UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 22

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In the Matter of:

ROSEDEV HOSPITALITY SECAUCUS, LP
AND LA PLAZA SECAUCUS, LLC,
JOINT EMPLOYERS, d/b/a CROWN
PLAZA HOTEL & CONVENTION CENTER

Respondents,

And

Case Nos. 22-CA-078843
22-CA-081066

NEW YORK HOTEL & MOTEL TRADES
COUNCIL AFL-CIO,

Charging Party.

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RESPONDENTS' BRIEF IN SUPPORT OF THEIR EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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PRELIMINARY STATEMENT

Rosdev Hospitality Secaucus, L.P. and La Plaza Secaucus, LLC[1] (collectively referred to herein as the "Respondents"), respectfully submit this brief in support of their exceptions to the June 28, 2013 decision of Administrative Law Judge ("ALJ") Steven Fish (the "Decision"). As set forth herein, the Respondents respectfully assert that the ALJ incorrectly held that Respondents failed to notify and bargain with New York Hotel & Motel Trades Council AFL-CIO (the "Union") before reducing the hours and subsequently closing the cafeteria between November 2011 and February 10, 2012. Further, even assuming that the ALJ correctly held that the Respondents violated the Act with regards to the cafeteria, the ALJ nonetheless erred in ordering the Respondents to post a notice that it would not unilaterally reduce the hours in the cafeteria, as the cafeteria has been closed since December 2012, and the ALJ correctly held that the closure of the cafeteria in December 2012 was not at issue in the instant matter.

ISSUES PRESENTED

1. Whether the ALJ erred in finding that the Respondents failed to bargain with the Union before reducing and subsequently closing the employee cafeteria between November 2011 and February 10, 2012?

2. Whether the ALJ erred in ordering the Respondents to post a notice acknowledging that it would not unilaterally reduce the hours in the employee cafeteria?

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[1] On August 19, 2013 La Plaza Secaucus, L.P. ("La Plaza") filed a Notice of Suggestion of Bankruptcy to alert the NLRB that on June 18, 2013 La Plaza Secaucus, LLC, filed a voluntary petition for relief in the United States Bankruptcy Court for the District of New Jersey under Chapter 7 of Title 11 of the United States Code and that the matter as to La Plaza should be stayed. In an abundance of caution and solely to preserve La Plaza's rights, this brief is submitted jointly. Nothing contained herein shall constitute a waiver of La Plaza's claim that the matter as to them is stayed pursuant to Section 362 of the Bankruptcy Code.

LEGAL ARGUMENTS

I. THE ALJ ERRED IN CONCLUDING THAT THE RESPONDENTS FAILED TO BARGAIN WITH THE UNION BEFORE REDUCING THE HOURS IN THE CAFETERIA IN NOVEMBER 2011 (EXCEPTION NOS. 1 -3)

In the Decision, the ALJ concluded that Counsel for the General Counsel met his burden of proof in establishing that the Respondents failed to bargain with the Union before reducing and subsequently closing the cafeteria between November 2011 and February 10, 2012. Respectfully, the ALJ ignored the testimony which established that the Respondents notified the Union of its anticipated action and continued to negotiate with the Union after taking the challenged action. Specifically, the testimony of the Alyssa Tramposch, counsel for the Union, made clear that the Union was provided notice in or about November 2011 before the hours were reduced in the cafeteria. See Tr. p. 117 ll. 16-21. Even after the hours were reduced, the parties met to discuss this issue. See Tr. pp. 64, ll. 20-25; p. 66, ll. 21-25. Further, George Padilla, Vice-President for the Union, testified that after the cafeteria was closed for a short period of time he met with Maria Napoli, Human Resources Director and "pushed on [the closure and] they opened it back up with reduced hours. And then subsequently it's been opened up." See Tr. pp. 71 ll. 13-25, 72 ll. 1-6. Clearly, Respondents did bargain over the issue of the November 2011 closure of the cafeteria and in fact, the Respondent ultimately acceded to the Union's demands. Id. As such, the ALJ should have dismissed these allegations contained within the consolidated Complaint.

II. THE ALJ ERRED IN ORDERING THE RESPONDENTS TO POST A NOTICE THAT PREVENTS THEM FROM UNILATERALLY REDUCING THE HOURS IN THE EMPLOYEE CAFETERIA (EXCEPTIONS 4-5).

Even assuming that the ALJ was correct in concluding that the Respondents failed to bargain with the Union before reducing and subsequently closing the cafeteria between November 2011 and February 10, 2012, the ALJ's proposed remedy in this case was improper.

As set forth herein, the ALJ's order contained the affirmative act of requiring the Respondents to post a notice affirming that the Respondents would not unilaterally reduce the hours in the cafeteria. This proposed remedy is inconsistent with the ALJ's correct conclusion that the subsequent total closure of the cafeteria in December 2012 was not at issue in this proceeding and that the Respondents could not be ordered in the proceeding to reopen the cafeteria. As such, it defies logic that the proposed remedy, as set forth in a June 2013 decision, would require the Respondent to aver that it will not unilaterally reduce the hours of the employee cafeteria, when it is undisputed that the employee cafeteria was closed in December 2012.

The complaint in this matter only contained allegations regarding the Respondents' reduction of hours in the cafeteria in November and December 2011 and the temporary total closure of the cafeteria in between January and February 10, 2012. (Decision pp. 18-19, 23, 26). On the day of the hearing, Counsel for the General Counsel, for the first time, asserted that the subsequent closure of the cafeteria in December 2012 was at issue in this matter and that the Region was seeking an order requiring the reopening of the employee cafeteria. See Tr. p. 83 ll. 4-9. The Respondents strenuously objected to these claims and asserted that the subsequent closure of the cafeteria in December 2012 was not at issue herein and was in fact the subject of a separate pending unfair labor practice, 22-CA-100327. (Decision p. 25, ll. 17-19, 24-31).

In the Decision, the ALJ correctly noted that the only allegations set forth in the complaint in this matter dealt with the reduction of hours in the employee cafeteria between November 2011 and December 2011 and the temporary total shutdown of the cafeteria in between January and February 10, 2012. (Decision p. 25, ll. 41-47). The ALJ further noted that the subsequent total closure of the cafeteria in December 2012, when La Plaza ceased operations, was not at issue herein. Indeed, the ALJ noted that to require the Respondents to reopen the

cafeteria or address any alleged effects from the subsequent closure of the cafeteria in December 2012 "would be a violation of due process." (Decision p. 25, l. 43). Further, the ALJ rejected the Counsel for the General Counsel's attempt to obtain any remedy for the total shutdown[2]. (Decision pp. 25 ll. 33-47, p. 26 ll. 5-9.)

Despite finding that the Counsel for the General Counsel failed to sustain his burden of establishing that the Respondents should reopen the permanently closed cafeteria and declining to issue any remedies related to that closure, the ALJ nonetheless improperly ordered the Respondents to post a notice that states in relevant part:

> WE WILL NOT unilaterally and without notice to or consultation with the Union make changes in wages, hours and other terms of conditions of employment to our employees, **including reducing the hours of our employee cafeteria** . . .

(Decision, Appendix). Given that the cafeteria has been closed since December 2012, the Respondents cannot agree not to such language as it relates to an already closed facility, especially since the ALJ ruled that the issue relating to the December 2012 closing of the cafeteria is not an issue in this matter.

In short, at a minimum, the Board should modify the order to the extent that it requires the Respondents to aver that it will not reduce the hours of the employee cafeteria, when same has already been closed.

CONCLUSION

For the above-stated reasons, the Respondents respectfully request that their exceptions be sustained in their entirety and that the findings that the Respondents violated the Act with regards to the employee cafeteria be reversed in its entirety. In the alternative, the Respondents

[2] Tellingly during the hearing the ALJ requested that the Counsel for the General Counsel submit in its post hearing brief case law to support its position and the Counsel for the General Counsel failed to do so. (Decision p. 25 ll. 33-40).

request that the Board modify the order to the extent it prevents the Hotel from closing a cafeteria that is already closed and further strike from the required notice any obligation to bargain with the Union before reducing the hours in and/or closing an already closed cafeteria.

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