

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

HACIENDA HOTEL, INC. GAMING )  
CORPORATION D/B/A HACIENDA )  
RESORT HOTEL AND CASINO, )

Respondent, )

AND )

SAHARA NEVEDA CORPORATION )  
SAHARA HOTEL AND CASINO )

Respondent, )

AND )

LOCAL JOINT EXECUTIVE BOARD )  
LOCAL 226, AND BARTENDERS UNION, )  
LOCAL 165, AFFILIATED WITH HOTEL )  
EMPLOYEES AND RESTAURANT )  
EMPLOYEES, AFL-CIO )

Union. )

**No. 28-CA-13274 & -13275**

**CHARGING PARTY'S  
OPPOSITION TO  
RESPONDENTS'  
MOTION FOR  
RECONSIDERATION**

**Charging Party's Opposition to Respondents' Motion for Reconsideration**

The Employers improperly asks the Board to ignore the Board's rules and regulations for filing motions for reconsideration and permit them the privilege to file about a year late. The Employers do not claim to have found new, undiscovered evidence. Rather, they are pinning their hopes on the fact that the Board recently issued a decision which could have helped them defeat the complaint against them. But the Board regularly takes new policy stances with each changing administration. If every party could reopen cases for reconsideration based on newly decided cases, there would be complete chaos at the Board.

**A. The Motion for Reconsideration Was Filed Far Outside the Time Limit**

According to the Board's Regulations, any motion for reconsideration of a Board decision or order must be filed 28 days after service. 29 CFR § 102.48 (c)(2) ("Any motion pursuant to this section must be filed within 28 days, or such further period as the Board may allow, after the service of the Board's decision or order, except that a motion to reopen the record must be filed promptly on discovery of the evidence to be adduced."). The decision that the Employers are seeking to have reconsidered was issued and served on March 5, 2019. Simple math shows that the Employers missed this deadline by almost a year.

**B. The Board's Recent Decision Does Not Apply to the Employers.**

The Board's decision in *Valley Hospital*, 368 NLRB No. 139 (2019), as corrected (Feb. 4, 2020), does not apply to the Employers. In that decision, the Board clearly stated that the ruling would "apply . . . retroactively in this case and in other pending cases." *Id.* at 1. The merits decision in this case is not pending. It has already been decided for more than a year. For this case, there is an additional wrinkle: changing last year's decision would conflict with the law of the case that the Board accepted on remand from the Ninth Circuit. *See Hacienda Hotel*, 367 NLRB No. 101 (2019). In other words, the Board's *Valley Hospital* decision cannot help the Employers with their already-decided cases. Instead, they must use the new rule for their pending and future cases.

Charging Party opposes the Motion for Reconsideration as baseless and respectfully asks the Board to deny the request.

Dated: March 18, 2020

Respectfully Submitted,

McCracken, Stemerma & Holsberry, LLP

By: /s/ Kimberley C. Weber  
Kimberley C. Weber

## CERTIFICATE OF SERVICE

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 **CHARGING PARTY'S OPPOSITION TO RESPONDENTS' MOTION FOR RECONSIDERATION** 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 18th day of March, 2020 as follows:

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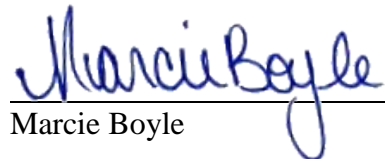
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 18, 2020 at San Francisco, California.

  
\_\_\_\_\_  
Marcie Boyle