

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

In the Matter of:

PARAGON SYSTEMS, INC.

Respondent

and

Case Nos. 12-CA-105275 and 12-CA-105291

UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA – LOCAL 236

Charging Party

**RESPONDENT’S OPPOSITIONS BRIEF TO THE COUNSEL FOR THE
GENERAL COUNSEL’S EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 (d)(2) of the Rules and Regulations of the National Labor Relations Board, the Respondent herein files the following Brief in Oppositions to the Counsel for the General Counsel’s Exceptions to the decision of Administrative Law Judge Joel P. Biblowitz issued on May 15, 2014. Respondent’s Brief disagrees with the General Counsel’s exceptions alleging that the ALJ failed to properly apply Alan Richey, Inc., 359 NLRB no. 40 (2012), to two suspensions and two discharges that occurred before the union and the employer entered into an initial collective-bargaining agreement.

I. INTRODUCTION

As a matter of background, Paragon Systems, Inc. hereinafter referred to as Paragon, began providing armed security services for the Federal Government, through the Department of Homeland Security and the Federal Protective Service throughout Northern Florida, at midnight on December 1, 2012. The predecessor contractor that provided the security services to the Federal Government was ERIS. The contract between Paragon and the Federal Government included locations that were not represented by a labor union, and had no history of collective bargaining.

Paragon hired a majority of the predecessor's employees and recognized the United Government Security Officer of America, International Union and its affiliated Local 236, for the Tampa, FL area, as the exclusive bargaining representative effective December 1, 2012. Paragon advised the Union that it would not assume the terms and conditions of the collective bargaining agreement between ERIS and the Union, except the wage and fringe benefit levels that Paragon was required to honor in accordance with the McNamara O'Hare Service Contract Act (SCA). And that the transition from ERIS to Paragon, would not be a perfectly clear successorship.

The parties began negotiations for a new collective bargaining agreement (CBA) in early December 2012, and held subsequent bargaining sessions in early March and late April 2013. The membership of Local 236 ratified the CBA in early July 2013, with an effective date of June 1, 2013 through November 30, 2014. **(GC Exhibit 10)**

In December 2012, the Local Union also filed an unfair labor practice charge number Case 12-CA-094884 **(Employer Exhibit 3)** against Paragon alleging that Paragon

beginning on December 1, 2012, was in violation of Section 8(a)(1) and (5) of the Act by, 1) failure and refusal to bargain in good faith with the Union regarding mandatory subjects of bargaining; 2) unilaterally changed terms and conditions of employment without notifying and bargaining with the Union; 3) ignored the Union's request to bargain, and ; 4) abrogated the predecessor's collective bargaining agreement.

The charge also alleged that beginning on December 1, 2012, Paragon unilaterally cut the pay of bargaining unit employees by eliminating health and welfare pay for security officers, and failed to notify and bargain with the Union over the elimination of health and welfare benefits or effects of the reduction in pay and the elimination of health and welfare benefits. On or about March 29, 2013, the charge was dismissed by the Regional Director.

Prior to reaching a CBA with the Union, Paragon suspended seven bargaining unit employees, and terminated the employment of two employees, Mr. Cifarelli and Mr. Robles, for falsifying a Federal Form 139.

The Local Union filed charges numbers 12-CA-105275 and 12-CA-105291 and the Regional Director issued an "Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, on December 31, 2013.

On March 5, 2014, a hearing was held before Administrative Law Judge Joel P. Biblowitz, in Tampa, Florida. The ALJ concluded that the Respondent violated Section 8(a) (5) of the Act by suspending five of the suspended employees without affording the Union notice or an opportunity to bargain over these issues.

However, the ALJ concluded that the suspensions of Joe Favell on February 25, 2013, and Kevin Strong on April 30, 2013, for creating an open post and the discharges of

Thomas Cifarelli on April 9, 2013, and Jose Robles on April 15, 2013 for falsifying a Form 139, were not in violation of Section 8(a) (5) of the Act and the Alan Richey Inc., 359 NLRB No.40 (2012) decision.

On June 12, 2014, the Counsel for the General Counsel filed Exceptions and a Brief in Support of Exceptions to the Decision of the Administrative Law Judge, alleging that the ALD erred in a number of aspects of his decision, including the above referenced suspensions of Joe Favell and Kevin Strong and the terminations of Thomas Cifarelli and Jose Robles.

Even though the Respondent believes that that the ALJ ruled correctly in all of the areas cited in the Counsel for the General Counsel's Brief in Support of Exceptions to the Decision of Administrative Law Judge, the Respondent's Brief will focus only on the two areas identified above.

II. ARGUMENT

The Respondent strongly disagrees with the Counsel for the General Counsel's position. The Counsel for the General Counsel contends that the AJL misapplied Alan Richey, Inc. in determining that the Respondent did not exercise discretion in suspending employees Favell and Strong for alleged open post or in discharging Cifarelli and Robles for allegedly falsifying time records.

Let's examine the "open post" issue first. If a Protective Security Officer (PSO) fails to arrive as scheduled to open/assume a post where another PSO is not awaiting relief, an open post is created. In addition, an open post is considered as a breach of security and an open post also violates the terms and conditions of the Agreement between Paragon

and the Federal Government. It is true that initially the Employer did not suspend employees that created an open post, when Paragon commenced operations, at midnight on December 1, 2012. However, within several weeks of commencing the operations, the number of “open post” greatly expanded, and the Employer could no longer treat an open post as a mere tardy, and a three day suspension was initiated.

The Counsel for the General Counsel alleges that the testimony of Respondent Project Manager Larry Stacy was uncorroborated, with respect to the increase in open post violations. Yet the Counsel for the General Counsel did not present a witness during the trial to refute Mr. Stacy’s testimony, or question the credibility of his testimony.

In order to establish a level of discipline for the open post infraction, Paragon relied on the “Rules for Personal Conduct” section of the Security Officer Handbook (**GC Exhibit 8**) under the Major offences category, which states the following warning; “Discharge, if warranted, after unpaid suspension and management investigation. Possible probation period determined at the discretion of the Program Manager.

Specifically, number 12, on page 48, which reads as follows: “Refusal to submit to authority and/or refusal to follow instructions from supervisors who have been appointed over him/her, or from a member of the client’s facility who has the authority from the client to issue instructions to security forces; not following Post Orders either written or verbal”.

And number 29, which reads as follows: “Violation of agency and contractor security procedures and regulation or violation of the rules and regulations governing public buildings as set forth in CFR Subpart 101-20.3 Conduct on Federal Property.”

With respect to the two employees, Mr. Cifarelli and Mr. Robles that were discharged for falsifying a Federal Form 139, Paragon relied on Major Offense number 9, located on page 48 of the Handbook which reads as follows: “Falsification or unlawful concealment, removal, mutilation, or destruction of any official documents or records, or concealment of material facts by willful omissions from official documents or records to include government documents including 139s.

Contrary to the Counsel for the General Counsels contention, progressive discipline was not an option in consideration of the level of discipline for Cifarelli and Robles.

A Form 139 is a time keeping and billing form used by the Federal Government and Paragon. There is absolutely no doubt that both of these individuals falsified the Form 139, therefore, Paragon had no discretion in these matters and that the only appropriate penalty was discharge. In other words, there was no room to bargain over the level of discipline for Cifarelli and Robles. For the Counsel for the General Counsel to argue otherwise, is disingenuous.

To go a step further, the Union never requested to bargain over any of the suspensions and the two discharges, during the several face to face negotiations between the parties During December 2012, March 2013 and April 2013. However, during the hearing, on re-cross examination Local 236 President, Charles Mestas was asked if anyone from the Union bargaining committee including himself ever asked to bargain of the seven employee suspensions and the two discharged individuals, he replied “I did multiple times, sir”. When asked if he had notes that indicate the he replied that he did not.

(Page 73 line 25 through page 74 line 10 of the hearing transcript)

Even though Mr. Mestas testified under oath that he asked to bargain over the suspended and discharged employees “multiple times” during the negotiations, strangely enough, his affidavit (**Employer Exhibit 1**) never mentions this topic.

III. CONCLUSION

During the course of the hearing, the Counsel for the General Counsel did not even come close to proving that a violation of Section 8 (a) (5) occurred, with respect to the suspensions Favell and Strong and the terminations of Cifarelli and Robles. It is also the Respondent’s position that the Counsel for the General Counsel is taking a very broad, expanded and unreasonable attempt to apply the Alan Richey ruling to this case. The “one glove fits all” and “pile on” approach is not appropriate in these matters.

As a reminder, the Respondent recognized the Union the same day that we commenced operations, on December 1, 2012. The Union was not elected or voluntarily recognized after the fact.

In addition, the Union and each employee was well aware of all of the terms and conditions contained in the Security Officer Handbook (**GC Exhibit 8**) as well as the Security Guard Information Manual (SGIM) (**GC Exhibit 9**) and what the consequences would be with respect to Major Rules violations and unacceptable behavior. During the course of the CBA negotiations, which took place over several sessions, the Union **never** requested to negotiate over terms and conditions contained in the Security Officer Handbook

Based on the above, the Respondent respectfully requests that the Exceptions to the Decision of the Administrative Law Judge be dismissed in their entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roman Gumul". The signature is fluid and cursive, with the first name "Roman" and last name "Gumul" clearly distinguishable.

Roman Gumul
Assistant Vice President Labor Relations
Paragon Systems, Inc.
13655 Dulles Technology Drive, Suite 100
Herndon, VA 20171

Date: June 30, 2014