

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC**

**CONTINENTAL LINEN SERVICES, INC.
Respondent**

and

CASES

GR-7-CA-52296

GR-7-CA-52715

GR-7-CA-52798

**CHICAGO and MIDWEST REGIONAL
JOINT BOARD – WORKERS UNITED/SEIU
Charging Union**

**COUNSEL FOR GENERAL COUNSEL’S EXCEPTIONS TO THE DECISION
OF THE ADMINISTRATIVE LAW JUDGE**

Counsel for General Counsel hereby excepts to the findings of the Administrative Law Judge (ALJ) in his decision and recommended order which issued in this matter on September 15, 2010, in the following respects:

Counsel for General Counsel excepts to:

1. The finding that the General Counsel failed to establish by a preponderance of the evidence that the Charging Union has at all material times been the collective bargaining representative within the meaning of Section 9(a) of the Act. (ALJD p. 9, l. 34-40; ALJD p. 15, l. 33-44) The preponderance of the evidence does establish that at all material times the Charging Union has been and continues to be the Section 9(a) representative.

2. The finding that given the evidence presented at trial, it is just as likely that Local 151 and/or UNITE HERE was the collective bargaining representative, and that the Charging Union acted as the agent of the collective bargaining representative without replacing it. (ALJD p. 9, l. 38-40) The evidence establishes that the Charging Union at material times has been the Section 9(a) representative.

3. The finding or suggestion that proving that Local 151 was formally dissolved is necessary to establishing that the Charging Union became the Section 9(a) representative. Even if the legal entity of Local 151 was not formally dissolved, the evidence shows that Local 151 had neither the ability nor the willingness to continue as the Section 9(a) representative, and it allowed the Charging Union to assume that role by early 2005. (ALJD p. 10, l. 17-35)

4. The finding that the evidence established that since 2005, Local 151 has been willing or able to act as the Section 9(a) representative. (ALJD p. 10, l. 17-35) The evidence shows that the Local 151, through Barbara Lipsey, played only a minor and subordinate role to the Charging Union in representing the employees by her functioning as a steward and that the Local 151 was neither willing nor able to carry out the duties and responsibilities of a Section 9(a) representative.

5. The finding that Local 151 did not take any overt act to dissolve itself or to transfer its authority to another entity. (ALJD p.10, l. 18-35) While no formal transfer agreement was signed, Local 151, by its conduct, openly allowed the Charging Union to take over as the Section 9(a) representative and ceased to function as the 9(a) representative, and to the extent it continued to exist, it was in a subordinate role to the Charging Union.

6. The finding that following the UNITE HERE merger, Local 151 continued to be an active participant in contract negotiations for the new collective bargaining agreement, and the president of Local 151 and two Local 151 stewards were on the bargaining team. (ALJD p. 10, l. 24-46) Record evidence discloses that the two stewards and members of the bargaining team other than Barbara Lipsey were appointed by the Charging Union. While Lipsey attended the bargaining sessions, the negotiations were lead, and the important decisions were made, by Charging Union representatives. This evidence does not indicate that Lipsey or Local 151 was an active participant.

7. The ALJ's failure to find that the stewards (other than Lipsey), who were appointed by the Charging Union, also filed grievances, and that employees also contacted the Charging Union representatives directly about filing grievances. (ALJD p.10, l. 30-35) The evidence does not establish that these stewards were representatives of Local 151, rather they were appointed by and were representatives of the Charging Union.

8. That the ALJ placed legal significance on General Counsel's failure to establish that UNITE HERE consented to Local 151 formally going out of existence. (ALJD p. 3, l. 33-40; p. 10, l. 39-47) The record evidence establishes that to the extent that Local 151 continued to exist it was merely a shell organization. To the extent Local 151 continued to exist, it played only a minor and subordinate role to the Charging Union and was unable and unwilling to carry out the duties and responsibilities of a Section 9(a) representative.

9. The relevance of the finding that the constitution of UNITE HERE requires that UNITE HERE consent to the dissolution of a local union. (ALJD p. 3, l. 33-35; ALJD p. 10 l. 37-45)

10. The failure to find that the Charging Union's assumption of the status of a 9(a) representative was consistent with the Charging Union's constitution. The Charging Union's constitution vests it with the exclusive authority to sign collective bargaining agreements and requires it to do so in the name of the Charging Union. Under its constitution, the Charging Union has the exclusive authority to call strikes. The correct name of the Charging Union prior to disaffiliation as set forth in its constitution was the "Chicago and Midwest Regional Joint Board, UNITE HERE." (ALJD p. 3, l. 34-52; Jt Ex. 9, p. 1, p. 3-4)

11. The finding that Local 151 was an active entity following the July 2004 merger. (ALJD p. 11, l.1-5) By early 2005, Local 151 ceased being an "active" entity and to the extent that it continued to exist it was a subordinate to the Charging Union.

12. The finding that if Local 151 delegated its 9(a) status to the Charging Union, such a transfer was legally void or that the General Counsel conceded such a transfer of 9(a) status was void. (ALJD p. 11, l. 33-40). While such a transfer may have been impermissible at the time it occurred and Respondent may have been able to lawfully refuse to bargain with the Charging Union when the transfer occurred, Respondent failed to timely challenge the transfer within the Section 10(b) period. Instead, Respondent knowingly acquiesced to the transfer and recognized the Charging Union outside of the 10(b) period and did not assert a challenge to the transfer of 9(a) status until long after the 10(b) period had expired.

13. The finding that if the evidence showed that Local 151 had gone out of existence, then it was just as likely that UNITE HERE was the Section 9(a) representative and the Charging Union was only an intermediate organization to which UNITE HERE had delegated representational duties. (ALJD p. 11, l. 35-40) The preponderance of the evidence, including the language in the 2005-2010 collective bargaining agreement, the language in the 2007 agreement to reaffirm the collective bargaining agreement, the bargaining history and the conduct of the parties, establishes that the Charging Union became the 9(a) representative and that Respondent knowingly acquiesced in the transfer of 9(a) status to the Charging Union outside of the 10(b) period.

14. The finding that individuals who performed the representational duties were employed by the Charging Union does not mean that they were performing those duties as officials of the Charging Union as bargaining representative rather than as agents of UNITE HERE. (ALJD p. 12, l. 1-15) While a union may have another union act as its agent, the preponderance of the record evidence establishes that the Charging Union was not acting as the agent of UNITE HERE nor was it acting as the agent of Local 151. Rather, the Charging Union had become the 9(a) representative, and its representatives were acting on its behalf.

15. The finding that the record evidence indicates that Charging Union representatives Monje, Klein, and Monterrubio were seen by Barbara Lipsey and Local 151 members as agents of UNITE HERE rather than as officials of the Charging Union. (ALJD p.10, l.15-20) The parties stipulated that these agents were directly employed by the Chicago and Midwest Regional Joint Board, UNITE HERE, which was the correct legal name of the Charging Union prior to the disaffiliation. (Jt. Ex. 26 par. 8 and 9)

There is no testimony from other bargaining unit members, other than Lipsey, as to how they viewed these agents, but the collective bargaining agreement as amended by the agreement to reaffirm the collective bargaining agreement established that the Charging Union was the bargaining representative, and any mistaken impression of Lipsey to the contrary does not prove otherwise.

16. The relevance of the finding that the Charging Union's constitution defines "local" as a local of UNITE HERE and not as a local of the Charging Union. (ALJD p. 12, l. 19-20) The ALJ overlooked that the same constitution also defines an "affiliate" as a local union of the Charging Union (Jt. Ex. 9 p. 1), and the parties stipulated that prior to the disaffiliation, Local 151 had been an affiliate of the Charging Union as well as an affiliate of UNITE HERE. (Joint Ex. 26, par. 3-7)

17. To the relevance of the finding that no unit employees authorized the transfer of 9(a) status in that this occurred outside of the 10(b) period and Respondent failed to timely challenge the transfer. (ALJD p. 12, lines 17-20)

18. To the finding that authorization cards indicated that UNITE HERE was the 9(a) representative. (ALJD p. 12, l. 14-16) The ALJ overlooked the fact that the cards also bore the name of the Charging Union.

19. The finding that the 2005-2010 collective bargaining agreement and its signature block are more reasonably read as indicating that UNITE HERE became the collective bargaining representative, and that the collective bargaining agreement also supports the view that if any entity replaced Local 151 as the bargaining representative it was UNITE HERE. (ALJD p. 12, l. 1. 39-52, and ALJD p. 12, l. 39-52, p. 13, l. 1-30) The first sentence of the collective bargaining agreement and other provisions of the

agreement, the agreement to reaffirm the collective bargaining agreement, the bargaining history, and the conduct of the parties establish that the Charging Union became the Section 9(a) representative.

20. The finding that the collective bargaining agreement and other evidence fail to support the conclusion that the Charging Union had become the bargaining representative. (ALJD p. 12, l.15-30) The ALJ overlooked that the preamble contained in the first sentence of the collective bargaining agreement recites the correct legal name of the Charging Union, and that during bargaining Joint Board Representative Monje insisted that the name of the Charging Union be listed as the contracting party, and that this is consistent with the requirements of the Charging Union's constitution that required that collective bargaining agreements be executed in the name of the Charging Union. (Tr. 74, Jt. Ex. 9, Art. 2, Section 1c, p. 3)

21. The finding that language in the agreement to reaffirm the collective bargaining agreement fails to support the conclusion that the Charging Union had become the bargaining agent and it was equally susceptible to an interpretation that UNITE HERE had become the bargaining agent. (ALJD p. 13, l. 34-49) The first sentence of the agreement to reaffirm the collective bargaining agreement, the signature block of that agreement, the bargaining history, and the conduct of the parties establish that the Charging Union was the Section 9(a) representative.

22. The finding that the evidence failed to establish that 9(a) status had been transferred to the Charging Union outside of the 10(b) period. (ALJD p. 14, l. 2-13)

23. The finding that General Counsel conceded that there was no agreement between Local 151 and the Charging Union to the transfer of 9(a) status. (ALJD p. 14, l.

6-10) While there was no written transfer agreement, it is clear that both Local 151 and Respondent knowingly acquiesced in, and did not object to, the transfer and thereby tacitly assented to the transfer.

24. The finding that Respondent did not receive clear and unequivocal notice of the transfer. (ALJD p.14, l.4-35) The collective bargaining agreement, the bargaining history, the agreement to reaffirm the collective bargaining agreement, and the conduct of the parties establish that Respondent had received unequivocal notice of the transfer, and had failed to challenge the transfer within the 10(b) period of such notice.

25. The finding that reliance should be placed on Lipsey's testimony that she had not heard of the Charging Union until recently. The collective bargaining agreement referred to the Charging Union, and Lipsey was present for the negotiations. (ALJD p. 14, l. 29-31)

26. The finding that Respondent did not wait six months to challenge the transfer of 9(a) status to the Charging Union and timely asserted a challenge. (ALJD p. 14, l. 35-40)

27. The finding that the collective bargaining agreement and/or the agreement to reaffirm the collective bargaining agreement did not give Respondent unequivocal notice of the transfer of 9(a) status to the Charging Union outside of the 10(b) period. (ALJD p. 14, l. 14-34, ALJD p. 15, l. 21-31)

28. The finding that after early 2005 Local 151 was an active participant in contract negotiations and in helping employees resolve disputes. (ALJD p.15, l. 1-4) While Barbara Lipsey attended bargaining sessions for the 2005 agreement, and sometimes filed first step grievances, the evidence establishes that she and Local 151

were acting in a subordinate role to the Charging Union, and that the description of her conduct as being “active” is an exaggeration of the evidence on the record. Moreover, although the collective bargaining agreement was not signed until October 2005, it was agreed to and ratified by March 2005 and went into effect by March 21, 2005.

29. The finding that the contention of General Counsel that the Charging Union’s performance of all of the representational duties put Respondent on notice that the Charging Union had become the Section 9(a) representative fails as a matter of fact and law. (ALJD p. 14, l. 43-45, p. 15, l. 1-13) The ALJ misconstrued the argument of the General Counsel. The argument of the General Counsel which is supported by fact and law is that the Respondent was put on notice of the transfer of 9(a) status by: the fact that a Charging Union representative performed virtually all of the duties and responsibilities of the 9(a) representative by early 2005, the fact that Local 151 had become a shell organization which was unwilling and/or unable to carry out these duties by that date, by the language in the 2005-2010 collective bargaining agreement and the 2007 agreement to reaffirm the collective bargaining agreement, by the bargaining history, and by the conduct of the parties in administering those agreements. This evidence establishes that Respondent had received unequivocal notice of the transfer of 9(a) status to the Charging Union outside of the 10(b) period, and Respondent knowingly acquiesced to the transfer.

30. The finding that after 2005, the Charging Union presented Local 151 as having continuing representation responsibilities. (ALJD p. 15, l. 6-12) The Charging Union did not present Local 151 as being the 9(a) representative. The Charging Union did not suggest that Local 151 was the 9(a) representative. Rather, it did nothing more

than to state that Local 151 would continue to assist the Charging Union as the 9(a) representative.

31. The failure of the ALJ to find that there was a continuity of representation following the disaffiliation of the Charging Union from UNITE HERE, and its subsequent affiliation with Workers United/SEIU in March 2009, and, as a result, the Charging Union continued to be the 9(a) representative. (ALJD p.9, l. 42-47)

32. The finding that Respondent did not violate Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Charging Union, by denying the Charging Union access to its facilities, by refusing to process its grievances, by refusing to remit to the Charging Union union dues and fees deducted from the checks of its employees, by refusing to provide the Charging Union with requested information, and by refusing to meet and bargain with the Charging Union for a successor collective bargaining agreement. (ALJD p. 15, l. 32-44)

33. The finding that the information that the Charging Union requested was only an updated seniority list, because in addition to dates of hire, the Charging Union also requested telephone numbers, addresses, classifications, labor grades, and the current wage rates of bargaining unit employees. (ALJD p.7, l. 25-27)

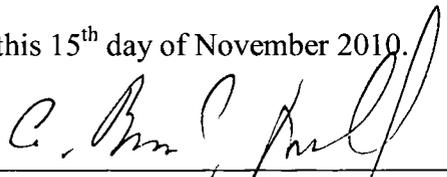
34. The conclusion of law that the evidence does not establish that the Charging Union was and continues to be the 9(a) representative of the bargaining unit employees. (ALJD p. 16, l. 10-11, G.C. Ex. 3)

35. The conclusion of law that the record does not establish that Respondent violated Section 8(a)(1) and (5) of the Act when it refused to remit union dues and fees to the Charging Union, refused to meet with representatives of the Charging Union to

bargain a successor agreement or process grievances, refused to allow the Charging Union's representatives access to its facilities, and refused to provide the Charging Union requested information. (ALJD p. 16, l. 13-17)

36. To the Order dismissing the complaint. (ALJD p. 16, l. 20-22)

Respectfully submitted this 15th day of November 2010.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Counsel for General Counsel's Exceptions to the Decision of the Administrative Law Judge and Counsel for the General Counsel's Brief in Support of Exceptions* was served electronically (email) on November 15, 2010 on the following parties:

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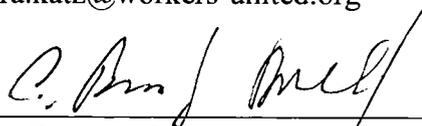
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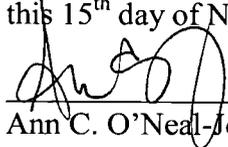
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Subscribe and Sworn to Before Me
this 15th day of November 2010.


Ann C. O'Neal-Jones, Notary Public
Acting in Kent County, Michigan
My commission expires September 30, 2011