

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PAE APPLIED TECHNOLOGIES, LLC)	
)	
and)	Case No. 28-CA-165334
)	28-CA-170331
SECURITY POLICE ASSOCIATION OF)	
NEVADA.)	
)	
)	

PAE APPLIED TECHNOLOGIES, LLC'S
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

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Respondent, PAE Applied Technologies, LLC (“Respondent” or “PAE”), by its attorneys, Jackson Lewis P.C., pursuant to § 102.46 of the National Labor Relations Board’s (“NLRB”) Rules and Regulations, takes the following exceptions to the decision¹ of the Administrative Law Judge Amita Baman Tracy (“ALJ”):

1. The ALJ’s finding that “[t]he security officers have top secret security clearance.” [ALJD² at p. 3]
2. The ALJ’s finding that “Fisco told Poulos to contact Farnham or Allen for further details.” [ALJD at p. 4, fn 9]
3. The ALJ’s finding that “Costello, Williams and Rutledge knew that Ring was counsel for the Union, and not Poulos’ personal attorney.” [ALJD at p. 7]
4. The ALJ’s finding that at the start of the February 24, 2016 meeting, “Poulos informed Rutledge that he was engaged in protected activity when he spoke to Allen on February 16.” [ALJD at p. 8]
5. The ALJ’s decision to discredit Rutledge’s testimony that he permitted the union to ask questions during the February 24th meeting and to clarify the questions and to credit the testimony of Lujan on that subject. [ALJD at p. 10, fn. 19]

¹ Respondent’s brief in support of these exceptions is being submitted contemporaneously herewith.

² ALJ Tracy’s Decision will be cited herein to as “ALJD.”

6. The ALJ's decision to not credit the testimony of Thomas Fisco regarding the February 16, 2016 conversation with John Poulos and Raymond Allen. [ALJD at p. 13]
7. The ALJ's decision to credit Poulos' February 24, 2016 written statement regarding the February 16, 2016 while specifically discrediting his testimony regarding the incident. [ALJD at p. 13]
8. The ALJ's decision to credit Poulos' testimony that he did not tell Raymond Allen "that a GS-13 should keep his nose out of this." [ALJD at p. 13]
9. The ALJ's conclusion that "Poulos requested Ring as his union representative, and Respondent's multiple denials of his requests violates Section 8(a)(1)." [ALJD at p. 15]
10. The ALJ's conclusion that "Ring, who was designated by the Union as Poulos' representative, is an agent of the Union, and is considered a union representative." [ALJD at p. 15]
11. The ALJ's erroneous reliance on Costello, Williams and Rutledge's knowledge that Ring was union legal counsel in her conclusion that Ring was a union representative for purposes of *Weingarten*. [ALJD at p. 15]
12. The ALJ's conclusion that the "[t]he right to a *Weingarten* representative is a right to a representative who is an agent of the labor organization which serves as the exclusive representative of the employees." [ALJD at p. 15]
13. The ALJ's efforts to distinguish the Board's decision in *Consolidated Casinos Corp.*, 266 NLRB 988 (1983). [ALJD at p. 15]

14. The ALJ's conclusion that "the Union designated Ring to represent Poulos during the *Weingarten* meeting." [ALJD at p. 16]
15. The ALJ's failure to rely on, or distinguish, the Board's holding in *Montgomery Ward & Co.*, 269 N.L.R.B. 904, 911 (1984). [ALJD at p. 16]
16. The ALJ's erroneous reliance on the Board's decision in *Public Service Company of New Mexico*, 360 NLRB No. 45 (2014) for the conclusion that an outside union attorney was "an agent of the Union." [ALJD at p. 16]
17. The ALJ's finding that "Ring, as an agent of the Union, was available and appeared at the February 19 meeting" and that Respondent "continually denied Poulos' right to the representative of his choice." [ALJD at p. 16]
18. The ALJ's conclusion that "Respondent violated Section 8(a)(1) of the Act on February 18, 19, 22, and 24 by denying Poulos his union representative of choice." [ALJD at p. 16]
19. The ALJ's finding that "although Rutledge initially permitted a few questions, he then told all the participants that he would not allow any further discussion and all questions needed to come through him." [ALJD at p. 16]
20. The ALJ's conclusion that Respondent unlawfully limited Poulos' union representatives' participation during the meeting. [ALJD at pp. 16-17]
21. The ALJ's finding that "Rutledge stifled Lujan and Campbell's ability to represent Poulos immediately from the start of the meeting." [ALJD at p. 16]

22. The ALJ's finding that "Rutledge precluded Poulos from consulting with his representatives about his statement, and they could not ask any clarifying questions during the question-and-answer session." [ALJD at p. 16]
23. The ALJ's reliance on the Board's decision in *Lockheed Martin Astronautics*, 330 NLRB 422 (2000) in concluding that Respondent violated Section 8(a)(1) by Rutledge's conduct during the February 24, 2016 investigatory meeting. [ALJD at p. 17]
24. The ALJ's conclusion that "Respondent violated Section 8(a)(1) of the Act when on February 18, 19, 22 and 24, it denied Poulos the right to be represented by an available representative of his own choosing." [ALJD at p. 17]
25. The ALJ's conclusion that "Respondent violated Section 8(a)(1) of the Act when Rutledge required Poulos' union representative to remain silent during certain portions of the investigatory interview thereby depriving Poulos of useful representation." [ALJD at p. 17]
26. The ALJ's rejection of the *Wright Line* analysis and her application of the analytical framework from *Burnup & Sims*, 256 NLRB 965 (1981). [ALJD at p. 17]
27. The ALJ's conclusion that "Poulos' [*sic*] clearly engaged in union activity on February 16, 2016 which was known by PAE. " [ALJD at p. 18]
28. The ALJ's finding that Poulos was engaging in protected conduct during his interaction with Allen on February 16, 2016. [ALJD at p. 18]

29. The ALJ's conclusion that "[t]he record is clear that Respondent violated Section 8(a)(3) and (1) when issuing Poulos a final written warning for his conduct on February 16." [ALJD at p. 18]
30. The ALJ's conclusion that "Respondent mistakenly believed Poulos engaged in misconduct." [ALJD at p. 18]
31. The ALJ's application of the *Atlantic Steel* factors to the credited evidence in this case. [ALJD at pp. 18-19]
32. The ALJ's conclusion that "Poulos' conduct at the February 16 meeting was not so opprobrious as to cause him to lose the protections of the Act." [ALJD at p. 18]
33. The ALJ's application of the first *Atlantic Steel* factor – the place of discussion. [ALJD at pp. 18-19]
34. The ALJ's application of the second *Atlantic Steel* factor – the subject matter of the discussion. [ALJD at p. 19]
35. The ALJ's application of the third *Atlantic Steel* factor – the nature of the employee's conduct. [ALJD at p. 19]
36. The ALJ's conclusion that "[a]t worst, Poulos' statement can be seen as nondeferential to Allen but does not weigh in favor of Poulos losing the protection of the Act." [ALJD at p. 19]
37. The ALJ's finding that "as the Union President, Poulos' conduct was well within the bounds of conduct which has been sanctioned by the Board." [ALJD at p. 19]

38. The ALJ's conclusion that she did not find Poulos' conduct and alleged statement to be insubordinate contrary to Respondent's assertion. [ALJD at p. 19]
39. The ALJ's conclusion that the balance of the *Atlantic Steel* factors support a finding that Poulos' conduct during the February 16 meeting was protected and did not lose the protection of the Act. [ALJD at p. 19]
40. The ALJ's finding that, even under *Atlantic Steel*, "Respondent's disciplinary action of Poulos for engaging in that conduct was unlawful." [ALJD at p. 19]
41. The ALJ's conclusion that the conduct "which Respondent attributes to the issuance of the final written warning to Poulos for insubordination was protected conduct." [ALJD at p. 19]
42. The ALJ's finding that the General Counsel met his initial burden under the *Wright Line* test. [ALJD at p. 19]
43. The ALJ's finding that Poulos engaged in protected and concerted activity. [ALJD at p. 19]
44. The ALJ's finding that Poulos' union activity was a motivating factor in Respondent's decision to discipline him. [ALJD at p. 20]
45. The ALJ's reliance on Rob Williams' February 10 memorandum as evidence of an unlawful animus. [ALJD at p. 20]
46. The ALJ's statement that the "timing of events is also suspect" and her rationale for this statement. [ALJD at p. 20]

47. The ALJ's finding that, despite no evidence in the record that Williams' February 10 memorandum was considered by the Disciplinary Review Board ("DRB") and the credited testimony of Dresbach that the DRB did not discuss the memorandum, that it played a role in the decision to issue the final written warning to Poulos. [ALJD at p. 20]
48. The ALJ's finding that Respondent offered "shifting explanations" for its decision to discipline Poulos and that those "shifting explanations" indicate that PAE had some sort of unlawful animus. [ALJD at p. 20]
49. The ALJ's conclusion that "Respondent violated Section 8(a)(3) and (1) when it issued Poulos a final written warning for his conduct on February 16." [ALJD at p. 21]
50. The ALJ's conclusion that, "under the totality of the circumstances, Respondent unlawfully interrogated Poulos." [ALJD at p. 22]
51. The ALJ's statement that "Poulos' conduct during the February 16 meeting was union activity which was protected under the Act." [ALJD at p. 22]
52. The ALJ's statement that, "[s]imply because Allen complained that Poulos' conduct during the meeting was 'bullying' and 'insubordination' does not permit Respondent to stymie Poulos' Section 7 rights to represent his constituents." [ALJD at p. 22]
53. The ALJ's conclusion that "Respondent violated Section 8(a)(1) of the Act when Rutledge interrogated Poulos on February 24." [ALJD at p. 22]

54. The ALJ's finding that, on February 24, 2016, "when Rutledge set forth the rule of when union representatives may speak during the investigatory meeting, Respondent set forth an overly restrictive rule which infringes upon the employees' Section 7 rights of requesting union representatives' assistance and counsel during an investigatory meeting." [ALJD at p. 23]
55. The ALJ's conclusion that "Respondent violated Section 8(a)(1) when Rutledge orally promulgated the rule on February 24 on when union representatives may provide assistance and counsel during an investigatory meeting." [ALJD at p. 23]
56. The ALJ's finding that "Respondent's rule relegated Poulos' union representatives as mere observers which contradicts the purpose of *Weingarten* rights of employees." [ALJD at p. 23]
57. The ALJ's conclusion that Respondent also violated Section 8(a)(1) of the Act when it promulgated the March 24, 2016 rule in response to union activity. [ALJD at p. 23]
58. The ALJ's statement that Poulos was unlawfully disciplined for engaging in union activity. [ALJD at p. 24]
59. The ALJ's reliance on the Board's decision in *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990) and her failure to distinguish this case from *Kinder-Care* on the basis that the evidence presented at the Hearing demonstrated that the customer *asked* for the rule and PAE received the Corrective Action Request from the U.S. Air Force. [ALJD at p. 24]

60. The ALJ's finding that "Respondent's discipline of Poulos, in part for contacting the Customer thereby violating this rule, is a violation of the Act as the rule is found to be unlawful." The General Counsel had not asserted any such theory under *Double Eagle Hotel & Casino*, 341 NLRB 112, 123 (2004).
61. The ALJ's conclusion the March 24 rule "reasonably tends to inhibit union officers from bringing work-related matters to entities other than Respondent which restrains the union officers' role in protecting employees' Section 7 rights." [ALJD at p. 24]
62. The ALJ's conclusion that "Respondent violated Section 8(a)(1) of the Act when it implemented the March 24 rule."
63. The ALJ's conclusion that "Allen's classified complaint prompted Respondent's investigation and subsequent discipline of Poulos" and, therefore, the "classified complaint is relevant and necessary for the Union in its role of representing Poulos." [ALJD at p. 25]
64. The ALJ's rejection of Respondent's defense that PAE satisfied its obligation to furnish relevant information when it provided the Union with a copy of an unclassified version of Allen's complaint about Poulos. [ALJD at p. 25]
65. The ALJ's attempt to analogize this case involving a document designated as classified by the U.S. Government with a case involving confidentiality concerns. [ALJD at p. 25]

66. The ALJ's statement that the classified complaint was "shared with PAE management which led to their decision to unlawfully discipline Poulos."
[ALJD at p. 25]
67. The ALJ's reference to, and reliance on, the fact that Poulos and his union representatives "hold security clearances which allow them to see top secret documents in secured areas in certain buildings" in her decision to conclude that PAE violated Sections 8(a)(1) and (a)(5). [ALJD at p. 25]
68. The ALJ's conclusion that "Respondent, who has a bargaining relationship with the Union, failed to bargain with the Union on a suitable accommodation." [ALJD at p. 25]
69. The ALJ's finding that "[c]ertainly, Allen's classified complaint, not the unclassified complaint, led to Poulos' discipline." [ALJD at p. 25]
70. The ALJ's conclusion that, "[b]y failing to bargaining with the Union on an accommodation, Respondent violated Section 8(a)(5) and (1) of the Act."
[ALJD at p. 25]
71. The ALJ's conclusions of law finding that Respondent violated Sections 8(a)(1), (3) and (5) of the Act. [ALJD at pp. 26-27, Conclusions of Law Nos. 3, 4, 5, 6, 7, and 8]
72. To the extent that the ALJ erred in her findings and conclusions of law regarding Respondent's violations, the remedies recommended by the ALJ against Respondent, including, but not limited to, the requirement that

Respondent expunge Poulos' March 24, 2016 final written warning and take other affirmative action, such as the posting of a notice. [ALJD at p. 27]

73. The ALJ's recommended order to the extent it requires Respondent to take action that is based on the ALJ's erroneous findings and conclusions of law, as more fully set forth in the Exceptions above and the Respondent's Brief in support of these Exceptions. [ALJD at pp. 27-29]

74. The ALJ's proposed notice to the extent the language of the notice is based on the ALJ's erroneous findings and conclusions of law, as more fully set forth in the Exceptions above and the Respondent's Brief in support of these Exceptions.

WHEREFORE, Respondent PAE Applied Technologies, LLC respectfully request that the Board refuses to adopt the Decision and recommendations of the ALJ to the extent requested herein. Respondent relies on the exceptions set forth above and its Brief in Support of Exceptions to the Administrative Law Judge's Decision filed herewith.

DATED: January 13, 2017.

JACKSON LEWIS P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of PAE APPLIED TECHNOLOGIES, LLC'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE in Cases 28-CA-170331, et al., was served on January 13, 2017 as follows:

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