



United States Government

NATIONAL LABOR RELATIONS BOARD
Region 22
20 Washington Place - 5th Floor
Newark, NJ 07102

September 23, 2013

Gary Shinnars, Executive Secretary
Office of Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington D.C. 20570-0001

Re: Rosdev Hospitality Secaucus, LP, et al.
Cases 22-CA-CA-078843 & 22-CA-081066

Dear Mr. Shinnars:

Please consider this letter brief as Counsel for the Acting General Counsel's Answering Brief to Respondent's Exceptions to the Administrative Law Judge's Decision in the above referenced case.¹ The Acting General Counsel relies upon the Statement of the Case and Findings of Fact as set forth in the Administrative Law Judge's Decision and the record of the hearing in this matter.²

¹ Respondent's contention that La Plaza Secaucus, LLC filing 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 stays these NLRB proceedings against La Plaza is disingenuous. Respondent's bankruptcy filing is obviously a legal tactic to try to shield La Plaza from liability. However, Rosdev and La Plaza as joint employers legally are jointly liable for any monetary damages.

² In this letter brief, the transcript of the hearing will be referred to as (Tr.) and references to the General Counsel's Exhibits entered into evidence in the hearing will be referred to as (GCX). References to the ALJD will be designated by the page number and line divided by a colon (i.e. ALJD page:lines).

Issues raised by Respondent in its exceptions have been thoroughly dealt with in the Administrative Law Judge's Decision ("ALJD"), support for which is found in the record. Counsel for the Acting General Counsel will therefore address each issue raised by Respondent in a limited way and rely primarily upon the Judge's Findings of Fact and Conclusions of Law.

I. The ALJ correctly concluded that Respondent Failed to Bargain With the Union Before Reducing Hours of the Employee Cafeteria

Respondent's first exception is not so much an exception as it is a misreading of the ALJD. Respondent seems to believe that the ALJ erred because, it claims, he improperly "ignored the testimony which established that Respondent notified the Union of its anticipated action and continued to negotiate with the Union after taking the challenged action." However, as the ALJ correctly noted, there is no dispute that Respondent did not notify or bargain with the Union regarding the reduction in hours of operation or the closure of the employee cafeteria or the layoff of the employee cafeteria attendant. Additionally, citing *Racetrack Food Services, Inc.*, 353 NLRB No. 76 (2008), a closely analogous case to the facts here, the ALJ concluded that Respondent's entire shut down of the cafeteria, resulting in the total loss of all hours for cafeteria attendants, in effect resulted in a layoff in violation of Section 8(a)(1) and (5) of the Act.

Contrary to Respondent's misleading characterization of the ALJ's findings, the ALJ considered Respondent's arguments that it satisfied its obligation to bargain with the Union about these actions inasmuch as the Union's counsel Alyssa Tramposch's testimony admitted that the parties discussed during the negotiations in 2011 that Respondent sought to close the cafeteria. Yet, the ALJ correctly concluded that there was no agreement with the Union on any of these issues and insufficient evidence that impasse existed. (ALJD 24:40-41). The Board does not lightly infer the existence of an impasse, and the burden of proving it rests on the party asserting it. *Naperville Ready Mix, Inc.*, 329 NLRB 174, 183 (1999), enfd. 242 F.3d 744 (7th Cir. 2001); *Serramonte Oldsmobile*, 318 NLRB 80, 97 (1995), enfd. in rel. part 86 F.3d 227 (D.C. Cir. 1996). Respondent called no witnesses and introduced no evidence of any discussions during bargaining on these issues, and thus, it failed to establish an impasse existed. In the absence of an impasse, the ALJ properly concluded that the initial reduction in hours of work, consequent with the initial reduction of hours of the cafeteria, was effectuated without any notice to or bargaining with the Union. (ALJD 24:46-47). Therefore, this exception is meritless and should be denied.

II. ALJ Did Not Err To Require Respondent Post Notice Addressing its Unlawful Reduction of Hours in the Employee Cafeteria

Respondent argues that the ALJ's order containing the affirmative act of requiring Respondent to post a notice affirming that Respondent would not

unilaterally reduce the hours in the cafeteria is improper due to the ALJ's finding that the employee cafeteria's closure in December 2012 was not at issue in this proceeding and that Respondent could not be ordered in the proceeding to reopen the cafeteria. Respondent's attack on the ALJ's remedy is misplaced.

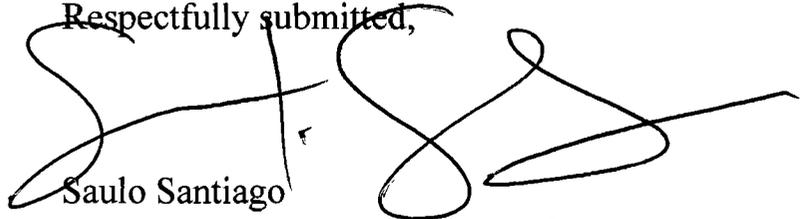
The ALJ's traditional 'cease and desist' remedy is appropriate here. The extent of the Board's control over the remedy is clearly demonstrated in *Schnadig Corp.*, 265 NLRB 147 (1982), "... since we have full authority over the remedial aspects of our decisions." Similarly, the ALJ is authorized pursuant to Section 10(c) of the Act to fashion an appropriate remedy. Respondent's argument simply points to the cafeteria's closure as the motivating factor to obviate the ALJ's remedy. Respondent's argument is baseless. Respondent presents no legitimate reason for moving away from the traditional remedy, nor is Respondent's argument persuasive in finding that the traditional remedy is inequitable. Respondent's argument seeks to manipulate the Board's authority to remedy a violation of the Act, or an attempt to erase the remedy from effectively addressing Respondent's misconduct. Thus, Respondent's exception is baseless and must be denied.

CONCLUSION

Based upon all of the foregoing, it is respectfully submitted that Respondent's Exceptions to the Decision of the Administrative Law Judge are

without merit and must be denied in their entirety. It is further submitted that the Administrative Law Judge's Decision should be affirmed and his recommended Order be adopted by the Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Saulo Santiago', written over the typed name.

Saulo Santiago
Counsel for the Acting General Counsel
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, NJ 07102-3310
(973) 645-3319

CERTIFICATION OF SERVICE

This is to certify that copies of the Counsel for the Acting General Counsel's Answering Letter Brief have been served this date as follows:

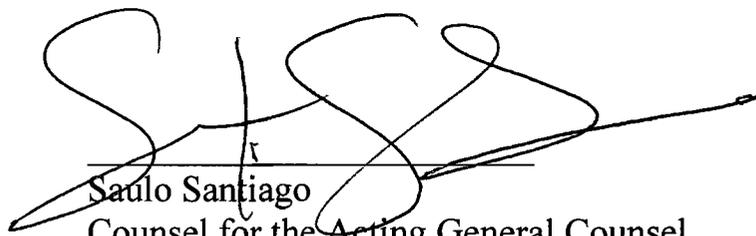
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Gar Shinnors, Executive Secretary
Office of Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington D.C. 20570-0001

Denise Forte, Esq.
Trivella & Forte, LLP
1311 Mamaroneck Avenue
Suite 170
White Plains, NY 10605

Alyssa Tramposch, Esq.
New York Hotel & Motel Trades Council
709 Eighth Avenue
New York, NY 10036

Dated at Newark, New Jersey this 23rd day of September, 2013.



Saulo Santiago
Counsel for the Acting General Counsel
National Labor Relations Board – Region 22
20 Washington Place, 5th Floor
Newark, NJ 07102-3310
(973) 645-3319