

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
THIRTIETH REGION

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URS ENERGY & CONSTRUCTION, INC.,

Respondent,

And

Case No. 30-CA-18775

TIMOTHY PARE,

Charging Party.

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**RESPONDENT URS ENERGY & CONSTRUCTION, INC.'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S DECISION**

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Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent URS Energy & Construction, Inc. ("URS") takes the following exceptions to the Decision of the Administrative Law Judge ("ALJ"):

**EXCEPTIONS**

1. To the ALJ's statement that he omitted certain evidence because he has determined that it was not essential in deciding the issues or has rejected or discredited as not reliable or trustworthy. (Administrative Law Judge Decision ("ALJD") 10:28-31.)

- The ALJ's omission of certain evidence, including evidence of URS' past practice regarding layoffs and witness testimony bearing on Charging Party Timothy Pare's ("Pare") credibility, is not supported by the evidence in the record or by Board law.

2. To the statement that charging party, Pare, recounted with detail the events of September 16 and 24, remembering specific conversations whereas Louis Yuker, his supervisor who made the decision to lay him off, could not recall exactly what he told Pare. (ALJD 10:37-41.)

- See Tr. at 73:10-75:5 (Pare)<sup>1</sup>; 77:23-81:5 (Pare); 200:25-203:23 (Lewis Yuker, Jr. “Yuker”).
- The ALJ’s conclusion that this made Pare more credible is not supported by the evidence in the record or by Board law.

3. To the statement that Yuker’s “perhaps most telling testimony” was Yuker’s recollection of his conversations with Pare on September 24; the ALJ characterized Yuker’s testimony as disjointed and not elaborating in detail on what Pare said or why it made Yuker so irritated.

(ALJD 10:41-11:2). The ALJ specifically referenced the following testimony from Yuker:

That, regarding Yuker’s first conversation with Pare, Yuker said Pare was “overbearing...as in forcing the conversation on me. I’m not sure how to explain it better than that...he had to have his say in all of these things. And that’s the best way I can describe it.” Yuker then testified about their second conversation that “[Pare] had to tell me why he was going on and being so forceful in that first conversation. And I know by the end of the conversation I was pretty annoyed with it. Again, he was overbearing.” (ALJD 10:41-11:2.)

- See Tr. at 200:25-203:23 (Yuker).
- The ALJ’s conclusion that this made Yuker less credible than Pare is not supported by the evidence in the record or by Board law.

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<sup>1</sup> References to the transcript will be “Tr.” followed by the page and line number and identification of testifying witness.

4. To the statement that Yuker provided no substance or specificity as to what ensued during his conversation with Pare on September 24 other than his own “foggy recollection and perceptions of the encounter.” (ALJD 11:3-4.)

- See Tr. at 200:25-203:23 (Yuker).
- The ALJ’s conclusion is not supported by the evidence in the record.

5. To the statement that Yuker still harbors animus against Pare for filing charges against Local 139 which may have impacted his ability or willingness to recall their conversations fully or accurately. (ALJD 11:4-6.)

- See Tr. at 73:10-75:5 (Pare); 77:23-81:5 (Pare); 200:25-203:23 (Yuker).
- The ALJ’s conclusion is not supported by the evidence in the record.

6. To the statement that Yuker gave Pare a copy of the Seventh Circuit Decision. (ALJD 12:13-16.)

- See Tr. at GC Ex. 6; 63:10-64:5 (Pare); 65:3-16 (Pare); 128:18-24 (Yuker); 145:6-13 (Yuker); 197:18-198:5 (Yuker).
- The ALJ’s conclusion mischaracterizes evidence in the record since it implies that Yuker gave only Pare a copy of the Seventh Circuit Decision when he gave a copy to each of his subordinates.

7. To the ALJ’s decision to credit Pare’s account of the two meetings between Pare and Yuker on September 24, 2010 over Yuker’s based on the fact that Pare was much more precise in his recollection of what was said at each meeting whereas Yuker summarized the meetings by saying that Pare was “overbearing, forceful,” and Yuker acknowledge he was “annoyed with it.” (ALJD 12:27-30.)

- See Tr. at 73:10-75:5 (Pare); 77:23-81:5 (Pare); 200:25-203:23 (Yuker).

- The ALJ’s conclusion is not supported by the evidence in the record or Board law.

8. To the statement that Pare asked Yuker why every time they met it felt like they just wanted to shoot each other, that Pare told Yuker he had nothing against him and treated him like his foreman, and Yuker responded that what Pare did to the Union he had done to him and added, “Until you change that, this is the way it is going to be.” (ALJD 12:30-34.)

- See Tr. at 73:10-75:5 (Pare); 77:23-81:5 (Pare).
- The ALJ’s conclusion is not supported by the evidence in the record or Board law.

9. To the statement that the Company’s contention that Yuker was simply following Company protocol when he selected Pare to be laid off does not withstand close scrutiny. (ALJD 12:45-13:1.)

- See Tr. at GC Ex. 10, Article 2; 231:2-9 (Alan Corder, “Corder”); 155:1-18 (Yuker); 118:3-13 (Yuker); 184:25 (Yuker); 225:17-23 (Bob McKeag, “McKeag”); 231:23-232:3 (Corder).
- The ALJ’s conclusion is not supported by the evidence in the record.

10. To the statement that it was clear that Yuker had a game plan for selecting employees for layoff but did not follow any protocol. (ALJD 13:8-9.)

- See Tr. at GC Ex. 10, Article 2; 231:2-9 (Corder); 155:1-18 (Yuker); 118:3-13 (Yuker); 184:25 (Yuker); 225:17-23 (McKeag); 231:23-232:3 (Corder).
- The ALJ’s conclusion is not supported by the evidence in the record.

11. To the statement that it was just as clear that Yuker could select whomever he wanted for layoff and that selections or recommendations to higher management were, as a general practice, accepted by higher management. (ALJD 13:9-11.)

- See Tr. at GC Ex. 10, Article 2; 231:2-9 (Corder); 155:1-18 (Yuker); 118:3-13 (Yuker); 184:25 (Yuker); 225:17-23 (McKeag); 231:23-232:3 (Corder).
- The ALJ's conclusion is not supported by the evidence in the record.

12. To the statement that in the second conversation between Pare and Yuker on September 24, 2009, Pare asked Yuker why there seemed to be so much animosity between them to which Yuker responded that what Pare had done to the Union by filing the unfair labor practice charges against the Union he had done to him (Yuker) and until he changed that, this was the way it was going to be. (ALJD 13:16-20.)

- See Tr. at 73:10-75:5 (Pare); 77:23-81:5 (Pare).
- The ALJ's conclusion is not supported by the evidence in the record or by Board law.

13. To the statement that Yuker announced at work to Pare's co-workers that Pare should not have filed the charges and he should undo his actions in that regard. (ALJD 13:32-33.)

- See Tr. at 126:6-21 (Yuker); 149:10-150:12 (McKeag).
- The ALJ's conclusion mischaracterizes the evidence in the record since Yuker did not use Pare's name.

14. To the Administrative Law Judge's rejection of the Company's assertion that Yuker gave Pare certain opportunities to operate different equipment at higher rates of pay as evidence that Yuker held no lawful animus against Pare. (ALJD 13:41-43.)

- See Tr. at 91:22-92:11 (Pare); 93:6-8 (Pare); 175:17-177:2 (Yuker); URS Ex. 20 248:12-251:13.
- The ALJ's conclusion is not supported by the evidence in the record.

15. To the Administrative Law Judge's conclusion that URS engaged in unfair labor practices affecting commerce within the meaning of Section 8(a) (1) and (3) and Section 2(6) and (7) of the Act. (ALJD 14:9-14.)

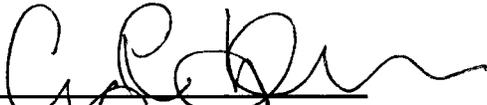
- The ALJ's conclusion is not supported by the evidence in the record or by Board law.

16. To the Administrative Law Judge's suggested remedy and order. (ALJD 14:18-16:2, Appendix.)

- The ALJ's suggested remedy and order are improper since the ALJ's conclusion that URS engaged in unfair labor practices was not supported by the evidence in the record or Board law.

Respectfully submitted this 7th day of October, 2011.

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