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17 Communication Workers of America, AFL-CIO

18 UNITED STATES OF AMERICA

19 BEFORE THE NATIONAL LABOR RELATIONS BOARD

20 COMMUNICATIONS WORKERS OF  
21 AMERICA, LOCAL 9588, AFL-CIO

Case No. 21-CA-039382

Union/Charging Party,

**EXCEPTIONS BY THE CHARGING  
PARTY TO THE DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

and

VERIZON CALIFORNIA, INC.

Employer/Respondent.

**EXCEPTIONS**

No.	Page	Exception
1.	1:29-1:30	To the finding that deferral to the arbitrator's decision is appropriate because it is susceptible of an interpretation consistent with the Act.
2.	2:36-2:37	To the finding that the immediate supervisor's name was Brenda Cooper. It was Paula Cooper.
3.	2:41-3:1	To the finding that one objective of the 2010 PIP was a requirement that Rodriguez contact his manager on all long-duration jobs, that is, jobs which require over 1.8 hours to complete. The 2010 PIP required calls to local managers after 2 hours.

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4.	3:4-3:5	To the finding that Cooper took Rodriguez off the PIP when she saw some improvement although Rodriguez did not achieve the PDA set for him in the 2009 PIP. He did not achieve the JPD objective, there is no such measurement as PDA.
5.	3:24	To the finding that Cooper, on June 8, 2010 knew that Rodriguez would be on the long job.
6.	3:40-3:42	To the finding that Cooper asked Rodriguez to explain the stops he made prior to arrival at the long-duration job the previous day and that Rodriguez responded that he did not feel comfortable discussing the matter without Union representation. To the failure to the ALJ to find that Cooper asked Rodriguez about the long-duration job of the previous day, which triggered Rodriguez' request for Union representation.
7.	3:44	To the failure of the ALJ to include the warning on the 2009 PIP that "Upon discontinuation of the Performance Improvement Plan, the employee must maintain acceptable performance for the next 12 months. If future performance falls below expectations, the employee may be subject to further corrective action up to and including dismissal."
8.	3:45	To the failure of the ALJ to include the warnings on the 2010 PIP that "Technician Responsibilities: Follow all of Gateway Work Rules, Contact LCOM on long-duration tickets (call at 2.0 hours on job) ... Improvement Time Period—Immediate"; and "Upon discontinuance of the Performance Improvement Plan, the employee must maintain acceptable performance for the next 12 months. If future performance falls below expectations, the employee may be subject to further corrective action up to and including dismissal."
9.	4:1-4:2	To the finding that Cooper just wanted an explanation for the two stops Rodriguez made before the long-duration job on June 8. To the ALJ's failure to find that Cooper's questions were about the long-duration job itself, not just prior stops.
10.	4:4-4:5	To the finding omitting the facts that Rodriguez's wish to have Union representation before answering Cooper's questions was based on previous PIP warnings as well as a verbal warning by Cooper on June 3 and on the admonitions in the Gateway Rules.
11.	4:7-4:8	To the finding that Cooper told Rodriguez that she just needed to know what those stops were so she could complete her report and the ALJ's failure to find that Cooper was asking about the long-duration job itself.
12.	4:7-4:8	To the finding that Rodriguez responded that he had been told by the Union not to talk to Cooper and the ALJ's failure to find that Rodriguez did talk to Cooper without Union representation except when the discussion involved the long-duration job of the previous day.
13.	4:18-4:23	To the finding excluding from Cooper's notes of her 6/9/2010 conversation with Rodriguez the entirety of the first section of Cooper's notes reading: "Called Bryan to review 6/8 JPD (1) ticket 5.7 hr 12pm-

1		5:42. Bryan stated he didn't feel comfortable talking to supervisor without union rep. Explained to Bryan this is the detail I need for my SABIT call and he needs to <u>explain long-duration tickets as stated in PIP/work rules</u> . Bryan said he was instructed by union, D. Goodwin not to talk to me without a union rep. I denied to involve union when <u>getting details of long-duration ticket</u> - just normal conversation.	
2		Bryan stated that he doesn't see work and issue with JPD is affected by dispatch and not seeing work avail [sic]. I told Bryan specifically need details on <u>1 job/ 3 locations</u> than I can answer my call. Bryan said again he has been instructed not to answer without union. I told Bryan I am giving you a directive to <u>get me the details on job</u> . Bryan refused-- he is stressed out--feels it's a hostile work environment. I told Bryan it is a stressful job and I can give him EAP#... But again I need details or will consider insubordination..." (Emphasis added)	
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9	14.	5:5-5:12	To the finding that the Global Positioning system (GPS) Memorandum of Agreement is relevant to the instant matter.
10	15.	5:19-5:21	To the finding that Cooper's not having previously disciplined any employee for violating the work rule requiring employees to contact their local managers on long-duration jobs is relevant to Rodriguez's reasonable belief that discipline may be meted out to him.
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12	16.	5:20-5:21	To the finding that Cooper's lack of awareness as to whether other employees have been disciplined for violating the work rule requiring employees to contact their local managers on long-duration jobs is relevant to Rodriguez's reasonable belief that discipline may be meted out to him.
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14	17.	7:20	To the finding that the arbitral award is not clearly repugnant to the Act's purposes and policies.
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16	18.	7:23-7:25	To the finding that the Judge may not apply the standards set forth in GC Memorandum 11-05 (January 20, 2011) concerning Deferral to Arbitral Awards and Grievance Settlements.
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18	19.	7:39, 8:1	To the finding that the party opposing the arbitration award has the burden to show that the award is inappropriate.
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20	20.	8:1-8:3	To the finding that the arbitral award is susceptible of an interpretation consistent with the Act.
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22	21.	8:5-8:6	To the finding that the incorporation of the <i>Walker</i> arbitration award did not render the instant award clearly repugnant to the Act.
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24	22.	8:13-8:14	To the finding that the Arbitrator in the instant case did not rely on the <i>Walker</i> award for anything other than the discussion of legal precedent under <i>Weingarten</i> .
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26	23.	8:16-8:25	To the ALJ's failure to read the explicit language in the Arbitrator's Opinion and Award that he adopted the "rationale" and "reasoning" for the award in the <i>Walker</i> arbitration, based upon entirely distinguishable facts from those in the instant arbitration, as opposed to his merely adopting the outline of the <i>Weingarten</i> case law set forth in the <i>Walker</i> opinion.
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1	24.	8:27-8:29	To the ALJ's mischaracterization of the Arbitrator's Opinion and Award as a finding that Rodriguez's belief was based upon Cooper's questions to him about two stops shown on the GPS records, as opposed to her questions concerning a long-duration job, the issue about which he had previously been warned on numerous occasions.
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4	25.	8:31-8:36	To the ALJ's failure to include as part of Rodriguez's reasonable fear of discipline, the Gateway Rules, the PIP warnings, and the proximate counseling by Cooper to Rodriguez about long-duration jobs.
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6	26.	8:38-8:41	To the ALJ's finding that the General Counsel and the Union are asserting their "credibility preference", whereas the Union and General Counsel rely solely on the explicit testimony by the Company witnesses and the Company's own documents which it introduced at the Arbitration hearing to establish Rodriguez's reasonable fear of discipline.
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10	27.	8:40-8:42	To the ALJ's characterization of the Union's argument as an attempt to "second guess the Arbitrator's credibility resolutions" as opposed to the Union's argument that the Arbitrator ignored the plain, explicit and clear Company-introduced documents and testimony that show that Rodriguez was explicitly warned of discipline for long-duration jobs without calling his supervisor, and was specifically being asked about such a long-duration job, when he asked for Union representation.
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14	28.	8:43-8:44	To the ALJ's misstatement of the Arbitrator's finding that Rodriguez's expectation "that he might be disciplined as a result of Cooper's inquiry regarding two stops shown by the GPS was unreasonable, considering all the facts as presented", as opposed to the Arbitrator's actual words: in his finding which were ... "the Undersigned believes the Company exercised its rights reasonably in denying Rodriguez Union representation when Cooper was soliciting information from him <b>regarding his long-duration job</b> . The expectation that he might be disciplined as a result of Cooper's inquiry was unreasonable, considering all of the facts as presented."(Emphasis added).
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19	29.	9:1-9:3	To the ALJ's conclusion that the Arbitrator was legally correct in crediting Cooper's testimony of her motives for her questioning of Rodriguez as opposed to her objective statements to Rodriguez concerning the previous day's long-duration job, as evidenced by her testimony, as well as in her own notes of the conversation, her further notes of the reason for the suspension of Rodriguez and in her statements testified to by a second Company manager and the Labor Relations Manager.
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24	30.	9:5	To the ALJ's finding that the Arbitrator's standard for determining the <i>Weingarten</i> issue is consistent with the Act.
25	31.	9:7-9:8	To the ALJ's finding that the Arbitrator's award may be understood to discredit Rodriguez and to credit Cooper.
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27	32.	9:10	To the ALJ's reliance upon the Arbitrator's discussion of some employees' possible "guilt complex" to justify his opinion and award.
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1	33.	9:11-9:13	To the ALJ's concurrence with the Arbitrator's reliance on Cooper's motives for her questions to Rodriguez, as she testified to, as opposed to her actual questions to Rodriguez about his long-duration job of the previous day when he did not call his supervisor, a matter about which he had been warned.
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4	34.	9:17-9:20	To the ALJ's finding that the Arbitrator's award was justified because Rodriguez' belief that discipline might result was unreasonable, because Cooper "only wanted the information about two stops shown by GPS in order to complete an internal report" as opposed to the undisputed fact that she told Rodriguez that her questions concerned the long-duration job of the previous day, a matter about which he had recently been warned.
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9	35.	9:19-9:20	To the ALJ's finding that the information asked of Rodriguez only related to GPS stops, ignoring the Company-provided evidence and the Arbitrator's finding that the questions concerned his long-duration job of the previous day.
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11	36.	9:20-9:22	To the ALJ's improper failure to acknowledge the multiple warnings of discipline which the Company gave to Rodriguez, even though he had not previously actually been disciplined for working on long-duration jobs without calling his supervisor.
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14	37.	9:24-9:25	To the ALJ's rejection of the contention that the Arbitrator had a basic misunderstanding of <i>Weingarten</i> protections
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16	38.	9:27-9:31	To the ALJ's concurrence with the Arbitrator's mischaracterization of the Union's argument, falsely asserting that the Union believes an employee's subjective belief of possible discipline triggers <i>Weingarten</i> rights, as well as with the Arbitrator's specious possible outcome arising from this false premise, a premise directly opposite to the argument advanced by the Union.
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19	39.	9:33-9:37	To the ALJ's adoption of the Arbitrator's mischaracterization of the Union's argument as asserting that <i>Weingarten</i> rights are triggered by an employee's subjective belief in possible discipline.
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21	40.	9:33-9:37	To the ALJ's finding that the Union's assertions that the Arbitrator inserted a subjective component into the <i>Weingarten</i> standards, was based on the measure of the employee's beliefs, as opposed to the Union's actual argument that the Arbitrator, and now the ALJ, has wrongfully inserted a subjective component into the <i>Weingarten</i> standards by relying on the subjective motives of the supervisor conducting the investigation as opposed to the objectively reasonable perceptions of the employee.
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25	41.	9:37	To the ALJ's finding that the Arbitrator did not adopt a subjective standard.
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27	42.	9:47	To the ALJ's finding that the Arbitrator's statement, completely misstating the Union's arguments that <i>Weingarten</i> rights are triggered upon an employee's subjective beliefs, may be ambiguous.
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1	43.	9:47,10:40	To the ALJ's finding that the Arbitrator's statement, completely misstating the Union's arguments, supports a finding that the Arbitrator's award is susceptible to an interpretation consistent with the Act.
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3	44.	10:4-10:5	To the ALJ's finding that the Arbitrator's award is not clearly repugnant to the Act pursuant to the standard enunciated in <i>Spielberg, supra</i> , and <i>Olin, supra</i> .
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5	45.	10:5-10:6	To the ALJ's decision to defer to the Arbitrator's award and dismiss the complaint.
6	46.	10:11-10:13	To the ALJ's Order that the complaint is dismissed.
7	47.	Passim	To the ALJ's failure to find that the Company's "Gateway District Policies and Procedures", given to Rodriguez in January, 2010, with its express rule concerning long-duration jobs and need to contact supervisor, and bold-printed warnings of possible discipline including termination for employees' failure to comply with rules... was basis for reasonable belief that discipline may result from discussion with supervisor about his long-duration job of previous day where he did not call supervisor.
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12	48.	Passim	To the ALJ's failure to find that 2009 PIP document given to Rodriguez, by Cooper, with warning that: "If future performance falls below expectations, the employee may be subject to further corrective action up to and including dismissal" contributed to reasonable belief that discipline might result from discussion with supervisor about his long-duration job without his calling his supervisor, a violation of work rule.
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16	49.	Passim	To the ALJ's failure to find that the 2010 PIP document, given by Cooper to Rodriguez on June 2, 2010 and which included specific notation that Rodriguez was expected to follow Gateway Work Rules and also that he was required to call supervisor on jobs over two hours and which contained specific warning that, "If future performance falls below expectations, the employee may be subject to further corrective action up to and including dismissal" led to reasonable belief that discipline might result from June 9, 2010 discussion with supervisor about a long-duration job where Rodriguez failed to call his supervisor on the previous day.
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21	50.	Passim	To the ALJ's failure to find that Cooper's June 3 counselling to Rodriguez about failure to call her on a long-duration job, saying it was a written directive in the Gateway Rules and his PIP that he do so, led to his reasonable belief that discipline might result from June 9, 2010 discussion with Cooper about his long-duration job the previous day when he failed to call her.
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25	51.	Passim	To the ALJ's failure to find that Cooper's June 8 morning meeting with Rodriguez in which she again referred to his PIP, contributed to a reasonable belief that the conversation the next day about his long-duration job without calling her might result in discipline.
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28	52.	Passim	To the ALJ's failure to acknowledge that on June 9, 2010, Cooper called Rodriguez and asked about his long-duration job of the previous day, as evidenced by Cooper's own notes of the June 9 conversation, by

1		her testimony at the arbitration hearing, by her notes about why she suspended Rodriguez, and by her statements to a fellow manager who testified at the arbitration on behalf of the Company as well as Company's Labor Relations Manager.	
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4	53.	Passim	To the ALJ's failure to acknowledge that the Arbitrator, himself found that on June 9, 2010, Cooper was soliciting information from Rodriguez about the long-duration job of the previous day, not GPS stops.
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6	54.	Passim	To the ALJ's repeated findings that Cooper was inquiring about GPS stops, ignoring all the evidence that Cooper's questions specifically involved Rodriguez' long-duration job of the previous day, where he did not call his supervisor, conduct that had been the subject of explicit and proximate warnings of Company actions up to dismissal.
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9	55.	Passim	To the ALJ's findings that the purported credibility of Cooper on the stand and/ or the purported lack of credibility of Rodriguez justify the Arbitrator's ruling, where such credibility determinations are irrelevant, given the undisputed Company-provided documentary evidence showing that Rodriguez was warned of possible discipline for working long-duration jobs without calling his supervisor, that he violated said rules, and that Cooper was asking him questions specifically about this exact job, culminating in a reasonable belief that discipline might follow from the discussion.
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14	56.	Passim	To the ALJ's failure to note that Cooper never again asked Rodriguez for information she purportedly needed for her report.
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16	57.	Passim	To the ALJ's failure to find that the Arbitrator misstated the law concerning <i>Weingarten</i> rights when he enunciated them as: "While in fact, discipline can result in [sic] discussions with employees, that does not give rise to an obligation by Management or a right by employees to have Union representation", and on that basis alone to decline to defer to his award.
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19	58.	Passim	To the ALJ's failure to credit the Company's training document given to the field managers concerning employees' <i>Weingarten</i> rights which, itself, is an incorrect enunciation of the law, leading to the Company violating the Act.
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22	59.	Passim	To the ALJ's failure to adopt the post-arbitral deferral standard set forth in General Counsel Memorandum 11-05 in order for the Board to carry out its mandate under the NLRA, to adequately safeguard the rights of employees and protect them from retaliation for engaging in protected activities including requesting Union representation when they have a reasonable belief that discipline may result from questioning by managers, requiring that Verizon bear the burden of demonstrating, among other factors, that the Arbitrator correctly enunciated the applicable statutory principles and applied them in deciding the case.
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60.	Passim	To the ALJ's failure to find that Verizon did not meet this burden, that the Arbitrator did not correctly enunciate the applicable <i>Weingarten</i> principles, did not correctly apply such principles to the undisputed facts of this case, and that therefor his award is entitled to no deference.
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Dated: May 1, 2014

Respectfully submitted,

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO

By:   
JUDITH G. BELSITO  
DAVID A. ROSENFELD  
Attorneys for Petitioner/Charging Party  
Communications Workers of America, AFL-CIO

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
3 and not a party to the within action. My business address is 12215 Telegraph Road, Suite 210,  
4 Santa Fe Springs, California 90670.

5 On May 1, 2014, I served the following documents in the manner described below:

6 **EXCEPTIONS BY THE CHARGING PARTY TO THE DECISION OF THE**  
7 **ADMINISTRATIVE LAW JUDGE**

- 8  (BY U.S. MAIL) I am personally and readily familiar with the business practice of  
9 collection and processing of correspondence for mailing with the United States Parcel  
10 Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed  
11 in the United States Postal Service at Alameda, California.
- 12  (BY FACSIMILE) I am personally and readily familiar with the business practice of  
13 collection and processing of document(s) to be transmitted by facsimile and I caused  
14 such document(s) on this date to be transmitted by facsimile to the offices of  
15 addressee(s) at the numbers listed below.
- 16  (BY ELECTRONIC SERVICE) By electronically mailing a true and correct to the  
17 email addresses set forth below.

18 On the following part(ies) in this action:

19 William J. Dristas, Esq.  
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21 Kamran Mirrafati, Esq.  
22 KMirrafati@seyfarth.com  
23 *FOR THE RESPONDENT*

Ami Silverman, Esq.  
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*FOR THE GENERAL COUNSEL*

24 I declare under penalty of perjury under the laws of the United States of America that the  
25 foregoing is true and correct. Executed on 5/1/14 at Santa Fe Springs, California.

26   
27 NATALIE MOORE