UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 98

and **Case 04-CC-223346**

SHREE SAI SIDDHI SPRUCE, LLC, D/B/A FAIRFIELD INN & SUITES BY MARRIOTT

COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S CROSS-EXCEPTIONS TO THE CHIEF ADMINISTRATIVE LAW JUDGE'S DECISION

Respectfully submitted,

Dated: September 9, 2019

LEA F. ALVO-SADIKY
Counsel for the General Counsel
National Labor Relations Board
Fourth Region
The Wanamaker Building
100 Penn Square East, Suite 403
Philadelphia, Pennsylvania 19107

TABLE OF CONTENTS

TABLE OF CASES

Statute

I. INTRODUCTION

Counsel for the General Counsel, pursuant to Section 102.46(d) of Board's Rules and Regulations, respectfully files this answering brief opposing the cross-exceptions filed by Respondent International Brotherhood of Electrical Workers, Local 98 (Respondent).

Chief Administrative Law Judge Robert A. Giannasi issued his decision in this case on May 28, 2019. There he correctly found that the use of a bullhorn by Respondent on June 29, 2018, constituted unlawful secondary coercion against Shree Sai Siddhi Spruce, LLC, d/b/a Fairfield Inn & Suites by Marriott (Fairfield Inn or the Hotel) and Libertine Restaurant (Libertine or the Restaurant) in violation of Section 8(b)(4)(ii)(B) of the Act. (ALJD 11:21-22)[1] The record evidence shows that the Judge correctly found that Respondent's confrontational and disruptive bullhorn activity crossed the line to unlawful secondary coercion. On August 20, 2019, Respondent filed cross-exceptions to the Judge's Decision. This brief addresses assertions Respondent made in its brief in support of its cross-exceptions.

II. STATEMENT OF FACTS

A. Background

Fairfield Inn is located at the corner of 13th and Spruce Streets in Center City, Philadelphia, Pennsylvania. The Hotel, which is in a historic building, is 12 stories tall with 119 guest rooms. The Hotel opened on June 15, 2018[2] after being closed for a two or three-year period of renovation supervised by Wankawala Organization, LLC (Wankawala), a property

[1] Throughout this brief, abbreviated references are employed as follows: "ALJD" followed by page and line numbers to designate the ALJ's Decision; "T" followed by page number to designate Transcript pages; "GCX" followed by exhibit number to designate General Counsel's Exhibits; and "RX" followed by exhibit number to designate Respondent's Exhibits.

[2] All dates are in 2018 unless otherwise indicated.

management company that owns and manages hotels. During the renovation, the electrical work was done by Tri-M, a non-union electrical contractor. Respondent engaged in lawful primary area standards conduct while Tri-M was at the location. In December 2017, Respondent ceased its area standards conduct at the property against Tri-M. By May 2018, the renovation was complete and Tri-M was no longer at the property. (ALJD 2:39-42, 3:1-5; T. 7, 25)

Fairfield Inn is located in a mixed-use area, with both residential and commercial activity. The entrance to the Hotel is roughly in the middle of 13th Street and there is a bike lane in front of it. Libertine, a tenant of the Hotel with a separate outside entrance between the Hotel's entrance and the corner of 13th Street, occupies part of the ground floor of the Hotel. Libertine opens to the general public at 4:00 p.m. or 5:00 p.m. for dinner. Weather permitting, Libertine can seat up to 40 patrons at tables and chairs set up outside on the sidewalk alongside the Restaurant on 13th Street pursuant to a permit from the Streets Department of Philadelphia. (ALJD 2:25-38; T. 66, 78; GCX-6; GCX-11(a))

B. June 26-28, 2019

For three days, on June 26, 27 and 28, 2018, Respondent posted large inflatable rats near the entrances to the Fairfield Inn and Libertine to publicize its dispute that the non-union Tri-M had been used during the renovation.[3] Pedestrians, guests, employees, and contractors who passed by the Hotel and Restaurant or entered or exited the Hotel between the hours of 8:00 a.m. and 2:00 p.m. passed by the inflatable rats. During those three days, Respondent's agents also handed out a flyer on 13th Street. (ALJD 3:5-11) The flyer read:

[3] Respondent's conduct during those three days is the subject of exceptions filed previously by General Counsel and will not be discussed here. A full description of the conduct that occurred during those three days is set forth in General Counsel's Brief in Support of Exceptions to the Chief Administrative Law Judge's Decision.

YOU CAN'T PUT LIPSTICK ON A PIG

The Wankawala Organization would like you to believe that by renovating this property at 261 S. 13th Street, Fairfield Inn and Suites by Marriott, things are going to change. **Don't let the fresh paint fool you**!

These are the same people who operated this property as the "Parker Spruce Hotel" which was a well-known hourly/ daily rental hotel, with a track record of being a menace to this community.

These blood suckers have continued the same **piggish** behavior by being cited several times for not having permits and had many safety violations during their "renovation". (Really?)

PIGS WILL ALWAYS BE PIGS!!!

These greedy pigs hired contractors at DISCOUNTED rates compared to the fair wage and benefit package recognized in this area. Will they pass that savings on to you, the consumer ... *NOT LIKELY!*

DO NOT BE A FACILITATOR TO THE VIOLATOR!!!

Please contact owner Mihir Wankawala @215-454-6508 to tell him that you won't support his violation of the area wages and standards.

This message is intended for the general public. Please don't stop work, deliveries, or litter. Distributed by IBEW Local 98 (ALJD 3:17-38; GCX-2)

C. Friday, June 29, 2018, Respondent Brings A Bullhorn

On Friday, June 29, Respondent changed its tactics. Instead of arriving in the morning, with inflatable rats, Respondent's Organizer and Business Representative John Donohoe[4] and two other agents arrived around 5:00 p.m. in the evening with A-frame signs that stated "Do Not Buy Here."[5] (ALJD 10:33-35, 10:41, 11:1-2; T. 53, 65; GCX-8(a)-(b); GCX 10; GCX-11) It was a beautiful evening, and two to three customers were sitting at an outdoor table adjacent to

[4] Pursuant to Respondent's Cross-Exception No. 7, General Counsel has corrected the spelling of the name of Respondent's agent Donohoe.

[5] As previously noted in General Counsel's Exception No. 9, the Judge mistakenly found that Donohoe was alone. However, both testimony and Respondent's sign-in sheet for that day, which erroneously listed the day as June 30, show that there were two other agents there as well. (ALJD 10:33-34; T. 60-61, 65; GCX-11) This mistake does not affect the Judge's reasoning.

the Restaurant enjoying cocktails.[6] There were also several customers inside the Restaurant at the bar and a couple of people sitting in the dining room area. All of the Restaurant's windows in the front and on the Spruce Street side were open that evening. (ALJD 11:2-5; T. 60, 61, 86)

While Respondent's agents again handed out the flyer on the corner of 13th and Spruce Streets, Donohoe had a portable bullhorn with a microphone that he used at the highest possible volume. (T. 53-54, 60-61) For three hours, Donohoe proceeded to walk up and down the entire perimeter of the Hotel and Restaurant on 13th Street in the street and on the sidewalk loudly asking people to take the flyer and reiterating its contents. (ALJD 10:35-38, 11:8-13; T. 56-57; 60, 85) Two short videos taken by Fairfield Inn General Manager James Lawrence-Evans show Donohoe walking on the sidewalk and on the bike lane in front of the Hotel using the bullhorn as he proclaims loudly: "Step up right here, got a handbill here, got a handbill here;" "You can't put lipstick on a pig;" "Pigs will always be pigs, don't be facilitator to this wage violator…tell Mahir Wankawala that you won't support his violations of the area wages and standards, shame on the Wankawala Organization." (GCX 9(a)-(b))[7]

After Donohoe started deploying the bullhorn, Derek Davis, Libertine's Director of Food and Beverage and Executive Chef, spoke to him. Davis said, "Listen, you know, we're just a neighborhood restaurant. … We have local employees. We're all paying local taxes." Donohoe responded, "You know, my beef isn't [with you], my beef's with Wankawala. And, you know, we're going to stay here as long as we want, and frankly, I don't give [a] flying fuck." Davis told

[6] In the evening, the Restaurant has a double row of outside tables in front of the Restaurant with an aisle between them. The video and pictures of that evening only show the tables placed near the curb for that evening, not those against the building where these patrons were sitting. (ALJD 10:37-41; T. 55, 59, 60) Respondent is correct in its Cross-Exception No. 1 that the record does not support the Judge's factual finding that these outside patrons left shortly after Donohoe started using the bullhorn. (ALJD 11:4; T. 60, 86) The record also shows that the inside patrons at the bar left shortly after the bullhorn started and that no new patrons entered Libertine during that time. (T. 88)

[7] The videos can be seen by accessing the link on the exhibit, GCX-9.

him that Respondent was affecting his livelihood. Donohoe told him that Respondent had business dealings with Wankawala and Wankawala decided to go elsewhere and brought in workers from New York. (T. 87, 92-93)

The sound of the bullhorn could be heard not only outside but throughout the Restaurant and in the Hotel. Davis testified that normally it is really difficult for people to hear each other in the Restaurant's kitchen because the exhaust system is very loud, so those in the kitchen have to speak loudly and ask each other to repeat what they have said when they are communicating with each other. But on that night, when he was in the kitchen, 45 feet from the entrance, he could clearly hear the words of the bullhorn. (ALJD 11:13-15; T. 85) For the three hours that Donohoe used the bullhorn, despite the fact that it was Friday evening, the second busiest day of the week for the Restaurant, no customers entered the Restaurant and the few customers at the bar soon left. (T. 88) Meanwhile Lawrence-Evans received complaints from five or six Hotel guests, who were pretty upset, about the noise and wanting to know what the Hotel could do about it. A few of those guests wanted to move their rooms. The Hotel moved those guests to other rooms. The Hotel gave other guests who complained about the noise free food or drinks at the Restaurant or discounted their stay to compensate for the inconvenience. (ALJD 11:15-17; T. 61-62)

Finally, around 8:00 p.m., Respondent's agents left. (ALJD 11:6; T. 57, 62)

III. RESPONDENT'S EXCEPTIONS

Respondent filed seven cross-exceptions to the Judge's decision. The first two of those cross-exceptions argue that the Judge made factual conclusions that were incorrect concerning Respondent's June 29 conduct. Of these two exceptions, General Counsel does not dispute

cross-exception 1 but does dispute cross-exception 2.[8] Cross-exceptions 3 through 6 essentially argue that Judge incorrectly concluded that Respondent's June 29 conduct was coercive and violated Section 8(b)(4)(ii)(B). The Board should reject these cross-exceptions and affirm the Judge's findings and conclusions concerning Respondent's June 29 conduct. Respondent's cross-exception 7 concerns the misspelling of Donohoe's name and is not contested.

III. ARGUMENT

A. The Judge Correctly Found that Respondent Used a Bullhorn in an Excessively Loud Manner and that it Disrupted the Operations of the Hotel and Restaurant (Cross-Exceptions 2 and 3)

Contrary to Respondent, there is sufficient evidence in the record to support the Judge's finding that guests and patrons of Fairfield Inn and Libertine found the noise from the bullhorn deployed by Respondent to be excessively loud. As correctly found by the Judge, on June 29, 2018, from 5:00 p.m. to 8:00 p.m., Donohoe broadcast Respondent's secondary message to the public using a bullhorn set an extremely loud level while walking back and forth in front of the Hotel and Restaurant. The Judge based his finding on his viewing of the videos of Donohoe's conduct and on the uncontradicted testimony evidence in the record.[9] The videos show how loud Donohoe set the bullhorn's volume. While they show only snippets of Donohue's deployment of the bullhorn, it is undisputed that Donohoe engaged in this conduct for three hours. The Judge also credited Chef Davis that Donohoe's words amplified by the bullhorn could be heard well inside the Restaurant. As Davis noted, normally in the kitchen, which was about 45 feet away

[8] Cross-Exception No. 1 asserts that the record does not support the Judge's factual finding that outside patrons left shortly after Donohoe started using the bullhorn. (ALJD 11:4; T. 60, 86) Cross-Exception 2 asserts that the Judge's factual finding that "hotel guests found the sound excessively loud" is unsupported by the record.

[9] Respondent did not put on any witnesses. Nor did it cross examine either witness concerning the noise of the bullhorn.

from the Restaurant's entrance, it was hard to hear people speaking in the kitchen due to the loud exhaust system. Nonetheless, even above the usual noise in the kitchen, Davis could clearly hear what Donohoe was saying because of the volume of the bullhorn. The Judge further credited Lawrence-Evans that five to six Fairfield Inn guests were "pretty upset" about the noise and "wanted to know what [the Hotel] could do about it," including a few who asked to have their rooms moved. (T. 61) Respondent's speculation in its Brief in Support of Cross Exceptions (p. 6) as to other reasons that may have motivated guests to complain to the Hotel are just that—speculative. The obvious reason for the guest complaints is that they were disturbed by the excessive noise. Thus, contrary to Respondent, the Judge correctly found that the noise level was excessively loud.

Moreover, the Judge correctly concluded that there was sufficient evidence to find that Respondent's three-hour deployment of the excessively loud bullhorn affected guests and patrons of both the neutral Hotel and Restaurant, prevented them from enjoying their hotel rooms and meals, and disrupted both the Hotel's and Restaurant's operations. And, unlike Respondent's conduct during the prior three days, Respondent's conduct specifically targeted a time when guests and patrons would most likely be around—5:00 p.m. on a Friday—the start of a summer weekend. Indeed, no patrons entered the Restaurant during the three hours that Donohoe broadcast Respondent's secondary message, despite this being a beautiful Friday evening and the second busiest day of the week. Those inside the Restaurant left shortly after the bullhorn started and the Hotel had to appease guests who were complaining about the noise. Clearly, guests and patrons of the Hotel and Restaurant were not peacefully enjoying their meals or their rooms. Clearly also, as a result, the Hotel and Restaurant's operations were disrupted because of Respondent's conduct. Based on the above, the Judge's conclusion should be upheld.

B. The ALJ Rightly Concluded that Respondent's Use of the Bullhorn Violated Section 8(b)(4)(ii)(B) (Cross-Exceptions 4 and 5)

Contrary to Respondent, the Judge correctly found that Respondent's use of the excessively loud bullhorn on June 29 was unlawfully coercive and violated Section 8(b)(4)(ii)(B).[10] Section 8(b)(4)(ii)(B) of the Act makes it "'an unfair labor practice for a labor organization … to threaten, coerce, or restrain' a person not party to a labor dispute 'where … an object thereof is … forcing or requiring [him] to … cease doing business with any other person.'" *NLRB v. Retail Clerks Local 1001 (Safeco Title Ins. Co.)*, 447 U.S. 607, 611 (1980) (quoting 29 U.S.C. § 158 (b)(4)(ii)(B)). The Board has found non-picketing conduct to be coercive "when the conduct directly caused, or could reasonably be expected to directly cause, disruption of the secondary's operations." *Carpenters Local 1506 (Eliason & Knuth of Arizona)*, 355 NLRB 797, 805 (2010).

In *Metropolitan Regional Council, Carpenters (Society Hill Towers Owners' Association.)*, 335 NLRB 814, 820-23 (2001), enfd., 50 F. App'x 88 (3d Cir. 2002), a union used a sound system at excessive volume levels to broadcast its area standards message about the use of a non-union contractor at the neutrals' residential apartment buildings and condominium complex. The Board found that the excessive volume of the message interfered with the use of private facilities by patrons and tenants of neutrals and therefore violated Section 8(b)(4)(ii)(B). In *Service Employees Local 87 (Trinity Maintenance*), 312 NLRB 715, 746, 750 (1993), enfd. 103 F.3d 139 (9th Cir. 1996), a union conducted mass gatherings and engaged in excessive noise

[10]Respondent admitted that its conduct had a secondary object with the undisputed aim of deterring customers from accessing the Hotel and Restaurant and forcing Wankawala to cease using Tri-M. (ALJD 1:11-14; T. 7-9) Thus, the issue is whether the conduct was unlawfully coercive under Section 8(b)(4)(ii)(B).

activity, including the use of bullhorns, directed at tenants of a building in an effort to get the neutral building owner to cease doing business with a non-union contractor. The Board found that the union's harassment of the neutral tenants violated Section 8(b)(4)(ii)(B). In *Service Employees Local 525* (*General Maintenance Co.*), 329 NLRB 638, 638, 680 (1999), a union was found to have engaged in various acts of coercion against neutral employers, including having its members hurl trash bags filled with shredded papers into the lobby of a commercial building. In finding a violation with regard to the trash bags incidents, it was noted that the union staged these incidents with "the certain knowledge that they would inconvenience tenants and others entitled to the peaceable use of the buildings." *Id*. In all these cases, non-picketing conduct was found unlawful under Section 8(b)(4)(ii)(B) because it involved some physical disruption of the neutral employer's premises. See also, *Mine Workers (New Beckley Mining)*, 304 NLRB 71, 71-72 (1991) enfd., 977 F.2d 1470 (D.C. Cir. 1992) (mass gathering of 50-140 people at motel housing strike replacements and agent who provided those replacements, with shouting and name-calling unlawfully coerced the neutral motel operator to cease renting rooms for the replacements).

Respondent asserts in its cross-exceptions that in finding a violation the Judge improperly failed to distinguish *Society Hill Towers Owners' Association* because the conduct in that case was much more extreme than the conduct by Respondent on June 29. Respondent points to, among other things, the fact that the union in that case exceeded noise levels permitted by the City of Philadelphia, for which there is no evidence here, and that the conduct continued for a much longer time than here. The Judge, in rejecting Respondent's attempt to distinguish *Society Hill Towers Owners' Association,* correctly noted that that case did not rely on the finding of noise violations found by the City of Philadelphia against the union to find unlawful

8(b)(4)(ii)(B) coercion, but rather on the impact of the excessive noise conduct on the neutrals and the people patronizing or using the neutral's facility or premises. ALJD 11:36-12:5, citing *Society Hill Towers Owners' Association,* at 826-829. While the June 29 bullhorn conduct that Respondent engaged in was not to the level or degree of that in *Society Hill Towers Owners' Association,* it clearly impacted guests and patrons of the Hotel and Restaurant, neutral employers, and interfered with the use of the Hotel and Restaurant by those guests and patrons. *Id*. at 828-829. See also *General Maintenance Co*., 329 NLRB at 679-680, 681-682; *Trinity Maintenance*, supra 312 NLRB at 746, 750; *New Beckley Mining*, 304 NLRB at 72-73. And while the bullhorn noise did not last as long as in *Society Hill Towers Owners' Association,* neither was the harassment momentary. As correctly found by the Judge, for a three-hour period during dinnertime hours of 5:00 p.m. to 8:00 p.m. on a summer Friday, Donohoe amplified Respondent's message at an excessive level. Furthermore, as noted in *Society Hill Towers Owners' Association*, the tenants and patrons in *Trinity Maintenance,* supra, and *General Maintenance Service*, supra, were harassed only momentarily and yet violations were found. *Id*. at 828.

Donohoe did not merely communicate Respondent's message by disseminating information in a non-confrontational manner. He chose to do so in a loud and disruptive manner that impacted patrons and guests of the Hotel and Restaurant. Respondent's conduct was intended to, and in fact did, enmesh the Hotel and Restaurant, neutral employers, directly into Respondent's labor dispute with Tri-M. Respondent intended to cause discomfort to the patrons and guests of the Hotel and Restaurant and it succeeded. Respondent's amplified bullhorn message could be heard clearly in the noisy kitchen and even more clearly in the Restaurant itself. As a result, no new guests entered the Restaurant during that time. Meanwhile, Hotel

guests and patrons, who had paid for the right to enjoy their room or meal in peace, complained about the noise, resulting in the Hotel changing some guests' rooms and compensating other guests. By Respondent's agent yelling through a bullhorn for three hours, Respondent's secondary conduct, which interfered with the peaceful use of the Hotel and Restaurant's facilities, went beyond persuasion to unlawful coercion. *Society Hill Towers Owners' Association*, supra, at 827-828; *General Maintenance Co.*, supra. See also, *Eliason & Knuth*, 355 NLRB at 806. Thus, consistent with longstanding Board law discussed above, the Judge correctly found that Respondent's excessively loud use of a bullhorn for three hours impacted the patrons and guests of Fairfield Inn and Libertine, was unlawfully coercive and violated Section 8(b)(4)(ii)(B).

C. The Judge's Findings and Conclusion that Respondent's Conduct Violated 8(b)(4)(ii)(B) Do Not Implicate First Amendment Concerns (Cross-Exception 6)

Respondent wrongly asserts that by finding a violation for its conduct on June 29, the Judge implicated First Amendment concerns and failed to apply the doctrine of constitutional avoidance. Respondent argues that the loudness of its bullhorn is immaterial because the message of its broadcast was essentially the same as that which had been printed on its accompanying handbill and is thereby protected by the First Amendment. However, just as in *Society Hill Towers Owners' Association*, that argument must fail.

In Section 8(b)(4), Congress sought to prohibit the "substantive evil" of the secondary boycott, and the Supreme Court has recognized that the First Amendment does not shield conduct that falls afoul of that prohibition. *International Bhd. of Elec. Workers, Local 501 v. NLRB*, 341 U.S. 694, 705 (1951) (secondary picketing, as well as phone calls emphasizing the purpose of the picketing, not protected by the First Amendment). See also *Safeco Title Ins. Co.*,

447 U.S. at 616 ("[a]s applied to picketing that predictably encourages consumers to boycott a secondary business, §8(b)(4)(ii)(B) imposes no impermissible restrictions upon constitutionally protected speech"). As the Supreme Court in *International Longshoremen's Association v. Allied Int'l*, 456 U.S. 212, 226-27 (1982), has observed:

> We have consistently rejected the claim that secondary picketing by labor unions in violation of § 8(b)(4) is protected activity under the First Amendment. … It would seem even clearer that conduct designed not to communicate but to coerce merits still less consideration under the First Amendment. The labor laws reflect a careful balancing of interests. … There are many ways in which a union and its individual members may express their [views] without infringing upon the rights of others. (Citations and footnotes omitted.)

See also, *United Brotherhood of Carpenters and Joiners of America v. Sperry*, 170 F.2d 863, 869 (10th Cir. 1948) (placement of neutral employer on blacklist, promulgation of the blacklist, and picketing the neutral employer unprotected by the First Amendment).

Respondent does not have an unfettered First Amendment right to make noise to support its secondary message. The use of noise in the circumstances here is not, like handbilling, protected speech under the U.S. Supreme Court's decision in *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council,* 485 U.S. 568, 579-80 (1988). In *DeBartolo,* a union's distribution of leaflets was deemed protected speech under the proviso of where there was no intimidation or confrontation accompanying handing out the leaflets and the only message conveyed was that contained in the words of the handbills. As the Board noted in *General Maintenance Service Co.*, supra, the union's conduct in *DeBartolo* was "merely expressive conduct" and not "a combination of conduct and communication more likely to be found coercive under the Act." *Id*. at fn. 4

Moreover, in other circumstances, the Supreme Court has upheld limitations on disruptive amplified noise notwithstanding free speech concerns. In *Kovacs v. Cooper*, 336 U.S. 77 (1949), a plurality of the Supreme Court upheld a municipal ordinance that banned "loud and raucous" amplified noises. In *Kovacs*, the Supreme Court sought to strike a balance between speakers' ability to "win the attention" of the "minds of willing listeners," while protecting the general rights of the population to live their lives, associate with each other, and conduct their business in peace. *Id*. at 88. The Court in *Kovacs* specifically noted that there is no significant curtailment of free speech by a prohibition of loud and raucous noises where there are other means of dissemination such as by handbills. *Id*. at 89. See also *Pine v. City of W. Palm Beach, FL*, 762 F.3d 1262, 1274-1275 (11th Cir. 2014); *Klein v. City of Laguna Beach*, 594 F. Supp. 2d 1142, 1145 (C.D. Cal. 2009).

Here, Respondent freely distributed handbills the entire four days that it was at the Fairfield Inn and Libertine location, and Respondent makes no argument that such distributions were "ineffective to communicate with those who would *voluntarily* entertain Respondent's message" or that it was unable to express its views without infringing on the rights of others. *Society Hill Towers Owners' Association*, supra, at 826. Respondent's amplified broadcasting did not simply seek to persuade the public about the justice of its cause by disseminating information in a non-confrontational manner such as a handbill, but rather sought to dissuade the public from patronizing the Fairfield Inn or Libertine through the use of excessively loud noise. By doing so, Respondent's conduct stepped outside the protection of *DeBartolo* and went beyond the lawful means of persuasion. To the extent that Respondent's use of a bullhorn can be considered to be speech, its use here is unlawful under the Act and not protected under the First Amendment because it was excessively loud and was used specifically to coerce in aid of an

unlawful purpose – a secondary boycott. *International Longshoremen's Association v. Allied Int'l*, supra. Thus, Respondent's First Amendment defense lacks merit, and the Judge correctly found that Respondent's excessively loud use of a bullhorn for three hours impacted the patrons and guests of Fairfield Inn and Libertine, was unlawfully coercive, and violated Section 8(b)(4)(ii)(B).

VI. CONCLUSION AND REMEDY

For the reasons set forth above, Counsel for the General Counsel respectfully urges the Board to find no merit to Respondent's exceptions and to affirm the Judge's findings and conclusions that Respondent violated Section 8(b)(4)(ii)(B) of the Act on June 29, 2019 when Respondent, with an object of forcing or requiring the Hotel, Libertines, and Wankawala, and other persons engaged in commerce, or in an industry affecting commerce, to cease doing business with Tri-M, used a bullhorn to broadcast excessively loud messages while handbilling in front of the Fairfield Inn and Libertine.

Respectfully submitted,

Dated: September 9, 2019

LEA F. ALVO-SADIKY
Counsel for the General Counsel
National Labor Relations Board
Fourth Region
The Wanamaker Building
100 Penn Square East, Suite 403
Philadelphia, Pennsylvania 19107
lea.alvo-sadiky@nlrb.gov

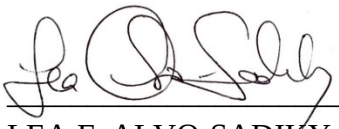
CERTIFICATE OF SERVICE

I hereby certify that copies of the **GENERAL COUNSEL'S ANSWERING BRIEF IN RESPONSE TO RESPONDENT'S CROSS-EXCEPTIONS TO THE CHIEF ADMINISTRATIVE LAW JUDGE'S DECISION** in Case 04-CC-223346 were served on the 9th day of September 2019, on the following persons by email:

Wally Zimolong, Esq.
Wally Zimolong LLC
P.O. Box 552
Villanova, PA 19085
wally@zimolonglaw.com

William T. Josem, Esq.
Cassie R. Ehrenberg, Esq.
Cleary, Josem & Trigiani, LLP
325 Chestnut Street, Suite 200
Philadelphia, PA 19106
wtjosem@cjtlaw.org
cehrenberg@cjtlaw.org

Respectfully submitted,



LEA F. ALVO-SADIKY
Counsel for the General Counsel
National Labor Relations Board
Fourth Region
The Wanamaker Building
100 Penn Square East, Suite 403
Philadelphia, Pennsylvania 19107
lea.alvo-sadiky@nlrb.gov