

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

BETH ISRAEL MEDICAL CENTER
Respondent,

and

Case Nos. 02-CA-039486
02-CA-039574

LOCAL 814, IBT
Charging Party

and

LOUIS GUGLIOTTA, AN INDIVIDUAL
Charging Party

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

As permitted by the practice of the National Labor Relations Board ("Board"),¹ Counsel for the Acting General Counsel submits this reply memorandum in support of its Motion for Summary Judgment and Issuance of a Decision and Order, herein the Motion. Respondent's answering brief to the Motion essentially concedes that no issues of fact requiring a hearing exist.

Notably, Respondent wholly fails to contest the assertions of the Motion regarding Respondent's admission of all the allegations of the Complaint. Respondent thereby concedes that

¹ "Motions for Summary Judgment are governed by Sec. 102.24 of the Board's Rules and Regulations. Sec. 102.24(b) permits a party to file an opposition to the motion and a response to the Notice to Show Cause. In addition, although not expressly provided for in Sec. 102.24, it is the Board's practice to permit the party moving for summary judgment to file a reply brief, just as a party filing exceptions under Sec. 102.46 is permitted to file such a brief." *D. L. Baker*, 330 NLRB 521, 521 n.4 (2000) (emphasis added).

the Acting General Counsel is entitled to summary judgment unless Respondent can either (i) raise an affirmative defense or (ii) prevail as a matter of law, assuming all the allegations of the Complaint are true. Because the second possibility has already been addressed and briefed by the parties, there is no need to hold a hearing unless Respondent's affirmative defenses have a possibility of success. As argued in the Acting General Counsel's initial brief and elaborated upon below, Respondent's affirmative defenses wholly fail, as a matter of law.

First, Respondent concedes that (i) while engaged in bargaining for a collective bargaining agreement and (ii) prior to reaching an overall impasse in bargaining, Respondent ceased contributing to certain fringe benefit funds. Respondent counsel's position is that, notwithstanding the well-established rule of *Bottom Line Enterprises*, 302 NLRB 373 (1991), it was excused from adhering to that rule, citing *Roadhome Construction Corp.*, 170 NLRB 668 (1968) and *Monroe Mfg., Inc.*, 323 NLRB 24 (1997).

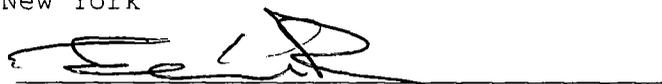
However, neither case provides even the least support for Respondent's position. *Roadhome* excused an employer's failure to bargain where the requesting union was powerless to alter even a single provision of the contract it had offered the employer; there was thus nothing about which the employer and union could bargain. For obvious reasons, Respondent does not contend that it and the Union had nothing about which to bargain. In *Monroe Mfg.*, the Board, in the absence of exceptions, expressly declined

to address the portion of the Administrative Law Judge decision on which Respondent counsel appears to rely.

Second, Respondent's Section 10(b) defense also fails. Respondent counsel does not address any of the arguments made in the Acting General Counsel's original brief in support of the Motion. Rather, Respondent (i) disregards the case law establishing that Respondent's purported statements of intent to cease participating in the benefit fund did not "start the clock" for purposes of Section 10(b)² and (ii) asserts that the Board has misapplied its own Rules and Regulations regarding the computation of time period. Neither argument has merit.

For the reasons set forth above and in the initial brief in support of the Motion, the Board should grant the Acting General Counsel's motion for summary judgment and find that Respondent violated Section 8(a)(5) of the Act by unilaterally ceasing to make benefit fund contributions to the Local 814 Pension, Annuity, and Welfare Funds.

Dated: February 10, 2012
New York, New York



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² *Howard Electrical & Mechanical*, 293 NLRB 472, 475 (1989); *Leach Corp.*, 312 NLRB 990, 991 (1993) (citing *NLRB v. Electrical Workers IBEW Local 112*, 827 F.2d 530 (9th Cir. 1987) and *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 547 (3d Cir. 1983)). See also *United States Can Co.*, 305 NLRB 1127, 1141 (1992), *enfd.* 142 LRRM 2313 (7th Cir. 1993) and *Teamsters Local 42 v. NLRB*, 825 F.2d 608, 615-616 (1st Cir. 1987).

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AFFIDAVIT OF SERVICE

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated below I filed the Acting General Counsel's REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT electronically through the NLRB E-File system and served that document to the following persons at the following addresses by the methods indicated following each individual's name:

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Subscribed and Sworn to this
10th day of February 2012

Designated Agent:


National Labor Relations Board