

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

NOAH'S ARK PROCESSORS, LLC d/b/a
WR RESERVE

and

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL UNION NO. 293

Cases 14-CA-217400
14-CA-224183
14-CA-226096
14-CA-231643
14-CA-235111

**RESPONDENT NOAH'S ARK PROCESSORS, LLC'S EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Noah's Ark Processors, LLC ("Respondent") files the following Exceptions to the October 11, 2019, Decision of Administrative Law Judge ("ALJ") Andrew S. Gollin in the above-captioned cases.

Respondent excepts to the ALJ's Decision as follows:¹

1. To the finding that "Respondent discharged Guadalupe Ortiz, Viviana Hernandez, Brittney Spratt, Jimmy Deleon, Luz Maurant Lao, Jacinto Gomez, Maria Diaz, Sandra Diaz, Kyle Anzualdo, and Maya Keana Wright because they engaged in a protected, concerted work stoppage to collectively protest their wage issues, in violation of Section 8(a)(1)," (D 24, L 4-7), as such finding is contrary to the record as a whole, and contrary to established Board law.

2. To the finding that "Respondent, through Hernandez and Helzer, violated Section 8(a)(1) with their statements in the cafeteria, the hallway, and in the parking lot," (D 24, L 9-10), as such finding is contrary to the record as a whole, and contrary to establish Board law.

¹ References to the ALJ Decision are identified page and line numbers as follows: "D (page number), L (line number)."

3. To the finding that “Respondent, through supervisors Murillo and Madrigal, violated Section 8(a)(1) when they interrogated employees about whether they had received a Board subpoena,” (D 29, L 19-20), as such finding is contrary to the record as a whole, and contrary to established Board law.

4. To the finding “I make the same finding regarding Josue Guerrero’s questioning of the employees on his line as to whether they had received a letter about the Union,” (D 29, L 20-22), as such finding is contrary to the record as a whole, and contrary to established Board law.

5. To the finding “Respondent, through Hernandez and Madrigal, violated Section 8(a)(1) when they questioned Hernandez-Acosta about the contents of his meeting with “the feds,” (D 29, L 31-32), as such finding is contrary to the record as a whole, and contrary to established Board law.

6. To the finding “Respondent, through its supervisors, violated Section 8(a)(1) by unlawfully interrogating its employees,” (D 30, L 4-5), as such finding is contrary to the record as a whole, and contrary to established Board law.

7. To the finding “Respondent violated Section 8(a)(1) by requiring employees to meet with and/or use attorneys retained and compensated by Respondent prior to and during their meetings with Board agents, thereby interfering with the Board’s processes,” (D 31, L 4-6), as such finding is contrary to the record as a whole, and contrary to established Board law.

8. To the finding “that telling employees they cannot be trusted to speak to a Board agent without a company-provided attorney would reasonably inhibit employees from resorting to the Board for the protection of their Section 7 rights, and that Hernandez’s statements to

Hernandez-Acosta violated Section 8(a)(1),” (D 31, L 25-27), as such finding is contrary to the record as a whole, and contrary to established Board law.

9. To the finding “Respondent violated Section 8(a)(5) and (1) when it failed or refused to bargain in good faith with the Union over a successor agreement,” (D 39, L 33-34), as such finding is contrary to the record as a whole, and contrary to established Board law.

10. To the finding “Respondent violated Section 8(a)(5) and (1) when it unlawfully implemented its last, best, and final offer, which unilaterally changed mandatory subjects of bargaining, including articles addressing dues checkoff, grievance procedures, safety, holidays, union access, and the term of the agreement, without first bargaining with the Union to an overall good-faith impasse,” (D 42, L 5-9), as such finding is contrary to the record as a whole, and contrary to established Board law.

11. To the finding “Respondent violated Section 8(a)(1) and (5) by undermining or denigrating the Union as the representative of the Unit employees,” (D 43, L 18-19), as such finding is contrary to the record as a whole, and contrary to established Board law.

12. To the conclusion of law that “on or about March 27, 2018, Respondent, through Paul Hernandez and Mike Helzer, threatened employees with termination for engaging in protected, concerted activities, told employees they were terminated for engaging in protected, concerted activities, and threatened to call the police because the employees engaged in protected, concerted activities, in violation of Section 8(a)(1) of the Act,” (D 45, L 25-28), as such conclusion is contrary to the record as a whole, and contrary to established Board law.

13. To the conclusion that “in about early November 2018, Respondent, through Paul Hernandez, Joel Murillo, Jose Madrigal, and Josue Guerrero, interrogated employees about their

Union and/or Board activities, in violation of Section 8(a)(1) of the Act,” (D 45, L 38-40), as such conclusion is contrary to the record, and contrary to established Board law.

14. To the conclusion that “[i]n about early November 2018, Respondent, through Paul Hernandez, Joel Murillo, and Jose Madrigal, required employees to meet with and/or use attorneys retained and compensated by Respondent prior to and when meeting with Board agents, in violation of Section 8(a)(1) of the Act,” (D 45, L 42-44), as such conclusion is contrary to the record as a whole, and contrary to established Board law.

15. To the conclusion that “[i]n about early November 2018, Respondent, through Paul Hernandez, told employees they were required to use Respondent’s paid attorneys when meeting with the Board’s agents and stated they were required to use the Respondent’s paid attorneys to meet with the Board’s agents because Respondent didn’t want employees to be confused speaking to the Board agents or use a word that he didn’t know how to use properly, in violation of Section 8(a)(1) of the Act,” (D 45, L 46-50), as such conclusion is contrary to the record as a whole, and contrary to established Board law.

16. To the conclusion that “[o]n or about March 27, 2018, Respondent terminated employees Guadalupe Ortiz, Viviana Hernandez, Brittney Spratt, Jimmy Deleon, Luz Maurant Lao, Jacinto Gomez, Maria Diaz, Sandra Diaz, Kyle Anzualdo, and Maya Keana Wright, because they engaged in protected, concerted activities by collectively requesting from Respondent explanations of wage discrepancies and demanding a wage increase, in violation of Section 8(a)(1) of the Act,” (D 46, L 1-5), as such conclusion is contrary to the record as a whole, and contrary to established Board law.

17. To the conclusion that “[o]n about January 30, 2019, Respondent declared impasse and implemented its last, best and final collective-bargaining proposal addressing mandatory

subjects of bargaining, such as dues checkoff, grievance procedure, safety, holidays, union access, and term of agreement, without first bargaining with the Union to an overall good-faith impasse for a successor collective-bargaining agreement, in violation of Section 8(a)(1) and (5) of the Act,” (D 47, L 4-8), as such conclusion is contrary to the record as a whole, and contrary to established Board law.

CONCLUSION

For the foregoing reasons, and the reasons set forth in Respondent’s Brief in Support of Exceptions, the Respondent respectfully requests that the Board reject the ALJ’s findings, conclusions of law, recommended Remedy, recommended Order, and “Notice to Employees” to the extent inconsistent with Respondent’s Exceptions.

Respectfully submitted,

DATED this 8th day of November, 2019.

NOAH’S ARK PROCESSORS, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2019, I caused the foregoing document to be filed via E-Filing with the Board’s Office of the Executive Secretary. I hereby certify that on November 8, 2019, I caused the foregoing document to be electronically mailed to the attorneys representing the parties:

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