

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**CC-1 LIMITED PARTNERSHIP d/b/a
COCA-COLA PUERTO RICO BOTTLERS,**

Employer Respondent,
and

CARLOS RIVERA, et al.

Case No. **24-CA-11018, et al.**

Charging Parties,
and

**UNION DE TRONQUISTAS DE PUERTO
RICO, LOCAL 901, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,**

Case No. **24-CB-2648, et al.**

Union Respondent,
and

**MIGDALIA MAGRIZ, MARITZA QUIARA,
SILVIA RIVERA,**

Case No. **24-CB-2706, et al.**

Charging Parties.

**CHARGING PARTIES MAGRIZ, QUIARA, and RIVERA's
ANSWERING BRIEF to CGC'S and UNION'S EXCEPTIONS**

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Charging Parties Magriz, Quiara,¹ and Rivera (hereinafter "CPs"), by their undersigned counsel, respectfully respond as follows in opposition to the Exceptions to the Administrative Law Judge Decision filed by the Union de Tronquistas de Puerto Rico, Local 901.

I. INTRODUCTION

The CPs were all long-time members and elected shop stewards in the Unión de Tronquistas de Puerto Rico, Local 901, affiliated with the International Brotherhood of Teamsters, ("the Union") until March 10, 2009, when the Union expelled each from membership for a period of six years, removed each as the elected steward of her bargaining unit, and fined each \$10,000.00. GCX 27.

As found by the ALJ and detailed below, the CPs were disciplined for supporting an unfair labor practice strike that was protected by Section 7 and in retaliation for challenging the incumbent officers in a just-completed officer election. The Union's disciplinary actions against the CPs for supporting an unfair labor practice strike by fellow members, conduct protected by Section 7, was contrary to policies embedded in the Act, as the ALJ concluded.

¹ Ms. Quiara has now retired from employment, but the public interest in redressing her claims is not moot. The chilling effect of her discipline upon active members remains strong. The members who elected her as their steward were injured by the Union's unlawful removal of their elected steward, the "first-line" representative of their interests in the administration of the terms and conditions of employment. The \$10,000 fine assessed against Ms. Quiara continues to hang over her own head like a Sword of Damocles, notwithstanding her retirement, and casts a pall on the exercise of Section 7 rights by all of the Union's members. The legal redress for these injuries is the affirmative relief ordered by the ALJ, with the exception of the restoration of Ms. Quiara to her former position as the elected steward, and the posting of an official Board notice that clearly encompasses the unlawful conduct committed against all three CPs. The Union would then be free to adjust her membership status to reflect her status as a retired member in good standing.

The disciplinary actions were harshly discriminatory. The CPs were the *only* members disciplined for supporting the strike. No strike leaders were disciplined. The stewards fired by Coca-Cola, whose discharges were held by the ALJ to be unprotected, were not disciplined, nor were any of the rank-and-file strikers. GCX 34, ¶¶ 18, 43. With one significant exception, no other members from other bargaining units, including stewards, who came to the Coca-Cola picket line to demonstrate their support, were disciplined, although a number of such members and stewards from other bargaining units did attend and participate to show their support for strikers – the identical behavior that was the basis for the CPs’ expulsions from membership, removals as stewards, and heavy fines. *Id.* ¶¶ 47, 48, 49, 50. The exception was that in September 2009, more than a half-year after the CPs were disciplined, four other members from other bargaining units, who had attended the picket line to show their support, including two stewards, were charged and tried on the same charges that had been made against the CPs. These members were the fourth (and only other) candidate on the CPs’ challenging slate and three of their slate’s election observers. Following union hearings on the charges against them, these four members filed ULP charges. The union failed to issue dispositions and settled the ULP complaints issued on those charges by purging all references to the charges from all union records. See GCX 34, ¶¶ 35, 38, 39, 40; GCX 1(ccc cccc) (settlement agreements in Case Nos. 24-CB-2725, -2726, -2728, 2729).²

² The disciplinary actions against the CPs were taken after they filed post-election protests with the U.S. Secretary of Labor, after settlement negotiations collapsed and shortly before suit was filed to set aside and rerun the October 3, 2008 officer election under the supervision of the Secretary of Labor. *Chao v. Local 901, IBT*, Civil No. 3:09-cv-01329-ADC. Without remedial action, the incumbent officers will have effectively eliminated their opponents in any rerun election that may be ordered by the court, by causing the CPs to become ineligible as candidates.

II. III. BACKGROUND FACTS³

None of the CPs are employed by Coca-Cola. Ms. Magriz and Ms. Quiara were employed by Crowley Liner Services de Puerto Rico. Ms. Magriz remains actively employed by Crowley. Ms. Quiara recently retired. See note 1, *supra*. Ms. Rivera is employed by Pepsi Cola Mfg., Intl. All CPs were elected stewards in their respective shops. Both Crowley and Pepsi are employer parties to collective bargaining agreements with the Union. GCX 34 - Stipulation ¶¶ 1, 2, 54.

The Contractual Context.

As the Union now admits and the ALJ has found, ALJD, at 6-7, n.9, the predecessor collective bargaining agreement to the current agreement expired on July 31, 2008, JX 1, and was then extended for one month by agreement, to August 31, JX 2, following which the Employer continued operations under the terms of the expired collective bargaining agreement until a new collective bargaining agreement was executed on February 2, 2009. ALJD, at 6-7, n.9.

Thus, the contract and its extension had expired and the successor agreement had not yet been negotiated when the material events in these cases unfolded. The strike vote meeting of September 15, 2008, the pre-strike meeting of October 12, 2008, and the strike itself all took place in the absence of a CBA.

The October 20-22 Coca-Cola Strike.

The ALJ found that the strike was a protected ULP strike because it protested the unexplained expulsion of Union business agent and chief negotiator Lopez from the facility

³ A fully detailed statement of facts was made in the Charging Parties' Post-Hearing Brief and is incorporated herein by reference.

while he was meeting with employees to discuss ongoing negotiations, and sought the reinstatement of the five discharged Coca-Cola stewards and resumption of the stalled contract negotiations. ALJD, at 19, 20. The Judge further found that there was some strike-related misconduct, but that the Employer failed to meet its burden of proof as to most such allegations and that the minor misconduct that was proved did not affect the strike's protected status. ALJD, at 20-24.

The October 3, 2008 Union Officer Election.

On October 3, 2008, the Union held its regular election of officers. In that election, CPs Magríz, Quiara, and Rivera were candidates on a partial slate, known as "Teamsters Making a Difference," together with Humberto Miranda. GCX 34, at ¶ 19. The incumbent principal officer, secretary-treasurer Germán Vázquez, was unopposed in the election, but ran with a slate that was vigorously opposed by the plaintiffs and Mr. Miranda. Ms. Quiara challenged Alexis Rodríguez for the position of Union President, Ms. Magríz challenged Ray Lebrón for the position of Vice President, and Ms. Rivera ran for one of the vacant Trustee positions, as did Mr. Miranda.

The Vázquez slate was declared victorious in an election tainted by substantial irregularities, including verbal and physical threats of violence against the CPs and numerous observer rights violations. At Coca-Cola, however, the CPs' slate achieved a sweeping victory, by a margin of 108 votes for their slate against six votes for the Vázquez slate. GCX 34, ¶ 20.

The Charging Parties timely pursued their internal union post-election remedies and then filed an administrative complaint with the DOL's Office of Labor-Management Standards, in compliance with the procedures required by Title IV of the Labor-Management Reporting and

Disclosure Act, 29 U.S.C. § 482. GCX 34 at ¶ 23; GCX 28, at ¶ 8. Following investigation and after determining that violations of the Act had occurred and failing to settle the matter with a voluntary rerun election under DOL supervision, the Secretary of Labor filed suit to set aside and rerun the election under her supervision. GCX 28 - *Solis v. Teamsters, Local 901*, Civil Action 09-1329 (ADC) (D.P.R.). That suit remains pending.

The Disciplinary Proceedings and Actions Against the CPs.

The Union offers no countervailing evidence to challenge the large body of evidence and the stipulated record that supports the ALJ's findings that Ms. Magríz, Ms. Quiara and Ms. Rivera were singled out for selective discipline, ALJD, at 29; GCX 34, at ¶¶ 7, 18, 35-40, in retaliation against them for their electoral challenge to the incumbent officers and against their fellow members at Coca-Cola who had strongly supported them in that election.

The Union contends here, as it did before the ALJ, that the Board has no jurisdiction over the matter, as one involving purely internal union matters; that its disciplinary actions against the CPs were lawful because the October 20-22 strike was unprotected, as a strike that the Union had not authorized; and that the Union believed, perhaps mistakenly, that alleged picket line misconduct exposed the Union to the risk of contempt proceedings for violating the "Broad Order," stripping the strike of its protected status.

ARGUMENT

General legal standards.

In assessing an alleged violation of Section 8(b)(1)(A), the standard is objective, not subjective. It is not whether a particular employee was actually restrained or coerced, but whether the union's action or statement would have a "reasonable tendency to restrain or coerce

employees in the exercise of their statutory rights.” *Letter Carriers Branch 3126 (Postal Service)*, 330 NLRB 587, 587–88 (2000); *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979).

The Union Erroneously Reserves to Itself the Prerogative to Discipline Its Stewards for Failing to Meet a Higher Standard of Conduct Under Circumstances Where Such Discipline Would Be Unlawful if Committed by an Employer.

The only recognized circumstance in which it is not unlawful for a steward to be held by an Employer to a higher standard of conduct based on his or her status as a steward is a work stoppage that violates a contractual no-strike clause. In *Precision Castings Co.*, 233 N.L.R.B. 183 (1977), the Board held that selective dismissal of a shop steward who participated in and failed to attempt to stop an *illegal* strike was discrimination based solely on the holding of union office, in violation of sections 8(a)(1) and (3). In *Metropolitan Edison v. NLRB*, 460 U.S. 693, 707 (1983), an employer was allowed to selectively discipline, where there was in effect a “clear and unmistakable” contractual waiver of the statutory right of union officials not to be subject to disparate treatment based on their union status.

In this case, as the CGC has correctly argued in its Exceptions, there was no contractual no-strike clause, and thus no contractual waiver of the right to be free of disparate treatment as a steward. In this case, moreover, the strike was not in violation of a contractual no-strike clause, since the contract had expired. The strike in this case was not only not unlawful and not in violation of contract; it was a protected unfair labor practice strike. The striking employees were entitled by law to be on strike.

Nor did these stewards have any duty to the Union in connection with the conduct of the employees who were on strike, as they were stewards in other bargaining units. They were present at the strike not as stewards, but as supportive fellow members, to show solidarity, which itself is protected concerted activity.

The Union has not attacked the Judge's analysis, but instead asks the Board to reject his findings and rule that the conduct of the fifth Coca-Cola steward, Miguel Colon, was unprotected, as the ALJ found the other stewards' conduct on the evening of October 9th to have been. See ALJD, at 12-14.

The ALJ Properly Enforced Section 8(b)(1)(A) Against the Union Discipline in These Cases.

Section 8(b)(1)(A) warrants Board action to strike down union discipline “that (1) impacts on the employment relationship, (2) impairs access to the Board's processes, (3) pertain to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or (4) otherwise impairs policies imbedded in the Act.” *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1418-19 (2000). In *Scofield v NLRB*, 394 US 423 (1969), the Court ruled that: a union may enforce a properly adopted rule that (1) reflects a legitimate union interest, (2) impairs no policy Congress has imbedded in the labor laws, and (3) is reasonably enforced against union members who are free to leave the union and escape the rule.

The Union erroneously invokes *NLRB v. Boeing Co.*, 412 US 67, 74, (1973), in which the Court disapproved of Board review of the reasonableness of union fines, as causing excessive Board involvement in internal union matters. The issue in this case is not the reasonableness of

the fine, but union discipline in contravention of policy embedded in the labor laws: the right, in this case, to express support and solidarity with fellow members on strike against an employer of another bargaining unit.

Unions may well have a legitimate interest in limiting strikes to those that it authorizes. In this case, however, the Union's assertion of its right to authorize the October 20-22 strike was clearly pretextual, for the simple reason that the Union created the impression that it had authorized the strike and never at any time informed the affected employees that it had not authorized it or had changed its mind.. If the Union were in fact interested in enforcing this interest, it would have informed the Coca-Cola employees that the strike was not authorized. In the face of the Union's silence, the Coca-Cola workers were under the circumstances reasonably entitled to assume that the strike had the Union's blessings. The Union had itself requested and obtained strike authorization. It had applied for and obtained from the International Union the right to strike benefits for the strikers. It had received the Coca-Cola employees' written notice that they had reaffirmed their strike authorization a week before the strike. The employees were entitled to assume that the Union had followed its own Bylaws procedure, which called for strike authorization by the executive board before the conduct of a strike authorization vote by the affected members. They were entitled to assume that, under the Bylaws, the Union's solicitation of strike authorization from the affected members was the last step of the authorization process. The Union cannot claim a legitimate interest in the pretextual withholding of strike authorization.

CPs Did Not Expose the Union to Liability Under the "Broad Order."

To justify its disciplinary actions against the CPs, the Union relies principally upon its claimed interpretation of the Broad Order. The referenced order was a 1991 settlement

agreement and consent contempt adjudication entered by the Court of Appeals for the First Circuit against the Union and two former officers, Jose Cadiz and Noel Colon, based on stipulated findings that the Union had repeatedly engaged in officially sanctioned strike violence and was in civil contempt of three previous orders of that court involving the Union's strike-related misconduct. JX 10(a) - *NLRB v. Union de Tronquistas de Puerto Rico, Local 901, IBT*, Docket No. 71-1371 (1st Cir. Sept. 10, 1991).

The Union argues that it “had good reason to belief [*sic*] that the actions of its stewards violated the ‘Broad Order,’” based on assertions of strike-related violence by Coca-Cola. Union Brief, at 16.

However, the Union had no *objective* basis ever to believe that it faced liability under the Broad Order, because the clear terms of the Broad Order limit the Union's liability to strike misconduct by “the Union, its officers, agents, and representatives,” and to failures to take the affirmative steps required by the order in *officially sanctioned* strikes. JX 10(a). Under the Union's bylaws, § 18.08, union stewards were expressly excluded from the definition of union agents.

Nor did the terms of the Broad Order treat union stewards as agents. The Order requires the *Union and its officers, agents, and representatives* to refrain from authorizing or permitting picketing without first assuring that the manner of picketing would be lawful, to designate *specific officers or agents* as responsible for maintaining lawful conduct in the event of future authorized picketing or strikes, and to hold a meeting with picketers to instruct them about their obligations under the Order, to be presided over by its *principal officer or designated business agent*, before the start of any picketing *authorized by the Union*. *Id.* 6, 7. In the event of conduct

in violation of the Order, the *Union, its officers, agents, and representatives* are required to end it and to “*remov[e] any responsible officer or agent* from the picket line, revoking his/her strike benefits, and seeking the imposition of reasonable sanctions under the Union’s governing rules” *Id.* 8.

The final provision of the Order was specifically relied on by the Union in its disciplinary decisions against the CPs. But such reliance was unwarranted. This provision imposes potential future fines of \$1,000 per violation, to be doubled in the event of serious injury, against any “*officer, agent or representative of the Union, or any other individual who, with knowledge of such [court] orders, acts in concert or participation with the Union*” in any future violation of the Order.” (All emphases added.) The Broad Order prohibits official *Union* misconduct and reaches beyond the Union and its officers, agents, and representatives, to Union members, only where members act “in concert or participation with the Union.” It is clearly inapplicable to the October 20-22 strike, because that strike was not officially sanctioned.

By its terms, the Broad Order does not reach rank-and-file members’ picket line and strike activities that are not authorized by the Union. The ALJ found, with ample evidentiary basis, that the Broad Order was not violated because the Union did not authorize or call the strike. ALJD, at 20.

The Union’s communications of record in this case show that it understood and invoked the distinction between official and unofficial and the breadth of such terms as “agent” and “representative,” and understood that the Union was not liable under the Broad Order for the acts of its stewards. In its October 20th response to the accusations by Coca-Cola, made that same

day, the Union demonstrated its understanding of these terms in denying any responsibility or liability for the actions by Coca-Cola stewards and rank-and-file members:

[T]he presence there of any Union member would have been of their own accord, not official Likewise, if any person claimed he/she was representing the Union, said claim would be a false representation. It is clear to us that the actions that took place there were outside the Union and its Constitution, and that the only ones responsible for the legal consequences are those who participated in and abetted said actions....

JX 19 (Oct. 20, 2008 Union letter to Employer).

In sum, ample evidence supports the ALJ interpretation of the Broad Order as providing no basis for any reasonable and objectively-based Union concern about its own potential liability in the event of strike-related violence in the October 20-22 strike.

Nor does the Union do anything more than assert a connection to the CPs' presence at the strike as warranting its focus on them as involved in strike-related misconduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certify that the following parties and counsel have been served on this date as shown below:

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