

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

DOUBLETREE GUEST SUITES  
SANTA MONICA

and

Case 31-CA-26242

HOTEL EMPLOYEES & RESTAURANT  
EMPLOYEES UNION LOCAL 11,  
HOTEL EMPLOYEES & RESTAURANT  
EMPLOYEES INTERNATIONAL UNION,  
AFL-CIO

*Yaneth Palencia, Esq.*,  
Los Angeles, California,  
for the General Counsel.

*Mark Theodore, Esq.* and  
*Adam C. Abrahms, Esq.*  
(*Proskauer Rose LLP*)  
Los Angeles, California, for the Respondent.

*Kristin L. Martin, Esq.*,  
(*Davis, Cowell & Bowe, LLP*)  
San Francisco, California, for the Union.

DECISION

Statement of the Case

JAY R. POLLACK, Administrative Law Judge: I heard this case in trial at Los Angeles, California, on August 11, 2003. On April 22, 2003, Hotel Employees & Restaurant Employees Union Local 11, Hotel Employees and Restaurant Employees International Union, AFL-CIO, (the Union) filed the charge in Case 31-CA-26242 alleging that Doubletree Guest Suites Santa Monica (Respondent or the Employer) committed certain violations of Section 8(a)(1) of the National Labor Relations Act, as amended (29 U.S.C. Section 151 et seq., herein called the Act). The Union filed an amended charge on June 27, 2003. On June 30, 2003, the Regional Director for Region 31 of the National Labor Relations Board issued a Complaint and Notice of Hearing against Respondent alleging that Respondent violated Section 8(a) (1) of the Act. The complaint was amended at the hearing. Respondent filed a timely answer to the complaint, denying all wrongdoing.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my

observation of the demeanor of the witnesses,<sup>1</sup> and having considered the post-hearing briefs of the parties, I make the following:

## Findings of Fact and Conclusions

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### I. Jurisdiction

Respondent is engaged in the operation of a hotel located in Santa Monica, California. During the twelve months prior to the issuance of the complaint, Respondent derived gross revenues in excess of \$500,000. During the same time period, Respondent purchased and received products valued in excess of \$5,000 directly from suppliers located outside the State of California. Accordingly, Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. The Alleged Unfair Labor Practices

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#### Background and Issues

At its Santa Monica, California facility, Respondent is engaged in the operation of a hotel. The Union has been engaged in an organizing campaign at Respondent's hotel for approximately two years. In May 2002, the Union filed a charge in Case 31-CA-25696 alleging, inter alia, that Respondent maintained an overly broad no-solicitation rule and a rule requiring that employees remove union buttons. On September 27, 2002, the Regional Director issued a complaint against Respondent alleging various violations of the Act including an allegation that Respondent maintained an overly broad rule restricting employees from wearing union insignia and/or buttons; and the promulgation, maintenance and enforcement of a written Jewelry Policy in Respondent's Employee Handbook.

On August 28, 2002, the Union filed the charge in Case 31-CA-25891, alleging, inter alia, that Respondent maintained various rules restricting employee Section 7 rights, including a ban against wearing union buttons. In September 2002, Respondent amended its Jewelry Policy. Thereafter, in October 2002, the Union filed an amended charge challenging Respondent's amended Jewelry Policy. On November 25, 2002, the Regional Director issued a consolidated complaint against Respondent alleging, inter alia, that Respondent promulgated and maintained an overly broad rule prohibiting employees from wearing union insignia and/or union buttons and that Respondent's Jewelry Policy unlawfully restricted employees' rights to wear union buttons and/or insignia.

On January 28, 2003, Respondent entered into an informal settlement agreement whereby it agreed, inter alia, to post a notice, which included the following:

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<sup>1</sup> The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

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WE WILL NOT promulgate, maintain, or enforce any rule that discriminatorily prohibits our employees from wearing union insignia or buttons, or that requires our approval before doing so.

5 WE WILL rescind and/or modify the rules and provisions of our Team Member handbook to conform to the foregoing undertakings AND WE WILL notify our employees that we have done so.

10 The Union did not join in the settlement agreement. While Respondent modified certain of its rules in the employee handbook it did not modify or rescind the Jewelry Policy at issue in the settled case and which is at issue in the instant case.

15 The Jewelry Policy attacked by the instant complaint was promulgated in September 2002 and has been enforced both before and after the Section 10(b) period involved in the instant case. The Jewelry Policy provides:

20 Jewelry should be professional and conservative. The only pins or decorations that may be worn on uniforms are nametags, language pins, service awards, and other pins approved by hotel management for special promotions or activities. The maximum number of pins permitted beyond the nametag is two. Non-uniformed female team members may wear one conservative pin or broach.

25 Respondent contends that when it settled Cases 31-CA-25696 and 31-CA-25891 it agreed not to discriminatorily enforce its Jewelry Policy but did not agree to rescind or modify that rule. Respondent contends that the settlement agreement permits it to continue the rule in effect and to enforce the rule in a lawful manner. Respondent argues that the settlement agreement in Cases 31-CA-25696 and 31-CA-25891 bars the General Counsel from litigating the Jewelry Policy in the instant case.

30 General Counsel and Union argue that the Jewelry Policy is unlawful under *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). They further argue that the prior settlement agreement cannot be construed to abrogate the employees' rights to wear Union buttons and/or insignia.

35 The facts are not in dispute. Respondent only allows its employees to wear pins and buttons approved by the Employer. The ban on union buttons applies to all of the employees at the Hotel. Employees at the Hotel wear three types of pins. Employees are required to wear a promotional white and blue button containing the phrase "Catch Me At My Best." Employees are also required to wear nametags and service recognition pins.

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#### The Settlement Negotiations

45 As indicated earlier, on November 25, 2002, the Regional Director issued a consolidated complaint against Respondent alleging, inter alia, that Respondent promulgated and maintained an overly broad rule prohibiting employees from wearing union insignia and/or union buttons and that Respondent's Jewelry Policy unlawfully restricted employees' rights to wear union buttons and/or insignia. On January 28, 2003, representatives of the Respondent met with representatives of the Region to discuss settlement of the outstanding complaint. Respondent stated that it would not agree to language prohibiting the Employer from maintaining a no buttons rule or dress code. The Respondent did agree to the following language:

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WE WILL NOT promulgate, maintain, or enforce any rule that discriminatorily prohibits our employees from wearing union insignia or buttons, or that requires our approval before doing so.

5 WE WILL rescind and/or modify the rules and provisions of our Team Member handbook to conform to the foregoing undertakings AND WE WILL notify our employees that we have done so.

10 On February 19, 2003, Respondent's general manager informed the press that Respondent was going to enforce its Jewelry Policy in a non-discriminatory manner.<sup>2</sup> On March 4, 2003, Respondent's counsel wrote the Region stating that the Jewelry Rule "complied with the Settlement Agreement and that "Respondent [would] not discriminatorily enforce the provision." Other employee rules were to be modified or deleted. The Union did not join in the settlement agreement. On March 10, the Regional director approved the settlement agreement  
15 unilaterally.

20 On April 3, 2003, the Union filed a charge alleging that Respondent had forbidden employees from wearing union insignia of the Act and the prior settlement. The charge was withdrawn by the Union. However, on April 22, 2003, the Union filed the instant charge alleging that Respondent had unlawfully forbidden employees from wearing union insignia. The Respondent then wrote the Region stating that Respondent was merely enforcing its Jewelry Rule in a non-discriminatory manner. The Region found that the settlement agreement had not been breached but issued a complaint based upon an ad hoc oral rule prohibiting the wearing of union  
25 insignia. At the instant hearing, the General Counsel amended the complaint and challenged the written Jewelry Rule. The evidence, at the hearing, indicated that Respondent has enforced the Jewelry Rule as written since September 2002. Even at the hearing, when it became clear that Respondent had never rescinded or modified its Jewelry Rule, the Regional Director did not set aside or revoke the settlement agreement.

### 30 The Settlement Bar Issue

It is well established that "a settlement agreement with which the parties have complied bars subsequent litigation of pre-settlement conduct alleged to constitute unfair labor practices." *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978). Under *Hollywood Roosevelt Hotel* the settlement agreement disposes of all issues involving pre-settlement conduct. The settlement disposes of all pre-settlement matters "unless prior violations were unknown to the General  
35 Counsel, not readily discoverable by investigation, or specifically reserved from the settlement by the mutual understanding of the parties." 235 NLRB at 1397.

40 In *Ratliff Trucking Corp.*, 310 NLRB 1224 (1993) the Board held that a settlement agreement barred the General Counsel from attacking language in a union-security clause which had been the subject of a settlement agreement. The Board held that the entire union-security clause of the collective-bargaining agreement was before the General Counsel in the cases disposed of by the settlement, and the language that the General Counsel alleged as unlawful  
45 even appeared in the same sentence as other language modified by the settlement agreement. The Board reasoned that the respondents could therefore reasonably believe that the settlement disposed of the legality of the entire clause, at least during the term of the contract in which it was contained. According to the Board, in order for the General Counsel to relitigate,

50 <sup>2</sup> The parties stipulated that the Union was aware of this statement by the Hotel's general manager.

the union-security clause and call it a new, or "other" case, the General Counsel had to show a specific reservation of the right to proceed on "the union-security clause's unaltered provisions." Thus, the Board held that the unfair labor practices alleged in *Ratliff Trucking*, could not be properly described as constituting either an "other" case or one involving different pre-

5 settlement "events." The settlement, therefore, had the effect of barring litigation of not only pre-settlement conduct but also barring litigation of post-settlement conduct which was grounded in the pre-settlement contract language.

10 In *Leeward Nursing Home*, 278 NLRB 1058, 1083 (1986) the Administrative Law Judge noted with Board approval:

15 Finally, it deserves mention that a settlement agreement may, in a limited class of circumstances, have a certain "prospective" reach in that it will bar efforts to litigate alleged post settlement violations which are themselves inescapably grounded in pre-settlement actions which would be barred by a settlement from litigation. *Ventura Coastal, Corp.*, 264 NLRB at 298, 301 (1983).

20 Thus, in the cited case, the settlement was held to bar not only litigation of a certain pre-settlement demotion of the charging party, but also the post settlement layoff of the same individual. The latter layoff action, it was held, was a natural consequence of the former settlement-banned demotion since the demotion placed the alleged discriminatee in a position of vulnerability to layoff at such future point as the employer might be required to engage in work force cutbacks. Since the eventual layoff of the alleged discriminatee had no independently unlawful character, but depended for its violative character solely on the allegedly unlawful pre-settlement demotion, the settlement was held to bar litigation of both the initial demotion and the eventual post settlement layoff. *Ibid.*

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30 I find the instant case controlled by the holding in *Ratliff Trucking*. In January 2003, at the time of the settlement agreement, the Regional Director, had before him the Jewelry Policy in existence since September 2002. Apparently, the General Counsel contends that the policy was to be rescinded or modified. However, the uncontradicted evidence establishes that Respondent never agreed to modify the Jewelry Policy. On March 4, prior to the Regional Director's approval of the settlement agreement, Respondent's attorney wrote that the Jewelry

35 Policy was lawful and did not need to be modified or rescinded. Notwithstanding this clear language, the Regional Director approved the settlement agreement. Thus, the General Counsel permitted the language of the Jewelry Policy to remain while other provisions of the employee handbook were modified or rescinded. There is no evidence that Respondent did not comply with the settlement agreement and the general Counsel did not seek to set aside the settlement agreement. Thus, under *Hollywood Roosevelt Hotel*, and *Ratliff Trucking*, I find that the instant complaint must be dismissed. The Jewelry Policy, on which the unfair labor practices alleged in the complaint rests, is pre-settlement conduct, which may not be considered as evidence to support the General Counsel's complaint. Accordingly, I shall recommend dismissal of the complaint.

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#### Conclusions of Law

1. Doubletree Guest Suites Santa Monica is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
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2. The Hotel Employees & Restaurant Employees Local 11 and Hotel Employees and Restaurant Employees International Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

5 3. The instant complaint is barred by the Board's settlement bar doctrine.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:

10 ORDER<sup>3</sup>

15 The complaint is dismissed in its entirety.

Issued at San Francisco, California, this 19<sup>th</sup> day of September 2003.

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Jay R. Pollack  
Administrative Law Judge

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50 <sup>3</sup> All motions inconsistent with this recommended order are hereby denied. If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.