

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

SECURITY WALLS, LLC

and

Case 28-CA-22483

ORLANDO FRANCO, an Individual

**GENERAL COUNSEL'S STATEMENT OF EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Counsel for the General Counsel (CGC) files the following exceptions to the Decision of Administrative Law Judge Margaret G. Brakebusch (ALJ) which issued in this matter on November 25, 2009.

1. To the ALJ's finding that Washington Tru Solutions LLC (WTS) contract administrator Mark Friend testified without contradiction that if Respondent had been unable to provide fire brigade services for that evening shift, WTS would have had to depend upon back up services from county services that were located 32 to 40 miles away from the facility.

(ALJD, p. 15, lines 39-44)

2. To the ALJ's finding that, "If Respondent is unable to provide the coverage, WTS must contact the Eddy County Fire Department and the Lee County Fire Department to request assistance in coverage. The Eddy County Fire Department is located 32 miles from the WIPP site and the Lee County Fire Department is located approximately 40 miles from the facility. If WTS cannot arrange for alternate coverage, the facility is closed down for waste handling operations." (ALJD, p 4, lines 3-8)

3. To the ALJ's finding that, "Under the provisions of the Atomic Energy Act, the SPOs have the authority to arrest violators for committing felonies on the site and for misdemeanors that are witnessed by the officer." (ALJD, p. 3, lines 19-21)

4. To the ALJ's finding that Orlando Franco (Franco) failed to make any specific demand or to notify Respondent of the reasons for the employees' concerted action. (ALJD, p. 14, lines 44-46)

5. To the ALJ's finding that Franco's failure to make any specific demand or to notify Respondent of the reasons for the employees' concerted action is a factor in concluding that these employees' conduct was more akin to retaliation rather than true protected concerted activities. (ALJD, p. 14, lines 46-47)

6. To the ALJ's conclusion that the conduct in issue is the employees' "deliberate decision to ignore Respondent's need for overtime coverage on February 24, with the knowledge of the potential consequences affecting Respondent and the government facility." (ALJD, p. 15, lines 7-9)

7. To the ALJ's conclusion that the record does not support a finding that Respondent disciplined Franco more severely than Royal Jacobs (Jacobs) and Jeff Ortega (Ortega) because Franco complained about working conditions to a greater extent than the other employees. (ALJD, p. 11, lines 35-38)

8. To the ALJ's conclusion that the overall evidence does not support a finding that the discipline issued to Franco was motivated by anything other than the employees' conduct on February 23 and February 24. (ALJD, p. 11, lines 48-50)

9. To the ALJ's finding that by attempting to affect how overtime would be offered to employees, the actions of Respondent's employees Franco, Ortega and Jacobs were nothing



more than their attempt to unilaterally determine their terms and conditions of employment, conduct that is not protected by the Act. (ALJD, p. 16, lines 29-32)

10. To the ALJ's finding that Respondent's argument that the discriminatees failed to take reasonable precautions to protect both Respondent and the WIPP facility has merit. (ALJD, p. 16, lines 2-4)

11. To the ALJ's failure to find that that Respondent disciplined Franco, Ortega and Jacobs for conduct that was protected by the Act. (ALJD, p. 16, lines 27-28)

12. To the ALJ's failure to find that that Respondent violated Section 8(a)(1) of the Act by terminating Franco and by issuing disciplinary notices to Ortega and Jacobs. (ALJD, p. 16, lines 35-36)

Dated at Albuquerque, New Mexico, this 23rd day of December 2009.

Respectfully submitted,

/s/ Liza Walker-McBride

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** in **SECURITY WALLS, LLC**, Case 28-CA-22483, was served via E-Gov, E-Filing, e-mail, and overnight delivery via Federal Express, on this 23rd day of December 2009, on the following parties:

Via E-Gov, E-Filing:

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Dated at Phoenix, Arizona, this 23rd day of December 2009.

Respectfully submitted,

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