

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

FIRST STUDENT, INC.

**CASES 08-CA-062611
08-CA-064827**

and

**TEAMSTERS LOCAL UNION NO. 413
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

**SUPPLEMENTAL EVIDENCE IN SUPPORT OF THE
ACTING GENERAL COUNSEL'S MOTION TO REMAND CASE**

On September 20, 2012, Counsel for the Acting General Counsel filed a Motion to Remand the above-captioned cases to the Regional Director of Region 8 for the purposes of effectuating a settlement that substantially remedies the violations found by Administrative Law Judge (ALJ) Mark Carissimi in his decision in JD-41-12. Counsel for the Acting General Counsel provides this supplemental evidence to the Board for purposes of evaluating the Motion.

On September 13, 2012, Respondent executed an informal Board Settlement Agreement that substantially complies with the Judge's Order and provides full backpay for discriminatees Pennie Ingram and Gary Warnick as well as the posting of a Notice to Employees. A copy of the executed Informal Board Settlement Agreement and Notice is attached as Exhibit No. 1.

On September 19, 2012, the Charging Party Union filed objections to the terms of the informal Board Settlement Agreement on the basis that the settlement does not include a reinstatement remedy for discriminatee Ingram. A copy of the Charging Party Union's letter dated September 19, 2012 containing its objections is attached as Exhibit No. 2. Discriminatee Ingram, however, has informed the Region, both verbally and in writing, that she does not desire

reinstatement and that she is satisfied with the terms of the settlement. A copy of discriminatee Ingram's statement verifying her desire not to return to work for the Respondent is attached as Exhibit No. 3. Additionally, discriminatee Warnick has indicated on numerous occasions that he is satisfied with the terms of the settlement. The Regional Director believes the proposed settlement effectuates the remedy ordered by ALJ Carissimi. Based upon discriminatee Ingram's desire not to seek reinstatement with the Respondent, the Charging Party Union's objection to the settlement does not warrant disapproval of the settlement as discriminatee Ingram has clearly indicated that she does not desire reinstatement.

Based upon Counsel for the Acting General Counsel's Motion to Remand and the supplemental evidence provided herewith, Counsel for the Acting General Counsel requests that these cases be remanded to the Regional Director so that he may entertain and approve the Settlement Agreement reached by the parties.

Dated at Cleveland, Ohio this 21st day of September 2012.

Respectfully submitted,

/s/ Rudra Choudhury

Rudra Choudhury, Esq.

Sharlee Cendrosky, Esq.

National Labor Relations Board, Region 8

1240 E. 9th Street, Room 1695

Cleveland, Ohio 44199

Counsel for the Acting General Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2012, I electronically filed the foregoing Supplemental Evidence in Support of its Motion to Remand with the Executive Secretary of the Board using the Agency's e-filing system and served copies of it by email upon:

Raymond Walther, Esq.
Labor Counsel
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Cook & Logothetis, LLC
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Cincinnati, Ohio 45202
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Counsel for Charging Party

/s/ Rudra Choudhury
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Counsel for the Acting General Counsel

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

First Student, Inc.

Cases 08-CA-062611
08-CA-064827

And

Teamsters Local Union No. 413

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICES — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notices to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around its Marysville, Ohio and Columbus, Ohio facilities including all places where the Charge Party normally posts notices to employees. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

BACKPAY — Within 14 days from approval of this agreement, the Charged Party will make whole the employee(s) named below by payment to each of them of the amount opposite each name. The Charged Party will make appropriate withholdings for each named employee. No withholdings should be made from the interest portion of the backpay. The interest portion of Ingram's back pay is \$324.00. The interest portion for Warnick's back pay is \$0

Pennie Ingram	--	\$20,484.00
Gary Warnick	--	\$1,344.00

NON-ADMISSION CLAUSE — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned cases, and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence. By approving this Agreement the Regional Director withdraws any Complaint and Notice of Hearing previously issued in the above cases, and the Charged Party withdraws any answer filed in response.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a

Exhibit No. 1

AS for FSI
9/13/12

Recommended By:	Date	Approved By:	Date
SHARLEE CENDROSKY, Field Attorney		Regional Director, Region 08	

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT instruct employees to not talk to other employees about a union or involve other employees with a union.

WE WILL NOT threaten employees with loss of jobs if they become involved with a union.

WE WILL NOT instruct employees that they cannot have any communication about or with a union while they are "on the clock." **WE WILL NOT** discharge or otherwise discriminate against employees for engaging in union or other protected concerted activities. **WE WILL NOT** discriminatorily select employees to return to layoff from a temporary assignment for engaging in union or other protected concerted activities.

WE WILL NOT in any like manner, interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Pennie Ingram whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest compounded daily. Ingram has advised us that she is not interested in returning to her former position and no offer of reinstatement will be made.

WE WILL, within 14 days from the date of the posting of this Notice, remove from our files any reference to the unlawful discharge of Pennie Ingram and **WE WILL**, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL consider Gary Warnick for future temporary assignments to the Marysville, Ohio facility.

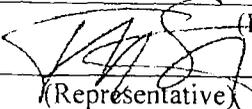
WE WILL make Gary Warnick whole for any loss of earnings and other benefits resulting from his discriminatory selection to return to layoff status from a temporary assignment at our Marysville, Ohio facility, less any net interim earnings, plus interest compounded daily.

WE WILL, within 14 days from the date of the posting of this Notice, remove from our files any reference to the unlawful selection of Gary Warnick for return to layoff status from a temporary assignment at our Marysville, Ohio facility and **WE WILL** notify him in writing that this has been done and that the discriminatory removal from temporary employment will not be used against him in any way.

TAS
for FSI
9/13/12

FIRST STUDENT INC.

Dated: 9/13/12

By:  ~~(Employer)~~
V.P. Labor Relations
(Representative) (Title)

1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

Telephone: (216) 522-3715
Hours of Operation: 8:15 a.m. to 4:45 p.m.

Cook & Logothetis, LLC

Attorneys at Law

David M. Cook
Jennie G. Arnold**
Claire W. Bushorn*

Of Counsel
Sorrell Logothetis
Scott M. Heenan

*Also admitted in Kentucky
**Also admitted in Colorado

September 19, 2012

Via regular mail and facsimile ((216) 522-2418)

Frederick J. Calatrello, Regional Director
NLRB, Region 8
1240 East 9th Street, Room 1695
Cleveland, OH 44199-2086

Re: First Student, Inc.
Case Nos. 8-CA-062611 & 8-CA-0624827

Dear Mr. Calatrello,

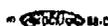
Please be advised that the Charging Party, Teamsters Local Union No. 413, affiliated with the International Brotherhood of Teamsters, respectfully declines to enter into the proposed Settlement Agreement for the reasons set forth below.

The September 13, 2012 cover letter transmitting the proposed Settlement Agreement to the undersigned sets forth the representation that "[t]he Settlement Agreement is a complete remedy of the issues currently in dispute and is all that could be achieved by a hearing and a favorable decision in these matters." The Charging Party does not agree with this conclusion and believes that the proposed settlement will not advance the purposes of the Act.

From the outset, it was obvious that this case represented a classic "nip-in-the-bud" destructive course of conduct by the Employer in response to the Union's organizing campaign.

Prior to the Employer's sabotaging of the campaign, three (3) Union authorization cards had been executed by the drivers including Pennie Ingram, Claire Houdashelt and Marra Eastman. The Charges were filed by the Union, with amended charges, during the period September-October 2011. A Consolidated Complaint issued on March 29, 2012, including 8(a)(3) allegations for the discharges of Ingram and Houdashelt. A finding of no merit had been found by the Regional Director and the charge regarding Eastman was withdrawn.

A hearing was held before an Administrative Law Judge on April 30 and May 1, 2 and 3, 2012. A Decision was issued by Administrative Law Judge Mark Carissimi on August 10, 2012 finding that employee Pennie Ingram had been discharged in violation of Section 8(a)(3) of the Act and dismissing the allegations of the Complaint with regard to the Claire Houdeshelt discharge.



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On March 29, 2012, the Regional Director filed for 10(j) relief in the United States District Court for the Southern District of Ohio. The Federal District Court action is still pending.

The Notice recommended by the Administrative Law Judge would require that the Respondent offer Pennie Ingram full reinstatement to her former job or to a substantially equivalent position and that she be made whole for any loss of earnings or other benefits resulting from her discharge.

Our major concern with the proposed Settlement is that Respondent, after having totally obliterated the Union campaign, has been able to broker a settlement in this matter with the Regional Office that would, in effect, require Pennie Ingram to waive reinstatement. With a conclusion of this nature, the Employer's total course of conduct has not been remedied.

Obviously, the Union has been placed in a difficult, essentially enigmatic, position with the proposed Settlement. On the one hand, there must be concern for the interests of Pennie Ingram at least being able to achieve some relief in the face of economic circumstances that were caused initially by the Employer's unlawful discharge; and, on the other hand, with this Settlement, the Union must realistically conclude that its campaign is essentially "dead in the water."

MEMORANDUM GC 10-07, issued September 30, 2010, set forth two (2) basic reasons by the Acting General Counsel for seeking Section 10(j) remedies for unlawful discharges in organizing campaigns: (1) that an unremedied discharge sends to other employees a message that they also could risk retaliation by exercising Section 7 rights; and (2) that the continued absence from the workplace of unlawfully discharged union leaders not only continues the negative message from the discharges, but, also, the remaining employees are deprived of the leadership of active and vocal union supporters.

On both counts, the proposed Settlement falls woefully short of achieving the objectives articulated by the Acting General Counsel. Under the Settlement, the unavoidable message to other employees is that the Respondent was able to eliminate Pennie Ingram from the situation. So what if Ingram received some back pay? That would simply represent the cost of doing business by the Respondent. And, looking at the second prong of the Acting General Counsel's concerns, the Union is left with no active Union supporters in the workplace.

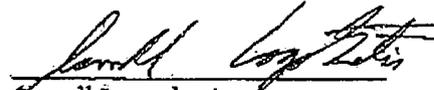
The Respondent's motives for insistence of the waiver of reinstatement by Ingram are obvious. And, it must be noted that this conclusion is particularly repugnant when one is reminded that the Respondent has issued a freedom of association/neutrality policy that is appended to the National Agreement with the Teamsters.

The Union acknowledges that the rights of the Employees involved in this case were effectively pursued by the Regional Office Attorneys with zeal. Also, for the Union to object to a Settlement that at least offers some relief to an Employee that has been put in a hardship situation through the actions of the Respondent is a matter that had to be carefully thought out by the Union. However, when one considers that the Administrative Law Judge ordered reinstatement for Pennie Ingram, that a Federal District Court action for 10(j) relief is pending and that Ingram was the last surviving Union supporter in the unit because of the Respondent's abrupt, preemptive response to the campaign, we cannot avoid the conclusion that the proposed

Settlement ultimately falls short and would permit the Respondent to have accomplished its unlawful objectives.

Thank you for giving us the opportunity to respond to the proposed Settlement and for giving consideration to the objections set forth in this letter.

Sincerely,
COOK & LOGOTHETIS, LLC



Sorrell Logothetis
Attorney for Teamster
Local Union No. 413

cc: Teamsters Local Union No. 413

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To: Sharlée Cendrosky

4-14-12

I, Fernie Ingram, do not want
to be reinstated at First Student
in Mansville, Oh.

Fernie S. Ingram