

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

**UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 540 (TYSON FOODS)**

and

Case 16-CB-193820

JESUS ROMERO, an Individual

**EXCEPTIONS OF UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 540**

Pursuant to Section 102.46 of the Rules and Regulations of the national Labor Relations Board, the Respondent, United Food and Commercial Workers Union, Local 540 (“the Union”) makes the following exceptions to the February 27, 2018 decision of Administrative Law Judge Keltner W. Locke:

1. The Union excepts to the finding that “The Respondent violated Section 8(b)(1)(A) of the Act by telling an employee seeking to file a grievance that the Respondent would not file a grievance on his behalf because he was not a union member.” Decision at page 2, lines 20-23.

The evidence adduced at the hearing shows that the Union steward (Jose Segovia) did not tell Jesus Romero that the Union would not file a grievance on his behalf. On the contrary, Segovia told Romero that his discharge case was a tough case, and that Segovia needed to talk to someone above him at the Union (Juan Ventura, the Union Business Agent) to determine if Romero had a case worth pursuing. *Tr.*, page 73, line 19 to page 74, line 1. Romero’s and Bonilla’s testimony that Segovia told him that the Union would not file a grievance because he was not a union member is simply not plausible in light of their admissions that Segovia told Romero that he would have to talk with Ventura in connection with the question of whether Romero had a grievance worth pursuing. *Tr.*, page 22, lines

9-18, page 34, line 24 to page 35, line 6. Obviously, there would be no need whatsoever for Segovia to get the Business Agent involved in Romero's discharge if Segovia, had, in fact, told Romero that the Union would not file a grievance on his behalf.

There was also undisputed evidence adduced at the hearing that Segovia and the Union had prosecuted multiple grievances on behalf of non-union members at the Tyson plant. *Tr.*, 66, line 23 to page 68, line 24; *Un. Ex. 1*. In addition to that, there was testimony that there have been times where the Union makes decisions that a grievance should not be filed on behalf of union members. *Tr.*, page 70, lines 18 to 22.

Due to the foregoing evidence, the General Counsel failed to meet its burden of showing a prima facie case of discriminatory treatment under *Wright Line*, 251 NLRB 1053 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). Assuming, *arguendo*, that somehow the General Counsel met its burden of establishing a prima facie case, the evidence brought forth by the Union successfully rebutted such prima facie case.

For all of the foregoing reasons, the administrative law judge erred in his findings against the Union, and the Complaint should be dismissed in its entirety.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that Exceptions of United Food and Commercial Workers Union, Local 540 was served on this 27th day of March, 2018, as follows:

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