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1 NEVADA OCCUPATIONAL SAFETY AND HEALTH  
2 REVIEW BOARD

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4 CHIEF ADMINISTRATIVE OFFICER  
5 OF THE OCCUPATIONAL SAFETY  
6 AND HEALTH ADMINISTRATION OF  
7 THE DIVISION OF INDUSTRIAL  
8 RELATIONS OF THE DEPARTMENT  
9 OF BUSINESS AND INDUSTRY, STATE  
10 OF NEVADA,

Docket No. LV 19-1995  
Inspection No: 1366116

FILED  
October 18, 2024  
OSH Review Board  
By: Karen Kennedy

8 Complainant,

9 vs.

10 AIMBRIDGE HOSPITALITY LP,

11 Respondent.

12  
13 DECISION OF THE BOARD, FINDINGS OF FACT,  
14 CONCLUSIONS OF LAW AND FINAL ORDER

15 This case arose out of a programmed comprehensive inspection of Aimbridge Hospitality  
16 dba Springhill Suites. The inspection was conducted as a result of the Hotel Local Emphasis  
17 Program. State's Exhibit 1, p. 12. Aimbridge Hospitality manages Marriott properties of which  
18 Springhill is one of those facilities. *Id.* Aimbridge Hospitality does business as Springhill  
19 Suites. *Id.*, at p. 9. The cited address for Springhill Suites is 1481 Paseo Verdi Parkway,  
20 Henderson, Nevada 89012. Paul Gundrum is the General Manager for the property. The  
21 property was inspected and an opening conference which was conducted on December 10, 2018.  
22 The closing conference was conducted on January 29, 2019.

23 This matter came on for hearing before the Nevada Occupational Safety and Health  
24 Review Board (the Board) on November 12, 2020. It continued over to November 13, 2020 and  
25 was finally concluded on June 9, 2021. The hearing was initially conducted in furtherance of a  
26 duly provided Notice. *See*, Notice of Hearing, dated October 13, 2020. In attendance to hear the  
27 matter at the outset were then Board Chairman, Steve Ingersoll, then Board Secretary Rodd  
28 Weber, and Members James Halsey, Frank Milligan and Lance Semenko. As a member of the

1 public, Frank Milligan, was present to hear the matter. One member from management and one  
2 member from labor were in attendance. A quorum was present, enabling the Board to hear this  
3 contested case.

4 Nevada has adopted all Federal Occupational Safety and Health Standards which the  
5 Secretary of Labor has promulgated, modified or revoked and any amendments thereto. They  
6 are then deemed the Nevada Occupational Safety and Health Standards. *See*, NRS 618.295(8).

7 Respondent is a Texas Foreign Limited Partnership, registered with the Secretary of State  
8 of Nevada to do business within the State. Respondent conducted business and maintained a  
9 place employment as defined by NRS 618.155 at the 1481 Paseo Verdi Parkway, Henderson,  
10 Nevada address. Pursuant to NRS 618.315, jurisdiction has been conferred upon the State over  
11 the working conditions at Respondent's place of employment, as mentioned above. Respondent's  
12 activities are defined in the North American Industry Classification System (NAICS) as Hotels  
13 (except Casino Hotels) and Motels (NAICS No. 721110).

14 On March 22, 2019, the State issued Citation and Notification of Penalty, Inspection  
15 number 1366116, CB 19-013. The inspection was conducted from December 10, 2018, through  
16 January 29, 2019, pursuant to NRS 618.375 as a result of alleged code violations discovered at  
17 Aimbridge's place of employment, within the State of Nevada. A copy of the Citation and  
18 Notification of Penalty is attached to the State's complaint in this matter which, in turn, is an  
19 Exhibit admitted into evidence as a part of the State's evidence package. By contest letter dated  
20 April 26, 2019, incorporated into the State's complaint herein by reference, Aimbridge contested  
21 all citations and penalties set forth in the referenced Citation and Notification of Penalty.

22 The State has brought forth against Aimbridge a complaint consisting of 14 items (causes  
23 of action or claims). Essentially, the State has brought a complaint against Aimbridge  
24 concerning the working conditions and safety practices involving the housekeeping practices as  
25 maintained and impacting housekeeping and cleaning staff. The complaint also concerns the  
26 engineering staff of the business which is, of course, a hotel-non gaming facility existing in the  
27 Las Vegas area. Generally speaking, the State was concerned about the exposure of  
28 housekeeping staff to blood borne pathogens, to the accessibility of staff to Hepatitis B

1 vaccinations, the exposure of staff to hazardous chemicals such as Muriatic Acid (hydrochloric  
2 acid), and the State was concerned with the operation of the engineering plant, specifically the  
3 handling and use of respirators.

4 When the hearing on this matter commenced, the State offered for admission into  
5 evidence Exhibits 1 through 3, consisting of pages 1 through 259. Respondent offered for  
6 admission into evidence its exhibit packet consisting of Exhibits A through MM consistent of  
7 and pages AAH01 through AAH278. Respondent objected to the admission into evidence of the  
8 State's Exhibit 1, pp. 18-22, and 23-25, the written statements of Tommy Pong and Alma Coupe.  
9 Tr. 12.<sup>1</sup> The objection was on grounds that Mr. Gundrum was not permitted to sit in on the staff  
10 interviews. Tr. 13. An evidentiary hearing ensued at the conclusion of which Chairman  
11 Ingersoll overruled the respondent's objection to their admissibility. Tr. 44. All of the State's  
12 evidence packets were, therefore, admitted into evidence, including the witness statements taken  
13 of Aimbridge staff by the State's investigators, Rodriquez and Poznecki. Tr. 10-44.

#### 14 STATEMENT OF FACTS

15 The State provided a summary of the investigation of the property and the conclusions  
16 that were reached. It is excerpted herein to orient to the charges.

17 Prior to the State's interview of personnel, however, Paul Gundrum, the General Manager  
18 of the property, State's Exhibit, p. 10, alleges he asked Ralph Poznecki, one of the two  
19 investigators, for permission to sit in when the staff were being interviewed in connection with  
20 the charges. He claims, he was denied. Testimony, however, was taken on this issue. The two  
21 State investigators, Crystle Rodriguez and Mr. Poznecki, denied any such request was ever  
22 made. Mr. Gundrum, of course, insisted that he had made such a request. According to Mr.  
23 Gundrum, only he and Mr. Poznecki were present when Mr. Gundrum's request was made. Mr.  
24 Gundrum did not pursue this further beyond the request made to Mr. Poznecki to sit in on the  
25 interviews. He never complained to Mr. Poznecki's supervisor. At the end of the process, Mr.  
26 Gundrum again never used that opportunity to complain. Tr. 10-44.

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27  
28 <sup>1</sup>"Tr." refers to the transcript for the first day of hearings. 2 Tr. is the symbol for the second day  
of hearings and 3 Tr. is the symbol for the transcript for the third and last day of hearings.

1 The upshot of this brief evidentiary hearing was the ruling on the admissibility of  
2 evidence outline above. It also impacted upon Respondent's Due Process argument addressed  
3 later in the decision.

4 Turning to excerpts of the State's summary, as previously indicated, of the  
5 comprehensive inspection, it

6 ... was conducted as a result of the Hotel Local Emphasis Program. Aimbridge  
7 Hospitality manages Marriott properties of which Springhill is one. Aimbridge  
8 Hospitality provides their properties with all employees. The employer has had  
no previous OSHA inspection. State's Exhibit p. 12.

9 The State asserts that, "OSHA logs were requested, but only the current year was  
10 available. Issues with new ownership resulted in logs not being transferred." *Id.* at p. 12.

11 ...

12 A walk around inspection was initiated after the opening conference with Paul  
13 Gundrum. [He was informed]...that the property was on a target list for the OSHA  
local emphasis program.

14 The employer's Written Safety Program (WSP) was requested, later reviewed, and  
15 deemed in compliance. The Employee Nevada Rights & Responsibilities  
pamphlets were not available or signed by all employees. A Regulatory citation  
under NRS 618.376(1) is being proposed.

16 The employer's Hazard Communication Program and training records were  
17 requested. The program and training was provided from the Aimbridge  
18 Hospitality HR Office. The program was reviewed and deemed in compliance,  
however, the employee failed to have the Hazard Assessment that was conducted  
certified. An Other-than-Serious citation under 1910.132(d)(2) is being proposed.  
*Id.* at 12.

19 The employer had required Safety Data Sheets (SDS) on site and in multiple  
20 locations, however, the chemical inventory list was incomplete lacking the pool  
21 chemicals. A Serious citation under 1910.1200(e)(1)(i). *Id.* at 13.

22 ...

23 The laundry area operated with two, high capacity, front end loading washing  
24 machines. The machines utilized laundry chemical cartridges which fed the  
25 products into the machines via a closed system. Two high capacity gas operated  
26 dryers were on the West wall. The equipment appeared to be clean and in fully  
27 operational condition with proper electrical and gas connections. The laundry  
28 was separated into two areas. One area was for soiled intake, the other for  
processing and folding. No designated spot for linen that may have contained  
blood or Other Potentially Infections Materials (OPIM) was established. There  
was a wall mounted bloodborne pathogen spill and clean up kit in the soiled linen  
intake room. *Id.* at 13.

...

1 Employees assigned to the laundry would handle all linens brought to the laundry  
2 room, whether or not the linens may be contaminated with blood or Other  
3 Potentially Infectious Materials. The handling and processing procedures for  
4 linens that may be contaminated with blood or Other Potentially Infections  
5 Materials (OPIUM) did not follow what was outlined in the Aimbridge  
6 Hospitality Bloodborne Pathogens Program and training, as only members of the  
7 "Red Team" would handle potentially infectious materials. Since there is  
8 exposure to the employees from bloodborne pathogens, the Hepatitis B Virus  
9 vaccination should have been offered. Two grouped Serious citations for  
10 1910.1030(f)(2)(I) and 1910.1030(g)(2)(I) are being proposed.

11 An eyewash station was situated in the soiled room, next to a sink. The station  
12 operated by depressing a hand actuated valve. The hand valve was pushed and  
13 the eyewash station functioned properly. Sharps containers were not available to  
14 the laundry employees. There were no obvious issues with lighting. *Id.* at 13.

15 An eyewash station was observed in the Northeast corner of [the room storing  
16 pool equipment and chemicals] however, it was blocked by a sheet of plywood  
17 and other equipment. The eyewash station was not accessible for quick flushing  
18 of eyes and for immediate emergency use. A Serious citation under 1910.151(c)  
19 is being proposed. *Id.* at 14.

20 On the West wall of the pool equipment room was a posting that stated  
21 "Disposable 3M N95 mask and chemical gloves are to be worn at all times when  
22 working with pool chemicals." The N95 mask is considered a respirator, and, its  
23 mandatory use requires a medical evaluation. This was not provided to  
24 employees, and, is in violation of 1910.134(e)(1) with a Serious citation being  
25 proposed. *Id.* at 14.

26 The 3M Particulate Respirator, N95 Model 8210 Plus mask, also requires a fit  
27 test. Since this was not provided for the employees, a serious citation under  
28 1910.134(f)(2) is being proposed. *Id.* at 14.

On the West wall of the equipment room was a medicine cabinet with a large hasp  
and padlock securing it. The Chief Engineer, Larry Black, was asked to open it.  
It contained a North, tight fitting, half face, Model 5500 Respirator, equipped  
with Organic Vapor Cartridges. Mr. Black stated that it was his own personal  
mask, and he used it when adding or mixing the pool chemicals. Mr. Black also  
stated he wore the mask "voluntarily." An additional item on the posting stated  
"A doctors' note must be provided to use a half face respirator." *Id.* at 14.

When Mr. Gundrum was asked about the posting, he stated, "As long as Larry  
(Engineer Lead) posted it, I'm OK with it." Failure to have a written Respiratory  
Protection Program is in violation of 1910.134(c)(1) and a Serious citation is  
being proposed. *Id.* at 14.

The employer's failure to conduct respirator training is a violation of  
1910.134(k)(2) and a Serious citation is being proposed. *Id.* at 14.

The inspection continued on the top floor walking each hallway.... A storage  
room on the third floor contained an electrical panel located on the west wall.  
Access to the panel was obstructed by furniture, cleaning equipment and other  
hotel items. Mr. Gundrum was asked to open the panel, which he had to climb  
over the obstructions to do so. The panel being blocked is in violation of  
1910.303(g)(1)(I)(A) and a Serious citation is being proposed. *Id.* at 14.

1 ... During the course of the inspection, room attendants stated if they came across  
2 sharps, they would use tongs which are provided on the room attendants' carts,  
3 and place it into a secured sharps container, also provided on their carts. Room  
4 attendants also disclosed that the "Red Team" would respond to address OPIUM  
5 from the sheets or on carpets, but the Room Attendant was still responsible to  
6 clean bathrooms where blood has been found on toilet seats, sinks, bathtubs and  
7 on bathroom linens. Since there is exposure to the employee from the bloodborne  
8 pathogens, the Hepatitis B Virus vaccination should have been offered. As  
9 mentioned earlier in this section, the grouped Serious citations 1910.1030(f)(2)(I)  
10 and 1910.1030(g)(2)(I) are being proposed. *Id.* at 15.

11 No other remarkable or unusual occurrences were observed upon the walk  
12 around. *Id.* at 15.

13 The investigation included interviews of staff. They provided written statements signed  
14 by each after they have had the opportunity to review the contents of the statements and to make  
15 corrections. All of these statements from staff were admitted into evidence. *See, supra.* Tommy  
16 Pong was interviewed.

17 **Pong's interview, State's Exhibit, pp. 18-22.**

18 Pong's written statement informs that he was the assistant general manager at Aimbridge  
19 and that his supervisor/foreman was Paul Gundrum. *Id.* at 18. He also indicated  
20 supervisor/foreman Paul Gundrum was almost always on site performing inspections for  
21 bloodborne pathogens. Before it was "just the Red Team." The Red Team is just myself and  
22 Alma [another employee] at this location and Larry [Black] too. Summarizing he said, sharps go  
23 into the container and then the red bag they use for clothes and tongs. Pong also states,

24 I oversee engineer employees for pool chemicals that they use different gloves,  
25 apron, a dust mask. They have to wear the dust mask, its mandatory for Larry and  
26 Peter. We provide the dust masks. We do inventory of PPE every month. *Id.* at  
27 21.

28 Peter and the "... house attendant would use it for gas into pressure washer, it is  
mandatory." *Id.* at 21.

We do not have any requirements on a physical, they only get a background  
check. No one is sent to the doctor prior to working. We have one size for dust  
mask, they use the metal piece to adjust... No other testing is done to ensure dust  
mask fit. Larry's respirator was supplied by Aimbridge, it is a half face respirator  
... "He [Larry] has not had any medical evaluation. He uses it for the pool  
chemicals. He wears it about 1-2 times per week. I go in the pool storage not  
very often, but when I do my property walk. I am unsure about the plywood in  
the storage room. It could be left over from reconstruction of the pool area. *Id.* at  
21.

1 Pong also stated he was self-trained. But, he was responsible for the training of all staff.  
2 Staff that were interviewed, Coupe and Hernandez, stated that Pong was their supervisor, State's  
3 Exhibit pp. 23 and 30. According to Pong, the dust mask is mandatory for Larry and Velazquez.  
4 Pong had to be referencing respirators as that is all Larry and Velazquez wear that fall under the  
5 category of mandatory. State's Exhibit, p. 21.

6 In the utility rooms, Pong states: Those rooms are walked daily by engineering to ensure  
7 they're not blocked." *Id.* at 22.

8 **Coupe interview, State's Exhibit, pp. 23-25.**

9 Alma Coupe was interviewed. Her title is Operations Manager. Her supervisors are Paul  
10 [Gundrum] or Tommy [Pong]. *Id.* at 23. She says in her report that she can use employees from  
11 Townplace, the sister property to Springhill, but she hasn't yet. When bio was found they call  
12 her, Tommy or Larry Black who is also on the Red Team's list. She wears gloves, has a red bag,  
13 a red container. She claims that she has to clean up the bio. If the bio is bad, it goes in the red  
14 bag and then they trash it. If its not bad, the linen will go to the laundry and then I wash it. *Id.* at  
15 23.

16 According to Alma Coupe in her statement, red bags filled with bio get thrown in the  
17 trash. She has had two cases where she found bio, blood on the towels and sheets and she  
18 trashed them in the red bag into the dumpster out back. If she finds an employee picked up  
19 sharps or cleaning blood the employee would be verbally corrected. She has never written  
20 anyone up for violating the policy on bio.

21 If a room attendant finds blood they are supposed to call Alma who would then help  
22 clean. Alma wrote, if I find an employee pick up sharps or cleaning blood they would be verbally  
23 corrected, I have never written anyone up for that. Alma claimed she was not offered the  
24 Hepatitis B vaccination at Aimbridge. The declaration form was by signature. She then  
25 recanted, stating she was offered the vaccination and signed for it. I forgot about it.

26 **State's Exhibit, Larry Black interview, pp. 26, 27.**

27 Larry Black was interviewed. According to his written statement, his job title is Engineer  
28 Lead and his supervisor/foreman is Paul Gundrum. In Black's written statement he advised that

1 the eyewash station in the pool equipment room had been obstructed and that the electrical panel  
2 that was blocked had been cleared away. Tr. 85. He does daily walks to check if he is balancing  
3 the pool water. Tr. 85. He wears a half face mask respirator when adding acid "I wear a face  
4 shield." He does this three times a month. I wear an N95 mask in the shop if working with  
5 wood. Tr. 86.

6 He has not had a medical evaluation. Tr. 86. He says in his statement: "I would be in  
7 trouble if I were not wearing my respirator." Tr. 86. Larry states he initiated having to have a  
8 doctor's note to use the respirator. He was unaware of any respiratory protection program. Tr.  
9 86, 87. Larry's respirator is a one size fits all. Tr. 87. Aimbridge has not sent him anywhere to  
10 have the mask sized, fit and checked. Tr. 87. His mask is a 3M product. Tr. 133. To the best of  
11 his knowledge there has not been a hazardous assessment conducted. Tr. 87, State's Exhibit, p.  
12 27.

13 On the issue of blood pathogens, he says if a room attendant sees a sharp, they are to  
14 notify the Red Team and not pick them up themselves. The Red Team is the elite of the blood  
15 pathogens team charged with the responsibility of cleaning up blood pathogens, contaminated or  
16 soiled or infected, towels, linens, beddings, mattresses and toilet facilities. All management are  
17 on the "Red Team." State's Exhibit, p. 28. Larry is a member of the Red Team. Tr. 157. He is,  
18 therefore, a member of management.

19 Chief Engineer Black admits to posting the directive in the pool equipment area, where it  
20 states: "Guidelines for entering and working in pool chemical room." They include:

21 "Disposable M3 (sic) N95 masks and chemical clothes are to be worn at all times  
22 when working with pool chemicals." This statement for posting includes at its  
23 conclusion "I understand that the above is a requirement." State's Exhibit, pp.  
24 123-123A. Tr. 96, 133, 221, State's Exhibit pp. 96, 143.

24 During the walk around inspection of the premises when asked about the directive,  
25 General Manager, Gundrum, stated: "If Larry [Chief Engineer] has it on the door, then yes, it  
26 would be required to wear a N95, I am fine with it." Tr. 133, 134. When testifying, however,  
27 GM Gundrum, offered a slightly different version of his comment. He testified that he told  
28 Nevada OSHA that if Chief Engineer Black was wearing a mask, he was fine with it. 2 Tr.



1 191;13-17. General Manager Gundrum also walked backed his comment or observation by  
2 claiming that he was simply referring to "surgical masks" and not respirators. 2 Tr. 191, 192.  
3 The evidence shows, however, that what was referred to as "surgical masks," were, in fact, 3M  
4 N95 particular respirators. State's Exhibit 1, p. 141.

5 Tommy Pong also tried to walk back from his comments set forth in his written  
6 statement. He claimed he was confused, thinking the reference was to dust mask and that is what  
7 he was really had in mind. 2 Tr. 7-22. The specificity with which he was talking about  
8 respirator type equipment belies his subsequent testimony during the course of the hearing. The  
9 Board is of the opinion that both Mr. Pong and Mr. Gundrum were less than credible when  
10 testifying. From Mr. Pong's descriptions of his duties at Aimbridge, it is clear he was a member  
11 of management.

12 **Velazquez interview, State's Exhibit pp. 28, 29.**

13 Pete Velazquez also was interviewed. He indicated his job title was Engineer 1 and that  
14 his supervisor/foreman was Larry Black. His statement sets forth that he is not certified in the  
15 pool area. He takes readings but does not touch any chemicals. If the readings are off he calls  
16 Larry (Black). He wears safety glasses if there is dust. Tr. 92. I wear a mask. When I power  
17 wash, I use ear plugs. State's Exhibit, p. 28. He wrote, "I would be in trouble if not wearing a  
18 mask because it is a part of my PPE." Tr. 92, State's Exhibit p. 28. He states that if I saw a  
19 needle on the floor we call the "Red Team." "All management is on the "Red Team." State's  
20 Exhibit p., 92, State's Exhibit p. 28.

21 He admits that there was a blocked panel, indicating the blocked panel was cleared and  
22 the area was marked off to keep clear. Tr. 92. State's Exhibit, p. 28. He acknowledges that  
23 there are also eyewash stations, which Larry checks. State's Exhibit, p. 28.

24 Larry showed me how to put on and Larry told him to wear a mask when working.  
25 State's Exhibit, p. 28. Aimbridge had not sent him for a medical evaluation to wear a mask. He  
26 wears a mask with two straps. Tr. 92, 93, State's Exhibit, p. 28.

27 He does not know where the Red Team disposes of a full sharps container. State's  
28 Exhibit, p. 28, Tr. 93. He watched a video on employer rights and responsibilities but signed

1 the hard copy a week ago. Tr. 93, State's Exhibit, p. 29. Peter also concedes: "I saw the signage  
2 poster in the pool room area in regard to N95 mask being mandatory to wear." Tr. 94, State's  
3 Exhibit, p. 29.

4 On Mr. Velazquez's statement, it is clear that Larry Black was supervising Mr.  
5 Velazquez. And, Mr. Velazquez said that his advisor/foreman is Larry Black, State's Exhibit, p.  
6 29, further indicating that Larry Black was a member of management supervising Mr.  
7 Velazquez as well as being a part of the Red Team. According to Mr. Velazquez, Larry was on  
8 the "Red Team" which itself consists of all management, Tr. 92, further evincing that Larry  
9 Black was a member of the management.

10 **Santo Blanco Hernandez interview, State's Exhibit, pp. 30, 31.**

11 Santa Blanco Hernandez was also interviewed. She lists her job title as Housekeeping  
12 Supervisor and her supervisor/foreman she lists as Ulma, Paul and Tommy. State's Exhibit, p.  
13 30. In her written statement she relates that a month before she gave this written statement, there  
14 was a guest with a lot of body fluids on the mattress. She had on gloves, mask and she put it in a  
15 red bag. It was vomit but I couldn't distinguish anything. State's Exhibit, p. 30. She makes sure  
16 that all her housekeepers have gloves. Last week prior to Alma telling her to report any bio to  
17 them [the Red Team], I use to do it. *Id.*, at 30.

18 In her statement, she says she was offered the Hepatitis B vaccine last week. When  
19 Tommy trained all housekeeping. He did a video. I signed for the training but I did not sign for  
20 the shot. *Id.* at 30 and 31.

21 **Alyssa Mendoza interview, State's Exhibit pp. 32, 33.**

22 Alyssa Mendoza was also interviewed. According to her written statement, she is a  
23 Housekeeper/Laundry person. Alma and Santa are her supervisors. State's Exhibit, p. 32 She  
24 cleans 12 to 16 rooms a day, sometimes less due to the don't disturb signs on the door. *Id.* at 32.  
25 The bathroom takes the longest removing dirty linen and trash. *Ibid.*

26 The dirty linen contaminated with blood is picked up while I wear my gloves. Tr. 94. It  
27 gets bundled with the rest of the linen and then goes to laundry. *Id.* at 31, 32, Tr. 94. She also  
28 states that she was not offered the Hepatitis B vaccination nor signed anything on it. State's

1 Exhibit, p. 33. She does not recall having hazardous communication training. *Id.* at 33, Tr. 95.

2 To the extent that any of the Conclusions of Law constitute Findings of Fact, they are  
3 incorporated herein.

#### 4 CONCLUSIONS OF LAW

5 The State is obligated to demonstrate the multiple violations by a preponderance of the  
6 reliable evidence in the record. Findings must be based upon the kind of evidence which  
7 reasonable persons are accustomed to rely upon in serious affairs. Mere estimates, assumptions  
8 and inferences fail this test. Conjecture is also insufficient. *See, William B. Hopke Co., Inc.*,  
9 1982 OSHARC LEXIS 302 \* 15, 10 BNA OSHC 1479 (No. 81-206, 19820 (ALJ)). The Board's  
10 decision must be based on consideration of the record as a whole and shall state all facts  
11 officially noticed and relied upon. 29 CFR 1905.27(b); *Armor Elevator Co.*, 1 OSHA 1409,  
12 1973-1974 OHSD ¶ 16,958 (1973); *Olin Const. Co. v. Occupational Safety & Health Rev.*  
13 *Comm'n*, 525 F.2d 464 (2d Cir. 1975).

14 In these types of matters, the burden is upon the State to prove by a preponderance of the  
15 evidence, a *prima facie* case exists against the Respondent. *See*, NAC 618.788(1), *see also*,  
16 *Original Roofing Company LLC v. Chief Administrative Officer of the Nevada OSHA*, 442 P.3d  
17 146, 149 (Nev. 2019). Thus, the State must establish: (1) the applicability of a standard being  
18 charged; (2) the presence of a non-complying condition; (3) employee exposure or access to the  
19 non-complying condition; and, (4) the actual or constructive knowledge of the employer's  
20 violative conduct. *Id.* at 149, *see also*, *American Wrecking Corp. v. Secretary of Labor*, 351  
21 F.3d 1254, 1261 (D.C. Cir., 2003).

22 In its defense, Aimbridge argues variously that the case should have never been brought  
23 against Springhill. Rather, it should be combined with the citation issued to Townplace because  
24 these companion properties constitute a single entity. Respondent also argues the case should be  
25 dismissed because knowledge of the violations cannot be imputed through its "alleged"  
26 supervisors because the State unlawfully refused to let Mr. Gundrum, the General Manager, sit  
27 in on the interviews of his staff. This was also Aimbridge's denial of due process claim. These  
28 defenses or objections are addressed separately below.

1 As for the Citations, respondent did not so much challenge the facts in this dispute.  
2 Rather, respondent's approach to the State's case was respondent's claim of the lack of  
3 acknowledge of wrong doing and its claim, the wearing of face masks was not required by  
4 Aimbridge.

5 To the Citations, then, analysis turns.

6 A. Citation 1, Item numbers 1-4, may be lumped together as all four deal with  
7 respirators in the workplace.

8 Citation 1, Item 1, cites 29 CFR 1910.134(c)(1), which requires the employer to establish  
9 and implement a written respiratory protection program. Citation 1, Item 2, cites  
10 29 CFR 1910.134(e)(1), which requires the employer to provide a medical evaluation to  
11 determine the employee's fitness to use a respirator. Citation 1, Item 3, cites  
12 29 CFR 1910.134(f)(2) which requires the employer to ensure that a fit test on the respirators  
13 being used is conducted prior to initial use of the respirator by an employee. Finally, Citation 1  
14 Item 4, cites 29 CFR 1910.134(k)(1) which requires the employer to ensure an employee can  
15 demonstrate knowledge of the general requirements involving the use of respirators.

16 Each of these regulations turn upon 29 CFR 1910.134(c)(1), where it states:

17 In any workplace where respirators are necessary to protect the health of the  
18 employee or whenever respirators are required by the employer, the employer  
19 shall establish and implement a written respiratory protection program with  
worksite-specific procedures.

20 Citation 1, Items 1 through 4 turn on the necessity to wear a respirator in the first place.  
21 Or, they turn on whether the employer requires its employees to wear respirators. The use of a  
22 respirator is an either or proposition. Either workplace conditions make the use of a respirator  
23 necessary or the employer requires the employees wear respirators. In either case, the condition  
24 for the use of a respirator set forth in Citation 1, Items 1 through 4 apply. If workplace  
25 conditions do not make necessary the use of a respirator and the employer does not require the  
26 use of a respirator, Citation 1, Items 1 through 4 are of no moment.

27 ///

28 ///

1 Here, neither party claims, Tr. 54, that workplace conditions required the use of a  
2 respirator and, therefore, would require the employer to follow the conditions attached to  
3 Citation 1, Items 1 through 4 and regulation 29 CFR 1910.134(c)(1). Aimbridge also claims it  
4 did not require the use of a face mask. Consequently, there was no violation of Citation 1, Items  
5 numbered 1 through 4 because workplace conditions did not make the use of a respirator  
6 necessary and it was Aimbridge's position it did not require the use of respirators in the  
7 workplace. Thus, Citation 1, Items 1 through 4 were inapplicable to the workplace and no  
8 violation was proven by the State since the wearing of a respirator was not required.

9 The State, however, takes umbrage with Aimbridge's claim here of inapplicability  
10 because Aimbridge did not require staff to wear face masks. Chief Engineer, Larry Black,  
11 informed in his statement that he wore a N95 mask and that he would be in trouble if he was not  
12 wearing his respirator. Tr. 96, State's Exhibit, p. 27. His mask is a 3M product, State's Exhibit p.  
13 27, Tr. 133, and he posted a directive in the pool equipment area stating: "Disposable M3 (sic)  
14 N95 mask and chemical gloves are to be worn at all times when working with chemicals." Tr.  
15 96. The posting also stated: "I understand the above is a requirement." Tr. 96. The chemicals  
16 used in the pool area included Muriatic Acid. 2 Tr. 26. The directive is signed by Chief  
17 Engineer Black. State's Exhibit, p. 143. *See also*, State's Exhibit, pp. 26 and 27, Tr. 96, 133.

18 Pete Velazquez was also interviewed about masks. State's Exhibit, p. 28. There he  
19 listed Larry Black as his supervisor/foreman. His statement reveals that he wears a mask when  
20 power washing and that: "I would be in trouble if not wearing a mask because it is part of my  
21 PPE." State's Exhibit p. 28, Tr. 92.

22 Mr. Velazquez stated that Aimbridge had not sent him for a medical evaluation to wear  
23 the masks. State's Exhibit, p. 28. Similarly, Larry Black stated that he did not have a medical  
24 evaluation for the use of masks and that Aimbridge had not sent him anywhere to have the mask  
25 that he wore sized, fit and checked. State's Exhibit, p. 28, Tr. 93. And to the best of Black's  
26 knowledge, there had not been a hazard assessment conducted. State's Exhibit, p. 27, Tr. 87.

27 During the inspection of the premises, General Manager Gundrum stated: "If Larry  
28 [Chief Engineer] has it [the sign discussed above] on the door, then, yes, it would be required to

1 wear a N95, I am fine with it." Tr. 133, 134. During the course of the hearing, however, he  
2 changed his statement slightly to eliminate the impression that he was affirming the mandate that  
3 Larry Black had posted on the door. 2 Tr. 191.

4 Taking all of this together, the Board concludes that the wearing of respirators at  
5 Aimbridge was mandatory by the employer. State's Exhibit, p. 29. Therefore, Citation 1, Items  
6 1 through 4, could be sustained, but only if knowledge of the requirement by management could  
7 also be shown, as knowledge is an essential element of a *prima facie* case.

8 The Board concludes that knowledge by management of the mandatory requirement for  
9 the use of respirators is also shown. Obviously both Velazquez and Larry Black were aware of  
10 the requirement. Black was the Chief Engineer who posted the requirement in the first place.  
11 Velazquez's testimony revealed that he surely was aware of the requirement.

12 Black was listed by Velazquez as Velazquez's supervisor. Velazquez's statement  
13 includes references to the direction given him by Larry Black. State's Exhibit, p. 28. Initially,  
14 Black was made a part of the "Red Team." Tr. 162. The Red Team was made up exclusively of  
15 management. State's Exhibit, p. 28. Larry Black was a member of the Red Team and, therefore,  
16 part of management, as all of the Red Team were considered management. State's Exhibit p. 28.

17 Larry Black was the author of the poster mandating face masks. He was clearly aware of  
18 the requirement. As a supervisor his knowledge could, therefore, be imputed to Aimbridge. *See,*  
19 *Original Roofing, supra* at 144, 145. Further, as a member of the "Red Team" and, therefore, a  
20 person considered to be part of the management of Aimbridge, at the hotel site, Black's  
21 knowledge of the mask mandate amounts to knowledge by management as Black was a part of  
22 management.

23 In Mr. Pong's statement, State's Exhibit, p. 21, he made clear he understood that wearing  
24 a face mask was mandatory. From any fair reading of his statement, it is evident that he was a  
25 part of management, as he trained and directed personnel. He also knew there was no respiratory  
26 program for personnel who were required to wear masks. His subsequent professed confusion  
27 over medial masks or dust masks and respirators is no where evident in his written statement.  
28 Mr. Pong's knowledge of the treatment of respirators is clearly imputable to Aimbridge.

1           It is beyond dispute that respondent did not satisfy any of the conditions required to be  
2 met by an employer such as fit testing and medical exams before wearing a respirator. The  
3 Board, therefore, finds that the elements of a *prima facie* case have been satisfied as well. The  
4 regulation applied, Black and Velazquez were exposed to the respirators, respirators were  
5 required, respirators were the peril, management knew respirators were required and the  
6 conditions to wearing a respirator were not met.

7           Next, the Board considers, Citation 1, Item 5. It is based upon 29 CFR 1910.151(c),  
8 which states:

9           Where the eyes or body of any person may be exposed to injurious corrosive  
10 materials, suitable facilities for quick drenching or flushing of the eyes and body  
shall be provided within the work area for immediate emergency use.

11           Aimbridge concedes in its closing brief that the eyewash sink was blocked. Aimbridge  
12 Brief, p. 9. Aimbridge's defense here is that it had no knowledge of the blocked eyewash area  
13 and there was no evidence employees were exposed to chemical hazards during the period when  
14 the sink was blocked. *Ibid.* In his signed statement, however, Larry Black admits that the  
15 eyewash station in the pool equipment area had been obstructed by painters for a three week  
16 period of time. Tr. 86. According to Larry Black, they used gasoline for the power washer,  
17 stainless polish and acid, muriatic acid (hydrochloric). State's Exhibit, pp. 26-27.

18           The facts are that Larry Black, a member of management, was fully aware of the situation  
19 regarding the eyewash sink and the type of chemicals used Aimbridge which necessitated the  
20 presence of an eyewash sink. Aimbridge claims, however, there is no exposure because the pool  
21 was closed at the same time as that access to the eyewash sink was blocked. The fact of the  
22 matter is the pool was open for use, State's Exhibit p. 28, Tr. 85, 86, 92, during the later period  
23 of time the eyewash sink or facility was blocked. 2 Tr. 210. Also, General Manager Gundrum  
24 stated he walked the property at least weekly. 2 Tr. 191. He also confirmed that the pool was  
25 opened part of the time during the blockage 2 Tr. 210. As Larry Black walked the property daily,  
26 Tr. 85, he was aware of the situation with the eyewash sink as a member of management. His  
27 knowledge is imputed. In that respect, his knowledge is also actual for Aimbridge being a  
28 member of management.

1 Mr. Gundrum would have had the opportunity, however, as General Manager, to see the  
2 condition of the premises also through his weekly walk of the property. He would have had at  
3 least three opportunities to note the condition of the pool, the operation of the pool and the  
4 condition of the eyewash sink. The State has shown here, that through Gundrum, Aimbridge  
5 knew or should have known there were issues with the eyewash sink. The State did not show  
6 that there was an injury because of the circumstances surrounding the eyewash sink. Proof of an  
7 injury, however, is not necessary to establish a violation of a blocked sink. *Cf., U.S. Dept. of*  
8 *Labor v. Abdo Allen Co.*, 14 OSAHRC, 481 (O.S.H.R.C.) 1974, at p. 8. When the pool is  
9 operational, it presents the threat of an injury. The State met its burden for this Citation.

10 The Board then turns to Citation 1, Item 6. It involves 29 CFR 1910.1030(d)(4)(iii)(C).  
11 It provides: "Disposal of all regulated waste shall be in accordance with applicable regulations of  
12 the United States, States and Territories, and political subdivisions of States and Territories."  
13 This Federal regulation calls, in turn, for consideration of Nevada's Administrative Code  
14 444.662(6) which states:

15 Medical wastes must be stored in watertight, tightly covered and clearly labeled  
16 containers that are resistant to corrosion and are in a safe location, inaccessible to  
17 the public.... Medical wastes must not be deposited in containers with other solid  
18 wastes. Medical wastes must be transported separately from other solid wastes to  
19 an approved disposal site and handled in accordance with a method approved by  
20 the solid waste management authority.

19 The term "Medical Waste" for this application refers to linens contaminated with blood  
20 or Other Potentially Infectious Materials. The evidence shows that if bio was really bad, it's put  
21 in a red bag and put in the trash. State's Exhibit, p. 23. The evidence was also that during the  
22 walk around, General Manager Gundrum said that if they find sharps, they dispose of them  
23 separately. They just go in a dumpster. According to Ms. Coupe, I clean up the Bio. If it is bad,  
24 it goes in the red bag and then it is trashed. I trash the red bag into the dumpster. State's Exhibit  
25 p., 24. Therefore, Aimbridge failed to observe these requirements as contaminated linens and  
26 sharps were disposed of with the regular trash. That is, the dumpster was the container for the  
27 trash. *See*, State's Exhibit, pp. 4, 19, 23 and 24, Tr. 81, 82, 193, 2 Tr. 91, 92, 94 (not separated).  
28 The Board, therefore, concludes that by mixing contaminated linens or sharps by dumping them



1 in a public waste container, State's Exhibit pp. 4, 19, 23 and 24, Tr. 81, 82, 193, 2 Tr. 91, 92, 94,  
2 Aimbridge failed to properly dispose of regulated waste at Springhill Suites. This citation  
3 should be sustained.

4 Turning, then, to Citation 1, Item 7a, it implicates 29 CFR 1910.030(f)(2)(i). This  
5 regulation provides:

6 Hepatitis B vaccination shall be made available after the employee has received  
7 the training required in paragraph (g)(2)(vii)(I) and within 10 working days of  
8 initial assignment to all employees who have occupational exposure unless the  
9 employee has previously received the complete hepatitis B vaccination series,  
antibody testing has revealed that the employee is immune, or the vaccine is  
contraindicated for medical reasons.

10 The State claims that Aimbridge failed to offer the Hepatitis B vaccination within 10  
11 working days of initial assignment to all employees. The Board finds, however, the proof in  
12 support of this allegation is one of significant confusion. The record shows that Aimbridge  
13 attempted to make the Hepatitis vaccine available to all employees and if refused, to obtain their  
14 signature showing declination. Some of the witness statements suggest otherwise, however.  
15 Given this confusion, and the fact that the burden of proof lies with the State to establish a  
16 violation, here, the Board believes that the State failed to prove by a preponderance of the  
17 evidence that 29 CFR 1910.030(f)(2)(v) was not followed. The Board believes that this Citation  
18 should not be affirmed.

19 Next, the Board considered Citation 1, Item 7b, which is based upon 29 CFR  
20 1910.130(f)(2)(iv). This regulation provides:

21 The employer shall assure that employees who decline to accept hepatitis B  
22 vaccination offered by the employer sign the statement in Appendix A.

23 Here, the State alleges that, Employees were exposed to blood or Other Potentially  
24 Infectious Materials. Room attendants clean toilets, sinks and tubs that sometimes have blood  
25 present. Employees included on the "Red Team" were offered the Hepatitis B virus vaccination,  
26 but other employees with exposure were not. For Citation 1, Item 7b, the Board finds that the  
27 Hepatitis B vaccination was uniformly offered but that Aimbridge was inconsistent in requiring a  
28 declination of signature in the event that an employee did not want to be vaccinated with the

1 Hepatitis B vaccination after being exposed to potentially infectious materials. State's Exhibit  
2 31. The record indicates, however, that the State could generate only one employee who  
3 declined the offer of Hepatitis B vaccination but did not sign declination. State's Exhibit p. 33.  
4 The Board concludes that there was a technical violation proven by the State but that it was *de*  
5 *minimis* in scope and warranting no fine with a serious designation reduced to one of *de*  
6 *minimis* and no fine.

7 Turning to Citation 1, Item 8, it is based upon 29 CFR 1910.103(g)(2)(i). The regulation  
8 provides that:

9 The employer shall train each employee with occupational exposure in  
10 accordance with the requirements of this section. Such training must be provided  
11 at no cost to the employee and during working hours. The employer shall institute  
12 a training program and ensure employee participation in the program.

12 Here it is alleged that Aimbridge failed to train each employee with occupational  
13 exposure in accordance with requirements of this regulation. Employees are exposed to blood or  
14 Other Potentially Infectious Materials. It is beyond dispute, room attendants clean toilets, sinks  
15 and tubs that sometimes have blood present.

16 The Board finds that Aimbridge had a comprehensive training program that provided for  
17 training of all personnel, the Red Team, and those who were not members of the Red Team but  
18 were involved in housekeeping such as cleaning toilets and sinks which may be contaminated  
19 with potentially infectious materials. The Board was not convinced, however, that Aimbridge  
20 took the steps to ensure all personnel who may come in contact bloodborne pathogens or other  
21 potentially infectious materials received the requisite training. The record is not clear that all  
22 employees were trained. State's Exhibit p. 33 (Mendoza, doesn't recall hazard training). That is  
23 not to say, it was the burden of Aimbridge to prove that all employees were trained. It is to say  
24 that the State created sufficient doubt that Aimbridge did not ensure that all of its employees  
25 were trained to deal with blood borne pathogens and OPIM. Tr. 145, 2 Tr. 22. Since the record  
26 reflects that Aimbridge did not ensure that each of its employees received the requisite training,  
27 this Citation should be affirmed.

28 ///

1 The Board next considered Citation 1, Item 9 which is based upon  
2 29 CFR 1910.1200(e)(1)(i), which provides:

3 Employers shall develop, implement, and maintain at each workplace, a written  
4 hazard communication program which at least describes how the criteria specified  
5 in paragraphs (f), (g), and (h) of this section for labels and other forms of  
6 warning, safety data sheets, and employee information and training will be met,  
7 and which also includes the following: A list of hazardous chemicals known to be  
8 present using a product identifier that is referenced on the appropriate safety data  
9 sheet (the list may be compiled for the workplace as a whole or for individual  
10 work areas).

11 The State alleged that:

12 Springhill Suites failed to provide a complete list of hazardous chemicals known  
13 to be present. There was no chemical inventory list in the SDS Binder, nor was it  
14 located anywhere else on site. The list that was provided did not contain all  
15 chemicals utilized on site. The pool chemicals were not on the list.

16 The chemicals involved were hydrochloric acid /Muriatic acid, considered a cohesive  
17 chemical posing potential harm. To provide employee protection, a list of chemicals on site and  
18 used by employees needs to be created, including an index of the chemicals known to be present  
19 in the workplace and have it correlate to safety data sheets that should be present for each  
20 employee or workstation. 2 Tr. 24. This is important because if any amount of chemical being  
21 used, is spilled one does not want delays when trying to figure out what the best procedure is in  
22 case of a spill or who they could contact should there be an emergency. 2 Tr. 24. The evidence  
23 here is that there was no inventory list at the end of the SDS binder listing all of the chemicals  
24 used and on site. A list was provided but it did not include the chemicals used in the pool. 2 Tr.  
25 25.

26 More specifically, Aimbridge's Hazards to Communication Program, under "General  
27 Managers/Human Resource Manager/HazCom Compliance Officer," states: "Publish a master  
28 list of chemicals used in front of each SDS book. The list is to be updated as necessary and kept  
available for review at all times." State's Exhibit p. 238.

Aimbridge's policy evinces an awareness of the hazardous communication requirement.  
In the face of its written policy, Aimbridge failed to provide a comprehensive inventory list

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1 binder. As indicated the list that was provided did not contain all of the chemicals relied on site.  
2 State's Exhibit p. 245.

3 The commercial/consumer use exemption to the hazardous communications standard  
4 does not apply if the chemical is used commercially by consumers. Gundrum conceded that  
5 according to the SDS, Muriatic acid, the pool chemical, was used only for industrial and  
6 professional use, not consumer use. 2 Tr. 231, 232; *See*, State's Exhibit, 194. Additionally,  
7 Gundrum admitted that Chief Engineer Black had to be licensed to maintain the hotel pool. 2 Tr.  
8 239. This further removes the applicability of the consumer exemption for application in this  
9 case. The Board is of the opinion that Citation 1, Item 9, should be sustained.

10 Aimbridge claims that Citation 2, Item 1, should be vacated because Aimbridge  
11 maintained records provided by its predecessor. Citation 2, Item 1, is based upon 29 CFR  
12 1904.34, which states:

13 If your business changes ownership, you are responsible for recording and  
14 reporting work-related injuries and illnesses only for that period of the year  
15 during which you owned the establishment. You must transfer the Part 1904  
16 records to the new owner. The new owner must save all records of the  
17 establishment kept by the prior owner, as required by 29 CFR 1904.33 of this  
18 Part, but need not update or correct the records of the prior owner.

19 During the course of the hearing, the State agreed that Aimbridge had not violated 29  
20 CFR 1904.34 and that it was the seller of the property who was withholding records. 2 Tr. 134.  
21 Aimbridge had provided all that it had obtained and maintained. The State concurs that Citation  
22 2, Item 1, should be vacated. 2 Tr. 133, 134.

23 Citation 2, Item 2, is the next in order. It is based upon 29 CFR 1910.132(d)(2) which  
24 provides:

25 The employer shall verify that the required workplace hazard assessment has been  
26 performed through a written certification that identifies the workplace evaluated;  
27 the person certifying that the evaluation has been performed; the date(s) of the  
28 hazard assessment; and, which identifies the document as a certification of hazard  
assessment.

29 There is no dispute that Aimbridge completed a workplace hazardous assessment that  
30 was, in itself, adequate. There is equally no dispute, that the required workplace assessment  
31 must be certified with a signature at its conclusion. It is further beyond dispute that the signed

1 certification was not provided by Aimbridge. 2 Tr. 33, 34. Aimbridge obviously knew of the  
2 signed certificate requirement. Its own policy required a monthly work place assessment that  
3 had to be documented. State's Exhibit, p. 259. Citation 2, Item 2, should therefore be affirmed.<sup>2</sup>

4 Citation 2, Item 3, is based upon 29 CFR 1910.303(g)(1)(i)(A). It provides:

5 The depth of the working space in the direction of access to live parts may not be  
6 less than indicated in Table S-1. Distances shall be measured from the live parts if  
they are exposed or from the enclosure front or opening if they are enclosed.

7 Aimbridge claims Citation 2, Item 3, should be vacated because again, it had no  
8 knowledge of the blocked electrical panels. According to Aimbridge's, closing brief, however,  
9 Aimbridge conceded that the electrical panel was blocked, claiming that Aimbridge cleared the  
10 block panel immediately upon discovery during the inspection of the premises.

11 As for the lack of knowledge, in his statement, Larry Black, stated that the electrical  
12 panel that was blocked has been cleared away. Tr. 85. Similarly, Pete Velazquez, in his  
13 statement, stated that the panel had been blocked and the area cleared and marked off to keep  
14 clear. State's Exhibit, p. 28. Aimbridge knew the area should not be blocked. On the door to the  
15 room, a sign was posted, "lets keep it very clean guys." 2 Tr. 38. Velazquez did not know who  
16 or why it was blocked. Obviously, staff knew that the electrical panel had been blocked. Larry  
17 Black, as a member of management, knew the electrical panel had been blocked. General  
18 Manager Gundrum walked the premises weekly. 2 Tr. 191. If he did not know, he should have  
19 known, if his inspection of the premises on a weekly basis had any meaning. And Larry Black  
20 walked the premises daily. He must have seen the blockage. In fact, he did see that the panel  
21 was blocked.

22 Citation 3, Item 1, is based upon Nevada Revised Statutes 618.376(1). It provides as  
23 follows:

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24  
25 <sup>2</sup>According to the Haz/Com standard, one of the exemptions is consumer products. It does not  
26 apply to any consumer products that are defined in the Consumer Product Safety Act (CPSA) or Federal  
27 Hazardous Substance Act. Pool chemicals are not on the list of items that were given or on the index that  
28 was provided to OSHA and those were pool chemicals kept in the original containers. If those were  
consumer products, they would not need to be on a chemical list under OSHA's regulation. However,  
Muriatic Acid in this case, the SDS says for professional or industrial use only. So that eliminates the  
consumer aspect of this. 2 Tr. 110 and 2 Tr. 111.

1 Every employer shall, upon hiring an employee, provide the employee with a  
2 document or videotape setting forth the rights and responsibilities of employers  
3 and employees to promote safety in the workplace. The document, or evidence of  
4 receipt of the videotape, must be signed by the employer and employee and  
5 placed in the employee's personnel file. The document or videotape shall not be  
6 deemed to be a part of any employment contract.

7 The State alleges Springhill Suites "... did not ensure every employee was provided a  
8 document or videotape setting forth the rights and responsibilities of employers and employees  
9 to promote safety in the workplace." State's Exhibit p. 75. This regulation is important because  
10 employees should know what is confronting them by their employment if they are asked to do  
11 that or if they feel is unsafe or put them in peril that they may refuse the types of tasks being  
12 assigned within reason. 2 Tr. 41. OSHA found that Aimbridge could not verify that every  
13 employee was provided either the documents, the pamphlet, or shown a video tape and then  
14 signed off. When provided a list of the employees, their signatures were dated post the opening  
15 conference. 2 Tr. 41, State's Exhibit p. 29. This partial compliance shows, however, that  
16 Aimbridge was well aware of the requirement. It was determined, however, that the standard  
17 was not being followed, State's Exhibit p. 42.<sup>3</sup>

18 Aimbridge then claims as a general proposition, that knowledge of the violations cannot  
19 be imputed to Aimbridge through the alleged supervisors because the State unlawfully barred  
20 management's participation in the interviews. Turning to Aimbridge's use of the term "alleged  
21 supervisors," the State relied obviously upon the knowledge and statement of Larry Black.  
22 Aimbridge denies that Black and possibly Alma Coupe were supervisors. Therefore, their  
23 knowledge cannot be imputed to the employer. Hence, the knowledge requirement could not be  
24 satisfied because the knowledge, such as it was, of Black and Coupe could not be imputed to the  
25 employer. They were not supervisors.

26 This raises the question of what or who is a supervisor. In *Secretary of Labor,*  
27 *complainant, v. Kerns Brothers Tree Service, respondent*, OSHRC Docket No. 96-1719, the  
28 commission in that case identified the following elements from which a determination of

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<sup>3</sup>In fact, Aimbridge concedes that point. Aimbridge did not address Citation 3, Item 1 in its post trial brief. The State's claim under Citation 3, Item 1 is unchallenged and conceded by Aimbridge.

1 supervisor might be gleaned. "An employee who has been delegated authority over other  
2 employees, even if only temporarily, is considered to be a supervisor for purposes of imputing  
3 knowledge to an employer" *Tampa Shipyards, Inc.*, 15 BNA OSHC 1533, 1537 (No. 86-630,  
4 1992). There the Commission held that "leadmen" were supervisors, even though they had no  
5 disciplinary authority, because they were "responsible to higher supervision for the progress and  
6 execution of the work" and for informing superintendents of safety problems reported to them by  
7 employees. *See also, Access Equipment, 18*, BNA OSHC at 1726, 1999 CCH OSHD at p.  
8 46,782 (employee who is "in charge of" or "the lead person for" one or two employees who  
9 erected scaffolds "can be considered a supervisor"). *See also, Mercer Well Serv.*, BNA OSHC  
10 1893, 1894 (No. 76-2337, 1977) (crew chief was supervisor for purposes of the Act where he  
11 maintained contact with designated supervisor to relay orders to crew and report problems to that  
12 supervisor); *Dover Elevator Co.*, 16 BNA OSHC 1281, 1286 (No. 91-862, 1993) (an "employee  
13 who is empowered to direct that corrective measures be taken is a supervisory employee;" formal  
14 title of the employee is not controlling, but rather substance of employee's duties).

15       Then, in *Secretary of Labor, complainant v. Rawson Contractors, Inc., respondent*,  
16 OSHRC Docket No. 99-0018, the issue was whether the Secretary had established that Rawson  
17 had the requisite knowledge of the violation and whether the violation was willful.

18       On the issue of knowledge, Rawson in essence argued that the foreman, an hourly paid  
19 union employee with no vacation and holiday benefits, is too remote from management to have  
20 his knowledge imputed to Rawson. There the commission noted in support of this argument,  
21 Rawson pointed out that the foreman has neither the title of supervisor nor authority to hire or  
22 fire employees. The Commission pointed out, however, that this argument is inherently flawed  
23 and equally significant, it ignores a critical responsibility bestowed by the employer upon the  
24 foreman.

25       The Commission determined that it found decisive significance in the fact that the  
26 foreman was Rawson's designated competent person on site – a designation for which to qualify  
27 he received substantial additional training and which among other things meant that he was  
28 responsible for compliance with OSHA regulations. As the on-site competent person assigned

1 and authorised by the company, it was the foreman's duty to identify and take prompt corrective  
2 measures to eliminate hazards.

3 In addition to the precedents of the commission established in *Rawson* that job titles are  
4 not controlling and that the power to hire and fire is not the *sine qua non* of supervisory status,  
5 supervisory status can be established on the basis of other indicia of authority that the employer  
6 has empowered a foreman or other employee to exercise on its behalf. *See, Iowa S. Utilities Co.*,  
7 5 BNA OSHC 1138, 1139, (No. 9295, 1977) (substance of an employer's delegation of authority  
8 over other employees is a primary importance when determining if knowledge can be imputed to  
9 the employer); *Dover Elevator Co., Inc.*, 16 BNA OSHC 1281, 1286 (No. 91-862, 1993) (for  
10 purposes of imputing knowledge, substance of delegation of authority is controlling, not  
11 employee's formal title).

12 Based on the foregoing, the Board concludes that Black was a supervisor. And, in fact,  
13 was also a part of management through his participation on the "Red Team."

14 Then Aimbridge argues that none of the statements taken of its staff could be used  
15 against Aimbridge to prove elements of the claim because the State refused to let Gundrum, the  
16 General Manager, sit in on four staff interviews. The Board also believes that this was the basis  
17 Aimbridge's denial of due process claim based upon the Fourth Amendment, rather, arguing it  
18 has been denied due process and the case should be dismissed because management wanted to  
19 be present in the room when its employees were being questioned by the State. According to  
20 Aimbridge, this constitutes a denial of due process warranting dismissal of the case with  
21 prejudice.

22 As this Fourth Amendment claim is yet another affirmative defense, the burden of proof  
23 by a preponderance of evidence is upon Aimbridge to prove Aimbridge asked to sit in on the  
24 interview. Two state employees denied this took place. Aimbridge offers only Gundrum's claim  
25 he made the ask and was denied. The Board finds at best the evidence is inconclusive, therefore,  
26 Aimbridge has not made out its affirmative defense.

27 ///

28 ///



1           Regardless, Aimbridge is mistaken about the right of management to sit in the room  
2 when its line staff is being interviewed. As stated in *Donovan v. Metal Bank of Am., Inc.*, 516  
3 F.Supp. 674, 680–81 (E.D. Pa. 1981): “The legislative history of the Act supports the Secretary's  
4 position. Congress emphasized the importance of involving employees in employer health and  
5 safety efforts. The Senate Committee Report on the bill specifies that an employer should be  
6 entitled to accompany an inspector on his physical inspection, although the inspector should  
7 have an opportunity to question employees in private so that they will not be hesitant to point out  
8 hazardous conditions which they might otherwise be reluctant to discuss. S.Rep.No.91-1282,  
9 91st Cong., 2d Sess. (1970), reprinted in (1970) U.S.Code Cong. & Ad.News 5177, 5187. The  
10 House of Representatives receded in favor of the Senate's amendment providing for private  
11 interviews. Conference Rep.No.91-1765, 91st Cong., 2d Sess. (1970), reprinted in (1970). U.S.  
12 Code Cong. & Ad. News 5177, 5232-33.”

13           The Board concludes that the fact that management was not permitted to sit in on the  
14 interviews of Aimbridge's employees, standing alone, is not a due process violation requiring  
15 dismissal because management was kept out of the employee interviews. There is nothing that  
16 Aimbridge has brought forward to cause the Board to deviate from the decision of *Donovan*,  
17 referenced above. The State is not precluded for that reason from using the results of interviews  
18 of Aimbridge’s staff.

19           Finally, Aimbridge claims that the citations issued to Towne Place and Spring Hill,  
20 should be combined because both buildings constitute a single entity. That is, Aimbridge claims  
21 that the two hotel buildings, Towne Place and Spring Hill, should be treated as a single  
22 establishment. Therefore, only one set of citations should have been issued to Aimbridge.  
23 Aimbridge cites 29 CFR 1904.46(2) in support of this affirmative defense. The first problem  
24 here for Aimbridge is that 29 CFR 1904 is a requirement for, "... employers to record and report  
25 work-related fatalities, injuries, and illnesses." 29 CFR part 1904 is not intended to eviscerate  
26 claims between mutual properties. 2 Tr. 43, 44, 45.

27           Regardless, the question raised is whether Spring Hill Suites and Towne Place Suites are  
28 "... a functional, cohesive unit" *Schultz v. Hasan Realty Corp.*, 316 F.Supp. 1136, 1142-44

1 (S.P.F. La., 1970), aff'd sub nom. *Hodgson v. Hasan Realty Corp.*, 442 F.2d. 1336 (5<sup>th</sup> Cir.,  
2 1971) addressed this issue. There, the factors the Court has considered to make this  
3 determination were explained by *Schultz* as follows:

4 Applying the criteria of the Interpretive Bulletin, the Diplomat clearly consists  
5 \*1143 of a single establishment within meaning of the Act. Four of the five main  
6 facilities are on physically contiguous parcels of land. The Presidential Country  
7 Club and Golf Course is located some five miles from the other buildings, but  
8 only because the price of land at the time of its construction made it economically  
9 unfeasible for the Diplomat to provide its guests with additional golf facilities  
10 closer to the main hotel units. No separate books and records are kept for the  
11 various facilities. The general accounting department maintains payroll, financial,  
12 and accounting records for all Diplomat properties. Nor are employees hired to  
13 work solely in one of the five units. Hiring is done through a central office, and  
14 employees are interchanged between the various facilities, as needed. *Schultz*,  
15 *supra*.

16 Then, again, the Court in *Schultz* reiterated:

17 The employees sought to be characterized as 'central' by the Secretary are  
18 employed by the Diplomat Hotel, not by a separate facility within the hotel  
19 complex. The hotel facilities have common ownership and a common payroll. No  
20 separate records are maintained, and employees are interchanged among the hotel  
21 facilities, as needed.

22 The Diplomat Hotel, Inc., although composed of a complex of five separate  
23 facilities, is a single hotel establishment.... *Ibid*.

24 These are the factors, the Board has considered to determine whether Spring Hill and  
25 Towne Place Suites are a functional, cohesive unit. The Board concludes, herein, that these two  
26 facilities are not "functional, cohesive units" requiring them to be considered as a single unit.  
27 The fact of the matter is according to the record, brought forth, the two properties have separate  
28 General Managers. Gundrum is the General Manager at Spring Hill Suites. Chelsea Atwell is  
the General Manager at Towne Place Suites. 1 Tr. p. 117. The properties do not keep one set of  
accounting records, 2 Tr. 46-48, and keep their own set of 300 logs, 2 Tr. 47, 48. The properties  
have different numbers of employees. The properties have separate business licenses, 2 Tr. 45,  
46, and they have separate 300 logs. 2 Tr. 47, 48. The properties have different sets of business  
records. 2 Tr. 46. The violation of the two properties were, when inspected, not the same. *See*  
*also*, 2 Tr. 116.

///

1 **CONCLUSION**

2 The State presented an exhaustive explanation justifying the amount of the fine or  
3 assessment for each of the Citations and Items alleged in the complaint. Aimbridge did not  
4 oppose directly the calculations of damages for each of the Citations. Rather, Aimbridge  
5 challenged in each instance, liability, itself, and as stated did not take on the damages or the fine  
6 portion of the complaint. The Board accordingly affirms each of the fines as pled by the State  
7 except where the Board, as indicated below, expressly deviated from the State's prayer for  
8 damages, a fine or an assessment.

9 Finally, Aimbridge offered up multiple other arguments not mentioned herein. The  
10 Board finds those arguments to be unworthy and rejects them.

11 Accordingly, the Board concludes that the Citations and Items in this case are disposed of  
12 as follows:

13 It was moved by Rodd Weber, seconded by Frank Milligan, to deny dismissal of the case  
14 on the single entity grounds. The motion was adopted on a vote of 4-0-1, with member Jorge  
15 Macias abstaining as he will abstain on the rest of these motions as he was newly appointed to  
16 the Board and was not present during any of the hearings on this matter.

17 It was then moved by Rodd Weber, seconded by Frank Milligan, to deny a motion to  
18 dismiss on due process grounds because management was not allowed to sit in on the interview  
19 of the Aimbridge staff. The motion was adopted on a vote of 4-0-1, Macias abstained.

20 Next, the Board considered Citation 1, Item 1, Rodd Weber moved to uphold Citation 1,  
21 Item 1, as written. The motion was seconded by William Spielberg, the motion was carried.  
22 Citation 1, Item 1, was upheld as written.

23 Citation 1, Item 2. It was moved by Frank Milligan to uphold Citation 1, Item 2.  
24 William Spielberg seconded the motion, the motion was adopted unanimously. Citation 1, Item  
25 2, was upheld as written.

26 Citation 1, Item 3, Rodd Weber moved to uphold it as written. Frank Milligan seconded  
27 the motion. The motion was adopted unanimously. Citation 1, Item 3, was upheld as written.

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1 Citation 1, Item 4, it was moved by Frank Milligan, seconded by William Spielberg to  
2 uphold as written Citation 1, Item 4. The motion was adopted unanimously.

3 Citation 1, Item 5, was next addressed. Frank Milligan moved to uphold Citation 1, Item  
4 5 but to change it from Serious to Other-than-Serious and with a penalty reduction from \$4,410  
5 to \$473. William Spielberg seconded the motion. The motion was adopted unanimously.

6 Citation 1, Item 6, was considered. It was moved by Rodd Weber, seconded by Frank  
7 Milligan to uphold Citation 1, Item 6, as written. The motion was adopted unanimously.

8 Citation 1, Item 7a, was considered. It was moved by Rodd Weber, seconded by Frank  
9 Milligan, to vacate Citation 1, Item 7a. The motion was adopted unanimously.

10 Citation 1, Item 7b, was then considered. It was moved by Frank Milligan that Citation  
11 1, Item 7b be changed from a Serious to Other-than-Serious violation with a zero penalty. The  
12 motion was seconded by Rodd Weber.

13 Chairman Ingersoll explained there was a motion and second to uphold Citation 1, 7B  
14 and move it from Serious to an Other-than-Serious violation with a proposed penalty of zero or  
15 *de minimis*. The motion was unanimously adopted.

16 Citation 1, Item 8, was considered. It was moved by Rodd Weber, seconded by Frank  
17 Milligan to uphold Citation 1, Item 8 as written. The motion was adopted unanimously.

18 Citation 1, Item 9, was next considered. William Spielberg moved to uphold Citation 1,  
19 Item 9 as written, the motion was seconded by Frank Milligan. The motion was adopted  
20 unanimously.

21 The Board then took up Citation 2, Item 1. Member Weber stated that he believed this  
22 matter was withdrawn by the State. No further consideration need be given. It is withdrawn  
23 with prejudice, with each side to assume their respective fees and costs.

24 Citation 2, Item 2. Frank Milligan moved to uphold Citation 2, Item 2 as written.  
25 William Spielberg seconded the motion. The motion was adopted unanimously.

26 Citation 2, Item 3. Frank Milligan moved to uphold Citation 2, Item 3 as written. Rodd  
27 Weber seconded the motion. The motion was adopted unanimously.

28 ///

1 Citation 3, Item 1, was next considered. William Spielberg moved and Frank Milligan  
2 seconded the motion to uphold Citation 3, Item 1 as written. The motion was adopted  
3 unanimously.

4 Based upon the above, the Board sustained, rescinded or dismissed the State's complaint  
5 accordingly.

6 On October 9, 2024, the Board convened to consider adoption of this decision, as written  
7 or as modified by the Board, as the decision of the Board.

8 Those present and eligible to vote on this question consisted of 3 of 4 current members of  
9 the Board, to-wit, Chairman Jorge Macias, Board Secretary William Spielberg and Tyson Hollis.

10 Upon a motion by Jorge Macias, seconded by Tyson Hollis, the Board voted Vote: 3-0-1  
11 (Bautista abstaining) to approve this Decision of the Board as the action of the Board and to  
12 authorize the Chairman, Jorge Macias, after any grammatical or typographical errors are  
13 corrected, to execute, without further Board review, this Decision on behalf of the Nevada  
14 Occupational Safety and Health Review Board.

15 On October 9, 2024, this Decision is, therefore, hereby adopted and approved as the  
16 Decision of the Board of Review.

17 This is the Final Order of the Board.

18 IT IS SO ORDERED.

19 DATED this 18<sup>th</sup> day of October, 2024.

NEVADA OCCUPATIONAL SAFETY  
AND HEALTH REVIEW BOARD

21 By: /s/Jorge Macias, Chairman  
22 Jorge Macias, Chairman

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