JD(SF)-24-11
Los Angeles, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

MARRIOTT INTERNATIONAL, INC., d/b/a
J.W. MARRIOTT LOS ANGELES AT L.A. LIVE

and Case 21-CA-39556

UNITE HERE! Local 11

Jean Libby, Esq.,
for the General Counsel.

Kamran Mirrafati, Esq., (Seyfarth Shaw LLP)
of Los Angeles, California for the Respondent.

Kirill Penteshin, Esq., Staff Attorney,
of Los Angeles, California and *Eric B. Meyers, Esq.*
(Davis, Cowell & Bowe LLP) of San Francisco,
California for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. This case was tried in Los Angeles, California on April 18, 2011. Unite Here! Local 11 (the Charging Party or the Union) filed the charge on October 28, 2010[1] against Marriott International, Inc., d/b/a J. W. Marriott Los Angeles at L.A. Live (the Respondent) and the General Counsel issued the complaint on January 27, 2011. Posthearing briefs by the General Counsel, the Charging Party, and the Respondent were timely submitted on June 13, 2011.

The complaint as amended at the hearing alleges and the answer denies that the Respondent has maintained certain rules of employee conduct which interfere with, restrain, and coerce employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relation's Act (the Act) and, therefore, violate Section 8(a)(1) of the Act.

FINDINGS OF FACT

Upon the entire record including helpful briefs from each of the parties, I make the following findings of fact:[2]

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[1] All dates are in 2010 unless otherwise indicated.

[2] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

I. JURISDICTION

At all material times the Respondent, a State of Delaware corporation with principal offices in Bethesda, Maryland, and a hotel facility located at 900 West Olympic Boulevard, Los Angeles, California (the Hotel), has been engaged in providing hotel and lodging services.

During the 12-month period ending November 22, 2010, a representative period, the Respondent, in conducting its business operations derived gross revenues in excess of $500,000 from the operation of the Hotel and purchased and received at the Hotel goods valued in excess of $5,000 directly from points outside the State of California.

Based on these uncontested facts, I find the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. LABOR ORGANIZATION

The pleadings establish, there is no dispute, and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE COLLECTIVE BARGAINING RELATIONSHIP

The following employees of the Respondent at the Hotel facility, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All regular full-time and regular part-time hotel service, housekeeping, food and beverage employees (including room cleaners, house persons, bell persons, telephone operators, kitchen employees, servers, bussers, bartenders, cashiers, hosts, front desk employees, and concierges (at the J.W. Marriott only) employed by the Respondent at the Hotel, but excluding the following employees: all secretarial, office clerical, accounting, guest recognition and residential coordinators (at the Ritz-Carlton Hotel and Residences only), event management coordinators, gift shop, lifeguard, pool-chemical cleaning, Spa (except that employees cleaning the spa facility will be in the unit), sales, maintenance and engineering employees and all managers, supervisors, and guards as defined in the National Labor Relations Act.

At all material times since April 10, 2010, the Respondent has recognized and, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Employee Rules in Contest

Over the course of 4 days in late January and early February 2010, the Respondent held four new employee orientation sessions for the roughly 500 employees that had been hired to staff the opening of the Respondent's new L.A. Live property. During these orientation sessions the Respondent promulgated and distributed an employee handbook entitled "California

Associate Handbook" (the California handbook) to each new hire. The Respondent had earlier promulgated the California handbook, which was last revised in June 2009, to all of its California employees.

Commencing on or about late January 2010 with the issuance of the California handbook, the Respondent maintained the following "Return to Work Premises" rule at the Hotel:

> Associates are not permitted in the interior areas of the hotel more than fifteen minutes before or after their work shift. Occasionally, circumstances may arise when you are permitted to return to interior areas of the hotel after your work shift is over or your days off. On these occasions, you must obtain prior approval from your manager. Failure to obtain prior approval may be considered a violation of Company policy and may result in disciplinary action. This policy does not apply to parking areas or other outside non-working areas.

Commencing on or about late January 2010 with the issuance of the California handbook, the Respondent maintained the following "Use of Hotel Facilities" rule at the Hotel:

> The hotel and its facilities are designed for the enjoyment of our guests. If you wish to use the guest facilities during non-working hours, you need to obtain prior approval from your manager.

These rules were both set forth in the California handbook initially distributed by the Respondent to employees in late January 2010 and were in effect thereafter as described in detail below. Following its becoming the unit employees' representative on April 10, 2010, the Union on May 19th, 2010 submitted a request to the Respondent for its then-current California handbook which the Respondent provided the Union on May 21, 2010.

However because of the unique situation in which the Ritz-Carlton Hotel and the Respondent's Hotel shared the same building and needed a unified operating procedure, the Respondent drafted a new handbook specifically for the L.A. Live property (the L.A. Live handbook). The final draft of the L.A. Live handbook was not completed until early November 2010, after which the Respondent began distributing the L.A. Live handbook to newly hired employees during subsequent orientation sessions in lieu of the California handbook. The Respondent admits that the only employees that received the L.A. Live handbook were those hired after the handbook's finalization in November 2010 and any incumbent employees that proactively asked for a copy. That handbook contained the following modifications to the above quoted rules:

> RETURNING TO WORK PREMISES:
> Employees are not permitted in the interior areas of the Property more than fifteen (15) minutes before and after their work shift. Occasionally, circumstances may arise when you are permitted to return to interior areas of the Property after your work shift is over or on your days off. On these occasions, you must obtain prior approval from your manager. Failure to obtain prior approval may be considered a violation of Company policy and may result in disciplinary action. This policy does not apply to parking areas or other outside non-working areas.

With respect to the "Returning to Work Premises" rule, the L.A. Live handbook substituted "Employees" for the term "Associates" and "Property" for the term "hotel".

> USE OF PROPERTY FACILITIES:
> The Property and its facilities are designed for the enjoyment of our guests and residence owners. You are not permitted on guest or resident floors, rooms, or elevators, in public restaurants, lounges, restrooms or any other guest or resident facility unless on a specified work assignment or with prior approval from your manager. Permission must be obtained from your manager before utilizing any Property outlet, visiting family or friends staying in the Property, or using any of the above mentioned facilities. Please ensure that the manager of the area you intend to visit is aware of the approved arrangements.

Thus in and after November 2010 the employees who had received the earlier employee handbook were aware of the earlier rules quoted above and the employees receiving the new employee handbook were aware of the subsequent rules.

V. ANALYSIS AND CONCLUSIONS

A. Threshold Issue: Section 10(b) Time-bar

The Respondent in a motion to dismiss filed at the hearing and advanced in its posthearing brief argues that the alleged violations referencing the rules in the original employee handbook are time-barred under Section 10(b) because they were first promulgated more than 6 months before the charge was filed. However, an employer commits a continuing violation of the Act throughout the period that an unlawful rule is maintained. See, e.g., *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). Also with respect to an alleged time-bar under Section 10(b), the maintenance of unlawful rules within 6 months of the filing of charges will render the action timely. *Turtle Bay Resorts*, 353 NLRB 1242 (2009). Accordingly, because there is no indication that the employees that received the original handbook were notified at any time that those rules were superseded or discontinued, I find that the two original rules at issue located in the California handbook have been maintained throughout the relevant period leading up to filing of the unfair labor practice charges on October 28, 2010. As such the Respondent's time-bar argument fails under the cases cited.

B. The Handbook Rules as Interference with, Restraint and Coercion of Employees' Exercise of Section 7 Rights—Complaint Paragraph 9

1. Overview of the Law

Before examining each individual rule and the parties' respective contentions, a brief examination of Board decisions dealing with the maintenance of employer work rules that restrict off-duty employees' access to the employer's premises is useful. In general, the analytical framework for determining whether an employer's maintenance of a work rule violates Section 8(a)(1) is set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004):

> [A]n employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. *Id*. at 825, 827. Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule explicitly restricts activities protected by Section 7. If it does, we will find the rule unlawful.

> If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.[3]

More specifically, the Board analyzes rules restricting off-duty employee access to an employer's facility under a three-prong test first articulated in *Tri-County Medical Center,* 222 NLRB 1089 (1976). In that case, the Board stated:

> We conclude, in order to effectuate the policies of the Act, that such a rule is valid only if it (1) limits access solely with respect to the interior of the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity. Finally, except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside nonworking areas will be found invalid. (222 NLRB 1089 at 1089.)

As noted, the General Counsel's complaint attacks various portions of the Respondent's handbook rules. The individual rules under challenge are best discussed separately. For clarity's sake, each rule is quoted at the beginning of the analysis respecting it.

2. The original "Returning to Work Premises" rule—Complaint Sub-Paragraph 9(a)

The original Returning to Work Premises rule states:

> Associates are not permitted in the interior areas of the hotel more than fifteen minutes before or after their work shift. Occasionally, circumstances may arise when you are permitted to return to interior areas of the hotel after your work shift is over or your days off. On these occasions, you must obtain prior approval from your manager. Failure to obtain prior approval may be considered a violation of Company policy and may result in disciplinary action. This policy does not apply to parking areas or other outside non-working areas.

The General Counsel and Union's theory of a violation respecting the above quoted rule is that, by allowing occasional access to the premises with a manager's permission, the rule does not prohibit off-duty employee access for any purpose and thus contravenes the third requirement of the *Tri-County Medical Center* test. In its posthearing brief at 10–14, the Respondent argues that, because the Board has previously validated no access rules that included clauses granting manager permission to allow off-duty employees access to the premises in certain circumstances, the rule at issue should not be held unlawful.

The Board in *Lafayette Park Hotel*, 326 NLRB 824, 827 (1998) found the following "Hotel rule 6" valid:

> Employees are not permitted to use the restaurant or cocktail lounge for entertaining friends or guests without the approval of the department manager.

[3] 343 NLRB at 646–647 (emphasis in original and footnote omitted).

The General Counsel and Union in *Lafayette Park Hotel* argued that the rule was unlawful "because it allows management to select which off-duty employees may use the premises, and can therefore be used to inhibit Section 7 activity." Id. at 827. The Board nevertheless found the rule valid, responding to the General Counsel and Union's contention that the rule may cause employees to "reasonably believe that they must seek employer permission to engage in Section 7 activity in the restaurant or cocktail lounge, and that this belief would chill the employees in the exercise of their Section 7 rights," by explaining at 827:

> [W]e do not believe that this rule reasonably would be read by employees to require them to secure permission from their employer as a precondition to engaging in protected concerted activity on an employee's free time and in non-work areas…
>
> Here, the rule does not mention or in any way implicate Section 7 activity. Rather, it merely requires permission for "entertaining friends or guests." In our view, a reasonable employee would not interpret this rule as requiring prior approval for Section 7 activity. There are legitimate business reasons for such a rule, and we believe that employees would recognize the rule for its legitimate purpose, and would not ascribe to it far-fetched meanings such as interference with Section 7 activity. We therefore find that the mere maintenance of this rule would not reasonably tend to chill employees in the exercise of their Section 7 rights. Accordingly, this allegation is dismissed.

The General Counsel in the present matter cites two cases to support his claim that any exceptions to an off-duty employee access restriction rule will render it invalid under *Tri-County Medical Center*.[4] The language in those cases does, in fact, indicate that the third requirement of the *Tri-County Medical Center* test necessitates the invalidation of any off-duty employee access rule that provides for exceptions. However, I find that the more recent Board decision in *Lafayette Park Hotel,* supra*,* must also be read in analyzing the question.

Lafayette Park Hotel's "Hotel rule 6" as discussed above, is not distinguishable from an off-duty employee access restriction rule that would normally be analyzed under *Tri-County Medical Center* because, as the rule reads and as both the Board reasoning and the General Counsel and Union's quoted argument note, the rule encompasses employees who may want to use the restaurant or cocktail lounge for entertaining friends or guests while off-duty.

While the Board does not explicitly state in *Lafayette Park Hotel* that the language of the third requirement of the test outlined in *Tri-County Medical Center* was not meant to be read literally, the decision suggests, *sub silentio*, that an employer, in limited circumstances, is able to include exceptions to an access restriction rule that encompasses off-duty employees.[5]

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[4] *Baptist Memorial Hospital*, 229 NLRB 45 (1977), enf'd. 568 F.2d 1 (6th Cir. 1977); *Intercommunity Hospital*, 255 NLRB 468 (1981).

[5] The Board in *Lafayette Park Hotel* reasons that because the access restriction rule "does not mention or in any way implicate Section 7 activity" and is drafted in a narrow manner and only restricts access for a limited purpose, it cannot be interpreted by a reasonable employee as requiring prior approval for Section 7 activity. Moreover, the access restriction was deemed to be based on "legitimate business reasons," and that "employees would recognize the rule for its legitimate purpose." 326 NLRB at 827.

The rule at issue, however, is not analogous to the "Hotel rule 6" validated in *Lafayette Park Hotel*. The "Hotel rule 6", despite its exceptions, limited its reach to the entertainment of friends or guests, and it limited its application to the hotel restaurant and cocktail lounge. The key issue that was addressed was not whether an access restriction rule excluded off-duty employees for any and all reasons. Rather the key issue was whether, if such a rule contains a clause granting manager or supervisor discretion to approve exceptions to access restriction, it would cause a reasonable employee to interpret the rule as requiring prior approval for Section 7 activity and would thus chill employees' exercise of that activity.

Here, despite the fact that the instant rule does not mention or implicate Section 7 activity, the rule flatly requires manager approval for any off-duty access to the interior of the hotel. The Respondent's rule and its manager approval clause is not limited in scope, and any potentially legitimate business reasons for broadly barring off-duty employees from the interior of the hotel without manager approval would not be clear to employees based on a facial reading of the rule.[6] Therefore I find that, based on the rationale discussed above, the Respondent's original "Returning to Work Premises" rule is invalid under both *Lafayette Park Hotel* and *Lutheran Heritage Village-Livonia* because the access restriction is not sufficiently limited and invites reasonable employees to believe that Section 7 activity is prohibited without prior managerial permission.[7] The rule also fails under the second requirement of the *Tri-County Medical Center* test because the Respondent ceased distributing the original California handbook to newly hired employees in and after November 2010 and thus the rule has not been clearly disseminated to all employees.

For all the above reasons, I find the rule invalid and that the General Counsel has sustained this element of the complaint.

3. The revised "Returning to Work Premises" rule [8]

RETURNING TO WORK PREMISES:

> Employees are not permitted in the interior areas of the Property more than fifteen (15) minutes before and after their work shift. Occasionally, circumstances may arise when you are permitted to return to interior areas of the Property after your work shift is over or

[6] Respondent's inclusion of the clause limiting the "Returning to Work Premises" rule to the interior of the hotel and excluding "parking areas or other outside non-working areas" does not eliminate the possibility that a reasonable employee would construe the rule as requiring prior approval for Section 7 activity in nonwork areas in the interior of the hotel.

[7] The present rule in contest is also similar to the rules invalidated in *Brunswick Corp.*, 282 NLRB 794, 795 (1987) and *Teletech Holdings, Inc.*, 333 NLRB 402, 403 (2001) in that, even though union solicitation or other Section 7 activity is not directly implicated in this case, the broad manager approval clause theoretically covers such activity and therefore requires off-duty employees to obtain the employer's permission before engaging in union solicitation in nonwork areas during nonworking time. See also the Board's distinction between the valid rule in *Lafayette Park Hotel* and the invalid rule in *Brunswick Corp.*, where the limited and specific nature of the valid rule's manager approval clause foreclosed a reasonable employee's interpretation of the rule as requiring prior approval for Section 7 activity. 326 NLRB 824, 827 (1998). There are no such limitations here.

[8] The parties amended their pleadings at the hearing to include the more recent rules in the complaint and answer and specifically and skillfully litigated the validity of all four rules—older and newer—both at the hearing and on brief.

> on your days off. On these occasions, you must obtain prior approval from your manager. Failure to obtain prior approval may be considered a violation of Company policy and may result in disciplinary action. This policy does not apply to parking areas or other outside non-working areas.

The revised "Returning to Work Premises" rule was included in the Respondent's L.A. Live handbook, which was distributed to all new employees in and after November 2010 and only given to existing employees that proactively asked for a copy of the new handbook. The material changes to the rule in the L.A. Live handbook substituted "Employees" for the term "Associates" and "Property" for the term "hotel." "Property" may be construed as a more expansive term than "hotel", which I find could further confuse reasonable employees about the scope of the access restriction rule. As such, because the revised "Returning to Work Premises" rule found in the L.A. Live handbook would be understood by a reasonable employee as prohibiting activity protected under Section 7 of the Act without prior managerial approval, I find that, based on the same rationale outlined in the above analysis for the original "Returning to Work Premises" rule, the instant rule is invalid under both *Lafayette Park Hotel* and *Lutheran Heritage Village-Livonia*. The rule also fails under the second requirement of the *Tri-County Medical Center* test because the Respondent failed to distribute the L.A. Live handbook to all of the employees that had been hired prior to November 2010, who had not asked for a copy of the new handbook, and thus the rule has not been clearly disseminated to all employees.

For all the above reasons, I find the rule invalid and that the General Counsel has sustained this element of the complaint.

4. The "Use of Hotel Facilities" rule—Complaint Sub-Paragraph 9(b)

The Use of Hotel Facilities rule states:

> The hotel and its facilities are designed for the enjoyment of our guests. If you wish to use the guest facilities during non-working hours, you need to obtain prior approval from your manager.

The General Counsel and Charging Party both argue that the "Use of Hotel Facilities" rule found in the California handbook violates *Tri-County Medical Center* because it may be reasonably read to include exterior facilities of the hotel to which off-duty employees have a Section 7 right of access. The Respondent counters with various novel arguments, but fails to address the fact that the term "guest facilities" is overly broad and undefined and could confuse reasonable employees into believing that they need to obtain prior managerial approval before engaging in activity protected under the Act, including lawfully entering parking lots, gates or other outside nonwork areas. As such, this rule is invalid under both *Lafayette Park Hotel* and *Lutheran Heritage Village-Livonia* because it invites reasonable employees to believe that Section 7 activity is prohibited without prior managerial approval.

Further, the undisputed record evidence shows that there are outside nonwork areas, such as the outside patio connected to the mixing-room bar area, which could be encompassed by the broad term "guest facilities." Accordingly, I find that this rule violates *Tri-County Medical Center* because it does not limit access solely with respect to the interior of the premises and other working areas. Further, I find the rule has not been clearly disseminated to all employees because the Respondent ceased distributing the California Handbook to newly hired employees sometime in November, 2010.

For all the above reasons, I find the rule invalid and that the General Counsel has sustained this element of the complaint.

5. The updated "Use of Property Facilities" rule

USE OF PROPERTY FACILITIES:

> The Property and its facilities are designed for the enjoyment of our guests and residence owners. You are not permitted on guest or resident floors, rooms, or elevators, in public restaurants, lounges, restrooms or any other guest or resident facility unless on a specified work assignment or with prior approval from your manager. Permission must be obtained from your manager before utilizing any Property outlet, visiting family or friends staying in the Property, or using any of the above mentioned facilities. Please ensure that the manager of the area you intend to visit is aware of the approved arrangements.

The Respondent argues that, because the updated "Use of Property Facilities" rule specifically restricts access to guest facilities that are inside the property, the rule would not be construed by a reasonable employee as prohibiting Section 7 activity. General Counsel notes, however, that the rule itself is ambiguous and unclear and thus should be interpreted as unlawfully restricting employee access to outside facilities. Where ambiguities appear in employee work rules promulgated by an employer, the ambiguity must be resolved against the promulgator of the rule rather than the employees, who are required to obey it. *Norris/O'Bannon*, 307 NLRB 1236, 1245 (1992).

The Respondent responds with the Board's holding that:

> [i]n determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights.[9]

Based on this, the Respondent argues on brief at 15 that employer rules must not be "nitpicked" in order to find a violation.

Without nitpicking, I conclude, when given a reasonable reading, the rule's generalized and ambiguous terms and phrases referring to the Property ("Property," "Property and its facilities," "Property outlet") may nevertheless be reasonably construed from an employee's perspective, as encompassing the entire premises and could be construed by a reasonable employee as unlawfully restricting off-duty employee access to outside nonwork areas. Also, the phrase listing the various areas that are explicitly included in the restriction may not be read in isolation, but must be read in context as simply giving specific examples of areas that are restricted within the broader umbrella of the "Property," the "Property and its facilities," or "any Property outlet." Again, as noted supra, the Board teaches that the ambiguities in rules of this type must be resolved against the Respondent, who promulgated the rule, and not against the employees, who are required to obey them. Under such an analysis the instant rule broadly restricts access to the Property and thus is invalid under *Lafayette Park Hotel* and *Lutheran Heritage Village-Livonia* because reasonable employees would construe the rule as prohibiting activity that is protected by Section 7 of the Act without prior managerial approval. The rule also fails under *Tri-County Medical Center* because the Respondent failed to distribute the L.A. Live

[9] *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004).

handbook to all employees hired prior to November, 2010, and thus the rule hasn't been clearly disseminated to all employees.

For all the above reasons, I find the rule invalid and that the General Counsel has sustained this element of the complaint.

6. Summary and Conclusions

As set forth above, I have found that the General Counsel has sustained his burden of proving each of the four rules is invalid, because they chill employee exercise of Section 7 rights, therefore constituting a violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

Given all the above, including the above findings of fact, and based on the record as a whole, including the posthearing briefs of the parties, I make the following conclusions of law:

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent by distributing to its employees and continually maintaining the following rules at its L.A. Live facility in Los Angeles, California, as set forth on page 6 of its California handbook, has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act:

(a) Returning to Work Premises

> Associates are not permitted in the interior areas of the hotel more than fifteen minutes before or after their work shift. Occasionally, circumstances may arise when you are permitted to return to interior areas of the hotel after your work shift is over or your days off. On these occasions, you must obtain prior approval from your manager. Failure to obtain prior approval may be considered a violation of Company policy and may result in disciplinary action. This policy does not apply to parking areas or other outside non-working areas.

(b) Use of Hotel Facilities

> The hotel and its facilities are designed for the enjoyment of our guests. If you wish to use the guest facilities during non-working hours, you need to obtain prior approval from your manager.

4. The Respondent by distributing to its employees and continually maintaining the following rules at its L.A. Live facility in Los Angeles, California, as set forth on pages 43 and 44 of its L.A. Live handbook has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act:

(a) RETURNING TO WORK PREMISES:

Employees are not permitted in the interior areas of the Property more than fifteen (15) minutes before and after their work shift. Occasionally, circumstances may arise when you are permitted to return to interior areas of the Property after your work shift is over or on your days off. On these occasions, you must obtain prior approval from your manager. Failure to obtain prior approval may be considered a violation of Company policy and may result in disciplinary action. This policy does not apply to parking areas or other outside non-working areas.

(b) USE OF PROPERTY FACILITIES:

The Property and its facilities are designed for the enjoyment of our guests and residence owners. You are not permitted on guest or resident floors, rooms, or elevators, in public restaurants, lounges, restrooms or any other guest or resident facility unless on a specified work assignment or with prior approval from your manager. Permission must be obtained from your manager before utilizing any Property outlet, visiting family or friends staying in the Property, or using any of the above mentioned facilities. Please ensure that the manager of the area you intend to visit is aware of the approved arrangements.

5. The unfair labor practices found above have an effect on commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent violated the Act as set forth above, I shall recommend that it be ordered to cease and desist from engaging in the conduct found unlawful, and from engaging in any like or related conduct. I shall also recommend that the Respondent rescind the rules quoted above, remove them from the appropriate handbooks, and advise the employees in writing that the rules have been withdrawn and are no longer being maintained. *Lafayette Park Hotel*, 326 NLRB 824, 834 (1998).

The Respondent shall post the attached remedial Board notice, in English and Spanish languages, and, in addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB No. 9 (2010). The posting of the paper notices by the Respondent shall occur at all places where notices to employees are customarily posted at the facility.

On the basis of the above findings of fact and conclusions of law and on the entire record herein, I issue the following recommended

ORDER[10]

The Respondent Employer, J.W. Marriott Los Angeles at L.A. Live, its officers, agents, and representatives, shall:

1. Cease and desist from

(a) Maintaining or enforcing provisions in its California handbook under the heading "Returning to Work Premises."

(b) Maintaining or enforcing provisions in its California handbook under the heading "Use of Hotel Facilities."

(c) Maintaining or enforcing provisions in its L.A. Live handbook under the heading "RETURNING TO WORK PREMISES."

(d) Maintaining or enforcing provisions in its L.A. Live handbook under the heading "USE OF PROPERTY FACILITIES."

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind or revise the rules quoted above, amend or remove them from the Human Resource Policy and Procedure Manual, and advise the employees in writing that the rules have been withdrawn and are no longer being maintained.

(b) Within 14 days after service by the Region, post at its L.A. Live facility at which the quoted handbook rules were maintained and distributed, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director, in English, Spanish and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure the notices are not altered, defaced or covered by other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility any time after May 2011.

[10] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 22, 2011

_____
Clifford H. Anderson
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union,
Choose representatives to bargain on your behalf with your employer,
Act together with other employees for your benefit and protection, and
Choose not to engage in any of these protected activities.

You have the right to join with your fellow employees in protected concerted activities. These activities include discussing working conditions among yourselves, forming a union, and making common complaints about your wages, hours, and other terms and conditions of employment, including complaints regarding various forms of harassment.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT maintain or enforce provisions in our California Associate Handbook under the heading “Returning to Work Premises.”

WE WILL NOT maintain or enforce provisions in our California Associate Handbook under the heading “Use of Hotel Facilities.”

WE WILL NOT maintain or enforce provisions in our L.A. Live Handbook under the heading “RETURNING TO WORK PREMISES.”

WE WILL NOT maintain or enforce provisions in our L.A. Live Handbook under the heading “USE OF PROPERTY FACILITIES.”

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you in Section 7 of the Act.

WE WILL rescind or revise the rules noted above, amend or remove them from our California handbook and our L.A. Live Handbook, and advise you in writing that the rules are no longer being maintained.

J.W. Marriott Los Angeles at L.A. Live

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information and an electronic version of this decision from the Board's website: www.nlrb.gov.

National Labor Relations Board Region 21
888 South Figueroa Street, 9th Floor
Los Angeles CA 90017-5449
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (213) 894-5229.