

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

G4S REGULATED SECURITY SOLUTIONS
a Division of G4S SECURE SOLUTIONS (USA) INC.
f/k/a THE WACKENHUT CORPORATION

and

THOMAS FRAZIER, an Individual

Case 12-CA-026644

and

CECIL MACK, an Individual

Case 12-CA-026811

**COUNSEL FOR THE GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF
THE ADMINISTRATIVE LAW JUDGE AND ARGUMENT IN SUPPORT OF CROSS-
EXCEPTIONS**

Submitted by:

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January 31, 2019

Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits the following Cross-exceptions to the Decision of Administrative Law Judge Robert A. Ringler , dated December 20, 2018, in the above captioned case:¹

EXCEPTION 1: The Administrative Law Judge (ALJ) erred in his analysis, found in Section VI(B)(1)(b), at page 6:17-34 of his decision, when he concluded that the first quarter interim earnings for Cecil Mack for calendar year 2011 as found in the Amended Compliance Specification, are unreasonable, and increased the amount of interim earnings for Mack from \$9,230.76 to \$10,999.95, thereby reducing the amount of net backpay owed to Mack from \$10,780.40 to \$9,011.21

Argument in support of Exception 1

The Amended Compliance Specification (the Specification) in this matter was issued on April 17, 2018. GCX 1(e). The Specification, in Appendix H, sets forth the amount of interim earnings credited to Mack for each consecutive quarter of the backpay period, beginning the first quarter of 2010 and ending in the third quarter of 2017. With the exception of the interim earnings credited to Mack for the first quarter of 2011, the ALJ correctly attributed all interim earnings amounts for each quarter as alleged in the Specification. ALJD 9:44-10:1.

Mack began working for Rent-A-Wheel around the middle of August 2010. T 31. He continued to work for Rent-A-Wheel until June 2011. T 34:15-19. His tenure at Rent-A-Wheel included the first quarter of 2011. There is no record evidence that Mack earned any additional wages during that quarter. In his decision, the ALJ excerpted Respondent's brief as follows:

Mack...ma[de] ... \$44,000 per year [at]...Rent A Wheel (Tr. At 34),...[i.e.] approximately \$864.15 per week. Although the first quarter of 2011 consisted of thirteen weeks, the Compliance Specification, Appendix H, only lists interim earnings of \$9,230.75 for that quarter, rather than \$10,999.95 (13 weeks x \$846.15 per week). As such, the net backpay for the first quarter of 2011 should be \$9,011.21 (rather than \$10,780.40). ALJD 6:22-27

¹ The following references are used in this document
ALJD ___:___ = ALJD page and line numbers
T ___: ___ = transcript page and line numbers.
GCX ___ = General Counsel's exhibit number
RX ___ = Respondent's exhibit number.

The ALJ found Respondent's arguments persuasive, and concluded that the interim earnings for the first quarter of 2011 should be increased to \$10,999.95 instead of \$9230.76 as alleged in the Amended Compliance Specification. ALJD 6:19-34, GCX 1(e). The increase in interim earnings decreased the amount of net backpay for that quarter from \$10,780.40 to \$9,011.21, a difference of \$1,769.19.

Respondent's argument and the ALJ's adoption of Respondent's argument is flawed for two reasons. First, Mack's testimony was that he earned "roughly [\$]44,000 a year". T 34:8-9. This testimony was based on Mack's recollection of his salary for a position that he held 7 years prior to the hearing. Additionally, Mack gave an *approximation* of his interim earnings. Mack's actual salary could have been \$43,525, which would not be inconsistent with his testimony reflecting a rough estimate of his actual salary. Even if Mack did, in fact, earn \$44,000 per year, it is possible that during that quarter he worked fewer hours, used unpaid leave, or suffered some other loss of income during the first quarter of 2011. Accordingly, Mack's approximation of his yearly annual salary does not provide a basis for concluding that his actual salary was \$44,000 per year or that he earned almost \$11,000 during the first quarter of 2011.

The second, and more compelling, basis for concluding that the ALJ erred as described above is that the record evidence reflects the exact dollar amount, down to the penny, that Mack earned for the entire first quarter of 2011. Respondent's Exhibit 1, which is a report of Mack's quarterly earnings per the State of Florida's Department of Revenue, was received into evidence by the ALJ. RX 1; T 90:19-20. That document reflects that SOI 31 of AR Inc. reported Mack's quarterly earnings for the first quarter of 2011 as \$9230.76. R 1. This amount is exactly the same amount that appears in Appendix H of the Specification in the portion reflecting Mack's interim earnings for the first quarter of 2011. GCX 1(e). Surely, documents from the State of Florida Department of Revenue are more reliable, and will reflect more accurate information, than the earnings estimate elicited during Mack's testimony about a position he held 7 years earlier. Furthermore, Mack testified that SOI-31 of AR, Inc. was, in fact, Rent-A-

Wheel.² T 61:23-25 -62:1. While there was testimony regarding the identity of SOI 31, a simple internet search reflects that it is an Arizona based payroll benefits company. It is a reasonable and likely conclusion that SOI-31 of AR, Inc. was the payroll company contracted by Rent A Wheel to perform its payroll services. Accordingly, the ALJ should have relied on the information in R 1 and found that Mack's interim earnings for the first quarter 2011 were \$9,230.76 as reflected therein.

Based on the arguments above, the Board should grant Counsel for the General Counsel's Exception 1 and find that Mack had interim earns of \$9,230.76 during the first quarter of 2011, and that net backpay owed for that quarter is \$10,780.40, as set forth in the Specification.

EXCEPTION 2: The ALJ erred in his summation of the net backpay set forth in Section 6, page 10 of the ALJD.

Argument in support of Exception 2

Notwithstanding the arguments above in Exception 1, the General Counsel submits that the calculations set forth in the chart on page 10 of the Judge's Decision are incorrect to the extent that the total listed for net backpay equals \$360,434.39. A review of each of the values for each calendar quarter listed in the ALJ's chart reveals that the total net backpay, based on those values, should be \$360,444.39. While the \$10 difference may be the result of a simple computation error, the General Counsel believes that Mack should receive the full and correct amount of net backpay owed to him as a result of Respondent's unlawful termination of his employment. Accordingly, the total net backpay due should be increased by \$10.

² A simple internet search shows that SOI-31 of AR is an Arizona based payroll benefits company. RX 1 also shows entries for SOI 31 of AR for the second quarter of 2011. That amount was also included in Appendix H of the Specification for the second quarter of 2011. Curiously, the ALJ accepted that amount and included it in his decision.

EXCEPTION 3: The ALJ erred by ordering Respondent to pay Mack backpay in the amount of \$360,434.39, rather than \$362,213.58. ALJD 11:4-13.

Argument in support of Exception 3

In his recommended Order, the ALJ directed Respondent to pay backpay to Mack in the amount of \$360,434.39. The amount of backpay set forth in the Order is based on the ALJ erroneous finding that Mack had interim earnings of \$10,999.95 during the first quarter of 2011, rather than \$9,230.76, resulting in a \$1,769.19 reduction to net backpay, and on a \$10 computation error. For the reasons set forth above, the record evidence reveals that Mack's interim earnings were in fact \$9,230.76 during the first quarter of 2011, and that his net backpay should be increased by \$1,769.19, as well as by \$10 to correct the computational error. Accordingly, the Board should Order Respondent to pay net backpay to Mack in the amount of \$362,213.58 (\$360,434.39+\$1,769.19+\$10).³

Conclusion

The General Counsel respectfully requests that the Board grant its exceptions and find that Mack had interim earnings of \$9,230.76 during the first quarter of 2011, that net backpay in the amount of \$10,78.40 is owed to him for that quarter, and that the ALJ made a computational error that reduced net backpay owed by \$10. Furthermore, the Board should modify the ALJ's recommended Order to reflect that total net backpay due Mack is \$362,213.58.

Respectfully submitted,

/s/ John F. King

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³ Due to computation errors, the Amended Compliance Specification overstates the amount of net backpay owed to Mack by \$0.02.

CERTIFICATE OF SERVICE

I hereby certify that the Counsel for the General Counsel's Cross-Exceptions to the Decision of the Administrative Law Judge and Argument in Support of Cross-Exceptions in the matter of G4S Regulated Security Solutions, a Division of G4S Secure Solutions (USA) Inc., f/k/a The Wackenhut Corporation, Case 12-CA-026644 and Case 12-CA-02681, was duly served upon the following individuals by electronic transmittal on January 31, 2019, by the following means:

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