

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CP ANCHORAGE HOTEL 2, LLC, D/B/A
HILTON ANCHORAGE

and

UNITE HERE! LOCAL 878

Cases 19-CA-193656
19-CA-193659
19-CA-203675
19-CA-212923
19-CA-212950
19-CA-218647
19-CA-228578

RESPONDENT'S EXCEPTIONS

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent CP ANCHORAGE HOTEL 2, LLC, d/b/a HILTON ANCHORAGE (“Hilton Anchorage” or “Respondent”) makes the following exceptions to the March 4, 2020 decision of Administrative Law Judge (“ALJ”) Andrew S. Gollin.¹

1. Respondent excepts to the ALJ’s conclusion that following an informal settlement of several 2017 unfair labor practice charges, the Region informed Respondent it was holding the settlement in abeyance pending investigation of a subsequent charge (Case 19-CA-212950) based in part on an erroneous allegation that Respondent was not complying with the terms of the settlement agreement. (ALJ 2:7-10)

2. Respondent excepts to the ALJ’s conclusion that “on April 9, 2019, Respondent executed a unilateral Board settlement agreement to resolve” numerous Union charges filed in 2017 and 2018, but that the “settlement was never approved, and the record does not reflect

¹ References to the March 4, 2020 decision are (ALJ page:line).

why.” (ALJ 2:27-28) This exception is for the reason that the ALJ ignored an earlier unilateral settlement executed by Respondent on April 6, 2018.

3. Respondent excepts to the ALJ’s conclusion that for years, Union representatives regularly visited Respondent’s cafeteria as their primary method of communicating with unit members. (ALJ:1; 6:20-21)

4. Respondent excepts to the ALJ’s conclusion that most employees took their lunch break when the Union representatives were in the cafeteria. (ALJ 6:24)

5. Respondent excepts to the ALJ’s conclusion that of the extensive information requests made by the Union approximately a week before scheduled negotiations in early August, some of the request information was provided prior to the August 2017 bargaining sessions and some was provided after. (ALJ 11:39)

6. Respondent excepts to the ALJ’s conclusion that at the August 4, 2017 bargaining session, the Union’s attorney stated the Union had changed its prior bargaining positions on wages and health care. (ALJ 13:6-7)

7. Respondent excepts to the ALJ’s conclusion that at the August 4, 2017 bargaining session, the Union’s attorney stated the Union was no longer seeking for Respondent to participate in the Union’s health benefit trust fund. (ALJ 13:7-8)

8. Respondent excepts to the ALJ’s conclusion that at the August 4, 2017 bargaining session, the Union’s attorney stated the Union was no longer seeking for Respondent to match the wages paid at another hotel. (ALJ 13:8-9)

9. Respondent excepts to the ALJ’s conclusion that on October 16, 2017, the Union’s chief negotiator proposed bargaining through correspondence rather than in-person sessions. (ALJ 15:3-4)

10. Respondent excepts to the ALJ's conclusion that Respondent's Union access policy was prematurely implemented on January 12, 2018. (ALJ 18:12-13)

11. Respondent excepts to the ALJ's conclusion that it had also posted an "Open Door Policy" on the same bulletin board as was posted a memo in late June 2018. (ALJ 20:fn. 24) This exception is due to its incorrect insinuation that the postings had been done simultaneously.

12. Respondent excepts to the ALJ's conclusion that the Union did not exceed the scope of its contractual access right or of established past practice related to interns because on the day in question, the Union sent the same number of representatives, at the same general time, to the same location as it had on a daily basis for the last several years. (ALJ 29:12-14)

13. Respondent excepts to the ALJ's apparent determination that Respondent was responsible for the bargaining hiatus that has occurred since January 5, 2018, (ALJ 30: 34) despite having repeatedly agreed in settlement documents prepared by the Regional Director to return to bargaining upon notice from the Union.

14. Respondent excepts to the ALJ's determination that an informal Board settlement is irrelevant to a determination of whether Respondent failed to bargain after January 5, 2019. (ALJ 30:fn. 32). The ALJ ignored an informal settlement executed by Respondent a year earlier on April 6, 2018 (R. Ex. 31), wherein Respondent agreed it would resume bargaining upon notice from the Union. Despite knowledge of the settlement, the Union has never given notice to resume bargaining to Respondent.

15. Respondent further excepts to the ALJ's determination that an informal Board settlement is irrelevant since Respondent allegedly failed to effectuate its terms (when it had not been accepted by the Union or approved by the Regional Director). (ALJ 30:fn. 32) This

determination is legally unsupported and fails to acknowledge that the settlement document written by the Region required that compliance would not occur until Respondent received written notice from the Regional Director.

16. Respondent further excepts to the ALJ's determination that an informal Board settlement is irrelevant since alleged lack of compliance by Respondent with the unilateral settlement (that had not been accepted by the Union or approved by the Regional Director) allegedly put the Union in a "disadvantageous position," or would have caused it to "bargain from a hole." (ALJ 30:fn. 32)

17. Respondent excepts to the ALJ's determination that the record does not support its defense that the Union continually delayed or avoided bargaining. (ALJ 32:4-5) The record demonstrates that the Union repeatedly avoided bargaining over Respondent's access proposal by delaying meetings for months and when they did occur, was unprepared with proposals or counter proposals. It further delayed bargaining without good cause by making multiple extensive information requests, many of which had little or no demonstrable relationship to the bargaining proposals the Union repeatedly claimed it would make.

18. Respondent excepts to the ALJ's determination that after a Union member was terminated for misconduct, that the Union proposed to continue negotiations through correspondence. (ALJ 32: 37-38) The record shows that the Union conditioned further bargaining on Respondent either rescinding the discharge or providing an explanation satisfactory to the Union about why the employee was discharged.

19. Respondent excepts to the ALJ's determination that it bargained in bad faith because it allegedly wanted the Union to relinquish access to bargaining unit members in exchange for little or nothing. (ALJ 32:44-45) The record shows that Respondent did not

propose that the Union “relinquish” access and, rather, sought to modify it. Moreover, early in the negotiation over access, Respondent offered to restore the union dues checkoff provision which had been eliminated upon implementation of the collective bargaining agreement in 2008. When that offer was rejected by the Union, Respondent then agreed it would look at the Union’s yet to be provided bargaining proposals with an open mind.

20. Respondent excepts to the ALJ’s determination that a totality of the circumstances demonstrates that it bargained in bad faith during contract negotiations; that it did not approach the negotiations with the attitude of settlement through give and take. (ALJ 32:45-46) The record demonstrates that the allegations in the Complaint cannot be substantiated and that Respondent has not bargained in bad faith.

21. Respondent excepts to the ALJ’s determination that the parties were not at a single issue impasse over Respondent’s access proposal when it implemented that proposal in January 2018. (ALJ 33:18-20) The record does not show that the Union substantially changed its bargaining position with legitimate concessions. Rather, ten months after Respondent made its access proposal, when the Union finally made a formal counteroffer, it did not agree to the material terms of Respondent’s proposal and, instead, offered to adhere to existing language or to refrain from activities to which it had no contractual entitlement.

22. Respondent excepts to the ALJ’s determination that the parties were not at a single issue impasse over Respondent’s access proposal because Respondent failed to provide the Union with information related to employee complaints about voice recording. (ALJ 34:9-10) The record will show that this ruling is in error because the General Counsel failed to show that the bargaining was directly or substantially affected by the lack of the requested information.

23. Respondent excepts to the ALJ's determination that the parties were not at a single issue impasse over Respondent's access proposal because Respondent never identified "limiting access to the cafeteria as its primary or overriding objective. (ALJ 34:12-13) The record reflects that Respondent consistently made clear that moving the Union meetings away from the employee cafeteria used by all employees and managers was of paramount interest.

24. Respondent excepts to the ALJ's determination that the parties were not at a single issue impasse over Respondent's access proposal pursuant to such authority as *National Gypsum Co.*, 359 NLRB 1058 (2013).

25. Respondent excepts to the ALJ's determination that the parties were not at a single issue impasse over Respondent's access proposal because the Union allegedly "eagerly sought to bargain all of the key issues." (ALJ 34:38-40) The record demonstrates that after ten months of Union-caused delays in the bargaining, the parties were no closer to an agreement on the access proposal.

26. Respondent excepts to the ALJ's determination that Respondent violated Section 8(a)(5) and (1) when it contacted the Anchorage Police Department to seek its assistance in enforcing the implemented access provision because the Union allegedly retained a contractual right to access the cafeteria in the absence of a good faith impasse. (ALJ 35:11-13) The record shows that a valid single issue impasse had been reached on the access proposal and Respondent therefore lawfully implemented its access proposal.

27. Respondent excepts to the ALJ's determination that Respondent violated Section 8(a)(5) and (1) when it contacted the Anchorage Police Department to seek its assistance in enforcing the implemented access provision. (ALJ 35: 13). The record shows that Respondent's

General Manager contacted the police department to inquire what options Respondent had in light of the Union's refusal to comply with the implemented policy.

28. Respondent excepts to the ALJ's determination that Respondent violated Section 8(a)(5) and (1) by posting a memorandum in response to a Union posting which allegedly bypassed the Union and denigrated the Union by soliciting employee complaints with the implied promise of remedying them. (ALJ 37:5-7) This ruling overlooks that Respondent's open door policy (R. Ex. 42) had been posted for an extensive time period without Union objection.

29. For reasons discussed above and in the accompanying brief, Respondent excepts to the ALJ's conclusion of law number 4. (ALJ 37:29-30).

30. For reasons discussed above and in the accompanying brief, Respondent excepts to the ALJ's conclusion of law number 5. (ALJ 37:32-35).

31. For reasons discussed above and in the accompanying brief, Respondent excepts to the ALJ's conclusion of law number 6. (ALJ 37:36-39).

32. For reasons discussed above and in the accompanying brief, Respondent excepts to the ALJ's conclusion of law number 9. (ALJ 37:49 – 38:1-2).

33. Respondent excepts to the ALJ's recommended remedy. (ALJ 38:14-30; 38:35-39:25). The unfair labor practice charges subject to the foregoing exceptions should be dismissed in their entirety.

Dated: April 1, 2020.

Respectfully submitted,

/s/ Douglas S. Parker

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2020, I served a full, true and correct copy of the foregoing:

- By delivery via messenger, or otherwise by hand,
- By facsimile,
- By e-mail,
- By mailing same, postage paid,

addressed to:

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