

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

REMINGTON LODGING & HOSPITALITY, LLC
d/b/a THE SHERATON ANCHORAGE

and

UNITE HERE!, LOCAL 878, AFL-CIO

Cases: 19-CA-32148
19-CA-32188
19-CA-32222
19-CA-32238
19-CA-32301
19-CA-32334
19-CA-32337
19-CA-32349
19-CA-32367
19-CA-32414
19-CA-32420
19-CA-32438
19-CA-32487

RESPONDENT'S REPLY TO

GENERAL COUNSEL'S OPPOSITION TO MOTION FOR LEAVE TO SUPPLEMENT THE RECORD

COMES NOW the Respondent named hereinabove, Remington Lodging & Hospitality, LLC d/b/a The Sheraton Anchorage, with the following reply to the General Counsel's opposition to Respondent's simple request to ensure that the Board has a complete record of the enforcement proceedings in this case.

This Motion should be granted to allow the Board review of the results of the General Counsel's petition for injunctive relief pursuant to Section 10(j), and the compliance Respondent has provided and performed pursuant to the 10(j) ruling and in accord with the Administrative law judge decision under review.

The General Counsel's reliance on section 102.48(d) of the Board's Rules and Regulations is misplaced. By its very terms, section 102.48(d) relates to motions for "reconsideration, rehearing or reopening of the record *after the Board decision or order.*" (emphasis added). Since this Board has yet to rule, section 102.48(d) has no application. Moreover, no request for "reconsideration" or "rehearing" is at issue. Hence, the premise identified in this section – that such motions are granted only under "extraordinary circumstances" – has no application. This premise would in any event have less force, if not an absence of force, when the only relief being sought would have no extraordinary impact on the case; *i.e.*, unlike the situation with a motion for reconsideration or rehearing, we are dealing here with only a request to supplement the record.

All Respondent is seeking is accuracy and completeness of the record with respect to compliance already achieved, so that when the Board does issue its ruling – either granting some or all of the exceptions, or none of them – it will do so in the context of compliance previously achieved. And, in the case of a grant of one or more of Respondent's exceptions, so that a reversal of prior compliance actions can be efficiently and effectively reversed.

Completeness of record is needed in order for the Board to make an informed ruling with respect to remedies, and it will be needed in the event enforcement or review is pursued at the appellate level. Respondent, however, disavows any attempt, as suggested in the Opposition filed by the counsel for the General Counsel, to seek review of the 10(j) ruling, nor could the Respondent procedurally use supplementation of this record for such a purpose. The

appellate court should, however, have before it all the facts concerning the degree of compliance which has in fact occurred.

The General Counsel has not identified any prejudicial harm which could possibly be caused by granting this Motion to Supplement, nor would the granting of this Motion result in any meaningful delay.

This motion is timely, contrary to the assertion by counsel for the General Counsel. The 10(j) action was not filed until after the final briefs on exceptions and cross-exception were submitted to the Board. The most recent ruling by the Court was its June 11, 2012 Order clarifying its primary ruling. This Motion to Supplement the Record was filed one week later, on June 18, 2012.

The Board's assessment will not be complete without an examination of the interim enforcement actions that have already been taken by the Board and the remedies that have already been imposed. The General Counsel wishes for the Board to make its decision about enforcement "in the dark," without considering the enforcement actions that have already been taken.

The General Counsel inexplicably opposes even a partial granting of this Motion to allow a consideration of the transcript of proceedings and the Judge's several different Orders, which would, once again, leave the Board wholly in the dark about what has occurred in this case since completing the exceptions briefs in December of 2011. Respondent urges the Board to at least allow a partial grant, permitting the supplementation by the submission of the primary

10(j) pleadings (*i.e.*, excluding merely procedural pleadings), the hearing transcript, and the Orders of the court.

WHEREFORE, the Respondent respectfully requests this leave to supplement the record.

DATED, this 5th day of July, 2012.

/s/ Peter Fischer
Arch Stokes, GA Bar 683100
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PROOF OF SERVICE

I am employed in the County of Fulton, State of Georgia. I am over the age of eighteen years and not a party to the within action; my business address is 3593 Hemphill Street, Atlanta, Georgia 30337.

On June 30, 2012, I caused the following document(s) to be served:

Respondent's Motion for Leave to Supplement the Record

— BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Atlanta, Georgia, in the ordinary course of business pursuant to Code of Civil Procedure Section 1013(a). 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.

— BY FACSIMILE: I served said document(s) to be transmitted by facsimile pursuant to Board's Rules and Regulations, Series 8, as amended, Section 102.24. The telephone number of the sending facsimile machine was (404) 766-8823. The name(s) and

facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.

X BY THE NLRB'S ELECTRONIC FILING SYSTEM on its website: <http://www.nlr.gov>. It was e-filed with Region 19 and The Office of Executive Secretary

X BY ELECTRONIC MAIL to:

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Executed on July 5, 2012, at Atlanta, Georgia.

I declare under penalty of perjury under the laws of the State of Georgia that the foregoing is true and correct.

/S/ Peter Fischer

Peter Fischer, attorney

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