



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 29  
TWO METRO TECH CENTER STE 5100  
FL 5  
BROOKLYN, NY 11201-3838

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (718)330-7713  
Fax: (718)330-7579

June 3, 2019

Hon. Kenneth W. Chu  
Associate Chief Administrative Law Judge  
National Labor Relations Board  
26 Federal Plaza, 17<sup>th</sup> Floor  
New York, NY 10278

Re: Remington Lodging & Hospitality, LLC  
Case No. 29-CA-093850, et al.

Dear Judge Chu:

Counsel for the General Counsel and Charging Party in this matter, Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades, hereby oppose Respondent Remington Lodging & Hospitality, LLC's request to postpone the Compliance hearing in the above-captioned case scheduled to begin June 11, 2019.

Respondent has not established good cause for the postponement it seeks. Respondent's primary basis for seeking this postponement, a mere ten days before the opening of the hearing in this case, is the pendency of Respondent's Motion for Special Permission to Appeal ("Special Appeal") the Order of Administrative Law Judge Benjamin W. Green striking Respondent's affirmative defense regarding the immigration status of the discriminatees in this case. The pending Special Appeal, however, does not warrant further delay of the hearing. The National Labor Relations Board ("Board") Division of Judges Bench Book, Section 10-600 makes clear that, "A judge is not required to grant a recess in the hearing pending a special appeal and may continue with and close the hearing without waiting for the Board to rule. See, e.g., *Custom Excavating, Inc.*, 228 NLRB 285, 286 (1977)." Section 10-600 of the Bench Book goes on to suggest that a postponement in order to permit a Board ruling on a party's interlocutory appeal is appropriate only where "the judge has a genuine doubt about the ruling."

There is no reason for Judge Green or Your Honor to doubt the propriety of Judge Green's Order striking Respondent's unfounded immigration-related affirmative defense. The Order is well-grounded in long-established Board law that prohibits a respondent from abusing the Board's Compliance proceedings to engage in a coercive and intimidating "fishing expedition" into the immigration histories of employees. See *Flaum Appetizing Corp.*, 357 NLRB 2006, 2009 (2011). The Board recognizes that "formal inquiry into [employees'] immigration status and facts arguably touching on it is intimidating and chills the exercise of statutory rights," and for that reason, the Board requires a respondent to plead a "concrete" factual basis for questioning employees' immigration status that goes beyond mere "theoretical argument" or speculation. *Flaum*, 357 NLRB at 2012. Judge Green's Order is firmly rooted in this and other Board precedents establishing that a respondent cannot launch an inquiry into employees' immigration histories based on the type of unsubstantiated, theoretical and

speculative premises that Respondent has asserted in support of its affirmative defense in this case. It is extremely unlikely that the Board will reverse its holding in *Flaum* and permit Respondent in this case to open inquiries concerning the immigration status of the discriminatees without having pled a specific, “concrete” basis for doing so. Therefore, there should be little doubt about the Board’s ultimate dismissal of Respondent’s pending Special Appeal, and Your Honor, in accordance with the Bench Book, should not postpone the hearing in this matter simply to allow time for the Board to dispose of Respondent’s baseless Special Appeal.

Even if Your Honor believes it is appropriate to obtain the Board’s ruling on Respondent’s Special Appeal before the record in this case closes, it is nevertheless unnecessary to postpone the hearing, as requested by Respondent. Respondent’s Special Appeal identifies only 21 discriminatees whom Respondent believes it has a basis to question regarding their immigration status. Meanwhile, there are a total of 53 discriminatees named in the Compliance Specification in this case. There is no reason why Respondent cannot proceed with its examination of the 30-plus discriminatees for whom it concedes the immigration issue is not a factor, while we await the Board’s ruling on the Special Appeal concerning the other 21 individuals. Respondent’s request to postpone the hearing based on its pending Special Appeal is thus entirely unnecessary and unwarranted.

In its Motion to Postpone Hearing, Respondent claims that delaying the hearing will “avoid prejudice.” However, Respondent has made no such showing, as its Motion to Postpone fails to articulate who will be prejudiced by preserving the June 11 hearing date, or what that prejudice might be. To the contrary, delaying the hearing for an entire month, as requested by Respondent, would prejudice the numerous discriminatees in this case, who have been waiting nearly seven years for the remedy for Respondent’s violation of their rights under the Act. A month-long delay will also severely prejudice Counsel for the General Counsel. The undersigned Counsel for the General Counsel is expecting the birth of his first child in mid-to-late July 2019 and will be on paternity leave from approximately July 24, 2019 until September 20, 2019. Counsel has spent months preparing for this case, interviewing discriminatees and mastering the varied and complex issues presented in this litigation. Postponing the hearing to July 11, 2019 would almost certainly cause yet another delay of the hearing until after Mr. Jackson returns to work from paternity leave. In light of the extensive time and resources that Mr. Jackson committed to preparing for this litigation, along with the trial schedules of the Region’s other attorneys, the Region is unable to assign another attorney to substitute for Mr. Jackson.

Furthermore, it is important to highlight that this hearing has been delayed far too long already. The initial Compliance Specification issued on June 1, 2018 – over one year ago. The hearing was previously delayed for months while the Board considered and ruled upon a General Counsel Motion for Partial Summary Judgment. There is no need for still another extensive delay while Respondent’s Special Appeal makes its way through the Board’s overburdened docket.

Respondent asserts that another postponement is necessary to “allow adequate time to prepare for a hearing which promises to be extensive.” The notion is preposterous, considering that Respondent has had *more than a full year* to prepare for this litigation. Respondent appears

to be seeking this latest delay simply because it is ill-prepared to proceed with the hearing as scheduled. Your Honor should not reward such complacency.

Respondent further argues that a postponement would help facilitate a full settlement of the case. Again, the contrary is true. It is the impending nature of the hearing that has brought the Parties to the negotiating table in the first place. The Parties are, as Respondent states, “engaged in productive settlement negotiations” precisely because the immediacy of the hearing has compelled the Parties to focus on a pre-trial resolution. Postponing the hearing will almost certainly diminish the urgency with which the Parties are working to reach a settlement. Moreover, just last week, the Parties mutually agreed to a one-week postponement of the hearing to facilitate settlement, yet Respondent now seeks an additional month of delay on top of that. Respondent should not be given more time for settlement beyond what the Parties had already agreed.

For the foregoing reasons, the General Counsel and the Charging Party respectfully request that Your Honor deny Respondent’s Motion to Postpone Hearing, and instead open the hearing in this matter on June 11, 2019 as scheduled.

Respectfully Submitted,

*/s/ Matthew A. Jackson*

Matthew A. Jackson  
Counsel for the General Counsel