

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 501

and

Case No. 28-CB-182296

GNLV CORP. d/b/a
GOLDEN NUGGET LAS VEGAS

**CHARGING PARTY GNLV CORP. D/B/A GOLDEN NUGGET
LAS VEGAS'S REPLY BRIEF IN SUPPORT OF ITS
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION AND RECOMMENDED ORDER**

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Respondent International Union of Operating Engineers Local 501, AFL-CIO (“Local 501”) fails to set forth any meritorious arguments against Charging Party GNLV Corp.’s (“Golden Nugget”) exceptions to the Administrative Law Judge’s decision. Local 501 acted unlawfully when it did not provide any documents with respect to two out of three information requests. The Administrative Law Judge erred by failing to find that Local 501 violated Section 8(b)(3) of the National Labor Relations Act (“the Act”). Indeed, based on the evidence before the Administrative Law Judge and the necessarily lenient standard applied to information requests so that parties can evaluate bargaining proposals and properly administer collective bargaining agreements, the Administrative Law Judge should have found Local 501’s conduct unlawful and ordered Local 501 to produce the requested information.

I. GOLDEN NUGGET’S EXCEPTIONS ARE SUFFICIENTLY PLED.

As a threshold matter, Local 501 incorrectly alleges that Golden Nugget’s exceptions do not comport with the requirements of the NLRB’s Rules and Regulations Section 102.46.¹ In reality, between Golden Nugget’s exceptions and its supporting brief, Golden Nugget clearly specifies the questions to which exceptions are taken, identifies the part of the Administrative Law Judge’s decision to which exceptions are taken, provides precise citations to the record relied on, and states the grounds for exceptions through the use of legal argument and citation of authorities pursuant to Section 102.46(a)(1)(i). Additionally, pursuant to Section 102.46(a)(2), Golden Nugget’s supporting brief also provides a clear and concise statement of the case, specification of the questions involved with references to specific exceptions, and arguments clearly presenting facts and law relied on in its exceptions. Thus, Local 501’s technical

¹Charging Party assumes Respondent used an old version of the section when it cited 102.46(b)(1)(i)-(iv) and was referring to the current version’s 102.46(a)(1)(i)(A)-(D).

arguments are devoid of merit as Golden Nugget's exceptions and supporting brief comply with all Section 102.46 requirements.

Further, Local 501 cites a clearly distinguishable case, World Detective Bureau, 296 N.L.R.B. 148 (1989), in an attempt to argue Golden Nugget's exceptions are insufficient. Notably, the party that filed exceptions in Worldwide Detective Bureau did not provide a supporting brief, citations to the records, or legal support; the filing was a mere list of issues that the party had with the Administrative Law Judge's decision. See 296 N.L.R.B. 148 (1989) Here, in contrast, Golden Nugget provided its exceptions and a supporting brief that expressly identify specific parts of the decision at issue, reasons for those issues, relevant legal authority, and citations to the record – much more than a “wholesale listing of each and every finding, conclusion, and recommendation of the judge.” Thus, Golden Nugget's exceptions are sufficiently briefed and comply with the requirements set forth in Section 102.46.

II. GOLDEN NUGGET'S REQUEST IS HIGHLY RELEVANT TO THE BARGAINING PROCESS.

While Local 501 attempts to defend the Administrative Law Judge's decision, both the evidence before the Administrative Law Judge and current Board law mandate that the Local 501 should be required to provide the requested information to the Golden Nugget. Golden Nugget easily overcame its preliminary burden in its information request, which is “**not exceptionally heavy**,” by showing the information would be of some use to Golden Nugget. See Salem Hosp. Corp., 358 N.L.R.B. No. 95 (July 31, 2012) (quoting Alcan Rolled Products, 358 N.L.R.B. No. 11, at *4 (2012)) (emphasis added); Am. Benefit Corp., 354 N.L.R.B. 1039, 1051 (2010) (quoting Dodger Theatricals Holdings, 347 N.L.R.B. 953, 970 (2006)). As expressly included in the final letter to Local 501 and explained throughout multiple negotiation sessions, “[s]ample grievances and arbitration decisions of comparable language could show us which proposed

language requires clarifying language or a complete redraft.” GC Ex. 8. Especially here, where the parties are negotiating a first contract, how proposed language has been interpreted by comparable properties is highly relevant, particularly when the proposing party is reluctant to deviate from its proposed language.

Moreover, as explained in Golden Nugget’s supporting Brief, the relevancy of this request has been previously decided by the Board in Hotel & Restaurant Employees Local 226 (Caesars Palace), 281 N.L.R.B. 284, 288 (1986). Golden Nugget has demonstrated that the Administrative Law Judge incorrectly found Golden Nugget’s requests were irrelevant and Local 501 offers nothing in its scant answering brief that should dissuade the Board from finding otherwise.

While Local 501 claims Golden Nugget “bases much of its specificity and relevance argument” regarding Local 501’s understanding of “similar” on Local 501’s production of collective bargaining agreements (“CBAs”), Golden Nugget made mention of the CBA production a mere two times and in combination with other ways Local 501 demonstrated its understanding of the term “similar.” Indeed, the Administrative Law Judge even found that “Local 501 took the position that that [sic] certain of its proposed language should be acceptable to the Golden Nugget because it was ‘similar’ to language Local 501 had in contracts with other employers.” ALJD: 3. Consequently, there cannot be any realistic debate over Thomas O’Mahar and Local 501’s understanding of “similar” with respect to Local 501’s own proposals. Such an argument is merely a red herring to detract from Local’s 501’s repeated refusal to submit a single grievance or arbitration award as requested by Golden Nugget – a refusal which amounts to an unfair labor practice by Local 501.

III. CONCLUSION.

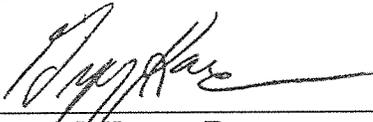
For the aforementioned reasons in Golden Nugget's exceptions, brief in support of its exceptions, and this reply brief, the Administrative Law Judge erred in the above-mentioned determination that Local 501 did not violate the National Labor Relations Act when it failed to provide requested relevant information to Golden Nugget. Accordingly, Golden Nugget respectfully requests that the Board modify the Administrative Law Judge's Decision and Recommended Order to correct the aforementioned errors and to require Local 501 to provide the requested information to the Golden Nugget.

DATED this 17th day of August, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2017, I did serve a copy of the foregoing
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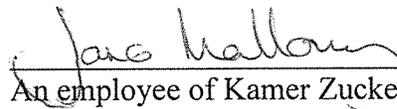
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