

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD REGION 28**

**LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA, LOCAL 872**

**and**

**Case 28-CC-148007**

**NAV-LVH, LLC d/b/a WESTGATE  
LAS VEGAS RESORT & CASINO**

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**WESTGATE'S EXCEPTIONS THE TO ADMINISTRATIVE  
LAW JUDGE'S DECISION OF AUGUST 21, 2015**

Charging Party, NAV-LVH, LLC d/b/a Westgate Las Vegas Resort & Casino in accordance with Rule 102.46 of the Board's Rules and Regulations files its exceptions<sup>1</sup> to the Decision of Administrative Law Judge ("ALJ") Jeffrey D. Wedekind of August 21, 2015<sup>2</sup> ("Decision") filed in the above-captioned matter.

**A. Westgate's Exceptions**

1. *Having carefully considered those briefs and the entire record, for the reasons set forth below I find that the evidence fails to support the alleged violations under extant law.* ALJD, p.2, lines 10-12.

This conclusion arbitrarily repudiates applicable National Labor Relations Board ("NLRB") precedent, over two hundred years of American Jurisprudence involving private property ownership rights and is unsupported by the clear preponderance of the record evidence. Consequently, the ALJ's conclusion is unreasonable and untethered from the

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<sup>1</sup> The exceptions are listed in bold and are the verbatim text of the challenged portion of the ALJ's Decision in the order in which they appeared in the Decision. The grounds specifically supporting Westgate's exceptions follow each individual exception. A brief in support of Westgate's exceptions will be filed contemporaneously with these exceptions.

<sup>2</sup> Citations to the decision will be referenced as "ALJD" followed by the corresponding page and line numbers. Reference to the hearing transcript will be noted as Tr. followed by the page and line numbers.

substantial evidence on the record considered as a whole.

### **FINDINGS OF FACTS**

2. [On March 6, 9-11, 2015 when the Union placed the inflatables on the “utility cutouts”], *there were no obstructions or signs indicating that the cutouts were private property and off limits to anyone other than the utility companies. Nor did any of the utility companies ask the Union to remove the inflatables from the cutouts.* ALJD, p. 6, lines 16-20.

*Local 872 Organizing Director [Mike] DaSilva testified that he spoke to a water district employee who happened to be working near one of the west-side utility cutouts on March 6, and the employee said there was no problem putting an inflatable in the cutout as they were not working there (Tr. 260–261, 264, 278–284, 304). DaSilva also testified that a metro police detective told him “you guys are good” after the detective and two uniformed officers walked around and looked at all the banners and inflatables that morning (Tr. 281–284, 295). Although DaSilva’s testimony is uncorroborated, it is also uncontroverted, and there is no other compelling reason on the record to discredit it. However, I would find that the Union’s conduct did not violate the Act even without the testimony.* ALJD, p. 6 fn. 11.

These finding of facts and the ALJ’s credibility assessment of Mr. DaSilva’s uncorroborated hearsay involving a controlling issue in the hearing was improperly based on the misapplication of NLRB and Supreme Court precedent and arbitrarily disregards controlling private property state laws. These finding of facts, and the conclusions derived from them, are unreasonable and contrary to the substantial evidence on the record considered as a whole.

### **ANALYSIS**

3. *The General Counsel also argues that the Board’s prior decisions are distinguishable because the rat in the event center driveway and the other inflatables on the utility cutouts were on Westgate’s property. However, the relevant inquiry in evaluating whether nonpicketing conduct violates 8(b)(4)(ii)(B) is whether it “directly caused, or could reasonably be expected to directly cause, disruption of the secondary’s operations.” Eliason, 355 NLRB at 807; Brandon, 356 NLRB No. 162, slip op. at 3. Here, as discussed above, neither the event center driveway nor the utility cutouts were being used by Westgate or utility company personnel at the time. Thus, none of the inflatables at those locations directly disrupted, or threatened to directly disrupt, Westgate’s operations. Moreover, the rat was stationed at the event center only one day, and the Union ceased placing the inflatables on the cutouts when Westgate clearly marked the cutouts as private property on March 12.*

*Thus, the Union's conduct cannot reasonably be characterized as unlawful harassment or repeated trespass. See 520 S. Michigan Avenue Assoc., Ltd. v. UNITE HERE Local 1, 760 F.3d 708 (7th Cir. 2014) (discussing circumstances where nonpicketing conduct may constitute harassment or repeated trespass violative of 8(b)(4)(ii)(B)).* ALJD, p. 7, line 26 - 38 to p. 8, 1-2.

This legal analysis and the resulting conclusion that the Union's conduct did not violate 8(b)(4)(ii)(B) is arbitrary and repudiates applicable NLRB and Supreme Court precedent, and over two hundred years of American Jurisprudence involving private property ownership rights. This conclusion is unreasonable and untethered from the substantial evidence on the record considered as a whole.

#### **CONCLUSION OF LAW**

4. *Laborers Local 872 did not violate Section 8(b)(4) as alleged in the complaint.* ALJD, p. 8, line 24.

The ALJ's conclusion arbitrarily repudiates applicable NLRB and Supreme Court precedent, and over two hundred years of American Jurisprudence involving private property ownership rights. This conclusion is unreasonable and untethered from the substantial evidence on the record considered as a whole.

#### **B. This Board Must Reverse the Decision.**

For the reasons stated here and in Westgate's Brief in Support of its Exceptions, the NLRB must reverse the Decision of Administrative Law Judge Jeffrey D. Wedekind of August 21, 2015 because it is unreasonable and untethered from the substantial evidence on the record considered as a whole. The new Order should state that the Laborers' International Union of North America, Local 872 violated Section 8(b)(4)(ii) of the National Labor Relations Act when it repeatedly trespassed onto Westgate's property and hijacked Westgate's use of its property by illegally erecting approximately seven (7) gigantic

inflatables for approximately four (4) days. The Union's actions were coercive with the proscribed object of enmeshing Westgate, the neutral employer, in a controversy not its own.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed via E-Gov, E-Filing, and electronic mail on this 16th day of October, 2015 on the following:

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