

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 150, A/W
INTERNATIONAL UNION OF OPERATING
ENGINEERS, AFL-CIO

and

Case 25-CC-230368

MAGLISH PLUMBING, HEATING, & ELECTRIC,
LLC

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

Comes now Counsel for the General Counsel and, for the reasons set forth in Counsel for the General Counsel's Brief in Support of Exceptions, respectfully excepts to the decision issued in this matter by Administrative Law Judge Kimberly R. Sorg-Graves on October 16, 2019.

1. Counsel for the General Counsel excepts to the Judge's finding on page 2, lines 13-19, that Respondent did not violate the Act by placing a stationary inflatable rat, sign, and banner at the intersection of Old Porter Road and Route 20 in Portage, Indiana (hereafter "near the Maglish Shop") or at the construction site of Gary Carroll's personal residence located on Division Road in Valparaiso, Indiana (hereafter "Division Road Jobsite").

2. Counsel for the General Counsel excepts to the Judge's finding on page 7, fn. 11, that Counsel for the General Counsel made no argument that Respondent's actions violated Section 8(b)(4) of the Act under current Board law.

3. Counsel for the General Counsel excepts to the Judge's finding on page 8, lines 33-38, that the banner and sign Respondent displayed near the Maglish Shop and at the Division Road Jobsite involved First Amendment rights akin to the First Amendment rights implicated in *Eliason & Knuth of Arizona, Inc. (Eliason & Knuth)*, 355 NLRB 797 (2010) and *Brandon Regional Medical Center (Brandon II)*, 356 NLRB 1290 (2011).

4. Counsel for the General Counsel excepts to the Judge's finding on page 9, lines 7-15, that proximity of the rat, sign, and banner to the Maglish Shop and the Division Road Jobsite was indistinguishable from the displays found lawful in *Eliason & Knuth of Arizona, Inc. (Eliason & Knuth)*, 355 NLRB 797 (2010) and *Brandon Regional Medical Center (Brandon II)*, 356 NLRB 1290 (2011).

5. Counsel for the General Counsel excepts to the Judge's finding on page 9, lines 20-24, that the size or appearance of the rat, sign, and banner displayed by Respondent near the Maglish Shop and at the Division Road Jobsite was indistinguishable from the displays found lawful in *Eliason & Knuth of Arizona, Inc. (Eliason & Knuth)*, 355 NLRB 797 (2010) and *Brandon Regional Medical Center (Brandon II)*, 356 NLRB 1290 (2011).

6. Counsel for the General Counsel excepts to the Judge's finding on page 10, lines 13-16, that the rat, sign, and banners Respondent displayed near the Maglish Shop or at the Division Road Jobsite were no more coercive, threatening, or restraining than those considered by the Board in *Eliason & Knuth of Arizona, Inc. (Eliason & Knuth)*, 355 NLRB 797 (2010) and *Brandon Regional Medical Center (Brandon II)*, 356 NLRB 1290 (2011) and thus did not violate Section 8(b)(4)(ii)(B) of the Act.

7. Counsel for the General Counsel excepts to the Judge's finding on page 11, lines 31-34, that the record contained insufficient evidence of picketing, conduct tantamount to

picketing, or otherwise coercive conduct that would establish a violation of Section 8(b)(4)(ii)(B) of the Act or that Respondent's conduct was specifically directed at employees of Maglish or other employees.

8. Counsel for the General Counsel excepts to the Judge's failure to find on page 12, lines 10-11, a violation of Section 8(b)(4)(i)(B).

9. Counsel for the General Counsel excepts to the Judge's Conclusion of Law on page 12, lines 22-24, that Respondent did not violate Sections 8(b)(4)(i) or (ii)(B) of the Act by displaying an inflatable rat, sign, and banner near the Maglish Shop and at the Division Road Jobsite.

10. Counsel for the General Counsel excepts to the Judge's order on page 12, line 28, that the complaint is dismissed in its entirety.

Respectfully submitted,

/s/ Tiffany J. Limbach

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Counsel for the General Counsel's Exceptions to the Administrative Law Judge's Decision have been filed electronically with the Executive Secretary of the Board through the Board's E-Filing System this 13th day of November 2019. Copies of the filing are being served upon the following persons by electronic mail:

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