UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

C & G DISTRIBUTING COMPANY, INC.	:	**CASE NO. 9-CA-78875**
Respondent,	:	
vs.	:	
GENERAL TRUCK DRIVERS, WAREHOUSEMEN, HELPERS, SALES AND SERVICE AND CASINO EMPLOYEES, TEAMSTERS LOCAL UNION NO. 957, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS	:	
Charging Party.	:	

REPLY BRIEF OF CHARGING PARTY GENERAL TRUCK DRIVERS, WAREHOUSEMEN, HELPERS, SALES AND SERVICE AND CASINO EMPLOYEES, TEAMSTERS LOCAL UNION NO. 957,

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This matter is before the National Labor Relations Board (Board) on the Exceptions filed by the Acting General Counsel to the Administrative Law Judge's Decision that the Respondent did not violate Sections 8(a)(1) and 8(a)(5) of the Act when the Respondent ceased deducting and remitting bargaining unit employees' union dues to the Charging Party, General Truck Drivers, Warehousemen, Helpers, Sales and Service and Casino Employees, Teamsters Local Union No. 957 (Union or Local 957) upon expiration of the parties' collective bargaining agreement. Notwithstanding the inappropriate and somewhat esoteric arguments submitted by the Respondent in its Answering Brief, Local 957 submits that the current case law, which is

solidly based on the legislative history of the Act, and the record developed in this case, establish that the Respondent's conduct violated Sections 8(a)(1) and 8(a)(5) of the Act.

ARGUMENT

Legislative History and Case Law Support A Finding of a 8(a)(1) and 8(a)(5) Violation

The Board's decision in Hacienda Resort & Casino, 355 NLRB742 (2010), in which a four-member Board deadlocked on whether to reverse Bethlehem Steel, 136 NLRB 1500 (1962), remanded on other grounds sub nom. Marine & Shipbuilding Workers v. NLRB, 320 F. 2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964), set the stage for a honest review of the Board's Bethlehem Steel decision on whether an employer violates Sections 8(a)(1) and 8(a)(5) of the Act by unilaterally ceasing the deduction of union dues of bargaining unit employees and remitting those dues to the affected union. The Board has recently engaged in such a review of the Bethlehem Steel decision in light of the legislative history and determined that an employer violates Sections 8(a)(1) and 8(a)(5) of the Act by making a unilateral change in the deduction of bargaining unit employees' union dues for submission to the recognized union. WKYC-TV, 359 NLRB No.30 (December 12, 2012). The Same determination should be made in the instant case. However, the Union submits there are justifiable reasons for a different remedy.

In their concurring opinion in Hacienda Resort Hotel & Casino, Chairman Liebman and Member Pearce explained in detail why the arguments of their colleagues on the Board for the continuation of the application of the Bethlehem Steel decision could not withstand scrutiny, especially since their colleagues acknowledged that the Board has never adequately explained the rationale for excepting dues checkoff from the postimpasse rule of NLRB v. Katz, 369 U.S. 736 (1962). The Board's recent decision in WKYC-TV examined the legislative history of the

Act and the arguments in favor of maintaining the application of the Bethlehem Steel decision. After this careful review, the Board determined that the deduction of union dues should be treated like the vast majority of terms and conditions of employment, with the exception of the no strike clause, arbitration and management's rights, requiring an employer to continue to honor the dues deduction provisions in an expired collective bargaining agreement until a new agreement is reached or until a lawful impasse has been reached. A similar decision should be rendered in the instant case.

However, while agreeing that the Board's WKYC-TV decision should be applied to the instant case, Local 957 submits that a retroactive application is appropriate. The Respondent, and its counsel, were well aware of the Board's August 27, 2010 decision in Hacienda Resort Hotel & Casino and, in effect, were put on notice that, under the right circumstances, the Board would review the Bethlehem Steel decision. Shortly thereafter, the complaint in the WKYC-TV case was issued, putting all employers, and their respective counsel, on notice that the Board was going to have the opportunity to review the continuing viability of Bethlehem Steel.

Despite these indications that the viability of Bethlehem Steel was in jeopardy, the Employer decided to take the risk that the current Board would not have the opportunity to revisit this issue or that the Board would decide to continue following the Bethlehem Steel decision. In either case, the Employer decided to gamble with full knowledge of the current circumstances involving the Board's decision in Hacienda Resort Hotel & Resort and the multiple cases pending before the Board challenging the viability of the Bethlehem Steel decision. For these reasons, a full retroactive application of the WKYC-TV decision should be issued as a remedy in this case. At the very least, the Employer herein should be required to

immediately begin deducting dues for the bargaining unit employees and remitting those dues to Local 957.

CONCLUSION

For the forgoing reasons and the record as a whole, Local 957 submits that the Board should uphold the Exceptions filed by the Acting General Counsel and render a decision finding that Respondent violated Sections 8(a)(1) and 8(a)(5) of the Act under the facts of the instant case.

Respectfully submitted,

DOLL, JANSEN, FORD & RAKAY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon Jamie Ireland, National Labor Relations Board, Region 9, 3003 John Weld Peck Federal Building, 550 Main St., Cincinnati, Ohio 45202-3271 Ronald L. Mason and Aaron T. Tulencik, Mason Law Firm Co., LPA, 425 Metro Place North, Suite 620, Dublin, Ohio 43017 by regular mail this 26th day of December, 2012.

/s/ John R. Doll
John R. Doll