

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

STAMFORD PLAZA HOTEL &  
CONFERENCE CENTER, LP

and

Case No. 34-CA-13031

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 371, CLC

*Rick Concepcion, Esq.*, Hartford, CT  
for the General Counsel.

*Denise A. Forte, Esq. and Scott P.  
Trivella, Esq.* (Trivella & Forte),  
White Plains, NY for the Respondent.

*Keri Hoehne*, director of organizing, Westport,  
CT for the Charging Party.

**DECISION**

Steven Fish, Administrative Law Judge: Pursuant to charges and amended charges filed by United Food and Commercial Workers Union, Local 371, CLC, herein called the Union, on July 1 and July 28, 2011,<sup>1</sup> respectively, on November 30, the Regional Director issued a complaint and notice of hearing, alleging that Stamford Plaza Hotel & Conference Center, LP, herein called Respondent, violated Section 8(a)(1) of the Act by interrogating its employees regarding their union activities on four separate occasions by four separate alleged supervisors and agents in June and July and Section 8(a)(1) and (3) of the Act by discharging its housekeeping and engineering/maintenance employees and subcontracting their work because their employees assisted the Union.

The trial with respect to the allegations in the above complaint was held before me on February 7, 8 and 9, 2012. Briefs have been filed by General Counsel and Respondent and have been carefully considered.

Based upon the entire record, including my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. Jurisdiction and Labor Organization

Respondent has provided hotel guest room and suite accommodations, meeting rooms and other event space at its facility located in Stamford, Connecticut.

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<sup>1</sup> All dates, unless otherwise indicated, are in 2011.

5 During the 12-month period ending October 30, 2011, Respondent derived gross revenues in excess of \$500,000 at its Stamford facility and purchased and received at its Stamford facility goods valued in excess of \$50,000 directly from points located outside the State of Connecticut.

It is admitted, and I so find, that Respondent is and has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

10 It is also admitted, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

15 II. Prior Related Case:  
Rosdev Hospitality Secaucus LP and LaPlaza Secaucus LLC,  
349 NLRB 202 (2007)

20 On January 31, 2007, the Board issued a Decision and Order in the above case, concluding in agreement with a decision issued by Judge Mindy Landow on July 28, 2006 that Rosdev Hospitality, Secaucus and LaPlaza Secaucus (herein collectively called Rosdev) violated 8(a)(1) and (5) of the Act by unlawfully changing the terms and conditions of employment of its employees by implementing a leave accrual policy that conflicted with the predecessor employer's past practice and Section 8a)(1) of the Act by its supervisor informing employees that Rosdev was going to "get rid of the union."

25 The case involved Rosdev Hospitality, the same "parent" company as in the instant case, and La Plaza, found to be joint employers of a hotel in Secaucus, New Jersey, that the Respondent purchased from its former owners, Felcor Suites, managed by Bristol Hotels, a division of Intercontinental Corp. The prior owners (Felcor) had a collective bargaining agreement with UNITE HERE, Local 69 (herein called Unite), which covered a unit of essentially  
30 all employees at the hotel, excluding office clerical employees, confidential employees and supervisors.

35 When Rosdev purchased the hotel from Felcor, it did not agree to adopt the terms of the collective bargaining agreement that was still in existence between Unite and Felcor. Rosdev was required by the sale to hire two-thirds of the hotel's work force. In fact, Rosdev decided to hire all of Felcor's hourly employees, except for bartenders due to Respondent's lack of a liquor license.

40 Rosdev paid the employees the same salaries that they had received and made no other changes in working conditions, other than the change in leave accrual, alleged to be violative of the Act.

45 Rosdev had argued that although it had not agreed to adopt the prior contract with Felcor, it did follow the terms, which stated that seniority for vacation and benefits would be measured by length of tenure with the "Employer" (Felcor). Therefore, since Rosdev was the employer once it began operating the hotel, it made no changes in working conditions.

50 However, the judge found, and the Board agreed that, in practice, seniority had always been measured by employees' tenure at "the hotel" and not by employment with Felcor as stated in the contract. In such circumstances, the Board concluded that "for purposes of measuring seniority for the accrual of leave, the relevant terms and conditions of employment were those established by Felcor's actual practice and not contained in the expired contract but

not followed in practice.” 349 NLRB at 203. Therefore, it adopted the judge’s finding that Rosdev unilaterally changed that established practice in violation of Section 8(a)(1) and (5) of the Act.

5 The Board also agreed with the judge that Rosdev violated Section 8(a)(1) of the Act by its supervisor telling an employee that Rosdev was going to “get rid of the union.”

10 In that trial, Rosdev had contended that the unit was not appropriate and that, in fact, during bargaining, Unite had agreed to two units, one consisting of food and beverage employees and the other of housekeeping employees. However, the evidence disclosed that this was merely a proposal of Rosdev and that Unite had stated that it was discussing negotiating two separate collective bargaining agreements. However, since no agreements were reached on that change, the judge found, and the Board agreed, that the single unit has historically been represented by the union and was an appropriate unit.

### 15 III. Background and Corporate Structure of Respondent

The facility is a hotel containing 448 guest rooms and suites, a restaurant and bar as well as meeting and banquet rooms. In July of 2009, Respondent purchased the hotel. The hotel had previously been operated as a Sheraton.

20 Respondent is owned by a Canadian based entity, known and interchangeably referred to as Rosdev Hospitality or Rosdev Management (Rosdev). Rosdev is primarily a real-estate property management firm, which has been in business for over 50 years and is a family business owned by members of the Rosenberg family.

25 In the 1950s, Michael Rosenberg, the son of the founder of the company, came into the business and was instrumental in the company branching out into the ownership and management of hotels. Since that time, as part of its business, Rosdev owns and operates six other hotels, in addition to Respondent. Four of these hotels are located in Canada, one in Secaucus and one in Queens, New York, near the JFK Airport.<sup>2</sup>

30 Respondent hired Henry Topas, one of its former executives, in October of 2009, to oversee the hotel’s operations, including the then-purchased Stamford hotel. Topas was engaged primarily in overseeing construction and engineering functions at the property, but was, at times, consulted concerning the day-to-day issues concerning the hotel by the general manager, who is the primary official in charge of day-to-day supervision of employees and operation of the hotel. Thomas Rosenberg, the primary shareholder of Respondent and general partner, is normally at the hotel once or twice during each week.

40 When Respondent took over the hotel, it employed a general manager. That general manager left. It then employed an individual named Mahmoud Shanab, who, although he did not, according to Topas, have the title of general manager, essentially performed the functions of that position. Clearly, the employees believed that Shanab was the general manager. After the events occurred, alleged to be violative of the Act, Respondent terminated Shanab and hired Michael Moser as the hotel’s general manager.

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50 <sup>2</sup> The latter property, although purchased by Rosdev, is not yet operational as the property was purchased as a result of a bankruptcy and renovations were still in process as of the trial. Thus, this hotel had not yet opened. The Secaucus property is the hotel involved in the prior Board case, detailed above.

Respondent employed a number of individuals as supervisors and managers. They were Bruce Linval, director of housekeeping, Mark Pisacane, facilities manager or director of engineering, Carlos Morel, food and banquet manager, Gustavo Soto, food and banquet supervisor, and Maria Acevedo, housekeeping supervisor.<sup>3</sup>

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The number of employees employed by Respondent during the relevant time is somewhat uncertain, but according to employee witnesses and the union representative, Keri Hoehne, it employed approximately 50 employees. This included about 22 housekeepers, 5 maintenance/engineering employees, 4 banquet workers and bar and restaurant employees. Respondent did not present any contrary evidence to this number of employees, except that Topas testified that, in fact, Respondent did not employ any bar and restaurant employees. Rather, Topas contends, as will be described more fully below, that the bar and restaurant employees were employed by another entity, allegedly unaffiliated with Rosdev, but who rents out the property from Respondent and employs the bar and restaurant employees. Topas did not testify as to how many bar and restaurant employees were employed at the hotel by this entity.

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However, the record is clear that prior to the hotel being purchased by Respondent, it was operated as a Sheraton by the prior owner and that all the employees of the former owner were directly employed by that owner and all these employees were hired by Respondent and/or the other entity to perform essentially the same functions that were performed when employed by the Sheraton entity.

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Thus, while the number of bar and restaurant employees working at the hotel is unclear, it appears that the Union believed that they were all employees of Respondent since it petitioned to represent and attempted to organize all of these employees, which included bar, restaurant and kitchen employees.

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It is not essential for the purposes of this case to resolve the status or the number of bar and restaurant employees since the complaint allegations relate primarily to conduct involving the housekeeping, engineering and banquet departments.

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#### IV. Supervisory and Agency Status of Acevedo, Linval, Morel, Pisacane and Soto

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On August 3, the Region issued investigatory *subpoena duces* to Respondent. On the cover page of the investigatory subpoena, Respondent was informed that the Director was requesting documents in order to enable him to decide various issues raised by the Union's charge, including "the supervisory status of certain individuals employed by Respondent, who are alleged to have made unlawful statements to employees."

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Respondent's attorney responded to the subpoena with a letter containing attachments responsive to many of the items subpoenaed and explaining that some other items will be forwarded under a separate cover. With respect to subpoenaed information regarding supervisory status, the letter stated as follows: "Moreover, under a separate cover my office will forward information regarding supervisors/managers who have authority to hire, fire, suspend,

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<sup>3</sup> Respondent concedes that these individuals had these titles but disputes the fact that these individuals were supervisors or agents of Respondent under Section 2(11) or 2(13) of the Act. Respondent admits that Shanab was a 2(11) supervisor and agent, although his title was actually operations manager.

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etc.”

On September 28, Respondent’s attorney submitted the following to the Region, in relevant part:

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Attached please find the supplemental information, which I referenced in my 9/19/2011 submission to your office.

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I have attached a list of Managers/Supervisors employed from January 2011 to date. Please be advised that I have been informed by my client that the only individual with the authority to hire or fire is the Operations Manager of the hotel, Mahmoud Shanab.

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The attached list submitted by Respondent is entitled “Managers/Supervisors Employed from 1/2011” and reads as follows:

Managers/Supervisors Employed from 01/2011

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Department	Name	Position	Date of Hire		Last Day of Work
Front Office	Rangi, Amit	Director of F/O	09/20/09		
	Manicham, Hanithah	F/O Manager	07/09/09		
HSKP	Bruce, Linval	Executive HSKP	11/09/04		06/24/11
	Acevedo, Maria	HSKP Supervisor	07/09/09		06/25/11
	Guerrero, Maura	Executive HSKP	08/04/11		
Engineering	Pisacane, Mark	Director of Eng.	06/07/10		07/08/11
	Stewart, Rudi	Director of Eng.	08/09/11		
F & B	Velarde, Len	Director of F&B	12/07/09		07/09/09
	El-Masry, Safwat	Director of F&B	07/25/11		
	Morel, Carlos	F&B Manager	07/09/09		
	Soto, Gustavo	F&B Supervisor	07/09/09		
Accounting	Prashad, Bharat	Controller / Acting GM from 01/27/11 to 06/10/11	11/29/04		06/10/11
Sales	Naghibosa, Masoud	Director of Sales	12/06/10		03/04/11
HR	DeGeorge, Jennifer	Director of HR	06/20/04		01/18/11
	Sing,	Acting	01/15/10		01/31/11

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	Poonam	Director of HR from 01/18/11 to 01/31/11			
5	Miller, Jessica	Acting Director of HR from 01/31/11	07/09/09		
10	Operations Shanab, Mahmoud	Director of Operations	05/15/11		
	GM Bhandari, Vishal	General Manager	08/10/09		01/27/11
15	Michael Moser	General Manager	07/20/11		

Evidence was adduced during the trial concerning the status of these individuals. The evidence consisted of testimony from employees, documentary evidence and testimony from Topas, who was the only witness called by Respondent. Neither Linval, Pisacane, Acevedo, Morel nor Soto testified.<sup>4</sup>

Linval was hired by Respondent on July 3, 2009 as the director of housekeeping (also referred to as the “executive housekeeper”) at the hotel at a salary of \$60,000 annually. Respondent sent Linval a letter confirming its offer and his acceptance of the position. It reads as follows:

Congratulations Linval! I am pleased to confirm our offer and your acceptance to the position of Director of Housekeeping at the Stamford Plaza Hotel and Conference Center, in Stamford Connecticut. As we discussed, your role is a very important one and will require flexibility and focus on the Housekeeping Department. As a manager, you will work hand-in-hand with all managers, department heads, all line level associates and myself to reach the ultimate in product quality, exceptional customer service and of course, maximizing revenues.

This letter will serve as our official offer and by signing below your acceptance of the position of Director of Housekeeping at the Stamford Plaza Hotel and Conference Center, in Stamford Connecticut.

1. Your official start date will be July 09, 2009. The Company follows a policy of Employment-at-will. You are free to end the Employment relationship at any time, with or without cause, and the Company has the same right. The amount, kind, and eligibility requirements for benefits and incentives are subject to change as provided for in the applicable benefit and incentive plans and policies. Nothing in this offer is intended to create a contract for employment or the providing of any benefit or incentive.

<sup>4</sup> Morel and Soto were still employed by Respondent at the time of the trial. Linval, Acevedo and Pisacane were not employed by Respondent during the hearing, but Respondent knew where they were, and Topas conceded that he had or could have spoken to these individuals about the trial. Nonetheless, as noted, none of these individuals were called as witnesses and did not testify.

2. You will be compensated at the rate of \$1,153.84 per pay period (the equivalent of \$60,000 annually).

5 3. Stamford Plaza Hotel and Conference Center, in Stamford Connecticut offers Medical, Dental, Life Insurance, Short Term Disability, and Long Term Disability. You will be eligible for Life Insurance, Short Term Disability, and Long Term Disability Insurance effective August 01, 2009, as this insurance is 100% paid by the company. You will be eligible for Medical and Dental Insurance effective  
10 November 01, 2009. You will be offered a 50/50, employee/employer contribution to the plans premium.

15 4. After one year of service you will be eligible for two (2) weeks of vacation. Vacation time is accrued each pay period worked, at a rate of 1.538 hours per week-first year. After five years of service your vacation time increases to 3 weeks, at a rate 2.307 hours per week. You will also be eligible for personal time each year; you will be eligible for five (5) personal days after six  
20 (6) months of continuous employment. Please note, you will be eligible for a maximum of five (5) personal days distributed per calendar year. We encourage our staff member to take off the time you have earned therefore personal time does not roll over year after year (based on calendar year). Earned vacation time can only be accumulated up to a maximum ceiling of one and one time your maximum yearly allotment. Should you reach your  
25 ceiling, no additional vacation time will be accrued or earned until you reduce the amount of vacation time you have accumulated. Your original date of hire of November 09, 2004 with Rosdev Hospitality will be honored.

30 5. Stamford Plaza Hotel and Conference Center, in Stamford Connecticut observes eight paid holidays: New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

35 6. We will also offer a 401K savings plan. After 6 months of continuous service you will be able to participate in the plan. The employer will contribute 50% of every dollar you contribute up to a 4% of the employee contribution. You will be fully vested after three (3) years of continuous service.

7. You will receive free Dry Cleaning for your work-related attire.

40 Again, Congratulations! We look forward to welcoming you to our team at the Stamford Plaza Hotel and Conference Center in Stamford Connecticut. Please sign below and return to my attention. If you have any questions, please feel free to contact me.

45 Sincerely,

Jennifer DeGeorge, CHRE  
Director of Human Resources

50 In Respondent's position description for its "housekeeper" position, which such employees received and signed, it states that the housekeepers report to the executive housekeeper as well as to the housekeeping supervisor. It also requires housekeepers to notify

supervisors when service is complete, report to supervisors any rooms unable to be serviced by 2:00 p.m., report needed repairs and unsafe conditions to supervisors, and to report lost and found articles to supervisors. The position description also states that the employees must respond “to housekeeping requests from guests or management in a timely and efficient manner.”

Anna Rodriguez was employed at the hotel as a housekeeper since 2001. She was employed in that position through different ownerships, including when the hotel was a Sheraton, prior to Respondent taking ownership in 2009. Her duties had continued to be the same, before and after Respondent began operating the facility. She testified that Linval was the director of housekeeping and Acevedo was the housekeeping supervisor in charge of the 22-25 housekeepers.

Every morning Linval and Acevedo would start the day with a meeting in the housekeeping office, where Linval and Acevedo had desks and computers. Both Linval and Acevedo had keys to this office, and the housekeepers did not have access to the computers or keys to the office.

During these meetings, either Linval or Acevedo would assign the rooms to the housekeepers to clean and would inform the housekeepers to clean the rooms well and would indicate which rooms were VIP rooms, which were rooms occupied by important guests, such as Topas when he was staying there, which would require special attention and care.

Respondent’s records reveal three disciplinary warnings signed and issued by Linval. On June 26, 2010, Linval signed a company document, entitled “Notice of Corrective Action,” reflecting a verbal warning issued to employee Norien Erick for “bathroom cleanliness.” Linval summarized the incident on the form, explaining that a guest had complained about the cleaning the room (cleaned by Erick) in that the shower curtain was not changed. Linval related that the employees was trained by her manager for overall room cleanliness and failed to follow procedures. The document also states, “If this incident should occur again, further disciplinary action will be taken which may lead to termination.” This warning was signed by the employee as well as by Jennifer DeGeorge, Respondent’s human resource director.

On June 28, Linval signed a document marked “Final Warning,” for employee Anthony Nazaire. The infraction, as described by Linval, was as follows: “Lost and Found: Theft of property belonging to a guest or fellow employee of the hotel. Willful damage or misuse of hotel or guest property.”

Linval further described the details of the incident and indicated that Nazaire had stripped the room, which was still occupied, although in error, as Respondent believed that the guest had checked out. Nazaire brought the suitcase and sneakers to housekeeping as apparently was required, but threw out a number of other items in the rooms belonging to the guest, such as sunglasses, toothbrush, sandals, cologne, watch, razor and some clothes. That action was contrary to Respondent’s policy, and Linval so noted. Linval also stated, “If this incident should occur again, Anthony will be terminated from the Stamford Hotel.” This document was also signed by the employee and DeGeorge and included an expressed agreement by Nazaire to pay \$529.00 to reimburse the guest for the items thrown out. Respondent’s emails reveal that it was Linval, who communicated with the guest about the incident, explained what had happened and apologized for the inconvenience. Linval requested from the guest and received a list of the missing items, along with prices, which Respondent used to compel Nazaire to reimburse the guest for the loss of these items that he had thrown out.

On September 30, Linval signed a verbal warning issued to Germithe Telemargue for “room cleanliness.” Linval related that a guest had complained that there was hair and a stain on the sheet of the room that the employee had cleaned. Linval commented that “if this incident should occur again, further disciplinary action will be taken which may lead to termination.” This document was signed by the employee as well as by DeGeorge.

On June 24, 2010, Respondent’s then-general manager Vishal Bhandari documented a discussion held that day between Bhandari, Linval and DeGeorge. This document reads as follows:

Stamford Plaza Hotel and Conference Center  
 Record of Documented Conversation: 11am on Thursday, June 24, 2010  
 Attendance: Linval Bruce: Director of Housekeeping, Vishal Bhandari: General Manager, Jennifer DeGeorge, Director of Human Resources

Areas of Concern: Accountability, follow through, and leadership skills

Meeting follow up to April 27, 2010 conversation. Areas of concern within the Housekeeping Department are as follows:

Action Plan with Due Date:

- Housekeeping training- Room Attendants, Housepersons, and supervisors- DUE Friday, July 2nd
- Room Inspection checklist to be revised and given to Jennifer by Friday, June 25th
- Room Inspection checklist is to be used by Bruce and Supervisors by Monday, June 28th
- Every Arrival Room must be inspected using the point-system checklist starting Monday, June 28th
- Bruce is to produce daily and weekly reports for Vishal compiling and summarizing the daily checklist sheets: Areas of concern; high performers, low performers, action plan for department, ect. This report is due weekly to Vishal starting Friday, July 9th.
- Room Attendants are to be ranked by performance level- There are 17 Room Attendants- 1-17 with documentation.
- Action Plan for Supervisors-More inspections, must be held accountable, work orders need to be completed
- The laundry situation- items need to be counted- what goes out, what is comes back- there needs to be laundry tracking log. Starting, June 28th.

Additional Areas that were addressed:

- Several emails to Vishal addressing the lack of cleanliness within the hotel. Guest rooms and public space is dirty, work orders are not being completed
- Maria and Olga- Two Supervisors- training and documentation. Jennifer and Bruce are to talk to Maria about her schedule- full time a possibility. Olga- needs to be held accountable for her actions and leadership- this is to be a documented conversation with Jennifer and Bruce.

- Bruce's Schedule- Every other week- Thursday and Friday will be taken off, then the next week, Saturday and Sunday will be taken off. Between Front office and Bruce, someone must be here every Saturday and Sunday.
- The laundry situation- items need to be counted- what goes out, what is comes back- there needs to be laundry tracking log. Starting, June 28th. This is something that is started and stopped and started again. This has to be a consistent process.
- Need to see results from the department
- Large leadership role- need to be held accountable and must hold team accountable for all actions and projects assigned.
- Acid from the pool is not an approved cleaning product for guest bathrooms- Bruce is to call eco-lab and speak with them about the rust stains on the toilet. Only OSHA approved cleaning agent is to be used.

*Action Plan: The above need to be resolved and tasks need to be completed.*

- Need to see a change- The three of us will meet on Friday, July 9th
- Need to see results from the department- See timeline and dues dates for follow-up above
- Large leadership role- need to be held accountable and must hold team accountable for all actions and projects assigned.
- Timelines- must be followed and communicated. Being asked multiple times for the same issue need to come to a stop.
- The expectation is that tasks will be done in a timely fashion, tangible evidence of communication will take place, and is accountable for the success of the housekeeping and engineering departments.

Mark Pisacane was hired by Respondent as the director of facilities (also known as the facilities manager) at the hotel at a starting salary of \$75,000 annually, the highest rate of pay for any manager, including that of Operations Manager Shanab. He started working for Respondent on June 7, and he received an acceptance letter from Respondent, similar to the letter received by Linval, and signed by DeGeorge, which states *inter alia* that “you will report directly to the General Manager and will be responsible for the entire Engineering team, hotel renovations, preventative maintenance and upkeep, security, technical AV duties that support the Stamford Plaza Hotel and Conference Center assigned by the General Manager.” It further reflects that “as manager, you will work hand-in-hand with all managers, department heads, all line level associates and myself in product quality exceptional.”

Respondent’s position description for “engineering associate” states that the employee reports to the facilities manager and that they must *inter alia* “assist the Facilities Manager in any project as directed.”

Jose Rivera had worked at the hotel in various jobs for different owners since 1985. Since 1987, he has been employed as a maintenance employee and was hired by Respondent as an engineering associate. As an engineering associate, Rivera and the other four employees in that classification performed a number of maintenance related functions, including repairing lights, sheet rock work, electrical and plumbing related tasks and wallpapering. These employees reported directly and exclusively to Pisacane once Pisacane was hired in June of 2010, and Pisacane assigned and directed the work of every employee in the department. When a job needed to be performed, Pisacane would decide which employee would be assigned to do it. Indeed, Topas admitted that Pisacane was “in charge of the engineering

department.”

Pisacane had an office in the engineering department, and he alone had keys to that office.

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Pisacane also signed a company document dated 12/8/10, entitled “Paid Time Off Personal Time Off Request” for employee Staniszaus Tysz, approving 16 hours of personal leave for him for August 5 and 6, 2010.

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Pisacane also signed a company document dated 6/29/10, relating to Rivera. The document consists of a printout of Rivera’s in- and out-time punches for the period of June 13 through June 25. The punch-out for June 22 marked 3:38 p.m. is circled. Underneath the printout, the following words are written: “Verbal coaching explaining no overtime will be accepted. 30 mins, OT.” Rivera’s signature appears on the document along with Pisacane’s.

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Pisacane would also ask Rivera or other employees if they were interested in working overtime, and the employees would inform Pisacane if they could or could not do it. Employees were not required to accept overtime assignment at Respondent.

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In June of 2010, Respondent employed approximately five banquet workers, including employees Paul Hidalgo. Hidalgo began working at the hotel in 2006 when it was a Starwood property. His position and job has been the same, that of banquet houseman. He sets up rooms for events, such as banquets, dances and other events. His work assignments have been given to him by banquet manager Carlos Morel, and at times, by banquet supervisor Gustavo Soto.

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They would tell Hidalgo or the other employees present what jobs to perform, such as setting up a room for a conference and provide refill and clean-up refreshments served during the events.

Both Soto and Morel shared an office in the banquet department.

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When Hidalgo needed a day off or a change in schedule, he would ask Morel, and Morel would grant his request or ask him to take the day off on a different day due to scheduling issues. Morel made the decision (on Hidalgo’s request) without involvement of any other management official.

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Hidalgo believed that Soto had the authority to discipline employees based on an incident involving a fellow employee named Cedric, who was constantly coming in late to work. On that day, Cedric and Hidalgo were talking, and Soto approached them and asked Cedric to come with him into the office. After about 15 minutes, Cedric came out, and Hidalgo asked what happened. Cedric informed Hidalgo that Soto “got mad at me,” threatened to “write it up” and said to Cedric “one more time, I’m out.”<sup>5</sup>

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Topas conceded that Morel had the authority to assign work to banquet department workers. He also testified that Soto would fill in for Morel, in Morel’s absence, since Morel only works five days a week and during the day. Thus, in the evenings and when Morel is off, Soto will assign work. Soto, however, according to Topas and agreed to by Hidalgo, will also perform the same work as Hidalgo, such as setting rooms and other tasks performed by banquet employees. Topas testified that, at times, Soto would also fill in to act as a waiter or a bartender when “it gets busy.”

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<sup>5</sup> Neither Soto nor Cedric testified.

The record reflects that Morel was paid a salary of \$36,000 annually and his position is listed on Respondent's personnel form as food and beverage supervisor and manager. In Morel's personnel file, there is a document entitled, "Certificate of Training," which certified that Morel completed sexual harassment training conducted on January 28, 2010, which meets the requirements of Connecticut Regulations of State Agencies Section 46(a)-54-200-207. The document states that it was presented by DeGeorge, director of human resources for Rosdev.

Morel's personnel file also contained four memos, all dated June 10, 2010, which were addressed to "All Outlet Servers and Supervisors," dealing with various subjects. These memos are set forth below, and each of them contained Morel's signature, dated June 11, 2010.

Re: Room Service Deliveries

You should NEVER be uncomfortable about delivering a Room Service order. If a guest is inappropriately dressed or behaving in a manner to cause you concern DO NOT ENTER THEIR ROOM.

In the first case, the guest being under or inappropriately dressed you should NEVER enter the room. You should address the guest by saying "I'm sorry. If you are charging this to your room I can leave it here outside the door. If you'd like to pay cash I'll be happy to come back in a few minutes when you've had time to put something on." Most guests will just ask you to leave the order. Charge the guests room and make note of the situation why there is no signature on the check. If the case involves a large or expensive order, over \$100, or you think it's a scam to get out of paying, do not leave the order, let the guest know you'll be back with the Manager in just a minute.

In the second case, the guest is unruly or you feel threatened, simply offer to hand the guest their order. "I have your order for you here, sir/ma'am. I just need you to sign off on the receipt." Make a note on the check as you close it in case there is some dispute or complaint made by the guest in the future.

Please note. In cases involving the delivery of ALCOHOL. As a Server you are still responsible for maintaining alcohol service laws when serving a guest in their room. Just as at the bar or dinner table, you MUST feel comfortable giving the order to the guest. You MUST be confident that this guest is not already inebriated (drunk) and that your drinks will not put them over the legal limits. Although the guests are staying at a Hotel, they can still be involved in alcohol related incidents including sickness, fighting, and driving while intoxicated. You want the guests to enjoy themselves, but you must look out for their safety and that of others.

Re: Supervisors on Duty

In the event there is no Food & Beverage Supervisor or Manager on duty, and a situation arises with which you need help, this is what you can do.

1. Check with Front Desk Supervisor, Manager, or Director
2. Ask the Front Desk Agent if any of the Management Team are currently staying at the Hotel. If so, contact them.
3. Contact the Food & Beverage Director via Phone
4. Contact an F&B Manager or Supervisor via Phone

Remember as an EMPOWERED employee, we have confidence in your ability to make common sense decisions which effect the Hotel and it's guests. Please feel free to contact a supervisor at any time in which you are uncomfortable with a situation, but also feel free to make a decision based on your experience and sense of what's right when no supervisor is available.

Re: Security Guards

The Hotel's Security Guards are here to assist you, whether they are working directly for the Hotel, or as contracted labor. They should always be able to be contacted by phone during the evening after 10pm

In the event of an incident involving a guest or employee, Security should be contacted immediately. Their experience and skills can help solve the problem and correct the situation.

If you foresee a problem in the future, potential issues, involving a guest or employee, contact Security. Your aim is to diffuse the situation before it becomes an event or issue.

Security should always be called if you are uncomfortable approaching a guest's room to deliver room service or you think something inappropriate is happening in one of the rooms. They will investigate and determine whether or not to contact the Police.

Security should always be called if a drunken guest comes to the F&B Outlet. They will provide you with another set of eyes to observe the guest and back you up if you deny the guest service.

Security Guards are not Police Officers, nor are they bouncers. If something serious occurs- call the Police or contact Security or another Team Member to contact the Police. Security will do the same. If there is a violent or unruly guest who needs to be asked to leave, Security can do this. If the problem persists security will call the Police to have the guest removed.

In situations where there is no Security Guard present, contact a manager immediately. If there is no manager reachable, call the Police if necessary.

Re: Saying "No" to a Guest

We try to never say "no" to a guest. There are, however certain situations in which you will be unable to fulfill their request. The word "no" can almost always be avoided.

In most situations your answer should be to offer the guests the alternative:  
-Can I have Lobster Newburgh? Sir, we offer several types of Seafood on our menu. Salmon, Ahi Tuna, Shrimp...

-Do you sell Sake? I'm afraid the closest I can come to Sake is Dry White Wine and a bowl of

Rice! Would you like to see our wine list?

-Do the Wings come with a Salad? We are happy to make you a Side Salad but there will be a charge for that.

5 Regarding changes to the menu, the best response is usually to give us a minute, we'll check with the Chef and see what we can do. Most changes are close enough in value ie Salad for Fries, Veggies for Potato, Rice for Mashed, that we are happy to offer that to a guest. If you feel the change alters what the price should be, let the guest know the difference. "Sir it will be an extra to change the Chicken Quesadilla for Shrimp". "Ma'am we're happy to make an order of 20 wings for your table. The price will be \$14."

10 Guests who are long term stay or regulars frequently are looking for changes to the menu. Let them know you'll work with them to find them something they'll like. If the chef will make it, we can offer it. Just keep in mind the amount of time it will take to prepare the special dish, and the cost involved. Let the guest know both. Be prepared to offer the same service to all guests especially if they overheard you with the long-stay guest. Of course, if you are  
15 extremely busy, it may not be the best time to offer such creativity with the menu.

20 Longterm and regular guests often expect some upgrade in their service. Absolutely greet them by name whenever possible and use terms like "welcome back" and "good to see you AGAIN". Service should be consistent for all guests.

25 Alcohol rules are blind. They are the same for everyone all the time. No special rules for guests of hotels, regular drinkers, or big tippers. "I'm afraid I can't offer you any more alcohol at this time sir. Would you care for a coffee or soft drink?"

30 Identical memos also appeared in Soto's personnel file and were signed by Soto on June 12, 2010. In this regard, Topas testified that "outlet servers" include employees in the bar or at the restaurant, such as waiters, waitresses, busboys and bartenders and that he believed that all of the employees performing those functions would have received these memos.<sup>6</sup>

35 Respondent's handbook policies, which are distributed to all of its employees, require employees to notify and speak with their "department manager" before calling out absent or arriving late and that employees can be terminated immediately if found to be involved in any of a number of acts, including "insubordination, willful disregards or disrespect toward supervisors or representatives of management."

#### 40 V. The Union Campaign

In late May and early June, Union representative Keri Hoehne was contacted by one of Respondent's housekeepers about seeking union representation. Hoehne and co-organizer Anthony Ciento agreed to meet with interested employees at the apartment of housekeeper

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45 <sup>6</sup> Apparently, Respondent was not asked to provide files for food and beverage employees, so the record is not clear as to whether their files would also include these documents, although it seems likely that they would. I note, as mentioned above and more fully discussed below, Topas testified that the food and beverage employees at the hotel were actually not employed by Respondent but by another entity, who rents space from Respondent. However, at another  
50 point in his testimony when these memos were discussed, Topas testified that the "outlet servers" as defined in the memo were "employed by the company, and not outsourced.

Anna Rodriguez on June 2.

On that date, Hoehne and Cliento met with six housekeepers, including Rodriguez, at Rodriguez's apartment. The employees present at the meeting informed the union  
5 representatives that they were interested in union representation because the health insurance that the Respondent offered to employees was too expensive and that only one employee was purchasing the insurance provided. Another reason mentioned was that their wages had remained stagnant and that they had not received an increase for between two and three years. Additionally, employees were concerned about increased workload that was being considered  
10 by Respondent. In that regard, employees had been informed by housekeeping director Linval that operations manager Shanab had ordered the number of rooms cleaned daily be raised from 17 to 22. Further, employees were concerned about their days and hours being cut back, resulting in loss of hours and that Shanab, who had recently taken over as operations manager, had threatened through Linval to "clean house" and to terminate employees. All six  
15 housekeeping employees signed authorization cards on that date and gave them to Hoehne after she went over the process of getting in a union. The employees explained at the meeting that Respondent employed approximately 50 employees, who included 22 housekeepers, 5 maintenance or engineering employees, 5 front desk workers, 5 banquet workers, 1 van driver, 4 waiters and waitresses, 4 bartenders and 5 cooks. The employees informed Hoehne that they  
20 were confident that they would be able to get the housekeeping department to sign cards as well as the maintenance department and some of the front desk workers. They were concerned about waiters, waitresses, bartenders and cooks and were unsure about getting them to sign, stating that was going to be a little bit more difficult. Hoehne gave each of the employees a stack of blank cards and told them to go back and talk to co-workers, see how many additional  
25 cards could be obtained and they would meet again on June 9, a week later.

Another meeting was agreed upon for June 9, also at Rodriguez's apartment.

On June 6, Rodriguez telephoned Hoehne and informed her that she had an additional  
30 20 signed cards to provide to the Union. They agreed to meet at the hotel during Rodriguez's break in mid-morning on that day.

Hoehne arrived at the hotel by car, parked her car in the parking lot and met Rodriguez in the driveway in front of the hotel. Rodriguez handed Hoehne a brown paper bag, containing  
35 20 signed authorization cards. Hoehne then handed Rodriguez a batch of blank authorization cards to distribute. During the course of this exchange, Shanab stood in the driveway smoking a cigarette. Hoehne testified that Rodriguez got "kind of nervous" as Shanab was standing from 10-15 feet away from where Rodriguez and she were talking and exchanging cards. Hoehne's back was to Shanab, and she conceded that she could not see whether Shanab was looking at them during the incident. Hoehne also admitted that she was not wearing any union pin nor did her car have any union bumper sticker. According to Hoehne, Rodriguez looked over Hoehne's  
40 shoulder and said to her that the general manager Shanab was over there and was looking at them. Hoehne asserts that she told Rodriguez that it was her right to talk to Hoehne, that she should keep talking and they continued their conversation. They then discussed the next  
45 scheduled meeting on June 9, and Hoehne gave Rodriguez the new batch of unsigned cards to distribute. According to Hoehne, when she turned around to go to her car, immediately after Rodriguez went back into the hotel, she looked at Shanab and observed that he was looking at her at that time.

50 Rodriguez testified that she recalled Hoehne giving her more cards on June 6 and that Shanab had come out of the hotel and was standing about 100 feet away from where she and Hoehne were conversing. On direct testimony, Rodriguez stated that she did not know whether

Shanab was looking at them when they were talking, but she did say to Hoehne “that’s Mahmoud (Shanab).” Rodriguez emphatically denied that Shanab had seen her and Hoehne talking on that day. Rodriguez’s response to that question was “I didn’t see anything.” Further, her affidavit given to the Region stated that Shanab “did not see Keri and I, nor what we were doing.” She reiterated on cross-examination that Shanab “didn’t look at us” and that he would always go out to smoke.”<sup>7</sup>

On June 9, the second meeting was held in a meeting room rented by Rodriguez inside her apartment building. In addition to Hoehne and Cliento, approximately 17-20 employees, primarily housekeeping and maintenance employees, attended the meeting, some of whom had already signed cards. Four maintenance employees were present at the meeting, including Jose Rivera, Carmelo Marquez, Stan Rysz and Ed Maillard. Paul Hidalgo, a banquet worker, was also among those employees present. During this meeting, the employees discussed again their complaints about working conditions, such as cost of insurance, their fears of being terminated by Respondent, staffing issues and that Respondent was bringing in temporary employees to reduce hours of housekeeping employees.

Hoehne and Cliento explained the process and the next steps the Union would be taking. They gave out more cards to employees present. Some employees signed cards at that meeting and others’ signed cards, which were given to Hoehne at the meeting. At the June 9 meeting, the Union received a total of eight new signed cards, which also included a card signed by the van driver, who was not at the meeting but had driven some of the employees to the meeting in Respondent’s van, and who was waiting outside to drive the employees back to the hotel.

During this meeting, it was mentioned that Respondent employed an undetermined number of on-call banquet servers, which Hoehne believed could be included as unit employees. Although by this time, the Union had obtained 34 signed cards.<sup>8</sup> It decided that it would not file a petition until more information was obtained concerning the on-call banquet servers.

Therefore, the only employee present at the June 9 meeting, who did not either sign a card at the meeting or had signed a card previously, was Maillard. He sat in the back of the room and did not ask any questions and said nothing during the meeting. He did accept a card from the Union but did not sign it at that time or any other time.

Paul Hidalgo, as noted above, was a banquet worker. He was first informed about the Union by Maria Acevedo, housekeeping manager, who told him it would be a great idea to bring a union into the hotel. On June 5, Hidalgo was given a union authorization card by Rodriguez in the housekeeping office. She asked him to sign it, which means that he “approves of bringing the union here.” Hidalgo signed the card and gave it back to Rodriguez. Rodriguez gave Hidalgo five or six blank cards to distribute to other employees and to ask them to sign as well. Therefore, Hidalgo subsequently spoke to eight to ten employees, some in his department and some in other departments. These conversations took place in the cafeteria, locker rooms, lobby of the hotel and the banquet office. He discussed the union campaign with his fellow employees during these conversations, distributed cards to them, and in some instances, employees signed cards in front of him. Hidalgo did not recall how many cards he obtained but

<sup>7</sup> As noted above, Shanab did not testify and is no longer employed by Respondent.

<sup>8</sup> Six obtained at the June 2 meeting and twenty cards given to Hoehne by Rodriguez on June 6 and the eight additional cards received on June 9.

did recall specifically that employees Ron Miraclo and Jose Rivera signed their cards in front of him and gave them to him. He, in turn, gave the cards that he obtained to Hoehne. According to Hoehne, she received four additional signed cards from Hidalgo on June 16, which brought the Union's total to 38. According to Hoehne, the Union still did not file a petition for an election at that time, although it had 38 cards out of a unit of approximately 50 because it was still uncertain of how many on-call banquet servers Respondent employed and was still waiting for more information from employees as to that issue and hoping to obtain additional cards. The Union had obtained signed cards from all of the housekeeping employees<sup>9</sup> and from four of the five engineering/maintenance employees.

## VI. The Interrogations of Employees by Alleged Supervisors

### A. Carolos Morel

In early June, during the course of a conversation about video games between Morel and Hidalgo in Morel's office, Morel said to Hidalgo that he heard that "a revolution was coming." Hidalgo asked Morel what he was talking about. Morel responded that he (Morel) heard that a union is coming and "I'm asking you is this true?" Hidalgo smiled and said that he did not know what Morel was talking about. Morel retorted, "Well, if it's true, you know, I think it's a good idea for you guys but not for the managers because that would be more work for us." Morel explained that for example, currently, when it gets busy in the restaurant, he (Morel) could and would ask Hidalgo (primarily a houseman, who sets up tables and chairs) to help out and/or take orders or remove stuff from the tables and Hidalgo would perform these tasks. However, Morel explained that an employee, such as Hidalgo, could not do these kinds of jobs if a union was there because the work was not in their department. Therefore, it would be more work for management and he (Morel) would have to go do the work. Hidalgo asked Morel why management didn't simply hire more employees because they were always short staffed. Morel told Hidalgo that he had always talked about that with the general manager, who prefers to have part-time employees, which for Morel, was not a good idea. At that point, the conversation ended when Morel received a call from the front desk.

A few days after that conversation, Hidalgo had a conversation with Linval while they were going towards the elevator in the lobby. Hidalgo felt that Linval seemed mad and upset, so he asked what was wrong. Linval replied that he was very tired of people not doing their jobs and always doing the wrong things. Hidalgo answered that the same thing happens in his department. Linval then said to Hidalgo, "I heard a union's coming." Hidalgo responded, "What are you talking about?" Linval then pressed on, "Well, I'm asking you. That's why I'm asking you if you know something." Hidalgo against said, "No, I don't know anything about it." Linval continued, "Are you sure?" Hidalgo replied, "Definitely, I'm a hundred percent sure. I don't know what you say." Linval then said, "If it's true, you know, you guys, I mean, go for it, you guys need it. I mean everything right now is bad for you guys. You guys go for it, that's good for you to have help." At that point, Hidalgo received a call from Morel instructing Hidalgo to go back to the office to pick up some equipment.

On July 3, Hidalgo and Soto were working side by side setting up for an event. Soto said to Hidalgo that a lot of people had come to him (Soto) and asked about the union, if it's coming. Soto continued that this was a surprise to him and he did not know anything about it. Soto then said, "That's why I'm asking you now if you know anything about it." Hidalgo replied, "No, I don't

<sup>9</sup> There were from 22-24 housekeeping employees employed by Respondent in June of 2011.

know anything about what you say.”

5 Soto replied similar to Morel’s comments, “You guys, if it’s true, go for it. You guys need help.” Soto added that although a union would be good for employees, it wouldn’t be good for management, similar to reasons given by Morel. Soto explained to Hidalgo that the managers wouldn’t receive help from the employees and gave an example that if he received a room service call, he could ask Hidalgo to do it if Hidalgo was in the hotel. But if a union was there, Soto would have to do it himself.

10 On June 10 (the day after the June 9 union meeting, where employees signed cards with Ed Maillard being the only employee present, who did not sign a card), Jose Rivera was approached by Pisacane in the engineering shop. Pisacane asked Rivera how the union meeting went. Rivera replied very well, but “Mr. Ed (Maillard) didn’t say too much.” Pisacane responded that he knew that Maillard was the only one that had not signed a card because he  
15 (Pisacane) thought Maillard was afraid of losing his job. Rivera answered that it was up to him (referring to Maillard).

20 My findings with respect to the above statements by alleged supervisors Linval, Soto, Morel and Pisacane were based on undenied, credible and similar testimony of employees Hidalgo and Rivera. As noted, neither Linval, Pisacane, Morel or Soto testified although they were either still employed by Respondent at the time of the trial or were available to be called by Respondent to refute or deny the above testimony. I found the testimony of the employees to be believable, consistent on direct and cross examinations and somewhat consistent in nature with the testimony of the other employee. I, therefore, credit Hidalgo and Rivera.

25

#### VII. The Subcontracting of Respondent’s Housekeeping and Engineering/Maintenance Departments

30 On June 24, 25 and 26, Respondent notified the housekeeping and engineering department employees during a series of meetings conducted by Shanab that they were being subcontracted to another employer. On June 24, Shanab met with the engineering/maintenance employees Rivera, Jimmy Diaz, Carmelo Marquez and --- Amaya and supervisor Pisacane. Maillard, who was the remaining employee in the engineering department, was not present at the meeting. Shanab announced to the employees present that they were being subcontracted  
35 to another company effective immediately. Shanab handed the employees a letter from Respondent’s Vice-President Topas. The letter explained the name of the contractor and attached an employment application for the contractor, New York Major (NYM). The letter is set forth below.

40

Mr. Jose Rivera  
204 Hope St.  
Stamford, CT 06906

45

Re: Engineering Arrangements

Dear Mr. Rivera:

50

In an effort to streamline our operations, we have engaged the firm New York Major Construction Corp. to handle our engineering operations starting immediately. This firm is well known and is very professional. The firm will be at the hotel on Sunday, June 26, 2011 at 3:00pm to discuss the change and meet with all current employees. Below is the contact information for the firm.

New York Major Construction Corp.  
1736 55<sup>th</sup> St  
Brooklyn, NY 11204  
Tel: 718-801-4599 Fax: 347-371-9293

5

As a condition for engaging this firm, we have insisted and they have agreed to hire all engineering employees at the same rates of pay and seniority as they presently enjoy with our firm. Also, please note we will compensate you for any accrued vacation/sick time due you as of this date.

10

We trust that you will give them your full cooperation and ask for your agreement to join that company immediately.

15

We thank you for your cooperation.

Very truly yours,

Stamford Plaza Hotel and Conference Center, LP

20

Henry Topas  
Executive Vice President

Cc: Thomas Rosenberg  
Mahmoud Shanab

25

Acknowledge Receipt of: \_\_\_\_\_

Date: \_\_\_\_\_

30

The employees were startled by this development and questioned whether this meant that they were being fired. In fact, Rivera initially refused to sign the letter as Shanab had demanded because he did not know who or what company it is or if he was being fired. Another employee asked what was this new company. Shanab did not answer and simply replied that he was just the messenger and that the employees must sign the letter. Pisacane was surprised by this announcement and asked what his role was going to be with the new company and whether he is involved. Shanab responded that Pisacane would still be working for Stamford Plaza, would still be overseeing the engineering department, but he would be reporting to New York Major. Thus, Pisacane continued to be paid by Respondent. Rivera was still uncertain about what was going on and refused to sign the letter on that day. The employees went back to work. A day or two later, Rivera received a letter from NYM offering him a job as set forth below.

35

40

Jose Rivera  
204 Hope St.  
Stamford, CT 06906

45

Notice to Employees

As you are aware, we have recently been retained by the ownership of Stamford Plaza Hotel to manage the engineering maintenance of the hotel. It has come to our attention that notice from the current hotel management to you has been on short notice. New York Major is prepared to extend the courtesy to you up until

50

July 5<sup>th</sup> 2011. If you have not yet received an application please call our office to receive some [sic].

5 Please keep in mind, we are willing to rehire you at the exact same pay arrangement including holidays, vacation, etc. under the same terms and conditions you had with the hotel ownership. We will contact you to set up direct deposit paychecks on a biweekly basis. Mike will continue to be your supervisor.

10 Please take this letter as official notice that payroll will not be able to be processed for you as of July 5<sup>th</sup>, 2011 if we do not have your application. You can give it to Mike to email or fax it to the numbers below.

15 Thank you,  
Yiddi Nussenzweig, President

20 While this letter states that “Mike” will continue to be your supervisor, it is clear that the reference to “Mike” was in error and that NYM meant “Mark.” Topas conceded that the letter’s author, Nussenzweig, did not speak English as his first language and obviously confused “Mark” with “Mike.” Further, Respondent did not employ any supervisors named “Mike” at that time.

25 On June 28, Pisacane called Rivera into the office and informed Rivera that he had to sign the letter as well as various documents for NYM or he was not going to get paid. Rivera signed the letter as well as an employment application and a W-4 form for NYM, which were dated 6/28/11.

30 The only employee in the engineering/maintenance department not to be subcontracted to NYM was Maillard, who was suddenly promoted to “engineering supervisor,” effective June 24, as reflected in a personnel action form, signed by Shanab on June 24. Maillard was not present at the June 24 meeting and was not required to attend.

35 Topas testified, however, that notwithstanding this form, Maillard was not promoted to supervisor and that, in fact, Maillard’s status had been changed in February to “clerk of the works,” which, according to Topas, meant that Maillard no longer performed day-to-day maintenance tasks and his duties were limited to following contractors performing construction related work around the hotel and reporting to Topas on their progress. Topas admitted,<sup>10</sup> however, that owner Rosenberg made the decision to exclude Maillard from being subcontracted and that Topas was not informed of the circumstances behind the reasons for his exclusion from the subcontracting or the decision to classify him as a supervisor as of June 24.

40 Following the subcontracting, the engineering/maintenance employees (other than Maillard) continued to report to Pisacane, who continued to supervise them as before. They had no contact with any representative from NYM other than to get paid. On one occasion, there was a flood in the building, so NYM sent in some workers from its Brooklyn office to help out. At that time, Nussenzweig, NYM’s president, was present at the hotel.

45 Shortly after the subcontracting started, Rivera and Pisacane were talking. Rivera said to Pisacane that he was very confused and he didn’t know what was going on. Pisacane responded that “maybe because of the Union coming in, that’s why they changed companies for you then.”

50

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<sup>10</sup> Maillard did not testify. As noted above, neither did Rosenberg.

Shortly, thereafter, Pisacane resigned on July 8. He was replaced by Rudi Stewart as director of engineering, who was an employee of Respondent and who continued to supervise the employees as had Pisacane.

5

On Saturday and Sunday, June 25 and 26, Shanab held meetings with the housekeeping department. Shanab informed the employees that there are going to be changes in the hotel and employees would be working for Labor for Hire (LFH). Shanab gave the employees a letter explaining the details and informed them that they had to sign or they would be fired. The letter reads as follows:

10

June 23, 2011

Ms. Ana Rodriguez  
40 Stillwater Ave.  
Stamford, CT 06902

15

Re: New Housekeeping Arrangements

20

Dear Ms. Rodriguez:

In an effort to streamline our operations, we have engaged the firm Labor For Hire, Inc. to handle our housekeeping operations starting immediately. This firm is well known and is very professional. The firm will be at the hotel on Sunday, June 26, 2011 at 3:00pm to discuss the change and meet with all current employees. Below is the contact information for the firm.

25

Labor For Hire, Inc.  
2315 East 22<sup>nd</sup> Street, Suite 1R  
Brooklyn, NY 11229  
[Labor.hoteljob@gmail.com](mailto:Labor.hoteljob@gmail.com)  
Tel: 718-300-2785 Fax: 866-289-0927

30

As a condition for engaging this firm, we have insisted and they have agreed to hire all housekeeping employees at the same rates of pay and seniority as they presently enjoy with us. Also, please note we will compensate you for any accrued vacation/sick time due you as of this date.

35

We trust that you will give them your full cooperation and ask for your agreement to join that company immediately.

40

We thank you for your cooperation.

Very truly yours,

45

Stamford Plaza Hotel and Conference Center, LP

Henry Topas  
Executive Vice President

50

Cc: Thomas Rosenberg  
Mahmoud Shanab

Acknowledge Receipt of: \_\_\_\_\_

Date: \_\_\_\_\_

5

The employees signed the letter and continued working. All of the housekeeping employees were hired by LFH. Linval and Acevedo were not subcontracted but continued to supervise the housekeeping employees as employees of Respondent as they had done prior to the subcontracting. A day or two after the subcontracting began, a representative from LFH, Oleg Tsimbler came to the hotel and spoke to the housekeepers. He snapped his fingers and told the employees that if “you guys don’t do the work, you’re going out.” Tsimbler did not appear again and, insofar as the record discloses, the employees had no other contact with LFH representatives.

10

15

Their day-to-day supervision continued to be performed by Linval and Acevedo, who were, as noted, still employees of Respondent. Both Linval and Acevedo resigned shortly after the subcontracting started. Respondent hired Maura Guerrero as the new executive housekeeping supervisor on August 4, 2011, and she became the direct supervisor of the housekeeping employees.

20

In October of 2011, Rodriguez asked Guerrero for a raise since she was in charge of doing the VIP rooms. Guerrero agreed, and Rodriguez subsequently received a raise from \$10.50 to \$12.50 per hour. The record does not reflect whether Guerrero had to receive approval from anyone before the raise was granted. The new salary was paid by the subcontractor at the time.

25

Under its subcontracting agreement with LFH, Respondent continued to pay for housekeeping uniforms, cleaning supplies and equipment. Under its agreement with NYM, the subcontracted engineering associates were to continue reporting to Respondent’s engineering department supervisors, who would be responsible for tracking employee hours. Respondent was also responsible for providing all necessary supplies and equipment under its agreement with NYM. Both contracts could be terminated with 30 days notice by either party.

30

Respondent offered its employees the opportunity to be provided with medical, dental, vision, short and long-term disability insurance as well as access to a 401(k) plan. Most of the employees did not take advantage of the opportunity to have these benefits because of their cost, but some did. After the subcontracting, none of the employees subcontracted to LFH or NYM were provided the opportunity to have these benefits.

35

Additionally, LFH did not deduct income taxes from the wages of the housekeepers and expected the workers to pay those taxes directly.

40

#### VIII. The Union’s Petition

45

On July 5, the Union filed an RC petition, seeking to represent the following unit:

All housekeepers, housemen, maintenance, full and regular-time banquet servers, front desk employees, bellmen, kitchen employees, bartenders and restaurant servers, excluding all on-call banquet servers, office clerical and supervisors as defined in the act.

50

The petition listed the approximate number of employees in the unit as 50.

Subsequently, the Union withdrew its petition in view of the fact that the housekeeping and maintenance employees had been subcontracted out.

IX. Respondent Terminates Its Subcontracting Agreement with LFH  
and Subcontracts to a New Entity

5

The subcontracting between Respondent and LFH was short-lived since numerous issues arose, including problems with LFH failing to deduct taxes from employees' paychecks, LFH's inability to secure uniforms for subcontracted employees and some problems with the quality of some employees hired by LFH to do cleaning. Respondent hired Michael Moser, its new general manager to replace Shanab on July 20, and Moser was unhappy with LFH's performance. Ultimately, after discussions between Thomas Rosenberg, Moser and LFH representative Dovgalyuk, it was agreed that the subcontracting relationship would be terminated.

15

An email chain between Moser and Topas on August 16 details the termination of the relationship and discussions among Respondent's representatives concerning a replacement contractor. These emails are set forth below.

20

From: Michael Moser [mmoser@stamfordplazahotel.com]  
Sent: Tuesday, August 16, 2011 7:14 PM  
To: 'Henry Topas'  
Subject: RE: Hskp./Labor for Hire

25

Thomas just indicated to me that Alex will call me later to discuss. New York Major has been contacted by Thomas and I guess they could set it up under a separate LLC. One agency I reviewed the opportunity with has no interest in the business with the parameters of utilizing staff in place. The other is reviewing Labor Laws in Connecticut with their legal team before submitting a proposal. Thomas said he was going to review the opportunity with you. Have you discussed it with him? Thanks MM

30

Michael Moser  
General Manager  
Stamford Plaza Hotel & Conference Center  
2701 Summer Street, Stamford, CT 06905  
P: 203-978-5631 F: 203-359-6474  
Email: mmoser@stamfordplazahotel.com  
Web: www.StamfordPlazaHotel.com

40

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From: Henry Topas [mailto:HTopas@rosdev.com]  
Sent: Tuesday, August 16, 2011 6:51 PM  
To: 'mmoser@stamfordplazahotel.com'  
Subject: RE: Hskp./Labor for Hire

45

I don't suggest using the same company since that might open the door for a voting block

50

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From: Michael Moser [mmoser@stamfordplazahotel.com]

Sent: Tuesday, August 16, 2011 06:24 PM  
To: Henry Topas  
Subject: Hskp./Labor for Hire

5 FYI-We met with Labor for Hire this afternoon. Yulia met with Thomas first and  
then he excused himself and we reviewed her issues. All issues were  
understood by both parties and she was issued her check minus the petty cash  
10 payments. Twenty minutes later Thomas received a call from her threatening to  
terminate the relationship immediately. He informed me about the call and I told  
him we would be able to move forward operationally without any issues. Yulia  
returned to the property and informed me of her desire to terminate immediately  
and I said OK and prepare the invoices through today. As we move forward the  
15 only challenge is the payroll processing and insurance which I suggested using  
the Engineering company in place for both departments. Thomas said he would  
let me know and he just told me he will discuss it with you and Alex. MM

Michael Moser  
General Manager  
20 Stamford Plaza Hotel & Conference Center  
2701 Summer Street, Stamford, CT 06905  
P: 203-978-5631 F: 203-359-6474  
Email: mmoser@stamfordplazahotel.com  
Web: www.StamfordPlazaHotel.com

25 Topas was asked on cross examination about his email, wherein he stated: "I don't  
suggest using the same company since that might open the door for a voting bloc." Topas  
explained what he meant in this email. He testified as follows:

30 Q: No, it doesn't speak for itself. You tell me. Why?

A: I don't need to have, at that point already – once we learned, after the fact,  
that I learned that there was union activity why would I want to open more doors?

35 Q: Open more doors to what?

A: To having a unionization of the property at that point in time.

Q: So you didn't want the property to be unionized, did you?

40 A: Not afterwards.

Q: You wanted it to be unionized before?

A: We don't care one way or the other.

45 Q: But you cared on August 16<sup>th</sup> –

A: Yeah, I do.

50 Q:-- 2011

A: We don't care.

Q: You don't care?

A: I don't care.

5

Q: But you wanted a separate LLC to avoid the possibility of unionizing?

A: That is correct.

10

Topas explained further that he suggested separate corporations for the contractor because "in the event that one department decides it wants to unionize wonderful. I don't necessarily have to put a situation together where another department may want to unionize." Topas continued, "So, for example, in Secaucus, I have operating engineers doing the maintenance. That's one union. I have a different union doing food and beverage housekeeping."

15

He explained further when questioned by the undersigned as follows:

Judge Fish: Right.

20

The Witness: -- in terms of ownership today, as is New York Major. And I said separate the two.

Judge Fish: That was your recommendation.

25

The Witness: Yeah, that was my recommendation.

Judge Fish: And the reason that you gave for separating the two was?

30

The Witness: Was that there should not be a situation if one of them fails to perform that I'm married to the other.

Judge Fish: So what did that have to do with unionization? That's what --

35

The Witness: As a further potential situation.

Judge Fish: Go ahead.

40

The Witness: As we have in other hotels there is not only a single union in our other hotels. In some cases we have Operating Engineers in Secaucus handling maintenance. That's one company

45

Any by the way, I think I was questioned about the Operating Engineering contract earlier and I did meet with the Operating Engineer representative at the Tick Tock Diner on Route 3 in New Jersey and asked him if I could outsource. I was turned down. That's Secaucus. But back to Stamford. I would rather be in a situation where I do not necessarily have the same union handling the entire hotel.

50

Later on in his testimony, Topas explained what he meant by "voting bloc" in his email, recommending a separate corporation for housekeeping and for maintenance employees. This exchange is as follows:

Judge Fish: Alright. Well, let me ask you this, because I’m looking at that myself and I don’t know. You wrote this. This is from you.

5 The Witness: Yes.

Judge Fish: “I don’t suggest using the same company since that might open the door for a voting bloc”. I don’t know what that means.

10 The Witness: In the event –

Judge Fish: Can you explain this?

The Witness: Well, we –

15 Judge Fish: “Voting bloc”?

The Witness: We recognize that the property may become unionized.

20 Judge Fish: Which property?

The Witness: Stamford.

Judge Fish: Right.

25 The Witness: It could happen.

Judge Fish: Right.

30 The Witness: You know, if it happens it happens.

Judge Fish: Right.

35 The Witness: But I’d rather have the possibility, as I have for example in Stamford – in Secaucus rather, where I have engineers handling the engineering work, Operating Engineers are the union there, and I have whatever housekeeping union comes into the housekeeping department, as opposed to one that can shut the whole operation down if one minute nobody is happy. Today, to this point in time, everyone of our properties, as I’ve mentioned, is unionized. Negotiate in good faith, we reach collective bargaining agreements, and we’re done and that’s it.

40

45 Eventually, Respondent and NYM agreed to create a new entity called “My Space Management” (MSM), a company owned by Nussenzweig through which Respondent would subcontract the entire housekeeping department. The housekeeping employees were then transferred to the payroll of MSM, but their supervisor remained the same, i.e. supervised by Respondent’s executive housekeeping director Guerrero. Apparently, MSM was able to properly make the tax deductions from employees’ salaries that LFH was unable to do and which appeared to be the principal reason for the dissolution of the subcontracting between

50 Respondent and LFH. This was the first time that Respondent or Rosdev had ever used a company owned by Nussenzweig, including NYM and MSM, to subcontract housekeepers at any of its hotels. Topas conceded that he wasn’t even sure whether any Nussenzweig-owned

firms could even handle the task of managing the subcontracted housekeepers.

At some later point, MSM suddenly transformed its name to “New York Certified Interior Corp.” (NYCIC). Rodriguez testified that when she received a check on January of 2012 from NYCIC, she asked Jessica, a supervisor for the company in New York, why was there another name on the check. Jessica told Rodriguez that she didn’t know anything. A day or two later, Rodriguez asked Guerrero why there was another name on the check. Guerrero told Rodriguez that she would ask why they changed the name. However, Guerrero never got back to Rodriguez concerning her inquiry.

Rodriguez summed up the situation when she was asked by Respondent’s attorney on cross-examination, “Do you even know who you’re employed by anymore?” She replied, “I don’t even know who I work for. It’s a lot of companies. I don’t know.”

The record reflects that MSM distributed a letter to its employees working at Respondent, dated January 27, 2012, announcing the name change of the company to New York Certified Interior Corp. The letter reads as follows:

January 27, 2012

Dear Employees,

As you will be able to see the name on your check this week is “New York Certified Interior Corp”. This is not an error. Due to some technical difficulties, MySpace Management Corp. had to change its legal name. We will continue to be operating under MySpace Management which is a legal DBA (Doing Business As) of New York Certified Interior Corp. On next payrolls check the name MySpace Management will be on the check and New York Certified Interior Corp. will be the name on the check stub, as the law demands.

Thank you,

MySpace Management

#### X. Respondent’s Defense

On August 24, following the Union’s filing of the instant charge on July 1, Respondent submitted a position statement signed by its attorney, wherein *inter alia*, it explained the reasons for its decision. The statement is as follows:

The Employer had legitimate non-discriminatory business reasons for subcontracting out engineering services and the housekeeping services. Specifically, in regards to housekeeping, subcontracting that work permitted the Employer to have a fixed unit price per room for housekeeping services thereby saving the Employer money. As to maintenance, subcontracting that work removes that area of day to day operations from the responsibilities of the General Manager, freeing him up to handle other critical areas, of the business and puts it in the hands of firms whose specialty is exclusively handling maintenance for buildings. Indeed, the Employer successfully utilizes outside maintenance services, such as Johnson Controls at other buildings where it provides services to the public, resulting in a cost savings to the Employer that can be passed along to the consumer.

5           With respect to the Region’s inquiry as to the nature, process and purpose of the Company’s decision to engage the housekeeping and engineering/maintenance contractors, please be advised that the Employer’s decision to subcontract was based upon its belief that the on-sight maintenance of these departments were deficient.

10           At trial, as noted above, the only witness called by Respondent was Topas, who testified as best he could to his belief as to the reasons for the decision. However, Topas conceded that he was not involved in nor a participant in the decision to subcontract the housekeeping or the engineering/maintenance departments nor the reasons why Respondent decided to do it in June of 2011. The decision makers in these areas was, according to Topas, Thomas Rosenberg, although Topas testified that Alex Hartstein, another Rosdev official and perhaps Michael Rosenberg may have been involved as well. Neither Hartstein nor either of the Rosenbergs was called to testify by Respondent.

15           According to Topas, when he was rehired by Rosdev in September or October of 2009,<sup>11</sup> he spoke with Michael Rosenberg about the business. Michael Rosenberg informed Topas that Rosdev had a relatively new business plan *vis a vis* its hotels of minimizing Rosdev’s involvement with day-to-day operations of its hotels on “virtually everything,” except selling rooms.

20           Topas was hired primarily to oversee the construction and the renovation at the Stamford Plaza Hotel, which was ongoing at the time of his hire. Michael Rosenberg explained to Topas his general philosophy of outsourcing or subcontracting as many areas as possible, and he intended to implement that at the Stamford Plaza property. Rosenberg specifically mentioned an intent to outsource housekeeping, which has the largest number of employees at the hotel, and he told Topas that in Rosdev’s Montreal hotel, housekeeping department is already being outsourced.

25           He also informed Topas that the food and beverage employees were already outsourced at the property. Topas testifies that he was told that on the day that Respondent acquired the property, Rosenberg decided that he did not want any Rosdev entity to handle food and beverage operations because he was an observant Jew and didn’t want to have involvement with non-kosher food under his ownership. Therefore, Rosenberg made an arrangement with another entity, Stamford Plaza, LP, which is not affiliated with either Rosdev or Respondent. This entity, according to Topas, is owned by a “Gentile” individual, who lives in Montreal and is “revenue neutral to him.” Topas explained that if that entity had a profit after calculating sales revenues and expenses for the year that profit ends up being paid to Respondent in rent. Thus, this entity employs the food and beverage employees, including waiters, waitresses, bar tenders and kitchen employees, and pays their salaries. From Topas’s testimony, it appears that he believed that the food and beverage employees, such as Hidalgo, who sets up the rooms for events and helped out in serving, are also employed by this entity. Topas was uncertain what wage and benefits were received by these employees, but he believed that they were the same wages paid by the previous hotel (Sheraton) and received some benefits that the other employees of the hotel (employed by Respondent) received.

30           Topas testified that Rosenberg specifically informed him that Respondent intended to

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50           <sup>11</sup> He had previously been employed by Rosdev prior to 2002 but then left its employ for several years to pursue other opportunities.

subcontract the housekeeping department but did not tell him when that was going to occur. Topas did not recall Rosenberg mentioning to him any specific plan to outsource or subcontract the engineering/maintenance department.

5 Topas further testified that the next discussion concerning subcontracting at Respondent that he was aware of was a conversation in late-2009 or early-2010 when Michael Rosenberg held a meeting regarding the state of operations at the Stamford hotel with Thomas, in which Topas was present. During this meeting, Michael asked Thomas what's happening with the subcontracting. According to Topas, Michael Rosenberg did not mention which group of  
10 employees he was talking about, but Topas asserts that "I presume he meant housekeeping." Thomas replied, "I'll get to it." Nothing more was said about it at that time.

Topas further testified that in the summer of 2010, he was present during a similar discussion between the Rosenbergs. Once more, Michael asked about subcontracting, and  
15 Thomas replied, "I'm working on it," without supplying any details as to his efforts in that regard. Topas added in this regard that "I think the father is in a sense sensitive to his son's...I'm going to use a Yiddish word kuvent, honor. He doesn't want to embarrass the son. So, in my presence, I don't think he's going to take a piece out of him, but he may well do so when I'm not around."

20 Other record evidence, more specifically, an email chain between LFH representative Yulia Dovgalyuk and Thomas Rosenberg from April 27, 2010 through November 9, 2010 reveals that they had met and negotiated subcontracting. These emails in pertinent part are set forth below.

25 From: labor for hire inc <yulia.dovgalyuk@gmail.com>  
Date: Tue, Apr 27, 2010 at 12:22 PM  
Subject: For Mr. Thomas Rosenberg  
To: [trosen118@gmail.com](mailto:trosen118@gmail.com)

30 Hello Mr. Thomas Rosenberg this is Yulia we meet with you at Crowne Plaza JFK week ago. Are you still interesting to work with us? can we have a meeting?

35 Labor For Hire, Inc  
Professional in Hotels Industry  
Tel 646-387-7605  
Tel 718-300-2785  
[Yulia.Dovgalyuk@gmail.com](mailto:Yulia.Dovgalyuk@gmail.com)

40 What would you say if we told you that MONEY is being lost at your hotel? It's the money you could be saving on your business! We are so sure! Why? We are professionals in hotels industry. We will study your housekeeping operations and develop a comprehensive plan that will save you MONEY, TIME and WORRY!

45 You can trust us! We will help to you cut yours[sic] expenses! We'll take the headaches out of you and will also help you save budget.

50 The company was established in 2004 and showing successful results. We have over 250 people of personal[sic] working in hotels. We provide this industry with professional housekeepers, housemen, drivers, valet parking, front desk attendants, kitchen staff etc.

This is where our expertise is needed. We have the experience, the history and the qualification.

Labor for Here[sic] takes special pride in the training of our staff.

5

If you are interested in this offer and looking for more details, you can call us or email any time.

Yours sincerely.

10

Oleg Tsimbler-General Manager

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From:< [trosen118@gmail.com](mailto:trosen118@gmail.com) >

15

Date: Mon, May 3, 2010 at 7:36 AM

To: labor for hire inc <yulia.dovgalyuk@gmail.com>

Good morning,

20

Pls send the proposal,

Thank you

---

25

From: labor for hire inc <yulia.dovgalyuk@gmail.com>

Date: Mon, May 3, 2010 at 12:24 AM

To: [trosen118@gmail.com](mailto:trosen118@gmail.com)

30

Hello Mr. Rosenberg! How are you? This is proposal. Please discuss with Mr. Bhandari and let me know what you think!

Thank you and have a good day!

Yulia

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35

From: labor for hire inc <yulia.dovgalyuk@gmail.com>

Date: Mon, May 24, 2010 at 3:19 AM

To: thomas roseberg< [trosen118@gmail.com](mailto:trosen118@gmail.com) >

40

Hello Thomas! Sorry for late! How was your holidays?

---

From:< [trosen118@gmail.com](mailto:trosen118@gmail.com) >

45

Date: Mon, May 24, 2010 at 8:27 AM

To: Julia <Yulia.dovgalyuk@gmail.com>

Pls call me when u can

---

50

From: labor for hire inc <yulia.dovgalyuk@gmail.com>

Date: Tue, Nov 9, 2010 at 11:38 AM

To: thomas roseberg< [trosen118@gmail.com](mailto:trosen118@gmail.com) >

Thomas to generalize our meeting.

I don't understand:

5

How you can spend more than \$15 per hr for 1 housekeeper and don't want to pay \$11 per hr for houseman or \$10 per room with supervisor and houseman???? with us can save more than \$100.000 per year!!! You need to make decision! If you satisfied with your service and expenses for this service you don't need our help! I offer not only cut expenses as well, i take all responsibility and control for housekeeper department! besides supervicer[sic] at the hotel i do meeting with employers every two weeks and discuss mistakes and questions, every week with managers, and every day keep everything under control.

10

15

Yesterday we talked about the same as we talk in the beginning! I didn't see outlook for the future! i can't work like agency.

20

---

From:< [trosen118@gmail.com](mailto:trosen118@gmail.com) >  
 Date: Tue, Nov 9, 2010 at 11:52 AM  
 To: Julia <Yulia.dovgalyuk@gmail.com>

25

Julia,  
 I definitely feel that we can expand in the future, but the GM is concerned with service ect I feel that we should start with the 2 house men and th bar tenders and than we will move on to other locations, believe me that I want to save \$,

30

Thanks  
 Thomas

35

In January of 2011, Respondent terminated the services of Vishal Bhandari as general manager. In early February, Topas asserts that he spoke to Thomas Rosenberg, not in the presence of Michael, and said to Thomas that now that Respondent was without a general manger, it would be a good time to get moving on outsourcing for the housekeeping department. Thomas Rosenberg responded to Topas, as he had to his father, Michael, "I'm working on it." Topas did not press Rosenberg any further as to where he stood on the alleged negotiations for the outsourcing. Respondent did not employ a general manger between January and July of 2011, according to Topas. After it terminated the prior general manager in January, Rosenberg told Topas that Respondent was not going to fill the position at that time and that controller Bharat Prashad had filled in and assumed the general manager responsibilities. In May, Rosenberg hired Shanab to oversee inspections on construction, and according to Topas, Shanab took it upon himself to become a "de facto" general manager by assuming a lot of the responsibilities of the position. Clearly, the employees believed that Shanab was general manager. Respondent's position paper listed Shanab's title as director of operations. In any event, as also detailed above, Respondent terminated Shanab shortly after the decision to subcontract was made and effectuated, and Moser was hired as general manager.

50

The record reveals no communication between any of Respondent's officials with LFH or any other potential contractor or subcontractor between the November 9, 2010 emails, detailed above, wherein it appears that negotiations had ended and no deal was imminent until June 16,

2011 at 7:21 am when Thomas Rosenberg sent the following email to Yulia Dovgalyuk of LFH. “Good morning, long time no speak, can we meet today in Stamford, Ct.”

5 The record does not reflect whether or not Rosenberg and Dovgalyuk met as proposed in his email to her at 7:21 am. The record does contain an email to Dovgalyuk from Rosenberg, detailing what Respondent agrees to pay and the details of the proposed agreement at 12:32 pm on the same day, June 16. This email reads as follows:

10 Julia,

We want to pay

\$10.00 per room

15 \$11.50 for suite

Including house man for the floors

We will provide the Hskp director, and cleaning material

20 You will provide 1 supervisor for every 50 rooms

We will also need around 10h a day of house man for lobby area,

25 Pls let me know, we would want to start asap,

Thomas

30 The record also reflects an email between Shanab and Alex Hartstein, a Rosdev employee involved with business development, wherein Shanab informs Hartstein, “As per our phone conversation, please find below the average salary rates for HSKP employees, I will have the previous 2 weeks and the upcoming 2 weeks analysis on hand when we meet on Sunday, please advise the location and address and meeting schedule time.” The email included range of salaries for housekeeping employees, ranging from \$8 to \$15 per hour.

35 Another email from Dovgalyuk to Hartstein was sent at 2:47 pm on June 17 and states as follows: “Hi Alex. This contract and agreement which we usually use. You can make changes at your discretion.”

40 Topas was not involved in any of the negotiations for the agreements, but he recalled receiving a call from Thomas Rosenberg two days before the contracts were signed, and he informed Topas that “we found somebody,” and asked Topas to look over a copy of the proposed contract. Topas asserts that he did so and consulted with Respondent’s attorney about the arbitration clause in the agreement.

45 According to Topas, he did not ask nor did Rosenberg tell him during this conversation why Respondent was subcontracting either the housekeeping or the maintenance department. However, Topas did testify that he had discussions “long in advance of that” with Rosenberg about his intent to subcontract housekeeping functions, particularly during the period that the hotel was under construction. Topas did not testify when these discussions took place but indicated that due to occupancy problems at the hotel during construction, the idea of  
50 contracting with LFH on a cost per room basis seemed like “the way to go.”

In this regard, Topas provided some testimony concerning the financial condition of Respondent as well as the renovations and conditions in 2009 through 2011 at the hotel. When Respondent purchased the hotel, it had no “flag,” which means it was not affiliated with any of the major chains. Thus, a flag is a chain such as Holiday Inn, Hilton or Sheraton and the operators of the hotel contracts with the chain for the use of its name and reservations system in exchange for various fees. Topas was in charge of negotiations for a flag for Respondent and was in the process of negotiation with IHG, the parent company of Holiday Inn, Crowne Plaza and Holiday Inn Express. The plan as conceived by Topas was to divide the property into two hotels, one Holiday Inn Express and the other Holiday Inn, Crowne Plaza. This decision required extensive negotiations and renovations, which were ongoing during the period from 2009-2011.

As a result of the renovations, there were substantial periods of time when rooms were unavailable for use and couldn’t be occupied. Thus, revenues for the hotel suffered.

Topas further testified that while Respondent was under construction with a reduction in availability of rooms, it did not know how many rooms it would have on a given day. Therefore, he believed that Respondent was happy for that reason to agree to employ LFH on a basis of fixed price per room cleaning wage as eventually agreed upon in the contract with LFH.<sup>12</sup> The agreement ultimately signed with LFH also provided for a 5% management fee in addition to the price per room cleaned, paid to LFH. Respondent also paid LFH a rate of \$12.00 per hour for lobby attendant (houseman) services, which had no relation to the number of rooms cleaned. Topas did admit in his testimony that there was no cost savings from this arrangement with LFH and that neither Rosenberg nor anyone from Respondent ever informed him that Respondent made its decision to subcontract because it sought to save money or how much cost savings it anticipated from the subcontracting.

Topas also testified that since the emails reflected the involvement of Hartstein in the negotiations that there might have been discussions between Hartstein and LFH between November of 2010 and June of 2011, but he did not know. As noted above, neither Hartstein, Michael or Thomas Rosenberg or, indeed, any representatives from LFH testify herein.

The contract ultimately signed with LFH was dated June 23, 2011 and was signed by Oleg Tsimbler, general manager of LFH, and Topas on behalf of Respondent.

It reads as follows:

LABOR FOR HIRE INC.  
2315 E 22<sup>nd</sup> Street Suite 1R  
Brooklyn, NY 11229  
Tel (718)-300-2785/Fax (866)-289-0927

June 23, 2011

AGREEMENT

1. Engagement and Scope of Services Provided. For the term herein set forth.

<sup>12</sup> As noted above, LFH, in its earlier negotiations with Respondent in 2010, appeared to be arguing that Respondent could save money by contracting for serving on a per room basis.

Stamford Plaza Hotel and Conference Center, LP by address 2701 Summer Street Stamford Connecticut 06905 (Company) shall engage Labor for Hire Inc. (Labor) to provide with housekeeping services. Labor will provide daily professional crews for Company pursuant to its management's (Company Management) needs to run daily housekeeping operations.

5

2. Compensation. The Parties herein enter into a one (1) year services agreement (Agreement) whereby Labor will receive compensation equal to \$10.60 (ten dollars and sixty cents) per room and \$12.10 (twelve dollars and ten cents) per suite, pursuant to a mutually agreed upon Company services schedule. Labor will charge \$12 per hour for houseman [lobby attendant-TR) services. Compensation shall be paid to Labor based on invoicing on a weekly basis. The Parties shall agree upon a further schedule of payments relating to rooms and suites occupied on a long term basis. All employees will be paid in accordance with the minimum wage laws. All housekeeping employees of the company will be offered similar positions by Labor at the same wages, benefits and seniority which they have from their present employment by Company.

10

15

3. Operations. All employees will be reporting directly to the supervisors elected by Company Management. Supervisors can be outsourced to the Labor or be Company in house employees. They will be properly trained by Company Management and report to the Company Management directly. In case of any subordination failure and unsatisfied duty performance by any Labor employees, Company Management should address that issue to Labor management for immediate resolution. Labor will provide Company with supervisor for every 50 rooms, and all necessary housekeepers and housemen. Every Friday, management of the hotel will give Labor schedule of reservations for next week and every Monday will give full schedule of hours worked for previous week. Company will be responsible for all cleaning supplied including but not limited to mops, brooms Windex, cleaning soaps, air freshening products, vacuum cleaner bags, stainless steel and/or brass polishing products, etc. ALL SUPPLIES CELECTED BY LABOR FOR HIER. Labor will be provided with use of Company's entire present inventory of cleaning equipment and staff uniforms as set forth in Annex "A" attached herewith. Company will compensate Labor a maintenance fee of \$50.00 (fifty dollars) per month for vacuum cleaner maintenance and \$10.00 (ten dollars) per uniform per month per full time employee for maintenance and replacement of such items as required. At the termination of the Agreement, such items shall be returned to Company in the same condition as noted on Annex "A" at the time of the signing of this agreement. Labor shall ensure that all its employees present themselves in a professional manner both as to appearance and hygiene when performing their tasks for Company. Labor shall be responsible to wash and press uniforms as required.

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4. Termination Clause. Agreement can be terminated by either party by providing the other party with written notice of said termination 30 (thirty) day in advance. Company may terminate the Agreement for cause without notice.

45

5. Licenses and Liability Insurance. Labor shall have all necessary licenses to operate in the City of Stamford and the State of Connecticut. Labor agrees to maintain workman's compensation coverage as well as general liability insurance of no less than \$2 million and agrees to indemnify, defend and hold Company

50

5 harmless from any suits, actions or proceedings incurred by Company in  
defending a third party action. Labor to provide Company proof or workman's  
compensation coverage and proof of liability insurance coverage within 5 days of  
the execution of this Agreement. Such proof shall be in the form of a certificate of  
insurance on which Company shall appear as a named insured. In addition,  
Labor will provide Company with a bond insuring the honesty of its employees.  
Company may call on such bond in the event of any action by hotel guests or  
others which question any losses of personal property in rooms serviced by the  
employees of Labor. All employees will be citizens of US or have work papers  
and all have been verified by law.

10  
15 6. Assumption of Liabilities for Substitute Services. Labor agrees to assume  
costs related to substitute services that may be required in order to insure that  
Company's service needs are fully satisfied in compliance with the mutually  
agreed upon Company services needs. Labor will pay all expenses incurred by  
Company if Labor fails to provide Company with services.

20 7. Binding Upon Successors. This Agreement shall be binding upon and shall  
inure to the benefit of the parties hereto and their respective successors and  
assigns as provided herein. This paragraph shall not be construed to alter or  
modify the prohibition upon assignments or transfers by Licensee expressed in  
this Agreement.

25 8. Choice of Laws. This Agreement shall be construed in accordance with the  
laws of the state of Connecticut and any action hereunder shall be commenced  
in the courts of the State of Connecticut.

30 9. Additional Documents. The parties agree to execute and deliver any additional  
documents, which may be reasonably required to accomplish any of the  
purposes set forth in this Agreement.

35 10. Integrated Agreement. This Agreement constitutes the entire Agreement  
between the parties. This Agreement supersedes any prior agreement or  
understanding between the parties and no modifications or revision thereof shall  
be of any force or effect unless the same are in writing and executed by the  
parties hereto.

40 11. Third Party Beneficiary. No provision of this Agreement is intended to be for  
the benefit of or enforceable by any third party.

12. Counterparts. This Agreement and any amendments hereto may be executed  
in counterparts all of which taken shall constitute one agreement.

45 13. Independent Contractor. Labor is an independent contractor, and nothing  
herein shall be construed as making Labor an employee.

50 14. Separability of Provisions. Any provision of this Agreement, which shall be  
determined to be invalid, shall be ineffective, but such invalidity shall not affect  
the remaining provision hereof.

The titles to the paragraphs hereof are for convenience only and have no  
substantive effect. Company reserves the right to have Agreement reviewed by

its counsel and Labor herein agrees to any modification of terms and condition stipulated by such counsel.

5 15. Arbitration. It is hereby agreed by and between the parties that any and all disputes, controversies, or disagreement of any kind, as it relates to the interpretation of any provision of this Agreement shall be resolved via final and binding arbitration in accordance with laws of the State of New York before Arbitrator Roger Maher, in accordance with the rules of the American Arbitration Association at its New York locale.

10 16. Address for notice:

Labor:  
2315 E 22<sup>nd</sup> Street Suite 1R  
15 Brooklyn, NY 11229  
Tel (718)-300-2785/ Fax (866)-289-0927

Company:  
2701 Summer Street  
20 Stamford, Connecticut 06905  
Tel: 203-359-1300  
Fax: 203-359-6474

25 With copy to:  
7077 Park Avenue Suite 600  
Montreal, Quebec H3N 1X7  
Canada  
Attention: Henry Topas  
30 Fax: 514-270-6423

Labor for Hire Inc.  
By: Oleg Tsimbler I  
Date: 06.23.2011

35 Stamford Plaza Hotel and Conference Center, LP  
By: Thomas Rosenberg  
Date: 6/23/11

40 Topas also testified that he did not know if Respondent obtained any other bids from other companies to subcontract the housekeeping work and admitted that, as far as he knew, Respondent had never used LFH as a subcontractor before in any of its hotels.

45 Topas provided minimal testimony concerning the decision to subcontract the maintenance engineering work to NYM. In fact, he didn't testify when or how or who notified him that this department was being subcontracted or provided any reason for it, other than his speculation that it was also done pursuant to Respondent's "business plan" to subcontract as much work as possible as he explained in his testimony concerning the housekeeping department decision.

50 Topas did testify that he was aware that NYM did some work for Rosdev in some of its other properties but primarily construction work. The contract with NYM, signed by a NYM representative, is as follows:

New York Major Construction Corp.  
1736 55<sup>th</sup> street  
Brooklyn, NY 11204  
5 Tel (718)-801-4599/ Fax (347)-371-9293

June 23, 2011

AGREEMENT

10 1. Engagement and Scope of Services Provided. For the term herein set forth,  
Stamford Plaza Hotel and Conference Center, LP by address 2701 Summer  
Street Stamford Connecticut 06905 (Company) shall engage New York major  
15 Construction inc. (Major) to provide with Engineering services. Major will provide  
daily professional crews for Company pursuant to its management's (Company  
Management) needs to run daily Engineering operations.

20 2. Compensation. The Parties herein enter into a one (1) year services  
agreement (Agreement) whereby Major will receive compensation equal to  
\$22.00 (twenty two dollars) per hour and pursuant to a mutually agreed upon  
Company services schedule. Compensation shall be paid to Labor based on  
25 invoicing on a by weekly basis. Prior to payment of the second month's invoicing,  
Labor to provide Company with proof of having paid all payroll related taxes and  
deductions. This process shall repeat monthly for the duration of the Agreement.  
All Engineering employees of the company (as depicted in Exhibit "A") will be  
offered similar positions by Major at the same wages, benefits and seniority  
which they have from their present employment by Company.

30 3. Operations. All employees will be reporting directly to the Chief engineer  
currently employed by Company Management. They will be properly trained by  
Company Management and report to the Company Management directly. In case  
of any subordination failure and unsatisfied duty performance by any Major  
employees, Company Management should address that issue to Major  
35 management for immediate resolution. Major will provide Company with 4  
engineers for the hotel. Every Friday, Chief engineer of the Company will give  
Major the amount of billable hours for the previous week and the amount of hours  
anticipated for the coming week. Major will be provided with use of Company's  
entire present inventory of equipment. At the termination of the Agreement, such  
40 equipment shall be returned to Company in the same condition as the time of the  
signing of this agreement. Major shall ensure that all its employees present  
themselves in a professional manner both as to appearance and hygiene when  
performing their tasks for Company.

45 4. Termination Clause. Agreement can be terminated by either party by providing  
the other party with written notice of said termination 30 (thirty) day in advance.  
Company may terminate the Agreement for cause without notice.

50 5. Licenses and Liability Insurance. Major shall have all necessary licenses to  
operate in the City of Stamford and the State of Connecticut. Major agrees to  
maintain workman's compensation coverage as well as general liability insurance  
of no less than \$2 million and agrees to indemnify, defend and hold Company  
harmless from any suits, actions or proceedings incurred by Company in

5 defending a third party action. Major to provide Company proof or workman's compensation coverage and proof of liability insurance coverage within 5 days of the execution of this Agreement. Such proof shall be in the form of a certificate of insurance on which Company shall appear as a named insured. In addition, Major will provide Company with a bond insuring the honesty of its employees. Company may call on such bond in the event of any action by hotel guests or others which question any losses of personal property in rooms serviced by the employees of Major. All employees will be citizens of US or have work papers and all have been verified by law.

10 6. Assumption of Liabilities for Substitute Services. Major agrees to assume costs related to substitute services that may be required in order to insure that Company's service needs are fully satisfied in compliance with the mutually agreed upon Company services needs. Major will pay all expenses incurred by Company if Major fails to provide Company with services.

15 7. Binding Upon Successors. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as provided herein. This paragraph shall not be construed to alter or modify the prohibition upon assignments or transfers by Licensee expressed in this Agreement.

20 8. Choice of Laws. This Agreement shall be construed in accordance with the laws of the state of Connecticut and any action hereunder shall be commenced in the courts of the State of Connecticut.

25 9. Additional Documents. The parties agree to execute and deliver any additional documents, which may be reasonably required to accomplish any of the purposes set forth in this Agreement.

30 10. Integrated Agreement. This Agreement constitutes the entire Agreement between the parties. This Agreement supersedes any prior agreement or understanding between the parties and no modifications or revision thereof shall be of any force or effect unless the same are in writing and executed by the parties hereto.

35 11. Third Party Beneficiary. No provision of this Agreement is intended to be for the benefit of or enforceable by any third party.

40 12. Counterparts. This Agreement and any amendments hereto may be executed in counterparts all of which taken shall constitute one agreement.

45 13. Independent Contractor. Major is an independent contractor, and nothing herein shall be construed as making major an employee.

50 14. Separability of Provisions. Any provision of this Agreement, which shall be determined to be invalid, shall be ineffective, but such invalidity shall not affect the remaining provision hereof. The titles to the paragraphs hereof are for convenience only and have no substantive effect. Company reserves the right to have Agreement reviewed by its counsel and major herein agrees to any modification of terms and condition stipulated by such counsel.

15. Arbitration. It is hereby agreed by and between the parties that any and all disputes, controversies, or disagreement of any kind, as it relates to the interpretation of any provision of this Agreement shall be resolved via final and binding arbitration in accordance with laws of the State of New York before Arbitrator Roger Maher, in accordance with the rules of the American Arbitration Association at its New York locale.

16. Address for notice:

Major:  
1736 56<sup>th</sup> street  
Brooklyn, NY 11204  
Tel (718)-801-4599/ Fax (347)-371-9293  
Email-nymajor@gmail.com

Company:  
2701 Summer Street  
Stamford, Connecticut 06905  
Tel: 203-359-1300  
Fax: 203-359-6474

With copy to:  
7077 Park Avenue Suite 600  
Montreal, Quebec H3N 1X7  
Canada  
Attention: Henry Topas  
Fax: 514-270-6423

New York Major Construction Inc  
By: Moshe Y. Nusenzweig  
Date: 6-26-11

Stamford Plaza Hotel and Conference Center, LP  
By:  
Date:

Topas also testified concerning the hotels operated by other Rosdev affiliates, where the hotels outsourced or subcontracted various functions. An entity named Hotel Cote de Liesse, Inc. is another Rosdev entity, which operates a hotel under the Holiday Inn flag at the airport in Montreal, Canada (herein called Holiday Inn Airport). Employees of Holiday Inn Airport have been and still are represented by a labor organization, and the parties have entered into a series of collective bargaining agreements, covering these employees. The bargaining unit in these contracts covered housekeeping employees.

On November 1, 2000, Holiday Inn Airport entered into a subcontracting agreement with Le Group HMS, Inc. (HMS) to perform housekeeping services at the hotel. The agreement by its terms begins July 1, 2000 and terminates on December 31, 2000, with either party having the right to terminate anytime during the contract after 30 days notice. The contract requires HMS to fulfill all the obligations of Holiday Inn Airport contained in its contract with the union, insofar as housekeeping employees are concerned, including payment of salaries, benefits, hours, conditions of work and grievances. Topas did not know how long the housekeeping functions

were outsourced to HMS but conceded that housekeepers were not outsourced at this property at the time of the hearing. However, Topas added, “Today, they are not, but they will shortly go back into being.”<sup>13</sup> Topas was asked whether the union at the airport hotel consented or agreed to the subcontracting. Topas answered that he did not know, but that he doubted if the union  
5 cared since the subcontracting agreement required the subcontractors to follow all the terms of the union’s contract with the hotel.

Topas also testified that the engineering and maintenance employees at that property have ever been subcontracted or outsourced.  
10

Another Rosdev entity is 2985-420 Canada, Inc., which operates a Holiday Inn Midtown hotel in Montreal, Canada. This entity also had and has a collective bargaining agreement with a union covering employees in a unit, including housekeeping employees. Topas testified and identified a subcontracting agreement between the hotel and another subcontractor, running  
15 from January 1, 1999 through December 31, 1999. This contract contains a clause with the same language as the contract involving the airport hotel in Montreal, obligating the subcontractor to adhere to the terms of the hotel’s collective bargaining agreement with the union as housekeeping employees are concerned. According to Topas, the housekeeping work at this facility was and is still subcontracted as of the date of the trial. Topas testified that either  
20 the front desk or the engineering employees at the hotel were also outsourced as of the date of the trial, but he was not sure which one.<sup>14</sup>

Topas also testified about another Rosdev entity, which operates a Crowne Plaza hotel at the Montreal airport. According to Topas, the housekeeping employees at that hotel are  
25 outsourced, but the engineering department is not. Thus, the hotel also has a collective bargaining agreement with the hotel, covering these groups of employees.

Another Rosdev entity operates a Holiday Inn hotel in Gatineau (next to Ottawa), Canada with a union contract, covering housekeeping and engineering employees. According to  
30 Topas, neither the housekeepers nor the engineers employed at that hotel have been outsourced. Topas added, however, that the new contract with the union at that facility contained a provision, allowing the hotel to outsource the laundry employees. Topas did not testify that the hotel had, in fact, subcontracted or outsourced the laundry employees at that facility.  
35

The Rosdev entity also includes two hotels in the United States. One of the hotels is the Crowne Plaza Hotel in Secaucus, New Jersey. That is the hotel involved in the unfair labor practice proceeding, detailed above, where it was concluded that the Respondents (herein called Secaucus), therein, which were found to be Rosdev and La Plaza Secaucus as joint  
40 employers, violated the Act by unilaterally changing the leave accrual policies after it purchased the hotel, agreed to hire the predecessor’s employees and did not announce its intention to establish new terms and conditions of employment.

That decision traced to some extent the history of bargaining and representation at that  
45 hotel, which ties in to Topas’s testimony about Rosdev’s bargaining history and relationship with unions and Rosdev’s business plan to outsource as many functions as possible.

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<sup>13</sup> Topas testified further in that regard that Rosdev was in the process of trying to find another contractor to perform the housekeeping work.

<sup>14</sup> No documents were introduced by Respondent to corroborate Topas’s testimony in these  
50 latter respects.

Topas testified that at that hotel Respondent had collective bargaining relationships with several unions in an attempt to support his testimony that Respondent did not care whether its employees chose to be represented by a union at the Stamford Plaza hotel. Through Topas, Respondent introduced a copy of a collective bargaining agreement between Rosdev Hospitality and Local 68-68A-68B, International Union of Operating Engineers, AFL-CIO (Engineers Union), which by its terms runs from March 29, 2008 through March 31, 2013 and which, according to Topas, was still in effect at all times material herein.

This contract provided for recognition of the Engineers Union in a unit of employees operating steam boilers, stationery, marine, portable, boisting, gas or electrical engines or any machine, all packaging and adjusting or refrigeration machines and equipment, including power plant auxiliaries coming under the supervision of the chief engineer, operation of the engine and boil rooms, and all repairs, assembling, cleaning and maintenance to keep the machines in operation.

Topas furnished no testimony nor does the record reflect how long this collective relationship existed or how it started. Interestingly, the prior unfair labor case, detailed above, did not appear to involve a unit covering these employees. Thus, the decision reflects that the unit, which had been recognized by the predecessor and which was found to be appropriate by the Board, covered a large number of different classifications, such as bellmen, bartenders, cooks, room attendants, housemen, night cleaners, cashiers, servers, bus persons, storeroom employees and linen employees, and excluded office clericals, guards and supervisors. No mention was made in the unit description of engineering or maintenance employees, and the decision makes no reference to this group of employees or whether they had been covered by the contract. From the description of the unit, it appears that this group had not been covered by the Unite Here contract. Thus, the record does not disclose whether this group of employees had been previously represented by the predecessor employer as had the Unite unit's employees and/or that Rosdev Secaucus agreed to continue that recognition as it did with the larger unit or that this group was unrepresented when Rosdev Secaucus began operation of the hotel.

I note that the purchase of the hotel by Rosdev Secaucus occurred in December of 2004, and the contract entered into evidence was effective March 29, 2008 and signed by a Rosdev Secaucus representative on August 13, 2008.

The prior decision did reflect, as related above, that Rosdev Secaucus denied the appropriateness of the unit, alleging that during bargaining the union therein (Unite) had agreed to two units. One unit consisted of food and beverage employees, employed by La Plaza, and one consisted of housekeeping employees, employed by Rosdev. However, since the record disclosed that this unit change was merely a bargaining proposal urged by Rosdev Secaucus and had not yet been agreed upon by Unite, the historical unit as set forth in the prior contract was found to be appropriate.

This record also included a copy of the most recent collective bargaining agreement between Rosdev Secaucus and Unite, which by its terms runs from August 3, 2007 through August 3, 2011. In this contract, the unit covered includes only housekeeping and laundry employees, and specifically excludes front desk employees, engineering and maintenance employees and food and beverage employees as well as supervisors and office clericals. Thus, it appears that at some point during their bargaining, Rosdev Secaucus and Unite agreed to change the prior unit to a unit including housekeeping and laundry employees and excluding all other classifications.

5 The record does not reflect what happened *vis a vis* representation to the other classifications of employees at that hotel, such as bellmen, food and beverage employees, cashiers, and bar persons, who had clearly been part of the unit at the predecessor employer and were for some period of time part of the unit recognized by Rosdev Secaucus.

10 Interestingly, as noted above, the prior contract and the unit found appropriate in the prior Board case makes no mention in either the inclusion or exclusion of engineering and maintenance employees. However, in the most recent contract entered into by the parties, engineering and maintenance employees were specifically excluded from the unit. Thus, the status of the engineering and maintenance employees from 2004 through 2008 is uncertain. It is possible that Respondent had recognized the Engineers Union (Local 68), who may have been the recognized collective bargaining representative of the predecessor's employees performing that work. It is also possible that this group of employees had been unrepresented by the predecessor or even that they were included in the unit, although not specified in the contract.

15 Whatever may have been the case as to these matters are largely irrelevant to any issues here. What may be relevant and what is clear from this record is that Rosdev Secaucus recognized and had a collective bargaining relationship with Local 68, Engineers Union, covering a unit of essentially engineering and maintenance employees.

20 Topas admitted that Rosdev Secaucus has not ever subcontracted or outsourced either the engineering maintenance or the housekeeping employees at that facility. Topas did testify, however, that Rosdev Secaucus made efforts to persuade both unions involved to agree to subcontract some functions, but to date, these efforts have not been successful.

25 Thus, Topas met with Robert Masterson, a business agent for the Engineers and asked Masterson if he would permit Rosdev Secaucus to outsource some or all of the maintenance work, and Masterson said no. Additionally, Topas testified that he had had numerous meetings with representatives of Unite, in which Rosdev Secaucus, because of extensive money losses in the last two years, asked Unite for permission to outsource food and beverage employees, which has been turned down, and for permission to close the laundry. The latter request was being entertained by the union but had not occurred yet. Rosdev Secaucus also asked Unite for permission to outsource the shuttle drivers, who ferry people back and forth to the airport, but there was no agreement on this request as well. According to Topas, these issues are still under discussion with the union. Notably, however, Topas did not testify that Rosdev Secaucus has ever asked permission of the union in Secaucus to outsource or subcontract housekeeping employees. Indeed, according to Topas, negotiations for a successor collective agreement with the union regarding Rosdev Secaucus employees were still ongoing as of the trial.<sup>15</sup>

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45 Topas also provided testimony about another property of Rosdev, located near JFK airport, which has previously been a Holiday Inn Crowne Plaza hotel. This facility was acquired by Rosdev in bankruptcy. The Rosdev operating entity is JFK Plaza Property, LP (herein called Rosdev JFK). The previous owner of the property had filed for bankruptcy and during the bankruptcy proceeding, Rosdev JFK became involved with the facility and purchased it from the debt holder, Neshgold LP. The prior owners had operated the hotel under a flag of Crown Plaza and had a contract with Local 6, New York Hotel and Motel Trades Council, AFL-CIO, covering a wall-to-wall unit covering all employees, including housekeeping and engineering and

50 <sup>15</sup> As noted above, the prior contract with Unite by its terms expired on August 3, 2011. The contract with the Engineers Union was still in effect, due to expire on March 31, 2013.

5 maintenance employees. In the course of the bankruptcy proceeding, JFK Plaza (and  
 Neshgold) negotiated with Local 6 concerning the terms of a new collective bargaining  
 agreement to take effect when the purchase of the hotel becomes final. The parties reached an  
 agreement on such a contract on March 28, 20011, signed by Topas and Peter Ward, president  
 of Local 6, New York Hotel and Motel Trades Council. This document provides that the parties  
 10 agree to apply the terms of the current collective bargaining agreement and any successor  
 agreement negotiated between the union and the hotel association with certain specified  
 exceptions. Thus, the parties agreed to wages of from 70-75% the contract's wages and other  
 changes regarding severance, renovations and benefits. The agreement also specifies that  
 Neshgold "may reduce staff or eliminate laundry operations." According to Topas, during the  
 negotiations for this agreement, which had been conducted under the auspices of the  
 bankruptcy trustee, Rosdev JFK had also asked to outsource the food and beverage  
 department as well as the front desk and housekeeping departments, but that the union turned  
 15 down these requests. Topas conceded that Rosdev JFK never asked to outsource the  
 engineers and that it always intended to "keep the engineers" at that facility. The union did  
 agree, as the contract indicates, that Rosdev JFK could close or outsource the laundry  
 department.

20 Topas further testified that it was the intent of ownership to seek some further  
 concessions on outsourcing in some of these other departments at that facility when it is  
 operational but admitted that "I would say we would ask, but I don't think I'm going to get too far  
 at this point."

25 Topas also testified that Rosdev has utilized and is currently utilizing NYM to perform  
 work at the JFK hotel during the repairs, construction and renovation period, which was still  
 ongoing as of the date of the trial. Indeed, that property still had no flag, and Rosdev JFK was  
 still negotiating to obtain a flag for that property when the construction and renovations are  
 complete. Topas did not know whether NYM employed any of the engineering and maintenance  
 employees previously employed at that hotel by the predecessor owner while performing these  
 30 repair, construction and renovation functions. Topas concurred that the hotel itself was not  
 operational and did not employ any employees.

35 Topas also admitted that he was unaware whether or not NYM had ever had previous  
 experience in performing housekeeping outsourcing for any employers and that NYM had not  
 previously performed subcontracting or maintenance engineering work for any Rosdev entity.

## XI. Analysis

### A. The Status of the Alleged Supervisors and Agents

40 Section 2(11) of the Act defines "supervisor" as:

45 any individual having the authority, in the interest of the employer, to hire,  
 transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline  
 other employees, or responsibly to direct them, or to adjust their grievances, or  
 effectively to recommend such actions, if in connection with the foregoing the  
 exercise of such authority is not of merely routine or clerical nature, but requires  
 the use of independent judgment.

50 Pursuant to this definition, individuals are statutory supervisors if (1) they hold the  
 authority to engage in any 1 of the 12 supervisory functions (e.g. "assign" or "responsibility to  
 direct") listed in Section 2(11); (2) their "exercise of such authority is not of a merely routine or

clerical nature, but requires the use of independent judgment”; and (3) their authority is held “in the interest of the employer.” *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. “[T]he burden of proving supervisory status rest on the party asserting that such status exists.” *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003); accord *Kentucky River*, 532 U.S. at 711-712 (deferring to existing Board precedent allocating burden of proof to party asserting that supervisory status exists). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Dean & Deluca*, 338 NLRB at 1047; *Bethany Medical Center*, 328 NLRB 1094, 1103 (1999).

The Board examined and discussed in *Oakwood Healthcare Inc.*, 348 NLRB 686 (2006) and *Croft Metals, Inc.*, 348 NLRB 717 (2006) several particular aspects of this issue, particularly the definitions of “assign,” “responsibly to direct” and “independent judgment” as these terms are used in Section 2(11) of the Act. In *Croft Metals*, supra 348 NLRB at 721, the Board summarized the pertinent portions of these definitions as detailed in *Oakwood Healthcare* as follows:

The authority to “assign” refers to “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee.... In sum, to “assign” for purposes of Section 2(11) refers to the...designation of significant overall duties to an employee, not to the...ad hoc instruction that the employee perform a discrete task.” *Id* slip op at 4.

The authority “responsibly to direct” is “not limited to department heads” but instead arises “[i]f a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’...provided that the direction is both ‘responsible’...and carried out with independent judgment.” *Id* slip op at 6. “[F]or direction to be ‘responsible,’ the person performing the oversight must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed are not performed properly.” *Id* slip op at 7. “Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id* slip op at 7.

“[T]o exercise ‘independent judgment,’ an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Id* at 8. “[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id* slip op at 8. “On the other hand, the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices.” *Id* slip op at 8 (citations omitted). Explaining the definition of independent judgment in relation to the authority to assign, the Board stated that “[t]he authority to effect an assignment...must be independent [free of the control of others], it must involve a judgment [forming an opinion or evaluation by discerning and comparing data], and the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” *Id* slip op at 8 (citations omitted).

Further, even where an individual does not possess the indicia under Section 2(11) of the Act necessary to establish that he or she is a supervisor under the Act, an employer may,

nonetheless, be responsible for the conduct of this individual if that individual is an agent of the employer under Section 2(13) of the Act.

5 In this regard, the Board applies common law principles when examining whether an employee is an agent of the employer. Apparent authority will result from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question. *Southern Bag Corp.*, 315 NLRB 725 (1994). The test is whether, under all the circumstances, “employees would reasonably believe that the alleged agent was acting on behalf of management when he took the action in question.” *California Gas Transport*, 347 NLRB 1314, 1317 (2006); *Great American Products*, 312 NLRB 962, 963 (1993). As stated in Section 2(13) of the Act, when making the agency determination, “the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.”

15 Although the individual may not have exercised supervisory responsibilities sufficient to establish 2(11) supervisory status, his position and duties are relevant in determining agency status. It is well-settled that agency can be established when the employee is held out as conduit for transmitting information to the employees. *D&F Industries*, 339 NLRB 618, 619 (2003); *Hausner Hard-Chrome of KY*, 326 NLRB 426, 428 (1998).

20 I now turn to the specific individuals alleged in the complaint to be supervisors and agents of Respondent and shall evaluate their status in light of the above described principles.

#### 25 B. Bruce Linval

General Counsel contends that although Respondent in its answer to the complaint denied the supervisory or agency status of Linval (as well as Pisacane, Soto, Morel and Acevedo) that Respondent admitted to the supervisory status of these individuals during the investigation in its responses to General Counsel’s investigatory subpoena.

30 In this regard, General Counsel notes, as detailed above, that General Counsel issued a subpoena seeking job titles of all “managers and supervisors employed by Respondent,” who possessed or exercised the “indicia of supervisory authority set forth in Section 2(11) of the Act.” Respondent’s attorney responded to that request by a letter from its attorney stating that it would “forward information regarding supervisors/managers who have the authority to hire, fire, suspend, etc.” under separate cover.

40 Respondent, thereafter, submitted an email from its counsel, attaching a “list of Managers/Supervisors employed from January 2011 to date.” “Please be advised that I have been informed by my client that the only individuals with the authority to hire and fire is the Operations Manager of the hotel, Mahmoud Shanab.”

45 Based on these submissions, General Counsel argues that Respondent should be construed as admitting that individuals were supervisors under Section 2(11) of the Act inasmuch as it denied only that they had the authority to hire or fire. Therefore, General Counsel contends that Respondent implicitly admitted that these individuals did, in fact, have the authority to exercise the other indicia of supervisory authority reflected in Section 2(11) of the Act, such as transfer, promote, assign, reward, responsibly direct or discipline employees since its initial response stated that it would submit to General Counsel “information regarding supervisors/managers who have the authority to hire, fire, suspend, etc” under separate cover.

I do not agree and find it inappropriate to construe the response of Respondent’s

Counsel to the investigatory subpoena as an admission. While the response may have been inartfully worded, I do not believe that they can or should be reasonably construed as admitting supervisory status. Respondent initially stated that it would forward the information regarding supervisors/managers who have the authority to hire, fire, suspend etc” under separate cover.

5 The use of “etc.” appears to be merely an attempt to avoid listing all of the indicia listed.

10 When Respondent subsequently stated that the only individuals with the authority to hire and fire is the operations manager, I do not believe it reasonable to construe Respondent as necessarily admitting that these individuals possessed all or even any of the other indicia of supervisory status. I find it just as likely that when Respondent stated that only Shanab had the authority to hire and fire that it meant to include the other indicia of supervisory status as referred to as “etc.” in its prior letter and intended to deny the possession of any of the Section 2(11) statutory indicia, except for Shanab. I find that Respondent’s submissions are at best ambiguous in this regard and find it inappropriate and somewhat unfair to construe them as  
15 binding admissions of supervisory status as General Counsel asserts, particularly where Respondent had unequivocally denied supervisory status in its answer.

20 I, therefore, find it necessary to decide the supervisory and agency status of Linval as well as the other individuals alleged in the complaint as supervisors and agents of Respondent based on the record evidence concerning their responsibilities and authority.

25 Turning to the evidence adduced concerning Linval’s status, General Counsel argues that Linval both assigned and responsibly directed the work of the housekeeping employees and that the record discloses that Respondent held Linval accountable for the housekeepers’ performance. Therefore, it argues that on this basis alone Linval should be found to be a supervisor under Section 2(11) of the Act.

30 While the record establishes, as General Counsel points out, that Linval does assign and direct the work of housekeepers, which includes informing them of which rooms to clean and which rooms were VIP rooms, which were rooms to be occupied by important guests, such as Topas when he stayed there, and which would require special attention and care.

35 However, the record has not established that Linval exercised independent judgment in his responsibilities of assigning or directing the work of the housekeepers. No evidence was presented that Linval, in considering what rooms to assign to the housekeepers, considered the housekeepers skills or abilities and matched these skills to the rooms. Thus, the assignments and directions exhibited by Linval, insofar as this record discloses, reveals little more than equalization of work load, which is insufficient to demonstrate independent judgment. *Oakwood Healthcare*, supra, 348 NLRB 693-694, 697; *Loparex LLC*, 353 NLRB 1224, 1225 (2009)  
40 (assignment of work by shift leaders to employees does not take into account relative skills of crew members; assignments made randomly and do not reflect exercise of independent judgment); *Rockspring Development Inc.*, 353 NLRB 1041, 1043 (2009) (no independent judgment shown, absent evidence that putative supervisor assessed relative skills of employees in making assignments); *Lynwood Manor*, 350 NLRB 489, 490 (2007) (independent judgment not found, wherein charge nurses not found to make assignments tailored to patient conditions and particular skill sets of employees); *Alstyle Apparel*, 351 NLRB 1287, 1305 (2007) (no independent judgment exercised by shift leaders in assignment or direction or work);  
45 *Loyalhanna Health Care*, 352 NLRB 863, 864 (2008) (nurse managers found not to exercise independent judgment in deciding which aides to assign, wherein not shown that managers considered particular aides’ skill sets and matched these skills to the condition and needs of  
50 particular patients); *Austal USA LLC*, 349 NLRB 561 fn. 6 (2007) (no evidence adduced regarding factors weighed or balanced by team leader in making assignment or directions to

employees; thus, degree of discretion involved in these activities does not rise above the routine or clerical, *Croft Metals*, supra).

5 I, therefore, need not and do not decide whether the evidence<sup>16</sup> adduced by General Counsel that Linval is allegedly “accountable” for the performance of employees under his supervision is sufficient to meet the prong of *Oakwood Healthcare*, supra that is essential for a finding of responsible direction of employees.

10 However, I do agree with General Counsel that the record does establish that Linval possessed and exercised the authority to discipline and recommend discipline, one of the 11 indicia of supervisory responsibilities set forth in Section 2(11) of the Act.

15 Here, the record discloses that Linval assigned and issued three disciplinary warnings to three different employees, documenting various issues of misconduct by these employees, one of which was marked “final warning.” All of these warnings reflect similar comments reflecting that if future similar incidents occur again further disciplinary action will be taken, which may lead to termination. The final warning issued to employee Nazaire reflected that if this incident should occur again, “Anthony will be terminated from the Stamford Hotel.” All of these warnings were signed by the employees involved in the incident.

20 With respect to the final warning issued to Nazaire, the document reflects that Linval was involved in requiring Nazaire to pay \$529.00 to Respondent, out of his paychecks to reimburse a guest for belongings that the employee had thrown out, contrary to Respondent’s policies and proceedings, which required him to bring these items to the housekeeping department.

25 I find that Linval possessed and exercised the authority to impose and recommend discipline. *RCC Fabricators, Inc.*, 352 NLRB 701, 736-739 (2008); *Wilshire at Lakewood*, 345 NLRB 1050, 1051 (2005) (disciplinary write-ups placed in employee’s personnel file, first step in process for possible discipline); *Mountaineer Park*, 343 NLRB 1473 (2004) (authority to write up employees for proposed disciplinary and initiate disciplinary process); *Progressive Transportation Services*, 340 NLRB 1044, 1045-1046 (2003) (dispatcher by issuing and signing notices describing incidents, initiates disciplinary process, even though higher supervisor approves discipline, effectively recommends discipline); *Sheraton Universal Hotel*, 350 NLRB 1114, 1115-1118 (2007) (front desk supervisor in hotel possess authority to effectively recommend discipline, where he initiated disciplinary process by conducting couch and counsel session and effectively recommend issuance of written warning to higher management).

30 I also conclude that since the record demonstrates that Linval possessed at least one of the indicia of supervisory status under Section 2(11) of the Act, it is appropriate to consider a number of secondary indicia of supervisory status, which are present here and support a finding of supervisory status on the part of Linval. They include the fact that Linval is paid a considerably higher salary than the employees under his supervision, has been given a supervisory title by management, is considered by employees to be a supervisor and was held out by management to employees as a supervisor. *Sheraton Universal*, supra, 350 NLRB at 45 1118; *Wilshire at Lakewood*, supra, 345 NLRB at 1051.

50 <sup>16</sup> Document of conversation between Linval and then-general manager, wherein Linval was informed that he must be held more “accountable” regarding performance of room attendants and he “must hold team accountable for all actions and projects assigned” and that Linval would be held accountable “for the success of the housekeeping and engineering departments.”

Additionally, I would conclude that even if the evidence does not establish, as I have concluded above, Linval's supervisory status, the evidence is, nonetheless, sufficient to find, which I do, that Linval was an agent of Respondent under Section 2(13) of the Act. The applicable standard in assessing this issue is, as detailed above, whether employees would reasonably believe that the purported supervisor was speaking for management. Here, Respondent had placed Linval in a position, wherein they would reasonably believe that he was speaking for management by conferring him with a supervisory title, distributing a handbook to employees requiring them to notify and speak to the manager before calling out, absent or late, and stating that employees can be terminated immediately for "insubordination, willful disregards or disrespect towards supervisors or representatives of management," and giving him the authority to assign work to and oversee the work of employees. *Bill's Electric Inc.*, 350 NLRB 292, fn. 3 (2007) (Board does not pass on judge's finding that foremen were supervisors under Section 2(11) of the Act by assigning and directing work of employees but finds them to be agents under Section 2(13) of the act based on these facts since they exercised apparent authority and acted as spokespersons for employer on jobsite); *Facchina Construction Co.*, 343 NLRB 886, 886-887 (2004) (finding foreman to be an agent of employer, where he gave employees their daily assignments and work instructions, oversaw employees' work and received time off requests); *K.W. Electric*, 342 NLRB 1231, 1241 (2004) (leadman on jobsite agent, who told employees what to do and transmitted information from management, involving work assignments to employees); *Progressive Electric Co.*, 344 NLRB 426, 433 (2005), *enfd.* 453 F.3d 538 (D.C. Cir. 2006) (foreman found to be agent since employer representative told employees that foreman was "running jobs for him" and they should ask foreman any questions about jobs; held to manifest to employees that foreman was speaking for management); *D&F Industries*, 339 NLRB 618, 619-620 (2003) (assistants to packaging manager held to be agent although not supervisor, in view of their roles in assigning work to employees, administering over-time and time-off policies and enforcing employer's rules; Board concludes that in these matters, the assistants "spoke to employees as representatives of management and the record shows that employees perceived them such"; moreover, higher officials told employees that they were supervisors); *United States Service Industries*, 319 NLRB 231, 237,fn. 2 (1995) (agency status found based on Board findings that employer placed disputed individuals in positions, where employees could reasonably believe they spoke on behalf of management, where they assigned work, checked work of employees, issued written warnings and were identified by employees as supervisors); *Three Sisters Sportswear*, 312 NLRB 853, 864-865 (1993) (section supervisors agents, although not Section 2(11) supervisors, where they assigned and corrected work of employees and were designated by employer as supervisors).

#### C. Mark Pisacane

My analysis of the status of Pisacane is virtually identical to the above detailed analysis of Linval's status.

General Counsel contends, as it did with respect to Linval, that Pisacane assigned and responsibly directed work to the engineering associates under his supervision. However, General Counsel has again failed to establish that Pisacane exercised independent judgment in connection with either of these functions. No evidence was adduced that Pisacane makes any judgments or analysis of the relative skills or abilities of the engineering associates under him or attempts to match their skills with the particular tasks that he assigns to be performed. *Rockspring Development*, *supra*; *Alstyle Apparel*, *supra*; *Austal USA*, *supra*.

However, similar to Linval, Pisacane issued a verbal warning to an employee, which was memorialized in a document placed in the employee's personnel file. Therefore, I also conclude that Pisacane possessed and exercised the authority to impose and recommend discipline, one

of the primary indicia of Section 2(11) of the Act. *RCC Fabricators*, supra; *Wilshire at Lakewood*, supra; *Mountaineer Park*, supra; *Progressive Electric*, supra; *Sheraton Universal*, supra.

Also, similar to Linval, I also find that the record discloses a number of secondary indicia of supervisory status, which are supportive of a finding of supervisory status. They include the facts that Pisacane was paid a salary of \$75,000 per year, which is compensation higher than the operations manager Shanab, his title was director of manager of facilities, he exclusively had an office in the engineering/maintenance department and keys to the office, he approved time-off requests and asked employees to work over-time.

I, therefore, find that the record establishes that Pisacane was supervisor of Respondent within the meaning of Section 2(11) of the Act,

I also conclude, as I did with respect to Linval, that Respondent placed Pisacane in a position that employees would reasonably believe that he was speaking on behalf of management. Much of the evidence and applicable precedents are similar to Linval's status. Pisacane assigned and directed the work of employees, was given a supervisory title by Respondent, employees were informed that they report to the facilities manager to assist him in any project as directed, Respondent's handbook required them to notify the manager before calling out absent and stating that employees could be terminated for insubordination to work supervisors or members of manager. Therefore, I find that even if he is not found to have been a supervisor under Section 2(11) guidelines, that Pisacane was an agent of Respondent under Section 2(13) of the Act. *Bill's Electric*, supra; *Facchina Construction*, supra; *K.W. Electric*, supra; *Progressive Electric*, supra; *D&F Industries*, supra; *United States Service*, supra; *Three Sisters Sportswear*, supra.

#### D. Carlos Morel and Gustavo Soto

Morel was Respondent's food and beverage manager and Soto was the food and beverage manager. They supervised the five banquet housemen, who set up the rooms for banquets, dances and other events.

General Counsel contends that the undisputed evidence from employee Hidalgo, essentially confirmed by Topas, that both Morel and Soto assign and direct the work of the housemen employees with various tasks, such as setting-up rooms and providing refills for refreshments served during events, established that they assign work and responsibly assign work to the banquet housemen employees, sufficient to make them supervisors under Section 2(11) of the Act.

However, as in the cases of Linval and Pisacane, described above, that evidence falls short of establishing that either Soto or Morel exercised independent judgment in making their assignments or in directing the work of the employees under their supervision.

I would note that some evidence in the record indicates that both Morel and Soto also supervise food and beverage employees such as waiters, bartenders and busboys. I cannot find supervisory status based on this evidence, particularly, since it is unclear from Topas's testimony whether these food and beverage employees were employees of Respondent. In any event, even as to these employees, the record does not establish that either Soto or Morel exercise independent judgment in making assignments or directing their work.

General Counsel also argues that the record establishes that Soto had the authority to discipline employees based on Hidalgo's testimony. Hidalgo testified that while he and

employee Cedric were talking, Soto approached them and asked Cedric to come with him into the office. Fifteen minutes later, Cedric emerged from the office, and Hidalgo asked what happened. Cedric informed Hidalgo that Soto “got mad at me,” threatened to “write it up” and said to Cedric “one more time, I’m out.”<sup>17</sup> However, since Cedric did not testify, Hidalgo’s testimony about what Soto allegedly told him is hearsay. I find it inappropriate to rely on such evidence, which is not corroborated by any other evidence, to establish that Soto had the authority to discipline employees.

Therefore, I conclude the General Counsel has failed to establish that either Soto or Morel possessed any of the indicia of supervisory status under Section 2(11) of the Act.

In such circumstances, evidence of secondary indicia, which are present here, such as higher salary and supervisory title are irrelevant and cannot be considered sufficient to establish supervisory status. *Central Plumbing Specialties*, 337 NLRB 973, 995 (2002); *Billows Electric Supply of Northfield*, 311 NLRB 878 fn. 2 (1993).

I, therefore, conclude that General Counsel has failed to establish that either Soto or Morel were supervisors of Respondent as defined under Section 2(11) of the Act.

However, as with Pisacane and Linval, and based on the similar facts and precedents cited above, I conclude that Respondent has placed Morel and Soto in positions where they would reasonably believe that they were speaking for management. They had higher salaries than the employees under them, were given supervisory titles by Respondent, they assigned and directed work of employees, employees were required to speak with their department managers before calling out absent or sick and were informed that insubordination toward supervisors or representatives of management can lead to termination. I find they were agents of Respondent. *Bill’s Electric*, supra; *K.W. Electric*, supra; *Progressive Electric*, supra; *D&F Industries*, supra; *United States Service*, supra; *Three Sisters Sportswear*, supra.

#### E. Maria Acevedo

The complaint also alleges that Acevedo is both a supervisor and agent of Respondent. In her case, the evidence concerning her status consists only of evidence that she assigns work to housekeepers. However, similar to other alleged supervisors here, no evidence was adduced that she exercised any independent judgment in making these assignments. Thus, General Counsel has failed to establish that she is a supervisor within the meaning of Section 2(11) of the Act.

I also do not believe that her role in, at times, assigning work to employees, without more evidence, is sufficient to establish that employees would reasonably view her as speaking for management. I find that she was not an agent of Respondent and shall recommend dismissal of this complaint allegation.

#### F. The Alleged Interrogations

Interrogation is not a per se violation of Section 8(a)(1) of the Act. *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom, *UNITE HERE, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In determining whether a supervisor’s questions to an employee about union or concerted activities constitutes an unlawful interrogation, the Board examines whether, under all

<sup>17</sup> Cedric, according to Hidalgo, had been coming in late to work.

the circumstances, the questioning reasonably tends to interfere with, restrain or coerce employees in the exercise of their Section 7 rights. *Heartshare Human Services of New York*, 339 NLRB 842, 843 (2003); *Rossmore*, supra.

5 Under the totality of circumstances approach, the Board examines factors such as the  
 employer's background (i.e., whether there is a history of employer hostility) the nature of the  
 information sought, place and method of the interrogation (e.g., whether the employee was  
 called from work to the boss's office), whether the tone of the questions was hostile or  
 threatening, and the truthfulness of the reply. *Bourne Co. v. NLRB*, 332 F.2d 47, 48 (2<sup>nd</sup> Cir.  
 10 1969). Another important though not conclusive factor considered by the Board is whether the  
 interrogated employee is an open and active union supporter. *Camaco Lorain Mfg. Plant*, 356  
 NLRB #143 slip op at 1 (2011); *Evergreen America*, 348 NLRB 178, 208 (2006); *Demco New  
 York Corp.*, 337 NLRB 850, 851 (2002); *Dyn Corp.*, 343 NLRB 1197, 1211 (2004); *Gloria Oil &  
 Gas Co.*, 337 NLRB 1120, 1122 (2002); *Sundance Construction Management*, 325 NLRB 1013  
 15 (1998); *Schwartz Mfg. Co.*, 289 NLRB 874, 888 (1988).

In assessing the legality of the four alleged unlawful interrogations, here, I emphasize  
 the importance of the latter factor, which, as noted above, the Board finds highly significant.  
 Here, the evidence disclosed that neither of the two employees, who were questioned about  
 20 union activities, Hidalgo or Rivera, were known nor open union supporters at the time of the  
 questioning. *Evergreen America*, 348 NLRB 178 (2006); *Camaco Lorain*, 356 NLRB #143 slip  
 op at 2 (2011); *Gardner Engineering*, 313 NLRB 755 (1994), enfd. as modified on other grounds  
 115 F.3d 636 (9<sup>th</sup> Cir. 1997).

25 Hidalgo was questioned by three different supervisors and/or agents of Respondent in a  
 similarly coercive manner. On June 3, Hidalgo was asked by Morel in Morel's office, if it was  
 true that a union was coming. Hidalgo replied that he did not know what Morel was talking  
 about. Morel responded, "If it's true, you know, I think it's a good idea for you guys, but not for  
 the managers because it will be more work for us." Morel explained to Hidalgo what he meant  
 30 by that comment. Thus, Morel said at present, when work gets busy in the restaurant, he could  
 ask Hidalgo (who is primarily a houseman) to help out and take orders or remove stuff from the  
 tables, and Hidalgo would perform these tasks. However, Morel explained that if there was a  
 union, an employee, such as Hidalgo, could not do these kinds of jobs because the work was  
 not in their department.

35 I find that this questioning by Morel of Hidalgo to be coercive for several reasons in  
 addition to the fact that Hidalgo was not an open union supporter. Most importantly was  
 Hidalgo's response to the question about his knowledge of whether the union was coming in  
 that he did not know what Morel was talking about. Such attempts by the employee to conceal  
 40 union support weigh in favor of finding an interrogation unlawful. *Camaco Lorain*, supra  
 (employee responded to question about a union meeting that he did not know what meeting the  
 supervisor was talking about); *Sproule Construction Co.*, 350 NLRB 774, fn. 2 (2007)  
 (applicants for employment sought to conceal their support for the union); *Evergreen America*,  
 supra, (employees questioned gave evasive or untruthful replies); *Grass Valley Grocery Outlet*,  
 45 338 NLRB 877 fn. 1 (2003) (employee gave evasive reply to question about him voting for the  
 union, accompanied by statement of agent of employer that he had heard that employee was a  
 "strong leader for the union"; employee told agent that he didn't know where agent had heard  
 that because employee had not made such statement to anybody); *E-Z Recycling*, 331 NLRB  
 950, 951 fn. 6 (2000) (employee responded untruthfully to questioning).

50 Moreover, I also conclude that although Morel did indicate to Hidalgo that he thought  
 that the union was a good idea for the employees, he further commented that it would not be

good for managers because it would be more work for them is supportive of finding coerciveness in the questioning. In my view, by expressing his (Morel's) opinion that a union would result in Morel having to do more work (due to the alleged inability to persuade employees to perform work outside their classification) implicitly expressed Morel's disapproval and hostility towards the union and the employees' organizing activity. *Advance Waste Systems*, 306 NLRB 1020 (1992) (interrogation coercive because supervisor expressed hostility towards the union and disapproved of union's organizing activity immediately following questions about union activity).

Similarly, Hidalgo was subsequently questioned by housekeeping director Linval a few days after he was unlawfully interrogated by Morel.

This questioning was also coercive. In addition to Hidalgo not being an open union supporter, Linval was a high level supervisor. Hidalgo once again gave an untruthful reply to Linval's questions about the union. *Camaco Lorain*, supra; *Evergreen America*, supra. Linval made repeated attempts to ascertain if Hidalgo knew anything about the union by asking, "Are you sure?" *Cumberland Farms*, 307 NLRB 1479 (1992) (repeated probing and focused nature of questions indicated coerciveness, even where employees questioned were open union adherents). Thus, Linval's questioning of Hidalgo was also coercive and violative of Section 8(a)(1) of the Act.

Finally, Hidalgo was questioned by Soto on July 3, and this conversation was almost identical to the questions by Morel a month earlier. Soto asked Hidalgo if he knew anything about the union and it's coming. Hidalgo replied that he didn't know anything about what Soto had said. Soto then commented to Hidalgo in a similar fashion as did Morel. Soto said that "you guys, if it's true, go for it. You guys need help." However, Soto added, as did Morel, "While a union would be good for employees, it wouldn't be good for management since it would inhibit Soto from asking for help on a job not in his classification, such as a room service call, in which case, Soto would have to do it himself.

I find this comment by Soto as with Morel's similar remark to be an expression of hostility toward the union and a disapproval of the employees' union activity, which suggests a finding that the preceding questions about Hidalgo's knowledge of union activities was coercive. *Advance Waste*, supra, 306 NLRB at 1020. Additionally, as in the unlawful interrogation by Morel, Hidalgo did not give a truthful answer to the questioning of Soto. *Camaco Lorain*, supra; *E-Z Recycling*, supra. Also, Hidalgo was not an open union supporter. *Camaco Lorain*, supra; *Evergreen America*, supra; *Demco New York*, supra.

The interrogation of Rivera by supervisor Pisacane on June 10 was also coercive for similar reasons as the questioning of Hidalgo based on similar precedent. Rivera was also not an open union adherent, *Camaco Lorain*, supra; *Evergreen America*, supra, when Rivera was asked by his supervisor, Pisacane, how the union meeting went.<sup>18</sup>

I find that this questioning by Pisacane to also be coercive since he was a high level supervisor and he accompanied his questioning of Rivera about the events of the union meeting the night before by informing Rivera that he (Pisacane) knew that Maillard was the only

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<sup>18</sup> The meeting had been held the night before. Rivera replied that it went very well, but that Ed Maillard didn't say too much. Pisacane responded that he knew that Maillard was the only one that had not signed a card because he (Pisacane) thought that Maillard was afraid of losing his job.

employee (at the meeting), who had not signed a union card because he (Pisacane) thought Maillard was afraid of losing his job. I find that these comments of Pisacane are supportive of the coerciveness of his questioning of Rivera. Although not plead as a violation of the Act, Piscane’s comments to Rivera indicating his awareness that Maillard was the only employee at the meeting, who did not sign a card, would be unlawful, giving the impression of surveillance of employees’ union activities by Respondent if it had been so alleged. *Comaco Lorain*, supra, 356 NLRB slip op at 2-3 (question by supervisor to employee how was the meeting “yesterday” indicates that employer knew specifically when the union meeting was held and demonstrates its coerciveness and that employee would assume from questions of supervisor that their attendance at union meetings had been placed under surveillance); *Connecticut Humane Society*, 358 NLRB #31 ALJ slip op at 33-34 (2012) (statement by supervisor that it was aware of employees’ union meeting from a “reliable source” gives impression of surveillance since it does not identify where information came from, thus, employees would reasonably conclude that employer obtained information through employee monitoring). Accord, *Stevens Creek Corp.*, 353 NLRB 1294, 1295-1296 (2009); *Classic Sofa Inc.*, 346 NLRB 219, 221 (2006) (statement by supervisor that he knew which employees had brought in the union).

Piscane’s questioning of Rivera was another instance of coercive interrogation by Respondent in violation of the Act, I so find.

#### G. The Subcontracting

Subcontracting decisions by employers are not immune from the reach of the NLRA and such decisions are unlawful if motivated by anti-union purposes. *Healthcare Employees Union, Local 399 v. NLRB*, 463 F.3d 909, 919 (9<sup>th</sup> Cir. 2006.) As in all cases involving employer motivation, subcontracting decisions are subject to the burden shifting analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1<sup>st</sup> Cir. 1981); *Reno Hilton Resorts*, 326 NLRB 1421, 1429-1430 (1998), enfd. 196 F.3d 1275 (DC Cir. 1999).

Thus, the burden is on General Counsel to demonstrate that a motivating factor in respondent’s decision was anti-union animus. If General Counsel adduces sufficient evidence to meet that burden, then the burden shifts to respondent to establish that it would have taken the same action (i.e. the subcontracting), absent the union activities of its employees.

As the circuit court observed in *Healthcare Employees, Local 399*, supra:

The Union challenges the Board’s conclusion that the General Counsel failed to present sufficient evidence of anti-union animus to sustain its burden of persuasion. An employer will seldom admit that it was motivated by anti-union animus when it made its adverse employment decision. See *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 [62 LRRM 2401] (9<sup>th</sup> Cir. 1966) (“Actual motive, a state of mind, being the question, it is seldom that direct evidence will be available that is not also self-serving.”). For that reason, circumstantial evidence is sufficient to establish anti-union motive. See *New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1465 [155 LRRM 2129] (9<sup>th</sup> Cir. 1997); see also *Folkins v. NLRB*, 500 F.2d 52, 53 [86 LRRM 011] (9<sup>th</sup> Cir. 1974) (per curiam).

“Motive is a question of fact, and the NLRB may rely on both direct and circumstantial evidence to establish an employer’s motive, considering such factors as the employer’s knowledge of the employee’s union activities, the employer’s hostility towards the union, and the timing of the employer’s action.” *Power, Inc. v. NLRB*, 40 F.3d 409, 418 [147 LRRM 2833] (D.C. Cir. 1994); see

*also E.C. Waste, Inc. v. NLRB*, 359 F.3d 36, 42 [174 LRRM 2417] (1<sup>st</sup> Cir. 2004) (“To determine motive, the Board may rely on indirect evidence and inferences reasonably drawn from the totality of the circumstances.”)

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463 F.3d at 919

10 It is, therefore, necessary to examine the factors, detailed above, respondent’s knowledge of the employees’ union activities, its hostility towards the union and the timing of respondent’s actions. Such examination of each of these factors reveals compelling evidence that Respondent’s decision to subcontract its housekeeping employees in June of 2011 was motivated by animus towards the unionization of its employees and its desire to thwart its employees’ organizational efforts.

15 As Respondent correctly observes, it is essential for General Counsel to establish, as part of its burden of proof, that Respondent was aware of the union activities of its employees when it subcontracted these two departments out to two different subcontractors. Respondent asserts that General Counsel has not met that burden of proof. I disagree.

20 The evidence is undisputed that between late-May and early-June, the Union engaged in an organizing campaign at Respondent’s hotel. The campaign consisted of two union meetings held at the home of one of the housekeepers on June 2 and 9 during which union authorization cards were signed as well as union discussions amongst employees and the signing of union cards on the premises of the hotels, including the cafeteria, locker rooms, lobby of the hotel and the banquet office. By June 16, 38 employees of Respondent had signed cards, which were, in turn, given to the Union. At that time, the Union had not filed a petition or contacted Respondent since it was unsure of how many employees were in the appropriate bargaining unit. Thus, the Union believed that their proposed “wall to wall” unit included approximately 50 employees. However, the Union as made aware that Respondent employed an undetermined number of on-call banquet servers and was awaiting more information from employees as to the exact number of such employees employed by Respondent before filing a petition. The bulk of the Union’s support came from two departments of Respondent’s employees. Housekeeping was the largest component of its workforce, consisting of between 22-24 employees, all of whom signed union cards. The engineering/maintenance department consisted of 5 employees, 4 of these employees signed union cards, all except for Edward Maillard.

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I have also concluded, as detailed above, that Respondent committed four unlawful interrogations of employees by four different supervisors and/or agents during the period of the organizational campaign. Significantly, these interrogations provided evidence that Respondent was not only aware that there was union organizing activity going on prior to its decision to subcontract, but that the support for the union came primarily from employees in the housekeeping and maintenance/engineering departments. Pisacane informed Hidalgo that he knew not only about the union meeting that had taken place the night before but also that Maillard was the only employee present at the meeting, who did not sign a card. Thus, this evidence demonstrates that Respondent was aware of the nature of the Union’s support amongst its employees. (Maillard was the only one out of five maintenance employees, who didn’t sign a card, and all of the housekeeping employees, many of whom attended the meetings signed cards.) Such knowledge is attributable to Respondent, absent any affirmative basis for negating the imputation of the knowledge or Respondent’s supervisors and agents of Respondent. *Parksite Groups*, 354 NLRB #90 slip op 4, fn. 18 (2009); *Holsum de Puerto Rico*, 344 NLRB 694, 714, fn. 36 (2005); *Ready Mixed Concrete*, 317 NLRB 1140, 1143-1144 (1995); *Pinkerton’s Inc.*, 295 NLRB 538 (1989).

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Here, Respondent had not adduced any probative evidence negating the inference of knowledge properly attributable to it based on the interrogating of its supervisors and/or agents. To the contrary, it produced as a witness, only Topas, who, while testifying that *he* (emphasis supplied) did not know about any union organizing activity prior to the filing of the union petition (after the subcontracting was implemented). However, Topas correctly and accurately admitted that he “can’t speak for” whether either of the Rosenbergs knew about the union organizing prior to the subcontracting.

This is particularly significant in the absence of any testimony from either Michael or Thomas Rosenberg that they did not know about the union organizing prior to the decision to subcontract since they apparently were the ones, who made the decision to subcontract these two departments in June of 2011. Indeed, I conclude that in these circumstances, it is appropriate to draw an adverse inference that the testimony of these witnesses would not support Respondent’s position or Topas’s testimony that Respondent did not know of the union organizing prior to the subcontracting. *Ready Mixed Concrete*, supra, 312 NLRB at 1143, fn. 16; *International Automated Machines Inc.*, 285 NLRB 1122, 1123 (1987); *Avondale Industries*, 329 NLRB 1064, 1158 (1999).

Further, Respondent did not call any of the four supervisors and/or agents, who clearly had knowledge of the union organizing, to testify that they did not pass on that information to higher management. In such circumstances, imputation of knowledge based on these supervisors’ or agents’ knowledge is fully warranted, even though some of them were no longer employed by Respondent at the time of trial.<sup>19</sup> *State Plaza Hotel*, 347 NLRB 755, 757 (2006); *Avondale Industries*, supra.

Further, the timing of the discriminatory action *vis a vis* the protected activities of employees can lead to an inference that the employer was aware of such activities. *Evenflow Transportation*, 358 NLRB #82 slip op at 3 (2012) (layoff within weeks of renewal of union organizing campaign); *Flat Rate Movers*, 357 NLRB #112 slip op at 8 (2011); *Meyers Transport of New York*, 338 NLRB 985 (2003) (terminations within two weeks after organizing began); *Trader Horn of New Jersey*, 316 NLRB 194, 198 (1995); *Fiber Products*, 314 NLRB 1169, 1186 (1994); *Best Plumbing Supply*, 310 NLRB 143, 144 (1993).

I, therefore, also rely on the fact that the subcontracting was effectuated at the height of the organizing campaign within days of the Union having obtained authorization cards from Respondent’s employees, primarily from employees in the two departments subcontracted, as further evidence that Respondent was aware of both the Union’s organizing prior to the subcontracting and that the Union’s support was centered in the two departments that Respondent chose to subcontract.

Another factor in assessing whether General Counsel has made its prima facie showing under *Wright Line* is evidence of employer hostility or animus towards the protected conduct of its employees. Here, the evidence disclosed, as I have detailed below, four separate instances of unlawful interrogations by four different supervisors and agents of Respondent shortly before the subcontracting was announced. Additional evidence of animus as well as evidence supporting the conclusion that the subcontracting was motivated by the appearance of the Union is demonstrated by Pisacane’s comment to Rivera during the course of the unlawful interrogation that he (Pisacane) knew that Maillard was the only one that had not signed a card because he (Pisacane) thought Maillard was afraid of losing his job. I found, as noted above,

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<sup>19</sup> Linval and Pisacane.

that Piscane’s comment about his knowledge that Maillard was the only employee (at the meeting) not to sign a card would be an unlawful giving the impression of surveillance if it had been pled as a violation. Notwithstanding, the failure to allege this comment as a violation, it is appropriate to consider such evidence was reflective of anti-union animus. *Facchina Construction*, 343 NLRB 886, 887, fn. 5 (2004), I so conclude with respect to Pisacane’s remarks. While Pisacane merely observed that he thought that Maillard did not sign a card because Maillard was afraid of being fired if he did so, I believe that Piscane’s remarks can reasonably be construed as an implicit threat that Respondent would be likely to terminate an employee if they signed a union card.

I further find evidence of both animus and discriminatory motivation by Respondent in Piscane’s post-subcontracting statement to Rivera that “maybe because of the union coming it, that’s why they changed companies for them.” I recognize that Piscane was not involved in the decision to subcontract these two departments and, in fact, was himself surprised by the announcement of the subcontracting of the engineering/maintenance department and asked what his status would be in light of the subcontract. Nonetheless, Pisacane was both a supervisor and agent of Respondent, it is reasonable to conclude, which I do, that Pisacane would not have made such a remark unless he had been told by higher management that the subcontracting was motivated by the Union’s appearance.

Additionally, I also rely on the email sent by Topas on August 16 to Moser, Respondent’s newly-hired general manager when Respondent decided to change contracts for the housekeepers. In that email, Topas commented to Moser, “I don’t suggest using the same company since that might open the door for a voting block.” Topas’s testimony made clear that he wanted the subcontractor used to set-up a separate corporation for the housekeepers than for the engineering/maintenance employees because Respondent did not want the property to be unionized. Topas further explained that he would rather have the possibility, as Rosdev has in its Secaucus property, where it has the Operating Engineers representing the engineers and another union representing housekeeping, so that Respondent would not have one union “that can shut down the whole operation if one minute no body is happy.”

It is, of course, true that Topas’s comments are post-subcontracting and relate to the decision to subcontract the housekeeping work to another entity in August. Nonetheless, in my view, the statement is reflective that union concerns motivated Respondent’s actions when it replaced the subcontractor for the housekeeping employees, which supports the conclusion that I draw that similar concerns motivated Respondent’s decision to subcontract this very same work in June of 2011.

The timing factor is the final element to be assessed in the *Wright Line* analysis. As I observed in connection with both the animus and knowledge issues, suspicious timing, present here, supports the presence of these elements. The timing of the subcontracting itself here is not only suspicious but can appropriately be characterized as “astonishing,” *Meyers Transport of New York*, 338 NLRB 958, 971 (2003,) or “stunningly obvious,” *NLRB v. Long Island Airport Limousine Service*, 468 F.2d 292, 295 (2<sup>nd</sup> Cir. 1972). Indeed, timing also can be sufficient to establish that anti-union animus was a motivating factor in an employer’s action. *Hewlett Packard Co.*, 341 NLRB 492, 498 (2004); *Schaeff Inc.*, 321 NLRB 202, 217 (1996); *Sawyer of Napa*, 300 NLRB 131, 150 (1990). See also *NLRB v. Joy Recovery Technology*, 134 F.3d 1307, 1314 (7<sup>th</sup> Cir. 1998) (“In this case, timing is everything. The closing of the department comes on the heels of the union’s organizational activity.”).

The timing factor is particularly significant here in view of the lack of evidence presented by Respondent of any event or business consideration that motivated its decision to subcontract

that occurred in June of 2011 when the subcontracting was implemented. Indeed, as will be more fully explained below, when Respondent’s alleged defenses are analyzed all of these alleged economic reasons were in existence well before the subcontracting was decided upon and implemented. *Reno Hilton Resorts v. NLRB*, 196 F. 3d 1275, 1283 (DC Cir.1999) (court  
 5 upholds Board finding subcontracting to be discriminatorily motivated, concluding that “the timing of the decision to contract out is suspect in view of evidence that Reno Hilton knew long before the union’s certification that contracting out its security work could save a significant of money.”).

10 Accordingly, I conclude that based on the above analysis, General Counsel has adduced substantial evidence that a motivating factor in Respondent’s decision to subcontract the work of these two departments was the Union’s organizational campaign at its hotel. In such circumstances, the burden shifts to Respondent to demonstrate by a preponderance of the evidence that it would have taken the same action, absent the employees’ protected conduct.  
 15 *Wright Line*, supra.

I find that Respondent has fallen short of its burden in this regard. In fact, I am in agreement with General Counsel that the defenses offered by Respondent were so deficient that they are “pretextual” and would be supportive of General Counsel’s prima facie case.

20 In this regard, I find it highly significant that Respondent did not call the decision maker or decision makers to explain the reasons for its subcontracting to explain the reasons for its subcontracting reasons and, more particularly, the timing of such actions. It presented only Topas, who admittedly was not involved in or even told by any higher management officials why  
 25 the decision was made or why it decided to subcontract in June of 2011. The decision maker or makers, according to Topas, was Michael Rosenberg, perhaps in consultation with Thomas Rosenberg or Alex Hartstein, another official of Rosdev. None of these individuals testified. Therefore, it is appropriate to draw an adverse inference from the Respondent’s failure to call these decision makers to explain why they subcontracted the work of only these two  
 30 departments in June of 2011. *Government Employees (IBPO)*, 327 NLRB 676, 699 (1999); *United Parcel Services of Ohio*, 321 NLRB 300, fn. 1, 308-309, fn. 21 (1996); *Ready Mixed Concrete*, supra, 317 NLRB at 1143, fn. 16; *Dorn’s Transportation*, 168 NLRB 457, 460 (1967), enfd. in pert. part 405 F.2d 706, 713 (2<sup>nd</sup> Cir. 1969) (failure of the decision maker to testify “is damaging beyond repair”). (This decision was enforced by the Second Circuit in 405 F.2d 706 at  
 35 713 (2<sup>nd</sup> Cir. 1969), where the Court concluded that “Dorn’s attitude was critical on the question of the motivation of the discharge and the failure to call him as a witness on what he thought of Roger’s loyalty and attitude towards his work permits an “adverse inference,” citing the Supreme Court’s decision in *Interstate Circuit v. United States*, 306 U.S. 208, 59 S.Ct. 467 at 474 [83 L.Ed 610] (1939), where the Court observed, “The production of weak evidence is strong and is  
 40 available can lead to the conclusion that the strong would have been adverse.”).

As noted above, Topas was the only witness presented by Respondent to testify about its alleged reasons for the decision. As also noted, and it must be emphasized again, that his testimony is little more than speculation as to the reasons for Respondent’s decision, since he  
 45 was neither involved in the decision or even told about why or when the decision was made. Nonetheless, even examining Topas’s testimony, assuming it to be an accurate assertion of Respondent’s proffered reasons for the decision, reveals it to be pretextual and far from sufficient to meet Respondent’s *Wright Line* burden of proof.

50 Topas testified essentially to his belief that the decision to subcontract the two departments was made in conformance with a corporate-wide (meaning hotels under the Rosdev aegis, which included Respondent), policy of subcontracting as much work as possible.

According to Topas, this policy as explained to him by Michael Rosenberg, when Topas was hired in the fall of 2009, was due to Rosdev's belief that that policy would permit its officials and managers to concentrate on sales and bringing in revenue rather than becoming involved with day-to-day operations. In that regard, Topas did testify the Michael Rosenberg did inform him at that time that Respondent did intend to implement that policy by subcontracting the housekeeping department, but he did not tell Topas when this decision was going to be implemented. Significantly, Rosenberg did not mention to Topas anything about subcontracting the engineering/maintenance employees to Topas at that time or, indeed, at any other time until the decision was implemented in June of 2011.

Topas also testified to another conversation between father and son in late 2009 or early 2010 when Michel asked Thomas, "What's happening with subcontracting?" (referring to housekeeping), and Thomas replied, "I'll get to it."

Topas testified to a similar conversation between the Rosenbergs in the summer of 2010, where Michael asked about the subcontracting, and Thomas responded, "I'm working on it." In this connection, the record reveals email communications between Thomas Rosenberg and representatives from LFH between April 27 and November 9, 2010, regarding meetings and discussion about subcontracting the housekeeping department. Thus, this evidence demonstrates that Rosenberg was "working on it" as he responded to his father in the summer of 2010. However, this email chain indicates that these negotiations and discussions ended on November 9, 2010 when Rosenberg apparently rejected the proposals of LFH to subcontract the entire housekeeping department and instead stated that while Respondent could expand in the future, proposed starting with two housemen and the bar tenders and then perhaps move to other locations. This "counterproposal" by Respondent apparently was rejected since no responses were submitted nor any evidence of any further communications between LFH and Respondent until June 16, 2011 when Thomas Rosenberg emailed LFH stating "long time no speak, can we meet today in Stamford, CT." Although the record does not reflect if there was such a meeting on that or any other day between Rosenberg and LFH officials, it does reflect that by June 16 an agreement was reached between LFH and Respondent to subcontract the housekeeping department at terms very similar to the \$10 per room rate Respondent had rejected in 2010.<sup>20</sup>

Thus, contrary to the implications of Topas's testimony, no final decision had been made to subcontract the housekeeping department and, in fact, negotiations had ended with LFH in November of 2010. Moreover no evidence was adduced that Rosenberg or any other representative of Rosdev or Respondent was negotiating with any other contractors or even attempting to find any other contractors until June of 2011.

Topas did testify that in January of 2011, after Respondent had terminated its general manager, he personally said to Thomas Rosenberg that now that Respondent was without a general manager, it would be a good time to get moving on outsourcing the housekeeping department. According to Topas, Thomas responded to Topas, as he had to his father, that he "was working on it," and Topas did not press Rosenberg any further on the subject. In the absence of any testimony from Rosenberg or any other evidence from Respondent, it is apparent that, in fact, Rosenberg was not "working on it" in January of 2011 as he told Topas. At best, it can be concluded that Respondent still may have intended to subcontract the housekeeping department but that Rosenberg was busy with other matters and hadn't gotten

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<sup>20</sup> The actual agreement finally signed called for a payment of \$10.60 per room for housekeepers and \$12.10 per suite.

around to doing anything about it. At worst, and what is most probable, is that Respondent had abandoned the idea until suddenly in June of 2011, it decided to do it. Thus, whether Respondent intended to subcontract the departments out and simply never got around to finalizing the agreement or simply abandoned the idea altogether is inconsequential. What is significant is there had been no final decision to subcontract the housekeeping department until June of 2011 and that this decision to do so was made on June 16, 2011 and implemented on June 23, at the height of the union campaign without any explanation for why this decision was made that that time. The alleged “corporate policy” of subcontracting as many departments as possible had been in place since the hotel opened in 2009 when Respondent was negotiating with LFH in 2010 and when these negotiations concluded in November of 2010.

The only significant event that occurred between November of 2010 and June of 2011, insofar as this record discloses that might have motivated this decision, was the appearance of the Union in June, as I have outlined above.

Therefore, Respondent, particularly, in the absence of any testimony from Rosenberg or any other decision maker, has not shown why it waited until June of 2011 to implement this decision. Therefore, this leaves the only logical conclusion that can be from this record is that the organizing activity of the Union in June of 2011 accounted for this decision. *Reno Hilton*, supra.

Notably, the above discussions makes no mention whatsoever of an intention or discussion by Rosdev or Respondent about subcontracting the maintenance/engineering department employees. Further, Respondent had adduced no evidence of why it decided to subcontract these employees along with the housekeeping employees. That leaves the inference, which I draw, that Respondent included the maintenance/engineering employees in its subcontracting decision because the Union had substantial support in this department. As I have detailed above, the Union had obtained four signatures out of five employees in that department. The only employee in the department, who did not sign a card, was Maillard, who was not included in the subcontracting and was, in fact, promoted to a supervisory position.

I note further that Topas’s speculation that the decision was made in conformance with an alleged corporate policy to subcontract out as much as possible is undermined by evidence that among all the hotels under the Rosdev banner either in Canada or the United States none of them were subcontracting housekeeping or engineering employees, except for the Holiday Inn Mid-town Hotel in Montreal, Canada, where, according to Topas, housekeeping employees have been and are still subcontracted out with the concurrence of or the agreement of the union at that hotel. Topas also testified that housekeeping employees at Rosdev’s Holiday Inn Airport Hotel had subcontracted the housekeeping functions in the year 2000 and a subcontracting agreement was entered into evidence that substantiated that fact. Topas added that he didn’t know how long that subcontracting arrangement existed but concluded that the housekeeping employees were outsourced but that at present Rosdev was trying to find another contractor to perform that housekeeping work and that he doubted if the union at the hotel cared since the subcontracting agreement required that subcontractor to follow all the terms of the union’s contract with the hotel. Topas also admitted that neither the housekeeping nor engineering employees at Rosdev’s Holiday Inn Hotel in Gatineau, Canada were outsourced but added that the contract there with the union allowed outsourcing of laundry employees.

Significantly, Topas testified that at the one operational facility that Rosdev has in the United States neither the housekeeping nor the engineering/maintenance functions have been subcontracted. At that facility in Secaucus, New Jersey, Rosdev has collective bargaining agreements with two different unions, the Operating Engineers, representing essentially

engineers and maintenance employees, and with Unite, representing other employees, including housekeeping. Topas testified that he has made attempts to persuade the Engineers Union to allow outsourcing of maintenance work, and the union representative refused. Additionally, Topas testified to numerous meetings with Unite representatives, which he asked  
5 Unite for permission to outsource food and beverage employees, and which was turned down, and to close the laundry, which request was still being considered by the union. Notably, Topas did not testify that Rosdev ever even asked Unite for permission to outsource or subcontract housekeeping employees at the Secaucus facility.

10 Topas also furnished testimony concerning Rosdev's facility near JFK Airport (JFK Plaza), which had previously been a Holiday Inn Crowne Plaza before it went bankrupt and was acquired through the bankruptcy proceeding. The prior owner had a contract with Local 6 of Hotel and Motel Trades Council, covering all employees, including housekeeping and  
15 engineering employees. During the course of the proceeding, the JFK Plaza negotiated with Local 6 and reached agreement on terms for a new contract covering these employees to take effect when the sale becomes final and when the hotel beings operating. The contract contains various agreements, including reductions to wages and benefits agreed to from the union's contract with the hotel association, plus an agreement that JFK Plaza could "reduce staff or  
20 eliminate laundry operations." According to Topas, during the negotiations for this agreement, which were conducted under the auspicious of the bankruptcy trustee, JFK Plaza also asked to outsource the food and beverage, housekeeping and front desk departments but was turned down by the union. Topas conceded that JFK Plaza never asked to outsourced the engineers and always intended to "keep the engineers" at that facility.

25 All of this evidence certainty does not demonstrate any corporate-wide policy of subcontracting housekeeping and maintenance/engineering functions, but, as Topas suggests, rather that in two hotels it has subcontracted housekeeping in Canada and that it has tried unsuccessfully to persuade unions in some of Rosdev's properties in the United States to agree  
30 that Rosdev could subcontract either housekeeping or engineering functions. At best, it demonstrates intent by Rosdev to try to subcontract these functions but that it has been stymied in its efforts to do so by the unions at these facilities. Thus, Topas's testimony in this regard, rather than supporting Respondent's attempts to meet its Wright Line burden of establishing that it would have subcontracted the work in June of 2011, absent union activities of its employees, supports the opposite inference. It appears that while Respondent may have had some intent to  
35 subcontract the housekeepers' work out, and, perhaps, even the engineers/maintenance employees later on, it had not decided when or how to do so. It did make some efforts to negotiate with LFH to subcontract the housekeepers between April and November of 2010, which resulted in no agreements and, insofar as this record is concerned, the apparent abandonment of Respondent's plans to subcontract the work. On June 16, Rosenberg suddenly  
40 decided to restart negotiations with LFH, resulting in an agreement within a week. The inference that this sudden change of heart by Rosenberg was motivated by the appearance of the Union is unmistakable and further supported by the inference that I draw from Topas's testimony that while Respondent may have intended to subcontract the housekeepers' work out, it knew or, at least, believed that the Union's recognition as the employees' representative would block or  
45 prevent the subcontracting. Therefore, it was essential for Respondent to immediately subcontract the work before the Union could achieve its ultimate goal of obtaining representation rights and preventing Respondent from achieving its intention of subcontracting work. That scenario, which is suggested by Topas's testimony, if believed, would, of course, establish the unlawfulness of Respondent's conduct rather than make it lawful as it  
50 demonstrates that Respondent accelerated the implementation of a decision previously made because of union concerns.

Accordingly, Topas’s testimony had fallen far short of meeting Respondent’s *Wright Line* burden of proof and, as I observed above, reveals its defense to be pretextual.

5 Furthermore, Respondent’s attorney submitted a position paper in connection with the investigation. In that position paper, Respondent makes no argument or contention that the decision to subcontract either department was motivated by implementation of a corporate-wide policy of subcontracting as much work as possible. Rather, the position paper essentially provided two reasons for the decisions. With respect to housekeeping, it asserted that subcontracting permitted Respondent to have fixed unit prices per room, thereby, saving Respondent money. As for the maintenance department, the position paper asserts that the decision removed the general manger from day-to-day operations to handle other areas and places the work into hands of firms, who specialize in handling maintenance, such as Johnson Controls, which handles work for Rosdev at buildings, resulting in a cost savings to the employer. The position paper adds that its decision to subcontract was based upon its belief that the “on-sight maintenance of these departments were deficient.” Respondent vigorously objected to the introduction of its position paper into evidence, which is not surprising in view of the inconsistencies between these explanations and the testimony offered at trial by Topas. However, it is well-settled that position papers submitted by respondent employers’ in connection with investigations of charges are admissible into evidence and can be used as admissions against respondents. *Evergreen America*, supra, 348 NLRB at 182-188 (2006); *Raley’s*, 348 NLRB 382, 501-502 (2006); *United Scrap Metal*, 344 NLRB 467, 468 (2005); *Tarmac America*, 342 NLRB 1049 (2006).

25 The shifting of reasons for an employer’s actions had long been held to be a clear indicium of discriminatory and unlawful intent and a finding of pretext. *Desert Toyota*, 346 NLRB 118, 120 (2005); *Casino Ready Mix*, 335 NLRB 463, 465 (2001); *Kajima Engineering & Construction*, 331 NLRB 1604, 1607 (2000); *Painting Co.*, 330 NLRB 1000, 1002 (2000); *C.D.S. Lines*, 313 NLRB 296, 300 (1993); *Whitesville Mill Service*, 307 NLRB 937, 945 (1992); *Aratex Services*, 300 NLRB 115, 115-116 (1990); *A.J. Ross Logistics*, 283 NLRB 410, 414 (1987).

30 I find that these principles and precedent are applicable here. Respondent has offered three different reasons for the subcontracting, two of which appeared in its position paper (cost savings and deficiencies in work performance of its employees), which differed from the reason advanced at trial by Respondent’s sole witness, Topas (conformance with corporate policy).<sup>21</sup>

35 Indeed, Topas specifically discredited the assertions made in the position paper by admitting that Respondent did not rely on cost savings to outsource either the housekeeping or the engineering employees and that there was no evidence of any deficiencies in performance by the existing staff or supervisors in either of these two departments.

40 Respondent argues in its brief that Topas’s testimony supports the cost savings contention in the position paper since he did corroborate the fact that construction and renovations of converting parts of the hotel to a potential Holiday Inn Express caused rooms to be unavailable. Topas confirmed that when Rosenberg was negotiating with LFH they were talking about saving money by using LFH and that in view of the construction going on, there was a loss of available rooms. Thus, the loss of available rooms could make the cost per room deal proposed by LFH attractive and might cause a cost savings. However, Topas still insists that, as far as he was concerned, cost savings “was not the big issue” in the decision but adds

50 <sup>21</sup> I emphasize again the absence of any testimony from any decision makers of Respondent in assessing the validity of Respondent’s defense.

that he did not know what was in Rosenberg’s mind. This response by Topas only re-emphasizes the importance of the failure by Respondent to call Rosenberg to explain the reasons for the decision and support for my conclusion, detailed above, that an adverse inference against Respondent is warranted for its failure to do so.

5

Further, Topas’s testimony also supports the pretextual nature of Respondent’s “cost control” argument since it is clear that whatever savings Respondent might have contemplated for using LFH were in existence in 2010 when LFH and Respondent were negotiating and negotiations ended without a deal. Thus, renovations were still going on at that time and the number of available rooms was presumably still severely reduced. Therefore, it appears that had Respondent really intended to subcontract to save money, it would have done so in 2010 when it was negotiating with LFH and these factors were present. Respondent’s failure to agree to subcontract at that time and its decision to do so seven months later, immediately after the union campaign was at its height, leads to the inescapable conclusion that the Union’s appearance was the reason for the decision and that the cost savings contention was and is pretextual. *Reno Hilton*, supra.

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Respondent attempted to rehabilitate its case and corroborate the reasons expressed in its position paper by questioning Topas after the position paper was received in evidence over its objection. The questions and Topas’s answers are set forth below.

#### Redirect Examination

By Ms. Forte:

25

Q: Mr. Topas, I’d like to draw you [sic] attention to GC exhibit 48. Please turn to page three of the document, first paragraph. Read that paragraph to yourself, please.

30

A: I did.

Q: Okay. And as set forth in this position paper, which was submitted by my firm, not yourself, correct?

35

A: Correct.

Q: What does this document maintain is the legitimate non-discriminatory business reason for subcontracting out the work of the engineering services and the housekeeping services?

40

A: Well, you provide two potential areas of interest. One is the idea of having a fixed unit price per room, but the greater area is that it frees up the general manager to handle other critical areas of business, which is probably more in harmony which—what—that I had said earlier of the idea that we would like, as a business plan, to spend our time getting people in the door and not have to worry about all the day to day nitty-gritty.

45

Q: And again, the last sentence of this first paragraph provides “indeed, the employer successfully utilizes outside maintenance services, such as in Johnson Controls”, which is a case, “and at other buildings where it provides services to the public, resulting in a cost savings to the employer that can be passed along to the customer”. You see that sentence, Mr. Topas?

50

A: I do.

5 Q: So in cost savings was that a dispositive factor or is that one of the factors in making a decision to subcontract out to the work?

A. I would say it—

10 Mr. Concepcion: Objection, he doesn't know it. Nobody told him.

Judge Fish: You can answer it if you know.

15 The Witness: Well, you refer to another building where I do have Johnson Controls doing work and that's at a property in Toronto, Canada that's totally leased to Bell Canada, Ma Bell so to speak. And we have found that in that property by giving the entire contract at a fixed price per annum we're done. And Bell is happy with it, because essentially they are assuming the cost at the end of the day, and we're happy.

20 By Ms. Forte:

Q: And the whole concept of freeing up responsibilities of the general manager is that an indirect cost savings?

25 A: That is—I'll reverse it. It is better than a cost savings. It allows for greater revenue. He should be concentrating on revenue. So it is greater profitability when a manager has the ability to focus on things other than the day to day nuts and bolts.

30 Ms. Forte: I have no further questions for this witness.

35 An examination of this exchange reveals no help to Respondent's case. Thus, Topas is still insisting that, in his view, cost savings was not a factor but that the decision was based, as he testified, on Respondent's desire to free up the general manager to concentrate on bringing in the sales rather than the "day to day nuts and bolts." The attorney tried by a leading question to get Topas to at least agree that cost savings was one of the factors in the decision, but Topas would not take the bait and did not respond affirmatively to that question. Instead, he referred to Johnson Controls, which was mentioned in the position paper. Topas explained that Johnson Controls is a company that Rosdev uses to do work at a property in Toronto, Canada that is leased to Bell Canada. In that property, according to Topas, there is a cost savings to Rosdev by a contract on a fixed price per annum. However, this is not a hotel property, so its connection to the decision to subcontract at the Respondent, which is a hotel, is tenuous at best.

45 Respondent's attorney tried again by asking if the concept of freeing the general manager is at least an indirect cost savings. Topas responded as best he could that it is better than costs savings because it frees up the general manager to concentrate on sales, which brings in revenues. Nonetheless, Topas would not and could not say that the decision was based in whole or in part on cost factors since he had candidly admitted several times in his testimony that, at least in his view, this was not a reason for the decision and that, in fact, no cost savings resulted from the decision to subcontract either department.

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The pretextual nature of Respondent's alleged defenses is further supported by several

other factors. I again note Respondent's conduct when it replaced LFH as the contractor with MSM (later changing its name to NYCIC). At that time, Respondent contracted with MSM, an affiliate of NYM, but a separate organization set up at Respondent's suggestion, admittedly to avoid unionization. In addition to this damaging admission, which, as I have detailed above, can be construed as relating back to the motivation for the initial decision to subcontract the subcontracting to NYM, totally eviscerates any pretense of validity to Respondent's purported defenses.

Thus, Respondent, in August of 2011, admitted, after knowing of the Union's appearance, rather than taking the housekeeping work back in house after the LFH subcontract was admittedly seen to have been a huge mistake, it decided to subcontract it to NYM, a company with absolutely no experience in performing housekeeping subcontracting functions. Indeed, as the emails between Respondent's officials make clear, NYM's function would be essentially as a payroll service. The evidence discloses that no representatives of NYM or its successor names had any contact with housekeeping employees and that the housekeeping employees continued to be supervised by Guerrero, a supervisor of Respondent, and not any of the subcontractors used by Respondent (LFH, NYM or NYCIC). Further, evidence of this conclusion is found in Rodriguez asking Guerrero directly for a raise and subsequently receiving it while she was employed and paid by the subcontractor.

Thus, any contention that Respondent's decisions were based on any legitimate business considerations is completely eviscerated by these developments. The evidence discloses that all the subcontractors, here, were little more than a payroll service. Supervision continued to be performed by Respondent's supervisors, Pisacane (replaced by Stewart) and Linval (replaced by Guerrero), and all essential terms and conditions of employment of employees were at least co-determined by Respondent.<sup>22</sup>

Therefore, the contention made by Topas, that Respondent was seeking to free-up the general manager or other representatives from day-to-day responsibilities to concentrate on sales, makes no sense. The facts disclosed no evidence that the subcontracting freed up the general manager or any management from anything in order to allegedly concentrate on sales. The record discloses, as noted, that the subcontractors performed little more than payroll services, and no evidence was adduced that the general manager or any management representative was freed up to concentrate on sales.

Therefore, I find Respondent's purported defense to be pretextual, which is further support for the conclusion that it failed to meet its *Wright Line* burden.

Accordingly, based on the foregoing analysis and authorities, I conclude that Respondent has fallen well-short of meeting its burden to establish that it would have subcontracted the housekeeping or maintenance/engineering departments in June of 2011, absent the union activities of its employees. It has, thereby, violated Section 8(a)(1) and (3) of the Act, I so find.

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<sup>22</sup> This would lead to the probable finding that Respondent has been a joint employer of these employees, notwithstanding, the subcontracting. I make no such finding here since it was not so alleged, but these facts do demonstrate the lack of any legitimate business reason for Respondent's decisions.

## 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.

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

3. By coercively interrogating its employees concerning their activities on behalf of the Union, Respondent has violated Section 8(a)(1) of the Act.

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4. By contracting out the work of its housekeeping and its maintenance/engineering employees and discharging these employees because of these employees' activities on behalf of and support for the Union, Respondent has violated Section 8(a)(1) and (3) of the Act.

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5. The aforesaid unfair practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## The Remedy

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Having found that Respondent engaged in certain unfair labor practices, I find that Respondent must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

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Respondent shall be required to rescind the subcontracting agreements that it has entered into with the subcontractors for its housekeeping and engineering and maintenance employees and reinstate the employees to their former positions of employment with no loss of earnings or benefits. It is also recommended that Respondent make whole its employees in these departments for any losses of pay or benefits that they may have suffered as a result of Respondent's discrimination against them.

30

The record is uncertain as to the extent of this obligation. It appears that no employee suffered any loss of wages and that only one employee lost any benefits since only one employee in these departments had taken advantage of this opportunity to obtain health benefits through Respondent. However, there is some evidence in the record that when LFH took over, it began to send in some housekeepers to work at Respondent, who had not been Respondent's employees, causing some of Respondent's housekeepers to lose some hours. Thus, some additional backpay to some housekeepers could be due. I shall leave to compliance to determine the extent of this additional backpay. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub.nom., *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>23</sup>

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<sup>23</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The National Labor Relations Boards orders that the Respondent, Stamford Plaza Hotel & Conference Center, LP, Stamford, Connecticut, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Coercively interrogating its employees concerning their activities on behalf of or support for United Food and Commercial Workers Union, Local 371 (the Union).

(b) Interfering with, restraining, and coercing its housekeeping and engineering/maintenance employees in violation of Section 8(a)(1) of the Act by contracting out their work and discharging them because of their activities on behalf of or support for the Union.

(c) Discriminating against its housekeeping and engineering/maintenance employees in violation of Section 8(a)(1) and (3) of the Act by discharging them and contracting out their work because of their activities on behalf of or support for the Union.

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

2. Take the following affirmative action which is necessary to effectuate the purpose of the Act.

(a) Re-establish its housekeeping and engineering/maintenance workforce by rescinding and severing all subcontracted operations for these employees.

(b) Within 14 days from the date of this Order, offer the former housekeeping and engineering/maintenance employees full reinstatement to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole, with interest, for any loss of earnings and benefits each of them may have suffered as a result of the Respondent's unlawful subcontract on June 23, 2011, as set forth in the remedy section of this Decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and, within 3 days thereafter, notify the discharged employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Stamford, Connecticut facility and mail to each of the involved housekeeping and engineering/maintenance employees, copies of the attached notice marked "Appendix."<sup>24</sup> Copies of the notice, on forms provided by

<sup>24</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted

Continued

the Regional Director for Region 34, 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. 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 any time since June 3, 2011.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 34 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.

\_\_\_\_\_  
Steven Fish  
Administrative Law Judge

\_\_\_\_\_  
Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

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 with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT coercively interrogate our employees concerning their activities on behalf of or support for United Food and Commercial Workers Union, Local 371 (the Union).

WE WILL NOT interfere with, restrain, and coerce our housekeeping and engineering/maintenance employees by contracting out their work and discharging them because of their activities on behalf of or support for the Union.

WE WILL discriminate against our housekeeping and engineering/maintenance employees by discharging them and contracting out their work because of their activities on behalf of or support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL re-establish our housekeeping and engineering/maintenance workforce and WE WILL rescind and sever all subcontracted operations for these employees.

WE WILL within 14 days from the date of this Order, offer the former housekeeping and engineering/maintenance employees full reinstatement to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole, with interest, for any loss of earnings and benefits each of them may have suffered as a result our unlawful subcontract on June 23, 2011, as set forth in the remedy section of this Decision.

WE WILL within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and, within 3 days thereafter, notify the discharged employees in writing that this has been done and that the discharges will not be used against them in any way.

Stamford Plaza Hotel & Conference Center, LP

\_\_\_\_\_  
(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 from the Board's website: [www.nlr.gov](http://www.nlr.gov).

A.A Ribicoff Federal Building and Courthouse  
450 Main Street, 4th Floor  
Hartford, Connecticut 06103-3022  
Hours: 8:30 a.m. to 5 p.m.  
860-240-3522.

**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, 860-240-3006