

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

TITO CONTRACTORS, INC.

and

INTERNATIONAL UNION OF PAINTERS  
AND ALLIED TRADES, AFL-CIO  
DISTRICT COUNCIL 51

Cases 5-CA-119008  
5-CA-119096  
5-CA-119414  
5-CA-123265  
5-CA-129503  
5-CA-131619  
5-CA-134285

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

Pursuant to Section 102.46 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, counsel for the General Counsel (“GC”) submits the following exceptions to the Decision and Order of Administrative Law Judge Arthur J. Amchan (“ALJD”) that issued in the above-captioned Cases on November 4, 2014.<sup>1</sup>

Exception No. 1

The GC excepts to the ALJD’s omission of: (i) factual findings and legal conclusions as to Paragraph 7(b) of the Amendment to Complaint 1A,<sup>2</sup> which alleges that in about October, Respondent, by Fermin Rodriguez (“Fermin”), “interrogated employees about their involvement in protected concerted activities of filing a collective action/class action lawsuit;” and (ii) language in the Order and Notice to Employees (“Notice”) requiring Respondent to cease and desist from interrogating employees about their participation in

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<sup>1</sup> Hereinafter, all dates referred to are in the year 2014 unless otherwise noted.

<sup>2</sup> Complaint 1A refers to the Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing that issued on July 11 (GC Exh. 1(Z)).

collective-action lawsuits against Respondent and any other protected concerted activities (see ALJD 25:28-30, 28-30, Appendix; Tr. 817-818, 1030; GC Exh. 1(Z)).

Exception No. 2

The GC excepts to the ALJD's omission of factual findings and legal conclusions as to Paragraph 7(c) of Complaint 1A, which alleges that in about December 2013, Respondent, by Fermin, "interrogated employees about their union sympathies" (see ALJD 25-26; Tr. 1032-1033; GC Exh. 1(Z)).

Exception No. 3

The GC excepts to the ALJD's omission of factual findings and legal conclusions as to Paragraph 4(a) of the Amendment to Complaint 1A, which alleges that in about October 2013, Respondent, by Maximo Pierola ("Maximo"), "via telephonic communication: interrogated employees about their protected activities" (see ALJD 4-5; Tr. 819-821; GC Exh. 1(FF)).

Exception No. 4

The GC excepts to the ALJD's omission of: (i) factual findings and legal conclusions as to Paragraph 4(e) of the Amendment to Complaint 1A,<sup>3</sup> which alleges that in about October 2013, Respondent, by Maximo, "via telephonic communication: equated employees' protected activities with disloyalty for Respondent;" and (ii) language in the Order and Notice requiring Respondent to cease and desist from equating employees' protected activities with disloyalty for Respondent (see ALJD 5, 28-30, Appendix; Tr. 819-821; GC Exh. 1(FF))

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<sup>3</sup> Amendment to Complaint 1A refers to the Motion to Amend the Amended Consolidated Complaint and Notice of Hearing filed on August 25 (GC Exh. 1(FF)).

#### Exception No. 5

The GC excepts to the ALJD's omission of factual findings and legal conclusions as to Paragraph 4(f) of the Amendment to Complaint 1A, which alleges that in about October 2013, Respondent, by Maximo, "via telephonic communication solicited employee complaints and grievances, thereby promising increased benefits and improved terms and conditions of employment to discourage employees from engaging in protected concerted activities and union activities" (see ALJD 5; Tr. 819-821; GC Exh. 1(FF)).

#### Exception No. 6

The GC excepts to the ALJD's omission of findings of fact and legal conclusions as to Paragraph 8 of Complaint 1A, which alleges that Respondent, by Manual Alarcon ("Alarcon"), "coerced employees by advising employees that those who complained about overtime work could not work overtime without prior approval from senior management" (see ALJD 25-27; Tr. 931; GC Exh. 1(Z)).

#### Exception No. 7

The GC excepts to the ALJ's statement that the GC did not allege as a violation Respondent's discipline of employees pursuant to its unlawful overtime policy (ALJD 17 fn. 24, 24:36-25:19; see also GC Exh. 1(Z)).

#### Exception No. 8

The GC excepts to the ALJD's omission of: (i) factual findings and legal conclusions as to Paragraph 17(a) of Complaint 1A, which alleges that "since about October 2013, Respondent issued written and/or oral warnings to employees whose identities are presently unknown to the undersigned, but whose identities are known to Respondent;" and (ii) language in the Order and Notice requiring Respondent to cease and desist from

discriminatorily disciplining employees pursuant to its unlawful overtime policy and rescind all of the discipline it issued to its construction employees pursuant to that policy (see ALJD 17 fn. 24, 24:36-25:19; Tr. 1234-1235, 1435-1439; GC Exh. 1(Z)).

Exception No. 9

The GC excepts to the ALJD's omission of factual findings and legal conclusions as to Respondent's unlawful reduction in overtime hours for 5 of 12 alleged "overtime discriminatees." Paragraph 18(a) of Complaint 1A alleges that "on about October 24, 2013, Respondent began withholding overtime work from Respondent's employees José Amaya, Roberto Ayala, José Mauricio Bautista, José Diaz, Geremias Berganza, Hector Delgado, Sabino Diaz, José Jiminez, Hernan Latapy, Luis Palacios, Nestor Sanchez, and Domingo Zamora" ( collectively, "overtime discriminatees"). However, the ALJ found that "Respondent violated the Act in discriminating against 7 employees who were identified as plaintiffs [to the FLSA collective-action suit] prior to November 2, 2013 by withholding overtime from them during the pay period ending on that day" (ALJD 19:12-41; Tr. 1068-1069, 1145, 1239, 1258; GC Exh. 1(Z)).

Exception No. 10

The GC excepts to the ALJD's omission of language from the Order and Notice requiring Respondent to take affirmative action to make all 12, or any, of the alleged "overtime discriminatees" whole for any loss of earnings and other benefits as a result of Respondent's unlawful reduction in their overtime hours (see ALJD 19:15-20, 28-30, Appendix; Tr. 1068-1069, 1216-1223, 1239, 1258; GC Exhs. 10, 10(A), 10(B), and 13).

Exception No. 11

The GC excepts to the ALJD's omission of factual findings and legal conclusions as to Paragraph 5(a) of Complaint 2,<sup>4</sup> which alleges that on or about February 27, Respondent by Maximo "solicited employee complaints and grievances, thereby promising employees increased benefits and improved terms and conditions of employment if they refrained from engaging in union activities" (see ALJD 16:33-36, 15:42-46; Tr. 970-976, 1070-1071, 1167-1171; GC Exh. 1(BB)).

Exception No. 12

The GC excepts to the ALJD's omission of: (i) findings of fact and legal conclusions as to Paragraph 5(b) of Complaint 2, which alleges that on or about February 27, Respondent by Maximo "disparaged employees because they engaged in union and/or protected concerted activities;" and (ii) language in the Order and Notice requiring that Respondent cease and desist from publically disparaging its employees because of their union activities (see ALJD 16:19-41, 28-30, Appendix; Tr. 970-976, 1070-1071, 1167-1171; GC Exh. 1(BB)).

Exception No. 13

The GC excepts to the ALJD's omission of findings of fact and legal conclusions as to Paragraph 12(a) of Complaint 1A, which alleges that about April 2014, Respondent, by Maximo "interrogated employees about their union activities by asking if they complained to the Union about wages" (see ALJD-63, 26:1-2; Tr. 826; GC Exh. 1(Z)).

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<sup>4</sup> Complaint 2 refers to the Order Consolidating Cases, Complaint and Notice of Hearing that issued on August 1 (GC Exh. 1(BB)).

#### Exception No. 14

The GC excepts to the ALJD's omission of: (i) findings of fact and legal conclusions as to Paragraph 12(b) of Complaint 1A, which alleges that about April, Respondent, by Maximo "impliedly threatened to withhold benefits from employees by stating that employees do not appreciate their mother until they have a step mother;" and (ii) language in the Order and Notice requiring Respondent to cease and desist from threatening employees with a loss of benefits because of their protected concerted activities (see ALJD-63, 18:3-40; Tr. 1084; GC Exh. 1(Z)).

#### Exception No. 15

The GC excepts to the ALJD's omission of legal conclusions as to Paragraph 13(a) of Complaint 1A, which alleges that about October 30, 2013, Respondent, by Tomas Berganza ("Berganza"), "at Respondent's Montgomery County, Maryland, Recycling Center worksite interrogated employees about their union activities by stating that Respondent was informed that employees were communicating with a union" (see ALJD 9 n. 12, 27: 20-30; Tr. 606-608; GC Exh. 1(Z)).

#### Exception No. 16

The GC excepts to the ALJD's omission of factual findings and legal conclusions as to Paragraph 13(b) of Complaint 1A, which alleges that about October 31, 2013, Respondent, by Berganza, "at Respondent's Montgomery County, Maryland, Recycling Center worksite interrogated employees about their union activities by stating that Respondent understood that employees were talking to the Union" (see ALJD 9:18-41; Tr. 198-201; GC Exh. 1(Z)).

Exception No. 17

The GC excepts to the ALJD's omission of: (i) factual findings and legal conclusions as to Paragraph 13(c) of Complaint 1A, which alleges that about October 31, 2013, Berganza, "by stating [he] noticed employees were for the Union, created an impression among its employees that their union activities were under surveillance by Respondent;" and (ii) language in the Order and Notice requiring Respondent to cease and desist from creating the impression among its employees that their union activities are under surveillance (see ALJD 9:18-41, 28-30, Appendix; Tr. 198-201; GC Exh. 1(Z)).

Exception No. 18

The GC excepts to the ALJD's omission of legal conclusions as to Paragraph 15(a) of Complaint 1A, which alleges that about December 2013, Respondent, by Berganza, "at Respondent's Montgomery County, Maryland, Recycling Center worksite, interrogated employees regarding their union activities and sympathies" (see ALJD 14:21-28, 22-27; Tr. 168-169, 632-634; GC Exh. 1(Z)).

Exception No. 19

The GC excepts to the ALJD's omission of: (i) factual findings and legal conclusions as to Paragraph 15(c) of Complaint 1A, which alleges that about December 2013, Respondent, by Berganza, "at Respondent's Montgomery County, Maryland, Recycling Center worksite, by stating that the Union cannot get employees higher wages or touch Tito's money, informed its employees that it would be futile for them to select the Union as their bargaining representative;" and (ii) language in the Order and Notice requiring Respondent to cease and desists from suggesting to employees that it is futile for them to select a union as their bargaining representative (see ALJD 28-30, Appendix; Tr. 632-634; GC Exh. 1(Z)).

Exception No. 20

The GC excepts to the ALJD's omission of: (i) accurate factual findings and legal conclusions as to Paragraph 15(b) of Complaint 1A, which alleges that about December 2013, Respondent, by Berganza, at Respondent's Montgomery County, Maryland, Recycling Center worksite, "coerced employees by stating that selection of a union would cause immigration-related consequences and discharge for Respondent's employees;" and (ii) language in the Order and Notice requiring Respondent to cease and desist from threatening employees with adverse immigration-related consequences and discharge to discourage them from engaging in union activities (see ALJD 14:24-29; Tr. 636-637, 171-174; GC Exh. 1(Z)).

Respectfully Submitted on this 18th day of February 2015,



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**CERTIFICATE OF SERVICE**

I hereby certify that the following document was electronically filed through the NLRB's electronic case-filing system, and that I served the document by e-mail on the 18th day of February 2015, on the parties listed below:

1. The Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge; and
2. The Counsel for the General Counsel's Brief in Support of Exceptions to the Decision of the Administrative Law Judge

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Dated at Baltimore, MD, this 18th day of February 2015  
Respectfully submitted,



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