

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

UNITE HERE LOCAL 1

RESPONDENT

AND

HYATT REGENCY CHICAGO

CHARGING PARTY

Cases 13-CB-217959
13-CB-220319
13-CB-228165

**MOTION TO ACCEPT FILING OF EXCEPTIONS
AND BRIEF IN SUPPORT OF EXCEPTIONS**

Submitted by:

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Attorneys for UNITE HERE Local 1

Respondent UNITE HERE Local 1 hereby moves that the Board accept the filing of its Exceptions and Brief in Support of Exceptions in the above-captioned case.

The reason the Board should accept the two documents is that they were timely filed using the Board's E-File system, at 5:51 p.m. and 5:54 p.m. Pacific time, respectively, or 8:51 p.m. and 8:54 p.m. Eastern time, on October 24, 2019. *See* Declaration of David L. Barber, filed herewith, ¶¶ 2-7.

That the two documents were timely filed is demonstrated not just by the personal recollection of the attorney who filed them but also by confirmation pages and emails generated by the Board's E-File system. *See* Barber Declaration Exhibits C and D.

A letter dated October 25, 2019 from Leigh Reardon, associate executive secretary, incorrectly states that the documents were filed after midnight Eastern time on October 25.

Respondent does not know why the Reardon letter lists the wrong times and date of filing. *See* Barber Declaration ¶¶ 8-9. It may be that recent changes in the E-File system introduced some sort of software error.

Since the exceptions and brief were E-filed well before 11:59 p.m. Eastern on October 24, 2019, which is the date they were due (*see* Order Transferring Proceeding to the National Labor Relations Board in this case, dated September 26, 2019), they were timely filed and should be accepted for consideration by the Board.

Date: October 25, 2019

Respectfully submitted,
McCracken, Stemerma & Holsberry, LLP

/s/ David L. Barber
David L. Barber
Attorneys for UNITE HERE Local 1

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(HYATT REGENCY CHICAGO)**

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**Declaration of David L. Barber
in Support of Motion to Accept Filing of Exceptions
and Brief in Support of Exceptions**

I, David L. Barber, hereby declare:

1. I am an attorney at the firm of McCracken, Stemerman & Holsberry, LLC. I represent Respondent UNITE HERE Local 1 in the above-captioned case.
2. On Thursday, October 24, 2019, I filed two documents with the NLRB via the Board's E-File system: Respondent's Exceptions to ALJ Decision and Respondent's Brief in Support of Exceptions to ALJ Decision.
3. A true and correct copy of the Exceptions that I filed is attached hereto as **Exhibit A**. A true and correct copy of the Brief in Support of Exceptions that I filed is attached hereto as **Exhibit B**.
4. My office is located in San Francisco, California. I filed the Exceptions at 5:51 p.m. Pacific time, which is 8:51 p.m. Eastern time, on October 24. I filed the Brief in Support at

5:54 p.m. Pacific time, which is 8:54 p.m. Eastern time. I personally was standing at the desk of my assistant, Noorullah Baheej, and he and I together filed the two documents.

5. I know the filing occurred before 6 p.m. Pacific time simply based upon my own memory of the event. I left the office that day not long after 6 p.m., after having filed the two documents.

6. In addition, my assistant made true and correct PDF copies of the confirmation screens that were shown by the Board's E-File system after each document was filed, by selecting "Print" and printing the pages to PDF files. Those two confirmation documents show the filing times in Eastern time, specifically, 8:51 p.m. and 8:54 p.m. Eastern. True and correct copies of those two confirmation documents are attached hereto as **Exhibit C**.

7. In addition, I received email confirmation from the address "e-Service@service.nlr.gov" for each of the two filings, shortly after the filings were made. Those confirmation emails also list 8:51 p.m. Eastern and 8:54 p.m. Eastern on October 24 as the filing times for the two documents. True and correct copies of those two confirmation documents are attached hereto as **Exhibit D**.

8. To my surprise, on October 25 I received a rejection letter about the Exceptions and Brief in Support from Leigh Reardon, associate executive secretary. A true and correct copy of the letter is attached hereto as **Exhibit E**. The letter states that "Respondent's exceptions and brief in support were filed respectively at 12:51 a.m., and 12:54 a.m. (ET), on October 25, 2019." The times and date of filing stated in the letter are incorrect. As stated above and documented by the various proofs of filing, the exceptions and brief were filed well in advance of the deadline of 11:59 p.m. Eastern time on October 24.

9. I do not understand why the letter from the associate executive secretary lists the wrong times and date of filing. I am aware that the Board's E-File system was recently updated, and it may be that there is some sort of software error that has misinformed the Office of the Executive Secretary.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 25, 2019 in San Francisco, California.



David L. Barber

EXHIBIT A

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

UNITE HERE LOCAL 1

RESPONDENT

AND

HYATT REGENCY CHICAGO

CHARGING PARTY

Cases 13-CB-217959
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RESPONDENT'S EXCEPTIONS TO ALJ DECISION

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Pursuant to Section 102.46 of the Board’s Rules and Regulations, Respondent UNITE HERE Local 1 submits the following exceptions to the decision of the Administrative Law Judge:

1. The ALJ’s decision to impose an extraordinary remedy. ALJD 36:6-16.

Grounds for exception: The evidence did not demonstrate that an ordinary remedy—ordering Respondent to post and comply with a notice that required it to provide responses to Charging Party’s information requests—would be in any way inadequate to vindicate the Section 7 rights at issue. See Section 1 of the Argument in Respondent’s Brief in Support of Exceptions, filed herewith.

2. The ALJ’s decision to impose an extraordinary remedy requiring training for Respondent’s officials. ALJD 36:6-16.

Grounds for exception: There is no precedent for ordering a respondent’s officials and employees to undergo training in responding to information requests as a remedy for the kinds of violations found here, and the ALJ gave no reason to believe such training would be necessary. See Section 2 of the Argument in Respondent’s Brief in Support of Exceptions, filed herewith.

3. The ALJ’s decision to require Respondent’s organizers and representatives who are required to attend the training to acknowledge in writing “that he or she has attended the training and has been furnished with a copy of this settlement agreement, the notice to employees, and written instructions, understands them and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone, by action or inaction, any violation of this settlement agreement.” ALJD 37:31-37.

Grounds for exception: This personal pledge remedy is without precedent and is both unnecessary and humiliating. See Section 3 of the Argument in Respondent’s Brief in Support

of Exceptions, filed herewith.

4. The ALJ's inadequate justification for the imposition of an extraordinary remedy involving mandatory training for Respondent's officials.

Grounds for exception: The ALJ did not provide adequate justification from legal authority or record evidence for the extraordinary remedy. See Sections 1 through 3 of the Argument in Respondent's Brief in Support of Exceptions, filed herewith.

5. The ALJ's mistaken references to a "settlement agreement" rather than to her own order. ALJD 37:10-37.

Grounds for exception: The ALJ's training order refers to a "settlement agreement," but there is no settlement agreement in this case. See Section 4 of the Argument in Respondent's Brief in Support of Exceptions, filed herewith.

6. The ALJ's order that Respondent provide responses to information requests about grievances that have been completely resolved.

Grounds for exception: Hyatt's only valid reason for making the information requests at issue was to process the grievances, so when a grievance has been resolved, Hyatt's request about that grievance is no longer relevant. See Section 5 of the Argument in Respondent's Brief in Support of Exceptions, filed herewith.

Date: October 24, 2019

Respectfully submitted,

McCracken, Stemerman & Holsberry

/s/ David L. Barber

David L. Barber

Attorneys for UNITE HERE Local 1

**PROOF OF SERVICE
STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO**

I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled **RESPONDENT'S EXCEPTIONS TO ALJ DECISION** was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 24th day of October, 2019 as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 24, 2019 at San Francisco, California.

/s/Noorullah Baheej
Noorullah Baheej

EXHIBIT B

**RUNITED STATES OF AMERICA
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RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO ALJ DECISION

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INTRODUCTION

In this case, the Administrative Law Judge found that Respondent, UNITE HERE Local 1 (“Local 1” or “Union”) failed to respond adequately to a number of information requests made by Charging Party, Hyatt Regency Chicago (“Hyatt”) about grievances filed by the Union over various alleged contract violations.

Most of the failures to respond took the form of the Union responding to requests but inadvertently leaving out some fact or other that it possessed but overlooked in formulating the response. For example, the Union sometimes knew (because the grievant had filled in on the Grievance Intake Form) the date the grievant had discussed a complaint with management, but sometimes the Union neglected to pass on that information. Another type of failure found by the ALJ was that the Union asserted that the Grievance Intake Forms and other communications by grievants directly to the Union were confidential and privileged. On that issue, the ALJ found a violation of the Act because the Union should have engaged in accommodative bargaining about privilege and confidentiality issues. A third type of violation was similar: the Union asserted that it provided all the facts it possessed, and Hyatt demanded facts that the Union did not have. The ALJ found that the Union should have engaged in accommodative bargaining to determine whether and how the Union could obtain the information requested. The evidence showed that the Union’s failures to provide information were not a bad-faith refusal to bargain but rather were good-faith attempts to process grievances with Hyatt while maintaining the Union’s assertions of its rights.

After finding violations, the ALJ should have ordered the standard remedy in information-request cases: requiring the respondent to disclose the information that had not previously been provided. *See NTN Bower Corp.*, 356 NLRB 1072 (2011). Instead, the ALJ

went beyond a standard remedy to impose she called an “extraordinary remedy.” This remedy requires the Union to conduct two trainings for all personnel who handle Hyatt grievances, and requires each attendee to sign a pledge to adhere personally to the remedial order.

The ALJ’s extraordinary remedy is without precedent in NLRB case law, and its appropriateness is not supported by the facts or reasoning in the ALJ’s decision. The extraordinary remedy should be dropped from the order in this case.

The ALJ additionally erred in ordering the Union to respond to information requests about grievances that have been settled or otherwise resolved since the requests were made. Hyatt’s only valid reason for requesting the information was to resolve grievances, so where the grievance is now resolved, the request about that grievance is no longer relevant to the parties’ bargaining relationship. The ALJ’s order should be amended to require responses only to those information requests about open grievances.

STATEMENT OF FACTS

1. The bargaining relationship and grievance-handling process.

UNITE HERE Local 1 and Hyatt Regency Chicago (“Hyatt”) have a 40-year collective bargaining relationship. ALJD 3:12. Prior to about 2015, the parties had a well-established method of adjusting grievances, most of which was set forth in their CBA and some of which was customary.

Typically, bargaining-unit members file grievances by coming to the Union office and filling out a grievance intake form, which asks for basic information as well as a statement of the alleged grievance. Tr. 589:14-16; Union Ex. 1. The Union does not have enough staff to do an in-person interview at the time the grievance is filed. Tr. 593:10-595:14. Instead, the grievance form asks the grievant for details about the grievance. Tr. 802:8-803:11. In addition to the

grievance form, grievants sometimes but not always provide the Union with documents relevant to their grievances, such as work schedules or disciplinary notices. Tr. 595:21-596:11.

The Union then notifies the employer in writing that a grievance exists. The employer must respond in writing. According to the CBA, if the grievance is not resolved, it may be moved to a joint grievance board or to mediation. If it is still not resolved, it may be moved to arbitration. Certain timelines apply to each of these steps. GC Ex. 2a at 38-41.

In addition to the steps specified in the CBA, since at least 2004, and probably since long before then, Local 1 has had a practice of holding a “grievance meeting” about each grievance that it pursues with any of its hotel employers. Tr. 605:19-606:14. The grievance meeting is not a formal step in the collective-bargaining agreement, but it has nonetheless been the practice of Local 1 and its signatory hotel employers including Hyatt for decades.

The Union typically has its first face-to-face discussion with a grievant right before the grievance meeting. This is when the Union representative first gets to learn the details of the grievance allegations beyond what the grievant writes on the intake form. Tr. 814:7-815:1. Typically, the parties at least discuss settlement at grievance meetings and are often able to resolve grievances at that point.

The Union has never had enough staff to interview grievants when they come to the union office to file a grievance. Tr. 595:9-20; 700:2-11. Nor does the Union have enough resources to meet with grievants in between the filing of the grievance and the grievance meeting. Rachale Brumleve, the representative who has responsibility for the Hyatt, also covers other employers with thousands of bargaining-unit members. Tr. 610:4-10. She only has time to inform grievants of their upcoming grievance meeting, not to conduct in-depth interviews with grievants in the interim months between the filing of the grievance and the grievance meeting.

Tr. 610.

2. Hyatt's escalation of information requests in response to increased Union attempts to enforce contract.

All the information requests at issue in this case were made by Hyatt to the Union about grievances filed by the Union. The Union and Hyatt have had difficulties processing grievances since about 2015.

In about 2013, the Union began to place a greater priority on enforcing its contracts with the hotel employers in the Chicago area whose employees were represented by the Union. Tr. 586-87. As a result, the Union began filing more grievances. Tr. 712:15-18.

Hyatt Regency Chicago was among the hotels where Local 1 stepped up its enforcement of subcontracting and bargaining-unit-work provisions. Tr. 712:19-21. Two arbitration decisions about these issues were issued against Hyatt. Tr. 713. Rather than acquiesce to the awards, Hyatt appealed them and continued to engage in similar violations. Tr. 714.

Around the time of the issuance of those two awards, Hyatt began changing how it handled grievances. Hyatt began to make fewer times available for holding grievance meetings, which made it hard to schedule those meetings. Tr. 716:13-15. Hyatt attempted to limit the number of shop stewards who could attend grievance meetings, and at one point tried to bar them altogether from attending. Tr. 716:15-18. Hyatt told the Union that it would no longer participate in the joint grievance committee anymore. Tr. 716:19-25. At one point, Zach King, labor relations manager for Hyatt, ceased holding grievance meetings altogether because he was angry about a comment that a shop steward made at a grievance meeting. Tr. 717. King also stopped settling grievances at the grievance meeting, but rather responded to Union settlement proposals only after a meeting ended. Tr. 727. This slowed down the process of settling grievances.

At one point, in about 2015, the Union filed an unfair labor practice charge against Hyatt for failing to turn over information that the Union needed to complete its investigations of grievances. Tr. 730. King asked the Union to withdraw the charge, and the Union refused. Tr. 730-31. King responded by telling a Union representative, “well, you’re not going to like what comes next.” Tr. 731:23-25. Soon after King made this threat, Hyatt filed a ULP charge against Local 1 for failure to provide information.

Around the time of Hyatt’s retaliatory NLRB charge in 2015, Hyatt also began issuing lengthy information requests to the Union in response to the grievances being filed. Tr. 732:11-19. Some of these information requests are in evidence in this case. For example, GC Ex. 9c, at pages 13 and following, shows an incredibly detailed, discovery-type set of information requests made by the Employer in 2017. That set of requests was sent by the Employer in response to a Union email enclosing “a spreadsheet of all the violations contained in this grievance and all documentation that the Union has in its possession for each violation.” GC Ex. 9c at 21.

3. The Union becomes overwhelmed and makes mistakes in responding to Hyatt’s burdensome requests.

When Hyatt began its retaliatory practice of propounding onerous information requests in response to every grievance, the Union did not know how to respond to the sheer volume of requests. It did not have systems in place to provide the information that Hyatt was asking for. Tr. 733:7-19. Hyatt filed two sequential ULP charges against the Union for failure to respond to information requests.

4. Two settlements and compliance with those settlements.

The Union settled those two charges, and the Region determined that the Union complied with those settlements. Tr. 628. The first settlement was an informal settlement that did not include admission of wrongdoing. Er. Ex. 6.

The second settlement covered a number of grievances, including grievance number 20162235. Er. Ex. 5. After the settlement was reached, the Union searched its files and provided additional information, all the information it then possessed, about grievance number 20162235. Tr. 624:23-627:9. Despite the fact that the Region determined the Union had complied with that settlement agreement, the operative complaint in *this* case alleged, among other things, that the Union had not properly responded to information requests about grievance number 20162235. *See* Complaint VI (g) and GC Ex. 9c (the allegedly deficient response).

To deal with the extensive information requests that Hyatt began making with every grievance filed, the Union developed processes and procedures. It hired an additional staff person to respond to Hyatt's requests. Tr. 733:24-25. The Union established a policy that tried to balance several concerns: the Union's duty to provide information to the Employer, the Union's duty to represent employees, and the Union's significant staffing and resource constraints. Under this policy, the Union provides Hyatt with all information that it possesses about a grievance and provides any documentation that the grievant has provided with the grievance filing, such as schedules or discipline notices. Tr. 735:8-19.

In addition to hiring staff and establishing procedures, the Union has, since January 2019, implemented a computerized grievance module. Tr. 599:20-24. In addition, it was apparent from testimony offered at the hearing that the Union has continued to work with Hyatt to improve the efficiency of the grievance handling process, including making agreements about holding grievance meetings. The parties implemented a new CBA in late 2018, after the alleged violations in this case, that streamlines the grievance and arbitration process. GC Ex. 2b. All of the information requests in this case were made pursuant to the process in the prior CBA.

5. The failures to respond to information requests in the present case.

The failures to respond to information requests that the ALJ found in this case fell into two categories. First were inadvertent failures, in which the Union responded to most of a request but neglected to include some piece of information or other that it possessed. Second were instances where the Union asserted in good faith that it was not required to provide the information. It told the Employer that certain information or documents were privileged and confidential, or that it did not possess the information and that it would be burdensome to gather the information.

Typical of the inadvertent failures are the ALJ's findings with respect to the allegations in paragraph VI(i) of the complaint, regarding information requests about grievance 20180538. As with most of the information requests at issue, the Employer requested "all documentation relied upon in [the Union's] decision to file the ... grievance" including "all facts, photos, videos, documents, names, dates, times, locations and any other information pertaining to this grievance, including, but not limited to all notes taken by the Grievant, Shop Steward and Union Representative." GC Ex. 11c at 5. The Union responded by summarizing what it knew about the alleged violation—the information that was on the Grievance Intake Form. *Compare* GC Ex. 11c at 4 (Union response) to Union Ex. 12 (Union grievance file). However, the Union neglected to list the name of the employee who filed the grievance as a witness and neglected to hand over a photograph that had been turned in along with the grievance form. *See* Tr. 947-949 (Union contract representative does not know why photo not provided). The ALJ faulted the Union for not providing "the name of the witness on the intake form" and "a picture of the text message from a supervisor about the incident." ALJD 32:7-8.

In a similar vein, the ALJ found a violation with respect to the allegations in paragraph

VI(o) about grievance 20180794 because, although the Union did respond to the Employer's information requests, "the grievance intake form ... contained more information" than the Union provided—specifically, "the intake form listed the names of the employees who filed the grievance on behalf of the hostesses, and that there was a 'buy out for Thursday + Friday.'" ALJD 33:21-22. In failing to provide these bits of information, the Union's response was found to be deficient.

The instances in which the Union asserted in good faith that it was not required to provide the information requested fell into two categories. First, for every grievance, the Union asserted that it was withholding communications between the Union and grievant, such as the Grievance Intake Forms, because they were privileged and confidential. The Union asserted this position in almost every response to Hyatt's information requests—what the ALJ called the Union's "standard refusal." ALJD 6-7. The Union explained its view of why the intake forms were sensitive in this way:

It's really the first conversation that the member gets to have with the union about what's happening. We want to make sure they are free to express exactly what they want to express without fear of that being handed over to the employer.

Tr. 601:23-602:3. On this issue, the ALJ held that the Union should have sought "to bargain an accommodation to provide the information in a manner that protects its confidentiality interests." ALJD 37:21. The ALJ did not definitively reject the Union's claim that the documents were privileged and confidential, but rather found a violation in the fact that the Union had not sought to bargain about maintaining confidentiality. *See, e.g.*, ALJD 32:15-24.

Second, the Union asserted to the Employer that it did not have to provide information it did not possess. For example, regarding paragraph VI(r) of the complaint, the ALJ wrote:

Regarding the RFI filed on June 28, 2018, the evidence establishes that the grievance submitted to the Charging Party failed to include basic information

such as the type of discipline allegedly issued, who issued the discipline, any discussions between management and the employee about the discipline, name of the managers alleged to have taken pictures of the grievant, names of the management officials who have allegedly placed him under increased scrutiny, and any witnesses to the discipline or discussions between management and the employee. . . . I find that the Respondent failed to establish a valid reason for its refusal to produce the information.

ALJD 34:24-33. The evidence at the hearing established that the Union only had the information provided on the Grievance Intake Form, Union Ex. 23. *See* Tr. 970-972. That information did not include answers to many of the issues listed by the ALJ. Furthermore, since the Union’s general process is to conduct a follow-up interview with the grievant only around the time of the grievance meeting with the Employer, Tr. 736:8-19, and since no grievance meeting had been held about this grievance when the information request was made, the Union simply did not possess answers to the Employer’s questions when it responded to the request.

For this and for similar requests, the ALJ faulted the Union for not bargaining over an “accommodative process” about the information requests. ALJD 29:33. The ALJ did not find that the Union had an absolute duty to obtain information that the Employer requested but the Union did not have. Rather, the ALJ asserted that “[i]f the Respondent had engaged in the accommodative process as required by law, the parties may have discovered a solution allowing the Respondent to provide the requested information in a manner that was amenable to it.”

ALJD 29:32-34.

ARGUMENT

Respondent does not except to the finding of violations on the facts and evidence in the record. But the remedy ordered by the ALJ goes much too far. The evidence in this case supports only a standard remedy for failure to respond to information requests: an order that the information be provided and that a remedial notice be posted. Here, the ALJ imposes an

extraordinary remedy that is, as far as Respondent can tell, completely without precedent in Board case law: two training sessions for Union personnel who handle Hyatt grievances, culminating in the attendees signing personal pledges not to permit, by “action or inaction,” any failure to respond to Hyatt’s information requests. The ALJ imposes this extraordinary remedy with little discussion, no citations to supporting case law, and in the face of facts that show the violations here to have been either mistakes or good-faith assertions of privilege. The standard remedy will suffice here, and the extraordinary remedy should be eliminated. The ALJ’s remedy also errs in ordering the Union to respond to information requests about grievances that have, by now, been completely resolved, an order which is contrary to Board case law.

1. No extraordinary remedy is warranted in this case.

The standard remedy where the Board finds that a failure to disclose information was unlawful is to order that the information be provided. *See NTN Bower Corp.*, 356 NLRB 1072 (2011). The evidence here does not support any remedy beyond this standard remedy.

Non-standard remedies have been imposed in information-request cases where the respondent utterly refused to respond or even take seriously the information requests, coupled with a history of similarly egregious non-responsiveness. This was the situation in *Pan American Grain Co., Inc.*, 346 NLRB 193 (2005). There, the respondent employer “made no good-faith effort to respond to the information request,” and had committed prior violations, not just of Section 8(a)(5) of the Act, “but also of the Act as a whole.” *Id.* at 193. On that basis, the Board imposed an extraordinary remedy. Similarly, in *Postal Service*, 339 NLRB 1162 (2003), the respondent employer demonstrated a “pattern of misconduct” with respect to providing information at numerous facilities throughout an entire district, and the employer had taken no “affirmative steps to control the misconduct.” On that basis, the Board ordered an extraordinary

remedy. *Id.*

Here, the facts are quite different from cases where extraordinary remedies have been imposed. The failures to provide information were not severe, and the Union made good-faith efforts to respond to the requests. Local 1 has complied with prior settlement agreements about this issue. And Local 1 has continued to improve its own internal processes to respond to requests, suggesting that the standard remedy will be sufficient to ensure compliance.

A. Respondent's violations were not egregious, and Respondent made good-faith efforts to respond to the information requests at issue while preserving its privacy and confidentiality concerns.

As discussed above, the violations here were not severe. Unlike in *Pan American Grain Co.*, the responding party made good-faith efforts to provide the information that had been requested. To the extent the Union withheld information it possessed, it was either inadvertent or a good-faith attempt to preserve confidentiality. Inadvertent withholding occurred, for example, when the Union neglected to provide managers' and witnesses' names that were listed on the grievance intake form, ALJD 30:29-31, or when the grievant had written on the intake form the date he had discussed the issue with management but the Union did not pass on that bit of information. *See* GC Ex. 4(c); Union Ex. 4. The Union also withheld copies of the intake forms by making a clear and good-faith assertion of privilege to protect its private communications with its members. The ALJ did not find this claim of privilege to be entirely misplaced, but said the Union should have bargained with the Employer to attempt to accommodate concerns.

Since the violations that were found here were not egregious, an extraordinary remedy is not appropriate.

B. Respondent complied with prior settlement agreements involving earlier information requests from the same Charging Party.

Extraordinary remedies are appropriate when a party has a “proclivity” to violate the Act. *Hickmott Foods*, 242 NLRB 1357, 1357 (1979). Here, there is no such proclivity. The evidence shows that the Union has complied with two prior settlement agreements about information-request issues with Hyatt. The Region has reviewed the Union’s performance under those settlement agreements and found that it complied. Tr. 628:15-24; Union Ex. 2.

Since the Union fully complied with prior settlement agreements which directed it to provide information, there is no reason to think it will not comply with a standard remedial order in this case. An extraordinary remedy is not warranted.

C. Respondent has improved its internal processes to deal with the Employer’s increasingly invasive information requests.

Further reason to think that a standard remedial order will be sufficient in this case is provided by the Union’s efforts at improving its responses to Hyatt’s requests over time. The Union admitted that when Hyatt started making detailed, burdensome information requests about each grievance, in about 2015, the Union was not prepared to respond to them. Since then, the Union has made improvements: it has assigned additional administrative staff to Contract Enforcement to help with the increased paperwork generated by Hyatt’s information requests; it has implemented policies and procedures for responding; and it has instituted a computerized grievance-tracking module that centralizes its record-keeping.

Since the Union has demonstrated that it is improving its processes and procedures for responding to Hyatt’s requests, a standard remedy in this case will be sufficient to ensure that Hyatt receives the information it is entitled to.

2. The extraordinary remedy of holding two mandatory training sessions is not appropriate.

The extraordinary remedy that is ordered in the ALJ decision is not appropriate. The ordered remedy is for the Union to conduct two “mandatory in-person training sessions for all current organizers and representatives” who are responsible for information requests made by Hyatt. ALJD 36:8-16.

This remedy is not appropriate because it is without precedent; it would not likely result in greater future compliance than a simple, standard order; and the number of union staff involved is so small that two training sessions rather than one is excessive.

A. There is no precedent for ordering mandatory trainings to remedy a failure to provide information in bargaining.

Respondent’s research can find no Board cases where a responding party was ordered to hold trainings about how to respond to information requests. Neither the General Counsel nor Charging Party cited any such cases in their briefs. Nor does the ALJ Decision cite any precedent for this remedy.

B. There is no good reason to believe the training remedy ordered by the ALJ is necessary.

Not only is the training order without precedent in Board cases, but there is no reasoning or evidence that suggests that training is necessary.

The ALJ Decision does not give any reasoning in support of a training order rather than some other type of remedy. Nor does it does not marshal any evidence in support of a claim that Union staff who responded to Hyatt’s requests were under-trained.

In addition, there is evidence in the record that the Union has been improving its processes for processing grievances so that it can respond to the requests made by Hyatt. The Union has hired administrative personnel, changed its policies, and implemented a computerized

grievance-tracking module.

Since the Union is already engaged in improving its own processes and procedures for handling Hyatt's comprehensive information requests, a Board-ordered training is not necessary. There is no evidence that it would be more effective than a standard remedial order in this case.

C. So few Union staff are involved in handling this employer's information requests that the requirement of *two* trainings is excessive.

Not only did the ALJ order training, with no evidence to support the need for Board-ordered training, but she ordered *two* mandatory training sessions for Union staff who handle Hyatt information requests. This is an additional indicator that the extraordinary training remedy order is arbitrary.

The order for *two* training sessions further demonstrates the arbitrariness of the extraordinary remedy here. Testimony established that three Union staff members are responsible for replying to Hyatt's information requests: Vinay Ravi, the union's organizing director and director of its Contract Enforcement team (Tr. 580-82); Rachael Brumleve, a contract enforcement representative (Tr. 798), and Fatima Jurado, an administrative assistant assigned to the Contract Enforcement Team (Tr. 833). This is not a group of hundreds or even dozens of people whom it would be hard to collect in one place for a single meeting. There is no reason to hold two mandatory trainings for these three individuals. Nor does the ALJ Decision give any reason for holding two trainings.

3. The order that attendees of the trainings sign personal compliance pledges is unprecedented and inappropriate.

The ALJ Decision order goes further than just ordering trainings. It requires that each person who attends the trainings

shall acknowledge in writing that he or she has attended the training and has been furnished with a copy of this settlement agreement, the notice to employees, and written instructions, understands them and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone, by action or inaction, any violation of this settlement agreement. [sic]

ALJD 37:31-37.

This requirement is unprecedented and unjustified. It goes far beyond the standard remedial orders used by the Board in information-request cases, and it is much more intrusive into the Union's affairs than even the sorts of extraordinary remedies for which there is Board precedent. Even if some sort of training remedy is justified—and as argued above, a training remedy is without precedent and without justification in the circumstances here—the ALJ's requirement that Union employees personally sign pledges of good behavior is a truly outrageous intrusion into the relationship between the Union and its employees.

A. The pledge order is unprecedented.

Respondent can find no precedent for ordering individual Union employees, who were not themselves charged in a ULP proceeding, to sign pledges not to “in any way commit, engage in, induce, encourage, permit, or condone, by action or inaction, any violation of” a Board order.

The ALJ's order requires personal performance by Union employees, which goes far beyond requiring the Union as an organization to comply with a remedial order. This type of personal performance—requiring certain employees to give pledge their word not to “permit or condone, by action or inaction” any violation of the standard remedial order that is directed at the Union—is without precedent in an Board decisions that Respondent has been able to locate. Nor is such a pledge order, or anything resembling it, contemplated by the current NLRB Compliance Manual. Neither the ALJ Decision nor the briefs of the General Counsel or Charging Party made reference to any similar remedial order by the Board.

The closest analogue to such an order that Respondent can locate is the extraordinary remedy that the Board sometimes orders of having a company president personally read a notice posting to members of the bargaining unit. For example, in *S.E. Nichols, Inc.*, 284 NLRB 556, 560 (1987), the Board ordered a company president to personally read a remedial notice out loud to employees in several stores affected by the company's unfair labor practices, where the "atmosphere [was] poisoned by Respondent's unrelenting, egregious, and pervasive trampling on its employees' statutory rights," including repeated attacks on the Board's neutrality by the company president.

However, the notice reading remedy is not a true analogue of the pledge order in the current ALJ decision. A notice reading remedy requires the individual manager to read the notice once, while the pledge order requires a promise of vigilant compliance. A notice reading remedy does not require the individual manager to give his or her word to comply with the remedy, while the pledge order is entirely about that. The pledge order is much more intrusive than a notice reading remedy.

Since the pledge order is without precedent, it is inappropriate in this case, which does not present particularly unusual circumstances.

B. The pledge order is unjustified.

Besides being without precedent, the ALJ's order that Union employees personally pledge to comply with the remedial order is not justified by the facts of this case.

With respect to the less intrusive notice-reading orders, even when the facts of the case include egregious and widespread violations of employee rights, the Board typically orders that the reading may be done by a manager or by a Board agent in the presence of the manager. *See, e.g., Print Fulfillment Services, LLC*, 361 NLRB 1243 (2014) ("egregious and widespread

unlawful conduct” justifies order of notice reading by responsible management official *or* by Board agent in the presence of such official). The purpose of permitting a Board agent rather than a manager to read the notice is to mitigate the oppressive nature of ordering a specific individual to read the notice.

Courts have expressed reservations about such a remedy even when egregious violations of employees’ rights have been found. The D.C. Circuit has long “viewed public reading requirements with ... suspicion.” *Teamsters Local 115 v. NLRB*, 640 F.2d 392, 402 (D.C.Cir. 1981). It is particularly concerned with the “‘ignominy of a forced public reading’ by an employer and its potential for oppression.” *United Food & Commercial Workers Int’l Union AFL–CIO v. NLRB*, 852 F.2d 1344, 1348 (D.C.Cir.1988) (quoting *Int’l Union of Elec. Radio & Mach. Workers v. NLRB*, 383 F.2d 230, 234 (D.C.Cir.1967)).

Yet orders directing a responsible management official to read a remedy out loud to employees in an attempt to diffuse the effects of egregious violations of employee rights are not as intrusive into the lives of those officials as the pledge remedy ordered by the ALJ in this case. An official who is required to read a notice simply reads the notice out loud. By contrast, here the ALJ’s order requires Union employees to “acknowledge in writing” that they will “conduct themselves consistently” with the remedial notice “and will not in any way commit, engage in, induce, encourage, permit, or condone, by action or inaction, any violation.” This is a much more personal intrusion into the lives of the Union employees who are covered by the order. It calls to mind the humiliating schoolroom punishment of forcing a student to write “I will not ...” over and over on a chalkboard, a remedy that is more about humiliation and control than about ensuring compliance.

The ALJ Decision gives no justification for such an intrusion. Nor is there any such

justification. The Union itself, as an organization and as the respondent here, is ordered to comply with the remedial order by providing the necessary information in response to Hyatt's requests. The Board's compliance procedures are adequate to address any noncompliance by the Union should it occur. The ALJ gives no reason to add to those compliance procedures a requirement that individual Union representatives pledge not to "permit or condone, by action or inaction," any violation of the remedy.

Since the pledge remedy is overly intrusive and not justified by the facts of the case, it should be eliminated from the remedial order here.

4. The repeated references to a "settlement agreement" in the ALJD's remedial order are mistakes.

The ALJ Decision's order about the mandatory trainings refers repeatedly to "this settlement agreement." ALJD 37:6-37. This is a mistake, because there is no settlement agreement in this case. If the training is not eliminated entirely from the remedy, the language should be corrected.

5. The order for the Union to produce responses to information requests about grievances that are now resolved is improper.

Where some grievances have been resolved by the time of the issuance of an order about information requests pertaining to those grievances, it is "inappropriate" to order the respondent to furnish the information because the information "has no current relevancy." *Westinghouse Electric Corp.*, 304 NLRB 703, 709 (1991).

Here, the ALJ ordered Respondent to provide responses to all of the information requests, as alleged in paragraphs VI(a) through (s) of the complaint. Specifically, the decision orders the Union to

furnish the Charging Party with the information, as specified in the consolidated complaint, it has requested since on or about October 9, 12, 13 and 17, 2017, on

or about December 18 and 22, 2017, on or about January 31, 2018, on or about March 12, 13, 20, and 29, 2018, on or about April 9, 10, 16, 23, 26, and 30, 5 2018, on or about May 10, 2018, and on or about June 8, 28, and 29, 2018.

ALJD 37:1-5.

But uncontroverted evidence showed that a number of the grievances have been resolved. Since, as in *Westinghouse*, the requesting party has no reason to ask for the information other than to process the underlying grievances, and since those grievances are no longer open, the requests about those grievances have “no current relevancy,” and it is error to require the Union to respond to them.

Specifically, the following grievances have been fully and finally resolved, so no responses from the Union are necessary:

Grievance 20162235 concerned multiple allegations about bargaining-unit work over a period from October 2016 through June 2017. *See* GC Ex. 9c at 2-6. The grievance was settled by mutual agreement of the parties in April 2018. Tr. 220.

Grievance 20171930 was never filed by the Union, but was mistakenly include in an email to Hyatt. GC Ex. 10bi at 1; Tr. 859:24-860:23. Since Hyatt learned at the hearing, if not before, that the grievance was never filed, there is no further information response that would be helpful.

Grievance 20180751 was filed but then closed by the Union because the Union determined it was untimely. Tr. 865. Since Hyatt learned at the hearing, if not before, that the grievance is closed, no further information response would be helpful.

Grievance 20180662, about a disciplinary suspension issued to a bargaining-unit employee, was settled by mutual agreement. Tr. 1010:16-23.

Grievance 20171159, also about managers doing bargaining-unit work, was settled by

mutual agreement. Tr. 240:2-11.

Furthermore, since the Union and Hyatt continue to have a bargaining relationship and continue to process grievances, whether by settlement or arbitration, it is plausible and perhaps even likely that additional grievances named in the consolidated complaint have been resolved in the months since the close of the record in this proceeding.

Hyatt offered evidence at the hearing that it needed responses to its information requests in order to process, investigate, settle, and defend the grievances at issue. It offered no reason for the information requests other than the handling of the specific grievances to which the requests pertained. Therefore, if a particular grievance has been resolved, Hyatt has no further legitimate interest in obtaining the information from the Union that it requested pertaining to that particular grievance. *See Westinghouse Electric Corp.*, 304 NLRB at 709.

Since some of the grievances at issue have been resolved and the Employer has no further need of responses to its information requests about those grievances, the order in this case should be amended to make clear that the Union need not provide responses to any of the information requests at issue that have been mooted by settlement or other final resolution of the underlying grievance.

CONCLUSION

The extraordinary remedy ordered by the ALJ should be eliminated from the remedial order in this case. No extraordinary remedy is warranted, because the violations were not egregious and there is no reason to suggest that a standard remedy will not be effective. And the particular form of extraordinary remedy ordered here—two training sessions for a handful of Union personnel, with the requirement that those personnel sign pledges undertaking personally to comply with the remedy—is unprecedented, unnecessary, intrusive, and humiliating. The ALJ

decision also goes counter to Board case law in so far as it orders responses to information requests about grievances that have since been completely resolved.

For the reasons stated above, Respondent requests that the remedial order in this case be modified to eliminate Section 2(b) of the order (the training and pledge requirement) and to change Section 2(a) of the order (requiring responses to information requests) to make clear that Respondent need not respond to information requests about grievances that have been resolved.

Date: October 24, 2019

Respectfully submitted,

McCracken, Stemerman & Holsberry

/s/ David L. Barber

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Attorneys for UNITE HERE Local 1

**PROOF OF SERVICE
STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO**

I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled **RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO ALJ DECISION** was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 24th day of October, 2019 as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 24, 2019 at San Francisco, California.

 /s/Noorullah Baheej
Noorullah Baheej

EXHIBIT C

You have E-Filed your document(s) successfully. You will receive an E-Mail acknowledgement noting the official date and time we received your submission. Please save the E-Mail for future reference. You may wish to print this page for your records

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Please be sure to make a note of this confirmation number.

Confirmation Number: 1006973284

Date Submitted: Thursday, October 24, 2019 8:51 PM (UTC-05:00) Eastern Time (US & Canada)

Submitted E-File To Office: Office of Executive Secretary

Case Number: 13-CB-217959

Case Name: UNITE HERE Local 1(Hyatt Regency Chicago)

Filing Party: Charged Party / Respondent

Contact Information:

David Barber

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Attached Documents:

Exceptions:2019-10-24 Exception.pdf

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Confirmation Number: 1006973456

Date Submitted: Thursday, October 24, 2019 8:54 PM (UTC-05:00) Eastern Time (US & Canada)

Submitted E-File To Office: Office of Executive Secretary

Case Number: 13-CB-217959

Case Name: UNITE HERE Local 1(Hyatt Regency Chicago)

Filing Party: Charged Party / Respondent

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Attached Documents:

Brief in Support of Exceptions:2019-10-24 Respondent's Brief in Support of Exceptions to ALJ Decision.docx.pdf

EXHIBIT D

David Barber

From: ExecSec@nlrb.gov <e-Service@service.nlrb.gov>
Sent: Thursday, October 24, 2019 5:57 PM
To: David Barber
Subject: RE: 13-CB-217959 - Exceptions

Confirmation Number: 1006973284

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Date Submitted:	Thursday, October 24, 2019 8:51 PM (UTC-05:00) Eastern Time (US & Canada)
Case Name:	UNITE HERE Local 1(Hyatt Regency Chicago)
Case Number:	13-CB-217959
Filing Party:	Charged Party / Respondent
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Attachments:	Exceptions: 2019-10-24 Exception.pdf

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David Barber

From: ExecSec@nlrb.gov <e-Service@service.nlrb.gov>
Sent: Thursday, October 24, 2019 5:57 PM
To: David Barber
Subject: RE: 13-CB-217959 - Brief in Support of Exceptions

Confirmation Number: 1006973456

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Date Submitted:	Thursday, October 24, 2019 8:54 PM (UTC-05:00) Eastern Time (US & Canada)
Case Name:	UNITE HERE Local 1(Hyatt Regency Chicago)
Case Number:	13-CB-217959
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Attachments:	Brief in Support of Exceptions: 2019-10-24 Respondent's Brief in Support of Exceptions to ALJ Decision.docx.pdf

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EXHIBIT E



United States Government

**NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE EXECUTIVE SECRETARY
1015 HALF STREET, SE
WASHINGTON DC 20570**

October 25, 2019

David L. Barber
McCracken, Stemerma & Holsberry, LLP
595 Market Street, Suite 800
San Francisco, CA 94105

Re: Unite Here Local 1
Cases 13-CB-217959, 13-CB-220319 and 13-CB-228165

Dear Mr. Barber:

This letter acknowledges receipt of Respondent's Exceptions and Brief in Support of Exceptions to the Administrative Law Judge's Decision, filed with the Board on October 25, 2019.

Section 102.46(a) of the Board's Rules and Regulations provides for the filing of exceptions and brief in support of exceptions with the Board "[w]ithin 28 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board." The Order Transferring Proceeding to the Board was served on September 26, 2019. As stated in that Order, the due date for the filing of exceptions and brief in support of exceptions was October 24, 2019. Per Section 102.2(b) of the Board's Rules and Regulations, E-filed documents must be received by 11:59 p.m. of the time zone of the receiving office which would be Eastern Standard Time. The Respondent's exceptions and brief in support were filed respectively at 12:51 a.m., and 12:54 a.m. (ET), on October 25, 2019. Accordingly, the Respondent's filings are untimely and will not be forwarded to the Board for consideration.

Section 102.2(d) of the Board's Rules and Regulations allows for parties to file documents within a reasonable time after the due date only upon good cause shown based on excusable neglect and when no undue prejudice would result. "A party seeking to file such documents beyond the time prescribed by these Rules must file,

along with the document, a motion that states the grounds relied on for requesting permission to file untimely. The specific facts relied on to support the motion must be set forth in affidavit form and sworn to by individuals with personal knowledge of the facts. For the Board to consider the Respondent's untimely filed exceptions and brief, you must follow the prescribed method outlined in Section 102.2(d), which requires a sworn affidavit by individuals with personal knowledge of the facts.

Very yours truly,

/s/ Leigh Reardon
Associate Executive Secretary

cc: Parties

