

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

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

and

UNITE HERE! LOCAL 878, AFL-CIO

Case 19-CA-241411

RESPONDENT'S POST-HEARING BRIEF

Renea I. Saade
Counsel For Respondent
CP Anchorage Hotel 2, LLC d/b/a Anchorage Hilton
Littler Mendelson
500 L Street, Suite 201
Anchorage, Alaska 99501
Phone: 907.561.1214
Email: Rsaade@Littler.com

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I. INTRODUCTION

Through its Complaint, the General Counsel alleges that the Respondent CP Anchorage Hotel 2, LLC d/b/a Hilton Anchorage and Anchorage Hilton (“Respondent”) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the “Act” or “NLRA”) by not adequately responding to a November 20, 2018 request for information issued by UNITE HERE Local 878 (“Union”) and not bargaining with the Union before asking housekeepers at the Hilton Anchorage (“hotel”) to clean rooms after a 2018 renovation at the hotel.¹ Respondent denies any violation and has asserted various affirmative defenses in response to the Complaint.² A hearing was held before the Honorable Eleanor Laws via Zoom December 1 – 4 and 7, 2020. The General Counsel, Union and Respondent all had an opportunity to introduce testimony through live witnesses as well as documentary and video evidence. This post-hearing brief is submitted with the authority of Judge Laws and in accordance with the January 29, 2021 deadline set by a December 16, 2020 Order issued by the Office of Administrative Judges.

While the volume of documentary evidence submitted in this case is enormous – the issues are really quite straightforward. There is no dispute that the Respondent responded to the November 20, 2018 requests for information (as well as several others propounded in 2018 and 2019). The issue raised through the Complaint and in the hearing is whether the Respondent’s response was deficient to the level it violated the Act. Respondent submits that its response was meaningful and sufficient so did not violate the Act. Respondent also maintains that the request was submitted in bad faith and sought information not necessary for the Union’s representation.

¹ GC 1(e). The Complaint was issued based upon a May 10, 2019 charge (GC 1(a)) that was amended on July 29, 2019 (GC 1(c)).

² GC 1(g). *See* Affirmative Defenses 1–13 (all of which remain asserted).

As for the allegation that the Respondent failed to bargain, Respondent again maintains that it did not violate that act because no invitation to bargain was made and no mandatory bargaining issue was triggered by the Respondent's renovation. The General Counsel correctly acknowledges and agrees that the Respondent had the legal right to proceed with a renovation of the property or decide what renovation would occur.³ The only pending question is whether or not the renovations had the effect of "materially, substantially and significantly" changing the housekeepers' work assignments such that the Respondent violated the Act by not bargaining with the Union before asking housekeeping staff to clean renovated rooms.⁴

Respondent submits that upon a reasonable review of the totality of the evidence introduced at hearing and consideration of the credibility of the arguments and testimony proffered, the answer is that the renovations did not trigger mandatory bargaining. This is in part because if any effect did occur, the impact was *de minimis* and done in the interest of preserving legitimate business interests and as such, no violation of the Act occurred. Because there was also no showing that the Respondent engaged in bad faith and the evidence instead confirmed that the Respondent's efforts improved the worksite and in turn, business operations and availability of work hours, there has been no harm that would justify relief. The evidence further confirms that the Respondent continued to engage with the Union and its housekeeping team in good faith and consistent with the parties' implemented terms and past practices.

To the extent the Administrative Law Judge disagrees with the Respondent's view of the

³ See Transcript ("Tr.") at 713 (General Counsel's agreement of the scope of the legal issue concerning the renovation).

⁴ *Id.* While not clear from the Complaint, the Amended Charge filed in July 2019 also alleges that the Respondent "coerced" housekeepers to clean the renovated rooms with the threat of discipline and violated the Act on that basis as well. For the reasons set forth herein, Respondent denies these allegations as well and submits that the evidence does not support this accusation.

evidence, Respondent requests that the requests for relief made by the General Counsel be denied on the basis that the Union waived their right to seek relief by not timely raising their alleged concerns and more importantly, the relief requested is not supported by fact or law.

II. SUMMARY OF RELEVANT EVIDENCE

A. General Background

The history between the Respondent and Union is long and somewhat complicated. But, the extensive details of the same are not necessary to evaluate the pending issues. For brevity and simplicity, the Respondent merely confirms that the Collective Bargaining Agreement for the hotel lapsed in 2008.⁵ Since then, hotel management and the Union have been operating under various terms derived from the last Collective Bargaining Agreement and implemented in March 2009 and again in March 2016 (“Implemented Terms”).⁶

The hotel is a full service hotel in downtown Anchorage with approximately 600 guest rooms. As one of the oldest buildings in downtown Anchorage, it is not a typical “box” building. Instead, it has two primary towers and each floor has a different composition and many guest rooms within the same class (Double, King or Suite) vary depending on where the room is located within the hotel.⁷

⁵ Joint Exhibit (“JTX”) 2.

⁶ JTX 3-4 and 15. Respondent acknowledges that the law concerning the parties’ obligations to one another after the expiration of a Collective Bargaining Agreement continues to evolve with the decisions of *Nexstar Broadcasting d/b/a KOIN-TV*, 369 NLRB No. 61, slip op. at 3 (Apr. 21, 2020), *MV Transportation, Inc.*, 368 NLRB No. 66 (Sept. 10, 2019) and other cases. By agreeing that the parties’ have been operating under the Implemented Terms and using the same as the baseline for the parties’ expectations as it relates to the issues currently pending, Respondent is not waiving any legal rights or defenses it may otherwise have under this area of evolving law or otherwise.

⁷ See JXT 2, 3, 4, 7, 8 and 26; Testimony of Steve Rader (Rader). To keep the citations succinct, this brief will refer to witness testimony with the witness’s last name and where applicable, the applicable transcript page(s).

B. Remodel

In mid-2017, it was announced that all the guest rooms at the hotel would be renovated to include new updated furniture, carpeting, art, paint, and shower upgrades to some of the bathrooms.⁸ The remodel began around mid-February 2018 and continued until approximately January 2019.⁹ The renovations occurred in phases with discrete areas of the guest rooms going out of service while they were being updated.¹⁰ During this period of time, the housekeeping staff continued to clean the rooms that remained in service and once an updated room was released to be put back into rotation, they began cleaning those renovated rooms.

The renovations changed the overall appearance of the guest rooms and updated the items found inside but the square footage and the general components of the room did not change.¹¹ The only real difference post-renovation was that the tub insert was removed out of half of the rooms and replaced with a shower with a glass door (the interior wall remained tiled in all rooms).¹² Overall, the changes were merely cosmetic and any notable changes that occurred helped reduce the size and tasks required of the housekeepers as the updated furniture was easier to clean and left less floor area to vacuum and otherwise clean.¹³ Respondent did not confer or bargain with the Union prior to introducing any new items into the guest room or otherwise change the work duties of the housekeepers. There was no need to and there had been no historical practice to do so.

There had been many other times where linens, furniture and appointments in the room

⁸ Rader (Tr. 659-662); Donnelly (Tr. 693-697); Just (Tr. 598-513).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Respondent Exhibit (“RX”) 8-10, 31 and 35- 36.

¹² See General Counsel Exhibit (“GCX”) 2- 4 and RX 9.

¹³ *Id.*; Rader, Just, Donnelly, Feddersen.

such as coffee makers, alarm clocks and TVs had been upgraded and replaced in the hotel.¹⁴ Prior to 2018 -2019, the Union had never asked for any details as to what linens, furniture or items were in the guest rooms or ask or expect that they would be consulted before changes were made.¹⁵ Furthermore, no such items or changes to them had ever been an issue the parties bargained over.¹⁶

C. Housekeepers' Duties

The housekeeping department was managed by a Director of Housekeeping who reported to the General Manager of the hotel.¹⁷ While their managers have changed over time, even during the period in question, the duties performed by the housekeeping staff has remained the same.

The long-standing job description for the housekeeping staff unequivocally includes the duties that the housekeeping staff performed before, during and after the remodel:

8. Room Attendant: - Make beds, vacuums and/or sweeps rooms, dusts, cleans private baths and all room fixtures, and wipes down woodwork and doors. Heavy cleaning of guest doors will be done by housemen. However, wiping of doors will be done by Room Attendants. Cleans inside window of smudges, fingerprints, etc. Vacuums immediate threshold area in front of guest room door. No cleaning of halls, hoppers, public baths or overhead work may be required of Attendants.¹⁸

While the above-description adequately captures the primary job duties and responsibilities of the housekeeping staff, the parties never intended the description to be exhaustive. As the preamble of Article of XXVI of the parties' prior Collective Bargaining Agreement and their current Implemented Terms explain:

¹⁴ Rader (Tr. 497-500)

¹⁵ Esparza (Tr. 347-352).

¹⁶ See Rader 498-499 and Esparza (Tr. 347-349).

¹⁷ See *generally* Rader, Just, Talley and Donnelly.

¹⁸ JX 15 at 21 (Article XXVI, ¶8).

The following job descriptions are general guidelines only. All jobs are subject to the assignment of multiple duties. Job titles are solely for identification, and do not limit the assignment of duties. The Company may assign an employee additional duties, and may assign other employees to duties which that employee normally performs. No employee, and no job classification, has an exclusive claim to any kind of work, or any job duty. The goal is to have all employees work together for the best results without artificial limitations.¹⁹

These duties were reiterated in job postings used by Respondent's management and Human Resources Department.²⁰ Upon hire, housekeepers were also advised that their position included cleaning a tub and shower – including cleaning and drying the shower and tub walls, shower curtain and tile from top to down.²¹ Like all employees, the housekeeping staff was advised that they could perform their daily tasks with some discretion as long as they met the Hilton brand and Respondent's standards for cleanliness and guest satisfaction.²² An employee handbook and various flyers and other materials put staff and managers on notice as to what was expected of

¹⁹ JX 15 at 20 (Article XXVI).

²⁰ Talley (Tr. at 791-793) and RX 1.

²¹ RX 29; Dingle (Tr. at 175-177, 192-193); RX 30; Lee (Tr. at 282 - 284). While Ms. Lee's testimony suggested that she never cleaned shower curtains (instead would only spray them and leave cleaning to houseman), it also appeared that the fact she did not testify in her native language may have caused confusion thereby making her testimony less credible. *See* Lee (Tr. 240-241; 247-249). Ms. Lee acknowledged that she had a responsibility to inspect, spray and clean the curtain but also appeared to explain that if a curtain was dirty to the point it needed laundering, then it would be designated for replacement by a houseman. *Id.* Ms. Lee was not expected to do the laundering but unequivocally was expected to spray and wipe down the curtain each time she cleaned a guest room that included one. Just (Tr. 601, 611-612). To the extent Ms. Lee's testimony is interpreted otherwise, it does not establish that cleaning showers was a task reassigned from houseman to housekeepers after the remodel. Instead, her testimony would only confirm that she was not performing all duties assigned to and expected of her. As management testified, there were simply not enough shower curtains in the hotel's inventory to replace rather than clean them thereby making the suggestion that housekeepers could simply replace instead of clean incredible. Rader (Tr. 523 and 525) (impossible to even replace 10% of the shower curtains on any given day). Similarly, the General Counsel's overall assertion that it took housekeeping staff 30-40 minutes to clean a renovated room is also not credible given the schedule housekeepers worked and the daily routines followed by the same. *See* Just (Tr. 614-615).

²² Just (Tr. 639-646).

them.²³ At no time during the relevant period did the Union question or challenge Respondent's expectation that these standards would be met. Likely because the parties' prior Collective Bargaining Agreement and their Implemented Terms confirmed that management had the discretion to adopt and implement work rules and dictate how work would be performed.²⁴ Indeed, the parties agreed that Respondent retained the right to, among other things, "determine the work to be done by employees", "the methods, process and means of performing any and all work", "control ...the assignment... of its working forces", "change or introduce a new or improved operations, methods, means or facilities," and "control the nature and specification of all materials used in its operations, and the specifications of the products and services it offers to its guests, and to change, add to or eliminate such specifications in whole or part."²⁵

Prior to the present proceeding, the Union did not ask to review the Respondent's job postings for the housekeeper position or take any action to obtain clarification on, challenge or change the job description for housekeepers or object to the inclusion of any particular task in their day-to-day work duties.²⁶ There is also no indication, let alone evidence, that the Union ever observed (or requested to observe) housekeepers while on duty at the hotel at any time before, during or after the renovation.²⁷

D. Guest Room Details or Assignments Were Never Bargaining Topics

Despite the Union's regular presence at the hotel and routine request for copies of the housekeepers' work schedules, the Union did not request or expect Respondent to provide

²³ RX 2 (Handbook), RX 4-5 and 10-13 (Hilton standards).

²⁴ JX 15 at 3 (Preface – Section 4 (A) – (E)) and 18 (Article XXV – Section 13).

²⁵ JX 15 (Preface – Section 4 (A) – (E)).

²⁶ Talley (Tr. at 793 and 795); Valades (Tr. at 714-717).

²⁷ Valades (Tr. at 715-716); Esparza (Tr. 339-340).

regular information on which rooms each housekeeper cleaned during each shift. The Union also never asked Respondent to explain how its managers expected the housekeeping staff to complete the duties of “dusting”, “vacuuming”, cleaning a “private bath and all room fixtures”, “wip[ing] down woodwork and doors” or “clean[ing] inside window of smudges, fingerprints.” The Union also did not ever ask the Respondent to confirm how many fixtures or windows would be included in the cleaning or the square footage of glass that was expected to be cleaned. Prior to the Spring of 2019, the Union similarly never asked for the details or questioned the nature or details of the furniture or linen in each guest room or private bath cleaned by the housekeeping staff. Furthermore, the Union never asked the Respondent how much time management expected staff to spend on each guest room or take any time to determine the average amount of time staff was spending to clean guest rooms.²⁸ And, the Union never completed any such studies itself.²⁹ The specific room assignments and the details of how the cleaning duties would or should be completed were left to management to determine.³⁰

The only issues the parties had previously bargained over was what the room limit or quota would be for a shift, how much a staff person would be paid if they cleaned more than their expected quota for the day (\$4.95 per extra room) and what amount of room credit would be given if a housekeeper had to work on three or more floors, travel to both towers or clean 12 or more “check-out” rooms.³¹ While a housekeeper could ask for an additional room credit on the basis that a room was extremely dirty, there was no requirement under the parties’ Implement Terms for credit to be given in those circumstances. It was left to the management’s discretion

²⁸ Valades (Tr. at 714-717); Just (Tr. 614); Esparza (Tr. 353-354).

²⁹ Esparza (Tr. 341).

³⁰ Valades (Tr. at 717); *see also* Rader (Tr. at 480-482); Talley (Tr. 802-804); Esparza (Tr. 355-356).

³¹ JX 4 (Article XXV – Section 18 (F)) and JX 15 (Article XXV – Section 16(F))

as to whether to provide that housekeeper with assistance to clean the room, give the housekeeper additional credit, re-assign the room or take another step management in its discretion deemed reasonable under the circumstances.³²

The parties never contemplated or bargained over whether an additional room credit or pay would be provided to a housekeeping staff member if a room contained a shower or not.³³ Indeed, despite the fact there had always been ADA compliant rooms at the hotel that contained a walk in shower and extra surfaces that required cleaning (such as the various railings in the bathroom), the Union had never insisted or even asked that these rooms be considered two room credits or for the bathroom to count as a separate room for purposes of meeting the staff's room quota.³⁴

The Union did not request to bargain or negotiate changes to the housekeepers' room quotas or compensation because rooms were taken out of order due to the remodel or even the earthquake that took place in November of 2018.³⁵ The Union did not even take steps to adjust quotas or compensation on the basis that occupancy levels or the type of guest/room use fluctuated on a seasonal basis.³⁶ And, to date, they have not taken any steps to advocate or even request an adjustment due to COVID-19 or even evaluate if room quotas have been met since March 2018.³⁷ The Union did not even regularly track who was receiving extra room bonuses or

³² *Id.*

³³ Rader (Tr. 469-470).

³⁴ *Id.*

³⁵ *Id.* and (Tr. 480 – 482 and 510).

³⁶ *Id.* As witnesses explained, the occupation level at the hotel fluctuated depending on seasonal tourism and due to certain airline customer relationships with hotel has, many guest rooms – particularly in the off season – are only occupied by a single guest (pilot or other airline personnel) that uses the room for their “rest hours” between working flights. *See* Rader.

³⁷ Valades (Tr. 728-731). As several witnesses testified, since COVID-19 business disruptions have hit, housekeeping staff are not expected to clean more than 15 rooms a day (because the

monitoring if there was any changes in such activity.³⁸

E. Housekeeping Duties Did Not Change After Remodel

Despite the assertions by the General Counsel and Union otherwise, the housekeeping staff's duties did not change with the remodel. Housekeeping staff were still required to dust, vacuum, clean a private bath and all room fixtures, wipe down woodwork and doors and windows inside the room and change linens.³⁹ They were also expected to continue to wipe down the shower curtain in those rooms that continued to contain a bath/tub combination. Just as their duties did not change, the discretion the staff had as to how to complete their duties and what supplies or tools to use to complete their duties did not change.⁴⁰ The only requirement both before and after the renovation was that the finished product (cleaned room) had to meet Hilton brand and the Respondent's standards for cleanliness and guest satisfaction.⁴¹

From all appearances, in the beginning, news of the remodel brought excitement and a general consensus that the remodel was going to make the housekeepers' job easier – not more difficult.⁴² It was not until two months into the remodel (in February 2018) that the Union first even asked for any information regarding the remodel even though they had known about the plans for the remodel for several months.⁴³

Even when the Union representatives and the Respondent's managers met in March 2018

staff is no longer performing “stay over” cleans (cleanings during a guest's stay) and instead are only performing “check out” cleaning (cleaning when the guest is checking out of the hotel). *See* Lee, Talley, Just. To date, the Union has not taken any issue with this adjustment and the time to do so has long passed.

³⁸ Esparza (Tr. 357).

³⁹ Just (Tr. 591 – 613).

⁴⁰ Rader (Tr. 498 and 511-512)

⁴¹ Rader (Tr. 497-498); RX 10 – 13; Just (Tr. 636 and 639-646).

⁴² *See* Rader (Tr. 479- 480); Donnelly (Tr. 693-696); Just (Tr. 598-613).

⁴³ Rader (Tr. at 482- 484).

to discuss concerns the Union raised related to the housekeeping room quota, the Union did not request that anyone be excused from cleaning the remodeled rooms or those with a glass shower door or make any training or cleaning tools or supply demands upon the Respondent.⁴⁴ In other words, they did not take any action upon the information requested or received in connection with the November of 2018 request for information.

F. Housekeeping Staff Suffered No Other Adverse Effect After Remodel

The General Counsel suggests through the Complaint that the housekeeping staff struggled to meet room quotas and suffered a financial loss as a result of the remodel. To support this theory, General Counsel relies upon a notice Mr. Just issued in February 2019⁴⁵ to remind the staff of their obligation to clean up to 17 rooms each shift (subject to need and credits that could be earned). General Counsel asserts that this reminder somehow establishes that the housekeeping staff as a whole was having difficulty performing their duties post-renovation. But, that was not the case. As Mr. Just explained, there was no new or more difficult quota imposed and he did not even issue the notice because he believed there was some sort of department wide issue.⁴⁶ Rather, he issued the reminder because of staff concern that one or two housekeepers were not even making an effort to take on a full-shift worth of rooms and it was causing tension among the team. Indeed, the notice was issued as a reminder and to appease staff – no discipline actually flowed from it.⁴⁷ The only individuals that were disciplined after the February 2019 reminder was issued were staff that had not worked at the hotel pre-renovation and/or were not meeting expectations for reasons clearly unrelated to the

⁴⁴ Esparza (Tr. 359-360 and 369); Just (Tr. 667).

⁴⁵ JX 13.

⁴⁶ Just (Tr. 652 and 667-689).

⁴⁷ *Id.*

renovations.⁴⁸

Moreover, just as it had done pre-renovation, management continued to honor staff requests for floor assignments and gave the more senior staff first choice on which floors to clean.⁴⁹ It also allowed housekeepers to partner up if they wished and continued to allow them to decide how to perform the actual physical tasks of cleaning the guest room and what supplies or tools to use.⁵⁰

III. LEGAL ANALYSIS

A. Respondent Met Its Obligations Related to the Union's November 2018 Requests for Information

Included in the Complaint is the allegation that the Respondent "...in writing, failed and refused to furnish the Union" with information requested on November 20, 2018.⁵¹ The Complaint further alleges that the information requested by the Union was "necessary for, and relevant to, the Union's performance of its duties".⁵² While the Complaint lists various information the General Counsel believes was not provided to the Union, no clear testimony was presented by the Union witnesses at the hearing specifying what information was actually needed by the Union, why it was needed and/or to confirm that the information was not otherwise already available to the Union.⁵³ There was also no evidence to establish that the Union could

⁴⁸ *Id.*; Talley (Tr. 799-801); GCX 15 and GCX 16.

⁴⁹ *See* Just (Tr. 47-51)

⁵⁰ *Id.*

⁵¹ Complaint, ¶7(a) and (c). While the General Counsel introduced evidence of an earlier request for information issued by the Union in February of 2018 and June of 2018 the Complaint does not include allegations that these requests were not timely or adequately responded to by Respondent. JX 5, JX 7 and Complaint. Indeed, the Respondent responded in good faith on March 6, 2018 and in July 6, 2018. JX 6 and JX 9.

⁵² Complaint, ¶7(b).

⁵³ The best inference the evidence at hearing provided was that General Counsel believes that Respondent did not adequately identify what training or tools were given to the housekeeping

not obtain the information that allegedly remained outstanding from other sources – such as the members of the bargaining unit, information given to the Union on a weekly basis by the Respondent related to housekeeper schedules, and what was visibly and readily apparent to them each time they entered the hotel’s premises.⁵⁴

The General Counsel and the Union have the burden of proof to establish that the request for information propounded by the Union was actually made in good faith for a legitimate representational function. If the only reason that a union makes a demand for information is to harass the company, then the request may legally be denied.” *WLVI-TV, Inc.*, 333 NLRB 1079 (2001) (citing *Hawkins Construction Co.*, 285 NLRB 1313 (1987), enf. denied on other grounds 857 F.2d 1224 (8th Cir. 1998)). Despite the fact that the Union’s request, on its whole, did not appear to be conveyed in good faith but instead just part of the Union’s continued and routine barrage of requests for information⁵⁵, Respondent made a good faith and substantial effort to

staff to perform their duties. See Complaint, ¶7(a)(ii)(C) and (D) and General Counsel’s examination of Esparza and Rader, however, as all relevant witnesses testified, the housekeepers were not given any specific training specific to the renovation nor were they required to use any specific tool or new cleaning supplies as a result of the renovation so there was no responsive information to provide. *See generally* Rader, Just, Dingle, Lee, Donnelly and Talley.

⁵⁴ See Valades (Tr. at 722)(union representative could not confirm that information requests were issued only after determining the information was not otherwise available).

⁵⁵ The November 20, 2018 letter sent to the Respondent included more than 20 requests including the various subparts and required the production of a large volume of detailed information and documents. JX 11 and JX 16. The November 2018 request followed a various requested propounded in February 2018 and June 2018. JX 5 and JX 7. As Mr. Rader testified, the November 2018 was only one of many requests for information that the Respondent received during 2018 and throughout the time he served as General Manager of the hotel. *See* RX17 and RX 18; Rader (Tr. at 546-547). In the letter, the Union acknowledged that it had known that the renovation would include changes to the guest room showers since early March of 2018 at the latest. See JX 6 (express written notice to Union) and JX 11 at 3 (acknowledgment of this information). If this anticipated aspect of the remodel was truly a concern and raised a valid representation issue, the Union would have requested information in July or soon thereafter. It would not have waited months to seek additional information. If the information was legitimately needed, the Union would have taken immediate action based upon the information

respond to the several individual and detailed requests included in the November 20, 2018 request (as was the approach for all requests received).⁵⁶ Respondent provided an initial response on December 4, 2018 – merely days after the request was propounded and well before the response deadline unilaterally set by the Union.⁵⁷ Respondent then supplemented its response on January 4, 2019.⁵⁸ With its January 4th supplement, Respondent substantially responded to the requests and provided more than sufficient information to aid the Union in any actual effort to serve a legitimate representative function. Respondent also clearly stated that if the Union wished to discuss any issues it believed were outstanding or wanted Respondent to consider information, it was willing to do so.⁵⁹ This offer was genuine and sincere. In fact, Respondent voluntarily provided Union representatives with an impromptu tour of a renovated room (including a bathroom) early on.⁶⁰ The Union did not express any concern to Respondent’s management about the actual changes to the renovated rooms, request a future or more extensive tour of the remodeled areas of the hotel or request that they be provided an opportunity to observe the housekeepers while on duty.⁶¹ They also took no action to accept the Respondent’s

learned in December 2018 and January 2019 and/or if it believed the information provided was insufficient, take timely steps to follow up on any deficiency the Union believed existed. But, that is not what it did. Despite the Respondent’s offer on January 4th to discuss the matter of the inclusion of shower updates in the remodel and any concerns the Union may have, the Union did not take up the offer until late March 2019. JX 12 and JX 14. And, it did not file the charge that underlies the Complaint here until May 2019. GCX 1(a). Moreover, at no point did the Union provide the Respondent with any actual factual based information or studies to contradict the Respondent’s assessment of the situation. In other words, there was no genuine exchange of information or timely inquiry by the Union as is expected when the Union is actually working in a legitimate representative capacity.

⁵⁶ Rader (Tr. 546-553).

⁵⁷ JX 11 and JX 12.

⁵⁸ JX 12.

⁵⁹ JX 11.

⁶⁰ Rader (Tr. at 543-545); Valades (Tr. at 722-723)

⁶¹ See Rader (Tr. at 544-546).

invitation to meet and discuss any concerns until months later in late March of 2019.⁶²

Furthermore, at no point between January 4, 2019 and the filing of the May 10, 2019 charge did the Union follow up on its November 2018 request and advise the Respondent it believed that additional information was needed for the Union to adequately represent its members.⁶³ Had they, the Respondent would have made a good faith effort to respond to the same as it regularly did in response to the voluminous and frequent requests for information propounded by the Union.⁶⁴

It is well-established law that the Board looks to the totality of the circumstances to determine whether the parties have made a diligent effort to obtain or provide the requested information reasonably and promptly and there is no *per se* rule as to when information must be provided. *West Penn Power Co.*, 339 NLRB 585, 587 (2003). Once the totality of circumstances here are considered, it is clear that Respondent met its duty to respond to the Union's November 20, 2018 requests for information.

The duty to furnish information requires a "reasonable good faith effort to respond to the request as promptly as circumstances allow." *The Permanente Medical Group, Inc.*, 368 NLRB 131 (Dec. 11, 2019) citing *Good Life Beverage Co.*, 312 NLRB 1060, 1062 n.9 (1993). The totality of the circumstances in this case indicate the Respondent made a diligent effort to supply the Union the requested information as promptly as circumstances allowed.

Mr. Rader, the General Manager of the Anchorage Hilton at the time, was not directly managing the renovation work at the hotel.⁶⁵ As he explained in his hearing testimony, he

⁶² JX 14.

⁶³ See JX 11, JX 12 and JX 14 and generally, Esparza (Tr. 345-346), Valades and Rader.

⁶⁴ See Rader (Tr. 540 – 553).

⁶⁵ Rader (Tr. at 500 – 503 and 506-510).

received periodic updates on the remodel's schedule but he did not have much advance notice and the schedule information available continued to change.⁶⁶ Once the information was more firm and he was in an actual position to provide the Union with concrete information, he provided it⁶⁷. The Union was put on notice as soon as plans for the remodel were announced in mid-2017 and Union representatives saw mock ups of the rooms before any work even began.⁶⁸ Mr. Rader and others regularly provided the Union's representatives with verbal updates and were available for any questions they wished to ask him. The parties agree that Mr. Rader (and others in management at that time) had a professional working relationship with the Union's representatives, was responsive and communicated effectively with them.⁶⁹

Thus, when he received their request for information he responded to it in good faith. But, he could only respond with the information he had available. And, he could not respond immediately given when the request came in – which was the eve of the holiday season and year end. As everyone can appreciate, that is a time of year where operations are busy and all tasks tend to take longer than usual due to various staff vacations and other business interruptions. In addition to usual circumstances, the entire Anchorage community also dealt with a dramatic 7.0+ earthquake on November 30, 2018 that caused massive business disruptions.⁷⁰ For these reasons, any delay that occurred between December 15, 2018 (the Union's unilaterally set response deadline) and January 4, 2019 (Mr. Rader's response) was reasonable in light of these circumstances. *See, e.g., The Permanente Medical Group, Inc.*, 368 NLRB 131 (Dec. 11, 2019) (finding no unreasonable delay for information provided up to 12 weeks after initial request

⁶⁶ *Id.*

⁶⁷ *Id.* (Tr. at 483 – 487).

⁶⁸ *See* Donnelly (Tr. 693-697); *see also* Esparza and Valades.

⁶⁹ Talley (Tr. 806); Esparza (Tr. 360-362).

⁷⁰ *See* Rader (Tr. at 430); *see also* <https://www.usgs.gov/news/2018-anchorage-earthquake>.

considering size of request and employer's continuous communications with union); *West Penn Power Co.*, 339 NLRB 585, 587 (2003) (finding 7.5 month delay not unreasonable as employer periodically advised union of status and noting that request made alongside other information requests, requiring substantial time to address); *Good Life Beverage Co.*, 312 NLRB 1060, 1062 n.9 (1993) ("5 ½ week delay in responding to an information request is not 'necessarily . . . excessive'").

To the extent any delay is deemed unreasonable or in the event the Respondent is found to not have substantially responded to any particular aspect of the request for information, Respondent submits that such conduct caused no harm and did not, as the General Counsel suggests, impact the Union's performance of its duties. As explained herein, the Union had known that the remodel would include updates to the guest bathrooms since mid-2017 but did not timely seek additional information regarding the same.⁷¹ It also did not use the information shared to take any meaningful steps to address any alleged concerns.

As multiple witnesses testified at the hearing, the Union and all bargaining members were provided information related to the renovation on a regular basis as new information became available. The Union was well aware what floors were out of commission due to the remodel and the dates said floors were out of order. The Union business representatives were there almost each day Monday through Friday and could see with their own eyes which floors were out of order. They also regularly met with the members of the bargaining unit during their lunch breaks at the hotel and could find out directly from them – which floors had been remodeled, which floors or rooms were remodeled to replace tub/shower combos with walk-in showers, what supplies/tools were available to the staff to use, what training, if any staff were given. This

⁷¹ See generally Donnelly and Rader.

was not information that was solely within the Respondent's custody, knowledge or control.

Moreover, there has been no showing that any of the information requested or let alone - outstanding - was needed for, or even relevant to, the Union's performance of its duties. The Union did not use any of the information they were given in response to their July 2018 or November 2018 requests for information in their meeting with the Respondent in March 2019 and they did not use it to make any specific demands to the Respondent let alone use the same in bargaining.⁷²

The Union's statements alone that the information is needed is not enough to meet this requirement. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979) ("A union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested. The duty to supply information under §8(a)(5) turns upon 'the circumstances of the particular case' . . . and much the same may be said for the type of disclosure that will satisfy that duty."). Requests for information that is already known to the Union and/or is not needed is a request made in bad faith and for no purpose other than to harass. *See WLVI-TV, Inc.*, 333 NLRB 1079.

Taking into account the totality of the circumstances, there is not sufficient evidence to support the allegations that the Union's November 20, 2018 requests for information were issued in good faith, that the Respondent did not substantially and sufficiently respond to the requests, that additional information was needed for the Union's representative duties and/or that there was some prejudice to the Union as a result of not getting additional information in writing. For these reasons, the Respondent cannot be found to have violated Section 8(a) of the NLRA.

⁷² *See* Esparza and Rader.

B. The Remodel Did Not Trigger Mandatory Bargaining

i. Legal Standard

General Counsel has the burden to show that an assignment constituted a material, substantial, and significant change in an employee's work assignments. *Bohemian Club*, 351 NLRB 1065, 1066 (2007) (citing *Peerless Food Products*, 236 NLRB 161 (1978)); *Creative Vision Resources, LLC*, 15-CA-020067, at *27-28 (NLRB Jan. 7, 2013). The burden has not been met here.

Despite more than a year and a half to prepare its case and present evidence over multiple days from numerous witnesses without any restrictions⁷³, the General Counsel and the Union failed to introduce evidence to substantiate the allegation that the remodel caused a material, substantial or significant adverse change in the housekeeping staff's work. In order to meet their burden, the General Counsel and Union were required to do more than to present subjective unpersuasive vague testimony from only two staff members. Yet, that is all they did.

Even if the testimony presented showed some change, it did not meet the threshold of a material, substantial or significant change. Any change was a positive one or at the very least, nominal and immaterial. The two housekeepers that testified indicated that the remodel increased their work duties no more than a few minutes each shift. Even if their testimony was credible (which it was not given their lack of detail and uncertainty and the Union's coercion of at least one of the witnesses), their testimony does not meet the showing required. As is shown by the Board's decision in *Bohemian Club*, the change in work duties must be the "imposition of

⁷³ The fact that the hearing was conducted via Zoom allowed the General Counsel and Union to present evidence through witnesses irrespective of their location and without cost. Even though there were no limitations or obstacles to presenting evidence, only two housekeepers testified in support of the claims of the General Counsel and Union and their testimony was unpersuasive.

a significantly different task” that was previously done by someone else – not the “mere continuation” of regular work. *Bohemian Club*, 351 NLRB 1065, 1066 (2007) (cooks required to perform cleaning duties previously performed by stewards); *Fancy Dan’s Jet Inn Restaurant*, 213 NLRB 709, 713-14 (1974) (waitresses required to clean restrooms); *Ironton Publications*, 313 NLRB fn. 3, 1211 (1994), *enfd.* Mem. 73 F.3d 362 (6th Cir. 1995) (pressmen required to perform the new duty of mopping floor).

Moreover, the change must represent an undisputed significant increase of time spent working. *Bohemian Club*, 351 NLRB 1065 (parties agreed that the task at issue required an additional 30 minutes a day). Unlike *Bohemian Club*, *Fancy Dan’s Jet Inn Restaurant* and *Ironton Publications*, the tasks at issue (cleaning a shower and wiping down glass) fall squarely within the housekeepers’ regular work duties, were not previously performed by others, and the alleged impact is disputed.

Minor changes in the means by which employees perform their job, which have negligible impact, do not meet the “material, substantial, significant change” standard. *Alan Ritchey, Inc.*, 359 NLRB 396, 442 (2012). “Further, if the changes ‘ . . . constitute merely particularization of, or delineations of means for carrying out, an established practice, they may, in many instances, be deemed not to constitute a “material, substantial, and significant” change.’” *Id.* (mechanics who repaired containers - were issued a revised set of expectations that altered work terms did not rise to the level of a material, substantial and significant change).

ii. There Was No Material, Substantial or Significant Change

The alleged changes attributed to the remodel did not materially, substantially or significantly change the housekeepers’ duties. And, the changes certainly did not make the job

materially more onerous or arduous. If anything, their continued assigned work duties became easier because there was less surface area to dust and vacuum and newer furniture and materials that were easier to clean. The overwhelming testimony from the witnesses that have actually worked in housekeeping and are familiar with the old and new furniture, carpet and other appointments established that it was faster and easier – not more difficult and time consuming to clean the remodeled rooms.⁷⁴ Indeed, the video of Ms. Feddersen (a housekeeping professional for more than 20 years with extensive experience cleaning the exact tubs and showers at the hotel) performing the task of cleaning a shower curtain versus a shower glass door and her convincing testimony⁷⁵ confirm that it is easier to clean a new shower with a glass door than it is to clean an older shower/tub combo with a shower curtain. The video recordings and her testimony capture the only reality supported by the evidence which is – to the extent there was a change – it was a positive one.⁷⁶

Although the General Counsel and Union presented testimony from two housekeepers to support the argument that the renovated rooms made their work assignments more difficult and take longer, their testimony was inconsistent and not credible. Ms. Dingle did not work at the

⁷⁴ Rader, Just, Feddersen.

⁷⁵ Unlike the other housekeepers who testified, Ms. Feddersen had nothing personal to gain by testifying. She will not benefit if there is ruling for the General Counsel in this case and she will not benefit if the ruling is in the Respondent's favor. While counsel for the General Counsel attempted to suggest that Feddersen somehow received a promotion (at a separate hotel property) because she allowed herself to be videotaped while cleaning a hotel guestroom – there is absolutely no evidence for this theory. Ms. Feddersen testified that she was not told how to perform the task of cleaning the two types of bathroom showers at the hotel, the rooms were used and needed cleaning and she cleaned them in the middle of the day using her normal speed, methods and supplies. *See generally Feddersen (Tr. 755-763)*. Put another way, her video recordings and testimony more accurately capture “real life” for the housekeeping staff than any other evidence presented and holds much more credibility than the general and vague testimony given by Ms. Dingle and Ms. Lee.

⁷⁶ RX 25 (Part 1 – 3); RX 36; Feddersen (Tr. 743 – 764).

hotel before the renovation began and as such, had no baseline to compare the post-remodeled rooms because there was never a time she only cleaned unremodeled rooms.⁷⁷ Additionally, she routinely worked with another housekeeper during her shifts at the hotel and admitted that the other housekeeper often cleaned the bathrooms – not her.⁷⁸ Curiously, the General Counsel and Union did not call the other housekeeper to testify at the hearing. As for the second housekeeping witness the General Counsel and Union presented, Ms. Lee, did not provide any detail regarding what amount of time it actually took her to clean the newer room, how it impacted her room quotas or identify any financial impact to her. Her vague statements that the remodel made her job more difficult does not meet the General Counsel’s burden in this case.

The Union representatives themselves could not point to any language in the parties’ implemented terms or any specific statistical or even speculative data that supports the notion that the renovation materially, substantially or significantly changed the housekeeper’s job.⁷⁹ They admitted in their testimony that they merely relied upon the general statements of a couple of housekeepers that it was more difficult to clean the showers after the remodel.⁸⁰ Yet – there was no evidence introduced at the hearing to support this allegation. Based on the testimony of the Union representatives, they also did nothing to gather more details or evidence from any of

⁷⁷ Dingle (Tr. 160-161). Ms. Dingle testified she was never assigned to just one floor and began cleaning renovated rooms as soon as she began working at the hotel. *Id.* Moreover, she could not provide any confident testimony as to how often or for how long she cleaned unrenovated rooms. *Id.* Her lack of confident testimony was contradicted by the testimony of Respondent’s management that most rooms had been renovated by the end of December 2018 and all renovation work had been completed by early 2019 – shortly after Ms. Dingle’s employment began. *See Rader, Just and Donnelly* (Tr. 693). Ms. Dingle’s overall testimony is also suspect in light of the fact that the Union representatives (including the President) took multiple steps to speak with Ms. Dingle before she appeared to testify and appeared to influence her position in this matter. *See generally*, RX 28; DelPilar (Tr. at 774-778); Valades (Tr. 734-736).

⁷⁸ Dingle (Tr. at 167).

⁷⁹ Valades (Tr. 706-710)

⁸⁰ *Id.* (Tr. 724).

the complaining housekeepers.⁸¹

In total, there plainly is no evidence to support an argument that there was an effect upon the housekeepers' work duties. If there was, it was *de minimis* and justified by the Respondent's legitimate efforts to protect its business interests, improve the worksite (improvements the Union has been advocating to see for more than a decade), and increase business (which in turn, increases the availability of work hours, wages, tips and extra room bonuses for the housekeepers). There has been no violation of the Act. To the extent there has been, it is excused by its nominal impact, Respondent's good faith and pursuit of legitimate business interests.

C. The Relief Sought Is Not Founded in Fact or Law

Through its Amendment to the Complaint, the General Counsel requests that the Respondent:

“...pay its housekeepers who have worked since November 5, 2018, for the wages and other benefits lost, including opportunities to earn tips and bonuses as well as the \$4.95 contractual premium per additional room for the additional time they spent because of the changes made to their cleaning dues [*sic*] without first providing notice and the opportunity to bargain.”⁸²

The General Counsel further requests that this monetary relief be paid for the period of more than two years before the hearing until the Respondent bargains until an agreement is reached, the parties reach a bona fide impasse, Union fails to timely request bargaining or commence negotiations after receipt of Respondent's notice of its desire to bargain, or Union fails to bargain in good faith.⁸³ But, even if the General Counsel meets its burden to show that the circumstances

⁸¹ *Id.* (Tr. 724-726).

⁸² GCX 1(h).

⁸³ *Id.*

triggered a mandatory bargaining obligation, the relief sought by the General Counsel is not founded in fact or law for several reasons.

In short, the General Counsel asks the Administrative Law Judge to order the parties to bargain (which Respondent has never indicated an unwillingness to do yet Union has not invited it to bargain) and to apply an incredibly speculative version of a “make-whole” relief. Neither of these requests are appropriate or supported by law.

First of all, the Union never made a request to bargain that has gone ignored by the Respondent.⁸⁴ In contrast, the Respondent offered in its January 4, 2019 written communication to the Union that it was willing to continue the discussion and consider any information the Union wished to present.⁸⁵ That message was consistent with the Respondent’s position regarding bargaining for several years and was again reiterated when the parties met in March of 2020.⁸⁶ Yet, the Union did not extend an invitation to bargain or commence negotiations in response.⁸⁷ As such, there is no basis to order the Respondent to bargain now. If the Union believes this is a matter that requires bargaining, they can invite the Respondent to participate in a bargaining session. Respondent’s counsel has been unable to find any legal authority that the Union or General Counsel can utilize this type of proceeding to try and create leverage for a bargaining session over an issue that had never been the subject of bargaining in the past which is what appears to be the attempt here.

Second, there is no basis for the assertion that the housekeeping staff sustained a financial loss due to the remodel let alone that they are entitled to the monetary relief sought in this case

⁸⁴ Esparza (Tr. 352-353).

⁸⁵ JX 14.

⁸⁶ Rader (Tr. 467-470).

⁸⁷ *See generally*, Rader (Tr. 477-479), Esparza (Tr. 352 – 353), Valades and JX 14.

(alleged lost wages, tips and \$4.95 for each “additional room” cleaned since November 5, 2018).⁸⁸ Setting aside for a moment the impossibility of determining what has allegedly been lost in the way of tips or what “additional rooms” have been cleaned (since that term is not defined in the General Counsel’s request for relief), there has been no established wage loss. Moreover, “make-whole” relief arguments are not appropriate in effects bargaining cases particularly make-whole awards for significant back pay that has not been proven with any certainty. *Berklee College of Music*, 01-CA-089878, at*24-25 (NLRB Sept. 20, 2013)(citing *Fast Food Merchandisers, Inc.*, 291 NLRB 897, 899–902 (1988)). The standard remedy in effects bargaining cases is a limited make-whole *Transmarine* remedy, as clarified in *Melody Toyota*. *Transmarine Navigation Corp.*, 170 NLRB 389 (1968); *Melody Toyota*, 325 NLRB 846 (1998); *Rochester Gas & Electric Corp.*, 355 NLRB 507,508 (2010); *Electrical Workers Local 36 v. NLRB*, 706 F.3d 73 (2d Cir. 2013), petition for cert. filed 81 U.S.L.W. 3566 (U.S. Mar. 28, 2013) (No. 12-1178); *Stevens International*, 337 NLRB 143, 144 (2001). A *Transmarine* remedy requires an employer to bargain over the effects of its decision and to provide employees with *limited* back pay from 5 days after the date of the decision until the occurrence of one of four

⁸⁸ “Extra room” bonuses were paid when a housekeeper cleaned more than 17 rooms (after any applicable credits were taken into account). See JX 15 at 18. The inference made by the General Counsel’s request is that any room with a shower should be considered an “extra room”. Not only would it be impossible to now determine – more than two years later – how many rooms with showers each housekeeper has cleaned – such a formula is in no way contemplated or supported by the compensation structure in place at the hotel and could result in an additional payment of \$84.15 per day worked ($\$4.95 \times 17 = \84.15) if a housekeeper cleaned a floor with only shower rooms. While housekeeping is a difficult profession – increasing the housekeeper’s daily rate of pay so significantly is not a damage calculation that is warranted by the existing pay rate or existing bonus structure for the position and certainly is not even a reasonable speculation as to what any bargaining session could have yielded if held. As the summary of extra room bonuses attached here as Appendix A shows, housekeepers often earned less than \$100 *per month* in extra room bonuses. The General Counsel appears to be arguing that each housekeeper is entitled to almost that same amount *each day worked*. Under any theory of damages – that argument is not supported by fact or law.

specified conditions. See *Transmarine*, supra at 390. Applying this legal authority, any award of back pay does not kick in until *after a decision* not from the time the Union alleges the effects began.

Make-whole relief awards are particularly inappropriate where the alleged loss is purely speculative. *LTV Electrosystems, Inc.*, 166 NLRB 938, 940 (1967) (Board deemed a “make whole” award not appropriate because “on the record here the fact and amount of losses appears too speculative to warrant attempt at ascertainment). The Board further explained that “[a]bsent experiential presumption or statistical or other evidence from which reasonable inference of possible loss may flow, there is no basis for a make-whole order.”. *Id.* If it cannot be “said with sufficient certainty ... that the Respondent and the Union would probably have bargained to a contract containing, without offsetting bargaining trades, monetary benefits above the present scale”, a reimbursement order is not allowed. *Id.*

That is the precise situation here. It cannot be said with any certainty that bargaining would have yielded additional compensation for the housekeeping staff – particularly given the parties’ bargaining history since 2009. Moreover, the relief demanded by the General Counsel (alleged lost wages and tips) is purely speculative. The housekeepers at the hotel do not report their tip receipts to management and there is no evidence that tips are expected or in any way directly tied to what rooms are cleaned. In other words, there is no automatic gratuity charge or tip pool at the hotel. Similarly, there is no way to attribute a decrease in hours or pay to the type of rooms cleaned by a housekeeper on any given day. The evidence at hearing was clear that the work schedules are incredibly fluid and depend on the needs of the business on that particular day.

There is no evidence that any housekeeper lost their job at the hotel because they could

not meet a room quota or the standards for cleaning the renovated rooms. There is also no evidence that any housekeeper had difficulty keeping up with occupancy demands or earned less because of the remodel or alleged “changed” work duties.⁸⁹ The Union’s representative confirmed that as of the hearing – no analysis has been done to determine if there was any issue with housekeepers meeting their quota.⁹⁰ The evidence of record confirms that the staff continued to earn extra room bonuses and that extra room bonuses even increased after the remodel was complete.⁹¹ Consistent with Evidence Rule 1006, the summary of the data contained in General Counsel Exhibit 8 and 10 is attached hereto as Appendix A⁹². As the summary table illustrates, the extra room bonus payments fluctuated with the occupancy rates of the hotel – not the dates of the renovations. If anything, extra room bonuses *increased* not decreased as a result of the model – presumably because the rooms did become easier to clean – not harder. The data regarding extra room bonuses shows that more significant bonuses were paid in January and February 2019 than January and February 2018, again indicating room renovations were not a cause of reduced room bonus payouts. Individual housekeepers who were the highest earners pre-renovation, remained the highest earners post-renovation—and all five highest earners earned more in 2019. Specifically, the following is a summary of the extra room payments for the highest earners⁹³:

⁸⁹ See GC 6-8; Talley (Tr. 804-805); and Donnelly (Tr. 701).

⁹⁰ Valades (Tr. 727-728).

⁹¹ See GC 6 (paystubs), GC 7 (hours worked), GC 8 (extra room bonuses); R27 (extra room bonuses); and Talley (Tr. at 789-791 and 804-805).

⁹² As the parties explained in their Joint Stipulations regarding these exhibits, the parties agreed to refer to (with reservations spelled out in their stipulation) upon a certain sampling of data for a total of approximately eight months that spans the period of before/early, during and after renovation at the hotel.

⁹³ GCX 8.

Housekeeper	2018 Months	2019 Months
Maria Zarzuela	\$767.25	\$1,370.95
Irene Meneses	\$103.95	\$640.25
Belinda Clifton	\$89.10	\$480.15
Adalgis Huahes-Hernandez:	\$148.50	\$346.50
Sung Lee	\$75.75	\$401.85

Additional housekeepers also made more post-renovation than pre-renovation⁹⁴:

Housekeeper	2018 Months	2019 Months
Ana Ynfante	\$128.70	\$272.25
Yocasta Guerrero	\$31.60	\$311.85
Yolanda Belen	\$0	\$222.75
Yolimar Berrocales	\$153.45	\$108.90

Indeed, there is no evidence that either of the housekeepers who testified in the General Counsel’s case cleaned less rooms during or after the remodel⁹⁵ or suffered monetary loss.

Rather, the payroll documentation submitted unequivocally shows that housekeepers continued to earn the same if not more extra room bonuses during and after the remodel.⁹⁶

While one housekeeper (Ms. Dingle) initially suggested she stopped earning extra room bonuses after the remodel because of alleged extra work duties, the undisputed payroll evidence introduced at the hearing directly contradicts her testimony.⁹⁷ As Ms. Dingle later admitted and

⁹⁴ GCX 8.

⁹⁵ See Talley (Tr. at 797-801)(confirming that there was no concern by managers that there had been a decrease in productivity on a whole or even an individual level that could be attributed to the remodel).

⁹⁶ *Id.*

⁹⁷ Dingle (Tr. at 149-150). In her testimony, Ms. Dingle suggested that she became tired more

Ms. Talley confirmed, Ms. Dingle received bonus payments throughout the period of time in question including but not limited to, bonuses earned between March 29, 2019 – May 23, 2019.⁹⁸

To the extent there was any fluctuation for any one particular housekeeper, said fluctuation cannot reasonably be found to have been caused by the remodel given the multiple factors that impact the number of rooms that a housekeeper cleans on any given day.⁹⁹ Even the housekeeping staff witnesses called to testify by the General Counsel acknowledged and described this reality.¹⁰⁰

The General Counsel and Union have copies of all the housekeeping boards, occupancy reports, time cards, schedules and payroll records (including data on extra room bonuses) for a period of approximately eight (8) months that spans before, during and after the remodel.¹⁰¹ Based upon Respondent's analysis of this data, there is no support for the argument that housekeepers missed earning additional wages due to the remodel. To the extent the General Counsel and/or Union believe the evidence of record provides otherwise, Respondent looks forward to seeing how such an argument is cobbled together and to the extent appropriate, will seek leave to respond to the same in a reply brief.

quickly cleaning the remodeled rooms and as a result, did not clean extra rooms. Her efforts to create a causal connection to the remodel is plainly flawed. Ms. Dingle testified that during the remodel she was working a day shift at another hotel and a night shift at Anchorage Hilton. Naturally, someone working a 16 or more hour day is inherently going to be tired and not wish to stay late at their second shift of the day to clean additional rooms even if they took a "team approach" to their work duties as Ms. Dingle did (she jointly cleaned rooms with another housekeeper). *Id.* (Tr. at 157 and 167). Moreover, Ms. Dingle testified that cleaning extra rooms was not voluntary but instead assigned. Dingle. (Tr. at 149-159); *see also* Just (Tr. 47-48). Thus, her suggestion that she somehow was denied the opportunity to earn additional tips or extra room bonuses because of changes in work duties simply makes no logical sense.

⁹⁸ RX 27; Dingle (Tr. 162-165); Talley (Tr. at 789-791).

⁹⁹ Just (Tr. 591-598 and 624-636).

¹⁰⁰ Dingle; Lee; Just; Rader; and Donnelly.

¹⁰¹ GC 6-8 and 11.

There simply is no support for the notion that each housekeeper that has worked since November 5, 2018 is entitled to monetary relief. To award such relief would result in a windfall and unjust compensation for work not performed. It would be an error of law.

IV. CONCLUSION

As established at hearing and summarized in this closing brief, neither the General Counsel nor the Union have met their burden to show that the Respondent has violated the Act. Even if they had met their burdens, the Respondent has met its burden on its affirmative defenses that the Respondent's conduct was justified by the Respondent's legally protectable business interests and done in good faith. The evidence also establishes that any unlawful conduct was *de minimis* in nature such that it does not warrant the finding of an unfair labor practice or the issuance of remedial order and the relief sought by the General Counsel is not founded in fact or law. Accordingly, for these reasons Respondent requests that the Complaint and all claims asserted therein be dismissed.

Dated this 29th day of January, 2021.

LITTLER MENDELSON
Attorneys for Respondent
CP ANCHORAGE HOTEL 2, LLC d/b/a
ANCHORAGE HILTON

By: /s/ Renea I. Saade

Renea I. Saade
Alaska Bar 0911060

4842-4037-6537.2

Summary of Occupancy Reports (GC 11) and Extra Room Bonus Data (GX 8)

	Jan. '18	Feb. '18	Aug. '18	Sept. '18	Jan. '19	Feb. '19	Apr. '19	May '19
1	85	246	397	335	91	189	293	406
2	91	233	428	197	119	194	310	366
3	98	220	415	187	138	180	302	302
4	126	262	400	224	149	198	271	335
5	104	270	361	282	147	281	255	399
6	130	273	n/a	308	153	312	222	455
7	113	236	381	329	156	295	188	483
8	121	200	422	324	163	270	210	565
9	147	176	429	327	166	192	251	462
10	146	182	444	325	155	130	255	428
11	124	259	357	309	179	140	220	443
12	127	278	428	335	232	164	188	453
13	175	285	410	335	197	186	209	516
14	125	265	418	317	181	205	146	565
15	121	252	397	338	189	207	154	562
16	153	218	421	335	207	207	180	557
17	142	198	407	385	197	155	187	575
18	147	154	n/a	374	226	144	151	543
19	156	142	301	301	222	178	175	525
20	213	195	357	283	168	239	158	553
21	152	211	350	283	147	271	149	569
22	131	214	367	349	184	403	187	547
23	155	263	415	357	191	451	236	552
24	262	312	401	353	246	383	286	397
25	323	186	386	357	261	399	247	414
26	350	201	321	309	275	408	253	437
27	307	238	318	307	256	373	237	379
28	208	318	277	294	247	366	231	506
29	186	n/a	312	277	245	n/a	287	567
30	192	n/a	373	n/a	234	n/a	406	470
31	230	n/a	298	n/a	210	n/a	n/a	n/a
Total:	5140	6487	10991	9026	5931	7120	6844	14331
	Jan. 2018	Feb. 2018	Aug. 2018	Sept. 2018	Jan. 2019	Feb. 2019	Apr. 2019	May 2019
Total Bonus Paid Out	\$232.25	\$448.90	\$999.10	\$583.75	\$257.25	\$606.60	\$242.55	\$4,535.30

* Some dates were missing from both reports:

- From Occupied Rooms: 8/6/18; 8/18/18; 9/30/18.
- From Extra Rooms Reports: 1/1 – 1/4/18; 9/28 – 9/30/18.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2021, I served a full, true and correct copy of the foregoing via electronic mail to:

Kristin White
kristin.white@nlrb.gov

Eric B. Myers
ebm@msh.law

By: /s/ Nancy Kruse