

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

CL FRANK MANAGEMENT, LLC, CL
METROPOLIS MANAGEMENT, LLC, AND
CL VERTIGO MANAGEMENT, LLC, A
SINGLE EMPLOYER d/b/a HOTEL PROJECT
GROUP d/b/a HOTEL FRANK

and

Cases 20-CA-35123
20-CA-35238
20-CA-35253

UNITE HERE! LOCAL 2

CL FRANK MANAGEMENT, LLC, CL
METROPOLIS MANAGEMENT, LLC, AND
CL VERTIGO MANAGEMENT, LLC, A
SINGLE EMPLOYER d/b/a HOTEL PROJECT
GROUP d/b/a METROPOLIS

Case 20-CA-35223

and

UNITE HERE! LOCAL 2

MOTION TO STRIKE RESPONDENT'S BRIEF IN SUPPORT
OF EXCEPTIONS TO ALJ DECISION

Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the Acting General Counsel moves to strike Respondent's brief in support of its exceptions to the ALJ decision.

Respondent's Brief in Support of Exceptions Does Not Conform To the Requirements of Section 102.46(c) of the Board's Rules and Regulations

Respondent's brief in support of its exceptions fails to meet the requirements of Section 102.46(c)(2) because the brief completely fails to state "a reference to the specific exceptions to which they relate." Respondent's brief is little more than a condensed version of its original ALJ brief, with no references at all to the 155 Exceptions that Respondent's filed. Accordingly, Respondent left it to Counsel for the Acting General Counsel to speculate as to which of the 155 Exceptions the particular argument relates, a manageable task when only a few exceptions are filed but herculean, if not impossible, when 155 are filed.

Respondent's brief also fails to meet the requirements of Section 102.46(c)(3), which requires that the brief contain the "argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the record and the legal or other material relied on." Because of Respondent's failure to meet the requirements of 102.46(c)(2), it necessarily follows that the brief fails 102.46(c)(3). The point of these rules is that the other party, as well as the Board, needs to know exactly what is being taken exception to and why. Here, Respondent has taken exception to various findings of the ALJ but its brief merely regurgitates its original ALJ brief (albeit in a condensed form), citing to the transcript and on rare occasion, the ALJD.¹ This simply doesn't meet the Board's requirements of "presenting clearly the points of fact and law relied on in support of the position taken."

¹ See *Covanta Bristol, Inc.*, 356 NLRB No. 46, n. 1 (2010); *One Stop Kosher Supermarket, Inc.*, 355 NLRB No. 201, fn.2 (2010); *Holsum de Puerto Rico*, 344 NLRB 694 fn. 1 (2005); *Metropolitan Transportation Services*, 351NLRB 657 fn. 5 (2007); *Conley Trucking*, 349 NLRB 308 fn. 2 (2007), enfd. 520 F.3d 629 (6th Cir. 2008). These cases pertain to Section 102.46(b)(1) of the Board's Rules and Regulations, however, Section 102.46(c)(3) and Section 102.46(b)(1) require the parties to provide the same information, with the chief difference being whether the party filing the exceptions has chosen to also file a separate brief in support of exceptions. Accordingly, these cases are analogous to the case at hand.

In light of Respondent's failure to comply with the requirements set forth in Section 102.46(c)(2) and (3), Counsel for the Acting General Counsel respectfully requests that the Board grant the instant Motion to Strike Respondent's Brief in Support of Exceptions and find that there is no merit to Respondent's exceptions because they are unsupported by any factual or legal argument.

Dated at San Francisco, California, this 9th day of September, 2011.

Respectfully submitted,

/s/ Sarah McBride

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

CL Frank Management, LLC, CL Metropolis Management, LLC, and
CL Vertigo Management, LLC, a single employer d/b/a Hotel Project
Group d/b/a Hotel Frank

and

UNITE HERE! Local 2

Cases 20-CA-35123
20-CA-35238
20-CA-35253

DATE OF MAILING September 9, 2011

**AFFIDAVIT OF SERVICE OF MOTION TO STRIKE RESPONDENT'S BRIEF IN SUPPORT
OF EXCEPTIONS TO ALJ DECISION**

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) by electronic mail upon the following persons, addressed to them at the following addresses:

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Subscribed and sworn to before me on

September 9, 2011

DESIGNATED AGENT

**/s/ Vicky Luu
NATIONAL LABOR RELATIONS BOARD**