

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION ONE

_____)	
TEAMSTERS LOCAL 25,)	
)	
Petitioner,)	
)	
and)	Case No. 1-RC-22303
)	
DUNKIN' DONUTS NORTHEAST)	
DISTRIBUTION CENTER,)	
)	
Employer.)	
_____)	

PETITIONER'S POST HEARING BRIEF

On June 10, 2009, a hearing was held concerning Petitioner Teamsters Local 25's objections to an election involving Dunkin' Donuts Northeast Distribution Center's drivers and helpers that was held on March 31, 2009 and April 1, 2009. The election resulted in a tally of ballots cast as follows: 87 for Teamsters Local 25 and 102 against participating in Teamsters Local 25. On April 6, 2009, Petitioner Teamsters Local 25 ("Union") timely filed objections to the conduct of the election and conduct affecting the results of the election.

Petitioner alleges that during the critical period, on March 23, 24, and 25, 2009, and again on March 29, 2009, the Employer threatened the drivers and helpers that they would no longer be able to make contributions or receive matching 401(k) contributions from the Employer if they selected Teamsters Local 25 as their collective bargaining representative. Specifically, at three mandatory meetings of drivers and helpers that were spread out over a three-day period on March 23, 24, and 25, 2009, the Employer distributed a two-page summary of the eligibility section of its 401(k) Summary Plan Description. The SPD provided that in order to be eligible to make 401(k) contributions, one had to meet a number of requirements, including: "you are *not* a

union employee, unless you are covered by a collective bargaining agreement that provides for your coverage under the Plan". When John Ditmars, Vice President of Operations, was asked by an employee at the March 24 meeting if the Union was voted in, would the employees be able to continue contributing to their 401(k) plans, Ditmars responded that he was not sure, that attorneys were looking at the issue, and that he would provide a more definitive answer after he had obtained clarification on the issue.

On March 29, 2009, after consulting with the Company's Human Resources Manager, who had, in turn, contacted Prudential Retirement, the Plan Administrator for the 401(k) plan, about the question of whether the employees, upon the election of the Union as their collective bargaining agreement, would lose their ability to make contributions or receive matching Employer contributions to their 401(k) benefits, Ditmars posted the following power point slide at a mandatory meeting that was attended by 120 drivers and helpers:

401k Information

- Cannot make contributions into the plan
- Cannot receive the company match or profit share award
- Cannot remove balance of funds unless it's a loan or a hardship withdrawal
- Can repay outstanding loans
- Can take out loans
- Can take withdrawals according [to] the plan (age 59 ½ or more, Hardship)
- Vesting will continue during the period of ineligibility (union employee without an agreement) (Petitioner Exhibit 2)

Ditmars then posted a second slide which stated that employee benefits would remain the same between the time the Union was chosen and a collective bargaining agreement was reached. This prompted driver Gerald Houde to ask Ditmars that if this were true, then why would the 401(k) benefits immediately change if the Union was selected. Ditmars responded by claiming that the 401(k) benefits were the exception to this rule and, therefore, that 401(k) contributions would undoubtedly cease upon the employees' selection of the Union.

The Employer's maintenance of a retirement plan which discriminates against Union employees is unlawful on its face and therefore in violation of Section 8(a)(1) of the Act. The Employer's distribution of the eligibility section of the SPD and its threats to the employees that they would no longer be able to contribute to the 401(k) plan upon the election of the Union unlawfully affected the results of the election. Critically, the Employer does not dispute that it unequivocally informed the employees that the election of the Union would result in their being unable to make contributions or receive matching 401(k) contributions until and if the Union negotiated a collective bargaining agreement that provided for such contributions. Rather, the Employer simply blames Prudential, the Plan administrator, for providing it with this interpretation of the employees' eligibility as union employees under the Plan. Prudential's alleged role is immaterial, however, since by maintaining the Plan and providing this threatening information to its employees during the course of the election campaign, the Employer created the unmistakable impression among the employees that all 401(k) contributions would immediately cease if the employees selected the Union as their collective bargaining agreement.

The Employer therefore engaged in unlawful conduct which affected the results of the election. The results of the election held on March 31, 2009 and April 1, 2009 should therefore be set aside and a second election held.

FACTS

On February 19, 2009, Teamsters Local 25 filed an election petition seeking to represent drivers and helpers employed by Dunkin' Donuts Northeast Distribution Center. The parties executed a stipulated agreement setting the election for March 31, 2009 and April 1, 2009.

During the course of the election campaign, Dunkin Donuts held five mandatory meetings for its drivers and helpers concerning the election. (Transcript, 40). In or about mid-to-

late March, but prior to March 23, 2009, Human Resources Manager Katherine Norton-Edge and Human Resources Vice President Renee St Germain discussed with John Ditmars, Vice-President of Operations, the fact that the language in the 401(k) Standard Plan Description contained a clause that appeared to exclude employees who were unionized but had not yet negotiated a collective bargaining agreement, from participating in the 401(k) plan. (Tr. 44, 64-65, 90). Norton-Edge was not sure whether this definitively meant that the employees, upon choosing the Union, would immediately cease being eligible to contribute to the Plan, so Ditmars instructed her to check with Prudential Retirement, the Plan Administrator, for further clarification. (Tr. 64-65).

On March 23, 24, and 25, 2009, Dunkin' Donuts held mandatory meetings for its drivers and helpers. (Tr. 14, 41-42). An employee was required to attend one of the three meetings based upon his or her schedule, but each meeting's agenda covered the same issues. (Tr. 42). Although Ditmars had not yet received further clarification from Human Resources and/or Prudential regarding the 401(k) eligibility issue, at the mandatory meetings held on March 23-25, 2009, Ditmars distributed a two-page eligibility section of the "Summary Plan Description for National DCP 401(k) Profit Sharing and Trust". (Tr. 15-16, 43-44; Petitioner Exhibit 1).

Pursuant to this eligibility provision of the SPD, in order to be eligible to make 401(k) contributions, one had to meet a number of requirements, including the following provision, which the Employer highlighted in yellow on the handout: "you are *not* a union employee, unless you are covered by a collective bargaining agreement that provides for your coverage under the Plan". (Tr. 18, 28, 44-45; Petitioner Exhibit 1) (Emphasis in original). At the March 24, 2009 meeting, Ditmars reviewed this highlighted provision with the employees, which prompted one of the employees to ask if this meant that if the Union was voted in, they would no longer be able

to make contributions to their 401(k) plan until the parties had reached a collective bargaining agreement. (Tr. 17). Ditmars responded that he was not sure what would happen with respect to the employees' 401(k) contributions if the Union was voted in, but that the Employer and/or the Plan Administrator had attorneys looking at the question and that he would get the employees an answer prior to the election. (Tr. 17-18, 45-47).

Sometime between March 24 and March 29, 2009, Norton-Edge spoke with Tammy Wells of Prudential and asked for clarification regarding the eligibility language and whether it meant that if the Union was voted in, the employees would immediately cease being able to make contributions until the parties had reached a collective bargaining agreement. (Tr. 90). Wells subsequently confirmed for Norton-Edge, both over the telephone and via email, that, indeed, it was Prudential's opinion that the employees would no longer be able to contribute to the 401(k) program upon the selection of the Union until a collective bargaining agreement was negotiated between the parties providing for such contributions. (Tr. 90-91). Norton-Edge then relayed this information to Ditmars via email (Tr. 91), and he cut and pasted Norton-Edge's email and put it on a power point slide to present at the last mandatory meeting for drivers scheduled for March 29, 2009, two days prior to the election. (Tr. 65-66).

At the March 29, 2009 meeting, Ditmars conducted the aforementioned power point presentation. He showed to the approximately 120 employees, as well as all of the operations managers and supervisors who were in attendance (Tr. 19, 49), a slide which stated as follows:

401k Information

- Cannot make contributions into the plan
- Cannot receive the company match or profit share award
- Cannot remove balance of funds unless it's a loan or a hardship withdrawal
- Can repay outstanding loans
- Can take out loans
- Can take withdrawals according [to] the plan (age 59 ½ or more, Hardship)

- Vesting will continue during the period of ineligibility (union employee without an agreement) (Tr. 19-20, 50; Petitioner Exhibit 2; Employer Exhibit 1, p.3)

Upon showing the slide, Ditmars commented that if the Union was voted in, the 401(k) would cease and the employees would not be able to make contributions to the Plan or receive Employer matching contributions, and that the employees would not be able to remove any funds other than through hardship withdrawals. (Tr. 23, 53). Ditmars then showed the employees a second slide which stated:

Collective Bargaining

- During CB ALL pay, benefits, rules and policies have to remain unchanged
- Neither the union nor the company can change anything unless the other agrees
- Promises are made to be broken- get it in writing (Tr. 20-21; Employer Exhibit 1, p. 20)

After Ditmars showed the second slide, driver Gerald Houde asked Ditmars why, if all benefits remained the same, did Ditmars state, when presenting the earlier slide, that the drivers would not be able to make contributions to the 401(k) if the Union was elected.¹ (Tr. 21, 23, 53). Ditmars responded that the 401(k) benefit was different because it was “controlled by the government”, thereby confirming that the employees would not be able to make contributions to their 401(k) plans if the Union was voted in until a collective bargaining agreement was reached. (Tr. 21, 23, 53-55).

Immediately following the March 29, 2009 meeting, Houde and a number of other drivers and helpers convened in the parking lot to discuss the issues raised by the Employer at the meeting. (Tr. 24). A major topic of discussion and concern was the notion that the employees

¹ Ditmars maintained that the latter slide was on page 20 of his presentation, and was therefore not shown right after the 401(k) slide, as Houde maintained. Regardless of when the slide was shown, both Houde and Ditmars testified that Houde asked Ditmars if, pursuant to the second slide in question, all benefits remained the same, why was the Employer also maintaining that the drivers would not be able to contribute to the 401(k) benefit. (Tr. 21, 23, 53).

would not be able to contribute to their 401(k) plan for up to a year if the Union was chosen as their bargaining representative. (Tr. 24).

ARGUMENT

I. The Election Results Should be Set Aside and a New Election Ordered Because the Employer Unlawfully Threatened Employees with a Loss of Certain 401(k) Benefits. Upon the Selection of the Union.

There is no dispute that the Employer, on March 23-25, 2009, provided its employees with a two-page document (“SPD”) setting forth the eligibility requirements for the 401(k) that gave the employees the impression that if they selected Teamsters Local 25 as their collective bargaining representative, their ability to contribute to their 401(k) plans and to receive matching contributions from the Employer would immediately cease and would not resume unless and until a collective bargaining agreement was reached providing for such 401(k) contributions. It is also undisputed that at a mandatory meeting on March 29, 2009, the Employer reiterated this threat contained in the SPD both orally and via a power point presentation.

The Employer’s conduct in maintaining a 401(k) plan that discriminates against union employees and threatening employees on March 23-25 and March 29, 2009 with a loss of benefits upon choosing Teamsters Local 25 as the employees’ bargaining representative adversely affected the results of the election, thereby requiring that the results of the March 31 and April 1, 2009 election be set aside and a second election held.

The National Labor Relations Board holds representation elections so as to provide a means for workers to “fairly and freely choose their bargaining representative if indeed they want one”. *Zeiglers Refuse Collectors v. NLRB*, 639 F.2d 1000, 1004-1005 (3rd Cir. 1981). A representation election should be “a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees”.

General Shoe Corp., 77 NLRB 124, 127 (1948). “Extreme care must be taken that the laboratory conditions have not become so tainted that employees may have based their vote not upon conviction, but upon fear or upon any other improperly induced consideration”. *Zeiglers Refuse Collectors v. NLRB*, 639 F.2d at 105. In order “for conduct to warrant setting aside an election, not only must that conduct be coercive, but it must be related to the election as to have had a probable effect on the employees’ actions at the polls”. *The Hertz Corporation*, 316 NLRB 672, 694 (1995), citing *Valley Rock Products v. NLRB*, 590 F.2d 300 (9th Cir. 1979). The appropriate test for determining whether such conduct had a probable effect on the way employees voted “is not whether the employee ‘was in fact intimidated or coerced’” but, rather, “whether a remark can reasonably be interpreted by an employee as a threat”. *Cooper Tire & Rubber Company v. NLRB*, 156 Fed. Appx. 760, (6th Cir. 2005), quoting *Smithers Tire & Auto. Testing of Texas, Inc.*, 308 NLRB 72 (1992).

A. The Employer’s 401(k) Plan is Invalid on its Face Because it Discriminates Against Union Employees.

The National Labor Relations Board has consistently held that an employer violates Section 8(a)(1) of the Act “through a provision in, or a statement about, a plan that suggests that coverage of employees will automatically be withdrawn as soon as they become represented by a union”. *The Hertz Corporation*, 316 NLRB at 695. “The mere maintenance and continuation of a provision in a pension plan, making a lack of union representation one of the qualifications for eligibility participate therein, itself tends to interfere with, restrain, and coerce employees, who are otherwise eligible, in the exercise of their self-organizational rights”. *Niagara Wires, Inc.*, 240 NLRB 1326, 1327 (1979).

Plans that discriminate based upon union membership “interfere with, restrain, and coerce currently unrepresented employees because the exclusionary clauses automatically

eliminate the benefits on selection of a representative and do not allow for their continuation pending negotiations”. *Handleman Company*, 283 NLRB 451, 452 (1987). The unlawful suggestion inherent in this language is that “unrepresented employees will forfeit the plans’ benefits if they choose union representation”. *Id.* Plans that include such exclusionary language constitute unlawful threats which violate the Act. *Id.*

The Board has previously set aside an election following the filing of objections where the Employer distributed a summary of its 401(k) plan which conveyed the impression the employees would lose the 401(k) plan immediately upon choosing union representation. See: *The Hertz Corporation*, 316 NLRB 672 (1995).

Moreover, even assuming, *arguendo*, that Vice-President of Operations John Ditmars’ distribution of the Plan documents was not unlawfully motivated, “the communication and the continued existence of such an exclusionary eligibility requirement necessarily exert a coercive impact on the employees. It is for this reason that an employee benefit plan which restricts coverage to unrepresented employees is per se violative of Section 8(a)(1) of the Act, regardless of whether the employer adds to the misconduct by implementing the restriction or exploiting it during an organizing campaign”. *Niagara Wires, Inc.*, 240 NLRB 1326, 1328 (1979). See also: *E & L Plastics Corp.*, 305 NLRB 1119, 1120 (1992) (Employer violated 8(a)(1) by “promulgating and maintaining a pension and profit-sharing plan limited to non-bargaining unit employees”); *Handleman Company*, 283 NLRB 451 (1987) (Employees’ stock ownership plan found not to violate Section 8(a)(1) because the plan did not cut off benefits prior to negotiations); and *Lynn-Edwards Corp.*, 290 NLRB 202 (1988) (Eligibility provision did not violate 8(a)(1) because the “employees’ participation in the Respondent’s ESOP continues

throughout the negotiation process and is discontinued only in the event that a new retirement plan is funded through the agreement”).

In the present case, there is no dispute that Dunkin Donuts maintained a 401(k) retirement plan for its employees that on its face prohibited union employees who did not yet have a collective bargaining agreement from making contributions or receiving matching contributions. The Plan is therefore per se invalid and a violation of Section 8(a)(1) of the Act.

B. The Employer’s Threats that the Employees Would Lose Their 401(k) Benefits if They Chose Teamsters Local 25 as Their Bargaining Representative Unlawfully Tainted the Results of the Election.

It is also undisputed that the Employer unequivocally conveyed to its employees the message that they would immediately cease being able to contribute to their 401(k) plans (or receive matching contributions from the Employer) should they select Teamsters Local 25 as their union representative

Ditmars admitted that he passed out the SPD eligibility provision even though he had not yet received clarification from either the legal department or from the Plan Administrator as to whether the employees would immediately be ineligible to make 401(k) contributions.² (Tr. 44-46). Thus, Ditmars intentionally passed out the eligibility provision knowing that it would have a strong likelihood of threatening and intimidating employees into voting against the Union since

² At the hearing, Ditmars admitted that he passed out the SPD eligibility provision even though he did not know for sure if the employees would no longer be able to contribute to the 401(k) if they selected the Union, but felt they should know the provision existed, presumably to scare the employees into voting against the Union:

- Q: Why would you hand out something if you didn’t know what it meant?
- A: We felt it was important that they knew there might be an issue.
- Q: Okay. And that [‘]might be an issue[’] is what?
- A: That they might not be able to be part of the 401(k) program. (Tr. 45-46).

a vote for the Union might mean the immediate cessation of contributions for possibly up to one year.³

When Ditmars later received “confirmation” from Human Resources and Prudential that the employees would indeed immediately lose the ability to make contributions or receive matching Employer contributions to their 401(k) accounts, he then compounded his unlawful threats by making a power point presentation that clearly confirmed that the employees would not be able to make contributions upon the selection of Teamsters Local 25. Finally, when driver Gerald Houde questioned Ditmars at the March 29 meeting as to how, according to Ditmars, all other benefits would remain the same in the interim period between the selection of Teamsters Local 25 and the negotiation of a collective bargaining agreement but the 401(k) benefits would still change, Ditmars responded that the 401(k) benefits were an exception based upon their being “controlled by the government”.⁴ (Tr. 21). As Ditmars admitted, he was confident in his answer to Houde’s question and clearly conveyed to the employees that they would definitely not be able to make 401(k) contributions or receive employer matching contributions if they chose the Union to represent them. (Tr. 53).

The Board has previously found objections to an election sufficient to overturn an election where the employer informed employees that if the Union was voted in, they “would no longer be eligible to neither contribute to this MESIP [401(k)] program nor receive employer

³ Ditmars testified that he still handed out the SPD without having yet received clarification on the eligibility issue because “I didn’t think it was fair to get clarification and then at the last meeting hit them with something like that”. (Tr. 68). Yet, this is essentially what Ditmars ended up doing on March 29, 2009, two days before the election, when he “hit them” with the power point slide and told them unequivocally that they would not be able to make contributions or receive matching Employer contributions to their 401(k) plans if the employees selected the Union as their representative.

⁴ The Employer spent considerable time at the hearing exploring whether Ditmars only read the power point slide as opposed to commenting on it at the March 29 meeting, but the distinction is irrelevant. Similarly, it is immaterial whether the power point slide on the 401(k) benefits immediately preceded the showing of a second slide about all other benefits remaining unchanged, or whether the second slide was presented at a later time in the presentation, as there is no dispute that Ditmars told the employees at some point during the presentation that 401(k) benefits were different and therefore could be changed between the time the Union was selected and when that parties had negotiated collective bargaining agreement.

matching contributions”. *BCI Coca-Cola Bottling Company of Los Angeles*, 339 NLRB 67 (2003). The Board found that the employer’s explicit oral statements that employees would no longer be able to contribute to the 401(k) plan could be viewed as a “threat that an existing benefit would no longer be available to employees if they selected the Union as their representative”. *Id.* at 68. Here, Dunkin Donuts made such threats both orally and in writing, conduct more egregious than the threats found sufficient for ordering a new election in *BCI*.

The Board in *BCI* further noted that the employer never made a clear assurance, following its threat, that employees would not automatically lose the right to continued participation in the 401(k) program: “The Employer never clearly explained that it was legally obligated to maintain the status quo with respect to the 401(k), unless and until a different arrangement was negotiated”. *Id.* In contrast, here it is not even clear that Dunkin Donuts recognizes that it had an obligation to maintain the status quo with respect to the 401(k) benefits should the Union be selected. Ditmars not only put up a slide on March 29, 2009, two days before the election, that confirmed in writing his initial implication at the March 23-25, 2009 mandatory employee meetings that the benefits would immediately cease upon selection of the Union, but he specifically told the employees, when asked, that the obligation to maintain the status quo with respect to employee benefits did not apply to the employees’ 401(k) benefits. (Tr. 21, 23, 53-55). Thus, unlike in *BCI*, Ditmars did not even attempt to clarify his unlawful earlier threat; rather, he confirmed and exacerbated that threat two days before the election! In addition, Ditmars cloaked the threat in legitimacy by stating that he had received “confirmation” of this interpretation from the Plan Administrator, which had checked with its ERISA attorneys. (Tr. 66).

If the employer's conduct in *BCI* was sufficiently unlawful as to overturn the election, then clearly Dunkin' Donuts' conduct had a considerable threatening effect on the employees that most certainly affected the results of the election and which therefore warrants the holding of a second election.

Another relevant Board decision with very similar facts as those presented here is *The Hertz Corporation*, 316 NLRB 672 (1995). In *Hertz*, the employer issued its employees a two-page summary of its 401(k) plan during the campaign that conveyed the impression that the employees would immediately lose their 401(k) benefits upon selecting union representation. The Board found that the employer's later attempt to orally explain the negotiation process did not sufficiently dispel the impression:

The Respondent's explanation suggested that the employees would lose the plan on becoming unionized, subject to possible restoration on the completion of negotiations. Thus, the impression remained that unionization itself would trigger the loss of the plan and ***that loss would continue throughout negotiations unless and until it was restored.*** *Id.* at 672. (Emphasis added).

The threat in *Hertz* was therefore essentially the same threat made by Dunkin Donuts- that upon choosing the union as their representative, the 401(k) plan (or significant parts thereof) would immediately be taken away and not restored unless and until a collective bargaining agreement was reached, a process that could take up to one year. In ordering a new election, the Administrative Law Judge noted that the employer's unlawful actions involved most if not all of the employer's employees over a two-day period, and that the issuance of the two-page summary of the 401(k) plan "might even be said to have a continuing effect on employees up to the election". *Id.* at 696. In addition, the ALJ based his decision to order a new election, in part, on the fact that there had been testimony that the employees had been concerned about what would

happen should they obtain union representation, and because the unlawful threatening statements had been made by two of the employer's high-level managers. *Id.*

Similarly, in the present case it is undisputed that the meetings at which Dunkin' Donuts handed out the plan summary (March 23, 24, and 25) and put on a power point presentation regarding the loss of 401(k) benefits (March 29, two days prior to the election) were mandatory and were attended by most of the drivers and helpers. Moreover, the summary plan handout and power point slide can be said to have had a "continuing effect" on the drivers and helpers. The employees were given the SPD on March 23, 24, and 25, and the terms of the SPD were confirmed and reinforced by Ditmars on March 29 in a power point presentation. In addition, there was testimony from driver Gerry Houde that after the March 29 meeting in which the power point presentation was made and at which Ditmars specifically stated that 401(k) benefits were the exception to the rule that benefits remain at the status quo between the time a union is selected and a collective bargaining agreement is reached, many employees gathered in the parking lot to discuss the Employer's presentation. One of the employees' major issues of concern and discussion was the apparent cessation of 401(k) contributions upon selection of the Union. (Tr. 24).

Furthermore, Ditmars' misleading and unlawful threats were more intimidating and appeared more legitimate because he was the highest ranking management figure at Dunkin' Donuts Northeast Distribution Center. Ditmars also brought further legitimacy, in the employees' eyes, to his threatening claims by informing the employees that he was only telling them what Prudential had told Dunkin' Donuts, and then topped off his performance by blatantly lying that the 401(k) benefits, unlike other benefits, could be changed because they were "controlled by the government". (Tr. 21).

Finally, the March 29, 2009 mandatory meeting in which Ditmars unequivocally clarified that the election of the Union would result in the loss of the ability to contribute to the drivers' 401(k) accounts occurred two days before the election. This considerable threat of losing retirement benefits for up to one year, made on the eve of the election, was the last piece of information the employees received with respect to the issue of the 401(k) benefits. The timing of the threat therefore made it all the more likely to affect how the employees voted in the election.

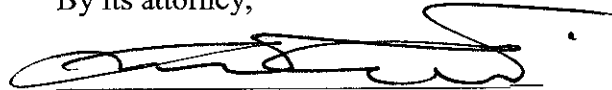
Based upon all of these factors, and viewing the Employer's conduct "through the prism of an employee's economic dependence", *Cooper Tire and Rubber Company v. NLRB*, 156 Fed. Appx. 760, 766 (6th Cir. 2005), especially in the context of the current troubled state of the economy, it is undeniable that Ditmars' threats impacted the results of the election. Therefore, the only remedy to rectify this unlawful conduct is the ordering of a second election.

CONCLUSION

For all of the foregoing reasons, and on the record as a whole, the Board should invalidate the results of the March 31 – April 1, 2009 election and order that a second election be held.

Respectfully submitted,

For the Petitioner
By its attorney,



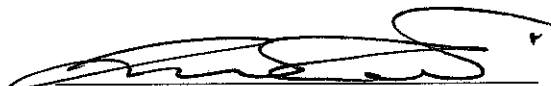
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Dated this 22nd day of June, 2009.

CERTIFICATE OF SERVICE

I, Jonathan M. Conti, hereby certify that I caused a copy of the foregoing to be served via first class mail, postage prepaid, on counsel for the Respondent, Shari G. Kleiner, Esq., Wilmer, Cutler, Pickering, Hale & Dorr, LLP, 60 State Street, Boston, MA 02109.

Dated this 22nd day of June, 2009.

A handwritten signature in black ink, appearing to read 'Jonathan M. Conti', written over a horizontal line.

Jonathan M. Conti