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

CASINO PAUMA

and **Cases 21-CA-125450**
21-CA-126528
21-CA-131428

UNITE HERE INTERNATIONAL UNION

Irma Hernandez, *Esq.*, for the General Counsel.
Scott A. Wilson, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

ARIEL L. SOTOLONGO, Administrative Law Judge. I presided over this trial in Temecula, California, on December 15, 16, and 17, 2014. On July 24, 2014 the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued an order consolidating cases, consolidated complaint and notice of hearing in the above-captioned cases. The consolidated complaint alleges that Casino Pauma (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by: (1) maintaining a rule in its employee handbook prohibiting distribution of literature in "working or guest areas" at any time; (2) by interfering with the distribution of union literature by employees near the public entrance to its casino; (3) by threatening employees with discipline for distributing union literature at that location; (4) by taking a photograph of an employee who was distributing union literature; (5) by interrogating an employee about her union activity; and (6) by directing an employee to keep a discussion about possible discipline as confidential. The complaint additionally alleges that Respondent violated Section 8(a)(3) and (1) of the Act by issuing a written disciplinary warning to an employee for engaging in union activity. Respondent thereafter filed a timely answer to the complaint.

I. Jurisdiction

At the outset, I note that on March 31, 2015, the Board issued a decision involving this same Respondent in *Casino Pauma*, 362 NLRB No. 52 (2015), affirming the decision of administrative law judge Jeffrey D. Wedekind that the Board had jurisdiction over Respondent pursuant to the Board's ruling in *San Manuel Indian Bingo & Casino*, 341 NLRB 1005 (2004), enfd. 475 F.3d 1306 (D.C. Cir. 2007).[1] In *Casino Pauma*, the Board also cites *Little River Band*

[1] The Board also affirmed Judge Wedekind's findings that Respondent violated Section 8(a)(1) of the Act by, inter alia, interfering with its employees' wearing of union pins and other conduct.

of Ottawa Indians Tribal Government, 361 NLRB No. 45 (2014) and *Soaring Eagle Casino & Resort*, 361 NLRB No. 73 (2014) in support of its finding that the Board has jurisdiction over Indian casinos, including Respondent. The Board additionally rejected Respondent's argument, which it again makes in this case, that the Supreme Court has implicitly overruled the Board's *San Manuel* decision in *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014).

I also note that the parties have stipulated that the same facts that underlie and support the jurisdictional findings in the prior case before Judge Wedekind also exist and are applicable in the present case, to wit:

- That Respondent operates a gaming and entertaining establishment (the Casino) in Pauma Valley, California, and that the Casino has slot machines, gaming tables and several restaurants;
- That Respondent is owned the Pauma Band of Mission Indians (the Tribe), but that there is no evidence of any Tribal involvement in the day-to-day operation of the Casino;
- That Respondent operates 24 hours a day, 7 days a week, to members of the public, and that the vast majority of its customers are not members of the Tribe or of any other Native American Tribe;
- That the vast majority of Respondent's employees, security guards, supervisors and managers are not members of the Tribe or any other Native American Tribe, and that of the 236 members of the Tribe, only 5 are employed by Respondent;
- That Respondent advertises its Casino using multiple sources, including website, television, radio, mail, and mobile billboards on buses, and advertises in various California counties, including San Diego, Riverside, San Bernardino, Orange, and Los Angeles. (See Jt. Exh. 1) [2]

Additionally, I note that the parties stipulated that in calendar year 2013, Respondent had revenues of at least $50,000,000 (Tr. 19-20), and that in its answer to the complaint Respondent admitted that: (1) during the 12-month period ending on June 30, 2014, it had gross revenues in excess of $500,000; and (2) that (during the same period) it purchased and received at its Pauma Valley, California facility goods valued in excess of $50,000 directly from points outside California (GC Exh. 1(o)). Finally, I note that in its answer to the complaint Respondent admitted that there is no Federal treaty between the Tribe and the Federal government (GC Exh. 1 (o)).

In light of the above facts, which have not changed since Judge Wedekind issued his decision in the prior case, I conclude that pursuant to the Board's recent decision in *Casino Pauma*, the issue of jurisdiction is *res judicata*. Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Board therefore has jurisdiction over Respondent.

During the trial, as well as in its post-hearing brief, Respondent advances arguments against the Board exercising jurisdiction, including arguments that it apparently did not raise in the prior case. Briefly, Respondent first argues that the Supreme Court in *Bay Mills,* id., impliedly overruled the Board's ruling in *San Manuel*, an argument that the Board specifically

[2] Joint Exhibits will be referred to as "Jt. Exh.(s);" General Counsel's exhibits will be referred to as "GC Exh.(s);" and Respondents exhibits will "R Exh.(s)." The transcript will be referenced as "Tr.," followed by applicable page number(s).

rejected in footnote 3 of *Casino Pauma,* supra. While Respondent's arguments in that regard may ultimately be found valid by a circuit court, or even the Supreme Court, I am bound by the Board's recent ruling, and therefore reject it.

Secondly, Respondent argues that in 2000, Respondent entered into a Tribal State Compact with the State of California (the Compact), under the auspices and provisions of the Indian Gaming Regulatory Act (IGRA)(25 U.S.C. §2710 (d)(3)(B)). The Compact provides for certain union organizing rights under its provisions, including the Tribal Labor Relations Ordinance, which Respondent argues should be controlling in this case, and not the Act.[3] Such argument would have been valid prior to the Board's 2004 decision in *San Manuel*, pursuant to which the Board for the first time opted to exercise jurisdiction over Indian casinos, which it had previously declined to do for the historical and policy reasons discussed at length in that decision. Once the Board opted to exercise jurisdiction over Indian casinos, however, the doctrine of Federal preemption applied, thus preempting the Compact and any other State laws or regulations that govern matters over which the Board has exclusive jurisdiction. *Bethlehem Steel Co. v. New York State Labor Relations Board* 330 U.S. 767, 773-774, 746 (1947); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242-243 (1959); *Machinists Lodge 76 v. Wisconsin Employment Relations Comission.*, 427 U.S. 132, 150-151 (1976). Accordingly, I do not find merit in Respondent's arguments, and as stated above, conclude that the issue of jurisdiction in this case is *res judicata* and thus a settled matter pursuant to the Board's ruling in *Casino Pauma*.

II. The Facts

A. Background

As reflected above, Respondent operates a gaming establishment, which the parties stipulated consists of 35,000 square feet of gaming area, with a total of 7 buildings housing different aspects of Respondent's operations and a parking lot that can accommodate approximately 859 vehicles, 5 bus parking places, and 24 RV parking places (J Exh. 1). Aerial (or satellite) photos of Respondent's property were introduced as joint exhibits, which provide a good perspective of the size of the facility and overall property, as well as the location of various areas where some of the activities at issue herein took place.[4]

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[3] A copy of the Compact, and its addendums, appears on the record as R Exh. 4.

[4] Thus, Jt. Exh. 3A is a photograph taken from above showing the two main white-roofed buildings housing Respondent's casino, including its restaurants, and part of the parking lot closest to the casino. To the left of the building in the center of the photo is a crescent (or half-moon) shaped driveway, which is the valet entrance to the casino, where the main doors are located (below the bronze-colored roof). This is the public entrance to the casino, and part of the public parking lot can be seen. The second white-roofed building (connected to the first and similar in shape and size) that appears closer to the edge of the photograph is the back side of the casino, and an area immediately outside the building where blue-colored awnings can be seen is where the employee (non-public) entrance to the casino is located. A second photograph from a higher perspective and showing a wider field was introduced an admitted as Jt. Exh. 3B. An additional 4 photographs taken from a ground perspective and showing the valet (or public) entrance to the casino were also introduced as Jt. Exhs. 2A through 2D. It is at this location where the leafleting activities described below took place.

As described in Judge Wedekind's prior decision, UNITE HERE International Union (the Union) has been conducting an organizing campaign among Respondent's employees since at least early 2013. It is the conduct of Respondent's employees as part of this campaign, and Respondent's response to such conduct, as described below, that is at issue in the present case, just as it was in the prior case.

Additionally, at issue is language contained in Respondent's employee handbook, which the parties stipulated to and introduced as Jt. Exh. 4. The language (rule) in question appears on page 24 of the handbook and reads as follows:

> Circulation of Petitions
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> No one shall be allowed to distribute literature in working or guest areas at any time. Team Members may not solicit other Team Members for any purpose during scheduled work time. Work time does not include break time. In addition a Team Member who is on his/her break may not solicit or distribute literature of any kind to a Team Member who is working.

It was Respondent's enforcement of this rule which gave rise to some of the allegations of the consolidated complaint discussed below.

B. The events of December 14, 2013

It is undisputed that on December 14, 2013, a number of Respondent's employees, at various times of the day, distributed union leaflets at the valet entrance of the casino, which is on the front or "public" side of the casino, facing and immediately adjacent to the visitor parking lot. Based on undisputed testimony from witnesses, the evidence indicates that the location where the employees distributed leaflets was approximately 75-100 feet from the front doors of the casino (Tr. 102, 236).[5] It is undisputed, and indeed admitted by Respondent, that Respondent's security personnel approached these employees on each occasion they were distributing flyers and informed them that they were prohibited from doing so in that area of the property, and informed the employees that they could be disciplined if they continued to do so.[6] Finally, I note that there is no evidence, or allegations, that the employees distributing the union leaflets/flyers were littering, obstructing foot or vehicular traffic, or harassing casino customers in any manner. The testimony about the events of December 14 was as follows:

Victor Diaz Huerta (Huerta), an employee of Respondent for 8 years, testified that on December 14, starting at approximately 11:30 a.m., he and fellow employees Maria Ponce, Guadalupe Piñeda,[7] and Raul Marquez began distributing union leaflets by the entry and exit points at the valet driveway in the front or public entrance of the casino. These employees stationed themselves strategically so that any customer walking into the casino from the public parking lot on the front (or public) side of the casino would have to walk past them, and could

[5] The parties agreed that the main entrance doors of the casino were about 80-90 feet from the location where the leaflets were being distributed (Tr. 138-139)

[6] As described below, it is also undisputed that on several occasions the security personnel informed the employees that they were allowed to distribute the leaflets on the "back" or employee entrance of the casino.

[7] Although the transcript reflects the name as "Pineda," the correct Spanish spelling of the employee's name is "Piñeda," and the transcript shall thus be corrected.

thus be handed a leaflet.[8] Although Huerta could not specifically recall if the flyer introduced into evidence as GC Exh. 2 was the one he distributed on that day, other witnesses confirmed that this leaflet was indeed the one they distributed on that day, and the parties stipulated that GC Exh. 2 was the flyer distributed by the union to the employees that day to pass out (Tr. 49-56, 290).[9]

Huerta testified that he positioned himself on the sidewalk on the exit side of the valet driveway, with Ponce directly across the driveway from him on same side, while Piñeda and Marquez positioned themselves across each other on the entry side of the valet driveway. About ten minutes after Huerta started distributing leaflets, Jacob Hanson, Respondent's security director, approached him. Hanson told Huerta, in English (which Huerta understands), that he could not distribute flyers there, adding that he could distribute the flyers in the back (of the casino), by the employee entrance. Huerta asked Hanson what would happen if he continued to distribute flyers at the present location, and Hanson responded that he could report him to Human Resources (HR), which could result in disciplinary action. Huerta added that just as Hanson was approaching him, Ponce crossed the driveway and joined them as their conversation was occurring. (Tr. 59-67, 93-96).

Hanson, Huerta and Ponce then walked to the entry side of the valet driveway where Piñeda and Marquez were distributing leaflets, and Huerta noticed that two security guards, Max Ortiz and Ricardo ("Ricky") Torres had also approached that location.[10] According to Huerta, "Max" Ortiz told Piñeda and Marquez, in Spanish (which Huerta speaks), that they could not distribute flyers in that area, but could do so in the "back," by the employee entrance. Huerta also testified that Piñeda asked Ortiz what would occur if they did not stop distributing flyers at

[8] Much testimony and time was devoted to describing the precise spots by the valet driveway where the employees were standing while they distributed leaflets, and indeed photographs were introduced to mark these spots. Thus, for example, Jt. Exh. 2A shows the "exit" side of the crescent-shaped valet driveway (also shown in the aerial photographs in Exhs 3A and 3B), and Jt. Exh. 2C shows the entrance of that driveway. All the employees who testified about having distributed leaflets on December 14 testified that they stationed themselves on the sidewalk on either side of the entrance or the exit of such driveway. As previously discussed, it is undisputed that these spots were located about 75-100 feet from the main doors of the casino, that the employees were on the sidewalk and not blocking foot or vehicular traffic, and that neither they nor the customers were littering or otherwise throwing leaflets on the ground. In light of these undisputed facts, the *exact* location of each employee distributing the leaflets has no legal significance, and henceforth I will simply describe their location by indicating that they were stationed by the valet driveway.

[9] GC Exh. 2 is a double-sided flyer, in English on one side and Spanish on the other, containing the photograph of employees in the union organizing committee, and exhorting customers of the casino to support the employees' organizational activities.

[10] The parties stipulated to the names of the security guards as well as to their status as agents of Respondent. Undisputed testimony by various witnesses also established that Respondent's security guards or personnel wore distinguishable clothing that identified them as members of the security staff, many of whom were well-known to the employees.

that location, and that Ortiz replied that they would be reported to HR for disciplinary action.[11] (Tr. 68-72).

Ponce and Piñeda corroborated Huerta's testimony, whom I found to be credible (Tr.118-125, 129-134, 135-139, 159-163, 170-173). Indeed, Respondent's security director, Hanson, admitted that he told Huerta and the others that they could not distribute flyers at the location where they were, pursuant to Respondent's employee handbook, which prohibited distribution of literature in "public" (the term used by Hanson) areas of the casino, as quoted above.[12] Moreover, Hanson admitted that he instructed his security personnel not to permit such distribution of flyers in the public areas, and admitted that his personnel had multiple encounters throughout that day with employees distributing literature in these areas, which they stopped. (Tr. 370-375).

In light of Hanson's admission, there can be no dispute that the other encounters later on the same day occurred as described by the union witnesses (and as alleged in the complaint), with one limited exception involving the alleged taking of a photograph by a security guard, which as discussed below, is disputed.

Thus, employee James Bayton testified that approximately at 12:20 p.m. on the same day, he and fellow employees Alvaro and Maria Bolanos (husband and wife) started distributing union leaflets (GC Exh. 2) at the same location(s) by the valet driveway previously described above. About 10 minutes after they started distributing the flyers, security guard Gene Oseguera, approached Bayton and told him and the Bolanos, who had also approached, that they could not distribute the flyers at that location. Bayton asked Oseguera what would happen if they did not stop, and Oseguera replied that he would take their names and report them to the HR department. (Tr. 224-232).[13] In his testimony, Oseguera confirmed that he instructed individuals distributing flyers at the valet entrance, which he described as the "guest entrance," to stop doing so, but his account varies from Bayton's in two respects. First, he testified that he was on a bike when he approached, not on foot. Second, he testified that he approached a man and a woman whom he recognized as employees, and as he was telling them they could not distribute flyers at that location they were approached by another "older" white male who told Oseguera that he was

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[11] Almost every employee who testified about these encounters asked the same question as to what would occur if they did not stop distributing flyers at this location, and they all testified receiving the same replies. Apparently, the employees were coached by the Union to ask such question, and Respondent's security personnel obliged them with the same replies. Indeed, the Union gave the employees a printed card that spelled out what their rights were, including their right to distribute union literature in the public areas and parking lots pursuant to cited Board cases, and requested them to give out these cards to any security personnel that tried to stop them (See GC. Exh 3). The employees attempted to give these cards to the guards, which in most cases declined to take them.

[12] It appears Respondent uses the terms "guest areas" and public areas" to mean the same.

[13] Bayton testified that Oseguera approached on foot, not on a bike. He had seen Oseguera patrolling on a bike before, but not on this occasion.

wrong and that they could distribute the flyers anywhere. Oseguera testified that this man had no employee identification, so he asked him to leave the property. (Tr. 393-398).[14]

Employee Maria Tavarez testified that at approximately 1:00 p.m. on the same day she and fellow employee Maria Alba were distributing union flyers at the valet entrance previously described. A few minutes after they started, two security guards whom she recognized (and whose identities were stipulated to by the parties), Gene Oseguera and Jesus Solis, approached her on foot. As they did, Alba came over to where the three of them were. Solis, in Spanish, told them they could not distribute flyers in this location. Just as this was occurring, a third security guard arrived on a bike and approached the group. Tavarez testified that she did not know the name of the security guard on the bike, but that she's seen him before both inside the casino floor as well as patrolling in the parking lot on a bike. This security guard also told them, in Spanish, that they could not distribute flyers at that location. Tavarez then handed him a copy of the "union rights" card (GC Exh. 3) that the Union had given them to pass out to anyone who tried to stop them from distributing flyers, and she asked this guard what would happen if they did not stop doing so. According to Tavarez, the guard on the bike pointed at Tavarez's employee badge and stated that he would report them to HR, and then took a photo of Tavarez and Alba (who was standing next to Tavarez) with a camera, whose "flash" caught Tavarez's eye. Alba was not called to testify by the General Counsel, but neither was Solis nor the unidentified guard on the bike called to testify by Respondent. Oseguera testified about an

[14] The identity of this "older" man was never clearly established, although it is not ultimately important. In this regard, I conclude that I need not make any credibility determinations regarding this encounter except as discussed below, because Oseguera admitted the main allegation: that he instructed the individuals distributing the flyers to stop, and did not deny threatening to report them to HR if they did not stop. The dispute as to whether he was on foot or on a bike is important, however, because it impacts testimony regarding another encounter that Oseguera allegedly had later that afternoon with other employees distributing flyers. I credit Bayton's testimony that Oseguera was on foot, not on a bike, because another employee testified that Oseguera was on foot at an encounter shortly thereafter, as described below, and because an "Incident Report" introduced by Respondent describing the encounter at approximately 12:24 p.m. makes no mention of Oseguera being on a bike (R. Exh. 2). Indeed, contrary to Oseguera's testimony, the incident report describes him encountering two <u>women</u> distributing leaflets, not a man and a woman as he testified.

earlier incident, as described above, but did not testify about this encounter occurring at 1:00 p.m. Tavarez's testimony is thus uncontradicted, and I credit it. (Tr. 193-205, 207, 214)[15]

Finally, employees Catalina Gutierrez and Olivia Garcia, who corroborated each other's testimony, testified that around 4:20-4:30 p.m. that day, they along with fellow employee Andreas Ramirez, were distributing union flyers (GC Exh. 2) at the same area by the valet driveway described earlier. A few minutes after they started distributing the flyers, they were confronted by security guard Brian Linderman, who needed to call on a second security guard, Antonio Alcaraz to translate into Spanish for him.[16] Through Alcaraz, Linderman told Gutierrez, Garcia and Ramirez that they could not distribute flyers to customers at that location, because the customers "did not need to know the problems of the casino." Linderman added that they could distribute flyers in the "back," at the employee entrance to the casino. Linderman also told them that he would report them to management if they did not stop, and that they could lose their jobs. (Tr. 242-248, 267-272, 274-276). Neither Linderman nor Alcaraz testified, and I credit the testimony of Garcia and Gutierrez, which is uncontradicted.

Accordingly, the above facts show that on 4 separate occasions on December 14, 2013, Respondent's security personnel stopped employees from distributing union flyers at or near the public entrance of Respondent's casino, threatened them with discipline if they persisted, and on one occasion took a photograph of two of the employees distributing the flyers.

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[15] There are additional reasons for crediting Tavarez's version, while discrediting Respondent's assertion that it was Oseguera who was on the bike during this encounter (see, e.g., Tr. 212-213). Oseguera had denied taking any photos at the 12:24 p.m. encounter described earlier, but said nothing about 1:00 p.m. encounter with Tavarez and Alba, despite the "incident report" submitted by Respondent confirming that Oseguera was indeed present at the 1:00 p.m. encounter (R Exh. 3). Tavarez, who knew Oseguera and provided a description of him which differed from that of the guard on the bike, was positive that Oseguera was **not** on a bike, and was positive that it was a third guard on a bike who showed up (Tr. 214). Moreover, as described earlier by Bayton, who had an encounter with Oseguera about 30 minutes before, Oseguera was not on a bike that day, contrary to Oseguera's testimony, but on foot. Finally, Respondent refused to comply with the subpoena duces tecum issued by the General Counsel requesting, inter alia, photos of all the guards employed by or performing services for Respondent that day, despite my order directing that it do so in response to a Motion to Revoke subpoena filed by Respondent. I concluded such photos were relevant and necessary because they could have helped Tavarez identify the security guard on the bike, who was the subject of an allegation of the complaint denied by Respondent. Accordingly, I draw an adverse inference against Respondent, and conclude that had such photos been made available, Tavarez would have positively identified a third guard (on the bike) present at this encounter. See, e.g., *Metro-West Ambulance Service*, 360 NLRB No. 124, slip op. at 2-3 (2014). In that regard, I note that Respondent did not comply with the subpoena on the grounds that it would have to seek authorization from the "Tribal Gaming Authority" to release the photos of the guards, but failed to demonstrate any diligence on its part in trying to obtain such authority—assuming that such authority is necessary, a doubtful proposition in the face of a Federal subpoena. Accordingly, I conclude that Respondent failed to provide a valid reason for its failure to comply with the subpoena, and that the adverse inference described above is proper.

[16] The parties stipulated to the identity of these 2 security guards. (Tr. 273-274)

C. The disciplinary warning issued to Audelia Reyes.

Audelia Reyes has worked for Respondent since 2003 as a buffet attendant, normally working in the 8:00 a.m. to 4:00 p.m. shift. She has been an active participant in the Union's organizing activities, having distributed Union flyers at the "back" or employee entrance of the casino in plain sight on a number of occasions, and having worn a union pin or button during working hours.[17] According to the testimony of Reyes, which was uncontradicted in this regard, employees are normally given 2 half-hour breaks during their working hours. During the time at issue, in January 2014, employees were allowed to decide for themselves when to take their breaks, which employees did sequentially, so that when one finished his/her break another employee would then go on break.[18] This meant that employees would take their breaks at different times, and sometimes the last employee taking his/her break would not do so until the last half hour of their work shift. (Tr. 303-308, 311, 314-316, 320-323).

On January 24, 2014, Reyes took her second (or afternoon) break between 3:30 p.m. and 4:00 p.m., which happened to be at the end of her work shift. About 1 to 2 minutes before 4:00 p.m., employees whose shift ended at 4:00 p.m., including Reyes, started gathering in a hallway outside the employee cafeteria where the time clock where they "clock" or "punch" in/out" is located. Apparently taking advantage of a "captive" audience, Reyes gave out Union flyers to 3 employees standing in line at the time clock, starting about 45 seconds prior to 4:00 p.m., the exact time when Reyes clocked out (GC Exh.5). At the time Reyes gave out the flyers (introduced into evidence as GC Exh. 6), neither she nor the 3 employees had yet clocked out, but all did so within about 30 seconds. The exact timing of these events was captured in a security video that was played during the trial and introduced into evidence (GC Exh. 9; Tr. 318-321, 324).

Almost a month later, on February 20, 2014, Respondent's Human Resources (HR) director, Annabelle Lerner, summoned Reyes to a meeting in the HR office, also attended by Director of Food & Beverage Department Jorg Limper and HR Assistant Maria Perez, who acted as a Spanish interpreter. Lerner, through Perez, asked Reyes if she was authorized to distribute information in the casino.[19] Reyes initially replied "No," apparently unsure of what Lerner was referring to. After Lerner reminded Reyes that there were many surveillance cameras in the casino, and suggesting that being untruthful could have serious consequences, Reyes realized that Lerner was referring to her distribution of flyers by the time clock a month before. Reyes then admitted she had distributed flyers on that occasion, by the "punch machine," and said that the Union had authorized her to do so. Lerner then asked Reyes if she was familiar with the no solicitation/distribution policy of Respondent, which Reyes had acknowledged receiving when she was hired—although she stated that it was in English so she had not understood. Reyes, however, acknowledged that she knew which areas she was allowed to distribute literature in,

[17] Reyes is also one of about a dozen employees who appear on a photograph contained in the union flyer that was distributed on December 14, 2013, discussed above (GC Exh. 2)

[18] Employees would thus relieve one another to go on break, without having to obtain permission from, or even having to notify, a supervisor before doing so. This policy was apparently changed thereafter, so that employees had to "punch out" on their time cards when going on break. (Tr. 320, 322-323)

[19] Reyes initially testified that the question Lerner asked was if she was authorized to give information in the casino (Tr. 327), but later testified that the question was "who authorized me to give information…" (Tr. 329-330).

including the employee cafeteria, outside of work, and in the parking lot. Lerner then played a video of the incident by the time clock for Reyes on a computer, which they watched together. Reyes then apologized and said that it had been a mistake to give out flyers before she had punched out, but added that she had been on break at the time. Lerner then asked Reyes to write a statement describing what she had done, and Reyes went to a separate room where she wrote a short statement in Spanish, which she then gave to Lerner.[20] Lerner thanked Reyes for her honesty and said that if there was anything else, she would call Reyes. According to Reyes, Lerner then said "And everything that we spoke about will stay here. Everything is confidential. Nothing else should be said outside." The meeting ended at this point. (Tr.304-308, 311, 316-322, 324-326, 328-334).

Neither Lerner nor Limpert testified, but Perez, who had translated during the meeting, testified as a witness for Respondent. Perez testified that she translated at a meeting that took place in March 2014 (not February, as testified by Reyes). Perez was not asked any details as to what happened at the meeting, except she was specifically asked if Lerner had said anything to Reyes about keeping the meeting confidential. Perez replied "No. I don't recall. No." Asked if she heard Lerner say to Reyes that Reyes had to keep the meeting confidential, Perez testified: "No, I don't recall." I asked if she had served as translator at other disciplinary meetings with employees, and Perez replied that she had. I asked if employees are told in these meetings to keep things confidential, and she replied "No, they are told that it's kept confidential as a policy within the HR department…It is a policy to be kept confidential within the HR department." She clarified that the HR department has a policy not to "distribute publicly" issues of employee discipline. (Tr. 403-406).

While I generally credit Reyes, who gave a far more detailed account of the meeting in question, which I conclude occurred in February and not March 2014, I do not discredit Perez, whom I also found was being truthful during her testimony.[21]

It is undisputed that on March 6, 2014 Respondent issued Reyes a disciplinary warning, admitted as a joint exhibit (J Exh. 6), for her conduct in distributing flyers by the time clock on January 24, 2014. The warning quotes Respondent's "No Solicitation or Distribution Policy," contained on page 24 of Respondent's employee handbook (J Exh. 4) as follows:

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[20] The original statement in Spanish was introduced as Jt. Exh. 7A, and the translation in English as J Exh 7B, which reads as follows: "On January 24, I am aware that I passed out information to like three people. I apologize because the truth is I had not clocked-out yet. I was on my break. Like you say that it was still work time, I know I made a mistake."

[21] In that regard, I conclude that when Perez testified "No, I don't recall. No" when asked if Lerner had directed Reyes to keep what occurred at the meeting confidential, she was not indicating that she had no recollection of what was said, as suggested by the General Counsel, but rather that she does not remember that particular statement being made. Moreover, I do not draw any negative inferences from the fact that Perez was not asked any questions as to what else occurred at the meeting, since apparently Respondent does not otherwise factually contest Reyes' account of what transpired during the rest of this meeting. For the same reason, I do not draw any negative inferences as to Lerner's failure to testify. As I will discuss below, some of the statements that were made during the course of this meeting can reasonably be interpreted differently than the General Counsel suggests.

Casino Pauma wants to protect its Team Members from annoying interruptions, and to promote a proper and litter-free working environment. Therefore:

- Solicitation of any type by Team Members during working time is prohibited.
- Distribution of literature of any type or description by Team Members during working time is prohibited.
- Distribution of literature of any type or description in working areas is prohibited.

Violation of any of the above rules will result in immediate disciplinary action up to and including termination of employment.

Respondent has not disciplined any other employee for violating its no solicitation/no distribution policy, and thus did not produce any such disciplinary warnings subpoenaed by the General Counsel, because it claims no other violations of this rule have occurred. (Tr. 23).

III. Discussion and Analysis

A. The Rule Regarding "Circulation of Petitions"

The General Counsel alleges that Respondent's rule (Jt. Exh. 4), which prohibits distribution of literature in working *or guest areas* (emphasis supplied) within Respondent's property is overbroad and thus unlawful, because it prohibits distribution of literature in areas where work is not being performed and where Respondent has no compelling interest to suppress or control activities protected by Section 7 of the Act. For the following reasons, I agree with the General Counsel.

In determining the validity of the work rule, the Board's decision in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), directs me to first determine if the rule in question explicitly restricts activities protected by Section 7. If so, the rule is unlawful. If the rule does not explicitly restrict Section 7 rights, I must next examine the following criteria: (1) whether employees would reasonably construe the language to prohibit (or restrict) Section 7 activity; (2) whether the rule was promulgated in response to union activity; (3) whether the rule has been applied to restrict the exercise of Section 7 rights. *Lutheran Heritage*, at 647. See also, *U-Haul Co. of California*, 347 NLRB 375, 377 (2006), enfd. 255 Fed.Appx. 527 (D.C. Cir. 2007). If any of the above 3 criteria is met, there would likewise be a violation of the Act.

Since Respondent's rule does not explicitly restrict protected Section 7 activity, I must apply the above-enumerated criteria to determine its validity under the Act. First, I note there is no evidence that Respondent promulgated the rule in response to union or protected activity, so it is clear that criteria 2 does not apply. The validity of the rule thus turns upon the application of the first and third criteria. Regarding the first criteria, whether employees would reasonably construe the language of the rule to restrict Section 7 rights, such determination rests on the clarity or vagueness of the language that prohibits distribution of literature in "working or *guest* areas," with emphasis on the word guest. The restriction on distribution on "working" areas is reasonably clear, and I conclude that any reasonable person would understand that such prohibition only applies to areas were work is normally performed—a prohibition that

presumably does not violate the Act.[22] The dispute in this case stems from the application of the no-distribution/solicitation rule in *guest* areas, which is not only vague and ambiguous in its meaning and definition, but which apparently applies to areas beyond traditional or normal working areas. It is by now well-settled that employees are allowed, absent unusual or special circumstances, to distribute union literature on their employer's premises during nonwork time in nonwork areas. *Republic Aviation Co. v. NLRB*, 324 U.S. 793,803-804 (1945); *NLRB v. Babcock & Wilcox*, 351 U.S. 105, 110-111 (1956); *Santa Fe Hotel & Casino*, 331 NLRB 723 (2000). No unusual or special circumstances have been shown to exist in the present case.

With regard to the third criteria under *Lutheran Heritage*, at issue in this case is also the *application* of the no distribution rule to the area of the valet driveway near the entrance to the casino as well as the public parking lot. This rule could arguably apply to other areas as well, such as restrooms, which may not be considered working areas but may be considered "guest" areas. The Board's rulings in *Santa Fe Hotel & Casino*, supra., *Dunes Hotel*, 284 NLRB 871, 875 (1987) (cited in *Santa Fe*), and *Flamingo Hilton-Laughlin*, 330 NLRB 287, 288 (1999) are dispositive of this issue. In *Santa Fe*, the Board, citing *Dunes Hotel* and other cases, held that casinos are analogous to retail stores when evaluating the legality of no-solicitation/no-distribution rules, and while these rules can be enforced in gaming areas (the equivalent of a retail's store's selling floor), prohibition in other areas such as restrooms and parking lots is unlawful. See also, *Double Eagle Hotel*, 324 NLRB 112, 113 (2004). In *Santa Fe*, the Board found that restricting off-duty employees from distributing literature at the main entrance to the facility—as employees in the present case did—violated Section 8(a)(1) of the Act. Likewise, in *Dunes Hotel*, the Board held that a rule prohibiting off-duty employee distribution of literature in "areas open to the guests or the public" to be unlawful. In *Flamingo Hilton*, the Board similarly found unlawful a rule prohibiting off-duty employee distribution in "public areas" of the employer's facility other than gambling areas.

Accordingly, I find that Respondent's rule prohibiting solicitation or distribution of literature in *guest* areas violates Section 8(a)(1) of the Act and is unlawful both because it runs afoul of the first criteria under *Lutheran Heritage* (employees would reasonably construe the rule to restrict Section 7 activity), and because it also runs afoul of the third criteria under that case, because the rule was in fact applied to restrict the lawful exercise of Section 7 rights, as discussed below.

B. Respondent's conduct on December 14, 2013

As described in the Facts section, on December 14, 2013 Respondent's security personnel confronted employees who were distributing union flyers on the side of the valet driveway by the public entrance to the casino. On at least 4 separate occasions that day, security personnel instructed the off-duty employees to stop distributing flyers and threatened that discipline might result if they did not stop such activity. In light of the cases cited above, including *Santa Fe*, *Dunes Hotel* and *Flamingo Hilton* (and cases cited therein), employees had the right under Section 7 to distribute union literature in this public, non-working area of the casino, and Respondent's interference with such activity violated Section 8(a)(1) of the Act. Likewise, the

[22] Such rule could be unlawfully applied, however, if the employer allowed other types of distribution or solicitation in working areas but prohibited the distribution of union literature. There is no evidence of such disparate treatment in this case, however.

threat to impose discipline for engaging in such activity constitutes a separate violation of Section 8(a)(1).[23]

As also described in the Facts section, one of the security officers, on a bike, who confronted off-duty employees Maria Tavarez and Maria Alba at approximately 1:00 p.m., took a photograph of them after directing them to stop distributing flyers and threatening them with discipline. It is well established that the photographing of employees engaged in protected activity by an employer has a chilling and coercive effect, and thus violates Section 8(a)(1) of the Act. *Sprain Brook Manor*, 351 NLRB 1190, 1205 (2007); *Clock Electric, Inc.*, 328 NLRB 932 (1999); *F.W. Woolworth Co.*, 310 NLRB 1197 (1993). Accordingly, and in the absence of any valid justification for the taking of such photograph, I conclude that Respondent violated Section 8(a)(1) of the Act by the conduct of the security officer in the bike.

C. Respondent's conduct during the February 20, 2014 meeting with employee Reyes

As described in the Facts section, on February 20, 2014, after apparently watching Reyes on a security video passing out flyers by the time clock area shortly before her work shift ended on January 14, 2014, HR Director Lerner held a *Weingarten*-type investigatory interview with Reyes.[24] Lerner asked Reyes if she was authorized (or who had authorized her) to pass out information in "the casino." The General Counsel asserts that this question posed of Reyes violated Section 8(a)(1) of the Act because it was a coercive interrogation regarding Reyes' union activity. For the following reasons, I disagree.

It is well settled that in determining whether a statement is coercive and thus unlawful, the test is whether such statement, from the standpoint of the employee, has a reasonable tendency to interfere with, restrain or coerce the employee in the exercise of protected rights. *American Freightways Co.*, 124 NLRB 146, 147 (1959); *Double D Construction Group, Inc.*, 339 NLRB 303 (2004); *NLRB v. Okun Bros. Shoe Store, Inc.*, 825 F. 2d 102, 105 (6th Cir. 1987). As the General Counsel correctly points out, in making this determination the Board looks at the totality of the circumstances. Among the factors that the Board considers are the following: the

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[23] Respondent's defense mainly consists of again arguing that Indian casinos are not subject to Board jurisdiction, or to argue that even if they are, special rules are applicable to them, allowing Indian casinos to protect their "economic interests" by barring unions, their agents, members or sympathizers from engaging in conduct that is otherwise protected when other employers are involved. There is simply no support for this proposition under Board law, and as previously stated, the issue of Board jurisdiction over Indian casinos and specifically over Respondent is *res judicata*. In this regard, I note that during the trial Respondent asked many questions as to how the employees distributing union flyers arrived at or departed Respondent's property. It is undisputed that in many instances the employees engaged in distributing flyers were driven to Respondent's parking lot and picked up there afterwards by a union representative, a fact that Respondent attempts to argue is legally significant for the reasons described above. While in some circumstances non-employee union representatives may be barred from entering an employer's property, such issue has no bearing on the right of employees to be present at Respondent's property during their non-work time. Simply put, how employees arrived at Respondent's premises is completely irrelevant in the present circumstances.

[24] Also present at this meeting was Food and Beverage Director Jorg Limper and HR Assistant Maria Perez, who is fluent in Spanish and translated for Lerner and Reyes. Neither Lerner nor Limper testified.

employer's history of hostility (toward the union); the nature of the information sought; the identity and position of the questioner; the place and method of interrogation; and whether the interrogated employee was an open union supporter. *Rossmore House*, 269 NLRB 1176, 1178 (1978), affd. 750 F.2d 1006 (9th Cir. 1985).

While it is true that the questioner in this case was a high-ranked official of Respondent (its HR Director), and that questioning took place in her office, the other factors discussed above do not favor the General Counsel's position. First, contrary to the General Counsel, who argues that Respondent had no legitimate reason to question Reyes, I conclude that Respondent did in fact have a legitimate reason to question her about the circumstances surrounding the events of January 24. Respondent has a valid no-solicitation/distribution rule, to the extent that it prohibits employees from distributing literature in working areas during working time, and General Counsel has not alleged, nor contends, that such rule is invalid. At the time Lerner questioned Reyes, there were legitimate questions as to whether Reyes had complied with Respondent's valid rule. Lerner was not aware that Reyes had been on "break," at the time she distributed the flyers, because this information was not provided by Reyes until later in the interview. Thus, potentially, Reyes could have been in violation of a valid rule, and Respondent therefore had valid reasons to inquire about her status at the time. Moreover, the employees to whom she distributed the flyers might arguably have been on "working time" as well, since they had not yet "clocked out," and Respondent could therefore have reasonably inquired about their status and about the location where Reyes distributed the flyers.[25] Thus, Respondent was clearly conducting a legitimate investigation of conduct that might have violated a valid work rule. Accordingly, it is incorrect to argue that Respondent had no valid reason to ask Reyes about the circumstances surrounding her distribution of literature.[26]

Secondly, the manner of the interrogation was not inherently coercive. Lerner did not ask Reyes about her views or support for the Union, or about others' support for the union, or anything directly regarding her motives or about the union campaign.[27] Rather, Lerner asked Reyes if she had been authorized to pass out "information" at that time and in that area—the "casino." If, for example, a supervisor had authorized Reyes' activity (unlikely as that might be), and Reyes so informed Lerner, that might have provided a valid explanation for her conduct that would have undermined any potential discipline and satisfied the purpose of the disciplinary interview. To be sure, Lerner's question was phrased awkwardly, perhaps as a result of a poor translation, but if the question had been phrased slightly differently, such as "were you authorized to distribute flyers while working," or "did a supervisor authorize you to pass out information at that time (or place)," such question would not have been coercive, in my view. I conclude this is what Lerner was trying to establish. Thirdly, as the General Counsel concedes—and indeed points out in its argument—Reyes was a well-known an open Union supporter, which is another factor weighing against the General Counsel's theory. Simply put,

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[25] This issue will be discussed further below.

[26] Whether or not I ultimately conclude that Reyes violated Respondent's valid rule does not affect the legitimacy of Respondent's inquiry at the time.

[27] Thus, the cases cited by the General Counsel, including *Observer & Eccentric Newspapers, Inc.*, 340 NLRB 124, 125 (2003), enfd. 136 Fed. Appx. 720 (6th Cir. 2005); *Dealers Mfg. Co.*, 320 NLRB 947, 948 (1996); and *Cumberland Farms*, 307 NLRB 1479, 1479-1480 (1992), enfd. 984 F.2d 556 (1st Cir. 1993), are clearly distinguishable. In each of those cases, the employees were specifically asked about their views about the union, or other employees' views, or asked how the union campaign was going.

Respondent had little to gain by specifically interrogating Reyes about her union activities, activities that were no secret and unlikely to be deterred.

Finally, I disagree with the General Counsel's characterization of Respondent as having a "history of hostility" toward the Union or its supporters, at least not in the manner that such term is generally defined when taking this factor into consideration. In *Casino Pauma*, supra, the Board found that Respondent had violated Section 8(a)(1) of the Act by enforcing an invalid rule concerning the wearing of union pins, and by issuing a warning to an employee who was wearing one. In the present case, I have similarly found that Respondent was unlawfully enforcing an overly broad no-solicitation/distribution rule. Thus, the disputes so far have centered on the validity and enforcement of work rules and other similar issues, rules that were in place long before the Union's campaign. Although Respondent has been found to have violated Section 8(a)(1) of the Act by maintaining and enforcing some of these rules, such conduct does not represent evidence of a virulent reaction against union organizing. While it can hardly be said that Respondent has embraced the Union, its conduct has not been egregious or represented the type of "hallmark" or significant violations that would render all of its conduct inherently suspect.[28] It is therefore not accurate or valid to characterize Respondent as having a "history of hostility" toward the union or union activity.

Accordingly, considering all the above factors and the totality of the circumstances, I conclude that Lerner's questioning of Reyes during the February 20 2014 interview about the January 24 events was not coercive, and did not violate Section 8(a)(1) of the Act. I thus recommend that this allegation of the complaint be dismissed.

With regard to the complaint's allegation that on the same meeting Respondent violated Section 8(a)(1) of the Act by directing Reyes to keep everything discussed at this meeting confidential, it is well settled that this conduct would violate the Act, if indeed that is what occurred. The right of employees to discuss these types of matters, such as disciplinary problems, amongst themselves goes to the very core of Section 7, which guarantees employee rights to act in concert for mutual aid and protection. See, e.g., *Westside Community Mental*, 327 NLRB 661 (1999), and cases cited therein. As discussed in the Facts section, however, I have credited Maria Perez's testimony as to what occurred at this meeting. Perez, who acted as the translator during the meeting, testified that what Lerner said at the meeting was that *the HR Department* would keep what was learned during the meeting as confidential, not that Reyes was directed to do so. Indeed, Perez credibly testified that this is something that is routinely said to employees at meetings where she has served as translator, which is apparently often. While I do not discredit Reyes, who was generally a credible witness, I believe she misunderstood the import of what Lerner said, perhaps because of the hazards of translation or because she was understandably anxious given the circumstances. Inasmuch the General Counsel bears the burden of proof in establishing that the Act was violated, I conclude that it has not met its burden

[28] Indeed, the evidence indicates, for example, that even as Respondent's security personnel were stopping the distribution of union flyers at the front or "public" entrance to the casino, they informed the employees that they could distribute such flyers in the "back" side of the casino, at the employee entrance. This suggests that Respondent was primarily concerned with enmeshing customers in its labor dispute and perhaps trying to avoid embarrassment, rather than being virulently opposed to any type of union activity. Moreover, I note that there is no evidence of a history of interrogations of employees regarding their union or protected activity, which has now been taking place for a couple of years.

of proof in this regard. Accordingly, I recommend that this allegation of the complaint be dismissed.

D. The disciplinary warning issued to Reyes on March 6, 2014.

On March 6, 2014, apparently as the result of what it learned at the February 20 investigatory meeting with Reyes, Respondent issued her a disciplinary warning for violating its no-solicitation/no-distribution rule on January 24, 2014. As described earlier, Reyes' conduct consisted of distributing union flyers to three employees, who along with Reyes, were waiting by the time clock getting ready to clock-out at the end of their work shifts at 4:00 p.m. As also described earlier, Reyes was on her afternoon 30-minute break at the time, not having had the chance to take her break earlier, and her distribution of the flyers—which was captured by a security video—occurred within the last 30 seconds or so prior to the employees clocking out for the day.

Since Reyes was indisputably on her break at the time, the question of whether she violated a valid work rule—and therefore the lawfulness of the discipline itself--must turn on whether the employees whom she distributed the flyers to were on "working time" and/or were in a "working area." With regard to the issue of "working time," I first note that in the very preamble of Respondent's "No Solicitation or Distribution Policy" it states that "Casino Pauma wants to protect its Team Members form annoying *interruptions*, and to promote a proper and litter free work environment." (Jt. Exh. 4, emphasis supplied). Accordingly, it is reasonable to presume that the intent behind Respondent's rule is not to have its employees' *work* disrupted or interrupted by solicitations or distribution of literature or other materials, which is a reasonable and perfectly valid goal. By that standard, however, it cannot be said that the employees who received the flyers from Reyes were *working* or *performing work* under any reasonable definition of such terms. Indeed, they had completely ceased working and were lined up at the time clock ready to "punch out" at their quitting time, which was 4:00 p.m. The evidence shows that Reyes and all three employees who received the flyers clocked out within 30 seconds or so of the time when the flyers were handed out. Thus, the perfunctory act of clocking out, under the circumstances, should not serve as the rigid demarcation line for determining whether the solicited employees were actually on "working time" pursuant to Respondent's rule. I conclude they were not.[29] *Eastex, Inc.*, 215 NLRB 271, 274-275 (1974), enfd. 550 F.2d 198 (5th Cir. 1977), affd. 437 U.S. 556 (1978); *Essex International, Inc.*, 211 NLRB 749 (1974); *ESB, Inc.*, 177 NLRB 778, 785 fn. 25 (1969).

Likewise, the area where the distribution of the flyers took place, by the time clock, cannot reasonably be considered to be a "working area." The time clock is immediately outside the employee break room/cafeteria, in an area removed from the gaming areas or other places that customers or clients have access to, and where no "work" is apparently performed. Accordingly, I conclude that this was not a "working area" under any reasonable definition of the term, and that by distributing flyers in that area Reyes did not violate Respondent's rule. *Eastex, Inc.*, supra. Accordingly, Respondent's defense—that it issued Reyes a warning because she breached a valid work rule—is both factually and legally invalid. Thus, Reyes was engaged in activity protected by Section 7 when she handed out union flyers to fellow employees on

[29] Nor was the intent or spirit of the rule, as stated in the preamble, of maintaining a litter-free work environment violated, since there is no evidence that any of the employees in question littered by throwing out the flyers.

January 24, an activity that was the sole basis of the warning issued to her by Respondent on March 6, 2014.

In light of the above, it is clear that by issuing Reyes a written warning on March 6, 2014 for engaging in union activity on January 24, 2014, Respondent violated Section 8(a)(1) and (3) of the Act, as alleged in the complaint.

CONCLUSIONS OF LAW

1. Casino Pauma (Respondent) is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. By maintaining and enforcing a rule in its employee handbook prohibiting the distribution of literature in "guest areas;" by interfering with the distribution of Union literature by employees in these areas, including the public or guest entrances to its casino; by threatening to discipline employees who distributed Union literature in these areas; and by photographing employees who distributed Union literature in these areas, Respondent, has interfered with, restrained and coerced employees in the exercise of their rights, in violation of Section 8(a)(1) of the Act.

3. By issuing employee Audelia Reyes a written disciplinary warning on March 6, 2014 for distributing Union literature on a non-working area during non-working time, Respondent violated Section 8(a)(1) & (3) of the Act.

4. Respondent did not otherwise violate the Act as alleged in the consolidated complaint.

REMEDY

The appropriate remedy for the Section 8(a) (1) and (3) violations I have found is an order requiring Casino Pauma (Respondent) to cease and desist from such conduct and take certain affirmative action consistent with the policies and purposes of the Act.

Specifically, Respondent will be required to rescind the rule in its employee handbook prohibiting distribution of literature in its "guest areas," and to notify employees that this language in the handbook has been rescinded and is no longer valid. Additionally, Respondent will be required to stop enforcing this rule by interfering with distribution of literature by employees in these areas, and to cease and desist from engaging in surveillance or the appearance of surveillance of employees, by taking photographs of such employees or other such activity. Respondent will also be required to rescind the disciplinary warning issued to employee Audelia Reyes on March 6, 2014, and to expunge all references to such warning from Reyes' personnel records. Moreover, Respondent will be required to post a notice to employees, in both English and Spanish, assuring them that it will not violate their rights in this or any other related matter in the future. Finally, as Respondent communicates with its employees by email, it shall also be required to distribute the notice to employees in that manner, as well as any other electronic means it customarily uses to communicate with employees.

Accordingly, based on the forgoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended[30]

ORDER

The Respondent, Casino Pauma, Pauma Valley, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing a rule in its employee handbook that prohibits the distribution of literature in "guest areas;"

(b) Interfering with the distribution of literature by employees in these areas including the public or guest entrance of its casino;

(c) Threatening employees with discipline for distributing literature in these areas;

(d) Engaging is surveillance or in creating the impression of surveillance by taking photographs of employees engaged in the distribution of literature;

(e) Issuing disciplinary warnings to employees for distributing literature in non-work areas during non-working time.

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

(a) Rescind the rule prohibiting the distribution of literature by employees in guest areas;

(b) Furnish all current employees with inserts for their current employee handbooks that will (1) advise that the unlawful rule has been rescinded, or (2) provide a lawfully worded rule on adhesive backing that will cover the unlawful rule; or publish and distribute to all current employees revised employee handbooks that (1) do not contain the unlawful rule, or (2) provide a lawfully worded rule.

(c) Within 14 days of the Board's order, rescind and remove from its files any reference to the March 6, 2014 disciplinary warning issued to its employee Audelia Reyes, and within 3 days thereafter, notify Reyes in writing, in both English and Spanish, that this has been done and that such warning will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay and/or other compensation due under the terms of this Order.

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[30] 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.

(e) Within 14 days after service by the Region, post at all its facility in Pauma Valley, California where notices to employees are customarily posted, copies of the attached notice marked "Appendix" in both English and Spanish.[31] Copies of the notice, on forms provided by the Regional Director for Region 21, 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, the 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities 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 December 14, 2013.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 21, 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. June 4, 2015

Ariel L. Sotolongo
Administrative Law Judge

[31] 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 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 the National Labor Relations Act and has ordered us to post and obey by 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 benefits and protection
Choose not to engage in any of these protected activities

In recognition of these rights, we notify employees that:

WE WILL NOT maintain rules prohibiting employees from distributing literature in "guest areas at any time."

WE WILL NOT prohibit our off-duty employees from distributing union-related literature to patrons in nonworking areas of our facility, including outside the customer main entrance.

WE WILL NOT threaten you with reporting you to human resources, discipline and discharge for your activities related to **UNITE HERE International Union** or any other union.

WE WILL NOT photograph employees engaged in union activity without proper justification.

WE WILL NOT discipline you for engaging in union and/or other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL rescind and/or revise the rule prohibiting employees from distributing literature in "guest areas at any time," and **WE WILL,** within 3 days thereafter, notify our employees in writing that this has been done.

WE WILL remove from our files all references to the warning of Audelia Reyes and **WE WILL**, within 3 days thereafter, notify her in writing that this has been done and that the warning will not be used against her in any way.

CASINO PAUMA

(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.

888 South Figueroa Street, 9th Floor, Los Angeles, CA 90017-5449
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-125450 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, (213) 894-5184.