

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS,
LOCAL UNION NO. 542, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
(UNITED PARCEL SERVICE)

and

Case 21-CB-233544

DEREK CORREIA, AN INDIVIDUAL

**BRIEF OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS, LOCAL UNION NO. 542
IN SUPPORT OF ITS EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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I. STATEMENT OF THE CASE

On February 22, 2019, based on charges and amended charges filed by the Charging Party, Derek Correia, an individual, (“Correia”) against Respondent, Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 542 (“Local 542”), a Complaint and Notice of Hearing (“Complaint”) issued alleging that Local 542 violated Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. §§151-169 (“Act”) when an agent of Local 542, Paul Samson (“Samson”) “threatened employees of United Parcel Service (“UPS”) with loss of employment in retaliation for their union and protected concerted activities.”

On May 13, 2019, a hearing was held in San Diego, California before Administrative Law Judge Gerald M. Etchingham. On July 17, 2019, the judge issued his decision in which he found Local 542 violated Section 8(b)(1)(A) of the Act “by threatening Derek Correia with a loss of employment for engaging in the protected activity of handbilling.”

Pursuant to Section 102.46(a) (2) of the Board’s Rules and Regulations, Local 542 submits this brief in support of its Exceptions to the judge’s Decision finding a violation of Section 8(b)(1)(A) of the Act.

II. FACTS

Derek Correia (“Correia”) is employed as a full-time package car driver for UPS at the San Diego facility, 7925 Ronson Road, San Diego. He began his employment with UPS on February 18, 1998. Correia has been continuously employed until the present. He was off work from November 26, 2016 to September 28, 2018 for an injury and knee surgery.

Correia is a member of the bargaining unit at UPS represented by Local 542. Correia is a member of Local 542. Correia has engaged in handing out flyers to members to educate them and inform them of contractual issues. He also speaks to members. (Tr.p.24:16-22). He attends

some monthly membership meetings of Local 542 (Resp. Ex. 6A, 6B and 6C). There is no evidence of any negative interaction between Correia and Samson prior to or after the allegations related to December 14, 2018.

A. Correia's Testimony Concerning His Activities December 2017 and December 14, 2018

One of the flyers Correia, together with other UPS employees, gave to employees was General Counsel Exhibit 2. Correia with UPS employees Tara Jordan ("Jordan"), Rhett Dillard ("Dillard"), John Tunnell ("Tunnell") and Kurt Marchetta ("Marchetta") created this flyer in December 2017 (Tr.p.17-p.26:5; p.71:3-14). Samuel Vivanco ("Vivanco"), who handbilled with Correia on December 14, 2018, was not involved in creating or handing out the flyer in 2017 (Tr.p.30:13-p.31:8). Correia and Tunnell testified that they and the others created the flyer because they were getting complaints and calls from members concerning UPS management was forcing them to work six days a week and up to seventy hours a week. Correia said that some employees told them they spoke to Samson and what he said. Correia disagreed with what he heard and told the employees they would put together a flyer for the employees (Tr. p.26:20-p.27:17; Tr.p.71:20-24). The flyer was passed out once in 2017 (GC Ex2). No one from Local 542 said anything to Correia concerning this flyer or his passing out this flyer when this flyer was passed out in 2017 (Tr. p.27:18-p.30:12). Tunnell confirmed that no one from Local 542 said anything in December 2017 (Tr.p.71:25-P.72:12).

Because of the same issues, the same flyer was passed out by Correia, Tunnell and Vivanco on December 14, 2018 at the San Diego UPS facility in the parking lot, about ten yards from the guard shack. Correia and Vivanco were present from around 7 a.m. - 9 a.m. Marchetta
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was present at 7 a.m. but went into work prior to Samson's arrival at the UPS facility (Tr.p29:22-p.30:12).

According to Correia, Samson arrived sometime between 8:15 a.m. and 9 a.m. and talked to a member before he spoke to Correia. (Tr.p.31:9-p.32:10) Correia testified that Samson got right in his face and said "give me that flyer." Correia responded "absolutely not." Samson then said "let me look at it" to which Correia responded "no." Correia then testified that Samson asked him what he was doing here to which Correia responded "I'm doing my due diligence." Correia testified that Samson responded "Due diligence huh? You know what your problem is you have no integrity" to which Correia responded "integrity, you have no integrity. You never inform the members." Correia claimed that Samson responded "You don't know shit anyway. You've never been - you've been out so long with your injury, you don't know what's going on." Correia responded "That's why we're out here. We're informing and educating the members, because you never come out here." Samson walked away towards the guard shack and at that point Samson was five feet from Correia. According to Correia, while security was looking through Samson's items, Samson turned back and said to Correia "You know what man? Your days at this company are numbered. You're done. You're finished" to which Correia responded "Yeah you're finished too." Samson ended the conversation with "Do me that favor" and walked into the building (Tr.p.32:11-p:33:15).

Correia testified that he did not give Samson a copy of the flyer because in the past, when Samson became a business agent, he would call Correia to ask his advice on issues. Correia would answer and then Samson would take credit for it. He claimed this went on for a couple of years - Samson always asking him for advice. So he thought to himself, "Well I'm paying him, and this is going on for a couple of years and it's the same situation. Always asking him for

advice when he's the business agent, so I did not want him taking credit for the flyer"

(Tr.p.33:16-p.34:2).

In a tweet to other UPS employees on December 14, 2018, just after the exchange, and in his testimony, Correia acknowledged that he had a heated conversation with shop steward Rob Moreno ("Moreno") that morning and that Moreno called Samson (GC Ex 3; GC Ex. 4A; Tr.p.49:16-p.50:13). Correia tweeted that Samson asked for a flyer and he refused and "needless to say it ended in a shouting match in front of all the drivers coming in at the guard shack" and that Samson said "he'll make sure I'm out of UPS and I also promised him the same fate." (GC Ex 3 and 4 A, B, C) Tunnell confirmed that Correia and Moreno had a heated conversation, although he did not hear it (Tr.p.76:19-p.77:9).

Correia's testimony as to the events is partially supported by UPS employee Vivanco, who has been employed by UPS since May 1998. Vivanco passed out flyers two times, June of 2018 and December 14, 2018. (Tr.p.60:15-p.61:1). He passed out flyers on December 14, 2018 at Correia's request (Tr.p.61:2-4). Vivanco did not testify to any negative interaction with Samson prior to December 14, 2018 nor to any negative interaction with him personally on December 14, 2018.

On December 14, 2018 Vivanco arrived at the UPS San Diego facility a little after 7. Tunnell and Correia were already present. They passed out the flyer inside the parking lot, close to the guard shack (Tr.p.61:15-p.62:4). Vivanco saw Samson coming into the parking lot around 8:20 a.m. (Tr.p.62:5-24) According to Vivanco Samson walked straight up to Correia, got very close to his face - his "arm length" away - and said "Can I have one of those?" Correia responded "No you cannot" to which Samson responded "Why not?" Correia stated "Because we did this, you know for our members and you didn't. Then Samson said to Correia "like what are you

doing her?” Correia responded “I’m here doing my due diligence because it will help the members with any information.” Samson responded “you have no integrity” and then went to the guard shack and then as Samson was getting closer to the guard shack and the metal detector Vivanco testified that Samson told Correia “his days were, you know numbered with the company, he was done.” As Samson crossed the metal detector in the guard shack Correia responded “No your days are over.” Samson took his personal items and told Correia he will do him a favor and walked away (Tr.p.62:25-p.64:8).

B. Correia’s Activities Handbilling Prior to December 14, 2018

Correia over a two year period 2017-2018 handed out at least 10-11 flyers. Only one flyer was used more than once, the flyer in issue on December 14, 2018. (Tr.p.38-25-p.40:9).

In 2017, Correia, with other UPS employees, passed out flyers six or seven times at UPS facilities in San Marcos, San Diego and Chula Vista. Samson was present one other time in 2017 other than December and did come up. There was no testimony of any negative interchange (Tr.p.37:25-p.38:18).

In 2018, Correia, with other UPS employees, passed out flyers three or four times at UPS facilities including December 14, 2018. Correia saw Samson only one time in 2018, December 14, 2018. (Tr.p.38:22-p.39:24)

C. Correia’s Activities Handbilling After December 14, 2018

From December 14, 2018 through the date of the hearing, May 13, 2019, Correia, with other UPS employees, passed out flyers at least four times at Costco and an least three or four times at the Chula Vista UPS facility (Tr.p.40:17-p.41:3). The flyers handed out at Costco by Correia and the other UPS employees were about the Costco contract (Tr.p.78:7-16). There was

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no testimony about any negative interaction with Samson or any other Local 542 representative during any of these handbilling efforts.

D. Correia's Telephone Calls to Samson in 2018

Correia telephoned Samson about contract issues in 2018. He phoned Samson on January 19, 2018 about combo jobs (Resp Ex. 4). He telephoned Samson about combo jobs again on May 21, 2018 (Resp. Ex. 3). He telephoned Samson on October 10, 2018 with a "question about the contract" and hoping Samson could help him out with the question." (Resp. Ex. 5). Samson returned all his calls (Tr. P.46:19-p.47:17).

E. Correia's Attendance at Local 542 Membership meetings and Seeing Samson After December 14, 2018

In 2017, Correia attended Local 542 membership meetings on May 18, 2017, October 19, 2017, November 16, 2017 and December 17, 2017 (Resp Ex. 6A).

In 2018 Correia attended Local 542 membership meetings on January 18, 2018, April 19, 2018, May 17, 2018, September 16, 2018, October 18, 2018 and November 15, 2018 (Resp Ex 6B)

In 2019 Correia attended Local 542 membership meetings on January 17, 2019, February 21, 2019, and April 18, 2019 (Resp Ex 6C).

Correia confirmed his attendance at the meetings (Tr.p.47:18-p.48:25).

Correia also saw Samson at the UPS San Diego facility after December 14, 2018. He denied having any conversation with Samson. According to Correia, Samson does not speak to him and he does not speak to Samson (Tr.p.50:20-p.51:10)

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F. Paul Samson Background

Samson has been a member of Local 542 for 25 years. He was employed at UPS June 7, 1994. He initially was employed at the Chula Vista facility as a package handler/unloader. He was promoted to full time and an Article 22.3 combo employee in 2000. A combo job is made by putting two part-time jobs together to make a full time position. He was appointed on January 7, 2008 as a business representative by then Secretary-Treasurer of Local 542, Ken Lundgren.

As a business representative for Local 542 Samson is presently responsible for the UPS San Diego and Chula Vista facilities and American Red Cross. His responsibilities as a business representative are to police the collective bargaining agreement, answer questions, represent employees in meetings, process grievances, make telephone calls, and visit facilities. For the San Diego and Chula Vista UPS facilities he services approximately 1000 UPS employees (Tr.p.98:4-7). Samson serves on the negotiations committees for the UPS Southwest Sort Rider (Jt. Ex. 2D), the UPS Southwest Package Rider (Jt. Ex. 2C) and the UPS Western Region Supplemental Agreement (Jt. Ex. 2B). He also was appointed to serve on the negotiations for the National Master UPS Agreement (Jt. Ex. 2A) (Tr.p.98:8-21).

G. Samson Interaction with Correia Prior to December 14, 2018

Samson handled grievances filed by Correia in 2016, settling all the grievances filed (Tr.p.99:12-p.100:1). Correia did not work in 2017 because of his injury.

Correia telephoned Samson about contract issues in 2018. He phoned Samson on January 19, 2018 about combo jobs (Resp Ex. 4). He telephoned Samson about combo jobs again on May 21, 2018 (Resp. Ex. 3). He telephoned Samson on October 10, 2018 with a “question about the contract” and “hoping Samson could help him out with the question.” (Resp. Ex. 5). Samson returned all his calls and answered his questions (Tr.p.100:2-23). As noted above, Samson

having worked as a combo employee had personal experience with the process as well as knowledge of the collective bargaining agreement.

Samson denied ever calling Correia to ask him for advice about what the collective bargaining agreement provided (Tr.p.100:23-p.101:1).

Employees prior to December 14, 2018 had raised issues about the hours they were required to work. Samson discussed the issues with the employees (Tr.p.102:4-9).

Starting in 2017 and prior to December 14, 2018, Samson saw UPS employees passing out flyers to employees and he also heard that UPS employees, including Correia, were passing out flyers. Samson told anyone that reported the flyer activity to him that the employees had the right to pass out flyers (Tr.p.102:25-p.103:14; p.104:2-6). Samson believes he saw UPS employees passing out flyers in 2017, but he did not recall if he asked for a flyer in 2017 (Tr.p.103:15-p.104:1).

H. Samson Testimony Concerning December 14, 2018

Samson testified as to everything he said on December 14, 2018.

On December 14, 2018 while on his way to service the San Diego UPS facility, Samson received a telephone call from union steward Moreno that he had gotten into a big argument with the people that were passing out the flyers. Samson told Moreno he was on his way to the facility, not to argue with them and they have a right to handbill (Tr.p.105:14-24).

At the facility, Samson asked Correia politely “Can I have a copy” to which Correia responded no. Samson asked why not. Correia responded because “you don’t do shit for the members.” Samson responded how do know when you haven’t been around for a year and half. Correia responded that Samson had seen him out at the facilities passing out flyers. Samson said “where’s your integrity.” Because Correia was getting loud, Samson walked away to walk to the

guard shack and as he was putting his things in the metal detector, Correia called out “You’re not going to be here very long.” Samson responded do me a favor. He continued through security. Turner was at the guard shack with him during the end of the exchange (Tr.p.105:25-p.106:16).

Samson thinks he saw the flyer in the building. The flyer just stated DOT and contractual provisions. He had no objection to the flyer (Tr.p.108:12-21).

I. Samson Contact with Correia After December 14, 2018

One to two weeks after December 14, 2018, while servicing the San Diego UPS facility, Samson saw Correia. He said good morning to Correia who said good morning to Samson (Tr.p.106:17-p.107:4). He saw Correia at the facility again but there was no interaction (Tr.p.107:7-14).

Samson also saw Correia at Local 542 membership meetings (Tr.p.107:6-7). In 2019 Correia attended Local 542 membership meetings on January 17, 2019, February 21, 2019, and April 18, 2019 (Resp. Ex. 6C).

J. Petitions Against Paul Samson

The General Counsel in its cross-examination of Samson, stated that he was not contending Samson’s alleged threat was in retaliation for the petitions circulated against Samson in April/May 2018 and discussed at a UPS meeting on June 2, 2018 (Tr.p.114:1-2; Resp.Ex.8,9).

The petitions are Respondent Exhibits 8 - San Diego Building and 9 - Chula Vista Building. There was no evidence that Correia had any involvement in the creation of or circulation of the petitions. Dillard testified that he did not know if Correia was or was not involved with the petition (Tr.p.134:8-13). Correia did not sign the petitions (Resp. Ex. 8 and 9).

Phil Farias (“Farias”) is President of Local 542. He has held the elected position of President for 14 years. Prior to his election, he was employed by UPS. Farias testified that in

response to the petitions he had his office manager, Teresa Diaz, randomly select 50 signatories, 25 from each petition, to whom he sent letters asking them to contact him concerning the petition and “why you feel Paul should be removed.” He had nothing to do with choosing who got the letter. He received two telephone calls in response to the letters. (Resp. Ex. 10; Tr.p.125:3-p.126:2; p.136:12-23).

Samson truthfully responded that the petitions were a big deal because it questioned his position and integrity. He took the petitions professionally, but he believed the claims were false and he did not take them personally. (Tr.p.114:16-p.115:1; p.122:11-25).

There were UPS employees passing out flyers in 2017 and 2018 who signed the petitions: Dillard (Resp. Ex.8(G)) and Vivanco (Resp. Ex.8(G)).

K. June 2, 2018 UPS Collective Bargaining Agreement Update Meeting

On June 2, 2018, there was a meeting held by Local 542 for UPS employees to update them on collective bargaining negotiations. Samson at this meeting was given an opportunity to address the petitions - to give his side about what he believed led up to the petition - an employee who was unhappy about his not being given a driving position. The issue of the driving position was taken to panel arbitration upholding the employee was not entitled to the driving position. (Tr.p121:1-16; p.126:3-14. Samson had the stewards join him in front of the meeting.

Correia was not at the June 2, 2018 meeting (Tr.p.131:1-11).

III. JUDGE’S FINDINGS

The Judge found that Local 542 violated Section 8(b)(1)(A) of the Act by its agent Paul Samson threatening Charging Party Correia with loss of employment for engaging in the protected activity of handbilling. The Judge noted that “This case turns on the disputed testimony by four witnesses about the December 14 threat that Samson, a union official, gave to

the Charging Party....” (ALJ Decision 2:17-20) The Judge discounted the testimony of Samson denying that he made the threat based on his determination that “Samson’s willingness to lie regarding his being bothered or upset about the petition to remove him makes his other testimony less credible.” (ALJ Decision 8:23-25). The Judge also found that there was no conflict between Samson’s version of the events of December 14th and the version of Correia and Vivanco as to whether Samson made a threat because “he did not testify that he did not make a threat.” (ALJ Decision 8:16-21). The Judge disregarded that Samson testified to everything that occurred on December 14th so his testimony would not include the threat because it did not occur. Samson did not “jump from asking whether Correia had any integrity to Correia saying Samson was going to be gone from the union.” He testified as to what was said, omitting nothing. (ALJ 8:18-19). Contrary to the Judge’s finding that he was untruthful as to the effect of the petitions on him, Samson testified that the petitions were a big deal because it questioned his position and integrity, but he believed the claims were false and he did not take them personally. (Tr.p.114:16-p.115:1; p.122:11-25).

The Judge found that “there are no credibility issues for Correia and Vivanco” (ALJ Decision 8:26). But in making the credibility finding, the Judge did not address any of the factors and testimony raised by Local 542 relating to Correia’s credibility.

The Judge did not find that the threat Samson made coerced or intimidated Correia from exercising his protected right of handbilling. The evidence is clear that it did not. Instead the Judge found a violation based upon his finding that the threat Samson made would reasonably coerce Correia from exercising his protected right of handbilling, misreading the decision in *Carpenters Union Local 180*, 328 NLRB 947 (1999).

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The Judge also failed to address Correia's activities handbilling not only at UPS, but now also at Costco after the alleged threat in relation to what the *Carpenters* decision actually held as well as in relation to Correia's credibility that a threat was made.

While the Judge references the petitions and June union meeting as a basis for his decision only as to credibility, he calls out the petitions and states that "the story here begins with the Charging Party's December 2017 handbilling and a subsequent petition to remove Samson as the business agent the following summer." (ALJ Decision 2:24-26) He has found the petitions to be a motivating factor for the threat to Correia where Correia had nothing to do with the petitions.

The Judge in finding that the "story" of the threat "began with the December 2017 handbilling" by Correia but then disregarded the evidence that there was other handbilling by Correia in December 2017, and handbilling by Correia in 2018 and 2019, both before and after the alleged threat. In 2017 Correia handbilled six or seven times at the UPS facilities in San Marcos, San Diego, and Chula Vista. Samson was present one other time in 2017 besides December 2017 and he did come up to Correia. (Tr. p.387:25-p.38:18; p.38:22-p.39:24). Nothing happened. Correia handbilled with at least 10-11 flyers in a two year period with no action by Local 542 including Samson. The particular flyer used in December 2017 and 2018 was the only time the same flyer was used two different years (Tr. p.38:25-p.40:9). After December 14, 2018 to the date of the hearing Correia has handbilled at least four times at Costco and at least three or four times at UPS (Tr. p.40:17-p.41:3).

IV. ARGUMENT

The Respondent has excepted to some of the Judge's credibility findings and failure to consider credibility issues related to the Charging Party. Respondent is aware that the Board's

established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect.

Standard Dry Wall Products, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). It is the Respondent's position that the clear preponderance of all the relevant evidence shows that the basis for the Judge's credibility findings and the failure to consider issues related to the credibility of the Charging Party warrant reversing the findings as to credibility in this case.

Local 542 raised a number of issues related to the credibility of the Charging Party. The Judge did not address these issues in his Decision. Additionally, the Judge made a credibility determination concerning Samson's testimony based on his determination that Samson "jumped over" facts.

The Judge linked Correia to the petitions filed against Samson and the meeting where the petitions were discussed, where the evidence was clear that Correia was not involved in the petitions, did not sign the petitions and was not at the meeting where the petitions were discussed.

The Judge in finding "the story began" with the December 2017 handbilling by Correia, disregarded the evidence concerning the lack of any activity by Local 542 or Samson in response to the December 2017 handbilling and the fact that there was days of handbilling by Correia in 2017, 2018 and 2019 with no action or response by Local 542 including Samson. This included handbilling after the petitions as noted above in the facts (Sections II B and C) at not only UPS but also now at Costco. The Judge also disregarded Correia's attendance at Local 542 membership meetings in 2017, 2018 and 2019, as noted above in the facts (Sections II E and I). There was no adverse action toward Correia at these meetings.

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The Judge also did not address the fact that Correia's Section 7 activity increased after the alleged threat, handbilling not only at UPS but now also at Costco. This fact goes to Correia's credibility and the ultimate finding of a violation of the Act.

A. Credibility Issues Raised by Local 542 Which Were Not Addressed

1. Correia's Testimony That Samson Was Seeking His Help To Be A Business Representative Was Not Credible

Correia testified that Samson throughout his employment as a business representative called Correia to ask him for advice and help with the collective bargaining agreement. This was raised by Local 542 as not being credible.

Samson was employed longer than Correia. He was hired as a business representative by Local 542. Samson denied ever calling Correia for advice or his help on the collective bargaining agreement. It makes no sense that he would make such a call.

Further, there was evidence that Correia was calling Samson about the collective bargaining agreement. If Samson needed to call Correia to answer members' questions about the collective bargaining agreement as Correia claims, why would Correia call Samson about the collective bargaining agreement? Correia filed grievances that Samson handled in 2016. As noted in the Facts above (Section II D), in 2018 Correia called Samson three times about questions Correia had about the collective bargaining agreement. One call on May 21, 2018 was while the petitions were being circulated. One of those calls, October 18, 2018, was after the petitions had been circulated in May 2018. Clearly, Correia believed Samson could provide him answers he was seeking despite his claim that Samson was always calling him for answers about the collective bargaining agreement.

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2. There Was No Evidence Of A Reason For Samson To Threaten Correia

The Judge in his Decision focused on two bases for Samson to threaten Correia: Correia's handbilling in 2017; and the petitions circulated complaining about Samson's performance.

a. December 2017 Handbilling

The handbill used in December 2017 and December 2018 were the same handbill. There was no evidence that there was any comment or action by anyone at Local 542, including Samson to the December 2017 handbill. The handbill only stated what is in the collective bargaining agreement and the Department of Labor regulations. Yet, the Judge made the specific statement that the story of the threat begins with the December 2017 handbilling. In making such a statement the Judge cited to no evidence to support such a statement. The Judge could not in fact cite to any such evidence, because there was no such evidence. The fact that the same handbill was used in December 2017 with no comment or action by Local 542 supports that there was no reason that this same handbill in December 2018 would result in a threat by Samson to Correia.

Further, as set out above in the Facts, in 2017 Correia handbilled UPS with other UPS employees six or seven times at UPS facilities in San Marcos, San Diego and Chula Vista. There was no testimony of any negative interchange (Tr.p.37:25-p.38:18). In 2018, Correia, with other UPS employees, passed out flyers three or four times at UPS facilities including December 14, 2018. Local 542 argued that it made no sense that there would be no comment or reaction to handbilling in 2017 or 2018 and suddenly on December 14, 2018 that Local 542 through Samson would threaten Correia because of a handbill previously handed out. While the Judge focused only on December 2017 handbilling somehow starting the story of the threat, he disregarded the

handbilling that occurred between December 2017 and December 2018 as well as in 2019 as being part of the story of what occurred in this case.

b. The Petitions and the June Meeting

The General Counsel stated that he was raising the issue of the petitions from the San Diego facility and Chula Vista facility against Samson, not contending the alleged threat was in retaliation for the petition, but to show Samson's background state of mind on December 14, 2018. Despite this position by the General Counsel and the fact that the petitions are not cited in the Amended Complaint, the Judge in his statement that the story of the threat begins with a subsequent petition to remove Samson, demonstrates that he found the petitions to be a motivating factor for the threat. The Judge clearly based his Decision on his finding that the threat was in retaliation for the petitions. In making this determination, the Judge disregarded the evidence that showed Correia was not involved in any way in the petitions, so if there was going to be a threat because of the petitions, why would there be a threat against Correia, rather than against someone involved with or who signed the petitions? Local 542 denies that there was any threat.

The Petitions were circulating in April/May of 2018. A review of the petitions show that Correia did not sign the petitions. Dillard and Vivanco signed the petitions (Resp Ex 8G). Correia, Tunnell, Jordan, and Marchetta did not sign the petitions (Resp Ex 8 and 9). There is no evidence that Correia was involved in creation of or circulation of the petitions. If in fact Correia had any involvement in the petitions, the General Counsel would have had him so testify to establish that he did. Correia did not so testify.

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Nor was Correia present at or involved in a meeting to update the UPS employees on the contract negotiations on June 2, 2018. Samson was given time at this meeting to address the petitions.

There is nothing in evidence to explain why seven months after the petitions and six months after the June 2 meeting, Samson would suddenly threaten Correia because of the petitions. Yet the Judge clearly made such a determination.

3. Samson Was Asked To Testify About What Was Said On December 14, 2018 Which He Did

The Judge found that Samson simply “jumped” over the fact that he made the threat when he testified, so therefore there was no actual conflict between the testimonies of Correia, Vivanco and Samson on the issue of whether a threat was made. The Judge found that Samson did not testify that he did not make a threat and that therefore there was no actual conflict between the testimonies of Samson, Correia and Vivanco regarding whether the threat was made. There was no basis for these findings.

The Judge stated that Samson “jumped from asking Correia” about his integrity to the threat Correia made against Samson. The Judge’s finding of no actual conflict is based upon his presumption that Samson made the threat but chose not to testify to it. There was no basis for such a finding. Samson was asked to testify to what was said by him and by Correia and on direct and cross and he so testified.

4. Correia’s Section 7 Activities After the Alleged Threat Belie A Threat Was Made

Local 542 has excepted to the Judge’s failure to address in relation to Correia’s credibility as to whether a threat was made, Correia’s continuing to handbill at UPS and adding handbilling at Costco after the alleged threat. Local 542 raised the issue of Correia’s continuing to handbill at

UPS and to add handbilling at Costco between the date of the alleged threat December 14, 2018 up to the date of the hearing shows that Correia was clearly not coerced and would not be the reaction of someone who was threatened for engaging in the activity. The evidence in fact establishes that neither Correia nor any other employee was restrained or restrained or coerced in the exercise of their Section 7 rights as a result of the alleged threat.

Since the alleged threat, Correia and the other UPS employees continued to distribute flyers to UPS employees. Correia has done so at least four times since the alleged threat. Not only did Correia continue to distribute flyers at UPS facilities to UPS employees, Correia after the alleged threat, was now additionally distributing flyers at Costco facilities to Costco employees.

Since the alleged threat, Correia and the other UPS employees have continued to attend Local 542 general membership meetings.

There is no evidence that Correia has stopped talking with fellow employees or answering their questions. In fact the continued distribution of flyers makes it unlikely that he has done so.

The evidence was that Correia and other employees continued to engage in Section 7 activity and in fact has increased what they were doing, where they were doing it and to whom they were doing it. This is not the reaction of an employee who was threatened for engaging in this activity.

B. There is No Evidence to Support a Finding That Respondent's Statement Reasonably Tended to Coerce or Intimidate Correia

The Judge in finding a violation of Section 8(b)(1)(A) of the Act cited to *Carpenters Union Local 180*, 328 NLRB 947 (1999) in support of his finding in this case. The *Carpenters* decision does not support a finding of a violation in this case.

The activity by Correia and other UPS employees in continuing to engage in the Section 7 protected activity of handbilling and to even increase where and to whom it was handbilling, established that there was no unlawful restraint of Correia from exercising his Section 7 right to engage in the protected activity of handbilling. The Judge disregarded this evidence and misread the finding in the *Carpenters* case.

The Board's decision in the *Carpenters* case asked "whether Respondents agents statements on July 8 and 9 reasonably tended to coerce or intimidate Joel and Eliseo Calderon in the exercise of their rights, as protected by the Act..." *Carpenters Union Local 180* at p. 949. This is a question to be answered specific to the facts of the case and the parties involved in the case, and not a general question as to whether conduct would tend to coerce or intimidate any employees. There is no evidence in this case, as there was in the *Carpenters* case that "Respondents' threats reasonably tended to coerce and intimidate the Calderons in the exercise of their Section 7 rights." In this case Correia was neither coerced nor intimidated in the exercise of his Section 7 rights. Accordingly, there is no basis for a finding that Local 542 violated Section 8(b)(1)(A) of the Act.

Additionally the Judge misunderstood why Local 542 raised the issue that Correia did not believe or state that he believed that Samson could affect his employment with UPS. In the *Carpenters* case the Board noted that both Joel and Eliseo Calderon testified they believed that the union agent was telling them the truth as to what was being threatened. *Carpenters Union Local 180* at p.950. In this case, there is no evidence that Correia believed that Samson could affect his employment. He never so testified.

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V. CONCLUSION

A full consideration of all the evidence shows that there should be a finding that Local 542 did not violate Section 8(b)(1)(A) of the Act. The Complaint should be dismissed.

Dated: August 13, 2019

SMITH STEINER VANDERPOOL, APC

BY: _____



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