

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

**NEVADA YELLOW CAB CORPORATION, NEVADA
CHECKER CAB CORPORATION, and NEVADA
STAR CAB CORPORATION, a Single Employer**

and

Case

28-CA-218477

**INDUSTRIAL TECHNICAL & PROFESSIONAL
EMPLOYEES UNION, OPEIU LOCAL 4873, AFL-CIO**

**GENERAL COUNSEL’S EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

The General Counsel (General Counsel) files the exceptions set forth below to the decision issued by Administrative Law Judge Arthur J. Amchan (the ALJ) in this matter on December 27, 2018 [*Nevada Yellow Cab, et al.*, JD-84-18 (Dec. 27, 2018)].

1. The General Counsel excepts to the Administrative Law Judge’s finding that Industrial Technical & Professional Employees Union, OPEIU Local 4873, AFL-CIO (the Union) “backed away from the agreed upon conditions for [a ratification bonus].” JD 7:44-45.

2. The General Counsel excepts to the Administrative Law Judge’s finding that, “[s]ince the Union backed away from the agreed upon conditions of [a ratification bonus], [Nevada Yellow Cab, Nevada Checker Cab Corporation, and Nevada Star Cab Corporation, a Single Employer (Respondent)] was not obligated to pay the rest of the bonus—at least until there was a determination that the Union’s interpretation of the new contract is correct.” JD 7:44-47.

3. The General Counsel excepts to the ALJ’s reliance on *Hertz Corp.*, 304 NLRB 469 (1991), in finding that “[s]ince the Union backed away from the agreed upon conditions of [a ratification bonus], [Nevada Yellow Cab, Nevada Checker Cab Corporation, and Respondent

Nevada Star Cab Corporation, a Single Employer (Respondent)] was not obligated to pay the rest of the bonus—at least until there was a determination that the Union’s interpretation of the new contract is correct.” JD 7:44-47.

3. The General Counsel excepts to the ALJ’s failure to find that Respondent failed and refused to pay its employees their \$250 ratification bonus in violation of Sections 8(a)(1), (3), and (5) of the Act. JD 7:38-47.

4. The General Counsel excepts to the ALJ’s failure to order an appropriate remedy for Respondent’s failure and refusal to pay its employees their \$250 ratification bonus in violation of Sections 8(a)(1), (3), and (5) of the Act.

5. The General Counsel excepts to the ALJ’s finding that the Union’s request to take a grievance about the way Respondent calculated drivers’ pay to Step 3 of the parties’ grievance-arbitration procedure was untimely. JD 8:5-6; 8:25.

6. The General Counsel excepts to the ALJ’s failure to draw an adverse inference against Respondent based on its failure to produce grievance forms requested by Subpoena Duces Tecum B-1-12UWMVX, issued to Respondent at the request of Counsel for the General Counsel.

7. The General Counsel excepts to the ALJ’s failure to find that Respondent always denied Step 2 grievances in writing. JD 8:11-12.

8. The General Counsel excepts to the ALJ’s finding that “the General Counsel has not shown that Respondent had a practice of ignoring the time requirements set forth in Article 15, the grievance procedure of the new and prior contracts.” JD 8:19-21.

9. The General Counsel excepts to the ALJ’s finding, with respect to the allegation that Respondent unilaterally changed the parties’ grievance processing practice, that, “[t]he equities in this case, however, favor Respondent.” JD 8:25.

10. The General Counsel excepts to the ALJ's finding that "Respondent was privileged to refuse to advance [the Union's grievance about the way Respondent calculated drivers' pay] to [Step 3 of the parties' grievance-arbitration procedure]." JD 8:26-27.

11. The General Counsel excepts to the ALJ's finding that the Union's grievance about the way Respondent calculated drivers' pay "was not filed in good faith." JD 8:27.

12. The General Counsel excepts to the ALJ's finding that "Respondent was privileged to refuse to advance [the Union's grievance about the way Respondent calculated drivers' pay] to [Step 3 of the parties' grievance-arbitration procedure]," "in part because the Union's grievance was not filed in good faith." JD 8:8:26-27.

13. The General Counsel excepts to the ALJ's finding that the Union must have known how Respondent would interpret the contractual language Respondent proposed concerning the way it would calculate drivers' pay. JD 8:26-34.

14. The General Counsel excepts to the ALJ's finding that the meaning of the contractual language Respondent proposed concerning the way it would calculate drivers' pay was clear. JD 7:28-32.

15. The General Counsel excepts to the ALJ's failure to find Respondent unilaterally changed the parties' grievance processing practice by refusing to provide the Union with a written response after Step II grievance meetings and informing the Union it no longer had to provide such a response, in violation of Sections 8(a)(1) and (5) of the Act. JD 8:1-34.

16. The General Counsel excepts to the ALJ's failure to find Respondent unilaterally changed the parties' grievance processing practice by ceasing its practice of advancing grievances to Step III of the grievance procedure where the Union's appeal to Step III was filed within 10 days after the Union received the Respondent's written response to the Step II grievance, in violation of Sections 8(a)(1) and (5) of the Act. JD 8:1-34.

17. The General Counsel excepts to the ALJ's failure to order an appropriate remedy for Respondent's unilaterally changing the parties' grievance processing practice by ceasing its practice of advancing grievances to Step III of the grievance procedure where the Union's appeal to Step III was filed within 10 days after the Union received the Respondent's written response to the Step II grievance, in violation of Sections 8(a)(1) and (5) of the Act.

18. The General Counsel excepts to the ALJ's failure to order an appropriate remedy for Respondent's unilaterally changing the parties' grievance processing practice by ceasing its practice of advancing grievances to Step III of the grievance procedure where the Union's appeal to Step III was filed within 10 days after the Union received the Respondent's written response to the Step II grievance, in violation of Sections 8(a)(1) and (5) of the Act.

19. The General Counsel excepts to the ALJ's dismissal of the Complaint. JD 9:13.

WHEREFORE, the General Counsel respectfully requests the Board grant the above exceptions for the reasons set forth in the accompanying General Counsel's Brief in Support of Exceptions to ALJ's Decision.

Dated at Phoenix, Arizona, this 24th day of January 2019.

Respectfully submitted,

/s/ Kyler Scheid

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CERTIFICATE OF SERVICE

I hereby certify that GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE in *NEVADA YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, and NEVADA STAR CAB CORPORATION, a single Employer*, in Case 28-CA-218477 was served via E-Gov, E-Filing, and Electronic Mail, on this 24th day of January 2019, on the following:

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