UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GARDA CL GREAT LAKES, INC., Respondent, and **UNITED FEDERATION OF SPECIAL POLICE AND SECURITY OFFICES, INC.,** Charging Party.	:	Case No. 9-CA-087203 9-RC-085968

RESPONDENT'S ANSWERING BRIEF TO THE GENERAL COUNSEL'S CROSS-EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46(e) of the Board's Rules and Regulations, Respondent Garda CL Great Lakes, Inc. (hereinafter the "Company") files this Answering Brief in response to the General Counsel's Cross-Exception to the Decision ("Decision") of the Administrative Law Judge ("ALJ").

I. INTRODUCTION

As explained in greater detail in the parties' previous briefing in this matter, the Administrative Law Judge found that the Respondent violated the Act by soliciting grievances in advance of a representation election. (JD-15-13). In his Opinion, the Judge identified conduct by Vincent Modarelli, Ivelices Linares, and Christine Bouquin, but held that "there is no evidence that [Webster] Lubemba solicited anyone" or otherwise violated the Act. (JD-15-13, p. 8). The Judge is correct. The General Counsel's Cross-Exception is factually inaccurate and mischaracterizes the contents of the Record and the conduct of Webster Lubemba.

II. RESPONSE TO THE GENERAL COUNSEL'S CROSS-EXCEPTION

A. Relevant Facts Concerning The General Counsel's Cross-Exception

The General Counsel's Cross-Exception stems from Webster Lubemba's interactions with employees at the Garda Columbus Branch in August 2012 concerning the proposed implementation of shorts in Garda's regular employee uniform. During the Hearing, Christine Bouquin explained that the Company had considered issuing shorts to employees as part of a Pilot Program, as an effort to keep employees cool. (Tr. 37, 52, 73, 164).

There is no dispute that shorts were **never** issued to employees in Columbus. (Tr. 37). Indeed, Mr. Lubemba testified that "there were issues that would not allow us to allow employees to wear shorts as a company." (Tr. 286). However, when the final determination was made by the Company to steer away from shorts, Mr. Lubemba was sent to Columbus to explain the decision to employees. (Tr. 286).

The General Counsel argues that it was Mr. Lubemba's trip to Columbus during which he told employees they were not receiving any shorts that violated the Act. There is no evidence to support this claim.

B. Webster Lubemba Did Not Violate The Act

Respondent does not dispute that part of Mr. Lubemba's purpose in returning to Columbus in August 2012 was to "explain face-to-face to employees why they weren't going to be getting shorts." (Tr. 286). While the General Counsel calls this "manag[ing] the expectations of employees" in his Brief, the purpose of Mr. Lubemba's trip was not improper. Garda's decision to inform employees that they would **not** be receiving shorts as part of their uniforms face-to-face is not an improper solicitation and does not violate the Act. If anything, informing

employees they will not be receiving a benefit is the opposite of soliciting grievances.

The General Counsel appears to be arguing that, while in Columbus, Lubemba solicited employee opinions and interest in "alternative uniform ideas." (G.C. Brief p. 10). But while the General Counsel alleges that Lubemba's solicitation of alternative uniforms was "motivated by Respondent's fear that employees would perceive that this was an unfulfilled promise," there is *nothing* in the Record suggesting that any such solicitation ever took place, or supporting the General Counsel's inference. (G.C. Brief, p. 10). To be sure, none of the witnesses who testified during the Hearing alleged that Lubemba said anything of legal significance to them – two witnesses said Lubemba did not speak to them at all, and a third testified that Lubemba said nothing about union-related matters and made no promises or solicitations. (Tr. 39-40, 114).

The only cite the General Counsel provides in support of his claim that Lubemba solicited alternative uniform ideas is General Counsel Exhibit 6, but Exhibit 6 does not suggest that Lubemba solicited alternative uniform ideas. The General Counsel mischaracterizes Lubemba's email. Mr. Lubemba's email – which was addressed to Ms. Bouquin and Ms. Linares – first explains that there was not much interest in shorts as a uniform item in Columbus when Lubemba returned, so fears that the decision would be incredibly unpopular were unfounded. (G.C. Ex. 6). Lubemba also explains that employees were more frustrated with the lack of uniforms provided, but there is nothing in Lubemba's suggesting that Lubemba solicited this information or made any representations to employees that the Company would solve any uniform-related concerns. Finally, Lubemba writes that "[t]he aspect of preparing for next summer with the option of cotton shirts and pants was discussed." (G.C. Ex. 6). Ostensibly, it is this discussion of "cotton shirts and pants" that the General Counsel believes arose after Lubemba allegedly solicited "alternative uniform ideas." Again, the General Counsel is wrong,

and has misconstrued the testimony. Cotton shirts were not a new idea, first proposed or solicited in Columbus in the presence of Lubemba. Lubemba's email establishes that the decision to offer employees the option to purchase cotton shirts had been made some time ago, and Lubemba was reminding employees that "it would be their responsibility to communicate to management to order these uniform items for them." (G.C. Ex. 6). This was a **reminder**, not a solicitation of alternative uniform ideas.

In any event, any ambiguity in the email must be read in favor of the Respondent, as the General Counsel did not ask Lubemba a single question about this sentence – or about cotton shirts or cotton uniforms – during cross-examination.

In sum, there is no evidence that Lubemba solicited "alternative uniform ideas" on his trip to Columbus. The General Counsel's effort to side-step the evidentiary deficiencies in his case by alleging that Lubemba was part of a "continuity of action" that was "intimately connected" to violations by Bouquin and Linares is lofty prose, but it ignores the legal standard. Alleged violations by Ms. Bouquin or Ms. Linares do not alter the requirement that the General Counsel must prove a distinct violation by Lubemba. The General Counsel's efforts to mischaracterize the contents of an email that he neglected to thoroughly inquire about on cross-examination is improper, but is also insufficient to warrant overturning the Administrative Law Judge's findings concerning Webster Lubemba. There is no evidence that Webster Lubemba solicited grievances in violation of the Act. United Airlines Servs. Corp., 290 NLRB 954 (1988).

III. CONCLUSION

Based on the record as a whole and the reasons cited herein, Respondent submits that the General Counsel's Cross-Exception should be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by regular U.S. Mail, postage prepaid and electronic mail, this 13th day of May, 2013 upon:

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