

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Washington, D.C.

ARAKELIAN ENTERPRISES,
INC., D/B/A ATHENS SERVICES

and

TEAMSTERS LOCAL 396

Cases 31-CA-223801
31-CA-226550
31-CA-232590
31-CA-237885

CHARGING PARTY TEAMSTERS LOCAL 396's EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE'S DECISION AND RECOMMENDED
ORDER

Respectfully Submitted by:

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Pursuant to Section 102.46 of the National Labor Relations Board's ("NLRB" or "Board") Rules and Regulations, Charging Party Teamsters Local 396 ("Charging Party" or "Teamsters Local 396") submits the following Exceptions to the December 30, 2019 Decision of Administrative Law Judge Jeffrey D. Wedekind ("the ALJ") in the above-captioned matter.

Charging Party also submits its concurrently-filed Brief in Support of Exceptions, which is incorporated by reference.

TEAMSTERS LOCAL 396's EXCEPTIONS

Exceptions Numbers 1-8: Charging Party adopts and incorporates herein the General Counsel's exceptions numbers 1-8, and each sub-exception thereto, as set forth on pages 2-6 of the Counsel for the General Counsel's Exceptions and Brief in Support of Exceptions to the Decision and Recommended Order of the Administrative Law Judge in this matter.

Exception Number 9: The ALJ should have found that Respondent Athens Services ("Athens") violated Section 8(a)(1) of the Act by threatening Casildo Garcia in March or April 2018. (Administrative Law Judge Decision ("ALJD"), at 4-5).

Exception Number 9(a): The ALJ erred in concluding that Garcia's testimony was inconsistent because he stated at the hearing, in August 2019, in front of his employer, that he was not an active member of the union, or his having received a ride to the unfair labor practice hearing in August 2019, while a union representative testified that Garcia had spoken with union representatives during the course of 2018.

Exception Number 9(b): The ALJ erred in concluding that Garcia's testimony was inconsistent because of minor discrepancies in his account of his conversation with assistant general manager Tomas Solis.

Exception Number 9(c): The ALJ erred in concluding that Garcia's testimony was not credible because Garcia did not mention his conversation with Solis at the time that it occurred.

Exception Number 9(d): The ALJ erred in concluding that Garcia's testimony was not credible because he was inconsistent in whether others were present during

his conversation with Solis, because Garcia's testimony on this question was consistent on direct and cross-examination.

Exception Number 10: The ALJ should have found that Athens violated Section 8(a)(1) of the Act by interrogating employee Michael Bermudez about his union sympathies and soliciting him to support decertification of the union. (ALJD, at 20-23).

Exception Number 10(a): The ALJ erred by overlooking record evidence of material inconsistencies between the accounts of General Manager Michael Leidelmeyer, Operations Manager Matt Martinez, and field supervisor Kam Naeole on the content of their meeting with Bermudez.

Exception Number 10(b): The ALJ erred in declining to credit Bermudez's account of a meeting with Torrance facility General Manager Leidelmeyer because of the ALJ's opinion that "the Company's progressive discipline system does not even include a 6-month probationary period."

Exception Number 10(c): The ALJ erred in discrediting Bermudez's testimony based on the fact that Bermudez had a final written warning on his record and so would have been terminated by Leidelmeyer if Leidelmeyer imposed discipline.

Exception Number 10(d): The ALJ erred in discrediting Bermudez's testimony based on the fact that Bermudez was not ultimately disciplined.

Exception Number 10(e): The ALJ erred in deeming it inconsistent that Bermudez did not report the incident with Leidelmeyer in March 2018 out of fear of retaliation, but did allow the Teamsters Local 396 President to read a prepared statement from him at the bargaining table in May 2018.

Exception Number 11: The ALJ should have found that Athens violated Sections 8(a)(1) and 8(a)(3) of the Act when it terminated employee Michael Bermudez in June 2018.

Exception Number 11(a): The ALJ erred by crediting supervisor Kam Naeole's account of what he told Bermudez during a two-way radio call over Bermudez's account of that call.

Exception Number 11(b): The ALJ erred by characterizing driver Jacinto Pimental’s June 7 written statement as “corroborating” Naeole’s account of the call.

Exception Number 11(c): The ALJ erred in discrediting helper Luis Prado’s testimony because Prado “was a union supporter.”

Exception Number 11(d): The ALJ erred in discrediting Bermudez’s testimony based on the fact that Bermudez did not blame the failure to switch trucks on Pimental during his disciplinary interviews.

Exception Number 11(e): The ALJ erred in discounting the direct evidence of anti-union animus in the sarcastic comments made by Leidelmeyer and Naeole to Bermudez.

Exception Number 11(f): The ALJ erred in failing to take into consideration the record evidence that Athens issued no discipline at all to Pimental, despite the fact that Pimental violated a direct instruction from Naeole to switch trucks.

Exception Number 11(g): The ALJ erred in failing to take into consideration the cursory investigation the Leidelmeyer conducted of the incident, and his failure to interview Bermudez, before determining that Bermudez should be terminated.

Exception Number 11(h): The ALJ erred failing to address the record evidence that Athens failed to discipline Pimental for identical conduct in concluding that Athens had met its burden under the *Wright Line* standard.

Exception Number 12: The ALJ should have found that Athens violated Sections 8(a)(1) and 8(a)(3) of the Act by disciplining employee Damien Weicks.

Exception Number 12(a): The ALJ erred by discrediting the testimony of former Athens employee Brendan Farris.

Exception Number 12(b): The ALJ erred in discrediting Farris’s testimony based on the mere fact that a different witness disagreed with it.

Exception Number 12(c): The ALJ erred in concluding that Farris had a “prior friendship” with Weicks, a conclusion not supported by record evidence.

Exception Number 12(d): The ALJ erred in discrediting Farris’s testimony based on the fact that he had been discharged by Athens more than a year earlier.

Exception Number 12(e): The ALJ erred in failing to take into account the testimony of Athens witness Julio Portes, which corroborated Weicks' testimony that there had been a verbal altercation between him and bin painters Lozano and Zelaya.

Exception Number 12(f): The ALJ erred in failing to take into account the record evidence that Weicks was unpopular among some Sun Valley employees because of his role with the union.

Exception Number 12(g): The ALJ erred in concluding, inconsistently, that Weicks' testimony should be discredited because Rubio and Guerrero testified that he did not tell them that Lozano cussed at him, and that because cussing was common in the yard, "Weicks may very well not have mentioned it to Rubio or [Guerrero]."

Exception Number 12(h): The ALJ erred in discrediting Weicks' testimony because he did not create a written statement during the disciplinary process.

Dated February 14, 2020

Respectfully submitted,



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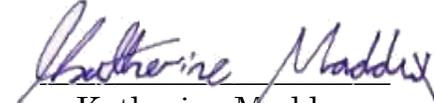
I, Katherine Maddux, certify that I served the attached **CHARGING PARTY TEAMSTERS LOCAL 396's EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE's DECISION AND RECOMMENDED ORDER** to the following parties via e-file and electronic mail:

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