

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DECO-AKAL, JV

and

Case 28-CA-21082

INTERNATIONAL UNION, SECURITY, POLICE, AND  
FIRE PROFESSIONALS OF AMERICA (SPFPA)

and

Case 28-CB-6508

JUAN J. VIELMA

INVITATION TO FILE BRIEFS

This case is currently before the Board on the exceptions of the Respondent Union to the June 13, 2007 decision of Administrative Law Judge Gregory Z. Meyerson.<sup>1</sup>

Judge Meyerson found that the Respondent Employer and Respondent Union violated Section 8(a)(3) and (1) and 8(b)(1)(A) and (2) of the Act, respectively, by effectuating the termination of Juan Vielma for refusing to pay his union dues pursuant to the parties' union-security agreement. In doing so,

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<sup>1</sup> The Respondent Employer has not filed exceptions to the judge's decision. The Employer's counsel has represented to the General Counsel that it has settled its portion of the case by paying a backpay sum to the discriminatee, who waived reinstatement, and by posting the judge's recommended notice to employees. The General Counsel has therefore filed a motion to sever Case 28-CA-21082, adopt the judge's decision as it relates to the Respondent Employer, and to remand this case to the Regional Director for compliance purposes. This motion is also currently before the Board.

he relied on the Texas state "right-to-work" law, which prohibits the execution and enforcement of union-security provisions.

Shortly after the issuance of Judge Meyerson's decision, the Attorney General of Texas initiated state court proceedings against the Respondents seeking, among other things, make-whole remedies for Vielma and an injunction requiring the Respondents to cease and desist from enforcing the union-security provision.<sup>2</sup> On August 10, 2007, a Texas district court in El Paso ordered that the Respondent Employer, among other things, cease and desist from enforcing the provision, make Vielma whole for any losses, and post a notice to its employees stating that it violated state labor law. On February 26, 2008, the same court ordered that the Respondent Union, among other things, cease and desist from seeking enforcement of the provision and refrain from including similar language in future collective-bargaining agreements.<sup>3</sup>

To assist the Board's consideration of whether the Respondents violated the Act by effectuating the termination of

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<sup>2</sup> On September 25, 2007, the Board denied the Respondent Union's Motion to Reopen the Record to introduce the Texas Attorney General's Petition and Request for Temporary and Permanent Injunction, which had been filed in state court. In doing so, however, the Board stated that it would take administrative notice of the petition. We now take notice of the petition and the court's subsequent rulings in the case.

<sup>3</sup> Both of these orders are attached as appendices.

Vielma, we invite the Parties to file briefs addressing the following questions:

1. In light of the completed litigation in Texas, the remedies ordered by the state court, and the Employer's asserted remedial action, is there still a live controversy to be resolved by the Board?
2. In their briefs to the Board, the parties cited the U.S. Supreme Court's decision in *Retail Clerks International Association, Local 1625 v. Schermerhorn*, 375 U.S. 96 (1963). In that case, the Board filed a brief with the Supreme Court. Brief for the United States as Amicus Curiae, 1963 WL 105628. What are the parties' views on the position set forth in the Board's brief and its relevance, if any, to the legal issue presented here?
3. What are the parties' views on *Albertson's/Max Food Warehouse*, 329 NLRB 410 (1999), *City Markets, Inc.*, 266 NLRB 1020 (1983), and then-Chairman Fanning's concurrence in *Asamera Oil*, 251 NLRB 684 (1980), as they relate to this case? <sup>4</sup>

Briefs not exceeding 25 pages in length shall be filed with the Board in Washington, D.C. on or before May 25, 2011. The parties may file responsive briefs on or before June 8, 2011,

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<sup>4</sup> Member Hayes agrees that the parties' response to question 1 may obviate the need to address the issues raised by the Respondent's Union's exceptions. However, he would not invite supplemental briefing on questions 2 and 3, and he dissents from his colleagues' decision to do so. As indicated in question 2, the parties have already cited the *Schermerhorn* decision and had full opportunity to discuss its import. The amicus brief filed by the General Counsel in that case is nonprecedential and, as such, nonbinding on either the Board or subsequent General Counsels. Likewise, the precedent cited in question 3 substantially predated issuance of a complaint in this case and the parties have already had their opportunity to discuss its relevance, if any. In any event, the Board is fully capable of analyzing these cases when making its own conclusions of law based on the theory of violation heretofore argued by the General Counsel.

which shall not exceed ten pages in length. No other responsive briefs will be accepted. The parties shall file briefs electronically at [http:// mynlrb.nlr.gov/efile](http://mynlrb.nlr.gov/efile). If assistance is needed in filing through <http:// mynlrb.nlr.gov/efile>, please contact the undersigned.

Dated, Washington D.C., May 4, 2011

By direction of the Board:

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Lester A. Heltzer  
Executive Secretary