

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

RHCG SAFETY CORP.,

Employer/Respondent,

and

CONSTRUCTION AND GENERAL  
BUILDING LABORERS LOCAL 79,

Petitioner/Charging Party.

Case Nos.: **29-CA-161261**  
**29-RC-157827**

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**EMPLOYER RHCG SAFETY CORP.'S EXCEPTIONS TO THE DECISION OF  
ADMINISTRATIVE LAW JUDGE RAYMOND P. GREEN**

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RHCG Safety Corp.

Pursuant to the National Labor Relations Board's Rules and Regulations, Employer/Respondent RHCG Safety Corp. ("RHCG" or "Employer" or "Respondent") by and through its undersigned counsel, Genova Burns LLC, hereby submits the following Exceptions to the Decision and Recommended Order ("Decision") of Administrative Law Judge Raymond P. Green ("ALJ") in the above captioned case:<sup>1</sup>

1. The ALJ's conclusion that RHCG illegally interrogated Claudio Anderson ("Anderson") in violation of Section 8(a)(1) of the National Labor Relations Act ("Act") by asking him if he was working for RHCG or the union. (ALJD 5:2-3).<sup>2</sup> This conclusion is contrary to record evidence and controlling law.
2. The ALJ's decision to admit into evidence GC-3(a) and GC-3(b), which contained screenshots of text messages allegedly exchanged between Anderson and David Scherrer ("Scherrer") during the time period July 30, 2015 and August 4, 2015, including an alleged text message from Scherrer to Anderson on July 30, 2015 at 8:36 p.m. stating: "U working for Red Hook or u working in the union?"<sup>3</sup> (ALJD 3:39-42, fn. 1; T1, 120:4-15; T3, 462:14-466:1). This decision is contrary to record evidence and controlling law.
3. The ALJ's decision to deny RHCG's objection regarding the admissibility of GC-3(b). (T1, 120:18-25). This decision is contrary to record evidence and controlling law.

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<sup>1</sup> RHCG simultaneously filed herewith its Brief in Support of Exceptions to the ALJ's Decision.

<sup>2</sup> Citations to the ALJ's Decision will be designated by "ALJD" and followed by the cited page and/or line numbers.

<sup>3</sup> Exhibits are labeled as "GC-" and the exhibit number for the General Counsel's exhibits, "R-" and the exhibit number for Respondent's exhibits, "U-" and the exhibit number for the exhibits of Petitioner/Charging Party Construction and General Building Laborers Local 79 ("Union" or "Petitioner" or "Charging Party"), and "Bd. Ex.-" and the exhibit number for Board exhibits.

4. The ALJ's denial of RHCG's Motion to Exclude GC-3(a) and GC-3(b) pursuant to the Rule of Completeness. (ALJD 3:39-42, fn. 1). This denial is contrary to record evidence and controlling law.
5. The ALJ's decision to deny, or indication that he would deny, RHCG's Motion to Exclude GC-3(a) and GC-3(b) before RHCG even filed its Motion. (T4, 619:14-624:6; ALJD 3:39-42, fn. 1). This decision is contrary to record evidence and controlling law.
6. The ALJ's application of an incorrect standard and/or misapplication of the appropriate standard in denying RHCG's Motion to Exclude GC-3(a) and GC-3(b). (ALJD 3:42, fn. 1). This is contrary to controlling law.
7. The ALJ's contradictory findings that the text messages in GC-3(a) and GC-3(b) were incomplete, but still admissible. (ALJD 3:42, fn. 1). This finding is contrary to record evidence and controlling law.
8. The ALJ's failure to give adequate consideration, analysis, and/or weight to the undisputed fact that GC-3(a) and GC-3(b) were incomplete, as there were 10 text messages purposely excluded from these exhibits, in his finding that GC-3(a) and GC-3(b) were admissible. (ALJD 3:21-3:42; T3, 462:14-466:1). This is contrary to record evidence.
9. The ALJ's failure to impose sanctions or draw an adverse inference on Anderson regarding GC-3(a) and GC-3(b) and/or the alleged text messages contained therein, for his spoliation of evidence with respect to these text messages, the 10 text messages purposely excluded from GC-3(a) and GC-3(b), and the cell phone with which he sent and received these text messages. (ALJD 3:21-3:42; T1, 54:1-56:1; T3, 462:18-463:6). This is contrary to record evidence and controlling law.

10. The ALJ's inaccurate recitation in the ALJD of the order and content of the text messages in GC-3(a) and GC-3(b), as if to imply that they represented a complete conversation between Anderson and Scherrer. (ALJD 3:42-4:28). This is contrary to record evidence.
11. The ALJ's finding that the text messages in GC-3(a) and GC-3(b) were authentic. (ALJD 3:42, fn. 1). This finding is contrary to record evidence and controlling law.
12. The ALJ's decision to rely on and/or place weight on the text messages in GC-3(a) and GC-3(b) in concluding that RHCG violated Section 8(a)(1) of the Act by unlawfully interrogating Anderson via text message. (ALJD 3:21-27, 4:39-41). This decision is contrary to record evidence and controlling law.
13. The ALJ's decision to rely on and/or place weight on the text messages in GC-3(a) and GC-3(b) in concluding that RHCG violated Section 8(a)(1) of the Act by unlawfully interrogating Anderson via text message. (ALJD 3:42-4:28; T4, 621:7-622:12; citation to transcript or exhibits). This decision is contrary to record evidence and controlling law.
14. The ALJ's failure to give adequate consideration, analysis, and/or weight to the undisputed fact that Anderson failed to produce and could not produce the cell phone with which he exchanged text messages with Scherrer during the time period July 29, 2015 to August 4, 2015, including the alleged text messages in GC-3(a) and GC-3(b) and the 10 texts that Anderson excluded from GC-3(a) and GC-3(b). (ALJD 3:21-3:27). This is contrary to record evidence.
15. The ALJ's failure to give adequate consideration, analysis, and/or weight to the undisputed fact that Anderson gave the cell phone with which he exchanged text

messages with Scherrer during the time period July 29, 2015 to August 4, 2015, including the alleged text messages in GC-3(a) and GC-3(b) and the 10 texts that Anderson excluded from GC-3(a) and GC-3(b), no longer contained any text messages because Anderson gave the cell phone to his sister approximately one week before the start of the hearing in this matter and Anderson's sister reset the cell phone, which deleted all the text messages therein. (ALJD 3:21-3:27). This is contrary to record evidence.

16. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the undisputed fact that RHCG could not inspect the cell phone with which Anderson exchanged text messages with Scherrer during the time period July 29, 2015 to August 4, 2015, including the alleged text messages in GC-3(a) and GC-3(b) and the 10 texts that Anderson excluded from GC-3(a) and GC-3(b), because he gave the cell phone to his sister approximately one week before the start of the hearing in this matter and Anderson's sister reset the cell phone, which deleted all the text messages therein. (citation to the transcript and/or exhibits). This is contrary to record evidence.

17. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the undisputed fact that Anderson gave his cell phone to his sister approximately one week before the start of the hearing despite the fact that he was aware in 2015—well in advance of the hearing—that he was going to be a witness in this matter and that the alleged text messages from Scherrer were going to be a part of this proceeding. (T7, 953:5-16, 954:9-21; R-19, ¶ 1; GC-3(b)). This is contrary to record evidence.

18. The ALJ's failure to give adequate consideration, analysis, and/or weight to the undisputed fact that the cell phone records from the cell phone carriers do not show the

contents of the text messages exchanged between Anderson and Scherrer during the time period July 29, 2015 to August 4, 2015. (ALJD 3:49-3:42). This is contrary to record evidence.

19. The ALJ's decision to rely on and/or place weight on the cell phone records from the cell phone carriers in reaching his conclusion RHCG interrogated Anderson in violation of Section 8(a)(1) of the Act, despite the undisputed fact that the cell phone records do not show the contents of the text messages exchanged between Anderson and Scherrer during the time period July 29, 2015 to August 4, 2015. (ALJD 3:49-3:42; R-14). This decision is contrary to record evidence and controlling law.
20. The ALJ's decision to credit, rely on and/or place weight on the inaccurate, inconsistent and/or contradictory testimony of Anderson with respect to the text messages exchanged between he and Scherrer during the time period July 29, 2015 to August 4, 2015, his cell phone, his interactions with Scherrer during July and August 2015, and GC-3(a) and GC-3(b). This decision is contrary to record evidence.
21. The ALJ's failure to make an adverse credibility determination against Anderson because of his inaccurate, inconsistent and/or contradictory testimony with respect to the text messages exchanged between he and Scherrer during the time period July 29, 2015 to August 4, 2015, his cell phone, his interactions with Scherrer during July and August 2015, and GC-3(a) and GC-3(b). (ALJD 3:21-27; 4:31-32). This is contrary to record evidence.
22. The ALJ's decision to sustain the objection by counsel for the General Counsel foreclosing RHCG from questioning Anderson about his purported filing of an insurance

claim on his cell phone, which is relevant to his credibility. (T1, 53:2-11). This decision is contrary to record evidence and controlling law.

23. The ALJ's failure to recognize inconsistencies of Anderson's witness testimony and his affidavit including but not limited to, the length of his tenure with RHCG, the dates of various events (when he requested time off to go to Panama,), when his mother told him he did not have to go to Panama, when he signed his Union authorization card, his attempts to contact Scherrer, his cessation of work at RHCG, whether he was a demolition or concrete laborer, whether he responded to Scherrer's July 30, 2015 text message at 8:36 p.m. This is contrary to record evidence.
24. The ALJ's decision to credit, rely on and/or place weight or significance on Anderson's testimony regarding the Section 8(a)(1) allegations in the Complaint despite his inaccurate, inconsistent and/or contradictory testimony with respect to his vacation and time off request; whether he took time off and where he was after July 23, 2015; whether the screenshots of the texts were complete and whether there were any missing messages; Anderson's numerous accounts regarding to whom he sent the screenshots of the texts messages with Scherrer; and Scherrer's contact information in Anderson's cell phone. This decision is contrary to record evidence.
25. The ALJ's factual findings in support of his conclusion that RHCG violated Section 8(a)(1) of the Act by unlawfully interrogating Anderson. (ALJD 3:39-4:36). These findings are contrary to record evidence.
26. The ALJ's factual findings with respect to: the ALJ's recitation of the number of text messages, the context of the text messages, the reason for the text messages, the meaning

of the text messages and whether the disputed text messages were an interrogation. (ALJD 3:18-4:28). This finding is contrary to record evidence.

27. The ALJ's factual findings that the cell phone records show that the text messages were sent not only on the same dates but at the same times as those listed on the screenshots of the messages, and that Anderson took pictures of the text messages which were ultimately transmitted by the Union to the NLRB agent who was investigating the charge. (ALJD 3:39-41). This finding is contrary to record evidence.

28. The ALJ's factual findings that Anderson requested an extended period of time to visit his mother in Panama, that this request was granted by Scherrer, that soon thereafter Anderson visited the office of the Union and signed a union authorization card, that Anderson's mother then called to tell him that he didn't need to come after all, and that as a result Anderson and Scherrer communicated via a series of text messages about his return to work between July 30 and August 4. (ALJD 3:10-19). This finding is contrary to record evidence.

29. The ALJ's finding that the cell phone records contradict the testimony of Scherrer that he did not send or receive text messages with Anderson during July 30, 2015 to August 4, 2015. (ALJD 3:31-32). This finding is contrary to record evidence and controlling law.

30. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to any of the Bourne factors in concluding RHCG violated Section 8(a)(1) of the Act by interrogating Anderson. (Bourne v. NLRB, 332 F. 2d 47 (2d Cir. 1964); ALJD 5:2-3). This finding is contrary to record evidence and controlling law.



31. The ALJ's failure to give adequate consideration, analysis, and/or weight to the totality of the circumstances in concluding RHCG violated Section 8(a)(1) of the Act by interrogating Anderson. (ALJD 5:2-3). This finding is contrary to record evidence and controlling law.
32. The ALJ's expansion of the test for what constitutes an unlawful interrogation in violation of Section 8(a)(1) of the Act. (ALJD 4:38-5:3). This finding is contrary to record evidence and controlling law.
33. The ALJ's conclusion that a text message can constitute an unlawful interrogation in violation of Section 8(a)(1) of the Act. (ALJD 5:2-3). This finding is contrary to record evidence and controlling law.
34. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that any alleged interrogation of Anderson was an isolated incident rather than a violation of 8(a)(1) of the Act. (ALJD 5:2-3). This finding is contrary to record evidence and controlling law.
35. The ALJ's failure to credit the Scherrer's testimony regarding his interactions with Anderson in July and August 2015 regarding jobsite moves and requests for time off, the absence of communications between Scherrer and Anderson about the Union or Anderson's Union activities, the absence of Scherrer's knowledge about the Union and/or its organizing efforts in July and early August 2015, Scherrer's face-to-face communication with Anderson about his availability to work for RHCG, and the text messages Scherrer exchanged with Anderson between July 29, 2015 and August 4, 2015. (ALJD 3:31-3:42). This finding is contrary to record evidence and controlling law.

36. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the undisputed fact that Anderson and Scherrer had a good personal and professional relationship. This finding is contrary to record evidence.
37. The ALJ's decision to grant the Counsel for the General Counsel's Petition to Revoke paragraphs 2 and 3 of Respondent's subpoena to Anderson which sought documents related to Anderson's earnings, income, wages, compensation, etc. subsequent to the cessation of his employment with RHCG and documents concerning Anderson's search for work and/or work-related expenses subsequent to the cessation of his employment with RHCG. (T1, 8:15-18). This finding is contrary to record evidence.
38. The ALJ's decision to sustain the objection of Counsel for the General Counsel and thereby prohibiting RHCG from questioning Anderson about his availability to work for RHCG during the time period of July 24, 2015 to August 4, 2015 along with his search for work and/or employment subsequent to his cessation of employment with RHCG. This finding is contrary to record evidence.
39. The ALJ's conclusion that RHCG violated Sections 8(a)(1) and 8(a)(3) of the Act by discharging Anderson. (ALJD 5:1-3). This finding is contrary to record evidence and controlling law.
40. The ALJ's conclusion that RHCG discharged Anderson. (ALJD 5:1). This finding is contrary to record evidence and controlling law.
41. The ALJ's finding that Anderson signed a Union authorization card during his visit to the Union's office in July 2015. (ALJD 3:14-15). This finding is contrary to record evidence.

42. The ALJ's conclusion that RHCG violated Sections 8(a)(1) and 8(a)(3) of the Act by discharging Anderson despite his failure to find that the Counsel for the General Counsel made out a *Prima Facie* case. (ALJD 5:1-3). This finding is contrary to record evidence and controlling law.
43. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to any of the factors under the Wright Line test for a discriminatory discharge. (ALJD 5:1-3); (Wright Line, 251 N.L.R.B. 1083 (1980), enforced, 662 F.2d 899 (1<sup>st</sup> Cir. 1981)). This finding is contrary to record evidence and controlling law.
44. The ALJ's failure to consider Anderson's minimal union activity. (T1, 80:1281:1). This finding is contrary to record evidence.
45. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that Christopher Garofalo ("Garofalo") did not have any knowledge of Anderson's union activity. This finding is contrary to record evidence.
46. The ALJ's finding that Anderson suffer an adverse employment action. This finding is contrary to record evidence and controlling law.
47. The ALJ's finding that there was a nexus or link between Anderson's alleged protected activity and his cessation of employment. This finding is contrary to record evidence and controlling law.
48. The ALJ's failure to identify and evaluate whether antiunion animus was a substantial or motivating factor in the cessation of Anderson's work with RHCG. This is contrary to record evidence and controlling law.

49. The ALJ's failure to consider whether Anderson's employment with RHCG would have ended absent any alleged protected activity. This is contrary to record evidence and controlling law.
50. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the undisputed evidence that RHCG does not provide paid vacation and employees can be replaced if the needs of the job require it. This is contrary to record evidence.
51. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that if an employee is replaced while he is on vacation, it is the employee's obligation to contact RHCG supervisors to inquire about the prospects of his ability to return to work. This is contrary to record evidence.
52. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that laborers are moved around on a job-by-job basis, depending on the phase of a project or the number of workers needed on that jobsite. This is contrary to record evidence.
53. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that RHCG does not have a formal policy or process regarding the assignment or transfer of workers to/from jobsites. This is contrary to record evidence.
54. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that RHCG does not maintain a list of job applicants for the demolition division. (T3, 523). This finding is contrary to record evidence.
55. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that Scherrer does not maintain a list of individuals who need work, is not aware of any such list maintained by RHCG for the concrete division, and does not keep track

of concrete workers when they move from his jobsite to another jobsite. This is contrary to record evidence.

56. The ALJ's finding that on or about August 4, 2015 Scherrer told Anderson to speak with Rodriguez. (ALJD 4:31-32). This finding is contrary to record evidence.

57. The ALJ's decision to credit, rely on, and/or place weight on Anderson's testimony concerning his meeting with Scherrer on or about August 4, 2015. (ALJD 4:31-32). This finding is contrary to record evidence.

58. The ALJ's failure to credit, rely on, and/or place weight on the testimony of Scherrer concerning his meeting with Anderson on or about August 4, 2015. (ALJD 4:31-32). This finding is contrary to record evidence.

59. The ALJ's decision to credit, rely on and/or place weight on Anderson's testimony based on the ALJ's finding that Scherrer allegedly provided contradictory testimony. (ALJD 3:31-32). This finding is contrary to record evidence.

60. The ALJ's failure to give adequate consideration, analysis, and/or weight to the testimony of Scherrer, Rodriguez or Garofalo. This finding is contrary to record evidence.

61. The ALJ's finding that on or about August 4, 2015, Anderson visited the 2301 Tilliston Avenue job site and Scherrer told him that there was no work for him. (ALJD 4:30-31). This finding is contrary to record evidence.

62. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to that Scherrer advised Anderson to contact Nick Pavon ("Pavon") (another concrete supervisor) or other concrete supervisors to inquire whether they had any work for Anderson. (T2, 293:4-6). This is contrary to record evidence.

63. The ALJ's finding that Rodriguez told Anderson that Garofalo said that Anderson and some other guys could not work for the company anymore during their alleged conversation on or about August 4, 2015. (ALJD 3:34-36). This finding is contrary to record evidence.
64. The ALJ's finding that Anderson reasonably took Rodriguez's alleged statement that Garofalo said he and some other guys couldn't work for the company anymore to mean that Anderson was fired. (ALJD 3:34-36). This finding is contrary to record evidence.
65. The ALJ's decision to credit, rely on, and/or place weight on Anderson's testimony concerning his alleged telephone conversation with Rodriguez on or about August 4, 2015. (ALJD 3:31-36). This finding is contrary to record evidence.
66. The ALJ's failure to credit the testimony of Rodriguez concerning his alleged telephone conversation with Anderson, including that Rodriguez did not discharge Anderson, did not tell Anderson that Garofalo was firing him, and did not tell Anderson that Garofalo said that Anderson and some other employees could no longer work for RHC. This finding is contrary to record evidence.
67. The ALJ's failure to find that Rodriguez did not terminate Anderson. This finding is contrary to record evidence.
68. The ALJ's failure to find that Garofalo did not terminate Anderson. This finding is contrary to record evidence.
69. The ALJ's failure to find that Scherrer did not terminate Anderson. This finding is contrary to record evidence.

70. The ALJ's finding that Rodriguez was an agent of RHCG in his alleged telephone conversation with Anderson on or about August 4, 2015. (ALJD 4:42-44). This finding is contrary to record evidence.
71. The ALJ's failure to conduct an adequate analysis to determine whether Rodriguez was an agent of RHCG with respect to his alleged telephone conversation with Anderson. (ALJD 4:42-44). This finding is contrary to record evidence and controlling law.
72. The ALJ's failure to acknowledge and apply the correct standard to determine whether Rodriguez was an agent of RHCG with respect to his alleged telephone conversation with Anderson. This is contrary to record evidence and controlling law.
73. The ALJ's finding that Rodriguez acts as a messenger between the company and Spanish speaking employees and has been used to transmit termination notifications and, therefore, he was an agent of RHCG. (ALJD 4:42-44). This finding is contrary to record evidence and controlling law.
74. The ALJ's decision to credit, rely on, and/or place weight on his finding that because Rodriguez acts as a messenger between the company and Spanish speaking employees and has been used to transmit termination notifications, Rodriguez was an agent of RHCG. (ALJD 4:42-44). This finding is contrary to record evidence and controlling law.
75. The ALJ's decision to grant the General Counsel's oral motion to amend the Complaint to allege that Rodriguez was an agent of RHCG under Section 2(13) of the Act. (T2, 199:21-200:12). This finding is contrary to record evidence and controlling law.
76. The ALJ's denial of RHCG's objection to the General Counsel's oral motion to amend the Complaint to allege that Rodriguez was an agent of RHCG under Section 2(13) of

the Act. (T2, 199:21-200:12). This finding is contrary to record evidence and controlling law.

77. The ALJ's finding that Anderson's testimony about his alleged telephone conversation with Rodriguez was admissible, despite RHCG's hearsay objection. (T1, 63:1-64:24). This finding is contrary to record evidence and controlling law.

78. The ALJ's decision to overrule RHCG's hearsay objection that Anderson's alleged telephone conversation with Rodriguez was inadmissible hearsay. (T1, 63:1-64:24). This finding is contrary to record evidence and controlling law.

79. The ALJ's conclusion that the text messages in GC-3(a) and GC-3(b) show that Scherrer was not putting Anderson to work. (ALJD 4:39-41). This finding is contrary to record evidence and controlling law.

80. The ALJ's conclusion that the text messages in GC-3(a) and GC-3(b) show that the reason for Anderson's discharge was RHCG's belief that he was becoming involved with the union. (ALJD 4:44-46). This finding is contrary to record evidence and controlling law.

81. The ALJ's failure to give adequate consideration, analysis, and/or weight to the fact that Anderson was a concrete worker and the Union was trying to organize RHCG's demolition workers. (ALJD 3:1-5). This finding is contrary to record evidence and controlling law.

82. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that Scherrer brought Anderson to the 5740 Broadway jobsite as a favor to Anderson, and pursuant to Anderson's request, because Anderson had a problem with a coworker at the 809 Neptune Avenue jobsite he was working on in early July 2015,



despite the fact that Scherrer did not have a lot of work for Anderson at the 5740 Broadway jobsite. This is contrary to record evidence.

83. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that Scherrer moved Anderson to the 2301 Tilloston Avenue jobsite in mid-July 2015, as a favor to Anderson and in an effort to keep him working, when work ceased at the 5740 Broadway jobsite, despite the fact that Scherrer did not need another laborer at the 2301 Tilloston Avenue jobsite at that time. This is contrary to record evidence.

84. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that Anderson admitted that when he notified Scherrer of his request for time off he knew he could be replaced at the 2301 Tilloston Avenue jobsite during his time away from RHCG. This is contrary to record evidence.

85. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that Anderson's last day of work for RHCG was July 23, 2015. This is contrary to record evidence.

86. The ALJ's failure to address or give adequate consideration, analysis, and/or weight to the fact that the reason there was no work at 2301 Tilloston Avenue jobsite in late July and early August 2015 was because there was nothing really happening at that jobsite, as the jobsite was not ready for the foundation yet and, when the jobsite would be ready for the foundation, another concrete supervisor would be coming onto the jobsite with his crew to do the foundation. This is contrary to record evidence.

87. The ALJ's failure to consider, credit, rely on, and/or give weight to the undisputed testimony that Scherrer never spoke to or asked Anderson about the Union in July 2015. This is contrary to record evidence.

88. The ALJ's failure to consider, credit, rely on, and/or give weight to Anderson's testimony that he never told Scherrer or any other supervisor from RHCG that he signed an authorization card, went to the Union's office to complete paperwork, or that he was a Union member and/or supporter. This is contrary to record evidence.
89. The ALJ's failure to consider, credit, rely on, and/or give weight to Anderson's testimony that he did not discuss the Union with Scherrer or anyone else on the jobsite. (T2, 296:22 to 298:16). This finding is contrary to record evidence and controlling law.
90. The ALJ's failure to consider, credit, rely on, and/or give weight to Anderson's testimony that Scherrer did not know about anything about the Union or its efforts to organize RHCG's demolition division until later in August 2015, after the cessation of Anderson's employment with RHCG. This is contrary to record evidence.
91. The ALJ's failure to consider, credit, rely on, and/or give weight to Garofalo's undisputed testimony that he did not speak with Scherrer about Anderson during July and August 2015. This is contrary to record evidence.
92. The ALJ's failure to consider, credit, rely on, and/or give weight to Garofalo's testimony that he did not have any communications with Scherrer during the summer of 2015. This is contrary to record evidence.
93. The ALJ's failure to consider, credit, rely on, and/or give weight to Garofalo's undisputed testimony that he did not speak with Rodriguez about Anderson during July and August 2015 This is contrary to record evidence.
94. The ALJ's failure to consider, credit, rely on, and/or give weight to Garofalo's undisputed testimony that he did not tell Rodriguez to notify Anderson that he was fired. This is contrary to record evidence.

95. The ALJ's failure to credit, rely on and/or give weight to Garofalo's undisputed testimony that he did not fire Anderson. This is contrary to record evidence.
96. The ALJ's failure to consider, credit, rely on, and/or give weight to Garofalo's undisputed statement that never told Rodriguez to tell Anderson he could not work for RHCG or to terminate him. This is contrary to record evidence.
97. The ALJ's failure to consider, credit, rely on, and/or give weight to both Garofalo's and Rodriguez's statements that they did not have any communications or conversations in June, July or August about Anderson or his alleged Union activity. This is contrary to record evidence.
98. The ALJ's failure to consider, credit, rely on, and/or give weight to Garofalo's testimony that he did not know Anderson, did not know in which division he worked, and did not have any interaction or communication with Anderson. This is contrary to record evidence.
99. The ALJ's failure to consider, credit, rely on, and/or give weight to Garofalo's testimony that he did not know what job site Anderson worked at and whether Anderson was a member of the Union. This is contrary to record evidence.
100. The ALJ's failure to consider, credit, rely on, and/or give weight to Garofalo's testimony that he did not have any discussions with Scherrer or Rodriguez about Anderson. This is contrary to record evidence.
101. The ALJ's failure to consider, credit, rely on, and/or give weight to Anderson's testimony that he did not follow up with Pavon or reach out to any other RHCG supervisors to inquire whether they had any work available for him. This is contrary to record evidence.

102. The ALJ's failure to consider, credit, rely on, and/or give weight to the fact that as a result of Anderson's inaction and failure to contact another supervisor, his employment with RHCG ceased. This is contrary to record evidence.
103. The ALJ's failure to consider that after the cessation of Anderson's employment with RHCG, he left a comment on Scherrer's Facebook page saying that Scherrer was a "good man." This is contrary to record evidence.
104. The ALJ's conclusion that RHCG failed to provide an adequate Excelsior list. (ALJD 5:37). This conclusion is contrary to record evidence and controlling law.
105. The ALJ's conclusion that the election was relatively close. (ALJD 5:37-38). This conclusion is contrary to record evidence and controlling law.
106. The ALJ's conclusion that because RHCG failed to provide an adequate Excelsior list and the election was relatively close, the Union's objection should be sustained and the election should be set aside. (ALJD 5:37-39). This conclusion is contrary to record evidence and controlling law.
107. The ALJ's conclusion that the Union's objections regarding RHCG's alleged failure to submit an accurate and adequate Excelsior list are sustained. (ALJD 6:38-39). This conclusion is contrary to record evidence and controlling law.
108. The ALJ's conclusion that the conduct found to be objectionable is sufficiently serious to set aside the election and hold a new one. (ALJD 6:41-42). This conclusion is contrary to record evidence and controlling law.
109. The ALJ's finding that an employer in an election has to file a list of the names and addresses of all eligible voters within seven days after either the approval of an

election agreement or the issuance of a Decision and Direction of Election. (ALJD 5:43). This finding is contrary to record evidence and controlling law.

110. The ALJ's finding that the Stipulated Election Agreement required RHCG to submit to the Region for transmittal to the union a list of the company's employees with their home addresses, phone numbers and e-mail addresses, and that RHCG agreed to this. (ALJD 5:41-44). This finding is contrary to record evidence.

111. The ALJ's finding that the failure to provide a voter list or the submission of a substantially erroneous list is grounds for setting aside the election. (ALJD 5:45 to 6:2). This finding is contrary to record evidence and controlling law.

112. The ALJ's finding that 80 of the employees' addresses in the Voter List were incorrect. (ALJD 6:7). This finding is contrary to record evidence.

113. The ALJ's finding that the Union placed into evidence 26 envelopes that were returned by the Post Office. (ALJD 6:7-8). This finding is contrary to record evidence.

114. The ALJ's finding that a Union representative testified that when she and others went to make home visits, the employees were not at the addresses on the Excelsior list. (ALJD 6:7-10). This finding is contrary to record evidence.

115. The ALJ's failure and/or refusal to consider mitigating factors, such as the fact that any deficiencies with respect to the Voter List were not caused by RHCG's intentional conduct, the fact that the Union was able to successfully communicate with a vast majority of the employees on the Voter List and the election had a high voter turnout, in concluding that the Union's objection to the Voter List should be sustained and the election should be set aside and a new election should be conducted. This is contrary to record evidence and controlling law.

116. The ALJ's failure and/or refusal to consider that, under the NLRB's Election Rules and Regulations, RHCG only had two days to compile, file and serve the Voter List after the Regional Director signed the Stipulated Election Agreement, in concluding that the Union's objection to the Voter List should be sustained and the election should be set aside and a new election should be conducted. This finding is contrary to record evidence and controlling law.

117. The ALJ's failure to address or to consider, credit, rely on, and/or give weight to the testimony of Andre Marc-Charles ("Marc-Charles") about his compilation of the Voter List, the fact that he only had two days to compile the Voter List under the NLRB's Election Rules and Regulations, and the fact that he had to perform his normal job functions (including processing payroll for the entire company) while simultaneously compiling the Voter List. This is contrary to record evidence and controlling law.

118. The ALJ's failure to address or to consider, analyze, or give weight to the mitigating fact that the two-day time period to compile, file and serve the Voter List under the NLRB's Election Rules and Regulations is prejudicial, unreasonable, unduly burdensome, arbitrary, and capricious as to RHCG. This is contrary to record evidence and controlling law.

119. The ALJ's conclusion that the Voter List did not contain any phone numbers notwithstanding evidence that RHCG's supervisors maintained and utilized employee phone numbers on their own cell phones. (ALJD 6:12-14). This finding is contrary to record evidence and controlling law.

120. The ALJ's failure to address or to consider, analyze, or give weight to the fact that RHCG does not maintain a list or database of employees' phone numbers, does not

regularly compile and/or store this information, and does not request this information from its employees upon their hiring. This is contrary to record evidence and controlling law.

121. The ALJ's failure to address or to consider, analyze, or give weight to the fact that the phone numbers of employees on the Voter List were not available to RHCG because RHCG does not maintain a list or database of employees' phone numbers, does not regularly compile and/or store this information, and does not request this information from its employees upon their hiring. This is contrary to record evidence and controlling law.

122. The ALJ's failure to address or to consider, analyze, credit, or give weight to the fact that in compiling the Voter List, Marc-Charles did not come across any phone numbers of employees on the Voter List in his review of the only database that RHCG uses to maintain employees' contact information. This is contrary to record evidence

123. The ALJ's failure to address or to consider, analyze, or give weight to the fact that RHCG could not have exercised reasonable diligence to obtain the phone numbers of the employees on the Voter List. This is contrary to record evidence and controlling law.

124. The ALJ's conclusion that the Voter List did not contain the names of any former employees who worked for sufficient periods of time in the prior two years to make them eligible under the Steiny/Daniel formula. (ALJD 6:16-18). This finding is contrary to record evidence and controlling law.

125. The ALJ's conclusion that it is probable that the submitted Excelsior list omitted an entire category of employees who might have been eligible voters if they had been

aware of the election. (ALJD 6:18-20). This finding is contrary to record evidence and controlling law.

126. The ALJ's recitation of the Steiny/Daniel eligibility formula as it was allegedly set forth in the Stipulated Election Agreement. (ALJD 6:18, fn 5). This is contrary to record evidence and controlling law.

127. The Administrative Law Judge's proposed Remedies. (ALJD 7:1-32). This is contrary to record evidence and controlling law.

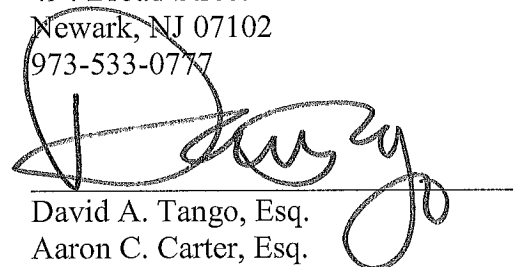
128. The Administrative Law Judge's recommended Order, including the aspects of the ALJ's recommended Order that concern the unfair labor practice aspect of this consolidated case. (ALJD 6: 34 to 7:40). This is contrary to record evidence and controlling law.

129. The Administrative Law Judge's recommended Order that Case 29-RC-157827 be remanded to the Regional Director and that the election held on September 18, 2015 be set aside and that a new election be scheduled. (ALJD 7:35-37). This is contrary to record evidence and controlling law.

Respectfully submitted,

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