

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

**STATION CASINOS, INC., ALIANTE  
GAMING, LLC, d/b/a ALIANTE STATION  
CASINO + HOTEL, BOULDER STATION,  
INC., d/b/a BOULDER STATION HOTEL  
& CASINO, PALACE STATION HOTEL &  
CASINO, INC., d/b/a PALACE STATION  
HOTEL & CASINO, CHARLESTON  
STATION, LLC, d/b/a RED ROCK  
CASINO RESORT SPA, SANTA FE  
STATION, INC., d/b/a SANTA FE  
STATION HOTEL & CASINO, SUNSET  
STATION, INC., d/b/a SUNSET STATION  
HOTEL & CASINO, TEXAS STATION,  
LLC, d/b/a TEXAS STATION GAMBLING  
HALL & HOTEL, LAKE MEAD STATION,  
INC., d/b/a FIESTA HENDERSON CASINO  
HOTEL, FIESTA STATION, INC., d/b/a  
FIESTA CASINO HOTEL, and GREEN  
VALLEY RANCH GAMING, LLC, d/b/a  
GREEN VALLEY RANCH RESORT SPA  
CASINO, a single Employer**

**and**

**Cases 28-CA-022918  
28-CA-023089  
28-CA-023224  
28-CA-023434**

**LOCAL JOINT EXECUTIVE BOARD OF  
LAS VEGAS, CULINARY WORKERS  
UNION, LOCAL 226 AND BARTENDERS  
UNION LOCAL 165, affiliated with UNITE  
HERE, AFL-CIO**

**ACTING GENERAL COUNSEL'S REPLY BRIEF**

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Office of the Executive Secretary**

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**ACTING GENERAL COUNSEL'S REPLY BRIEF**

Pursuant to Section 102.46(h) of the Board's Rules and Regulations, Counsel for the Acting General Counsel (General Counsel) files this Reply brief to Respondent's Answering Brief to General Counsel's Exceptions to the Decision (ALJD) of Administrative Law Judge Geoffrey Carter (ALJ) in the captioned case.

## **I. Introduction**

In its Answering Brief, Respondent makes sweeping claims, including the assertion that the General Counsel attempted to “support its Exceptions by rewriting the facts.” (RAB 2, 3)<sup>1</sup> A review of the record and the ALJD makes clear that Respondent’s assertions are themselves unsupported and amount to an attempt to justify its failure to support its arguments contained in its Brief in Support of Exceptions by pointing out “flaws,” no matter how insignificant, in the General Counsel’s Brief in Support of Exceptions.

## **II. Argument**

### **A. Respondent’s Assertion that the General Counsel’s “Facts” are Unsupported by the Record Evidence is Incorrect**

Respondent’s considerable emphasis on arguing that the General Counsel’s “Facts” are unsupported by the record evidence is incorrect. (RAB 3-4) Respondent takes issue with the “fact” section of General Counsel’s Answering Brief and points to several instances where the General Counsel’s statement of facts is “not supported” by the record. For example, Respondent asserts that the record was misrepresented when the General Counsel wrote that managers and supervisors were “not given guidelines on what was appropriate and lawful” and that “[t]he only instructions provided . . . . was to state the contents of Sound Bytes ‘with conviction’ and to ‘aggressively’ state Respondent’s anti-union position.” Respondent references several pages of the transcript to support its contention that “Respondent provided managers and supervisors with extensive guidance with what constitutes lawful and unlawful speech.” (RAB 3) Respondent’s argument, however, is taken out of context as it applies to questions asked of Respondent’s Vice-President of Human Resources and Training about

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<sup>1</sup> RAB \_\_\_ refers to Respondent’s Answering Brief to General Counsel’s Exceptions followed by the page number. General Counsel’s exhibits are shown as GCX followed by the exhibit number and exhibit page, if applicable. Transcript references are (Tr.\_\_:\_\_) showing the transcript page and line, if applicable. ALJD\_\_ refers to JD-(SF)-59-11 issued by the ALJ on September 22, 2011, followed by the page number.

e-mails sent to general managers, assistant general managers, and human resource directors at each of its facilities. The record clearly establishes, however, that lower level managers and supervisors were not provided with instructions on what was appropriate when speaking to employees about the Union and when disseminating the contents of Respondent's Sound Bytes. (Tr. 106:16-20)<sup>2</sup> In fact, this was noted by ALJ Carter in his decision. (ALJD 4:30-33) Paragraph 16 of the Complaint applies to Respondent's use of "printed and oral 'Sound Byte' communications and other printed communications," and does not extend to the other unfair labor practices that Respondent committed. Thus, Respondent's claim that supervisors and managers were given instructions on the use and dissemination of Sound Bytes and similar materials, is inaccurate and an overstatement of the record.

**B. The ALJ did not Consider all the Relevant Evidence and the Language Contained in Respondent's Sound Bytes and RTM Sound Byte Alerts is Unlawful**

Respondent's assertion that the ALJ considered all of the different forms of Respondent's anti-union communications, specifically the RTM Sound Byte Alerts and Que Pasa newsletters, ignores the General Counsel's reasons and arguments for taking exception to the ALJ finding. In finding that the communications at issue were lawful, the ALJ reasoned that "[a]lthough the Sound Bytes did exhort employees not to sign Union membership cards or support the Union, the Sound Bytes were not coercive or threatening when read in their entirety." (ALJD 31:30-32) In recommending dismissal of Paragraph 16, the ALJ did not discuss the lawfulness of the RTM Sound Byte Alerts or the Que Pasa newsletters. The ALJ's reasoning does not apply to Respondent's RTM Sound Byte Alerts or to its Que Pasa newsletters because of the absence of any discernible context. See ALJD 29 fn. 44. Contrary to Respondent's assertions, the contents of the statements contained in the

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<sup>2</sup> As noted in footnote 4 of the ALJD, the trial transcript, while generally accurate, contained several errors. In Tr. 106:20; the speaker was Ms. Murzl not Mr. Wamser.

Que Pasa newsletters and the RTM Sound Byte Alerts were not isolated statements by supervisors. Rather, they were well-planned attempts to discourage the union activities of employees through the distribution and dissemination of these anti-union materials to as many employees as possible.

**C. Respondent's Prohibition Against the use of Union Buttons by Employees was not Isolated**

Respondent's argument that the Board should affirm the ALJ's finding that it repudiated its unlawful prohibition against wearing Union buttons at work because the incidents were "isolated" is simply not supported by the record. (RAB 8-9) Respondent's attempt to classify its numerous unfair labor practices by type of allegation in order to minimize the severity of its conduct and to bolster its argument that it met the Board's minimum requirements under *Passavant Memorial Area Hospital*, 237 NLRB 138, 138-139 (1978), is indicative of just how little Respondent values the rights of its employees. Respondent's arguments overlook the fact that in determining whether an employer has repudiated its conduct, the Board must consider, among other factors, whether its repudiation is "free from *other proscribed illegal conduct*" and "there must be adequate publication of the repudiation to the employees involved and there must be no proscribed conduct on the employer's part after the publication." *Id.* (Emphasis added) In the instant case, Respondent repeatedly prohibited employees from wearing Union buttons at work (a total of four employees in four separate incidents). Respondent's unlawful conduct however, did not end there. In fact, Respondent committed numerous and wide-ranging violations that were as coercive and in many cases more coercive, than simply prohibiting employees from wearing Union buttons. On numerous occasions, employees were interrogated, prohibited from talking about the Union, and threatened with discharge. Respondent even terminated two employees because of their Union activities. Hence, Respondent's argument that its conduct

was “isolated” is contradicted by the record and the ALJ’s Decision and Recommended Order. Reviewing Respondent’s unlawful conduct based on the type of unfair labor practices committed, instead of the coercive effects of an employer’s unlawful behavior, falsely diminishes the coercive effects of an employer’s illegal conduct.

Moreover, Respondent’s argument that affirming the ALJ’s decision would incentivize “an employer to proactively remedy unfair labor practices of which it becomes aware,” does not apply in the instant case. The repeated violations committed by Respondent, which trampled upon the rights of its employees, demonstrate that Respondent is committed to remaining Union-free without any regard to the rights of employees. Its past and present conduct makes clear that Respondent is not committed to correcting any unlawful conduct unless said conduct is so severe as to be defenseless, as was the case here.

### **III. Conclusion**

Respondent’s Answering Brief to General Counsel’s Exceptions, as discussed above, lack merit and are not supported by the record or by legal precedent. It is respectfully requested that the Board should grant General Counsel’s exceptions and otherwise affirm the decision of the ALJ.

Dated Las Vegas, Nevada, this 29<sup>th</sup> day of December 2011.

Respectfully submitted,

/s/ Pablo A. Godoy

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CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S REPLY BRIEF in STATION CASINOS, INC., ALIANTE GAMING, LLC, d/b/a ALIANTE STATION CASINO + HOTEL, BOULDER STATION, INC., d/b/a BOULDER STATION HOTEL & CASINO, PALACE STATION HOTEL & CASINO, INC., d/b/a PALACE STATION HOTEL & CASINO, CHARLESTON STATION, LLC, d/b/a RED ROCK CASINO RESORT SPA, SANTA FE STATION, INC., d/b/a SANTA FE STATION HOTEL & CASINO, SUNSET STATION, INC., d/b/a SUNSET STATION HOTEL & CASINO, TEXAS STATION, LLC, d/b/a TEXAS STATION GAMBLING HALL & HOTEL, LAKE MEAD STATION, INC., d/b/a FIESTA HENDERSON CASINO HOTEL, FIESTA STATION, INC., d/b/a FIESTA CASINO HOTEL, AND GREEN VALLEY RANCH GAMING, LLC, d/b/a GREEN VALLEY RANCH RESORT SPA CASINO, a single Employer, Cases 28-CA-022918 et al., was served by E-Gov, E-Filing, and E-Mail, on this 29<sup>th</sup> day of December 2011, on the following:

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