

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

**LOCAL 471, ROCHESTER REGIONAL
JOINT BOARD, WORKERS UNITED (SODEXO, INC.)**

and

Case 3-CB-9172

SHARRON RODRIGUE, AN INDIVIDUAL

**LOCAL 471, ROCHESTER REGIONAL
JOINT BOARD, WORKERS UNITED (SODEXO, INC.)**

and

Case 3-CB-9176

TINA MAYOTTE, AN INDIVIDUAL

**ROCHESTER REGIONAL JOINT BOARD, LOCAL 471,
WORKERS UNITED
EXCEPTIONS TO ALJ DECISION**

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I. INTRODUCTION AND SUMMARY

The Complaint alleges that Respondent, Local 471, Rochester Regional Joint Board, Workers United (herein “RRJB Local 471”), restrained and coerced employees in the exercise of their Section 7 rights in violation of 8(b)(1)(A) of the Act, and “caused or attempted to cause” the employer to discriminate against its employees in violation of 8(a)(3) of the Act, in violation of 8(b)(2) of the Act, by negotiating specific provisions into the 2009-2012 Collective Bargaining Agreement. The specific contractual provisions at issue are a vacation pay cap for “wait staff who normally work in the Albany Room” (Charging Party Sharron Rodrigue) and a new provision specifically requiring that assignments in the Catering Department would be made based on seniority (Charging Party Tina Mayotte). A trial was held before Administrative Law Judge Robert Ringler on February 23 and 24, 2011.

When negotiating collective bargaining agreements, unions are afforded a “wide range of reasonableness” with respect to the provisions being negotiated and the substance of the final agreement. As long as the final result of bargaining is not irrational or arbitrary, it cannot constitute a breach of the duty of fair representation. Air Line Pilots Ass’n, Int’l v. O’Neill, 499 U.S. 65, 78 (1991); Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953).

In order to prevail, the charging party must show improper intent, purpose or motive and a causal connection between the alleged misconduct and the complained-of-injury. Lindsay v. Association of Professional Flight Attendants, 581 F.3d 47, 61 (2d Cir. 2009); White v. White Rose Food, 237 F.3d 174, 179 (2d Cir. 2001). In other words, Counsel for the General Counsel was required to prove that Rodrigue and Mayotte’s protected activity (if any) actually motivated the Union’s decision to negotiate the disputed CBA provisions and that they were harmed thereby. He failed to carry this burden. Even if he had, the Union established that its reasons for

negotiating the disputed provisions were not “irrational” or “arbitrary.” O’Neill, supra; NLRB v. Transportation Management Corp., 462 U.S. 393, 402 (1983); NLRB v. Ironworkers, 149 F.3d 93, 103 (2d Cir. 1998). The Complaint should be dismissed.

No evidence supports the claim that Rodrigue’s protected activity caused the Union to negotiate the vacation pay cap in the manner it did; rather, the evidence supports the Union’s position that it was attempting to create equity among the members of the “wait staff” classification and initially, based on information provided by the Company, believed the cap was appropriately applied to Ms. Rodrigue. Because the factual circumstances underlying the ULP were submitted to the contractual dispute resolution process and were, in fact, resolved by that process, the ALJ should have deferred to the settlement. The deferral issue was timely asserted as a defense in the Respondent’s Answer to the Second Amendment to the Consolidated Complaint and was filed and served at the outset of the hearing. See, G.C. Exhibit 3; Tr. at 8.

With respect to Mayotte, Counsel for the General Counsel failed to establish that Mayotte was economically harmed by the new seniority-based scheduling procedure. The evidence at trial firmly established that the previous Union business agent had refused to enforce the seniority provisions of the CBA, and that the employees in the Catering Department had been attempting to have their seniority grievance heard for several years to no avail. When the opportunity arose to negotiate a definitive resolution with the Company, it was only logical that the Union would seize that opportunity. Mayotte, the most junior employee in the Catering Department, would inevitably oppose a seniority-based scheduling system, but Counsel for the General Counsel failed to prove any economic harm resulted since she ultimately worked more hours in 2010 than either of the more senior employees in the department.

Counsel for the General Counsel failed to introduce any evidence of animus by the Union's negotiating team toward Mayotte and failed to introduce any evidence that the lead negotiator and spokesperson, Elizabeth Weiner,¹ had any knowledge of Mayotte's alleged protected activity or bore her any ill will of any kind. Contrary to the findings of the ALJ, no evidence was introduced to support the notion that Weiner was motivated by anything other than her understanding of the long-standing dispute in the department regarding the application of the seniority system to scheduling and the belief that contractual seniority rights should be enforced.

The ALJ inappropriately used statements made to Rodrigue, who concededly engaged in protected activity in support of a rival union, to support his finding of animus by Local 471 toward Mayotte. However, none of the alleged statements was made by Weiner, and Counsel for the General Counsel introduced no evidence whatsoever that Weiner possessed any illegal motivations for negotiating the contract as she did. Contrary to the ALJ decision, the Union proved that it would have negotiated the same contractual seniority provisions regardless of Mayotte's protected activity (if any), and for legitimate reasons. Respondent respectfully requests that the ALJ's findings be set aside in their entirety and the Complaint dismissed.

II. BACKGROUND

Sodexo operates the food service concessions at Empire State Plaza ("ESP"), a large government office complex located in Albany, New York. As part of its services, Sodexo operates facilities for banquets, receptions, and other special events. Tr. 38. Respondent RRJB Local 471 represents the food service workers at ESP, including the house wait staff in the catering department. Previous to RRJB Local 471, the unit was represented by UNITE HERE, which was a union created by the merger of UNITE and the Hotel and Restaurant Employees

¹ The ALJ misspelled Weiner's name throughout his decision.

International Union. In early 2009, RRJB Local 471 and several other Joint Boards disaffiliated from UNITE HERE and formed Workers United, which subsequently affiliated with the SEIU.

In early 2010, during the jurisdictional dispute which arose as a result of the disaffiliation of Workers United from UNITE HERE, UNITE HERE undertook an organizing drive at Empire State Plaza. The drive was led by Theresa Hammer, former president of Local 471, who continued her allegiance to UNITE HERE. One of the charging parties, Sharron Rodrigue, assisted Hammer in the organizing effort. Tr. 171-172, 176-177. The organizing drive went nowhere. Tr. 127. After the drive was resolved, though, another member of Local 471 who serves on the executive board, Jay Manning, who works as on-call wait staff at ESP, allegedly threatened Rodrigue that her involvement and support of Hammer could interfere with her getting work through the Union and could lead to internal Union charges. Tr. 178. Rodrigue also testified that Shop Steward Joanne Franco threatened her on February 14, 2010 and that District Director Michael Roberts threatened her on February 26, 2010. Tr. 178-180. RRJB Local 471 Business Agent Elizabeth (“Nicki”) Weiner was also present at the meeting held in February and had a very different recollection of what occurred there between Rodrigue and Roberts, which was corroborated by Mayotte. Tr. 231, 292-293. Charges against Rodrigue were sent by Manning to the Local’s executive board, but were later withdrawn. Tr. 294, 380.

Rodrigue complained to Sodexo about the comments from Manning, and Manning was barred from further work at Sodexo. Rodrigue filed three unfair labor practice charges over the incidents. Tr. 183-185. The charges were resolved in an agreement that Manning would apologize to Rodrigue, the Local would confirm that Rodrigue was not subject to any discipline, the Union would not interfere with her employment, and Rodrigue would ask Sodexo to let

Manning return to work. Tr. 183-185, 295-296. Charging Party Tina Mayotte, to the Union's knowledge, did not participate in any of this activity. Tr. 380-381.

Numerous exhibits were introduced by Counsel for the General Counsel to establish the foregoing. The background facts regarding the disaffiliation are fully set forth in Exhibits GC 14, 27, and 28.

III. THE BIDDING SYSTEM

EXCEPTION 1: THE ALJ'S FINDING THAT THE UNION POSSESSED "DUAL INVIDIOUS MOTIVATION" WHEN IT NEGOTIATED THE BIDDING SYSTEM IS NOT SUPPORTED BY RECORD EVIDENCE.

The ALJ erred when he found that Counsel for the General Counsel established the elements of a prima facie case under Wright Line Div., 251 NLRB 1083 (1980), enforced, 662 F.2d 899 1st Cir. 1981). In order to establish a prima facie case, his burden was to show that the employee's protected activity was a substantial or a motivating factor in the Union's actions. NLRB v. Ironworkers Local 46, 149 F.3d 93 (1998) Counsel for the General Counsel failed to prove that the Union was aware of any protected activity by Mayotte.

A. BACKGROUND

The negotiation of the 2009-2012 CBA with Sodexo was led for the Union by Business Agent Weiner. No evidence was introduced in support of the notion that Ms. Weiner was influenced in any way in her bargaining decisions by the foregoing disputes or any other illegal animus. In fact, the record is crystal clear that the problems surrounding scheduling in the Catering Department pre-dated any alleged protected activity by several years and had nothing to do with union affiliation.

Ms. Weiner started employment with the Union in June of 2009. Tr.254-255. At that time, the disaffiliation of RRJB Local 471 from UNITE HERE had already occurred. Tr.259.

At the time Ms. Weiner started with RRJB Local 471, Sodexo was refusing to recognize RRJB Local 471 as the representative of its employees, and for a period of time Ms. Weiner was not permitted access to the non-public portions of the Empire State Plaza, including the Albany Room, where Ms. Rodrigue usually worked. Tr. 260-263.

Ms. Weiner testified that upon assuming responsibility for servicing the Empire State Plaza unit, notwithstanding the company's refusal to deal with her, she undertook extensive efforts to both understand the negotiations that had already taken place and to learn about the membership's views regarding what issues were most important for the 2009-2012 CBA. She testified, without contradiction, that wages ranked first on the membership's priority list, closely followed by enforcement of seniority provisions of the CBA. She spoke to each member of the catering department, among others; she reviewed the Union files with respect to Empire State Plaza and discovered numerous grievances had been filed regarding the seniority issue as it pertained to scheduling and that the plain language of the previous collective bargaining agreement required such a system. Tr. 272, 280, 302-305. Notwithstanding the plain language of the CBA, the employer had developed a practice which provided for scheduling of the house wait staff based on a rotation that did not account for seniority. Under the 2005-2008 CBA, the house wait staff could only qualify for insurance coverage and pension contributions if they worked a total of 1040 hours in the course of a year. Therefore, access to hours was of primary importance to employees in this department. GC Exh. 4 at page 6.

The 2005-2008 CBA (along with many of the other CBA's negotiated by UNITE HERE in this timeframe) explicitly stated that "Seniority shall also apply whenever possible to scheduled days off, shifts, and vacation schedules." GC Exh. 5, Art. 8, Sec. 4. See also, Union Exh. 3, 4, 6. A side letter agreement to the 2005-2008 CBA listed three people as "regularly

scheduled banquet (catering) employees” entitled to health insurance and pension contributions; anyone else who was in the Catering Department was supposed to be treated as an “extra” and would be excluded from such benefits. G.C. Exh. 4 at page 6. The house wait staff included Lane Williams, Josephine Franco and Anne Marie Hayes. Id. In January 2007, against the wishes of the employees in the Catering Department, the employer hired Charging Party Tina Mayotte as a fourth person in the rotation. Tr. 208-212. The more senior employees in the Catering Department were concerned that the presence of a fourth person on the rotation would prevent any of them from working enough hours to qualify for health insurance coverage and pension contributions. Union Exh. 7.²

Grievances were filed in 2007, 2008 and 2009 regarding this issue. See Union Exh. 7, 9, 15. Josephine (JoAnne) Franco, the shop steward, made efforts to elevate this issue which were repeatedly quashed by then-Union business agent Theresa Hammer of UNITE-HERE. Ms. Hammer rejected the position of the regular catering staff and incorrectly characterized the grievance as an effort to get Mayotte fired. Tr. at 117-119. In November 2007, Hammer resigned from her position with the Union under a cloud. Tr. 103. In January 2008, Jason Crane, the next UNITE HERE Business Agent, requested a Step 3 meeting regarding the same topic. Union Exh. 9.

On February 6, 2009, during contract negotiations, the Union bargaining committee rejected the Employer’s proposal that the rotation procedure be codified in the CBA, stating that the Union wanted the option of having house wait staff scheduled by seniority. Tr. 62. And in July 2009, another grievance was filed with Sodexo regarding violation of contractual seniority rights in scheduling. Union Exh. 15.

² Hayes left Sodexo in September of 2009. Tr. at 269. According to the evidence at trial, a total of 3128 hours were available in 2010. Union Exh. 1. If four employees had been on the rotation in 2010, none of them would have been able to work enough hours to qualify for health insurance, pension, or vacation.

B. THE BARGAINING PROCESS

Ms. Weiner reviewed the Union files and learned all of the foregoing information. Tr. at 354-360. She drew the conclusion that a practice had developed of disregarding seniority with respect to scheduling in the catering department and, consistent with her predecessor, Jason Crane, concluded that the rotation system should not be codified in the contract.³ Based on the available information, she also concluded that a goal of negotiations should be to reverse this practice through an explicit requirement that catering department scheduling be based on seniority. Tr. at 304-305.

The trial testimony and exhibits clearly showed that seniority-based scheduling was a bone of contention in the Catering Department long before any of the protected activity that has been alleged, all of which occurred in 2010. The Union's choice to support seniority rights for its members over the employer's preferred practice of rotation, and thereby enforce the plain language of the CBA and address concerns that the most senior employees continue to qualify for health insurance coverage in the face of a drastic economic downturn, was utterly rational. Tr. 90-94. Joanne Franco, both a senior person in the Catering Department and the shop steward, and a member of the Union's bargaining committee, was understandably interested in this particular issue. Rather than focus on the fact that the Union was attempting to resolve a long-standing dispute and protect its members' seniority rights through collective bargaining, the ALJ chose to focus on the fact that one member of the negotiating committee was senior to Mayotte and would be positively affected by the adoption of seniority-based scheduling. If this were

³ Much was made during the trial of an undated memo written by Jason Crane to the members (GC 31), which indicated that he believed the rotation system, if properly implemented, was the fairest way to distribute catering assignments. Ms. Weiner testified that she did not see the memo until late 2010, after negotiations were concluded, and no other testimony was introduced regarding Mr. Crane's meaning or intent. Absent any further context, and in light of Crane's subsequent bargaining proposal to utilize seniority-based scheduling, the memo is largely meaningless and should not be considered.

sufficient to establish animus, union negotiating teams would consist only of those who have no stake in the outcome of the negotiations. This is not, and never has been, the law.

Counsel for the General Counsel presented no evidence that Ms. Mayotte, who was the least senior person in the catering department and therefore the least likely to embrace a seniority-based scheduling system, engaged in any protected activity of which the Union was aware. Mayotte herself testified that she went to ESP at Rodrigue's request on January 27, 2010 during Hammer's visit to the property, and spoke briefly to Joanne Franco about the papers Hammer was asking employees to sign and about some statements Mayotte heard Franco had been making about Hammer "embezzling money." Tr. 228-229. Mayotte did not testify that she saw any other RRJB Local 471 Union representative that day. She testified that she talked to some workers about signing the petition, but did not obtain any signatures. There was no evidence presented that Weiner was aware of this activity. Finally, Mayotte testified that she attended an "overflow meeting" in February 2010, sat with Sharron Rodrigue, and spoke out briefly when Sharron was addressed in front of the group at the beginning of the meeting. Tr. at 228-231. Ms. Weiner either did not see her, or did not hear her speak, on any of these occasions. Tr. 380-381.

Based on all of the foregoing, the ALJ erred when he found that Counsel for the General Counsel carried his prima facie burden under Wright Line.

EXCEPTION 2: THE UNION'S AFFIRMATIVE DEFENSE IS AMPLY SUPPORTED IN THE RECORD.

Extensive record evidence was introduced by the Union showing that the senior employees in the catering department were unhappy that Ms. Mayotte had been hired in 2007, contrary to the plain language of the side letter, due to their perception that her presence in the rotation would adversely affect their ability to work enough catering hours to obtain the

minimum requirement for health insurance coverage. This concern and the related disputes predated any of the 2010 union activity that Ms. Mayotte testified about at the hearing. Union Exh. 7, 8, 9, 15.

The ALJ made much of Joanne Franco's role as a member of the bargaining team and relied on Franco's interactions with Mayotte in an attempt to prove animus by the Union in negotiating the bidding system. However, no testimony established that Franco's desire for seniority-based scheduling in her department had anything whatsoever to do with Mayotte's union affiliation. Tr. 280. In fact, the evidence is uncontradicted that the rotation/seniority dispute arose in 2007, right after Mayotte was hired, and was motivated by a concern about senior employees working enough hours to qualify for health insurance and pension contributions. Tr. 80, 89-90, 280. As Sodexo Director of Labor Relations Howard Taegel testified, UNITE HERE, through Weiner's predecessor, Jason Crane, on February 9, 2009 rejected a company proposal that codified the rotation practice and advocated seniority-based scheduling, consistent with the CBA, the employees' position. This was a full year before Ms. Mayotte claims to have participated in any protected activity. Tr. at 61-62.

The ALJ ignored Ms. Weiner's testimony regarding the reasons for the Union's negotiation position. Weiner testified that there were four reasons for the Union's position: First, the rotation system did not allow employees to have any control over their schedule to account for child care issues, family commitments, and other personal needs, which were of concern to the senior members of the department. The bidding system proposed by the Union was intended, in part, to address that concern. Tr. 344. Second, seniority-based scheduling was what the majority of the members wanted based on the information gathered by the Union. Third, it was consistent with the position advocated by UNITE HERE since the onset of formal

negotiations in February 2009. Fourth, it was a method of correcting a practice that violated the side letter agreement and denied contractual seniority benefits to members of the Catering Department. Tr. at 304, 344-345. Contrary to the position advocated by Counsel for the General Counsel, the Union did not simply adopt the majority position without any attempt to reconcile differing positions. Rather, it took all the circumstances into account and made a rational decision to support the seniority rights of its employees.

C. LEGAL ARGUMENTS IN SUPPORT OF EXCEPTIONS RELATING TO THE BIDDING SYSTEM

The legal standards that govern this case are well-settled. In order to prevail, the charging party must show improper intent, purpose or motive and a causal connection between the alleged misconduct and the complained-of-injury. Lindsay v. Association of Professional Flight Attendants, 581 F.3d 47, 61 (2d Cir. 2009); White v. White Rose Food, 237 F.3d 174, 179 (2d Cir. 2001). Counsel for the General Counsel was required to prove that Mayotte’s protected activity (if any) actually motivated the Union’s decision to negotiate the disputed CBA provisions and that she was harmed thereby. He failed to carry this burden. Even if he had, the Union established that its reasons for negotiating the disputed provision were not “irrational” or “arbitrary.” O’Neill, supra; NLRB v. Transportation Management Corp., 462 U.S. 393, 402 (1983); NLRB v. Ironworkers, 149 F.3d 93, 103 (2d Cir. 1998). The Complaint should be dismissed.

When negotiating collective bargaining agreements, unions are afforded a “wide range of reasonableness” with respect to the provisions being negotiated and the substance of the final agreement. Ford Motor Co. v. Huffman, 345 U.S. 330, 338, 73 S.Ct 681, 97 L.Ed. 1048 (1953). “Congress did not intend judicial review of a union’s performance to permit the court to substitute its own view of the proper bargain for that reached by the union . . . [a]ny substantive

examination of a union's performance, therefore, must be highly deferential, recognizing the wide latitude that negotiators need for effective performance of their bargaining responsibilities . . . For that reason, the final product of the bargaining process may constitute evidence of a breach of duty only if it can be fairly characterized as so far outside the 'wide range of reasonableness,' that it is wholly 'irrational' or arbitrary.'" Air Line Pilots Ass'n, Int'l v. O'Neill, 499 U.S. 65, 78 (1991), citing Huffman, 345 U.S. at 338. The Seventh Circuit has held, in a similar context, "Huffman and O'Neill show that a conflict among workers does not undercut the union's ability to choose . . . [m]ajority rule is the norm. Equal treatment does not become forbidden because the majority prefers equality, even if formal equality bears more harshly on the minority." Rakestraw, et al., v. United Airlines, Inc., 981 F.2d 1524, 1533 (7th Cir. 1992).

In the context of negotiation of a seniority system, this standard is particularly well-established. The Board has held,

At the expiration of a collective bargaining agreement, as here, a union is free to negotiate a change in the seniority system as long as it complies with its duty to represent fairly, impartially, and in good faith all of the employees in the unit, even if some employees will be affected adversely by the change.

International Brotherhood of Firemen and Oilers, Local #320 AFL-CIO (Philip Morris, USA) and Archie D. Sadler, Jr., 323 NLRB 89, 154 LRRM 1185, at *91, citing Glass Bottle Blowers Assn. Local 149 (Anchor Hocking Corp.), 255 NLRB 715 (1981).

In the context of a discrimination claim, a union's acts are discriminatory when "substantial evidence" indicates that it engaged in discrimination that was "intentional, severe, and unrelated to legitimate union objectives." Amalgamated Ass'n. of Street, Electric, Railroad and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301 (1971). Moreover,

“bad faith, which ‘encompasses fraud, dishonesty, and other intentionally misleading conduct,’ requires proof that the union acted with ‘an improper intent, purpose, or motive.’” Spellacy v. Airline Pilots Ass’n. – Int’l., 156 F.3d 120, 126 (2d Cir. 1998). In situations where, with the benefit of hindsight, the union might have done better by making a different decision, “tactical errors by the union are insufficient to show breach of the duty of fair representation; even negligence on the union’s part does not give rise to a breach.” Barr v. United Parcel Service, Inc., 868 F.2d 36, 43 (2d Cir. 1989); see also Vaughn v. Airline Pilots Ass’n., 604 F.3d 703, 709 (citing Barr) (2d Cir. 2010).

“Conflict between employees represented by the same union is a recurring fact. To remove or gag the union in these cases would surely weaken the collective bargaining and grievance processes.” Humphrey v. Moore, 375 U.S. 335, 349 (1964). In Humphrey, two employers were merging their operations, but the union was initially told that one facility would simply close and all employees at one facility would be laid off while the others would be retained, and the union so advised its members. Later, the union learned that the two facilities would “merge” and bring into play a clause of the CBA that permitted the dovetailing of seniority lists between the two facilities, which led to some workers who initially thought they were “safe” being laid off. “By choosing to integrate seniority lists based upon length of service at either company, the union acted upon wholly relevant considerations, not upon capricious or arbitrary factors.” Id. at 350. Similarly here, the Union based its bargaining decisions on relevant and non-discriminatory grounds. Ms. Mayotte will not always be the least senior person and will ultimately benefit from the seniority bidding system about which she currently complains. “Surely a union does not breach its duty of fair representation simply because it acts

pursuant to a request from a group of represented employees and thereafter negotiates contract provisions beneficial to that group.” Firemen and Oilers, Local #320, 323 NLRB at *91.

In this case, the Union established that its reasons for negotiating a seniority-based scheduling system in the Catering Department were based on legitimate union objectives and were not irrational, arbitrary, or in bad faith. In finding otherwise, the ALJ disregarded controlling law.

EXCEPTION 3: THE ALJ ERRED WHEN HE FOUND THAT MAYOTTE WAS ECONOMICALLY HARMED BY THE SENIORITY-BASED SCHEDULING SYSTEM

Counsel for the General Counsel failed to prove that Mayotte was harmed by the seniority-based scheduling system. Absent any evidence of harm to the charging party that was caused by the Union, the Complaint should be dismissed. Lindsay v. Association of Professional Flight Attendants, 581 F.3d 47, 61 (2d Cir. 2009); White v. White Rose Food, 237 F.3d 174, 179 (2d Cir. 2001).

Mayotte claimed in her testimony that she lost hours because of the change in the system, but Counsel for the General Counsel failed to substantiate this claim with any evidence. To the contrary, the official hours report provided to the Union by the company (Union Ex. 1) shows that Mayotte worked more hours and earned more money than anyone else in the Catering Department during 2010. Although Counsel for the General Counsel claimed, through Howard Taegel’s testimony, that the hours report included hours worked by Mayotte at Sodexo’s General Electric facility, Mayotte’s own testimony disproves this assertion. Mayotte testified that she was paid \$18.00 per hour at General Electric. Tr. at 250. The hours and earnings report submitted as Union Exhibit 1 shows hours worked by each member of the Catering Department for 2010. The report was provided to the Union at the Union’s request and pursuant to the CBA.

It was identified by Taegel (Tr. at 88-89) and relied upon by all parties at the hearing. This report shows pay rates for Mayotte of \$7.25 per hour and \$7.75 per hour throughout 2010 but no hours worked at \$18.00 per hour. Clearly, Mayotte's General Electric hours could not possibly be included in this report.

According to Union Exhibit 1, Mayotte worked a total of 1105 hours in 2010, earning a total of \$30,553.62. Franco worked 1067 hours, earning a total of \$30,408.97. Lane Williams worked 956 hours and earned \$28,197.41. The claim that Mayotte was financially harmed by the seniority-based scheduling, or that the new system was designed intentionally to harm Mayotte's earnings or to benefit Franco at Mayotte's expense, therefore has no basis whatsoever in the record.

Ms. Mayotte also complained that the new "bidding" arrangement required her to physically come to ESP each Thursday to pick her shifts, but this was a requirement of the Company, not the Union, and was required of all the Catering employees uniformly. Tr. 333. Ms. Mayotte was also unhappy that the employees were given access to the "BEO's" or banquet information sheets before they selected their shifts. However, the Union's position is that there is no rationality in a "bidding" system unless the employees know on what they are bidding; and access to the BEO's was not a provision negotiated by the Union in any event. Tr. 248, 334,342-343. Neither of these provisions was the Union's doing, and neither provision singles out Mayotte. Mayotte never requested a grievance be filed on either issue. Tr. 248.

Even assuming the Company is correct and Union Exhibit 1 shows that the Employer credited Mayotte with hours she worked at other Sodexo facilities for the purpose of qualifying for health insurance, Ms. Mayotte has not been harmed by the application of seniority-based

scheduling.⁴ Clearly from Ms. Mayotte’s testimony, when ESP had enough work for her, she worked there exclusively; both before and after the busy years at ESP, Mayotte worked at other Sodexo facilities and still accrued enough hours to qualify for health insurance. Tr. 216. Seniority-based scheduling has therefore not damaged her despite the allegations in the Complaint.

Counsel for the General Counsel failed to prove that Mayotte was harmed by the seniority-based scheduling system. Absent any evidence of harm to the charging party that was caused by the Union, the Complaint should be dismissed.

EXCEPTION 4: THE ALJ ERRED WHEN HE FOUND THAT FRANCO UNDULY INFLUENCED THE NEGOTIATIONS TO BENEFIT HERSELF

The ALJ held that the Union violated the Act because Franco was a member of the Union’s negotiating committee and had greater seniority than Mayotte, was an active advocate of seniority-based scheduling in the catering department, and was benefited by the application of seniority to scheduling. If these facts were sufficient to establish a violation, union negotiating committees would not be allowed to include anyone who would be affected by the ultimate agreement. The relevant inquiry is whether Franco benefited because of a neutral factor (i.e., seniority) or whether she benefited because of her status as a union adherent. In this case, there is simply no evidence that Franco’s position as a union adherent motivated the decisions made during bargaining. Rather, the Union took a position to support contractual seniority rights. “Bargaining has winners and losers. . . . a conflict among workers does not undercut the union’s ability to choose.” Rakestraw, 981 F.2d at 1530.

⁴ The Union supports Ms. Mayotte in her position that the hours worked at other facilities count toward her health insurance and intends to pursue this issue to insure that all members of the unit receive health insurance if they have reached the required hours threshold. Tr. at 386.

The ALJ found that the seniority-based scheduling provisions were Joanne Franco's "consolation prize," in place of having Mayotte terminated. This misses the point. The Union had been objecting to the presence of a fourth person in the rotation and protesting the scheduling system for three years, as the economy declined, and long before any protected activity. In fact, Franco raised the contractual issue almost immediately after Mayotte was hired and placed on the rotation in early 2007. Union Exh. 7. The testimony at trial was uncontradicted: the concerns articulated by Franco were consistently based on seniority rights explicitly conferred by the CBA and a past practice which denied those same rights, affecting all of the catering department employees' access to hours, health insurance, and pension contributions. As the shop steward and a member of the negotiating team, Franco had the obligation to represent her colleagues and enforce the CBA. It was no secret that the senior members of the catering department were likely to benefit more from the proposed system. Even if the ALJ was correct that Franco was motivated by Mayotte's protected activity, the outcome of the negotiations was not discriminatory; all members of the Catering Department were scheduled based on their seniority. This is not a discriminatory result, and is unassailable under the deferential standard of review required by O'Neill.

Moreover, the idea advanced by the ALJ that Ms. Weiner was unduly influenced by Franco must be rejected based on the undisputed trial testimony. Ms. Weiner conducted her own investigation and assessment of the issues to be negotiated and drew her own conclusions. She was aware of Ms. Franco's opinions, but they were not her sole guide nor was she bound by them. In fact, those opinions were shared by all of the senior members in the Catering Department (Williams, Hayes, and Franco). No evidence was presented that Ms. Weiner's bargaining decisions were motivated by hostility towards Mayotte based on union affiliation or a

desire to accommodate or reward Franco based on union affiliation. Importantly, Ms. Weiner was unaware of any protected activity by Ms. Mayotte and never saw her at any of the 2010 meetings or during the January decertification effort. Tr. 380-381. No evidence was presented at trial that Ms. Weiner was aware of any protected activity by Ms. Mayotte; she cannot have been motivated by protected activity of which she knew nothing.

Counsel for the General Counsel presented evidence that the Employer opposed the use of the seniority-based system for scheduling of its catering employees as evidence that the use of a seniority-based system was discriminatory. The stated reason for the Employer's opposition was that it needed to maintain a "core" group of steady employees who were familiar with the facility and that a seniority-based system would prevent it from achieving that goal. Tr. 48. In this case, however, there has been no evidence that the "core" employees – i.e., Lane Williams, Joanne Franco and Tina Mayotte – have ceased employment with Sodexo because of the seniority-based scheduling system. Given the small size of the catering department at Empire State Plaza, it would appear that seniority-based scheduling has had no effect on the Employer's ability to maintain a core group of dedicated employees. It would also appear that the employer had a financial interest in preventing the house wait staff from reaching the 1040 threshold each year: it would not be liable for health insurance, pension contributions or vacation pay.

The cases relied upon by the ALJ to support his findings are distinguishable from the instant case. In all the cases cited by the ALJ, the union official who was responsible for the alleged discriminatory act also made discriminatory statements either directly to the charging party or to others. In this case, no testimony connects Weiner to any allegedly discriminatory statement, and no evidence was introduced to support the unjustified inference of animus drawn by the ALJ. Weiner demonstrated an objectivity and willingness to work collaboratively with

the union committee and the employer to finally reach agreement on a contract that included some significant advances for the ESP employees. Even Taegel, the Company's chief negotiator, called Weiner "a breath of fresh air." Tr. at 69. The evidence demonstrates that Weiner's conduct throughout negotiations was supported by legitimate union objectives. As such, under the controlling law, the contract provisions are beyond review. See pages 11-13, *infra*.

EXCEPTION 5: THE ALJ ERRED WHEN HE FOUND WEINER WAS NOT CREDIBLE

The ALJ summarily dismissed Weiner's testimony because he found her to be a "cagey" witness. He failed to account for the fact that a great deal of Ms. Weiner's testimony was elicited by Counsel for the General Counsel in adverse direct examination under FRE 611(c). Tr. at 256. Counsel for the General Counsel asked many leading questions and repeatedly attempted to put words into Ms. Weiner's mouth. Ms. Weiner was diligent about answering in her own words the questions put to her and did not hesitate to ask for clarification of the many confusingly worded questions posed by Counsel for the General Counsel. Ms. Weiner's effort to be accurate in her answers and to understand the many convoluted questions posed by opposing counsel cannot be used against her to malign her credibility. See, e.g., Tr. at 349-351.

IV. VACATION CAP ISSUE-DEFERRAL

EXCEPTION 6: THE ALJ SHOULD HAVE DEFERRED THE VACATION CAP ISSUE TO THE GRIEVANCE SETTLEMENT NEGOTIATED BY THE PARTIES

A cap on vacation pay for wait staff had been included in a side letter to the 2005-2008 CBA. According to Howard Taegel, the side letter was incorporated into the 2005-2008 CBA in "an attempt to make the health and welfare pension contributions and vacation pay more equitable than what the body of the contract would have permitted." Tr. 44. Non-wait staff in

the unit qualified for such benefits if they were “regularly scheduled to work 20 hours per week.” The side letter accounted for the ups and downs of the catering business by permitting the house wait staff to qualify for health insurance coverage and pension contributions if they worked a minimum of 1,040 hours in the previous calendar year.

With respect to vacation, the non-wait staff employees in the unit received vacation pay based on 1/52nd of the amount reported on their prior year’s W-2 form. The wait staff presented a difficulty: the employer did not want to use the W-2 formula for the wait staff because it would include the 15% gratuity and, in the Company’s view, result in an overpayment. The Union opposed compensating wait staff for vacation at their base hourly rate because the amount would be far too low. Taegel and UNITE HERE Business Agent Theresa Hammer, who negotiated the 2005-2008 CBA, both testified that the \$250 cap was agreed upon in 2005 as a compromise. Tr. 43, 111-112. As Hammer stated, “It wasn’t what they would get, had we gotten the full value of their tips, but they did give the – what we calculated to be like an additional \$150.” Tr. 112.

During negotiations for the 2009-2012 CBA, the Union proposed eliminating the cap on wait staff’s vacation and including the full value of the 15% gratuity in the vacation pay calculation. Tr. 367. This proposal was consistently rejected by Sodexo and ultimately the cap remained in place in exchange for the company covering half the cost of dental insurance for all employees. Tr. 368-369. However, while the CBA was being finalized, the vacation language was modified to include “wait staff who normally work in the Albany Room.” GC Exh. 11 at p. 11, Art. 12, Sec. 4. This would include Charging Party Rodrigue, who the Union believed, based on information provided by the Company, was a member of the “wait staff.” Tr. 327-328, 361-362. The vacation pay cap had not been historically applied to Rodrigue, even though she was classified as “wait staff,” and the Union sought to remedy this perceived inequity by

clarifying that wait staff who work in the Albany Room were also subject to the vacation cap. Tr. 327. It is undisputed that Rodrigue had first claim on catering events in the Albany Room and therefore does work a portion of her time as “wait staff.” Tr. at 164.

Rodrigue herself never approached the Union before filing her charge in this case. Tr. 204-205. The Union learned after this Charge was filed that Rodrigue was not solely classified as “wait staff”, but also as “hostess.” At Rodrigue’s request the Union grieved the application of the vacation cap to her hostess hours. The Company sustained the grievance and Rodrigue was paid vacation retroactively. Tr. at 201-202, 328, 369-373, Union Exh. 13(b).

Ms. Weiner testified without contradiction that at the outset of her participation in negotiations, she received information from Sodexo which indicated that Rodrigue was classified as “wait staff.” (Tr. 95-96, 327-328). Being new to the Empire State Plaza and, for a period of time, being barred from the premises by Sodexo due to the jurisdictional dispute with UNITE HERE, Ms. Weiner was unaware of the exact nature of Ms. Rodrigue’s work in the Albany Room until October of 2010. Tr. at 328. Ms. Weiner testified repeatedly that “equity” was a major concern of the Union’s during negotiations and that her request regarding the inclusion of the Albany Room reference was for the sole purpose of establishing such equity. This testimony is both credible and uncontradicted. Tr. 327-328. The ALJ incorrectly discredited her testimony in this regard. See page 18, *infra*.

When it was drawn to her attention that the vacation cap was not properly applicable to all of the hours worked by Ms. Rodrigue, the situation was promptly remedied through the grievance procedure. Ms. Rodrigue herself never approached Ms. Weiner directly or asked her why this provision was in the contract before filing this charge. Tr. at 205. Counsel for the General Counsel produced no evidence that Ms. Weiner was aware of Ms. Rodrigue’s multiple

classifications at the time the CBA was negotiated or that she was properly distinguished from other wait staff for purposes of application of the vacation cap.

A. LEGAL ARGUMENTS IN SUPPORT OF DEFERRAL

Based on the uncontradicted testimony that the entire matter was resolved through the grievance procedure, the ALJ should have deferred and dismissed the Complaint pursuant to Spielberg Mfg. Co., 112 NLRB 1080 (1955) and Olin Corp., 268 NLRB 573 (1984), as applied to settlements in Alpha Beta Co., 273 NLRB 1546 (1985) aff'd sub nom. Mahon v. NLRB, 808 F.2d 1342 (9th Cir. 1987) and United States Postal Serv., 300 NLRB 196 (1990).

The ALJ found “I do not find that Local 471’s subsequent attempt to remedy Rodrigue’s issue by filing a grievance, eradicates the invidious motivation that initially prompted this issue.” ALJ Decision at page 14, lines 8-9. In effect, the ALJ made a determination about how he believed the case should be resolved and then refused to defer because the settlement reached by the parties was not precisely in alignment with his view of the facts. “This approach of determining the merits before considering the appropriateness of deferral” was roundly rejected by the Board in Olin Corp., 268 NLRB at 574, and should be rejected here.

The Board has consistently deferred to settlements reached through the grievance procedure agreed to by the parties as long as the settlement meets certain standards. Alpha Beta, 273 NLRB 1546, 1547 (1985), citing Olin Corp., 268 NLRB 573 (1984). The grievance proceedings must be fair and regular, the settlement must be made under the CBA’s grievance procedure, all parties must agree to be bound, and the results must not be “clearly repugnant” to the principles and policies of the Act. The additional test set forth in Olin is not whether the Board would have reached the same result, but whether the result is “palpably wrong” as a matter of law. Alpha Beta, supra, citing Olin. The Board stated that “palpably wrong” means

that the outcome in “not susceptible to an interpretation consistent with the Act.” Olin, supra at 575. “Thus, the Board’s concern in a possible deferral situation is to ensure that its decision does not impinge on the parties’ rights under the Act . . . [w]hen a settlement is reached prior to arbitration, we examine whether the unfair labor practice issue was considered by the parties. This criterion is satisfied when the contractual issue and the unfair labor practice issue are factually parallel, and the parties were generally aware of the facts relevant to resolving the unfair labor practice.” Id. The burden is on the party opposing deferral to show that the Olin standards have not been met. Id.

These standards are clearly met in this case. Rodrigue requested that a grievance be filed after she filed the instant ULP charge and as a result of pre-trial settlement discussions; clearly, the parties “were generally aware of the facts” relevant to resolving the ULP. The Union grieved the application of the vacation pay cap to Rodrigue in her capacity as a hostess. The Company sustained the grievance and issued her back pay. Rodrigue was satisfied. The negotiated contract language itself is not inappropriate, since it applies only to “wait staff.” As long as Rodrigue is not classified as “wait staff” it will not be applied to her. Rodrigue’s Section 7 rights are not even remotely impinged by this resolution; indeed, she has received full back pay as a result of the settlement and there is no other issue to be resolved.

Even if Rodrigue had not agreed with the grievance settlement, deferral would still be appropriate. The Board has continued to defer under Alpha Beta even when the charging party disagrees with the Union’s resolution of the grievance, holding that by filing a grievance, the charging party authorized the Union to settle the grievance when he invoked the contractual grievance procedure. “The employee’s collective-bargaining agent was empowered to bind him, even without his consent.” Postal Service, 300 NLRB 196-197; see also Catalytic Inc.,

301 NLRB 380 382 (1991) (following Postal Service). In this situation, the resolution of the grievance in Rodrigue's favor, with her consent, and with full back pay resolves all of the matters contained in the charge. The Complaint should be dismissed.

EXCEPTION 7: ABSENT DEFERRAL, THE ALJ ERRED IN FINDING THAT COUNSEL FOR THE GENERAL COUNSEL MET HIS PRIMA FACIE BURDEN UNDER WRIGHT LINE REGARDING THE VACATION CAP AND THAT THE UNION FAILED TO PROVE ITS AFFIRMATIVE DEFENSE

No evidence was presented that Ms. Weiner bore Ms. Rodrigue any ill will for Ms. Rodrigue's support of the decertification effort in January of 2009. Ms. Weiner continued to represent Ms. Rodrigue and advocated on her behalf in grievances after the instant charge was filed. Tr. 199, 374-375. Ms. Weiner testified without contradiction that Jay Manning had no role in negotiations; the hearsay testimony regarding comments allegedly made to Rodrigue should therefore be excluded as irrelevant. Tr. 381. Nothing in any of the testimony at trial supports the claim that the Union behaved arbitrarily, discriminatorily, or in bad faith when it requested the revision to the vacation cap language. Contrary to the finding of the ALJ, the negotiated contractual language itself is perfectly correct, because the Union's position is that "wait staff" who work in the Albany Room should be treated the same way as "wait staff" who work anywhere else.

No trial testimony supports the idea that Ms. Weiner requested the additional vacation cap language because of Ms. Rodrigue's union activity. In fact, the uncontradicted testimony was that the Union was attempting to achieve equity among the wait staff. It is undisputed that Ms. Rodrigue has been made whole for the misunderstanding regarding the application of the vacation pay cap. She did not contest the Union's motives or dispute that Ms. Weiner legitimately believed she was properly classified solely as "wait staff." She does not claim, and

is not due, any further compensation, nor does she make a credible case that the collective bargaining agreement must be amended in order to resolve her claim.

The ALJ erred when he found that Weiner's insertion of the "Albany Room" language into the final CBA was evidence of her invidious intent. As set forth above, Weiner had no reason to believe that the vacation pay cap should not be applied to Rodrigue, and therefore no reason to believe that Rodrigue would be surprised by it. If anything, Weiner's not discussing the matter with Rodrigue amounted to mere neglect, which cannot establish a breach of the duty of fair representation. Steelworkers v. Rawson, 495 U.S. 362, 374-75 (1990); Barr v. United Parcel Service, Inc., 868 F.2d 36, 43 (2d Cir. 1989); see also Vaughn v. Airline Pilots Ass'n., 604 F.3d 703, 709 (citing Barr) (2d Cir. 2010).

The ALJ's resolution of this case poses a significant problem for the future. In articulating concerns about equity among the wait staff, the Union would be entitled to address a situation if it believed that the Company was unlawfully rewarding an employee for opposing the Union in violation of the Act. If, for example, the vacation pay cap should have been applied to Rodrigue's hours worked as wait staff, and was not because the Company sought to reward Rodrigue's anti-Local 471 activity, the Union would be entitled to address that situation. A union's protest of unlawful company favoritism is not a violation of 8(b)(1)(a), but this ALJ's holding would make it so. Such a result should not be sustained.

EXCEPTION 8: THE ALJ MADE NUMEROUS FACTUAL ERRORS WITH RESPECT TO THE EVIDENCE. THE FACTUAL ERRORS ARE LISTED BELOW WITH RECORD CITATIONS TO THE CORRECT TESTIMONY AND EXHIBITS. THESE “FACTS” WERE USED BY THE ALJ TO SUPPORT HIS ULTIMATE FINDINGS AND THUS INFECT THE ENTIRE DECISION WITH REVERSIBLE ERROR.

(a) Page 4, line 21. “Mayotte stated that she admitted to Franco that she signed the petition.”

This is false. At page 228, lines 20-21, Mayotte testified that Joanne Franco asked her “Did you sign that piece of paper?” And I said “No.”

(b) Page 5, lines 1-2 of the ALJ Decision, the judge compounded his error by citing to

“Mayotte’s confessed support for UNITE-HERE.” As set forth above, Mayotte did not “confess support” for UNITE HERE to Joanne Franco and denied signing the petition. See, Transcript at p. 228, lines 20-21.

(c) Page 5, lines 13-17. The ALJ assumed that the Union was aware of Rodrigue and

Mayotte’s “home visits” with respect to the UNITE HERE petition drive. However, no evidence was produced that Weiner, or any other Union agent, was aware of these home visits.

(d) The ALJ misstates Ms. Weiner’s testimony regarding the events of January 27, 2010, and

then improperly used this misstatement to discredit her testimony. Ms. Weiner never testified that she “coincidentally” encountered Hammer on January 27. Ms. Weiner testified that she was called by Wayne Brown, an employee, and asked to come to the ESP. Brown told her that Hammer was on site and talking to employees. Ms. Weiner contacted counsel and her stewards, including Joanne Franco, who was not on the property at the time. Ms. Weiner arrived and located Wayne Brown and then went looking for Theresa Hammer. Ms. Weiner testified that she did not “stalk” Ms. Hammer but observed her from a distance for a period of time and then spent the rest of the day

interviewing workers who were willing to speak to her regarding any encounter they had with Hammer. Transcript at p. 284-287.

- (e) ALJ Decision at page 5, lines 23-41, and page 6, lines 1-5. The ALJ adopted Sharron Rodrigue's version of the February 25, 2010 overflow meeting, which was contradicted by both Tina Mayotte and Weiner, who were both present at the same meeting. Mayotte testified that Roberts asked Rodrigue if she was going to repeat anything that happened in the meeting and that Rodrigue would not answer him at first, but finally did answer him after he asked three times. Mayotte also testified that union member Jay Manning got upset at that point and that Mayotte encouraged Rodrigue to answer Roberts' question. Transcript at p. 231.

Weiner testified that Roberts told the meeting participants that charges had been filed against Sharron Rodrigue. Sharron asked "by who" and Roberts declined to tell her. Roberts asked her three times if she had the best interests of the Union at heart, and Sharron finally said yes. Jay Manning stated "that's not good enough" and Roberts said "She is a member of the Union, she has a right to be here." Tr. at p. 293.

Rodrigue's version of the meeting is significantly embellished and not corroborated but either Mayotte or Weiner. Even Rodrigue testified that Roberts said, "I do have to represent her." Tr. at p. 182. Nothing about this interaction demonstrates animus by Weiner toward Rodrigue.

- (f) ALJ Decision at page 10, lines 9-10. With respect to the February 25 meeting, the ALJ found that Mayotte "essentially corroborated Rodrigue's testimony." This is incorrect. Mayotte gave a completely different version of what happened at the meeting than that given by Rodrigue. In fact, Mayotte essentially corroborated Weiner's testimony.

Rodrigue's testimony stands alone and uncorroborated. The ALJ's adoption of Rodrigue's account of the meeting is not supported by testimony in the record.

- (g) ALJ Decision page 8, lines 13 (footnote 7). The ALJ fails to mention that the "conflicting report" regarding Rodrigue's wait staff classification was not received by Weiner until October of 2010, several months after negotiations were complete and long after the original October 2009 report that the company provided to Weiner. Tr. at 370, Union Exh. 13(b). No evidence was introduced to support the idea that Weiner was aware at the time the language was inserted into the contract that Rodrigue was not "wait staff".
- (h) ALJ Decision at page 9, the ALJ disregarded the substantial evidence in the record that with respect to bargaining the scheduling system for the catering staff, the Union had opposed including the rotation terms in the contract since February of 2009. The ALJ also omitted any reference to the contractual seniority issue testified about by Ms. Weiner and repeatedly raised by Joanne Franco and Lane Williams prior to any protected activity by Mayotte. In fact, the 2005-2008 collective bargaining agreement named three employees who were to be considered regularly scheduled house wait staff: Lane Williams, Joanne Franco and Ann Marie Hayes. Tina Mayotte was not on this list, and the consistent position of the employees was that she was not entitled to participate in the rotation as if she were regularly scheduled house wait staff. The employees raised this issue with their Union representative, Theresa Hammer, repeatedly from 2007 through Hammer's departure in 2009, but Hammer refused to enforce the collective bargaining agreement as written.

In the grievances filed in the 2007-2009 timeframe, there were also claims made by the employees that management employees were manipulating the rotation system in order to benefit Mayotte. Union Exhibit 9, p. 2; Union Exhibit 15, p. 4. The ALJ erroneously disregarded all of this evidence. The ALJ also simply ignores the fact that any economic harm caused by the use of seniority-based scheduling would have applied to anyone who was in the junior position in the department. He likewise impugns Franco's advocacy for seniority-based scheduling as a quest for personal gain by Franco. He simply ignores the legitimate Union objective repeatedly testified to by Weiner, that the Union had chosen to support seniority rights with respect to scheduling.

- (i) ALJ Decision, page 11, line 19. The ALJ stated that Weiner was willing to "abandon Mayotte's interests." In fact, Weiner was advocating for the enforcement of the senior employees' seniority rights under the CBA, a legitimate union objective. See argument infra at pages 11-13.
- (j) Pge 14, line 45: The ALJ erroneously held that Local 471 knew that Mayotte aided UNITE-HERE's organizing drive. This finding is not premised on any affirmative record evidence, but simply on the ALJ's erroneous finding that Weiner was not credible. The ALJ's credibility analysis based on Weiner's cautious demeanor during the trial is fundamentally flawed, as set forth above, and is therefore insufficient to support the ALJ's finding in the absence of any other record evidence. Starcraft Aerospace, Inc., 346 NLRB 1228, 1231 (2006).

V. CONCLUSION

Based on all of the foregoing, the Union respectfully requests that the Complaint be dismissed in its entirety.

DATED: September 6, 2011

Respectfully submitted,

s/Cindy Lapoff

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

**LOCAL 471, ROCHESTER REGIONAL
JOINT BOARD, WORKERS UNITED (SODEXO, INC.)**

and

Case 3-CB-9172

SHARRON RODRIGUE, AN INDIVIDUAL

**LOCAL 471, ROCHESTER REGIONAL
JOINT BOARD, WORKERS UNITED (SODEXO, INC.)**

and

Case 3-CB-9176

TINA MAYOTTE, AN INDIVIDUAL

CERTIFICATE OF SERVICE

The undersigned certifies that on this 6th day of September, 2011, she filed the foregoing Exceptions in the above-captioned matter with the NLRB by means of the NLRB e-filing system and served a copy of the foregoing Exceptions electronically on each of the other parties as follows:

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