

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**KHRG EMPLOYER, LLC, D/B/A HOTEL  
BURNHAM & ATWOOD CAFÉ**

**and**

**Case 13-CA-162485**

**UNITE HERE LOCAL 1, AFL-CIO**

**COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS  
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Board's Rules and regulations, the General Counsel, through its attorney Andrea James, respectfully files these Exceptions to the January 27, 2017, Decision of Administrative Law Judge Christine E. Dibble.<sup>1</sup> The General Counsel excepts to the following:

1. The ALJ's rejection, at ALJD p. 8, lines 36-37 and p. 9, lines 16-17, of the General Counsel's argument that *Wright Line*, 251 NLRB 1083 (1980) is not the appropriate analysis in this case.
  - a. The ALJ's refusal at ALJD p. 8, lines 33-35 to apply the Atlantic Steel four-factor analysis in this case.
2. The ALJ's failure to analyze and find that Evan Demma's termination was for conduct that was part of the *res gestae* of his protected concerted activities and that Demma did not lose the Act's protection when he engaged in this conduct. ALJD p. 8, lines 25-35.
3. The ALJ's conclusion, at ALJD p. 9, lines 15-17, that "Respondent's motive is at issue" in this case.

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<sup>1</sup> In these Exceptions, the Administrative Law Judge will be referred to as the "ALJ," the National Labor Relations Board will be referred to as the "Board," Unite Here, Local 1 will be referred to as the "Union" or "Charging Party," and KHRG Employer, LLC, d/b/a Hotel Burnham & Atwood Café will be referred to as "Respondent." Citations to the ALJ's decision will be referred to as "ALJD" followed by the page and line numbers specifically referenced.

4. Assuming that *Wright Line* is the proper test, the ALJ's finding, at ALJD p. 9, lines 38-39, that Counsel for the General Counsel failed to prove the final prong of its initial burden under *Wright Line*, 251 NLRB 1083 (1980). This exception encompasses the following findings and conclusions:
  - a. The ALJ's failure, at ALJD p. 9, line 41, to find an inference of discriminatory animus based on the "sham" investigation conducted by Palladino.
  - b. The ALJ's failure, at ALJD p. 9, line 41, to find an inference of discriminatory animus based on the timing of Demma's termination.
  - c. The ALJ's failure, at ALJD p. 9, lines 41-42, to find an inference of discriminatory animus based on Respondents failure to discipline other employees for similar security violations.
  - d. The ALJ's failure, at ALJD p. 9, lines 43-44, to find an inference of discriminatory animus based on Respondent's failure to discipline other employees who followed Demma into Scott's office.
  - e. The ALJ's failure to analyze and conclude that Respondent failed to present sufficient evidence to establish that it would have discharged Demma even absent his protected concerted activity.
5. The ALJ's conclusion, at ALJD p. 11, lines 28-30, that Respondent's discharge of Demma did not violate Section 8(a)(1) of the Act.
6. The ALJ's failure to make the following factual findings based on evidence presented at the hearing:
  - a. that Demma chose a route to the manager's office designed to cause the least amount of disruption at Respondent's facility. (Tr. 56)

- b. that Respondent admitted that its door security was a “bit loose”. (Tr. 286)
- c. that vendors provided with the passcode would leave the secured door left propped open and unmonitored. (Tr. 92; 94)
- d. that Palladino relied on a slew of anti-union and anti-Demma emails prior to making a decision to terminate Demma. (Tr. 278)

Respectfully Submitted,

/s/ Andrea James  
Counsel for the General Counsel  
National Labor Relations Board, Region 13  
219 S. Dearborn Street, Suite 808  
Chicago, Illinois 60604

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the **Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge** was electronically filed with the Office of the Executive Secretary of the National Labor Relations Board on March 17, 2017 and that true and correct copies of the document were served on the parties in the manner indicated below:

Tonya Scott , General Manager  
Kimpton Hotel & Restaurant Group, LLC & KHRG  
Employer, LLC d/b/a Hotel Burnham & Atwood  
Restaurant  
1 W Washington St  
Chicago, IL 60602-1603

**REGULAR MAIL**

Brian Stolzenbach , Attorney at Law  
Seyfarth Shaw LLP  
131 S Dearborn St Ste 2400  
Chicago, IL 60603  
bstolzenbach@seyfarth.com

**E-MAIL**

Karla E. Sanchez , Attorney at Law  
Seyfarth Shaw LLP  
131 S Dearborn St Ste 2400  
Chicago, IL 60603  
ksanchez@seyfarth.com

**E-MAIL**

Jordan Fein  
UNITE HERE Local 1  
218 S Wabash Ave Ste 700  
Chicago, IL 60604-2449  
jfein@unitehere.org

**E-MAIL**

Kristin L. Martin  
Davis, Cowell and Bowe LLP  
595 Market Street, Suite 1400  
San Francisco, CA 94105-2821  
klm@dcbsf.com

**E-MAIL**

David Barber  
Davis, Cowell & Bowe, LLP  
595 Market Street, Suite 800  
San Francisco, CA 94105  
dbarber@dcbsf.com

**E-MAIL**

/s/ Andrea James

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Andrea James  
Counsel for the General Counsel  
219 S. Dearborn, Suite 808  
Chicago IL 60604