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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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Case No. 2-CA-39597

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MIRON & SONS, INC.

- and -

LAUNDRY, DRY-CLEANING & ALLIED  
WORKERS JOINT BOARD

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**BRIEF IN SUPPORT OF EXCEPTIONS  
SUBMITTED ON BEHALF OF MIRON & SONS, INC.**

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## INTRODUCTION

This brief is submitted on behalf of the Respondent, MIRON & SONS, INC. (“Respondent,” “MIRON” or the “Employer”) pursuant to NLRB Rules and Regulations § 102.46(a) and (b) in support of Respondent’s Exceptions to the Decision of the Administrative Law Judge Steven Davis dated December 17, 2010. The matter originally involved an Amended Complaint, Case Number 2-CA-39597 based upon the charges filed by Laundry, Dry-Cleaning & Allied Workers Joint Board which asserted against MIRON various violations of the National Labor Relations Act (the “Act”). MIRON filed answers with respect to the Amended Complaint (GC Exh. 1) and Complaint (GC Exh. 39) generally denying the allegations and setting forth affirmative defenses. This action was tried in front of the Honorable Steven Davis starting on October 13, 2010 and continuing for five separate hearing dates. The hearing closed on October 21, 2010. The Judge issued a Decision and recommended an Order on or about December 17, 2010.

The Respondent has filed, together with this Brief, Exceptions to the Decision and Recommended Order of the ALJ.

## STATEMENT OF THE CASE

The National Labor Relations Board (hereinafter referred to as “General Counsel” or “the Board”) and the Laundry, Dry-Cleaning & Allied Workers Joint Board (hereinafter referred to as “the Union”) brought the instant Complaint against Miron, Inc. (hereinafter referred to as “Miron” or “the Company”) alleging that Miron violated §§ 8(a)(1), (a)(3) and (a)(5) of the National Labor Relations Act (hereinafter referred to as the “Act”). As demonstrated below and as established by evaluation of the credible testimony of the Company’s witnesses and the disingenuous testimony of General Counsel’s witnesses, Miron did not violate the Act, but rather:

- 1) lawfully terminated Miguel Figueroa (“Figueroa”) after numerous warnings stemming from his obstinate refusal to cease lying to the workforce regarding employee welfare benefits;
- 2) truthfully advised its employees on the status of negotiations with the Union; and
- 3) continued to bargain with the Union in good faith, even in spite of a vicious campaign by the Union to force the Company’s hand at the bargaining table.

In essence, the filing of subject unfair labor practice charges and the prosecution of this matter are nothing more than extensions of the Union’s campaign to pressure Miron to agree to a collective bargaining agreement that disproportionately favors the Union. As set forth in detail below, Miron first contacted the Union to commence negotiations in July of 2009, months prior to the November 27, 2009 expiration date. Miron was proactive not only because the Company wanted to reach a successor agreement, but because the Company was facing financial difficulty resulting from the economic crisis that had begun affecting the broader economy in the Fall of 2008. The Union essentially ignored Miron’s plea for needed economic relief under the contract and, consequently, no successor agreement was reached prior the expiration date.

Ultimately, the Union commenced a campaign against Miron in furtherance of their unreasonable bargaining goals. Upon information and belief, they secretly appointed a new shop steward and directed him to spread lies about Miron management in an effort to undermine employee support for the Company. Nevertheless, the employees, generally dissatisfied with the Union, refused to strike. Seeing that their tactics were unsuccessful, the Union commenced a handbilling campaign of Miron customers, resulting in millions of dollars of lost revenue to the already ailing business. The Union now, incredibly, seeks to hold Miron accountable for its lawful reactions to these vicious attacks in furtherance of their scheme. As set forth at length below, the Union's witnesses are not credible and have manufactured their testimony, as well as certain documentary "evidence," to support these baseless claims. We request that the exceptions be granted and that the decision and order of the ALJ be revised and modified as excepted, along with such other relief as deemed just and proper. After such relief is granted, Miron can return to the bargaining table and attempt to reach a successor agreement.

## STATEMENT OF FACTS

Founded by Miron Markus (“Markus”) in 1977, Miron is a commercial laundry facility that services hotels in the New York City metropolitan area. (T: 15, 15-23)<sup>1</sup>. The Company has maintained a collective bargaining relationship with the Union and its predecessors since 1988. (T: 18, 1-4). Since 2004, Maritza Cordova (“Cordova”) served as the Shop Steward for Miron (T: 183, 13-20). Allegedly, in October, 2009, Miguel Figueroa (“Figueroa”) nominated himself as Shop Steward and was, unbeknownst to Miron management and ownership, voted in as Shop Steward by one other employee. (T: 194, 20-25).

The most recent collective bargaining agreement between Miron and the Union expired on November 27, 2009 (“2009 Agreement”) (See Exhibit GC-4). The parties have been engaged in negotiations to reach a successor agreement since July 2009. Markus testified credibly that it has been his intention to reach a mutually agreeable successor agreement, and that he remains confident that this goal will be achieved. He testified that he is, and always has been, negotiating in good faith with the Union to reach this successor agreement. (T: 65, 21-25; T: 66, 1-5).

Throughout 2008, Miron, like many other businesses, began to feel the strain of a severe economic downturn. (T: 25, 22-25). Specifically, the hotels with which Miron maintained service contracts demanded a thirty percent (30%) discount on all services. (T: 26, 1-3). Finally, in October 2008, after cutting operating costs to the greatest extent possible, Markus reached out to the Union and had discussions with Union Business Manager, Wilfredo Larancuent (“Larancuent”) wherein Markus advised him of the necessity of relief from the impending economic increases in the collective bargaining agreement. He advised Larancuent that it would be economically impossible to grant increases in wages and benefit contributions that were to become effective in November 2008. As a follow-up to their discussions, Markus sent a letter to

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<sup>1</sup> References to the testimony at multiple days of hearings are referred to as “T: [page], [lines]”.

the Union on December 15, 2008 (See Exhibit GC-6) requesting temporary relief under the 2009 Agreement to assure the survival of the Company. Specifically, Miron requested temporary suspension of the scheduled wage increases and benefit fund increases called for during the final year of the agreement. The Union did not respond to Markus' advice or to the December 15<sup>th</sup> letter. Contrary to the Union's claim that it responded to Markus' plea by letter dated December 18, 2008 (See Exhibit GC- 7), no indication of the Union's reaction to the request was received by Markus until in or around March or April of 2010.<sup>2</sup> (T: 67, 7-23). As the Union had ostensibly chosen to take no action with respect to Markus' letter, Miron implemented the proposed changes to the agreement to ensure the continued viability of the business. There was no grievance filed by the Union or by any employee in response to Miron' unfortunate, but necessary measures. Thus, Markus reasonably believed that the Union consented to the changes.<sup>3</sup> (T: 68, 9-12).

In a measure of good faith, Markus proactively contacted Larancuent to commence negotiations for a successor agreement ("Successor Agreement") to the 2009 Agreement in July 2009, nearly four full months prior to the contract's expiration. (T: 68, 23-25; T: 69, 1-21). At that meeting, Markus discussed with Larancuent the financial difficulties that the Company was experiencing and the necessity of givebacks and freezing all wages and benefits contributions.<sup>4</sup>

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<sup>2</sup> The Union claims to have hand delivered a letter to Miron dated December 18, 2008 in response to Markus' letter. The weight of evidence demonstrates that this letter was not sent on that date, but rather was created in or around March or April 2010 to further the Union's attack against Miron. Notably, the Union cannot explain why this correspondence was purportedly hand delivered while all other correspondence between the Union and Miron have been sent via mail. The Union has failed to establish that the letter was ever distributed to or received by the Company.

<sup>3</sup> The Union claims to have filed a grievance over these allegedly unlawful unilateral changes to the terms and conditions of the collective bargaining agreement. However, at the hearing in this matter, the Union, when directed to produce a copy of the grievance, failed entirely to produce any grievance. The Union responded, conveniently, that they "could not find the document". (T: 313, 14-25; 314, 1-9).

<sup>4</sup> Employee members of the Union negotiating committee included Figueroa, Cordova, Juan Peguero ("Peguero", Modesta Alvarez and an alternate. (T: 268, 2-5).

The Union appeared to be unsympathetic to the economic reality facing the Company, continually rejecting all Company proposals. In spite of the Union's refusal to even consider Miron's proposals, the Company continued to bargain in good faith. Approximately four to six additional bargaining sessions were held prior to the expiration of the 2009 Agreement. (T: 245, 15-19). The last of this series of bargaining sessions was held on or about November 25, 2009. (T: 263, 14-19).

During October and November of 2009, Miron held several meetings with its employees. Miron feared that the Union was misstating what had occurred at the negotiation session or even failing to relay information to the employees at all. The sole purpose of these meetings was to advise them of the status of negotiations with the Union and of the economic realities facing the Company. (T: 70, 24-25; T: 71, 1-13; T: 111, 13-25; T: 112, 1-14; T: 129, 6-9). Larancuent was invited to these meetings, but declined to attend. (T: 71, 7-8).

As negotiations became embroiled, the Union polled its members with regard to engaging in a strike. The Union's efforts failed (not many, if any, employees agreed to strike) and no strike ensued. (T: 303, 18-25; T: 304, 1-8). Then, in late November 2009, the Union commenced a handbilling campaign directed at several hotels in the New York City area that were customers of Miron. (T: 252, 13-18; GC-26). The leaflets accused the various hotels of "supporting the abuse of workers" by continuing to conduct business with Miron. (See Exhibit GC-26). The Union also sent similarly worded letters directly to representatives of the hotels. (See Exhibit GC-28). Admittedly, this course of conduct was designed to bring pressure to bear against Miron at the bargaining table. (T: 255, 10-14). Miron requested by letter that the Union cease immediately. (See Exhibit GC-29). Most, if not all, of the handbilled hotels ceased doing business with Miron as a result of the Union's activity, exacerbating the Company's financial

difficulties. (T: 302, 12-25; T: 303, 1-11). Upon information and belief, the Union resorted to this course of conduct after the employees declined to strike their employer. (T: 303, 18-25; T: 304, 1-8).

During his employment, Figueroa engaged in a course of conduct that caused the lawful termination of his employment on November 25, 2009. Notwithstanding numerous warnings issued to Figueroa, he continued to knowingly advise Miron employees of false statements. As such, Figueroa received a written warning on September 17, 2009. (See Exhibit GC-14). This incident stems from the Union's persistent and inexplicable failure to provide welfare benefits to all bargaining unit employees at Miron. One such aggrieved employee was Jose Ramos ("Ramos"). In or about September, 2009, Ramos inquired as to why he, as a fully qualified employee, was not receiving benefits. Figueroa claims to have passed this inquiry along to Union Representative Jorge DesChamps ("DesChamps"). Without ever bringing the issue to the Company, Figueroa then declared to the employees that many of them, including Ramos, do not receive benefits because Markus refuses to pay for them. (T: 94, 1-10; T: 121, 2-23) Further, Figueroa falsely proclaimed that Markus makes deductions from these employees' wages, and simply keeps that money for himself.

Ramos, enraged at this allegation, immediately sought an explanation from Markus. Ramos conveyed exactly what Figueroa had reported.<sup>5</sup> (T: 73, 1-4). Markus provided documentary proof to Ramos that he had, in fact, paid for his benefits. (T: 73, 5-10). Ramos was fully satisfied with Markus' offer of proof and correctly concluded that the Union was at fault. (T: 73-74).

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<sup>5</sup> Crucially, Markus has no knowledge that Figueroa was the shop steward prior to his November 25, 2009 termination. (T: 72, 14-23; T: 110, 9-11).

Markus then explained to Figueroa that, contrary to his allegations, the Company was paying for benefits for all qualifying employees. If those employees were not receiving health coverage, then the Union was to blame and the issue should be addressed to the Union. Markus was upset that Figueroa knowingly provided incorrect information to the employees and did so without first consulting with the Company.<sup>6</sup> Because Figueroa had lied to the employees about an important employment benefit, Markus issued Figueroa a warning. (T: 95, 9-12). Figueroa was placed on notice that he would be terminated if he continued making false statements to the employees. (T: 76, 22-25; T: 77, 1-15). The circumstances giving rise to his termination center around Figueroa's inability to make truthful statements in and around the workplace and his continued refusal to ascertain the truth of his statements before dispensing lies to the workforce. Finally, Figueroa's propensity to make bold-faced, untruthful misrepresentations to employees about Miron operations with the Union caused his lawful termination.

Miron has been deeply concerned that its qualifying employees do not receive health coverage from the Union and/or the Funds that the Company pays for with its contributions. Markus was furthermore concerned that some employees would require benefits in the event that the bargaining relationship between the Company and the Union were to terminate. As such the Company, by secretary and bookkeeper Cecilia Valderrama ("Valderrama"), created a list whereby the employees would indicate "yes" or "no," stating whether or not they needed medical benefits. (T: 75, 5-7; T: 85, 23-25; T: 86, 1-18; See Exhibit GC-13). Employees were presented with the question at the time they picked up their paycheck as a matter of convenience. An employee's ability to receive their paycheck was not contingent upon their response or even upon their refusal to provide any response whatsoever. (T: 75, 18-23; T: 129, 18-23). Moreover,

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<sup>6</sup> Markus had maintained an excellent relationship with the prior shop steward Cordova. On many occasions, Cordova resolved issues between the Union and Miron amicably, as Cordova was interested in understanding both the Union and the Company's position on the issues. (T: 77, 16-25).

at no point did Miron ask employees to sign a document indicating whether they support the Union. (T: 74, 5-13).

Notwithstanding the foregoing, on or about November 25, 2009, Figueroa advised employee Santos Rosario (“Rosario”) and other employees that Miron would not distribute their paychecks unless they agreed to sign a document stating that they do not support the Union. (T: 112, 15-24). When the Company learned that Figueroa had made yet another knowingly false statement, his employment was terminated. (T: 92, 6-16; T: 104, 13-25; See Exhibit GC-16). Figueroa has since been reinstated to his former position. (T: 71, 20-23).

Notwithstanding the Union’s relentless campaign against Miron, the Company continues to bargain in good faith with the Union. Miron remains confident that the parties will reach a Successor Agreement.

## ARGUMENT

### POINT I

#### THE ALJ ERRED IN FINDING THAT MIRON MARKUS WAS NOT CREDIBLE AND IN REFUSING TO CREDIT ANY TESTIMONY BY MIRON MARKUS AND FINDING THAT THE EMPLOYEE WITNESSES' TESTIMONY WAS CONSISTENT, CREDIBLE, AND PLAUSIBLE

In his Analysis and Discussion of the matter ALJ Steven Davis (“ALJ” or “Davis”), at the outset of the Decision, determined that he could not credit any testimony of Miron Markus (“Markus”). The ALJ based his decision on his denial that he drafted and distributed a letter to his employees. Markus emphatically denied having written that letter and he denied having distributed that letter, as did his assistant Cecilia Valderamma (“Valderamma”). In fact, the ALJ credited the argument that the letter was not written in the manner in which other letters admittedly from Markus was written.

Nonetheless, the ALJ relied solely on the testimony of the employee witnesses. Those same witnesses who did in fact distribute the letter to each other. There was no testimony that the letter was distributed to any other employee of Miron. There were three employee witnesses presented to testify, Miguel Figueroa (“Figuero”), Rodrigo Vaquero (“Vaquero”) and Santos Rosario (“Rosario”). All three are former employees with an axe to grind against Miron. Each of them fired for legitimate reasons. There was no testimony supplied by any employee currently employed at Miron, although the National Labor Relations Board (“NLRB”) General Counsel Karen Newman (“GC”) had full access to any employee she chose to interview.

Further, the ALJ found that Markus testified in an “excited, agitated manner”. Markus runs a multi-million dollar company that over the past few years has been faltering, for some reasons relating to the economy and for other reasons directly relating to the tactics of the Union

during the period that was supposed to be dedicated to good faith bargaining. Markus is frustrated and angry that his company that he has worked night and day to build is failing. Testifying in an agitated and excited manner is a direct result of his frustration. Not an indication that he is not a credible witness.

Each of the employees' credibility was tested during cross-examination and through the admission of documentary evidence. The ALJ simply brushed aside, without explanation, that Peguero was not even at work on a day that he testified that he attended the meeting held by the employer. He was emphatic. He testified that he was at work and that he attended the meeting. Clearly, he lied. The ALJ excused the bald-faced lie as that there was some confusion as to the date of the meeting. No one was confused as to the date of the meeting. Throughout his Decision, the ALJ cites that the meeting occurred on October 21. The ALJ remarkably states that all three employee witnesses testify consistently and in support of each others' testimony.

## **POINT II**

### **FIGUEROA WAS LAWFULLY DISCHARGED BY MIRON FOR LEGITIMATE BUSINESS REASONS AND NOT FOR ENGAGING IN PROTECTED ACTIVITY AS ALLEGED BY GENERAL COUNSEL.**

Figueroa was terminated after three successive warnings for falsely advising employees that Miron had engaged in unlawful conduct. Specifically, Figueroa continually advised employees, in spite of clear and compelling evidence to the contrary, that certain employees were not receiving welfare benefits because Miron failed to pay for their coverage, and that despite Miron deducting union dues from the employees' pay, the Company never made payment to the Union. This resulted in verbal and written warnings. Finally, in November 2009, Figueroa advised Rosario and several other employees that Miron was refusing to issue their paychecks unless they signed a document indicating whether they needed the Company to provide medical

benefits. In response to his latest false accusation, Figueroa was terminated on or about November 25, 2009.

A violation of §§ 8(a)(1) and (a)(3) of the Act will lie where an employer discriminates against an employee in the terms and conditions of their employment on account of their engaging in protected activity. However, where the employer is not motivated by a discriminatory motive, but rather has a legitimate business reason for the action taken that is wholly unrelated to protected activity, no such violations will lie. In Wright Line, 251 NLRB 1083, *enfd.* 662 F.2d 899 (1<sup>st</sup> Cir. 1981), the Board established an analytical framework for deciding cases that turn on employer motivation. To prove that an employment decision violated §§ 8(a)(1) and (a)(3), General counsel must first persuade, by a preponderance of evidence, that the employee's protected conduct was a motivating factor in the employer's decision. Once General Counsel makes such a showing, the burden of persuasion "shift[s] to the employer to demonstrate that the same action would have taken place in the absence of protected conduct." Wright Line, at 1089. As set forth below, General Counsel has failed to meet its initial burden of demonstrating that protected conduct was a motivating factor in Miron' decision to terminate Figueroa's employment, as they have not established that his conduct was, in fact, protected.

Employees do not forfeit the protection of the Act by making false or inaccurate allegations concerning their employer in connection with workplace complaints, provided that the allegations are not "deliberately or maliciously" false. (*emphasis added*) Simplex Wire & Cable Co., 313 NLRB 1311 (1994). Here, Figueroa, upon hearing that Ramos was not receiving medical benefits, failed to follow protocol and take the short walk to Markus' office, speak to Valderamma and ask the simple question whether payments were made for Ramos. Rather, he allegedly asked a Union delegate. Allegedly, the Union called the Funds who stated payment

wasn't made and the Union then relayed third hand information back to Figueroa. It is the classic game of "telephone". Then Figueroa, without even inquiring as to the Company's position, broadcasted a false and malicious allegation not only to Ramos but to the rest of the staff: that the whole reason that certain of Miron employees, including Ramos, were without welfare benefits was because the Company refused to remit payment to the Union. This was completely unnecessary. His actions were malicious and intentional. Broadcasting false information to the entire workforce is a clear indication of his intentions.

Then, to compound his unnecessary, malicious and intentional actions, Figueroa never recanted his statements once he the truth was verified. He never advised all those he had lied to that Miron had in fact paid for benefits for Ramos. Figueroa nevertheless maliciously continued to disseminate this same false allegation. As Figueroa knew that his allegations were patently and maliciously false, his conduct clearly fell outside of the protection of the Act.

Finally, Figueroa, with a reckless disregard for the truth, again advised Miron employees of other falsities on or about November 24, 2009 that they would not receive their paycheck unless and until they signed a document stating that they do not support the Union. Markus, Valderrama and Ramos all credibly testified that this never occurred. In fact, even employees who said that they allegedly favored the Union received their paychecks that day. Because this act by Figueroa continued his pattern of willful and malicious dissemination of lies to the employees, his employment was terminated. As Figueroa made this and previous statements with malicious intent and without any attempt to determine the veracity of his allegations, his statements and actions are not protected under the Act.

Importantly, Miron management had no knowledge of Figueroa's purported shop steward status. This fact contributes to a reasonable belief by the Company that Figueroa's conduct is

“malicious” under the standard set forth under Simplex and makes it less likely that Miron would conclude that his wrongful behavior was somehow motivated by union support. While both Markus and Valderrama both testified credibly that they had no knowledge of Figueroa’s role, testimony by DesChamps and Figueroa himself cast serious doubt on whether he held that title at any time during 2009. Notably:

- Neither Figueroa nor DesChamps could provide any documentary evidence that Figueroa was elected as shop steward (T: 155);
- Figueroa recalled clearly that he was nominated to become shop steward by someone other than himself but he could not recall by whom or when he was nominated (T: 156; 157);
- Figueroa further recalled that a vote was taken and that all or most employees were present. He recalled that he was overwhelmingly voted in as shop steward. Upon further questioning, Figueroa could not name more than four individuals at the meeting (T:159); and
- DesChamps offered shifting testimony regarding the process by which Figueroa was nominated and elected to the position. First he testified that Figueroa nominated himself and that Figueroa alone voted for himself as shop steward. (T: 194, 20-25). Moments later, after being told that Figueroa had testified that a ratification meeting had been held with all employees present, DesChamps changed his testimony to somewhat conform with Figueroa’s testimony. However, like Figueroa, DesChamps was inexplicably unable to name more than a few people present at the alleged meeting. (T: 196).

Based on the foregoing testimony and the record as a whole, General Counsel failed to put forth any credible evidence that Figueroa was in fact the shop steward at Miron at any time from his first alleged protected activity up to his termination. While Figueroa’s lack of status as shop steward is not dispositive, it makes it more likely for Miron to have viewed his conduct as malicious and less likely to persuade that his conduct was in support of the goals of the Union or the bargaining unit. Moreover, this substantiates Miron’s position that the Union supplied General Counsel with numerous misrepresentations in support of the instant claim as part of a greater campaign to bring pressure to bear against Miron and the bargaining table.

An employer maintains a right to terminate an employee for making false and malicious statements against their employer. Figueroa's employment was terminated for precisely this reason. Because the overwhelming weight of evidence demonstrates that Figueroa's false and malicious statements did not comprise protected activity, furthered by the fact that Miron had no knowledge that he was the shop steward and had terminated his employment for legitimate nondiscriminatory reasons, the instant claims should be dismissed in its entirety.

### POINT III

#### THE ALJ ERRED IN FINDING THAT MIRON THREATENED FIGUEROA WITH DISCHARGE AND DEMANDING THAT HE NOT ATTACK MARKUS.

Figueroa unabashedly lied to his co-workers about situations occurring at the facility on more than one occasion. Markus lawfully disciplined Figueroa for disseminating lies. Despite previous discipline, Figueroa continued to lie and was discharged as a direct result of those lies. Markus simply told Figueroa NOT to lie. Markus told Figueroa not to start or repeat lies when the employees were gathered for a meeting. Markus had a good faith belief that spreading lies about him and the company to the employees was a direct attack. Figueroa outright refused to heed Markus's warning that if he continued to lie, he would be fired.

### POINT IV

#### THE ALJ ERRED IN HIS DETERMINATION THAT MIRON POLLED THE EMPLOYEES FOR UNION SUPPORT AND THREATENED CLOSURE OF THE FACILITY WITHOUT PROVIDING OBJECTIVE EVIDENCE.

The ALJ erred in finding that Miron offered no objective evidence that the company would have to close if they agreed to the Union demands. Markus advised all employees that the

economy forced him to reduce his prices; that competition has increased due to price undercutting and costs relating to wages and benefits. Markus truthfully advised employees that if he had to pay the wages and benefits that the Union demanded, without some type of relief, he would be unable to continue. This was reality, not a threat to the employees to disassociate with the Union. Markus continually advised his employees (and believed it himself) that he and the Union would ultimately come to an agreement. Markus did not tell the employees that he would increase any benefits. One of the most steadfast proposals he made was that he be allowed to provide benefits to only those employees that needed them, whether it be from him or the Union. Further, his proposals to the Union were to reduce holidays, not to increase them. Markus never promised an increase in benefits or holidays. He simply advised the employees of the status of negotiation, of the proposals of each party and of the potential for closure of the facility due to the economy and financial constraints.

**POINT V**

**THE ALJ ERRED IN FINDING THAT MIRON INTERFERED WITH, RESTRAINED OR COERCED EMPLOYEES IN THE EXERCISE OF THEIR SECTION 7 RIGHTS.**

The determination that Miron violated § 8(a)(1) of the Act is based on various allegations occurring between July 2009 and November 2009, each of which are denied by the Company and refuted by credible evidence. To the contrary, the Union has manufactured claims in an attempt to establish that Miron set on a course to unlawfully rid itself of the Union, an allegation that is belied by the fact that the Company first reached out to the Union to commence bargaining months prior the 2009 Agreement's expiration. Moreover, Miron, despite a series of bad faith actions by the Union including, but not limited to, refusing to consider bargaining

demands during an economic crisis and leafleting the Company's most important customers, has continued to bargain and maintains a belief that a successor contract will be reached.

**A. It has not been established Miron polled employees regarding their support for the Union or that any unlawful conduct occurred at various meetings held by Miron in October and November of 2009.**

The ALJ determined that Miron polled its employee regarding their support for the Union and held employee meetings on October 18, 2009, October 21, 2009 and November 24, 2009 designed to undermine Union support. These allegations were supported by the testimony of Figueroa and former employees Peguero and Rodrigo Vaquero ("Vaquero"). While Miron does not deny that meetings did occur during this period of time, the Company denies any allegations that it unlawfully advised employees that, for example, they would be discharged for participating in Union activities or that the facility would be closed if the Union did not agree to the Company's bargaining demands. On the contrary, Miron held these meetings to truthfully advise the employees as to the status of bargaining with the Union as permitted by the Act, since there was serious doubt that the Union was relaying any updates on negotiations to the employees. As to employee polling, Miron asked employees only whether they needed medical coverage. In fact Markus advised Larancuent that he would be asking the employees who needed medical insurance in order to ascertain the cost of the medical plan and whether costs could be defrayed by an "opt-out" option. At no time did Miron ask the employees to indicate whether they supported the Union. Markus asked Larancuent to attend these meeting in order to efficiently get this information. Larancuent refused. As evidenced by the distinctions set forth below, the testimony of Peguero, Vaquero and Figueroa is not credible and the violations based thereupon should be dismissed in their entirety.

Peguero's testimony regarding the various employee meetings and employee polling have been wholly discredited and serve only as evidence that the Union has attempted to manufacture a claim where none exists. Peguero testified that he was present at the October 21, 2009 meeting wherein Markus allegedly informed the employees that 1) they would be discharged if Miron had to accept the Union's proposals; 2) they would be discharged if they went on strike; 3) they would receive a wage increase and benefits if the Company became a non-union shop; and 4) the facility would be closed unless the Union agreed to the Company's proposals. In reality, Peguero's testimony is a fabrication. Peguero emphatically testified with confident specificity that he was present at work on October 21, 2009. A review of Peguero's time records reveals that he was not at work on October 21, 2009. (T: 383, 17-19; Resp-4a). Peguero did not attend this meeting.

Peguero's false testimony taints the testimony of others, including both Vaquero and Figueroa, both of whom have attempted to pass a similar account of their employer's allegedly unlawful conduct, both alleging that Peguero was present. Moreover, both Vaquero<sup>7</sup> and Figueroa were terminated by Miron, permitting the inference that anger and bitterness toward Miron may have motivated them to manufacture claims against the Company and in support of the Union. As such, their testimony should be discarded in favor of the credible testimony of Markus, Valderrama and Ramos who all stated that no such unlawful activity occurred.

**B. Certain allegations set forth in the Amended Complaint were not substantiated or even addressed at the hearing.**

Certain allegations set forth in the Amended Complaint were not addressed at the hearing. As no evidence has been offered in support of these claims, they should be dismissed in their entirety.

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<sup>7</sup> Vaquero was terminated by Miron for pushing a six hundred pound laundry cart into another employee during an altercation. (T: 374, 1-4; T: 400-401).

Notably, General Counsel failed to offer any evidence supporting their claim that “on or about October 18, 2009, Respondent, at its facility, by Miron Markus, threatened its employees that they would be discharged because they participated in activities on behalf of the Union and other protected concerted activities.” (See A.C. ¶ 7). As a search of the record reveals no testimony or other evidence supporting a claim of unlawful conduct on that date, this claim should be dismissed in its entirety.

**C. The alleged memorandum from Miron to all employees dated November 23, 2009 has not been properly authenticated.**

In support of its § 8(a)(1) claim, General Counsel offered a memorandum dated November 23, 2009 in which it was allegedly threatened that the facility would be closed and that the employees would be discharged if the Union persisted in its demands. Further there was a promise to maintain wage and benefits if the employees were no longer represented by the Union. (See Exhibit GC-18). Markus denies that he authored the document and that Miron ever distributed this document. (T: 109, 1-3). Ample evidence exists to demonstrate that this document is simply another fabrication offered to support this claim manufactured by the Union.

While Markus and employees Valderrama and Ramos (T:379), have testified credibly that the November 23, 2009 memorandum was neither created or sent by the Company, other evidence exists to support this claim. Notably, General Counsel has failed to offer one credible witness who actually received the document from the Company. Figueroa testified that he allegedly received the document from Rosario, a fellow employee. (T: 147) Likewise, DesChamps testified that he received the document from Figueroa. (T: 198). The question must be asked: How did Figueroa know that the document was objectionable when Figueroa admittedly can not read or write Spanish or English? Further, General Counsel has failed to ascertain precisely how this document was distributed to the employees. Not one witness

testified he received the document from Markus, Valderrama or some other agent of the Company. No one provided testimony as to how they received this document, only that it was shown by Rosario to Figueroa. The entire circumstance surrounding this letter is suspect.

It is a worthwhile exercise to compare the memorandum itself to other documents in the record authored by Miron. In terms of style, tone, grammar, syntax and diction, GC-18 bears no resemblance to other documents authored by Markus, who, as a Russian immigrant, both speaks and writes in a distinctive manner. (Compare with Exhibits GC-6; GC-8; GC-9; GC-10; GC-12, etc.). The vast dissimilarity between GC-18 and other documents authored by Markus suggests that the document was not authored by him or anyone related to the Company.

In light of the foregoing, the weight of evidence demonstrates that Miron did not author or disseminate the alleged November 23, 2009 memorandum. As such, General Counsel's allegations that the Company has violated § 8(a)(1) should be dismissed in their entirety.

POINT VI

THE ALJ ERRED IN FINDING THAT MIRON HAD  
FAILED AND/OR REFUSED TO BARGAIN  
COLLECTIVELY AND IN GOOD FAITH WITH THE  
UNION.

The ALJ determined that the Company has violated §§ 8(a)(1) and (a)(5) by failing and refusing to bargain in good faith with the Union. However, the undisputed fact remains that Markus, amid a vicious campaign to apply pressure and effectively put his company out of business, has consistently returned to the bargaining table with a steadfast and good faith belief that a successor agreement will be reached. For this reason, as well as the reasons set forth below, this claim should be dismissed in its entirety.

**A. Miron lawfully barred Figueroa from collective bargaining on January 21, 2010.**

Contrary to the ALJ's erroneous determination, Miron was fully prepared to proceed with a bargaining session on January 21, 2010 but it was the Union that refused to proceed without Figueroa. Figueroa harbored a hostility toward Markus that was evidenced in his behavior and Markus had the absolute right not to allow Figueroa on his property. Markus agreed to continue with negotiation, without Figueroa on his premises. The Union not only refused to engage in negotiations on that day, but did little to secure another location where negotiations could take place. As such, the instant claim should be dismissed.

As set forth at length above, Miron lawfully terminated Figueroa's employment on or about November 25, 2009. Although the Union alleges that, even after his termination, Figueroa remained an agent of the Union for collective bargaining purposes, they have failed to offer any evidence to that effect. Notably, there is no indication that Figueroa was employed by the Union or that he had any official relationship with the Union whatsoever. While Figueroa may have served as a member of the Union's bargaining committee while employed by Miron, that

relationship severed when he ceased to be employed by the Company. As such, Miron lawfully denied him access to the facility during the January 21, 2010 collective bargaining session.

**B. Miron' temporary refusal to bargain in response to the Union's leafleting campaign was based upon a good faith belief that such conduct was unlawful.**

General Counsel has correctly alleged that Miron sent correspondence to the Union demanding that they cease their leafleting campaign prior to the scheduling of any additional collective bargaining sessions. As set forth in that correspondence Miron operated upon the good faith belief that the Union's conduct violated the Act. When, after a short period of time, Miron abandoned this belief, the Company immediately returned to the bargaining table even though the Union's conduct had cost them millions in revenue. Because this cessation of bargaining was temporary and caused no harm permanent damage to the collective bargaining process, the instant claim should be dismissed.

**POINT VI**

**THE ALJ ERRED IN FINDING THAT MIRON HAD FAILED TO REMIT UNION DUES TO THE UNION AND FAILED TO PAY BENEFIT FUND CONTRIBUTIONS**

Markus testified and the GC confirmed that all dues contributions retained from employee paychecks were remitted to the Union. Markus testified that after he initially withheld the dues from the employees' checks he did not know where to send the monies. But that he held it in a separate account awaiting further instruction. Upon receiving information from GC, he promptly made payment to the Union. At no time did Markus retain any of the monies for himself or for the benefit of Miron.

Markus testified that he paid benefit contributions to the Funds under the good faith belief that the Union did not object to his December 15, 2008 letter in which he explained he could not afford the increase to the Fund contributions or the wage increases. Since no letter was

ever received from the Union in response to his letter, Miron operated on a good faith belief that he could implement the terms of his letter.

**CONCLUSION**

Based on the foregoing, Miron respectfully requests that every allegation against it be dismissed in its entirety, and that Miron be awarded such other relief as the Board deems just and proper.

Dated: Uniondale, New York  
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