

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

CAESARS ENTERTAINMENT CORPORATION
d/b/a RIO ALL-SUITES HOTEL AND
CASINO,

Employer,

And

INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES, DISTRICT COUNCIL 15,
LOCAL 159,

Petitioner

Case No. 28-RC-6747

EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S REPORT AND
RECOMMENDATIONS ON OBJECTIONS TO
CONDUCT AFFECTING RESULTS OF ELECTION

The Employer, Rio Properties, Inc., d/b/a Rio All-Suites Hotel and Casino¹ (hereinafter "the Rio"), by and through its undersigned counsel, and pursuant to Section 102.69(e) of the Board's Rules and Regulations, as amended, hereby timely files these Exceptions to Hearing Officer Barbara Baynes' April 8, 2011 Report and Recommendations on Objections to Conduct Affecting Results of Election.

On January 5, 2011, a secret ballot election was held among the unit found appropriate for collective bargaining by the Regional Director. All six eligible employees voted, but only two of them cast ballots in support of the International Union of Painters and Allied Trades, District Council 15, Local 159 (hereinafter, "the Union"). The results of that election are a valid

¹ The Employer is incorrectly named in the caption.

expression of the majority of employees' free choice not to be represented by the Union. The Hearing Officer's recommendation that the Objections lodged by the Union should result in a re-run election should not be adopted.

The Rio specifically excepts to the Hearing Officer's Report and Recommendations, and the proceedings that led to it, as follows:

- I. The Hearing Officer acted in excess of her authority by reopening the hearing after she closed it.
- II. The Hearing Officer erred in considering and ruling upon the Union's Objection 1, which stated only that "The Employer maintained and enforced unlawful rules which interfered with the election." At no time prior to the February 8 Hearing or the filing of the Union's post-hearing brief did the Rio receive notice of the policies that the Union claimed were objectionable, despite repeated requests by the Rio's counsel at the Hearing. By not indicating which policies were allegedly objectionable, the Union failed to provide "a short statement of the reasons" for the objections, pursuant to Section 102.69(a) of the Board's Rules and Regulations, as amended. As a result, the Rio was denied due process.
- III. The Hearing Officer erred in finding objectionable conduct based upon policies found in an outdated 2006 handbook. There is no evidence in the record that the allegedly objectionable policies are currently in force, and no party entered the current handbook into evidence. The handbook entered to evidence was purportedly authenticated by an employee witness who could only testify that it was "the same thickness" as one he had received.
- IV. The Hearing Officer erred in finding that "Petitioner's Exhibit 1 was the only handbook in existence for the purposes of these proceedings."

- V. The Hearing Officer erred in her interpretation of the allegedly objectionable policies, in that she failed to read them in the context in which reasonable employees would construe them. No reasonable employee would read the isolated provisions in the policies cited in the strained manner that the Hearing Officer did. Indeed, for several of the rules considered by the Hearing Officer, she recognized that she had to read them “despite the supplemental context” to find them objectionable.
- VI. The Hearing Officer erred in reading the rules concerning “Family Members Participating in Promotions and Tournaments” and “Use of Facility,” as those rules merely impose limitations on the manner in which employees use facilities intended for customers and guests of the hotel. The rules cited cannot reasonably be construed to restrict off-duty employee *access* or require managerial permission to *access* company property while off-duty.
- VII. The Hearing Officer erred in reading the “Confidentiality” rule. No reasonable employee would read that rule to prohibit activity protected by Section 7. It prohibits disclosure of only inherently non-public information. The restriction on use of “internet chat rooms or message boards” is merely a specific reminder to employees that they are not only barred from disseminating confidential information in person, but also electronically. The Hearing Officer’s observation of the absence of language limiting the bar to working time or the employer’s equipment is irrelevant. The prohibition on dissemination of “salary structures” also does not chill Section 7 activity. Only read in isolation can “salary structures” be understood to bar discussion of wage rates, benefits, or other working conditions. The other categories of information that “salary structures” is listed along with (“Company financial data; plans and strategies (development, marketing, business);

organizational charts,...research or other analyses and customer or supplier list related information”) make clear that a reasonable employee would read that provision to apply only to higher-level strategic information to which the employees in question here do not have access.

- VIII. The Hearing Officer erred in reading the “Workplace Violence” rule. No reasonable employee would read the prohibition on “Allowing unauthorized persons access to the premises or to confidential information without authorization” in the context of a workplace violence policy to prohibit Section 7 activity. The language found objectionable by the Hearing Officer relates only to preventing violence on company property, not restricting off-duty employee access or discussion of terms and conditions of employment. Moreover, the Hearing Officer’s erroneous reading of the Workplace Violence rule is dependent on her erroneous reading of the Confidentiality rule, as discussed in Exception VII.
- IX. The Hearing Officer erred in ignoring the failure of the Union witnesses offered at the first Hearing to make any showing as to the effect of the allegedly objectionable policies on them.
- X. The Hearing Officer erred in finding unenforced policies that were not promulgated in response to union activity to constitute objectionable conduct.
- XI. The Hearing Officer erred by finding that Dean Allen promised a wage increase to employees if they voted against the Union. The hearing testimony shows that Allen’s statement to employees could only be understood to mean that the Rio would proceed in the same way as it had in years past, irrespective of the results of the election. Moreover,

the employee witnesses who testified at the Hearing stated that Allen did not promise a wage increase if they voted against the Union.

- XII. The Hearing Officer erred in finding that Allen threatened employees that they would not receive projected wage increases if they voted for union representation. The hearing testimony shows that Allen's statement to employees could only be understood to mean that the Rio would proceed in the same way as it had in years past, irrespective of the results of the election. Moreover, the employee witnesses who testified at the Hearing stated that Allen did not threaten to withhold a wage increase if they voted for the Union.
- XIII. The Hearing Officer erred in attributing significance to the fact that Allen's statement regarding raises was made two days before the election.
- XIV. The Hearing Officer erred by finding that Dean Allen promised a 401(k) match benefit to employees if they voted against the Union. The hearing testimony shows that Allen's statement to employees could only be understood to mean that the Rio's treatment of employees would be the same, irrespective of the results of the election.
- XV. The Hearing Officer erred in attributing significance to the fact that Allen's statement regarding 401(k) benefits was made two days before the election.

CONCLUSION

Based on the foregoing Exceptions, the Rio respectfully requests that the Board reject the Hearing Officer's Report and Recommendations on Exceptions. The employees in question have already expressed their free choice, and that choice was not tainted in any of the ways the Hearing Officer's Report suggests. The Board should instruct the Regional Director to certify the results of the election forthwith.

Respectfully submitted this 22nd day of April, 2011.

A handwritten signature in black ink, appearing to be "Douglas R. Sullenberger", written in a cursive style.

Douglas R. Sullenberger
Brian M. Herman
Fisher & Phillips LLP

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO CONDUCT AFFECTING RESULTS OF ELECTION upon the following individuals by email:

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Dated: April 22, 2011



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