

1 DAVID A. ROSENFELD, Bar No. 058163
2 WEINBERG, ROGER & ROSENFELD
3 A Professional Corporation
4 1001 Marina Village Parkway, Suite 200
5 Alameda, California 94501
6 Telephone (510) 337-1001
7 Fax (510) 337-1023
8 E-Mail: drosenfeld@unioncounsel.net

9 Attorneys for Respondent
10 Laborers' International Union of
11 North America, Local 872

12 UNITED STATES OF AMERICA
13 NATIONAL LABOR RELATIONS BOARD
14 REGION 28

15 LABORERS' INTERNATIONAL UNION OF
16 NORTH AMERICA, LOCAL 872,

17 Respondent,

18 and

19 NAV-LVH, LLC D/B/A WESTGATE LAS
20 VEGAS RESORT & CASINO,

21 Charging Party.

Nos. 28-CC-148007

**CROSS-EXCEPTIONS TO THE
DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

22 Respondent hereby files the following Cross-Exceptions to the Decision of the
23 Administrative Law Judge ("ALJ").

<u>No.</u>	<u>Exception</u>	<u>Language</u>
24 1.	P. 2, ln. 16	To the suggestion that the Westgate is the owner of the property. The evidence shows, as a matter of fact, a different entity is the owner of the property. This cross-exception applies to all the references to the Westgate or the ownership of the property involved in this dispute.
25 2.	P. 2, fn. 2	The Union contests the Board's jurisdiction to the extent that the jurisdictional standards are way out of date.
26 3.	P. 3, lns. 4-6	To the suggestion that there were any inflatables after March 11th. As a matter of fact, there were no inflatables after that date.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>No.</u>	<u>Exception</u>	<u>Language</u>
4.	P. 3, Ins. 30-39	The “sloped ramps” are not ADA compliant. There is no evidence that as of the time of these incidents they were intended to be used for ADA access. The ALJ furthermore failed to notice that at least one of them was in disrepair.
5.	P. 4, ln. 4	The evidence shows that the banners did not extend three-quarters of the way into the access ramp.
6.	P. 5, Ins. 20-24	To the failure of the ALJ to note that the inflatable was placed at a public access point where public could walk across the driveway from the sidewalk to the next sidewalk entrance at the convention center. Thus, the inflatable was not in an actual public access area.
7.	P. 5, ln. 25	Again, to the suggestion that this was Westgate property.
8.	Passim	To the failure of the ALJ to find that Nevada trespass law did not prohibit the placing of the critters on the utility cutouts.
9.	P. 5, ln. 27	To the suggestion that a hard right turn would be necessary. A right turn would be necessary; no harder or more difficult than would have been made by anyone exiting the property.
10.	P. 6, Ins. 5-21	To the failure of ALJ to find that these cutouts were used by the public and therefore part of public sidewalk until unlawfully restricted by Westgate. The Westgate’s restriction is a violation of Section 8(a)(1).
11.	P. 6, fn. 11	To the failure of ALJ to find that the placing of the inflatables on the cutoffs was authorized by one of the easement holders.
12.	P. 8, fn. 14	To the failure of the ALJ to find that the Act must be interpreted consistent with the Religious Freedom Restoration Act so as to allow the religious right of employees to engage in activity to help fellow workers.
13.	P. 8, fn. 14	To the failure of the ALJ to find that the application of Nevada trespass law is preempted.
14.	P. 8, fn. 14	To the failure of ALJ to find that Section 8(b)(4)(ii)(B) is unconstitutional.
15.	P. 8, fn. 14	To the failure of ALJ to award additional remedies including attorney’s fees based upon the Religious Freedom Restoration Act as well the interference with the First Amendment rights of Local 872 and its members and supporters..
16.	P. 8, fn. 14	To the failure of ALJ to order a training session for the Regional Office with respect to First Amendment Rights.
17.	P. 8	To the failure of the ALJ to order that Westgate allow the critters to be reestablished on the utility cutouts.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: October 29, 2015

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /S/ DAVID A. ROSENFELD
DAVID A. ROSENFELD

Attorneys for Respondent
Laborers' International Union of North America,
Local 872

138382\830177

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**CERTIFICATE OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On October 29, 2015, I served the following documents in the manner described below:

CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system to the email addresses set forth below.

On the following part(ies) in this action:

Myrna Masonet
Greenspoon Marder
7881 West Charleston Boulevard, Suite 160
Las Vegas, NV 89117-8324
Email: myrna.maysonet@gmlaw.com

Elise Oviedo, Esq.
National Labor Relations Board, Region 28
600 Las Vegas Blvd., South, Suite 400
Las Vegas, Nevada 89101-6637
Email: Elise.oviedo@nlrb.gov

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 29, 2015, at Alameda, California.

/s/ Karen Scott

Karen Scott