

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

**LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL NO. 16, AFL-CIO**

and

Case 28-CA-092331

DOLORES ORNELAS, an Individual

GENERAL COUNSEL'S REPLY BRIEF

The Laborers' International Union of North America, Local No. 16, AFL-CIO (Respondent or the Union), in its Answering Brief, wholly fails to respond to the issues and arguments raised by the Exceptions and Brief in Support of Exceptions filed by the General Counsel. Rather, the Union attempts to distinguish between an initial requirement of membership and a continuing requirement, during the Section 10(b) period, of continued membership. Such a distinction, much as with unlawfully promulgated work rules, is immaterial. The only issue in dispute is whether the Union unlawfully maintained a rule requiring Union membership by Charging Party Dolores Ornelas during the Section 10(b) period, which undisputedly began no later than July 26, 2012, prior to Ornelas's discharge. The General Counsel contends that the ALJ correctly concluded that the Union did, in fact, require Ornelas to maintain Union membership until the time of her discharge, and that such requirement was unlawful.¹ However, the ALJ incorrectly found that the violation was time-barred, and it is this erroneous finding to which the General Counsel excepts.

¹ Despite its attempt to argue in its Answering Brief that because Ornelas did not ask to resign from the Union or request to withdraw her dues check-off authorization, there is no evidence of any unlawful membership rule, the Union did not file exceptions to the ALJ's findings that Respondent required Ornelas to join the Union – and maintain membership in the Union – as a condition of her employment. (Respondent's Answering Brief at 3).

For example, the Union states in its Answering Brief that it does not dispute that it “continued to withhold dues from Ornelas pursuant to a voluntary check-off executed by Ornelas (GCX 3, page 23) dated November 21, 2008.” (Answering Brief at 3). But the ALJ correctly concluded that Ornelas’s dues check-off authorization was not voluntary, stating that the Union’s asserted defense that “Ornelas voluntarily undertook her membership obligations” “lacks merit.” (ALJD at 10).² Thus, the only inquiry to be determined is whether an unlawful requirement of union membership violates the Act when it is undisputedly *maintained* during the Section 10(b) period.

As previously discussed in the General Counsel’s Brief in Support of Exceptions, it is well-established that unlawful work rules that are longstanding, and that are *maintained* within the statutory limitations period established in Section 10(b) of the Act, constitute continuing violations of the Act. *Relco Locomotives*, 359 NLRB No. 133, slip op. at 16 (2013). See also *Communications Workers of America*, 359 NLRB No. 131, (2013) (union’s maintenance of unlawful rule requiring annual renewal of *Beck* objections was not time-barred; “continued maintenance of a rule is unlawful even though the rule was enacted outside the 10(b) period if the rule is found to be unlawful on its face or is presumptively unlawful”). The violation in this case, as in *CWA*, is not based on events that occurred outside of the 10(b) period, as the ALJ contends, but rather on the fact that the rule itself is unlawful. *Id.*

The fact that the rule at issue here involves union membership, and an asserted violation of Section 8(a)(3) of the Act, as opposed to typical work rules that violate Section 8(a)(1) of the Act, does not make the analysis different. The ALJ’s conclusion that an unlawful rule – one that requires an employee to become and remain a union member – that is undisputedly *maintained* within the Section 10(b) period does not violate the Act because it

² Again, the Union did not file exceptions to this – or any other – finding by the ALJ.

was initially promulgated outside the Section 10(b) period, undermines years of well-established Board law that holds to the contrary. Because the continued maintenance of Respondent's unlawful membership rule through the termination of Ornelas's employment in August 2012, which is within the Section 10(b) period, is undisputed, the only appropriate conclusion that can be reached in this case is that the unlawful membership rule violates Section 8(a)(1) and (3) of the Act.

Dated at Phoenix, Arizona, this 24th day of December 2013.

Respectfully submitted,

/s/ Eva C. Shih

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CERTIFICATE OF SERVICE

I hereby certify that a copy of GENERAL COUNSEL'S REPLY BRIEF in LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 16, AFL-CIO, in Case 28-CA-092331, was served by E-Gov, E-Filing, and E-Mail on this 24th day of December 2013, on the following:

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