

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SPACE NEEDLE, LLC	Cases:
and	19-CA-098908
UNITE HERE! LOCAL 8	19-CA-098988
and	19-CA-098836
JULIA DUBE, an Individual	19-CA-108459
	19-CA-107024

**RESPONDENT’S EXCEPTIONS TO
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent Space Needle, LLC (“Respondent,” “Space Needle,” or “Employer”) submits the following exceptions to Administrative Law Judge Mary Miller Cracraft’s March 5, 2014 (“ALJD”) in the above-captioned matter, finding that the Space Needle had engaged in certain Unfair Labor Practices, more specifically discussed herein, below.¹

Exception #1: The ALJD erroneously failed to consider, find, and conclude that the Space Needle at all times complied with *WKYC-TV*. (ALJD PP.2-5).

¹ References to the Administrative Law Judge Mary Miller Cracraft’s March 5, 2014 Decision are indicated as “(ALJD p.____).” Citations to witness testimony contained in the official transcript of the proceeding are indicated as “(Tr. PAGE : LINE).” Citations to exhibits are indicated as “(R. Exh ____, p. ____)” or “(G.C. Exh ____, p. ____).” Reference to testimony and exhibits, the basis for Respondent’s Exceptions, are provided at length and in more detail in Respondent’s Brief in Support of its Exceptions.

Exception #2: The ALJD erroneously found and concluded that lawful cessation of the dues deduction program began on June 30, 2012. Rather, lawful cessation of the dues deduction program began on June 1, 2012. (ALJD p. 3).

Exception #3: The ALJD erroneously failed to find and conclude that there did not exist offer, acceptance, and consideration in the context of a bargained-for-exchange necessary to find a binding agreement requiring the Space Needle to restart the dues deduction program. (ALJD pp.2-5).

Exception #4: The ALJD erroneously found and concluded that Respondent entered into a legally binding agreement to reinstate dues deductions. (ALJD pp.2-5).

Exception #5: The ALJD erroneously failed to consider, find, and conclude that the Union's December 19, 2012 letter was not an offer to enter into an agreement and was instead a demand that the Space Needle restart the dues deduction program by the next pay date. (ALJD pp.2-5).

Exception #6: The ALJD erroneously failed to find and conclude that there did not exist offer, acceptance, a meeting of the minds, consideration, a bargained-for-exchange, or any evidence to support that the parties were entering into a bargained-for-exchange for restarting of the dues deduction program. (ALJD pp.2-5).

Exception #7: The ALJD erroneously found and concluded that Respondent's communications and actions following the January 2, 2013 letter evidenced a meeting of the minds, manifested an intention to reinstate dues deduction, and acknowledged an agreement to reinstate dues deduction. (ALJD p.5).

Exception #8: The ALJD erroneously failed to find and conclude that the Union failed to provide a current list of Team Members or all amounts owed by January 7, 2013, or thereafter. (ALJD pp.2-5).

Exception #9: The ALJD erroneously found and concluded that the Union had provided a current list of Team Members and all amounts owed. (ALJD p.5).

Exception #10: The ALJD erroneously failed to find and conclude that to the extent an agreement existed, the agreement was that the Space Needle would not violate the law after issuance of the *WKYC-TV* decision and it is undisputed that the Space Needle complied with the law after issuance of the *WKYC-TV* decision. (ALJD pp. 2-5).

Exception #11: The ALJD erroneously found and concluded that the terms of a binding agreement between the parties were that the Space Needle would restart the dues deduction program despite the fact that *WKYC-TV* did not require the Space Needle to restart the dues deduction program. (ALJD p.5).

Exception #12: The ALJD failed to consider, find, and conclude that to the extent there existed any agreement between the parties, the agreement was not breached because the Space Needle continued to be in compliance with the law after *WKYC-TV*. (ALJD pp.2-5).

Exception #13: The ALJD erroneously found and concluded that the parties reached an agreement to reinstate dues deduction on January 2, 2013, that Respondent reneged on that agreement, and that by doing so Respondent violated Section 8(a)(1) and (5) of the Act. (ALJD p.5).

Exception #14: The ALJD erroneously failed to consider, find and conclude that the General Counsel's claim that Respondent entered into a legally binding agreement to restart dues deduction is barred by the Union's misrepresentation. (ALJD pp.2-5).

Exception #15: The ALJD erroneously failed to consider, find and conclude that the General Counsel's claim that Respondent entered into a legally binding agreement to restart dues deduction is barred by the doctrines of unilateral and/or mutual mistake. (ALJD pp.2-5).

Exception #16: The ALJD erroneously found and concluded that the doctrine of unilateral mistake of law did not bar any agreement or otherwise render any purported agreement between the parties voidable and/or subject to rescission. (ALJD pp.4-5).

Exception #17: The ALJD erroneously failed to find and conclude that the Union's first attempts to negotiate an agreement on January 21 and 31, 2013, when the Union offered to withdraw the pending unfair labor practice charges dating back to 2012 if dues check off was reinstated, and that the Respondent rejected that offer. (ALJD pp.2-5).

Exception #18: The ALJD erroneously failed to find and conclude that the Space Needle did not fail to recall its servers from layoff, including Julia Dube, for any unlawful reason. (ALJD p.12).

Exception #19: The ALJD erred in allowing the General Counsel to assert a new theory at the hearing inconsistent with the Complaint allegation regarding server recall. (ALJD pp.17-26).

Exception #20: The ALJD erroneously found and concluded that the "General Counsel claims that Respondent manipulated the recall of servers in such a way as to exclude Dube from recall because of Union activity" despite that the General Counsel never made such an allegation in its Complaint or at the hearing. (ALJD p.23).

Exception #21: The ALJD erroneously failed to find and conclude that the General Counsel failed to establish any business justification that would have required the addition of more server shifts after the additions to the March 25, 2013 schedule. (ALJD pp.17-26).

Exception #22: The ALJD erroneously failed to consider, find and conclude that business levels and staffing levels during Dube's seniority window were nearly identical to business levels during the same time period in 2011 and there was no business justification to add additional servers after the additions to the March 25, 2013 schedule. (ALJD pp.17-26).

Exception #23: The ALJD erroneously failed to find and conclude that the General Counsel failed to establish that the Space Needle manipulated the recall procedure in order to preclude recall of employees until Dube's seniority lapsed. (ALJD pp.17-26).

Exception #24: The ALJD erroneously found and concluded that the General Counsel proved that the Space Needle manipulated the recall procedure in order to preclude recall of employees until Dube's seniority lapsed. (ALJD p.24).

Exception #25: The ALJD erroneously failed to find and conclude that the March 7 update on open requisitions did not establish manipulation of a schedule, or any of the General Counsel's prima facie requirements and ultimate burden such as adverse action and motivating factor, or negate any affirmative defense by the Space Needle. (ALJD 17-26).

Exception #26: The ALJD erroneously found and concluded that the March 7 update on open requisitions in some unknown fashion related to manipulation of a schedule, the General Counsel's prima facie requirements and ultimate burden the Space Needle's affirmative defense. (ALJD 25).

Exception #27: The ALJD erroneously failed to find and conclude that servers were not forced to take shifts without consent or by fiat and that the Space Needle did not deviate from longstanding practice with respect to seniority in assigning additional shifts by seniority. (ALJD pp.17-26).

Exception #28: The ALJD erroneously found and concluded that servers were forced to take shifts without consent or by fiat and that Respondent did not adhere to its general rule of following seniority in assigning additional shifts by seniority. (ALJD p.20 and p.25).

Exception #29: The ALJD erroneously failed to find and conclude that there was no testimony or evidence that seniority was not followed or that a server was forced to take a shift when the shifts were added to the March 25, 2013 schedule. The testimony and evidence show seniority was followed and servers chose to pick up shifts. (ALJD pp.17-26).

Exception #30: The ALJD erroneously found and concluded that servers may have been forced to take shifts without consent or by fiat, that server testimony established the forcing of shifts on servers and/or violation of seniority, and that Respondent did not adhere to its general rule of following seniority in assigning additional shifts by seniority. (ALJD p.20 and p.25).

Exception #31: The ALJD erroneously failed to find and conclude that five on call shifts were converted to regular shifts in addition to the 25 shifts added to the schedule on March 25, 2013, and this does not establish manipulation of the schedule. (ALJD pp.17-26).

Exception #32: The ALJD erroneously found and concluded that eight on call shifts were “dropped on the March 25 schedule in order to assign existing servers eight of shifts added to the schedule.” Five of the eight on call shifts were converted to regular shifts. (ALJD p.20 and p.25).

Exception #33: The ALJD erroneously failed to find and conclude that converting 5 on call shifts to regular shifts in addition to the 25 shifts added to the schedule on March 25, 2013 was to the benefit of laid off servers and increased the chances of laid off employees making it onto the schedule once existing servers with higher seniority had determined which shifts, if any, they desired to pick up. (ALJD pp.17-26).

Exception #34: The ALJD erroneously found and concluded that the on call shifts somehow decreased the chances of laid off server making it onto the schedule when the shifts were added to the schedule on March 25, 2013. (ALJD p.20 and p.25).

Exception #35: The ALJD erroneously failed to find and conclude that removing on call shifts from the schedule is a normal practice and has occurred on the schedules in 2011, 2012, and 2013. (ALJD pp.17-26).

Exception #36: The ALJD erroneously found and concluded that on call shifts no longer appearing on the schedule the week of March 25, 2013 was a marked departure from past practice. (ALJD p.25).

Exception #37: The ALJD erroneously failed to find and conclude there was no evidence the removal of the on call shifts in any way negatively impacted the ability of laid off servers to potentially come onto the schedule when shifts were added the week of March 25, 2013. (ALJD pp.17-26).

Exception #38: The ALJD erroneously found and concluded that had the on call shifts not been removed, Dube and McCauley would have come onto the schedule. (ALJD p.25).

Exception #39: The ALJD erroneously failed to find and conclude that how servers individually chose shifts in May 2011 before the summer bid that year bears no relationship, statistical or otherwise, as to how servers individually chose shifts in March 2013. (ALJD pp.17-26).

Exception #40: The ALJD erroneously found and concluded that how servers individually chose shifts in May 2011 supports a conclusion that the conversion of 5 on call shifts to regular shifts when the 25 shifts were added to the schedule had a negative effect on the ability of laid off servers to make it onto the schedule. (ALJD p.20 and p.23).

Exception #41: The ALJD erroneously failed to find and conclude that the alleged conversation between Dare and Dube about a change in the procedures for reapplication and interviewing is immaterial since no change ever occurred, any confusion was cleared up by a contemporaneous memorandum from Mike Douglas did not establish manipulation of a schedule, and there was no adverse action taken against any server based upon that conversation. (ALJD pp.17-26).

Exception #42: The ALJD erroneously found and concluded that despite no change in the rehire process, deviation from past practice, or adverse action taken, that the conversation between Dare and Dube somehow establishes that a schedule was manipulated or unlawful adverse action was taken. (ALJD p. 20 and p.25).

Exception #43: The ALJD erroneously failed to find and conclude that the General Counsel failed to carry its burden by failing to establish adverse action. (ALJD pp.17-26).

Exception #44: The ALJD erroneously failed to find and conclude that the General Counsel failed to carry its burden by failing to establish that protected activity was a motivating factor in any adverse action. (ALJD pp.17-26).

Exception #45: The ALJD erroneously found and concluded that Respondent was aware that Dube was one of the more active Union advocates among its employees. Rather, Dube engaged in Union activity throughout her employment at the Space Needle and in similar manner to other employees. (ALJD p.17).

Exception #46: The ALJD erroneously found and concluded that statements made at the February 12, 2013 meeting were indicative of union animus and had causal connection to the server recall issue or otherwise could establish that protected activity was a motivating factor in any adverse action. (ALJD pp.23-24).

Exception #47: The ALJD erroneously found and concluded that statements by Harold Fields were indicative of union animus and had causal connection to the server recall issue or otherwise could establish that protected activity was a motivating factor in any adverse action. (ALJD p.24).

Exception #48: The ALJD erroneously found and concluded that statements by Chef Maxfield were indicative of union animus and had causal connection to the server recall issue or otherwise could establish that protected activity was a motivating factor in any adverse action. (ALJD p.24).

Exception #49: The ALJD erroneously found and concluded that statements by Crystal Dare were indicative of union animus and had causal connection to the server recall issue or otherwise could establish that protected activity was a motivating factor in any adverse action. Rather, the statements were all lawful, protected by constitutional right, and unconnected to any purported adverse action. (ALJD p.24).

Exception #50: Respondent takes exception to any and all statements in the “fact” section of the ALJD Server Recall Section to the extent they are construed as establishing any of the elements of the General Counsel’s prima facie case and ultimate burden, or to negate the Respondent’s affirmative defense. (ALJD pp.19-23).

Exception #51: The ALJD erroneously failed to find and conclude that the General Counsel had not alleged a “collateral damage” or “camouflage” theory and that the evidence did not support such a theory. (ALJD pp.17-26).

Exception #52: The ALJD erroneously found and concluded that the General Counsel had alleged a “collateral damage” or “camouflage” theory and that the evidence supported such a theory. (ALJD p.24).

Exception #53: Even if the General Counsel had presented a *prima facie* case and carried its ultimate burden, the ALJD erroneously failed to find and conclude that the Space Needle had met its affirmative defense by showing that the same action would have occurred regardless of Union Activity. (ALJD pp.17-26). *See, also*, Exceptions 20-42 herein).

Exception #54: The ALJD erroneously failed to find and conclude that the Space Needle did not fail to rehire its servers, including Julia Dube, for any unlawful reason. (ALJD pp.27-28)

Exception #55: The ALJD erroneously found and concluded that the rehire issue was not briefed and was moot. The issue was brief by Respondent. (*See*, Post-Hearing Brief pp.53-109). (ALJD p.28).

Exception #56: The ALJD erroneously failed to find and conclude that the February 5, 2013 letters to employees did not violate Section 8(a)(1) of the Act and did not unlawfully poll union sympathies. (ALJD pp.5-12).

Exception #57: The ALJD erroneously found and concluded that the February 5, 2013 letters to employees violated Section 8(a)(1) of the Act. (ALJD p.10).

Exception #58: The ALJD erroneously found and concluded that all versions of the February 5 letter referred to a sample union withdrawal form. (ALJD p.7). (G.C. Exh. 28).

Exception #59: The ALJD erroneously found and concluded that managers were instructed to tell each employee that Respondent did not want to reinstate dues deduction but would do so unless employees instructed Respondent by February 6 to not deduct dues from their paycheck. Rather, this statement is unsupported by the record and the February 5, 2013 letters were handed out by the managers and confirm what was actually communicated to employees. (ALJD p.7).

Exception #60: The ALJD erroneously failed to find and conclude that the Space Needle did not unlawfully track employee action to obtain and complete union resignation forms. (ALJD pp.5-12).

Exception #61: The ALJD erroneously found and concluded that the Space Needle unlawfully tracked employee action to obtain and complete the resignation forms based upon the ALJD's mistaken conclusion that the information was unrelated to the dues authorization program. (ALJD pp.9-10).

Exception #62: The ALJD erroneously found and concluded hypothetically employees could remain non-members in the face of a lawful union security clause so union membership is unrelated to dues payment, and that Respondent tracked whether employees completed resignation letters. (ALJD pp.8-9).

Exception #63: The ALJD erroneously failed to find and conclude that Human Resources Manager Beth Reddaway did not violate the Act in her conversation with Lee Plaster. (ALJD pp.5-12).

Exception #64: The ALJD erroneously found and concluded that Human Resources Manager Beth Reddaway coerced an employee by telling him that if he signed a dues authorization form, he would owe six months of back dues. (ALJD pp.10-12).

Exception #65: The ALJD erroneously found and concluded that Human Resources Manager Beth Reddaway testified inconsistently. (ALJD p.11).

DATED at Seattle, Washington this 2nd day of April, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April, 2014 I caused to be filed with the Executive Secretary of the National Labor Relations Board, via the NLRB E-Filing system, the foregoing ***“RESPONDENT’S EXCEPTIONS TO DECISION OF ADMINISTRATIVE LAW JUDGE.”***

I further certify that true and correct copies of the same were served via electronic mail upon the following individuals at the email address specified for them as shown below; and paper copies of the same were mailed to the undersigned via U.S. Mail, First Class Postage prepaid, at the following physical addresses:

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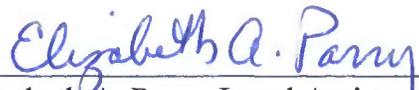
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