

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

ROSDEV HOSPITALITY, SECAUCUS, L.P. AND
LA PLAZA, SECAUCUS, LLC, joint employers
d/b/a CROWNE PLAZA HOTEL & CONVENTION CENTER

and

Cases 22-CA-078843
22-CA-081066

NEW YORK HOTEL & MOTEL TRADES
COUNCIL, AFL-CIO

Saulo Santiago, Esq., Newark, NJ
for the General Counsel.

Denise Forte, Esq. and Scott P. Trivella, Esq.,
(Trivella & Forte LLP) White Plains, NY
for the Respondents.

Alyssa M. Tramposch, Esq., New York, NY
for the Charging Party.

DECISION

Steven Fish, Administrative Law Judge: Pursuant to charges filed by New York Hotel and Motel Trades Council, AFL-CIO (the Union), the Acting Director for Region 22 issued an Order Consolidating Cases, First Amended Consolidated Complaint on November 21, 2012, alleging that Rosdev Hospitality, Secaucus, LP (Rosdev) and La Plaza, Secaucus, LLC (La Plaza), joint employers d/b/a Crowne Plaza Hotel and Convention Center (Respondent) violated Sections 8(a)(1) and (5) of the Act.

The trial with respect to the allegations raised in the complaint was held before me on February 28, 2013 in Newark, New Jersey.

Briefs have been filed by General Counsel and Respondent and have been carefully considered. Based upon the entire record, including my observation of the demeanor of the witnesses, I issue the following:

Findings of Fact

I. Jurisdiction and Labor Organization

Respondent Rosdev is a limited partnership and Respondent La Plaza is a limited liability company. The entities operate the Crowne Plaza Hotel and Convention Center in Secaucus, New Jersey.

The complaint alleged that Rosdev and La Plaza were joint employers of employees working at the hotel, which Respondent denied. However, in a prior NLRB case, Rosdev

Hospitality, Secaucus, LP and La Plaza, Secaucus, LLC, 349 NLRB 202 (2007), Respondent stipulated that Rosdev and La Plaza were joint employers of the employees in involved hotel here.

5 The judge in that trial made the finding based on that stipulation of joint employer status of these entities, which the Board affirmed.

10 At the trial, here, General Counsel moved to strike the Respondent's affirmative answer, denying joint employer status, based upon the prior decision and Respondent's failure to comply with General Counsel's subpoena to supply documents relating to the joint employer issue.

15 Respondent's attorney opposed the motion, asserting that it was not Respondent's counsel at the time of the prior case but did not dispute that Respondent did stipulate in the prior case that the parties were joint employers and further that it was not aware of changes in circumstances or facts since that time that would render that stipulation inaccurate or not binding. Indeed, Respondent concedes that, in such circumstances, a joint employer finding is required.

20 However, Respondent would not stipulate to the joint employer status of the entities and insisted on litigating the issue because Respondent La Plaza has gone out of business and because the owners of Respondent Rosdev are Orthodox Jews and believe that it would be contrary to their religious beliefs to own a non-Kosher food and beverage business and to mix food and beverage businesses with other services. According to Respondent's attorney, this is how Respondent operates all of its hotels in Canada and the United States, and it always has
25 separate companies for food and beverage services.

 Based upon the above, I granted General Counsel's motion and struck Respondent's answer and affirmative defense as to the joint employer issue.

30 I reaffirm that ruling here. Respondent admits that that is no legitimate legal basis to deny joint employer status of the two entities. The religious beliefs of the ownership of Respondent Rosdev provide no defense to this finding. If anything, these comments of Respondent's attorney serve as an admission that the entities are joint employers and that for religious reasons, Respondent wishes there to be two separate entities with two different
35 names, one for food and beverage and the other for its remaining employees.

 I, therefore, find that Respondent Rosdev and Respondent La Plaza are joint employers of the employees employed at the hotel.

40 During the 12 months, ending December 31, 2012, Respondent derived gross revenues in excess of \$500,000 and that it purchased and received at the Secaucus facility goods valued in excess of \$5,000 directly from points outside the State of New Jersey.

45 It is admitted, and I find, that Respondent is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

 It is also admitted, and I so find, that the Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

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II. Prior Related Case:
Rosdev Hospitality Secaucus LP and La Plaza Secaucus LLC,
349 NLRB 202 (2007)

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On January 31, 2007, the Board issued a Decision and Order in the above case,¹ concluding in agreement with a decision issued by Judge Mindy Landow on July 28, 2006 that Rosdev Hospitality, Secaucus and La Plaza Secaucus (herein collectively called Rosdev) violated 8(a)(1) and (5) of the Act by unlawfully changing the terms and conditions of employment of its employees by implementing a leave accrual policy that conflicted with the predecessor employer's past practice and Section 8a)(1) of the Act by its supervisor informing employees that Rosdev was going to "get rid of the union."

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15

The case involved Rosdev Hospitality, the same "parent" company as in the instant case, and La Plaza, found to be joint employers of a hotel in Secaucus, New Jersey, that the Respondent purchased from its former owners, Felcor Suites, managed by Bristol Hotels, a division of Intercontinental Corp. The prior owners (Felcor) had a collective bargaining agreement with UNITE HERE, Local 69 (herein called Unite Here), which covered a unit of essentially all employees at the hotel, excluding office clerical employees, confidential employees and supervisors.

20

25

When Rosdev purchased the hotel from Felcor, it did not agree to adopt the terms of the collective bargaining agreement that was still in existence between Unite Here and Felcor. Rosdev was required by the sale to hire two-thirds of the hotel's work force. In fact, Rosdev decided to hire all of Felcor's hourly employees, except for bartenders due to Respondent's lack of a liquor license.

30

Rosdev paid the employees the same salaries that they had received and made no other changes in working conditions, other than the change in leave accrual, alleged to be violative of the Act.

35

Rosdev had argued that although it had not agreed to adopt the prior contract with Felcor, it did follow the terms, which stated that seniority for vacation and benefits would be measured by length of tenure with the "Employer" (Felcor). Therefore, since Rosdev was the employer once it began operating the hotel, Rosdev argued that it made no changes in working conditions.

40

However, the judge found, and the Board agreed that, in practice, seniority had always been measured by employees' tenure at "the hotel" and not by employment with Felcor as stated in the contract. In such circumstances, the Board concluded that "for purposes of measuring seniority for the accrual of leave, the relevant terms and conditions of employment were those established by Felcor's actual practice and not contained in the expired contract but not followed in practice." 349 NLRB at 203. Therefore, it adopted the judge's finding that Rosdev unilaterally changed that established practice in violation of Section 8(a)(1) and (5) of the Act.

45

The Board also agreed with the judge that Rosdev violated Section 8(a)(1) of the Act by its supervisor telling an employee that Rosdev was going to "get rid of the union."

50

In that trial, Rosdev had contended that the unit was not appropriate and that, in fact,

¹ This is the decision referred to above in my discussion of the joint employer issue.

during bargaining, Unite had agreed to two units, one consisting of food and beverage employees and the other of housekeeping employees. However, the evidence disclosed that this was merely a proposal of Rosdev and that Unite Here had stated that it was discussing negotiating two separate collective bargaining agreements. However, since no agreements were reached on that change, the judge found, and the Board agreed, that the single unit has historically been represented by the union and was an appropriate unit.

III. Bargaining History with the Union

As noted above, the Respondent has agreed to recognize and bargain with Unite Here for an overall unit of essentially all employees at the hotel, excluding supervisors and office clerical employees.

As also noted above, in the prior decision, Respondent and the Union were at the time of the trial still bargaining over the terms of a new contract, starting in late 2004, during which the parties were discussing Respondent's proposal for two separate bargaining units, one unit consisting of food and beverage employees employed by La Plaza and one of other employees employed by Rosdev. Unite Here had agreed to consider negotiating two separate collective bargaining agreements, but no agreements were reached and no agreement to redefine the scope of the unit. Thus, the judge found, and the board agreed, that the single historically recognized overall unit was appropriate.

In August of 2007, Unite Here and Respondent executed two collective bargaining agreements, which by their terms was in effect from August 3, 2007 through August 3, 2011.

One agreement was between La Plaza d/b/a Crowne Plaza Hotel and Convention Center and Unite Here, Local 96 and covered food and beverage, restaurant, kitchen, banquet and bar employees, excluding housekeeping, laundry, executive, supervisory, office clerical, confidential employees, front desk employees, engineering and maintenance employees.

The other contract was between Rosdev d/b/a Crowne Plaza Hotel and Convention Center and Unite Here, Local 96, and covered laundry and housekeeping employees, excluding food and beverage employees, restaurant, kitchen and banquet employees, front desk employees, engineering and maintenance employees as well as supervisors and office clericals, employees.

Unite Here had been formed as a result of a merger between Unite² and the Hotel Restaurant Employees Union (HERE) in 2004. After that merger, the employees at the hotel continued to be represented by Unite Here. As related above, Felcor was the employer of the employees at the hotel and was a party to the contract with Unite Here. That collective bargaining was set to expire by its terms on September 20, 2003 and had been extended. Respondent notified Unite Here that the hotel was scheduled to be sold to Rosdev as of October 26, 2004 and the parties agreed to bargain over the effects of the sale.

The prior decision reflected that Felcor completed the asset sale of the hotel to Respondent on December 23, 2004, at which time, Respondent commenced operations, hiring all of the employees previously employed by Felcor.

Respondent continued to recognize Unite Here as the representative of the employees

² Unite was created by a merger of the ILGWU and Amalgamated Clothing Workers in 1995.

at the hotel in the classifications, described above, and, as also detailed above, finally reached contracts in August of 2007, dividing up the classifications into separate agreements, food and beverage employees, who were employed by La Plaza and housekeeping employees, employed by Rosdev.

5

The merger between Unite and HERE fell apart in 2009 and 2010. Numerous joint boards of Unite Here voted to disaffiliate from Unite Here and formed a new labor organization, Workers United, United Service Employees International Union (Workers United).

10

Litigation ensued between the Workers United and Unite Here, involving numerous issues, including representation rights for the employees previously represented by Unite Here. In early 2011, Workers United and Unite Here resolved their differences and settled their disputes over assets, including jurisdiction over various shops. This agreement included a transfer of jurisdiction of hotel workers to the Union.

15

Subsequently, on March 22, 2011, Respondent signed a recognition agreement, agreeing to recognize the Union based on the Union's presentation of authorization cards from a majority of employees in the unit, which had been established by a card count, conducted by the Impartial Chairman of the Hotel Industry. The recognition agreement also reflected that the New Jersey New York Joint Board (the Joint Board of Unite Here) disclaimed any and all interest in representing any employees at the hotel.

20

The card count agreement makes reference to Rosdev and to Crowne Plaza Secaucus Meadowlands as the employer and makes no further definition of the employees in the unit, other than to refer to employees at the hotel covered by the existing contract. However, undisputed testimony establishes, and I find, that they covered employees in both contracts, i.e. food and beverage employees covered by the contract with La Plaza and housekeeping and laundry employees, who were covered by the contract signed by Rosdev.

25

30

It is undisputed that Respondent has continued to recognize the Union as the collective bargaining representative of the employees covered by both contracts, and I find further that it did so in one appropriate unit, as alleged in the complaint, consisting of food and beverage employees and housekeeping employees. It could be argued that the parties agreed to change the appropriate unit to a unit of food and beverage employees (employed by La Plaza) and so separate appropriate unit of housekeeping and laundry employees, but such a finding would not affect any of the issues here since Respondent admittedly has agreed to recognize the Union as the representative of all of the employees in the classifications, detailed above, who were covered under the contracts signed by the joint employer, herein.

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IV. The 2011 Bargaining

As noted above, the existing collective bargaining agreements between Respondent and the Union expired on August 3, 2011. The Union sent a request to Respondent to commence bargaining for successor agreements. The parties first met to bargain in August of 2011. Bargaining has continued from that time and is still in progress. As of the date of the instant trial, February 28, 2013, the parties have not reached agreement on terms for new contracts.

45

V. The Information Requests

By three separate letters, dated November 4, 2011, the Union's vice-president, George Padilla, sent Respondent's director of human Resources, Marie Napoli, requests for information that the Union needed for bargaining and to process potential grievances.

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The Union's first request asked for OSHA and related information. The letter is set forth below:

5 Marie Napoli
Director of Human Resources
Crowne Plaza Secaucus
2 Harmon Plaza
Secaucus, NJ 07094

10 Dear Ms. Napoli:

15 In furtherance of contract negotiations for a successor collective bargaining agreement with the Crowne Plaza Secaucus, including the subject of employee health and safety, the Union requests that you provide the following information:

20 1. Any and all inspection reports, permits certifications, citations, complaints or lawsuits or similar materials from any and all Federal, State, and local agencies/organizations with responsibility for safety and/or health, including, but not limited to, the Department of Housing, Department of Building, OSHA, Fire Department, etc. for the last two (2) years;

25 2. Any and all inspection reports or similar materials regarding the safety and/or health conditions at the Hotel by any private consultant or investigator;

3. Copy of the Hotel elevator inspection/recall report;

4. Copies of the OSHA Forms 300, 300A, and 301, if applicable;

30 5. Any and all documents, including but not limited to injury or accident logs, accident or injury reports, security incident reports, showing the accidents, injuries or illnesses suffered by Hotel employees and claims for Worker's Compensation benefits during the past two (2) years;

35 6. Any and all documents, including but not limited to logs, reports or sign in sheets, relating to the Fire safety training given to Hotel employees during the past two (2) years;

40 7. Any and all documents, including but not limited to logs or reports, relating to fire drills conducted by the Hotel during the past two (2) years;

45 8. Any and all documents, including but not limited to logs, reports, presentation materials, sign in sheets, relating to the training given to Hotel employees regarding MSDS sheets or the handling of any chemicals, as well as any and all MSDS sheets kept on the Hotel's premises;

9. Copy of the Hotel elevator inspection/recall report;

50 10. Any and all documents, including but not limited to logs, reports, presentation materials, sign in sheets, relating to the training given to Hotel employees regarding the handling of bodily fluids or awareness of biological hazards;

5 11. Any and all documents, including but not limited to logs, reports, presentation materials, sign in sheets, relating to the training given to Hotel employees regarding asbestos awareness;

12. Any and all documents relating to an asbestos bulk survey performed for the Hotel; and

10 13. Any and all documents relating to personal protective equipment for Hotel employees.

15 Please provide the requested information to the undersigned, via e-mail at gpadilla@nyhtc.org, no later than November 14, 2011. If you are unable to provide all of the requested information at the same time, please provide whatever information you have available that is responsive, in whole or part, to this information request. Thank you for your anticipated cooperation.

20 Sincerely,
George Padilla

cc: Amy E. Tremonti, Esq.
Richard Maroko, Esq.

25 Padilla testified that the Union needed the requested information because it was formulating health and safety proposals and wanted to know about injuries on the job, if elevators were breaking down, if there were reports of asbestos, so it could make proposals to address these matters. Padilla further testified that the Union's request in paragraph 8 related to MSDS sheets (Material Safety Data Sheets), which are sheets kept by Respondent pursuant to
30 OSHA regulation concerning what to do if chemicals get in the eyes of employees or what chemicals should be combined. Padilla states that the Union represents room attendants, who are cleaning rooms, and stewards, who clean kitchens and wash dishes. Chemicals are used in these jobs, and the Union wanted to make sure that employees are trained properly and that certain mixes of chemicals can cause burns. Thus, the Union, in order to make proposals for
35 health and safety, needs this information to help determine if its people are trained properly in the use of such chemicals.

40 Padilla also testified that the Union's request in paragraph 10, regarding training to employees regarding handling of bodily fluid or awareness of biological hazards, related to the fact that the Union had contract proposals for extra fees for exposure to biohazard and premium pay for room attendants, who must clean up bodily fluids. The Union needed to make sure that the employees are trained properly on blood-borne pathogens and how to handle a bloody sheet.

45 The Union's second information request asked for copies of a plea agreed and related documents regarding Respondent's handling of waste water in violation of the New Jersey Water Pollution Control Act. The letter is as follows:

50

November 4, 2011

5 Marie Napoli
Director of Human Resources
Crowne Plaza Secaucus
2 Harmon Plaza
Secaucus, NJ 07094

10 Dear Ms. Napoli:

In furtherance of contract negotiations for a successor collective bargaining agreement and/or potential grievances with the Crowne Plaza Secaucus Hotel, the Union requests that you provide the following information:

- 15 1. The name and contact information of the person or company retained to monitor the Hotel's handling of wastewater pursuant to the plea agreement made by RD Secaucus L.P., in relation to the fourth-degree charge of unlawfully discharging a pollutant in violation of the state Water Pollution Control Act.
- 20 2. A copy of the plea agreement noted above.
3. Any and all reports prepared by the individual or entity referred to in paragraph 1.

25 Please provide the requested information to the undersigned via e-mail at gpadilla@nyhtc.org no later than Monday, November 14, 2011. Thank you for your anticipated cooperation.

30 Sincerely,
George Padilla

cc: Amy E. Tremonti, Esq.
Richard Maroko, Esq.

35 According to Padilla, the Union became aware of that from an article in the Newark Star Ledger of March 23, 2010, entitled, "Secaucus Crowne Plaza Hotel owner admits dumping sewage into Hackensack River." The article is as follows:

40 Secaucus Crowne Plaza Hotel owner admits dumping sewage into Hackensack River
By Brian T. Murray

45 SECAUCUS-- The corporate owner of the Crowne Plaza Hotel in Secaucus pleaded guilty today to pumping sewage-laced water into the Hackensack River, under a plea-deal by which the company must pay a \$75,000 penalty to the environmental watchdog group that uncovered the pollution.

50 RD Secaucus LLC, which does business as Crowne Plaza Hotel and Rosdev Hospitality Secaucus, must pay the Hackensack Riverkeeper, a group that led the state Attorney General's Division of Criminal Justice to launch an investigation last May and ultimately indict the company in September on a charge of violating the New Jersey Water Pollution Control Act.

5 The hotel, through an attorney, pleaded guilty before Superior Court Judge Lourdes Santiago in Jersey City to a reduced offense, maintaining that sewer pipe leaks and troubles that lead to pollution reaching the river occurred under prior management.

10 "There was no evidence to indicate that a sanitary line leak ever occurred under the hotel under our present ownership and management," read a statement the hotel issued today. "After nine months of extensive engineering studies, monitoring, and installation of new automatic pumping equipment, we today resolved allegations first brought to our attention by state environmental authorities back in 2009."

15 Under the agreement, the hotel must pay the Riverkeeper \$15,000 a year for the next five years, implement a program to better handle waste-water at the hotel and retain an environmental consultant approved by the division to monitor the hotel waste flow.

20 "It's a validation of what we do," said Riverkeeper Bill Sheehan, led investigators to an underground tunnel system by which raw sewage leaking from hotel pipes was being flushed into the river. "We've worked with the state Attorney General's Office on other environmental crimes and I think they are confident in our ability to deliver solid cases. This is one less source of pollution in the Hackensack River, and I think the river is all the better for it."

25 In June 2009, when state investigators visited the hotel, they discovered employees had rigged a pump in a grate-covered pit beside the hotel to run the sewage-laced waste water leaking from hotel pipes through a hose and across a grassy area to the riverbank, according to the state Division of Criminal Justice.

30 The hotel, however, contended the system was rigged during a series of repairs done in 1999 and 2000, before the current corporate ownership took over.

35 "The source of the water in the pit since that time involves rain water and groundwater that periodically enters the back pit," the hotel said. "The water in the pit is now government supervision."

40 Padilla testified that based on this article, the Union concluded that employees of Respondent were involved in dumping chemicals into the river, and it was concerned that its members could be subject to some type of penalties. Thus, the Union needed the information in order to formulate proposals to make sure that this doesn't happen again.

45 The Union's third information request asked for banquet orders and guest contracts and hours worked by banquet employees. The request is set forth below.

50 Marie Napoli
 Director of Human Resources
 Crowne Plaza Secaucus
 2 Harmon Plaza
 Secaucus, NJ 07094

Dear Ms. Napoli:

In furtherance of contract negotiations for a successor collective bargaining agreement and/or potential grievances with the Crowne Plaza Secaucus Hotel, the Union requests that you provide the following information:

5

1. Any and all documents, including but not limited to banquet event orders and guest contracts, for each banquet function which occurred during the last two (2) years.

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2. Any and all documents, including but not limited to payroll records, relating to the earnings for each banquet employee for the last two (2) years.

15

3. Any and all documents, including but not limited to time and hour records, relating to the hours worked by each banquet employee for the last two (2) years.

4. A copy of any current guest contracts or BEOs for future events, and a list of upcoming functions in the hotel.

20

Please provide the requested information to the undersigned via e-mail at gpadilla@nyhtc.org no later than Monday, November 14, 2011. Thank you for your anticipated cooperation.

Sincerely,
George Padilla

25

cc: Amy E. Tremonti, Esq.
Richard Maroko, Esq.

30

Padilla testified that the Union needed this information since it was making contract proposals for increases and banquet fees and gratuities for employees. Additionally, Padilla testified that the employees represented by the Union receive a percentage of the food and beverage charges at an event. According to Padilla, the Union had received complaints from employees that they believed that Respondent was lowering the price on food and beverage items and raising the price on other aspects of the event, such as dance floors or the price of a room, that would result in less tips for employees. The Union needed the information requested in order to determine if it had a possible grievance based on a failure to pay proper gratuities to employees. Indeed, subsequently, the Union did file grievances over failure to pay proper gratuities to banquet servers and had several meetings with Respondent, where these grievances were discussed.

35

40

On November 23, 2011, Respondent's counsel, Julie Rivera, sent three separate letters, responding to the Union's three information requests. The responses are as follows:

November 23, 2011

45

New York Hotel and Motel Trades Council, AFL-CIO
707 Eighth Avenue
New York, New York 10036
Attn: George Padilla
Legal Department

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Re: Crowne Plaza Secaucus' Health & Safety

Dear Mr. Padilla:

5 We represent Rosdev Hospitality, Secaucus, L. P. d/b/a Crowne Plaza Hotel (hereinafter referred to as "Crowne Plaza"). We write in response to your letter dated November 4, 2011 in which you seek information and materials relating to the employees' health and safety. Please be advised of the following:

10 1. Any and all inspection reports, permit certifications, citations, complaints or lawsuits or similar materials from any and all Federal, State and Local agencies/organizations with responsibility for safety and/or health, including but not limited to, the Department of Housing, Department of Building, OSHA, Fire Department, etc. for the last two (2) years

15 **Crowne Plaza is in the process of reviewing and gathering its records for purposes of responding to this request. Any and all responsive documents will be provided under separate cover.**

20 2. Any and all inspection reports or similar materials regarding the safety and/or health conditions at the Hotel by any private consultant or investigator.

25 **As this request is overly broad, it is unclear as to what information is being sought by your office. If you can provide us with additional information, we can advise our client accordingly.**

3. Copy of the Hotel elevator inspection/recall report.

30 **Crowne Plaza is in the process of reviewing and gathering its records for purposes of responding to this request. Any and all responsive documents will be provided under separate cover.**

4. Copies of the OSHA Forms 300, 300A and 301, if applicable.

35 **Crowne Plaza is in the process of reviewing and gathering its records for purposes of responding to this request. Any and all responsive documents will be provided under separate cover.**

40 5. Any and all documents, including but limited to injury or accident logs, accident or injury reports, security incident reports, showing the accidents, injuries or illnesses suffered by Hotel employees and claims for Workers' Compensation benefits during the past two (2) years.

45 **Crowne Plaza is in the process of reviewing and gathering its records for purposes of responding to this request. Any and all responsive documents will be provided under separate cover.**

50 6. Any and all documents, including but not limited to logs, reports or sign in sheets relating to the fire safety training given to Hotel employees during the past two years.

Crowne Plaza is in the process of reviewing and gathering its records for purposes of responding to this request. Any and all responsive

documents will be provided under separate cover.

7. Any and all documents, including but not limited to logs or reports, relating to fire drills conduct by the Hotel during the past two (2) years.

5

As this request is overly broad, it is not clear as to what specific documents you are seeking. If you can provide us with further advisement, we can advise Crowne Plaza so they can tailor their search accordingly.

10

8. Any and all documents including but not limited to logs, reports, presentation materials, sign in sheets relating to the training given to Hotel employees regarding MSDS sheets or the handling of any chemicals, as well as any and all MSDS sheets kept on the Hotel's premises.

15

These documents are readily available at the offices of Crowne Plaza. Please advise as to when you or someone from your office would like to inspect the documents and arrangements will be made accordingly.

20

9. Copy of the Hotel elevator inspection/recall report.

This request is duplicative of request no.3. We refer you accordingly.

25

10. Any and all documents including but not limited to logs, reports, presentation materials, sign in sheets, relating to the training given to Hotel employees regarding the handling of bodily fluids or awareness of biological hazards.

30

Crowne Plaza is in the process of reviewing and gathering its records for purposes of responding to this request. Any and all responsive documents will be provided under separate cover.

35

11. Any and all documents, including but not limited to logs, reports, presentation materials, sign in sheets, relating to the training given to Hotel employees regarding asbestos awareness.

40

As this request is overly broad, it is not clear as to what specific documents and time frame you are seeking. If you can provide us with further advisement, we can advise Crowne Plaza so they can tailor their search accordingly.

45

12. Any and all documents relating to an asbestos bulk survey performed for the Hotel.

50

As this request is overly broad, it is not clear as to what specific documents and time frame you are seeking. If you can provide us with further advisement, we can advise Crowne Plaza so they can tailor their search accordingly.

13. Any and all documents relating to personal protective equipment for Hotel employees.

As this request is overly broad, it is not clear as to what specific documents and time frame you are seeking. If you can provide us with further advisement, we can advise Crowne Plaza so they can tailor their search accordingly.

5

Thank you for your time and attention to this matter. Please do not hesitate to contact the undersigned if you require anything further.

10

Very Truly Yours,
TRIVELLA & FORTE, LLP
Julie A. Rivera, Esq.

November 23, 2011

15

New York Hotel and Motel Trades Council, AFL-CIO
707 Eighth Avenue
New York, New York 10036
Attn: George Padilla
Legal Department

20

Re: Crowne Plaza Secaucus/Pollutant Information

Dear Mr. Padilla:

25

We represent Rosdev Hospitality, Secaucus, L. P. d/b/a Crowne Plaza Hotel (hereinafter referred to as "Crowne Plaza"). We write in response to your letter dated November 4, 2011 in which you seek information and documents relating to an alleged unlawful discharge of a pollutant by Crowne Plaza.

30

In your letter, you indicate that you seek the information and documents for purposes of, *inter alia*, "potential grievances." As we are unaware of any filed grievances which involve the alleged unlawful discharge of a pollutant and/or violation of the Water Pollution Control Act by Crowne Plaza, we do not see the relevancy of your request.

35

At this time, we object to your request for the above-referenced information. If you can provide our office with copies of the grievances and/or additional information which supports the purpose of the request, we will respond accordingly.

40

Please do not hesitate to contact the undersigned if you require anything further.

45

Very Truly Yours,
TRIVELLA & FORTE, LLP
Julie A. Rivera, Esq.

50

November 23, 2011

5 New York Hotel and Motel Trades Council, AFL-CIO
707 Eighth Avenue
New York, New York 10036
Attn: George Padilla
Legal Department

10 Re: Crowne Plaza Secaucus' Banquet Information

Dear Mr. Padilla:

15 We represent Rosdev Hospitality, Secaucus, L. P. d/b/a Crowne Plaza Hotel (hereinafter referred to as "Crowne Plaza"). We write in response to your letter dated November 4, 2011 in which you seek information with respect to banquet orders, employee payroll information and guest event contracts.

20 In your letter, you indicate that you seek the information for purposes of "potential grievances." As we are unaware of any filed grievances which involve banquet orders, employees' payroll information and guest event contracts, we do not see the relevancy of your request. This information is confidential and without a valid reason for providing the records, we are unable to comply at this time. If you can provide our office with copies of the grievances and/or additional information which supports the purpose of the request, we will respond
25 accordingly.

Please do not hesitate to contact the undersigned if you require anything further.

30 Very Truly Yours,
TRIVELLA & FORTE, LLP
Julie A. Rivera, Esq.

35 As noted above, Rivera's response to the Union's request for health and safety information stated that Respondent was in the process of reviewing and gathering the information requested in paragraphs 1, 3, 4, 5, 6, 9 and 10 of the Union's request and that any and all responsive documents will be provided under separate cover.

40 Respondent also indicated that the Union's requests in paragraphs 2, 7, 11, 12 and 13 were overbroad, and it was unclear what information is being sought. The letter asked the Union for "additional information" or "further advisement" so it can advise Respondent accordingly. Padilla testified that he did not respond to these requests because he believed that what the Union was asking for was very specific and very clear.

45 Respondent responded, with respect to paragraph 8, that the information requested (documents relating to training given to hotel employees regarding MSDS sheets and all MSDS sheets on premises) was readily available at the offices of the hotel and asked the Union to contact the hotel and advise when it would send someone to inspect the documents.

50 Padilla did not respond to this request or response because he believed that the Union as entitled to this information, and it was readily available to Respondent. He did not believe that it was an undue burden on Respondent to copy the information and send it to the Union.

With respect to the Union's request for banquet event and water pollution information, Respondent responded identically, noting initially that the Union had stated in its requests for information that it was seeking the information for purpose of "potential grievances."

5 Respondent then stated that since it was unaware of any grievance filed involving these issues, Respondent did not see the relevance of the requests.

10 Although, as related above, Respondent's response on November 23, 2011, indicated that it was in the process of reviewing and gathering the items requested in seven paragraphs of the Union's request for health and safety information and would provide "responsive documents under separate cover." It did not do so.

15 On April 13, 2012, the Union filed its initial charge in this proceeding, in which it alleged that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Union with information requested on November 14, 2011.

20 On May 2 and May 16, 2012, the Union sent additional information requests to Respondent, reiterating its requests sent on November 4, 2011 and adding some additional items.

On June 21, 2012, Respondent, in a letter from its attorney, Denise Forte, responded to these requests as follows and attached some of the information requested by the Union. The letter from Forte is set forth below:

25 June 21, 2012

Ms. Alyssa Tramposch, Esq.
New York Hotel and Motel Trades Council, AFL-CIO
707 Eighth Avenue
30 New York, New York 10036

Re: Crowne Plaza Secaucus Meadowlands

Dear Ms. Tramposch:

35 As you know, this office is counsel to Crowne Plaza Secaucus Meadowlands (the "Crowne Plaza") with regards to certain legal matters. We write in response to your requests for information dated November 4, 2011, May 2, 2012 and May 16, 2012. While the Crowne Plaza disputes the relevance of this information and questions the motives of the Union in requesting this information, solely in an effort to resolve the pending unfair labor practice charges, the Crowne Plaza responds as follows:

40

45 In response to your November 4th request for information concerning health, safety and pollutants annexed hereto as Exhibit A are documents responsive to these requests. To the extent you seek information concerning the lawsuit filed by the Town of Secaucus that information, including the plea agreement, is publically available and we suggest you obtain that information from the Courts.

50 As to your request for copies of the Banquet Event Orders for the past two years these documents are very voluminous. These documents, however,

are available for review and inspection at my office. Please let me know if you would like to schedule a date and time to review them

5 With regards to your request for documents concerning the alleged subcontracting of the laundry, the parties resolved this issue and we do not understand why you continue to press for information. Nonetheless, annexed hereto as Exhibit B are documents that the Crowne Plaza previously provided the Region in connection with the settled unfair labor practice charge. Please be advised that the Crowne Plaza never entered into any contracts with third parties for the provision of laundry work.

10 Lastly, as to your requests concerning a change in bedding and furniture in the hotel rooms, as explained at the last bargaining session the Crowne Plaza recently changed all the bedding in the Crowne Plaza rooms. This change was mandated by the Crowne Plaza franchise and implemented at all Crowne Plaza hotels. A copy of the mandate from Crowne Plaza corporate is annexed hereto as Exhibit C. Additionally, the Crowne Plaza recently converted thirty rooms from king sized beds to double beds. These are the only changes that were made to the rooms. This has resulted in an increase in business for the Crowne Plaza and has resulted in increased hours for the unionized staff. One wonders why the Union would complain about a change that has had a positive effect on your members.

15 In short, Crowne Plaza has more than complied with the Union's requests for information. We therefore request that you withdraw the pending unfair labor practice charges relating to these matters.

20 If you wish to discuss this further I can be reached at 914-949-9075.

25 Very truly yours,
TRIVBLLA &FORTE, LLP
Denise Forte

30 On July 18, 2012, Forte send another letter to the Union further responding to the Union's information requests and attaching the remainder of the items requested by the Union, including information requested by the Union in May of 2012. This letter from Forte reads as follows:

35 Ms. Alyssa Tramposch, Esq.
New York Hotel and Motel Trades Council, AFL-CIO
707 Eighth Avenue
New York, New York 10036

40 Re: Crowne Plaza Secaucus Meadowlands

45 Dear Ms. Tramposch:

50 As you know, this office is counsel to Crowne Plaza Secaucus Meadowlands (the "Crowne Plaza") with regards to certain legal matters. We write to further respond to your requests for information dated November 4, 2011 and May 2, 2012. Without waiving the Crowne Plaza's objections to relevance of this information the Crowne Plaza responds as follows:

5 In response to your November 4th request for information concerning health, safety and pollutants enclosed herewith please find a) OSHA Forms 300, 300A and 301 for 2010 and 2011; b) Employee Injury Reports for 2010 and 2011; and c) a copy of the judgment of conviction and the consent decree entered into between the Crowne Plaza and the State of New Jersey. The firm of Paulus, Sokolowki and Sartor, LLC (PS&S[™]) was retained to monitor the Crowne Plaza's handling of wastewater. A copy of the letter from PS&S was previously provided and is enclosed again. To the extent that PS&S issued any reports they will be provided shortly. Please be advised that there are no other documents responsive to this request.

15 As to your request for copies of the Banquet Event Orders for past two years copies of the BEOs for 2010 and 2011 are enclosed herewith. Additionally, enclosed please find the invoices related to the provision of laundry services.

20 Lastly, enclosed please find a picture of a memorandum that was posted at the Hotel on June 27, 2012 rescinding the February 3, 2012 memorandum regarding access to the Hotel.

25 In short, Crowne Plaza has fully complied with all your requests for information and we therefore request that you withdraw all charges related to these requests. If you wish to discuss this further I can be reached at 914-949-9075.

Very truly yours,
TRIVELLA & FORTE, LLP
Denise Forte

30 Enclosures

cc: Saulo Santiago (via e-mail w/o enclosures)

35 Padilla admitted, and General Counsel, concedes that the information supplied by Respondent in June and July of 2012 fully complied with the Union's November 14, 2011 requests.

40 VI. The Reduction of Hours of the Employee Cafeteria
and the Reduction of Hours of Employees

45 Respondent maintained an employee cafeteria at the hotel, which cooked and served food to its employees. Employees, represented by the Union, cook and serve the food, wash the dishes and maintain the cafeteria. The collective bargaining agreements with La Plaza and Rosdev contain no reference to the cafeteria, but both contracts contain an identical provision requiring Respondent to furnish meals to employees free in certain circumstances. The provisions read:

50 Section 2 - Meals

The Employer for its convenience shall continue to follow its present practice of furnishing meals (one (1) meal after four (4) hours work and a second (2nd) meal

after ten (10) hours work), free to employees in the bargaining unit. Meals shall be served under clean and sanitary conditions. The Management will designate an individual to see that this Section of the Agreement is properly carried out. When an employee customarily entitled to a meal is required to work overtime, or
 5 in performing his duties misses the mealtime, the head of his department shall issue a meal order and grant a meal period of such an employee. Employees shall punch the time clock out whenever leaving their work station for a meal and again when returning to work after the meal period.

10 The cafeteria was opened from 7:00 am to 3:00 pm. Fred Zaghloul was employed by Respondent as the cafeteria attendant. He was responsible for maintaining the cafeteria, replenishing the hot and cold food, going back and forth from the kitchen to the cafeteria, replenishing juice and beverages, bringing dirty dishes to the dishwasher-stewards and finally cleaning the cafeteria.

15 In early December of 2011, Padilla received a phone call from Zaghloul, who informed Padilla that Respondent had reduced his hours of work because it had reduced the hours of operation of the cafeteria. Respondent had not notified the Union about the reduction of Zaghloul's hours or about the reduction of hours of the cafeteria itself.

20 Shortly, after this call, Padilla visited the hotel and spoke with Respondent's director of human resources, Marie Napoli.³

25 Padilla saw a notice stating that effective December 9, 2011 cafeteria hours had been changed to 11:30 am to 1:30 pm and that all food must be removed at 1:30 pm.

30 Padilla met with Napoli along with shop stewards for food and beverage, housekeeping and cooks. Padilla informed Napoli that Respondent could not reduce the hours of the cafeteria for the workers and that it must change the cafeteria hours back to the prior time and put everyone back to their regular hours and make everyone whole for any pay that was lost. Padilla added that the Union never agreed to these reductions and that Respondent needed to do it immediately.

35 Napoli responded that the decision was made by her supervisor, Bernie Mendoza, the hotel's general manager and by "corporate." Napoli added that the decision was "out of her hands."

40 Padilla responded that Respondent could not close the cafeteria, that the employee cafeteria attendant and kitchen worker jobs were bargaining unit jobs and that Respondent must provide the same level of food to employees⁴ and the work must be done by bargaining unit employees.

45 Napoli replied that there weren't enough people to sustain these hours and if the Union insisted on the restoration of hours, Respondent would close the cafeteria all together.

In this regard, Alyssa Tramosch, the Union's assistant counsel, testified about

³ Napoli serves as director of human resources for both Rosdev and La Plaza, and the Union deals with her concerning grievances under both collective bargaining agreements.

⁴ Padilla was referring to the above described contractual requirement to provide free food to employees in certain circumstances.

negotiations that she attended between Respondent and the Union in 2011. According to Tramposh, Respondent stated, during bargaining, that it was interested in closing the cafeteria and made proposals to do so. The Union's position was that it would not agree to any closure of the cafeteria. The parties discussed the issue at several sessions, but no agreements were
5 reached. During these discussions, the issue came up that if the cafeteria was closed, Respondent would need to find another position for Zaghloul.

There was never an agreement between the Union and Respondent concerning the closing or the reduction of the cafeteria hours or the status of Zaghloul. Tramposch did not
10 testify that the subject of the reduction of Zaghloul's working hours as a result of the reduction in the cafeteria's hours was the subject of any discussion.

On January 5, 2012, Respondent shut down the employee cafeteria. This action resulted in Zaghloul losing all of his hours and in a small loss of hours for two other employees, Juan
15 Diaz, steward dishwasher, and Pedro Fuentes, a cook.

Padilla met with Napoli on several occasions in January of 2012 to protest the closure, in which Padilla urged that the cafeteria be reopened and that the hours of Zaghloul as well as the other employees affected be restored. Padilla argued that the cafeteria closing impacted not
20 only the cafeteria attendant but other employees as well, who cooked the food for the employees. Napoli responded that the decisions were made by the general manager and that it was out of her hands.

The cafeteria remained closed from January 5, 2012 to February 9, 2012. Respondent
25 reopened the cafeteria on February 10, 2012 and posted a notice stating that effective February 10, the cafeteria would reopen from 11:00 am to 3:00 pm and that lunch will be served from 12 noon to 2:00 pm. Respondent did not notify the Union about the reopening nor negotiate the new reduced hours. Thereafter, the cafeteria remained open at these hours, and Zaghloul was recalled to work as a cafeteria attendant.

30 Since the hours of the cafeteria were still less than it had been prior to the initial reduction in November of 2011, Zaghloul was still not restored to his prior hours in February of 2012 when the cafeteria was reopened. The other two employees, Fuentes and Diaz, who had lost hours during the shutdown period, did not lose any hours after the reopening in February
35 since they were assigned to other work.

In October of 2012, Respondent sent a WARN notice to all food and beverage employees, including Zaghloul, stating that the entire food and beverage operation was being
40 shut down and all these employees would be laid off effective December 12, 2012.

At that time, Respondent continued to keep the cafeteria open but did not serve any food. Employees were able to bring in their own food to eat. There is a Starbucks in the hotel as well as a kiosk serving sandwiches and a hot dog machine. Thus, the employees get their food
45 from these sources or bring their own food and sit in the cafeteria and eat. The cafeteria is cleaned by a houseman from the housekeeping department.

VII. The Implementation of a No Access Policy

In early February of 2012, one of the Union's shop stewards notified Padilla that
50 Respondent had posted a new notice limiting access to the hotel for employees. Padilla visited the property and was shown a copy of the notice which read: "Please be advised that unless you have prior authorization from the General Manager, Bernie Mendoza, you should not be on

hotel property when off duty. There are no exceptions.”

5 Padilla spoke to shop stewards and was informed that employees were told that they could no longer stay on the property after work and could not come to the hotel if they were not on schedule. The employees told Padilla that this is a new policy that had never existed before,

10 Padilla then met with Napoli along with several shop stewards. Padilla objected to the policy and stated that Respondent had not negotiated with the Union about its implementation. Napoli replied that the hotel always had a practice of not allowing employees to return to the hotel, and the general manager said that this was the new rule and “that was it.” Several shop stewards, who were present at the meeting, disputed Napoli and told Napoli and Padilla that Respondent never had such a policy and the employees were always able to come and go in the hotel without restriction. The employees further stated that after their shifts ended, employees often went in the employee cafeteria for their ride, to pick up things, or to wait for the other employees to get off shifts. Other employees would return to the hotel while off duty to pick up their paychecks or to get something from other employees without a problem.

15 The Union never received any official notification that the policy had been rescinded. On June 27, 2012, Respondent issued a memo, stating that “the memo issued on February 1, 2012 regarding the need for prior authorization to be on hotel property when off duty was rescinded on March 1, 2012.”

25 According to Padilla, he first found out about the alleged rescission of the policy in a conversation with the Board Agent, who told him that it had been rescinded. Padilla visited the hotel after that conversation and saw the rescission notice, dated June 27, 2012, which reflected that the prior memo was rescinded on March 1, 2012. Respondent adduced no evidence that it has actually sent any notice to employees of the rescission on March 1, 2012, or indeed, at any time prior to June 27, 2012.

30 VIII. Analysis and Conclusions

A. The Information Requests

35 An employer, on request, must supply a union with information that is necessary and relevant to its carrying out its statutory duties and responsibilities in representing employees, which includes information relevant to contract administration, processing of grievances and negotiation. *NLRB v. Acme Industrial, Co.*, 385 U.S. 432 (1967); *National Broadcasting Co.*, 352 NLRB 90, 97 (2008); *CEC Corp.*, 337 NLRB 516, 518 (2002).

40 When the request concerns terms of employment within the bargaining unit, the information is presumptively relevant, and the employer then has the burden to prove lack of relevance or to provide adequate reasons why it cannot, in good faith, supply such information, *AK Steel Co.*, 324 NLRB 173, 183 (1997).

45 Where the information sought concerns matters outside the bargaining unit, the Union bears the burden of establishing the relevance of the information to its representative functions. *Dodger Theatricals Holdings*, 347 NLRB 953, 967 (2006); *CEC Corp.*, supra. Although the union has the burden of showing the relevance of non-unit information, that burden is not exceptionally heavy, requiring only a showing of probability that the desired information is relevant and that it would be of use to the union in carrying out its duties and responsibilities. *Certco Food Distribution Centers*, 346 NLRB 1214, 1215 (2006); *Wisconsin Bell Inc.*, 346 NLRB 62, 64 (2005).

It is well-settled that an employer is obligated to supply relevant information to the union in a timely and complete manner. The union is entitled to the information at the time it makes its initial request, and it is the employer's duty to furnish it as promptly as possible. *Monmouth Care Center*, 354 NLRB 11, 15 (2009); *Woodland Clinic*, 331 NLRB 735, 737 (2000). An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all. *Monmouth Care*, supra at 51; *Valley Inventory*, 295 NLRB 1163, 1166 (1989); *Woodland Clinic*, 331 NLRB 735, 737 (2000).

Here, the Union sent three letters to Respondent, requesting information, all dated November 4, 2011. The first request asked for OSHA and related information, which the Union needed in connection with negotiations and formulation of health and safety proposals. Such information is presumptively relevant, *Honda of Hayward*, 314 NLRB 443, 451 (1994), and indeed, Respondent does not contest the relevance of this information. In its response to this request by its attorney, Respondent stated that with respect to paragraphs 1, 3, 4, 5, 6, 9 and 10 that it was in the process of reviewing and gathering records and would provide any responsive documents under separate cover. Notwithstanding that assertion by Respondent, it did not furnish any of the items included in these paragraphs until after the instant charges were filed and after the Union renewed its information request in May of 2012. Finally, Respondent produced the requested information in two installments on June 21 and July 18, 2012.

With respect to paragraphs 2, 7, 11, 12 and 13, Respondent answered that the request were overly broad and it was unclear what information was being sought and asked the Union to provide more specific information as to what information it was seeking. Padilla testified that he did not reply to this request of Respondent because he believed that what the Union was asking for was specific and clear. I agree and conclude that these paragraphs were not overbroad and provided sufficiently clear and specific notice to the Respondent of what items the Union was seeking.

In paragraph 8, the Union requested documents related to training given to employees regarding MSDS sheets and all MSDS sheets on premises. Respondent responded to this paragraph by indicating that the information that the Union was seeking was readily available at the offices of the hotel and asked the Union to contact the hotel and advise when it would send someone down to inspect the documents. Padilla did not respond because he believed that the Union was entitled to this information, which was readily available to Respondent, and it was not an undue burden on Respondent to copy the information and send it to the Union.

I conclude that Respondent did not satisfy its statutory obligation to supply relevant information by offering the Union an opportunity to come to the hotel to inspect the documents. Absent unusual circumstances, including lack of photocopying equipment or undue inconvenience to the furnisher of the information, the requested information must be copied and supplied to the Union, and an offer to the Union to inspect the documents requested is insufficient to meet an employer's obligations under the Act. *Stella D'oro Biscuit Co.*, 355 NLRB 769, 773-774 (2010), enf. denied (absent unusual circumstances, required information must be furnished by photocopy); *Union Switch & Signal*, 316 NLRB 1025, 1033 (1995) (willingness to permit inspection and notetaking of information requested did not satisfy employer obligation to supply relevant information to the union); *Pertec Computer*, 284 NLRB 810, 811 (1987), enf. in relevant part, 926 F.2d 181, 184, 188-189 (2nd Cir. 1991) (employer did not meet its obligations to supply information by offer to allow union's financial analyst to look at cost study on its premises); *American Telephone & Telegraph*, 250 NLRB 47, 54 (1980), enf. 644 F.2d 923, 924 (1st Cir. 1981) (employer must supply copies of relevant information to union, absent exceptional circumstances).

5 Here, Respondent has not asserted or argued any usual or exceptional circumstances existed to justify its refusal to copy and furnish the Union information requested and, instead, to offer the Union the opportunity to inspect the information. Thus, Respondent has not satisfied its statutory obligations with respect to this portion of the Union’s information request.

10 Respondent, as noted above, failed to supply any of the relevant information requested by the Union on November 4, 2011 until June and July of 2012, after the Union had filed the instant charges and renewed its request in May of 2012.

15 While Respondent's submission in June and July of 2012 fully complied with the information requested in this request, such compliance was clearly untimely since it came 7-8 months after the information request was received. *Monmouth Care*, supra, 354 NLRB at 52 (six-week delay unreasonable); *Woodland Clinic*, supra, 331 NLRB at 737 (absent evidence justifying employer’s delay, seven-week delay found unreasonable); *Beverly California*, 326 NLRB 153, 157 (1998) (two-month delay unlawful); *Bundy Corp.*, 292 NLRB 671, 672 (1989) (2.5-month delay unlawful).

20 I, therefore, conclude that Respondent has violated Section 8(a)(5) of the Act by failing to supply the Union the information requested in the November request dealing with safety information in a timely manner.

25 The second information request made by the Union on November 4, 2011 by the Union asked for the water pollution plea agreement and related materials. This information involves matters outside the bargaining unit and the Union needs to demonstrate relevance. It has done so, here, by Padilla’s testimony that the Union needed this information in order to formulate bargaining proposals to protect unit employees and help prevent other such occurrences in the future. Such testimony is sufficient to establish relevancy of the information requested. Respondent initially denied this request in its November 23 response because it was unaware of
30 any filed grievances, which involve the alleged discharge of a pollutant and/or violation of the Water Pollution Act. Therefore, Respondent argued that it did not see the relevancy of the Union’s request. However, this response of Respondent is inadequate and insufficient to justify its refusal to comply. Notably, the Union mentioned in its request that it was seeking the information “in furtherance of contract negotiations for a successor collective bargaining
35 agreement and/or potential grievances.” Thus, Respondent has ignored the Union’s need for the information for negotiations purposes as testified by the Union. Further, the fact that no grievances has been filed does not mean that the Union has no need for the information for the purpose of investigating whether it is appropriate to file a grievance. Accordingly, I conclude that this information was relevant to the Union’s statutory responsibilities, and Respondent was
40 obligated to furnish it to the Union in a timely fashion. It did not do so and would, as it did with respect to the Union’s first request, wait until June and July of 2012 after the Union filed its charges and made a follow-up request in May of 2012 before it supplied the information requested.

45 Once again, I find this submission to be untimely and unreasonable, and I conclude that Respondent has violated Section 8(a)(5) of the Act. *Monmouth Care*, supra; *Woodland Clinic*, supra; *Beverly California*, supra.

50 The Union’s third request sought information including banquet event order sheets, payroll records and other related materials. Such information is clearly presumptively relevant to the Union’s collective bargaining representation, and I so find. Padilla testified that the Union received complaints that they were not receiving proper gratuity pay, and the Union needed to

investigate these complaints and the Union needed the information to help formulate its wage proposals.

Respondent's initial response to that request on November 4, 2011 was that it was
 5 unaware of any filed grievances involving these matters and, therefore, the request was not
 relevant to the Union's functions. Further, Respondent asserted that the information sought was
 "confidential" and would not be supplied "absent a valid reason for providing the records." This
 response is inadequate and insufficient to justify Respondent's refusal to supply the relevant
 information in timely fashion.

10 Similar to Respondent's response concerning the prior request, the fact that a grievance
 has not been filed with respect to the information request does not preclude it being relevant to
 grievance processing since investigation of a possible or potential grievance is clearly one of the
 functions of the Union. Further, as noted, the Union was formulating contract proposals on
 15 wages and gratuities so the information sought is clearly relevant to that function.

Once more, Respondent failed to produce information requested in this letter until June
 or July of 2012, 7-8 months after the request was made and after the Union filed a charge
 concerning the issue and the Union renewed its request for this information. Respondent has
 20 again failed to supply relevant information in a timely fashion in violation of Section 8(a)(1) and
 (5) of the Act, I so find. *Monmouth Care*, supra; *Woodland Clinic*, supra; *Bundy Corp.*, supra.

B. The Reduction of Hours

25 It is undisputed that in November of 2011, Respondent substantially reduced the hours
 of the employee cafeteria, cutting the hours from 8 to 2. This action resulted in the reduction of
 working hours for unit employees, principally for Fred Zaghoul, who was employed as the
 cafeteria attendant, responsible for replenishing the food and beverages, bringing dishes to the
 dishwasher and cleaning the cafeteria.

30 Respondent failed to notify or bargain with the Union about this decision and its
 consequences on unit employees.

35 When the Union was informed by Zaghoul about this conduct, Padilla complained to
 Napoli about this action and demanded that Respondent restore the hours of the cafeteria and
 the workers since the Union never agreed to these reductions.

40 Napoli responded that the decision was made by her supervisor, Bernie Mendoza, the
 hotel's general manger, and by "corporate" and that the decision was out of her hands. Padilla
 insisted that Respondent must provide the same level of food to employees and work must be
 done by bargaining unit employees.

45 Napoli responded that there wasn't enough people to sustain those hours, and if the
 Union insisted on the restoration of the hours, Respondent would close the cafeteria all
 together.

50 On January 5, 2012, Respondent fulfilled Napoli's predictions and shut down the
 cafeteria altogether, resulting in Zaghoul losing all of his hours and a small loss of hours for two
 other unit employees.

Effective February 10, 2012, the cafeteria was reopened at a slightly reduced schedule
 of 6 hours, and Zaghoul was recalled to work as a cafeteria attendant, although his working

hours were not fully restored at that time. The other two unit employees did not lose any hours, thereafter, since they were assigned other work.

5 In October of 2012, Respondent sent a WARN notice to all food and beverage employees, including Zaghoul, stating that the entire food and beverage operation was being shut down and all these employees would be laid off on December 12, 2012.

10 The layoffs were effectuated on that date, after which Respondent kept the cafeteria open but did not serve any food. Employees used the cafeteria to bring in food to eat from a Starbucks or other sources. The cafeteria is now cleaned by a houseman from the housekeeping department.

15 General Counsel contends, and I agree, that these facts are sufficient to establish that Respondent has violated Section 8(a)(1) and (5) of the Act by unilaterally reducing the hours of the cafeteria and its employees. It is well-settled that an employer violates Section 8(a)(5) of the Act if it unilaterally, and in the absence of impasse, makes changes in the terms and conditions of employment of its unit employees. *NLRB v. Katz*, 369 U.S. 736 (1962); *Professional Eye Care*, 289 NLRB 738, 754 (1988). Here, the evidence discloses that Respondent unilaterally reduced the hours of the employee cafeteria, resulting in the reduction of working hours of unit employees and that the Union received no notice of these actions and no opportunity to bargain about this decision and its effects on unit employees. Such conduct is violative of Section 8(a)(1) and (5) of the Act, I so find. *San Juan Teachers Assn.*, 355 NLRB 172, 175 (2010) (employer violated 8(a)(5) by reducing weekly working hours of two unit employees); *Professional Eye Care*, supra, 289 NLRB at 753-754 (change in hours of unit employees, absent impasse, violative of 8(a)(5) of the Act).

25 Furthermore, on January 5, 2012, Respondent shut down the employee cafeteria entirely, resulting in the total loss of all hours for Zaghoul, in effect resulting in his being laid off. Such conduct was further violative of Section 8(a)(1) and (5) of the Act. *Racetrack Food Services*, 353 NLRB 687, 700-701 (2008) (employer violated Section 8(a)(5) of the Act by closing dining room and bar on Wednesday and Thursday nights and reducing hours of employees).

30 Respondent argues that it satisfied its obligation to bargain with the Union about these action inasmuch as Tramosch's testimony admitted that the parties discussed during their negotiations in 2011 that Respondent sought to close the cafeteria, that the Union objected and did not consent to that proposal and that the parties also discussed the issue of if Respondent were to close, it would need to find another position for Zaghoul.

35 However, there were no agreements by the Union on any of these issues and insufficient evidence that impasse existed on any matter under discussion. Indeed, Respondent called no witnesses and introduced no evidence of any discussions during bargaining on these issues. The above description of the parties' discussion in 2011 concerning the closing of the cafeteria and the possible finding a position for Zaghoul was introduced primarily to establish, which it did, that the Union was never notified about and never consented to any reduction in hours for Zaghoul or any other employee. 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.

40 The total shutdown of the cafeteria in June of 2012, resulting in the loss of all of Zaghoul's hours, was discussed during bargaining, but no agreement was reached and no impasse has been established. Thus, that conduct was also violative of Section 8(a)(1) and (5)

of the Act. *Professional Eye Care*, supra; *NLRB v. Katz*, supra. I so find.

5 During the trial, General Counsel asserted that it was seeking an affirmative remedy to reopen the cafeteria and that those since job tasks, previously performed by Zaghoul, are now being performed by people other than Zaghoul that Zaghoul be reinstated to perform that work.

10 Those comments resulted in an exchange on the record, wherein I questioned how General Counsel could be seeking such a remedy since the complaint alleges only violations in 2011, although Respondent closed the cafeteria in January of 2012, for a month, the cafeteria was reopened in February of 2012 and Zaghoul was reinstated. General Counsel further conceded that it was seeking backpay for Zaghoul and the other two employees only from November of 2011 through December of 2012, when the Respondent closed its entire food and beverage operation and laid off all the food and beverage employees, including Zaghoul.

15 Respondent vigorously objected to General Counsel's request, noting that the parties had agreed to backpay amounts for all employees affected by the unfair labor practices alleged and noting that it lawfully shutdown its food and beverage operation in December of 2012, thereby, cutting off any backpay as well as any affirmative restoration relief.

20 General Counsel argued that since Respondent is a joint employer and Zaghoul has seniority, he can bump into the other bargaining unit and his job tasks, i.e. cleaning the cafeteria are still being performed, notwithstanding the layoff of the food and beverage employees.

25 Respondent countered that contention by asserting that Respondent does not employ anyone on a full-time basis to do Zaghoul's work, and if Zaghoul wishes to avail himself of the contract's bumping rights under the contract, he should file a grievance. However, Respondent argues that a reinstatement remedy for Zaghoul or an order reopening the cafeteria are clearly inappropriate, here, based on the violations found in this complaint. In this regard, Respondent's brief notes that the Union has filed a charge with the Region, alleging that the permanent shutdown of the cafeteria in December of 2012 is the subject of a "recently filed unfair labor practice charge."

35 General Counsel does not dispute that assertion and, in its brief, appears to have backed off from these demands for remedies since it made no reference to these requests in the brief, although I specifically directed him to do so and submit arguments and precedent supporting his positions expressed during trial that such remedies are appropriate. In its brief, General Counsel makes no reference to these proposed remedies but does request a broad order "with traditional reinstatement" and make whole remedies. No arguments or cases were presented, justifying such remedies, here, in light of the fact that Respondent has closed the entire food and beverage department in December of 2012.

45 I agree with Respondent that any such remedy ordering reopening of the cafeteria or a restoration of hours for Zaghoul is inappropriate here, and would be a violation of due process. The only allegations here found to be violative of the Act in connection with the cafeteria and the reduction of hours for unit employees, including Zaghoul, was the reduction in hours of the cafeteria and working hours of the employees in November of 2011 and the temporary shutdown of the cafeteria and resulting total loss of hours for Zaghoul in January of 2012.

50 However, in February of 2012, Respondent rescinded the closure, reopened the cafeteria and recalled Zaghoul to his former position. While his hours were not fully restored at that time, his backpay entitlement continued, and General Counsel conceded that his backpay was cutoff as of December of 2012 when the food and beverage operation was shut down and

Zaghloul as well as all other food and beverage employees were laid off. I fail to see how General Counsel can argue that reinstatement is an appropriate remedy when he admits that backpay entitlement had been cut off.

5 Any remedy for conduct subsequent to the December 2012 shutdown is inappropriate and would be violative of due process since there has been no litigation of the lawfulness of the December 2012 conduct of Respondent. Indeed, that issue is still the subject of a pending charge with the Region as of the submission of briefs, herein.

10 I also agree with Respondent's position that whether Zaghloul may have bumping rights under the contract in view of the fact that a portion of his prior work, i.e. cleaning the cafeteria, is now being performed by another unit employee, is not before me and should be pursued by filing a grievance. There was no complaint allegation that Respondent unilaterally assigned part of his work to another employee in December of 2012 and that issue was not, therefore, litigated and it would be inappropriate to order his reinstatement based on the fact that a small part of this work was now being performed by another unit employee.

15 I, therefore, decline to order any affirmative relief⁵ as requested by General Counsel, and I shall not order that Respondent reopen the cafeteria or that it reinstate Zaghloul.

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C. The Implementation of a No Access Policy

It is undisputed that in early February of 2012, Respondent posted a notice advising employees that unless authorized by the general manager that “they shouldn’t be on hotel property when off duty. There are no exceptions.” This was a new policy, and undisputed evidence by General Counsel indicates that employees had never been informed that they were not allowed on hotel property after or before their work hours and that, in fact, it was common practice for employees to wait at the hotel for rides from other employees or to be picked up by someone else, even after their shifts ended.

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This action was taken by Respondent without notifying or bargaining with the Union and is clearly violative of Section 8(a)(1) and (5) of the Act as it represents a material change in terms and conditions of employment of its employees. *United States Postal Services*, 350 NLRB 441, 443 (2007); *Flambeau Airmold Corp.*, 334 NLRB 165 (2001); *Ferguson Enterprises*, 349 NLRB 617, 618 (2007).

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Additionally, I conclude that Respondent's rule is independently violative of Section 8(a)(1) of the Act since it runs afoul of the Board’s requirement for a lawful no access rule. *Continental Bus Systems*, 229 NLRB 1262 (1977); *Tri-Country Medical Center*, 222 NLRB 1089 (1976).

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Respondent's rule is clearly overbroad and does not limit the rule to the interior of the hotel or other working areas.

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Respondent does not dispute the above findings but argues that since Respondent has rescinded this policy by issuing a new memo, after the Union complained about the policy, on June 27, 2012, stating that the February 1, 2012 memo was rescinded on March 1, 2012, the issue is now moot and no violation should be found. In this regard, Respondent notes that no

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⁵ Other than backpay for the period encompassed by the complaint, November 4, 2011 through December 12, 2012,

employee has been disciplined for violation of this policy.

I do not agree with Respondent. This unlawful policy was in effect for several months, and its rescission memo, issued on June 27, reflects that it has been rescinded on March 1, 2012. Respondent, however, adduced no evidence that it notified anyone, employees or the Union, that the policy was rescinded on March 1 as it claimed in its June 27 memo. In such circumstances, a dismissal for mootness is clearly unwarranted, notwithstanding that no employee was disciplined for violation of this policy. The requirements for dismissal of violations, based on subsequent rescissions of unlawful rules, have not been met, *Claremont Resort & Spa*, 344 NLRB 832, 836 (2005); *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). This unlawful, unilateral change affected the entire unit, which was subjected to its unlawfully implemented and unlawfully overbroad policy for over 4 months. While the record does not demonstrate that any employee was disciplined for violation of this policy, this is inconsequential since employees were subjected to the policy for a substantial period of time. *Intrepid Museum Foundation*, 335 NLRB 1, 18 (2001); *Storer Communications*, 297 NLRB 296, 297 (1989).

Accordingly, I conclude that Respondent has violated Section 8(a)(1) and (5) of the Act by its issuance of the above described no access policy for its employees.

Conclusion of Law

1. The Respondent, Rosdev Hospitality, Secaucus, LP and La Plaza, Secaucus, LLC, joint employers d/b/a Crowne Plaza Hotel and Convention Center is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. New York Hotel and Motel Trades Council, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All bellmen/valets, bartenders, bar assistants, tournant cook, cooks I, cooks II, pantry workers, room attendants, housemen, pot washers, stewards, night cleaners, cafeteria attendants, hosts-hostesses/cashiers, servers, busing persons, storeroom employees, and linen employees employed by Rosdev Hospitality, Secaucus LP and La Plaza, Secaucus, LLC at its facility located in Secaucus, New Jersey, excluding office clerical employees, confidential employees, executives, guards and supervisors as defined in the Act.

4. At all material times, the Union has been the exclusive representative of the employees in the above-described appropriate unit, for the purposes of collective bargaining with respect to wages, rates of pay, hours of employment and other terms and conditions of employment.

5. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by

(a) Unilaterally, without notice to or consultation with the Union, reducing the hours of and closing the employee cafeteria and reducing the hours of bargaining unit employees.

(b) Unilaterally, without notice to or consultation with the Union, implementing a no

access policy for its off-duty employees.

(c) Failing and refusing to supply timely information requested by the Union.

5 (d) The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

10 Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act. Having found that Respondent unilaterally reduced hours of operation of its employee cafeteria and work hours of its employees, I shall recommend that Respondent cease and desist from making unilateral changes in wages, hours and working
 15 conditions of employees in the appropriate unit and that Respondent make whole said employees for any loss of pay or other benefits they may have suffered as a result of Respondent’s unilateral changes as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356
 20 NLRB No. 8 (2010), enf. denied on other grounds sub. nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (DC Cir. 2011).

25 Respondent shall also file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters for the affected employees. Respondent shall also compensate the employees adversely affected by Respondent's conduct for the adverse consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than one year. *Latino Express Inc.*, 359 NLRB No. 44 (2012).

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

35 The Respondent, Rosdev Hospitality, Secaucus, LP and La Plaza, Secaucus, LLC, joint employers d/b/a Crowne Plaza Hotel and Convention Center, Secaucus, New Jersey, its officers, agents, successors and assigns shall:

1. Cease and desist from

40 (a) Failing and refusing to bargain collectively and in good faith with the New York Hotel & Motel Trades Council, AFL-CIO (the Union) by failing and refusing to timely supply information that is and necessary to the Union’s performance as the exclusive collective bargaining representative of its unit employees. The unit is:

45 All bellmen/valets, bartenders, bar assistants, tournant cook, cooks I, cooks II, pantry workers, room attendants, housemen, pot washers, stewards, night

50 ⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

cleaners, cafeteria attendants, hosts-hostesses/cashiers, servers, buspersons, storeroom employees, and linen employees employed by Rosdev Hospitality, Secaucus LP and La Plaza, Secaucus, LLC at its facility located in Secaucus, New Jersey, excluding office clerical employees, confidential employees, executives, guards and supervisors as defined in the Act.

(b) Failing and refusing to bargain collectively with the Union by unilaterally implementing changes in terms and conditions of employment of its employees employed in the above described unit, including reducing and closing the hours of the employee cafeteria, reducing the hours of its employees and implementing a no access policy for off-duty employees in the absence of lawful bargaining impasse.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the affected employees with interest in the manner set forth in the remedy section of this decision.

(b) Reimburse the affected employees an amount equal to the difference in taxes owed upon receipt of a lump sum backpay payment and taxes that would have been owed had there been no discrimination against them.

(c) Submit the appropriate documentation to the Social Security Administration so that when backpay is paid to the affected employees it will be allocated to the appropriate periods.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Secaucus, New Jersey facility copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 4, 2011.

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

5 (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 28, 2013

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Steven Fish,
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT unilaterally and without notice to or consultation with the Union make changes in wages, hours and other terms and conditions of employment of our employees, including reducing the hours of our employee cafeteria, reducing the working hours of our employees or implementing a no access policy for our off-duty employees in the absence of a lawful bargaining impasse in the following unit:

All bellmen/valets, bartenders, bar assistants, tournant cook, cooks I, cooks II, pantry workers, room attendants, housemen, pot washers, stewards, night cleaners, cafeteria attendants, hosts-hostesses/cashiers, servers, buspersons, storeroom employees, and linen employees employed by Rosdev Hospitality, Secaucus LP and La Plaza, Secaucus, LLC at its facility located in Secaucus, New Jersey, excluding office clerical employees, confidential employees, executives, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to timely supply information that is relevant and necessary to the Union's performance as representative of our employees.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL make you whole with interest for any losses that you suffered as a result of our reduction of your working hours.

WE WILL reimburse all employees from whom we reduced hours, amounts equal to the difference in taxes owed on receipt of a lump sum backpay payment and taxes that would have been owed had there been no discrimination against them.

WE WILL submit the appropriate documentation to the Societal Security Administration so that when backpay is paid these employees it will be allocated to the appropriate periods.

Rosdev Hospitality, Secaucus, LP and La Plaza, Secaucus, LLC,
joint employers d/b/a Crowne Plaza Hotel and Convention Center

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

20 Washington Place, 5th Floor
Newark, New Jersey 07102-3110
Hours: 8:30 a.m. to 5 p.m.
973-645-2100.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784.