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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 19

BIG SKY HOSPITALITY, LLC, d/b/a BUTTE WAR BONNET HOTEL, Respondent, -and- BUTTE HOTELS, LLC & BUTTE MOTELS, LLC, joint employers d/b/a BUTTE WAR BONNET HOTEL, *Golden State* Successor, -and- UNITE HERE! LOCAL 427, Union.	)	Case Nos. 19-CA-33164 19-CA-33165 19-CA-33185 19-CA-65517 19-CA-65566 19-CA-67196 19-CA-67200 **RESPONDENT BIG SKY HOSPITALITY'S OBJECTION TO BUTTE HOTELS' MOTION TO STRIKE**

Respondent BIG SKY HOSPITALITY, LLC, d/b/a BUTTE WAR BONNET HOTEL (hereinafter BSH) objects, and moves to strike, Butte Hotels, LLLC & Butte Motels, LLC's Motion To Strike Respondent Big Sky Hospitality, LLC's Objection, and/or Butte Hotels' Response To Big Sky Hospitality's dated June 20 , 2012.

I. Introduction

BSH objects to the issues raised by Butte Hotels, LLLC & Butte Motels, LLC (hereinafter Butte Hotels), in its Motion to Strike on the grounds that it is nothing more than a self-serving rendition of its version of events related to the purchase and sale of the hotel from BSH. BSH disputes the representations made by Butte Hotels in its Motion to Strike. Regardless, none of the issues raised by Butte Hotels fall within the purview of the National Labor Relations Act and, thus, are not within the NLRB's jurisdiction. Accordingly, Butte Hotels' Motion to Strike should be stricken.

II. Background

After the parties' efforts to reach a global settlement with the assistance of NLRB Settlement Judge Clifford Anderson were unsuccessful, BSH chose to file an Amended Answer as well as a Second Amended Answer to the consolidated complaint to avoid the significant expense associated with a hearing before an administrative law judge. BSH and Butte Hotels engaged in separate negotiations with the General Counsel, during which the General Counsel kept each party apprised of the status of negotiations and positions taken by all parties.

In its Motion to Strike, Butte Hotels misrepresented the conditional admissions contained in BSH's amended answer as unqualified admissions. These admissions to the allegations in the consolidated complaint were made for the sole limited purpose of resolving the unfair labor practice charges pending against it. Since the parties had failed to reach a global settlement, the General Counsel advised BSH and Butte Hotels that it would be necessary to obtain a summary judgment ruling from the Board before the NLRB could enter into any settlement resolving less than all pending unfair labor practice charges. BSH submitted amended answers expressly reserving the right to withdraw them and to assert all applicable affirmative defenses in the event

all charges against BSH are not fully resolved through an appropriate settlement agreement with the NLRB once a Board Order is issued.

In addition, Butte Hotels misrepresented BSH's Objection to Butte Hotel's Response dated May 23, 2012. BSH's Objection was not to the motion for summary judgment filed by the General Counsel, but the response filed by Butte Hotels on similar grounds to those supporting this Motion to Strike. The information contained in Butte Hotels' response was not relevant to the pending unfair labor practice charges and was beyond the scope of the NLRB's jurisdiction and should be disregarded.

Butte Hotels' argument in relation to timeliness of BSH's Objection is without merit as the Objection was filed the day after Butte Hotels' Response. To the contrary, Butte Hotels' Motion to Strike BSH's Objection was not filed until nearly a month later. As such, Butte Hotels' Motion to Strike should be stricken on timeliness grounds as well.

(1) The NLRB has no jurisdiction over the civil claims that are outside the scope of this proceeding.

The disputes between BSH and Butte Hotels are the subject of litigation filed in the Second Judicial District Court, Silver Bow County, Montana, Cause No. DV-12-16, over which the NLRB has no jurisdiction. Butte Hotels have improperly injected their arguments related to the civil claims into these proceedings, which are unrelated to the business of the NLRB. This has served no purpose but to attempt to distract the NLRB as to the actual issues that presently relate to this NLRB proceeding.

Civil claims among parties in a labor dispute are properly heard in district court, and not by the NLRB (See: Linn v. United Plant Guard Workers of Am., Local 114, 383 U.S. 53, 55, 86 S. Ct. 657, 659, 15 L. Ed. 2d 582 (1966)) In *Linn*, the Supreme Court of the United States

concluded, *"...that where either party to a labor dispute circulates false and defamatory statements during a union organizing campaign, the court does have jurisdiction to apply state remedies if the complainant pleads and proves that the statements were made with malice and injured him...."* Similarly here, Butte Hotels improperly attempt to comingle its civil complaints with the unfair labor practice charges to be adjudicated by the NLRB. Specifically here, Butte Hotels and Motels improperly attempts to raise issues related to the business transaction in concert with the labor issues in the NLRB proceedings. Quite simply, there is no basis for NLRB jurisdiction over the business transactions between these two businesses, because neither party is a labor organization.

(2) Butte Hotels' Motion to Strike was not timely, and should be stricken.

On May 24, 2012, BSH filed an Objection to Butte Hotels' Response to the General Counsel's Motions for Summary Judgment. It was not until nearly a full month afterward on June 20, 2012, that Butte Hotels filed its Motion to Strike BSH's Objection. Remarkably, Butte Hotels' Motion to Strike is, itself, untimely. Butte Hotels has failed to satisfy the standard for a reasonable time within which to file responsive briefs, and has not shown good cause based on excusable neglect for its delay. Accordingly, Butte Hotels' Motion to Strike should also be stricken on timeliness grounds.

II. Conclusion

Based on the foregoing, and the record, the Board should strike Butte Hotels' Response to Motions for Summary Judgment dated May 23, 2012, and Butte Hotels' Motion to Strike BSH's Objection dated June 20, 2012, as they are not relevant to the General Counsel's Motions for Summary Judgment. The issues raised in those documents pertain to the civil claims between BSH and Butte Hotels and are beyond the NLRB's jurisdiction.

DATED this 2nd day of July, 2012.

POORE, ROTH & ROBINSON, P.C.

By

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CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of July, 2012, the foregoing RESPONDENT BIG SKY HOSPITALITY'S OBJECTION TO BUTTE HOTELS MOTION TO STRIKE was duly served upon the following, by depositing a true copy thereof in the United States mail, postpaid, addressed as follows:

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