

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

HECTOR L. SANTANA-QUINTANA,	Case No. 12-CB-136934
SHARON MASUDA,	Case No. 12-CB-149945
HEATHER RALEIGH,	Case No. 12-CB-149949
ARLENE C. BEHRENS,	Case No. 12-CB-152211
MITCHELL KENT,	Case No. 12-CB-152912
JACOB GREENE,	Case No. 12-CB-159647
BARINGTHON BRUDY,	Case No. 12-CB-162916
DOLORES NICOSIA,	Case No. 12-CB-180519

Charging Parties,

and

INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 385,

Respondent.

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**REPRESENTED CHARGING PARTIES' REPLY BRIEF IN SUPPORT OF THEIR  
CROSS-EXCEPTIONS AND BRIEF IN SUPPORT OF THEIR CROSS-EXCEPTIONS  
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Charging Parties Sharon Masuda (“Masuda”), Heather Raleigh (“Raleigh”), Mitchell Kent (“Kent”), and Jacob Greene (“Greene”) (collectively, “Represented Charging Parties”), by and through their counsel, submit this Reply Brief in response to Respondent International Brotherhood of Teamsters, Local 385’s (“Union”) Answering Brief to Charging Parties’ Cross-Exceptions (hereafter, “Union Ans. Br.”). The four additional charging parties, Hector L. Santana-Quintana (“Santana-Quintana”), Arlene C. Behrens (“Behrens”), Baringthon Brudy, and

Delores Nicosia are not represented by undersigned counsel in the filing of this Reply Brief (collectively with Represented Charging Parties, “Charging Parties”).

Much of the Union’s Answering Brief is hyperbole and a litany of irrelevant, *ad hominem* attacks that warrant no response. The Union argues that Represented Charging Parties seek an inappropriate remedy and that the evidence, specifically in Respondent’s Exhibits 3 and 4, contradicts Administrative Law Judge Michael Rosas’s (“ALJ”) findings and Represented Charging Parties’ assertion that its illegal practices are pervasive. Contrary to the Union’s claims, the remedy sought by Represented Charging Parties is based on the Union’s pervasive policy, which is supported by record evidence, including Respondent’s Exhibits 3 and 4.

Represented Charging Parties seek nothing more than a sufficient make-whole remedy for the entire bargaining unit, which is more than appropriate given the circumstances of this case. As outlined in detail in Administrative Law Judge’s Decision (hereafter, “ALJD”), Represented Charging Parties’ Brief in Support of Their Cross-Exceptions to the Administrative Law Judge’s Decision (hereafter, “Rep. C.P. Cross-Exceptions Br.”), and their Answering Brief to Respondent Union’s Exceptions (hereafter, “Rep. C.P. Ans. Br.”), the Union’s policies and practices are unlawful and pervasive, and apply to all bargaining unit members. *See* ALJD at 22:35-23:5; Rep. C.P. Ans. Br. 23-34; Rep. C.P. Cross-Exceptions Br. 8-11. Application of the remedies sought by Represented Charging Parties to the entire bargaining unit is not only equitable, but also consistent with the purposes of the National Labor Relations Board’s remedial authority.

The Union argues that the fact that its unlawful practices are pervasive is “nothing more than naked rancor and abject speculation.” Union Ans. Br. at 2. In support of this assertion, the Union claims that Respondent’s Exhibits 3 and 4 are evidence of a lawful policy that proves its

unlawful activities were not pervasive. *Id.* Nothing, however, could be further from the truth. Respondent’s Exhibits 3 and 4 bolster the ALJ’s holding that the Union’s unlawful activity was pervasive. The ALJ found that Secretary-Treasurer Clay Jeffries (“Jeffries”), and by corollary the Union, had a “pattern and practice of ignoring member requests for the return of their dues authorization cards” and a “pattern of failing to respond to numerous voicemail messages.” ALJD at 13 n.32, 19 n.64. There is ample evidence that when the Union diverged from its alleged (and unlawful) policies it committed even more serious violations of the Act. Such evidence includes Charging Parties’ overwhelming, mutually supportive evidence establishing that the Union engaged in a pattern of ignoring bargaining unit members in order to prevent them from revoking their checkoffs. *See, e.g.*, ALJD at 22:23-23:5 10:17-19, 14:3-4, 15:5-6; 22:37-39; 22:39-44; 22:25-29. Moreover, in its arguments and witness testimony, the Union admits to some of these unlawful polices (even asserting that it regularly follows them) to support its claim that the policies are lawful. TR. 378:1-6; Union Ans. Br. at 2.

The Union further states that its unlawful policies regarding determining whether a letter is timely, and that a single individual—the Secretary-Treasurer, whose official duties require his absence from the office for a significant amount of time—is responsible for processing all revocation requests, are part of its routine policy. TR. 33:11-15, 36:1-20, 378:1-6; Resp’t Exs. 1-2; *see* TR. 31:18-21, 32:2-15, 33:3-5. Moreover, Jeffries testified that, as Secretary-Treasurer, he did not have to respond to verbal requests for information regarding checkoff revocation because they were not in writing; and, as such, admitted that he typically ignored voicemails from individuals who wanted to revoke their checkoffs. *Id.* at 43:23-44:4, 496:16-18; 497:20-23.

Despite the Union’s assertion that it provided evidence to demonstrate it “typically followed” its checkoff revocation policies in Respondent’s Exhibits 3 and 4, and that any

unlawful conduct was the exception rather than the rule,<sup>1</sup> Union Ans. Br. 2, the evidence does not support the Union's position. In fact, much of the evidence in Respondent's Exhibit 3 corroborates Represented Charging Parties' testimony and further demonstrates the Union's unlawful policies.

Respondent's Exhibit 3 includes letters employees sent to the Union and purported letters the Union sent in response. However, this exhibit is no more than the Union's own Potemkin village, and is a poor attempt to create a façade that, the Union "typically" timely responded to all checkoff revocation requests. In many cases, the Union provided no proof of the operative fact at issue—that the letters it submitted as evidence were actually sent. *See* Resp't Ex. 3; TR. 382:14-394:4. The Union skirts over the fact that it also produced letters it claims it sent to many of the Charging Parties, which the ALJ found it had not sent. *See* ALJD at 8 n.17, 10 n.24, 15 n.46, 16 n.51, 19 n.62. Respondent's Exhibit 3 is more of the same—a slew of letters with no proof besides Jeffries's discredited testimony that they were sent. TR. 383:10-394:4. Based on the evidence in Respondent's Exhibit 3, of all the letters it claims it sent out, there are only a couple instances where employees wrote responses to the Union's form letter. TR. 383:13-393:15; *see* Resp't Ex. 3.

Significantly, the documents contained in Respondent's Exhibit 3 further demonstrate the Union's pervasive policy of stonewalling employees who sought to end dues deductions. For example, Bereket Baraki and Ada Flores wrote to the Union on April 3, 2015, that they had been attempting to resign and revoke for two months. Resp't Ex. 3 at 3. They stated: "We have both gone to your office and to no avail, we have been told that only you Mr. Jeffers [sic] can give[] us the card, we were also told that Mr. Jeffers [sic] is in the office on Fridays and we have gone

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<sup>1</sup> Inexplicably, the Union included copies of letters sent by individuals outside of the bargaining units at issue. *See, e.g.* Resp't Ex. 3 at 3, 54. Also, one of the "examples" included is information relating to Kent's charge. *Id.* at 74-79.

on Fridays and Mr. Jeffers [sic] is never there.” *Id.* The letter also states that Flores called the Union and was told she would receive a call back, which she did not receive. *Id.* Baraki also sent additional letters on March 2, and April 1, 2015. *Id.* at 17-18, 20. In Baraki’s April 1 letter, he indicates that he could not afford to pay dues and he was still waiting for the “withdrawal card” he requested in February. *Id.* at 20. The Union included its purported responses to Baraki’s March 2 and April 1 letters in Respondent’s Exhibit 3. *Id.* at 19, 21. However, Baraki stated in the April 3 letter that his and Flores’s attempts to resign and revoke “have been ignored.” *Id.* at 3.

The Union also included a letter sent by Michael Silva on August 14, 2014 asking for a copy of his checkoff. *Id.* at 63. The Union provided a letter dated August 22, 2014 purportedly replying to this letter. *Id.* at 62. However, Silva indicated on August 28, 2014, that he had not received a response from the Union and again asked for a copy of his checkoff. *Id.* at 60. He also sent a letter on September 10, 2014 revoking his checkoff. *Id.* at 69. On October 16, 2014, Silva filed a charge against the Union stating that the Union had failed to respond to his checkoff revocation and had failed to send him a copy of his checkoff. *Id.* at 68-69. Only after the charge was filed was Silva able to timely revoke his checkoff. *Id.* at 57-58. Like Behrens and Santana-Quintana, the evidence suggests the Union failed to respond timely to Silva’s request until after he filed an unfair labor practice charge.

The documents contained in Respondent’s Exhibit 3 also corroborate Charging Party’s testimony and evidence that the Union did not send out the letters it claims to have sent. Respondent’s Exhibit 3 contains evidence that employees repeatedly sent “untimely letters” after they supposedly received a form letter that the Union sent to them informing them of their respective window periods. The Union included two letters it received from Albert Richardson,

dated December 7, 2014 and July 5, 2015, respectively. *Id.* at 4, 7. The Union also provided its purported response letters dated December 12, 2014 and July 7, 2015, which notified Richardson of his April 14 anniversary date. *Id.* at 5, 8. Similarly, the Union included three letters it received from David Hausen on July 16, 2013, April 6, 2015, and May 14, 2015. *Id.* at 34, 36, 40. The Union provided copies of timely responses it purportedly sent to each of these letters informing Hausen of his October 6 anniversary date. *Id.* at 35, 38, 41. The Union also included letters it received from Ron Benedetti dated December 5, 2013 and February 23, 2015. *Id.* at 97, 100. The Union included purported timely responses to Benedetti's letters informing him of his January 21 anniversary date. *Id.* at 96, 99. Like the Charging Parties, Richardson, Hausen, and Benedetti had no reason to send additional, untimely letters if they had already received responses from the Union notifying them of their respective anniversary dates. Rather, if they had received the Union's response letter, each would have had the proper information to then send a timely revocation letter. Thus, these letters are additional, corroborative evidence that the Union had a policy of not sending timely letters in response to employee revocation requests.

Additionally, the Union relies on Respondent's Exhibit 4 for its proposition that it regularly notified Disney to cease deducting dues from the wages of individuals who submitted a timely checkoff revocation. However, once again, the only proof submitted that these e-mails were sent as a result of a timely submitted checkoff revocation is the thoroughly discredited testimony of Jeffries. TR. 396:21-25. The e-mails themselves do not mention checkoff revocations or resignations; rather, each e-mail merely states that the individual "is no longer eligible to be a member of Teamsters Local Union # 385." Rep't Ex. 4. However, there could be a number of reasons why an individual is not eligible for membership. For example, if a Disney employee changed positions and transferred out of the Union's bargaining unit and into

the bargaining unit of another member of the trades' council, he or she would be "no longer eligible to be a member" of the Union. This seems to be relatively commonplace, *see* TR. 366:6-12, as Raleigh and Behrens originally were members of HERE Local 362 and later transferred to the bargaining unit represented by the Union. TR 220:6-221:6, GC Ex. 31-32; TR 63:15-64:1, 186:3-187:9, GC Ex. 49-50. Moreover, Respondent's Exhibit 4 contains no timely submitted checkoff revocations to corroborate the reason for the Union's sending the e-mails.

Finally, assuming, *arguendo*, that the e-mails in Respondent's Exhibit 4 were sent in response to checkoff revocations, these e-mails do not prove that the Union's conduct was lawful. Rather, it merely demonstrates that eventually the Union honored some checkoff revocations submitted by employees. The Union also eventually honored Masuda's and Raleigh's checkoff revocations with a similar e-mail, but engaged in an unlawful pattern of delaying and ignoring these charging parties' revocations before ultimately accepting them. The same could be true for each one of the e-mails in Respondent's Exhibit 4. The Union failed to provide any context for these e-mails, including a timely submitted checkoff revocation. Its failure to do so means that either the timely submitted checkoff revocations do not exist, or the timely submitted checkoff revocations contain evidence of the Union's unlawful delaying and stonewalling tactics. Thus, Respondent's Exhibit 4 is not proof that the Union timely honored checkoff revocations.

If the Union had evidence that more individuals received timely form letters or that they promptly honored timely checkoff revocations, it had ample opportunity to present such evidence during the hearing. Out of the 110 pages contained in Respondent's Exhibit 3, the Union has provided only five examples of its "routine" acceptance of checkoff revocations, and at least one such revocation was accepted after the employee filed a charge based on the Union's

failure to provide him with a copy of his checkoff.<sup>2</sup> The fact that Respondent’s Exhibit 3 contained evidence that supported Charging Party’s position is telling—if the Union had better evidence to support their position, they would have (or should have) produced it. As no such evidence was presented, the ALJ properly concluded that the vast majority of the evidence on the record demonstrated that the Union engaged in a practice of thwarting employees’ checkoff revocations.

For these reasons, and the reasons outlined in Represented Charging Parties’ Brief in Support of Cross-Exceptions, the ALJ’s Decision and Order should be modified to reflect the Cross-Exceptions submitted by Represented Charging Parties.

Respectfully Submitted,

Date: July 21, 2017

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<sup>2</sup> Represented Charging Parties inadvertently stated in their Answering Brief to Respondent Union’s Exceptions and Brief in Support of Exceptions that “the Union failed to produce evidence that it accepted timely revocations of *any other individuals*, other than the Charging Parties who had already filed unfair labor practice charges.”

## CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2017, I electronically filed Represented Charging Parties' Reply Brief in Support of Their Cross-Exceptions and Brief in Support of Their Cross-Exceptions to the Administrative Law Judge's Decision by electronic filing and I served a true and correct copy of the aforementioned documents on the Parties below by e-mail:

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