

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 28 (CERES GULF INC.)**

and

**Cases 16-CB-181716
16-CB-194603**

DONNA MARIE MATA, an Individual

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

Counsel for the General Counsel respectfully requests that the Board consider the following exceptions to the Administrative Law Judge's Decision (JD) in the above-captioned matter, which issued on October 23, 2018.

EXCEPTIONS

1. Counsel for the General Counsel excepts to the ALJ's failure to explicitly discredit Timothy Harris's testimony regarding whether or not he keeps records of training requests. (JD slip op. at 3-4, LL. 49-50; 1-13).
2. Counsel for the General Counsel excepts to the ALJ's failure to credit Mata's testimony that Harris told her that she should not work "dirty, physical" jobs. (JD slip op. at 13, LL. 49-51).
3. Counsel for the General Counsel excepts to the ALJ's failure to explicitly credit Donna Mata's testimony that Timothy Harris made unwanted sexual advances upon her. (JD slip op. at 13, LL. 40-50; 15, LL. 1-2).
4. Counsel for the General Counsel excepts to the ALJ's failure to credit Mata's testimony that during the months of March, April, May and June 2016, Mata repeatedly asked Harris to enroll her in training. (JD slip op. at 15, LL. 8-9).

5. Counsel for the General Counsel excepts to the ALJ's failure to make a ruling as to whether, during the months of April, May, and June 2016, Mata repeatedly asked Harris to enroll her in training. (JD slip op. at 15, LL. 8-9).
6. Counsel for the General Counsel excepts to the ALJ's conclusion that Mata's requests that Harris enroll her in training March 2016 were untimely made under Respondent's system. (JD slip. op at 15, LL. 8-9).
7. Counsel for the General Counsel excepts to the ALJ's implicit conclusion that Respondent's system was so uniformly operated that Harris could not have enrolled Mata in courses if her requests were untimely. (JD slip op. at 13, LL. 27-30).
8. Counsel for the General Counsel excepts to the ALJ's failure to conclude that Respondent's system of administering training was arbitrary. (JD slip op. at 19, L. 27).
9. Counsel for the General Counsel excepts to the ALJ's failure to conclude that Respondent's system of administering training was arbitrarily enforced as to Mata. (JD slip op. at 16, LL. 7-10).
10. Counsel for the General Counsel excepts to the ALJ's rejection of the *Wright Line* balancing test as an appropriate analytical framework for analyzing a duty of fair representation claim of gender-based discrimination against a Union. (JD slip op. at 15-16).
11. Counsel for the General Counsel excepts to the ALJ's failure to find that Harris's history of making unwanted sexual advances on Mata when she asked him to enroll her in training was evidence that his later failure to enroll her in training was discriminatorily motivated. (JD slip op. at 15, LL. 20-36).
12. Counsel for the General Counsel excepts to the ALJ's conclusion that the proportion of female employees was not established by the record. (JD slip op. at 14, LL. 46-48).

13. Counsel for the General Counsel excepts to the ALJ's rejection of the precedential value in duty of fair representation cases of United States Supreme Court decisions in Title VII cases wherein the Court addresses a parallel question raised under that statute. (JD slip op. at 15, LL. 27-36).
14. Counsel for the General Counsel excepts to the ALJ's failure to conclude that Respondent's denial of training to the Charging Party was based upon discriminatory motivations. (JD slip op. at 16, LL. 7-9; 19, L. 27).
15. Counsel for the General Counsel excepts to the ALJ's finding that an employee can "request training from Harris or another business agent." (JD slip op. at 3, L. 50).
16. Counsel for the General Counsel excepts to the ALJ's failure to credit Mata's testimony that she attempted to make requests for training through other agents. (referenced at slip op. at 6, LL. 44-48, but no stated finding).

DATED at Houston, Texas this 4th day of December, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that Counsel for the General Counsel’s Exceptions to the Administrative Law Judge’s Decision and Brief in Support of Exceptions have been served this 4th day of December, 2018 on the following:

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