

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGENCY GRANDE NURSING AND
REHABILITATION CENTER

AND

SEIU 1199 NEW JERSEY HEALTH CARE
UNION, AFL-CIO

Case 22-CA-26231

GENERAL COUNSEL'S ANSWERING BRIEF
TO RESPONDENT'S EXCEPTIONS

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INTRODUCTION

General Counsel files this answering brief to Respondent Regency Grande Nursing and Rehabilitation Center's Exceptions to the Administrative Law Judge's Supplemental Decision in this case issued on May 28, 2009.

ARGUMENT

In its first unnumbered exceptions, Respondent contends that the General Counsel bears the burden of establishing the eligibility of employees to receive reimbursement for union dues deducted from employee wages at a time when the Union did not represent a majority of unit employees. Respondent excepts to the Administrative Law Judge's correct assessment that it is Respondent, and not the General Counsel, who bears the burden as derived from the Board's holding in *Freeman Decorating Co.*, 336 NLRB 1 (2001) enf'd on other grounds, 334 F.3d 27 (D.C. Cir. 2003). The same rationale underlying the Board's assignment of the burden of proof to the Employer in *Freeman Decorating* to show that its withdrawal of recognition was based on majority support has been applied by the Administrative Law Judge here to require that Respondent in the instant case demonstrate that its grant of recognition to Local 300 was based on a bona fide showing of majority support. Respondent has cited no legal precedent to support an opposite holding. Further, in its Amendment to Answer dated October 28, 2008 (General Counsel Exhibit (1g)), in addition to admitting liability for paying 94 named employees who signed up for Local 300 after January 2004, Respondent admitted its obligation to show that 68 other employees voluntarily signed cards for January 2004.

In its second unnumbered exception, Respondent appears to claim that it cannot now attain the benefit of its bargain in its contract with Local 300 that provided for Respondent's indemnification in the event of liability claims arising out of Respondent's deduction of Union dues. Despite the fact that the Administrative Law Judge dealt handily with Respondent's reliance on *United Association of Journeymen (Lummus Corp.)*, 125 NLRB 1161 (1959) In making this argument, Respondent persists in pursuing this claim.

Respondent argues that because Local 300 seemingly does not have sufficient funds to provide the indemnification, the Administrative Law Judge should have considered its "changed circumstances" argument and should have allowed evidence of changed circumstances. However, as the Administrative Law Judge correctly pointed out, Local 300 is not a party to this proceeding so any consideration of its financial abilities were not properly before the Judge. Moreover, there is no basis to find that Respondent's financial circumstances are in any way changed. Respondent's sole witness, James Robinson, admitted that he had no affiliation with Local 300 at the time of the backpay hearing. There was no evidence presented at this hearing showing that Robinson was competent to testify about the current financial status of Local 300. Thus, without reliance on any relevant facts or persuasive precedent, Respondent's exceptions should be rejected

CONCLUSION

Based on the foregoing, except as provided in the General Counsel's Cross-Exceptions filed on, the Administrative Law Judge's rulings, findings and conclusions of law should be affirmed.



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Signed at Newark, New Jersey
this 22nd day of July, 2009

CERTIFICATION OF SERVICE

Copies of General Counsel's Brief to the Administrative Law Judge have been electronically filed and mailed today on counsel and the parties as follows:

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