

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

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Local 660, United Workers of America,

Complainant,

**Case Nos.: 29-CA-147909 &
157108 & 146077**

and

**Deep Distributors of Greater NY d/b/a
The Imperial Sales Inc.,**

Respondent.

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**RESPONDENT'S EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Respondent, by and through the undersigned Counsel, asserts the following exceptions to the findings, conclusions, remedies and orders of the Administrative Law Judge at the citations to the Judge's Decision set forth below:

1. ALJD p. 1 Statement of case

The ALJ's finding that he based his decision on charges and amended charges filed by United Workers of America, Local 660, and Henry Hernandez against Deep Distributors of Greater NY d/b/a The Imperial Sales on October 30, 2015.

2. ALJD p. 3, lines 5-6

The ALJ's statement that he made his decision based upon his observations and considering the briefs of all parties.

3. ALJD p. 3, lines 28-30 and footnote 3

The ALJ's findings as to Respondent's hierarchy and characterizations of arguments made at trial regarding corporate entities.

4. ALJD p. 4, lines 4-6

The ALJ's findings that Miller was in charge of a discreet area of the Warehouse.

5. ALJD p. 4, lines 50

The ALJ's findings that Malik occupies a position of trust.

6. ALJD p. 30, lines 30

The ALJ's findings that the Union filed a petition seeking to represent Respondent's warehouse employees.

7. ALJD p. 5, lines 40-43

The ALJ's findings Argueta testified credibly, when in the same sentence, the ALJ concedes that he must discount the same testimony.

8. ALJD p. 4-5, Footnote 4

The ALJ's findings that Reyes rehabilitated the multiple instances of dishonesty and inconsistency found in his testimony.

9. ALJD p. 6, lines 23-34

The ALJ's findings and mischaracterizations of testimony that work was not slow while the remaining employees testified that their individual workloads increased after the layoffs and the identification of new employee hires without identifying the date(s) of hire which spans an approximate six (6) month period of time.

10. ALJD p. 6, lines 44-46

The ALJ's findings that it was reasonable for Miller to have been aware that the Union was seeking to organize Respondent's workers.

11. ALJD p. 7, lines 22-24

The ALJ's findings that Jose Michael Torres was not subject to employee discipline.

12. ALJD p. 8, lines 7-9

The ALJ's findings that the month of March does not follow the Christmas holiday in time.

13. ALJD p. 8, lines 15-37

The ALJ's findings that Bindra could not provide definitive testimony regarding terminations and layoffs experienced by Respondent in the five (5) year period of time leading up to, and including, the year three (3) employees were laid off in March of 2015, as well as the detailed financial information provided regarding sales volume.

14. ALJD p. 9, lines 10-27

The ALJ's abrupt and inconsistent application of the Federal Rules of Evidence as a means by which to exclude Respondents' use of documentation introduced by Counsel for the General Counsel.

15. ALJD p. 9-10, footnote 6

The ALJ's findings that inconsistencies in testimony are immaterial.

16. ALJD p. 11, lines 39-47

The ALJ's findings that a tape recording was accurate simply because it was accompanied by a transcript of the recording, without allowing substantial questioning or access to the original recording as a means by which to determine authenticity.

17. ALJD p. 13, lines 9-14

The ALJ's selective manipulation of facts as a means by which to substantiate testimony of events occurring in the aftermath of a taped meeting discredits prior testimony that the allegations contained in a Fair Labor Standards Act lawsuit were admitted to be false.

18. ALJD p. 14, lines 14-16

The ALJ's findings that subpoenaed time records were not produced.

19. ALJD p. 14, lines 44-45

The ALJ's findings that employees had never been disciplined before, or that their discharge for refusing to abide by safety and attendance policies admitted to be reasonable was, in any way, inappropriate.

20. ALJD p. 14-15, lines 50-6

The ALJ's findings that a subpoena was not complied with regarding the number of employees who signed new employee policies and accepting as accurate Counsel for the General Counsel's blatant misrepresentations regarding subpoena production and that no documentation was provided to support Respondent's claim.

21. ALJD p. 15, lines 35-36

The ALJ's findings that employees were not told that if they refused to accept the attendance and cell phone policies they would be terminated.

22. ALJD p. 16, lines 24-26

The ALJ's findings that employees credibly testified as to what they heard and that they understood what was said.

23. ALJD p. 16-17, lines 40-2

The ALJ's findings that Argueta's repeated, consistent and substantial inconsistencies do not undermine his testimony.

24. ALJD p. 18, Footnote 8

The ALJ's findings that Mendoza's testimony which was obviously false alleging that the ALJ witnessed statements that the ALJ disavowed does not render the testimony of Mendoza unbelievable.

25. ALJD p. 17, footnote 9

The ALJ's findings that Fabres' admittedly inaccurate testimony is immaterial and does not undermine his testimony.

26. ALJD p. 18, lines 24-37

The ALJ's findings that despite numerous acknowledged inconsistencies in content, dates, locations, and identities, General Counsel's employee witnesses were worthy of credit and the unlawful discounting of their direct responses to questions about their specific allegations of the complaint.

27. ALJD p. 18-19, lines 39-6

The ALJ's findings that Respondents' testimony was not credible when he refused to permit clarification of questions and further, allowed General Counsel's unintelligible questions to be asked of witnesses and his attempts to embarrass Respondents' witnesses in retaliation for seeking clarification of those questions.

28. ALJD p. 19, lines 45-47

The ALJ's findings that there is as much work to perform in each respective area of the warehouse without any basis for the conclusion.

29. ALJD p. 30, lines 30-35

The ALJ's findings that Torres and Argueta believed that their activities were under surveillance.

30. ALJD p. 21, lines 5-20

The ALJ's findings that there can be no doubt as to Febres' purpose.

31. ALJD p. 21-22, lines 25-6

The ALJ's findings that the General Counsel has met their burden of proving motivating

factor, three (3) employees were discharged for Union activity, Respondent harbored animosity toward the Union, and their existed the impression or suggestion of surveillance.

32. ALJD p. 22, lines 4

The ALJ's findings that Respondent has not met its burden of establishing the layoff of Argueta, Torres and Torres were for economic reasons.

33. ALJD p. 22, lines 20-40

The ALJ's findings that the documents introduced by the General Counsel did not establish that the first quarter of the last five years resulted in employee layoffs and that the financial records introduced by General Counsel did not support the financial basis for the layoffs.

34. ALJD p. 23, lines 5-10

The ALJ's findings that employee misconduct was condoned by the Respondent and therefore should be condoned by the Board.

35. ALJD p. 23, lines 10-20

The ALJ's findings that a three week overlap in employment connotes anything other than an overlap.

36. ALJD p. 23-24, lines 45-8

The ALJ's findings that employees were threatened with unspecified reprisals and Discharge.

37. ALJD p. 24, lines10-25

The ALJ's findings that employees were interrogated and threatened with unspecified reprisals concerning their involvement in a FLSA suit.

38. ALJD p. 26-27, lines 5-31

The ALJ's findings that the implementation in written form of existing work rules was in

response to protected activity and a violation of the Act.

39. ALJD p. 28, lines 34-40

The ALJ's findings that employees testified consistently regarding allegations of threats made in the hearing room.

40. ALJD p. 29, lines 19-33

The ALJ's findings that employees were threatened with legal action in retaliation for participating in a Board hearing and because of their Union activity.

41. ALJD p. 36, lines 16-20

The ALJ's findings crediting the testimony of Mendoza.

42. ALJD p. 36-37, lines 30-5

The ALJ's findings that despite admitted physical contact and cursing by Mendoza, that it was short in duration.

43. ALJD p. 37, lines 15-20

The ALJ's findings that Argueta was present during the physical confrontation prior to the Union Election.

44. ALJD p. 37, lines 30-40

The ALJ's findings that Zabell was responsible for the physical altercation prior to the election.

45. ALJD p. 37, lines 40-51

The ALJ's findings that the physical altercation prior to the election did not interfere with the employee's free and non-coerced choice in the election.

46. ALJD p. 38, lines 48-49

The ALJ's findings that the election reflected employees' free choice and its overruling the

objection interposed during the hearing.

47. ALJD p. 4, lines 4-6

The ALJ's findings that Miller was in charge of a discreet area of the Warehouse.

48. ALJD p. 39, Conclusions of Law and Recommendations in their entirety.

The ALJ's findings that Respondent violated Sections 8(a)(1), (3) and (5) of the Act.

49. ALJD p. 40, The Remedies in their entirety.

50. ALJD p. 41, The Order in its entirety.

51. ALJD Order Modifying Order in Previous Decision in its entirety.

Dated: Bohemia, New York
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