

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF ADMINISTRATIVE LAW JUDGES**

XCEL PROTECTIVE SERVICES, INC.

and

**INTERNATIONAL UNION, SECURITY,
POLICE, AND FIRE PROFESSIONALS
OF AMERICA, LOCAL 5**

**Cases 19-CA-232786
19-CA-233141
19-CA-234438
19-CA-237861
19-CA-241689**

**CHARGING PARTY INTERNATIONAL UNION,
SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA, LOCAL 5'S
CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION,
AND BRIEF IN SUPPORT OF CROSS-EXCEPTIONS**

February 2, 2021

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**INTERNATIONAL UNION,
SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA, LOCAL 5'S
CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46(c) of the National Labor Relations Board (NLRA)'s Rules and Regulations, Charging Party International Union, Security, Police and Fire Professionals of America (SPFPA), Local 5 files these Cross-Exceptions to Respondent Xcel Protective Services' January 19, 2021 Exceptions to the Administrative Law Judge's ("ALJ") December 7, 2020 decision in this matter. Further arguments and authority supporting Charging Party SPFPA's Cross-Exceptions are set forth in its Brief in Support.

1. SPFPA takes exception to the ALJ's finding that "I do not believe the evidence supports a finding that Respondent's actions/inactions imposed a situation that was so difficult or unpleasant that it forced [Stephen] Mullen to resign, or that Respondent should have foreseen Mullen would have resigned because Xcel did not immediately inform him of the company's investigation into his allegations." Decision,¹ p. 48. In fact, the evidence supports a finding both that Mullen was constructively discharged and that Xcel should have foreseen that Mullen would have been constructively discharged in light of its inaction.

2. SPFPA takes exception to the ALJ's finding that "I do not believe the General Counsel has established a prima facie case that Terry's inaction for 2 days before he started investigating the Cunningham incident, or his failure to inform Mullen of the investigation, created working conditions so difficult or unpleasant that Mullen was forced to resign." Decision, p. 49. The General Counsel and SPFPA have shown Terry and

¹ References in these Cross-Exceptions and Brief to the ALJ's December 7, 2020 Decision will be designated as "Decision, p. ___." References to the official transcript will be designated as "Tr., p. ___." References to the General Counsel's, Employer's, Union's, and Joint exhibits will be referred to as "GC Ex. __," "E. Ex. __," "U. Ex. __," and "U. Ex. __," respectively.

Xcel's inactions were so egregious as to create the conditions for Mullen's constructive discharge.

3. SPFPA takes exception to the ALJ's finding that, "where [Kevin] David ceased all contact with Mullen once the incident was reported to Respondent, I do not believe that a reasonable employee would have found conditions so difficult or unpleasant so as to be forced to resign." Decision, p. 49-50. A reasonable employee in Mullen's position would have been forced into constructive discharge.

Conclusion

For the reasons set forth in its Cross-Exceptions and Supporting Brief, Charging Party SPFPA respectfully requests that the Board partially overturn the Administrative Law Judge's Decision as it relates to these Cross-Exceptions.

Respectfully submitted,

/s/ Matthew Clark

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CERTIFICATE OF SERVICE

I certify that a copy of the Charging Party, International Union, Security, Police and Fire Professionals of America (SPFPA), Local 5's Cross-Exceptions to the Administrative Law Judge's Decision, and Brief in Support of Cross-Exceptions was electronically served on February 2, 2021, upon the following parties:

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