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AUTOMOTIVE MACHINISTS LODGE 1173

8 UNITED STATES OF AMERICA
9 NATIONAL LABOR RELATIONS BOARD
10 REGION 32

11 FAA CONCORD H, INC. d/b/a CONCORD
12 HONDA,

13 Respondent,

14 and

15 MACHINISTS AUTOMOTIVE TRADES
16 DISTRICT LODGE NO. 190,
17 AUTOMOTIVE MACHINISTS LODGE NO.
18 1173,

Charging Party.

No. 32-CA-066979
32-CA-070343
32-CA-072231

**CROSS-EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE
LAW JUDGE**

CROSS-EXCEPTIONS

No.	Page	Cross-Exception
1.	4:44-5:5, fn 16	To the failure of the ALJ to find that no alternative work week election was conducted in 2000.
2.	5:23	To the misspelling of Caren Sencer's name.
3.	6:39-40	To the failure of the ALJ to find that this statement by Rick Rodgers was intended to make it plain that if Concord Honda intended to violate the law the sooner it did it the better so that the Union could take appropriate legal action.
4.	7:11-14	To the failure of the ALJ to find that the second election could not be held under any lawful theory. It was unlawful under the Act as direct dealing and unlawful under state law which only permits an election once a year.

No.	Page	Cross-Exception
		See IWC Order 4-2001 Section 3(C) (5). To the additional failure of the ALJ to find that the November 30 election was conducted in bad faith since it violated state law. See footnote 8 in which ALJ recognized that the Wage Order provides a 12 month interval between elections.
5.	7:11-18	To the failure of the ALJ to find that the reason that the union represented employees voted in favor of the 4/10 schedule was because of the unlawful threats made by the employer to lay off employees if they did not vote for the 4/10 schedule.
6.	7:21-8:20	To the failure of the ALJ to find that the Employer has delayed and stalled the arbitration proceedings under the arbitration agreement.
7.	7:26-8:1	To the finding that the Union, rather than the unit employees, demanded arbitration.
8.	8:24-9:37	To the failure of the ALJ to recommend that the employer be required to restore the bonus plan and pay the bonus on an ongoing basis.
9.	9:39-14:41	To the failure of the ALJ to find that the even if the Union sought to delay the alternative work week election, that was a lawful tactic of maintaining the status quo because it was a means of applying economic pressure to the employer by forcing it to pay overtime until a collective bargaining agreement was reached which might resolve that overtime payment requirement and/or allow the employer to continue the 4/10 schedule without the overtime compensation as permitted by state law. This was the economic pressure of the status quo obligation imposed on both parties.
10.	12:8-22 including fn. 14	To the failure of the ALJ to find that the Union had a substantial reason for rescinding its proposal on safety issues because of the development of safety concerns in the shop.
11.	13:1-18	To the failure of the ALJ to find that it is unlawful California Law for an employer to fail to pay overtime after 8 hours in a work day or 40 hours in a workweek regardless of work schedule.
12.	9:39-14:41	To the failure of the ALJ to find that the employer's conduct was an unlawful attempt to bring economic pressure on the Union to resolve the contract on the employer's own terms, foreclosing the employer from any economic exigency defense.
13.	15:18-27	To the failure of the ALJ to recognize that the Union had no obligation to attend an illegal meeting where the Union would have been, in effect, forced to condone unlawful direct dealing.
14.	16:13-24	To the failure of the ALJ to specifically find that pre-election meetings were unlawful direct dealing. Furthermore, to failure of the ALJ to find that the elections were also unlawful direct dealing. To the failure of the ALJ to order voiding and rescinding the alternative work week elections.

No.	Page	Cross-Exception
15.	16:35-17:36	To the failure of the ALJ to find that the Federal Arbitration Act does not govern this arbitration procedure. Although the employer's business as stated in the Arbitration Agreement affects interstate commerce, the dispute resolution procedure which is the activity at issue for Commerce Clause purposes does not affect interstate commerce. The only issue is arbitration and the FAA does not purport to regulate the automobile business or any aspect of employment.
16.	16:35-17:36	To the failure of the ALJ to find that the Arbitration Agreement is invalid because it unlawfully imposes an absolute privilege on employer communications. It insulates the employer from defamation or other legal actions if the employer engages in defamatory statements or other unlawful conduct about workers during the course of or related to the arbitration process.
17.	16:35-21:25	To the failure of the ALJ to recognize that the arbitration agreement is unlawful because it prohibits employees from acting concertedly to defend against employer claims. Just as it precludes employees from acting concertedly to bring their claims, it prohibits employees from acting concertedly to defend claims brought by the employer. This is even more onerous since it gives the employer a substantial punitive advantage of forcing employees to defend claims against themselves singly and without joining with others to defend themselves.
18.	16:35-21:25	To the failure of the ALJ to find that the Arbitration agreement restricts Section 7 activity because it prohibits concerted activity directed to parties who are not the employer. Since the Agreement seeks to prohibit any action against others who are not the employer ("owners, directors, officers, manager, employees, agents, and parties affiliated with benefit and health plans") it prohibits concerted actions by employees in court or by boycotting or other expressive activity.
19.	16:38	To the failure of the ALJ to find that because the arbitration proceeding is private, this prohibits employees from disclosing the proceedings to other workers or other employees or from other employees from attending and/or assisting in the proceeding.
20.	16:28-21:24	To the failure of the ALJ to find that the Arbitration Agreement is unlawful because it would impose substantial costs on employees for exercising their rights to complain concertedly about wages, hours and working conditions. The Arbitration Agreement does not state that the employer will pay the costs. Many of the administrative remedies available to workers are free (Labor Commissioner) or small cost (Court filing fee). Arbitration is much more expensive. Nothing on face of the Arbitration Agreement suggests anything other than the worker bearing punitive and prohibited arbitration costs to bring claims.
21.	16:28-21:24	To the failure of the ALJ to find that the Arbitration Agreement interfered with section 7 rights because the employer allows employees to bring claims or concerns concertedly to management's attention. Because it allows them to bring those claims concertedly, it is unlawful to then

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		preclude them from bringing them concertedly to the final step of arbitration.
22.	16:28-21:24	To the failure of the ALJ to find that the Arbitration Agreement would prohibit a group of employees from bringing a group claim which is neither a collective action nor a class action. If 2 workers had the same claim about unlawful treatment (e.g. payroll mistakes, discriminatory treatment, harassment, age discrimination etc.), they would be prohibited from bringing their claims concertedly.
23.	19:36-43	To the failure of the ALJ to find that the Arbitration Agreement has been applied to restrict concerted action. The employer has chosen the form of action, namely consolidation, and refused to allow the employees to bring class wide arbitration. The employer does not have the right to determine the form of group action as a condition of employment. Although the court could rule on whether a group, collective or class action may proceed, the employer may not limit those choices as a condition of employment. Additionally, this prohibits employees from bringing an action on behalf of all employees. Moreover consolidation offers distinct disadvantages to the employees and advantages to the employer.
24.	18:32-19:16	To the failure of the ALJ to find that because the employer has made it clear that it would not permit class wide arbitration, the only reading of the MMA is that it permits individual arbitration actions only.
25.	20:8-13	To the reference to the Respondent's position is that "collective" actions better reflects Section 7 rights. Here Respondent refused to allow a true collective action.
26.	Passim	To the failure of the ALJ to recognize that forcing employees to consolidate their claims over their objection violates their rights under Section 7 to refrain from concerted activity. Here, the employer is compelling employees to act concertedly by consolidating their claims.
27.	16:28-21:24	To the failure of the ALJ to find that by disallowing class or collective actions, it forces employees to bring separate actions rather than allowing representative, collective or group actions by others. This imposes a burden on their Section 7 right to act concertedly.
28.	16:28-21:24	To the failure of the ALJ to find that the Arbitration Agreements interfere with the representational rights of the charging party. The Union has a right to bring group, collective or class wide grievances to the attention of the employer. If the employer has the right to impose the arbitration agreement as part of the status quo, it cannot forbid the Union from proceeding in its Section 9 role as the representative of all the employees. Further the Arbitration Agreements force direct dealing since they force the individual employees to bring their disputes to the employer without the involvement of the Union on behalf of all or any employees.
29.	16:28-21:24	To the failure of the ALJ to recognize that the Arbitration Agreement requires all disputes be brought through to the Arbitration Procedure which forecloses concerted action such as boycotting, leafleting,

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		petitioning or other expressive activity.
30.	20:26-38	To the failure of the ALJ to recognize these issues of recess appointment are irrelevant since the newly confirmed Board can rule on all issues.
31.	20:39-21:23	To the failure of the ALJ to find that the activity at issue is not selling or repairing cars but rather the act of dispute resolution. Dispute resolution does not affect interstate commerce and Congress has no authority to regulate dispute resolution activity under the commerce clause.
32.	21:34-38	To the failure of the ALJ to recognize that maintaining and enforcing the mandatory arbitration agreement in light of the union's representative status violates Section 8(a)(5). The procedure is a limit on the Union's right as the representative to bargain about and resolve group, collective and class claims. This limits that statutory right and violates Section 8(a)(5).
33.	21:34-38	To the failure of the ALJ to recognize that by maintaining the arbitration agreement the employer violates Section 8(a)(1) because the agreement requires that proceedings be private and also because it prohibits the employees from joining together in the defense of actions brought against them by the employer.
34.	22:11-19	To the failure of the ALJ to allow class wide arbitration with a provision for any employee to opt out.
35.	22:21-31	To the failure of the ALJ to recommend the reimbursement to union employees of litigation expenses.
36.	22:21-31	To the rationale of the ALJ that any remedy should not be retroactive to January 3, 2012.
37.	23:13-36	To the failure of the ALJ to require the reinstatement of the bonus system.
38.	22:1-34	To the failure of the ALJ recommend that the employees be made whole for the unlawful rescission of the bonus.
39.	23:9	To the failure of the ALJ to find that maintaining and enforcing the mandatory arbitration agreement requires an appropriate remedy.
40.	22:38-23:36	To the Order as to the employer because it fails to provide a sufficient remedy. The employer should be required to read the notice to the employees repeatedly, to post the Board's notice for a lengthier period of time, to mail any notice to all employees who have worked for the facility from the date of the violation until the notice is mailed, and provide a copy of the Board's decision to the employees and to take other affirmative relief as described in the brief. The employer should be required to post the notice for the period from when the violation occurred until when the notice is posted or from when complaint issued until the notice is posted.

No.	Page	Cross-Exception
41.	Appendix	The notice should have specific references to the conduct which Concord Honda was found to have violated. A brief reference of “we violated Federal labor law” is insufficient to advise the employees of misconduct. The Notice should add more detail as to the illegal conduct by affirmatively stating the unlawful conduct.
42.	Appendix	To the failure of the notice to have the “we will not” language with respect to bypassing the union on the bonus.
43.	Appendix	To the failure of the notice provide information to the employees of where and how they can obtain the Board’s decision.
44.	Appendix and Remedy p 22:1-31	To the failure of the notice to address the additional remedies sought by the Charging Party.
45.	Appendix	To the inclusion of any language in a notice to be posted by Concord Honda which refers to the disadvantage to refrain language.
46.	Appendix	To the failure of the ALJ to recommend that the notice be posted for the length of time when complaint issued and when the employer actually post the notice.
47.	Appendix and Remedy p 22:1-31.	To the failure of the notice and order to require the Respondent to request the arbitrator to reinstate the class action and to toll the statute of limitations for any class members.
48.	Appendix and Remedy p 21:1-31.	To the failure of the notice to state Concord Honda will rescind the Arbitration agreement and will not issue any new policies without bargaining with the Union.

Dated: January 15, 2014

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ Caren P. Sencer
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129357/746778

1 **CERTIFICATE OF SERVICE**

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3 I am a citizen of the United States and an employee in the County of Alameda, State of
4 California. I am over the age of eighteen years and not a party to the withing action; my business
5 address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501. I certify that on
6 January 15, 2014, the CROSS-EXCEPTIONS TO THE DECISION OF THE
7 ADMINISTRATIVE LAW JUDGE was served on all parties or their counsel of record through
8 CM/ECF system as addressed below.

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17 I certify under penalty of perjury that the above is true and correct. Executed at Alameda,
18 California, on January 15, 2014.

19 /s/Jennifer A. Watkinson
20 Jennifer A. Watkinson

21 129357/748785