

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

KALTHIA GROUP HOTELS, INC.)	Cases	20-CA-176428
AND MANAS HOSPITALITY LLC)		20-CA-178861
D/B/A HOLIDAY INN EXPRESS)		20-CA-182449
SACRAMENTO,)		
)		
and)		
)		
UNITE HERE! LOCAL 49)		

**RESPONDENT’S BRIEF IN SUPPORT OF ITS EXCEPTIONS TO
THE DECISIONS OF THE ADMINISTRATIVE LAW JUDGE**

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1 On September 8, 2017, Administrative Law Judge (ALJ) John T. Giannopoulos issued his
2 Decision (ALJD) in the above-referenced matter. Respondent, Kalthia Group Hotels, Inc. and Manas
3 Hospitality LLC d/b/a Holiday Inn Express Sacramento, hereby submits the following Brief in Support
4 of its Exceptions to the Decisions of the ALJ filed herewith.

5 I. INTRODUCTION

6 In the attached Decision the ALJ accepts, virtually without question, every allegation made by
7 the General Counsel as it relates to allegations of 8(a)(1) violations; he also accepts, without sufficient
8 analysis, the General Counsel’s allegations of bad faith bargaining. (*See* further discussion below)

9 Significantly however, as it relates to the allegations of bad faith bargaining, is that the ALJ
10 makes a determination that the Contract was in effect when the bargaining started. Under Section 40,
11 “Term of the Agreement” (*see* further discussion below), in short, no appropriate 8(d) notice had been
12 provided, meaning there was no bargaining obligation to begin with.

13 If the Board finds violations, at most, Respondent should be ordered to post a sixty day notice
14 and additional bargaining should only be ordered if the Contract has been properly terminated. And in
15 no event should six months be ordered, as it was based upon alleged conduct of Respondent at a time
16 when it had no obligation to bargain to begin with.

17 The bad faith bargaining claim is approached from entirely the wrong frame of reference. The
18 predecessor employer had previously negotiated a contract with the Charging Party which had expired
19 six years prior to Respondent assuming operation of the Hotel. Respondent as part of its purchase of
20 the Hotel (*See* facts below) was presented those terms and conditions at the time it assumed operation
21 of the Hotel. However, such terms and conditions contained in the expired contract were never
22 bargained and/or otherwise agreed to between the Respondent and the Charging Party. Respondent
23 had the right to make proposals, and did make proposals that reflected the way that Respondent
24 wished to operate the Hotel. Consequently, the General Counsel has alleged “take away regressive”
25 bargaining. But such contractual terms at issue were never agreed to by Respondent to begin with.

1 When the negotiations are analyzed from Respondent’s right to start the negotiations fresh in terms of
2 the proposals it made, there is no bad faith bargaining. It is also important to note that Respondent is
3 one hotel in a chain owned by Manas Hospitality. All of the other hotels are not unionized.
4 Consequently, Respondent’s proposals reflected a point of view for a company that operated a chain of
5 non-union hotels.

6 **II. STATEMENT OF THE CASE**

7 The case was heard before ALJ John T. Giannopoulos on November 28, 2016 in San Francisco
8 California; November 19, 2016 through December 4, 2016 in Sacramento California; and, the hearing
9 concluded January 10, 2017 through January 11, 2017 in Sacramento California. The ALJ issued a
10 Decision on September 8, 2017.

11 **III. STATEMENT OF FACTS**

12 A quick summary of the facts, many of which are not in dispute (*See* detailed discussion
13 below) establishes that:

14 Respondent assumed the operations of the Holiday Inn Express at approximately the beginning
15 of August in 2015. Respondent agreed to recognize the Union and adopt initially the existing terms
16 and conditions from the expired Collective Bargaining Agreement (CBA) between the Union and the
17 previous employer. The Parties commenced bargaining in December of 2015 which continued until
18 May of 2015 which continued until May of 2016. The Union suspended negotiations for the months of
19 May, June, July, August, and September of 2016. The basis for this was allegations that the
20 Respondent was bargaining in bad faith i.e. no wage proposal and that Respondent was assisting
21 employees with a decertification petition.

22 The Parties resumed bargaining with meetings in November, December and January of 2016
23 and 2017. This included wage proposals by the Respondent.

24 The ALJ made a very significant factual finding. In his Decision the ALJ indicates that the
25 Respondent simply accepted the Contract as a “successor” and continued to bargain as if the Contract

1 were in full effect. (*See* ALJD 3) However, the ALJ additionally found as follows:

2 “The CBA has an effective date of June 2006 through December 2009, and thereafter
3 allows either party to terminate the agreement upon 10 days written notice. There is no
4 evidence that anyone terminated the agreement. Instead, the parties decided to continue
5 operating under the terms of the CBA, except the employer agreed to pay all
6 healthcare/benefit premium increases. (RT 289-291) The terms of the CBA also
7 covered a Clarion branded hotel; however that hotel closed in 2012. (RT 188, 272,
8 294).” (ALJD 3: Footnote 3)

9 The language in the Contract being referred to is in Section 40 “Term of Agreement” (*See* GC
10 Exhibit 1, p.33), which states as follows:

11 (a) This contract shall remain in full force from June 1, 2006 to December 31, 2009.

12 (b) Either party may notify the other in writing not later than November 1, 2009, or any
13 subsequent November 1, of their desire to amend this Contract; negotiations shall
14 thereafter commence not later than December 1st, and shall continue until
15 amendments have been agreed to or until the parties, or either of them recognize
16 that they are unable to agree upon the proposed amendments, in which case either
17 party may serve upon the other a ten (10) day written notice of termination of this
18 Contract.” (*See* GC Exhibit 3, p.37)

19 A clear reading of this language means neither Party had an obligation to bargain at the time
20 the negotiations commenced without the Section 40 language being complied with. This means if the
21 Charging Party wished to negotiate, notice should have been given prior to November 1, 2015.

22 **IV. TESTIMONY OF WITNESSES**

23 **A) SUHAD SALMAN**

24 During direct-examination by General Counsel Suhad Salman testified that she worked for the
25 Holiday Inn Express in Sacramento located in downtown Sacramento. (RT 26: 7-9) She recalled she
26 began working at the Hotel in April of 2016 and stopped working at the hotel on July 15, 2016. (RT
27 26: 12-20)

28 Ms. Salman stated she neither speaks nor understands English and is only able to speak Arabic.
29 (RT 30: 18-19, 22, 24) Ms. Salman communicated that her son and her husband Shaheed Hussein help
30 translate for her. However, Ms. Salman subsequently testified that she does not understand her son
31 because he does not speak Arabic. (RT 34: 5-6) She elaborated stating her son does help her with

1 phone calls by speaking to the caller in English (RT 33: 7-8), however, when communicating between
2 each other she speaks Arabic and he speaks English. (RT 33: 10-11, 13, 15-16) Ms. Salman informed
3 the Court that her husband Shaheed Hussein assists her when there is a language barrier; however, he
4 also speaks and understands minimal English. (RT 33: 21-22, 25)

5 Ms. Salman became aware of the UNITE HERE! Local 49 Union from other housekeepers
6 after her employment at the Hotel began. (RT 34: 14) She stated that Ms. Gutierrez did not tell her
7 about the Union when she was hired, but that she did receive a paper from Ms. Gutierrez one month
8 after her hiring with the name of the Union that explained their wage deductions and benefits. (RT 34:
9 17-19) Ms. Salman identified Christopher Rak and Roxana Tapia as representatives from the Union.
10 (RT 34: 23-24)

11 Ms. Salman claimed Ms. Gutierrez told her if Ms. Tapia Roxana in her office (RT 35: 13, 17),
12 alone (RT 37: 8) about a document Roxana gave her and not to sign it. (RT 36: 16-17) Ms. Gutierrez
13 said the Union would deduct money from her salary, however, because Suhad already received public
14 assistance and was afraid of losing it she said did not want to be a member of the Union. (RT 37: 15-
15 17, 21-25; 38: 1) Ms. Salman recalled a conversation later in the day with Ms. Gutierrez in a hallway
16 on the third floor of the Hotel. (RT 43: 2, 8-9) Ms. Salman stated the Hotel has three floors of which
17 she works on the third. (RT 43: 8) Ms. Salman purported Ms. Gutierrez instigated a conversation with
18 her while she was working on the third floor in which Ms. Gutierrez informed her someone would
19 come to the third floor of the Hotel if she would like to sign a paper to prevent these deductions. (RT
20 42: 23)

21 Ms. Salman described the conversation with another employee of the Hotel, referring to the
22 person Ms. Gutierrez said would come to the third floor, whom she identified as a man who works in
23 reception; she could not recollect his name. She expounded on their conversation, which she claimed
24 to occur in a room in the Hotel. (RT 44:5) She alleged the man asked her if she wanted to sign a paper,
25 which she inferred from their conversation to be a document to release her from her membership in the

1 Union. (RT 40: 23-24) She further stated this man gave her a pen which she used to sign the paper.
2 (RT: 42: 6-7) Ms. Salman recognized Joint Exhibit 3 as such paper and indicated the information three
3 lines up from the bottom were her name and signature dated May 9, 2016 which she wrote herself.
4 (RT 40: 12, 15) Ms. Salman specified that she signed said document in the evening and proceeded to
5 finish work. (RT 42: 17-18)

6 Ms. Salman was picked up by her husband, Mr. Hussein, on May 9, 2016 after her shift. (RT
7 44: 9) While driving home, she informed him that she signed a document, after which, he commenced
8 to return to the Hotel. (RT 44: 15-16) Mr. Hussein approached the man who works at the front desk to
9 inquire about the document is wife signed. According to Ms. Salman, the man crossed out her name on
10 the document (RT 45: 17-20) after which her husband took a picture. (RT 45: 9-12) Ms. Salman
11 recognized GC Exhibit 4 as a photograph of a document like the photograph her husband took on May
12 9, 2016. (RT 46: 11-12, 15) Ms. Salman recognized Mr. Rajneel Singh as the man who gave her the
13 document and the person who crossed off her name. (RT 57: 2-3)

14 Ms. Salman indicated she had a telephonic conversation with Ms. Gutierrez while driving
15 home with her husband regarding her membership in the Union pertaining to their policy of deducting
16 money from member's wages. (RT 47: 16-21; 48: 1-3) She recalled Ms. Gutierrez saying in a normal
17 voice, "Why did you cancel this company? This company will take your money." (RT 51: 12-14) Ms.
18 Salman stated her husband was privy to the conversation as the call was on speaker. (RT 50: 20)

19 Ms. Salman denied having any altercation with Devon Griffin, supervisory Marlene Cardenas,
20 and or receiving a verbal warning for any of this conduct. (RT 73: 13-25; RT 74: 1-25; RT 75: 1-25)

21 **B) SHAHEED HUSSEIN**

22 During direct-examination by General Counsel Shaheed Hussein testified that he is the
23 husband of Ms. Suhad Salman. (RT 83: 11) After being shown GC Exhibit 3 / Joint Exhibit 3 Mr.
24 Hussein identified page two as the document he viewed on May 9, 2016 while confronting Mr. Raj
25 Singh about the document his wife signed. (RT 84: 17, 22) Mr. Hussein recalled on that day he picked

1 his wife up from the Hotel. (RT 85: 6) Mr. Hussein described the events of that day beginning with the
2 conversation with his wife in their car in which he describes Ms. Salman expressing concern over her
3 signature. (RT 86: 2-8) He went on to affirm that they returned to the Hotel to cross her name off of
4 the document. (RT 86: 4-6, 9) Mr. Salman conveyed that he accompanied his wife into the Hotel to the
5 front desk as a translator. (RT 86: 9-11) He went on to explain he asked to view the document his wife
6 signed, recalling that the front desk attendant pulled the document out of his jacket (RT 89: 8-10, 12-
7 13) Furthermore, he verified he requested to take a picture of the document in order to show it to his
8 friends who spoke better English. (RT 86: 20-23) He clarified that the front desk attendant crossed his
9 wife's name out as well as the date RT 87: 24; 88: 1) In addition, he explained that the front desk
10 attendant would not let him take a picture of the document with other signatures on it so he made a
11 copy for Mr. Hussein to photograph. (RT 88: 4-6) Mr. Hussein was presented with GC Exhibit 4 after
12 which he recognized as the picture he took on May 9, 2016 of the document his wife signed. (RT
13 88:14-15, 17) Mr. Hussein testified that after this exchange he and his wife proceeded to exit the
14 premises where they were met by Ms. Salman's friend, at which point Mr. Hussein ceased to
15 participate in the conversation. (RT 89: 22-24) Mr. Hussein rejoined his wife when they were met by a
16 woman employed by the Union named Roxana Tapia. (RT 90: 2-3) Mr. Hussein claimed his wife
17 requested he ask Ms. Tapia what type of benefits the Union provides to which she replied by asking
18 for their phone number to visit them at home. (RT 90: 13-16, 21-22) Mr. Hussein confirmed they gave
19 her the phone number and then drove home. (RT 90: 3) While driving home Mr. Hussein alleged his
20 wife's supervisor, Elsa Gutierrez, called Ms. Salman, iterating that Ms. Gutierrez was not in
21 possession of his phone number. (RT 91: 7-8) He corroborated that his wife put the call on speaker
22 (RT 90: 11-12) allowing him to hear Ms. Gutierrez ask Ms. Salman why she crossed her name off of
23 the document. (RT 90: 15) He attested that he did not participate in the conversation; he only
24 overheard it. (RT 92: 4-5) Mr. Hussein reaffirmed that he did not assist his wife on the call adding he
25 did not assist her with any phone conversations regarding her employment at the Hotel. (RT 93: 14-15)

1 **C) VANESSA ABEL**

2 During direct-examination by General Counsel Vanessa Abel testified that she is a
3 Housekeeping employee at the Holiday Inn Express Sacramento. (RT 101: 3; 103: 1) She explained
4 that she was not currently working because of an accident that occurred on May 28, 2016. (RT 6: 15,
5 17) Ms. Abel described her weekly schedule, stating she usually works five days a week for eight
6 hours per day (RT 103: 15; 104: 1) for \$10.00 per hour. (RT 104: 3) She detailed her daily routine
7 explaining where she would clock in and out each day on the first floor as well as where she would
8 store her belongings in Ms. Gutierrez's office on the second floor of the Hotel. (RT 104: 11, 12, 16,
9 20-22, 24; RT 105: 1) Ms. Abel then described the weekly meetings the housekeepers would have in
10 Ms. Gutierrez's office regarding their goals for the week. (RT 105: 12, 14) On days where the was not
11 a meeting Ms. Abel clarified that the housekeepers would go to Ms. Gutierrez's office to receive their
12 room assignments on a piece of paper. (RT 105: 20-21, 23, 25; 106: 2; RT 107: 12) Ms. Abel then
13 described the break schedule specifying the lunch break is thirty minutes and she takes it in the first-
14 floor canteen area along with the other housekeepers. (RT 107: 17, 19, 21; 108: 4)

15 Recalling her interview prior to her hiring on April 4, 2016, Ms. Abel testified that the
16 managers Ms. Gutierrez, Mr. Nazeem, and Ms. Nand were present. (RT 109: 24-25) Ms. Abel alleged
17 that at the interview Ms. Gutierrez and Mr. Nazeem told her not to join the Union. (RT 110: 5, 7) She
18 admitted that they did discuss the Union's policy on deducting money from the employee's wages.
19 (RT 111: 5-6) Ms. Abel claimed that while working at the Hotel Ms. Gutierrez would tell her daily not
20 to join the Union and would not allow her to eat lunch in the canteen area because that is where the
21 Union representatives would meet with employees. (RT 111: 21-25) Ms. Abel identified the
22 representative for the Charging Party, Chris Rak as a Union representative. (RT 112: 14-15) Ms. Abel
23 claimed that Ms. Gutierrez told her not to speak with Mr. Rak. (RT 112: 20-22) Ms. Abel was aware
24 of a woman named Roxana Tapia who worked for the Union and stated she saw her at the Hotel
25 approximately twice a week in the canteen area. (RT 108: 23, 25; 109: 5)

1 After being presented with GC Exhibit 5 Ms. Abel identified it as a screenshot she took of her
2 cell phone's call record for May 10, 2016 when Ms. Gutierrez called her to go to work early. (RT 114:
3 15, 17, 19-20, 23) Ms. Abel indicated the call received at 7:20 AM on May 10, 2016 came from Elsa
4 Gutierrez. (RT 115: 1, 4, 18) Ms. Abel informed testified that she went to work early on May 10, 2016
5 at Ms. Gutierrez's request, claiming that she went to Ms. Gutierrez's office to sign a paper not to join
6 the Union. (RT 117: 22, 24-25) Upon arrival at Ms. Gutierrez's office Ms. Abel noted that an
7 employee from engineering named Johnny was present and that Ms. Gutierrez requested he leave so
8 she could talk to her in private. (RT 118: 4-5, 7, 9, 11) Ms. Abel identified GC Exhibit 6 as a note with
9 the Hotel room number she was told to meet Olga Villa in. (RT 118: 22, 24-25) Ms. Abel claimed that
10 Ms. Gutierrez told her if she did not go sign the paper she would be fired. (RT 119: 9) Ms. Able
11 verified that she did sign the paper expressing that she only signed it because she was in fear of losing
12 her job. (RT 119: 17, 21-22)

13 Ms. Abel testified when she arrived at room 2031, the room number allegedly written on the
14 note from Ms. Gutierrez, a laundry attendant named Ms. Olga Villa was sitting waiting for her with a
15 piece of paper. (RT 122: 14, 16, 18; 123: 3, 7) Ms. Abel noted that laundry room employees do not
16 generally go to Hotel rooms as part of their job. (RT 124: 7) Ms. Abel was presented with GC Exhibit
17 3 / Joint Exhibit 3, she recognized the document as the paper she signed from Ms. Villa. (RT 124: 13-
18 14) She identified her signature and first and middle name on the second line of the document as well
19 as the date May 10, 2016 which she confirmed to have written. (RT 124: 21, 25; 125: 2, 5, 8, 10) Ms.
20 Abel testified that after signing the document she took a photo of it with her cell phone with Ms.
21 Villa's permission. (RT 126: 21-22, 24-25) Ms. Abel recognized GC Exhibit 7 as the picture she took
22 of the paper she signed on May 10, 2016. (RT 127: 2, 4) Ms. Abel attested that after the meeting with
23 Ms. Villa she returned to Ms. Gutierrez's office where Ms. Gutierrez gave her the room numbers she
24 would clean. (RT 128: 6, 8-9)

25 //

1 Ms. Abel stated she informed Ms. Tapia about the paper she signed and provided her with a
2 photo of it through text messaging. (RT 130: 1-2, 13, 15-16) Ms. Abel confirmed GC Exhibit 8 to be a
3 screenshot from her phone of the text message she sent to Ms. Tapia on June 5, 2016. (RT 130: 24; RT
4 131: 1; RT 132: 9)

5 During cross-examination by Respondent's Counsel Ms. Abel declared that during her
6 employment at the Hotel she shared no animosity between herself and Ms. Gutierrez. (RT 137: 21)
7 Ms. Abel proclaimed that at no time did contact Ms. Gutierrez's husband claiming Ms. Gutierrez was
8 having an affair with an employee of the Hotel. (RT 138: 18. 20-21; RT 139: 4-5)

9 After being shown GC Exhibit 6 again Ms. Abel reiterated that it was her testimony Ms.
10 Gutierrez wrote the note for her to go to a room to meet Ms. Olga Villa. (RT 139: 14-15, 18, 20, 24-
11 25) Ms. Abel also reiterated that on GC Exhibit 5, the arrow pointing outwards from the call citing Ms.
12 Gutierrez's phone number meant that the call was incoming from Ms. Gutierrez. (RT 141: 9-10)

13 Ms. Abel confirmed that during her interview in front of Mr. Nazeem, Ms. Gutierrez, and Ms.
14 Nand she was give forms such as her W-2 to sign. Ms. Abel restated that after her interview around
15 April 4, 2016 Ms. Gutierrez told her not to have anything to do with the Union in a meeting in Ms.
16 Gutierrez's office. (RT 142: 14, 17, 19) Ms. Abel expressed that every day during her time at the Hotel
17 Ms. Gutierrez told her not to join the Union; however, she could not recall specifically which days,
18 what times, or the locations or any other specifics of these alleged conversations. (RT 145: 23-25) Ms.
19 Abel admitted to having a concussion and had memory lapses. (RT 147: 4-9) Ms. Abel disclosed that
20 she was on medication for pain that affected her ability to recall details. (RT 147: 24) Additionally,
21 Ms. Abel confirmed that she had been taking this medication since she was injured on May 28, 2016
22 and was currently on the medication. (RT 148: 1, 3)

23 During redirect-examination by the General Counsel Ms. Abel expounded on why she could
24 remember these alleged conversations with Ms. Gutierrez, suggesting that they were traumatizing. (RT
25 148: 22-RT 149: 1)

1 **D) SILVIA ARTEAGA**

2 During direct-examination by General Counsel Silvia Arteaga testified that she was a
3 housekeeper for Holiday Inn Express Sacramento from February to May of 2016. (RT 153: 1, 3, 5)
4 She claimed that she consistently worked a shift from 8am to 4pm on days she was scheduled to work.
5 (RT 153:16) Ms. Arteaga mentioned that she is unable to speak or read English, preferring only
6 Spanish as her primary language. (RT 154: 20, 22, 24) She recalled that a friend took her to the hotel
7 as a recommendation for hire. (RT 155: 3) Ms. Arteaga affirmed that Ms. Gutierrez had her cell phone
8 contact as early as the initial meeting and application. (RT 162; 5-8) She admitted that she was
9 unaware of the existence of a worker's union until March 3, 2016. (RT 164: 22-24) Moreover she
10 claimed that on that date around 4:00 PM, Ms. Gutierrez had pressured her not to join a union if
11 invited. (RT 165: 2-4, 6, 7) She attested that no one else was in the room when this supposedly
12 occurred. (RT 165: 19) Ms. Arteaga voiced that at this time she was unaware of what a union entailed,
13 claiming that Ms. Gutierrez offered to explain this to her at a later point since she was in a hurry to get
14 to the 4pm train. (RT 166: 1, 2, 5, 6, 8) She substantiated that this conversation was less than 15
15 minutes on that day. (RT 166: 17) Ms. Arteaga iterated that Maria Vidal, Lucia Mares and Roxanna
16 Tapia the Union representatives were together waiting for her for a Union meeting, at which she
17 claims to have talked about the alleged prior conversation with Ms. Gutierrez. (RT 166: 20-22; 167: 2,
18 3, 6) She indicated that this was the first time she had spoken with Roxanna, after which she left and
19 the union representatives remained. (RT 167: 11, 15)

20 Upon questioning, Ms. Arteaga purported to recall a meeting that took place between her, Ms.
21 Gutierrez and Ms. Nand. (RT 167: 18) She recollected it to have started with her cleaning a room
22 around 1:00 PM at which Ms. Gutierrez requested her in Ms. Nand's office for a training meeting. (RT
23 167: 18, 19, 23) After being presented with GC Exhibit 3, she affirmed that it was a document with her
24 signature. (RT 169: 8, 12, 17) Although she claimed that this meeting took place on May 9, 2016 the
25 document was confirmed to be dated May 12, 2016. (RT 170: 9) Ms. Arteaga testified that Ms.

1 Gutierrez and Ms. Nand claimed that the document was for training purposes. (RT 170: 18, 20, 23-24)
2 She claimed that Ms. Nand questioned her using Ms. Gutierrez as a Spanish translator. (RT 170: 23,
3 24) During said meeting, questions were raised about Ms. Arteaga's capacity to do the job she was
4 assigned, after which she signed the aforementioned document. (RT 171: 3-8, 10) Ms. Arteaga stated
5 that both Ms. Gutierrez and Ms. Nand remained in the office and that Ms. Gutierrez retained the
6 document. (RT 171: 21; 172: 6) This meeting was purported to take no longer than 10 minutes. (RT
7 172: 10) It was noted that a few days later, Roxanna Tapia the union representative, instructed Ms.
8 Arteaga to request a copy of the aforementioned document. (RT 173: 7, 8, 10, 11, 17-19) She then
9 recalled that Maria Vidal went with her to Ms. Nand's office to request a copy of the document. (RT
10 173: 24) Upon arriving it was purported that Ms. Gutierrez and Ms. Nand were in the office, making
11 those present to be noted as Ms. Gutierrez, Maria Vidal, Ms. Nand, and Ms. Arteaga. (RT 174: 7) Ms.
12 Arteaga then claimed that Ms. Gutierrez requested that Ms. Vidal leave the office, that Ms. Arteaga
13 would not receive a copy of the aforementioned document, but that Ms. Gutierrez would not interfere
14 with Ms. Arteaga's attempt to join the union. (RT 174: 10, 12-15) She then goes on to exclaim that she
15 believed that she was going to be terminated for misplacing hotel client baggage a few days prior. (RT
16 174: 17-20) Ms. Arteaga then reaffirms that she did not receive a copy of the document in question.
17 (RT 175: 10) She goes on to allege that at a later point during a hotel drill that Ms. Gutierrez and Ms.
18 Nand forced her to sign an additional document. (RT 175: 23-25) When presented with GC Exhibit 10,
19 Ms. Arteaga confirmed that it was indeed her signature but affirmed that the dated numbers were not
20 her calligraphy. (RT 176: 5, 9)

21 During cross-examination by Respondent's Counsel, Ms. Arteaga failed to recall the timing of
22 the conversation that supposedly took place on March 3rd 2016 with Ms. Gutierrez. (RT 180: 8-9, 16)
23 She affirmed that she must have clocked out at 4:00 PM on March 3, 2016, and that the conversation
24 must have occurred after a restroom break yet before leaving on the train. (RT 180: 19-20; 181: 1, 15-
25 17) Ms. Arteaga then reaffirmed that it was her signature on GC Exhibit 3, next to a May 9, 2016 date,

1 and that she signed it around 1:00 PM that day. (RT 181-182) She declined to identify Raj Singh. (RT
2 182: 8) She later confirmed that she was acquainted with the laundry-woman Olga Villa. (RT 183: 13)

3 **E) CHRISTIAN RAK**

4 Mr. Christopher Rak is the President of the Union UNITE HERE! Local 49. (RT 186: 21, 23)
5 Mr. Rak is responsible for leading negotiations for collective bargaining agreements between the
6 Union and the employers of Union members. (RT 187:4-5) Mr. Rak has maintained this position
7 throughout the entire set of new collective bargaining agreements with Holiday Inn Sacramento. (RT
8 187: 4, 5, 8, 14) He also led the prior collective bargaining with the prior employer. (RT 187: 15) Mr.
9 Rak confirmed that GC Exhibit 3 was indeed the previous Collective Bargaining Agreement between
10 Clarion Hotel, Respondent and Charging Party, which expired beginning 2010. (RT 188: 4, 10-13) He
11 later affirmed the change of ownership date as of August 1, 2015. (RT 189: 9) Mr. Rak acknowledged
12 that between 2009 and 2015, his Union and the Hotel chain agreed to use the prior Agreement with the
13 original ownership. (RT 190: 11-13) When questioned, he verified that GC Exhibit 11 was the
14 assumption Agreement forwarded to him prior to the August 1, 2015 change of ownership. (RT 191: 1,
15 2, 6) Mr. Rak acknowledged familiarity with Manas Hospitality LLC, and its relation to Kalthia Group
16 Hotels. (RT 192: 2, 4, 6, 7) Following questioning about the negotiations between him, Jay Shah and
17 Dean Chauhan, in which both of the later men assured him that the Hotel intended to keep all
18 transitioning employees yet hold off negotiations for a six month period. (RT 195: 19-22; RT 196: 24-
19 RT 197: 1-9) He expressed a reciprocated desire, but that he would consult other union members.. (RT
20 197:13-17) Mr. Rak then informed the General Counsel of an hour long meeting as early as September
21 2015 between himself, Lucia Mares, Maria Vidal-Gonzalez, Griselda Espinoza, Honsa Tandel and
22 Sushila Tandel about the six month delayed negotiation period. (RT 198: 9-12, 16-20) He stated that
23 the other union members believed that they would be okay with a delay in increase in pay if the
24 company agrees to pay the increase in health and welfare effective January 1, 2016. (RT 198: 23-25;
25 RT 199:1-5, 7, 8, 16-18)

1 During cross-examination by Respondent's Counsel Mr. Rak established that he represents the
2 collective bargaining interests of seven different hotel unions through UNITE HERE! 49. (RT 283: 17,
3 20) Prior to gaining the position of president of Charging Party, he established that he was formerly a
4 union organizer. (RT 284: 24) Mr. Rak established that he takes consideration to the content of other
5 local hotel contracts when submitting proposals to Respondent. (RT 285:10-12) He later admits that
6 the wage rates for the Contract given to Respondent were tied to the properties Holiday Inn Capitol
7 Plaza, the Sheraton Hotel and the Citizen Hotel through a settled labor dispute over health benefits that
8 occurred in 2012. (RT 286: 1-6, 9, 10) He later acknowledged that Citizen and Sheraton each have 125
9 and 175 bargaining unit employees respectively. (RT 287: 14, 19) He established that both hotels also
10 have Food and Beverage departments. (RT 288: 10) He later admits that Respondent only has 25
11 respective bargaining employees. (RT 288: 20) Mr. Rak went on to convey that negotiations with the
12 previous ownership, Pacifica, were ongoing and continued up until the exchange of ownership and that
13 no agreement was met. (RT 289: 9, 12, 20, 21; 290:3) He explained that the primary stumbling block
14 in the original Agreement was the lack of UNITE HERE! Local 49's willingness to take numerous
15 proposals in regards to Wages, Health and Welfare. (RT 290:6-13) Mr. Rak disclosed that Manas or
16 Kalthia had been operating under the original terms of the since expired Collective Bargaining
17 Agreement. (RT 292: 3) He went on to iterate that the Union refused to make any compromises in any
18 agreement that did not include both an increase in Wages and Health/Welfare benefits. (RT 293: 3-7,
19 11) He established that there was a joint contract for Clarion Hotel and Respondent, but that only
20 Clarion had a true Food and Beverage department. (RT 293: 25; RT 294: 4-9) Mr. Rak admitted that
21 despite the Clarion closing in 2012, they chose to maintain the terms of the joint contract for
22 Respondent (294:4) He revealed that the Contract being used allowed for classifications of numerous
23 positions that did not exist at Respondent, including Door Helper, Food and Beverage Server, Bus
24 Person, Host/Cashier nor Banquet department. (RT 295: 13, 15, 17, 19, 21, 24; 296: 3, 9) Mr. Rak
25 clarified that according to the Contract the employer can increase individual wages that would not

1 necessarily be reflected in the minimum established on page 32 of said Contract. (RT 297)

2 Upon further questioning, Mr. Rak recalled that neither the prior nor the current employer ever
3 contacted the Union about duty changes for Front Desk employees. (RT 298: 5-8) He established that
4 Pacifica created the position Front Desk Supervisor. (RT 299:19) During questioning, Mr. Rak was
5 uncertain of which year the change of hands took place. (RT 298-299) He reiterated that it was
6 continuous employment between ownership transfers. (RT 302: 18) Mr. Rak confirmed that Union had
7 not once filed against Respondent for bad faith bargaining. (RT 303: 4) He also indicated that the
8 Union has no other union properties KG Hotels. (RT 304) Mr. Rak disclosed the precedent that there
9 are other Hotels with less than one hundred employees which contract wages are not tied to the
10 contract of the larger hotels. (RT 307: 6-9, 14) He reiterated that in September of 2015, he
11 communicated to Mohammed Nazeem that the Union was willing to take a six month hiatus from
12 negotiations if employer agreed to pick up the additional Health and Welfare costs coming January 1st
13 2016. (RT 309:19-23) This stipulated Health and Welfare provision was established to have taken
14 place. (RT 310: 13, 16, 20) He estimated there to be only sixteen employees affected by the wage
15 increase in January 2016. (RT 312) Mr. Rak confirmed that there had been a tentative agreement
16 reached between the negotiating parties. (RT 314: 6) When shown GC Exhibit 17, Mr. Rak
17 substantiated that Respondent intended a hiatus in wage negotiations until they were able to evaluate
18 profitability. (RT 318: 3, 7, 8; 319) He later argues against calling such action a wage freeze. (RT 319-
19 320)

20 **F) MOHAMMED NAZEEM**

21 Mr. Mohammed Nazeem testified he is the active General Manager at the Hotel. (RT 387)
22 With regards to the issues involving Mr. Griffin and Ms. Salman, Mr. Nazeem, Mr. Nazeem testified
23 as to how he handled the particular complaint and warning to Ms. Salman. (RT 581: 10-25)

24 Additionally, he testified regarding bargaining that the Company did not refuse to discuss
25 wages. (RT 759: 15-18) Instead, the Hotel wanted to evaluate the property for one year. (RT 759)

1 **G) SANJITA NAND**

2 Sanjita Nand testified that she is the Human Resources Manager at the Hotel. (RT 431: 2) She
3 denied telling employees during the course of interviews that they should not associate with the Union.
4 (RT 464) and that as part of the obligation of being part of the “Intercontinental Hotel Group” (IHG)
5 the Hotel is obligated to conduct so called “Human Rights” training. (RT 470) (*See* RSP Exhibit 2)

6 Ms. Nand testified about Human Rights training involving Silvia Arteaga, and the procedure
7 that she followed (RT 475) and entered the exhibits relating to such training (RSP Exhibits 3-11) Ms.
8 Nand was certain that Ms. Arteaga underwent Human Rights training on May 9, 2016. (RT 500: 11-
9 25) She reiterated this testimony on cross examination (*See* beginning RT 503)

10 **H) DEVON GRIFFIN**

11 Devon Griffin testified (RT 560) he is employed at the Holiday Inn Express Sacramento (RT
12 561: 1), employed in the capacity as a “houseman” (RT 562: 9-10) testified that as part of his job he
13 interacted with other housekeepers (RT 564: 21-25); he did testify regarding an altercation with Suhad
14 Salman. (RT 565: 14-25; RT 566: 1-25) This altercation included what Mr. Griffin believed to be a
15 racist statement directed at him. (RT 567: 7-10) He reported this incident to Ms. Gutierrez who
16 informed him he needed to speak with Mr. Nazeem. (RT 569: 12-20) A formal complaint was filed by
17 Mr. Griffin regarding the altercation with Ms. Salman (*See* RSP Exhibit 13). (RT 570: 6-25)

18 **I) ELSA GUTIERREZ**

19 Ms. Elsa Gutierrez testified (beginning RT 605) that she is Housekeeping Manager at the
20 Hotel. (RT 605: 8-12) She testified her normal work hours are 7:00 AM to 3:30 PM and that she must
21 leave by 3:30 PM due to childcare commitments. (RT 606) Ms. Gutierrez denied referring to Ms.
22 Tapia as a “fat” person and/or telling Ms. Salman not to communicate with her. (RT 614: 7-25)
23 Additionally, Ms. Gutierrez denied arranging for Ms. Salman to meet with anyone to sign a
24 decertification petition. (RT 615: 1-25)

25 Ms. Gutierrez recalled a telephone conversation from May 9, 2016 regarding Ms. Salman; her

1 testimony was limited to Ms. Salman's husband Mr. Hussein inquiring as to why his wife did not
2 receive more consecutive days of work. (RT 615: 1-11) It was Ms. Gutierrez's recollection that she
3 left work at 3:30 PM on May 9th, as she does every other day. (RT 615: 24-25) Ms. Gutierrez believed
4 the phone call with Ms. Salman and/or Mr. Hussein took place at approximately 5:00 PM (RT 617: 11),
5 once again reiterating Mr. Hussein's anger with regards to Ms. Salman's work assignments. (RT 619:
6 4-12) She adamantly denied discussing anything relating to Ms. Salman signing a decertification
7 petition. (RT 620: 10-15) Ms. Gutierrez also denied speaking to Mr. Singh regarding the incident
8 involving Mr. Hussein and Mr. Singh at the Hotel on May 9, 2016; she denies telling Ms. Abel not to
9 associate with the Union. (RT 626: 17-25) When shown GC Exhibit 6 she denied it was her
10 handwriting (RT 427) giving her own writing sample (RSP Exhibit 14) as well as showing a Lost and
11 Found Log in her handwriting. (RT 627-RT 632)

12 Ms. Gutierrez denied telling Ms. Arteaga not to associate with the Union on March 3rd, 2016
13 as she had a housekeeping job off property and that she further instructed Ms. Arteaga regarding lost
14 and found items. (RT 633-634) All of this occurred on May 9, 2016 which she reiterated in her
15 testimony on cross examination. (RT 635)

16 **J) RAJNEEL SINGH**

17 Rajneel Singh testified (RT 819) that he generally works the front desk (RT 821: 1-25) with his
18 shift from 3:00 PM – 11:00 PM. (RT 821: 1-25) Mr. Singh affirmed that Dharmesh Tandel was the
19 previous Front Desk Supervisor. (RT 823: 2-9) He expounded that as the senior most Desk Supervisor,
20 he often receives calls from many other employees, including on his personal cell phone line. (RT 842:
21 3-19)

22 Mr. Singh recalled attending a "notice reading" by the Board as part of a settlement of a
23 previous unfair labor practice case. (RT 823: 12-25) At said meeting, the Board Representative Mr.
24 Richardson partook in a conversation with Mr. Singh regarding the failed efforts of a prior
25 decertification petition. (RT 826: 15-25) He was given instructions by the Board Agent present, Mr.

1 Joseph Richardson, regarding conduct that could be engaged in. (RT 826: 15-21) Such conduct
2 included a two month hiatus from circulation of any petition. (RT 827: 2-6) Clarifications as to
3 managerial involvement versus employee involvement were given. (RT 827: 9-17) Mr. Singh noted
4 with that knowledge no actions towards any decertification efforts prior to May 8, 2016 were made.
5 (RT 828: 9-10)

6 Mr. Singh described the difficulty he had in this filing process specifying a lack of readily
7 available information without the assistance of Hotel management. (RT 874-RT 876) He detailed his
8 process of accessing the proper paperwork from the NLRB website (RT 836 12-17); going on to
9 testify regarding his process of collecting signatures. (RT 837 18-21)

10 Prior to obtaining signatures, Mr. Singh described how he informed the other employees of the
11 Petition and where they could sign it. Mr. Singh testified he used his lunch period and rest breaks to
12 speak with employees about their sentiments of the Union. He told them where to meet him. (RT 851:
13 13-25; RT 852: 1-12)

14 The signatures on the Petition were gathered on May 9th, 10th, and 11th of 2016 (RT 849: 16-
15 25) on Sixteenth Street outside of the building during off-work time per the instructions of Mr.
16 Richardson. (RT 830: 9-20) Mr. Singh reiterated that he stood outside the gates on 16th Street at 3:00
17 PM and 4:00 PM because those were the end times for most shifts. (RT 854: 21-25-RT 856: 1-4)

18 To the extent he needed assistance with Spanish speaking employees; he used Ms. Olga Villa.
19 (RT 831: 18-20) He obtained Silvia Arteaga's signature on May 9, 2016 with the aid of Ms. Villa. (RT
20 849: 1-11)

21 While Mr. Singh was notifying employees of the Petition, Ms. Abel requested to prematurely
22 sign the Petition; however, Mr. Singh informed her she would need to sign it after work hours. He
23 explained that Ms. Abel came into possession of a photo of the Petition during this encounter. Ms.
24 Abel signed the Petition later that day, May 10, 2016. (RT 833: 6-25) Mr. Singh testified Ms. Abel
25 was not hesitant to sign the Petition, whatsoever. (RT 368: 23-25)

1 Mr. Singh collected Ms. Salman's signature on May 9th, 2016 on Sixteenth Street outside of
2 the Hotel premises. (RT 834) He noted that Ms. Salman spoke English, albeit minimal, but clearly
3 understood what was happening.

4 Mr. Singh described the May 9th encounter with Ms. Salman's husband Mr. Hussein. (RT 834:
5 9-25; RT 835: 1-25) He reiterated his testimony on cross examination beginning at. (RT 839) He
6 described Mr. Hussein as extremely aggressive, reiterating it during cross examination. (RT 836) He
7 explained that Mr. Hussein wanted to tear up the Petition paperwork, which is why he printed Mr.
8 Hussein a blank copy. Mr. Singh testified that he did not report this incident to anyone because he was
9 told by Mr. Richardson not to get management involved. (RT 866 12-14)

10 **V. LEGAL ARGUMENT**

11 **A) RESPONDENT DID NOT BARGAIN IN BAD FAITH**

12 ***1. There Was No Obligation To Bargain As A CBA Had Never Been Terminated***

13 As noted above, the ALJ acted on the premise that the Contract was in full force and effect,
14 and had never been terminated by either Party. (*See* Section III "Statement of Facts") In other words,
15 the Contract termination provisions under § 8(d), which create an underlying obligation to bargain,
16 had not been met. The Contract's language in Section 40 is very clear, there are only to be negotiations
17 if, every year commencing on November 1, 2010 and all subsequent years, proper notice is given. This
18 is a standard "rollover" termination clause. What this means, however, is that the Respondent had no
19 obligation to bargain with the Union as such termination notice was not given. And, Respondent has
20 no ongoing obligation to bargain unless and until the Contract is terminated. And, while Respondent
21 did bargain, everything that occurred should be considered null and void because proper termination
22 notice was not provided. For these reasons, the findings of 8(a)(5) violations should be dismissed.

23 ***2. Legal Standards Regarding The Obligation To Bargain In Good Faith***

24 As noted above, the Charges should be dismissed for failure to provide proper 8(d) notice.

25 However, even if the Board does not make such a finding, there was no bad faith bargaining by the

1 Respondent. There is extensive case law developed by the Board as well as the Courts regarding the
2 obligation of parties to bargain in good faith as required by the Act.

3 The starting point, however, is Section 8(d) of the Act which states as it relates to the
4 obligation of parties to bargain in good faith that this obligation “...does not compel either party to
5 agree to a proposal or require the making of a concession...” (See § 8(d) 29 U.S.C § 158(d))

6 With regard to the Employer’s obligation to bargain in good faith, the Board in interpreting
7 Section 8(d), the Board has looked at certain conduct as indicating bad faith bargaining (and/or surface
8 bargaining). And, the Board has identified seven distinct indicators which include: (*Atlantic, Hilton*
9 *and Tower*, 271 NLRB 1600 (1984))

- 10 - delaying tactics;
- 11 - proposing unreasonable bargaining demands;
- 12 - implementing unilateral changes and conditions of employment;
- 13 - direct dealing or implementing steps to bypass the Union;
- 14 - failure to designate an agent with sufficient authority to negotiate;
- 15 - withdrawal a proposal after tentative agreement has been reached on those items;
- 16 - arbitrary scheduling of meetings.

17 In the present case the General Counsel can show none of these tactics other than a claim that
18 Respondent made unreasonable bargaining proposals. In short, the entire case of bad faith bargaining
19 is based upon the content of the proposals made by the Respondent. This is despite the mandate of
20 Section 8(d) that a party is not obligated to agree to any particular proposal. Additionally, when
21 “totality” of the negotiations is considered and not “a snapshot” as presented by the General Counsel,
22 Respondent has not bargained in bad faith. Once again, as noted at the outset, Respondent was
23 presented with terms and conditions of an expired contract that it had never previously agreed to.¹

24 The Board and the Court in reviewing the Employer’s obligation to bargain in good faith

25 ¹ Among other topics discussed at the negotiations was the issue of whether or not the “front desk supervisor” would remain in the bargaining unit. The implication raised by the General Counsel was that Respondent was being dilatory or obstructionist in not agreeing to this proposal by the Union. It was testified to by Christopher Rak this position was in fact part of the bargaining unit. Case law is clear that changes to the unit are a “permissive” subject to bargaining over which Respondent had no obligation to even consider. (*Huntington Newspaper Printing Corporation v. NLRB* 625 F.2d 956 (10th Cir. 1980)). Respondent eventually agreed to the Union’s proposal after the person who held this position (Dharmesh Tandel) left the Hotel.

1 considers a “totality of the conduct”. See *Eatarn Maine Med. Cir. Ctr. v. NLRB*, 658 F.2d 1 (1st Cir.
2 1981); see also *Optica Lee Borinquen, Inc.*, 307 NLRB 705 (1992). Consequently, viewing all relevant
3 circumstances, the Board may overlook certain “misconduct” in reviewing the entire bargaining
4 process. See *Logemann Brothers Company*, 298 NLRB 1018 (1990). And, “hard bargaining” which
5 includes isolated misconduct will not constitute an ultimate determination of bad faith bargaining. See
6 *Roman Iron Works*, 275 NLRB 449 (1985); see also *Merrell M. Williams*, 279 NLRB (1986).

7 General Counsel is taking the position that because of Respondent’s position regarding wages,
8 union-security, seniority, and a successorship clause that Respondent was “gutting” the expired
9 Contract (the terms of which Respondent had never agreed to) and that its bargaining proposals could
10 never be accepted by the Charging Party. And because of this it is alleged Respondent has bargained
11 in bad faith. The 9th Circuit rejected this contention in *NLRB v. Tomco Communications* 567 F.2d 871
12 (9th Cir. 1978). See also *NLRB v. Fitzgerald Mills Corp.* 313 F.2d 260 (2nd Cir. 1963) where the Court
13 made it clear that the bargaining process is give and take, and that because initial proposals indicate
14 the parties are far apart, this does not establish bad faith bargaining.

15 There are two particular factors that should be taken into account by the Board in determining
16 whether or not Respondent is guilty of bad faith bargaining. First, the Board must consider the conduct
17 of the Union. The Union admittedly terminated the bargaining relationship for the months of May,
18 June, July, August, and most of September of 2016. This was openly admitted by Union representative
19 Christopher Rak. (RT 738: 1-25; RT 739: 1-15) The purported justification of this was that the Union
20 had not received a wage increase and that Respondent was allegedly instigating a decertification
21 petition. That does not justify shutting down the bargaining process however. As discussed above, the
22 Hotel had requested a one year wage freeze from the date of acquiring the Hotel.² The Union
23 complained vociferously about this and the General Counsel alleged it constituted a refusal to discuss
24 wages. And, while the legality of this proposal can be debated topic can be debated, the one year

25 ² In reality it was a six month proposed wage freeze as serious negotiations did not begin until late January of 2016.

1 period fell during the time period the Union had suspended negotiations. Additionally, suspending
2 bargaining for the alleged decertification effort was equally unreasonable. Under that rational, they
3 could suspend bargaining until the litigation was entirely completed. The bottom line is that the
4 Charging Party suspended bargaining for four of the twelve months of 2016. Yet, they and the General
5 Counsel are still complaining that sufficient progress was not made in the negotiations.

6 The other factor that should be considered is the CBA between the Charging Party and the
7 “Sutter House” (RSP Exhibit 20) another small hotel in downtown Sacramento. Mr. Rak testified that
8 the operations of the Respondent and the Sutter House were the most comparable as opposed to the
9 Charging Party’s CBAs with other hotels which were much larger. (RT 709: 18-25) Yet, when the
10 contested areas of the negotiations are reviewed proposals made by Respondent are very similar to
11 what was agreed to by the Charging Party in its CBA with Sutter House.

12 ***3. The Disputed Areas In The Collective Bargaining Negotiations***

13 The Charging Party representative Mr. Rak stated in his testimony that there were four primary
14 areas that, in his opinion, precluded the parties from reaching an agreement. These were wages; union-
15 security; seniority; and successorship language. There could be no final agreement on a contract until
16 all of these sections were resolved. Consequently, the fact the Respondent proposed a wage freeze is
17 irrelevant and did not impede the signing of the collective bargaining agreement because the parties
18 had not resolved the issues on the other three areas. The Union had been unable for six years to reach
19 an agreement with the predecessor company. (RT 290: 1-13; RT 293: 1-8) The Respondent had only
20 negotiated for six months (December 2015 – May 2016) before the Union began filing unfair labor
21 practice charges against it.

22 **i) Wages.** In discussing the issue of wages, the Board cannot overlook the impact of the
23 California minimum wage increases. There was a \$0.50 per hour increase. On January 1, 2016
24 California minimum wage rose from \$9.00 to \$10.00 per hour, a \$1.00 increase. And, twelve months
25 later, California minimum wage rose \$0.50 more to \$10.50 per hour on January 1, 2017. RSP Exhibit

1 16 shows the impact of the minimum wage on amounts paid by Respondent to its employees. Sixteen
2 of the thirty persons listed received pay increases as a result of the minimum wage increase, which, in
3 most cases ranged from \$0.65 to \$0.85 per hour. With another \$0.50 per hour for eighteen of the thirty
4 job classifications listed January 1, 2017. The Charging Party has made the absurd contention that the
5 Respondent should not “get credit” for wage increases prompted by the minimum wage; but from the
6 standpoint of the Respondent, this is out of pocket compensation that they are paying.

7 Also, Respondent did not refuse to discuss wages. Despite Mr. Rak’s testimony, nowhere in
8 the bargaining notes offered by the General Counsel and maintained by Mr. Rak is there a reference or
9 a statement that Respondent would not discuss wages. In effect, Respondent was asking for a wage
10 freeze until July of 2016 when it had operated the Hotel for a year. Despite all of the rhetoric about
11 this topic, the impact of what it was seeking was a wage freeze. In fact, Mr. Rak’s bargaining notes
12 (*See* GC Exhibit 17) reference that wages were to be put on hold. Respondent concedes that this whole
13 topic could have been more artfully stated. Respondent’s proposal regarding wages was tantamount to
14 requesting that wages be frozen.

15 Once negotiations resumed after being suspended by the Charging Party, not only was there a
16 wage increase offered on December 13, 2016, (*See* RSP Exhibit 16), an additional \$0.10 per hour to
17 such increase during the Parties negotiations of January 4, 2017. (*See* RSP Exhibit 18) Also, in
18 Respondent’s wage proposal to the Union (*See* RSP Exhibit 16; and RSP Exhibit 18) (its January 4,
19 2017 proposal offering an addition \$0.10 per hour) the wages are in the “ballpark” of the Sutter House
20 CBA, and, the Parties are still negotiating.

21 The Respondent has not bargained in bad faith regarding wages. Its operations were
22 significantly impacted by the minimum wage increase; the Union cancelled the negotiations for the
23 time period in which the one year ownership date fell; and since bargaining resumed Respondent has
24 made two proposals to the Charging Party. When the totality of the conduct is considered, and the
25 February/March 2016 discussion on wages are not looked at in isolation but as part of the totality of

1 the circumstances, Respondent has not bargained in bad faith. See *Roman Iron Works*, supra.

2 **ii) Union-Security.** With regard to the issue of union-security as noted, all of the hotels in
3 the Manas Hospitality chain are non-union. (See RT 304: 1-14; RT 306: 1-18) No other employees are
4 obligated, as a condition of employment, to pay Union dues. Consequently, Respondent’s objection to
5 making payment of dues a condition of employment is not unreasonable. Additionally, Respondent
6 was not objecting to the deduction and remission of dues for those employees who agreed to it.
7 Respondent’s proposal allowed for the dues check off procedure as long as it was voluntary. This is
8 not a situation where Respondent was claiming “administrative” difficulty or burdens in collecting
9 dues remitting the dues. In fact, what Respondent is proposing is exactly the procedure contained in a
10 contract where the employers operation are in a “Right to Work” state such as Nevada where this is
11 the procedure that would be followed. The Charging Party’s international union has extensive
12 contracts in the Las Vegas area.

13 The General Counsel’s contending that somehow objecting to dues payment as a condition of
14 employment is bad faith bargaining.

15 The Board addressed the issue of eliminating a union-security clause that existed in an existing
16 CBA in its decision, *Midwest Television, Inc.*, 349 NLRB 373. In discussing this issue the Board stated
17 as follows:

18 “The existence of a union-security clause in previous contracts does not by itself
19 obligate the parties to include it in successive agreements. *Challenge-Cook Bros.*, 288
20 NLRB 387, 388 (1988). In *Challenge-Cook Bros.*, the Board rejected the judge’s
21 reasoning that an employer’s insistence on the ‘predictably unacceptable’ elimination
of a long-established union-security provision revealed its unlawful predetermination
not to reach agreement. We find the judge’s reasoning in the present case similarly
erroneous. As the Board recognized in *Challenge-Cook Bros.*, supra:

22 An employer is entitled to advance a position sincerely held, notwithstanding the
23 employer’s having taken a different position at an earlier time.... Union security... [is
24 a] mandatory [subject] of bargaining, and [a] party ... is entitled to stand firm on a
position if he reasonably believes that it is fair and proper or that he has sufficient
bargaining strength to force agreement by the other party.

25 Id. (quoting *Atlas Metal Parts Co. v. NLRB*, 6600 F.2d 304, 309 (7th Cir. 1981))
(internal quotations omitted).”

1 In *Midwest Television, Inc.*, the employer wanted to eliminate the clause altogether. Here,
2 Respondent was willing to deduct dues and remit them for Employees who authorized, but not make it
3 a condition of employment. These payment obligations were not something that Manas Hospitality
4 obligated its employees to undertake at any other hotel and was justified in objecting to that at the
5 Respondent's property

6 **iii) Seniority.** The Respondent's seniority proposal (RSP Exhibit 18) reads as follows:

7 "The Employer and the Union agree that the purpose of seniority is to accord
8 consideration to senior employees in recognition of their length of service. And, subject
9 to equal qualification, seniority is further intended to provide maximum work
10 opportunity to senior employees. Personnel decisions including but not limited to
11 promotions, transfers, shift assignments, training, overtime, vacations, and days off
shall be made on the basis of job classification seniority; if in the discretion of the
employer qualifications and performance are equal. Decisions as to layoffs and recall
shall be determined solely by job classification seniority."

12 Respondent is being accused again of "gutting" the seniority rights of employees. Once again,
13 looking at this from the vantage point of Manas Hospitality, they don't want hotels where personnel
14 decisions are strictly seniority based as is the case in the expired CBA. (Joint Exhibit 1/GC Exhibit 3)
15 All Respondent's proposal does is give Respondent latitude not to follow strict seniority in a situation
16 where one employee can perform better than another employee. Other than unionized facilities, which,
17 the ALJ can take notice, comprise approximately seven percent of the private sector employers in the
18 United States are not bound by strict seniority regulations.

19 More importantly, however, the ALJ should consider the Sutter House contract. The Sutter
20 House CBA does not even contain a separate seniority clause identified in the table of contents of the
21 CBA. Instead, the only reference to seniority is Section 9 sub-paragraph (d) as follows, "The
22 Employer agrees to give consideration to laid off employees in re-employment. Senior employees
23 shall have consideration of full-time employment at all times". (RSP Exhibit 20) The Charging Party's
24 contract with Sutter House identified as the property most similar to Respondent, has extremely
25 limited seniority provisions. Respondent's seniority proposal gives far more seniority rights than what

1 the Union has agreed to at a hotel a few miles away from the Respondent.

2 **iv) Successorship Language.** The Respondent proposed deleting the successorship
3 language that was contained in the expired CBA. (See Article 34 “Successors and Assigns”) (RSP
4 Exhibit 18) The language in the expired Contract is extremely cumbersome upon an employer and
5 allows the Union to potentially obtain an injunction without even posting a bond, no matter how
6 damaging enforcement of the clause would be on a sell/buy transaction. Additionally, the literal
7 reading of the language of the clause which, is not qualified, would apply to a sale of the property to
8 an entity not even a hotel. The way the language is written goes far beyond simply protecting
9 bargaining unit employees.

10 A successorship clause is a significant limitation upon the property rights of an owner of the
11 business. The Union’s desire for such language is understandable, but the Employer’s rejection of such
12 language is likewise understandable. This is simply a good faith dispute between the Parties.

13 Mr. Rak in his testimony (RT 324: 1-25) stated that it is not uncommon for employers to take
14 the position espoused by the Respondent. Once again, a review of the Sutter House CBA (Section 26
15 “Employer’s Operations”) only references successorship as follows:

16 “(b) This contract shall be binding upon the heirs, and assignment executors,
17 administrators, successors, and the purchasers of the parties hereto.”

18 This language would not be binding on a purchaser as there is no requirement that the selling entity
19 condition the transaction on assumption of the agreement.

20 **v) Sick Leave.** There is also considerable discussion about the Parties position regarding sick
21 leave (Section 12) even though this was not one of the four areas identified by Mr. Rak as precluding
22 the entering into of an agreement. Charging Party has proposed a more generous sick leave policy.
23 Respondent’s proposal from the outset had been to maintain sick leave in the expired CBA.³
24 Respondent at the meeting of May 11, 2016 discussed the issue of sick leave with the Union, stating

25 ³ A review of the Sutter House Agreement (Respondent’s Exhibit 20) shows that it contains no provision regarding paid sick leave.

1 that any policies must comply with California law. (See also RSP Exhibit 18) Respondent never
2 proposed to decrease the number of sick days. Yet somehow by referencing California law it was
3 interpreted by the Charging Party as a “regressive” proposal to limit the number of days. This is a
4 complete distortion of what was proposed by Respondent and there is no reference what so ever to
5 reducing the number of sick days. It simply references California law which set minimum standards
6 that an employer can exceed as are those in the expired CBA.

7 From Respondent’s standpoint alleging this is complete “over reach” by the General Counsel
8 on an item that could have easily been clarified had the Charging Party truly believed that and was
9 subsequently clarified as part of the negotiations.

10 Effective July 1, 2015 California enacted the “Healthy Workplaces, Healthy Families Act”.
11 The law was signed in 2014 and went into effect, as noted, in July 1, 2015. It sets certain minimum
12 standards regarding sick-leave for employees, i.e. three days paid sick leave under certain qualifying
13 circumstances. The law was subsequently amended in October 2015 to deal with issues of accrual of
14 sick leave. The ALJ can take judicial notice by a simple google of the law and will see that there were
15 numerous HR and/or legal blogs and websites discussing open questions about the statute and how it
16 would be interpreted. Like any new law, particularly in California with and extremely aggressive
17 plaintiff employee bar there is honest concern about legal compliance. Simply to be safe the
18 Respondent added the language in this proposal regarding complying with the new statute. Under no
19 circumstances was this ever presented as a regressive proposal i.e. cutting sick leave to three days.
20 Additionally, Section 26 “Savings Clause” in the expired Agreement doesn’t squarely address the
21 Petitioners section at issue, only a general obligation to renegotiate. Adding such language is hardly
22 evidence of bad faith bargaining.

23 Somehow referencing compliance with California law has turned into a “regressive”
24 bargaining proposal by the Respondent, the sick leave would be cut from five days to three days.
25 Nowhere in any of Respondent’s proposals nor as explained to Mr. Rak was there ever a proposal to

1 reduce the number of sick days. Suggesting that language was simply cautionary and is not an instance
2 of bad faith bargaining.

3 **4. Tentative Agreements**

4 GC Exhibit 36 is a summary of tentative agreements between the Parties. Probably an easier
5 way to review this is to look at the table of contents of the expired CBA and compare that to GC
6 Exhibit 36; the table of contents would read as follows:⁴

7	TA	Section 1.	RECOGNITION
	TA	Section 2.	UNION REPRESENTATIVES AND SHOP STEWARDS
8	ND	Section 3.	WAGE PAYMENTS
	TA	Section 4.	TYPES OF EMPLOYEES
9	TA	Section 5.	REPORTING PAY
	TA	Section 6.	WORK SCHEDULES
10	TA	Section 7.	DISCRIMINATION AND EQUAL PAY
	O	Section 8.	EMPLOYEE MEALS AND REST PERIODS
11	ND	Section 9.	WORK DAY, WEEK AND OVERTIME
	O	Section 10.	VACATIONS
12	TA	Section 11.	HOLIDAY PAY
	O	Section 12.	SICK LEAVE
13	TA	Section 13.	FUNERAL LEAVE
	TA	Section 14.	MEDICAL AND DENTAL PLANS
14	TA	Section 15.	PENSION
	TA	Section 16.	CONTRIBUTIONS AND COLLECTIONS
15	ND	Section 17.	SUPERIOR WORKERS AND PREMIUM PAY
	ND	Section 18.	COMBINATION JOBS
16	O	Section 19.	SENIORITY
	O	Section 20.	DISCIPLINARY ACTIONS
17	TA	Section 21.	PICKET LINES
	ND	Section 22.	HOUSE CARDS AND UNION BUTTONS
18	ND	Section 23.	COMPLETE AGREEMENT
	O	Section 24.	UNION SECURITY
19	TA	Section 25.	EMPLOYER'S OPERATION
	ND	Section 26.	SAVINGS CLAUSE
20	TA	Section 27.	GRIEVANCE PROCEDURE AND ARBITRATION
	O	Section 28.	UNION DUES AND FEES CHECK OFF SYSTEM
21	ND	Section 29.	WORKER'S COMPENSATION
	O	Section 30.	MANAGEMENT RIGHTS RESERVED
22	TA	Section 31.	WORKING CONDITIONS AND CRAFT RULES
	ND	Section 32.	DRUG/ALCOHOL FREE WORK ENVIRONMENT
23	ND	Section 33.	HEALTH AND SAFETY COMMITTEE
	O	Section 34.	SUCCESSORS AND ASSIGNS
24	ND	Section 35.	USERRA PROTECTION

25 ⁴ "TA" Tentative Agreement; "O" Article Open; "ND" Not Disputed.

- 1 ND Section 36. UNION LEAVES OF ABSENCE
- ND Section 37. QUALITY SERVICE
- 2 ND Section 38. IMMIGRATION, WORK AUTHORIZATION, AND CITIZENSHIP
- O Section 39. WAGE SCALES
- 3 O Section 40. TERM OF AGREEMENT

4 Of the forty sections in the expired CBA twenty eight of those sections have either resulted in a
5 tentative agreement or were never disputed by either side to begin with. Of the twelve sections that are
6 open, four of these are the result of Union proposals to add benefits more favorable than the existing
7 Contract. (See Section 8 “Employee Meals and Rest Periods”; Section 10 “Vacations”; Section 12
8 “Sick Leave”; and, Section 30 “Management Rights Reserved”)

9 It should also be noted that at no time during the course of the negotiations did Respondent
10 unilaterally implement any of the proposals over which there was a disagreement on. (RT 335: 21-25)
11 Additionally, the Employer has maintained the existing health and welfare plan including increases to
12 it from throughout the bargaining process. (RT 689: 1-25; RT 690: 1-15) And finally, as it relates to
13 the issue of wages the Union reduced its wage proposal in November of 2016. (See GC Exhibit 27)
14 However, the Union’s previous wage proposal was based upon wage rates paid at the Sheraton, a
15 much larger hotel than Respondent. (RT 691: 1-25)

16 **B) RESPONDENT DID NOT UNLAWFULLY INSTIGATE AND/OR INSIST IN THE**
17 **DECERTIFICATION ELECTION**

18 ***1. Case Law Regarding Employer Involvement In Decertification Election***

19 Board/Court law is fairly straight forward regarding employer involvement in a decertify
20 cation effort by employees.

21 The Board has held that an employer does not violate the Act if it furnishes accurate
22 information about, or mistrial aid to, the decertification process, and does so without making threats or
23 offering benefits. See *Lee Lumber & Bldg. Material Corp.*, 306 NLRB 408, 409-10 (1992); *E. States*
24 *Optical Co.*, 275 NLRB 371, 371 (1985). An employer violates § 8(a)(1), however, “by ‘actively
25 soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an

1 employee petition seeking to decertify the bargaining representative.’’. See *Mickey’s Linen & towel*
2 *Supply, Inc.*, 349 NLRB 790, 791 (2007) (quoting *Wire Prods. Mfg. Co.*, 326 NLRB 625, 640 (1998),
3 enforced sub nom. *NLRB v. R.T. Blankenship & Assocs., Inc.*, 210 F.3d 375 (7th Cir, 2000)
4 (unpublished); see also *E. States Optical Co*, supra at 372.

5 It does not appear that the General Counsel is alleging that the Respondent promoted or
6 instigated the decertification effort. Based on the testimony from the witnesses called it appears that
7 the General Counsel is claiming that somehow Respondent unlawfully assisted the decertification
8 effort.

9 2. *Review Of General Counsel’s Witnesses Regarding The Decertification Contention*

10 i) **Suhad Salman.** A summary of Ms. Salman’s testimony is set out above. Ms. Salman was
11 an extremely un-credible witness. First off, an interpreter was used because she purportedly could not
12 understand English. This in and of itself was obviously false from observing her testimony where a
13 number of questions were asked that she knew the answers to prior to the time they were being
14 interpreted. However, instead of stating she had a difficult time with speaking English, she flat denied
15 that she understood.

16 Secondly, she was not truthful whatsoever when asked about the incident with Mr. Devon
17 Griffin. Ms. Salman explicitly denied that this incident took place, which obviously it did, including a
18 verbal warning.⁵

19 Consequently, her testimony that Elsa Gutierrez arranged for her to meet with Mr. Rajneel
20 Singh to sign a petition is simply not believable. She clearly lied about two other topics (see above),
21 and, this entire concept that Ms. Gutierrez needed to arrange for Rajneel Singh to meet Ms. Salman is
22 nonsensical. First, as testified to by Mr. Singh per his instructions from General Counsel

23 _____
24 ⁵ There is an apparent contention by the General Counsel that there is nothing in the collective bargaining agreement
25 regarding “verbal warnings”. This procedure was testified to also by Ms. Sanjita Nand prior to the testimony regarding
Devon Griffin. Ms. Nand’s testimony related to an incident involving Ms. Silvia Arteaga. See (RT 500: 24-25). While this
procedure is not in the Contract, Respondent should not be penalized because it did not impose more severe discipline.
Also, Union representative Mr. Rak was present during the testimony and said nothing to dispute this practice.

1 Representative Mr. Joseph Richardson at the “reading” in March of 2015, he believed that all
2 signatures for the decertification petition had to be obtained off Hotel property on non-work time. It is
3 clear that Mr. Singh’s testimony that he had complete control over this process, and the idea that he
4 would need Ms. Gutierrez to arrange a secret meeting in a linen closet when there is no other
5 testimony from employees about this is highly suspect.⁶ (RT 823: 12-25-RT 824: 1-25; RT 830: 16-
6 25; RT 831: 1-9)

7 **ii) Shaheed Hussein.** There was considerable testimony about a telephone call between Elsa
8 Gutierrez and Shaheed Hussein and/or his wife Suhad Salman on the way home from work at the
9 Hotel on May 9, 2016. This was the same day Ms. Salman signed the decertification petition and, set
10 out in the summary above, her husband objected to this and confronted Mr. Singh in the Hotel where
11 after Ms. Salman’s signature was removed. According to the version offered by Mr. Hussein/Ms.
12 Salman, Ms. Gutierrez was objecting to the fact that Ms. Salman’s signature was removed from the
13 petition. Ms. Gutierrez’s version is that there was a missed phone call she noticed on her cell phone
14 from Ms. Salman, which she returned resulting in an issue between her and Mr. Hussein over how
15 many hours of work Ms. Salman received.

16 The key point when reviewing this is that there is no evidence that Ms. Gutierrez knew about
17 the incident between Mr. Singh and Mr. Hussein/Ms. Salman. The only telephone conversation
18 between Mr. Singh and Ms. Gutierrez was not until 6:54 PM on May 9, 2016. (RT 841: 1-25; RT 871:
19 10-25; RT 872: 1-25; RT 873: 1-5) Obviously, if the phone call did not take place until close to 7:00
20 PM, and if the Ms. Salman/Mr. Hussein/Ms. Gutierrez conversation took place when Ms. Salman left
21 work at approximately 4:00 PM that day. If Ms. Gutierrez wasn’t aware of the altercation between Mr.
22 Singh and Mr. Hussein there is no way she would express a complaint to Ms. Salman regarding her
23 signature being redacted. (Gutierrez RT 621: 1-7; Singh RT 835: 17-25; RT 836: 1-2)

24 ⁶ The ALJ should also take into account that the Decertification Petition listed twenty one signatures. The only witnesses
25 called to support the General Counsel’s theory of the decertification assistance were persons no longer employed. Ms.
Salman and Ms. Arteaga had left and Ms. Abel was on a lengthy workers compensation leave.

1 **iii) Vanessa Abel.** Ms. Abel was called to testify by the General Counsel (*See* Summary of
2 Witness Testimony above) to contend that Ms. Gutierrez allegedly arranged for Ms. Abel to meet with
3 Ms. Olga Villa for purpose of obtaining her signature for a decertification petition. And, according to
4 Ms. Abel, Ms. Gutierrez wrote a room number (*See* GC Exhibit 6) on a piece of paper for her.

5 There are numerous problems with the testimony of Ms. Abel. First, she stated unequivocally
6 that “every day” without exception Ms. Gutierrez told her not to associate with the Union. This is
7 highly dubious particularly, as Ms. Gutierrez testified she’d been instructed by management not to
8 involve herself in any decertification effort.. (RT 663: 20-25) Secondly, it’s illogical that such a
9 meeting would be arranged with Ms. Villa. As attested to by Mr. Singh, Ms. Villa was only used for
10 purposes of gathering signatures of those employees who were Spanish speaking. Ms. Abel spoke
11 fluent English. Thirdly, Mr. Singh stated Ms. Abel’s signature was gathered outside the Hotel
12 premises along with the other employees in the manner he had been instructed to by General Counsel
13 Representative Mr. Richardson during the notice reading as noted above. Fourthly, is the issue of
14 whether or not the handwritten note (GC Exhibit 6) was Ms. Gutierrez’s handwriting. Ms. Gutierrez
15 wrote the same numbers during the hearing and the handwriting was clearly not the same.
16 Additionally, more importantly was RSP Exhibit 15 which was a “Lost and Found Log” created by
17 Ms. Gutierrez in May of 2016 at or about the time she had allegedly wrote GC Exhibit 6. Ms.
18 Gutierrez’s writing at the hearing as well as on the log establishes that the writing on GC Exhibit 6
19 was not that of Ms. Gutierrez. The handwriting on the Lost and Found Log was created in the regular
20 course of business. General Counsel contends that (*See* General Counsel Exhibit 34 and 35) that the
21 dates entered onto the affidavits prepared by the Board were more indicative of Ms. Gutierrez’s
22 writing. The ALJ does not have to resolve this because, as noted, Ms. Abel lacks credibility on
23 numerous other issues and her story is not believable particularly considering the testimony of Mr.
24 Singh.

25 //

1 **iv) Silvia Arteaga.** Ms. Silvia Arteaga was called by the General Counsel. (*See* Summary of
2 Witness Testimony above) The focus of her testimony was two different alleged incidents.

3 Regarding the first alleged incident, Ms. Arteaga claimed that Ms. Gutierrez approached her on
4 March 3, 2016 at almost exactly 4:00 PM. Allegedly a conversation took place where Ms. Gutierrez
5 told Ms. Arteaga not to associate with the Union. The problem with Ms. Arteaga’s claim is twofold.
6 First, as Ms. Gutierrez testified, during the time period in question, she worked each and every
7 Thursday off site. March 3, 2016 was a Thursday, Ms. Gutierrez reiterated in her testimony that she
8 was not at work. Secondly, Ms. Gutierrez testified that on the days she did work at the Hotel she left
9 between 2:30 PM and 3:00 PM as a result of a childcare commitment. It could be argued that Ms.
10 Arteaga was simply wrong as to the time and that Ms. Gutierrez was in fact at the Hotel however, her
11 testimony was repeatedly adamant that this conversation took place at 4:00 PM, close to the time she
12 regularly left work. Consequently, her testimony regarding this should not be credited.

13 The second issue Ms. Arteaga was called to testify regarding was a “Human Rights” training
14 which took place on May 9, 2016. According to the General Counsel as alleged, somehow the Human
15 Rights training never occurred and on that date Ms. Arteaga was tricked into signing a decertification
16 petition by Ms. Sanjita Nand and Ms. Gutierrez under the guise of mandatory “Human Rights”
17 training.

18 Once again, there are several problems with the testimony of Ms. Arteaga. First, as previously
19 noted, Mr. Rajneel Singh testified he was the one that obtained her signature with the help of Ms. Olga
20 Villa. It is also apparent from Mr. Singh’s testimony that he had taken charge of the decertification
21 effort. The idea of needing assistance from the HR Manager of the Hotel Ms. Nand and the
22 Housekeeping Manager of the Hotel Ms. Gutierrez is not believable. Secondly, as clear from the
23 testimony of Ms. Nand and RSP Exhibits 2-11, there were in fact Human Rights trainings conducted
24 which were further verified by Ms. Arteaga’s signature. Respondent concedes that the maintaining of
25 the Logs, the informing of the Union and backdating what Ms. Arteaga had signed was sloppy. But,

1 there is simply too much evidence to ignore in terms of the documentation that the training was in fact
2 provided. It is quite a stretch to contend that Ms. Nand was directly involved in soliciting a
3 decertification petition signature when all of the testimony cumulatively is viewed, particularly noting
4 the questions of Ms. Arteaga's credibility as to her previous encounter with Ms. Gutierrez.

5 Additionally, the factual scenario set out by Ms. Gutierrez and Ms. Nand as it relates to that
6 particular day are corroborated by RSP Exhibit 15, the Lost and Found Log, maintained by Ms.
7 Gutierrez. This Log additionally supports her testimony as to her handwritten notations on RSP
8 Exhibit 14 that reflect her true handwriting. Ms. Arteaga's testimony should be completely
9 disregarded.

10 ***3. Summary Regarding The Decertification Allegations***

11 A review of the un-redacted petition (RSP Exhibit 24) shows that there is overwhelming
12 support among the employees for the decertification effort. As noted, no current employees were
13 called as witnesses to support any of the allegations of the General Counsel. For the reasons noted
14 above, the fact that the testimony of the General Counsel's witnesses supports these claims is highly
15 dubious. Mr. Singh's testimony is consistent and credible, including his instructions from the Board as
16 to how the petition signing should take place. There is no evidence that Mr. Singh was instigated to
17 file the petition, instead only extremely weak testimony that he received management assistance. And
18 for the reasons noted, testimony simply doesn't square with the facts in Mr. Singh's testimony.

19 It's obvious from the petition that the Charging Party does not represent a majority of the
20 employees. The support for the decertification effort is understandable. The Charging Party was
21 unable to obtain a contract for over six years with the successor employer and in the meantime the
22 employees have paid Union dues for virtually no representation. The hearing officer should either (a)
23 determine that Respondent has no obligation to bargain with the Charging Party; and/or in the
24 alternative, (b) order the dismissal of the allegations in the Complaint and order the Region to process
25 the Decertification Petition.

1 **4. Remedy**

2 The ALJ has ordered relatively standard remedies i.e. posting of notice, etc., which, if the
3 8(a)(1) violations are established, Respondent does not object to. However, Respondent takes serious
4 issue with the extended six month bargaining obligation under the circumstances of this case. First,
5 there can be no bargaining obligation ordered by the Board unless and until the Contract has been
6 lawfully terminated. There is no obligation to bargain in the meantime. Secondly, even if the Contract
7 is terminated, the Board should not bootstrap an extended six month bargaining remedy, for conduct
8 that occurred when the Agreement was in effect, and order such remedy be implemented post Contract
9 termination. Assuming, the Board finds the existence of 8(a)(1) violations, there should be a standard
10 sixty day notice posting for such violations with the 8(a)(5) allegations being dismissed.

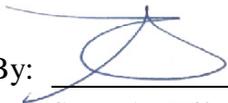
11 **VI. CONCLUSION**

12 For the reasons cited above, the Charges should be dismissed and/or under no circumstances
13 should the remedy sought by the General Counsel be granted.

14
15 Respectfully submitted,

16 DATED: November 1, 2017

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17
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