

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

EXXONMOBIL RESEARCH &  
ENGINEERING CO., INC.,

Respondent,

and

INDEPENDENT LABORATORY  
EMPLOYEES' UNION, INC.,

Charging Party.

CASE NOS. 22-CA-218903  
22-CA-223073  
22-CA-232016

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**RESPONDENT'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S DECISION**

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Respondent ExxonMobil Research and Engineering Co., Inc. ("Employer," "Company," or "Respondent"), by its attorneys, Jackson Lewis P.C., pursuant to § 102.46 of the National Labor Relations Board's ("NLRB") Rules and Regulations, takes the following Exceptions<sup>1</sup> to the Decision and Recommended Order Administrative Law Judge Michael A. Rosas ("ALJ"). A supporting brief is submitted herewith. The ALJ disregarded or incorrectly applied the record evidence, or otherwise erred, as follows:

1. The finding/conclusion that "[i]n August, the Company filed a motion to vacate the arbitration award but subsequently withdrew its petition to enforce the arbitration award." (D. 9:7-9).<sup>2</sup> In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining proposals; testimony from ExxonMobil Corporation's

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<sup>1</sup> Respondent also submits an accompanying Brief in Support of Exceptions to the Decision of the Administration Law Judge.

<sup>2</sup> ALJ Rosas' Decision cited herein as "D."

Americas Labor Relations Manager Jay Davis, and other relevant parts of the record, all of which show the Company did not withdraw its petition to enforce the arbitration award. JE 34; Tr. 313-15.

2. The finding/conclusion that “Giglio conceded that the Company had been planning the change since December 2017 but neither notified nor consulted the Union because it wanted to have the new change in place before giving notification.” (D.10, n.5). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties’ Collective Bargaining Agreement (“CBA”) and email exchanges; testimony from Mr. Myers, other relevant parts of the record, all of which show that Giglio never said the Company “wanted to have the new change in place before giving notification.” GCX 2, p. 58; GCX 7; GCX 8; Tr. 191-92.

3. The finding/conclusion that “at least one unit employee was evaluated in accordance with the new appraisal form in March.” (D.14 n. 8). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the emails of the parties; testimony from Human Resources and Labor Advisor Lyndsey Naquin, Union President Michael Myers, and Union Vice President Thomas Fredrickson, other relevant parts of the record, all of which show that no employee “was evaluated in accordance with the new appraisal form in March.” GCX 12; GCX 13; Tr. 35-36, 182, 188-191, 297-98, 321, 328-332.

4. The finding/conclusion that Arbitrator Klein found “the Company could not prospectively contract permanent jobs.” (D.18:29-30). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including Arbitrator Klein’s decision; testimony from Mr. Myers and Mr. Giglio, other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 22; Tr. 216, 275.

5. The finding/conclusion that “[b]y sending the July 3 email, the Company attempted to coerce the Union to hold a ratification vote for the contract that would result in changes to the wages and hours.” (D.32:27-29). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including Employee Information Bulletins (“EIBs”) and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 197-98, 248-250.

6. The finding/conclusion that “[t]he Company also used this email to undercut the Union’s bargaining position since the bargaining committee did not acquiesce to the Company’s proposals at the time.” (D.32:29-31). In support of this exception, Respondent relies upon the documentary evidence introduced at trial including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 197-98, 248-250.

7. The finding/conclusion that the July 3 “communication conveyed Giglio’s ‘expectation’ that the Union hold a vote, conveying an effort to changes terms and conditions of employment.” (D.32:40-42). In support of this exception, Respondent relies upon the documentary evidence introduced at trial including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 197-98, 248-250.

8. The finding/conclusion that the Company engaged in direct dealing by virtue of the July 3 email to the Union. (D.32:14-47; D.33:1-14). In support of this exception, Respondent relies upon the documentary evidence introduced at trial including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 197-98, 248-250.

9. The finding/conclusion that the Company did not effectively repudiate any supposed illegality in connection with the July 3 email by virtue of its subsequent July 28 email because the July 28 email was only sent to bargaining unit employees. (D.33:7-11). In support of this exception, Respondent relies upon the documentary evidence introduced at trial including emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 30; Tr. 201, 250.

10. The reliance on Auto Workers Local 785, 281 NLRB 704, 707 (1986) in support of the ALJ's findings/conclusions. (D. 33:1-11). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 199-200.

11. The ALJ's finding/conclusion that the Company intentionally failed to send the repudiation to all affected employees and the ALJ's faulty premise that repudiation outside the bargaining unit was necessary. (D.33:13-23). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 199-200-01, 250.

12. The ALJ's finding/conclusion that "the Company unlawfully engaged in direct dealing with unit employees and failed to adequately repudiate that action in violation of Section 8(a)(5) and (1)." (D.33:22-23). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 199-201, 250.

13. The ALJ's finding/conclusion that "[s]everal times throughout the bargaining sessions, the Company declared that it would not bargain over personal time because the Union previously filed an unfair labor practice charge." (D.34:28-29). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including prior unfair labor practices charges and dismissals, as well as the parties' bargaining transcripts; testimony from Mr. Myers and Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 25; GCX 28; GCX 29; JE 5, p. 85; JE 13, p. 56-57; JE 15, p. 78, 81, 85; JE 17, p. 18; JE 19, p. 6, 22, 23, 32; Tr. 177-180, 264-66.

14. The ALJ's finding/conclusion that "[o]n July 8, the Company stated that it was not interested in bargaining about personal time because of the previous charge and '[the Union's] aggressive actions.'" (D.34:30-31). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including prior unfair labor practices charges and dismissals, rulings of appeals, as well as the parties' bargaining transcripts; testimony from Mr. Myers and Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 25; GCX 28; GCX 29; JE 5, p. 85; JE 13, p. 56-57; JE 15, p. 78, 81, 85; JE 17, p. 18; JE 19, p. 6, 22, 23, 32; Tr. 177-180, 264-66.

15. The ALJ's finding/conclusion that "[o]n September 4, the Company stated that 'the gravy train has moved on' regarding a favorable personal time policy due to the previous charge." (D.34:31-33). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining transcripts; testimony from Mr. Myers, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 17, p. 46; Tr. 181.

16. The ALJ's finding/conclusion that "[t]he Company reiterated the same position at the November 29 meeting." (D.34:33-34). In support of this exception, Respondent relies upon the

documentary evidence introduced at trial, including the parties' bargaining transcripts; testimony from Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 19, p. 6, 19, 22-23, 32; Tr. 265-66.

17. The ALJ's finding/conclusion that "[i]n each circumstance, the Company clearly expressed a refusal to bargain due to the previous unfair labor practice charge." (D.34:34-35). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining transcripts; testimony from Mr. Myers and Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 5, p. 85; JE 13, p. 56-57; JE 15, p. 78, 81, 85; JE 17, p. 18; JE 19, p. 6, 22, 23, 32; Tr. 177-180, 264-66.

18. The ALJ's finding/conclusion that the "Company violated Section 8(a)(1) by refusing to bargain over personal time in retaliation for the Union filing a previous unfair labor practice charge." (D.34:40-42). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including prior unfair labor practices charges and dismissals, as well as the parties' bargaining transcripts; testimony from Mr. Myers and Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 25; GCX 28; GCX 29; JE 5, p. 85; JE 13, p. 56-57; JE 15, p. 78, 81, 85; JE 17, p. 18; JE 19, p. 6, 22, 23, 32; Tr. 177-180, 264-66.

19. The ALJ's finding/conclusion that "the Company took several actions that implied the union bore fault for employees not receiving better benefits." (D.35:22-23). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining transcripts, EIBs, and emails; other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 24; GCX 30; JE 14.

20. The ALJ's finding/conclusion that "[a]t the June 29 bargaining session, the Company said that the Union began to act regressively and stated that Myers was poorly

representing bargaining unit members.” (D.35:23-25). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties’ bargaining transcripts, EIBs, and emails; other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 24; GCX 30; JE 14.

21. The ALJ’s finding/conclusion that “[r]ead in this context, the September 28 email, by characterizing the Union as ungrateful and comparing employees’ contemporary benefits to those proposed by the Company implied that the Union bore fault for passing on the opportunity to increase benefits.” (D.35:25-27). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties’ bargaining transcripts, bargaining proposals and emails; testimony from Ms. Naquin and Mr. Myers, other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 31; JE 46, p. 2; JE 18, p. 10-11; Tr. 118-19, 135-36, 138-140, 247.

22. The ALJ’s finding/conclusion that “the Company included false communications in its July 3 email..., [it] corrected these misconceptions in the July 28 email, but waiting nearly a month to do so tended to drive a wedge between employees and the Union.” (D.35:28-30). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 197-98, 248-250.

23. The ALJ’s finding/conclusion that “these communications included enough disparaging content that in the totality of the circumstances these messages denigrated the Union.” (D.35:30-31). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ’s evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 197-98, 248-250.

24. The ALJ's failure to find that these messages served to lawfully inform the Union of its stance concerning the breakdown in negotiations. (D.35:34-35). In support of this exception, Respondent relies upon the documentary evidence introduced at trial including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 197-98, 248-250.

25. The ALJ's finding/conclusion that "the unflattering portrayal of the Union in these emails unlawfully disparaged it because it placed the burden on the Union for employees not receiving improved benefits." (D.35:35-36). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including EIBs and emails; testimony from Ms. Naquin, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 24; GCX 30; Tr. 197-98, 248-250.

26. The ALJ's finding/conclusion that "the Company violated Section 8(a)(1) by disparaging the Union and its leadership on June 29 and September 28, 2018." (D.35:38-39). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the EIB and the parties' bargaining transcripts; testimony from Ms. Naquin and Mr. Myers, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 31; JE 14, p. 15-16; Tr. 135-40, 246-47.

27. The ALJ's finding/conclusion that the Company made material changes to its performance appraisal system. (D.36:18-26). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' emails; testimony from Mr. Myers and Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 5; GCX 11; Tr. 184-85, 194-95, 270.

28. The ALJ's finding/conclusion that the Company "did not specify how promotion and discipline would work under the new system." (D.36:23-24). In support of this exception,

Respondent relies upon the documentary evidence introduced at trial, including emails, and information requests and responses; testimony from Mr. Myers and Ms. Naquin, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 5; GCX 7-9; GCX 11-13; Tr. 45, 47-51, 297-98.

29. The ALJ's finding/conclusion that "[t]hese changes drastically affect the incentives of the employees due to changing what employees strive toward when seeking to gain promotion or avoid discipline." (D.36:24-25). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' emails; testimony from Mr. Myers and Ms. Naquin, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 5; GCX 11; Tr. 184-85, 194-95, 270.

30. The ALJ's finding/conclusion that "[t]he Board will not find a waiver, however, when the employer presents the bargaining representative with a 'fait accompli.'" (D.37:6-7). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' CBA; testimony from Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 2, p. 58; Tr. 193-94.

31. The ALJ's finding/conclusion that the Company presented the change as a fait accompli. (D.37:20). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' CBA; testimony from Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 2, p. 58; Tr. 193-94.

32. The ALJ's finding/conclusion that "[b]y not taking any of the Union's concerns into account, the Company 'merely [presented information] concerning the fait accompli.'" (D.37:23-24). In support of this exception, Respondent relies upon the documentary evidence

introduced at trial, including the parties' CBA; testimony from Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 2, p. 58; Tr. 193-94.

33. The ALJ's finding/conclusion that "the Company violated Section 8(a)(5) and (1) by enacting a unilateral change to its appraisal system without first notifying and consulting with the Union." (D.37:28-29). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' CBA and emails; testimony of Mr. Giglio and Mr. Myers, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. GCX 2, p. 58; GCX 5; GCX 7-9; Tr. 191-92, 47-50.

34. The ALJ's finding/conclusion that Mr. Giglio's "statements clearly express an offer to exchange PPTO for decertification of the Union." (D.38:12-13). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining proposals and transcripts; testimony from Mr. Myers, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 5, p. 20-21; JE 9, p. 24; JE 22, p. 4; Tr. 157-58.

35. The ALJ's finding/conclusion that "Giglio intentionally made these statements during protracted bargaining over PPTO" rather than sarcastically. (D.38:16-19). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining transcripts; testimony from Mr. Giglio, Mr. Myers, and Mr. Fredrickson, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 15, p. 113-15; Tr. 102-03, 160, 162, 263, 340-43.

36. The ALJ's finding/conclusion that "[a] reasonable employee would understand such statements as implying a promise of a benefit in exchange for decertifying the Union." (D.38:19-21). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining transcripts; testimony from Mr. Giglio, Mr.

Myers, and Mr. Fredrickson, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 15, p. 113-15; Tr. 102-03, 160, 162, 263, 340-43.

37. The ALJ's finding/conclusion that "[u]nder the circumstances, Giglio's July 9, 2018 statement violated Section 8(a)(5) and (1)." (D.38:21-22). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining transcripts; testimony from Mr. Giglio, Mr. Myers, and Mr. Fredrickson, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 15, p. 113-15; Tr. 102-03, 160, 162, 263, 340-43.

38. The reliance upon Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964) in support of the ALJ's findings/conclusions. (D.39:44-47; 40:1-9). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the Company's bargaining proposals; testimony from Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 34, 36, 38, 42, 44 and 49; Tr. 272-73.

39. The ALJ's finding/conclusion that "the Company insisted on altering the scope of the bargaining unit as a condition of its agreement at several meetings." (D.40:11-12). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the Company's bargaining proposals; testimony from Mr. Giglio, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 15, pgs. 51, 62; JE 16, pgs. 113-114; JE 17, pgs. 19-21, 38; JE 18, pg. 17; JE 19, pgs. 8, 17-18; JE 34, 36, 38, 42, 44 and 49; Tr. 272-73.

40. The ALJ's finding/conclusion that "[t]he Company repeatedly insisted that it could not reach a final agreement without an agreement on its contract work proposal...[which] demonstrates that the Company conditioned a final agreement on the contracting term, a permissive subject." (D.40:34-42). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the Company's bargaining proposals; other

relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. E 15, pgs. 51, 62; JE 16, pgs. 113-114; JE 17, pgs. 19-21, 38; JE 18, pg. 17; JE 19, pgs. 8, 17-18; JE 34, 36, 38, 42, 44 and 49.

41. The ALJ's finding/conclusion that "[t]he Company's general conduct throughout the entire bargaining process demonstrates overall bad faith on its part." (D.41:9-22). In support of this exception, Respondent relies upon the documentary evidence introduced at trial, including the parties' bargaining proposals and transcripts; testimony from Mr. Myers, other relevant parts of the record, the ALJ's evaluation of the evidence, and Board law. JE 1-50; Tr. 141.

42. Respondent generally excepts to the ALJ's finding/conclusion that it engaged in direct dealing. GCX 24; GCX 30; Tr. 197-201, 248-250.

43. Respondent generally excepts to the ALJ's finding/conclusion that it refused to bargain over personal time. GCX 25; GCX 28; GCX 29; JE 5, p. 85; JE 13, p. 56-57; JE 15, p. 78, 81, 85; JE 17, p. 18, 46; JE 19, p. 6, 22, 23, 32; Tr. 177-181, 264-66.

44. Respondent generally excepts to the ALJ's finding/conclusion that it disparaged or denigrated the Union. GCX 24; GCX 30; GCX 31; JE 14, p. 15-16; JE 46, p. 2; JE 18, p. 10-11; Tr. 118-119, 135-140, 197-98, 246-250.

45. Respondent generally excepts to the ALJ's finding/conclusion that it made unlawful changes to its employee performance appraisal system. GCX 2, p. 58; GCX 5; GCX 7-9; GCX 11-13; Tr. 35-36, 45, 47-51, 182 184-85, 188-95, 270, 297-98, 321, 328-332.

46. Respondent generally excepts to the ALJ's finding/conclusion that it promised employees PPTO benefits if they decertified the Union. JE 5, p. 20-21; JE 9, p. 24; JE 15, p. 113-15; JE 22, p. 4; Tr. 102-03, 157-58, 160, 162, 166, 263, 340-43.

47. Respondent generally excepts to the ALJ's finding/conclusion that it conditioned acceptance of a collective bargaining agreement upon a permissive subject of bargaining. GCX 22; JE 34, 36, 38, 42, 44 and 49; Tr. 216, 272-73, 275, 313-315.

48. Respondent generally excepts to the ALJ's finding/conclusion that it engaged in bad faith bargaining. See Entire Record.

49. Respondent generally excepts to the recommended remedy of posting the notice contained in the Appendix to the ALJ's Decision.

50. Respondent generally excepts to the Conclusions of Law. (D. 41:26 - 42:37).

51. Respondent generally excepts to the Remedy. (D. 42:41 - 43:18).

52. Respondent generally excepts to the Order. (D. 43:20 - 45:16).

53. To the extent that Respondent's Brief in Support of its Exceptions references any of the ALJ's findings/conclusions not excepted to above, Respondent excepts to those findings/conclusions.

Respectfully submitted,

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By: /s Jonathan J. Spitz  
Jonathan J. Spitz  
Craig M. Stanley  
Daniel D. Schudroff  
Amanda J. Fray

Dated: July 24, 2019

ATTORNEYS FOR THE EMPLOYER

**CERTIFICATE OF SERVICE**

The undersigned affirms that on July 24, 2019, Respondent's Exceptions to Administrative Law Judge Michael A. Rosas's Decision were filed with the National Labor Relations Board using the e-filing system at [www.nlr.gov](http://www.nlr.gov), and that on the same day copies were served on the following individuals by electronic mail:

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