

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the matter of:

**UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL UNION**

Charging Party,

v.

BOAR'S HEAD PROVISIONS CO., INC.,

Respondent.

Consolidated Case Numbers:
07-CA-209874; 07-CA-212031

**RESPONDENT BOAR'S HEAD PROVISIONS CO. INC.'S EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Board's Rules and Regulations, for the reasons set forth in its Brief in Support of Exceptions to Administrative Law Judge's Decision filed concurrently with these Exceptions, Boar's Head Provisions Co., Inc. ("Boar's Head" or "Respondent") files the following Exceptions to the Decision issued by the Administrative Law Judge ("ALJD") issued May 14, 2020, which found merit to some of the allegations contained in the Amended Complaint. Boar's Head, through its undersigned counsel, excepts to the following findings, conclusions, and recommendations of the Administrative Law Judge ("ALJ").

1. The ALJ Erred and Violated Respondent's Due Process Rights by Permitting the General Counsel to Amend the Complaint After the Close of Testimony and Nearly Five Months After the General Counsel Presented Its Last Witness, Over Respondent's Objection. (ALJD p. 35 at fn. 58).
2. The ALJ Erred in His Finding that the Dress Code Rule Found Unlawful Does Not Apply in Non-Production Areas. (ALJD p. 36 at 17-28).

3. The ALJ Erred by Failing to Recognize the Dress Code Rule is Required by Good Manufacturing Practices and Federal Regulations on Food Safety (ALJD p. 36 at 13-15).
4. The ALJ Erred by Failing to Recognize the “Exterior Garments” Referenced in Rule 2.9 Refers to The Sanitary Frocks Worn Only in Production Areas and Is Clearly Understood by All Boar’s Head Employees (ALJD p. 36 at 13-15).
5. The ALJ Erred by Failing to Acknowledge that No Evidence Was Presented That Employees Have Ever Misunderstood That the Rule Only Applies in Production Areas. (ALJD p. 36 at 13-28).
6. The ALJ Erred by Ignoring Relevant Board Precedent and Refusing to Admit Relevant Evidence and Improperly Credited Valenzuela’s Testimony. (ALJD p. 12 at 32-35).
7. The ALJ Erred by Basing His Conclusion That Apolonia Rios’s Pay Adjustment Was Unlawful on a Fundamental Misunderstanding of the Facts (ALJD p. 14 at 10-11; p. 48 at 26-38).
8. The ALJ Erred by Ignoring Record Evidence, Incorrectly Concluding Record Evidence Does Not Establish that Maria Mendoza and Guadalupe Rodriguez Have Offices, and Premising Findings on the Mistaken Assumption Mendoza and Rodriguez do Not Have Offices. (ALJD p. 29 at 17-20).
9. The ALJ Erred by Improperly Concluding that Maria Mendoza’s Alleged Conversation with Elba Rivas and Other Employees Occurred in a Small Group when Rivas’s Own Testimony Contradicts this Conclusion and Confirms that It Was a Group Meeting. (ALJD p. 30 at 5-9, fn. 54).
10. The ALJ Erred by Ignoring the Contrary Testimony of Rivas to Avoid the Conclusion that Group Meetings are Not Possible on the Line While Production is Running. (ALJD p. 30 at 5-9, fn. 54).
11. The ALJ Erred in Failing to Appropriately Assess the Credibility of Ascension Rios in Finding Him to be a Credible Witness. (ALJD p. 20 at 20-25).
12. The ALJ Erred by Not Considering Rios’s Testimony About Alleged Interrogation and Solicitation of Grievances in Finding Him Credible
13. The ALJ Erred By Not Considering Rios’s Testimony About Alleged Threats of More Strict Enforcement of Work Rules in Finding Him Credible
14. The Judge Erred by Ignoring Rios’s Admission about His Inability to Recall Information

15. The ALJ's Erred by Concluding that Four Security Guards were in the Parking Lot at One Time is Not Supported by Record Evidence. (ALJD p. 22 at 23-24).
16. The ALJ Erred by Ignoring Evidence Regarding the Safety Concerns of the Employees Exiting the Parking lot. (ALJD p. 35 at 16-25).
17. The ALJ Erred by Ignoring Evidence that Larry Helfant and Other Senior Executives Had an Established Practice of Soliciting Grievances Prior to the Union Campaign. (ALJD p. 32 at 24-38).
18. The ALJ Erred by Concluding that Helfant's Meetings Were Mandatory (ALJD p. 12 at 11-13).
19. The ALJ Erred by Misapplying the Law Regarding the Use of Suggestion Boxes and that Boar's Head Lawfully Reminded Employees About the Suggestion Boxes in Use Prior to the Beginning of the 2017 Union Campaign (ALJD p. 33 at 20-28).
20. The ALJ Erred by Ignoring Substantial Facts Regarding the Development of Respondent's Vacation and Attendance Policy Leading Him to Improperly Apply the Law to His Misinterpreted Facts. (ALJD p. 44 at 6-12; p. 45 27-34).
21. The ALJ Ignored Emails Demonstrating that the Vacation and Attendance Changes Had Been Under Serious Discussion and Were Approved Prior to the Company Knowledge of the Union Campaign. (ALJD p. 44 at 6-12).
22. The ALJ Ignored Case Law Allowing Improvements Implemented on a Company-wide Basis and Case Law Providing for Legitimate Reasons for Improvements. (ALJD p. 43 at 37-39).
23. The ALJ Refused to Allow Relevant Testimony and Misapplied the Law Regarding Alleged Interrogation and Threatening Statements by Guadalupe Rodriguez to Walter Aguilar. (ALJD p. 29 at 4-44, p. 30 at 1-3).
24. The ALJ Errored in Failing to Conclude that Tools Were Lawfully Provided to Maintenance Employees at The Holland Plant to Correct an Unfair Inconsistency with All Other Boar's Head Plants. (ALJD p. 44 at 1-4, p. 47 at 1-7).
25. The ALJ Erred by Mistakenly Concluding the Document Entitled "Boar's Head Brand" Contained an Unlawful Threat of Loss of Benefits. (ALJD p. 27 at 19-30).
26. The ALJ Erred by Concluding that the Term "Negotiate Zero to Minimum" or Similar Words Were Ever Spoken in Employee Meetings. (ALJD p. 26 at 38-40, p. 27 at 19-22).

27. The ALJ Erroneously Credited Witness Walter Aguilar's Testimony Without Addressing Substantial Internal and Factual Inconsistencies and Inherent Probabilities Factoring Against the Accuracy of His Testimony (ALJD p. 8 at 1-5, fn. 14; p. 10 at 17-21).
28. The ALJ Erroneously Concluded That Employees Gabriela Esquivel and Abigail Forsten Were Not Present at The Employee Meeting Attended by Walter Aguilar. (ALJD p. 7 at 13-18).

Date: June 11, 2020

Respectfully Submitted by:

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CERTIFICATE OF SERVICE

The undersigned, on behalf of Respondent, Boar's Head Provisions Co., Inc. (Boar's Head), filed and sent a true and correct copy of Respondent Boar's Head Provisions Co. Inc.'s Exceptions To The Decision Of The Administrative Law Judge, e-filed this day, June 11, 2020, in the NLRB Office of Executive Secretary/Board, and to the parties by email at the addresses set forth below:

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