

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

PRAXAIR DISTRIBUTION, INC.

and

Case 28-CA-23266

PABLO RIVERA, an Individual

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

Counsel for the Acting General Counsel (CAGC) excepts to the Decision of Administrative Law Judge William L. Schmidt (ALJD) [JD(SF) 26-11], issued in the captioned cases on July 19, 2011, as follows:

1. The failure of the Administrative Law Judge (ALJ) to find that Pablo Rivera (Rivera) engaged in protected concerted activity as defined in *Meyers Industries, Inc.*, 268 NLRB 492 (1984) and *Meyers Industries, Inc.*, 281 NLRB 882 (1986). (ALJD 7-8) In support of this exception, CAGC relies upon the testimony of Rivera, and the documentary evidence introduced at trial. (Complaint Paragraph 5)

2. The failure of the ALJ to find a connection between Rivera's conduct which led to the November 4, 2010 investigatory and Rivera's prior protected concerted activity in *Praxair Distribution, Inc.*, JD(SF) 33-10, (August 4, 2010) (*Praxair I*). (ALJD 8:38-41) In support of this exception, CAGC relies upon the testimony of Rivera, and the documentary evidence introduced at trial.

3. The ALJ's failure to find that on or about November 4, 2010, the Respondent, by human resources manager Carson Mellott (Mellott), violated Section 8(a)(1) of the Act by interrogating its employee Rivera about his protected concerted activities. (ALJD 8) In

support of this exception, CAGC relies upon the testimony of Rivera, Mellott and Dave Schmidt (Schmidt), and the documentary evidence introduced at trial. (Complaint Paragraph 4(a))

3. The ALJ's failure to find that on or about November 4, 2010, Respondent, by Mellott, violated Section 8(a)(1) of the Act by promulgating an overly-broad and discriminatory rule prohibiting employees from discussing their concerted activities with others. (ALJD 9) In support of this exception, CAGC relies upon the testimony of Rivera, Mellott, and Schmidt, and the documentary evidence introduced at trial. (Complaint Paragraph 4(b))

4. The ALJ's failure to find that on or about November 4, 2010, Respondent, by Mellott, violated Section 8(a)(1) of the Act by threatening its employees with unspecified reprisals because they engaged in protected concerted activities. (ALJD 9) In support of this exception, CAGC relies upon the testimony of Rivera, Mellott, and Schmidt, and the documentary evidence introduced at trial. (Complaint Paragraph 4(c))

5. The ALJ's failure to find that on or about November 4, 2010, Respondent, by Mellott, violated Section 8(a)(1) of the Act by denying Rivera his request to be represented by a co-worker during the investigatory interview. (ALJD 9-10) In support of this exception, CAGC relies upon the testimony of Rivera, Mellott, and Schmidt, and the documentary evidence introduced at trial. (Complaint Paragraph 4 (d))

6. The ALJ's failure to grant CAGC's proposed amendment that alleged that, on or about November 4, 2010, Respondent, by Mellott, violated Section 8(a)(1) of the Act by subjecting Rivera to an investigatory interview in retaliation to his protected concerted

activities. In support of this exception, CAGC relies upon the testimony of Rivera, Mellott, and Schmidt, and the documentary evidence introduced at trial.

7. The ALJ's failure to find that on or about November 4, 2010, Respondent, by Mellott, violated Section 8(a)(1) of the Act by subjecting Rivera to an investigatory interview in retaliation to his protected concerted activities. In support of this exception, CAGC relies upon the testimony of Rivera, Mellott, and Schmidt, and the documentary evidence introduced at trial.

Dated at Phoenix, Arizona, this 24th day of August 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE in ., Cases 28-CA-23266, was served by E-Gov, E-filing, and by overnight delivery, on this 24th day of August, 2011 on the following:

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