

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

SPACE NEEDLE, LLC

and

UNITE HERE! LOCAL 8

and

JULIA DUBE, an Individual

**Cases 19-CA-098908
 19-CA-098988
 19-CA-098936
 19-CA-108459**

19-CA-107024

**COUNSEL FOR THE GENERAL COUNSEL’S REPLY
BRIEF IN FURTHER SUPPORT OF LIMITED EXCEPTIONS**

Respondent Space Needle, LLC (“Respondent”), devotes a significant portion of its answering brief to its claims that it should not be required to pay Charging Party Unite Here! Local 8 (the “Union”) the dues it agreed to withhold and remit on behalf of Unit employees and that, in any event, it should be permitted to recoup from its employees any amounts it is ordered to remit to the Union. As set forth below, Respondent’s argument lack merit.

Chiefly, Respondent attempts to rehash the issue of its underlying liability for unlawfully renegeing on its agreement, arguing that there should be no remedy, because there was, in fact, no violation. To the extent such arguments essentially supplement Respondent’s own exceptions, they are inappropriately included in this briefing. Second, Respondent claims that “there is no basis in the record . . . to require that the General Counsel’s after-the-fact remedy suggestion be adopted.” (Resp. Br. at 3) To the contrary, the Complaint in this case specifically sought:

an Order requiring that Respondent shall: (1) remit to the Union all dues, with interest, owed since January 29, 2013, on behalf of those Unit employees who authorized dues

deductions; and (2) make no attempt to recoup such amounts from its Unit employees.

(GC 1(cc)) Moreover, in its post-hearing brief to the Administrative Law Judge, Counsel for the General Counsel (“CGC”) reiterated its request for this remedy.

As noted in CGC’s moving brief in support of this limited exception, the requested remedy is in fact the Board’s standard remedy for an employer’s unlawful failure to deduct dues where employees have individually signed checkoff authorizations is to order the respondent reimburse the union for any dues it failed to deduct and remit to the union, with interest. *West Coast Cintas Corp.*, 291 NLRB 152, 156 (1988); *Texaco Inc.*, 264 NLRB 1132, 1134 (1982). *See also Alamo Rent-A-Car*, 359 NLRB No. 149, slip op. at 4 (2013). Citing no legal authority, Respondent nonetheless claims that this remedy should not be ordered because its reneging on an agreement to withhold dues was not “an unlawful deviation from the *status quo*.” (Resp. Br. at 3) This ignores the fact that the Board regularly finds § 8(a)(5) violations based on an employer’s non-performance of an agreed-upon term of employment. *See, e.g., Gadsden Tool, Inc.*, 340 NLRB 29, 29 n.1 (2003) (employer ordered to reimburse union for dues it failed to deduct and remit after its unlawful failure to execute agreed-upon contract containing dues-checkoff provision), *enf’d mem.*, 116 Fed. Appx. 245 (11th Cir. 2004).

Finally, Respondent argues that not permitting it to recoup the dues at issue from Unit employees is “punitive and not remedial.” (Resp. Br. at 8) The Board has specifically rejected this argument, finding that, where an employer reneges on an agreement to withhold dues, it “itself incur[s] the risk” that it might be obligated to repay those amounts without being able to seek recoupment from its employees. *See id.* (rejecting employer’s argument that order requiring reimbursement of dues was unfair

because employer was unable to deduct dues from employees' wages and would be obligated to pay the dues itself).

Based on the foregoing, as well as the arguments contained in CGC's brief in support of limited exceptions, the CGC requests that the Board: (a) revise the ALJ's recommended Order to require Respondent to remit, with interest, to the Union all the dues it failed to deduct and remit after it reneged on its agreement to reinstitute dues deduction, without recouping that amount from its employees; and (b) revise the ALJ's recommended Notice to Employees to include the language, "WE WILL remit to the Union an amount equal to the dues it would have received had we reinstated payroll deduction on January 29, 2013, as agreed, and WE WILL NOT seek to recoup those monies from our employees."

DATED at Seattle, Washington, this 29th day of April, 2014.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of Counsel for the General Counsel's Reply Brief in Further Support of Limited Exceptions was served on the 29th day of April, 2014, on the following parties:

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