

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

**INTERSTATE MANAGEMENT COMPANY, Case 28-CA-206663  
L.L.C. as agent for BRE NEWTON HOTELS  
PROPERTY OWNER, LLC d/b/a RESIDENCE  
INN BY MARRIOTT SANTA FE ALL-SUITES  
HOTEL**

**and**

**RESIDENCE MARRIOTT COMMITTEE**

**RESPONDENT'S EXCEPTIONS TO  
ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Interstate Management Company, L.L.C. as agent for BRE Newton Hotels Property Owner, LLC d/b/a Residence Inn by Marriott Santa Fe All-Suite Hotel (Respondent) hereby takes the following exceptions to the Decision and Recommended Order in the above-captioned matter issued on September 11, 2018 by Administrative Law Judge John T. Giannopoulos (ALJ):

1. To the ALJ's finding that Yamini Shankar (Shankar) was "Respondent's director of human resources." (ALJD 3:7)<sup>1</sup> Grounds for Exception: Shankar's title was "corporate director of human resources." (T 19)

2. To the ALJ's finding that Maria Orona's (Orona) testimony, that Shankar said "the good thing is that the police is not here and I hope that we don't have to call them, correct," is consistent with her affidavit from the underlying investigation. (ALJD 5:41-6:1, n.7) Grounds for

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<sup>1</sup> References to the ALJ's Decision are cited herein as "ALJD" followed by the page number(s) and line number(s). General Counsel exhibits are cited herein as "GX" followed by the number(s). Respondent exhibits are cited herein as "RX" followed by the number(s). The Reporter's Transcript is cited herein as "T" followed by the page number(s). References to the Respondent's post-hearing brief are cited herein as "RB" followed by the page number(s).

Exception: Orona's affidavit, in which she testified she disclosed "everything she could recall," did not include the statement "I hope we don't have to call them, correct." (T 131-32)

3. To the ALJ's finding that on "cross-examination Jennings admitted that she really did not remember the interpretation at all and generally does not remember any of her interpretations." (ALJD 7:5-6) Grounds for Exception: Jennings credibly testified that she remembered many details about the meeting at issue for which she interpreted, including that Shankar was very "aware" and was "very patient, taking notes," did not get mad, angry, or raise her voice and did not threaten to call the police or to terminate employees. (T 186-88) On cross-examination, Jennings testified that she particularly remembered that Shankar was calm "because my [Jennings] granddaughter was born a few days before, and it wasn't very nice time for me to go." (T191) Other details recalled by Jennings included that she had to ask Shankar for clarification on some of the vocabulary and that an employee wanted to record the meeting and began "cussing" when she was not allowed to do so. (ALJD 6:30-41; T 185, 187)

4. To the ALJ's finding that Shankar asking the employees to "explain exactly what the committee was and whether it was legal" is troubling because, she "surely understood the meaning of the employees' letter and their statement about forming a workers committee, and knew they were not doing anything illegal." (ALJD 15:1-4) Grounds for Exception: The undisputed testimony and documentary evidence reveals that Shankar had concerns about the legality of the committee. She requested "Attorney's Advice" regarding "Lluvia's statement that it is a legal committee with a lawyer and the three associates are one entity." (GX 5, p.10) Shankar testified that she did not know the meaning of the phrase, "decided to organize a workers' committee," in the employees' letter. (T 140) She also testified that, in response to Lluvia Ramirez-

Orozco's statement that "we are a committee," Shankar replied, "I'm not sure what exactly you mean." (T 144)

5. To the ALJ's finding that "the employees protested saying they did not want to meet separately." (ALJD 13:23-24) Grounds for Exception: Nowhere in the record did any employee testify that she protested about meeting separately after the group meeting. As stated by the ALJ at the hearing, there is "no allegation in the complaint that there was anything illegal about meeting individually, so why—I don't know why I care or why we should go on with that line of questioning." (T 80)

6. To the ALJ's finding that "Respondent's argument that it would be reasonable for Shankar to ask about the committee, and its legality, to avoid a possible 8(a)(2) violation as without merit." (ALJD 15, n.16) Grounds for Exception: The undisputed documentary evidence reveals that Shankar had concerns about the legality of the committee. She requested "Attorney's Advice" regarding "Lluvia's statement that it is a legal committee with a lawyer and the three associates are one entity." (GX 5, p.10)

7. To the ALJ's finding that "Shankar did not testify as to why she asked employees to further explain the committee or its legality." (ALJD 15, n.16) Grounds for Exception: The undisputed testimony and documentary evidence reveals that Shankar had concerns about the legality of the committee. She requested "Attorney's Advice" regarding "Lluvia's statement that it is a legal committee with a lawyer and the three associates are one entity." (GX 5, p.10) Shankar testified that she did not know the meaning of the phrase, "decided to organize a workers' committee," in the employees' letter. (T 140) She also testified that, in response to Lluvia Ramirez-Orozco's statement that "we are a committee," Shankar replied, "I'm not sure what exactly you mean." (T 144)

8. To the ALJ's finding that "Respondent's argument is no more than a post-hoc attempt to justify Shankar's comments, that has no basis in the trial evidence." (ALJD 15, n.16) Grounds for Exception: The undisputed testimony and documentary evidence reveals that Shankar had concerns about the legality of the committee. She requested "Attorney's Advice" regarding "Luvia's statement that it is a legal committee with a lawyer and the three associates are one entity." (GX 5, p.10)

9. To the ALJ's finding that Jennings said to the employees that "it was a good thing the police were not at the meeting, and she hoped they did not call them." (ALJD 16:4-6) Grounds for Exception: Both Jennings and Shankar credibly testified that no one at the meeting mentioned the police or threatened to call the police. (T 143, 188-89)

10. To the ALJ's finding that "a reasonable interpretation of the government investigations rule requires employees to first obtain clearance from Respondent's legal department before answering requests from the police or regulatory authorities." (ALJD 17:26-28) Grounds for Exception: Joy Johnson, Respondent's vice president of compliance, testified without contradiction or rebuttal that the policy does not "apply to employees who make a claim against the company, or who cooperate on their own in providing information to the government." (ALJD 10:5-7; T 173)

11. To the ALJ's finding that "Nowhere does the Code of Conduct say that the rule is limited to only 'official written requests' or 'subpoenas.'" (ALJD 18:5-7) Grounds for Exception: The ALJ disregards the plain language of Respondent's Government Investigation policy. The policy refers to Respondent in first person, and states, "**We** promote cooperation with law enforcement agencies and government agencies." (GX 3, p. 6) (emphasis added). The plain language of the policy further limits the policy's application by stating, that "***the Company***

*requires an official written request or a subpoena.*” (GX 3, p. 6) (emphasis added) Referring to the Respondent throughout the policy clearly indicates that Respondent is the subject of the policy, not the employees.

12. To the ALJ’s finding that it would be “reasonable to conclude” that employees would believe that the Government Investigation policy governed their interactions with Board investigators and required them to obtain clearance from Respondent’s legal department. (ALJD 18:13-17) Grounds for Exception: The ALJ mischaracterizes the legal standard. Under the correct legal standard, a “reasonable interpretation” is based on the perspective of a “reasonable employee.” A reasonable employee would not interpret the policy to cover their personal interactions with Board investigators. Nothing in the policy interfered with the three Hotel employees cooperating with Region 28’s investigation and providing affidavits without obtaining clearance from Respondent. (T 47, 98, 129). Similarly, the policy did not interfere with Ramirez-Orozco’s ability to file her the initial charge, two amended charges, and multiple complaints with other government agencies without obtaining clearance from Respondent. (T 112-17; GX 1(a), 1(c), 1(e)) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

13. To the ALJ’s finding that “the rule—as written—impacts the Section 7 rights of employees to provide evidence to the Board, or to cooperate in Board investigations” or investigations by other regulatory or law enforcement agencies. (ALJD 18:18-19, n.24) Grounds for Exception: Johnson testified without contradiction or rebuttal that the policy does not “apply to employees who make a claim against the company, or who cooperate on their own in providing information to the government.” (ALJD 10:5-7; T 173) A reasonable employee would not interpret the policy to cover their personal interactions with Board investigators. Nothing in the policy interfered with the three Hotel employees cooperating with Region 28’s investigation and

providing affidavits without obtaining clearance from Respondent. (T 47, 98, 129). Similarly, the policy did not interfere with Ramirez-Orozco's ability to file her the initial charge, two amended charges, and multiple complaints with other government agencies without obtaining clearance from Respondent. (T 112-17; GX 1(a), 1(c), 1(e)) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

14. To the ALJ's finding that "in practice" the Government Investigation policy requires employees to "identify" to Respondent that they have been contacted by a "Board agent" or other "government/law enforcement" agency and request clearance from Respondent before providing evidence. (ALJD 18:21-24; 19:14-15, 24-27) Grounds for Exception: Johnson testified without contradiction or rebuttal that the policy does not "apply to employees who make a claim against the company, or who cooperate on their own in providing information to the government." (ALJD 10:5-7; T 173) Johnson also testified without contradiction or rebuttal, that she does not know of any employee being disciplined for violating the policy. (T 177) Nothing in the policy interfered with the three Hotel employees cooperating with Region 28's investigation and providing affidavits without obtaining clearance from Respondent. (T 47, 98, 129). Similarly, the policy did not interfere with Ramirez-Orozco's ability to file her the initial charge, two amended charges, and multiple complaints with other government agencies without obtaining clearance from Respondent. (T 112-17; GX 1(a), 1(c), 1(e)) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

15. To the ALJ's finding that the Government Investigation policy puts employees at risk for intimidation, coercion, and could make them "reluctant to give statements to NLRB investigators at all." (ALJD 18:24, 34-35; 19:13-19) Grounds for Exception: There is no evidence that any employee has been subject to intimation or coercion or has been reluctant to give

statements on their own behalf as a result of the policy. Nothing in the policy interfered with the three Hotel employees cooperating with Region 28's investigation and providing affidavits without obtaining clearance from Respondent. (T 47, 98, 129). Similarly, the policy did not interfere with Ramirez-Orozco's ability to file her the initial charge, two amended charges, and multiple complaints with other government agencies without obtaining clearance from Respondent. (T 112-17; GX 1(a), 1(c), 1(e)) The evidence also indicates that employees are sufficiently informed of their legal rights, including their rights under the National Labor Relations Act, because Respondent posts notices of such rights by the employee timeclock. (T 125-28; RX 2-3)

16. To the ALJ's finding that Respondent's justification for the Government Investigation policy does not outweigh the adverse impact on employee rights. (ALJD 19:21-23) Grounds for Exception: The Respondent's justifications for the policy, which included removing pressure from employees, protecting employee and guest information, protecting employee and guest privacy, ensuring Respondent's compliance with audits and other legal requirements, and providing a procedure to navigate complex legal issues, such as immigration far outweigh any potential adverse impact the policy may have on Section 7 rights. (T 173-76) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

17. To the ALJ's finding that by maintaining the Government Investigation policy has a "severe infringement" on Section 7 rights and that "requiring employees to get clearance from the Company before answering requests from the police, Internal Revenue Service, or other regulatory authorities, Respondent has violated Section 8(a)(1) of the Act." (ALJD 18:21; 19:35-37) Grounds for Exception: Johnson testified without contradiction or rebuttal that the policy does not "apply to employees who make a claim against the company, or who cooperate on their own in providing information to the government." (ALJD 10:5-7; T 173) Thus, there is no impact on

Section 7 rights. Furthermore, the justifications provided by Respondent for maintaining the policy also outweigh any potential adverse impact on Section 7 rights. (T 173-76) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

18. To the ALJ's failure to accept Respondent's arguments and business justifications for its Government Investigation policy. (ALJD 8-9, 19-21) Grounds for Exception: The following evidence and legal arguments were not referenced in the ALJ's Decision: that all legally required government posters are posted near the timeclock (RX 2); Respondent's legitimate need to reply to requests made by government agencies to Respondent (T 174-76); the various examples of state and federal law conflicts (RB 39-41); and that every state and many government agencies, including the NLRB, require protections for personally identifiable information (RB 33-35).

19. To the ALJ's finding that the Information Protection policy "when reasonably interpreted in context with other rules in the Code of Conduct interferes with the exercise of employee Section 7 rights" including the right to share information "amongst themselves, and with third parties, including labor organizations and worker advocacy groups." (ALJD 20:21-22, 42-43; 21:8-10) Grounds for Exception: Johnson testified without contradiction or rebuttal that the Information Protection policy does not prevent an employee from giving out his/her own information or information about other employees that is properly obtained from the other employees. (T 167-68, 170-71) Nothing in the policy interfered with the three Hotel employees' ability to share their own information with Somos un Pueblo Unido and to form a workers committee "to improve working conditions" with Somos. (T 73; GX 6, p. 2) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

20. To the ALJ's finding that the Information Protection policy deems employee names, addresses, telephone numbers, and email addresses as "confidential" and there is no

exception for information employees learn “during the normal course of their work and association with coworkers.” (ALJD 20:37-39) Grounds for Exception: Johnson testified without contradiction or rebuttal that only information an employee obtains from Respondent’s databases—not employee information that is his/her own or is properly obtained from other employees—is covered by the Information Protection policy. (T 167-68, 170-71) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

21. To the ALJ’s finding there is no explanation in the text of the Information Protection policy that says the policy does not apply to Section 7 rights but is instead meant to protect employee safety. (ALJD 21:1-5) Grounds for Exception: Johnson testified without contradiction or rebuttal that the policy protects employee safety in situations such as domestic violence. (T 170) There is no requirement that Respondent’s justifications for the policy be in the policy’s text in order for the justifications to be given weight. Johnson also testified that the policy refers only to the Respondent’s information, such as its databases. (T 167-68, 170-71)

22. To the ALJ’s finding that Respondent reads the phrase “our Company” out of context and that the Information Protection policy is not “explicitly limited to company non-public information contained in Respondent’s databases.” (ALJD 21:6-8) Grounds for Exception: The plain language of the policy prohibits employees from revealing “*our Company’s non-public information.*” (GX 3, p. 3) (emphasis added) Johnson testified without contradiction or rebuttal that only information an employee obtains from Respondent’s databases—not employee information that is his/her own or is properly obtained from other employees—is covered by the Information Protection policy. (T 167-68, 170-71) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

23. To the ALJ's finding that "Respondent can accomplish all of its presumed justifications with a more narrowly tailored rule that does not interfere with employee protected activity, including the right to share the names and contact information of their coworkers with a union." (ALJD 21:20-23) Grounds for Exception: Johnson testified without contradiction or rebuttal that she does not know of any employee being disciplined under the policy. (T 172) There is no evidence that the policy, as written, interferes with employee protected activity. There is also no requirement that employer policies must be as narrowly tailored as possible. *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

24. To the ALJ's finding that the Information Protection policy's impact on employees' Section 7 rights is "significant" and is not outweighed by Respondent's legitimate justifications and, therefore, Respondent violated Section 8(a)(1) of the Act by maintaining its Information Protection policy that deems employee names, addresses, telephone numbers, and email addresses of current and former employees "confidential." (ALJD 21:12, 18-19, 26-28) Grounds for Exception: There is no evidence that a "reasonable interpretation" of the policy based on the perspective of a "reasonable employee" would result in a significant impact on Section 7 rights. The three employees present at the August 30, 2017 meeting were not deterred from sharing their own information with Somos un Pueblo Unido. (T 73) Furthermore, the justifications provided by Respondent for maintaining the policy, such as preventing unauthorized access to databases, unauthorized sharing of confidential information with competitors, and guest and employee safety concerns, also outweigh any potential adverse impact on Section 7 rights. (T 170-171) *See also* the facts and law cited by Respondent in its Brief in Support of Exceptions.

25. To the ALJ's failure to accept Respondent's arguments and business justifications for its Information Protection policy. (ALJD 8-9, 19-21) Grounds for Exception: The following

evidence and legal arguments were not referenced in the ALJ's Decision: the policy applies to guest, vendor, and other third-party information (T 164; GX 3, p. 3); the policy prohibits human resources, payroll, and management personnel from downloading and sharing PII with unauthorized persons, such as competitors (T170-71); the surrounding context of the challenged phrases in the Information Protection policy (GX 3, p. 3); that all legally required government posters are posted near the timeclock (RX 2); the Act does not protect employees who divulge information their employer may lawfully conceal (RB 32); and that the rule does not explicitly prohibit disclosure of wages, hours, working conditions, or other terms and conditions of employment (RB 30-31).

26. To the ALJ's conclusions of law, that Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad and discriminatory rule in its Business Code of Conduct requiring employees to keep confidential the names, addresses, telephone numbers, and email addresses of their coworkers or former coworkers. (ALJD 21:35-38) Grounds for Exception: The evidence cited in Exception Nos. 19-25, *supra*, and the evidence and applicable law cited in Respondent's Brief in Support of Exceptions, show that Respondent did not violate Section 8(a)(1) of the Act.

27. To the ALJ's conclusions of law, that Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad and discriminatory rule in its Business Code of Conduct requiring employees to receive clearance before answering requests from the police, Internal Revenue Service, or other regulatory authorities. (ALJD 21:40-43) Grounds for Exception: The evidence cited in Exception Nos. 10-18, *supra*, and the evidence and applicable law cited in Respondent's Brief in Support of Exceptions, show that Respondent did not violate Section 8(a)(1) of the Act.

28. To the ALJ's proposed remedy, which states "Having found Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act." Grounds for Exception: Grounds for Exception: The evidence cited in Exception Nos. 1-27, *supra*, and the evidence and applicable law cited in Respondent's Brief in Support of Exceptions, show that Respondent did not engage in any unfair labor practices.

29. To the ALJ's proposed remedy, which requires "immediate rescission of the offending rules" as well as distribution of "inserts for its Business Code of Conduct stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing that will cover the unlawfully broad rules." (ALJD 22:8-18) Grounds for Exception: The evidence cited in Exception Nos. 1-28, *supra*, and the evidence and applicable law cited in Respondent's Brief in Support of Exceptions, show that Respondent did not engage in any unfair labor practices.

30. To the ALJ's proposed remedy of a "nationwide" posting remedy. (ALJD 22:20-26) Grounds for Exception: The evidence cited in Exception Nos. 1-29, *supra*, and the evidence and applicable law cited in Respondent's Brief in Support of Exceptions, show that Respondent did not engage in any unfair labor practices.

31. To the following portion of the ALJ's Proposed Order which states:

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended

#### ORDER

Respondent Interstate Management Company, LLC as agent for BRE Newton Hotels Property Owner, LLC d/b/a Residence Inn by Marriott Santa Fe All Suites Hotel, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from:
  - (a) Maintaining rules, including a provision in its Business Code of Conduct, requiring employees to keep confidential the names, addresses, telephone numbers, and email addresses of their coworkers or former coworkers.
  - (b) Maintaining rules, including a provision in its Business Code of Conduct, requiring employees to receive clearance from the company before answering requests from the police, Internal Revenue Service, or other regulatory authority.
  - (c) In any like or related manner, interfering with restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
  - (a) Rescind the rules requiring employees to keep confidential the names, addresses, telephone numbers, and email addresses of their coworkers or former coworkers.

- (b) Rescind the rules requiring employees to receive clearance from the company before answering requests from the police, Internal Revenue Service, or other regulatory authority.
- (c) Furnish employees with inserts for the current Business Code of Conduct that (1) advise them that the unlawful rules have been rescinded or (2) provide a lawfully worded rules on adhesive backing that will cover the unlawful rules; or publish and distribute to employees a revised policy that (1) does not contain the unlawful rules or (2) provides lawfully worded rules. To the extent that these rules, or any characterizations or summaries of the same, are also found on the Respondent's intranet portal, revise that content so that it (1) does not contain the unlawful rules, or (2) provide lawfully worded rules.
- (d) Within 14 days after service by the Region, post (in both English and Spanish) at all of its facilities nationwide, including its Santa Fe, New Mexico facility, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other

material. If the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facilities any time since March 22, 2017.

- (e) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with this order.

Grounds for Exception: The Proposed Order is not appropriate in this case. The evidence cited in Exception Nos. 1-30, *supra*, and the evidence and applicable law cited in Respondent's Brief in Support of Exceptions, clearly establish that the Respondent did not violate the Act.

32. To the ALJ's proposed requirement that a Notice containing the following language be posted:

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose a representative to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

**WE WILL NOT** maintain work rules, including rules in our Business Code of Conduct, requiring employees to keep confidential the names, addresses, telephone numbers, and email addresses of their coworkers or former coworkers.

**WE WILL NOT** maintain work rules, including rules in our Business Code of Conduct, requiring that employees receive clearance before answering requests from the police, Internal Revenue Service, or other regulatory authority.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

**WE WILL** rescind the portions of our Business Code of Conduct requiring employees to keep confidential the names, addresses, telephone numbers, and email addresses of their coworkers or former coworkers.

**WE WILL** rescind the portions of our Business Code of Conduct requiring employees to receive clearance before answering requests from the police, Internal Revenue Service, or other regulatory authority.

**WE WILL** furnish you with inserts for the Business Code of Conduct that (1) advise you that the unlawful rules have been rescinded, or (2) provide lawfully-worded rules on adhesive backing that will cover the unlawful rules; or **WE WILL** publish and distribute to all current employees nationwide a revised Business Code of Conduct that (1) do not contain the unlawful rules, or (2) provide lawfully-worded rules.

Grounds for Exception: This proposed Notice is not appropriate in this case. The evidence cited in Exception Nos. 1-31, *supra*, and the evidence and applicable law cited in Respondent's Brief

in Support of Exceptions, clearly establish that the Respondent did not violate Sections 8(a)(1) of the Act.

Dated: October 9, 2018

Respectfully submitted,

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