UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HECTOR L. SANTANA-QUINTANA, et al., Case: 12-CB-136934, et al.

Charging Parties,

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 385,

Respondent.

RESPONDENT'S REPLY TO REPRESENTED CHARGING PARTIES' ANSWERING BRIEF

Respondent INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 385 hereby submits its Reply to Represented Charging Parties' Answering Brief to Local 385's Exceptions.

I. Local 385's policies and practices regarding membership resignation requests and checkoff revocation requests are lawful (Respondent's Brief in Support of Exceptions Sections III. A, B, and C).

Unlike General Counsel, Represented Charging Parties contend that Local 385's policy of requiring members to submit membership resignation requests and checkoff revocation requests in writing, and responding to untimely revocation requests only in writing, is unlawful. However, as pointed out in Local 385's contemporaneously-filed Reply to General Counsel's Answering Brief, such policy is not only lawful; but in addition such is not "obstructive" because legitimate considerations exist.

The "most recent" case forming the "starting point" on which Charging Parties rely for the contrary proposition, i.e., *Local 58, IBEW (Paramount Industries, Inc.)*, 365 NLRB No. 30 (2017) says just the opposite of what Charging Parties contend; and it supports Local 385's position. At page 3, the Board specifically stated that

> "Certainly, a union member who wishes to resign can be required to take 'minimal affirmative steps' to effectively communicate his intention to the union, *such as putting the resignation in writing and sending it to a designated union officer*". (internal quotations and emphasis added)

Local 385's policy requires just that, and no more. In all of the cases on which Charging Parties rely additional requirements were imposed.

The Board's brief to the D. C. Circuit, and the Court's opinion, in *Ruisi v. NLRB,* 856 F. 3d 1031 (D. C. Cir. 2017) demonstrate that there are legitimate considerations for the policy of providing only a written response to an untimely written revocation request. Local 385's policy was *specifically* implemented for the purpose of minimizing disputes over whether false or misleading information was given to members seeking to revoke checkoff authorizations, which the Board's brief specifically acknowledged is legitimate. Hence, Local 385's policy is not "arbitrary".

The Court's decision in *Ruisi* also underscores the points that, contrary to Charging Parties' contentions, the policy is not "discriminatory" because it is uniformly applied across the entire membership; and that in the absence of animus its application to specific individuals cannot be found to be in "bad faith".

II. The ALJ's overall conclusions that Jeffries did not send letters in response to six charging parties' resignation/revocation requests/*Beck* objections are unreasonable and contrary to the clear preponderance of all the relevant evidence (Respondent's Brief in Support of Exceptions Section III. E).

Charging Parties add little, if anything, to General Counsel's arguments to which Local 385 has responded in its Reply to General Counsel's Answering Brief. The salient theme is: the six charging parties who submitted untimely checkoff revocation requests are credible only because (a) they all denied receiving Jeffries' response letters; and (b) if they had received

Jeffries' response letters they would certainly have filed timely checkoff revocation requests. Neither of these themes withstands scrutiny.

Charging Parties' argument that Masuda and Raleigh *did* submit timely requests when their next windows opened does not apply to Kent, Brudy, or Greene, who *did not*. Their next-subsequent windows opened when, like Masuda's and Raleigh's charges, their charges remained pending; yet, they did not submit another, timely, revocation request. Instead, their motive to deny receipt of Jeffries' letters was obvious: each believed that Local 385 was obligated to honor their revocation requests regardless of timeliness.[1] Moreover, they learned that Jeffries was correct, and that they had to meet a window period, only after they filed their charges.[2]

In addition, Nicosia filed her charge shortly after Jeffries sent his response letter to her misdated, untimely, demand for immediate revocation of checkoff, after she learned that checkoff did not cease. And, Brudy never requested checkoff revocation at all. His motive for filing a charge was obviously his misguided belief that resignation from membership required immediate revocation of checkoff; and, like Nicosia, his charge was filed shortly after learning that checkoff had not ceased.

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[1] The "response" to their revocation requests which the charging parties wanted was for checkoff to cease immediately. Certainly, one would expect that members who have been led to believe that they are entitled to immediate revocation of checkoff if they resign from union membership would quarrel with a response telling them that they were wrong. Greene is a classic example: he believed he met the window period; he attempted to contact Jeffries and/or president Stapleton when checkoff did not stop; and he filed his charge shortly thereafter *because* checkoff did not stop.

[2] The cases cited at page 22 of Charging Parties' brief relating to Raleigh's "*Beck* objection" do not apply in a right-to-work state; and the argument that Raleigh's obligation to make continued payments is "zero" would be correct only if a timely checkoff revocation request had been made. The language of Raleigh's letter (GC Ex. 33) may and should fairly be read as her specific agreement to continue on checkoff, as her "lawful obligation". The mere fact that Jeffries sent Raleigh a form letter in response is evidence that he does, and did, send them and militates against Raleigh's credibility that she "really" meant something different than what her letter said.

The point of the above is that charging parties' testimony that they did not receive Jeffries' response letters does not lead to a conclusion that Jeffries did not send them, nor does it warrant or support a conclusion that Jeffries "fabricated" his responses after charges were filed. The fallacy of those conclusions is underscored by the documents within R. Ex. 3 and 4, which demonstrate that Jeffries does in fact send responses to untimely revocation requests and that he does in fact notify Walt Disney World to cease checkoff when timely requests are received. There is no reason why he would fail to comply with Local 385's established policies in the case of the random charging parties named in the complaint, over a span of two years, when the very reason for the policy is to attempt to prevent such complaints.

The only case cited for the asserted proposition that proof of non-receipt constitutes proof of non-mailing, i.e., *Laborers' Local 578* cited at page 10 of Charging Parties' Answering Brief, does not stand for that proposition at all. In that case *actual notice to the employee* of dues delinquency was required before causing the employer to remove the employee from employment under a union-security agreement. The ALJ specifically *credited* the Union's testimony that the notice had been mailed. The Board concluded that the evidence that the Union mailed such notice was *not* proof that the employee received it. (352 NLRB 1005, at 1012). The reverse is also true: proof that a letter was not received does not warrant an adverse credibility resolution against Jeffries, particularly in the face of abundant corroborative documentary evidence to the contrary (Jeffries' individually-prepared response letters themselves and R. Ex. 3, which the ALJ did not consider).

At p. 16 of their brief Charging Parties assert that Jeffries knew who Santana-Quintana was when he testified initially, on the first day of the hearing when he was called as an adverse witness by General Counsel; however, they neglect to point out that Jeffries' confusion occurred

six weeks later, only when the hearing (which had been continued at the GC's request) had resumed – a substantial lapse of time. The fact that Jeffries was familiar with Santana-Quintana at the outset of the hearing indicates that his subsequent confusion was real, and not evasive.

Finally, Charging Parties have attempted to deceive the Board into believing that the only basis for concluding that Local 385 honors timely revocation requests is "the discredited testimony of Jeffries" (brief at p. 36). It is not surprising that they (like the ALJ) would have the Board overlook the abundant documentary evidence to the contrary within R. Ex. 4, which the ALJ did not consider. This documentary evidence establishes that Jeffries' admitted failure to honor Santana-Quintana's and Behrens' timely revocation requests was the product of error, not intent.

In sum, it is strikingly obvious from Charging Parties' arguments that they simply disagree with the existing Board law which permits checkoff continuation to be conditioned on a *timely* revocation request pursuant to the language of their authorization cards, as well as with the existing Board law (which the ALJ did not consider) which establishes that Local 385's policies are lawful. It is equally obvious that the ALJ concurs with Charging Parties' philosophy, as demonstrated by his result-driven reasoning process in disregard of existing Board law, documentary evidence, and the inherent probabilities under the circumstances on the record as a whole. Local 385's exceptions should therefore be sustained, and each of the charges within the complaint should be dismissed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Original of this Reply to General Counsel's Answering Brief was filed electronically with the Executive Secretary on the National Labor Relations Board e-filing system and that a true and correct copy was sent via e-mail to John Scully, Esq.

jcs@nrtw.org, 8001 Braddock Road, Suite 600, Springfield, VA 22160; Alyssa Hazelwood, Esq., akh@nrtw.org, 8001 Braddock Road, Suite 600, Springfield, VA 22160, counsel for Charging Parties, and to Rafael Aybar, Esq., Counsel for the General Counsel, National Labor Relations Board, Region 12, Fifth Third Center, 201 East Kennedy Blvd., Ste. 530, Tampa, FL 33602-5824 Rafael.Aybar@nlrb.gov; this 7th day of July, 2017.

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