

1 BRUCE A. HARLAND, Bar No. 230477
WEINBERG, ROGER & ROSENFELD
2 A Professional Corporation
1001 Marina Village Parkway, Suite 200
3 Alameda, California 94501-1091
Telephone 510.337.1001
4 Fax 510.337.1023

5 JACOB J. WHITE, Bar No. 263778
WEINBERG, ROGER & ROSENFELD
6 A Professional Corporation
3435 Wilshire Boulevard, Suite 620
7 Los Angeles, California 90010-1907
Telephone 213.380.2344
8 Fax 213.381.1088

9 Attorneys for Respondent
10 SERVICE EMPLOYEES INTERNATIONAL UNION,
UNITED HEALTHCARE WORKERS-WEST
11

12 UNITED STATES OF AMERICA
13 NATIONAL LABOR RELATIONS BOARD
14

15 SERVICE EMPLOYEES INTERNATIONAL) Case No. 21-CB-15007
UNION, UNITED HEALTHCARE)
16 WORKERS-WEST) **RESPONDENT'S BRIEF IN SUPPORT**
) **OF EXCEPTIONS TO THE DECISION**
17 Respondent,) **OF ADMINISTRATIVE LAW JUDGE**
) **CLIFFORD H. ANDERSON**
18 and)
)
19 NATIONAL UNION OF HEALTHCARE)
WORKERS)
20)
Charging Party.)
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I. INTRODUCTION

Respondent Service Employees International Union, United Healthcare Workers-West submits the following brief in support of its Exceptions to the Decision of Administrative Law Judge Clifford H. Anderson. The ALJ erred when he found that Respondent failed to fulfill its fiduciary duty to Terrance Carter, an electroencephalogram technician at Lakewood Regional Medical Center. Carter made a deliberate, conscious, and intentional decision to cease paying his Union dues because he felt that Respondent was not representing him. In light of Carter’s decision, the ALJ erred when he failed to find that Carter was a “free rider”. For these reasons, discussed in detail below, Respondent Union respectfully requests that the Board grant its Exceptions in their entirety, and reverse the ALJ.

II. PROCEDURAL BACKGROUND

On August 4, 2010, the National Union of Healthcare Workers (“Charging Party”) filed a charge against Service Employees International Union, United Healthcare Workers-West (“Respondent” or “Union”). The General Counsel issued a complaint against Respondent on December 30, 2010. The complaint, as amended, alleges, and the answer denies, that Respondent improperly enforced the union-security clause in its then applicable collective bargaining agreement (“CBA” or “contract”) with Lakewood Regional Medical Center (“Employer” or “Hospital”) by requesting that the Hospital terminate unit-member Terrance L. Carter for failure to pay Union dues.

The case was tried on April 21, 2011, in Los Angeles, California before Administrative Law Judge Clifford H. Anderson. ALJ Anderson issued his Decision on June 29, 2011. The ALJ found that the Respondent violated the Act.

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1 **III. STATEMENT OF FACTS**

2 The Union and the Hospital are parties to a collective bargaining agreement from January
3 1, 2007 through March 31, 2011. (GC 18)¹. That CBA contains a union-security clause. The
4 union-security clause mandates that employees of the Hospital, who are subject to the CBA,
5 maintain membership with the Union in good standing. Id. at p. 39. Failure to comply with that
6 provision subjects the employee to termination upon notice by the Union to the Hospital. Id.

7 Terrance Carter was employed by the Hospital, as an electroencephalogram technician,
8 from February 27, 2006, until his termination on July 30, 2010. (Tr. 37:5-9, 84:4-9). In
9 approximately March of 2009, Carter signed a revocation form, revoking the Hospital’s authority
10 to automatically deduct Union dues from his paycheck. (Tr. 40:3-25). Carter filed his revocation
11 form with the Hospital’s Human Resources Department, along with the revocation form of more
12 than one hundred other employees. (Tr. 41:15-20). Carter had approached those other employees
13 to encourage them to fill out the revocation forms. (Tr. 70:21-23).

14 After revoking authorization for automatic dues deduction, Carter became delinquent in his
15 financial obligations to the Union. The Union informed Carter of this delinquency, and the
16 consequences of the delinquency, on a number of occasions. On March 15, 2010, the Union sent,
17 and Mr. Carter received, a letter informing him (1) that he was delinquent in his dues, (2) the total
18 sum owed to cure the delinquency, (3) the date by which the delinquency must be cured, and (4)
19 notification that failure to cure the delinquency would result in his discharge from the Hospital.
20 (GC 6). On May 10, 2010, the Union sent, and Mr. Carter received, a letter informing him (1)
21 that he was delinquent in his dues, (2) the total sum owed to cure the delinquency, (3) the date by
22 which the delinquency must be cured, and (4) notification that failure to cure the delinquency
23 would result in his discharge from the Hospital. (GC 7). Carter did not deny receiving a copy of
24 the May 10 letter. Despite his receipt of the letter, Carter ignored it and did not make any effort to
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26 ¹ In this brief, all citations to the ALJ’s decision will be referred to as “ALJD” followed by the
27 appropriate page number(s) and line number(s). The hearing transcript will be referred to as “Tr.”
28 followed by the appropriate page number(s) and line number(s). General Counsel’s exhibits will
be referred to as “GC” followed by the appropriate number(s). Union exhibits will be referred to as
“UX” followed by the appropriate number.

1 contact the Union in an effort to challenge delinquency amounts or to work out an alternative
2 payment plan.

3 In addition to mailing him the May 10th letter, and in an effort to make sure Carter actually
4 received the letter in case he later denied receiving it, Union Representative Cory Cordova hand-
5 delivered a copy of the letter to Carter at the Hospital on June 18, 2010. (Tr. 98:14-99:16). Carter
6 told Cordova that he would put the letter “with the others”. (Tr. 99:15-16). During that
7 conversation, Cordova explained to Carter the he understood Carter to be several hundred dollars
8 behind in his dues payments. (Tr. 99:25-100:2). Cordova told Carter that he could contact
9 Katherine De Jesus, an auditor with the Union, if he had any questions about the letter and/or his
10 delinquency. (Tr. 100:2-6). Cordova also explained to Carter that the Union was receptive to
11 working out a payment plan to accommodate any financial difficulty he may experience as a result
12 of bringing himself in to compliance with the union-security clause. (Tr. 100:13-22). During this
13 conversation Carter claimed, repeatedly, that he was “100% paid up” in his dues obligations. (Tr.
14 100:3-4, 100:23-24). After the conversation, Mr. Cordova informed the Union that he had
15 personally delivered the letter to Carter. (Tr. 100:25-101:7). Mr. Cordova also had telephone
16 conversations with Carter in which he informed him of his dues delinquency. (Tr. 108:12-16).
17 Carter again responded that he was “100% paid up” and that he did not owe anything to the Union
18 because the Union did not represent him. (Tr. 108:18-21).

19 Cordova also informed the Hospital, namely Human Resources Director Mary Okuhara
20 (hereinafter “Okuhara”), of the June 18th conversation with Carter in which he hand-delivered the
21 May 10, 2010 letter. (Tr. 110:11-12). This conversation also took place on June 18, 2010. (Tr.
22 110:1). During the same conversation Cordova told Okuhara that the Union was giving Carter
23 twenty-one calendar days from hand-delivery of the letter to comply with his financial obligations
24 because “the goal isn’t to get people fired”. (Tr. 110: 14-17). On or about June 25th, 2010,
25 Cordova had a telephone conversation with Kathy Wyrick (hereinafter “Wyrick”), assistant labor
26 relations director for Tenet Health Systems, the owner of the Hospital. (Tr. 111:1-4). During that
27 conversation, Wyrick told Cordova that the Hospital was giving Carter another fifteen working
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1 days after the twenty-one calendar days to comply with his dues obligations. (Tr. 111:19-23).
2 Cordova agreed to this plan because “the goal was to get [Carter] caught up and preserve his
3 employment.” Id. During that same conversation Wyrick asked Cordova to send another letter
4 requesting Carter’s termination, should Carter not comply by the new deadline. (Tr. 111:24-
5 112:4). Cordova subsequently sent letters on July 29, 2010 and July 30, 2010. (GC 20 & 21).

6 Carter testified that he signed and submitted a dues revocation form, and intentionally
7 stopped paying his Union dues, in protest because he felt that the Union was not representing him.
8 (Tr. 74:12-16). Okuhara testified that the Hospital terminated Carter’s employment on July 30,
9 2010 because the Union notified her that Carter had failed to pay his union dues and that he should
10 therefore be terminated pursuant to Article 23 of the CBA. (Tr. 84:4-14). Okura informed Carter
11 of his termination via letter. (Tr. 84:23-24) (GC 9).

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13 **IV. ARGUMENT**

14 The ALJ made three key errors. First, the ALJ erred when he found that the Union failed to
15 comply with the fiduciary duty it owed Terrence Carter. (ALJD 14:12-20). Second, the ALJ erred
16 when he found that Carter was not set on avoiding his dues obligations. (ALJD 17:40-18:1).
17 Finally, the ALJ erred when he found that Carter’s “request” for an itemized bill from the Union
18 eviscerated the Union’s “free rider” defense. (ALJD 17:33-36, 18:2-7).

19
20 **A. THE ALJ ERRED IN FINDING THAT THE UNION FAILED TO FULFILL ITS
21 FIDUCIARY DUTY TO CARTER**

22 A union causing an employer to discharge an employee pursuant to a union-security
23 agreement because of the employee’s failure to satisfy his or her dues paying obligations under the
24 agreement has a fiduciary duty to treat the employee fairly to assure that the non-complying
25 employee made a conscious choice to evade his or her obligation as opposed to non-compliance
26 through ignorance or inadvertence. UFCW Local 368(A), 317 NLRB 352, 354 (1995). A union
27 must satisfy the following conditions to fulfill its fiduciary duty:

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1. The union is party to a valid union-security agreement with the employer covering the employee which requires the employee to maintain good-standing membership in the union as a condition of continued employment;
2. Prior to causing the discharge, the union has notified the employee:
 - a. He or she is delinquent in his or her dues obligation;
 - b. The total sum payable to cure the dues delinquency, the time period covered by the delinquency, and the method used in calculating the delinquency;
 - c. The date by which the delinquency must be cured;
 - d. Failure to cure the delinquency will result in the union’s causing the employer to discharge the employee.
3. The employee has failed to cure the delinquency by the date specified by the union.

Id. (citations omitted). The ALJ found that the Union failed to meet the second element. (ALJD 14:12-20). This was an error.

Carter was informed that he was delinquent in his dues on no less than five occasions prior to his termination. He was mailed and received three letters from the Union. (G.C. 4, 6, and 7). The third paragraph in all three of those letters began the same way: “You are currently delinquent in your financial obligations to the union under the collective bargaining agreement.” In addition to the three letters, Union Representative Cory Cordova informed Carter of his delinquency during a face-to-face conversation at the Hospital on June 18, 2010. During that conversation, Cordova explained to Carter that he understood Carter to be several hundred dollars behind in his dues payments. (Tr. 99:25-100:2). Finally, Cordova testified that he spoke with Carter during a phone conversation in which he informed Carter of his dues delinquency. (Tr. 108:12-16). Clearly, then, the Union complied with element 2a. There can be absolutely no question that Carter was made aware of his dues delinquency.

The Union also complied with element 2b. The May 10, 2010 letter, which Carter received both in the mail and in person, via Cordova, clearly explained the amount Carter was in arrears (\$236.16), the time period covered by the delinquency (“...the amount you owe to the Union from pay period 11/17/2009 through pay period 4/24/2010 is \$226.16”), and the method used in

1 calculating the delinquency (“This calculation was arrived at as follows: the dues rate for the
2 Union is 2% of actual gross straight time earnings, to a maximum monthly rate of \$98.00 in 2009
3 and \$102.00 in 2010.”) (GC 7, p. 1). Again, Carter received this letter, with its clear compliance
4 with the Union’s legal responsibilities, on two separate occasions. Element 2b was, therefore,
5 complied with. Carter was made aware of the total sum payable to cure the dues delinquency, the
6 time period covered by the delinquency, and the method used in calculating the delinquency.

7 Elements 2c and 2d were also complied with. Carter was informed, in the May 10, 2010
8 letter, of the date by which the delinquency must be cured and the fact that a failure to cure the
9 delinquency would result in the Union causing the Hospital to discharge him from his employment:
10 “If we do not receive your payment for fee arrearages in the amount of \$236.16 by **May 31, 2010**,
11 we will demand that Lakewood Regional Medical Center begin proceedings to remove you from
12 employment due to your failure to comply with Article 3, Sections A.1-A.2. of the contract...”
13 (GC 7, p. 1) (emphasis in original). This was reiterated on the second page of the May 10, 2010
14 letter: “In order to avoid our notifying the employer to commence proceedings that can result in
15 your discharge, your payment in the amount of \$236.16 must be received by the Union no later
16 than **May 31, 2010**.” (GC 7, p. 2) (emphasis in original). The Union therefore complied with
17 element 2c and 2d. Carter was informed on multiple occasions of the date by which he had to cure
18 the delinquency, and the consequences for failure to cure. All the subparts of the second element
19 were therefore met.

20 The final element requires a showing that the employee has failed to cure the delinquency
21 by the date specified by the union. Again, this element was met. It is undisputed that Carter failed
22 to cure his dues delinquency by May 31, 2010. There was un-rebutted testimony from Cory
23 Cordova that, when he spoke with Carter in person at the Hospital on June 18, 2010, Carter had yet
24 to comply with the terms of the May 10, 2010 delinquency letter. Carter insisted that he was
25 “100% paid up”. But, plainly, he was not. Although there was evidence that Carter made sporadic
26 and nonsensical nominal payments in the past, he simply failed to cure his delinquency by May 31,
27 2010. Despite this, the Union bent over backwards in an attempt to help Carter save his job.

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1 Cordova hand-delivered a copy of the May 10, 2010, letter to Carter on June 18, 2010. The Union
2 also gave Carter twenty-one days from the date Cordova hand-delivered the letter with which to
3 comply. (Tr. 110:13-18). Finally, the Union agreed to the Hospital’s request to provide Carter
4 with an additional fifteen business days after the twenty-one days expired. That pushed Carter’s
5 discharge date all the way to July 30, 2010. Still, Carter failed to comply.

6 Despite this, the ALJ found that the Union failed to fulfill its fiduciary duty to Carter for
7 two reasons. First, the ALJ found that, as a result of the time delay described above, the Union did
8 “not provide Carter timely with the date by which the delinquency must be cured.” (ALJD 14:16-
9 17). Second, the ALJ found that the Union failed to “provide Carter with an accounting of how his
10 dues arrearages were calculated to the extent that his payments were applied to the balances due.”
11 (ALJD 14:18-20). Both of these findings were erroneous.

12 On the first finding, any time delay was a result of the Union’s efforts to make sure that
13 Carter was informed of the delinquency, and to afford him more time to comply with his dues
14 obligations. Cordova testified that he told both Carter and the Hospital that Carter was to have
15 twenty-one days from the hand-delivery of the letter to comply. (Tr. 110:13-18). This was
16 because, according to Cordova, the goal was not to get people fired. *Id.* For the same reason,
17 Cordova and the Union agreed when the Hospital requested that Carter be given another fifteen
18 working days to comply. (Tr. 111:18-23). Essentially, the ALJ took issue with the fact that the
19 Union did not seek Carter’s discharge on May 31, 2010. The sole reason for any delay in seeking
20 Carter’s termination was to insure that Carter was aware of his delinquency, and to afford him even
21 more time to cure the delinquency. Surely the Board cannot endorse a rule whereby a union is
22 punished for showing an abundance of caution and consideration before seeking the termination of
23 a bargaining unit member pursuant to a union security clause. That would clearly undermine the
24 Board’s jurisprudence in this area and the intent of the Act.

25 On the second finding, the Union provided Carter with three separate letters outlining his
26 outstanding balance, and the method for determining his dues obligations. In addition, Cordova
27 testified that he informed Carter that, if Carter had any questions he could contact Katherine De
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1 Jesus, an auditor at the Union and the author of the May 10, 2010, letter. (Tr. 100:2-24). Cordova
2 told Carter that De Jesus could “break it down” for him, and that the Union was accommodating
3 about creating payment plans. Id. Carter responded by saying that he did not have to contact
4 anyone, and that he was “100% paid up.” Id. Simply put, Carter had no intention of satisfying his
5 delinquency or remaining current with respect to his dues obligations.

6 In Teamsters Local 630 (Ralph’s Grocery), 209 NLRB 117 (1974), a case dealing with the
7 same issues present in the instant matter, the terminated employee claimed that he was not aware
8 of his financial obligations to the union. However, the Board found:

9 At the very least, the knowledge he acquired of the existence of the union-
10 security contract, coupled with his obligation to deposit the withdrawal card,
11 imposed a duty on [the employee] to make further inquiry of the Union.
12 Thus, the plight in which he found himself was due as much to his failure to
13 abide by his union membership obligations as to the Union’s neglect in
14 notifying him of his union-security obligations.

15 Id. at 125. In other words, because the employee was aware of the union-security clause, the
16 Board found that he was obliged to inquire as to his financial obligations. Similarly, in the instant
17 matter, Carter was told on multiple occasions that he was delinquent in his dues obligations. Carter
18 was provided, on multiple occasions², with the means to contact the Union should he have any
19 question or concerns about his delinquency. But Carter, openly hostile to the Union, refused to
20 make any inquiries. Carter’s intentions were clear from the beginning: he was not going to pay
21 dues to a Union that he did not believe was representing him.

22 In sum, the fact that the final correspondence from the Union did not contain an accounting
23 of Carter’s dues obligations up to the day of his termination was a result of the Union’s efforts to
24 provide Carter with extra time in which he could cure his dues delinquency. And, the Union
25 provided Carter with an accounting of how his sporadic payments were applied to his balance due
26 in that his current outstanding balance was reflected in the numerous letters the Union provided to
27 him. Further, the Union, on multiple occasions, informed Carter that he could contact the Union if

28 ² In addition to the oral admonition by Cordova, each of the many letters provided to Carter
provided contact information for the Union. See e.g. GC 4, p. 2.

1 he had any questions about his delinquency. Under Teamsters Local 630, when coupled with all
2 the other information available to Carter, this placed a duty on Carter to call the Union if he
3 disputed the balance owed. Therefore, the ALJ erred in finding that the Union failed to fulfill its
4 fiduciary obligation to Carter before seeking his discharge from the Hospital.

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6 **B. THE ALJ ERRED IN FINDING THAT CARTER WAS NOT SET ON AVOIDING**
7 **HIS DUES OBLIGATIONS**

8 In his decision, the ALJ found that Carter refused to pay his union dues because the Union
9 failed to provide him with an accounting of how the sporadic and nominal payments he made were
10 applied to his balance. (ALJD 16:49-50). This finding is at odds with the evidence produced at the
11 hearing, and was clearly erroneous. Carter made it abundantly clear on multiple occasions during
12 his testimony that his refusal to satisfy his dues obligations stemmed from his belief that the Union
13 was not properly representing him, not because the Union had failed to provide him with an
14 accounting:

15 Q (By Mr. White): So, in other words, you testified you didn't feel UHW
16 was functioning as a union and you didn't feel you were being represented
by UHW?

17 A (By T. Carter): We were not being represented fully by UHW at that point
18 in time, at the at the point in time when all this situation transpired which is
19 why – which is why – which is why in good conscience, because I was not
20 getting the service, I was not getting my requests responded to as a union
21 member, which means I paid their salary. If I pay, I have a say. I have a
22 voice in my union. **Now, when I don't have a voice in my union and I**
have to pay for it, then I'm going to – I'm going to slow down the
payment. I signed the revocation form for that very same reason.
Because services was not granted to me as a union member. So it was a
protest.

23 (Tr. 73:4-17) (emphasis added).

24 Q (By Mr. White): Is it your testimony then that you felt you were being
25 unrepresented or you were not being represented by UHW and you said,
therefore, you signed this revocation form **and stopped paying your dues**
as a result?

26 A (By T. Carter): In protest, yes.

27 (Tr. 74:12-16) (emphasis added).
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1 Q (By Mr. White): I'm asking you did you sign an affidavit in which you
2 said because the UHWW was not doing its job and **failed to assist me in**
3 **three grievances**, I was not willing to re-execute a dues check off form or
4 otherwise catch up with my dues payments?

5 A (By T. Carter): More or less to that – to that statement. More or less, yes.
6 (Tr. 75: 9-15) (emphasis added).

7 Carter could not have made it any clearer.³ He felt that the Union was not representing
8 him. He felt that the Union had failed to assist him with grievances. He felt that he did not have a
9 voice in the Union. He felt that he was entitled to certain services in exchange for his dues, and he
10 was not receiving those services. For these reason, and only these reasons, Carter decided to stop
11 paying his union dues. The ALJ's finding was, therefore, simply not supported by the evidence
12 produced at the hearing and was in error.

13 **C. THE ALJ ERRED IN FINDING THAT CARTER'S "REQUEST" FOR AN**
14 **"ACCOUNTING" FROM THE UNION WORKED TO EVISERATE THE UNION'S**
15 **"FREE RIDER" DEFENSE**

16 Although the Union clearly complied with its fiduciary duties by meeting all of the required
17 elements, as demonstrated above, the Board does not require "strict compliance with the rules...to
18 permit an employee who has knowingly and not through inadvertence or ignorance evaded his dues
19 obligation to the union to benefit from his noncompliance with that obligation." UFCW Local
20 368(A), supra, 317 NLRB at 354. This is the "free rider" exception. As the prior section makes
21 clear, Carter knowingly and intentionally failed to comply with his dues obligations.

22 The ALJ erred in finding that the free rider exception did not apply to the instant matter.
23 As a result the ALJ's decision effectively eviscerates the free rider exception. First, the ALJ
24 argues that "dissatisfaction or aversion to the union or to union representation is importantly
25 different from employee aversion to payment of required dues and/or an intention not to pay those
26 dues. It is the latter nexus that determines free rider status." (ALJD 15:28-32). In finding that

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28 ³ In addition, Carter told Cordova that he did not owe the Union anything because the Union did
not represent him. (Tr. 108:17-21).

1 Carter's dues intransigence was motivated by his desire to receive an accounting, and not by his
2 aversion to the Union, the ALJ then determined that the free rider exception did not apply to the
3 instant matter. However, the record is clear, as demonstrated in Section IV. B., that Carter was
4 motivated by animus towards the Union, not a desire to receive an accounting from the Union.
5 The ALJ's finding that the free rider exception did not apply was therefore an error.

6 The ALJ cites to Teamsters, Local Union 150 (Delta Lines), 242 NLRB 454 (1979) for the
7 proposition that "the Board has stated that a union's failure to provide information in response to
8 an employee's repeated inquiries regarding his union dues obligations is evidence of that
9 employee's lack of bad faith in failing to pay his obligations." (ALJD 17:33-36). But Delta Lines
10 does not stand for such a broad proposition. The employee in Delta Lines worked as a casual
11 driver for the employer. He was unsure as to whether or not the collective bargaining agreement
12 applied to casual drivers. He was given conflicting information regarding this issue from the
13 union. Because the union could not establish that it had informed the employee that the contract,
14 and therefore the union-security clause, applied to him, the Board found that the union violated the
15 Act by seeking his discharge. Delta Lines therefore stands for the much narrower proposition that
16 when a union fails to inform an employee that he is subject to the collective bargaining agreement,
17 and its union-security clause, in response to that employee's repeated inquiries regarding his union
18 dues obligations, then the employee cannot be said to have evaded his dues obligations in bad faith.

19 Delta Lines is therefore not applicable to the instant matter. Carter was well aware that he
20 was covered by the collective bargaining agreement, and its union-security clause. Carter was
21 aware because (1) he helped negotiate the contract (Tr. 120:12-16), and (2) he received no less than
22 three letters from the Union with clear references to the clause. (GC 4, 6, and 7).

23 The instant matter is comparable to John J. Roche & Co., 231 NLRB 1082 (1977). Like
24 Carter, the employee in Roche was a long time member of the union who was, therefore, "fully
25 aware of his general dues obligations as well as the possibilities of suspension from the Union and
26 discharge from employment for failure to pay dues." Id. As in the instant matter, the union in
27 Roche made numerous attempts to inform the employee of his dues delinquencies. Those efforts

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1 Dated: July 26, 2011

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Respectfully submitted,

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WEINBERG, ROGER & ROSENFELD
A Professional Corporation

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By: /s/ Jacob J. White
BRUCE A. HARLAND
JACOB J. WHITE
Attorneys for Respondent

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PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 3435 Wilshire Boulevard, Suite 620, Los Angeles, California 90010. On July 26, 2011, I served upon the following parties in this action:

Regional Director
NLRB, Region 21
888 S. Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449
Fax: (213) 894-2778

Irma Hernandez
Board Agent
NLRB, Region 21
888 South Figueroa Street
Ninth Floor
Los Angeles, CA 90017-5449
Fax: (213) 894-2778

Florice Hoffman
Law Offices of Florice Hoffman
8502 East Chapman, Suite 353
Orange, CA 92869
Tel: (714) 282-1179
Fax: (714) 282-7918

copies of the document(s) described as:

RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF ADMINISTRATIVE LAW JUDGE CLIFFORD H. ANDERSON

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

BY FACSIMILE I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Los Angeles, California, on July 26, 2011.

/s/ Melanie Garion
Melanie Garion