

IN ARBITRATION PROCEEDINGS
BEFORE ARBITRATOR FRANK YAP, JR.

STATE OF HAWAII

In the Matter of the Arbitration Between)	
)	Union Grievance No. 2020-179
UNITE HERE Local 5)	
)	
Union)	
)	ARBITRATOR’S DECISION AND
and)	PARTIAL AWARD
)	
Hyatt Regency Waikiki Resort & Spa)	Appendix A, B
)	
Employer)	
)	
)	
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ARBITRATOR’S DECISION AND PARTIAL AWARD

I. INTRODUCTION

Unite HERE! Local 5 (hereinafter “Union” or “Local 5”) filed a grievance on behalf of its members employed by Hyatt Regency Waikiki Resort & Spa (hereinafter “Employer” or “Hotel”). The grievance, dated November 18, 2020 (Union Exhibit 1), alleged that Employer is violating the Collective Bargaining Agreement “by failing and refusing to schedule daily room cleaning which is resulting in lost work opportunity and lost wages” for its members.

A one (1) day arbitration hearing was conducted on November 12, 2021 via video conference. Richard G. McCracken, Esq. represented the Union and was physically present in California; Robert S. Katz, Esq. and Jeffrey S. Harris, Esq. represented Employer and were physically present in Honolulu. Also present was the Union’s representative, Jennifer Cynn, Esq. and the Employer’s representatives, Bobby Walia and Michael D’Angelo. Ms. Cynn and Mr. Walia were physically present in Honolulu; Mr. D’Angelo was in New York. Ms. Cynn is the Union’s in-house counsel; Mr. Walia is the Hyatt Hotels Corporation’s Western Regional Director of Labor Relations; Mr. D’Angelo is the Hyatt Hotels Corporation’s vice-president of Labor Relations.

The record of proceedings was preserved by stenographic transcript. The parties were afforded the opportunity to submit evidence, to examine and cross-examine the witnesses, to present rebuttal evidence if they chose to do so, and by written post-hearing memoranda to present argument on the issues. Counsel fully and fairly represented their respective clients, and their respective positions were appropriately presented at the arbitration hearing and in their simultaneous Post Hearing memoranda submitted on January 10, 2022.

The Union's witness was Jennifer Cynn. Ms. Cynn participated in the current Collective Bargaining Agreement ("CBA") negotiations and took notes on her laptop computer during three negotiation sessions.

The Employer's witnesses were Marc Whitefield and Delaine Lindsay. Mr. Whitefield who testified from Farmington Hills, MI was the lead spokesperson for Employer in the negotiations of the current CBA. Ms. Lindsay is the Hyatt's Area Director of Human Resources.

Prior to the hearing, Employer submitted Exhibits A through J. The Union submitted Exhibits 1 through 48. During the hearing Employer submitted Exhibits K, L, and M, and the Union submitted Exhibit 49. There was no objection to Employer's Exhibits A through J and no objection to Union Exhibits 1 through 48. During the hearing the Union objected to Exhibits L, and M, but over its objection, the Arbitrator allowed those exhibits plus Exhibit K and Exhibit 49 into the Record.

Because the timeliness of the grievance is in issue, Employer did not stipulate the matter as arbitrable and the matter as properly before the Arbitrator.

II. STIPULATED ISSUES

1. Did the Union timely file the Grievance; and
2. If the Union timely filed the Grievance, did the Hyatt's Guest Personal Preference Guide violate the Collective Bargaining Agreement.

III. BACKGROUND

The Hyatt Regency Waikiki Resort & Spa ("Hotel") is a twin tower resort and convention complex located one block from Waikiki Beach, consisting of 1,230 guest rooms and suites within its Diamond Head and Ewa Towers. Both Towers are 40 floors.

A. The Housekeeping Policy

The Hotel's current policy on cleaning rooms during a guest's stay at the Hotel is identified within an undated document titled *Housekeeping Guest Personal Preference: Guide Americas Operations* (Joint Exhibit 3). This document contains three (3) sections. The rationale and the purpose of this document is clearly stated in the first two paragraphs in section I under the heading "I. What is Housekeeping Guest Personal Preference?"

This heading identifies the two (2) categories of hotel guests^{1/} for which housekeeping services are offered, explains why offering the guest a room cleaning preference is beneficial, and establishes a protocol for the Hotel's front desk host to follow, including a scripted greeting, for use when first meeting an arriving guest. In relevant part it states:

1. WoH Elite/VIP travelers'; [are] defined as Courtesy Card, Lifetime Globalist, Globalist, Explorerist, Discoverist, Hotel Designated VIP's. Opt-out of daily housekeeping service.
2. All other guests, Opt- in for daily housekeeping service

For all non-elite guests, housekeeping service will automatically take place on the 4th day of their stay, if not otherwise noted. Should they Opt-in for housekeeping service, it will be provided within a designated service window of AM "8am – 12noon" or PM "12noon – 4pm". It will now allow us the opportunity to "time" service to avoid guest contact and providing (sic) our colleagues a safe work environment. Any guest choosing housekeeping service will be asked if they prefer morning or afternoon service and responses will be noted by the Host.

WoH Elite/VIP travelers' will be provided daily service and will be given the option to select the personal preference for the service they desire, AM, PM, or Opt-out for their comfort.

The other two sections of the Policy are labeled "II. Benefits of Housekeeping Guest Personal Preference", and "III. How does it work?"

B. The Practice - Tasks Performed by the Housekeeper

Joint Exhibit 4, "HKSP Room Attendant Task List"^{2/}, compares the activities performed when the Hotel guest stays the night and remains a guest for another night ("stay-over"), and when the guest completes their stay and thus no longer occupies the room ("checks-out"). Common tasks – whether the guest is a stay-over, or after a guest checks-out – include:

^{1/} Guests who were housed in Hotel rooms designated as a "quarantined guest room" because they had not satisfied the State's COVID test requirements, were not included in the Policy because they were housed on specified floors, isolated from non-quarantined guests and hotel employees, and were provided a different form of Hotel services. (See Background section in Arbitrator's Decision and Award in Grievance 2020-189) See also Ms. Lindsay's testimony, at Transcript page 130.

^{2/} Appended as Appendix A.

“[Ensuring] the shower/tub is completely clean; the toilet is completely clean and in working order; the sink is completely clean and in working order; the bathroom floor is completely clean; all bedding is clean and well presented; the room has a clean or neutral smell”

Among the tasks identified for the guest who remains a Hotel guest for another night are to:

“Replace linen if assigned, otherwise make bed with current linen on bed; replace soaps and amenities as needed; vacuum carpet and sweep lanai floor; empty rubbish cans, discard any rubbish throughout the room”

C. Chronology of Policy Implementation

Sometime after October 15, 2020 when the Hotel again began accepting arriving guests, its front desk attendants or ‘hosts’ began asking guests for their room cleaning preferences at the time of guest registration and check-in. Sometime during the period October 23-26, 2020, someone from the Union requested a copy of the “Host Script” that informed the arriving guest that “we will not be providing daily service unless you would like it”.^{3/} The Script was provided and acknowledged received on October 23.

On October 30, 2020 a video conference call (via Zoom) was held between Hotel and Union officials and some Union members. Ms. Lindsay was one of the participants. A 10 page transcription of that conference was produced. (ER Ex. F) Included in that transcript is discussion of the Policy:

Cesilee – Can you clarify the procedures for the guests, providing daily service to the guests, we’ve heard it’s changed a few times on the different policies on how guests request or they are offered service.

Donald – We’re going to offer housekeeping service for guests, we want to make sure the guests understand when we go to the room, [that] they aren’t in the room, for their and our staff members safety. So we ask for [their] preference for morning or afternoon or anytime or don’t come to my room. We want to make sure we understand what the guest preference is.

Kalena – When the guest checks in, how are they notified?

.....

Betty: Starting today, the front desk is advising the guest, we are giving the option of daily service, am/pm, intermittent service, no service. Starting today, all guests are getting the option of service.

.....

Cesilee – We heard that it had changed a couple times, now it’s this – it changed again Betty?

Betty – At first it was only [E]lite, but now it’s the option for everybody.

.....

^{3/} The text messages are contained in Exhibit 5 to Employer’s Motion to Compel Compliance to Subpoena and Production of Information, dated October 25, 2021. The text messages had been produced by the Union on October 6, 2021 and spans the period October 23 through December 7, 2020.

Cesilee – We just want to ask because it's (sic) changes.
(ER Ex. F at p. 4-5, Emphasis added)^{4/}

In early December 2020^{5/} both Hyatt Elite Member guests and Hyatt Non-Elite Member guests were first offered room cleaning either in the AM or in the PM, and room cleaning options. The room cleaning options for the Elite Member guest differed from that of the Non-Elite Member guest: For the Elite Member, daily room cleaning would be provided unless that guest elected either intermittent or no daily cleaning; for the Non-Elite Member, room cleaning would be provided every 4th day, unless that guest elected either intermittent or daily cleaning or no room cleaning during their hotel stay.

D. Contract Provision At Issue

Section 52.11 of the Collective Bargaining Agreement (“CBA”) is at issue in this grievance. That Section states:

52.11 Daily Room Cleaning. Due to the unique characteristics of a resort environment, the Hotel shall not implement any program or policy whereby guests' rooms are not cleaned after each and every night of their stay. This prohibits a program whereby guests receive a financial incentive to not have rooms cleaned daily. It does not prevent the Hotel from continuing, modifying or establishing a sustainable environmental program, such as a “green program,” whereby guests are encouraged to re-use linens or terry, nor does it require the Hotel to have rooms cleaned where guests have indicated otherwise or that they wished to not be disturbed.

Discussion between the Employer and the Union regarding the current July 1, 2018 to June 30, 2022 CBA, which included Section 52.11 began in early February 2019, following the Union's completion of contract negotiations with another hotel chain, Kyo-ya Hotels & Resorts, and concluded in mid-June 2019, according to Employer's lead spokesperson Marc Whitefield, Esq. (Transcript page 65)

The language of Section 52.11 in the current CBA differs from the language contained in Section 52.11 of the 2013-2018 CBA and the 2010-2013 CBA. The 2010-2013 and 2013-2018 contract language is identical.^{6/}

^{4/} The named individuals are: Cesilee – Union organizer; Donald – Hotel Director of Rooms; Kalena – Union organizer; Betty - senior front desk clerk. (Tr. 108-112)

^{5/} The precise date the Elite and Non-Elite guests were provided the option of opting-out of or opting-in to housekeeping service is unclear to the Arbitrator. Employer's Post-Arbitration Brief identifies the date as December 7, 2020, a Monday (Employer's Brief at 4), while the Union's Brief indicates implementation was for the week of December 6 (Union's Brief at 20).

^{6/} Appendix B contains the Section 52.11 language in the 2010, 2013 and 2018 Collective Bargaining Agreements. The 2006 CBA did not have Section 52.11 nor was there any other provision in Section 52 that identified the frequency of room cleaning during a guest's stay at the Hotel. (JT. Ex. 1, Union Ex. 38, 39, 40)

Section 52.10 D. of the 2006, 2010, 2013 and 2018 Collective Bargaining Agreements is included.

E. Chronology of Grievance

- A Grievance dated November 18, 2020 was prepared. (Union Ex. 1)
- By letter dated November 21, the Union requested the Hotel's Human Resources Department to provide copies of certain documents no later than November 25 in order to process the grievance. (Union Ex. 2)
- By letter dated November (sic) 2, the Hotel provided one of the documents requested, advising that the other document was not maintained. (Union Ex. 4)
- Correspondence between that December 2 letter and January 8, 2021 (Union Ex. 4 through 8) show the Union was seeking additional information.
- By letter dated January 15 (Union Ex. 9), the Hotel indicated it was compiling the information and that the Union could expect receiving the information by January 22.
- An Amended Grievance dated January 19, 2021 was prepared, adding "Housekeeping Side Letter" as a basis for the grievance. (JT. Ex. 2)
- By Memorandum dated January 20, Employer informed the Union of its Step 1 determination. (Union Ex. 10)
- By letter dated January 22, the Hotel responded to the Union's January 8 and January 13 information requests, providing four (4) sets of documents – Housekeeping Activity Report (for Oct 15 to Jan 18, 2021 period); Out of Service Rooms for the same period; Occupied Rooms from "opening" through January 20; and the Housekeeping Guest Preference Policy. (Union Ex. 11)
- By letter dated January 22 to Employer, the Union requested the grievance proceed to Step 2. (Union Ex. 13)
- On February 4, a step 2 meeting was held between the Union and Employer. (ER Ex. L)
- By Memorandum dated February 10, Employer proposed a Step 2 resolution, reserving the right to move to the next step (Mediation) if resolution is not achieved. (Union Ex. 15)
- By letter dated February 17 to Employer, the Union disagreed with Mediation, and indicated its desire to Arbitrate (Step 4). (Union Ex. 16)
- Thereafter, a series of correspondence between the Union and Employer were exchanged – Employer notifying the Union it would unilaterally seek mediation (Union Ex. 17), information requests from the Union and Employer responses (Union Exs. 19-23, 24-25, 27, 30-31), and disagreements concerning the provision of certain requested information (Union Exs. 28-29)
- By letter dated April 6, the Union demanded arbitration. (Union Ex. 26)
- By letter dated June 15, 2021 from Employer's counsel, this Arbitrator was notified of his selection to arbitrate this matter.

IV. CONTENTIONS OF THE PARTIES

A. The Union's Contentions

The Union contends the Hyatt Hotels Corporation adopted a “global program” on guest room cleaning that the Hotel implemented in December 2020.

Addressing the issue whether the grievance was timely filed, the Union contends Employer's timeliness defense is waived, as it was never raised from the time the grievance was filed in November 2020 until just before the November 2021 arbitration hearing, when it was first raised by the Employer's attorneys in the stipulation of issues submitted to the Arbitrator. The Union further argues its grievance is timely contending (a) it was filed *before* the Hotel officially implemented the room cleaning policy in December 2020, and (b) the Hotel's continued failure to abide by terms of Section 52.11 of the CBA – to provide daily cleaning to *all* stayover guests – constitutes a continuing violation, not a one-time event.

In support of its argument that the Hotel's room cleaning policy is in violation of Section 52.11, the Union first contends Sec. 52.11 was “completely re-stated” from its 2013 CBA predecessor in the Section's first sentence that prohibits any Hotel policy or program not to clean guests' rooms every day and that the Section's title “Daily Room Cleaning” identifies its intent. The Union contends that not only does the Section 52.11 contract history support its argument, but Section 52.10 D. requiring the Hotel to assign “all rooms that have been occupied the prior night at the beginning of each day” reflects the intent that guest rooms are to be cleaned on a daily basis.

The Union rejects Employer's position that Section 52.11 does not require daily room cleaning for the guest who makes that choice so long as that guest is not given an incentive to make that choice – identifying a number of reasons for rejecting Employer's position.

The remedies sought are: (1) The issuance of a “cease and desist” order from not assigning all rooms to be cleaned which were occupied the night before; and (2) Compensation to all employees who would have worked, but for the Hotel's policy of not cleaning the rooms of Non-Elite guests every day of their stay – such compensation to include lost wages for each work day missed, together with Employer benefit contributions and accrual of paid time off (such as vacation and sick leave) the employee would have earned had the employee worked. Additionally, for those housekeepers who had lost health care coverage because of lack of working hours, reimbursement for any health care expenses incurred. Included in the

compensation remedy is the Union's suggestion of how affected housekeepers would be identified and how compensation is calculated.

B. The Employer's Contentions

Employer contends Section 52.11 expressly allows its policy of permitting its guests to indicate their room cleaning preferences, and that it was obligated under Section 15.01 to implement a policy to ensure the safety of its employees when the Hotel reopened in October 2020. Its Guest Personal Preference Policy does both.

Addressing the issue whether the grievance was timely filed, the Employer contends both the November 18, 2020 and the amended January 19, 2021 grievances were not filed within the 15 day period specified by Section 18.03 – the November 18 grievance because by October 30, the Union through its business agent was informed that the room cleaning policy was extended to both Elite and Non-Elite guests; and the January 19 grievance because it was filed after the December 7 implementation of the “more refined” Guest Preference Policy. Additionally, Employer contends the notion of a “continuing violation does not apply because Section 18.03 contains no exception for a continuing violation theory and further, the Policy was implemented as a discrete act on October 15, 2020 and is thus not the subject of a “continuing violation”.

In its Post-Hearing Brief, Employer identifies its understanding of the Guest Preference Policy:

“Later, on December 7, 2020 Hyatt Elite Member guests were first offered AM or PM daily room cleaning **with** the option to elect intermittent or no daily room cleaning while Non-Hyatt Elite Member guests were first offered every 4th day room cleaning AM or PM **with** the option to elect daily or other intermittent room cleaning AM or PM or no room cleaning.”
(Emphasis in the original, Employer Br. at 4)

In support of its argument that the Guest Personal Preference policy complies with Section 52.11, Employer contends the second sentence of Sec. 52.11 “creates an express exception to the general prohibition of the first sentence, by limiting its reach to ‘a program whereby guests receive a financial incentive to not have rooms cleaned daily’”. This argument is best summarized by the following statement:

“. . . it is clear from the plain reading of Section 52 and the negotiation history that the CBA does **not** prohibit Hyatt from inquiring about guests' room cleaning preferences and accommodating guests' preferences by not scheduling a guest room for cleaning where the guest indicated a preference for not cleaning the room.” (Employer's Br. at 18)

Employer further argues that the Guest Personal Preference policy is authorized under Section 15.01 and is in compliance with the U.S. Centers for Disease Control and Prevention guidelines and industry best practices. It also argues that the Covid-19 pandemic is an emergency and Section 40.04 authorizes Employer to make adjustments to the housekeepers' work schedules and workloads for the duration of the pandemic.

Employer contends the Union is not entitled relief because it did not provide any evidence at the hearing to support a claim that bargaining unit hours and wages were lost due to the Guest Personal Preference policy or that rooms had not been cleaned if a guest had not stated a contrary preference.

V. RELEVANT TESTIMONY

A. Jennifer Cynn

Ms. Cynn testified about her role as one of the Union negotiators, the manner and method in which she maintained contemporaneous notes of the negotiation sessions on March 13, March 14, and June 6, the persons present at those sessions, the Hotel's "Totally Green" program and its relation to the language of Section 52.11, and the basis for her concluding that Employer is in violation of the CBA, among other matters.

The Witness testified that negotiations with the Hyatt on the current CBA began after the Union ended its 51-day strike with Kyo-ya and after Contract negotiations with Kyo-ya had ended. (Tr.12-13) She testified that at the March 13 session, the room cleaning language that Kyo-ya agreed to in its Contract with the Union was provided Employer, with an expectation that language would be the language the parties would agree upon (Tr.37-38), stating:

"So we wanted to indicate to Hyatt that . . . we're not expecting a lot of back and forth on these. This is where we wanted to end up because this is - - was the final agreement at Kyo-ya." (Tr.38)

She agreed no tentative agreement on the room cleaning language was reached at this session, since the discussion during this session was mostly about how the Kyo-ya language would apply to Employer. (Tr.36, 39) Likewise, at the March 14 session no tentative agreement on room cleaning was reached. (Tr.42) Regarding the June 6 session, she was questioned about the Hyatt's "Totally Green Program" and after explaining what this Program involved (Tr.55), testified that as a part of the negotiations, Employer had agreed to end this Program at a certain date. (Tr.56)

The Witness was questioned about why the phrase “Due to the unique characteristics of a resort environment” was the opening phrase in Section 52.11’s first sentence, and she responded:

“Kyo-ya requested that that language be placed into the section. . . . they wanted this language . . . [and] because the language referred to daily room cleaning and the requirement of daily room cleaning, Kyo-ya requested that they put this portion in because they wanted to distinguish their hotels here as resort environments. (Tr.140)

* * * *

Kyo-ya wanted a distinction between its hotels in Waikiki as to why they were allowing - - that they were agreeing to daily room cleaning in those hotels, because they were resort hotels and they were not business hotels. . . . And so they wanted to have it clear . . . at least for the purposes of Kyo-ya, . . .that they would agree to the daily room cleaning”.

(Tr.142)

The Witness identified the basis for her conclusion that the Hotel is not in compliance with Section 52.11, in her answer to the following question:

“Q [by Mr. Katz]: I’m asking whether you know of any rooms that the employer refused to clean for any reason other than the guest declined service?

. . . .
A: Well, Hyatt has a program that - - Hyatt doesn’t - - it says they don’t clean them every day. It says they only clean them every fourth day. So I am aware that they don’t do it. I’m not sure which rooms or how they figure that out, but their program now is they only clean every fourth day unless you’re elite or on check-out. So that definitely means they’re not cleaning the rooms every day” (Tr.59)

B. Marc Whitefield

Mr. Whitefield testified about his role as Employer’s lead spokesperson during the Hyatt CBA negotiations, confirmed that the Union did not begin contract negotiations until after completion of negotiations with Kyo-ya, provided information about Hyatt’s Totally Green Program, about what transpired at the negotiation sessions regarding Section 52.11 and about the Hyatt’s Guest Preference program, among other matters.

The Witness testified the Union did not begin contract negotiations with Hyatt until just about after the Union wrapped up negotiations with Kyo-ya (Tr.68-69) and that the first meeting with the Union was in early February 2019 and concluded in mid-June 2019 with a new CBA. (Tr.65) At that first meeting, he testified that Eric Gill, a Union principal spokesperson, showed Employer representatives a document and said something to the effect:

“ . . . look, you’re gonna agree to something that looks a lot like this. We’ll talk about a few issues that pertain to your property in particular, but this is the template of what’s it’s going to look like. . . . And Section 52.11 was included in that template.” (Tr.69)

Addressing the questions Employer’s counsel posed, the Witness testified that (1) the Union did not propose any restrictions on *how* or *when* the Hotel would determine a guest’s room cleaning preference (Tr.70), (2) the Union did not indicate that Section 52.11 imposed any restriction on *how* or *when* the Hotel solicited or obtained a guest’s preference for room cleaning (Tr.70, 71), and (3) during negotiations there was no discussion of any language that would require the Hotel to clean a room when a guest indicated not wanting it cleaned (Tr.72). In response to Employer’s counsel question whether the Union could have proposed language prohibiting the Hotel from asking its guests about their room cleaning preference, the Witness testified the Union could have, stating that a Local in Boston, MA had proposed such language to him during negotiations with the Hyatt Place Boston/Seaport District Hotel. (Tr.76-77, 79) On redirect examination, the Witness testified the Hotel does not have program or policy that rewards guests for declining daily room service, although it allows a guest to decline such daily service. (Tr.89-90)

The Witness testified the Hotel has a program in place since 2016, known as Totally Green Program. This program allowed a guest who chooses to not have their room cleaned the next day, to place a placard on the room’s outside door knob by 11:00 p.m. A security officer making his rounds would take the placard and inform the Housekeeping Department, so that room would not be assigned the housekeeper for cleaning the next day. (Tr.72-73)

C. Delaine Lindsay

Ms. Lindsay testified about the Guest Preference program – how a newly arriving guest is made aware of this program, why the guest is asked to express a room cleaning preference, the advantages of such a preference program to both the guest and Hotel, the application of the guest personal preference policy to room cleaning, and how room cleaning was addressed in the pre-COVID era, among other matters.

The Witness testified that hotel guests had always been able to express their preference on room cleaning before the Hotel ceased operations, but upon reopening in mid-October 2020, “we made sure that guests knew that they were allowed to express their preference”, and that it would be honored. (Tr. 99) She explained:

“When a guest arrives at the hotel and they go to check-in at the front desk, they are asked for their preference, if they’re comfortable having a housekeeper in their room and if they would like service in the morning or in the afternoon, or perhaps not at all, depending on the guest.”
(Tr.100)

The front desk clerk enters that information into the computer system that manages reservations, which the Housekeeping Department can access to determine whether the guest preference is for morning or afternoon room cleaning so as to avoid a situation where the housekeeper and guest are in the room at the same time. (Tr.101)

The Witness testified that before March 2020, when the Hotel had a high occupancy, the Hotel would determine guest preference for room cleaning by putting the “Do Not Disturb” placard on the room’s doorknob, or when the guest would notify the front desk or the Housekeeping Department. She confirmed that front desk host *did not* query the guest at check-in. (Tr.103)

The Witness was questioned why the Policy was initiated after the Hotel reopened In October, and responded:

“ . . . We wanted [the] guests to feel comfortable coming - - traveling all the way out here and staying in hotels. The world was kind of shut down for awhile and we knew that there was a lot of hesitancy with customers feeling just safe and secure in general, so we wanted to give them the control of expressing their preference so that they felt good about coming to stay with us and starting to travel again.” (Tr.104)

The Witness also testified how the Policy was advantageous to both the Hotel and Union – minimizing the contact between guest and Hotel employees since little was known about COVID-19 at that time and increasing housekeeping scheduling efficiency. (Tr.105-108)

The Witness was questioned on the application of the Policy to the Hotel’s Elite guests and to its Non-Elite guests. She acknowledged that as to the Non-Elite guest, before the pandemic it was not the practice or policy that housekeeping service would be provided on the fourth day of that guest’s stay (Tr. 119). The Witness was questioned whether that practice was implemented on November 18, and responded she “did not believe so” (Tr. 121). Asked the following question, the Witness responded:

“Q (by Arbitrator): Could a guest not state their preference of room cleaning at check-in?
A: Yes, a guest could not state what their preference is.
Q: And what would happen at that point?
A: At that point, if it is a World of Hyatt elite guest, then they would automatically have daily stay-over cleaning, so daily service. If it was a non-World of Hyatt, then it would be serviced every fourth day.” (Tr.135)

VI. DISCUSSION AND ANALYSIS

A. Did The Union Timely File This Grievance

Employer's contends the November 18, 2020 grievance is untimely because it was submitted more than 15 days after October 30, the date Employer contends the Union was informed that the room cleaning policy would apply to all guests. It contends the January 19, 2021 amended grievance was also submitted more than 15 days after the Hotel's implementation of a "more refined" policy that identified that Hyatt Elite Members would be provided daily room cleaning while Non-Elite Members would be provided room cleaning on the 4th day of their Hotel stay, unless that guest requested more frequent housekeeping services.

In determining whether the grievance was timely filed, the following factors were considered:

1) The October 30 video conference meeting held to clarify the Hotel's "Host Script" which informed the arriving guest that daily housekeeping service would *not* be provided unless requested, indicated that "starting today", all guests would be informed they would have the choice of deciding how often their room would be cleaned during their stay, and whether they wanted the room cleaned during the morning or afternoon hours. Representatives of the Union were informed the housekeeping service choice initially applied only to Elite guests, but now applied to *all* guests. During that meeting nothing was said that the room cleaning frequency of the Elite guest differed from the room cleaning frequency of the Non-Elite guest.

2) In a letter dated December 4, Ms. Lindsay informed Ms. Linares the Hotel would be modifying its stayover guest procedures to comply with the Hyatt Corporation's Global Care and Cleanliness Commitment program. The memorandum did not identify what were the modifications, but stated the procedures would be implemented the week of December 6.

3) In a memorandum dated January 20, 2021, Ms. Greene informed Ms. Omosa of the Hotel's Step 1 response, stating: "The Hotel's position is that it is complying with the language of the CBA. The CBA language does not require that every room be cleaned every day. . . ."

4) In a letter dated January 22, 2021, Ms. Lindsay provided Ms. Linares the undated document titled *Housekeeping Guest Personal Preference: Guide* (JT. Ex. 3), along with two other requested documents. This document identified that Hyatt Elite guests would receive daily room cleaning, while Hyatt Non-Elite guests would have room cleaning every 4th day.

5) The November 18 grievance, as well as the January 19, 2021 amended grievance both identify the type of grievance as "contract violation", and allege that "Employer is violating the CBA by failing and refusing to schedule daily room cleaning . . ."

6) Section 52.10 D requires assigning housekeepers to clean all rooms that were occupied the prior night, at the beginning of each day. The total number of rooms assigned for cleaning each day is dependent upon the number of guest rooms that are afforded daily cleaning (Elite members who did not

choose a different frequency and Non-Elite members who affirmatively chose daily cleaning thereby rejecting every 4th day cleaning).

It is generally accepted in labor arbitration matters that a “continuing violation” is a meaningful exception to the time limitations required in filing a timely grievance. In another grievance filled by the Union against Employer stemming from the effects of the COVID-19 pandemic, Arbitrator Lou Chang made the following observation:

“Additionally, grievances concerning the scheduling or failure to schedule bargaining unit workers or the improper subcontracting out of bargaining unit work or the failure to pay proper raises of compensation have been found by arbitrators to be subject to the “continuing violation” doctrine under which such grievances are permitted to be filed but with limitations with respect to the extent of damages or back pay.”^{7/}

The assignment of rooms for cleaning each day is, in this Arbitrator’s opinion, an independent act for the purpose of determining whether there is a continuous violation. And that is because in determining the number of rooms to be assigned for cleaning at the beginning of each day, the count is dependent not only upon the number of guests already residing in the hotel, but also the number of newly arriving guests (and guests who will “check-out”) on the day preceding the day of room assignment. If it is determined by the Arbitrator that the 4th day room cleaning for the Non-Elite guest is a violation of Section 52.11, then depending upon the number of newly arrived Non-Elite guests on a particular day, the room count assignment would likely be different from the room count assignment that had been made on that particular day in 2021. And that different room count may affect the number of housekeepers who should have worked, but did not, and of course, their wages.

B. Does The Hyatt’s Guest Personal Preference Guide violate the Collective Bargaining Agreement

Section 52.11 of the 2018-2022 Collective Bargaining Agreement states:

Daily Room Cleaning. Due to the unique characteristics of a resort environment, the Hotel shall not implement any program or policy whereby guests’ rooms are not cleaned after each and every night of their stay. This prohibits a program whereby guests receive a financial incentive to not have rooms cleaned daily. It does not prevent the Hotel from continuing, modifying or establishing a sustainable environmental program, such as a “green program,” whereby guests are encouraged to re-use linens or terry, nor does it require the Hotel to have rooms cleaned where guests have indicated otherwise or that they wished to not be disturbed.

^{7/} Unite Here Local 5 v. Hyatt Regency Waikiki, (decided October 2, 2021) Case No. 2020-154 at page 15 (ER Ex. G) Arbitrator Chang determined the grievance was timely filed under the “continuous violation doctrine” , but denied the grievance on the merits.

In this Arbitrator's opinion, this Section makes it clear, that: 1) the Hotel is prohibited from having a policy or a program that prevents a hotel room from being cleaned after each night the guest resides in the Hotel; but 2) that hotel guest may choose not to have their room cleaned and that such a choice is not in violation of the Section as long as the Hotel does not give that guest a financial incentive to make that choice. The evidence in the Record does not establish the Hotel provides a financial incentive to the guest who chooses not to have their room cleaned the day after an over-night stay. Thus the Guest Personal Preference policy of allowing both Elite and Non-Elite guests to choose whether the guest desires room cleaning in the morning or in the afternoon, on a non-daily or on a daily basis does not violate Section 52.11.

However, the Guest Personal Preference policy does more than that. It identifies two categories of guests – one for whom their hotel room is cleaned on a daily basis, the other for whom their hotel room is cleaned on every 4th day of their hotel stay. Room cleaning on every 4th day is contrary to the Section's clear requirement that a guest's room is to be cleaned every day (i.e. daily room cleaning), and thus a violation of the Section.

Although Preference policy allows the Non-Elite guest to choose to have their room cleaned more frequently than every 4th day of their stay, the violation is not cured. As the Policy states, only if the Non-Elite guest "*opts-in*" for housekeeping service, will the guest be allowed to choose whether housekeeping service is provided during the hours of 8:00 a.m. to noon, or from noon to 4:00 p.m. Likewise, only by opting-in, is the Non-Elite guest allowed the choice of either daily room cleaning, intermittent cleaning, or no cleaning during their stay in the Hotel.

The term "opt-in" is defined to mean: "*to choose to do or be involved in something*", whereas the term "opt-out" is defined to mean: "*to choose not to participate in something*".^{8/} Requiring the Non-Elite guest to affirmatively choose the frequency of having their room cleaned, or else their room would be only cleaned on every 4th day of their stay is contrary to Section's language that the room is to be "cleaned after each and every night of their stay". By choosing to become a paying guest of the Hyatt Regency Waikiki Resort & Spa, that language grants a hotel benefit to the guest. The guest needs not to do anything more to have their room cleaned after every night of their stay – daily room cleaning is "automatic".

^{8/} Merriam-Webster Dictionary, on-line

VII. FINDINGS OF FACT

1. All components of the Housekeeping Guest Personal Preference policy were not implemented at the same time.
 - a. Sometime after October 15, 2020, Hyatt Elite Member guests were asked whether they preferred room cleaning during the morning or afternoon hours.
 - b. By October 30, all guests were allowed the option to choose whether the guest preferred room cleaning every day or on intermittent days or no room cleaning, and if room cleaning was chosen, whether the preference is for cleaning service in the morning or afternoon.
 - c. On December 4, the Hotel informed the Union it would be modifying its housekeeping stayover procedures to comply with Hyatt's Global Care Cleanliness Commitment Program, and intended to implement the corporate standards the week of December 6, 2020.
 - d. On December 7, this policy was implemented for both Hyatt Elite Member and Hyatt Non-Elite Member guests.
2. The room cleaning policy differed between Elite Member and Non-Elite Member guests. The significant difference is that the Elite Member would have their room cleaned daily, unless that guest chose otherwise, whereas the Non-Elite Member would have their room cleaned on every 4th day of their Hotel stay, unless that guest chose otherwise.
3. Whether an occupied room is to be cleaned or not cleaned after an overnight stay, affects the Housekeeping Department's responsibilities which includes the number of rooms to be assigned for cleaning at the start of the work day and for determining staffing needs.
4. When the "every 4th day cleaning" restriction is eliminated, the number of rooms that should have been scheduled for room cleaning on a particular day in 2021 may be greater than the number of rooms actually scheduled on that day. And that greater number of rooms that should have been cleaned may affect the number of Housekeepers that should have been scheduled to work on that day.

VIII. CONCLUSIONS

1. The January 19, 2021 amended grievance is timely.
2. The provision within the Housekeeping Guest Personal Preference: Guide Americas Operations that states: "For all non-elite guests, housekeeping service will automatically take place on the 4th day of their stay, if not otherwise noted" and the requirement that such guests "opt-in" to have their room cleaned every day, violates Section 52.11 of the 2018-2022 Collective Bargaining Agreement that provides for daily room cleaning.
3. This grievance is SUSTAINED.

IX. AWARD

1. Employer, Hyatt Regency Waikiki Resort & Spa shall Cease and Desist from not assigning to be cleaned, all rooms that were occupied the night before, unless Employer provides the Union clear evidence that the hotel guest chose not to have their room cleaned daily.
2. The Union and Employer shall meet and confer to determine:
 - a. The process by which the Union will be timely informed which guest room(s) have waived the daily room cleaning requirement or chosen another cleaning frequency;
 - b. The methodology and process to identify those bargaining unit employees who would have worked but for the policy of not cleaning the room of Non-Elite guests every day of their stay from January 19, 2021 to the present time;
 - c. An estimate of the time needed to achieve this result; and
 - d. Any other matter(s) necessary to properly compensate the affected bargaining unit employees.
3. The Parties must inform the Arbitrator within 45 calendar days from the date of this Award as to their progress in achieving Award item 2 above.
4. The Arbitrator will retain jurisdiction for 65 calendar days from the date of this Award to monitor progress, and if appropriate, to enforce the Award. Within that 65 day period, the parties may inform the Arbitrator whether they desire him to continue retaining jurisdiction after that period of time.

DATED: January 20, 2022



Frank Yap, Jr.
Arbitrator
P.O. Box 3589
Honolulu, Hawaii 96811

HKSP Room Attendant Task List

Check Out Room	Stayover Room
The shower/tub is completely clean	The shower/tub is completely clean
The toilet is completely clean and in working order	The toilet is completely clean and in working order
The sink is completely clean and in working order	The sink is completely clean and in working order
The towels are clean and well presented	The towels are clean and well presented
The bathroom floor is completely clean	The bathroom floor is completely clean
All bedding is clean and well presented	All bedding is clean and well presented
The carpet/floor is free of debris and spots	The carpet/floor is free of debris and spots
All pictures and furniture are clean/dust free	All pictures and furniture are clean/dust free
All electronics are clean and in working order	All electronics are clean and in working order
The lights are clean and in working order	The lights are clean and in working order
The room has a clean or neutral smell	The room has a clean or neutral smell
Room is free of any prior guest evidence (trash, drawers, clo fridge)	The guest belongings are neatly arranged
Broad steps to be taken to ensure appropriate cleaning	Broad steps to be taken to ensure appropriate cleaning
Remove all linen and rubbish from the room	Replace linen if assigned, otherwise make bed with current linen on bed
Disinfect and clean bedroom, bathroom, lanai and furniture	Replace soaps and amenities as needed

Make the bed or beds with fresh linen	Dust/Disinfect all surfaces and furniture
Return any guest room items to their correct locations (such as remotes, coffee maker, hair dryer, etc....)	Vacuum Carpet and Sweep Lanai Floor
Replenish guest room amenities such as soaps, coffee, paper products, etc....	Empty rubbish cans discard any rubbish through out the room
Ensure all electronics are in working order and report to be fix not	Release room as occupied clean
Vacuum Carpet and Sweep Lanai Floor	
Release room for use on HOTSOS device	

July 1, 2018 to June 30, 2022, Collective Bargaining Agreement

Section 52.10 A. Housekeepers shall be assigned no more than 15 rooms or credits during an eight (8) hour shift. Effective July 1, 2020, Housekeepers shall be assigned no more than 14 rooms or credits during an eight (8) hour shift.

* * * * *

D. The Employer will assign all rooms that have been occupied the prior night at the beginning of each day, except that the Employer may hold back up to fourteen (14) rooms per Hotel. This provision will not apply to rooms that are subject to renovation, maintenance or deep cleaning, and floor and/or wing closures, though such rooms will be assigned on the day of their release for occupancy.

52.11 Daily Room Cleaning. Due to the unique characteristics of a resort environment, the Hotel shall not implement any program or policy whereby guests' rooms are not cleaned after each and every night of their stay. This prohibits a program whereby guests receive a financial incentive to not have rooms cleaned daily. It does not prevent the Hotel from continuing, modifying or establishing a sustainable environmental program, such as a "green program," whereby guests are encouraged to re-use linens or terry, nor does it require the Hotel to have rooms cleaned where guests have indicated otherwise or that they wished to not be disturbed.

July 1, 2013 to June 30, 2018, Collective Bargaining Agreement

Section 52.10 A. Housekeepers shall be assigned no more than 15 rooms or credits during an eight (8) hour shift.

* * * * *

D. The Employer will assign all rooms that have been occupied the prior night at the beginning of each day, except that the Employer may hold back up to fourteen (14) rooms per Hotel. This provision will not apply to rooms that are subject to renovation, maintenance or deep cleaning, and floor and/or wing closures, though such rooms will be assigned on the day of their release for occupancy.

52.11 The Employer shall not adopt any new program to incentivize guests to forego daily room cleaning during their stay by offering guests a thing of value. This agreement does not set precedent regarding the Employer's right to institute such customer service programs. The Employer retains its position that it is within management rights to do so except as limited above; the Union retains its position that such programs cannot be implemented without the agreement of the Union

July 1, 2010 to June 30, 2013, Collective Bargaining Agreement

Section 52.10 A. Housekeepers shall be assigned no more than 15 rooms or credits during an eight (8) hour shift.

* * * * *

D. The Employer will assign all rooms that have been occupied the prior night at the beginning of each day, except that the Employer may hold back up to fourteen (14) rooms per Hotel. This provision will not apply to rooms that are subject to renovation, maintenance or deep cleaning, and floor and/or wing closures, though such rooms will be assigned on the day of their release for occupancy.

52.11 The Employer shall not adopt any new program to incentivize guests to forego daily room cleaning during their stay by offering guests a thing of value. This agreement does not set precedent regarding the Employer's right to institute such customer service programs. The Employer retains its position that it is within management rights to do so except as limited above; the Union retains its position that such programs cannot be implemented without the agreement of the Union.

July 1, 2006 to June 30, 2010, Collective Bargaining Agreement

Section 52.10 A. Housekeepers shall be assigned no more than 15 rooms or credits during an eight (8) hour shift.

* * * * *

D. Hyatt shall not change or move a Housekeeper I-Rooms employee's regularly assigned Section to avoid dropping or reducing rooms or credits in accordance with the Agreement, nor will Hyatt issue "IOU's" in lieu of dropping rooms in accordance with the Agreement.

[**Section 52.11 did not exist in the 2006 – 2010 CBA**]
