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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RALPHS GROCERY COMPANY
and
UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 324

Case No. 21-CA-039867

**BRIEF IN SUPPORT OF
CHARGING PARTY'S
EXCEPTIONS TO
ADMINISTRATIVE LAW
JUDGE'S DECISION**

I. INTRODUCTION

Pursuant to Section 102.69(i)(2) of the Board's Rules and Regulations, Charging Party United Food and Commercial Workers Union, Local 324 ("Union") excepts to the portion of Administrative Law Judge Jeffrey D. Wedekind's ("ALJ") decision which fails to order the Company to pay the Union for the costs of arbitration. The Union does not except to any other portion of the ALJ's decision.

The ALJ's decision fails to credit the Union's argument that "Payment of ... arbitrator and court reporter costs and fees is appropriate because, but for respondent's unlawful termination in violation of *Weingarten*, the Union would not have had to incur these fees. The collective bargaining agreement between the Respondent and the Union provides that the losing party in an arbitration proceeding must bear the costs of the arbitration, which the union did. Because the arbitrator's decision was palpably wrong, the Board should order reimbursement of those costs and fees to the Union." (Union's Trial Brief at 28-29).

The Union asks that the Board sustain Objection 1 and award the Union \$4,535.20 in arbitrator fees and \$1,400.45 in court reporter fees, for a total of \$5,935.65.

II. ARGUMENT

Exception 1 provides,

1. The finding that "In its brief the Union requests, for the first time, that the Company also be ordered to pay its... costs for the arbitration of Razi's grievance. However, the Union cites no authority for this remedy. Nor does the Union present any argument why the remedy is appropriate. I find that the matter is therefore best left to be addressed by the Board on exceptions, in (*sic*) any, after a full briefing by all parties." (ALJ Decision at 11:20-25).

Because the Union lost at the arbitration, it paid the arbitrator and court reporter's fees in full under a provision in the parties' collective bargaining agreement providing that the losing party in an arbitration hearing must bear the costs of the arbitration. Union's Trial Brief JX 1 at p. 45 ("The mediator/arbitrator's fees shall be borne by the loser in a grievance in which he is required to render a final and binding arbitral decision.").

However, now that the ALJ has ruled that the Company committed unfair labor practices and ordered reinstatement and backpay for the affected employee, the Union is no longer the losing party. But for the Company's erroneous decision to terminate Razi in violation of his *Weingarten* rights and the arbitrator's erroneous decision, the Union would not have paid the arbitrator's and court reporter's fees. Furthermore, the arbitrator's award was not "final and binding" in light of the ALJ's decision.

Accordingly, the Union respectfully requests that the Board require the Company to pay the costs of the arbitration and/or reimburse the Union because the Company is now the "loser" and its conduct resulted in an unnecessary expenditure by the Union. *Northwest Engineering Co.*, 158 NLRB 624, 629 (1966) ("In the exercise of its remedial powers, the Board is required to restore a situation which calls for redress as nearly as possible to that which would have obtained, but for the unfair labor practices involved.")

III. CONCLUSION

For the above-stated reasons, the Charging Party requests that its exception be sustained and that the Company be ordered to reimburse the Charging Party \$5,935.65 in arbitration costs and fees.

DATED: May 28, 2013

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By  _____
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