

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

**CSC HOLDINGS, LLC and CABLEVISION
SYSTEMS NEW YORK CITY CORPORATION,
a Single Employer,**

Respondent,

and

ANDRES GARCIA, Charging Party,

Case No. 02-CA-138301

and

PAUL MURRAY, Charging Party,

Case No. 02-CA-138302

and

BERNARD PAEZ, Charging Party.

Case No. 02-CA-138303

**COUNSEL FOR THE GENERAL COUNSEL'S CROSS EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

**Rachel F. Feinberg
Counsel for the General Counsel
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10278**

**Dated at New York, New York
This 15th Day of December, 2016**

I. STATEMENT OF THE CASE

On September 23, 2016, Administrative Law Judge Mindy E. Landow, herein the ALJ, issued a decision, herein the Decision or the ALJD, in the instant case, finding that Cablevision Systems New York City Corp., herein Respondent, violated Section 8(a)(3) and (1) of the Act by involuntarily transferring employees Andres Garcia (Garcia), Paul Murray (Murray), Bernard Paez (Paez), Mike Vetrano (Vetrano), Ezequiel Lajara (Lajara) and Wayne Roberts (Roberts) from its Brush Avenue facility to other locations in retaliation for their actual and/or perceived union activity. ALJD at 25:21-24. In addition, the ALJ's findings of fact support the conclusion that the transfers of Garcia, Murray and Paez independently violated Section 8(a)(1) because they were also in retaliation for those employees' protected concerted activities, although the ALJ's Conclusions of Law omitted the independent 8(a)(1) violations.

On November 21, 2016, Respondent filed Exceptions to the ALJ's findings of fact and conclusions of law, herein the Exceptions. Pursuant to Section 102.46(f)(2) of the Rules and Regulations of the National Labor Relations Board, herein the Board, Counsel for the General Counsel, herein General Counsel, requested an extension of time to file its Answering Brief and Cross Exceptions, from December 5, 2016 until December 19, 2016, which request was granted by the Office of the Executive Secretary. Pursuant to Section 102.46(d), General Counsel files this Answering Brief to the Exceptions.

It is General Counsel's position that the ALJ's conclusion that Respondent's transfer of the six discriminatees violated Section 8(a)(3) is fully supported by the facts as accurately set forth in the Statement of Case in her Decision based on the substantial documentary evidence and witness testimony which the ALJ properly credited. Nevertheless, General Counsel files Cross Exception to correct two oversights in the Decision.

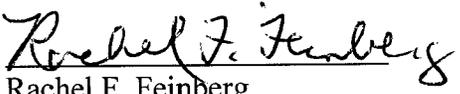
II. STATEMENT OF EXCEPTIONS

1. The ALJ failed to rely on her findings that Supervisor Ewan Isaacs interrogated discriminatee Murray in June 2013 regarding his and Paez's involvement with the Union and that Director of Area Technical Operations Kennedy solicited grievances and promised to remedy them during the March 12, 2014 "elephant in the room" meeting as background evidence of Respondent's anti-union animus (ALJD at 18:43-19:32; but see ALJD at 5:16-20, 6:15-25);
2. The ALJ inadvertently omitted to find the independent 8(a)(1) violation alleged in the Complaint in regard to the transfer of discriminatees Murray, Paez, and Garcia although her findings of fact support the violations (ALJD at 25:16-25; but see ALJD at 4:6-9; 5:40-42; 6:27-30, 38-7:24; GC Exh. 1(g) at para. 5(a)-(c)).

General Counsel recognizes that these Cross Exceptions have no bearing on the Remedy in this matter. Nevertheless, General Counsel respectfully requests that the ALJ's Conclusions of Law be corrected to include the independent 8(a)(1) violation in regard to the transfer of discriminatees Murray, Paez and Garcia and that the ALJ's 8(a)(3) analysis be modified to include Respondent's interrogation of Murray as well as Respondent's solicitation of and promise to remedy employee grievances outside the 10(b) period as background evidence of Respondent's anti-union animus.

Dated: December 15, 2016
New York, New York

Respectfully submitted,



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**COUNSEL FOR THE GENERAL COUNSEL'S BRIEF IN SUPPORT OF CROSS
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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I. STATEMENT OF THE CASE

On September 23, 2016, Administrative Law Judge Mindy E. Landow, herein the ALJ, issued a decision, herein the Decision or the ALJD, in the instant case, finding that Cablevision Systems New York City Corp., herein Respondent, violated Section 8(a)(3) and (1) of the Act by involuntarily transferring employees Andres Garcia (Garcia), Paul Murray (Murray), Bernard Paez (Paez), Mike Vetrano (Vetrano), Ezequiel Lajara (Lajara) and Wayne Roberts (Roberts) from its Brush Avenue facility to other locations in retaliation for their actual and/or perceived union activity. ALJD at 25:21-24. In addition, the ALJ's findings of fact support the conclusion that the transfers of Garcia, Murray and Paez independently violated Section 8(a)(1) because the transfers were also in retaliation for those employees' protected concerted activities, as alleged in the Complaint, although the ALJ's Conclusions of Law omitted the independent 8(a)(1) violations.

On November 21, 2016, Respondent filed Exceptions to the ALJ's findings of fact and conclusions of law, herein the Exceptions. Pursuant to Section 102.46(f)(2) of the Rules and Regulations of the National Labor Relations Board, herein the Board, Counsel for the General Counsel, herein General Counsel, requested an extension of time to file its Answering Brief and Cross Exceptions, from December 5, 2016 until December 19, 2016, which request was granted by the Office of the Executive Secretary. Pursuant to Section 102.46(d), General Counsel files this Answering Brief to the Exceptions.

It is General Counsel's position that the ALJ accurately set forth the facts of this case in the Decision and made sound rulings in regard to the credibility of the witnesses who testified during the preceding in concluding that Respondent's transfer of the six discriminatees violated Section 8(a)(3). Nevertheless, General Counsel files Cross Exceptions to correct two oversights

in the Decision. First, the ALJ failed to expressly rely on the findings that Respondent questioned Murray about his and Paez's involvement with the union and on her findings regarding Respondent's March 12, 2014 "elephant in the room meeting" as additional background evidence of anti-union animus supporting the conclusion that the transfers of the six employees were in violation of Section 8(a)(3). Second, the ALJ neglected to find that the transfers of Garcia, Murray and Paez independently violated Section 8(a)(1) of the Act, although the Complaint additionally alleged independent 8(a)(1) violations in regard to those discriminatees based on the evidence tending to show that they engaged in other protected activities, in addition to promoting unionization, that were a motivating factor in their transfers.

II. STATEMENT OF ISSUES

1. Whether the ALJ erred in failing to rely on events outside the 10(b) period, specifically, Supervisor Ewan Isaacs' June 2013 interrogation of discriminatee Murray regarding his and Paez's involvement with the Union and Director of Area Technical Operations Kennedy's solicitation of grievances and promise to remedy them during the March 12, 2014 "elephant in the room" meeting, as background evidence of Respondent's anti-union animus;
2. Whether the ALJ erred in inadvertently omitting to find the independent 8(a)(1) violation alleged in the Complaint in regard to the transfers of discriminatees Murray, Paez, and Garcia although her findings of fact establish the violation.

III. STATEMENT OF FACTS:

The facts have been completely and accurately set forth in the ALJD. They are not recapitulated here in full but only to the extent that they are necessary to support General Counsel's contention that certain modification should be made both to the ALJ's analysis in

regard to the 8(a)(3) violations properly found and to the Conclusions of Law in so far as they did not include the independent 8(a)(1) violations alleged in the Complaint and/or supported by the ALJ's findings of fact.

Based on the credited witness testimony the ALJ found that, in early 2012, the Communication Workers of America (CWA) began an organizing campaign at Respondent's Brush Avenue facility in the Bronx and filed representation petitions seeking a unit of Field Service (FS) Technicians and a unit of Outside Plant (OSP) Technicians. The CWA lost the election held pursuant to the former and the latter was withdrawn on June 28, 2012. In the meanwhile, the CWA successfully sought and won a representation election covering a unit of employees at Respondent's Brooklyn facility. After the Brooklyn election and before the withdrawal of the petition covering the OSP Technicians in the Bronx, Respondent CEO James Dolan announced changes to employee compensation, as a result of which, in May 2012, Bronx OSP Technicians Murray and Paez testified that they received a substantial wage increase far larger than any increase previously received as a result of their annual evaluations. ALJD at 4:13-27.

Based on substantial documentary evidence entered into the record, the ALJ concluded that in June 2013, various Brush Avenue Supervisors held meetings with employees that covered a range of employee complaints in regard to terms and conditions of employment. Summaries of those meetings that were entered into evidence show that among the topics covered were the renewed interest in unionization reported by a technician. ALJD at 4:31-45; GC Exh. 32 (c)-(i). In addition, the ALJ credited Murray's testimony that, also in June 2013, OSP Supervisor Isaacs came out to speak with him while he was working in the field and asked about his and discriminatee Paez's involvement with the union. Murray testified that Isaacs informed him that

Executive Vice President of Field Operations Barry Monopoli believed that Murray and Paez were responsible for “all of this.” ALJD at 5:16-20. There is no evidence to suggest that either Murray or Paez was an active union promoter at that time.

A memorandum, prepared by Human Resources Director Hector Reyes and circulated to Vice President of Technical Operations Riley, Director of Area Technical Operations Bob Kennedy and Senior Vice President of Network Management Pragash Pillai, indicates that a follow-up to the June meetings was held at the request of the Brush Avenue OSP Technicians in or about September 2013. Reyes’ memo indicates that, during the September 2013 meeting, the OSP Technicians stated that “they are the reason the Union is not in the Bronx and they want to be recognized and appreciated for their efforts.” ALJD at 5:1-5:11. The ALJ relied on substantial documentary evidence and witness testimony, in concluding that Respondent was engaged in monitoring union activity at the Bronx from late 2013 through 2014. ALJD at 7:28-8:40; 19:12-19; 20:41-47; GC Exh. 27-30; 32(a)-(q).

The ALJ further found that, in the meantime, in November 2013, Respondent announced certain changes to employee benefits to take effect in January 2014. The ALJ found that certain employees, including Murray, Paez and Garcia, discussed the changes among themselves in the “tech room.” The ALJ noted that the OSP Supervisors have offices in the tech room and generally keep their office doors open. ALJD at 4:6-9;5:40-42. In addition, the ALJ found that the credited witness testimony established that, in March 2014, Garcia spoke at some length against the changes in employee pension benefits during a group meeting led by Senior Vice President of Human Resources Paul Hilber and Executive Vice President of Human Resources Sandy Kapell and, along with three co-workers, met with Director of Field Technical Operations Robert Kennedy to discuss their concerns in regard to this and other changes Respondent had

made to their terms and conditions of employment. ALJD at 6:37-7:26.¹ Finally, the ALJ found that Murray lodged a complaint regarding the changes in employee benefits that had been implemented with Supervisor Donovan Reid and his own direct supervisor, Aniel Brady, during a team meeting held by Brady in April 2014. ALJD at 5:40-43.

On or about March 12, 2014, Director of Field Technical Operations Kennedy held an impromptu meeting in the tech room with OSP Technicians and Supervisors after observing an anonymous message written on the tech room white board stating “IBEW” and “We need a union.” The ALJ credited testimony of Murray, Paez and Supervisor Reid, all of whom were present at the meeting, that Kennedy gestured to the message on the white board and stated “we need to talk about the elephant in the room.” According to credited testimony, the ALJ found that Lajara admitted writing “IBEW” and stated a concern that OSP Technicians were being asked to perform electrical work for which they were not properly certified and Vetrano, who was also present, spoke up in support of Lajara. ALJD at 6:15-21. The ALJ found that Kennedy responded by stating that he would look into the issue and come up with a procedure for dealing with it. ALJD at 6:22-25. The ALJ also credited Murray’s testimony that Kennedy approached him immediately after the meeting and asked what he could “do better,” to which Murray responded that he believed the problem was at the corporate level. *Id.*

Finally, the ALJ relied on substantial documentary evidence and witness testimony, in concluding that Respondent’s monitoring of union activity at the Bronx reached a fevered pitch in early April 2014. On April 4, 2014, OSP Supervisors were instructed to distribute a letter from Executive Vice President Bob Comstock to the OSP Technicians urging them not to sign

¹In so finding, the ALJ relied on an email sent by Kennedy on March 31, 2014 to Vice President of Technical Operations Lou Riley in which he described in detail this meeting with the four named OSP Technicians, including Garcia, and indicated that “the group is ready to go across the river to Local 3 IBEW.” ALJD at 7:15-26; GC Exh. 32 (l)-(m).

authorization cards for IBEW. On that same day, Director of Outside Plant Alex Torres met with the OSP Supervisors to take a survey of the perceived union sentiments of each of the OSP Technicians, which he documented in coded language on a spreadsheet. ALJD at 7:28-8:40; 19:12-19; 20:41-47; C Exh 19(a).² The ALJ found that the transfer of the six discriminatees, all of whom were identified on Torres' spreadsheet as union supporters, a few weeks later was motivated by Respondent's desire to defuse the intensifying interest in unionization in the Bronx. In so finding, the ALJ concluded that Respondent's efforts to link the transfers to the results of an investigation in late April 2014 into workplace misconduct by an OSP Technician named Nick Felix were unpersuasive and that the evidence rather indicated that Respondent had seized on the investigation as an opportunity to undermine what Respondent perceived as an imminent threat of unionization in the Bronx. ALJD at 22:31-23:25; 24:10-43.

IV. ARGUMENT:

A. The ALJ Erred in Failing to Rely on Incidents Outside 10(b) Period in Concluding that Respondent Harbored Anti-Union Animus

The ALJ correctly found direct evidence of Respondent's anti-union animus, relying specifically on the following evidence: (1) An April 3, 2014 memorandum from Executive Vice President Comstock distributed to the OSP Technicians urging them not to sign authorization cards for IBEW; (2) Director of Outside Plant Torres' spreadsheet documenting OSP Technicians' perceived union sentiments using coded language that negatively characterized union-supporters as "Red Sox," i.e. not from the "home team;" and (3) Vice President of Technical Operations Riley statement in a post-transfer email, advocating against allowing

²The spreadsheet, which was admitted into evidence as General Counsel's exhibit 19(a), showed by tallies at the bottom of each column—"Red Sox" (prounion), "Mets" (undecided), and "Yankees" (antiunion)—that even if all of the identified anti-union and undecided OSP Technicians voted against a union, the union supporters would prevail (27 to 25).

discriminatee Paez to select a different transfer location, that the discriminatees were “transferred for a reason.”³ The ALJ properly concluded that, although there were no 8(a)(1) allegations in regard to this evidence and they could not be deemed in themselves unlawful, nevertheless they provided background evidence of Respondent’s anti-union animus in regard to the alleged unlawfully motivated transfers. The ALJ went on to conclude that this background evidence of animus combined with the strong circumstantial evidence indicating that Respondent would not have taken the same adverse action absent the discriminatees’ actual and/or perceived union activity established that the transfers were unlawful.

General Counsel agrees with the ALJ that the evidence cited above combined with the strong circumstantial evidence of pretext described in the ALJD is sufficient to meet the General Counsel’s initial burden of showing that the discriminatees’ union activity was a motivating factor in their selection for transfer and that Respondent had failed to rebut the evidence of unlawful motive here. However, General Counsel is of the view that the ALJ erred by ignoring additional direct evidence of animus consistent with her findings of fact but which fell outside the 10(b) period. General Counsel further contends that the evidence ignored by the ALJ, described below, likewise suffices to meet the General Counsel’s burden in combination with the circumstantial evidence described by the ALJ even without reliance on the background evidence on which the ALJ expressly relied.

It is indisputable that conduct falling outside the 10(b) period cannot give rise to an independent violation of law absent a showing that it occurred within six month of a timely filed charge and is closely related to the allegations contained therein. See *Redd-I*, 290 NLRB 1115

³As discussed at length in General Counsel Answering Brief to Respondent’s Exceptions, General Counsel agrees that this statement taken against the backdrop of Respondent’s failure to provide the discriminatees with a reason for their transfers at the time they occurred supports the inference of unlawful motivation here; nevertheless, the General Counsel would not characterize this evidence as “direct” evidence of animus and thus it is not included in the discussion here.

(1988). Here, the *Redd-I* standard is inapplicable because the incidents occurred in June 2013 and March 2014, hence more than six months prior to October 6, 2014, the date on which the timely charges alleging the unlawful transfers were filed. *Id.*; GC Exh. 1 (a)-(aaa), (c), (e); GC Exh. 25. Nevertheless, it is equally clear that such conduct may provide background evidence of animus that may be considered to the extent it is relevant to a timely filed charge. *Local Lodge No. 1424, International Association of Machinists, AFL-CIO v. NLRB*, 362 U.S. 411, 416 (1960)(citing well established principal of Board law that 10(b) is a statute of limitations not a rule of evidence); *Air Products and Chemicals Inc.*, 227 NLRB 1281, 1281 & fn.3 (1977)(adopting administrative law judge's conclusion that employer discriminated in hire and tenure of employees which relied in part on interrogation outside 10(b) period as background evidence bearing on the alleged discrimination); *Kidde, Walter & Co., Inc. (Glode Security Systems)*, 185 NLRB 1011, 1012-1013 (1970)(employer's interrogation of employee about another employee's union activity although outside 10(b) period is evidence of animus supporting finding that latter employee's termination along with seven other employees who signed union cards was unlawfully motivated). In the context of Respondent's on-going monitoring of union activity at Brush Avenue presented here, it is clear that the June 2013 interrogation of Murray about his and Paez's union involvement is relevant evidence indicating both Respondent's suspicion that Paez and Murray were leading the renewed interest in unionization and Respondent's antiunion animus directed at them.

Although the passage of time may in some circumstances tend to diminish the probative value of animus directed at an employee against whom adverse action is subsequently taken, that effect is minimized where, as here, the evidence establishes that Respondent was engaged in a sustained monitoring of union activity during that time period. Here, the ALJ concluded that

Respondent had been engaged in monitoring employee union activity at Brush Avenue since late 2013. ALJD at 17:6-12; 20:40-47. The evidence makes clear that the discriminatees were not only perceived by Respondent as principal union promoters from the outset but were among the most outspoken employees in regard to Respondent's subsequent changes in employee pension benefits, announced in November 2013 and which took effect in January 2014. Tr. at 524:8-15 (Reid). That Respondent recognized the connection between employees' growing discontent in response to those changes and the heightening interest in unionization at Brush Avenue is likewise inescapable. See GC Exh. 32 (J), (L)-(O); see also GC Exh. 30; GC Exh. 27. In this context, Respondent's June 2013 interrogation of Murray in regard to his and Paez's involvement with the union clearly bears on Respondent's motivation in deciding to transfer the discriminatees in April 2014, after Respondent's survey of the OSP Technicians' union sentiments made the threat of unionization appear imminent.⁴

Similarly, the March 2014 meeting during which Director of Area Technical Operations Kennedy solicited and promised to remedy grievances is compelling evidence of anti-union animus although it occurred outside the 10(b) period of the charges. See, e.g., *Smithfield Foods, Inc.*, 347 NLRB 1266, 1266-1267 & fn. 9 (2006)(employer promise of unspecified benefits to employee, in context of union campaign, although outside 10(b) period is background evidence of animus). It is undisputed that Kennedy called the impromptu meeting in response to an anonymous message written on the tech room white board stating "we need a union" and "IBEW." According to Murray, Paez and Supervisor Reid, all of whom were present, Kennedy

⁴That is particularly so given that during the June 2013 interrogation, Supervisor Isaac's informed Murray that Executive Vice President of Field Operations Monopoli believed he and Paez were responsible for the renewed interest in unionization in the Bronx. ALJD at 5:16-20. Thereafter, Monopoli was called in to address the increasing threat of unionization at Brush Avenue, as he explained during an April 4, 2014 meeting with the Brush Avenue Supervisors. Tr. at 543:19-24 (Reid); see also Tr. at 703:14-705:12 (Vanderbilt) and GC Exh. 18.

gestured to the white board and stated that “we need to talk about the elephant in the room.” The ALJ credited witness testimony that Lajara admitted writing “IBEW” during the meeting and raised a concern, seconded by Vetrano, regarding the requirement that OSP Technicians perform electrical work in lampposts for which they were not properly certified. According to the credited evidence, Kennedy replied that he would look into the matter and develop a procedure to address the concern. Moreover, at the end of the meeting, Kennedy accosted Murray individually and asked what the employer could do better. Kennedy’s conduct during and immediately after the meeting constitutes a solicitation of grievances and implied promise to remedy employees’ concerns in a context that was clearly intended to discourage support for the union. Cf. *Borg-Warner*, 229 NLRB 1149, 1152-1153 (1977)(meeting held to discuss employee grievances held in direct response to union activity during which plant manager stated that the employer would review its policies and “try to do better” violated Sec. 8(a)(1)); *Forest City Grocery Co.*, 306 NLRB 723, 723 & 729 (1992)(supervisor’s solicitation of employee concerns and response that he would “look into” them established unlawful solicitation of grievances and implied promise to remedy them in the absence of any statement by the supervisor that no promises could be made).

Any argument that the above described incidents were not fully litigated due to General Counsel’s failure to plead or amend the Complaint to include them in the course of the proceeding is untenable. On the contrary, General Counsel made clear during the course of the hearing that it was relying on events outside the 10(b) period as background evidence of animus. Respondent counsel was on notice of General Counsel’s intention to rely on such evidence and in fact objected on the grounds that Respondent counsel would then have to put on rebuttal evidence in regard to those matters. Tr. at 352:13-16; 354:11-355:9. The administrative law

judge allowed the evidence in as background, Tr. at 355:14-21, and, to the extent Respondent counsel did not rebut the evidence by presenting Director of Area Technical Operations Kennedy or OSP Supervisor Issacs to testify, they did so with full knowledge of General Counsel's intention in this regard. See, e.g., *Coastal Sunbelt Produce, Inc.*, 362 NLRB No. 126 at 2-3, 27-28 (2015).

General Counsel contends that the ALJ erred by failing to rely on this additional evidence, which, although outside the 10(b) period, provides substantial evidence of anti-union animus directed at four of the six discriminatees. Cf. *Kaumagraph Corporation*, 316 NLRB at 793-794 & fn. 2 (1995); *In re Wilmington Fabricators, Inc.*, 332 NLRB at 58 & fn. 6 (2000). Indeed, General Counsel contends that even in the absence of the other direct evidence identified by the ALJ, this evidence combined with the pretext evidence presented permits an inference of unlawful motive which Respondent has failed to rebut.

B. The ALJ Inadvertently Omitted from her Conclusions of Law the Alleged Independent 8(a)(1) Violation in Regard to the Transfers of Murray, Paez and Garcia

The allegations of the Complaint alleged that discriminatees Murray, Paez and Garcia were involuntarily transferred because of their actual and/or perceived union activity in violation of Section 8(a)(3) and (1) and also based on their other protected activity, specifically their discussions with coworkers and management of matters related to terms and conditions of employment, in violation of Section 8(a)(1). Thus, the Complaint alleges the transfers as constituting both a derivative 8(a)(1) violation, flowing from the Section 8(a)(3) violation alleged, and as an independent Section 8(a)(1) violation. See *Chinese Daily News*, 346 NLRB 906, 909 & 933 (2006)(adopting administrative law judge's findings and conclusions, including that employer's change in work assignment of employee after she engaged in protected

concerted activity violated Section 8(a)(3) and, derivatively, Section 8(a)(1)); cf. *MEMC Electric Materials, Inc.*, 342 NLRB 1172 (2004)(recognizing that alleged violation of 8(a)(3) included “at least derivatively” a violation of Section 8(a)(1) and finding that the alleged unlawful conduct constituted an independent violation of 8(a)(1) although that independent 8(a)(1) was not specifically alleged). Although the ALJ found clear evidence that discriminatees Garcia, Murray and Paez engaged in protected concerted activity as well as perceived and/or actual union activity, the ALJ’s Conclusions of Law do not provide an independent 8(a)(1) finding. Because the facts as found by the ALJ make clear that Respondent’s involuntary transfer of Garcia, Murray and Paez was a response to the perceived threat posed by their outspokenness in regard to terms and conditions of employment combined with their perceived and/or actual promotion of unionization, General Counsel contends that the ALJ’s failure to find the independent 8(a)(1) violation in setting forth her Conclusions of Law was in error.

There can be no dispute that, although the Judge did not expressly find the independent 8(a)(1) allegations, she made specific findings of fact in regard to protected concerted activity engaged in by Murray and Garcia. See ALJD at 17:40-18:1; see also *Worldmark by Wyndham*, 356 NLRB No. 104, slip op. at *2 (2011); *Whittaker Corp.*, 289 NLRB 933, 934 (1988)(group-meetings context allows inference of concerted objective). Although the findings as to Paez are less clear, the ALJD does state that “[c]ertain employees, including Murray, Paez and Garcia discussed the changes [in their benefits] among themselves” and that “there is testimony to the effect that [supervisors] generally keep their office doors open, so may have occasion to overhear discussions which may occur [in the tech room].” ALJD at 4:6-10; 5:40-42. It is clear from the ALJD that the ALJ concluded that Paez, Murray, and Garcia’s outspokenness was inextricable from their actual and perceived roles as union promoters and that Respondent clearly recognized

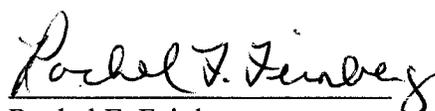
that the escalation in the talk of unionization corresponded with increasing employee discontent concerning Respondent's changes in employee benefits, articulated in particular by Murray, Paez and Garcia. ALJD at 5:1-11; 6:38-7:16. Thus, General Counsel contends that the omission of an independent Section 8(a)(1) violation arising from the protected concerted activity of those discriminatees, as alleged in the Complaint, was inadvertent error and respectfully requests that the error be corrected.

V. CONCLUSION:

For reasons discussed at length above, General Counsel respectfully requests that the ALJD be modified to include reliance on the June 2013 interrogation of Murray and the March 2014 "elephant in the room" meeting as direct evidence of Respondent's anti-union animus towards the discriminatees that motivated their subsequent involuntary transfers. In addition, General Counsel requests that the ALJ's Conclusions of Law be modified to include the conclusion that the transfers of Murray, Paez and Garcia constituted an independent 8(a)(1) violation, as alleged in the Complaint, as well as a violation of Section 8(a)(3) and, derivatively, 8(a)(1).

Dated: December 15, 2016
New York, New York

Respectfully submitted,



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**AFFIDAVIT OF SERVICE OF: ~~DECEMBER 15, 2016~~ Counsel for the General Counsel's Cross
Exceptions to the Administrative Law Judge's Decision and Brief in Support**

I, the undersigned employee of the National Labor Relations Board, being duly sworn and deposed, say that on the date indicated below, I served the above-entitled document **by electronic mail** upon the following persons, addressed to them at the following addresses:

By E-File

Hon. Gary Shinnars, Executive Secretary
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Subscribed and Sworn to this:
15th day of December, 2016

Designated Agent:
/s/ Rachel F. Feinberg
National Labor Relations Board