

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

FORTUNA ENTERPRISES, L.P., a Delaware
limited partnership d/b/a The Los Angeles Airport
Hilton Hotel and Towers

and

UNITE HERE, Local 11

Case Nos.: 31-CA-27837
31-CA-27954
31-CA-28011

**CHARGING PARTY'S CROSS-EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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Charging Party UNITE HERE Local 11, pursuant to section 102.46 of the Rules and Regulations of the National Labor Relations Board files the following cross-exception to the October 21, 2008 Decision of the Administrative Law Judge.

Exception #1:

Charging Party excepts to the ALJ's finding that "there is no evidence that Respondent knew that Brentner, Simmons, Magallon, Salinas, or Gomez either addressed the CTA, knew what they said or knew that they had participated in the CTA meeting in any way. (Decision p. 26, lines 38-41.)

Basis for Exception #1:

The record evidence clearly establishes that Respondent knew that Simmons participated in the CTA meeting and addressed its audience. Respondent's Food and Beverage Manager Thomas Cook testified:

- Q. There was an incident that occurred on June 3rd where an employee or employees addressed the CTA group in the International Ballroom. Are you aware of that incident?
- A. Yes.
- Q. How did you first find out about it?
- A. I believe that I was in my office that morning and I received a phone call. And I believe that that phone call was from Manny Collera.
- Q. And who is Manny Collera?
- A. He was my assistant director of food and beverage.
- Q. Okay. What did he tell you?

A. *He said that Patti Simmons and some employees are in the International Ballroom addressing the CTA.*

(Tr. 1558) (emphasis added).

The ALJ's finding to the contrary was in error.

Exception #2:

Charging Party excepts to the ALJ's italicized portion of the finding that "Respondent was aware that all five employees participated in the May 11, 2006 work stoppage, *although none played a prominent role.*" (Decision, p. 25, lines 43-44).

Basis for Exception #2:

The record evidence establishes that Patricia Simmons played a prominent role in the May 11, 2006 work stoppage. She helped organize it. (Tr. 410-413). She was one of the spokespersons for her co-workers. (Tr. 416; 424; 427-428; 430; 1880; 1890; 1895-1896). She made efforts to contact the Hotel's owner and the Human Resource Department to persuade a manager to come speak with employees. (Tr. 421-427). Based upon this evidence, there was substantial reason for Simmons to be considered by management as one of the prominent leaders of the work stoppage.

The record further establishes that Isabel Brentner played a prominent role in the May 11, 2006. She did so by telephoning Human Resource Director Sue Trobaugh to attempt to tell her that workers wanted to speak to a manager in the cafeteria. (Tr. 2081-2082; 2090).

Exception #3:

Charging Party excepts to the ALJ's finding that "there is no evidence Respondent had knowledge the five employees engaged in protected-concerted or union activity on June 3, 2006 and that their May 11, 2006, protected-concerted activity played no role in their June 2006 discipline." (Decision p. 25, lines 44-48).

Basis for Exception #3:

The record establishes that Respondent clearly knew that Simmons was engaged in protected-concerted or union activity on June 3, 2006. As stated above, Respondent knew that Simmons was participating in the CTA meeting and addressing its audience. (Tr. 1558). It also knew that she was a prominent leader in the organizing efforts and in the May 11, 2006 work stoppage. (See discussion *supra*, see also Tr. 402-404.) In light of the fact that the CTA is a labor organization and the fact that Simmons was a prominent leader of a high-profile organizing effort (that included marches, rallies and other activities described throughout the record), it is clearly the case that Respondent knew that the purpose of Simmons' addressing the CTA was to appeal for support.¹ Such appeals constitute § 7 protected activity. "Employees have a statutorily protected right to solicit sympathy, if not support, from the general public, customers, supervisors, or members of other labor organizations." *NCR Corp.*, 313 NLRB 574, 576 (1993); see also *UCSF Stanford Health Care*, 335 NLRB 488, 535-536 (2001) *enfd.* 325 F.3d 334 (D.C. Cir. 2001), *cert denied*;

¹ In fact, Simmons addressed the CTA audience to discuss the May 11, 2006 work stoppage. (Tr. 454-455.). Brentner addressed the CTA audience to accept a donation made by the teachers to the suspended employees. (Tr. 754.)

Santa Fe Hotel & Casino, 331 NLRB 723, 730 (2000). Moreover, the fact that Respondent knew that Simmons was engaged in activity related to organizing demonstrates that Respondent considered the other employees to be engaged in similar activity because Respondent suspected them (incorrectly) of entering the Ballroom to listen to Simmons. (Tr. 1562-1563.)

The impact of employees' exercise of their protected rights was of enormous concern to the Respondent. In its Brief in Support of Exceptions, Respondent describes what was at stake from its point of view: "The employees spoke at the conference while on a break in a Hotel public/guest area, in clear violation of Hotel policy. Three of the employees' coworkers attended the speech in the same unauthorized public area. *Shortly thereafter, this major client pulled its annual business from the Hotel, depriving employees of work and damaging the Hotel's reputation.* These five employees were merely given written warnings for their serious misconduct." (Respondent's Brief in Support of Exceptions, p. 4).

In light of these facts and law, the ALJ's finding that "there is no evidence Respondent had knowledge the five employees engaged in protected-concerted or union activity on June 3, 2006 and that their May 11, 2006, protected-concerted activity played no role in their June 2006 discipline." Nonetheless, as discussed in Charging Party's Opposition to Respondent's

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Brief in Support of Exceptions, the ALJ correctly ruled that Respondent violated Section 8(a)(3) of the Act based upon its general knowledge of their union activity.

Dated: January 30, 2009

Respectfully submitted

By s/Eric B. Myers

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PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 1400, San Francisco, CA 94105.

On January 30, 2009 I served the document described as **CHARGING PARTY'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** by electronic mail at the e-mail addresses indicated below and by placing a true copy thereof enclosed in a sealed envelope and depositing same with United Parcel Service for 2nd business day delivery addressed as follows:

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[X] (UPS) I am “readily familiar” with the firm’s practice for collection and processing correspondence for UPS delivery. Under that practice, it would be deposited with the United Parcel Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on January 30, 2009 at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

s/Renee Saunders _____
Renee Saunders