

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

# Advice Memorandum

DATE: October 27, 2009

TO : Dorothy L. Moore-Duncan, Regional Director  
Region 4

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Harrah's Chester  
Case 4-CA-36822

and

UNITE HERE Local 54 (Harrah's Chester)  
Case 4-CB-10344

These 8(a)(2) and (5) and 8(b)(1)(A) and (2) cases arise from the nationwide UNITE/HERE dispute and were submitted for advice on whether: (1) the Employer unlawfully repudiated its contract and refused to bargain with the Philadelphia Joint Board; (2) the Employer unlawfully recognized and entered into a collective-bargaining agreement with UNITE/HERE, Local 54; and (3) UNITE/HERE, Local 54 unlawfully obtained recognition from and entered into an agreement with the Employer.

In agreement with the Region, we conclude that there is no merit to any of these allegations. UNITE/HERE, and not the Philadelphia Joint Board, has been at all relevant times the designated collective-bargaining representative of the Employer's relevant bargaining unit employees, and could therefore lawfully appoint Local 54 as its agent to help service the bargaining unit.

## **FACTS**

Harrah's Chester, the Employer, currently operates a gaming casino in Chester, Pennsylvania, that was previously owned by Caesars. In 2004, Caesars had signed a neutrality and card check agreement with the Pennsylvania Gaming Council, a consortium of unions including, at the time, HERE, the Operating Engineers, and the Teamsters. In 2004, HERE merged with UNITE to become UNITE/HERE (hereafter, "UNITE/HERE" or "the International").

In 2007, the Employer acquired the Caesars facility and signed a neutrality and card check agreement with three unions: UNITE/HERE, the International Brotherhood of Teamsters, and the Laborers International Union of America. The agreement was signed by John Wilhelm on behalf of UNITE/HERE. In accordance with the neutrality agreement, the three unions conducted campaigns to organize a single wall-to-wall unit of the Employer's casino workers. An International representative conducted the campaign on behalf of UNITE/HERE. The International was assisted by the Philadelphia Joint Board (Joint Board), a UNITE/HERE affiliate that provided volunteers for the campaign. The Joint Board asserts that, at the time of the organizing campaign, it was understood that it would "have responsibility for" the Employer's facility, among other Pennsylvania gaming employers.

UNITE/HERE solicited and obtained authorization cards that solely named UNITE/HERE as the bargaining representative. A space on the card for the name of an affiliate was left blank. The two other unions also solicited cards for their unions, and upon obtaining a majority of cards the Joint Board, on behalf of the three unions, arranged for an independent verification of the cards. On February 28, 2007, the cards were independently verified by an official from the NAACP, who signed a form indicating that a majority of employees in the defined unit had authorized "the Unions" to be the representative. The top of the form was headed, "Harrah's Chester Casino & Racetrack Card Check Verification" and was signed by the Employer and each of the three unions. A representative of the International signed on behalf of UNITE/HERE.

The Employer commenced negotiations with the three unions for a single collective-bargaining agreement. Although the investigation did not reveal the roles of the other two unions during those negotiations, it is clear that an International representative conducted them on behalf of UNITE/HERE, along with a committee of approximately 40-50 UNITE/HERE employees. The parties held approximately 40 bargaining sessions. Of these, representatives of the Joint Board attended two.

The parties negotiated several drafts of an agreement. In each of these drafts, the recognition clause indicated that "[t]he Employer recognizes the Council as the

collective bargaining representative for the Employer's employees working under the Council's jurisdiction at the Employer's facility located at Harrah's Chester Facility and working in those job classifications listed in Exhibit 1." Exhibit 1 of the draft agreement listed over 40 job classifications, and each classification was assigned to one of the three unions. "The Council" itself is never defined in the agreement, and it apparently has no existence apart from the name assigned to the combination of the three unions for the purpose of their representation of the single bargaining unit of the Employer's employees. The Council has no officers or employees, nor anyone purporting to represent it during negotiations.

Although the Council is not defined in the agreement, both the cover and signature page refer to "The Chester Casino and Racetrack Workers Union Council." On both pages, the three unions are listed below the Council. On the cover, the UNITE/HERE entity is shown as "UNITE HERE! Philadelphia Joint Board," and on the signature page the signature line indicates "Philadelphia Joint Board, UNITE HERE!" According to the International, the Joint Board appears on the cover and signature pages of the agreement because the dues would be sent to the Joint Board, in accordance with the sample dues authorization form contained in the draft agreements. There is no signature line for the Council.

On May 10, 2008, the membership of the three unions convened for a ratification vote. The ratification ballot displayed the name of the Council at the top in large letters, with "Unite Here, Philadelphia Joint Board" and the other two unions below it, in smaller letters. The members in attendance overwhelmingly voted in favor of ratifying the contract. Although the membership ratified the agreement, it was never executed. The Employer apparently implemented the economic terms of the agreement, including remitting the applicable dues to the Joint Board, but the parties had remaining issues to resolve.

The investigation revealed that International representatives of UNITE/HERE serviced the unit, including conducting weekly employee meetings and handling most grievances. The Council appeared on the heading of the form used for all grievances processed during this period, with "Philadelphia Joint Board: UNITE HERE!" and the other

two unions appearing below. A Joint Board representative handled two grievances, and also signed a memorandum of agreement pertaining to a HERE health and welfare benefit. The Employer never signed that agreement.

Sometime around early February, 2009, the Joint Board announced its intent to disaffiliate from UNITE/HERE. As a result, the bargaining unit members of the negotiating committee voted to remain with UNITE/HERE and the UNITE/HERE International appointed Local 54 to replace the Joint Board.<sup>1</sup> On February 10, the Employer executed a revised draft of the negotiated collective bargaining agreement in which Local 54 appeared on the cover and signature pages in the place of the Joint Board. The recognition clause, as before, designated the Council as the employees' collective bargaining representative.

At present, International representatives continue to service the bargaining unit on a day-to-day basis and the membership dues remain the same. Local 54 obtained dues check-off authorization forms from the bargaining unit employees and the Employer has been remitting dues to the Local.

#### **ACTION**

We conclude that UNITE/HERE, and not the Philadelphia Joint Board, has been at all relevant times the designated collective-bargaining representative of the Employer's bargaining unit employees, and could therefore lawfully appoint Local 54 as its agent to help service the bargaining unit. The Region should therefore dismiss these allegations, absent withdrawal.

The investigation established, as between the International and the Joint Board, the International has at all times been the Section 9(a) representative of these employees. The International, and not the Joint Board, was a party to the 2007 neutrality/card check agreement with the Employer. The ensuing organizing campaign was conducted by an International representative. The authorization cards that the unit employees signed at that

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<sup>1</sup> Local 54 had been in existence for many years and was only affiliated with the Joint Board through their common affiliation with UNITE/HERE.

time referred to the International and made no reference to the Joint Board. Pursuant to the neutrality/card check agreement, and based on a card majority, an arbitrator certified "UNITE HERE" as one of the duly authorized bargaining representatives of Harrah's casino employees. Moreover, since that certification, the International has been servicing the unit on a day-to-day basis by holding employee meetings and handling grievances.

The evidence further supports the conclusion that the Joint Board has never been the 9(a) representative of the Employer's employees, but was merely designated by the International as an agent to collect dues and assist it with servicing the unit. The Joint Board has not provided any evidence demonstrating that it was the Section 9(a) representative other than the fact that its name appeared in the collective-bargaining agreement and on some other forms and meeting notifications. However, its appearance on those forms is consistent with the conclusion that the Joint Board's main function was to collect dues and assist the International with servicing the unit. Those references do not outweigh the overwhelming evidence that supports finding that the International is the bargaining representative.

As an agent of the International, when the Joint Board chose to disaffiliate from the International, the latter was entitled to designate Local 54 in its stead, and the cards obtained in February 2009 confirm that representative status. And, regardless of whether the International's agent was the Joint Board or Local 54, the International maintained continuity of representation throughout. As noted above, the International has continued servicing the unit on a day-to-day basis, as it has done consistently since the Employer granted recognition to the International in February 2007.

The fact that the recognition clause in the drafts and the final executed collective-bargaining agreement designate the Council as the collective-bargaining representative does not negate a finding that the International is the Section 9(a) representative. According to the International, the Council was merely a combination of the three international unions intended to facilitate their collective approach to the Employer for the purposes of negotiating both the neutrality/card check

and collective-bargaining agreements. The Council has no officers, board of directors, or place of business. The Council has no existence apart from its name as a combination of the three unions -- each of which obtained a majority of cards among the employees they were designated to represent. As such, the designation of the Council as the recognized union in the collective-bargaining agreement is not inconsistent with a conclusion that the International is the 9(a) representative.

Therefore, since the International has been and remains the appropriate Section 9(a) representative of the Employer's employees, the Employer and International, with Local 54 as its agent, were entitled to enter into a new collective-bargaining agreement. Accordingly, the Region should dismiss the 8(a)(2) and (5), and 8(b)(1)(A) and (2) allegations, absent withdrawal.

B. J. K.