

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

OAKTREE CAPITAL MANAGEMENT,
LLC, and TBR PROPERTY LLC, a SINGLE
EMPLOYER, d//b/a TURTLE BAY RESORTS,
and BENCHMARK HOSPITALITY, INC.

and

UNITE HERE! LOCAL 5

Cases 37-CA-6601-1
37-CA-6642-1
37-CA-6669-1
37-CA-6691-1
37-CA-6730-1
37-CA-6753-1
37-CA-6756-1
37-CA-6768-1
37-CA-6816-1
37-CA-6826-1
37-CA-6827-1
37-CA-6835-1
37-CA-6840-1
37-CA-6875-1
37-CA-6877-1
37-CA-6878-1

**RESPONDENTS OAKTREE CAPITAL MANAGEMENT, LLC, AND TBR PROPERTY
LLC, a SINGLE EMPLOYER, d//b/a TURTLE BAY RESORTS,
AND BENCHMARK HOSPITALITY, INC.'S
EXCEPTIONS TO SUPPLEMENTAL DECISION
OF THE ADMINISTRATIVE LAW JUDGE**

On March 29, 2009 a two-member panel of the National Labor Relations Board (hereinafter “the Board”) issued its decision in *Turtle Bay Resorts and Benchmark Hospitality* 353 NLRB No. 127 (2009) (“03/29/09 Decision”). The Board remanded for further consideration Administrative Law Judge Gontram’s (“ALJ Gontram”) analysis and conclusion relating to Respondents’ parking validation policy at the Resort with respect to Union business agents. ALJ Gontram found that “there was no evidence of the amount the Respondents require union representatives to pay for parking,” and that therefore he was “unable to conclude that the change in parking validation policy was a significant change that would require the Respondents to bargain before making the change.” *Id.* slip op at 2.

On August 17, 2009, Administrative Law Judge Mary Cracraft (“ALJ Cracraft”) issued her supplemental decision (“SALJD”) and order finding that Respondents violated Section 8(a)(5) and (1) by "unilaterally altering the parking validation policy for Union agents who were present at the facility to service the collective-bargaining contract.” Pursuant to Order of the National Labor Relations Board, dated September 9, 2009, Respondents OAKTREE CAPITAL MANAGEMENT, LLC, and TBR PROPERTY LLC, a SINGLE EMPLOYER, d/b/a TURTLE BAY RESORTS, and BENCHMARK HOSPITALITY, INC., submit the following exceptions to ALJ Cracraft’s Supplemental Decision.

In addition to the exceptions set forth below, Respondents also take exception to inclusion of Oaktree Capital Management as a named party in this matter and the underlying matter.

ALJD CITATION	EXCEPTION
Exception #1 SALJD @ p. 6	To the ALJ’s finding/conclusion that Respondents violated the NLRA by "unilaterally altering the parking validation policy for Union agents who were present at the facility to service the collective-bargaining contract."

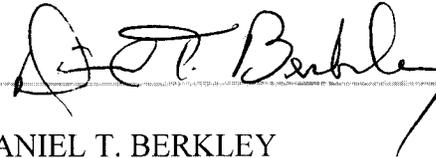
ALJD CITATION	EXCEPTION
Exception #2 SALJD @ p. 2	To the ALJ's finding/conclusion that "Respondents violated Sec. 8(a)(1) & (5) of the Act by unilaterally eliminating parking validation for Union agents who were present at the resort to perform representational duties pursuant to the terms of the expired CBA."
Exception #3 SALJD @ p. 2	To the ALJ's finding/conclusion that TBR's "rescission of the parking validation practice was a material, substantial and significant change."
Exception #4 SALJD @ p. 2	To the ALJ's finding/conclusion that "Respondents' practice was to validate the parking for Union agents. Validation continued, at least for a time, following expiration of the contract."
Exception #5 SALJD @ p. 2	To the ALJ's finding/conclusion that "the practice of providing free parking to the Union representatives while on the property on official business was known and facilitated by Respondents."
Exception #6 SALJD @ p. 5	To the ALJ's finding/conclusion that "in determining whether the unilateral change was material, substantial, and significant, the natural context must be considered," and to the ALJ's findings/conclusions allegedly in support of this proposition.
Exception #7 SALJD @ p. 6	To the ALJ's finding/conclusion that "the chronology of events illustrates amply that the change in the terms of parking was one of many means that the employer used to burden the link between the employees and their exclusive bargaining representative. Respondent's conduct itself towards the Union blocked or burdened the Union's access to the employees at every turn. Thus, Respondents' unilateral change of the parking conditions for Union business agents on the property on official business constituted a material, substantial, and significant change of employees' terms and conditions of employment."
Exception #8 SALJD @ p. 4	To the ALJ's finding/conclusion that "Judge Gontram found that all of the above actions [including the serious of events involving Business Agent Nate Santa Maria on August 6, 2004] by Respondents, with the exception of rescission of parking validation practices, violated Section 8(a)(1) of the Act."
Exception #9 SALJD @ p. 1	To the ALJ's finding/conclusion that "the Board severed and remanded this issue for reexamination in light of the fact that there was evidence in the record that showed that the parking fees assessed totaled approximately \$2,080 per year since 2005."
Exception #10 SALJD @ p. 6	To the ALJ's finding/conclusion that "moreover, even in the absence of the context of Respondents actions, the amount the Union paid for parking, \$2080 per year, is a substantial amount of money, the distance walked by business agents (some of whom had physical limitations) is significant, and the time involved in walking the extra distance is substantial. Given these factors and the concerted strategy to weaken the Union's access to employees, the parking validation practice, as found by Judge Gontram, was a mandatory subject of bargaining. Unilateral alteration constituted a material, substantial, and significant change and violates 8(a)(1) and (5) of the Act."

<u>ALJD CITATION</u>	<u>EXCEPTION</u>
Exception #11 SALJD @ p. 2	To the ALJ's finding/conclusion that "there is no evidence that the resort charges anyone other than the business agents for parking at the resort."

DATED: October ~~1~~⁴ 2009.

Respectfully submitted,

GORDON and REES LLP



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CHARLES O. ZUVER
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BENCHMARK HOSPITALITY, INC.,
OAKTREE CAPITAL MANAGEMENT, LLC, and
TBR PROPERTY, LLC d/b/a TURTLE BAY
RESORT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of **RESPONDENTS' EXCEPTIONS TO THE SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** has this day been served as described below

- by transmitting via e-mail the document listed above to the e-mail addresses set forth below on this date before 5:00 p.m. (PST), pursuant to §102.114 (a, i) of the Rules and Regulations of the NLRB:

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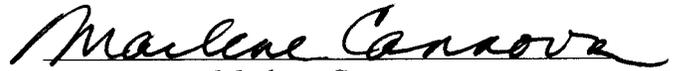
DATED on October 14, 2009 at San Francisco, CA.


Marlene Cannova

The undersigned hereby further certifies that **RESPONDENTS' EXCEPTIONS TO THE SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** was duly filed with the Office of the Executive Secretary of the NLRB in Washington D.C. pursuant to § 102.114 by transmitting via electronic filing the document listed above on this date before 5:00 p.m., PST.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 14, 2009 at San Francisco, California.


Marlene Cannova