JD-03-25
Boston, MA

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

YOTEL BOSTON **CASE NO. 01-CA-302444**

and

UNITE HERE LOCAL 26

Miriam Elisa Hasbún, Esq.
for the General Counsel

Paul Rosenberg and Michael Parente, Esqs.
for the Respondent

Luke Dowling, Esq.
for the Charging Pary

DECISION

Statement of the Case

MICHAEL P. SILVERSTEIN, Administrative Law Judge. UNITE HERE Local 26 (the Union) represented the housekeeping employees of Yotel Boston (Respondent), a hotel located in the Seaport District of Boston, Massachusetts. In this case, the General Counsel alleges that in early July 2022, Respondent unlawfully withdrew recognition from the Union. As will be explained *infra*, I find merit to the withdrawal of recognition allegation because Respondent failed to establish that the Union had, in fact, lost majority support at the time that it withdrew recognition, and because Respondent withdrew recognition without first bargaining for a reasonable period of time as prescribed in *Poole Foundry & Machine Co.,* 95 NLRB 34 (1951).

The Union filed the charge in this case on August 26, 2022. The Complaint and Notice of Hearing issued on April 26, 2024, and Respondent filed its Amended Answer on October 28, 2024.

The hearing in this case took place in Boston, Massachusetts on October 29, 2024. At trial, all parties were afforded the right to call, examine, and cross-examine witnesses[1], to present any relevant documentary evidence, and to argue their respective legal positions orally. Counsel for the General Counsel, the Union, and Respondent filed post-hearing briefs.

[1] The General Counsel called one witness – Michael Kramer – while the Respondent called one witness – Patricia Berry.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Union, and Respondent, I make the following:

FINDINGS OF FACT

JURISDICTION

Respondent admits, and I find, that at all material times, it has been a corporation with an office and place of business in Boston, Massachusetts and has been engaged in the operation of a hotel. (Joint Ex. 7). In conducting its business operations, Respondent has annually derived gross revenues in excess of $500,000 and purchased and received goods at its Boston hotel valued in excess of $5,000 directly from points located outside the Commonwealth of Massachusetts. Respondent also admits, and I find, that it has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. (Joint Ex. 7).

Respondent also admits and I find that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. (Joint Ex. 7).

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction over this case pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

Yotel Boston is a 326-room hotel that opened in the Seaport District of Boston in June 2017. (Tr. 16, 124, 158). The hotel has 12 floors, 2 restaurants, a gym and a small amount of meeting space. (Tr. 159-160). Rooms have all the amenities travelers expect – a bed, shower, toilet, ironing board, etc., but Respondent's rooms are much smaller than rooms at other Boston-area hotels, measuring roughly 150 square feet. (Tr. 159).

Respondent's branding channels the experience in a first-class cabin on an airplane. (Tr. 158). Consequently, the hotel's housekeepers are referred to as cabin crew attendants, housekeeping assistants are referred to as house crew attendants, and cleaners responsible for the lobby and other public areas of the hotel are referred to as public area attendants. (Tr. 125-127). Patricia Berry is the hotel's general manager. (Tr. 124).

The Union represents employees throughout Greater Boston and Rhode Island, including employees at 39 hotels in Boston. (Tr. 40, 105). Michael Kramer is the Union's Executive Vice-President and Carlos Aramayo is the Union's President. (Tr. 15-16).

Prior to the opening of the hotel, the Union and Respondent negotiated a card check neutrality agreement covering the hotel's housekeepers, housemen, and public area cleaners. The Union secured signed authorization cards from a majority of the unit employees and on November 7, 2019, Respondent recognized the Union as the exclusive collective-bargaining representative of its housekeeping employees. (Joint Ex. 7; Tr. 16). At that time, the hotel employed between 25 and 30 bargaining unit employees.

2020 Contract Negotiations and the Impact of COVID-19

The parties' first bargaining session took place on January 8, 2020. Paul Rosenberg was the lead negotiator for the Respondent and Michael Kramer was the lead negotiator for the Union. (Tr. 20-21). At this bargaining session, the Union presented a set a non-economic proposals covering subjects like recognition, dues check offs, hiring, lockers and rest rooms, seniority, etc.[2] (Joint Ex. 2(a); Tr. 27-28). These non-economic proposals were substantially similar to language contained in a majority of the Union's Boston hotel contracts. (Tr. 27-28). The parties caucused and after reconvening, Respondent indicated that it would provide counterproposals for most of these articles at the parties' next bargaining session. Before the session ended, the parties reached tentative agreements on four separate articles: Article 6 (voter registration), Article 15 (invalidity), Article 17 (no discrimination), and Article 26 (union stewards). (Joint Ex. 2(a); GC Ex. 4; Tr. 29). The parties also scheduled their next bargaining session for February 12, 2020. (GC Ex. 4).

At the February 12, 2020, bargaining session, Respondent presented its counterproposals to the Union. The parties also reached tentative agreements on the following subjects: Article 5 (hiring), Article 8 (uniforms and dress code), Article 11 (visits by union representatives), Article 19 (probationary employees), Article 20 (communication), Article 21 (health and safety), and Article 23 (pregnancy protection). (Joint Ex. 2(b); GC Ex. 5; Tr. 30-31). The parties then scheduled their next bargaining session for March 18, 2020. (Joint Ex. 7; GC Ex. 5).

The COVID-19 pandemic arrived shortly before the parties' March 2020 bargaining session. Consequently, the parties cancelled this bargaining session, and the hotel closed to the public on April 4, 2020. (Joint Ex. 7; Tr. 32).

On May 26, 2020, Paul Rosenberg sent Michael Kramer the following email:

"…I am writing to provide an update regarding Yotel-Boston. The Hotel remains closed due to the pandemic.

The entire bargaining unit has been on furlough since the Hotel closed on April 4. The Hotel is tentatively planning to reopen on or around June 8. This remains subject to change and reopening will ultimately be based on the ever evolving circumstances and state and national guidance and recommendations.

Unfortunately, regardless of when the Hotel reopens, business levels will remain severely depressed for the foreseeable future. As a result, the Hotel is converting the status of the attached list of bargaining unit employees to layoff effective May 31, 2020. Health/Dental insurance coverage for laid off employees will end on May 31, 2020…The most senior bargaining unit employees listed immediately below will remain on furlough status and be immediately recalled when the Hotel reopens. Employees will be subject to daily temperature screenings at the start of their shifts. Employees with a temperature of 100.4 or higher will be sent home and not permitted to return to work until the CDC and any state specific criteria to discontinue home isolation are satisfied.

[2] The parties did not negotiate ground rules governing these negotiations. Michael Kramer testified that it is his standard practice to propose non-economic items first, even if there is no specific agreement to do so. (Tr. 28-29).

> The COVID-19 pandemic was unanticipated and is forcing all of hospitality to confront incredible challenges. The Hotel is committed to weathering the crisis. As the pandemic subsides, it will recall employees by seniority based on business need. Please let me know if you would like to further discuss the impact of the COVID-19 pandemic on the bargaining unit." (CP Ex. 1; Tr. 111).

The hotel reopened with a hollowed-out staff on June 8, 2020. Occupancy levels hovered around 20% and remained near 30% for the rest of 2020.[3] Thus, only about 11 room attendants were recalled to work. (Joint Ex. 7; Tr. 32, 160).

Then on August 19, 2020, Michael Kramer sent Paul Rosenberg the following email:

> "I hope you have been well over these past couple of months. Now that Massachusetts has moved further along in the process of reopening the economy, I wanted to check in regarding the status of the Yotel Boston. Are the same number of employees currently working in the hotel or have additional employees been recalled from the group that was laid off?
>
> We also hope to continue making progress toward a collective bargaining agreement. While in-person negotiations seem inadvisable at this moment, I believe that much progress could be made through email exchange of proposals supplemented by phone or videoconferencing as needed. Local 26 is open to continuing discussions in this manner if you and your client are as well." (GC Ex. 4(b)).

On August 26, Rosenberg responded to Kramer via the following email:

> "I hope you also remain well. The employees listed below have been recalled.[4] Some are working part-time schedules due to the depressed occupancy.
>
> Regarding bargaining, we appreciate the union's desire to resume negotiations and are not opposed to virtual sessions. That being said, notwithstanding Massachusetts' gradual reopening, hotel demand remains severely impacted by the pandemic. The continued uncertainty over when demand (corporate or leisure) will return to some semblance of normalcy will significantly impair the parties' ability to meaningfully advance bargaining forward. On the other hand, when the pandemic subsides and state and national measures to abate the spread of the virus are lifted, both sides will be much better equipped to have constructive negotiations over a first contract. Thus, we recommend resuming negotiations when that occurs." (GC Ex. 6).

The Union did not oppose Rosenberg's recommendation to pause negotiations, no further bargaining took place in 2020, and there is no record evidence of any additional communications between the parties for the remainder of the year. (Tr. 33, 76).

[3] Travel restrictions depressed the entire hospitality industry as both occupancy levels and employment remained at far lower levels than normal throughout 2020. (Tr. 34).

[4] The email listed 9 cabin crew attendants, 2 house crew attendants, and 1 public area attendant. (GC Ex. 6).

The 2021 Withdrawal of Recognition, ULP Charge, and Settlement Agreement

In mid-January 2021, then housekeeping director Jessica Jean Felix handed hotel general manager Patricia Berry a one-page piece of paper signed by 7 employees with signature dates ranging from January 16 to January 19, 2021. The heading on the paper said, "We no longer wish to be represented by Local 26." (Resp. Ex. 1; Tr. 129-130).

Berry did not verify the signatures on the petition – she simply forwarded the petition to Respondent's counsel. (Tr. 130-131). Then on January 21, 2021, Rosenberg sent Kramer the following letter via email:

> "As you know, this firm is labor relations counsel to Yotel – Boston (the "Hotel"). The Hotel has previously recognized UNITE HERE Local 26 (the "Union") as the collective bargaining representative for employees in the cabin crew, house crew attendant, and public areas attendant classifications (the "Bargaining Unit").
>
> On January 19, 2021, the Hotel received clear, objective, good faith evidence that a majority of the Bargaining Unit no longer wish to be represented by the Union.
>
> As a result, please be advised that effective today the Hotel is withdrawing its recognition of the Union as the representative of the Bargaining Unit." (Joint Ex. 3(a); Tr. 34).

On July 14, 2021, the Union filed an unfair labor practice charge in Case 01-CA-279999 alleging that Respondent unlawfully withdrew recognition and refused to bargain with the Union.[5] (Joint Ex. 8). On December 1, 2021, Region 1 of the Board issued a Complaint and Notice of Hearing alleging that Respondent unlawfully withdrew recognition of the Union and failed and refused to bargain with the Union. (Joint Ex. 7; GC Ex. 2). Two weeks later, Regional Director Laura Sacks approved a bilateral informal settlement agreement in which the Respondent agreed to re-recognize the Union as the employees' certified collective bargaining representative and bargain with the Union concerning wages, hours, and working conditions.[6] (GC Ex. 3; Tr. 34).

Bargaining Resumes in 2022

By early 2022, the hospitality industry had slowly recovered and the Yotel bargaining unit had swelled to 27 employees.

The parties resumed first contract negotiations via Zoom on January 27, 2022, with Michael Kramer resuming his lead negotiator role for the Union and Paul Rosenberg continuing as Respondent's spokesperson. (Tr. 35). At the outset of the session, Kramer noted that the parties have had a challenging relationship in the past, but the Union would like to move forward and engage in productive bargaining. (GC Ex. 7). Kramer indicated that the Union had many open non-economic items still on the table, there was a lot to discuss regarding the open non-economic items, but to get all of its proposals on the table, the Union offered its economic proposals, including wages, benefits, and work rules for housekeepers.[7] (Joint Ex. 4(a); Tr. 37-38). Kramer testified that at this point, the Union wanted to get into a full discussion of

[5] It is unclear from the record as to why the Union waited nearly 6 months to file this charge.

[6] There is neither an admissions clause nor a non-admissions clause in the informal settlement agreement.

[7] The Union's proposals largely mirrored its contract standard with the other Boston hotel operators.

economic items as quickly as possible because work rules (e.g. the number of rooms a housekeeper must clean per shift) was the most important issue to the bargaining unit. (Tr. 39).

The parties discussed the Union's meal[8] and work rules proposal and then caucused. (GC Ex. 7; Tr. 43-44). After the caucus, the parties discussed the Union's wage rate proposal, with Rosenberg remarking that the Union's proposal was not far off from Respondent's existing wage structure. The parties next discussed housekeeping room credits and the Union's health insurance and pension proposals. Rosenberg said that Respondent could not respond to the Union's proposals that day and the parties scheduled their next bargaining session for February 17, 2022. (GC Ex. 7; Tr. 43-44). No tentative agreements were reached at the January 27th bargaining session. (Tr. 45).

At the February 17, 2022, bargaining session, Respondent provided its counterproposals regarding meals, wages, housekeeping work rules, health insurance costs, and paid time off. (Joint Exs. 4(b) and (c)). Regarding wage rates, Kramer testified that Rosenberg said that Respondent was already at the wage rate that the Union was proposing, which was in line with other Union contracts with Boston hotels. Kramer questioned how this could be because to the Union's knowledge, Respondent had not previously paid these wage rates to bargaining unit employees. Rosenberg replied that Respondent figured the Union would file a ULP charge if Respondent gave their employees a raise or the Union would file a ULP charge if Respondent did not give a raise, so Respondent gave its employees a raise. (GC Ex. 8; Tr. 45-46).

The parties next discussed hourly wage guarantees for reporting to work. The Union had proposed that employees receive an 8-hour guarantee for reporting to work and Respondent countered with a 3-hour guarantee. (GC Ex. 8; Tr. 49). Discussions regarding overtime pay, PTO, number of rooms housekeepers are required to clean, and health insurance followed, but no agreements were reached as Respondent's counterproposals largely mirrored the status quo at the hotel while the Union's proposals were substantially similar to the contract standard it had achieved at the other Boston-area hotels. (Tr. 49).

Kramer's bargaining notes indicate that after a heated back-and-forth exchange regarding unfair labor practice charges, Rosenberg asserted that the problem was that the Union believed there could only be one contract. Kramer commented that the Union wanted something like the city-wide standard that the Union had negotiated with all of Respondent's competitors, but the Union was very open as to how to get there. Kramer then claimed that Respondent's proposals were not serious, and it didn't seem like they were going to have a serious conversation that day. Rosenberg opined that the Union could walk away from negotiations if it wanted and Kramer countered that nobody was walking away from negotiations, but they were very far apart. (GC Ex. 8). In his testimony, Kramer noted that the parties had a heated back-and-forth exchange, and it was clear that the parties were very far apart in terms of where the parties were looking to go to reach a contract. Thus, the bargaining session ended, and no tentative agreements were reached that day.[9] (Tr. 50).

[8] The Union proposed that the Respondent provide unit employees with one meal per shift. This is a standard benefit found in the Union's contracts with other Boston hotels. Respondent informed the Union that Respondent did not provide a meal for its employees during their shifts. (Tr. 43-44).

[9] Rosenberg represented Respondent at the hearing as counsel, but he did not testify. Therefore, the only trial testimony regarding what took place during negotiations came from Kramer.

The parties did not schedule a follow-up session during their February 17th meeting and neither party requested any additional bargaining sessions after February 17th. (Joint Ex. 7; Tr. 52). The parties did not bargain again in 2022.[10] (Tr. 50).

On March 3, 2022, Kramer sent Rosenberg an email requesting specific information regarding the raises Respondent had given to its bargaining unit employees in the previous five years. Rosenberg provided the requested information on March 11th. (Joint Ex. 5; Tr. 50-51).

Respondent Withdraws Recognition in 2022

Patricia Berry testified that on June 29, 2022, bargaining unit housekeeper Lady Laura Javier came to Berry's office and handed Berry a four-page petition. (Tr. 133, 156). At this time, there were 27 employees in the bargaining unit. (Tr. 137-138). The first page was titled "Petition to Remove Union as Representative," with the Spanish-language translation underneath.[11] The first page of the petition reads as follows:

> "The undersigned employees of Yotel Boston do not want to be represented by UNITE HERE Local 26.
>
> Should the undersigned employees constitute 30% or more, but less than 50%, of the bargaining unit represented by UNITE HERE Local 26, the undersigned employees hereby petition the National Labor Relations Board to hold a decertification election to determine whether the majority of employees also no longer wish to be represented by UNITE HERE Local 26.
>
> In addition, should the undersigned employees constitute 50% or more of the bargaining unit represented by UNITE HERE Local 26, the undersigned employees hereby request that our employer immediately withdraw recognition from UNITE HERE Local 26, as it does not enjoy the support of a majority of employees in the bargaining unit."[12]

Five employees signed this page, with the first three employees signing their names on June 26, 2022, and the last two employees signing their names on June 27. (Resp. Ex. 2).

The second page of the petition is formatted differently than the first page. To this end, there is no heading or text referencing the employees' desire to remove the Union. Instead, there are only lines for employees' names, signature, and date. Fourteen employees signed the second page of the petition between June 26 and June 28 and the last line on this page is blank. There were no signatures on the third and fourth pages of the petition. (Resp. Ex. 2).

Berry testified that she did not ask Javier any questions about the document, she did not verify any of the signatures on the document, and Berry did not recall if Javier said anything to her when she handed Berry the petition. (Tr. 133, 135, 156). Berry testified that she did not know whether the pages in Respondent Exhibit 2 were circulated together, but she believed that

[10] The Union filed an unfair labor practice charge on February 24, 2022, alleging that Respondent unilaterally increased wages. The Union withdrew this charge on April 5, 2022. (Tr. 52). See https://www.nlrb.gov/case/01-CA-291266.

[11] About 90% of the bargaining unit speaks Spanish as their primary language. About 3 bargaining unit employees speak Cape Verdean Creole. (Tr. 54).

[12] The Spanish translation accompanied each paragraph of text on the petition. (Resp. Ex. 2).

the four original pages were stapled together when Javier handed her the petition. (Tr. 134, 137, 156).

Berry forwarded the June 2022 petition to Respondent's counsel. (Tr. 134). Then on July 6, Rosenberg emailed Kramer the following letter:

> "As you know, this firm is labor relations counsel to Yotel – Boston (the "Hotel"). The bargaining unit at the Hotel consists of cabin crew, house crew attendant and public areas attendant classifications (the "Bargaining Unit").
>
> On June 29, 2022, the Hotel received clear, objective, good faith evidence that an overwhelming majority of the Bargaining Unit no longer wishes to be represented by UNITE HERE Local 26 (the "Union").
>
> As a result, please be advised that effective today the Hotel is withdrawing its recognition of the Union as the representative of the Bargaining Unit." (Joint Ex. 6; Tr. 51).

Berry confirmed in her trial testimony that nine of the signatories on the second page of the petition still work for Respondent, but none of these employees testified at the hearing. Additionally, Berry confirmed that Lady Laura Javier still works for Respondent, but Javier did not testify at the hearing. (Tr. 154-155).

The Union's Explanation for Failing to Request Additional Bargaining Sessions From March to June 2022

Kramer testified that from the Union's perspective, the parties at the end of February 2022 were very far apart in their proposals. The Union decided that its next step was to engage in organizing with the bargaining unit to potentially take collective action to try to change Respondent's bargaining position. Kramer specifically testified that the Union needed to poll its bargaining unit to find a better calibrated bargaining proposal regarding the number of rooms employees must clean each shift because the existing rules did not work for the bargaining unit, but Kramer realized that the city-wide standard as applied at other hotels might not fit the Respondent's property.[13] (Tr. 52-53). To this end, Kramer testified that the Union was actively meeting with bargaining unit employees to discuss workplace changes the employees wished to see. (Tr. 118). It is undisputed, however, that the Union did not mount a public campaign against Respondent between February and July 2022. Although Kramer attributes this fact to bargaining unit employees' fear and confusion regarding their representational status, no employees testified at the hearing to confirm or deny these assertions. (Tr. 99, 104).

The Housekeeping Daily Room Cleaning Quota

During 2020 and 2022 contract negotiations, Respondent housekeepers' workload revolved around a system of credits. If the housekeeper was assigned to clean a room of a guest that was not checking out of the hotel (a stayover), the housekeeper received .75 credits for

[13] Kramer also testified that another factor aside from its need for deeper engagement with the bargaining unit which impacted the Union's decision not to request additional bargaining dates was that the Union was negotiating contracts for its other Boston hotel bargaining units, whose contracts were scheduled to expire in August 2022. The Union ultimately negotiated a two-year extension of those contracts. (Tr. 91-93).

cleaning the room. (Tr. 41). If the housekeeper was assigned to clean the room of a guest that was checking out, they would receive one full credit for cleaning this checkout room.

Kramer testified that under Local 26 contracts, "a room is a room," and by only receiving partial credit for cleaning stayover rooms, Yotel's housekeepers were responsible for cleaning more rooms than is standard in unionized hotels. (Tr. 41). Kramer testified that a general room quota for housekeepers under a Local 26 contract is 15 rooms/day. But if the housekeeper is assigned a checkout room to clean, their daily quota will drop to 14 rooms because checkout rooms are more difficult to clean. Similarly, if the housekeeper is assigned to clean rooms on more than one floor of the hotel, the travel time generally results in a reduction of the room quota. (Tr. 44-45).

Kramer testified that he is not aware of any Union contract in the Greater Boston area where a stayover is not counted as a full credit, but he acknowledged that the concept of a quota based on a number of credits is not unique and the Yotel Boston was not the first time that he had seen such a system.[14] (Tr. 80, 83). When pressed on cross-examination, Kramer could not recall any contract he had negotiated where the Union agreed to a provision counting a stayover room as less than one credit. (Tr. 84).

Kramer opined that from the Union's perspective, it is imperative that housekeeping rules ensure fair work for the room attendants. He added an important caveat – that fair work for room attendants looks different in different hotels and housekeeping rules across the 39 Union contracts are not identical. (Tr. 83).

Union #40 is the Union's January 2022 room attendant contract proposal. (Joint Ex. 4(a)). In this proposal, no room attendant shall be required to clean more than 15 rooms without additional compensation. Also, the contractual room quota shall be reduced by 1 room on a day in which there are 7 double doubles in a room attendant's assignment, and the contract room quota shall be reduced by 1 room on a day when there are 10 checkout rooms in the room attendant's assignment, 2 rooms when assigned 11 checkout rooms, and 3 rooms when assigned 12 checkout rooms. Additional components included in this proposal are work rules concerning special attention and bought rooms, as well as assigning room attendants to permanent floors or sections depending on occupancy rates. (Joint Ex. 4(a)).

In Respondent's February 2022 counterproposal, Respondent proposed that no room attendant shall be required to do more than 16 credits without additional compensation. Respondent agreed that room attendants will not be assigned to clean more than 7 double doubles (bunk beds) but proposed no reduction in room quotas for cleaning the double doubles. Respondent rejected the Union's proposal regarding reducing quotas for cleaning 10, 11, or 12 checkout rooms, but proposed to reduce the room quota by 3 credits if the room attendants are assigned 13 checkout rooms. Respondent also rejected most of the Union's proposed language regarding special attention and bought rooms, but agreed, to the extent possible, to assign room attendants to permanent floors or sections. (Joint Ex. 4(b)).

Kramer's bargaining notes from the February 17, 2022, session indicate only that Respondent explained that its room attendants bargaining proposal mirrored the status quo, with attendants expected to clean 16 rooms, with stayovers counting as a .75 credit. (GC Ex. 8). No further bargaining took place before the withdrawal of recognition, but Patricia Berry testified

[14] Kramer also testified that there is no standard definition of a room "credit" in the hotel industry. (Tr. 44).

that Yotel Boston no longer uses the credit system for counting rooms per shift. Berry explained that Respondent currently requires its housekeepers to clean 16 rooms/shift with a reduction in this quota for cleaning checkout rooms. (Tr. 163-166).

Analysis

Respondent Violated Section 8(a)(5) of the Act by Withdrawing Recognition from the Union Without First Establishing That the Union Had Actually Lost Majority Support

On June 29, 2022, Respondent received a petition from bargaining unit employee Lady Laura Javier which contained signatures on two pages. The first page was titled "Petition to Remove Union as Representative" and it contained text indicating the five signatories did not want to be represented by the Union. The second page contained the signatures of 14 employees, but no accompanying text stating the petition's purpose or what action the employees wanted Respondent to take based on the petition. Extant Board law mandates that Respondent was not permitted to rely on the 14 signatures on the second page of the petition as evidence that the Union had lost majority support. Therefore, the 5 signatures on the first page (out of a bargaining unit of 27 employees) were insufficient to support a withdrawal of recognition and Respondent's actions violated Section 8(a)(5) of the Act.

An employer "may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees." *Wyman Gordon Pennsylvania, LLC,* 368 NLRB No. 150, slip op. at 10 (2019), quoting *Levitz Furniture Co. of the Pacific,* 333 NLRB 717, 717 (2001). Thus, if a union contests an employer's withdrawal of recognition, the employer has the burden of proving that the union had, in fact, lost majority support at the time that it withdrew recognition. *Wyman Gordon Pennsylvania, LLC,* 368 NLRB No. 150, slip op. at 10; *Levitz Furniture Co. of the Pacific,* 333 NLRB at 725. If an employer withdraws recognition based on a petition, the more reasonable interpretation of the petition language must be that the signatory employees desired to remove the union as their representative. *Wyman Gordon Pennsylvania, LLC,* 368 NLRB No. 150, slip op. at 10; *Wurtland Nursing & Rehabilitation Center,* 351 NLRB 817, 818 (2007).

The Board's *Wyman Gordon* decision is directly on point. In that case, the employer received a disaffection petition consisting of five, unnumbered pages scanned into a single electronic document. The first and last pages of the petition contained signature lines, a statement that the "undersigned employees of…do not want to be represented by…," and a request that the employer withdraw recognition from the union immediately if "the undersigned employees make up 50% or more of the bargaining unit." *Wyman Gordon Pennsylvania, LLC,* 368 NLRB No. 150, slip op. at 10. The middle three pages of the petition, however, contained signature lines, but no statement of the petition's purpose or a request that the employer take action based on the petition. Out of a bargaining unit of 43 employees, 9 employees signed the first and last pages of the petition (which contained the text) and 14 employees signed the middle three pages. *Id.*

The Board in *Wyman Gordon* found that the first and last pages of the petition clearly indicated that the 9 signatory employees no longer wanted the union to represent them. But the Board found that 9 out of 43 employees in the bargaining unit was considerably short of the 50% threshold for withdrawing recognition. To this end, the Board found that the middle three pages

of the petition lacked any statement of the signatory employees' intent in signing the petition or their desires concerning union representation. *Id.* Because the middle three pages of the petition did not say anything, let alone indicate the employees' desires concerning continued union representation, the Board found that the employer could not properly rely on the 14 signatures on those pages to support its withdrawal of recognition. Therefore, the Board found that the employer failed to establish that the union had lost majority support at the time that it withdrew recognition in violation of Section 8(a)(5) of the Act. *Id.*

The facts in our case are strikingly similar to *Wyman Gordon*. In this regard, five employees signed the first page of the petition, which contained language demonstrating the intent of the signatories to remove the union as collective bargaining representative. But the second page contained 14 employee signatures with no explanatory language – the employees essentially signed and dated a blank piece of paper. Although Patricia Berry believed that the two pages were stapled together when Lady Laura Javier handed her the petition, there is no record evidence confirming that these pages were attached when the employees received and signed the petition. To this end, Berry testified that nine of the signatories on the second page still work for Respondent. But none of these employees testified at the hearing. Thus, the record is bereft as to what, if anything, these employees were told about the purpose of the petition when they signed it. The record is similarly devoid of an explanation as to why three employees signed the first page of the petition on June 26th and two more employees signed the first page on June 27th, yet the first seven employees listed on the second page of the petition signed their names on June 26th. Lady Laura Javier is one of the employees that signed the first page of the petition on June 27th. Her testimony could have illuminated the record as to who distributed the petition, why the second page did not have the same text as the first page, and what she told employees regarding the purpose of the petition. Although Javier still works for Respondent, she did not testify. And consequently, the record evidence fails to establish that the Union had actually lost majority support at the time Respondent withdrew recognition.[15]

In its post-hearing brief, Respondent attempts to distinguish *Wyman Gordon* from our case. To this end, Respondent asserts that the Board's finding in *Wyman Gordon* that the employer could not rely on the signatures in the middle three pages was bolstered by testimony that the signatures on the petition were obtained through nefarious means and were an unreliable indicator of employee desires. (Resp. post-hearing brief, pages 13-14). I do not agree. In this regard, the Board's recitation of relevant facts regarding this allegation does not mention that any of the petition signatures were obtained through nefarious means. Instead, the Board's analysis was straightforward – the middle three pages had no explanation accompanying the signatures and that alone supports the conclusion that these signatures were an unreliable indicator of actual loss of majority support.

Respondent's additional attempts to distinguish *Wyman Gordon* are equally unavailing. Contrary to Respondent's suggestion, the fact that the petition in *Wyman Gordon* was scanned and sent electronically versus the original, stapled petition handed to Berry in our case has no impact on the Board's ultimate finding in *Wyman Gordon* – that the lack of explanatory text on certain pages of petitions seeking removal of a union disqualifies the signatures on those pages from consideration as evidence of actual loss of majority support. In this same vein, the Board did not opine on the fact that the *Wyman Gordon* petition signatures had been collected over the

[15] The withdrawal of recognition letter does not explicitly identify any basis for Respondent's belief that the Union actually lost majority support other than the petition. And Respondent presented no evidence pointing to additional explanations for Respondent's basis for withdrawing recognition.

course of a month versus a more truncated time-period. Thus, Respondent's argument that the signatures in our case were collected over a three-day period has no impact on my disposition of this matter.

Respondent here chose to withdraw recognition even though red flags permeated the petition Javier handed to Berry. *Levitz* counsels that employers act at their own peril if a union questions whether the employer has established an actual loss of majority support. *Levitz* also reminds employer of an alternate route available to them – to the extent that there is good faith uncertainty regarding continued majority support of the union, employers may file an RM petition to allow employees to participate in a secret ballot election to determine whether the union continues to enjoy majority support. See *Liberty Bakery Kitchen, Inc.,* 366 NLRB No. 19, slip op. at fn. 2 (2018). Respondent chose the former option here. And the lack of record evidence demonstrating an actual loss of majority support means that Respondent's conduct violated Section 8(a)(5) of the Act.

Alternatively, Respondent Violated Section 8(a)(5) of the Act Because It Had Not Bargained in Good Faith for a Reasonable Period of Time Prior to Withdrawing Recognition

On December 15, 2021, the Regional Director for Region 1 approved a bilateral settlement agreement whereby Respondent agreed to re-recognize the Union as their housekeeping employees' exclusive collective bargaining representative and to bargain in good faith with the Union. Bargaining consisted of two meetings in early 2022, with the last session on February 17, 2022. The parties were far apart, which was understandable considering the parties had just exchanged their initial economic proposals. Applying prevailing Board law, I find that Respondent's withdrawal of recognition, which came a little more than four months after the parties' most recent bargaining session, violated Section 8(a)(5) of the Act because the Respondent had not bargained in good faith for a reasonable period of time prior to withdrawing recognition.

The seminal case regarding withdrawal of recognition after the execution of a settlement agreement is *Poole Foundry & Machine Co.,* 95 NLRB 34 (1951). In *Poole Foundry,* the Board stated:

> "After the Board finds that an employer has failed in his statutory duty to bargain with a union, and orders the employer to bargain, such an order must be carried out for a reasonable time thereafter without regard to whether or not there are fluctuations in the majority status of the union during that period. Such a rule has been considered necessary to give the parties to the controversy a reasonable time in which to conclude a contract. Similarly, a settlement agreement containing a bargaining provision, if it is to achieve its purpose, must be treated as giving the parties thereto a reasonable time in which to conclude a contract…After providing in the settlement agreement that it would bargain with the union, the respondent was under an obligation to honor that agreement for a reasonable time after its execution without questioning the representative status of the union." *Poole Foundry & Machine Co.,* 95 NLRB at 36.

The *Poole Foundry* requirement that parties must bargain for a reasonable period of time applies to informal settlement agreements as well as formal settlements. *AT Systems West, Inc.,*

341 NLRB 57, 61 (2004); *King Soopers, Inc.,* 295 NLRB 35 (1989).[16] The critical period for determining whether there was a reasonable time to bargain starts from the date of the approval of the settlement agreement. *Gerrino Restaurant,* 306 NLRB 86, 89 (1992). Bargaining that took place prior to the order/agreement to bargain in good faith is not included in the reasonable period of time, but the duration of pre-remedial bargaining is relevant to determine whether remedial bargaining has continued for a reasonable period of time. *American Golf Corporation d/b/a Badlands Golf Course,* 350 NLRB 264, 266 (2007).

There is no fixed timeframe to determine whether parties have bargained for a reasonable period of time, but the Board has laid out the following factors to guide parties: 1) whether the parties were bargaining for an initial agreement; 2) the complexity of the issues being negotiated; 3) the total amount of time elapsed since the commencement of bargaining and the number of bargaining sessions; 4) the amount of progress made in negotiations and how near the parties are to an agreement; and 5) the presence or absence of a bargaining impasse. *AT Systems West, Inc.,* 341 NLRB at 61: *Lee Lumber & Building Material Corp.,* 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002).

In our case, the parties were bargaining for a first contract. Starting from a blank slate can be a slow, time-consuming process. Respondent and the Union first exchanged non-economic proposals in 2020, resumed negotiations in early 2022 with the tendering of economic proposals, yet had little to no substantive back and forth negotiations on any of these subjects. Therefore, the first factor militates toward a finding that a reasonable period of time for bargaining had not yet passed prior to Respondent's withdrawal of recognition.

As for the second factor, I agree with the Respondent that the issues being negotiated were not complex. Beyond the size of the rooms, the parties presented no specific record evidence demonstrating that the housekeeper working conditions at Respondent's hotel are meaningfully different than at other hotels in Boston. To this end, Kramer offered conclusionary testimony asserting that the rooms at Respondent's hotel contained fewer amenities than other Boston hotels. But when asked for specifics to support this claim, Kramer could not identify a single amenity missing from Yotel Boston's rooms. (Tr. 40-43). And Kramer testified that housekeepers working at Yotel's in New York City and Washington, D.C. are unionized and sister locals reached collective-bargaining agreements with each of these hotels. (Tr. 105-106).

Housekeeping work rules are the central component of any Local 26 collective bargaining agreement, yet hotels in Boston come in all shapes and sizes. Most have larger rooms than the Yotel, some have more rooms, and others have fewer rooms. These are all factors that the Union and employers must consider when crafting bargaining proposals. This does not necessarily make negotiations more complex – it just means that boilerplate proposals based on working conditions at other hotels may not be the most appropriate starting point for negotiations. Therefore, I reject Counsel for the General Counsel and Counsel for the Union's arguments that the extra small room sizes at the Yotel Boston automatically created more complex collective bargaining negotiations. Consequently, I find that this factor weighs in favor of the Respondent.

[16] The Union asserts that I should apply a slightly different test whereby the Union is afforded "no less than six months, but no more than 1 year" as the reasonable time for bargaining. (Union post-hearing brief, page 3, citing *Lee Lumber,* 334 NLRB 399 (2001). That test applies to settlement agreements where the employer admits to committing unlawful behavior. Since the Board has not applied this timeframe to informal settlement agreements without a formal admission of liability on the employer's part, I do not apply the Union's suggested test here.

The last three *Lee Lumber* factors favor a finding that a reasonable amount of time had not passed to justify Respondent's withdrawal of recognition. In this regard, the parties held only two bargaining sessions prior to the 2021 withdrawal of recognition and held only two bargaining sessions prior to the 2022 withdrawal of recognition. In between these sessions were a global pandemic and a withdrawal of recognition which Respondent ultimately agreed to rescind and to bargain in good faith.

Town & Country Plumbing & Heating, Inc., 352 NLRB 1212 (2008)[17] illustrates how the Board's application of the third *Lee Lumber* factor, the amount of time elapsed and number of bargaining sessions, supports a finding of a violation here. In *Town & Country,* the Board noted that the period of bargaining prior to the respondent's withdrawal of recognition was at most 5 ½ months[18] and during this time, the parties held just three bargaining sessions and one exchange by fax and mail. *Id.* at 1216. The Board determined that "by any standard, this amounts to only a small amount of actual bargaining time. As such, it indicates that a reasonable period of bargaining had not elapsed when the respondent withdrew recognition." *Id.* The Board went on to note that:

> "the parties made progress, but it does not appear that they were on the verge of concluding an agreement. Indeed, they were still negotiating virtually all of the economic issues when the respondent withdrew recognition. The plentitude of unresolved issues is not surprising, however, given the brief time the parties spent negotiating. Consequently, even if this factor suggests that a reasonable period had elapsed, it does only slightly, because the parties held only three negotiation sessions for their first contract." *Id.*

The Board went on to conclude that the most probative facts demonstrating that the parties did not bargain for a reasonable period of time before the withdrawal of recognition were that the parties were bargaining for their first contract, they were not at impasse, and they held just three, 2-hour bargaining sessions. *Id.*

In our case, the parties only engaged in two bargaining sessions in the seven months following the Regional Director's approval of the bilateral informal settlement agreement where Respondent agreed to recognize and bargain with the Union. These sessions built on the two sessions from early 2020, but only to a limited degree. To this end, the 2020 bargaining sessions involved the tabling of non-economic proposals which yielded a series of tentative agreements. The 2022 bargaining sessions resumed with the Union tabling its economic proposals in January and Respondent providing its counters in February. That was it – no further discussion, no further proposals, and no further bargaining sessions. The Board in *Town & Country* concluded that such facts strongly militated in favor of finding a violation, and other Board cases reach the

[17] This case was decided by a 2-member Board, which the Supreme Court later determined was unconstitutional in *New Process Steel, L.P. v. NLRB,* 560 U.S. 674 (2010). The Sixth Circuit, however, affirmed the Board's ruling in *Town & Country Plumbing & Heating, Inc. v. NLRB,* 352 Fed.Appx. 20 (2009) prior to the Supreme Court's *New Process Steel* decision, and there is no record of a remand or request for reconsideration of the Sixth Circuit's decision. Thus, the Sixth Circuit's affirmation of the Board's decision is good law.

[18] *Town & Country* involved a formal settlement stipulation as opposed to an informal settlement agreement. The Board noted the parties' disagreement as to the date in which a reasonable time for bargaining should begin to be measured given the difference between the two forms of settlement, but the Board decided that under either formula, the evidence supported a finding of a violation. *Id.* at 1215-1216.

same conclusion. See e.g. *Driftwood Convalescent Hospital,* 302 NLRB 586, 589 (1991) (reasonable period did not elapse after two negotiations during an 83-day period).

Respondent asserts in its post-hearing brief that its withdrawal of recognition satisfied the reasonable period of time requirement because the total bargaining period was over a year long, the Union had over six months after approval of the settlement agreement to prove itself to employees, and the 2020 bargaining period should not be ignored pursuant to *American Golf Corp.,* 350 NLRB at 266. I find, however, that Respondent's arguments and caselaw do not justify its premature withdrawal of recognition. In *American Golf Corp.,* the parties resumed bargaining after the Union abandoned negotiations for 17 months. The resumed negotiations involved 6-8 bargaining sessions over a six-month period as well as telephonic negotiations on several occasions. *Id.* at 264-266. The only remaining unresolved issue at the time the employer withdrew recognition was a wage table at which the parties remained "at loggerheads." *Id.* at 265. The Board concluded that the third *Lee Lumber* factor overwhelmingly favored the employer. In this regard, the Board found that the substantial amount of bargaining that had taken place over a significant period of time caused the Board to assign less weight than it otherwise would to the fact that the parties were bargaining a first contract. *Id.* at 266-267. In our case, however, very little bargaining took place in 2020 before the first withdrawal of recognition and very little bargaining took place in 2022 prior to the second withdrawal of recognition. Thus, the first contract factor takes on more weight. And unlike in *American Golf Corp.,* the Union here did not abandon negotiations in 2020, or for 2022 for that matter. The COVID-19 pandemic caused the parties to cancel their March 2020 bargaining session, and the hotel closed for two months. When the hotel reopened, the Union proposed resuming bargaining. It was Respondent, however, that proposed tabling negotiations until the world more closely resembled its pre-pandemic self. The Union acquiesced to this request – a far cry from the union in *American Golf Corp.* that walked away from negotiations.

Respondent also asserts that the Union had six months to prove itself to the bargaining unit prior to withdrawing recognition. While the Union certainly could have taken a more pro-active approach to bargaining during this time, the record evidence shows that it did not walk away from this bargaining unit. To this end, in late February 2022, the Union filed an unfair labor practice charge alleging that Respondent unilaterally increased wages. Then in early March, the Union requested information from Respondent regarding the pay increases. The Union received this information about a week later and continued meeting with bargaining unit employees to craft revised bargaining proposals and brainstorm regarding potential collective action to bring Respondent back to the bargaining table. That no public actions were taken during this time does not support a finding that the Union abandoned this bargaining unit, nor does it justify a premature withdrawal of recognition. See *Spillman Co.,* 311 NLRB 95, 95 (1993) (6-month bargaining hiatus is not a sufficient objective consideration on which to base a good-faith doubt of majority support and the union's failure to meet with unit employees is also inadequate as an objective consideration); *King Soopers, Inc.,* 295 NLRB 35, 38 fn. 11 (1989).

Additionally, the fourth and fifth *Lee Lumber* factors, the amount of progress made during negotiations, how close the parties were to an agreement, and the lack of impasse, weigh in favor of a finding of a violation here. In this regard, the parties had made little progress in contract negotiations – after all, they had only met twice in 2020 and twice in 2022. A number of non-economic items were TA'd in 2020, but further talks were scuttled in light of the pandemic. When bargaining resumed in 2022, the Union tabled its economic proposals for the first time. The last bargaining session revolved around Respondent's counterproposals and each

side's frustration with the other. As a reminder, these were first contract talks – everything had to be negotiated, from the mundane to the complex. And the parties had just left the starting gates when the first and second withdrawals of recognition took place.

Respondent also asserts that the Union entered negotiations with a closed mind because it wanted the city-wide standard, and only the city-wide standard, in the Yotel CBA. Kramer's testimony and bargaining notes belie this contention. To this end, Kramer told Rosenberg on February 17, 2022, that the Union wanted something like the city-wide standard, but was very open on how to get there. In his trial testimony, Kramer elaborated. He testified credibly that the Union has negotiated a number of first contracts where something resembling the city-wide standard came into place right away. But in other first contract negotiations, the Union agreed to a contract that gradually moved toward the city-wide standard over the life of the agreement.[19] Kramer also credibly testified[20] that there were other contracts where the language looked different from the city-wide standard, but it met the Union's same core needs. (Tr. 102-103). On cross examination, Kramer agreed that health insurance and pensions were important parts of the Union's city-wide standard agreement. But Kramer sagely noted that the parties had only discussed these concepts at one bargaining session and in many contract negotiations, there is a lengthy back-and-forth process that ultimately yields an agreement with some variation from hotel to hotel. (Tr. 86-90). The Board has recognized that the fact that parties want and propose certain contract language does not, by itself, indicate that there is a steadfast insistence which would result in an impasse. See *Shangri-La Rest Home d/b/a Shangri-La Health Care Center, Inc.,* 288 NLRB 334, 335 (1988). Put in other words, just because the Union prefers that its contracts contain certain language does not mean that it will not approach bargaining with an open mind and potentially agree to deviations from its preferred contract language. This reflects the give-and-take of good faith bargaining that the informal settlement agreement required of Respondent. A review of the facts here shows that the parties were certainly not at impasse regarding any contract provision and Respondent's premature withdrawal of recognition prevented the parties from fully entering the give-and-take stage of bargaining that could yield a contract agreement.

Based on the above, I find that Respondent unlawfully withdrew recognition from the Union without affording the parties a reasonable period of time to conduct and conclude first contract negotiations.

[19] Respondent entered into the record a 2018 collective bargaining agreement between the Union and the Nine Zero hotel in Boston, ostensibly to demonstrate that the Union's contract proposals here were essentially a regurgitation of the city-wide standard language found in the Nine Zero agreement. The Nine Zero CBA, however, was not a first contract. While the language in the Nine Zero contract was substantially similar to the Union's initial contract proposals here, this was consistent with Kramer's testimony and in no way reflects the contract language the Union might have agreed to had it been allowed a reasonable period of time to conduct good-faith collective bargaining negotiations.

[20] I specifically credit these portions of Kramer's testimony because they reflected a pragmatic assessment of the reality of negotiations from the perspective of a seasoned negotiator. Kramer was not embellishing his testimony here – he simply provided logical explanations as to why a one-size-fits-all city-wide standard often conflicts with the reality of negotiating a first contract. Specifically, Kramer provided examples of TA's during the 2020 negotiations regarding hiring and uniforms where the Union agreed to language that is not identical to the city-wide standard contracts, but met the needs of this bargaining unit. (Tr. 107-108).

Conclusions of Law

1. The Respondent, Yotel Boston. is an employer within the meaning of Sections 2(2), (6) and (7) of the Act.

2. The Union, UNITE HERE Local 26, is a labor organization within the meaning of Section 2(5) of the Act that serves as the exclusive collective-bargaining representative of the following appropriate unit of employees within the meaning of Section 9(a) of the Act:

> Employees in the cabin crew attendant, house crew attendant, and public areas attendant classifications, excluding office clerical employees or managerial or professional employees as defined by the Act, engineers, food and beverage employees, and any other employees not specifically identified as being included.

3. By engaging in the following acts and conduct, Respondent has violated Section 8(a)(5) of the Act:

   a. Withdrawing recognition from the Union and subsequently failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

4. The above unfair labor practices affect commerce within the meaning of Sections 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.[21]

Having found that Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union, an affirmative bargaining order is warranted on the facts of this case. The Board has previously held that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Caterair International,* 322 NLRB 64, 68 (1996).

An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining through their designated representative by the Respondent's withdrawal of recognition and resultant refusal to bargain

[21] In its post-hearing brief (pages 21-27), Respondent asserts that the trial proceeding in this case is unconstitutional for three reasons: 1) the NLRB's structure only permits the President to remove Board members for neglect of duty or malfeasance; 2) ALJs have at least two layers of removal protection in violation of Article II of the Constitution; and 3) the General Counsel's requested remedies violate the Seventh Amendment. I deny each of Respondent's constitutional challenges with the understanding that the federal courts will likely address these issues at some point in the near future. See *Nexstar Media Group, Inc.,* 374 NLRB No. 5, slip op. at fn. 2 (2024); *SJT Holdings, Inc.,* 372 NLRB No. 82, slip op. at 1-2 (2023)

with the Union for an initial collective-bargaining agreement. See *Wyman Gordon Pennsylvania, LLC,* 368 NLRB No. 150, slip op. at 10.

At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable period of time, will not unduly prejudice the Section 7 rights of employees who may oppose continued union representation. The bar does not continue indefinitely, but rather only for a reasonable period of time to allow the good-faith bargaining that the Respondent's unlawful withdrawal of recognition cut short. Since the Union was unfairly deprived of an opportunity to reach an initial collective-bargaining agreement with the Respondent, it is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees' Section 7 right to representation will be vindicated and the employees will be able to fairly assess the Union's effectiveness as a bargaining representative in an atmosphere free of the Respondent's unlawful conduct. The employees can then determine whether continued representation by the Union is in their best interest. *Id.* at slip op. pages 10-11.

Counsel for the General Counsel has requested additional remedies, namely an order that Respondent recognize and bargain with the Union for a period of 12 months beginning on the date that Respondent engages in good-faith bargaining, as well as a bargaining schedule and reimbursement for the Union's 2022 collective bargaining expenses. Because I find that *Wyman Gordon* is the most analogous to the facts here, and the Board in *Wyman Gordon* did not award the additional remedies the General Counsel seeks, I decline to grant these remedies.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

Order

Respondent, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully withdrawing recognition from UNITE HERE Local 26 (the Union) and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

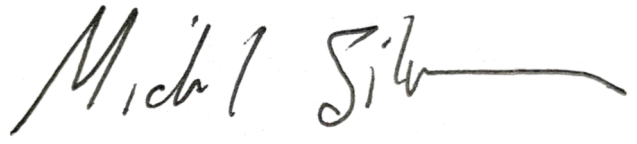
concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> Employees in the cabin crew attendant, house crew attendant, and public areas attendant classifications, excluding office clerical employees or managerial or professional employees as defined by the Act, engineers, food and beverage employees, and any other employees not specifically identified as being included.

(b) Post at its Boston, Massachusetts facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent, and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 6, 2022.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 13, 2025



Michael P. Silverstein
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT unlawfully withdraw recognition from UNITE HERE Local 26 (the Union) and fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our unit employees.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> Employees in the cabin crew attendant, house crew attendant, and public areas attendant classifications, excluding office clerical employees or managerial or professional employees as defined by the Act, engineers, food and beverage employees, and any other employees not specifically identified as being included.

YOTEL BOSTON
(**Employer**)

Dated_____ By: _____
(**Representative**) (**Title**)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

National Labor Relations Board Region 1
Thomas P. O'Neill Jr. Federal Building
10 Causeway Street, Room 1002
Boston, MA 02222-1001
Hours of Operation: 8:30 a.m. to 5:00 p.m.
617-565-6700

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/01-CA-302444 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.
(202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OFPOSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 617-565-6700.