

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

**MERCEDES-BENZ U.S. INTERNATIONAL,
INC. (MBUSI)**

and

Case 10-CA-226249

KIRK GARNER, An Individual

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

Counsel for the General Counsel, pursuant to Section 102.46(a) of the Board's Rules and Regulations, files the following exceptions to the July 26, 2019 decision of Administrative Law Judge Arthur Amchan in this matter:

1. The judge's failure, on page 3, lines 11 through 16, lines 30 through 41, and page 4, lines 1 through 4, to consider the complete statement and circumstances of the August 10, 2018, threat admitted to by Supervisor Don Fillmore.
2. The judge's assertion, on page 3, lines 31 through 32, that Garner refused to train contractors.
3. The judge's finding, on page 3, lines 35 through 36, that Fillmore's statement to Garner, "I have a job to do, and since I'm not quite ready to retire, we all have a job to do," followed by "Kirk, please do not disrupt the group because that will not help or be good for anyone, we all have a job to do, and it's going to take everyone to do it," did not constitute a threat of adverse consequences.
4. The judge's finding, on page 3, line 38, through page 4, line 4, that Garner could have reasonably interpreted Fillmore's August 10, 2018, statement to "mean a lot of things."

5. The judge's finding, on page 4, lines 4 through 5, that Fillmore's August 10, 2018, statement "does not necessarily suggest that Fillmore or Respondent would retaliate against Garner if Garner encouraged others to refuse to train the temps or protest this assignment."
6. The judge's finding, on page 4, footnote 5, that the "cases cited by the General Counsel are easily distinguishable."
7. The judge's finding, on page 4, lines 6 through 7, that Fillmore's statement to Garner, "I have a job to do, and since I'm not quite ready to retire, we all have a job to do," followed by "Kirk, please do not disrupt the group because that will not help or be good for anyone, we all have a job to do, and it's going to take everyone to do it," did not interfere with, coerce, and/or restrain Garner in the exercise of his Section 7 rights, in violation of Section 8(a)(1) of the National Labor Relations Act.
8. The judge's failure, on page 3, lines 18 through 24, and page 4, line 12 through page 5, line 5, to consider the record testimony of Kirk Garner, Timothy Ivory, and Bill Thomas in relation to the polling/group interrogation allegation.
9. The judge's factual distinction, on page 4, lines 12 through 16, between interrogation and polling.
10. The judge's conflated application, on page 4, lines 12 through 30, of *Rossmore House*, 269 NLRB 1176 (1984), *affd.* 760 F.2d 1006 (9th Cir. 1985) and *Preterm, Inc.*, 240 NLRB 654 (1979).
11. The judge's assertions, on page 4, line 36, through page 5, line 5, that Respondent had a legitimate business justification for Supervisor Timothy Ivory's August 13, 2018, polling/interrogation of employees regarding their coworkers' protected concerted activities.

12. The judge's finding, on page 5, lines 1 through 2, that Ivory's August 13, 2018, polling/interrogation of employees was "reasonable and non-coercive."
13. The judge's finding, on page 4, line 36, through page 5, line 5, that Supervisor Timothy Ivory's polling/interrogation of employees did not violate Section 8(a)(1) of the Act.
14. The judge's failure to make credibility determinations regarding the testimony of Michael Benson, Don Fillmore, Kirk Garner, Timothy Ivory, Liz Kelly, and Bill Thomas.
15. The judge's recommendation that the complaint be dismissed.
16. The judge's failure to recommend that Respondent be ordered to cease and desist its unlawful conduct.
17. The judge's failure to recommend that Respondent be ordered to remedy its unlawful conduct.

The portions of the record and authority relied upon to support these Exceptions are cited in the accompanying supporting brief.

Counsel for the General Counsel respectfully requests that the Board grant these Exceptions and find, contrary to the Judge, that Respondent violated the Act as alleged in the complaint, order Respondent to cease and desist its unlawful conduct, and order Respondent to remedy its unlawful conduct. Alternatively, Counsel for the General Counsel respectfully requests that the case be remanded to the Administrative Law Judge for a decision which considers the complete record and the appropriate Board precedent.

DATED, this _____ day of August, 2019.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief of Counsel for the General Counsel by electronic transmission on this date to:

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