

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

**PAE AVIATION AND TECHNICAL  
SERVICES LLC**

**and**

**Cases 28-CA-170401  
28-CA-175936**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
LOCAL LODGE 2949, AFL-CIO**

**GENERAL COUNSEL'S ANSWERING BRIEF TO  
CHARGING PARTY'S EXCEPTIONS TO ALJ'S ORDER**

/s/Chris J. Doyle

Chris J. Doyle

Counsel for the General Counsel

National Labor Relations Board – Region 28

2600 North Central Avenue, Suite 1400

Phoenix, AZ 85004

Telephone: (602) 416-4762

Facsimile: (602) 640-2178

E-Mail: [christopher.doyle@nrlb.gov](mailto:christopher.doyle@nrlb.gov)

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

**PAE AVIATION AND TECHNICAL  
SERVICES LLC**

**and**

**Cases 28-CA-170401  
28-CA-175936**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
LOCAL LODGE 2949, AFL-CIO**

**GENERAL COUNSEL’S ANSWERING BRIEF TO  
CHARGING PARTY’S EXCEPTIONS TO ALJ’S ORDER**

**I. PRELIMINARY STATEMENT**

The remaining allegations in the Consolidated Complaint (Complaint) that the National Labor Relations Board (the Board) remanded to the administrative law judge “for the purpose of reopening the record, if necessary [ . . .]” (emphasis added) involved Respondent’s maintenance of two overly-broad and discriminatory rules in its Disciplinary Process: Rule 12 and Rule 19. After analyzing those rules under the Board’s new standard enunciated in *The Boeing Company*, 365 NLRB No. 154 (2017), the General Counsel filed a Motion to Withdraw Certain Allegations from Complaint and For Remand to Regional Director (Motion).

Upon the filing of this Motion, Administrative Law Judge Mara-Louise Anzalone (the ALJ) issued an Order (1) Granting Motion to Withdraw and Remand Allegations to the Regional Director and (2) Remanding Allegations to the Regional Director. (ALJ Order). The ALJ correctly found that the Charging Party “lacked standing” to oppose the General Counsel’s Motion, that the General Counsel’s Motion was “appropriate”, and that “nothing in

the Board's remand order precludes the withdrawal of the two allegations at issue here." (ALJ Order, page 2). Moreover, the ALJ validly found that "the General Counsel has the sole right to withdraw the allegations at issue." (ALJ Order, page 3).

These findings by the ALJ are the crux of the Charging Party's Exceptions, none of which has merit. Furthermore, this case is not properly before the Board to consider the Charging Party's Exceptions because the ALJ's Order did not transfer the case to the Board; the ALJ's Order specifically remanded the case to the Regional Director for Region 28. Finally, even if this case was before the Board, all of the Charging Party's Exceptions do not comply with the Board's Rules and Regulations and, accordingly, should be disregarded.

**II. THIS CASE IS NOT PROPERLY BEFORE THE BOARD TO CONSIDER CHARGING PARTY'S EXCEPTIONS BECAUSE THE ALJ DID NOT TRANSFER THE CASE TO THE BOARD**

In her Order, the ALJ decreed the following:

Accordingly, it is **ORDERED** that the Motion to Withdraw Certain Allegations from Complaint and for Remand to the Regional Director is **GRANTED**, and

**IT IS FURTHER ORDERED** that this case is **REMANDED** to the Regional Director for Region 28 for further handling consistent with this Order.

(ALJ Order, page 3) (emphasis supplied).

Nowhere in her Order did the ALJ transfer this case to the Board.

In order for the Board to consider the Charging Party's Exceptions, the ALJ would had to have transferred the case to the Board. Indeed, Section 102.46(a) of the Board's Rules and Regulations prefaces that exceptions may be filed once the case is transferred to the Board:

Within 28 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board, pursuant to §102.45, any party may (in accordance with Section 10(c) of the Act and §§102.2 through 102.5 and

102.7) file with the Board in Washington, DC, exceptions to the Administrative Law Judge's decision or to any other part of the record or proceedings (including rulings upon all motions or objections), together with a brief in support of the exceptions. [. . .]

Here, the ALJ remanded the case to the Regional Director for Region 28 for further handling consistent with the ALJ's Order. Because the ALJ did not transfer the case to the Board, the case is not before the Board to consider the Charging Party's Exceptions.

**III. CHARGING PARTY'S EXCEPTIONS 1-5 SHOULD BE DISREGARDED BECAUSE CHARGING PARTY DID NOT COMPLY WITH SECTION 102.46(a)(1) OF THE BOARD'S RULES AND REGULATIONS**

Even if this case was before the Board to consider the Charging Party's exceptions, the Charging Party failed to comply with the requirements of Section 102.46(a)(1) of the Board's Rules and Regulations, and this warrants the Board to disregard those exceptions.

Section 102.46 (a)(1) mandates the following:

- (i) Each exception must:
  - (A) Specify the questions of procedure, fact, law, or policy to which exceptions is taken;
  - (B) Identify that part of the Administrative Law Judge's decision to which exception is taken;
  - (C) Provide precise citations of the portions of the record relied on; and
  - (D) Concisely state the grounds for the exception. If a supporting brief is filed, the exceptions document must not contain any argument or citation of authorities in support of the exceptions; any argument and citation of authorities must be set forth only in the brief. If no supporting brief is filed, the exceptions document must also include the citation of authorities and argument in support of the exceptions, in which event the exceptions document is subject to the 50-page limit for briefs set forth in paragraph (h) of this section.

Nowhere in its Exceptions does the Charging Party provide the "precise citations of the portions of the record" it relies upon. Rather, in four of its five exceptions (Exceptions 1-3 and 5), the Charging Party's specific citation is only "See entire two-page Order." (In

Exception 4, the Charging Party does not provide any citation to the ALJ's Order). Such nonspecific, all-inclusive, slipshod references do not comply with the stringent requirements of Section 102.46(a)(1).

Additionally, the ALJ's Order is three pages in length, not two. Thus, if the Charging Party is referring to two pages of the ALJ's three-page Order, then the Charging Party needs to identify those page numbers of the ALJ's Order that is the basis for Charging Party's exceptions. But the Charging Party did not do this.

Finally, the Charging Party did not file a supporting brief; it simply filed its exceptions. Consequently, the Charging Party had to include in its exceptions document "the citation of authorities and argument in support of the exceptions", as directed under Section 102.46(a)(1)(i)(D). But the Charging Party failed to follow that dictate, too.

Accordingly, the Board should disregard Charging Party's Exceptions. *Valmet, Inc.*, 367 NLRB No. 84, slip op. at 1 fn.4 (2019); *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn.1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006).

#### **IV. CHARGING PARTY'S EXCEPTIONS TO THE ALJ REMANDING THE CASE TO THE REGIONAL DIRECTOR, AND FAILING TO FIND THAT THE RULES VIOLATE THE ACT (CHARGING PARTY'S EXCEPTIONS 1-5)**

The ALJ accurately found that, under Section 3(d) of the Act, the General Counsel has exclusive authority over the issuance and prosecution of unfair labor practice complaints. (ALJ Order, page 2). Consequently, the ALJ found that the General Counsel's Motion was "appropriate", that the General Counsel had the "sole right" to withdraw the two allegations at issue, and that nothing in the Board's remand order precluded the General Counsel from doing so. (ALJ Order, pages 2-3)

The Charging Party excepts to the ALJ remanding the case to the Regional Director. (Exception 1). The Charging Party's remaining exceptions (Exceptions 2 through 5) are

subsumed and stem from the ALJ granting the General Counsel's Motion to remand the case to the Regional Director.

The Charging Party's Exceptions are nothing more than an attempt to advance a theory/violation that the General Counsel has disclaimed expressly through its Motion: that Respondent's Disciplinary Process Rules 12 and 19 violate Section 8(a)(1) of the Act. Board law has held that a violation may not be found based on an allegation or theory that has been asserted only by the charging party. *Coastal Marine Services*, 367 NLRB No. 58, slip op. at 1 fn.2 (2019);<sup>1</sup> *Hobby Lobby Stores, Inc.*, 363 NLRB No. 195, slip op. at 1 fn.2 (2016) ("It is well settled that a charging party cannot enlarge upon or change the General Counsel's theory of a case.").

Therefore, the Board should reject all of the Charging Party's Exceptions.

## V. CONCLUSION

Based upon the foregoing, the General Counsel submits that the Board reject all of the Charging Party's Exceptions.

Dated at Phoenix, Arizona this 6<sup>th</sup> day of March 2019.

Respectfully submitted,

/s/Chris J. Doyle

Chris J. Doyle

Counsel for the General Counsel

National Labor Relations Board – Region 28

2600 North Central Avenue, Suite 1400

Phoenix, AZ 85004

Telephone: (602) 416-4762

Facsimile: (602) 640-2178

E-Mail: [christopher.doyle@nrb.gov](mailto:christopher.doyle@nrb.gov)

---

<sup>1</sup> Counsel for the charging party in *Coastal Marine Services* is the same counsel that represents the Charging Party in the instant matter.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of **GENERAL COUNSEL'S ANSWERING BRIEF TO CHARGING PARTY'S EXCEPTIONS TO ALJ'S ORDER** in *PAE Aviation and Technical Services LLC*, Cases 28-CA-170401, et al., was served by E-Gov, E-Filing, and E-Mail, on this 6<sup>th</sup> day of March 2019, on the following:

**Via E-Gov, E-Filing:**

Roxanne L. Rothschild, Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
1015 Half Street SE, Room 5100  
Washington, DC 20570-0001

**Via E-Mail:**

Jeffrey W. Toppel, Attorney at Law  
Jackson Lewis, PC  
2111 East Highland Avenue, Suite B-250  
Phoenix, AZ 85016  
E-Mail: [Jeffrey.Toppel@jacksonlewis.com](mailto:Jeffrey.Toppel@jacksonlewis.com)

David A. Rosenfeld, Attorney at Law  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-6430  
E-Mail: [drosenfeld@unioncounsel.net](mailto:drosenfeld@unioncounsel.net)



---

Dawn M. Moore  
Administrative Assistant  
National Labor Relations Board  
Region 28 - Las Vegas Resident Office  
Foley Federal Building  
300 Las Vegas Boulevard South, Suite 2-901  
Las Vegas, Nevada 89101  
Telephone: (702) 820-7466  
Facsimile: (702) 388-6248  
E-Mail: [Dawn.Moore@nlrb.gov](mailto:Dawn.Moore@nlrb.gov)