

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

TROY GROVE A DIV. of RIVERSTONE GROUP)
INC., VERMILION QUARRY, A DIV. OF)
RIVERSTONE GROUP INC.)

Employer,)

and)

INTERNATIONAL UNION OF OPERATING)
ENGINEERS, LOCAL 150, AFL-CIO)

Union.)

Cases 25-CA-234477
25-CA-242081
25-CA-244883
25-CA-246978

RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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Respondent, TROY GROVE QUARRY, a Division of RIVERSTONE GROUP, INC., and VERMILION QUARRY, a Division of RIVERSTONE GROUP, INC., (collectively “Respondent” or “RiverStone”), by and through its attorneys, Califf & Harper, P.C., pursuant to Section 102.46 of the National Labor Relations Board’s (“NLRB”) Rules and Regulations, 29 CFR § 102.46, takes exception to the following findings, conclusion, and recommendations of the Administrative Law Judge, Melissa M. Olivero (“ALJ”) in the Administrative Law Judge’s Decision (“ALJD”) for the above-captioned consolidated cases:¹

1. Any finding or conclusion “By disciplining and discharging employee Matt Kelly for his union activity, Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act.” ALJD 20:28-29, 20:34-35, 15:14-18:14, 12:1-26, 5:20-9:14, 2:38-41.
2. Any finding or conclusion Matt Kelly was disciplined and terminated for his protected union activity instead of for his violation of workplace policies. ALJD 20:28-29, 20:34-35, 16:23-18:14; 5:20-9:14.
3. Any finding or conclusion Respondent’s retention of James Misercola as a persuader to disseminate information to employees to secure “no” votes in a representation election is evidence of anti-union animus in an unfair labor practice complaint rather than an employer’s exercise of its right of expression protected by Section 8(c) of the Act. ALJD 16:23-25, 2:38-41, 12:1-26.
4. Any finding or conclusion Superintendent Skerston’s comments when Matt Kelly publicly revealed his union affiliation at the workplace and asked Skerston what he thought of it support an inference of animus. ALJD 16:23-24, 16:25-27, 6:33-37.

¹ Citations to the record are as follows: Administrative Law Judge Decision (ALJD page:line), Transcript (Tr. page:line (Witness)); General Counsel Exhibits (GC Exh.# page, paragraph, or Bates Number); and Respondent Exhibits (R Exh.# page, paragraph, or Bates Number).

5. Any finding or conclusion the timing of Respondent's issuance of discipline to Kelly and the number of discipline warnings issued to Kelly supports an inference of animus. ALJD 16:37-17:9.
6. Any finding or conclusion Respondent departed from its past practice and policies in disciplining (and discharging) Matt Kelly and that this supports an inference of animus. ALJD 17:11-22.
7. Any finding or conclusion Respondent was not consistent in its reason for discharging Matt Kelly and its termination of Kelly for attendance was pretextual. ALJD 17:33-41.
8. Any finding or conclusion Respondent did not provide Matt Kelly with copies of his discipline and its termination of Kelly for attendance was pretextual. ALJD 17:43-18:14, 8:35-38.
9. Any finding or conclusion that "By interviewing employee Matt Kelly after denying his request for a union representative, Respondent violated Section 8(a)(1) of the National Labor Relations Act." ALJD 20:31-35, 9:18-10:11, 18:8-19:32.
10. Any finding or conclusion Matt Kelly was denied his request for a representative at a disciplinary meeting when he was offered an alternative representative and he accepted. ALJD 20:31-35, 9:18-10:11, 18:8-19:32.
11. Any finding or conclusion that "By requiring employee Joe Ellena to sign a preferential hiring list located at its Vermillion Quarry, Respondent has violated Section 8(a)(3) and (1) of the National Labor Relations Act." ALJD 20:21-23, 34-35, 13:35-14:28, 4:10-36.

12. Any finding or conclusion Respondent required Joe Ellena to sign a preferential hiring list to be considered for vacancies following his unconditional offer to return to work. ALJD 20:21-23, 20:34-35, 13:37-41, 14:11-28, 4:28-36.
13. Any finding or conclusion Respondent has not returned Joe Ellena to work because he did not sign the preferential hiring list. ALJD 20:21-23, 20:34-35, 13:37-41, 14:11-28, 4:28-36.
14. Any finding or conclusion that “By changing the punch-in policy for unit employees without providing the Union with notice or an opportunity to bargain, Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act.” ALJD 20:17-19, 20:34-35, 12:30-13:33, 5:33-6:18.
15. Any finding or conclusion that Respondent may not unilaterally set wages, hours, and terms and conditions of employment for permanent replacement workers during an ongoing strike, including, but not limited to, a punch-in policy. ALJD 20:17-19, 12:30-13:33, 5:33-6:18.
16. Any finding or conclusion that “By removing union picket signs from public property, Respondent has violated Section 8(a)(1) of the National Labor Relations Act.” ALJD 20:25-26, 20:34-35, 12:1-26, 10:40-11:5, 14:30-15:9, 4:40-5:29, 2:38-41.
17. Any finding or conclusion Respondent through its agent, James Misercola, removed union picket signs from public property. ALJD 12:1-26, 10:40-11:5, 14:30-15:9, 4:40-5:29, 2:38-41.
18. To the extent that Respondent’s Brief in Support of Exceptions to the Administrative Law Judge’s Decision references any of the Administrative Law Judge’s findings or

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 8, 2021, the foregoing RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION was electronically filed with the National Labor Relations Board and served upon the following:

by Email to:

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