

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

LEUKEMIA & LYMPHOMA SOCIETY,	§	
	§	
Respondent,	§	
	§	
and	§	Case No. 16-CA-152958
	§	
BRITTANY LYNN DOERING,	§	
	§	
Charging Party.	§	
_____	§	

MOTION FOR RECONSIDERATION OF ORDER
DENYING RESPONDENT’S MOTION TO POSTPONE

The Leukemia & Lymphoma Society (“LLS” or “Society”) moves for reconsideration of the Order Denying Respondent’s Motion for a one-day postponement and also offers this reply to the Counsel for the General Counsel’s opposition to the Respondent’s Motion for Postponement (the “Opposition”) in support of this request:

I. Introduction: The Regrettable Opposition to a One-Day Delay

There are some positions that should never be taken in a pleading filed in an official judicial or administrative proceeding. The Opposition represents such a pleading. If filed in federal court, it might warrant sanctions. The Counsel for the General Counsel opposes a one day extension to accommodate a major fund-raising

event for the Respondent, a national charitable organization, scheduled on the same day as the hearing in this case.

II. The Requested Delay to Accommodate the Board.

The hearing in this case should not proceed before the Board rules on the pending Motion for Summary Judgment and the Motion to Dismiss.¹ The Counsel for General Counsel did not contest this principle because no argument is advanced that the hearing should occur before the Board addresses these motions. Instead, Counsel for the General Counsel simply opined that “the Board, too, has ample time to rule on these motions prior to the February 16, 2016 hearing.” *See* Opposition, p. 3.

If the Board rules on the motions before February 16, 2016, then the General Counsel’s prophesy will prove true, and Respondent’s request will be moot. But if not, the hearing should be postponed until the Board resolves those pending motions. The Board’s Rules contemplate that such motions will stay the proceedings and be addressed before the hearing. 29 C.F.R. § 102.24(b). The rule does, however, permit a procedural maneuver – filing a quick response before issuance of a notice to show cause – to prevent operation of the automatic stay. The Office of the General Counsel deployed this tactic here by filing a non-substantive response to the Motion for Summary Judgment.

¹ On November 10, 2015, Respondent filed a Motion to Dismiss the Complaint’s allegations challenging certain policies contained in the LLS Employee Handbook. On December 7, 2015, LLS filed a Motion for Summary Judgment, contending that the Charging Party qualifies a statutory supervisor under Section 2(11) of the Act. Both motions are fully briefed and ripe for decision.

But Counsel for the General Counsel does not advance an argument that permitting the Board to rule on the pending motions would prejudice any party. The pending motions, if granted, are outcome determinative of claims that have been raised in the Complaint. These motions raise substantial, good faith arguments, and Respondent has incurred material time and expense to bring these matters before the Board. It is in the interest of justice and administrative economy to have those issues resolved before the hearing is held. Since the Counsel for General Counsel does not dispute these principles, this portion of the Respondent's Motion for Postponement should be treated as unopposed if the Board does not decide those motions before the hearing date.

III. Counsel for the General Counsel's Conduct Triggers *Dondi*.

It has been almost 28 years since the Northern District sat, *en banc*, to issue its opinion in *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988) (*en banc*). The famous case, which has been cited well over a 1,000 times, established standards of conduct for attorneys practicing in the Northern District of Texas. Eleven federal district judges participated in the *Dondi* decision.

They explained the problem being confronted as follows:

With alarming frequency, we find that valuable judicial and attorney time is consumed in resolving unnecessary contention and sharp practices between lawyers. Judges and magistrates of this court are required to devote substantial attention to refereeing abusive litigation tactics that range from benign incivility to outright obstruction. Our system of justice can ill-afford to devote scarce resources to supervising matters that do not

advance the resolution of the merits of a case; nor can justice long remain available to deserving litigants if the costs of litigation are fueled unnecessarily to the point of being prohibitive.

As judges and former practitioners from varied backgrounds and levels of experience, we judicially know that litigation is conducted today in a manner far different from years past. Whether the increased size of the bar has decreased collegiality, or the legal profession has become only a business, or experienced lawyers have ceased to teach new lawyers the standards to be observed, or because of other factors not readily categorized, we observe patterns of behavior that forebode ill for our system of justice.

121 F.R.D. at 287. The Opposition represents one of the sharp litigation tactics prohibited in this judicial district.

The standards the Northern District of Texas announced in *Dondi* include the following: “[i]f a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.” *Id.* at 288. Opposing a one-day postponement – in order to prevent a catastrophic disruption to a major fundraising event for a nationally prominent charitable organization – represents one of the types of pernicious litigation tactics prohibited in this judicial district.

IV. The Hollow Cry of Prejudice.

The Counsel for the General Counsel has no basis for its claim of prejudice. It proffers nothing but a general conclusion. But the prejudice to Respondent is self-evident. The General Counsel does not dispute that the Society is holding a major fundraising event at the Morton H. Meyer Symphony Center in Dallas, Texas on the

date of the hearing that requires its staff to attend. The Executive Director of the North Texas Chapter will open the event with a presenting speech. No prejudice will occur for a one-day extension to accommodate an event at which LLS projects to raise over \$800,000 for the fight against cancer.²

The General Counsel claims that the delay would:

“interfere with the right of Respondent’s employees to be informed of their Section 7 rights and to be assured that Respondent will not interfere with those rights. The delay obstructs the public’s right to have unfair labor practices remedied in a timely fashion.”

Opposition, p. 3. In this remark, the Counsel for the General Counsel is referencing a moot challenge to a handful of former policies in an Employee Handbook that was rescinded and replaced in November 2015 by policies. The Counsel for the General Counsel, Mr. Dooley, has represented to Judge Robert Ringley that those revised policies are not objectionable. Employees have already been notified that the challenged policies have been rescinded and replaced. In other words, the perceived unfair labor practices – while still disputed – have already been remedied and employees have been notified. To argue prejudice in this context without the accompanying disclosure represents yet another *Dondi* violation: “A lawyer owes to the judiciary, candor, diligence and utmost respect.” 121 F.R.D. at 287.

² The 32nd Annual St. Valentine’s Day Luncheon will occur on Tuesday, February 16, 2016, between 10:00 a.m. and 1:30 p.m. at the Morton H. Meyerson Symphony Center in Dallas, Texas. A flyer for the event was attached as Exhibit A to the Motion for Postponement. This annual event is one of the primary fundraisers held by the North Texas Chapter of The Leukemia & Lymphoma Society to finance medical research to find a cure for cancer. It is one of the largest LLS events of 2016 at which over 800 people will attend.

Let me end this request for reconsideration with a comment on settlement. Mr. Dooley claims that the parties “have ample time to work out the details of a settlement.” Opposition p. 4. He does dispute that negotiations which could lead to a settlement of all or a portion of the Complaint have been proceeding for the last few weeks. While substantial progress has been made, gaps remain. A brief postponement will allow those discussions to continue. Retaining the conflict between the hearing and the LLS event likely will not. The Opposition is another example of a sharp litigation tactic – an attempt to leverage a scheduling conflict in order to coerce settlement by the threatened disruption of the LLS charitable event. Such obnoxious litigation tactics – which tend to create great ill will, not an environment conducive to settlement – will not facilitate settlement discussions and should not be condoned.

Conclusion

Because good cause exists to postpone the hearing for at least one day, Respondent requests that Deputy Chief Administrative Law Judge Arthur J. Amchan reconsider the Order issued on February 4, 2016 denying Respondent's motion for a one-day postponement.

Respectfully submitted,

By: 

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing Respondent's Motion for Reconsideration was electronically filed and served on this 4th day of February, 2016, on:

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