

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS,  
CULINARY WORKERS UNION, LOCAL 226, and  
BARTENDERS UNION, LOCAL 165, affiliated with  
UNITE HERE  
(Host International, Inc.)**

**and**

**Case 28-CB-128997**

**NATALIE RUISI, An Individual**

**and**

**Case 28-CB-129003**

**MICHAEL PELUSO, An Individual**

*Nathan Higley, Esq.*, Counsel for the General Counsel.  
*Geoffrey MacLeay, Esq.*, National Right to Work Foundation, Counsel for the Charging Parties.  
*Paul More, Esq., McCracken, Stemberman & Holsberry*, Counsel for the Respondent.

**DECISION**

**Statement of the Case**

**Joel P. Biblowitz, Administrative Law Judge:** This case was heard by me on January 27, 2015 in Las Vegas, Nevada. The Consolidated Complaint herein, which issued on July 31, 2014<sup>1</sup> was based upon unfair labor practice charges that were filed on May 20 by Natalie Ruisi and Michael Peluso, who were employed by Host International, herein the Employer, which has a collective bargaining agreement with Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, herein called Culinary Workers Union, and Bartenders Union, Local 165, affiliated with UNITED HERE, and collectively referred to as the Union or the Respondent. Ruisi and Peluso were each employed by the Employer in job classifications covered by the contract with Union and were members of the Culinary Workers Union subject to the dues check-off provision of the contract. It is alleged that on about November 9, 2013 the Respondent, by Wanda Henry, its director of operations and an admitted agent of the Respondent, refused to provide its members with information, including the dates that they executed the Union dues check off authorization, so that they might cancel their dues check-off authorizations and resign their membership in the Union. The Complaint also alleges that “Jackie,” (last name unknown) is the Employer’s payroll representative, and that on about December 9, 2013 she provided members with incorrect information, including the dates that they executed dues check-off authorizations; Respondent, in its Answer, denies that “Jackie” is an agent of the Respondent. It is further alleged that on about February 21, the Respondent refused to honor Peluso’s resignation of Union membership and the cancelation of his dues check-off authorization, and that on about February 28, Henry informed Union members that it would not provide members with information that they needed in order to cancel their dues check-off authorizations and to resign from the Union, and that they were not honoring r–

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2014.

esignations of Union membership and the cancelation of Union dues check-off agreements. These actions are alleged to violate Section 8(b)(1)(A) of the Act.

### I. Jurisdiction and Labor Organization Status

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Respondent admits, and I find, that the Employer has been an employer within the meaning of Section 2(2), (6) and (7) of the Act and that the Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

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### II. The Facts

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The Union represents approximately sixty thousand employees, approximately fifty thousand of whom are members of the Union. Ruisi joined the Union in 2004; Peluso joined in 2007. Henry, as the Union's Director of Operations, is in charge of responding to members questions regarding their Union membership and their requests to resign from the Union or to revoke their dues checkoff authorizations. She testified that she receives, on average, three or four of such requests on a daily basis. The contract between the parties provides for dues check-off authorizations and the contract and the dues check-off authorizations contain identical language about revocation:

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This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice to both the Employer and the Union by registered mail during a period of fifteen (15) days immediately succeeding any yearly period subsequent to the date of this authorization or subsequent to the date of termination of the applicable contract between the Employer and the Union, whichever occurs sooner, and shall be automatically renewed as an irrevocable check-off from year to year unless revoked as herein above provided...

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Ruisi, who was a shop steward for the Union in about 2008, testified that she called the Union on November 25, 2013 and said that she wanted to speak to somebody about resigning from the Union. She was told that Henry is the person to speak to and she was transferred to Henry. Henry identified herself and Ruisi asked, "How do I go about resigning from the Union?" Ruisi answered that she had to send a letter on her anniversary date. Ruisi asked what anniversary date, and Henry responded, "Your Union anniversary date." When Ruisi asked, "How do I go about finding that out? Do you look that up for me?" Henry answered, "You have to call your payroll department." Ruisi then asked if she had to send the letter registered or certified, and Henry said, "Send it however you want" and hung up on her. Ruisi's testimony on what Henry told her became confused on cross examination:

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Q ...she told you that she doesn't look it up until he receives a letter?

A Yes, sir.

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Q But she said I'm not going to look up anything unless you send me a letter?

A No, sir.

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Judge Biblowitz: Did she say in that conversation, "I'm not going to look up anything unless you send me a letter?"

The witness: That's not how she said it, sir, no.

Q BY MR. MORE: So she said something to the effect of, “If you want me to look up your date, can you send me something in writing...right?”

5 A No. No sir. She said...if I wanted to know my date, I had to contact my payroll department.

Q But you also testified on direct, that she told you, “I will not look it up until you send me a letter,” and you said that on cross as well.

10 A She did not say, “I will not look it up.” She said, “I don’t look it up until you send a letter.”

Ruisi explained this apparent contradiction in her testimony in the following manner:

15 A Sir, she didn’t say that I needed to put a request to get my date in writing. She never said that to me. She said I needed to find out my dates by calling my payroll department and then I needed to send a letter by my anniversary date.

20 Henry testified that she knows that Ruisi is employed by the Employer, but she cannot recollect anything about the conversation, except that it was probably about stopping her dues payments. She did, however, testify about how she responds to these requests from members generally. She receives two types of calls from members. One is from members who are no longer working under a Union contract or are on a leave of absence. The other is from members who are still employed under a Union contract but wish to revoke their dues check-off  
 25 authorization. The two most commonly used terms are “anniversary date,” the date that the employee/member executed the dues check-off authorization, and “window,” the fifteen day period when they are permitted to revoke their dues authorizations. When members call stating that they no longer wish to pay dues to the Union, she tells them to send a written request to the Union and their employer within fifteen days of the date that they executed their dues check-off  
 30 card. When members call asking for their anniversary date she tells them that she does not give that information over the phone: “They need to put a letter in the mail. And, at that time, I will do the research...If I stop someone’s dues—and I don’t know who you are when you call me. And that person loses rights when I stop someone’s dues. So, giving that information out is confidential and I only give it out when it’s done through a letter.” As the original of employees’  
 35 dues check-off authorization card is sent to their employer, if employees ask her if there is another way that they can learn when they executed the card, she tells them that their employer has the card and that they can ask their payroll department for a copy of their card. If the employee sends his/her revocation letter to the Union in the window period, she notifies the employer to stop deducting dues for the employee. If the letter is not within the window period,  
 40 she notifies the employee that the request was not timely as it was not sent within the window period, and encloses a copy of the employee’s dues check-off authorization card.

Ruisi testified that on December 9, 2013, she called the Employer’s payroll department and spoke to an employee named Jackie, last name unknown. She asked Jackie for the “Union  
 45 anniversary date” for herself and Peluso, who was present while she was speaking to Jackie. Jackie said that she would need Peluso’s permission to give Ruisi his anniversary date, and Peluso got on the phone and gave his permission. Jackie responded that the only dates that she had were the dates that the Employer began deducting Union dues, and those dates were  
 50 August 16, 2004 for Ruisi, and March 8, 2007 for Peluso.

By letter dated February 19, but sent by certified mail on February 20, Peluso (actually, Ruisi wrote the letter at his request) wrote to Henry:

5 I am writing this letter to inform you that after of [sic] March of 2014 I am resigning from this union. I personally have had my fill of the lying and corruption and feel since this union failed to properly represent me in the past I feel my union dues are better served in my pocket. I am contacting my payroll office to inform them as well. It is my right to resign as this is a right to work state and I do not have to be union to work in a union house.

10 So again as of March I am no longer allowing any further union deductions from my pay check if any deductions continue in to April I will be reporting this to the labor board and possibly seeking legal action.

15 Ruisi testified that she prepared this letter for Peluso and they sent it certified mail from the post office on February 20. After mailing the letter, Peluso called Henry a few times and when she didn't answer, he left voice mails for her, the last of which said that she could call Ruisi who could speak for him. On February 25, Ruisi received a call from Henry. Ruisi asked if the Union received Peluso's letter, and Henry said that they did receive it, but that they were sending it back because he had missed the cutoff date. Ruisi asked how he could have missed the cutoff date as the Employer's payroll department said that it was March 8. Henry responded that she looked it up and his date was February 4 (actually, it was February 5), and he missed it. Ruisi then asked what her date was because she didn't want the same thing to happen to her, and Henry said that she wasn't going to look it up, that she should call her payroll department. Ruisi said that her payroll department got Peluso's date wrong, "so, why would I call them again?" Henry repeated that she had to call the Employer's payroll department. Ruisi told her, "This is ridiculous. I don't understand how you can send me somewhere knowing that they don't have the right dates, when you have the information right in front of you...but you won't look it up. So Michael is stuck in the union for another year because you gave the wrong information." She testified that Henry responded, "You got that right." She asked, "Are you doing this on purpose?" Henry repeated, "You got that right" and hung up the phone.

30 Henry testified that after receiving the letter dated February 19, she checked the Union's records to determine whether the request was sent within the required window. In calculating the fifteen day period as provided for in the contract and the check-off authorization, the Union's regular procedure is that it is fifteen calendar days rather than business days, and, "...the actual date that you signed the dues card, that's the date I start the count." Because his dues check-off authorization is dated February 5, and the revocation letter was mailed on February 20, she determined that it was one day late. On June 23, she wrote to Peluso:

40 We have tried to communicate with you twice before about revocation of your dues checkoff authorization. The first time we had an incorrect address so the letter was returned undeliverable. The second time you did not pick up the certified mail that we sent. We are therefore sending this letter by both regular and certified mail to increase the chances it will reach you.

45 Your revocation was untimely because the 15-day window for revocation expired on February 19, the 15<sup>th</sup> day from the anniversary date of your authorization, and your revocation was not sent by then. A copy of your checkoff authorization was sent with our previous letters to you. We are enclosing it again with this letter.

### 50 **III. Analysis**

In addition to alleging that Henry's statements and refusal to allow Peluso to withdraw

his dues check-off authorization violate the Act, the Complaint also alleges that the Union violated the Act by “Jackie” allegedly giving Ruisi and Peluso incorrect information regarding the dates that they executed their dues check-off authorizations. This allegation clearly has no merit. Jackie, apparently, is employed by the Employer in its payroll department and there is no evidence whatsoever that she is an agent of the Respondent. In addition, the evidence fails to establish that she gave Ruisi and Peluso incorrect information. Rather, the evidence establishes that she told Ruisi that the only dates that she had were the dates that the Employer began deducting their Union dues, and those were the dates that she gave them. She never misled them by telling them that the dates that she gave them were the dates that they executed the check-off authorizations. I therefore recommend that this allegation be dismissed.

It is next alleged that the Respondent violated the Act when Howard, on about November 9, 2013 and February 28, refused to tell Ruisi the dates that she and Peluso executed their dues check-off authorizations. Ruisi testified that when she asked Henry on about November 25 how she could find out what her Union anniversary date was, and whether Henry would tell her the date, Henry responded that she would have to contact her payroll department to obtain that information. Henry testified that although she has no independent recollection of this conversation, when she receives calls from members who wish to revoke their dues authorization check-offs, she tells them to send notification to the Union and their employer within fifteen days of the date that they executed the card. If the employee/member asks what that date is, she responds that because she does not know who she is speaking to, she cannot give that information over the phone; the employee/member should put the request in letter form, and then she will reply. Ruisi testified that when she called Henry in late February to learn her anniversary date, Henry again told her to contact her payroll department. When she complained that the incorrect information resulted in Peluso being stuck in the Union for another year Henry responded, “You got that right,” and when she asked if Henry was doing it on purpose, Henry again responded, “You got that right.”

This is a difficult credibility issue in that whereas Ruisi was generally a credible witness, it is difficult to understand Henry’s claimed delight at the difficulties that Ruisi and Peluso were experiencing. Handling these types of requests was a major part of her job and she handled these requests on a daily basis. The Union has about fifty thousand members and she received three or such requests on a daily basis. Why she would single out Ruisi is puzzling. I find that Henry told her that if she put her request in writing that she would tell her the date that her card was signed, or that she could contact her payroll department to learn the date that she and Peluso executed their dues checkoffs. However, I fail to see any affirmative obligation on the part of a union to notify its members of their anniversary date, especially on the basis of a telephone call. In *Local 308, National Postal Mail Handlers Union*, 339 NLRB 93 (2003), cited by counsel for the Respondent, the Board stated: “A union’s conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union’s action, the union’s behavior is so far outside ‘a wide range of reasonableness’ to be irrational.” I do not believe that Henry’s refusal to give Ruisi the information that she requested over the phone, satisfies this standard. I also find the facts herein distinguishable from those in *International Brotherhood of Electrical Workers, Local 66 (Houston Lighting and Power)*, 262 NLRB 483, 486 (1982), cited by Counsel for the General Counsel where the respondent repeatedly frustrated the employee in his attempt to learn the procedure for discontinuing his affiliation with the union. In the instant matter, Henry simply told Ruisi to put her request in writing, not an unreasonable request. I therefore recommend that these allegations be dismissed.

The final allegation is that the Union unlawfully refused to honor Peluso’s resignation of Union membership and the cancelation of his dues checkoff that was mailed to the Union on February 20. Peluso’s dues check-off authorization is dated February 5 and the certified letter

that he and Ruisi sent to the Union was mailed on February 20. Henry testified that his revocation was untimely because in counting the fifteen day window period, the date that the card was signed is counted as day one and, with that method, February 20 is the sixteenth day. The Act, in Section 302(c)(4) only requires that employees be given an opportunity to revoke their checkoff authorizations, at least, annually and at the expiration of the contract: “Beyond  
 5 that, it is well-established Board law that disputes about checkoff procedures essentially involve contract interpretations rather than interpretation and application of the Act.” *Furr’s, Inc.*, 264 NLRB 554, 556 (1982); *Frito-Lay, Inc.*, 243 NLRB 137 (1979). Both the contract and the checkoff authorization contain identical language referencing when the revocations must be  
 10 sent: “...during a period of fifteen (15) days immediately succeeding any yearly period subsequent to the date of this authorization.” The words “immediately succeeding” and “subsequent” leave no doubt in my mind that in calculating the fifteen day window period, Day 1 is the date subsequent to the date that Peluso signed his checkoff authorization, February 6, not February 5, as calculated by Henry. His revocation mailed on February 20, was sent on the  
 15 fifteenth day subsequent to the date of his authorization and was therefore timely. Accordingly, I find that by refusing to honor Peluso’s resignation and revocation, the Respondent violated Section 8(b)(1)(A) of the Act.

### Conclusions of Law

20 1. Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, and Bartenders Union, Local 165, affiliated with UNITE HERE, has been a labor organization within the meaning of Section 2(5) of the Act.

25 2. Host International, Inc. has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

30 3. The Respondent violated Section 8(b)(1)(A) of the Act by refusing to honor Michael Peluso’s resignation from Union membership and revocation of his dues checkoff authorization dated February 20.

4. I recommend that the remaining allegations of the Consolidated Complaint be dismissed.

### The Remedy

35 Having found that the Respondent has engaged in certain unfair labor practices, I find that it shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. As the Respondent unlawfully refused to honor  
 40 Peluso’s timely resignation from the Union, I recommend that it be ordered to notify the Employer that it should no longer deduct Peluso’s Union dues from his earnings, and that the Respondent reimburse Peluso for all dues that were deducted since February 20, 2014, with interest from that date as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

45 On these findings of fact, conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

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50 <sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

**ORDER**

5 The Respondent, Local Joint Executive Board of Las Vegas, Culinary Workers Union,  
Local 226, and Bartenders Union, Local 165, affiliated with UNITE HERE, shall:

1. Cease and desist from:

10 (a) Refusing to honor revocations of dues checkoff authorizations that were received in a  
timely manner pursuant to the terms of the checkoff authorization.

(b) In any like or related manner restraining or coercing members in the exercise of their  
rights guaranteed in Section 7 of the Act.

15 2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Notify Host International Inc., in writing, that it should immediately stop deducting  
Union dues from the wages of Michael Peluso.

20 (b) Reimburse Peluso for the dues unlawfully deducted from his wages since February  
20, 2014 as set forth in the Remedy section of this Decision.

25 (c) Within 14 days after service by the Region, post at its office in Las Vegas, Nevada,  
copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by  
the Regional Director for Region 28, after being signed by the Respondent's authorized  
representative, shall be posted by the Respondent and maintained for 60 consecutive days in  
conspicuous places including all places where notices to members are customarily posted.  
Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered,  
defaced, or covered by any other material.

30 (d) Sign and return to the Regional Director sufficient copies of the notice for posting by  
Host International, Inc., if willing, at all places where notices to employees are customarily  
posted.

35 (e) Within 21 days after service by the Region, file with the Regional Director a sworn  
certification of a responsible official on a form provided by the Region attesting to the steps that  
the Respondent has taken to comply.

**Dated, Washington, D.C. March 17, 2015**

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**Joel P. Biblowitz**  
**Administrative Law Judge**

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50 <sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the  
notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted  
Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the  
National Labor Relations Board."

**APPENDIX**

**NOTICE TO MEMBERS**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

**WE WILL NOT** refuse to honor revocations of dues checkoff authorizations sent in a timely manner and **WE WILL NOT** cause dues to be withheld from the wages of employees who have effectively revoked their authorizations for dues to be checked off.

**WE WILL NOT** in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** notify Host International, Inc., in writing, that they should immediately stop deducting Union dues from the wages of Michael Peluso, and **WE WILL** reimburse Peluso for the Union dues that were unlawfully withheld from his wages since February 20, 2014, as set forth in the Remedy section of this Decision.

**LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS, CULINARY WORKERS UNION,  
LOCAL 226, AND BARTENDERS UNION, LOCAL 165, affiliated with UNITE HERE**

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

2600 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-3099  
Hours: 8:15 a.m. to 4:45 p.m.  
602-640-2160.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/28-CB-128997](http://www.nlr.gov/case/28-CB-128997) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-640-2146.