

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

PARAGON SYSTEMS, INC.

and

Cases 12-CA-105275  
12-CA-105291

UNITED GOVERNMENT SECURITY  
OFFICERS OF AMERICA, LOCAL 236

**COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS  
TO DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel herein files the following Exceptions to the Decision of Administrative Law Judge Joel P. Biblowitz issued on May 15, 2014.

1. The ALJ erred by failing to find that Respondent exercised discretion in making decisions to suspend bargaining unit employee Joe Favell on February 25, 2013, suspend unit employee Kelvin Strong on April 30, 2013, discharge unit employee Thomas Cifarelli on April 9, 2013, and discharge unit employee Jose Robles on April 15, 2013. (ALJD p.9, line 39 to p.10, line 13).<sup>1</sup>

2. The ALJ erred by finding that discretion is not needed when a guard is accused of falsifying documents, as in the cases of the discharges of unit employees Robles and Cifarelli. (ALJD p.10, lines 10-12).

3. The ALJ erred by finding that "the Open Post penalty was fixed, rather than discretionary." (ALJD p. 9, lines 48-49).

4. The ALJ erred by finding Respondent did not violate Section 8(a)(1) and (5) of the Act by failing and refusing to give United Government Security Officers of America, Local 236 (the Union) prior notice and an adequate opportunity to bargain regarding the decisions to suspend

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<sup>1</sup> "ALJD" refers to the Decision of Administrative Law Judge Biblowitz in this case. GC refers to General Counsel's exhibits.

bargaining unit employees Joe Favell and Kelvin Strong, and to discharge bargaining unit employees Thomas Cifarelli and Jose Robles. (ALJD p.11, lines 8-10).

5. The ALJ erred by failing to find that the below-quoted provisions in Respondent's Security Officer Handbook (Handbook) allowed Respondent to exercise discretion in making the decisions to suspend employees Favell and Strong and to discharge employees Cifarelli and Robles:

Listed below are *examples of major rule offenses* for the Rules for Personal Conduct and the associated penalties. *The list [sic] not all inclusive, these and other infractions will be evaluated on a case-by-case basis.* Discipline will be administered in accordance with the Paragon Progressive Discipline Policy, *where appropriate.* (emphasis added) (GC Ex 8, p. 48).

Major Rule Offenses – Discharge, *if warranted,* after unpaid suspension and management investigation. *Possible probation period determined at the discretion of the Program Manager."*

Discipline and Termination....

Other Employer-Initiated Separations

When any employee fails to meet Paragon's and/or client expectations, Paragon *may end* the employment relationship....

Progressive Discipline Policy

Introduction

Paragon uses a progressive discipline policy for dealing with violation [sic] of work rules, instances of unacceptable behavior or misconduct, or continued poor performance by Paragon employees. 'Progressive discipline' means that employees will *normally* be assessed penalties that increase each time an offense is repeated or a performance improvement is not made. Of course, *some offenses will be more serious than others; therefore, certain conduct may lead to more severe discipline on the first offense.* (emphasis added) (GC Ex. 8, p. 52).

Causes for Immediate Suspension

Some types of misconduct *may* require immediate suspension while an investigation is conducted. These include, but are not limited to, physical attacks, threats of violence, allegation of theft and allegation of harassment....

Procedure

*Supervisors must obtain approval of disciplinary measures more severe than written reprimand from their supervisor or other appropriate management official, except in those cases where employees commit egregious acts, such as acts of violence, drug abuse and insubordination.*

(GC Ex 8, p. 48 and 51-52, emphasis added; ALJD, p. 4, lines 10-26; ALJD, p. 5 fn 5; ALJD p.9, line 39 to p.10, line 13).

6. The ALJ erred by failing to find that the below-quoted provisions in the Federal Protective Service Security Guard Information Manual (the Manual) allowed Respondent to exercise discretion in making the decisions to suspend employees Favell and Strong and to discharge employees Cifarelli and Robles: The Security Guard....

Acceptable and Unacceptable Conduct

Grounds for *Possible* Disciplinary Action

The following list with explanations comprises grounds for *possible disciplinary action, up to and including* permanent removal from any FPS security guard contract.

(GC Ex. 9, pp. 5, 11-13, emphasis added; ALJD, p. 4, lines 10-26; ALJD, p. 5 fn 5; ALJD p.9, line 39 to p.10, line 13).

7. The ALJ erred by failing to give sufficient weight to the Handbook and Manual provisions quoted above in Exceptions 4 and 5, and other relevant evidence, and by finding that “the Open Post penalty imposed of employees Favell and Strong [was] fixed, rather than discretionary. (ALJD, p. 9, lines 39-50).

8. The ALJ erred by giving insufficient weight to language in the Handbook and the Manual provisions quoted above in Exceptions 4 and 5, and other relevant evidence, and by finding that the discharges of Cifarelli and Robles for “falsification of government documents” were not discretionary. (ALJD, p. 4, line 43 to p. 6, line 20; ALJD, p. 10, lines 1-12).

9. The ALJ erred by failing to find that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to give the Union adequate prior notice and an opportunity to bargain with Respondent over whether employees Donald Mendez, Kevin Daley, Joshua Wielder, Duane Douglas, Anthony Durand-Gonzales, Joe Favell,, Kelvin Strong, Thomas

Cifarelli and Jose Robles committed the alleged offenses for which they were disciplined (i.e. the grounds for discipline), and over the grounds for the form of discipline chosen for those employees. (ALJD p.12, lines 9-12).

10. The ALJ erred by failing to include in the recommended Order the requirement that within 14 days from the date of the Board's order, offer employees Thomas Cifarelli and Jose Robles full reinstatement to their former jobs or, if those jobs not longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. (ALJD p.11, lines 8-10).

11. The ALJ erred by failing to include in the recommended Order the requirement that Respondent make whole the below-named employees for any loss of earnings and other benefits suffered as a result of the actions set forth opposite their names, with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010):

Joe Favell – suspension on February 25, 2013  
Kevin Daley and Donald Mendez – suspensions on March 4, 2013  
Joshua Wielder – suspension on March 16, 2013  
Thomas Cifarelli – discharge on April 9, 2013  
Jose Robles – discharge on April 15, 2013,  
Duane Douglas – suspension on April 29, 2103  
Kelvin Strong – suspension on April 30, 2013  
Anthony Durand-Gonzales – suspension on May 31, 2013<sup>2</sup>

ALDJ p.11, lines 8-10; ALJD p.12, lines 20-22).

12. The ALJ erred by failing to include in the recommended Order the requirement that within 14 days of the Board Order, Respondent remove from its files all references to the unlawful suspensions of employees Joe Favell, Kevin Daley, Donald Mendez, Joshua Wielder, Duane Douglas, Kelvin Strong and Anthony Durand-Gonzalez, and to the unlawful discharges of employees Thomas Cifarelli and Jose Robles, and to notify each of those employees that this

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<sup>2</sup> Although the ALJ recommended that employees Daley, Mendez, Wielder, Douglas and Durand-Gonzales be made whole, his recommended Order should be clarified to show the date on which each of the respective employees was suspended, and to include the requirement that interest compounded daily be paid on all backpay owed.

was done and that these actions will not be used against them in any way. (ALJD p. 12, lines 20-22).

13. The ALJ erred by failing to include in the recommended Order the requirement that Respondent compensate employees Joe Favell, Kevin Daley, Donald Mendez, Joshua Wielder, Thomas Cifarelli, Jose Robles, Duane Douglas, Kelvin Strong and Anthony Durand-Gonzales for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

14. The ALJ erred by failing to recommend that Respondent be required to preserve, and on request of the Regional Director, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of the Board Order.

15. The ALJ erred by failing to recommend that Respondent be required to electronically post the Notices to Employees, in addition to physically posting the notices and, if necessary, mailing the notices. (ALJD p.12, lines 24-34). *J. Picini Flooring*, 356 NLRB No. 9 (2010).

16. The ALJ erred by failing to recommend that the Board issue a Notice to Employees that fully remedies Respondent's unfair labor practices. (ALJD, Appendix). General Counsel

urges the Board to order the posting of the proposed Notice to Employees that is attached hereto.

DATED at Tampa, Florida, this 12<sup>th</sup> day of June, 2014.

Respectfully submitted,

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## NOTICE TO EMPLOYEES

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

**WE WILL NOT** fail or refuse to bargain with United Government Security Officers Association and its Local 236 (the Union) as the exclusive collective bargaining representative of our employees in the following unit:

All armed and unarmed security officers employed by Paragon Systems, Inc. performing guard duties as defined by Section 9(b)(3) of the National Labor Relations Act, assigned to Federal facilities in Bradenton, Clearwater, Dade City, Fort Myers, Lakeland, Naples, Port Charlotte, Port Richey, Sarasota, St. Petersburg, Sebring, Tampa, Valrico, Venice, Winter Haven, FL and surrounding areas under the contract with the Department of Homeland Security; excluding office clerical employees, managerial personnel, supervisors as defined by the National Labor Relations Act, and all other personnel.

**WE WILL NOT** ask our employees to sign Dispute Resolution Agreements, thereby bypassing the Union, your collective bargaining representative, and **WE WILL NOT** maintain or give effect to any Dispute Resolutions Agreements that were signed by our employees in the above unit.

**WE WILL NOT** suspend, demote or discharge employees in the above unit, at times when we are obligated to recognize and bargain with the Union but we do not have a collective-bargaining agreement or interim grievance agreement with the Union, without first giving the Union adequate prior notice and an opportunity to bargain about the grounds for imposing such discipline, as well as the grounds for the form of discipline chosen, to the extent that this choice involves the exercise of discretion.

**WE WILL NOT** refuse to accept or bargain about grievances filed by the Union.

**WE WILL NOT** fail or refuse to timely furnish the Union with information it has requested that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the above unit.

**WE WILL NOT** in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

**WE WILL** notify our employees in the above unit that they are not required to sign the Dispute Resolution Agreement.

**WE WILL** give the Union adequate notice and an opportunity to bargain with us before we impose decisions to suspend, demote or discharge employees in the above unit in our discretion, at times when we do not have a collective-bargaining agreement or an interim grievance agreement with the Union.

**WE WILL** accept and bargain in good faith with the Union about grievances that it files.

**WE WILL**, within 14 days from the date of this Order, offer to reinstate Thomas Cifarelli and Jose Robles full reinstatement to their former jobs or, if those jobs not longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

**WE WILL** make whole the below-named employees for any loss of earnings and other benefits suffered as a result of the actions set forth opposite their names, with interest:

Joe Favell – suspension on or about February 25, 2013  
Kevin Daley and Donald Mendez – suspensions on or about March 4, 2013  
Joshua Wielder – suspension on or about March 16 or 18, 2013  
Thomas Cifarelli – discharge on or about April 9, 2013  
Jose Robles – discharge on or about April 15, 2013,  
Duane Douglas – suspension on or about April 29, 2103  
Kelvin Strong – suspension on or about April 30, 2013  
Anthony Durand-Gonzales – suspension on or about May 31, 2013

**WE WILL**, within 14 days from the date of this Order, remove from our files all references to the unlawful suspensions of employees Joe Favell, Kevin Daley, Donald Mendez, Joshua Wielder, Duane Douglas, Kelvin Strong and Anthony Durand-Gonzalez, and to the unlawful discharges of employees Thomas Cifarelli and Jose Robles, and within three days thereafter, **WE WILL** notify each of those employees that this was done and that these actions will not be used against them in any way.

**WE WILL** compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

**PARAGON SYSTEMS, INC.**

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## Certificate of Service

I hereby certify that **Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge** in the matter of Paragon Systems, Inc., Cases 12-CA-105275 and 12-CA-105291, was electronically filed and served by electronic mail on the 12<sup>th</sup> day of June, 2014, as set forth below:

### By Electronic Filing:

National Labor Relations Board  
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