

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

**LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS,  
CULINARY WORKERS UNION, LOCAL 226,  
AND BARTENDERS UNION, LOCAL 165,  
affiliated with UNITE HERE**

**and**

**Case 28–CB–107960**

**NANI SUGIANTO, an Individual**

***Gregoire F. Sauter and Nathan Higley, Esqs.,***  
for the General Counsel.

***Yuval Miller, Esq.,***  
for the Respondent.

***John C. Scully, Esq.,***  
for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

**DICKIE MONTEMAYOR, Administrative Law Judge.** This case was tried before me on February 11, 2014, in Las Vegas, Nevada. Nani Sugianto (Charging Party) filed a charge on June 25, 2013, alleging violations by Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, and Bartenders Union, Local 165, affiliated with Unite Here (the Respondent) of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). Respondent filed an answer denying that it violated the Act. The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of witnesses as they testified and I rely on those observations here. I have studied the whole record, and based upon the detailed findings and analysis below, I conclude that the Respondent violated the Act essentially as alleged.

## FINDINGS OF FACT

### I. JURISDICTION

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The complaint alleges, Respondent admits and I find that:

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1. (a) At all material times, Paris Las Vegas Operating Company, LLC, formerly known as Parball Corporation and doing business as Paris Las Vegas (the Employer), has been a limited liability company with an office and place of business in Las Vegas, Nevada (the Employer's facility), and has been engaged in operating a hotel and casino.

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(b) In conducting its operations during the 12-month period ending June 25, 2013, the Employer purchased and received at the Employer's facility goods valued in excess of \$50,000 directly from points outside the State of Nevada.

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(c) In conducting its operations during the 12-month period ending June 25, 2013, the Employer derived gross revenues in excess of \$500,000.

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

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

3. At all material times, Alfonso Gonzalez held the position of shop steward and was an agent of Respondent within the meaning of Section 2(13) of the Act.

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4. At all material times, by virtue of Section 9(a), Respondent was the exclusive collective-bargaining representative of the following employees of the Employer: All full time and regular part-time employees working under the Union's jurisdiction and working in those job classifications listed in Exhibit 1, attached to and made part of the collective-bargaining agreement between Respondent and the Employer effective from June 1, 2007 through May 31, 2012 and extended through May 31, 2013 (the Agreement). (*See* GC Exh. 2.)

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### II. ALLEGED UNFAIR LABOR PRACTICES

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#### A. Background

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Nani Sugianto was employed as a snack bar attendant at JJ's Boulangerie, a casual dining restaurant located within the Paris Hotel and Casino. (Tr. 67:13–15.) Shortly after being hired, she signed a card authorizing the monthly deduction of union dues. (Tr. 73:14–15.) She later determined that she could reap the benefits of the collective bargaining agreement without paying any union dues and decided to cancel her membership. (Tr. 70:11–17.) On August 16,

2007, she sent a certified letter to the Respondent advising them of her decision to revoke her monthly union dues. (GC Exh. 3.) On October 9, 2007, she received a response from Wanda Henry, the Respondent's director of operations advising her that she could only request to stop her dues during the 15-day period after the anniversary of the date on which she signed the authorization. (GC Exh. 4.) Despite this letter from Henry, the deductions from her paychecks stopped and therefore Sugianto took no further action. Then, in August 2012, Sugianto noticed that dues were again being deducted from her paycheck. She contacted the Employer's payroll department and was advised to contact the Respondent. She thereafter contacted Wanda Henry who explained that the Respondent had never received a timely dues revocation. (Tr. 75:23-76:5.) Thereafter, Sugianto sent a new revocation to the Respondent on November 26, 2012, and subsequently the deductions ceased. (GC Exh. 5.)<sup>1</sup>

In the spring of 2013, negotiations between the Respondent and the Employer over a successor agreement began to grow contentious and there was talk among the employees of the possibility of a strike. The shop steward, Alfonso Gonzalez was at the time employed as a pizza chef at the restaurant. On May 7, 2013, Gonzalez met with a union organizer and was given a list of employees who were not paying union dues. (Tr. 36:20-37:21.) He asked for the list of persons because he wanted to talk to the employees in an effort to get them to sign up and become members of the Union. (Tr. 24:22.) On this same date, Gonzalez approached Sugianto to speak with her about joining the Union.

### B. Two Versions of the Same Conversation

Regarding the conversation with Gonzalez, Sugianto testified as follows:

Q: So could you tell me in your own words about this conversation from the beginning, how it was started and what was said?

A: Okay

A: On that day he came in at noon and usually I have to have a conversation with the cook about pizza. Some people want some people [sic] that's not on the counter and I have to ask the cook is there any Pizza's cooking right now? And I believe that time that I came to him and asked him is there any certain pizza the customer wants. And then he answered my question. And then he told me Nani I know you, we all know you, and I got a phone call from the Union rep to let you know that it will be bad for me and my family since I don't pay any more Union dues. So if the casino signs any more contract with the Union, then I will be losing all my benefits, my insurance, my seniority, and I will start over at the beginning as a new hire.

Q: And did you respond to anything?

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<sup>1</sup> Sugianto admitted that she was annoyed with the reinstatement of her dues and the requirement that she resubmit a new dues revocation. (Tr. 102:10.) Respondent attempts to weave from this candid testimony an argument to support the conclusion that her annoyance with dues payment was in reality her motivation for bringing false allegations. I reject Respondent's misplaced attempt to build a bridge from her annoyance with dues payment to a motivation to fabricate her testimony. The evidence of record and the reasonable inferences drawn from it simply do not support such a conclusion.

5 A: After I heard that I was just asking what do you mean as a new hire. His hand was putting the Pizza topping but he's making a little gesture with his chin, like her, like that. There was a new lady just started like a few weeks ago and she was bussing the table outside so he was like, pointing like her. Pointing like her.

Q: And so he referred to the new lady

10 A: To this new lady--

Q: as a new hire.

A: -- as a new hire.

15 Q: Meaning that if you don't pay -- and you understood that to mean that if you don't pay your dues --

A: Yes.

20 Q: You would be like her?

A: Yes. (Tr. 80:22-81:1-25.)

25 Gonzalez' version of the conversation differs from that of Sugianto. He testified as follows:

Q: Now, what is it that you said to her? In fact, if you could describe what it is that you said to her to try to quote yourself, talk as if you're talking to her.

30 A: Yeah, I told Nani, you know the companies almost called a strike, so if we go to strike I see that you -- you're not a member, so if you stay and we don't get a contract, you can -- you might lose your benefits and because we don't know -- and, like I told her, you see how the company is doing right now, trying to short hours, trying to take away [sic] hours from us, so if we lose our contract, they might not  
35 give us the benefits that we have right now and we want to keep it, we want to keep all of those benefits. So if we -- you can help us to vote and be a member, we are going to be stronger.

40 Q: And you had mentioned that you had talked about the strike to vote. What did you say about the strike vote or strike pay or anything like that?

A: Yeah. That we will -- we'll be out and if we strike we are all going to walk out and I told her that we don't know how long we will be in the strike, so the people who --  
45 who stay in that time when we were going to strike we're not going to have a contract.

Q: What was she doing when you were talking to her; was she listening carefully to you?

A: No. Because she was kind of in a hurry, because we were, like, in a work area.  
(Tr. 49:23-50:25.)

After the conversation ended, Gonzalez gave Sugianto a blank authorization card and told her to “just sign it and give it back to me and you’ll be fine.” (Tr. 82:3–7.) Shortly thereafter Sugianto sought the advice of a former manager whom she trusted to ask if whatever Gonzalez told her was true. (Tr. 101:5–21.)

### C. Analysis

Section 8(b)(1)(A) of the Act provides that “it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the rights guaranteed in Section 7.” Whether or not a violation of the Act occurred falls squarely on the question of whose version of events is believed. If Sugianto’s version is believed, the statements can reasonably be construed as threats. If, on the other hand, Gonzalez’ version is believed, the conversation is more akin to a mere prediction of the possible results of the Respondent not signing a contract.

After carefully considering the matter and studying the record, I credit the testimony of Sugianto. At the hearing, while I observed her testimony, she appeared to testify in a confident, candid and credible manner with certainty and conviction in her responses. Her overall demeanor was forthright and suggested that she was being truthful about the conversation.<sup>2</sup> I also credit her testimony because her action of seeking out a manager after the conversation with Gonzalez ended is consistent with her perception that she was being threatened and/or coerced.<sup>3</sup> In sum, the conversation triggered action on her part. Speaking with her manager and going the step further to complain to the Board is more consistent with someone who perceived that she was coerced and/or threatened than someone who merely was given advice as to what might happen if a contract was not signed. The actions taken after the conversation lend credibility to her version of events. Furthermore, I find that Sugianto’s lack of any potential monetary gain whatsoever in bringing forth the allegations bolsters her credibility.

I do not credit the testimony of Gonzalez because judging from his demeanor and the manner in which he testified, his testimony surrounding the conversation appeared to be self-serving, rehearsed and calculated to neatly fall within the parameters of what the law might consider not threatening and/or coercive.<sup>4</sup> Gonzalez attempted to portray himself as a close friend of Sugianto who was interested only in her well being. I find that this testimony was contrived merely to color his version of events with an artificial backdrop of legitimacy. (Tr. 39:10–15). I further find that Gonzalez was attempting to help increase Union membership during a time period when a potential

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<sup>2</sup> See *Advocate South Suburban Hospital and Serv. Employees Int’l Union*, 346 NLRB No. 23 (2006), enfd. *Advocate South Suburban Hospital v. NLRB*, 468 F. 3d 1038 (7th Cir 2006).

<sup>3</sup> It is important to note, as set forth more fully below, I find the statements of Gonzalez were not only perceived by Sugianto to be threatening and coercive but also when viewed objectively were in fact threatening and coercive and violate the Act. See *Teamsters Local 391*, 357 NLRB No. 187 (2012).

<sup>4</sup> See, e.g., *Advocate South Suburban Hospital v. NLRB*, 468 F. 3d 1038 (7th Cir. 2006), holding that testimony that was “mechanical” and “rehearsed” as well as hesitant and evasive was alone sufficient to support the conclusion that a witness was not credible.

strike was on the horizon and his over-zealous pursuit of that goal took the form of the conversation as described by Sugianto.

5 Having credited the testimony of Sugianto, the question turns to whether the statements made to her by Gonzalez violate the Act. On their face, the statements were threatening and/or coercive. The suggestion that it would be “bad for her family” that she could “lose all her benefits and seniority” as well as being forced to “start as a new hire” when coupled with the presentation of a blank authorization card for her to sign sent a clear message of sign up or suffer consequences. The Board has long recognized that such conduct violates the Act. *See Painters Local 558 (Forman-*  
 10 *Ford)*, 279 NLRB 150 (1986), holding that a message which conveyed potential unpleasant consequences for employee even if unintentionally communicated was coercive. *See also, Teamsters Local 886 (Lee Way Motor Freight, Inc.)*, 229 NLRB 832 (1977); *Teamsters, Local 745*, 240 NLRB 537, 540 (1979); *In Re Painters Local 446 (Skidmore College)* 332 NLRB 445, 446 (2000), noting the Board’s longstanding precedent holding that Section 8 (b)(1)(A)  
 15 proscribes threats of economic reprisals.<sup>5</sup>

#### CONCLUSIONS OF LAW

- 20 1. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. The Employer has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 25 3. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.
- 30 4. By threatening Charging Party with the loss of all benefits including insurance and seniority, the requirement that she would have to start as a new hire, and telling her that it would be “bad for her and her family” if she did not join the Union and reinstate her union dues, the Respondent violated Section 8(b)(1)(A) of the Act.

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<sup>5</sup> Respondent argues that an adverse inference should be drawn from the General Counsel’s failure to call witnesses who were available to testify at the hearing relying on *In re DPI New England*, 354 NLRB 849, 858( 2009). “[W]hen a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge.” *Int’l Automated Machines, Inc.*, 285 NLRB 1122, 1123 (1987) (citing 2 Wigmore, Evidence § 286 (2d ed.1940); McCormick, Evidence § 272 (3d ed.1984). While the rule permits an adverse inference to be drawn, it does not mandate conclusively that it must be drawn in every case. The rule requires that the witnesses not called be ones who may reasonably assumed to be favorably disposed to the party. This record provides insufficient evidence from which to conclude that the witnesses who were not called, and were merely co-workers of both Sugianto and Gonzalez, would have been more favorably disposed to Sugianto than to their other co-worker Gonzalez. I therefore find that the exercise of my discretion to draw an adverse inference is unwarranted under the facts presented. To hold otherwise would frustrate the purposes of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be required to post a notice that assures that it will respect employees' rights under the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>6</sup>

**ORDER**

The Respondent, Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, and Bartenders Union, Local 165, affiliated with Unite Here, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

- (a) Threatening employees with the loss of benefits, insurance and/or seniority if they fail to join the Union and/or pay union dues.
- (b) Telling employees that it will be "bad for them or their family" if they didn't pay union dues and/or join the Union.
- (c) In any like or related manner 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) Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice. Copies of the notice, on forms provided by the Regional Director 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 and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (b) Mail a copy of the notice to every member of the bargaining unit.

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<sup>6</sup> 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.


(c) Sign and return to the Regional Director sufficient copies of the notice for posting by the Employer, Paris Las Vegas, if willing, at all places where notices to employees are customarily posted in its facility.

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(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.<sup>7</sup>

Dated, Washington, D.C. May 2, 2014

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Dicke Montemayor  
Administrative Law Judge

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<sup>7</sup> If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading, “posted by Order of the National Labor Relations Board Shall read, “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”



**APPENDIX**

**NOTICE TO MEMBERS AND 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 on your behalf with your employer.
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

**WE WILL NOT** threaten you with unspecified losses and/or loss of contractual benefits unless you pay union dues once we and Paris Las Vegas agree to a new collective bargaining agreement.

**WE WILL NOT** in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

**Local Joint Executive Board of  
Las Vegas, Culinary Workers  
Union, Local 226, and Bartenders  
Union, Local 165, affiliated with  
Unite Here**

\_\_\_\_\_  
(Labor Organization)

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](http://www.nlrb.gov).

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099  
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/28-CB-107960](http://www.nlr.gov/case/28-CB-107960) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (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 OF POSTING 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, (602) 640-2146.