

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

KNOLLWOOD COUNTRY CLUB

And

UNITED HERE LOCAL 100

**CASE 02-CA-150410
02-CA-150571
02-CA-151405
02-CA-162251**

**BRIEF OF RESPONDENT KNOLLWOOD COUNTRY CLUB IN SUPPORT OF
ITS EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE,
THE HONORABLE RAYMOND P. GREEN**

SUMMARY

In the face of significant financial difficulties, Knollwood Country Club (“Knollwood” or the “Club”) attempted to economize while at the same time following the terms of the collective bargaining agreement and satisfying its obligations under the National Labor Relations Act. Specifically, following the advice of its then-attorney, the Club (1) followed those portions of the collective bargaining agreement that allowed it to staff special parties with employees from a staffing agency, and (2) followed the portions of the collective bargaining agreement that allowed it to staff its normal operations with summer employees.

The Union representing certain employees of Knollwood claims that the collective bargaining agreement did not allow the Club to act in the manner it did. In agreeing with the Union and the General Counsel, the Administrative Law Judge (1) applied an incorrect standard to his evaluation of the relevant collective bargaining agreement provisions; and (2)

misinterpreted those provisions. The Administrative Law Judge also erred by ignoring language in the collective bargaining agreement related to employee protest activities and by recommending inappropriate remedies.

I.

FACTS

Knollwood is a member of the Federation of Country Clubs. Jt. Ex. 1 ¶2. The Federation is party, on behalf of its members, to a collective bargaining agreement with UNITE HERE Local 100 that covers employees performing kitchen, dining room and bar services at the clubs. Jt. Ex. 1, ¶1; Jt. Ex. 2. The most recent collective bargaining agreement between the Federation and Local 100 was signed on or about November 18, 2014 (the “Collective Bargaining Agreement”). Jt. Ex. 1 ¶2.

A. Knollwood Faces Financial Problems

Knollwood had significant membership losses in the period 2012-2014, going from 190 active members to 166, a reduction of 13%. Jt. Ex. 4, p. 2. At the same time, the Club’s total labor costs went from \$2.69 million in 2012 to \$3.21 million in 2014, an increase of almost 20%. Jt. Ex. 4, p. 10. The total assets of the Club at the end of 2012 had been just over \$7 million. GC Ex. 13, p. 6. By the end of 2014, those assets had dropped by almost \$1.5 million to \$5.54 million. GC Ex. 14, p. 5. Cash and cash equivalents in 2012 were \$964,208. Jt. Ex. 13, p. 6. By the end of 2014, they had dropped to less than a third of that value, \$308,788. GC Ex. 14, p. 5. Most strikingly, net unrestricted assets dropped from over a million dollars in 2012 (GC Ex. 13, p. 6) to a **deficit** of \$27,443 at the end of 2014 (GC Ex. 14, p. 5).

B. Knollwood Looks for Avenues for Financial Relief Under the Collective Bargaining Agreement.

In the face of these financial problems, Knollwood explored a number of means of reducing costs. Among the areas Knollwood explored were labor costs under the Collective Bargaining Agreement with Local 100. Knollwood retained an attorney, Matthew Persanis, to assist the Club in achieving cost savings under the Collective Bargaining Agreement, and Attorney Persanis identified several mechanisms within the Collective Bargaining Agreement that could save the Club some money.

The Club, in consultation with its attorney, reviewed the Collective Bargaining Agreement and determined that there were several mechanisms built into the Collective Bargaining Agreement that would allow it to operate, albeit on a somewhat reduced basis, and save significant amounts of money on labor costs. In order to insure that the Collective Bargaining Agreement allowed the Club to proceed in the manner it believed that it could, the Club asked Attorney Persanis to lay out, in writing, what the Club could do, consistent with its obligations to the Union under the Collective Bargaining Agreement in order to save costs. Attorney Persanis did so. Respondent's Ex. 4.

On this basis, the Club concluded that the Collective Bargaining Agreement allowed it to use outside vendors in order to staff an event. Respondent's Ex. 4. Article 17 of the Collective Bargaining Agreement, entitled "special contracted parties," referenced employees "who are hired as Extras from an Agency." *Id.* The Club, on advice of its attorney, therefore concluded that the Collective Bargaining Agreement gave the Club the authority to hire an outside agency to staff a party. Jt. Ex. 2, p. 14; Res. Ex. 4. The Club's attorney explained that further support for

that authority was set forth in the Collective Bargaining Agreement's management rights provision. Jt. Ex. 2, p. 16-17; Res. Ex. 4.

Attorney Persanis also told the Club that it had the right under the Collective Bargaining Agreement to lay off regular staff and to staff the Club on a temporary or summer only basis. Res. Ex. 4. He directed the Club to several provisions in Article 8 of the Collective Bargaining Agreement regarding lay off of employees, and again cited the management rights provision of the Collective Bargaining Agreement as support for the permissibility of the Club to lay off regular employees. Jt. Ex. 2, pp. 8-10; Res. Ex. 4. Attorney Persanis advised the Club that it could, consistent with the Collective Bargaining Agreement, staff the Club just with summer employees described under Article 5 of the Collective Bargaining Agreement (the "Summer Employees"). Jt. Ex. 2, p. 5; Res. Ex. 4.

Staffing the Club with just Summer Employees rather than regular employees results in significant cost savings for the Club. The Collective Bargaining Agreement requires payment for eligible regular unit employees to a Welfare Fund of \$1,097.54 per month in 2015, payment to a Pension Fund of \$97.81 per week (\$391.24 per month), as well as several weeks of vacation pay and several days of sick pay. Jt. Ex. 2, pp. 11, 12, 19-28. This can amount to over \$2,000 per month for each employee. However, under Article 5 of the Collective Bargaining Agreement, the Club is allowed to hire persons for summer employment between April 1, 2015 and October 31, 2015 and need **not** contribute to the Funds or provide sick or vacation pay for those employees. Jt. Ex. 2, p. 5.

Attorney Persanis closed his letter with specific advice to the Club under the Collective Bargaining Agreement: "*My advice to you to save money is to lay off your permanent employees,*

hold out until April 1, 2015 to hire anyone and let them go by October 31, 2015 so all you have is summer employees. You will save on all Fund payments, vacation, sick time, holiday pay.”

Res. Ex. 4.

Knollwood followed its attorney’s interpretation of the Collective Bargaining Agreement and took the advised steps to save money. As it did every year, it laid off employees in early January, 2015. Jt. 1, ¶ 7. Beginning in February, 2015, the Club began using an outside agency, Mack Staffing, to provide kitchen, dining room, and bar workers for special parties. GC Ex. 8, pages 1-4; Transcript at 228 (Testimony of Robert Mack). The Club did not recall regular employees who had been laid off, but instead hired Summer Employees beginning on April 1, 2015. Jt. Ex. 17(c), Jt. Ex. 1, par. 15.

For the balance of 2015, Knollwood staffed its kitchen, dining room and bar areas with a combination of Summer Employees, individuals working for Mack Staffing and, ultimately, recalled regular Knollwood employees. Jt. Ex. 1, ¶¶ 15, 17-24; GC Ex. 8.

C. Local 100 Objects to Knollwood’s Actions.

In late March and early April, 2015, Local 100 learned that Knollwood had not recalled regular employees and was instead operating with Summer Employees. The Collective Bargaining Agreement has a detailed grievance and arbitration provision at Article 28 which is designed “to provide the fullest opportunity for discussion of any grievance defined as a dispute concerning the interpretation or application of any provision of this Agreement.” Jt. Ex 2, p. 29. Local 100 filed three grievances on or about April 8, 2015, challenging the Club’s actions in hiring Summer Employees without having recalled the regular employees. Jt. Ex. 5(a)-(c).

On the morning of April 16, 2015, two union officials – Dennis Diaz and Jean-Homer Lauture - met with several Knollwood employees at a diner in White Plains, New York. They discussed the staffing situation at the Club and decided at that meeting that they would proceed directly from the diner to Knollwood Country Club in order to demand that the Club recall the regular employees. With no prior notice to the Club, the two union officials and 8 laid off employees arrived en masse at the Club and entered the building. The employees massed in the foyer of the Club while Mr. Diaz and Mr. Lauture entered the kitchen area where Summer Employees were performing work. They confronted the Club's General Manager and demanded to know when the regular workers would be recalled. The General Manager told them that the Club's attorney, Mr. Persanis, would be handling that matter and that communications should go through Mr. Persanis. The General Manager gave Mr. Diaz and Mr. Lauture contact information for Mr. Persanis. That exchange continued several times, and ultimately the General Manager requested that Mr. Diaz and Mr. Lauture leave the premises. When they refused, he told them that he would have to call the police. When the police arrived, the Local 100 officials and the laid off workers who had amassed inside the Club left. The Club filed no formal charges.

Less than a week later, on April 22, 2015, the Union and the Club had a meeting. The Union was represented by Mr. Diaz, Mr. Lauture and Attorney Jane Lauer Barker, while Knollwood was represented by Attorney Persanis, the Club's President, the Club's General Manager, and its Assistant General Manager. At that meeting, the Union demanded that the Club recall the regular employees who had been laid off, as the grievances had demanded. The Club declined to do so, effectively responding to the grievances.

The grievance and arbitration procedure of the Collective Bargaining Agreement provides that if the Union representative and the Club Manager are unable to resolve the problem after a meeting about the issue, the Union is to meet with a designated representative of the Federation. Jt. Ex. 2, p. 30. The Union chose not to take that next step and involve the Federation in the dispute. Nor did the Union move the matter to arbitration as was allowed under the Collective Bargaining Agreement. Jt. Ex 2, p. 31.

D. Regular Employees Return to Work

In August, 2015, the Club recalled five of the seventeen regular employees who had been laid off in January. Jr. Ex. 1, ¶¶ 8, 17-19. Two of those employees declined recall. Jt. Ex. 1, ¶ 19. The Club had previously discovered that three of the regular employees were not authorized to work in the United States. Transcript at 137-140 (Testimony of Mauro Piccinnini).

The Club laid off two regular employees in late September, 2015, noting that it was suspending regular lunch and dinner operations. Jt. Ex. 1, ¶ 20; Jt. Exs 11 & 12. Those two employees were recalled in late October, 2015. Jt. Ex. 1, ¶¶ 21 & 22. In late November, 2015, the Club recalled an additional nine regular employees on the basis of seniority. Jt. Ex. 1, ¶¶ 23 & 24.

**II.
LEGAL ARGUMENT**

The operative complaint in this matter was filed on March 7, 2016, the first day of the hearing, and is General Counsel's Exhibit 2 (hereinafter "Complaint"). The Complaint alleged that the Club violated the Act in three primary ways. First, the Complaint alleged that the Club

“effectively repudiated the collective bargaining agreement” by a series of actions alleged to violate the Collective Bargaining Agreement. GC Ex. 2, ¶ 15. Second, the Complaint alleged that the Club failed to bargain in good faith by the actions that constituted the alleged repudiation and additionally by failing to provide certain information to the Union. GC Ex. 2, ¶ 16. Finally, the Complaint alleged that the Club interfered with, restrained, and coerced employees in the exercise of their Section 7 rights on April 16, 2015. GC Ex. 2, ¶ 17.

The Administrative Law Judge found that the Club did not repudiate the collective bargaining agreement. (ALJD at p. 17). The Administrative Law Judge did, however, incorrectly conclude that the Collective Bargaining Agreement did not allow the Club to staff special events with extra employees from an agency instead of regular employees and that it did not allow the Club to staff normal operations with summer employees instead of regular employees. The Administrative Law Judge therefore held that the Club violated the Act when it operated with agency and summer employees.

With regard to claims related to information requests, the Administrative Law Judge found that while the Club had not promptly provided all the information the Union requested, under the circumstances the Union’s need for that information had disappeared and therefore did not order any affirmative actions. The Club filed no exceptions in this regard.

Finally, the Administrative Law Judge correctly held the Union officials violated the Collective Bargaining Agreement by failing to provide advance notice of its visit to the Club, but entirely ignored the Club’s argument that the employees’ actions on the same day violated the no-strike provision of the Collective Bargaining Agreement. The Administrative Law Judge

therefore incorrectly held that the Club violated the Act by asking employees to leave the premises during a gathering to protest Club actions.

A. **The Proper Standard When Interpreting a Collective bargaining Agreement in the Context of Unfair Labor Practice Charges (Exception # 7)**

Because this case involves the provisions of a collective bargaining agreement, it is important to set forth the standard applicable to the Board's review of such provisions. The Board does not have direct jurisdiction to adjudicate claims that a party to a Collective Bargaining Agreement has breached the terms of that agreement. Section 301 of the LMRA puts that power in the federal courts or where, as in this case, the parties have agreed to binding arbitration, in the hands of an arbitrator selected under the Collective Bargaining Agreement. *See generally, NLRB v. Strong*, 393 U.S. 357, (1968) The Board may interpret a collective bargaining agreement in the context of an unfair labor practice proceeding, but when doing so it “does not seek to determine which of two equally plausible contract interpretations is correct.” *See, e.g., Bay Area Healthcare Group*, 362 NLRB No. 94 (2015). Instead, the Board will determine whether the party accused of a breach had a “sound arguable basis” for its belief that the contract authorized the action. *Id.* (citing *Bath Iron Works*, 345 NLRB 499, 502 (2005)). Moreover, not every breach of a collective bargaining agreement is an unfair labor practice. *See, e.g., Mine Workers v. NLRB*, 257 F.2d 211, 214-15 (D.C. Cir. 1958).

When determining whether an employer has breached its duty to bargain over an issue that is addressed by a provision of a collective bargaining agreement, the Board has traditionally held that any waiver of the right to bargain by a union should be “clear and unmistakable.” In a

situation like this, where the Collective Bargaining Agreement addresses the issues involved, the Board should set that approach aside and adopt the “contract coverage” approach used by the District of Columbia Circuit, under which “where the matter is covered by the collective bargaining agreement, the union *has exercised* its bargaining right.” *NLRB v. Postal Service*, 8 F3d 832, 836 (D.C. Cir. 1993); *see also Graymont, P.A. Inc.*, 364 NLRB No. 37 at 11 (Miscimarra, dissenting) (June 29, 2016). However, even under the Board’s traditional approach, the terms of the collective bargaining agreement at issue regarding the Club’s right to staff in the manner it did in this case are clear and unmistakable and therefore, under either standard, the Board should find that the Club did not violate the Act.

B. Use of Mack Staffing Workers (Exceptions # 2, 4, 5, 6, 8, 9, 14, 16, 17, 20)

The Club used workers from Mack Staffing to perform work at Special Parties from February, 2015 until November, 2015. In August, 2015, the Summer Employees who had been working at the Club were hired by Mack Staffing and the Club continued to use those individuals through Mack Staffing. That staffing model was specifically authorized by the Collective Bargaining Agreement and the Club did not violate the agreement by using that staffing model. The Club had, at the very least, a sound, arguable basis for its belief that such conduct was specifically authorized by the Collective Bargaining Agreement. Moreover, there is no reasonable alternate way to interpret the relevant provision of the collective bargaining agreement and therefore the waiver by the union of the right to bargain over the use of extra employees from an agency was clear and unmistakable.

The Club specifically asked its attorney whether the Collective Bargaining Agreement allowed it to use an outside vendor to staff an event. As Attorney Persanis’ January 14, 2015

letter to the Club explained, the Collective Bargaining Agreement specifically contemplates that Special Parties may be staffed by workers from an outside agency. Res. Ex. 4. Article 17 of the Collective Bargaining Agreement is entitled “Special Parties” and it explicitly provides that the Club may use employees “who are hired as Extras from an Agency to work at special contracted group parties.” Jt. Ex. 2, p. 14; Res. Ex. 4. There would be no need for such language if the Collective Bargaining Agreement prohibited the use of an agency to staff a special contracted group party.

Moreover, the Collective Bargaining Agreement’s management rights provision allows the Club to “discontinue, *lease* or relocate services or operations in whole or in part, *or to discontinue performance of services or operations by employees of the Club.*” Jt. Ex. 2, p. 16-17 (emphasis added). In addition to the permitting of the leasing of services, this language provides two distinct rights to the Club with regard to its services or operations: the Club can either (1) discontinue services or operations in whole or in part; **or** (2) discontinue performance of services or operations **by employees of the Club**. This second part of the quoted language must mean that the Club may continue with certain services but not use employees of the Club for such services; the language would be meaningless if it did not allow the Club to continue the service or operation without using Club employees. The first part already allows discontinuance of services or operations in whole or in part.

In interpreting a collective bargaining agreement, ordinary contract principle apply. *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 935 (2015). “It is a time-honored principle of contract construction that contracts should be interpreted so as to give meaning to each and every word. *See* 17A Am.Jur.2d contracts at 387 (1991) (no word in a contract should be rejected as

mere surplusage if the court can determine any reasonable purpose for that word). *See also, Intel Corp. v. International Trade Comm'n*, 946 F.2d 821, 826 (Fed.Cir.1991) ("When interpreting a contract, we must, where possible give meaning and purpose to every term used in the contract"); *Financial Services, Inc. v. Ryan*, 928 F.2d 994, 999-1000 (11th Cir. 1991) ("[A]n interpretation that gives reasonable meaning to all parts of the contract would be preferred to one that leaves portions of the contract meaningless"); *Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed.Cir.1985) (it is a "well accepted and basic principle that an interpretation that gives reasonable meaning to all parts of the contract would be preferred to one that leaves portions of the contract meaningless")." *Cotter v. DaimlerChrysler Corp.*, 87 F. Supp. 2d 746, 757-58 (E.D. Mich. 2000) (interpreting a collective bargaining agreement).

The only interpretation of the language in the management rights clause that gives meaning to that language is that the Club may stop using Club employees to perform services when it so decides, while continuing to provide those services. Thus, the management rights clause clearly and unmistakably allows the Club to continue providing services without using Club employees to perform those services.

In the case of the special contracted group parties, the Club discontinued performance of the work associated with such parties by employees of the Club and, as explicitly contemplated in Article 17 of the Collective Bargaining Agreement, used individuals "from an agency."

The Administrative Law Judge's Decision put much stock in the absence of the word "subcontract" from the management rights provision of the Collective Bargaining Agreement. (ALJD at p. 5 lines 24-35; p. 14, lines 13-26). The mere absence of a single word should not

overcome the grammatical fact that the language used can admit of only one meaning. Such meaning is clear and unmistakable.

The Collective Bargaining Agreement authorized the Club to use Mack Staffing employees in exactly the way that it did. That interpretation of the collective bargaining agreement, the only one that gives meaning to the language in the agreement, clearly and unmistakably allows the Club to provide services without using Club employees.

C. Use of Summer Employees Without Recalling Regular Employees (Exceptions # 1, 3, 10, 11, 15, 16, 17, 21)

The Club laid off regular employees in January, 2015, and when it resumed regular operations on or after April 1, 2015 it used Summer Employees for normal operations (as distinguished from Special Events) rather than recalling the regular employees. Jt. Ex. 1, ¶¶ 14 & 15. The Collective Bargaining Agreement specifically allows the Club to use Summer Employees. Jt. Ex. 2, p. 5. In fact, the Collective Bargaining Agreement provides substantial economic encouragement for a Club to do so, because the Club need not make welfare or pension fund contributions on behalf of Summer Employees and Summer Employees are not entitled to sick time or vacation time under the Collective Bargaining Agreement. Jt. Ex. 2, p. 5. The foregoing is undisputed. Also undisputed is the fact that the Collective Bargaining Agreement allows the Club to lay off regular employees. Jt. Ex. 2, pp. 8-10.

The Administrative Law Judge, however, held that the Club may only use Summer Employees once all regular employees who have been laid off have been recalled to work. Nothing in the Collective Bargaining Agreement says that. Instead, Article 5 of the Collective Bargaining Agreement is expansive in its language, providing that between April 1, 2015 and

October 31, 2015 the Club may hire Summer Employees “[n]otwithstanding anything to the contrary.” Jt. Ex. 2, p. 5. Nothing in Article 5 limits a Club’s use of Summer Employees to those times after the Club has recalled laid off regular employees – in fact nothing in Article 5 mentions regular employees at all.

The Administrative Law Judge held that a different part of the Collective Bargaining Agreement limited the Club’s authority to hire Summer Employees. Article 8, Section 8.2 dictates the order in which regular full time employees are laid off and recalled; it says nothing about the circumstances under which the Club may hire Summer Employees. That section provides that “the most senior regular full time employee in each category shall be the last laid off and the first re-employed after a layoff . . . provided the persons remaining have the ability to do the work required.” Jr. Ex. 2, p. 8. There is no allegation that the Club violated the order of seniority with regard to the timing of its recall of regular full time employees; the most senior regular full time employee in each category was in fact the first regular full time employee re-employed to that category after layoff (taking into account ability to do the work required).

The Administrative Law Judge held, however, that the seniority language did more than set the order of recall as among regular full time employees. He determined that the Article 8 language limits the grant of authority to hire Summer Employees as established in Article 5, and that Article 8’s “contrary” language should prevail over Article 5. However, even if Article 8’s language were contrary to Article 5 (which it is not) the parties themselves agreed that Article 5 would prevail over any contrary provision by beginning Article 5 with the phrase “notwithstanding anything to the contrary. . .” Jt. Ex. 2, p. 5.

Article 5 firmly establishes the right of the Club to hire Summer Employees during specified months, with no restrictions on its ability to do so. Thus, the Club had at the very least a sound arguable basis for its belief that the Collective Bargaining Agreement authorized it to use Article 5 Summer Employees even if it had not recalled regular employees from lay off. Had the Union truly believed that the Club was violating the Collective Bargaining Agreement, it would have pursued the matter through the grievance process, first to a representative of the Federation and, if not satisfied, to binding arbitration. If the Union's interpretation were correct, the Federation would have a strong incentive to say so to one of its member clubs. If the Federation supported the Club's position, then the Union could have appealed to binding arbitration, for a direct interpretation of the language in the Collective Bargaining Agreement. It chose not to do so, and the Board should not choose between plausible readings of the Collective Bargaining Agreement.

D. Fund Payments (Exceptions # 12, 18, 22)

In paragraph 11 of the Complaint, the General Counsel alleges that the Club failed to make payments to the UNITE HERE Health Fund in violation of the Collective Bargaining Agreement. However, Article 26 of the Collective Bargaining Agreement makes clear that effective December 1, 2014, in order to be eligible for contributions from the employer, an employee must have authorized in writing deductions from his or her paycheck for a contribution to the welfare fund. Jt. Ex. 2, pp. 19-21. Section 26.1(b) limits the obligation for the employer to make contributions to employees who "have individually agreed to weekly deductions . . ." Section 26.2(c) provides that "in order to be an eligible employee an employee must agree in writing to make the following weekly contributions . . ." Section 26.2(e) similarly provides that

“[e]ach employee wishing to be covered by the Welfare Fund Plan shall be required to execute an authorization for the Club to deduct their contribution from their pay.” Jt. Ex. 2, pp. 24-25,

Neither the General Counsel nor the Union presented any evidence at the hearing that any unit employee had made such an authorization. In the absence of that essential element, there can be no finding that the Club had an obligation under the Collective Bargaining Agreement to do so, and thus no finding that the Club violated the collective bargaining agreement or the Act.

E. The Employees’ Action on April 16, 2015 (Exceptions # 13 & 19)

The Administrative Law Judge also held that the Club interfered with the Section 7 rights of employees when it asked them to leave the premises after they massed in the foyer of the property for more than half an hour to protest the Club’s failure to recall them. Because the employees’ conduct violated the terms of the Collective Bargaining Agreement, the Club was justified in asking them to leave the premises and did not interfere with any rights protected under Section 7 of the Act.

A union may waive the right of employees to engage in otherwise protected activity, such as a strike, picketing or other protest activity, particularly where such waiver is connected in a quid pro quo manner with binding arbitration. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 455 (1957). In this case, Local 100 agreed on behalf of the Knollwood Country Club employees in Article 21 of the Collective Bargaining Agreement that no employee would “instigate, aid, condone participate or engage in any form of . . . Union activity directed against the business

interests or operations of the Club.” Jt. Ex. 2, pp. 15-16. This is explicitly the case “regardless of whether there is a claim by the Union of breach of this Agreement or State or federal law by the Club.” *Id.* Such disputes are instead to be resolved through arbitration under Article 28 of the Collective Bargaining Agreement. *Id.* at 29-32.

On April 16, 2015, two Union officials and several laid off employees decided that, in addition to filing grievances, they would go to directly to the Club and demand that the employees be reinstated. The employees appeared at the Club, massed in foyer for 30-40 minutes, and left when the Union leaders were asked to leave by police. There can be no question that this was “Union activity directed against the business interests or operations of the Club” – precisely the type of activity in which the Union promised that bargaining unit employees would not engage.

Moreover, there was no evidence at the hearing that Club management directly asked any of the employees to leave. There was no evidence at the hearing that the Club asked the police to remove the employees, or that the police ever interacted with the employees. The evidence was that the Club asked the Union officials to leave the premises, called the police when the Union officials refused, and that the police spoke with the Union officials. The employees simply followed the Union officials when they left.

The employees engaged in conduct prohibited by Article 21 of the Collective Bargaining Agreement. The minimal actions taken by the Club in requesting the Union officials, and by extension the employees themselves, to leave the Club’s property after 30-40 minutes did not constitute interference with any protected activity by the employees.

The Administrative Law Judge entirely ignored the relevant provision of the Collective Bargaining Agreement, and did not even comment on whether the provisions of Article 21 of the Collective Bargaining Agreement applied. That portion of the decision should be reversed.

F. Remedy - Union Dues (Exception #23)

The Administrative Law Judge found that the Club failed to deduct union dues from employees' pay and remit such deductions to the Union. As a remedy, the Administrative Law Judge ordered that "Respondent must make these contractually required payment to the Union, with interest . . ." ALJD at p. 22, lines 2-4. Union dues are an obligation of a Union member to a Union. Jt. Ex. 2 at pp 2-3. The only role that the employer has in payment of union dues is that, if the collective bargaining agreement so allows, the employer may be authorized by the employee to deduct a portion of the employee's wages to remit to the Union on the employee's behalf. The Employer thus only acts as means for the employee to pay the Union, the employer does not pay the Union. In fact, it is illegal for an employer to pay any of its own money to a Union. See 29 U.S.C. § 186.

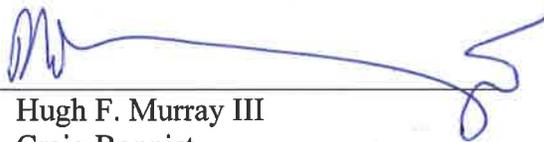
The payment of dues to a labor organization is between the members and the Union. Consider that any person ultimately eligible for reinstatement may have continued to pay Union dues during periods when he or she was not working for the Club. In any event, this is not an obligation of the Company. There is no justification for directing an employer to pay such dues to the Union. To the extent that the Club is ordered to pay employees back wages, the Board could order the Club to deduct unpaid union dues from such back wages and remit such deductions to the Union, but the Club should not be making direct payments to the Union.

Conclusion

Based on the Exceptions and this Brief in Support thereof, the Respondent respectfully requests that the Board reverse the Decision of the Administrative Law Judge as set forth herein.

Dated: July 6, 2016

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CERTIFICATE OF SERVICE

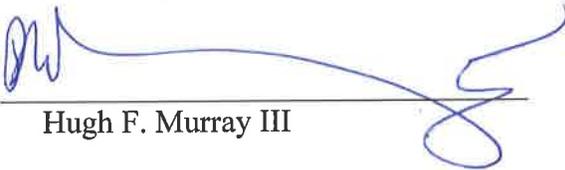
I hereby certify that on this day a true copy of the Brief of Respondent Knollwood Country Club, dated July 6, 2016, was served upon the attorney of record for each party by electronic mail upon:

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