UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

COMMUNICATIONS WORKERS OF AMERICA AND COMMUNICATIONS WORKERS OF AMERICA, LOCAL 4309 (AT&T TELEHOLDINGS, INC., D/B/A AT&T MIDWEST AND THE OHIO BELL TELEPHONE COMPANY-Employer)	
and	CASE NO. 8-CB-10487
SANDA ILIAS,	
An Individual	

RESPONDENTS' REPLY BRIEF IN SUPPORT OF SECOND MOTION TO REOPEN OR SUPPLEMENT THE RECORD AND RECEIVE FURTHER EVIDENCE

Respondents, Communications Workers of America ("CWA") and CWA Local 4309, previously filed their Second Motion to Reopen or Supplement and Receive Further Evidence in this case pursuant to § 102.48 (b) of the Board's Rules and Regulations. Charging Party has opposed said motion. This Reply Brief is meant to respond to Charging Party's opposition.

Respondents' Motion sought to make Respondents' Board Exhibits A and B a part of the record in this case. Exhibit A is copy of a cover letter to Charging Party dated October 15, 2012, enclosing a dues rebate check to her in the amount of $1,159.10. Respondents' Board Exhibit B is a copy of that check to Charging Party. That check

covered the difference, plus interest, between the amount of agency fees she paid and the amount of agency fees paid by *Beck* objectors for the time in question in this case.

While Charging Party offers no authority in support of her opposition, she does raise several arguments. None have any merit.

First, she asserts that Respondents should not be permitted to re-open the record now because they did not seek to do so during the time this matter was pending on remand before ALJ Clark. This argument is nonsensical. ALJ Clark issued his Supplemental Decision on September 17th at which time the case was transferred back to the Board. The letter and check in question were not issued until October 15th. So it would have been impossible to have made the request while this matter was pending before ALJ Clark.

Second, Charging Party argues that the additional evidence is "irrelevant to the question as to whether the Union violated the National Labor Relations Act." While the additional evidence may not be relevant to the question of whether the Union breached its duty of fair representation, it is clearly relevant to the Board's choice of remedy. *International Ass'n of Machinists, Local 2777 (L-3 Communications),* 355 NLRB 1062 1069 (2010). It should be made a part of the record so the Board has all the evidence before it when it renders a decision in this case.

Third, she argues that Respondents are "attempting to re-litigate the case by way of motion." She complains that this eliminates cross-examination and other rights to a full and fair hearing. This argument is a red herring. The evidence in question simply reveals the true fact that Charging Party has been provided with a dues rebate check in a certain amount. There is no basis to cross-examine this evidence. Charging Party makes

no assertion that she was not sent this check. That would be the only real basis to contest this evidence.

Fourth, Charging Party claims that the Union is seeking to escape liability for having committed an unfair labor practice and should not be permitted to do so. This is completely inaccurate. Respondents have taken exception to the ALJ's rulings and submitted its arguments with respect thereto in terms of whether or not it committed an unfair labor practice. This additional evidence does not go to that question at all, but solely to the question of what remedy ought to be imposed by the Board if it were to find that the Union did commit an unfair labor practice.

ALJ Clark did not order a make whole remedy, properly relying on the Board's determination in *L-3 Communications* that a retroactive remedy would not be appropriate in that case. The Board found that the legal landscape within which that union operated was sufficient to allow it to reasonably believe that its annual renewal requirement for *Beck* objectors was lawful. *Id*., at 1069. In this case a similar approach is well warranted. However, Charging Party has, *inter alia,* challenged the ALJ's failure to impose a make whole remedy.

Now that the Union has voluntarily made Charging Party whole, there is even less reason for the Board to impose a make whole remedy. To turn a blind eye to the fact that Charging Party has already been made whole, by refusing to admit this additional evidence into the record, makes no sense and would be unjust and prejudicial to the Union. The Board ought to have all the facts before it when it renders a decision in this case.

§ 102.48 (b) of the Board's Rules and Regulations authorizes the Board to admit this evidence. Respondents previously cited several cases where the Board has done just that. Charging Party offers no contrary authority. Her arguments in opposition to the Union's Motion are not well taken. Respondents respectfully urge the Board to grant their Motion.

CONCLUSION

For all of the foregoing reasons, and those set forth in the Motion and Brief in Support that were previously filed, Respondents respectfully urge the Board to reopen or supplement the record to receive the aforementioned Exhibits into evidence and to consider them when rendering its decision on the Exceptions.

Respectfully submitted,

/s/ Theodore E. Meckler
Theodore E. Meckler, District 4 Counsel
Communications Workers of America
20525 Center Ridge Road, Room 700
Cleveland, Ohio 44116
Phone: (440) 333-6363
FAX: (440) 333-1491
Email: tmeckler@cwa-union.org

ATTORNEY FOR RESPONDENTS

CERTIFICATE OF SERVICE

I certify that on the 9th day of November 2012, this Reply Brief was electronically filed at the e-filing section of the Board's website. Counsel for the other parties to this proceeding were sent copies of this Reply Brief via email at their below listed email addresses

Susan Fernandez
Counsel for the General Counsel
National Labor Relations Board
Region 8
1240 East 9th Street, Room 1695
Cleveland, Ohio 44199-2086
Email: Susan.Fernandez@nlrb.gov

John Scully
Attorney for Charging Party
National Right to Work Legal Defense Foundation
8001 Braddock Road, Suite 600
Springfield, VA 22160
Email: jcs@nrtw.org

/s/ Theodore E. Meckler
Theodore E. Meckler
CWA District 4 Counsel
Attorney for Respondents