

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

UNITE HERE LOCAL 1 (STEFANI'S PIER  
FRONT, INC. d/b/a CRYSTAL GARDENS),

and

Case 13-CB-096888

EILEEN CHAPA, An Individual.

**RESPONDENT UNITE HERE LOCAL 1'S BRIEF IN OPPOSITION TO ACTING  
GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

Kristin L. Martin  
DAVIS, COWELL & BOWE  
595 Market Street, Suite 1400  
San Francisco, CA 94105  
T: 415-597-7200  
F: 415-597-7201

Attorneys for Respondent UNITE HERE Local 1

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## INTRODUCTION

The key complaint allegation is that UNITE HERE Local 1 (“Local 1”) did not give Charging Party Eileen Chapa (“Chapa”) some of the information required by *Philadelphia Sheraton Corp.*, 136 NLRB 888 (1962) *enf’d* 320 F.2d 254, 258 (1963) before seeking her termination. The Administrative Law Judge correctly recommended that Complaint be dismissed for two related reasons. Local 1 gave Chapa multiple *Philadelphia Sheraton* notices before she was terminated. Each of these notices contained all of the information that the Complaint alleges that Local 1 did not provide to Chapa. Moreover, Local 1 dealt fairly with Chapa by, as the Judge described it “ma[king] numerous good faith efforts to assist Chapa in meeting her dues obligations” and “ben[ding] over backwards to accommodate Chapa with her dues delinquency issues.” ALJD<sup>1</sup> 7:46-47 & 8:17-20. As a result of Local 1’s efforts, Chapa indisputably knew how much money she owed Local 1 and that the check she gave to Local 1 to pay an installment of that debt bounced. Chapa did not even attempt to pay Local 1 after she learned that the check had bounced. Chapa’s failure to comply with her dues obligation was attributable to her own continual recalcitrance.

## STATEMENT OF FACTS

### A. Background

Eileen Chapa began work at Crystal Garden in 1995. At some point after that, UNITE HERE Local 1 began representing Crystal Garden employees. TR 19, 52. At the time, Chapa was also working at a restaurant called Lino’s, where she continued to work until Lino’s closed in 2003. TR 48; ALJD 2:-27-28. Local 1 represented employees at Lino’s, so Chapa became a

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<sup>1</sup> “ALJD” refers to the Administrative Law Judge’s decision. “TR” refers to the Reporter’s Transcript. “RX” refers to Respondent’s exhibits. “GCX” refers to the Acting General Counsel’s exhibits.

member of Local 1 and paid her union dues by authorizing that dues be deducted from her Lino's paycheck. TR 48; ALJD 2:28-30. When Lino's closed, Chapa continued working at Crystal Garden, but stopped paying dues to Local 1. TR 54-55; ALJD 2:30-31. Chapa was aware that she had a dues obligation at Crystal Garden. She testified that she assumed dues would be taken out of her Crystal Garden paycheck, but never bothered to look at her paycheck to see if dues were deducted.<sup>2</sup> TR 55; ALJD 2:33-3:1.

**B. In 2010, Local 1 began sending Chapa monthly delinquency notices and advised Chapa to start paying off her debt**

In April 2010, Local 1 discovered that Chapa was working at Crystal Garden, but not paying dues. Through health and welfare fund records, Local 1 was able to confirm Chapa's employment back as far as 2006. Local 1 calculated Chapa's dues delinquency back to that date and began sending her monthly delinquency notices. TR 113. The letters informed Chapa of her balance and also stated, "You need to pay your dues in order to keep your job." RX 1; TR 56, 57-58; ALJD 3:1-7.

Chapa testified that the first delinquency notice she received is the one dated September 2010, TR 58; but in fact she received a notice in June or July 2010. Chapa admitted that the first notice she received prompted her to call the union office, TR 59; and it was on July 6, 2010 that Chapa called the union office. RX 2. Chapa spoke with Local 1 employee Danni Li. Li's notes of this call state the following:

Mbr called about dues ltr, she said she hasn't been getting any dues notice until now, even tho she's owed dues since 2006. She thought that her employer was deducting her dues every month. I explained to her that we just recently reinstated her back to our system per the HW hours and per employer's list of

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<sup>2</sup> When an employer deducts dues from an employee's paycheck, it is noted on the paystub. *See* 820 Ill. Comp. Stat. 115-10 ("Employers shall keep records of names and addresses of all employees and of wages paid each payday, and shall furnish each employee with an itemized statement of deductions made from his wages for each pay period.").

employees, and per the employer, they don't deduct her dues. She's like a breakdown list of the dues she owed each year, and she'd like to have a payment arrangement for the balance. I told her we do not offer any payment plan right now, what she could do is to start paying every month to cut down her balance.

-DL

RX 2 (emphasis added); TR 60-61, 106-09. Chapa ignored Li's advice. Chapa did not start paying monthly dues and did not pay anything on her debt to Local 1. TR 62.

**C. In September 2012, Local 1 sent Chapa three *Philadelphia Sheraton* notices**

Local 1's collective bargaining agreement with Crystal Garden contains a union security clause. GCX 12 (Sec. 3); ALJD 2:21-23 & n.1. Two years after Local 1 began sending Chapa delinquency notices, Local 1 enforced the union security clause at Crystal Garden.

On September 6, 2012<sup>3</sup>, Local 1 sent Chapa a letter entitled "1st Notice of Termination for Dues Delinquency." The September 6 letter states that Chapa owes \$3,007.10. Attached to the letter is a chart showing the monthly breakdown of the amount owed and exactly how the amount was calculated. The letter clearly notifies Chapa that she will be terminated if she does not make payment by September 27: "Your employer must terminate you if you do not make this payment. The Union is notifying your employer to prepare to terminate you if the Union does not receive these payments by **09/27/2012**." GCX 2 (emphasis in the original). The letter also offers Chapa the option to enter into a payment plan:

You may make a payment plan instead, if you owe more than \$150. You must make the plan by **09/27/2012**. If you want to make a payment plan, you must come into the union office and bring with you a check, money order or cash for the first payment, which is one third of the total amount due.

GCX 2 (emphasis in the original); TR 24; ALJD 3:9-13 & n.4. Chapa received the letter seven or eight days after it was mailed, on September 13 or 14. TR 62-63.

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<sup>3</sup> Unless otherwise indicated, all dates are in 2012.

On September 13, Local 1 sent Chapa a second letter entitled, "Second Notice of Termination for Dues Delinquency." Like the first letter, this letter states that Chapa owes \$3,007.10; contains an attached chart showing the monthly breakdown of the amount owed and exactly how that amount was calculated; and offers Chapa the option of entering into a payment plan. This letter also states that Chapa will be terminated if she does not pay the dues she owes: "Your employer must terminate you if you do not make this payment. The Union has already notified your employer to terminate you if the Union does not receive these payments by 9/27/2012." RX 3; TR 115; ALJD 3:15-18.

On September 17, Chapa called Local 1's office. She first spoke to Matt Johnson, Local 1's membership coordinator assigned to Crystal Garden. Johnson's notes of the call state the following:

Eileen called and inquired about the termination letter that was sent to her. She said she has received no notices prior to this. I informed her that the address we sent the letter to is the same address we have sent past due notices to. She said she's called before and had nobody call her back. I told her that I couldn't speak for others but that I had received no messages from her. She said that it was ridiculous that we would wait 6 years to tell someone that they owe dues, I again informed her that we had informed her, but that we were also now informing her of our intention to enforce union security. She said that she can't afford to put 1/3 down to keep her job at Crystal Garden and I let her know that she only had two options at this point, which is to pay in full by 9/27 or sign a payment plan by 9/27. She asked for Henry, I told her he was on vacation, she asked who was below him, I said all of the directors and I asked if she wanted to talk to my lead. She said yes, I checked that Tara was available and transferred the call to Tara.

RX 4; TR 68-72, 117-18; ALJD 20-25. Local 1 Office Manager Tara Advani then spoke to Chapa. Advani's notes state:

Matt transferred call. Member received notice, said she doesn't think it's realistic to expect her to pay dues after 7 years. She said she had signed up for check off and asked why she was allowed to go so long without paying dues. Also stated she doesn't have a pension because the union doesn't have a pension because the

union doesn't negotiate good contracts. I asked if she was telling me that she thought she was paying union dues. She said no. I asked if she was telling me she thought she didn't have a dues obligations. She said no. I asked what she wanted from the phone call. She said a more realistic option. I told her I didn't have another option if she wanted to keep her job, she need to pay in full or make a payment plan for 3 months with 1/3 down by due date. She told me she would see what her options were.

RX 5; TR 72-75, 118-19; ALJD 3:25-28.

On September 20, Local 1 sent Chapa a third letter, entitled, "Third Notice of Termination for Dues Delinquency." GCX 3; TR 26. Like the first and second letters, this letter states that Chapa owes \$3,007.10; contains an attached chart showing the monthly breakdown of the amount owed and exactly how that amount was calculated; and offers Chapa the option of entering into a payment plan. This letter also states several times that Chapa will be terminated if she does not pay the dues she owes:

This letter is your final notice that you will be terminated for being delinquent in your dues and or fees. . . . Your employer must terminate you if you do not make this payment. The Union has notified your employer to terminate you if the Union does not receive these payments by **9/27/2012**.

**THIS IS YOUR LAST AND FINAL WARNING. THE NEXT THING THAT WILL HAPPEN IS THAT YOU WILL LOSE YOUR JOB.**

GCX 3 (emphasis in the original); ALJD 3:30-32.

**D. In response to the *Philadelphia Sheraton* notices, Chapa filed an unfair labor practice charge containing false allegations**

On September 24, Chapa filed an unfair labor practice charge against Local 1 in which she alleged, "Since September 20, 2012, the above named labor organization threatened Eileen Chapa with termination if she fails to make excessive dues payments without notice that the Union failed to deduct from her paycheck or allow for payment plan." RX 6; TR 76-77 (emphasis added). These allegation are false, as Local 1 had given Chapa notice that dues were

not being deducted from her paychecks and did offer her a payment plan. TR 77. Local 1 began sending Chapa delinquency notices each month since at least September 2010 and also sent Chapa three *Philadelphia Sheraton* letters in September 2012 which offer a payment plan. RX 1, 3; GCX 2, 3.

**E. On the last possible day, Chapa entered into a payment plan to avoid termination**

On September 27, Chapa entered into a payment plan with Local 1, in which Chapa agreed to pay \$3,007.10 in three equal installments. The first payment was due on September 27, which Chapa paid, and the second and third payments were due on October 31 and November 30 respectively. The payment plan states:

I understand that there is no grace period. If I don't make any payment on time or in full, I am then responsible and liable to pay the entire remaining balance within ten (10) days after Local 1 gives me notice that I have defaulted, even if I have meanwhile paid an overdue installment.

I understand and agree that if I don't comply with the terms of this plan, I shall have no further rights under this plan and that Local 1 can and will instruct my employer(s) to terminate me for failure to meet my financial obligations to Local 1.

GCX 4 (emphasis added); TR 26-27; ALJD 3:34-36 & n.5. Chapa signed the plan and received a copy of it. TR 28, 78-79; ALJD 3:37-38. Johnson also gave Chapa a page of "frequently asked questions" entitled "Local 1 Questions and Answers about Payment Plans." RX 8; TR 119-21; RX 7. The FAQs also state that termination will result a payment is made:

**What happens if I miss a payment?**

If you miss a payment or any part of a payment, you are required to pay the entire amount due to keep your job.

**Is it possible to get a Payment Plan extended?**

No. If you miss a payment deadline, even by one day, you must pay the entire amount due.

RX 8; ALJD 3:37-39 & n.6.

**F. Chapa did not make the next payment due on the payment plan**

Chapa knew that her second payment was due on October 31, TR 79; but Chapa did not make that payment. TR 31, 70-80. That same day, Johnson sent Chapa a letter notifying her that she was in default on the payment plan and that she had to pay the amount due in full by November 12 or she would be terminated. RX 10; ALJD 4:7-12. Chapa received the October 31 letter in the first week of November. TR 83. Chapa still did not pay anything to Local 1.

**G. Local 1 permitted Chapa to enter into a revised dues payment plan**

Conveniently for Chapa, Local 1 decided to revise the payment plan it offered to delinquent employees. The revised plan, available to employees who owe more than \$1,000, was a six-installment plan. TR 128-29. On November 7, Local 1 sent Chapa a letter offering her a six-installment plan and informed her that the deadline for entering into the plan was November 12. GCX 6; TR 32-33, 130; ALJD 4:18-24. Chapa testified that she received the November 7 letter “a few days” before November 12. TR 86.

On November 12, Chapa entered into a second payment plan with Local 1 that divided the balance due on Chapa’s first payment plan (\$2,004.73) over six payments. The initial payment of \$334.12 was due on November 12, and five additional payments of the same amount were due on the last day of each month, beginning in November.<sup>4</sup> RX 11; TR 123, 128; ALJD 4:26-31. Attached to the plan was a chart showing a monthly breakdown of the total amount that

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<sup>4</sup> On November 12 and at the hearing, Chapa complained that her second installment was due on November 30, instead of December 31. TR 35. This was because her first payment, which she made on November 12, was attributed to October 31 since she had defaulted on the prior payment plan by not making a payment in October. TR 89-90, 129-30. Chapa’s gripe is irrelevant. The Complaint does not allege that Local 1’s administration of this payment plan was somehow unlawful.

Chapa owed and how it was calculated. TR 122; ALJD 4 n.7. Even though Chapa's debt to Local 1 had continued to grow, the plan covered Chapa's obligations through July 2012 only because that was the time period covered by the September *Philadelphia Sheraton* letters. TR 130-31.

Like the first payment plan, the second payment plan contains the following language:

I understand that there is no grace period. If I don't make any payment on time or in full, I am then responsible and liable to pay the entire remaining balance within ten (10) days after Local 1 gives me notice that I have defaulted, even if I have meanwhile paid an overdue installment.

I understand and agree that if I don't comply with the terms of this plan, I shall have no further rights under this plan and that Local 1 can and will instruct my employer(s) to terminate me for failure to meet my financial obligations to Local 1.

RX 11 (emphasis added). Chapa signed the plan and received a copy of it. TR 122-23, 128.<sup>5</sup>

**H. Once again, Chapa did not make the second payment due on her payment plan**

On November 19, Local 1 sent Chapa a letter reminding her of her obligation to make the second payment on the payment plan on November 30. GCX 8; TR 40. Local 1 was not obligated to send Chapa this notice, but did so as a courtesy.<sup>6</sup> TR 131-32; ALJD 4:33-35.

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<sup>5</sup> After entering into the payment plan on November 12, Chapa requested to withdraw the unfair labor practice charge that she had filed because she considered the second payment plan to be reasonable. RX 13; TR 84-86. At the hearing, Chapa first testified that she withdrew the charge before learning that the second installment of the revised plan would be due on November 30, TR 84-85; but later admitted that "[i]t might have been after I entered into the payment plan [] I told him that I was not going to proceed with the charge." TR 86.

<sup>6</sup> A typographical error in the letter states that Chapa's second payment was "\$344.12" instead of "\$334.12." TR 132. However, attached to the letter was a copy of the payment plan and the chart showing a monthly breakdown of the amount Chapa owed when she entered into the second payment plan, and the plan states clearly that Chapa's second payment was \$334.12. TR 90-91; ALJD 4 n.8.

On November 30, Chapa gave Local 1 a check for her second payment, but asked that Local 1 not cash it until Monday, December 3 when there would be money in her bank account. Membership Coordinator Matt Johnson told Chapa that Local 1 was not planning on making bank deposits until December 3. TR 41, 91, 135-36. When Local 1 did deposit the check on December 3, the check bounced. TR 43; ALJD 4:37-38.

**I. Chapa did nothing when she learned that the check she wrote to Local 1 bounced**

By the second week of December<sup>7</sup>, the bank notified Chapa that her check was returned for insufficient funds. TR 91-92. Chapa still did nothing to pay her union dues. TR 92; ALJD 5:11-13.

**J. Three months after the deadline set out in three *Philadelphia Sheraton* notices, Chapa was terminated for not paying union dues**

The bank also notified Local 1 that Chapa's check had bounced. TR 136. Matt Johnson learned that information on about December 12. TR 152. Local 1 reached out to Chapa to give her one more chance. On December 13, Johnson called Chapa's home (which was the only phone number she had given Local 1) and left a message with a man, who presumably was Chapa's husband, that Chapa should call him at Local 1 about her dues payment plan. TR 55, 93-94, 136-38; ALJD 5:15-18. Chapa did not return Johnson's call, and on December 14, Johnson called Chapa's home again. This time, no one answered. TR 138; ALJD 5:20-24. On December 17, Johnson sent Chapa a letter which states the following:

The payment you made on November 30, 2012, which, per your request, was deposited by Local 1 on December 3, 2012 was returned by your bank due to

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<sup>7</sup> The ALJ decision states that Chapa received this letter "on or about" December 10. ALJD 5:5. Counsel for the Acting General Counsel complains that this date is inaccurate. AGC Br, at 5 n.5. In fact, Chapa testified that she received the letter during the second week of December. TR 91-92. December 10 falls in the middle of the second week. In any event, this is immaterial. There is not dispute that Chapa learned that her check bounced long at least thirteen days, and possibly more, before she was terminated.

insufficient funds. The Union has attempted to contact you twice by telephone since the check was returned to us last week. We have received no response. As a result of this payment not going through, you have defaulted on your payment plan with Local 1 to pay your overdue financial obligations. As the plan provides, you must now pay the entire remaining amount: **\$1,670.61**. Local 1 must receive payment of this amount in cash, check, money order or online at [www.unitehere1.org](http://www.unitehere1.org) , by **Thursday, December 27, 2012**.

If you fail to pay in full by then, Local 1 will instruct your employer to terminate you for not complying with the union security provision in the collective bargaining agreement.

GCX 9 (emphasis in the original); TR 138; ALJD 5:25-31 & n.9. On December 27 after the close of business, Johnson requested that the employer terminate Chapa, which the employer did. GCX 1 (Complaint, ¶ V(a-b)); TR 7; ALJD 2-23-25.

#### **THE ADMINISTRATIVE LAW JUDGE DECISION**

Administrative Law Judge Rosenstein decided that that Local 1 satisfied its *Philadelphia Sheraton* obligation to Chapa:

I find, based on the particular circumstances of this case, that the Union made numerous good faith efforts to assist Chapa in meeting her dues obligations while regularly providing written documentation as to the total amount of back dues owed, a monthly breakdown of that amount and how it was calculated. Thus, the requirements of *Philadelphia Sheraton* have been satisfied in this case.

ALJD 8:17-21. He based this conclusion on the undisputed evidence “that the Union bent over backwards to accommodate Chapa with her dues delinquency issues.” ALJD 7:46-47.

The Administrative Law Judge also concluded that “Chapa willfully and deliberately determined not to satisfy her dues obligation.” ALJD 8:5-6. This is an alternative basis for the decision, and the Judge pointed to two facts on which he relied to reach this conclusion. First, Chapa learned that the check she had written to Local 1 on November 30 had bounced long before Local 1 requested her termination, ALJD 8:6-12; and second, Chapa made a conscious

choice not to pay dues once Lino's closed in 2003. ALJD 8:12-15. With respect to the second point, the Judge made an adverse credibility finding against Chapa. He concluded that Chapa's testimony that she did not check her paystubs to see if dues were taken out was not believable:

I am hard pressed to believe that Chapa's assertion that for the years after the 2003 closing of Lind's she did not know that Union dues were not being taken out of her Crystal Garden paycheck. It is inconceivable to me that an employee does not review their paystub to ensure that he or she is paid correctly including the itemized deductions that are subtracted to reach the net payment.

ALJD 7:13-17.<sup>8</sup>

### SUMMARY OF ARGUMENT

Counsel for the Acting General Counsel filed exceptions to three of the Administrative Law Judge's legal conclusions. The first exception challenges the conclusion that Chapa was a free rider who willfully and deliberately failed to pay the dues she owed to Local 1. The second exception challenges the conclusion that Local 1 was not obligated to prove that Chapa actually received Local 1's December 17 letter informing her that she had defaulted on the second payment plan before asking the employer to terminate Chapa. Counsel argues that the actual notice requirement that applies to notices given to satisfy the *Philadelphia Sheraton* notice obligation also applies to the letter that Local 1 sent to inform Chapa that she defaulted on the payment plan. The third exception challenges the Judge's reliance on the numerous *Philadelphia Sheraton* notices that Local 1 indisputably did give Chapa before she defaulted on the second payment plan. This brief addresses these exceptions in reverse order.

Section A responds to third exception. It shows that the central complaint allegation – that Local 1 failed to give Chapa a *Philadelphia Sheraton* notice – is false. Chapa received

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<sup>8</sup> This is not the only time the Administrative Law Judge questioned Chapa's credibility. He also expressed doubt that Chapa did not receive the December 17 letter until December 29. ALJD 39-40.

multiple *Philadelphia Sheraton* notices before she was terminated, and she knew that she owed Local 1 dues that had to be paid or she would be terminated. Neither the purpose underlying the *Philadelphia Sheraton* rule nor a policy of incentivizing unions to offer delinquent employees payment plans would be served by finding that Local 1 had to give Chapa another *Philadelphia Sheraton* notice in December after Chapa learned that the check she had written to Local 1 had bounced.

Section B shows that in her argument in support of second exception, Counsel for the Acting General abandons the theory alleged in the Complaint (that Chapa was not given *Philadelphia Sheraton* information) and argues instead that Local 1 violated a private promise to Chapa that Local 1 made in the payment plan. This theory should not be considered because it was not alleged in the Complaint or litigated. Alternatively, if this unalleged theory is considered, it should be rejected because Local 1 did not promise to give Chapa ten days notice that she had violated the payment plan.

Section C responds to the first exception by showing that Chapa did deliberately fail to pay the dues she owed Local 1. Under the free rider doctrine, a union is excused from its failure to comply strictly with the *Philadelphia Sheraton* notice obligation when a recalcitrant employee fails to pay dues that she knows is due. The Administrative Law Judge correctly concluded that Chapa was a free rider because she knew of her dues obligation throughout her employment at Crystal Garden but did nothing to comply with it once she stopped working at Lino's, and because she knew that her November 30 check had bounced but did nothing to pay that money to Local 1.

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## ARGUMENT

### A. Local 1 met its obligations under *Philadelphia Sheraton*

#### 1. It is undisputed that Local 1 gave Chapa *Philadelphia Sheraton* notices

The key complaint allegation is that Local 1 caused Chapa to be discharged without providing her with four pieces of information required by the *Philadelphia Sheraton* notice rule.

This allegation appears at paragraph 5(c):

Respondent engaged in the conduct described above in paragraph V(a) without previously advising the employee about [1] the consequences of nonpayment of the monetary amount in arrears of her periodic dues, [2] the total amount owed by Eileen Chapa, [3] a monthly breakdown of the amount owed, and [4] how the amount was calculated.

GCX 1.<sup>9</sup> The Acting General Counsel did not prove this allegation. It is undisputed that Local 1 gave Chapa multiple notices containing each piece of information listed in ¶ 5(c) before Chapa was terminated.

On September 6, 13, and 20, Local 1 sent Chapa a series of three letters, each of which contained all of the required information. GCX 2, 3; RX 3. It is undisputed that Chapa received those letters. Chapa admitted to receiving the September 6 and September 20 letters. TR 24, 26, 62-63. Chapa could not remember whether she received the September 13 letter, TR 64; but the record supports a finding that she did. Local 1 Membership Coordinator Matt Johnson testified that he caused the September 13 letter to be mailed to Chapa at her home address, using the same careful method that he used to mail the September 6 and 20 letters. TR 114-15. *Cf. Golden State*

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<sup>9</sup> “[A] union’s duties prior to seeking a discharge for failure to pay union dues or fees include informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the fact that the discharge will result from failure to pay.” *Big Rivers Elec. Corp.*, 260 NLRB 329, 329 (1982) (citing *Philadelphia Sheraton Corp.*, 136 NLRB 888 (1962)). The Complaint does not allege that Local 1 failed to inform Chapa when payments were to be made.

*Warriors*, 334 NLRB 651, 666 n.22 (2001) (testimony that a letter was sent “establishes a presumption that the letter was received by the Respondent at that address in due course. A general denial of unawareness does not rebut the presumption”).

Once Chapa received just one of the September letters, Local 1 had complied with its obligation under *Philadelphia Sheraton*.

**2. Local 1 was not obligated to give Chapa another *Philadelphia Sheraton* notice after Chapa defaulted on the payment plan**

Counsel for the Acting General Counsel argues that the Board must disregard all of the prior *Philadelphia Sheraton* notices given to Chapa before she defaulted on the payment plan and find that Local 1 had an obligation to provide Chapa with another *Philadelphia Sheraton* notice after the default.

Counsel’s theory is not the law. The Board has never held that if, after a union has given a delinquent employee *Philadelphia Sheraton* notices, the union permits the employee to pay her debt to the union in installments and the employee fails to make an installment payment, the union must give the employee a new *Philadelphia Sheraton* notice. The cases that Counsel cites do not support this novel theory. Each of those cases stand for the proposition that after a union accepts a payment from an employee that satisfies the union’s demand for dues from the employee, the union may not then request the employee’s termination. *See Palmer House Hilton*, 353 NLRB 851, 851-82 (2009); *Colgate-Palmolive Co.*, 138 NLRB 1037 (1962) (cited in *Palmer House* for the same proposition); *Teamsters Local 200 (State Sand & Gravel)*, 155 NLRB 273, 277-78 (1965) (same). Here, Local 1 did not accept a payment from Chapa that satisfied Local 1’s demand for dues. The check that Chapa gave Local 1 bounced.

Counsel’s theory is also inconsistent with the Board’s rationale for requiring unions to give delinquent employees notice. The *Philadelphia Sheraton* rule exists solely in order to

ensure that delinquent employees know what dues must pay and that they risk losing their jobs if they do not pay. *Philadelphia Sheraton Corp.*, 136 NLRB at 896 (“To permit a union to lawfully request the discharge of an employee for failure to meet his dues-paying obligations, where the provisions relating to such obligations are not disclosed to the employee, would be grossly inequitable and contrary to the spirit of the Act.”); *NLRB v. Hotel & Motel Club Employees’ Union Local 568*, 320 F.2d 254, 258 (3d Cir. 1963) (enforcing *Philadelphia Sheraton*) (stating that the requirement exists so “that the employee may take whatever action is necessary to protect his job tenure”); *UFCW Local 368A (Prof. Svcs. Unlimited)*, 317 NLRB 352, 354 (1995) (stating that the purpose of the *Philadelphia Sheraton* notice rule is “to assure that the noncomplying employee made a conscious choice to evade his or her obligation and had not complied with his or her obligation through ignorance or inadvertence”). The *Philadelphia Sheraton* rule is not intended to make it impossible or burdensome for unions to enforce union security clauses against employees whom the union has informed of their dues obligations and the consequence of noncompliance. As we show in the next section, Chapa knew what she had to pay Local 1 in order to avoid losing her job.

**3. A new *Philadelphia Sheraton* notice would not have told Chapa something she did not already know**

**a. Chapa knew about her dues obligations and the consequence of noncompliance**

Even apart from the three *Philadelphia Sheraton* letters Local 1 sent Chapa in September, Local 1 repeatedly informed Chapa of her obligations and the consequence of failing to pay. The following facts are undisputed:

- In 2010, Local 1 began sending Chapa monthly delinquency letters stating the total amount Chapa owed Local 1 and “[y]ou need to pay your dues in order to keep your job!”

- On September 27, Chapa entered into a payment plan with Local 1, and was given a copy of the plan. The plan states the total amount that Chapa owed, the dates on which Chapa was required to make the payments, and that Chapa would be terminated if she did not comply with the plan's terms.
- On September 27, Matt Johnson of Local 1 gave Chapa a page of "Questions and Answers about Payment Plans." The answer to ninth question states that an employee who misses a payment must pay the entire amount due to keep her job.
- On October 31, Local 1 sent Chapa a letter informing her that she had defaulted on the payment plan and that she must pay the full amount owed or she would be terminated.
- On November 7, Local 1 sent Chapa a letter informing her that if she did not enter into a revised payment plan, she had to pay the entire balance due on the first payment plan or she would be terminated.
- On November 12, Chapa entered into the revised payment plan and was given a copy of the plan, including a chart showing the monthly breakdown and calculation of the amount she owed. The plan states the total amount that Chapa owed, a monthly breakdown, the dates on which Chapa was required to make the payments, and that Chapa would be terminated if she did not comply with the plan's terms.
- On November 19, Local 1 sent Chapa a letter reminding her of her obligation to make the next payment on her payment plan along with a copy of the payment plan and attached chart.

Chapa admitted that she received copies of the payment plans and the letters. Local 1 went well beyond its legal obligation in making sure that Chapa knew what money she had to pay Local 1, how it was calculated, and that she would be terminated if she failed to do so.

**b. Chapa knew that she had defaulted on the payment plan**

This is beyond dispute. At the hearing, Chapa admitted that during the second week of December, she received notice from her bank that the check she had written to Local 1 to meet her November 30 obligation had bounced. TR 91-92. Chapa did nothing to rectify this problem. She did not make another payment to Local 1 or even contact anyone at Local 1. She simply ignored her obligation.

**c. Chapa knew how much she had to pay**

Local 1 requested Chapa's termination solely because Chapa failed to pay the amount set out in the September *Philadelphia Sheraton* letters. She was not terminated for failing to pay any other dues that she owed Local 1, including any amounts that accrued after the September notice.<sup>10</sup> Of the four pieces of information alleged in paragraph 5(c) of the Complaint (the amount owed, the monthly breakdown, how it was calculated, or the consequence of nonpayment), only the amount owed changed between the September notices and her December termination. It changed each time that Chapa made a payment on her debt (on September 27 and on November 12). Each time, Local 1 gave Chapa a copy of the payment plan showing the balanced owed.<sup>11</sup>

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<sup>10</sup> Importantly, once Local 1 began enforcing the union security clause against Chapa by sending the September *Philadelphia Sheraton* notices, Local 1 never demanded more money from Chapa as a condition of preventing her discharge from Crystal Garden, even though Chapa's debt to Local 1 continued to grow.

<sup>11</sup> The date by which Chapa had to pay also changed after the September letters, but the Complaint does not allege that Local 1 failed to inform Chapa when payments were to be made. That element of the *Philadelphia Sheraton* obligation is notably excluded from paragraph 5(c).

**4. Requiring a new *Philadelphia Sheraton* notice would deter unions from entering into payment plans**

There is an important policy reason why the new rule proposed by Counsel for the Acting General Counsel -- that Local 1 had an obligation to provide Chapa with another *Philadelphia Sheraton* notice after Chapa defaulted on the payment plan -- should not be adopted. It would deter unions from offering delinquent employees payment plans at all. A union has no obligation to permit a delinquent employee to pay off her debt in installments. If the Board were to adopt rules that hamstringing union efforts to hold employees to the payment plans they sign, then unions like Local 1 would have an incentive to abandon a practice that benefits employees.

**B. Local 1's administration of the payment plan did not violate the Act**

In support of the second exception, Counsel for the General Counsel asserts that after Chapa's check bounced, Local 1 was obligated to give Chapa a ten-day notice of default and prove that Chapa actually received the notice: "After the Respondent learned of Chapa's bounced check, the Respondent was obligated to inform Chapa of her potential default and that she had 10 days to make her payment before seeking her termination." AGC Br., at 5. Any such obligation is based on the payment plan, not *Philadelphia Sheraton* or Board law. This is evident in how Counsel describes Local 1's obligation to Chapa throughout her brief. *See, e.g.*, AGC Br., at 1 (describing the "agreed upon notice procedures for default") & 8 (stating that Local 1 violated the Act "when it failed to provide Chapa with the opportunity to cure her default as the parties mutually agreed"). There are multiple problems with Counsel for the General Counsel's argument.<sup>12</sup>

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<sup>12</sup> Counsel also misrepresents the ALJ's holding when she states that "the ALJ held that the Respondent failed to carry its legal burden of proving that Chapa actually received this December letter." AGC Br., at 4. What the ALJ's decision actual says at the lines cited in the Acting General Counsel's brief is something very different:

**1. This theory is not alleged in the complaint<sup>13</sup>**

The Complaint does not allege that Local 1 violated a private promise that it made to Chapa to give her ten days notice after she defaulted on the payment plan before seeking her termination.<sup>14</sup> The Board may find a violation based on a theory not alleged in the complaint if it has been fully and fairly litigated, but “[a] respondent cannot fully and fairly litigate a matter unless it knows what the accusation is.” *Allied Mechanical Svcs.*, 346 NLRB 326, 329 (2006). “[A]n unalleged violation is not necessarily fully litigated simply because the facts giving rise to it emerged incidentally.” *Desert Aggregates*, 340 NLRB 289, 293 (2003); *see also Allied Mechanical*, 346 NLRB at 329 (stating that mere presentation of relevant evidence does not satisfy the requirement that a violation be fully and fairly litigated). Even where testimony relevant to the unalleged theory is elicited at the hearing, the Board will deny a motion to amend

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I am circumspect that Chapa did not receive the December 17 letter until December 29, twelve days after it was mailed. While I note that the Union did not conclusively establish that Chapa neither received the December 17 letter prior to her discharge nor received the telephone message left by Johnson on December 13 with someone in her household, I do not find this dispositive.

ALJD 7:39-43.

<sup>13</sup> This is not the only time that Counsel for the Acting General Counsel makes an argument about Local 1’s conduct that is not based on the Complaint allegations. Counsel also asserts that Local 1 failed to give Chapa notice of her *General Motors* and *Beck* rights. AGC Br., at 7 n.6. The provision of such notice to Chapa was not alleged in the Complaint and not litigated. Moreover, when Counsel elicited such evidence at the hearing, the Administrative Law Judge stated that he would not rely on it and would “only make a decision based on the allegations in the complaint.” TR 25.

<sup>14</sup> The disputed allegation (which appears in paragraph 5(c) of the Complaint) is that Local 1 requested and caused Chapa’s termination without “previously advising [her] about the consequences of nonpayment of the monetary amount in arrears of her periodic dues, the total amount owed by Eileen Chapa, a monthly breakdown of the amount owed, and how the amount was calculated.” These are the *Philadelphia Sheraton* requirements.

made in the post-hearing brief if “the respondent would have altered the conduct of its case at the hearing, had a specific allegation been made” or “flesh[ed] out” the facts. *Desert Aggregates*, 340 NLRB at 293; *see also United States Postal Service*, 352 NLRB 923, 924 (2008).

Parole evidence is admissible to prove the meaning of ambiguous contract language. *Don Lee Distributor, Inc.*, 322 NLRB 470, 484-85 (1996), *enf’d* 145 F.3d 834 (6th Cir. 1998); *Standard Homes*, 249 NLRB 1085 (1977). If Counsel for the Acting General Counsel had alleged that Local 1 had a contractual obligation, arising out of the payment plan, to give Chapa a ten-day notice, Local 1 would have put on extrinsic evidence about what the payment plan language meant and how it has been interpreted. *Lamar Advertising of Hartford*, 343 NLRB 261, 266 (2004) (holding that unalleged theory was not fully litigated because witnesses were not questioned about what they meant by a statement or how they understood the statement). Local 1 did not introduce this evidence because the General Counsel did not allege that Local 1 violated the payment plan.

**2. Local 1 did not violate the payment plan**

**a. The payment plan does not require that Local 1 give Chapa a ten-day notice before asking for her termination**

The payment plan’s language does not unambiguously require Local 1 to give the employee a ten-day notice of default before asking the employer to terminate the employee. The payment plan sets out the terms as follows: “I hereby enter into a payment plan to pay Local the amount I owe as shown above. I agree that I owe this amount. I agree to pay it installment payments as follows: [list of payments and due dates].” RX 11. The plan then contains an acceleration clause:

I understand that there is no grace period. If I don’t make any payment on time or in full, I am then responsible and liable to pay the entire remaining

balance within ten (10) days after Local 1 gives me notice that I have defaulted, even if I have meanwhile paid an overdue installment.

RX 11. Finally, the plan reminds Chapa that she can be terminated for failing to meet her obligations under the plan:

I understand and agree that if I don't comply with the terms of this plan, I shall have no further rights under this plan and that Local 1 can and will instruct my employer(s) to terminate me for failure to meet my financial obligations to Local 1.

RX 11. The ten-day notice is a condition of acceleration of the monthly payment obligations. It is not a condition of “terminat[ing] [the employee] for failure to meet [her] financial obligations to Local 1.”

**b. The payment plan does not require Local 1 to give Chapa “actual notice” that she had defaulted on the payment plan**

Even if the payment plan's ten-day notice provision were interpreted as being a condition precedent to Local 1's request that Chapa be terminated, the payment plan does not require that Chapa must receive the ten-day notice before being terminated.<sup>15</sup>

The plan does not state that notice is not effective until received. It is true, as Counsel for the Acting General Counsel argues, that an employee must receive a *Philadelphia Sheraton* notice before the employee may be terminated for failing to meet her union security obligation under a collective bargaining agreement. Indeed, the cases cited by Counsel in her brief (at pp. 5-6) and in her opening statement at the hearing – *Boilermakers Local 732*, 239 NLRB 504, 505 n.8 (1978), *District 9, Int'l Ass'n of Machinists (Marvel-Schebzer, Div. of Borg-Warner Corp.)*, 237 NLRB 1278, 1278 (1978) and *United Metaltronics & Hospital Supply Employees Local 955 (Pharmaseal Laboratories, Inc.)*, 254 NLRB 601, 606 (1981) – stand for that proposition. But

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<sup>15</sup> Local 1 does not concede that the payment plan requires a ten-day notice in order to request the employee's termination. It makes this assumption here solely for the sake of argument.

those cases do not say, and the Board has never said, that an employee is entitled to actual notice that she will be terminated as a result of default on a payment plan to which the employee agreed in order to meet her union security obligation and avoid her termination. The payment plan is an agreement between Local 1 and Chapa. Whether “notice” under the payment plan means actual notice is a question of contract interpretation, not Board law.

Local 1 did not administer the payment plan as if it required actual notice. Actual notice is required for *Philadelphia Sheraton* notices. In order to ensure receipt of *Philadelphia Sheraton* notices, Local 1’s practice is to send three notices, starting three weeks before the deadline for payment. GCX 2, 3; RX 2. In contrast, Local 1 mailed the ten-day notice to Chapa on December 17, and instructed her that she must pay by December 27, and then instructed the employer to terminate her on December 27. Local 1 could not have expected that Chapa would have had the December 17 letter for a full ten days before her termination. Similarly, when Local 1 sent a ten-day notice of default to Chapa following her default on the first plan, it sent the letter on October 31, and instructed her that she would be terminated on “Monday, November 12” (because the tenth day fell on a Saturday).

This is not unusual. Depositing a letter in the mail typically satisfies a notice obligation without regard to whether the letter was actually received. *See, e.g.* Fed. R. Civ. P. 6(d) (establishing irrebuttable presumption that document sent by mail is received in three days); 29 C.F.R. § 102.14(c) (“In the case of service of a charge by mail or private delivery service, the date of service is the date of deposit with the post office or other carrier.”); 29 C.F.R. § 102.112 (“The date of service shall be the day when the matter served is deposited in the United States mail, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service, or is delivered in person, as the case may

be.”); *Pattern Makers (Michigan Model Mfrs.)*, 310 NLRB 929, 930 (1993) (holding that when a union member mails a resignation letter, the effective date of resignation is the day following deposit in the mail).

**c. There was nothing unfair to Chapa about Local 1’s request for her termination**

A union’s “fiduciary duty” in this context is nothing more than a duty to treat an employee fairly. *Western Publishing Co.*, 263 NLRB 1110, 1111 (1982) (stating that “a union seeking to enforce a union-security clause against an employee has a fiduciary duty to deal fairly with that employee”); *see also NLRB v. Hotel & Motel Club Employees’ Union Local 568*, 320 F.2d 254, 258 (3d Cir. 1963) (“There necessarily arises out of this dependence a fiduciary duty that the union deal fairly with employees.”).<sup>16</sup> It is beyond dispute that Local 1 treated Chapa fairly.

Chapa admitted that during the second week of December, she received notice from her bank that the check she gave to Local 1 on November 30 had bounced. Even assuming that Chapa received that notice at the very end of the second week (December 14), Chapa still had more than ten days notice that she was in default on the payment plan.<sup>17</sup>

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<sup>16</sup> The Third Circuit’s decision enforcing *Philadelphia Sheraton* was the first time the union’s duty of fair representation was described as a fiduciary duty. Since then, the Board has never held that the duty entails anything more than a general duty of fairness.

<sup>17</sup> In the *Philadelphia Sheraton* context, the Board holds that notice from a source other than the union is sufficient. *Chestnut Hill Bus Corp.*, 270 NLRB 212, 217-18 (1984) (finding that employee had sufficient notice because he knew of the union security obligation and saw the union’s request to management that he be discharged); *Big Rivers Elec. Corp.*, 260 NLRB at 329 (finding that the union’s duty was satisfied where employee received notice from a combination of union officials, stewards, and fellow employees, and through a notice given to the employee’s grandmother which the employee did not receive).

Chapa was not prejudiced by her claimed failure to receive a formal ten-day notice before her termination. Chapa did not testify that she delayed paying Local 1 what she owed under the payment plan because she expected that she would receive a ten-day notice of default before being terminated. She testified that she knew that she owed the money to Local 1 but did not pay it because she had other financial problems and did not have the money. TR 100. There is no rationale for a rule that would require a union to give a notice to an employee who knows her obligations and also has conceded that she would not have complied with the obligation even if she had gotten the notice.

**C. Any technical defect in Local 1’s notice would have been excused because Chapa knew all of the information that a *Philadelphia Sheraton* notice would have provided her and she still failed to pay Local 1**

In the first exception, Counsel for the Acting General Counsel challenges the ALJ’s conclusion that Chapa willfully and deliberately sought to evade her union obligations. There is a well-established exception to the *Philadelphia Sheraton* notice rule that applies to employees who are free riders. “Over the past thirty years, the Board has also held that it will not require strict compliance with the [*Philadelphia Sheraton*] rules . . . to permit an employee who has knowingly and not through inadvertence or ignorance evaded his dues obligation to the union to benefit from his noncompliance with that obligation.” *Prof. Svcs. Unlimited*, 317 NLRB at 355. In practice, the Board has applied this rule more rigorously when a union fails to give the employee any notice of her dues obligation and then defends by arguing that the employee would not have paid his or her dues even if notice had been given. But where there is merely a technical defect in the notice, a union does not violate the Act by asking that the employee be terminated. This is because “the Board never intended [the *Philadelphia Sheraton*] requirements ‘to be so rigidly applied as to permit a recalcitrant employee to profit from his own

dereliction in complying with his obligations as a union member.” *Big Rivers Elec. Corp.*, 260 NLRB at 329.

Here, Chapa did not fail to pay her union dues “through ignorance or inadvertence.” Throughout her employment at Crystal Garden, Chapa knew that she had an obligation to pay dues to Local 1. TR 51. Ever since Lino’s closed in 2003, Chapa made no effort to pay union dues, except when necessary to avoid discharge. Consider the following undisputed facts:

- Chapa paid dues to Local 1 when she worked at Lino’s through deductions from her paycheck, and she knew those deductions stopped when she stopped working at Lino’s. Chapa did not pay any dues to Local 1.<sup>18</sup>
- In July 2010, Chapa called the union to complain about the amount of dues she owed. The union representative advised Chapa to “start paying every month to cut down her balance.” RX 2. Chapa did not pay anything on her balance.
- Each month since at least in September 2010, Local 1 sent Chapa delinquency letters stating the total amount Chapa owed Local 1. Chapa still did not pay any dues to Local 1.
- On September 17, after receiving the first one or two *Philadelphia Sheraton* notices, Chapa called the union and asserted that “she has received no notices prior to this,” RX 4; and that “she had signed up for check off.” RX 5. Both of those assertions were false.

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<sup>18</sup> Chapa’s claim that she assumed that dues would be taken out of her Crystal Garden paycheck, but she did not bother to look at her paystub, is not credible, as the ALJ concluded. ALJD 7:13-17; TR 55. The ALJ’s credibility determination is well-founded and Counsel for the Acting General Counsel did not file an exception to it. “[C]redibility contests may be resolved with reference to the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole.” *RC Aluminum Industries, Inc.*, 343 NLRB 939, 939 n.2 (2004). It is a rare employee who does not look at her paystub to ensure that she is paid correctly.

- Chapa made the first payment on a payment plan on the last possible day (September 27) to avoid termination.
- Chapa did not make the second payment that was due on that payment plan.
- Chapa made the first payment on a revised payment plan on the last possible day (November 12) to avoid termination.
- When the second payment was due on the revised payment plan (November 30), Chapa gave a check to Local 1 for which Chapa knew that there would not be sufficient funds in her bank account until three days later.
- During the second week in December, Chapa's bank notified her that the check she gave to Local 1 to comply with the payment plan had bounced. Chapa did nothing to pay what she owed to Local 1.

Chapa displayed the recalcitrance that is emblematic of a classic free rider.

The Board has found employees whose conduct was similar to Chapa's conduct to be free riders. *See, e.g., I.B.I. Security, Inc.*, 292 NLRB 648, 649 (1989) ("Umstead was well aware of his union dues obligation from early on in his employment at IBI. Umstead, however, resisted joining the Union and procrastinated until the Union had no alternative but to seek his dismissal. In these circumstances, we find that Umstead consciously chose not to fulfill his union-security obligations until it was too late."); *Big Rivers Electric Corp.*, 260 NLRB at 329 (based on finding that employee "failed to make any effort to meet her obligations for some 8 months after her hire and after repeated warnings about the consequences of failing to do so, we find that any infirmities in the Union's formal notice to [the employee] of her dues obligation was excused by her own recalcitrant attitude in fulfilling that obligation"); *Teamsters Local 630 (Ralph's Grocery Co.)*, 209 NLRB 117, 125 (1974) (finding employee to be a free rider who "willfully

and deliberately sought to evade his union security obligations on the pretext that he had never been notified directly by the union of the existence of a union security contract” but “asserted union dues should have been checked off from his wages,” and who, after the union “afforded him an opportunity to acquire good standing by permitting him to satisfy his delinquency in installments” used an “elaborate stagem” to make payment).

Counsel for the Acting General Counsel argues that Chapa was not a free rider because she made the first payment on each payment plan. AGC Br. at 9. That argument should be rejected because the free rider exception applies to employees who have paid some dues. *Professional Services*, 317 NLRB at 355 (finding the free rider defense established despite the employee’s intermittent and partial payments of dues and dues arrearages); *Ralph’s Grocery Co.*, 209 NLRB at 124-25 (finding employee to be free rider even though employee was previously a dues-paying union member). Similarly, Counsel argues that Chapa cannot be deemed a free rider because she made some payment toward her dues obligation and wrote a check to Local 1 without intending that it bounce. In support of this argument, Counsel cites cases in which the union did not give the employee any *Philadelphia Sheraton* notice before requesting the employee’s discharge, and then defended its utter noncompliance with the notice obligation by arguing that the employee would not have paid his or her dues anyway. AGC Br., at 9-11 (citing *Fischbach & Moore*, 309 NLRB 856, 857 (1992); *Ransome Lift*, 303 NLRB 1001, 1003-04 (1991); and *R.H. Macy Co.*, 266 NLRB 858, 859-60 (1983)).<sup>19</sup> This case presents very different facts. Local 1 gave Chapa multiple notices and “bent over backward” to accommodate her. Any

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<sup>19</sup> Counsel cites *Ransome Lift* and *R.H. Macy* for the proposition that a large arrearage does not make an employee a free rider if the union allowed the employee to build up a large arrearage. But here, the ALJ did not rely on Chapa’s large arrearage to conclude that she was a free rider. Importantly, the Board has never held that a union forfeits its right to enforce a union security obligation by not doing so promptly.

defect in Local 1's notice to her was merely technical. Chapa knew what her obligation was and failed to comply.

Counsel for the Acting General Counsel also suggests that Chapa's failure to pay was due to her financial problems and troubled marriage. AGC Br., at 2, 3. That suggestion should be rejected for two reasons. A claimed "inability to pay" does not give an employee immunity from discharge for not complying with her union security obligation. *Seafarers Int'l Union (Tomlinson Fleet Corp.)*, 149 NLRB 1114, 1121 (1964) (an employee who is "unwilling to pay for reasons unrelated to the terms of the union's request" is a free rider). Second, in footnote 12, the ALJ concluded that Chapa's financial problems did not excuse her failure to pay: "While I acknowledge that Chapa had serious financial concerns ongoing in her life during this period, it does not excuse her obligation to adhere to the union security provision in the collective bargaining agreement, particularly noting that she made a conscious decision not to pay union dues to the Union commencing in 2003." ALJD 8:43-46. Counsel did not file an exception to this conclusion.

## CONCLUSION

For all of the foregoing reasons, the Complaint should be dismissed in full.

Dated September 12, 2013 at San Francisco, California.

Respectfully submitted,

/s/ Kristin L. Martin

Kristin L. Martin  
DAVIS, COWELL & BOWE  
595 Market Street, Suite 1400  
San Francisco, CA 94105

Attorneys for Respondent UNITE HERE Local 1

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am a citizen of the United States and a resident of the State of California. I am over the age of eighteen years and not a party to the within matter. My business address is 595 Market Street, Suite 1400, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing

**RESPONDENT UNITE HERE LOCAL 11'S BRIEF IN OPPOSITION TO ACTING  
GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were thereafter served upon the following parties via:

[ X ] E-MAIL: I transmitted a copy of the foregoing document(s) via e-mail to the addressee(s)

Eileen Chapa  
626 Carpenter Ave.  
Oak Park, IL 60304-1105  
eileenchapa@gmail.com

Regional Director Peter Sung Ohr  
National Labor Relations Board Region 13  
209 South LaSalle Street, Suite 900  
Chicago, IL 60604-5208  
peter.ohr@nrlb.gov

Chief Administrative Law Judge Giannasi  
NLRB Division of Judges  
1099 14<sup>th</sup> Street NW, Room 5400 East  
Washington, DC 20570-0001  
robert.giannasi@nrlb.gov

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 12, 2013, at San Francisco, California.

/s/ Dinh Luong  
Dinh Luong