**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 32**

**LYTTON RANCHERIA OF CALIFORNIA**
**d/b/a CASINO SAN PABLO**

**and**

**UNITE HERE LOCAL 2850**

**Cases 32-CA-025585**
**32-CA-025665**
**32-CA-064020**
**32-CA-086359**

# ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

On March 5, 2013, Administrative Law Judge Jay R. Pollack, herein called the Judge, issued his Decision in this matter, finding that Respondent violated Section 8(a)(1) and (5) of the Act by various acts and conduct. The Judge, however, failed to find that Respondent violated Section 8(a)(1) and (5) by certain other acts and conduct also alleged to be unlawful despite his own factual findings that fully support these additional violations. Counsel for Acting General Counsel hereby files the following limited cross-exceptions to the Judge's failure to make certain additional findings, to his failure to make certain conclusions of law, to his recommended order and to his proposed notice.[1]

| No. | Page | Line | Exception |
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| 1. | 14-15 | | To the Judge's failure to find that Respondent violated Section 8(a)(1) of the Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 prohibiting gossip about other team members, including supervisors, managers and directors. |

[1] On April 2, 2013, the Charging Party filed Exceptions to the Decision of the Judge. Pursuant to Section 102.46(3)(e), the Acting General Counsel files these cross-exceptions.

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| 2. | 14-15 | | To the Judge's failure to find that Respondent violated Section 8(a)(1) of the Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 that stated that insubordination or other disrespectful conduct may result in disciplinary action up to and including separation of employment. |
| 3. | 14-15 | | To the Judge's failure to find that Respondent violated Section 8(a)(1) of the Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 that prohibited employees from soliciting or distributing literature in the workplace at any time for any purpose. |
| 4. | 14-15 | | To the Judge's failure to find that Respondent violated Section 8(a)(1) of the Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 that stated that "Making false, fraudulent or malicious statements to or about a Team Member, a guest or San Pablo Casino" may result in disciplinary action, up to and including separation of employment. |
| 5. | 14-15 | | To the Judge's failure to find that Respondent violated Section 8(a)(1) of the Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 that stated that "Team Members are not permitted in the back of the house areas more than thirty (30) minutes prior to the beginning of their shift or longer than thirty (30) minutes following the end of their shift, except under the following circumstances: 1. To conduct business with Human Resources, 2, Pre-arranged training sessions or orientations; 3. With the approval of a director, manager or supervisor." |
| 6. | 14 | | To the Judge's failure to find that Respondent violated Section 8(a)(5) of the Act by implementing on March 10, 2011 a new rule barring Union representatives' access to areas of the Casino where employee schedules are posted. |
| 7. | 14 | | To the Judge's failure to find that Respondent violated Section 8(a)(5) of the Act by implementing on March 21, 2011 a rule barring Union representatives' access to areas of the Casino outside of the employee cafeteria. |

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| 8. | 14 | | To the Judge's failure to find that Respondent violated Section 8(a)(5) of the Act by barring on January 31, 2012 Union representative Jessica Medina from its property indefinitely. |
| 9. | 15 | | To the Judge's failure to include in his "Conclusions of Law" that Respondent violated Section 8(a)(1) of the Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 prohibiting gossip about other team members, including supervisors, managers and directors. |
| 10. | 15 | | To the Judge's failure to include in his "Conclusions of Law" that Respondent violated Section 8(a)(1) of the Act by Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 that stated that insubordination or other disrespectful conduct may result in disciplinary action up to and including separation of employment. |
| 11 | 15 | | To the Judge's failure to include in his "Conclusions of Law" that Respondent violated Section 8(a)(1) of the Act by Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 that prohibited employees from soliciting or distributing literature in the workplace at any time for any purpose. |
| 12. | 15 | | To the Judge's failure to include in his "Conclusions of Law" that Respondent violated Section 8(a)(1) of the Act by Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 that stated that "Making false, fraudulent or malicious statements to or about a Team Member, a guest or San Pablo Casino" may result in disciplinary action, up to and including separation of employment. |
| 13. | 15 | | To the Judge's failure to include in his "Conclusions of Law" that Respondent violated Section 8(a)(1) of the Act by Act by maintaining a rule in its employee handbook during the period from about August 2010 until about May 2011 that stated that "Team Members are not permitted in the back of the house areas more than thirty (30) minutes prior to the beginning of their shift or longer than thirty (30) minutes following the end of their shift, except under |

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| | | | the following circumstances: 1. To conduct business with Human Resources, 2, Pre-arranged training sessions or orientations; 3. With the approval of a director, manager or supervisor." |
| 14. | 16 | | To the Judge's failure to include in his recommended Order that Respondent shall cease and desist from maintaining a rule in its employee handbook prohibiting gossip about other team members, including supervisors, managers and directors. |
| 15. | 16 | | To the Judge's failure to include in his recommended Order that Respondent shall cease and desist from maintaining a rule in its employee handbook that stated that insubordination or other disrespectful conduct may result in disciplinary action up to and including separation of employment. |
| 16. | 16 | | To the Judge's failure to include in his recommended Order that Respondent shall cease and desist from maintaining a rule in its employee handbook that prohibited employees from soliciting or distributing literature in the workplace at any time for any purpose. |
| 17. | 16 | | To the Judge's failure to include in his recommended Order that Respondent shall cease and desist from maintaining a rule in its employee handbook that stated that "Making false, fraudulent or malicious statements to or about a Team Member, a guest or San Pablo Casino" may result in disciplinary action, up to and including separation of employment. |
| 18. | 16 | | To the Judge's failure to include in his recommended Order that Respondent shall cease and desist from maintaining a rule in its employee handbook that stated that "Team Members are not permitted in the back of the house areas more than thirty (30) minutes prior to the beginning of their shift or longer than thirty (30) minutes following the end of their shift, except under the following circumstances: 1. To conduct business with Human Resources, 2, Pre-arranged training sessions or orientations; 3. With the approval of a director, manager or supervisor." |
| 19. | | | To the Judge's Failure to include in his proposed Notice To Employees a paragraph stating that WE WILL NOT |

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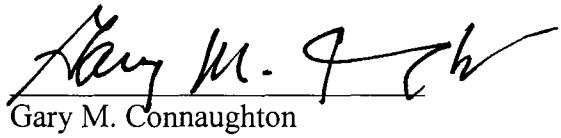
| | | | maintain unlawful rules in our employee handbook. |

**DATED AT** Oakland, California this 16th day of April 2013.

Respectfully submitted,



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| **LYTTON RANCHERIA OF CALIFORNIA d/b/a CASINO SAN PABLO**<br><br>**and**<br><br>**UNITE HERE LOCAL 2850** | **Case(s)** **32-CA-025585**<br>**32-CA-025665**<br>**32-CA-064020**<br>**32-CA-086359**<br><br>**Date:** **April 16, 2013** |

**AFFIDAVIT OF SERVICE OF ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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April 16, 2013
Date

Frances Hayden, Designated Agent of NLRB
Name

Signature