

UNITED STATES OF AMERICA BEFORE  
THE NATIONAL LABOR RELATIONS BOARD

In the matter of

United Government Security Officers  
of America International and its Local  
217,

Respondents,

and

Albert Frazier, an individual,

Charging Party

Case No. 04-CB-202803

**REPLY TO COUNSEL FOR THE GENERAL COUNSEL'S  
ANSWERING BRIEF TO EXCEPTIONS TO THE  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
ON BEHALF OF THE UNITED GOVERNMENT SECURITY OFFICERS  
OF AMERICA AND ITS LOCAL 217**

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## I. INTRODUCTION

United Government Security Officers of America International Union (“International”) and United Government Security Officers of America, Local 217 (“Local 217”) (collectively, “Respondents” or “UGSOA”) file this reply to the Counsel for the General Counsel’s answering brief to Respondents’ exceptions to the Administrative Law Judge’s (“ALJ”) findings that Respondents violated Section 8(b)(1)(A) of the Act (1) by threatening to disaffiliate and cease to represent PSOs employed at the VA, SSA, and IRS sites because a member complained about Respondents’ leadership on March 31, 2017 and (2) by disaffiliating from and refusing to represent PSOs at the VA, SSA, and IRS sites because they made concerted complaints about Respondents. Respondents submit this reply because the General Counsel appears to misstate their position in several respects, addressed below, in its answering brief.

### **1. Respondents Do Not Agree With Counsel For The General Counsel’s Position That A Union May Not Disclaim Interest In Response To Extreme Dissident Activities.**

In its answering brief, the General Counsel contends that Respondents appear to agree that Board precedent dictates that a Union violates Section 8(b)(1)(A) when it disaffiliates from a group of employees in retaliation for those members engaging in protected, concerted activity. Contrary to Counsel for the General Counsel’s claims, Board precedent demonstrates that a union may lawfully disclaim interest in representing employees due to even extreme forms

of dissident, protected, activities where a union can no longer effectively represent those employees. A union may disclaim its role in response to the employees' filing of a deauthorization petition or even the loss of a deauthorization election, even without objective evidence that its continued representation would be infeasible, Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999); American Sunroof, 243 N.L.R.B. 1128, 1128-29 (1979); NLRB v. Circle A&W Products, 647 F.2d 924, 926-27 (9<sup>th</sup> Cir. 1980). Similarly, a union may lawfully disclaim representation of employees in response to the filing of a decertification petition. Bonita Ribbon Mills, 88 N.L.R.B. 241, 241-42 (1950); Federal Shipbuilding & Drydock Co., 77 N.L.R.B. 463, 464 (1948).

**2. Respondents Did Not First Raise A Claim That They Could No Longer Represent Local 217B PSOs Due To Complaints In Their Post-Hearing Brief.**

The General Counsel contends that Respondents first claimed that Respondents could no longer represent the PSOs based on criminal complaints and baseless complaints in their post-hearing brief. The evidence, however, plainly shows that the relationship between the VA, SSA, and IRS PSOs and UGSOA underwent a complete breakdown due to those PSOs' extreme dissatisfaction with UGSOA, which was expressed through continuous complaints. While General Counsel attempts to construe Respondents as having relied on shifting reasons for disclaiming interest in the VA, SSA, and IRS PSOs, it is clear that Respondents did so due to their inability to continue

to effectively represent those PSOs as a result of their expression of continuous, extreme, dissatisfaction. That dissatisfaction often took the form of unsubstantiated and baseless complaints against Respondents, including the making of unsubstantiated criminal allegations.

At hearing, James Natale, East Coast Regional Director for the International, testified that based on communications with PSOs, it was clear that the representative relationship was “shattered.” Natale felt that the union’s resolution of issues was never to the satisfaction of the members. (Natale, 119-120).<sup>1</sup> Despite the International’s successful efforts to restore health and welfare funds, employees continued to make accusations that additional funds were missing. However, they provided no documentation showing that any funds were missing. (Natale, 119). Indeed, the ALJ noted in his decision that the SSA, VA, and IRS site PSOs were in a “virtual revolt” (ALJ Decision, at 27) against UGSOA.

In an August of 2017 email, Natale identified the reason for the disclaimer as an “outcry of displeasure with our union[.]” (Joint Exhibit 20).<sup>2</sup>

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<sup>1</sup> Citations to the hearing transcript shall be designated by witness’ last name and page number throughout.

<sup>2</sup> In communications with the Region, Natale further explained that “separation didn’t solve” issues for the VA, SSA, and IRS PSOs. That statement is entirely consistent with the evidence presented at hearing. After the reorganization, Respondents continued to receive vehement communications rejecting representation by UGSOA and making baseless accusations against UGSOA. (See Joint Exhibits 44 & 45).

While Natale did not use the word “complaints,” it is clear he was referencing the extreme dissatisfaction expressed by the VA, SSA, and IRS PSOs. Natale explained at hearing, as described above, that based on his communications with PSOs, he believed that the representative relationship had been destroyed or “shattered.”

In the position statement filed during the Region’s investigation, Respondents describe, generally, various complaints received from the VA, SSA, and IRS PSOs citing Respondents’ inability to resolve the issues raised by the PSOs and the PSOs continuing dissatisfaction. (Joint Exhibit 24) (“The unhappiness and dissatisfaction of the Charging Party was made clear several times via email with the request to break away from UGSOA altogether. UGSOA attempted to resolve all issues and complaints as they were brought to light, but it was never to the satisfaction of those making the complaints. . . . Despite the efforts by the UGSOA to provide the dissatisfied members with their own organization and allow them the independence to govern themselves, they still were not satisfied and expressed their desire to leave the UGSOA.”). Contrary to the General Counsel’s claims, Respondents have consistently cited the extreme dissatisfaction of the IRS, SSA, and VA PSOs, and UGSOA’s corresponding inability to effectively resolve issues to their satisfaction, as a cause of the disclaimer.

#### **IV. CONCLUSION**

Respondents respectfully request that the Board grant its exceptions and reverse the ALJ's finding that Respondents violated Section 8(b)(1)(A) by threatening to disaffiliate from employees assigned to the VA, SSA, and IRS sites and by then disclaiming interest in Local 217B.

Respectfully submitted,

On behalf of the United Government  
Security Officers of America International  
and its Local 217,

By its attorneys,

/s/Kristen A. Barnes

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Date: March 15, 2019

#### **CERTIFICATE OF SERVICE**

I, Kristen A. Barnes, hereby certify that I have on this day served by PDF email a copy of the foregoing Reply To Counsel For the General Counsel's Answering Brief To Exceptions To The Decision Of The Administrative Law Judge On Behalf Of The United Government Security Officers of America And Its Local 217 upon Patricia A. Garber, [patricia.garber@nrlb.gov] Supervisory Attorney, NLRB Region 4, 615 Chestnut Street, Philadelphia, PA, 19106, and Charging Party Albert Frazier [reemstyle32@gmail.com].

Dated: March 15, 2019

/s/Kristen A. Barnes

Kristen A. Barnes