UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FIVE

Comfort Solutions, Inc.,	*	
Employer/Respondent	*	
and	*	Case No.: 5-RC-16680
Sheet Metal Workers' International Association, Local Union No. 100,	*	
	*	
Union/Petitioner.	*	

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EXCEPTIONS TO RECOMMENDATION OF HEARING OFFICER

Respondent, Comfort Solutions, Inc., by counsel and pursuant to the National Labor Relations Board Rules and Regulations, as amended, respectfully excepts to certain findings of fact, conclusions of law, decisions, and recommendations in the decision of Hearing Officer Rachael M. Simon issued in this matter on January 13, 2012.[1] Comfort Solutions excepts to:

1. The finding that Mr. Bonilla did not spend the entire day at a single installation job site, because such finding is not supported by substantial or credible record evidence.

2. The finding that Mr. Bonilla stopped by the job sites in the morning and again in the afternoon or at the end of the day, because such finding is not supported by substantial or credible record evidence.

3. The finding that Mr. Bonilla arrived at the installation at the beginning of the day, spoke to the homeowner, gained access to the home for the technician, and then

[1] Comfort Solutions's Brief in Support of Exceptions is filed as a separate document.

informed the technician about the project to be completed that day, because such finding is not supported by substantial or credible record evidence.

4. The finding that Mr. Bonilla showed technicians the location of the old furnace or air conditioner and then instructed them on how to remove the old equipment and install the new equipment, because such finding is not supported by substantial or credible record evidence.

5. The finding that Mr. Bonilla told the technicians where duct work was to be modified, where to run the line sets, and communicated requests from the homeowners as to the location of the unit, ductwork, or other equipment, because such finding is not supported by substantial or credible record evidence.

6. The finding that technicians would not begin installation until they received instructions from Mr. Bonilla or a technician who spoke to Mr. Bonilla, because such finding is not supported by substantial or credible record evidence.

7. The finding that Mr. Jones stopped by the site to examine the jobs "less often," because such finding is not supported by substantial or credible record evidence.

8. The finding that problems arise on the jobsite quite frequently, because such finding is not supported by substantial or credible record evidence.

9. The finding that when problems arise at the jobsite technicians seek assistance by calling Mr. Bonilla on his cell phone, because such finding is not supported by substantial or credible record evidence.

10. The finding that when Mr. Davidson first started working for Comfort Solutions, he called Mr. Jones with his questions, but Mr. Jones soon told him to stop calling him

and to call Mr. Bonilla instead, because such finding is not supported by substantial or credible record evidence.

11. The finding that Mr. Jones informed Mr. Middleton that he was going to place the write-ups in his file and determine what Mr. Middleton's standing with the company would be, because such finding is not supported by substantial or credible record evidence.

12. The finding that Mr. Middleton did not read or sign the write-up, because such finding is not supported by substantial or credible record evidence.

13. The finding that Middleton spoke to Mr. Bonilla about the write-ups and Mr. Bonilla admitted that he had written up Mr. Middleton, but it was at Mr. Jones's request, because such finding is not supported by substantial or credible record evidence.

14. The finding that Mr. Bonilla told Mr. Middleton that Mr. Jones wanted him to write-up Middleton and two other technicians, because such finding is not supported by substantial or credible record evidence.

15. The finding that employees who called in sick were to first call Mr. Bonilla, and if he did not answer, then they should call Mr. Jones, because such finding is not supported by substantial or credible record evidence.

16. The finding that when Mr. Davidson requested time off, he simply left a voicemail at the office, because such finding is not supported by substantial or credible record evidence.

17. The finding that when technicians are first hired, Mr. Bonilla drives the new employee around to different job sites to show him how to do the wiring and teach him more about zoning systems and the electrical work, because such finding is not supported by substantial or credible record evidence.

18. The finding that Mr. Jones, Mr. Lee, and Mr. Bonilla are Comfort Solutions only salaried employees, because such finding is not supported by substantial or credible record evidence.

19. The finding that Mr. Middleton is a credible witness, because such finding is not supported by substantial or credible record evidence and contrary to the law.

20. The finding that Mr. Middleton answered questions spontaneously and with a level of detail called for by the questioner, because such finding is not supported by substantial or credible record evidence and contrary to the law.

21. The finding that Middleton conceded that he lacked personal knowledge with respect to certain questions, because such finding is not supported by substantial or credible record evidence.

22. The finding that Mr. Davidson was a credible witness, because such finding is not supported by substantial or credible record evidence and contrary to the law.

23. The finding that Mr. Davidson exhibited a relaxed demeanor when testifying, because such finding is not supported by substantial or credible record evidence.

24. The finding that Mr. Davidson responded candidly to questions, because such finding is not supported by substantial or credible record evidence.

25. The finding that Mr. Davidson e exhibited an appropriate level of knowledge for an employee who worked for Comfort Solutions for a short amount of time, because such finding is not supported by substantial or credible record evidence.

24. The finding that Mr. Jones testimony was not entirely credible, because such finding is not supported by substantial or credible record evidence and contrary to the law.

26. The finding that Mr. Jones frequently looked at his attorney during his responses to questions, because such finding is not supported by substantial or credible record evidence and contrary to the law.

27. The finding that Mr. Jones looked at his attorneys as if seeking approval of his answers, because such finding is not supported by substantial or credible record evidence and contrary to the law.

28. The finding that the Petition sustained its burden by providing by a preponderance of the evidence that Mr. Bonilla possesses the authority to responsibly direct the work of the technicians and does so with independent judgment, because such finding is not supported by substantial or credible record evidence and contrary to the law.

29. The finding that Mr. Bonilla responsibly directs the work of the Comfort Solutions's installation technicians or other employees, because such finding is not supported by substantial or credible record evidence and contrary to the law.

30. The finding that Comfort Solutions has authorized Mr. Bonilla to manage the installation work of the technicians and to take corrective action if the technicians encounter problems or commit errors, because such finding is not supported by substantial or credible record evidence.

31. The finding that that Mr. Bonilla gives the technicians specific instructions with respect to each unique job, reviews the status of the installation projects, corrects the technicians's work, responds to the technicians's work-related questions and problems, and adjusts installation plans when required by circumstances or the homeowner, because such finding is not supported by substantial or credible record evidence.

32. The finding that on a daily basis Mr. Bonilla instructs the installation technicians on issues and problems that are not covered by those written resources, because such finding is not supported by substantial or credible record evidence.

33. The finding that Mr. Jones has made Mr. Bonilla responsible for checking the jobs and answering the technicians's questions, because such finding is not supported by substantial or credible record evidence.

34. The finding that only Mr. Bonilla drives from site to site instructing the employees and checking work over, because such finding is not supported by substantial or credible record evidence.

35. The finding that Mr. Bonilla has technicians under his direction, because such finding is not supported by substantial or credible record evidence.

36. The finding that Mr. Bonilla is held accountable for the work performed by the technicians or other employees, because such finding is not supported by substantial or credible record evidence and contrary to the law.

37. The finding that the 2008 and 2009 memoranda from Mr. Jones to Mr. Bonilla indicate that Mr. Jones found deficiencies on a job site and held Mr. Bonilla responsible for those deficiencies, because such finding is not supported by substantial or credible record evidence.

38. The finding that Mr. Jones's explanation regarding the 2008 and 2009 memoranda are not wholly credibly, because such finding is not supported by substantial or credible record evidence and contrary to the law.

39. The finding that Mr. Bonilla very rarely performed installation work and was instead expected to check jobs over, because such finding is not supported by substantial or credible record evidence.

40. The finding that the record does not contain any indication that Mr. Jones issued write-ups directly to other employees, because such finding is not supported by substantial or credible record evidence and contrary to the law.

41. The finding that the 2008 and 2009 memos are write-ups issued by Mr. Jones issued to Mr. Bonilla for the poor performance of the technicians he supervised, because such finding is not supported by substantial or credible record evidence.

42. The finding that Mr. Bonilla uses independent judgment when he responsibly directs the work of the technicians, because such finding is not supported by substantial or credible record evidence and contrary to the law.

43. The finding that Middleton and Davidson provided specific examples to show that Mr. Bonilla directed and corrected their work without consulting instructions, a manual, or Mr. Jones, because such finding is not supported by substantial or credible record evidence.

44. The finding that the installation technicians's work is not routine and requires much more than minimal guidance, because such finding is not supported by substantial or credible record evidence and contrary to the law.

45. The finding that HVAC installation work is highly technical and very dangerous, because such finding is not supported by substantial or credible record evidence and contrary to the law.

46. The finding that HVAC installation work requires training and licensing and each installation is unique depending on the project and product, because such finding is not supported by substantial or credible record evidence and contrary to the law.

47. The finding that the record demonstrates that the technicians required more than minimal guidance, because such finding is not supported by substantial or credible record evidence and contrary to the law.

48. The finding that the relatively inexperienced technicians called Mr. Bonilla multiple times per day with problems and questions, because such finding is not supported by substantial or credible record evidence.

49. The finding that Mr. Bonilla directs the work of other employees, because such finding is not supported by substantial or credible record evidence and contrary to the law.

50. The finding that in directing the work of the technicians, Mr. Bonilla relies on his knowledge and experience and acts in consideration of factors such as the requests of the customers, the technical requirements, the experience of the technicians, safety, and the "Comfort Solutions Way," because such finding is not supported by substantial or credible record evidence and contrary to the law.

51. The finding that the technicians regularly encounter unforeseen problems, make mistakes in the installation process, or find that the project's design must be changed in response to the unique job site or the requests of the homeowner, because such finding is not supported by substantial or credible record evidence and contrary to the law.

52. The finding that Mr. Bonilla addresses the problematic issues without consulting the instructions, manuals or Mr. Jones, and instead responds to the situation based

upon his own knowledge and expertise in the field, because such finding is not supported by substantial or credible record evidence and contrary to the law.

53. The finding that Mr. Bonilla responsibly directed employees, because such finding is not supported by substantial or credible record evidence and contrary to the law.

54 The finding the Mr. Bonilla exercised independent judgment, because such finding is not supported by substantial or credible record evidence and contrary to the law.

55. The finding that Mr. Bonilla is a supervisor under Section 2(11) of the National Labor Relations Act because such finding is not supported by substantial or credible record evidence and contrary to the law.

56. The failure of the Hearing Officer to append the appeal language to the Recommendation because such action is contrary to the law and prejudiced Comfort Solutions, Inc.

57. The Hearing Officer providing the appeal language to the parties three (3) days before the exceptions in this case were due.

58. Comfort Solutions excepts generally the decision by Hearing Officer Rachael M. Simon.

Respectfully submitted,

/s/ Peter S. Saucier

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2012, a copy of the foregoing Exceptions to Recommendation of Hearing Officer and Brief in Support of Exceptions to the Recommendation of Hearing Officer was filed electronically with the National Labor Relations Board via the E-filing system on the Board's website at www.nlrb.com. A copy was filed via hand-delivery with Regional Director Wayne R. Gold, Region 5, National Labor Relations Board,103 S. Gay Street, 8th Floor, Baltimore, Maryland 21202. A copy was also sent via email and first-class mail, postage prepaid to Lucas R. Aubrey, Esq., Sherman, Dunn, Cohen, Leifer & Yellig, P.C., 900 Seventh Street, N.W., Suite 1000, Washington, D.C. 20001, Attorney for Sheet Metal Workers, International Association, Local Union No. 100, and sent via first-class mail to Rachael M. Simon, Hearing Officer, Region 5, National Labor Relations Board,103 S. Gay Street, 8th Floor, Baltimore, Maryland 21202.

/s/ Peter S. Saucier
Peter S. Saucier