

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

CASTRO VALLEY ANIMAL HOSPITAL, INC.

and

CHRISTINA ARIANNA PADILLA, an Individual

and

AKILAH WILLIAMS, an Individual

Cases 32-CA-251642
32-CA-254220

RESPONDENT CASTRO VALLEY ANIMAL HOSPITAL, INC.'S EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE'S DECISION

and

REQUEST FOR ORAL ARGUMENT

Submitted by:

/s/ Jonathan D. Martin _____

Jonathan D. Martin

Lewis Brisbois Bisgaard & Smith, LLP

333 Bush St., Suite 1100

San Francisco, CA 94104

Telephone: (415) 362-2580

Facsimile: (415) 434-0882

Jonathan.martin@lewisbrisbois.com

Counsel for Respondent CASTRO
VALLEY ANIMAL HOSPITAL, INC.

Respondent Castro Valley Animal Hospital, Inc. (“Respondent”), by and through its undersigned attorney, pursuant to Section 102.46 of the Board’s Rules and Regulations, takes exception to the Decision of the Administrative Law Judge, as enumerated below. The specific grounds and authorities for the exceptions are set forth in the accompanying brief.

1. Respondent excepts to the Administrative Law Judge’s finding: “Respondent attempts to narrowly view Padilla and Williams’ actions without considering the entire situation.” (Decision, Page 20, Lines 3 to 4.)

2. Respondent excepts to the Administrative Law Judge’s finding: “Padilla and Williams’ activity cannot be viewed in a vacuum but rather viewed under a totality of the circumstances.” (Decision, Page 20, Lines 5 to 7.)

3. Respondent excepts to the Administrative Law Judge’s finding: “Both Padilla and Williams clearly engaged in concerted activity which is protected.” (Decision, Page 20, Line 9.)

4. Respondent excepts to the Administrative Law Judge’s finding: “However, once Williams complained to Swart, and Padilla complained to Swart, Cordova and Garcia, their discussions shifted to a goal of improving their terms and conditions of employment, even if no other employees agreed or experienced the same working conditions.” (Decision, Page 21, Lines 9 to 11.)

5. Respondent excepts to the Administrative Law Judge’s finding: “Thus, Padilla and Williams engaged in protected concerted activity to improve their working conditions for mutual aid and protection.” (Decision, Page 21, Lines 14 to 15.)

6. Respondent excepts to the Administrative Law Judge's finding: "Contrary to Respondent's argument that Padilla and Williams only discussed their own situation for their personal benefit, Padilla and Williams' complaints were not personal gripes, which defeat a finding of protected concerted activity, but were complaints that applied to the employees." (Decision, Page 21, Lines 21 to 24.)

7. Respondent excepts to the Administrative Law Judge's finding: "The requirement that activity must be engaged in with an object of initiating group action does not disqualify the preliminary discussions one would expect employees to have from protection under Section 7. Since every concerted action for mutual aid or protection must start with some communication between employees, it would essentially void the rights of organizing and collective bargaining by Section 7 if such communications were denied protection due to lack of realization." (Decision, Page 21, Lines 38 to 43.)

8. Respondent excepts to the Administrative Law Judge's finding: "Williams' conduct, even after being removed from the schedule, demonstrates that she engaged in protected concerted activity seeking mutual aid or protection to 'improve their lot as employees.'" (Decision, Page 21, Line 46 to Page 22, Line 1.)

9. Respondent excepts to the Administrative Law Judge's finding: "As for Padilla, she also was not griping when she discussed the lack of meal breaks with Williams and others. In that same vein, Padilla refused to sign the Staff Note where she would be denying her claim that she was not given meal breaks. Thus, Padilla, also engaged in protected concerted activity seeking mutual aid or protection." (Decision, Page 22, Lines 2-5.)

10. Respondent excepts to the Administrative Law Judge’s finding: “Furthermore, despite Respondent’s denials, Brar had knowledge of Padilla and Williams’ protected concerted activities . . . The record contains ample evidence through direct and indirect evidence that Brar, who was the decisionmaker in these actions, knew about Padilla and Williams’ protected concerted activities—specifically, Williams’ discussion with Swart, and Padilla’s discussion with several of her coworkers about Respondent’s unfair policy on meal breaks as well as her refusal to sign the Staff Note.” (Decision, Page 22, Lines 7 to 15.)

11. Respondent excepts to the Administrative Law Judge’s finding: “Brar’s knowledge of Padilla’s protected concerted activity is unmistakable.” (Decision, Page 22, Lines 38 to 39.)

12. Respondent excepts to the Administrative Law Judge’s finding: “In sum, the General Counsel met its burden to show that Respondent terminated Williams and Padilla for discriminatory reasons. I therefore find that Respondent violated Section 8(a)(1) of the Act by terminating Williams and Padilla in response to protected concerted activity. In addition, Respondent violated Section 8(a)(1) when Brar threatened Padilla with termination if she did not sign the Staff Note, and false reported Brar to the police on October 22 and November 7.” (Decision, Page 29, Lines 29 to 34.)

13. Respondent excepts to the Administrative Law Judge’s conclusion of law: “2. Respondent committed unfair labor practices in violation of Section 8(a)(1) of the Act by: a. Threatening Padilla with termination on October 21 if she would not waive her group complaint regarding meal breaks; b. Falsely reporting Padilla to the police on October 22 and November 7 by accusing her of theft and threatening behavior because of her protected activities; c. Terminating Williams on October 18; and d. Terminating Padilla on October 21.” (Decision,

Page 29, Line 41 to Page 30, Line 1.)

14. Respondent excepts to the Administrative Law Judge's remedy: "Specifically, having found that Respondent violated Section 8(a)(1) by terminating employees Christine Arianna Padilla and Akilah Williams, Respondent must offer them full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them." (Decision, Page 30, Lines 13 to 18.)

15. Respondent excepts to the Administrative Law Judge's remedy: "Respondent shall compensate Padilla and Williams for their reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings." (Decision, Page 30, Lines 22 to 24.)

16. Respondent excepts to the Administrative Law Judge's remedy: "Respondent shall compensate Padilla and Williams for the adverse tax consequences, if any, of receiving a lump-sum backpay awards [*sic*]." (Decision, Page 30, Lines 29 to 30.)

17. Respondent excepts to the Administrative Law Judge's remedy: "I will order that the employer post a notice at the facility in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15-16 (2010)." (Decision, Page 30, Lines 38 to 39.)

Respondent requests oral argument before the Board. NLRB Rules & Regulations § 102.46(g) (“[a] party desiring oral argument before the Board must request permission from the Board in writing simultaneously with the filing of exceptions or cross-exceptions”).

Dated: August 24, 2020

Respectfully submitted,

/s/ Jonathan D. Martin

Jonathan D. Martin

Lewis Brisbois Bisgaard & Smith, LLP

333 Bush St., Suite 1100

San Francisco, CA 94104

Telephone: (415) 362-2580

Facsimile: (415) 434-0882

Jonathan.martin@lewisbrisbois.com

Counsel for Respondent CASTRO
VALLEY ANIMAL HOSPITAL, INC.

PROOF OF SERVICE

Castro Valley Animal Hospital, Inc., Christina Arianna Padilla and Akilah Williams

National Labor Relations Board, Region 32

Cases 32-CA-251642/ 32-CA-254220

STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA

At the time of service, I was over 18 years of age and not a party to the action. My business address is 333 Bush Street, Suite 1100, San Francisco, CA 94104-2872. I am employed in the office of the attorney at whose direction the service was made.

On August 24, 2020, I served the following document(s): **RESPONDENT CASTRO VALLEY ANIMAL HOSPITAL, INC.'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION AND REQUEST FOR ORAL ARGUMENT**

I served the document(s) on the following person(s) at the following address(es) (including fax numbers and e-mail addresses, if applicable):

Christina Padilla
4788 Proctor Rd.
Castro Valley, CA 94546

Akilah Williams
1020 Haight Street
San Francisco, CA 94117

The document(s) were served on the above individuals by the following means:

- (BY U.S. MAIL) I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and I deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

In addition, I served the document(s) on the following person(s) at the following address(es) (including fax numbers and e-mail addresses, if applicable):

Amy Berbower
Amy.Berbower@nlrb.gov

The documents were served on the above individual by the following means:

- (BY E-MAIL OR ELECTRONIC TRANSMISSION) I caused the documents to be sent from e-mail address berenice.barragan@lewisbrisbois.com to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on August 24, 2020, at Antioch, California.



Berenice Barragan