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**Trump Marina Associates LLC d/b/a Trump Marina Hotel Casino and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO.** Cases 4-CA-35334, 4-CA-35395, and 4-RC-21278

September 30, 2010

DECISION, ORDER, AND DIRECTION OF  
SECOND ELECTION

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER  
AND HAYES

On February 17, 2009, the two sitting members of the Board issued a Decision, Order, and Direction of Second Election in this proceeding, which is reported at 353 NLRB 921.<sup>1</sup> Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>2</sup> Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the remaining member who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

and for the reasons stated in the decision reported at 353 NLRB 921 (2009), which is incorporated by reference.<sup>3</sup>

In incorporating the prior decision, we find no need to pass on "all of the other alleged 8(a)(1) violations" which were dismissed by the judge (above at 922). As a result, we amend the prior decision by eliminating the second paragraph of footnote 2 (above at 921), eliminating footnote 6 (above at 921), eliminating the first paragraph of footnote 8 (above at 922), and by revising the final paragraph of the decision (*id.*, second paragraph) to read as follows:

"Finally, because further findings that the Respondent violated Section 8(a)(1) would not materially change the remedy in this case and are not necessary to our conclusion that a second election is necessary, we decline to pass on the remaining exceptions filed by the General Counsel and the Charging Party.<sup>8</sup> Based on the violations and objectionable conduct that we have found, we agree with the judge's recommendation to set aside the election results for the reasons he stated."

Dated, Washington, D.C. September 30, 2010

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>3</sup> We find it unnecessary to rely on *Desert Springs Hospital Center*, 352 NLRB 112 (2008), as cited at 921 fn. 7 of the decision. Member Hayes finds no need to pass on the issue raised by the Respondent's exceptions to the finding of an unlawful interrogation by Supervisor Steven Salvey.