

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

RESORTS WORLD LAS VEGAS, LLC

and

Case 28-CA-290128

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 501, AFL-CIO**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by International Union of Operating Engineers, Local 501, AFL-CIO (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Resorts World Las Vegas, LLC (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Union on February 3, 2022, and a copy was served on Respondent by U.S. mail on February 7, 2022.

(b) The first amended charge in this proceeding was filed by the Charging Party on March 21, 2022, and a copy was served on Respondent by U.S. mail on March 21, 2022.

2. (a) At all material times, Respondent has been a limited liability company with an office and place of business in Las Vegas, Nevada (Respondent's facility), and has been operating a hotel and casino, providing food, lodging, gaming, and entertainment.

(b) In conducting its operations during the 12-month period ending February 3, 2022, Respondent derived gross revenues in excess of \$500,000.

(c) In conducting its operations during the period of time described above in paragraph 2(b), Respondent purchased and received at Respondent's facility products, goods, and materials valued in excess of \$5,000 directly from points outside the State of Nevada.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) At all material times, the following individuals held the position set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of 2(13) of the Act:

Raoul Saiz	–	Teller Shop Manager
David P. McKinnis	–	Vice President of Construction
Bret Bonner	–	Facilities Director
Scott Sibella	–	President
Jolson Yee	–	Director of Slot Department
Rick Hutchins	–	Senior Vice President of Casino Operations
Russ Wills	–	Slot Office Manager

(b) At all material times, Greg Peraino held the position of Respondent's Labor Consultant and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) About January 20, 2022, a more precise date being unknown to the General Counsel, Respondent, by Raoul Saiz (Saiz), at Respondent's facility, interrogated its employees about their union membership, activities, and sympathies.

(b) About January 22, 2022, Respondent, by Peraino (Peraino), at Respondent's facility, by requiring employees to complete work orders for a labor consultant

retained by Respondent to campaign against unionization, created an impression among its employees that their union and protected concerted activities were under surveillance by Respondent.

(c) About January 26, 2022, Respondent, by Peraino, at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies;

(2) threatened to delay collective bargaining if employees elected the Union as their collective-bargaining representative; and

(3) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they did not elect the Union as their collective-bargaining representative.

(d) About January 27, 2022, a more precise date being unknown to the General Counsel, Respondent, by Peraino, at Respondent's facility:

(1) by telling employees that Peraino was aware of emails employees were sharing about him without disclosing how he learned of the emails, created an impression among its employees that their union and protected concerted activities were under surveillance by Respondent;

(2) interrogated its employees about their union membership, activities, and sympathies; and

(3) by telling employees they would lose seniority if they elected a union, threatened its employees with loss of benefits if they elected the Union as their collective-bargaining representative.

(e) About February 3, 2022, a more precise date being unknown to the General Counsel, Respondent, by Peraino, at Respondent's facility:

(1) by telling employees Peraino was getting copies of all the text messages and emails related to union organizing without disclosing how he was obtaining those documents, created an impression among its employees that their union and protected concerted activities were under surveillance by Respondent;

(2) by telling employees Peraino knew who was leading the union organizing campaign without disclosing how he learned that information, created an impression among its employees that their union and protected concerted activities were under surveillance by Respondent;

(3) engaged in surveillance of employees' union and protected concerted activities;

(4) by informing employees of the conduct described above in paragraph 5(e)(3), created an impression among its employees that their union and protected concerted activities were under surveillance by Respondent;

(5) threatened employees that they would have to pay \$500 for union representation if they opted not to become members of the Union, if they elected the Union as their collective-bargaining representative; and

(6) by telling employees they would not get anything out of unionizing, informed its employees that it would be futile for them to elect the Union as their collective-bargaining representative.

(f) About February 3, 2022, a more precise date being unknown to the General Counsel, Respondent, by David McKinnis (McKinnis), at Respondent's facility:

(1) engaged in surveillance of employees' union and protected concerted activities;

(2) by making it appear that McKinnis was closely watching employees' union and protected concerted activities, created an impression among its employees that their union and protected concerted activities were under surveillance by Respondent.

(g) About early February 2022, a more precise date being unknown to the General Counsel, Respondent, by Scott Sibella (Sibella), at Respondent's facility:

(1) threatened to delay collective bargaining if employees elected the Union as their collective-bargaining representative;

(2) interrogated its employees about their union membership, activities, and sympathies;

(3) impliedly promised that Respondent's management officials would be terminated if employees did not elect the Union as their collective-bargaining representative; and

(4) promised its employees unspecified benefits if they did not elect the Union as their collective-bargaining representative.

6. (a) The following employees of Respondent (the Units) constitute appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The Facilities Technician Unit

All full-time and regular part-time Facilities Technician I, Facilities Technician II, Lead Tech Facilities, and Laborers employed by us in Las Vegas, Nevada; excluding all other employees, office clerical employees, sales employees, professional employees, guards, and supervisors as defined in the Act.

The Gaming Technician Unit

All full-time and regular part-time Gaming Technicians employed by us in Las Vegas, Nevada; excluding all other employees, office clerical employees, sales employees, professional employees, guards, and supervisors as defined in the Act.

(b) About October 7, 2021, the Union, in writing, requested that Respondent recognize it as the exclusive collective-bargaining representative of the Units and bargain collectively with the Union as the exclusive collective-bargaining representative of the Units.

(c) The serious and substantial unfair labor practice conduct described above in paragraph 5 is such that there is only a slight possibility of traditional remedies erasing their effects and conducting a fair election or rerun election. Therefore, on balance, the employees' sentiments regarding representation, having been expressed through authorization cards, would be protected better by issuance of a bargaining order.

(d) The allegations described above in paragraph 6(c) requesting the issuance of a bargaining order are supported by, among other things:

(1) Sibella, McKinnis, and Saiz are high ranking supervisors responsible for the discriminatory conduct described above in paragraphs 5(a), 5(f), and 5(g);

(2) the conduct described above in paragraph 5 has not been retracted;

(3) there are approximately 96 employees in the Facilities Technician Unit described above in paragraph 6(a), and there are approximately 9 employees in the Gaming Technician Unit described above in paragraph 6(a);

(4) all of the employees of the Units described above in paragraph 6(a) learned or were likely to learn of the conduct described above in paragraphs 5; and

(5) the conduct described above in paragraph 5 followed immediately on the heels of the Respondent's knowledge of the Union's campaign;

(e) At all times since about October 7, 2021, based upon Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Units.

(f) Since about October 7, 2021, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Units.

7. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

In order to fully remedy the unfair labor practices set forth above, the General Counsel seeks an Order providing for all relief as may be just and proper to remedy the unfair labor practices alleged, including, but not limited to, requirements that Respondent:

(a) at a meeting or meetings scheduled to ensure the widest possible attendance during employees' working time, have Sibella read the notice to employees to the employees in the Units in the presence of McKinnis, Saiz, and Peraino, and a Board agent, and, upon the Union's request, an agent of the Union, and a Board agent, and have a Board agent read an explanation of rights to the employees in the Units in the presence of Sibella, McKinnis, Saiz, and Peraino, and, upon request of the Union, an agent of the Union; or, alternatively, at a meeting or meetings scheduled to ensure the widest possible attendance during employees' working time, have a Board agent read the notice to employees and an explanation of rights to the employees in the Units in the presence of Sibella, McKinnis, Saiz, and Peraino, and, upon request of the Union, an agent of the Union;

(b) at Respondent's expense, distribute printed copies of the notice to employees and explanation of rights to all employees at the beginning of the meetings described above in remedial paragraph (a);

(c) physically post the notice to employees and explanation of rights in conspicuous places in and around Respondent's facility, including in all places where notices to employees are ordinarily posted, and post and distribute the notice to employees and explanation of rights to all of its employees on its Beekeeper intranet site, by email, through any internal apps used to communicate with employees, and by text message if used to communicate with employees;

(d) immediately upon request of the Union, for a period of 2 years from the date on which the notice to employees is posted, grant the Union and its representatives reasonable access to post materials on bulletin boards and all places where notices to employees are customarily posted at Respondent's facility;

(e) immediately upon request of the Union, for a period of 2 years from the date on which the notice to employees is posted, permit a reasonable number of Union representatives access for reasonable periods of time to nonwork areas, including but not limited to, lunch rooms, cafeterias, rest areas, break rooms, and parking lots, at Respondent's facility so that the Union may communicate with employees in the Units, orally and in writing, in such areas during changes of shifts, breaks, mealtimes, or other nonwork periods;

(f) report arrangements and payments associated with Peraino communicating with its employees as unfair labor practice expenditures on a Form LM-10 filed with the Office of Labor-Management Standards of the Department of Labor; and

(g) cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act in any manner.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before May 12, 2022, or postmarked on or before May 11, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is

unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT at 9:00 a.m. (local time) on a date to be determined, and on consecutive days thereafter until concluded, at a location and by a means and method to be determined, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form

NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 28th day of April 2022.

/s/ *Cornele A. Overstreet*

Cornele A. Overstreet, Regional Director

Attachments

**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE**

Case 28-CA-290128

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Lynne K. McChrystal, Attorney at Law
Paul T. Trimmer, Attorney at Law
Jackson Lewis PC
300 South Fourth Street, Suite 900
Las Vegas, NV 89101

Gerald Gardner, General Counsel
Resorts World Las Vegas, LLC
3000 South Las Vegas Boulevard
Las Vegas, NV 89109

David A. Rosenfeld, Attorney at Law
Weinberg, Roger & Rosenfeld
1375 55th Street
Emeryville, CA 94608-2609

Jose Soto, Director of Organizing
International Union of Operating Engineers
Local 501, AFL-CIO
301 Deauville Street
Las Vegas, NV 89106

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.

If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.