

NEEL, HOOPER & BANES, P.C.

ATTORNEYS AT LAW  
1800 WEST LOOP SOUTH, SUITE 1750  
HOUSTON, TEXAS 77027-3272  
713.629.1800 (Telephone) ❖ 713.629.1812 (Facsimile)  
www.nhblaw.com

SAMUEL E. HOOPER\* (1972-2009)  
BRYANT S. BANES\*  
bbanes@nhblaw.com  
SEAN D. FORBES  
sforbes@nhblaw.com

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STORMY N. MAYFIELD  
smayfield@nhblaw.com  
BRIAN SANCHEZ  
bsanchez@nhblaw.com

OF COUNSEL

LINDA H. EVANS\*  
levans@nhblaw.com  
BILL W. WOOLEY  
bwooley@nhblaw.com  
W. Scott Matney  
smatney@nhblaw.com

\* BOARD CERTIFIED IN LABOR AND EMPLOYMENT LAW  
BY THE TEXAS BOARD OF LEGAL SPECIALIZATION

H-17,226/047d  
Hallmark-Phoenix 3, L.L.C.

April 19, 2016

Mr. Lyle W. Cayce  
United States Court of Appeals  
Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130

Re: No. 15-60011 Hallmark-Phoenix 3, LLC; v. NLRB,  
USDC No. 12-CA-90718  
USDC No. 12-CA-94037

Dear Mr. Cayce:

Pursuant to the Court's April 6, 2016 Order, Hallmark-Phoenix 3, LLC ("HP3") files this response to the NLRB's Proposed Judgment (DOC 00513454065). In its decision on this matter, the Court held in pertinent part that: (1) the Board erred in finding that Hallmark lacked a sound arguable basis under the CBAs for not including the lead-pay premium in TWU employees' severance pay; and (2) the Board further erred in finding that Hallmark lacked a sound arguable basis for withholding carry-over vacation pay for TWU employees (DOC 00513437895, p. 27).

Mr. Cayce  
April 19, 2016  
Page 2

Despite the foregoing holdings, the Board's proposed order continues to contain references to alleged ULPs and costs related to lead pay premiums on severance pay and carry-over vacation pay, without distinguishing between whether the order is directed at TWU employees, which it cannot be, or IATSE employees. The order should make clear that these provisions only apply to IATSE employees, and not to TWU employees (*See* DOC 00513437895, p. 3, ¶ 1(d) & (e) and pp. 5-6).

Moreover, the Board, in its proposed order, attempts to insert improper requirements that go beyond enforcing its order below. Specifically, the Board seeks to add requirements for HP3 to compensate for any adverse tax consequences of receiving a lump-sum back-pay award, and to require HP3 to file a report with the Social Security Administration allocating the back-pay award to the appropriate calendar quarters (DOC 00513437895, p. 3, ¶ 1(d) & (e) and pp. 5-6).

Both of these requirements go beyond the order sought to be enforced. As such, the Court is without jurisdiction to enter such orders, and these provisions are inappropriate and must be deleted. 29 U.S.C. § 160(e).

Very truly yours,

NEEL, HOOPER & BANES, P.C.

By



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Bryant S. Banes

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