

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

ROSEBURG FOREST PRODUCTS,

Case No. 19-CA-213306

Respondent,

and

CARPENTERS INDUSTRIAL COUNCIL
(CIC), LOCAL UNION NO. 2949,

Charging Party.

EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the Respondent Roseburg Forest Products Co. ("RFP") hereby files the following Exceptions to the Administrative Law Judge's ("ALJ") Decision dated October 31, 2018.

A. Exceptions to the ALJ's Decision regarding the mere griping standard as announced in

Mushroom Transportation:

1. The Respondent excepts to the ALJ's failure to apply the *Mushroom Transportation* "mere griping" legal standard to Nick Miller's ("Miller") conduct at the September 6, 2017 meeting.
2. The Respondent excepts to the ALJ's application of the *Mushroom Transportation* "mere griping" standard to Miller's Facebook post and conclusion on p. 11, note 24, that "Miller's action of raising the complaint with management distinguishes the Facebook conversation from the unprotected activity of 'mere griping' unaccompanied by action or contemplation thereof."

3. The Respondent excepts to the ALJ's conclusion on p. 13, lines 36-37, that "because the meeting in which Miller's alleged unprotected conduct occurred in person at the workplace, the factors set forth in *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979) apply."
4. The Respondent excepts to the ALJ's conclusion on p. 14, lines 18-21, that it is not "significant that Miller, who by all accounts had become frustrated after being confronted with the private Facebook post .. [and] the conversation strayed to his other workplace frustrations."

B. Exceptions to the ALJ's Decision regarding the application of *Atlantic Steel* and *Pier Sixty* to the evidence:

5. The Respondent excepts to the ALJ's conclusion on p. 14, lines 9-11, that "because the subject matter of the meeting was Miller's concerted protected/union activity, the second factor strongly militates in favor of finding that Miller's remarks retained [sic] Act's protection."
6. The Respondent excepts to the ALJ's conclusion on p. 14, lines 14-16 that Miller's rant "does not change the fact, however, that the meeting was called to discuss Miller's Facebook post" and that the post was "the crux of the meeting."
7. The Respondent excepts to the ALJ's conclusion on p. 18, lines 13-14 that "Miller's actions in the September 6 meeting were and remain protected."
8. The Respondent excepts to the ALJ's legal conclusion and application of Board precedent on p. 13, note 30, finding that "the *Pier Sixty* factors are for social media posts, not in person meetings, which are still governed by *Atlantic Steel Co.*"
9. The Respondent excepts to the ALJ's conclusion on p. 15, lines 8-11, that "because preponderant evidence establishes that Miller was terminated for conduct that was part of

the *res gestae* of his protected concerted and union activities, I find the General Counsel has met her burden to prove a violation of Section 8(a)(3) and (1) as alleged.”

C. Exceptions to the ALJ’s Decision regarding the application of *Wright Line* to the evidence:

10. Respondent excepts to the ALJ’s failure on p. 17, lines 20-37, to properly consider employee comparators when analyzing the General Counsel’s prima facie *Wright Line* case and subsequent conclusion that the record establishes evidence of union animus.
11. The Respondent excepts to the ALJ’s failure on p. 18, lines 13-20, to find that under the *Wright Line* analysis, RFP would have terminated Miller even in the absence of protected conduct.
12. The Respondent excepts to the ALJ’s conclusion on p. 18, lines 22-24, that “based on the foregoing, assuming a *Wright Line* analysis applies, I find the General Counsel has met her burden to prove Miller was suspended and terminated in violation of Section 8(a)(3) and (1) as alleged.”

DATED this 28th day of November, 2018.

Respectfully submitted,

By s/ Kyle T. Abraham

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2018, I electronically filed the foregoing **EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION** with the National Labor Relations Board and served it via e-mail on:

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DATED this 28th day of November, 2018.

s/Kyle T. Abraham

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