

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

SECURITY WALLS, LLC,

Respondent,

and

ORLANDO FRANCO,

An individual.

Case 28-CA-22483

**RESPONDENT SECURITY WALLS, LLC'S ANSWERING BRIEF
TO GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION
OF THE ADMINISTRATIVE LAW JUDGE**

George Cherpelis
Jeffrey W. Toppel
JACKSON LEWIS LLP
2390 E. Camelback Rd., Suite 305
Phoenix, Arizona 85016
(602) 714-7044





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I. PROCEDURAL HISTORY.

On November 25, 2009, Administrative Law Judge Margaret Guill Brakebusch (the “ALJ”) issued a Decision and Order (the “Decision”) in the above referenced matter. On December 23, 2009, Counsel for the General Counsel filed Exceptions to this Decision with a supporting brief. Cross-Exceptions and supporting Briefs and Answering Briefs are due on January 6, 2010. In addition to this Answering Brief, Respondent Security Walls, LLC (hereinafter referred to as “Security Walls”) has filed Cross-Exceptions and a brief in support of its Cross-Exceptions.

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Board (hereinafter referred to as the “Board”), Respondent files this Answering Brief to the General Counsel’s Exceptions and Brief in Support thereof. For the reasons set forth below, the General Counsel’s Exceptions lack merit and the ALJ’s Decision should be affirmed with respect to those issues raised by the Exceptions.

II. INTRODUCTION.

With its Exceptions, Counsel for General Counsel attempts to recast the facts to create an argument that is entirely inconsistent with the evidence presented at the July 28-29, 2009 hearing (the “Hearing”) in this matter and relied upon by the ALJ in her Decision. The General Counsel takes exception to the ALJ’s Decision that Security Walls did not violate Section 8(a)(1) of the National Labor Relations Act (the “Act”) by terminating Orlando Franco (“Franco”) and issuing disciplinary notices to Jeff Ortega (“Ortega”) and Royal Jacobs (“Jacobs”)(collectively referred to as the “Discriminatees”). The General Counsel’s Exceptions are predicated almost entirely on the argument that the

three Discriminatees were terminated not for the legitimate, non-discriminatory reasons established at the Hearing, but instead for the unlawful and insidious reason conjured up by the General Counsel to support the allegations in its Complaint.

Specifically, the Counsel for the General Counsel contends that the Discriminatees were terminated or disciplined *because* “they concertedly decided that, after their shift ended . . ., they would not answer their home or cell phones later that day if Respondent called them to ask if they would work voluntary overtime.” [Counsel for the General Counsel’s Brief in Support of Exceptions (“Brief”) at p. 1] As the evidence presented by the parties at the Hearing established, Franco was terminated for two very different and perfectly legitimate reasons: (1) his refusal to work on the night of February 24, 2009 compromised Respondent’s contractual relationship with its contractor, WTS; and (2) the fact that a co-worker, Julie Ruiz, reported to Respondent’s Project Manager at the WIPP site, Richard De Los Santos, that she was “upset” by a telephone call she received from Franco on February 23, 2009 telling her to “layoff the overtime.” Counsel for the General Counsel’s revisionist discussion of the evidence in the General Counsel’s Brief in Support of the Exceptions should be rejected by the Board.

For the foregoing reasons, the ALJ correctly concluded that the conduct of Franco, Ortega, and Jacobs was not protected by the Act and Security Walls did not violate Section 8(a)(1) of the Act when it terminated Franco and issued disciplinary notices to Ortega and Jacobs.

III. STATEMENT OF FACTS.¹

A. Security Walls, LLC's Work at the Waste Isolation Pilot Plant ("WIPP").

Security Walls contracts with Washington Tru Solutions LLC ("WTS") to provide security at the U.S. Department of Energy's Waste Isolation Pilot Plant ("WIPP"). The WIPP site is responsible for safe disposal of nuclear waste and is the only depository for nuclear waste in the United States. [ALJD at p. 2; R Exhibit 6] The 30 acre site is a *highly secure facility* that is surrounded by an 8 to 10 foot high fence, which is topped with strands of barbed wire. [ALJD at p. 2] Visitors are not allowed to tour the facility unless the visit has been pre-arranged through the Department of State or the Department of Energy. [ALJD at p. 3] Those individuals who do visit the facility must be under escort at all times and are required to view a safety video before they are given authorization to enter the facility. [ALJD at p. 3]

WTS contracts directly with the Department of Energy ("DOE") to manage the WIPP site. [*Id.*] Under its contract with WTS, which began in April 2008, Security Walls is responsible for providing security for the entire WIPP site. [R Exhibit 7, p. 7, § 5.14] Security Walls hires Security Police Officers ("SPOs") whose job it is to provide access control and protection to the WIPP site. [ALJD at p. 2] The SPOs wear tri-color desert camouflage uniforms and armored vests and, at all times, carry radios, handcuffs and flashlights. [ALJD at p. 3] The SPOs also carry respirators and gas masks in the

¹ Citations to the Decision of the Administrative Law Judge are designated as "ALJD." Citations to the Transcript of the Hearing shall be cited as "TR [page]"; hearing exhibits introduced by Counsel of the General Counsel shall be cited as "GC Exhibit [number]" and exhibits introduced by the Respondent shall be cited as "R Exhibit [number]."



event of an attack or accidental release of nuclear waste. [*Id.*] During their employment with Security Walls, SPOs must have or must apply for Q-clearance, which allows the SPO to handle classified information belonging to the DOE. [ALJD at pp. 3-4] SPOs with Q-clearance are permitted to handle classified documents, which may not be disclosed or disseminated to unauthorized persons. [TR 298-304]²

The WIPP site is located outside Carlsbad, New Mexico in an isolated area. [ALJD at pp. 2, 4] Because of its remote location, the WIPP site must be mostly self-sufficient when it comes to emergency services. As a result, Security Walls' contract with WTS mandates that its employees provide fire brigade support for the respective emergency response teams at the facility. [ALJD at p. 3] Moreover, the contract between Security Walls and WTS mandates that Security Walls maintains certain staffing levels. [R Exhibit at pp. 11-12; § 6.1.2] Specifically, the contract includes the following requirement for Security Walls:

Each crew will maintain at least two SPO II's capable of being armed and carrying out all duties of an SPO II. *In addition each crew will maintain at least two officers fully qualified and certified to support fire brigade duties.* These tasks apply to all rotating shifts and permanent day staff as well.

[*Id.* (emphasis added)] Therefore, in order to comply with the terms of its contract with WTS, Security Walls must have at least two trained SPOs on fire brigade duty at all times.

² At the Hearing, Counsel for General Counsel attempted to introduce into the record a WIPP "controlled [classified] document," the possession of which could not be explained by General Counsel. [See TR 298-304]



Contrary to the General Counsel's argument in its Brief, there was uncontradicted evidence introduced at the Hearing concerning the need to have trained SPOs on fire brigade duty on the evening of February 24, 2009. Moreover, the evidence demonstrated the substantial risk posed by Respondent's failure to provide such services. As Mr. De Los Santos, Security Walls' Project Manager at the WIPP site, explained at the Hearing, those on fire brigade duty provide:

.protection for the responders and we are – we also provide support for the firefighters in the case there is a fire. We are trained to fight fires, just like a regular fireman is and we provide that support to the local fire department at the WIPP site.

[TR 101:20-24] Franco testified that he *knew* Security Walls had an obligation to provide fire brigade protection on the night of February 24, 2009 and that the unavailability of SPOs for overtime was going to cause a problem for Security Walls. [TR 225:20 – 226:2; 227:8-10]

In addition to the testimony of Mr. De Los Santos, Security Walls also introduced the testimony of Mark Friend, a staff procurement specialist for WTS and the contract administrator for the subcontract with Respondent. Mr. Friend testified at length regarding Respondent's obligation to provide fire brigade protection at the WIPP site. In describing Respondent's obligations under its subcontract with WTS [Exhibit R6], Mr. Friend explained that Respondent was required to provide officers that were fire brigade qualified on the site 24 hours a day, 7 days a week. [TR 404:15-23] Mr. Friend further testified at length concerning the dire consequences in the event Respondent was unable to meet this contractual obligation:



Q And what if for one reason or another, Security Walls is unable to do that?

A If Security Walls was unable to do that, they would report that to us and WTS would do its best to cover that situation. However, if we could not, *then the plant would be shut down from waste handling operations.*

Q So what would that mean?

A *That would mean that we would not be allowed to handle waste, we would not be able to allow waste shipments to come in the gate until that situation was rectified.*

Q And what would that do to the relationship between WTS and the subcontractor?

A *Well, that would cause us to be in a position to take actions against Security Walls for being in default of their contract requirements.*

Q Now would that happen immediately every time there was a failure to provide the appropriate number of fire brigade?

A When it goes to security, yes. *We cannot have a failure in security.*

[TR 405:1-20 (emphasis added)] Mr. Friend also testified about WTS' response to Respondent's failure to provide fire brigade protection on the night in which the Discriminatees refused to work and the serious consequences of any further failures by Respondent:

Q Did WTS take any action against Security Walls on that occasion?

A *I believe that WTS had a stern conversation with Security Walls on that, probably between Scott Cassingham and Mr. De Los Santos. However, since it was the first incident that we've had*

with them, we showed some leniency, but only because we were able to cover the situation ourselves.

Q If there was a recurrence of that type of incident, what would be the reaction of WTS?

A Yes reaction would be to formally, in writing go to the contractor and probably give them a Show Cause letter.

Q What do you mean by that?

A *I would ask them to show cause why we should not take further actions towards terminating the contract because of this breach.*

[TR 406:5-19 (emphasis added)] While the General Counsel seeks to downplay the significance of Security Walls' failure to provide fire brigade protection on the night of February 24, 2009, this argument belies the evidence presented at the Hearing.

B. The Discriminatees' Conduct Compromised Security Walls' Obligations under its Contract with WTS.

Unhappy with Security Walls' overtime distribution policy – a policy that Security Walls had inherited from its predecessor – the Discriminatees conspired to withdraw and withhold their availability to work overtime on the night of February 24, 2009. Each agreed that they would collectively not answer their telephone when they were contacted by superiors to work overtime. In doing so, the Discriminatees were fully aware of the consequences of Security Walls' failure to provide fire brigade protection. In fact, Franco *admitted* at the Hearing that he was aware that Security Walls had an obligation to provide fire brigade protection on the night of February 24, 2009 and

that the unavailability of SPOs for overtime was going to cause a problem for Security Walls.³ [TR 225:20 – 226:2; 227:8-10]

Significantly, the Discriminatees' decision to unilaterally withdraw and withhold their availability for overtime was made before ever having raised their concerns over the distribution of overtime with Mr. De Los Santos or any other member of Respondent's management. [TR 235:9-17] As a result, Respondent was never provided the opportunity to address the Discriminatees' concerns about the overtime distribution prior to their concerted refusal to work. Furthermore, the evidence presented at the Hearing was uncontroverted that prior to February 23rd Franco had raised numerous issues concerning the terms and conditions of his employment with Respondent and *Respondent never disciplined him for any of this undoubtedly protected activity.* [TR 220:16-221:3] Notably, once the issues concerning the overtime distribution were brought to Mr. De Los Santos' attention, Respondent immediately changed the policy to address directly the concerns of the employees. [TR 69:18-70:17; GC 3] A change that Franco admitted improved the policy and made Respondent's overtime policy better than the policy Respondent inherited from its predecessor, Santa Fe Protective Services. [TR 235: 5-8]

Moreover, at the Hearing, Security Walls presented substantial evidence concerning an intimidating telephone call Franco made to a co-worker, Julie Ruiz, on the evening of February 23, 2009. [TR 144:5-12] In testifying concerning her reaction

³ Moreover, both Ortega and Jacobs testified that they were aware Respondent needed someone to cover the night shift on February 24, 2009. [TR 324:1-11; 345:8-18]

to Franco's February 23rd call in which Franco told her to "layoff the overtime," Ms.

Ruiz stated:

Q And what was your reaction, emotionally, to that call?

A Well, whenever he told me about laying off the overtime, *I got defensive and upset*, and I was thinking to myself, "Why are you calling me? Why? There is no reason for you to call me and tell me not to work, or to go to work, or whatever. You are not the boss, okay," and that is the feeling I got. I got upset. You know, why is he calling me about this. You know, we get paid the same, we work about the same, and then him telling me, "Don't come in and work." *I am like, "What?" I just got upset.*

[TR 145:21-146:5 (emphasis)] Additionally, Ms. Ruiz testified that she was so upset that after the call, she almost turned around and went back to the WIPP site to confront Franco. [TR 146:11-18] While she ultimately decided not to return to the WIPP site after the call, she instead chose to speak to Mr. De Los Santos the very next day about Franco's telephone call. [TR 148:12-25] Ms. Ruiz reported to Mr. De Los Santos that she was "upset" by the telephone call she received from Franco on February 23, 2009 telling her to "layoff the overtime." [R Exhibit 1; TR 49:21]

C. Franco, Ortega, and Jacobs Were Disciplined for Conduct that Was Not Protected by the NLRA.

At the Hearing, Respondent presented undisputed evidence demonstrating that the disciplinary action it took against Franco, Ortega, and Jacobs was not because they engaged in protected activity under the NLRA, but for wholly unprotected activity. The evidence established, and the ALJ agreed, that Respondent terminated Franco not because he exercised his right to engage in concerted activity for the "mutual aid and protection" of his co-workers, but for two very different reasons: (1) his refusal to work

on the night of February 24, 2009 compromised Respondent's contractual relationship with its contractor, WTS; and (2) the fact that Julie Ruiz reported to Mr. De Los Santos that she was "upset" by the telephone call she received from Franco on February 23, 2009 telling her to "layoff the overtime."

In addition, the undisputed evidence introduced demonstrates that the written reprimands originally issued to Ortega and Jacobs for their coordinated refusal to work were rescinded. Mr. De Los Santos testified that he rescinded the write-ups issued to both Ortega and Jacobs after issuing them. [TR 59:16-60:3] Although Jacobs' written reprimand was not rescinded immediately, there was no evidence introduced to demonstrate that the reason for this was anything other than "neglect" on the part of Mr. De Los Santos. [*Id.*; TR 71:24-72:1]

IV. **ARGUMENT.**

A. Counsel for General Counsel's Exceptions Lack Merit and Should Not Be Granted.

Counsel for the General Counsel's Exceptions are premised on the erroneous argument that Respondent terminated Franco, and issued disciplinary actions to Ortega and Jacobs (which were subsequently rescinded), because these three employees "concertedly decided that, after their shift ended that morning, they would not answer their home or cell phone later that day if Respondent called them to ask if they would work voluntary overtime." [Counsel for General Counsel's Brief at p. 1] In making this argument, Counsel for the General Counsel incorrectly states that the Discriminatees "jointly exercised their right not to answer Respondent's phone calls regarding overtime

work. ” [Counsel for General Counsel’s Brief at p. 4] However, both of these statements mischaracterize the nature of Discriminatees’ conduct on the evening of February 23, 2009. The Discriminatees did not have a “right” to deliberately *ignore* their employer’s inquiry as to their availability to work overtime that night. There is absolutely no basis for this assertion, particularly in light of the fact that the Discriminatees knew that Respondent was looking for a fire brigade trained SPO and that Respondent’s failure to provide a fire brigade trained SPO for the evening of February 24, 2009 would cause a “problem” for Respondent with its contractor, WTS. [TR 225:20 – 226:2; 227:8-10]

Counsel for the General Counsel also makes much of the fact that SPOs were not required to return Respondent’s calls inquiring about their availability to work overtime. [General Counsel’s Brief at p. 8] According to their argument, in the absence of such a requirement, Respondent’s discipline of Franco, Ortega and Jacobs must have been for an unlawful reason. Furthermore, the Counsel for the General Counsel’s efforts to compare the Discriminatees with Robert Lucas – another SPO who did not respond to Respondent’s attempt to contact him regarding his availability for overtime on February 24, 2009 – ignores the evidence. The Discriminatees were not disciplined because they did not return Respondent’s telephone calls, but rather, in part, because they conspired deliberately to refuse to work overtime with the full knowledge that, as a result of their refusal, Respondent would not be able to comply with its responsibilities under its contract with WTS.



Moreover, in her Brief, Counsel for General Counsel ignores the uncontroverted testimony of Respondent's Project Manager, Richard De Los Santos, concerning *the reason for Respondent's decision to terminate Franco*. At the Hearing, Mr. De Los Santos provided clear testimony on this point:

Q *Okay, and can you tell us the reason or reasons why you terminated him?*

A *Mr. Franco compromised our contract in a manner that was not acceptable and we -- I don't think I had a choice.*

Q In what way did he compromise the contract?

A We are obligated by contract from the Department of Energy all the way down through WTS (Washington Tru Solutions), to provide fire protection and security protection for the WIPP site, and Orlando in his attempt to -- to -- I guess emphasize his displeasure with the way we handle our overtime assignments, organized a situation. *As a result, we were not able to meet the requirements.* I did not have enough people on duty to provide the fire protection that I am required to provide by our contractor, WTS and the Department of Energy, and you know -- *the catalyst was the phone call that he made to Ms. Ruiz by asking her -- and to tell her to lay off the overtime, because she was taking it from them.*

[TR 38:2-24 (emphasis added)] Contrary to the argument asserted by Counsel for the General Counsel in her brief, *these were the undisputed reasons for Franco's termination*. The fact that Franco engaged in this conduct because he purportedly had concerns about Respondent's distribution of overtime -- a concern that Franco had not previously raised with Respondent -- was entirely irrelevant to Respondent's decision. Had Franco engaged in other conduct unrelated to these concerns that compromised Respondent's contract with WTS, the results would have been the same.



Moreover, Counsel for the General Counsel's argument discounts the significance of Franco's telephone call to co-worker, Julie Ruiz. As explained above, Mr. De Los Santos testified at the Hearing that Franco's telephone call to Ms. Ruiz – which Ms. Ruiz testified upset her -- was the "catalyst" for his decision to terminate Franco. [TR 38:2-24 (emphasis added)] Moreover, Ms. Ruiz testified at the Hearing that after she reported the telephone call to Mr. De Los Santos he immediately stated: "Okay, I have had enough with Orlando. I have had enough." [TR 148:3-5] While Franco's telephone call to Ms. Ruiz related to his perceived belief that Ms. Ruiz was taking overtime away from other employees, it clearly was not protected under the NLRA.

Finally, Counsel for the General Counsel's attempt to attack the testimony of Mark Friend – procurement specialist for WTS – is unhelpful. Counsel for the General Counsel erroneously disputes much of the ALJ's summary of Mr. Friend's testimony at the Hearing, but did not, and cannot, challenge the ALJ's ultimate conclusion: Mr. Friend's testimony makes it clear that a failure to provide coverage which might result in no coverage could result in a termination of the contract. [TR 406:5-19] This conclusion is consistent with the testimony quoted above from Mr. Friend that if neither Respondent nor WTS could provide fire brigade support, the WIPP site would have to be shut down. [TR TR 405:1-20] It is also consistent with his recollection that WTS' contract administrator, Scott Cassingham, had a "stern conversation" with Mr. De Los Santos concerning Respondent's failure to provide fire brigade support on the evening of February 24, 2009. Counsel for the General Counsel's attempt to attack Mr. Friend's testimony is misdirected and unavailing.



For the reasons explained above, the General Counsel's Exceptions are disingenuous and belied by the evidence presented at the Hearing.

B. The ALJ Properly Concluded that neither Franco, Ortega, nor Jacobs Engaged in Conduct Protected by the NLRA.

With its Exceptions, the General Counsel flatly disregards the long held principle that not all conduct by employees concerning the terms and condition of their employment is entitled to the protections of the NLRA. Despite the General Counsel's artful attempt to recast the facts of this case, it cannot escape the fact that the nature of the Discriminatees' conduct clearly fell outside the protections of the NLRA. As will be explained below, the ALJ properly analyzed the evidence presented by the parties at the Hearing and the relevant case law to determine that the Discriminatees did not engage in protected activity under Section 7 of the Act.

Based on the evidence presented at the Hearing, the ALJ properly concluded that the Discriminatees did not engage in any conduct for the "purpose of initiating or preparing for group" action as required by the Board's decision in *Meyers Industries (Meyers II)*, 281 NLRB 882, 8227 (1986). There was substantial evidence introduced to establish that the Discriminatees' unilateral decision to make themselves unavailable to work overtime on the evening February 24, 2009 was done with a malicious intent to "teach Respondent a lesson from making overtime available to Ruiz before offering it to them or simply retaliate against Respondent for having done so." [ALJD at p. 14] As the ALJ properly concluded, such action cannot be "characterized as initiating or preparing for group action" – a necessary element of Section 7 protected activity. Moreover, there



is certainly no basis to argue that Franco's telephone call to Ms. Ruiz, which the evidence demonstrated was made "clearly to intimidate her and to discourage her from accepting part-time work with Respondent," was made with the intent of initiating any type of group action. [*Id.*]

Counsel for General Counsel also argues that the Discriminatees' conduct did not lose the protection of the Act because it was "unaccompanied by indications of what the employees intend to do in the future should the employer not yield to their demands." [General Counsel's Brief at p. 17] However, this argument misses the point. In her Decision, the ALJ specifically recognized that while "an employee's failure to make any specific demand or to notify the employer of the reasons for a concerted action does not render the conduct unprotected," the employee's failure to do so is a "*factor in concluding that these employees' conduct was more akin to retaliation than true protected concerted activity.*" [ALJD at p. 14 (*citing Eaton Warehousing Company*, 297 NLRB 958, fn 3 (1990)(emphasis added))] ⁴ Respondent presented substantial evidence showing that Franco (and other employees) had raised concerns relating to the terms and conditions of his employment with Respondent on multiple occasions *and had not suffered any discipline.* [TR 220:16-221:3] In light of this undisputed evidence, the fact that the Discriminatees chose not to raise the issue with Respondent to give them an

⁴ Moreover, Counsel for the General Counsel's assertion that the employees' conduct in failing and refusing to respond to overtime calls is "presumptively protected" mischaracterizes the conduct at issue in this case. [See Counsel for the General Counsel's Brief at p. 17] For the reasons explained more fully above, the cases cited to by Counsel for the General Counsel are distinguishable.

opportunity to address it before conspiring to make themselves unavailable to work overtime on the evening of February 24, 2009 – despite full knowledge of the potential consequences to Respondent – is significant.

In addition, Counsel for the General Counsel’s attempts to distinguish the cases relied on by the ALJ to conclude that the nature of the Discriminatees’ conduct took the conduct outside the scope of Section 7 protection fails. The ALJ properly analyzed the decisions in *International Protective Services*⁵ and *AKAL Security*⁶ and applied them to the facts in this case. As in both cases, Security Walls’ SPOs “were entrusted with critical responsibilities for the protection of persons and property.” *International Protective Services*, 339 NLRB at 702. As detailed above, the SPOs had significant responsibilities for security the highly sensitive WIPP site, which is the *only depository for nuclear waste in the United States*.⁷ Counsel for the General Counsel seeks to distinguish these cases by downplaying the potentially serious consequences that could have resulted from Security Walls’ failure to provide fire brigade support on the evening of February 24, 2009. As explained above, this argument is based on their mischaracterization of the testimony provided by Mark Friend at the Hearing. Moreover, even more so than the employees in either *International Protective Services* or *AKAL Security*, the evidence in the instant case demonstrated that the Discriminatees acted in

⁵ *International Protective Services, Inc.*, 339 NLRB 701, 702 (2003)

⁶ *AKAL Security, Inc.*, 354 NLRB No. 11, slip op. at 1 (April 30, 2009).

⁷ The need to keep high security facilities, such as the WIPP site, fully protected is heightened during times of war and with increased threats of terrorist attacks.

deliberate disregard for the potential risks that would result from their conduct. The ALJ properly recognized the significance of this fact in her Decision when she stated:

Franco *admitted* that he was aware that Respondent had the obligation to provide fire brigade protection on the shift in question and he knew that the unavailability of SPOs for overtime was going to cause a problem for Respondent.

[ALJD at p. 15 (emphasis added)] Like the security guards in the aforementioned cases, the Discriminatees' conduct was "indefensible" and, therefore, not protected under the Act.

The ALJ properly concluded that the Discriminatees' conduct was not protected by the Act because "by attempting to affect how overtime would be offered to employees, the actions of these employees were nothing more than their attempt to unilaterally determine their terms and conditions of employment." [ALJD at p. 16 *citing* *Chep USA and Anthony McGlothian*, 345 NLRB 808, 817 (2005); *House of Raeford Farms, Inc.*, 325 NLRB 463 (1998); *Bird Engineering*, 270 NLRB 1415 (1984)]. Ultimately, Counsel for the General Counsel cannot ignore both the facts and the law, which compels a finding that the Discriminatees' conduct is not protected by the Act.

V. CONCLUSION.

Franco, Ortega and Jacobs did not engage in conduct protected under the NLRA. The ALJ properly analyzed the evidence presented at the Hearing and correctly concluded that Security Walls did not violate Section 8(a)(1) when it terminated Franco and issued disciplinary actions (which were subsequently rescinded) to both Ortega and Jacobs. For the reasons set forth in this Brief,

Respondent Security Walls, LLC respectfully requests that Counsel for the General Counsel's Exceptions be denied.

Dated: January 6, 2010.

Respectfully Submitted,
JACKSON LEWIS, LLP

By s/George Cherpelis
George Cherpelis
Jeffrey W. Toppel
2390 East Camelback Road, Suite 305
Phoenix, Arizona 85016-3466
Counsel for Respondent Security Walls, LLC

This pleading was electronically filed
VIA E-GOV, E-FILING on January 6, 2010 with:

Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street NW, Room 11602
Washington, DC 20570-0001

VIA E-MAIL on January 6, 2010 to:

Liza Walker-McBride
Counsel for the General Counsel
National Labor Relations Board, Region 28
Albuquerque Resident Office
421 Gold Avenue SW, Suite 310
P.O. Box 567
Albuquerque, New Mexico 87103-0567
liza.walker-mcbride@NLRB.gov

Mr. Orlando Franco
2106 Iris Street
Carlsbad, New Mexico 88220
Yvette_franco_79@hotmail.com

VIA U.S. MAIL on January 6, 2010 to:

Comele A. Overstreet, Regional Director
National Labor Relations Board, Region 28
2600 N. Central Avenue, Suite 1800
Phoenix, AZ 85004

 /s/Suzanne Hickey

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