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6 Attorneys for Charging Party, The Committee to  
Preserve the Religious Right to Organize

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8 UNITED STATES OF AMERICA  
9 NATIONAL LABOR RELATIONS BOARD

10  
11 THE COMMITTEE TO PRESERVE THE  
RELIGIOUS RIGHT TO ORGANIZE,

Case No. 20-CA-139745

12 Charging Party,

**MOTION FOR RECONSIDERATION**

13  
14 And

15 HOBBY LOBBY STORES, INC.,

16 Respondent.

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18 The Charging Party requests the Board reconsider its Second Supplemental Decision and  
19 Order.

20 The Charging Party still maintains that the Federal Arbitration Act does not apply and that  
21 the Board has ignored the issues concerning the application of the Federal Arbitration Act. Those  
22 issues will be presented upon review by the Charging Party in the appropriate court of appeals.

23 As to the Second Supplemental Decision and Order, the Board utterly failed to examine  
24 the arbitration agreement which is at issue. It failed completely to follow by the Board's  
25 admonition that an arbitration agreement must be enforced according to its terms. The Board  
26 recently reaffirmed the obligation of courts to "rigorously enforce" arbitration agreements  
27 according to their terms...", *California Commerce Club, Inc.*, 369 NLRB No. 106, slip op. at 4  
28 (*2020*) (quoting from *American Express v. Italian Colors Restaurant*, 570 U.S. 228, 233 (*2013*)).

1 A close examination of the language of the arbitration agreement demonstrates our point.

2 The arbitration agreement states in relevant parts:

3 **This Agreement between Employee and Company to arbitrate**  
4 **all employment related disputes includes, but is not limited to . .**  
5 **. all other federal, state and municipal statutes, regulations,**  
6 **codes, ordinances, common laws or public policies . . . .**

7 See *Hobby Lobby Stores, Inc.*, 369 NLRB No. 129, slip op. at 1 (2020) (emphasis in original).

8 There is no exception or even remotely stated exception to disputes which concern the  
9 exercise of Section 7 rights or any unfair labor practices.

10 The agreement furthermore states:

11 **This Agreement shall not apply to claims for benefits under**  
12 **unemployment compensation laws or workers’ compensation**  
13 **laws.**

14 See *id.* at 2 (emphasis in original).

15 Again, the only exemption that any employee reasonable or not could understand exists is  
16 for unemployment compensation laws or workers’ compensation laws.

17 The agreement furthermore states:

18 **By agreeing to arbitrate all Disputes, Employee and Company**  
19 **understand that they are not giving up any substantive rights**  
20 **under federal, state or municipal law (including the right to file**  
21 **claims with federal, state or municipal government agencies).**

22 See *ibid.* (emphasis in original).

23 Any employee would clearly recognize that all claims must be arbitrated.

24 The Board latches on to the phrase “including the right to file claims with federal, state or  
25 municipal government agencies.”

26 A reasonable employee would search the Board’s website and find no reference to claims  
27 that the Board ever entertains. The Board does not accept claims. The only thing the Board  
28 accepts are charges. There is a charge form available on the Board’s website.

The arbitration agreement is carefully worded to allow only claims to be filed and does  
not reference charges. According to the terms of the arbitration agreement, charges with the  
agency must be arbitrated because the Board does not entertain “claims.”

The Agreement furthermore states:

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Rather, Employee and Company are mutually agreeing to submit all Disputes contemplated in this Agreement to arbitration, rather than to a court.

See 369 NLRB No. 129, slip op. at 2.

Again, this language would be clearly read to indicate that all “Disputes” must be submitted to arbitration.

According to the strict terms of this arbitration agreement, the only exception of the arbitration agreement are “claims for benefits under unemployment compensation laws or workers’ compensation laws.” There is no other exception.

The language allowing “the right to file claims” is irrelevant since there is no claim form or ability to file claims with the Board.

Finally, the Board errs in reaching this determination. Under well-established Supreme Court law, the question of the interpretation of the arbitration agreement is for the arbitrator and not for the Board. Nor is that a decision for a court. It is clearly for the arbitrator.

Whether or not a claim can be submitted must then be subject to the arbitration agreement. If the Board is going to be consistent with the language in *Commercial Club*, as cited above, the Board cannot decide the issue but must find that the employee is compelled to submit his or her claim to arbitration, including the question of whether the employee can file a charge with the Labor Board and whether the arbitration agreement is broad enough to preclude such a claim.

In summary, then, the Board ignores *Italian Colors*, above, *California Commercial Club*, 369 NLRB No. 106, and all the series of Supreme Court and lower court decisions requiring the arbitration agreement to be enforced according to its terms.

Here, even applying the standard in *Boeing Co.*, 365 NLRB No. 154 (2017), a reasonable employee would conclude that all disputes have to be submitted to arbitration. Even if that employee may not conclude that the question of the breadth of the arbitration agreement must also be submitted to arbitration, that is the result under the language of the agreement and the law.

1 For these reasons, the motion for reconsideration should be granted. The Board just flatly  
2 ignored its recent application of what it asserts is FAA doctrine.

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4 Dated: August 21, 2020

Respectfully submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

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6 By: /S/ DAVID A. ROSENFELD  
7 DAVID A. ROSENFELD

8 Attorneys for Charging Party  
9 THE COMMITTEE TO PRESERVE THE  
10 RELIGIOUS RIGHT TO ORGANIZE  
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**CERTIFICATE OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On August 21, 2020 I served the following documents in the manner described below:

**MOTION FOR RECONSIDERATION**

(BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through the Weinberg, Roger & Rosenfeld’s electronic mail system to the email addresses set forth below.

On the following part(ies) in this action:

Mr. Frank Birchfield  
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Ms. Yasmin Macariola  
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 21, 2020 at Alameda, California.

/s/ Katrina Shaw  
Katrina Shaw

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