

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 251, AFL-CIO
(First Student, Inc.)**

and

DANIEL FORLASTO, an Individual

Case 01-CB-102347

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 251, AFL-CIO
(First Student, Inc.)**

and

DAVID GARDINER, an Individual

Case 01-CB-102460

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

On November 1, 2013, Respondent filed a Motion for Partial Summary Judgment with the Board in the above-captioned cases. By this Motion, Respondent appears to be seeking a partial summary judgment regarding its legal obligation to provide employees with an initial notice of their *Beck* rights that includes information disclosing the full dues rate and the percentage by which dues and fees are reduced for objectors so that employees can evaluate potential savings in absolute terms. Counsel for the General Counsel opposes this Motion because Respondent has failed to establish that there are no genuine issues of material facts or that it is otherwise entitled to judgment in this case as a matter of law. In support of its opposition, Counsel for the General Counsel states as follows.

A. Respondent Has Failed to Establish That There Are No Genuine Issues of Material Fact.

Contrary to the assertions made in its Motion, Respondent's Answer is insufficient to establish that there are no genuine issues of material fact requiring a hearing. Respondent has not admitted to all of the operative facts that are pled in the Complaint pertaining to the issue over which it seeks a judgment by this Motion. In that regard, paragraph 7 of the Consolidated Complaint alleges that Respondent and the Employer, First Student, Inc., maintain a collective-bargaining agreement that includes a Union Security clause that states:

3.2 All present employees who are members of the Union on the effective date of this Agreement, or on the date of execution of this Agreement, whichever is the later, shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union, and all employees who are hired hereafter, shall become and remain members in good standing of the Union as a condition of employment on and after the thirty-first (31st) day following the beginning of their employment or on and after the thirty-first (31st) day following the effective date of this Agreement, whichever is later. The failure of any person to become a member of the Union at the required time shall obligate the Company, upon written notice from the Union to such effect and to further effect that Union membership was available to such person on the same terms and conditions generally available to other members, to forthwith discharge such person. Further, the failure of any person to maintain his Union membership in good standing as required herein, shall, upon written notice to the Company by the Union to such effect, obligate the Company to discharge such person.

Paragraph 10(a) of the Consolidated Complaint alleges that Respondent has maintained an Application and Notice of Membership form that includes the following language:

I understand that under current law, I may elect "nonmember" status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective-bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees

based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedure for filing such challenges will be provided by the Union, upon request.

Paragraph 10(b) of the Consolidated Complaint alleges that:

The membership form described above in paragraph 10(a) does not inform potential *Beck* objectors of the percentage by which dues and fees are reduced for objectors, as well as the full dues rate, so that employees can evaluate potential savings in absolute terms.

Finally, paragraph 11 of the Consolidated Complaint alleges that:

At all material times, Respondent has failed to inform Unit employees, including Forlasto and Gardiner, of the information described above in paragraphs 10(b) and (c).

In its Answer to these allegations of the Consolidated Complaint, Respondent admitted only that its collective-bargaining agreement with the Employer included the Union Security clause described in paragraph 7 and that its Application and Notice of Membership form included the language described in paragraph 10(a) of the Consolidated Complaint. Respondent denied, without explanation, the allegations set forth in paragraphs 10(b) and 11 of the Consolidated Complaint. Although the General Counsel does not believe that there are any genuine disputes regarding the facts or conduct alleged in paragraphs 10(b) and 11 of the Consolidated Complaint, Respondent's unexplained blanket denials of those allegations leave the General Counsel to guess whether there is an issue of fact that needs to be resolved with a hearing.¹ Under these circumstances, Respondent has failed to establish that there are no

¹ The Affirmative defenses Respondent raises in its Answer do nothing to further explain the blanket denials of paragraphs 10(b) and 11 of the Consolidated Complaint. Affirmative defenses 4-7 address the allegations regarding Respondent's failure to provide employees with information relating to the percentage by which dues and fees are reduced for objectors, as well as the full dues rate. Those defenses only address whether Respondent's Application and Notice form for membership violated Section 8(b)(1)(A) of the Act or the adequacy of the Consolidated Complaint in that regard. They do not specifically address the underlying facts of whether or not Respondent provided the information.

genuine issues of material fact and as such, in accordance with Section 102.45(b) of the Board's Rules and Regulations, Respondent's Motion for Summary Judgment should be denied.²

B. Respondent is Not Entitled to Summary Judgment as a Matter of Law as the Legal Issue Presented in the Motion is Already Pending Before the Board and There Are Other Issues Presented in this Case Requiring a Hearing Before An Administrative Law Judge.

The Consolidated Complaint in this case alleges, in part, that Respondent violated Section 8(b)(1)(A) of the Act by causing the Employer to discharge Charging Parties Daniel Forlasto and David Gardiner for failing to comply with the union security provision of the collective-bargaining agreement Respondent has with their Employer without first informing them, in its initial *Beck* notice, of the amount of full union dues and the percentage reduction in dues that objecting non-members would receive so that they can evaluate potential savings in absolute terms should they decide to become objecting non-members. In support of its Motion, Respondent correctly argues that under current Board law a union is required to provide this information only if an employee makes a *Beck* objection – not in its initial Notice. The General Counsel, however, considers this information to be essential to an employee's ability to decide intelligently whether to object. As such, the General Counsel is urging the Board to reconsider its current policy and require unions to include this information in their initial notice to employees regarding their *Beck* rights. This issue is currently pending before the Board based on

² To the extent Respondent is also seeking Summary Judgment on the issue of its legal obligation to provide employees with information in its initial *Beck* Notice as to the process for filing an objection under *Beck*, Respondent's Motion should be denied. Respondent does not specifically argue that it is seeking Summary Judgment on that issue in its Motion. Even if Respondent's Motion did address that issue, however, the Motion should be denied for failing to establish that there is no genuine issue of material fact on the matter. The underlying facts supporting the allegation that Respondent failed to provide information to employees regarding the process for filing a *Beck* objection are contained in paragraphs 7, 10(a), 10(c) and 11 of the Consolidated Complaint. Although Respondent admitted paragraphs 7 and 10(a) in its Answer to the Consolidated Complaint, it denied paragraphs 10(c) and 11 without explanation. Again this leaves the General Counsel to speculate whether there are any genuine material issues of fact that require a hearing to resolve. Consequently, Respondent has failed to establish that there are no genuine issues of material fact and in accordance with Section 102.45(b) of the Board's Rules and Regulations Respondent's Motion must be denied.

exceptions the General Counsel filed on April 4, 2008 to an Administrative Law Judge's Decision that issued in *United Food & Commercial Workers International Union, Local 700 (Kroger Limited Partnership I)*, JD-14-08 (March 7, 2008). Consequently, Respondent has failed to establish that it is entitled to judgment on this issue as a matter of law. Moreover, this is not the only issue that is the subject of the instant Consolidated Complaint. There are other issues raised in the Consolidated Complaint that will require a hearing before an administrative law judge. Under all of these circumstances, Respondent's Motion for Partial Summary Judgment should be denied.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Counsel for the General Counsel respectfully asserts that Respondent has failed to establish that there are no genuine issues of material fact or that it is entitled to judgment as a matter of law, and as such, Respondent's Motion for Partial Summary Judgment should be denied.

Dated at Boston, Massachusetts, this 15th day of November, 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Mary H. Harrington, do certify that I have this day served by electronic mail copies of Counsel for the General Counsel's Opposition to Respondent's Motion For Partial Summary Judgment to the parties listed below:

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Mary H. Harrington

Mary H. Harrington
Secretary to the Regional Director
Dated: November 15, 2013