

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

**ALIANTE GAMING, LLC d/b/a  
ALIANTE CASINO AND HOTEL**

**and**

**Case 28-CA-126480**

**LOCAL JOINT EXECUTIVE BOARD OF  
LAS VEGAS, CULINARY WORKERS UNION,  
LOCAL 226 AND BARTENDERS UNION  
LOCAL 165 AFFILIATED WITH UNITE HERE**

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF  
TO RESPONDENT'S ANSWER  
TO GENERAL COUNSEL'S LIMITED EXCEPTIONS  
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

**Respectfully submitted,**

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## **I. INTRODUCTION**

In its Answer to General Counsel's Limited Exceptions, Respondent takes issue with General Counsel's allegation that employee Maria Lourdes "Lulu" Cruz Sanchez (Cruz) was directed to not discuss her discipline or suspension with others by Buffet Manager Bonita "Bonnie" Schafer-Rabonza (Rabonza).

## **II. LEGAL ARGUMENT**

### **A. A Directive is an Instruction or Order**

Respondent incorrectly argues that a "directive" and a "statement directed" to an employee are the same. The former denotes an instruction or an order, whereas the latter merely indicates to whom a comment is being made without carrying with it an expectation of some action or omission in response. An unlawful directive orally issued to one single employee alone is sufficient to establish a violation under the National Labor Relations Act (Act).

### **B. Rabonza Unlawfully Directed Cruz to Not Talk About Her Suspension**

Cruz testified credibly that during the April 4, 2014<sup>1</sup> meeting, Rabonza said, "[d]o me a favor, go home and do not tell anybody, because nobody knows anything about it." (Tr. 614:16-20)<sup>2</sup>. Through his decision, the ALJ properly credited Cruz and discredited Rabonza. Although the ALJ credited Cruz's version of events with regard to the statement made by Rabonza, he incorrectly found that the statement was not an unlawful directive because it was prefaced by "do me a favor," and because Rabonza did not spell out a specific consequence.

However, Respondent cannot avoid a violation of the Act by couching its instructions with "do me a favor," and implying unspecified reprisals. Administrative law judges, with Board approval, have regularly found violations of Section 8(a)(1) when the employer requested that

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<sup>1</sup> All further dates are in 2014, unless noted otherwise.

<sup>2</sup> (Tr. \_\_:\_\_) refers to page and line or lines of the transcript.

the employee do the employer a favor. See, e.g., *Bert Wolfe Ford*, 239 NLRB 555, 556 (1978)(gift of engine block conditioned upon refraining from association with union activists); *Aladdin Gaming, LLC*, 345 NLRB 585, 597-598 (2005)(request to remove union button employee was wearing); *Glasgow Industries, Inc.*, 204 NLRB 625 (1973)(request to vote no in union election). Here, the consequence, albeit unspecified, is still implied were Cruz not to heed Rabonza's instruction or order. As such, the Board should find that Respondent issued Cruz a directive on April 4, carrying with it a threat of unspecified reprisals should she talk to others about her suspension.

**C. Respondent Maintained An Overly Broad Confidentiality Rule**

Such a directive or order may also be interpreted as an overly broad confidentiality rule. *Bryant Heath Center, Inc.* 353 NLRB 739 (2009). In *Bryant*, the Board found that respondent had violated Section 8(a)(1) of the Act by maintaining an overly broad confidentiality rule when it instructed an employee not to discuss her discipline with others despite the order being a one-time occurrence. 353 NLRB 739, 749. In the instant case, Respondent, on one occasion, also instructed Cruz not to discuss her discipline with others. As such, the Board should find that Respondent maintained an overly broad confidentiality rule.

**D. Respondent's Argument that Cruz's Testimony Should Not Be Credited Because of Past History of Violating Company Policy is Without Merit**

Respondent argues that Cruz's testimony is not credible because she received past coachings and discipline. Here, employee discipline is not a relevant factor in a credibility determination. Moreover, none of Cruz's disciplines related to dishonesty. The ALJ made his credibility decisions based upon the entire record as well as his observations of the witnesses' demeanor and context of the witnesses' testimony. (ALJD 11:25-34; 15:30-31, 35-36)<sup>3</sup> The ALJ

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<sup>3</sup> (ALJD \_\_\_:\_\_\_) refers to page followed by line or lines of the ALJ's decision.

found Rabona's testimony riddled with inconsistent statements, whereas throughout the ALJ's observations of Cruz as a witness, he found her soft spoken and her demeanor to be quiet and demurred. (ALJD 14:21-46). Respondent attempts to impeach Cruz's credited and credible testimony, and, therefore, its argument should fail.

### **III. CONCLUSION**

The record reflects that Cruz credibly testified to Rabonza's directive to not discuss her suspension and Respondent has failed to discredit her testimony. Respondent maintained an overboard confidentiality rule when it prohibited Cruz from discussing her discipline with others. Counsel for the General Counsel respectfully requests that the Board so find.

Dated at Las Vegas, Nevada this 16<sup>th</sup> day of June, 2015.

Respectfully submitted,

*/s/ Elise F. Oviedo*

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## CERTIFICATE OF SERVICE

I hereby certify that the **COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF TO RESPONDENT'S ANSWER TO GENERAL COUNSEL'S LIMITED EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** in Case 28-CA-126480 was served via E-Gov, E-Filing, and electronic mail, on this 16<sup>th</sup> day of June 2015, on the following:

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