

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

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LAGUARDIA ASSOCIATES, LLP	:	
d/b/a CROWNE PLAZA LAGUARDIA	:	
	:	Case No. 29-CA-29347
Respondent,	:	
	:	
AND	:	
	:	
NEW YORK HOTEL & MOTEL TRADES	:	
COUNCIL, AFL-CIO	:	
	:	
Charging Party,	:	
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**RESPONDENT'S ANSWERING BRIEF SUBMITTED IN RESPONSE TO THE  
GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

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## **PRELIMINARY STATEMENT**

This brief is submitted on behalf of Respondent LaGuardia Associates, LLP d/b/a Crowne Plaza LaGuardia in response to the General Counsel's exceptions and brief in support thereof to the decision of Administrative Law Judge Steven Davis dated December 28, 2009.

Respondent is primarily content to rely on the record before the Administrative Law Judge (hereinafter "ALJ") as well as the well reasoned decision rendered by him. The limited purpose of this submission is to respond to several blatant mischaracterizations of the record set forth in the General Counsel's briefs herein.

### **POINT ONE**

#### **THE GENERAL COUNSEL HAS MISCHARACTERIZED THE RECORD EVIDENCE ABOUT WHETHER THE DISCHARGED EMPLOYEES PHYSICALLY TOUCHED ISENBERG**

Of the thirteen (13) employees who participated in the altercation with Respondent's Chief Operating Officer, Gary Isenberg, in the lobby of the Crowne Plaza LaGuardia Hotel on the morning of December 10, 2009, Respondent decided to terminate only four, who each engaged in improper physical contact with Isenberg and/or Security Guard Yassar Hassanein.

The ALJ found that each of the employees actually engaged in the physical misbehavior they were terminated for. The General Counsel asks the Board to overrule the ALJ's factual findings on this point, and in so doing has failed to accurately portray the factual record in several respects.

### **The Videotape Does Show Improper Touching**

In its brief, the General Counsel claims that the security video which captured some of the events occurring in the Hotel lobby on December 10, 2009 “demonstrates that there was no physical contact during the incident.” See GC Brief at p.9.

In truth, the security videotape substantially corroborates the testimony of Isenberg and Hassanein that they were grabbed and/or held by the four employees who were terminated by Respondent.

As noted by the ALJ, the security camera was positioned to the rear of the area where the employees confronted Isenberg, who had their backs to the camera. See ALJ Decision at p.9. Given the position of the camera, it is not surprising that the ALJ noted that the video (and still photographs excerpted therefrom) did not “distinctly” show touching in all instances. *Id.* at p.9. Yet, the ALJ found that the video did in fact show that the employees surrounded Isenberg “in a tight circle” as he was attempting to leave the area. He also specifically found that the video showed employee Robinson “touching” Isenberg’s elbow and back. The ALJ also found that the video showed employee Varela “moving from side to side” blocking Isenberg from leaving the area where he had been surrounded. Finally, the ALJ found that the video showed employee Lopez’ left hand grabbing Hassanein’s left wrist as he was trying to assist Isenberg in leaving the area.

Thus, contrary to the General Counsel’s representation, the security videotape was not exculpatory in any manner, but rather was found by the ALJ to strongly support the testimony of Isenberg and Hassanein about improper physical contact.

**The General Counsel Falsely Claims that the Testimony  
of Officer Centeno and Respondent's Witnesses  
Support its Claim that No Physical Contact Occurred**

The General Counsel argues that the testimony of Police Officer Javier Centeno and three witnesses produced by Respondent supports its position that the four terminated employees did not engage in any physical contact with Isenberg or Hassanein. See GC Brief at pp. 9, 22.

As shown below, this is an entirely disingenuous argument as none of these individuals was located in an area where they could have *seen* any of the specific interactions between Isenberg, Hassanein and the employees who surrounded them. Rather, and as the record is clear, these witnesses were called solely because even though they were far from the scene they were able to *hear* the yelling and screaming that the employee delegation engaged in when they confronted Isenberg in the Hotel lobby.

As noted in the ALJ's decision (at p.7) Officer Centeno and Human Resources Manager Lorraine Mercurio were standing at the far end of the lobby away from Isenberg when he was confronted by the employees, at a distance of 100-150 feet. Both heard loud voices but only see Isenberg being surrounded by a group of workers from their vantage point across the large lobby. They were certainly not close enough to have seen the grabbing and touching Isenberg testified to which occurred in the middle of the employee scrum. See Tr. 102-103.

Hotel Director of Guest Services Effie Mikedis was working in the PBX room, which is separated from the lobby by a wall, when Isenberg was confronted. See Tr. 338. While she could hear "loud loud noise" she obviously could not see what was happening.

See Tr. 338. She eventually walked out into the lobby *after* Isenberg had broken free and was walking back to his office. See Tr. 351.

Finally, bargaining unit member Carol Lynn Mears was working at the Hotel's front desk when Isenberg was surrounded. See Tr. 364-366. She did not have a direct line of sight to the area where Isenberg was accosted. While she could hear a "commotion" she only saw Isenberg emerge from the crowd attempting to "get away" from the group. See ALJ Decision at p.7, Tr. 368, 381.

Thus, it does not support the General Counsel's case in any way to argue that these witnesses did not see any physical touching.

Dated: New York, NY  
March 1, 2010

Respectfully submitted,

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Date of E-Filing/E-mailing: March 1, 2010

**STATEMENT OF SERVICE OF: RESPONDENT’S ANSWERING BRIEF  
SUBMITTED IN RESPONSE TO THE GENERAL COUNSEL’S EXCEPTIONS  
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

I, the undersigned, hereby state, under penalty of perjury that, in according with the NLRB Rules & Regulations § 102.114(i), a copy of the foregoing was sent to each party at the addresses listed below and on the date indicated above:

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