

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

KALTHIA GROUP HOTELS, INC.
and MANAS HOSPITALITY LLC d/b/a
HOLIDAY INN EXPRESS SACRAMENTO,
a Single and/or Joint Employer

Cases 20-CA-176428
20-CA-178861
20-CA-182449

and

UNITE HERE! LOCAL 49

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, Counsel for the General Counsel excepts to the following portions of the Decision of Administrative Law Judge John T. Giannopoulos, dated September 8, 2017:

<u>Exception No.</u>	<u>Page</u>	<u>Line</u>	<u>Exception</u>
1	34	19-24	To the Judge's inadvertent failure to include a description of the appropriate unit in Section 2(a) of the Recommended Order.
2	34	25-45	To the Judge's failure to include a notice-reading requirement in Section 2(b) of the Recommended Order.
3	Appx.	n/a	To the Judge's inadvertent failure to include a description of the appropriate unit in the affirmative bargaining obligation described in the Notice to Employees

DATED AT San Francisco, California, this 1st of November, 2017.

Respectfully Submitted,





Yaromil Ralph
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National Labor Relations Board
Region 20
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COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF IN SUPPORT OF EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

I. INTRODUCTION

Administrative Law Judge John T. Giannopoulos (Judge) properly decided on September 8, 2017 Kalthia Group Hotels, Inc. and Manas Hospitality LLC d/b/a Holiday Inn Express Sacramento (together referred to as "Respondent") violated Section 8(a)(1) of the Act by instructing employees to sign a petition to decertify UNITE HERE! Local 49 (Union); instructing employees to sign a petition to decertify the Union under threat of discharge; instructing employees not to sign any documents given to them by the Union; instructing employees not to go with their coworkers if they were invited to join the Union; instructing employees not to talk to union representatives or join the Union; purposely misleading employees about the benefits received from union dues deducted from their paycheck in order to dissuade them from supporting the Union; asking employees why they cancelled their signatures from a petition to decertify the Union; soliciting signatures on a petition to decertify the Union;

and violated Sections 8(a)(1) and (5) of the Act by bargaining in bad faith with the Union.
(ALJD 31:1-39)¹

Counsel for the General Counsel excepts only to the Judge's failure to include a description of the appropriate bargaining unit in the Recommended Order and Notice to Employees, as well as the failure to include a notice-reading requirement in Section 2(b) of the Recommended Order.

II. FACTS AND ANALYSIS

The Judge made all of the correct findings of facts and conclusions of law. The remedy sets forth the violations and how Respondent will be ordered to comply with the findings, including an order to bargain in good faith with the Union for the time period required in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), and the posting of a notice in English, Spanish and Hindi in accordance with *J. Piccini Flooring*, 356 NLRB 11 (2010). However, the Judge's order and notice should include a description of the bargaining unit, and the notice should be read aloud to employees.

A. THE ORDER AND NOTICE INADVERTENTLY OMIT A DESCRIPTION OF THE UNIT. (EXC. NOS. [1], [3])

The Board should correct the Judge's inadvertent omission of a description of the bargaining unit from the Recommended Order and Notice. The Judge properly found an appropriate unit for collective bargaining consisting of:

All employees employed by Respondent at the Holiday Inn Express, located

¹ References to the Administrative Law Judge's decision in this case are noted as "ALJD" followed by the page and line number(s). References to the transcript are noted as "Tr." followed by the page and line number(s). References to the General Counsel's exhibits are noted as "GC Exh." followed by the page number(s).

between 15th & 16th Streets and G & H Streets, in Sacramento, California, performing the work covered by the collective-bargaining agreement between the Union and Hospitality Sacramento L.P., effective June 1, 2006 to December 31, 2009.

(ALJD at 30:42–45)

While the Judge's conclusions set forth the appropriate unit, however, this unit description was omitted from the Recommended Order and Notice. (ALJD at 33–35, Appx.) In a case where, as here, there is a finding of a failure to bargain in good faith, the Board routinely includes such a description in the Order and Notice. See *General Hugh Mercer Corp. d/b/a Princeton Holiday Inn*, 282 NLRB 30, 30 n.6 (1986) (finding merit in General Counsel's exception to "the failure of the judge to include a description of the appropriate bargaining unit in his recommended Order and notice."); see also *E.I. Dupont de Nemours*, 364 NLRB No. 113, slip op. at 13, 29–30 (Aug. 26, 2016) (including unit description in Order and Notice). The inclusion of a bargaining-unit description in the Order and Notice is critical to ensure that the remedy applies to every employee affected by Respondent's unfair labor practices.

B. A NOTICE-READING TO RESPONDENT'S EMPLOYEES IS AN APPROPRIATE REMEDY IN THIS MATTER. (EXC. NO. [2])

The Board should amend the Judge's order to include a notice-reading remedy in the instant matter given the egregious and pervasive nature of Respondent's unfair labor practices, particularly Respondent's repetition of the alleged misconduct. The Judge concluded that a notice-reading is not warranted because, in his view, the Respondent is not a recidivist violator given the government's approval of a post-Complaint settlement with Respondent that involved conduct virtually identical to the one in this case. (ALJD 32:36–40) The matters settled

included solicitation by Respondent's managers of employees' signatures on a decertification petition and interference with employees' rights under the Act. (GC Exh. 3, pp. 43–44, 52–59) The settlement of the prior case required the reading of a notice to employees. (ALJD 4:4–22) The Judge's conclusion that Respondent is not recidivist because it settled a prior almost-identical case with the government has the effect of punishing the Board for agreeing to conclude the prior proceeding in an administratively efficient manner and rewards Respondent for essentially violating the terms of its settlement agreement, since it merely re-started circulating another decertification petition. (ALJD 31:1–30)

The Judge also concluded that Respondent's unlawful labor practices are not sufficiently egregious to warrant a notice-reading. (ALJD 32:35-36, 40–43) However, the evidence in the record, including Respondent's targeting of employees who did not understand English very well and were threatened and coerced by Respondent's managers, requires a notice-reading to reaffirm to employees their Section 7 rights and to reassure them that the Respondent will respect those rights in the future. (ALJD 9 at fns.11–12; ALJD 10 at fn. 16) *HTH Corp.*, 361 NLRB No. 65 at 3 (2014); See *Texas Elec. Cooperatives, Inc.* (1966) 160 NLRB 440, 462 (notice-reading ordered where employees had low levels of literacy and education)

Moreover, an employer's managers and supervisors, as the direct contact points between employees and management, play a critical role in an employer's compliance with the Act. *HTH Corp.*, 361 NLRB No. 65 at 3 (2014) In this case, as in *HTH Corp.*, the Respondent's General Manager, Housekeeping Manager, along with other managers, were perpetrators in Respondent's unlawful scheme. (ALJD 19–23, 25) As such, it is appropriate, then, to require them to attend a reading of the notice as a message to the employees that their supervisors are just as responsible

as upper management for adhering to the law and to exposes them to information concerning their own substantive obligations under the Act. *HTH Corp*, 361 NLRB No. 65 at 6.

III. CONCLUSION

For the reasons discussed, Counsel for the General Counsel respectfully requests that the Board sustain the General Counsel's Limited Exceptions to the Judge's Decision.

DATED AT San Francisco, California, this 1st of November, 2017.

Respectfully Submitted,





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EXPRESS SACRAMENTO, A SINGLE
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**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE and
COUNSEL FOR THE GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on October 31, 2017, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

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October 31, 2017

Date

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Name

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Signature