UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DOLLAR THRIFTY AUTOMOTIVE GROUP, Employer, and COMMUNICATIONS WORKERS OF AMERICA, LOCAL 7777, Union.	Case No. 27-CA-173054

EXCEPTIONS BY RESPONDENT DOLLAR THRIFTY AUTOMOTIVE GROUP TO THE DECISION AND RECOMMENDED ORDER OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Respondent Dollar Thrifty Automotive Group files the following exceptions to the January 27, 2017 Decision and Order (JD(SF) – 02 -07) (the "Decision") issued by Administrative Law Judge Amita Baman Tracy (the "ALJ") in the above referenced unfair labor practice case. A brief in support accompanies these Exceptions.

Findings of Fact

1. Dollar Thrifty excepts to that portion of the Decision finding that "[e]mployees also do not have access to other employees' electronic personnel files, medical records, and other sensitive information such as allegations of harassment." (Decision 3: 1-3). The record does not support the finding.

2. Dollar Thrifty excepts to that portion of the Decision finding that ". . . [she is] bound by Board law and do[es] not find these documents relevant to this proceeding" with regard to the federal and state statutes Dollar Thrifty submitted to the ALJ (Decision 3: Fn. 5). The record does not support the finding. The cites, statutes, and laws are relevant to the proceeding.

Discussion and Analysis

3. Dollar Thrifty excepts to that portion of the Decision finding that ". . . Respondent maintained [the] rules described in complaint paragraphs 3(a), 3(i), and 3(j) during the 6-month period prior to the filing of the charge, dated April 1, 2016." (Decision 4: 35-38). The record does not support the finding.

4. Dollar Thrifty excepts to that portion of the Decision finding that "Section 10(b) is an affirmative defense, which if not timely raised in the answer or at the hearing is waived . . . Respondent failed to assert in its answer or during the hearing that the rules described in complaint paragraphs 3(b), 3(c), 3(d), 3(f), 3(g), and 3(h) did not fall within the Section 10(b) period thereby waiving its right to assert such an affirmative defense in its posthearing brief. However, even assuming that Respondent timely raised this affirmative defense with regard to these rules, I find that these rules were maintained during the Section 10(b) period as they were included in Lawson's personnel file which was provided to the Union after Lawson was

terminated for violating at least one of these rules." (Decision 4: Fn. 6). The record does not support the finding. *See also* Answer to Complaint, Fourth Defense.

5. Dollar Thrifty excepts to that portion of the Decision finding that "[w]hile Respondent's claim may be true, Respondent also failed to prove that it did not also maintain the rules claimed to be violations of the Act (complaint paragraphs 3(a), 3(i), and 3(j)) during the Section 10(b) period." (Decision 5: 1-3). The record does not support the finding. The ALJ improperly imposed the burden of disproving an allegation of the Complaint on Dollar Thrifty.

6. Dollar Thrifty excepts to that portion of the Decision which purported to apply *Lutheran Heritage* and its progeny. *Lutheran Heritage* sets forth an unworkable standard which causes employers to violate various obligations under federal and state law. Even if *Lutheran Heritage* sets forth the proper legal standard, Dollar Thrifty's challenged rules do not prohibit employee Section 7 activity, and employees would not reasonably construe them to do so. (Decision 5: 16-29).

7. Dollar Thrifty excepts to that portion of the Decision finding that ". . . employees would reasonably consider their Section 7 protected activity to be prohibited acts. For example, employees would reasonably fear that criticizing their employer to a third party or to one another would lead to discipline as the criticism may be viewed by the employer as inappropriate, defamatory or offensive." (Decision 7: 11-14). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

8. Dollar Thrifty excepts to that portion of the Decision finding that ". . . Respondent's rule described at complaint paragraph 3(q) is overbroad and therefore unlawful in violation of Section 8(a)(1) of the Act." (Decision 7: 22-23). The challenged rule does not

prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

9. Dollar Thrifty excepts to that portion of the Decision finding that "[t]he rules described at complaint paragraphs 3(o) and 3(p) are facially unlawful. These rules clearly prohibit employees from revealing compensation data, or wages, to anyone else including colleagues. Thus, employees may not discuss their wages with one another or with an outside party, including union representatives. Respondent's rule regarding the discussion of pay (complaint paragraph 3(o)) appears to be optional, but when read with the rule at complaint paragraph 3(p), employees would reasonably understand that Respondent does not permit them to discuss their wages with anyone." (Decision 8: 8-14). The challenged rules do not prohibit employee Section 7 activity, and employees would not reasonably construe them as doing so.

10. Dollar Thrifty excepts to that portion of the Decision finding that ". . . Respondent's rules, described at complaint paragraphs 3(o) and 3(p), are unlawful and violate Section 8(a)(1) of the Act." (Decision 8: 20-21). The challenged rules do not prohibit employee Section 7 activity, and employees would not reasonably construe them as doing so.

11. Dollar Thrifty excepts to that portion of the Decision finding that "[a]s for the rule described at complaint paragraph 3(r), Respondent's media relations rule, this rule is also overbroad. Employees would reasonably construe the phrase 'with respect to the Company and its business' to encompass employment concerns and labor relations. The rule contains no limiting language or example to clarify for employees that the rule only applies to those employees who speak in an official capacity for Respondent. Moreover, the rule requires employees to seek Respondent's permission to speak to news media." (Decision 8: 38-43). The

challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

12. Dollar Thrifty excepts to that portion of the Decision finding that ". . . Respondent's rule, described at complaint paragraph 3(r) is overbroad, and violates Section 8(a)(1) of the Act." (Decision 9: 3-4). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

13. Dollar Thrifty excepts to that portion of the Decision finding that "[a]pplying the above principles, I find rule #4 described in complaint paragraph 3(a) to be unlawful for several reasons. Respondent's rule imposes a precondition on employees to obtain its permission before any solicitation or distribution may occur which is unlawful under Board law. As for solicitation, Respondent's rule makes no distinction between work and nonwork time. Furthermore, with regard to distribution of literature, Respondent's rule fails to make a distinction between work and nonwork time as well as define 'on company premises.' Thus, rule #4 described at complaint paragraph 3(a) is clearly overbroad and violates Section 8(a)(1) of the Act." (Decision 10: 8-15). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

14. Dollar Thrifty excepts to that portion of the Decision finding that "Respondent's rule #9 described in complaint paragraph 3(b) is unlawful as it is phrased broadly and lacks clarity." (Decision 10: 26-27). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged

rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

15. Dollar Thrifty excepts to that portion of the Decision finding that ". . . Respondent fails to define what action can and cannot disrupt harmony in the workplace. Therefore, Respondent's rule #9 described at complaint paragraph 3(b) is unlawfully overbroad and violates Section 8(a)(1) of the Act." (Decision 10: 37-39). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

16. Dollar Thrifty excepts to that portion of the Decision finding that ". . . Respondent's rule #26 described at complaint paragraph 3(c) is overbroad as it could reasonably include Section 7 activity such as protesting working conditions during a work gathering. The language in this rule is overbroad as it could be interpreted to include the right to engage in a work stoppage as the term 'interfere' is not defined, or explain that it is not intended to refer to Section 7 activity. Thus, Respondent's rule #26 as described in complaint paragraph 3(c) is overly broad and violates Section 8(a)(1) of the Act." (Decision 11: 11-17). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

17. Dollar Thrifty excepts to that portion of the Decision finding that "[a]n examination of a number of Board decisions leads to the conclusion that Respondent's rule, described at complaint paragraph 3(d) is unlawful." (Decision 12: 4-5). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the

filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

18. Dollar Thrifty excepts to that portion of the Decision finding that "Respondent's rule, described at complaint paragraph 3(d), precludes employees from disclosing any information that is deemed 'confidential,' 'secret,' or 'proprietary.' As the General Counsel argues, this information reasonably includes employee compensation data, which is noted as 'confidential' by Respondent in the employee handbook. Here, Respondent's rule precludes employees from discussing wages which is unlawful." (Decision 12: 17-22). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

19. Dollar Thrifty excepts to that portion of the Decision finding that "[t]aken together, although not defined by Respondent, the rule is reasonably read as prohibiting the sharing of employee names, addresses and phone numbers as personally identifiable information which hinder employees' exercise of their Section 7 rights as they could not share this information with one another or union representatives." (Decision 12: 28-32). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

20. Dollar Thrifty excepts to that portion of the Decision finding that "[u]nder this rule, Respondent disallows employees' right to complain about their working conditions to one another or to an outside entity as that criticism may damage to Respondent and its reputation." (Decision 12: 38-40). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

21. Dollar Thrifty excepts to that portion of the Decision finding that "[i]n sum, Respondent's rule, described at complaint paragraph 3(d), is overbroad in that employees would reasonably interpret this rule to preclude Section 7 activity. Applying Board precedent, Respondent's rule, described at complaint paragraph 3(d), is unlawful and violates Section 8(a)(1) of the Act." (Decision 12: 43-46). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

22. Dollar Thrifty excepts to that portion of the Decision finding that "Respondent's rule regarding internet websites and described at complaint paragraph 3(f) is unlawful as it is overbroad. The rule contains broad, sweeping bans on sending or receiving via the internet or emails any material which is 'defamatory,' 'intended to annoy, offend' 'another person' or disparaging others for their political beliefs. In the context of this rule, an employee would reasonably read the rule to encompass concerted communication such as complaining about working conditions. The rule does not specifically exclude Section 7 communication." (Decision 13: 30-36). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

23. Dollar Thrifty excepts to that portion of the Decision finding that "[a]gain, the rule provides no clarifying examples so to be clear to employees that Section 7 communications are permitted." (Decision 13: 37-38). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

24. Dollar Thrifty excepts to that portion of the Decision finding that ". . . Respondent's maintenance of the rule regarding internet websites, described at complaint paragraph 3(f), is unlawful as employees may reasonably believe that Section 7 activity is encompassed in the rule, and as such, violates Section 8(a)(1)." (Decision 14: 1-4). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

25. Dollar Thrifty excepts to that portion of the Decision finding that "[a]pplying the principles of *Purple Communications* to Respondent's rule regarding soliciting emails, described at complaint paragraph 3(g), leads me to conclude that this rule is unlawful." (Decision 14: 23-25). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

26. Dollar Thrifty excepts to that portion of the Decision finding that "Respondent's rule is reasonably read by employees to disallow employees to communicate Section 7 activity such as union organizing with fellow employees at any time, even during nonwork time. I find that Respondent's rule is sufficiently vague to leave a reasonable employee uncertain as to whether they are permitted to use Respondent's email system to engage in protected concerted activities during nonwork time." (Decision 14: 28-32). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

27. Dollar Thrifty excepts to that portion of the Decision finding that ". . . Respondent's rule described in complaint paragraph 3(g) is unlawful and violates Section 8(a)(1) of the Act." (Decision 14: 35-36). The General Counsel failed to show the challenged rule was

"maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

28. Dollar Thrifty excepts to that portion of the Decision finding that ". . . the rule alleged in complaint paragraph 3(h) is unlawful, insofar as Respondent failed to define the term, 'inappropriate.' In the context of this portion of Respondent's internet use policy, an employee reasonably would not know whether Section 7 activity is permitted when using the internet/intranet during nonwork time. Furthermore, Respondent failed to provide any context or examples to indicate that the rule does not encompass protected concerted activity. Thus, Respondent's rule regarding inappropriate use of internet/intranet, described at complaint paragraph 3(h), is unlawful and violates Section 8(a)(1) of the Act." (Decision 15: 9-15). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

29. Dollar Thrifty excepts to that portion of the Decision finding that "[t]his portion of the rule is also overly broad as Respondent may not prohibit the distribution of material during nonwork time in nonwork areas." (Decision 15: 28-29). Dollar Thrifty excepts to this conclusion on that grounds that the General Counsel failed to demonstrate that this rule was maintained during the 10(b) period, and employees would not reasonably construe it as restricting Section 7 rights.

30. Dollar Thrifty excepts to that portion of the Decision finding that "[a]pplying this analysis to the solicitation rule, described at complaint paragraph 3(i), I find Respondent's rule overbroad in that it prohibits employees from communicating via email or internet while either

employee is on worktime. It is unreasonable for an employee to know when the employee to whom he or she is communicating is in nonwork status, and for the receiving employee to know whether the contents of the communication permit him or her to open the message. Thus, Respondent's rule described in complaint paragraph 3(i) is unlawful and violates Section 8(a)(1) of the Act." (Decision 15: 38-44). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

31. Dollar Thrifty excepts to that portion of the Decision finding that "[d]espite the additional context, the rule described at complaint paragraph 3(j) is overbroad. Like the employee handbook rule alleged at complaint paragraph 3(r), Respondent's rule at complaint paragraph 3(j) creates a blanket prohibition against all contact with the media which is unlawful. In addition, this rule specifically prohibits a wide array of media contact including speeches, news articles, and postings on public websites, which would reasonably be understood by employees to forbid any contact with the media, including employee speech on his or her own behalf, which is unlawful." (Decision 17: 20-26). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

32. Dollar Thrifty excepts to that portion of the Decision finding that "[i]t is reasonable for an employee to conclude that the ban on speaking to the media would include voicing his or her own protected Section 7 views on matters such as working conditions." (Decision 17: 31-32). The General Counsel failed to show the challenged rule was "maintained"

during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

33. Dollar Thrifty excepts to that portion of the Decision finding that ". . . the rule described at complaint paragraph 3(j) is unlawful and violates Section 8(a)(1) of the Act." (Decision 17: 35-36). The General Counsel failed to show the challenged rule was "maintained" during the six-month period preceding the filing of the charge. The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

34. Dollar Thrifty excepts to that portion of the Decision finding that "Respondent's rules #3 and #4, described in complaint paragraph 3(k) and 3(l), are overbroad for reasons similar to those I have found with respect to other of Respondent's rules so found herein. These rules preclude employees from discussing company confidential information with anyone." (Decision 19: 11-14). The challenged rules do not prohibit employee Section 7 activity, and employees would not reasonably construe them as doing so.

35. Dollar Thrifty excepts to that portion of the Decision finding that ". . . the rule prohibits employees from learning about and discussing wages with one another and with third-parties, including union representatives." (Decision 19: 15-17). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

36. Dollar Thrifty excepts to that portion of the Decision finding that "Rule #7, described at complaint paragraph 3(m), prohibits employees from seeking information or data on other individuals. Read in conjunction with the confidentiality introduction, this rule reasonably

would be read by employees to include information on co-workers' wage data." (Decision 19: 38-41). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

37. Dollar Thrifty excepts to that portion of the Decision finding that ". . . employees would reasonably be hindered from seeking information on other employees such as wage data, which violates their Section 7 rights to discuss working conditions. A precursor to discussing working conditions, such as wages, is an ability to learn of such information. As rule #7, described at complaint paragraph 3(m), limits employees' Section 7 rights, I find that it violates Section 8(a)(1) of the Act." (Decision 19: 42-47). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

38. Dollar Thrifty excepts to that portion of the Decision finding that "With regard to the rule described at complaint paragraph 3(n), like the rule described at complaint paragraph 3(h), this rule is also vague and overbroad." (Decision 20: 11-12). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

39. Dollar Thrifty excepts to that portion of the Decision finding that ". . . the rule described at complaint paragraph 3(n) violates Section 8(a)(1) of the Act." (Decision 20: 16-17). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

40. Dollar Thrifty excepts to that portion of the Decision finding that "[w]ith regard to the rule #23, described at complaint paragraph 3(e), Respondent's requirement that employees report unauthorized access to or use of confidential information, when read along with Respondent's definition of confidential information to include compensation data, is overly

broad and unlawful." (Decision 20: 32-35). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

41. Dollar Thrifty excepts to that portion of the Decision finding that "[b]y requiring employees to report if another employee engages in protected concerted activity, this rule creates a chilling effect on employees' Section 7 right to communicate employment related complaints to third parties. Because the rule is unlawful, the requirement to immediately notify a supervisor or specialist is unlawful . . . In sum, the rule described at complaint paragraph 3(e) is unlawful and violates Section 8(a)(1) of the Act." (Decision 20: 39-44). The challenged rule does not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

42. Dollar Thrifty excepts to that portion of the Decision finding that "Respondent failed to show 'special circumstances.'" (Decision 21: 7). The challenged rules do not prohibit employee Section 7 activity, and employees would not reasonably construe it as doing so.

43. Dollar Thrifty excepts to that portion of the Decision finding that "Respondent's broad defense fails to ameliorate the unlawful rules it has maintained." (Decision 21: 11). The challenged rules do not prohibit employee Section 7 activity, and employees would not reasonably construe them to do so.

44. Dollar Thrifty excepts to that portion of the Decision finding that "[a]s for Respondent's exception for protected concerted activity, I find that this 'savings clause' does not adequately clarify to employees that protected activity is permitted." (Decision 21: 15-17). The challenged rules do not prohibit employee Section 7 activity, and employees would not reasonably construe them to do so.

45. Dollar Thrifty excepts to that portion of the Decision finding that ". . . it is by working at Respondent that employees learn of this information that is actually protected concerted activity but also defined by Respondent, confusingly, as 'private or confidential.' As the judge stated in *Solarcity Corporation*, supra, employees placed under such circumstances would require 'specialized legal knowledge' and would therefore likely refrain from exercising their Section 7 rights. Thus, Respondent's defenses fail." (Decision 21: 31-36). The challenged rules do not prohibit employee Section 7 activity, and employees would not reasonably construe them to do so.

Conclusions of Law

46. Dollar Thrifty excepts to the each and every conclusion of law as the evidence does not support them. (Decision 21:40 - 24:20).

Remedy

47. Dollar Thrifty excepts to the each and every proposed remedy as the evidence does not support them. (Decision 24: 24-31).

Order

48. Dollar Thrifty excepts to the ALJ's proposed Order in its entirety as the evidence does not support it. (Decision 24:24 - 28:35).

Dated: March 30, 2017

DOLLAR THRIFTY AUTOMOTIVE GROUP

By: _____

MATTHEW T. MIKLAVE
Robinson & Cole LLP
Chrysler East Building
666 Third Avenue – 20th Floor
New York, NY 10017-4132
Telephone: (212) 451-2900
Facsimile: (212) 451-29999
Email: mmiklave@rc.com
Attorney for Employer

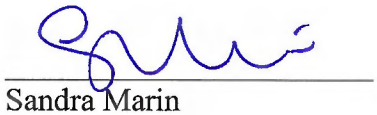
CERTIFICATION

I hereby certify that a true copy of the foregoing EXCEPTIONS BY RESPONDENT DOLLAR THRIFTY AUTOMOTIVE GROUP TO THE DECISION AND RECOMMENDED ORDER OF THE ADMINISTRATIVE LAW JUDGE was served on the interested parties in this action on this 30th day of March 2017, to the following:

VIA EMAIL:

Todd Saveland
Counsel for the General Counsel
National Labor Relations Board, Region 27
Byron Rogers Federal Building
1961 Stout Street, Suite 13-103
Denver, CO 80294
todd.saveland@nlrb.gov

Debra Medina
Vice President
Communications Workers of America,
Local 7777
2840 South Vallejo Street
Englewood, CO 80110
dmedina@cwa7777.org



Sandra Marin