UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 99

and

Case 5-CB-10107

JERRY C. EVANS SR., AN INDIVIDUAL

COMPLAINT AND NOTICE OF HEARING

Jerry C. Evans Sr., an individual, herein called the Charging Party, has charged that International Union of Operating Engineers, Local 99, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151, et seq., herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Charging Party on January 17, 2007, and a copy was served by mail on Respondent on January 18, 2007.

2. (a) At all material times, The Catholic University of America, herein called the Employer, a District of Columbia non-profit corporation with an office and primary place of business in Washington, DC, herein called the Employer's facility, has been engaged in the operation of a private non-profit educational institution.

(b) During the preceding twelve months, a representative period, the Employer, in conducting its business operations described above in paragraph 2(a), derived gross revenues, excluding contributions which, because of limitations by the grantor, are not available for operating expenses, in excess of $1,000,000.

(c) During the period of time described above in paragraph 2(b), the Employer, in conducting its operations described above in paragraph 2(a), purchased and received at its Washington,

DC facility products, goods, and materials valued in excess of $5,000 directly from points located outside the District of Columbia.

(d) At all material times, the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Harry Geety III	-	Assistant Business Manager
Lorenzo Gomillion	-	Grounds Shop Steward
Derek Queen	-	Maintenance Shop Steward
Peggy Stack	-	Power Plant Shop Steward

5. At all material times since June 26, 2001, by virtue of Section 9(a) of the Act, Respondent has been the exclusive, collective-bargaining representative of the following employees of the Employer, herein called the Unit:

> All full-time and regular part-time building mechanics, carpenters, electricians, electrician helpers, apprentice electricians, all trade/multi licenses, general maintenance mechanics, plumbers, carpenter/roofers, painters, plasterers, grounds keeper maintenance technicians, grounds keeper leader technicians, and grounds keeper landscape maintenance technician/irrigation specialists; excluding all boiler plant engineers, locksmiths, cleaners, office clerical employees, professional employees, guards and supervisors as defined by the Act.

6. At all material times since July 1, 2006, Respondent and the Employer have maintained and enforced a collective-bargaining agreement covering the Unit and containing the following conditions of employment, herein called the Union-Security Provision:

> (a) In accordance with the provision of Section 8(a)(3) of the Labor Management Relations Act, 1947, all employees covered by this Agreement shall within thirty (30) days from and after the effective date of this Agreement, as hereinafter set forth, or

within thirty (30) days after their employment during the term of this Agreement, become members of the Union and retain such membership during the period of the Agreement.
(b) Subject to the provisions of said Section 8(a)(3), the University may require the applicant to be mentally and physically capably and competent to protect the efficiency of the University.
(c) Subject to the provisions of said Section 8(a)(3) of the Labor Management Relations Act, 1947, the employer will within ten (10) working days after receipt of written notice from the Union, discharge any employee who is not in good standing in the Union as defined in the Act and required by the preceding paragraph (a).

7. Respondent expends the monies collected pursuant to the Union–Security Provision on activities germane to collective bargaining, contract administration, and grievance adjustment, herein called representational activities, and on activities not germane to collective bargaining, contract administration, and grievance adjustment, herein called non-representational activities.

8. At all times since on or about January 24, 2006, the Charging Party, who is covered by the Union-Security Provision, has not been a member of Respondent.

9. Since on or about January 24, 2006, Respondent has failed to inform Unit employees of the following information:

(a) that they have the right to be or remain a non-member;

(b) that they have a right as a non-member to object to paying for non-representational activities and to obtain a reduction in fees for such non-representational activities;

(c) that they have the right to be given sufficient information to enable them to intelligently decide whether to object; and

(d) that they have the right as a non-member to be apprised of any internal union procedures for filing objections.

10. On or about October 31, 2006, Respondent requested that the Employer discharge the Charging Party.

11. By the conduct described above in paragraph 10, Respondent attempted to cause, and caused, the Employer to discharge the Charging Party.

12. Respondent engaged in the conduct described above in paragraphs 10 and 11, at a time when:

(a) it had never advised the Charging Party of his rights under NLRB v. General Motors, 373 U.S. 734 (1963);

(b) nor advised the Charging Party of his rights under Communications Workers v. Beck, 487 U.S. 735 (1988);

(c) nor advised the Charging Party of his obligation under the union-security clause and the consequences of non-payment;

(d) nor correctly itemized the exact amount owed by the Charging Party or advised him how it was calculated.

13. By the conduct described above in paragraph 9, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

14. By the conduct described above in paragraphs 10 through 12, Respondent has been attempting to cause, and causing, an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act in violation of Section 8(b)(2) of the Act.

15. The unfair labor practices of Respondent described above effect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before May 11, 2007, or postmarked on or before May 10, 2007**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov,

click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. A failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. **When an answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three business days after the date of electronic filing**. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that commencing at 10:00 a.m., E.D.T., on the 23rd day of July 2007, in Hearing Room 5600 East, 1099 14th Street, NW, Washington, DC, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 27th day of April 2007.

(SEAL)

STEVEN L. SHUSTER

Steven L. Shuster, Acting Regional Director
National Labor Relations Board, Region 5
103 South Gay Street, 8th Floor
Baltimore, Maryland 21202

Attachments

FORM NLRB-4668
(4-05)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

FORM NLRB-4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case: 5-CB-10107

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFC 102.16(a).

(2) Grounds must be set forth in **detail;**

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained by the requesting party and set forth in the request; **and**

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

COUNSEL FOR RESPONDENT:

RESPONDENT:

MR. MICHAEL R. MURPHY
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION 99
2461 WISCONSIN AVENUE, NW
WASHINGTON, DC 20007-1862

COUNSEL FOR CHARGING PARTY

JOHN R. MARTIN, ESQ.
NATIONAL RIGHT TO WORK LEGAL
DEFENSE FOUNDATION
8001 BRADDOCK ROAD, STE. 600
SPRINGFIELD, VA 22160

CHARGING PARTY:

MR. JERRY C. EVANS SR.
2950 M STREET, SE
WASHINGTON, DC 20019

NOTIFICATION FOR EMPLOYER:

DAWN E. STARR, ESQ.
AKIN, GUMP, STRAUSS, HAUER & FELD LLP
ROBERT S. STRAUSS BUILDING
1333 NEW HAMPSHIRE AVENUE, NW
WASHINGTON, DC 20036

EMPLOYER:

MR. KEVIN M. PETERSON
THE CATHOLIC UNIVERSITY OF AMERICA
POWER PLANT BLDG., 2ND FLOOR
CARDINAL STATION
WASHINGTON, DC 20064