

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SAN FRANCISCO DIVISION OF JUDGES**

**KAVA HOLDINGS, LLC, et al., d/b/a  
HOTEL BEL AIR**

**and**

**Case 31–CA–074675**

**UNITE HERE – LOCAL 11**

**ORDER DENYING RESPONDENT’S  
MOTION FOR TEMPORARY STAY OF REMAND PROCEEDINGS**

On January 25, 2021, the National Labor Relations Board (the Board) upheld my initial Decision finding that Kava Holdings, LLC., et al., d/b/a Hotel Bel Air (Respondent) violated Sections 8(a)(3) and (1) of the Act by refusing to rehire unit employees who were laid off in September 2009 when the Hotel closed for renovations and who reapplied for their positions beginning July 26, 2011. See *Kava Holdings, LLC, et al. d/b/a Hotel Bel-Air*, 370 NLRB No. 73 (2021)

In the body of my Decision, I noted that there were 152 former unit employees who were not rehired to their former positions with Respondent. However, in the Remedies section of my Decision, I ordered reinstatement and make whole relief for 139 former unit employees. As such, there were 13 unidentified former employees (the unidentified 13 or the 13) who may be entitled to relief from this Decision (152-139=13). Accordingly, the Board severed and remanded the case in order for me to resolve the limited issue of whether an additional 13 individuals are entitled to reinstatement and make whole remedies.<sup>1</sup>

Respondent appealed the Board’s affirmance of my Decision to the Ninth Circuit Court of Appeals (9<sup>th</sup> Circuit). On March 2, 2021, Respondent moved to temporarily stay these remand proceedings pending a decision on Respondent’s Petition for Review by the 9<sup>th</sup> Circuit.<sup>2</sup> Counsel for the Acting General Counsel and UNITE HERE Local 11 (the Union or Charging Party) opposed the motion.

As grounds for its motion, Respondent averred that this remand should be stayed so it can challenge the Board’s affirmance of my Decision which found that Respondent violated the Act. Staying

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<sup>1</sup> I agree with counsel for the Acting General Counsel that, to the extent that Respondent argues that the Board remanded the issue of whether it violated Section 8(a)(3) and (1) as to the unidentified 13 individuals, that is not what was remanded. Rather, the Board’s Order specifically asked me to determine whether the additional 13 unidentified former unit employees are included as part of the affected class of discriminatees.

<sup>2</sup> To the extent Respondent infers that I recommended that it filed its motion to stay remand proceedings, that is incorrect. See Mot. Stay Remand Proc. At 2. It was Respondent who decided to file its motion with me versus the Board. I never informed, told, or suggested to Respondent that it file its motion with me in the first instance. To suggest otherwise is a misrepresentation of the facts and circumstances on Respondent’s behalf surrounding said motion.

these proceedings, Respondent contends, will save money, time and agency resources because, if Respondent is successful on appeal, the parties would not need to engage in the remand proceedings at all. Moreover, if the 9<sup>th</sup> Circuit affirms the Board, time and expense would be saved because the parties would not be simultaneously litigating in two venues – the 9<sup>th</sup> Circuit and the Board – and the parties could return to the remanded issue either after the 9<sup>th</sup> Circuit’s ruling and/or during the Board’s compliance stage.

However, Respondent’s arguments are misplaced. First, Respondent’s contentions are premised on the fact that the Board remanded the issue of whether Respondent violated Sections 8(a)(3) and (1) with respect to the 13 unidentified former unit employees. That is incorrect. Rather, this remanded issue is simple – which is, whether the 13 unidentified former employees should be included as affected employees entitled to a remedy. In other words, I must determine whether the unidentified 13 are or are not included in the class of discriminatees. That determination may be made in short order.

Second, while Respondent is focused on avoiding a delayed determination for the 139 identified discriminatees, it ignores the fact that, to stay the proceedings, means that the 13 unidentified former unit employees must wait indefinitely for a determination on whether they are included in the class of discriminatees.

Specifically, Respondent is unable to predict when the 9<sup>th</sup> Circuit will hear oral arguments on its Petition, how long the 9<sup>th</sup> Circuit will deliberate, and when the 9<sup>th</sup> Circuit will issue its determination. In fact, it could take years for the 9<sup>th</sup> Circuit to rule on Respondent’s petition. Meanwhile, a decision on whether to include the 13 unidentified former employees can be made now. Thus, to stay these proceedings will cost *more* money, expend *more* agency resources and expend *more* of the parties’ time than if the remanded issue goes forward.

Counsel for the Acting General Counsel is correct that the Board routinely severs and retains for further consideration a remedial issue while defending a final order on other, analytically distinct issues. See *Stephens Media, LLC*, 356 NLRB 661, 663 (2011) (severing one allegation for further consideration and issuing a final order on the remaining allegations), enforced, 677 F.3d 1241 (D.C. Cir. 2012) (holding that “[t]he severed issue was removed by the Board from the realm of th[e] case” and did not affect appellate review of the Board’s final order). A party juggling a remand proceeding and an appellate review is nothing new; and contrary to Respondent’s motion, going forward with this remand proceedings is the most efficient way to effectuate the purposes of the Act.

In fact, I can quickly amend the remedial section of the Decision to include all affected employees who were laid off as a result of the closure of the Hotel Bel Air in 2009 who re/applied for employment with the Hotel prior to its reopening in October 2011 but were not rehired, leaving the “question of precisely which individuals [139 or 152 former unit employees] comprise the class [to be] considered at the compliance stage of the case.” See *Iron Workers Local 433 (Reynolds Electrical)*, 298 NLRB 35, 35-36 (1990) (citations omitted), enfd. mem. 931 F.2d 897 (9th Cir. 1991). Then the parties can return to the 9<sup>th</sup> Circuit and proceed with Respondent’s Petition for Review. Waiting for Respondent to conclude its appeal to the 9<sup>th</sup> Circuit before the remanded issue is resolved unnecessarily delays these remand proceedings, and is a waste of time, money and agency resources.

Accordingly, Respondent's Motion for Temporary Stay of Remand Proceedings is DENIED.

Date: March 16, 2021, San Francisco, California.



Lisa D. Ross  
Administrative Law Judge

*Served by electronic mail to:*

**For the General Counsel:**

Yaneth Palencia, Esq.  
NLRB Region 31

[Yaneth.Palencia@nlrb.gov](mailto:Yaneth.Palencia@nlrb.gov)

Sarah Ingebritsen, Esq.  
NLRB – Region 19

[Sarah.Ingebritsen@nlrb.gov](mailto:Sarah.Ingebritsen@nlrb.gov)

**For the Respondent Hotel Bel Air:**

Karl Terrell, Esq.  
Diane Lerma, Esq.  
Stokes Wagner

[kterrell@stokeswagner.com](mailto:kterrell@stokeswagner.com)  
[dlerma@stokeswagner.com](mailto:dlerma@stokeswagner.com)

**For the Charging Party Union:**

Jeremy Blasi, Esq.  
UNITE HERE – Local 11

[jblasi@unitehere11.org](mailto:jblasi@unitehere11.org)

Kirill Penteshin, Esq.  
Schwartz, Steinsapir,  
Dohrmann & Sommers, LLP

[kp@ssdslaw.com](mailto:kp@ssdslaw.com)

**From:** Lee, Vanise J.

**Sent:** Tuesday, March 16, 2021 10:47 AM

**To:** Ingebritsen, Sarah <Sarah.Ingebritsen@nlrb.gov>; Palencia, Yaneth <Yaneth.Palencia@nlrb.gov>; dlerma@stokeswagner.com; jblasi@unitehere11.org; kterrell@stokeswagner.com; kp@ssdslaw.com

**Cc:** Gomez, Doreen E. <Doreen.Gomez@nlrb.gov>; DiCrocco, Brian <Brian.DiCrocco@nlrb.gov>; Lee, Vanise J. <Vanise.Lee@nlrb.gov>

**Subject:** d/b/a Hotel Bel Air, 31-CA-074675, Judge's Order Denying Resp Mtn to Temp Stay Proceedings 3-16-21.pdf

**Importance:** High

Good day Counsel,

Attached is an Order from Administrative Law Judge Lisa D. Ross.

Thank you for our attention in this matter.

***Vanise J. Lee, Legal Tech.***

***NLRB Division of Judges San Francisco Branch***

***Main – 415.356.5255***

***Direct – 628.221.8826***

***Fax – 415.356.5254***