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 REPLY BRIEF

DATED: October 20, 2011

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Respondent respectfully submits this reply in response to the answering brief filed on behalf of Region 3 in this case.

Counsel for the General Counsel continues to misconstrue Local 471's position in this case. In negotiating the current collective bargaining agreement for the Empire State Plaza workers, Local 471 took several negotiating positions which it would have taken irrespective of any employee's protected Section 7 activity. Evidence of the reasons for these bargaining positions was presented during the trial and incorrectly disregarded by the ALJ.

Mayotte

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. Counsel for the General Counsel failed to carry this burden, and Mayotte's claim should therefore be dismissed.

Counsel for the General Counsel fails to address in his answering brief the central evidentiary problem with respect to Mayotte's claims: No evidence was introduced of a causal connection between Mayotte's alleged union activity and the negotiated change to seniority-based scheduling. Moreover, the unrebutted evidence at trial showed that Mayotte worked more hours and earned more money than anyone else in the Catering Department during 2010. The other issues about which Mayotte complains – being required to come to ESP each Thursday to pick her shifts and access to the BEOs by the employees prior to picking their shifts – were not the Union's doing and are required of all catering employees uniformly. These affect Ms.

Mayotte no more or differently than they affect anyone else. See Respondent's Exceptions at pp. 11-15.

Rodrigue

With respect to the Rodrigue matter, counsel for the General Counsel erroneously relies on Roadway Express, 355 NLRB No. 23 (2010). The correct standard for deferral in grievance settlement cases is set forth in Alpha Beta, 273 NLRB 1546, 1547 (1985), and Postal Service, 300 NLRB 196-197 (1990). Roadway Express is wholly distinguishable from the instant matter. The grievant in Roadway Express dissented from the outcome that was obtained after arbitration. In this case, a complete remedy was provided to the grievant, Sharron Rodrigue, with the Union's assistance, prior to any arbitration. The resolution was both acceptable to Rodrigue and resolved the unfair labor practice issues. Deferral is therefore appropriate.

Counsel for the General Counsel failed to produce any evidence in the record to support the factual errors made by the ALJ and raised by Respondent in Exception #8. A brief review of the testimony cited by Counsel for the General Counsel shows that the Respondent is correct in its characterizations of the ALJ's errors.

The Respondent respectfully requests that the Order of the ALJ be reversed and that the Complaint be dismissed in its entirety.

DATED: October 20, 2011

Respectfully submitted,

s/Cindy Lapoff

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of October, 2011, she filed the foregoing Reply Brief in the above-captioned matter with the Administrative Law Judge by means of the NLRB e-filing system and served a copy of the foregoing Reply Brief electronically upon:

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She further certifies that service of a copy of the foregoing Reply Brief was made on the same date via United States First Class Mail upon:

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Dated: October 20, 2011

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