

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

LOCAL 7, BRICKLAYERS and
ALLIED CRAFT WORKERS

and

Case 29–CB–158878

TOM BALADI

John Mickley, Esq.,
for the General Counsel

Edward Groarke and Alicia Showell, Esqs.
(Colleran O'Hara & Mills, LLP), of
Woodbury, New York,
for the Respondent.

DECISION

Statement of the Case

MINDY E. LANDOW, Administrative Law Judge. This case was tried in Brooklyn, New York, on January 28, 2016. The underlying charge was filed on August 27, 2015¹ and the complaint was issued on November 20, alleging that Local 7, Bricklayers and Allied Craft Workers (Local 7 or Respondent),² violated Section 8(b)(1)(A) and 8(b)(2) of the Act by: (1) on August 14, notifying Castle Stone and Tile, Inc. (Castle or the Employer) that it could not employ Tom Baladi (Baladi or the Charging Party) because he was not a member in good standing because of unpaid dues which were incurred while Baladi worked for a different employer and (2) by attempting to cause and causing the Employer to discharge Baladi. It is further alleged that the Union engaged in the above-described conduct without previously advising Baladi of the precise amount he owed in union dues, the period for which such dues were owed, the method by which the amount owed was computed and without providing Baladi a reasonable opportunity to pay the amount owed. On December 17, Respondent filed an answer to the complaint, denying the material allegations contained therein and raising certain affirmative defenses, which will be discussed as applicable, below.

After considering the record in this matter, including a stipulation of facts and corresponding exhibits entered into by the parties, the record testimony, my observation of the demeanor of the witnesses and the inherent probability of their testimony, and after duly considering the briefs submitted by the General Counsel and the Respondent, I make the following

¹ All dates are in 2015 unless otherwise indicated.

² Reflecting the correct name of Respondent as amended at hearing.

Findings of Fact

I. Jurisdiction

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At all material times, the Employer has been a domestic New York corporation. The parties stipulated that the Company maintains an office and place of business located at 134 Cedar Road, East Northport, New York, where it is engaged in the business of the installation of tile and marble. Annually in the course and conduct of its business operations, the Employer has provided services in excess of \$50,000 to entities within the State of New York who are directly engaged in interstate commerce. It has been stipulated and I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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II. Alleged Unfair Labor Practices

Background

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Respondent represents employees within the construction industry and operates a nonexclusive hiring hall whereby employees are referred to work performing brick laying, tile and terrazzo work in the greater New York City and New Jersey area, as well as some upstate locations. The industry collective-bargaining agreement between the Union and the Greater New York and New Jersey Tile Contractors Association, which currently is effective from June 3, 2013 to June 2, 2017, contains a union-security clause, stipulated by the parties to be valid, which requires employees as a condition of employment to become and remain members of Local 7. Approximately 20 percent of employees working in the industry at any given time receive referrals through the Union's hiring hall, at other times they solicit work on their own.

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Baladi became a member of Respondent on November 30, 2007, and remained so until April 2013,³ when his membership was discontinued for a failure to pay dues for a 3-month period. Employees' dues obligations are set forth in various ways. Initially, they are set forth in the "Rules and Regulations Required and Expected of a New Member," conveyed to employees. This document was provided to Baladi upon his membership and signed by him.⁴ Union President Thomas Lane testified that members' dues obligations are also discussed at semiannual so-called "mega meetings" held with employees and reminder letters are sent should the member become delinquent in remitting payment. Lane further testified that in the event an employee fails to remit dues to the local union, it is nonetheless required to submit such funds to the international, of which it is a member.

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Beginning in January 2013, Baladi was unable to work for a period of 5 months due to his incarceration. He failed to pay his union dues during this period of time, and the Union terminated his membership in April. During this period Baladi, who lived in a home owned by a family member, but had his own apartment, was sent two communications from Respondent, apparently unaware of his circumstances, regarding his dues arrears. The first notice, sent on March 1, 2013, was sent to the address maintained in the Union's files and stated that the Union's records indicated that Baladi was delinquent in the payment of dues and notifying him

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³ The record indicates that there was a hiatus in Baladi's membership in Local 7 during a period when he resided in Florida and was a member of a sister local.

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⁴ These rules and regulations provide, in pertinent part, that "members will be dropped by [Local 7] if they fall three months behind" in their dues obligations.

that the relevant provisions the Union's constitution and bylaws provided that membership shall be suspended for a dues arrears of 3 months. The letter continued:

5 Your payment must be received by the end of the month or you will be automatically dropped. Once you have been dropped, in order to be reinstated as a member, you will be required to pay an additional fee.

The total amount due is \$66.00

10 Baladi failed to respond to this notice and was sent another letter, dated April 1, 2013, notifying him that he had been dropped from membership and stating that to be reinstated as a member in good standing he must satisfy his dues delinquency by April 15, 2013. The letter further stated that after that time Baladi would be required to complete a reinstatement form and pay, in addition to dues owed, a \$150 reinstatement fee.

15 Baladi asserts that, due to his incarceration, he did not receive either of the two letters referred to above and, in any event, was without funds to satisfy his dues obligations during this period of time or thereafter. There is no evidence that the letters were returned to the Union as undeliverable. Moreover, Baladi confirmed that he was aware of his obligation to pay dues to the Union and the consequences of failing to do so.

20 On or about July 3, 2013, Baladi contacted Larry Walmsley, an employee of Local 7 who is responsible for managing the payment of dues. At that time, as Baladi testified, he informed the Union that he had been incarcerated. Baladi was advised that Local 7 could not assist him in obtaining work within the jurisdiction of Local 7 until he satisfied his financial obligations to Local 7 through the payment of dues and a reinstatement fee.

25 Baladi testified that the Union failed to advise him as to how he could reinstate his membership and, moreover, that he had made "painstaking efforts to try to get reinstated, but they [the Union] denied my money." In particular, Baladi testified that he contacted Union President Lane, but received no response. Based upon the record as a whole, I do not credit such testimony. There is no other evidence that the Union refused at any time to accept the arrearages owed by Baladi and this theory of a violation is not alleged in the complaint. When counsel for the General Counsel was specifically asked whether the Government was contending that the Union had discriminatorily rejected Baladi's efforts to render dues and initiation fees, he answered in the negative.

30 After his release from prison, Baladi picked up various jobs, including several within the asserted jurisdiction of Local 7, which had extant collective-bargaining agreements, containing union-security clauses, when he could obtain such employment. Generally such employment was of short duration.⁵

35 During one of these jobs, for American Tile, located in the Bronx, New York, Baladi was approached by a Local 7 Field Representative William Reilly, along with another Union representative. They told Baladi that he should not be working on the job, as he had been dropped for non-payment of dues. Baladi told the Union representatives that he had been incarcerated, and would get in touch with Union President Thomas Lane and straighten out the

50 ⁵ In particular, Baladi worked for Troy Enterprises New York, Inc. (Oct. 2013); L&L Stone Tile, Inc. (April 2014); American Tile (summer 2014) and Pride Enterprise of NY Inc., (Dec. 2014). Baladi failed to remit dues to Local 7 during any of these periods of time.

dues that were owed and pay what he owed to the Union. Reilly testified that they left Baladi working at the site, but several hours later they contacted the Employer to state that Baladi had been dropped from the Union and should not continue on the job.

5 Union President Lane testified that after Reilly's visit to the jobsite, he received a text message from Reilly stating that that Baladi complained that he was not being paid properly, asking what the Union could do about it. Lane testified that the Union was being put in a difficult position if Baladi continued to operate as a nonmember, a so-called "free rider," but stated that he would call the Employer, which Lane did. The Employer responded with some comments
10 about Baladi which are set forth in the record, but do not bear repetition here as they have no relevance to the Union's conduct with regard to the instant dispute.

Baladi's Employment with Cathedral and Subsequent Events

15 In the summer of 2015, Baladi started working on a tile project for an employer referred to as Cathedral Stone (Cathedral), an entity which does not have a collective-bargaining relationship with the Union. The project in question was located at 19th Street and Park Avenue, in Manhattan (the 19th Street project). Baladi was referred by a friend who was a fellow worker, referred to as "Ed." Baladi was hired by Cathedral owner Ed Teran (as distinguished from "Ed"),
20 and was paid \$32 per hour, but did not receive any benefits. Baladi worked at this location for one or 2 days.

Shortly after the job commenced, a union representative came to the worksite and told Teran that the work employees were performing was within the jurisdiction of the Union.
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Teran then arranged to subcontract that work to Castle which was willing to sign a collective-bargaining agreement with the Union and employ union members. Teran testified that Cathedral contacted the Union's secretary-treasurer Christopher Guy and advised him that he had several employees that would like to sign for the Union.
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Teran then went to the union office and met with Guy to register Cathedral employees as members of the Union so that they could work with Castle. He provided Guy with a list of employees who were working for Cathedral as of that time. Baladi's name was on the list. As Teran testified at the hearing, Guy stated, "no—no to Tom. Tom was not able to work at the time." Teran further testified that Guy told him that "there's some issues with Tom; that he can't sign up right now or work." As Teran testified, Guy did not state anything further about why Baladi could not sign up.⁶ Teran testified that he discussed the situation with Baladi and transferred him to another nonunion worksite where he worked for approximately 2 weeks, until the job ended.
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The stipulation of facts entered into the parties provides as follows as regards the exchange between Teran and Guy:

45 At that meeting, Teran told Guy that Cathedral was willing to turn the aforementioned job over to the Employer and that the Employer would be willing to sign a collective

50 ⁶ In light of the parties' stipulation as to what occurred at this meeting, as set forth below, I give limited weight to Teran's account of what Guy may have told him. In this regard, I observed that Teran demonstrated the demeanor of a reluctant witness who did not present himself as someone who was thoughtfully trying to reconstruct events. I further note that counsel for the General Counsel, in stating his theory of the case, has primarily relied upon the stipulation.

bargaining agreement with Respondent. Guy asked Teran if he would be signing the collective bargaining agreement on behalf of the Employer. Teran said “no” as he has no affiliation with Castle Stone.

5 Teran recommended for employment several employees to Guy. The Charging Party was one of those employees recommended.

Guy informed Teran that the Charging Party was not a member in good standing. Teran then asked Guy if the non-member employees who were working on the
10 aforementioned job could become members of Respondent. Guy said yes.

There was no conversation concerning Tom Baladi between Local 7 and the Employer until mid-November 2015.

15 Mr. Baladi never worked for the Employer.

Castle’s owner, Sharon Amari, testified that she hired those employees referred to her from the union hall but did not know who picked them. As she stated, Castle called the union hiring hall and they sent men, and she paid them as they worked. Amari further testified
20 that she never spoke to Baladi and did not know who he was until she received an inquiry from the Union on November 16. At that time Amari exchanged emails with the Union and confirmed that Baladi had never worked for Castle.

It is undisputed that aside from the two written communications referred to above, sent in
25 early 2013, the Union never provided additional written notice to Baladi of his obligation to pay the dues and initiation fees owed to the Union prior to his employment with Cathedral and the only other communications to such effect were those discussed above.

The Union’s Further Communications with Baladi

30 After the filing of the charge in the instant matter, anticipating an apparent merit determination by the Region, Baladi and Lane had the following exchange via text message which commenced on October 27 and continued to October 28. Their exchange is as follows:

35 Baladi: I win [the text message contains a “smiley face” icon as well]⁷
Lane: What are you looking to do?
Baladi: Get back with my old IU # and seeking damages for lost pay.⁸
Lane: You can come back as a member but you have to pay initiation and five months dues.
40 Baladi: No deal I’ll see you in court.

On cross-examination Baladi confirmed the foregoing exchange and added, “[w]ith everything that happened to me and me being kicked off of jobs and costing me thousands of

45 ⁷ Baladi testified that this was a reaction to being informed by the Board that “what [the Union] did was illegal and they had to let me back into the Union. I had been fighting to get back into the Union for a while; so at that point I was feeling very victorious.”

⁸ The “IU” number Baladi was referring to was his number with the international union. Lane testified that, despite the difficulty in doing so, consultations with the attorney for the international union resulted in
50 an agreement that Baladi could seek reinstatement of his IU number once he agreed to begin paying his dues.

dollars, I didn't think that was a good deal; so I replied, "No deal, I will see you in court."

On November 19, Lane sent a letter to the Charging Party providing in pertinent part as follows:

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PLEASE BE ADVISED: That BAC Local 7 has no objection to you performing covered employment for Castle Stone & Tile Co., Inc. ("Castle Stone"). A copy of a letter I sent to Castle Stone is attached for your records.

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PLEASE BE FURTHER ADVISED that to become a member in good standing of BAD, Local 7 it is your obligation to remain current in the payment of your union dues. This is a follow up letter to our conversation on October 28, 2015 via text that explained what was necessary to become a member in good standing. Although you expressed that you will "see me in court" I want you to fully understand what your obligations are in order to be reinstated in Local 7. If you choose to reinstate as a member while the NLRB is deciding their determination or after that date you must take the following steps.

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In order to be reinstated as a member of BAC, Local 7 the Constitution and By-Laws requires that you pay a reinitiating fee of \$750 plus the arrears that were paid by the local of \$66.00 for the period of 1/01/2013 through 4/01/2013. You would also have to pay \$44.00 in future dues while your membership is being processed. We would allow you to pay the initiation fee in full or over a 3 month period with equal payments of \$250.00

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If you do not pay your reinstatement fee and dues arrearage within 15 days of this notice than you should be aware that BAC, Local 7 is empowered through its union seniority clause with signatory employees to seek your termination.

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The Union also sent a letter to Amari (with a copy to Baladi, as referenced above) stating that the Union had no objection to Castle employing him to perform work covered under the parties' collective-bargaining agreement.

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Baladi has since satisfied his financial obligations to the Union and is currently employed at jobs within its asserted jurisdiction.

III. Analysis and Conclusions

General Legal Standards

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A union violates Section 8(b)(1)(A) and (2) of the Act it causes or attempts to cause an employer to discharge an employee for the employee's failure to pay dues without first providing the employee with proper notice. Unions have a fiduciary duty to deal fairly with employees whom they seek to terminate for failure to pay dues. The Board has extended this rationale to those situations where a union had informed an employer that an employee is no longer a member in good standing and thus ineligible for hire. See *Industrial Contractors Skanska, Inc.*, 362 NLRB No. 169, slip op at 1–2 (2015) (and cases cited therein).

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The Board has explained that, at a minimum, the fiduciary duty owed to employees requires that a union

Give the employee "reasonable notice of the delinquency, including a statement of the precise amount and months for which dues [are] owed, as well as an explanation of the

method used in computing such amount.” In addition, the union must specify when such payments are to be made and make it clear to the employee that discharge will result from failure to pay. This fiduciary responsibility to advise an employee regarding his dues obligation requires “positive action,” without regard to any concurrent obligation on the employer to provide notice.

Western Publishing Co., 263 NLRB 1110, 1111–1112 (1982)(internal citations omitted).

As the Board in *Industrial Contractors Skanska* supra, slip op. at 2 went on to elaborate, a union’s fiduciary duty requires that an employee be provided with a reasonable opportunity to make payment after receipt of the notification of delinquency and such a duty is not satisfied by the fact that the employee may have acquired independent knowledge of the existence of and the obligations thereunder. Thus, the Board considers this rule to be a prophylactic one which operates largely independently of the subjective knowledge of the employee.

Notwithstanding the above, it is also the case that the above protections were never “intended to be so rigidly applied as to permit a recalcitrant employee to profit from his own dereliction in complying with his obligations.” Thus the Board has found that there is a reasonable basis to excuse a union’s failure to fully comply with the notice requirements if the union proves that the employee made a “conscious decision” to willfully and deliberately . . . evade his union-security obligations. *Ralphs Grocery*, 209 NLRB 117, 124–125 (1974). See also *IBI Security*, 292 NLRB 648, 648–649 (1989) where the employee “resisted joining the [u]nion and procrastinated until the [u]nion had no alternative but to seek his dismissal,” despite the union notifying the employee of his obligations to join the union and pay the fees, the amount of the fees and the consequence of his failure to do so. The Board has also found, however that “negligence or inattention on the part of the employee will not relieve the union of its fiduciary obligation.” *Grassetto USA Construction*, 313 NLRB 674, 677 (1994); *Industrial Contractors Skanska*, supra.

Contentions of the Parties

In its post hearing brief, the General Counsel advances several arguments as to why Respondent’s conduct was unlawful. As an initial matter, General Counsel maintains that Respondent unlawfully caused Baladi to be removed from the 19th Street project because he failed to pay his dues in 2013, when he was employed elsewhere and failed to pay dues under a prior union-security agreement between the Union and another employer. In support of the foregoing contentions, the General Counsel relies upon *Marlin Rockwell Corp.*, 114 NLRB 553 fn. 6 (1955).⁹

The General Counsel further contends that Respondent’s conduct not only caused Baladi’s removal from the 19th Street project but further caused Castle not to hire him because of that same failure; i.e., the failure to pay dues in 2013 under a union-security clause between the Union and a different employer. In this regard, the General Counsel acknowledges that the complaint in this matter alleges that Castle discharged Baladi; rather than its failure to hire him. General Counsel asserts however, that “Baladi was discharged from the 19th Street project and Respondent was on notice of the allegations.” As General Counsel maintains, “whether the [c]omplaint incorrectly uses the word ‘discharge’ is immaterial because Respondent clearly

⁹ In that case, the employees in question had resigned from the union prior to the time the union sought to enforce the union-security provisions of its collective-bargaining agreement with the employer. It was found that the provisions in question were not ironclad, and allowed nonmembers to work.

understood the allegations.” Thus, the General Counsel relies upon its assertion that the issue of Baladi’s employment, in particular, Castle’s failure to hire him, is closely connected to the subject matter of the complaint and has been fully litigated herein. *United Healthcare Services*, 363 NLRB No. 134, slip op. at 2 (2016); see also *Dilling Mechanical Contractors*, 348 NLRB 98, 99 (2006), “[u]nder well-established precedent, the Board may find a violation not alleged in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully and fairly litigated” (citations and footnote omitted).¹⁰

The General Counsel further maintains that the undisputed facts lead to three conclusions which support the finding of Section 8(b)(1)(A) and (2) of the Act: (1) during the conversation about whom Castle would hire, Guy told Teran that Baladi was not a member in good standing of the Union; (2) Guy told Teran that the Union had no problem with other individuals joining the Union and being hired by Castle and (3) as a result of this conversation, Baladi was not hired by Castle.

Based upon the foregoing, the General Counsel argues that Respondent did not adhere to the Board’s longstanding notice requirements prior to causing Baladi’s removal from the 19th Street project. *Philadelphia Sheraton Corp.*, 136 NLRB 888 (1962). The General Counsel further contends that Respondent’s proffered defense: that is not liable because Baladi deliberately avoided paying dues, is without merit.

The Respondent contends that it met its fiduciary obligation under *Philadelphia Sheraton* to deal fairly with Baladi. The Union further argues that, inasmuch as Baladi was never employed by Castle, it cannot be charged with interfering with his employment with that Employer. It is further contended that any notice deficiencies should be excused because Baladi’s conduct rises to the level of a willful and deliberate attempt to avoid his dues obligations. Finally, the Union argues that due to the nonexclusive nature of its hiring hall, it had no legal obligation to assist Baladi in his search for employment.

Discussion

Due Process Considerations

Before addressing the Union’s liability for causing Castle not to hire Baladi and the issue of whether it met the requirements of *Philadelphia Sheraton*, there are certain preliminary considerations which should be addressed. In particular, I find that there are substantial omissions in the pleadings and concomitant factual development which in my view would be necessary to a successful prosecution of this case under the theories put forth by the General Counsel. Here, Cathedral was not alleged an employer; Baladi’s transfer to another work location (variously characterized by the General Counsel as his “discharge” or “removal” from the 19th Street project) by Cathedral was not specifically alleged as an unfair labor practice attributable to the Union and, most importantly, Teran, who, according to the record evidence, is the only individual to have had contact with the Union regarding Baladi’s membership status, was not alleged as an agent of Castle. I find that the General Counsel’s failure to allege and

¹⁰ In his opening statement, counsel for the General Counsel stated as follows: “by the conversation I just described [between Guy and Teran], the Respondent caused Mr. Baladi not to be hired by Castle and to be discharged from the job that he was working at the time because of past-owed dues . . .” I note that the complaint alleges, in part, that the Union violated the Act by notifying Castle that it could not employ Baladi because of unpaid dues that were incurred while he worked for a different employer. In my view, this complaint allegation is sufficient to place the issue of Castle’s failure to hire Baladi in contention.

otherwise fully and fairly litigate these matters is a denial of due process owed to the Respondent.

5 Recently, in *Graymont PA, Inc.*, 364 NLRB No. 37, slip op. at 5–6 (2016) (fns. omitted), the Board had occasion to discuss this issue as follows:

10 The issue here is one of procedural due process, the fundamental elements of which are “notice and an opportunity to be heard.” *Earthgrains Co.*, 351 NLRB 733, 735 (2007). Sufficient notice is that which “afford[s] [the] respondent an opportunity to prepare a defense by investigating the basis of the complaint and fashioning an explanation of events that refutes the charge of unlawful behavior.” *Pergament United Sales, Inc. v. NLRB*, 920 F.2d 130, 135 (2d Cir. 1990), enfg. 296 NLRB 333 (1989). As stated in *Sunshine Piping, Inc.*, 351 NLRB 1371, 1378 (2007), “[t]he precise procedural protections of due process vary, depending on the circumstances, because due process is a flexible concept unrestricted by any bright-line rules.”

20 Section 102.15(b) of the Board's Rules and Regulations provides that the complaint shall contain “a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.” The complaint, however, is not the exclusive source of notice of the material issues to be addressed in a Board proceeding. Depending on the circumstances, notice may also be provided by the General Counsel's representations at the hearing, or it might be evident from the respondent's conduct in the proceeding. “It is well settled that the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated.” *Pergament*, 296 NLRB at 334. The determination whether a matter has been fully litigated “rests in part on ‘whether the respondent would have altered the conduct of its case at the hearing, had the specific allegation been made.’” *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2345 (2012) (quoting *Pergament*, supra at 335).

30 Here, I find that had the pleadings set forth the above-noted contentions, Respondent might well have altered the presentation of its defense to the allegations and supplemented the record with additional testimony or other evidence. Accordingly, I cannot conclude that these matters have been fully litigated.

The Evidence Fails to Support the Allegations of the Complaint

40 As an evidentiary matter, I disagree with the General Counsel's apparent contention that a request by the Union that Baladi not be hired by Castle may be inferred from the facts and circumstances set forth in the record in this matter. This is particularly the case in light of a failure of proof of Teran's agency status, at least insofar as it presumes communications or knowledge regarding the hiring decisions of Castle. Teran denied that he handled labor relations for Castle, and there is no evidence to the contrary. Moreover, there is no evidence of any joint or single-employer relationship between Cathedral and Castle.

50 General Counsel relies upon those cases where the Board has found that direct evidence of an express demand by a union that an employee be discharged is not necessary where the evidence supports a reasonable inference of a union request, *Avon Roofing & Sheet Metal Co.*, 312 NLRB 499, 499 (1993)(and cases cited therein), and where the Board has also found that a union violates Section 8(b)(1)(A) and (2) of the Act by informing an employer that an employee is no longer a member in good standing and therefore ineligible for hire. *Industrial*

Contractors Skanska, supra, slip op. at 1.

5 However, the evidence is not sufficient to show that this is what occurred in this instance. It has been stipulated that a union agent told Teran that Baladi was not a member in good standing. There is no evidence to show that Teran did anything with that information, other than transfer Baladi to another nonunion worksite after a determination was made that Cathedral would no longer continue to operate at the 19th Street project, a decision which affected all employees. It is also the case that the evidence fails to show that Teran is affiliated (other than in an arms-length business relationship) with Castle¹¹ or that he, acting on behalf of 10 that Company, communicated to Castle that Baladi was ineligible for hire due to his failure to maintain his membership in the Union or for any other reason. The evidence likewise fails to show that any representative of the Union made such a representation to Amari or any other principal of Castle. The parties' stipulation specifically states that there was no communication between Local 7 and the Employer concerning Baladi until mid-November. Moreover, Amari 15 testified that she had no idea who Baladi was until she was contacted by the Union in mid-November, well after employees were hired to work at the 19th Street project.

20 Additionally, there is insufficient credible evidence that at the time the project was subcontracted to Castle, Baladi would have been prevented by the Union from resuming his membership in Local 7, should he have chosen to do so. As noted above, I have specifically discredited Baladi's testimony insofar as it suggests to the contrary.

The Exception to Philadelphia Sheraton Would Apply Here

25 Here, the stipulation of facts entered into by the parties, as supplemented by that evidence found by me to be reliable, confirms that the Union has a routine manner in which employees are generally informed of their dues obligations and Baladi received such information. The record further establishes that during the period of his incarceration, Baladi was sent two written communications from the Union relating to his dues delinquency. Although 30 Baladi denies receiving these letters, I do not credit his testimony in this regard. As an initial matter the letters were sent to him at his listed address, which was in a residence owned by a family member. Baladi offered no testimony to explain or otherwise address why such mail would not be forwarded or otherwise provided to him. In addition, I find that Baladi's actions in contacting Walmsley, the individual responsible for managing dues payments, shortly after his 35 incarceration ended, raises a strong inference that he was aware of his dues delinquency, and Baladi did not deny that that was the case. At that time, as Baladi acknowledged, he was advised that he could not obtain work within the jurisdiction of Local 7 until he satisfied his outstanding financial obligations to the union, which he apparently chose not to attempt to do. In this regard, as noted above, I discredit Baladi's testimony to the effect that the Union refused to 40 allow him to pay dues in order to be reinstated.

Baladi was further advised of his financial obligations to the Union on subsequent occasions, as described above: in particular, in the summer of 2014, when he worked for American Tile.

45 I also find that there is no doubt that at the time of his employment with Cathedral, Baladi was aware of his financial obligations to the Union. However, as discussed above, Board law

50 ¹¹ The parties' stipulation provides, in relevant part, "Guy asked Teran if he would be willing to sign a collective-bargaining agreement on behalf of the Employer. Teran said, "No" as he has no affiliation with Castle Stone.

5 does not deem that sufficient. The question which has been raised by Counsel for the General Counsel is whether the Union had the obligation, under *Philadelphia Sheraton* and its progeny, to provide a specific notice to Baladi about his financial obligations, the period for which they were owed, the method in which they were calculated, and a date by which such payments were to be made prior to making its request, inferred or otherwise, that Baladi not be referred for employment to Castle. As discussed above, I have found insufficient evidence to establish that the Union had any such communications with the Employer named in the complaint; thus, I find such contentions to be without merit.

10 Moreover, even if I were to conclude that the Union had made such a request or that knowledge on behalf of Castle could somehow be inferred, I would find that the exception to *Philadelphia Sheraton* would apply in this instance. I find that Baladi made a conscious decision to willfully and deliberately evade his dues obligations, of which he was fully aware, even while working in jobs where he knew the Union had collective-bargaining agreements with his employers containing union-security provisions. His conduct in this regard shows neither negligence nor inadvertence. This is evinced by his text message exchange with Union President Lane, which has been set forth above. Although this exchange postdates the relevant events here, it demonstrates Baladi's continuing intention to get his membership reinstated without remitting dues or initiation fees, uniformly required as a condition of continued membership. See, e.g., *Food & Commercial Workers Local 368A (Professional Services)*, 317 NLRB 352, 354–355 (1995), where the Board dismissed the complaint because the delinquent employee, like Baladi in the instant case, had actual knowledge of the amount of dues owed, the date by which it had to be paid, the consequences of nonpayment and the means of reinstating membership. See also *No. 60 Teamsters (Ralphs Grocery)*, 209 NLRB 117, 124-125 (1974); *Big Rivers Electric Corp.*, 260 NLRB 329 (1982); *IBI Security*, 292 NLRB 648 (1989). Here, there is no evidence that prior to December 2015, Baladi made any attempt to cure his arrearages, or that the Union refused to accept any such offer. Accordingly, I find that the exception to *Philadelphia Sheraton* applies in this instance.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

35 The complaint is dismissed.

Dated, Washington, D.C., August 11, 2016

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Mindy E. Landow
Administrative Law Judge

50 ¹² 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.