

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Continental Linen Services, Inc.

Employer

and

GR-7-CA-52296

GR-7-CA-52715

GR-7-CA-52798

Chicago & Midwest Regional
Joint Board, Workers United,
SEIU

Charging Party

CHICAGO MIDWEST'S BRIEF SUPPORTING EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE'S DECISION

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Table of Contents

| | |
|---|----|
| Introduction..... | 1 |
| Statement of Facts..... | 2 |
| Background..... | 2 |
| Chicago Midwest represented the unit employees..... | 4 |
| Argument..... | 6 |
| I. Chicago Midwest is the §9(a) representative..... | 6 |
| A. Chicago Midwest became the employees’ §9(a) representative by representing the employees..... | 6 |
| B. §10(b) bars Continental’s challenge to Chicago Midwest’s §9(a) status..... | 9 |
| C. Chicago Midwest retained its §9(a) status through the UNITE HERE split because it underwent no significant changes..... | 11 |
| II. The ALJ’s holding that Chicago Midwest was not a servicing agent should be disavowed because the matter was neither alleged in the complaint nor litigated..... | 13 |
| Conclusion..... | 14 |
| Certificate of Service..... | 15 |

Introduction

By the mid-2000s, Local 151 had relinquished to its parent union, Chicago & Midwest Regional Joint Board (“Chicago Midwest”), the local’s status as the Continental employees’ §9(a) representative. Local 151 had ceased functioning. Its nominal president, Barbara Lipsey, testified that she became a “nobody.”¹ By dealing only with Chicago Midwest, Continental effectively recognized that union. Chicago Midwest left UNITE HERE in 2009, but otherwise did not significantly change. It therefore retained its §9(a) status. After the UNITE HERE split, Continental denied plant access and refused to remit checked-off dues, to process grievances, and to furnish information. Continental therefore violated §8(a)(5).

Administrative Law Judge Paul Bogas decided that Local 151 sufficiently functioned so as to retain its §9(a) status and that Continental never recognized Chicago Midwest. He also decided that Chicago Midwest, at least after the UNITE HERE split, did not serve as Local 151’s servicing agent. The ALJ erred (1) by discounting the facts showing that Chicago Midwest was the §9(a) representative, (2) by

¹ Tr.160.

permitting Continental to challenge Chicago Midwest's §9(a) after it had recognized Chicago Midwest for more than six months, and (3) by finding that Chicago Midwest was never Local 151's servicing agent, because this issue was neither alleged in the complaint nor litigated by the parties.

Statement of Facts

Background

Since around 1960, Local 151, Laundry and Dry Cleaning International Union (LDCIU) was the §9(a) representative for a production unit Continental's Kalamazoo, MI commercial laundry. Barbara Lipsey was Local 151's president – a paid position – for many years, and Viola Smith and Ollie Walker also served as union officials. All were unit employees. Local 151 paid Bob Inman – a Teamsters business agent – to function as its servicing representative. He assisted with contract negotiations and grievance handling.²

In October 2002, LDCIU affiliated with UNITE, which represented many other commercial laundry workers around the country. Under the

² Decision, 2.

merger agreement “LDCIU and all of its affiliated Locals . . . bec[a]me permanently affiliated with UNITE.”³

More reorganizations followed. By February 2003, Local 151 affiliated with UNITE’s Chicago & Central States Joint Board. In May 2004, Chicago & Central States merged with UNITE’s Midwest Regional Joint Board to form Charging Party Chicago Midwest.⁴ In July 2004, UNITE merged with the Hotel Employees and Restaurant Employees International Union to form UNITE HERE. In March 2009, almost all of the former UNITE affiliates – including Chicago Midwest – left UNITE HERE to form Workers United, which soon affiliated with SEIU.⁵

The newly HERE-dominated UNITE HERE initially challenged the secession.⁶ But in July 2010, SEIU and UNITE HERE settled the dispute. In the settlement, UNITE HERE acknowledged that almost all

³ Decision 3; JX2.

⁴ Decision, 3.

⁵ Decision, 3, 5; JX24, p.2.

⁶ E.g., Decision, 6.

laundry employees – including those employed by Continental – stayed with Workers United.⁷

Chicago Midwest represented the unit employees.

By 2005, Local 151 did not function. Chicago Midwest was performing all representative functions. And Continental recognized Chicago Midwest.

Local 151 ceased functioning.

- Local 151 held no membership meetings.⁸
- It conducted no elections.⁹
- It has had neither bank accounts nor funds.¹⁰
- It retained only had one unpaid officer, Lipsey, who has functioned only as a steward.¹¹
- Smith and Walker left their offices and were not replaced.¹²

Chicago Midwest took over contract negotiations.

- Chicago Midwest representative Richard Monje led contract negotiations.¹³

⁷ Selected pages are attached hereto. The settlement was reached after the ALJ hearing closed. Chicago Midwest requests that the Board take administrative notice of the settlement.

⁸ Decision, 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

- Monje developed the bargaining proposals.¹⁴
- Monje devised the bargaining strategy.¹⁵
- Chicago Midwest representatives appointed employees to the bargaining committee.¹⁶
- Chicago Midwest staff conducted the ratification vote.¹⁷
- Monje signed the contract for the union.¹⁸
- Chicago Midwest paid negotiation expenses.¹⁹

Chicago Midwest took over contract administration.

- Chicago Midwest “administered the collective-bargaining agreement with the Respondent on a day-to-day basis....”²⁰
- Chicago Midwest “investigated, filed, and pursued grievances, met with employees at the plant, and met with the Respondent to address employee concerns and discuss the possible resolution of grievances.”²¹
- Chicago Midwest “eclipsed Lipsey’s role in the formal grievance process”; Lipsey provided informal assistance to unit employees in dealing with Continental, but, in the formal grievance procedure, “Lipsey will, at most, help

¹³ *Id.*

¹⁴ Tr. 61.

¹⁵ *Id.*

¹⁶ Tr. 154-155.

¹⁷ Tr. 62-63.

¹⁸ JX7, p.35.

¹⁹ Decision, 5.

²⁰ *Id.*

²¹ *Id.*

prepare the grievance before referring the matter to” Chicago Midwest representatives.²²

- Chicago Midwest paid contract administration expenses.²³

Continental recognized Chicago Midwest. As detailed above, Continental dealt practically exclusively with Chicago Midwest representatives, and only minimally with Local 151 representatives. It at no time questioned Chicago Midwest’s status – until after the 2009 UNITE HERE split.

Argument

I. Chicago Midwest is the §9(a) representative.

A. Chicago Midwest became the employees’ §9(a) representative by representing the employees.

Chicago Midwest performed all representative functions. It is therefore the §9(a) representative.

An employer recognizes a union by bargaining with it. The Seventh Circuit observed that “[b]argaining with a union is, of course, one of the ways an employer can implicitly recognize a union.”²⁴ The court cited

²² Decision, 4.

²³ Decision, 5.

²⁴ *Operating Engineers, Local 150 v. NLRB*, 361 F.3d 395, 400 (7th Cir. 2004), affirming *Terracon*, 339 NLRB 221 (2003) (no implicit recognition because employer’s discussions with union did not amount to bargaining).

Lyon & Ryan Ford,²⁵ in which a union demanded recognition as a previously unorganized unit's §9(a) representative. There, the employer implicitly recognized the union by its "acceptance and examination of the proposed contract, ... meeting with the Union on three separate occasions, ... [and] discussing and negotiating with the Union over the terms of the proposed contract...."²⁶

In *Duquesne Light Co.*, as here, a new §9(a) representative replaced the historically recognized representative. Several local unions, as joint representatives, replaced the originally certified international as the employees §9(a) representative because the employer dealt with the locals, rather than with the international. The Board amended the certification to substitute the locals for the international because the locals had assumed all representational functions, although over 30 years, a much greater period of time than at issue here.²⁷

But in a number of cases, over shorter periods, unions attained §9(a) status – although jointly with the originally recognized unions – because

²⁵ 246 NLRB 1 (1979), enfd. 647 F.2d 745 (7th Cir. 1981), cert. denied 454 U.S. 894 (1981).

²⁶ 246 NLRB at 4; see also discussion of *Lyon & Ryan Ford* in *Operating Engineers*, 361 F.3d at 401.

²⁷ 248 NLRB 1271, 1273 (1980).

the employers dealt with them. In *Kentucky Power Co.*, the Board originally certified the international. Over only four years – the same amount of time at issue here (2005-09) – the employer dealt with a local ostensibly as the international’s agent, and the local signed two contracts as the international’s agent. A system council – a conglomeration of locals – administered the contracts. The system council’s constituent locals merged to form a new local. The Board amended a certification to include the new local as, jointly with the international, the employees’ §9(a) representative “in order to reflect the course of dealing between the parties.”²⁸ See also *BASF* (international, with originally certified local, the joint §9(a) representative because international participated in contract negotiations and administration)²⁹ and *American Medical Response* (employer unlawfully recognized international, but local also liable because its maintenance and enforcement of the contract demonstrated that it and the international were joint representatives).³⁰

²⁸ 213 NLRB 730, 732 (1974).

²⁹ 276 NLRB 498, 505 (1985).

³⁰ 335 NLRB 1176, 1178-79 (2001).

B. §10(b) bars Continental’s challenge to Chicago Midwest’s §9(a) status.

Assuming for argument’s sake that Continental’s recognition of Chicago Midwest was somehow unlawful, Continental waited too long to challenge its §9(a) status. Section 10(b) requires a charge to be filed within six months of the commission of an unfair labor practice. Therefore, once the §10(b) period expires, nobody can challenge a recognition for lack of majority support.

The six month period started running when Continental knew, or should have known, that Chicago Midwest was exercising a full range of bargaining responsibilities typical of a §9(a) representative, rather than a restricted range typical of an agent.³¹ Once a party is “on notice of facts that reasonably engender[] suspicion,”³² that party must “act to

³¹ See *Goad Co.*, 333 NLRB 677 (2001) (employer did not violate §8(a)(5) by refusing to bargain with union purporting to be a servicing agent when in fact union sought to perform all representative functions).

³² *Amalgamated Transit Union, Local Union No. 1433 (Phoenix Transit System)*, 335 NLRB 1263, fn.2 (2001) (employee filed dfr charge late; six month period, during which employee should have filed charge, started when employee had knowledge engendering suspicion that union violated dfr).

establish or controvert” that suspicion.³³ The obligation to act often entails questioning the other party.³⁴

Continental challenged Chicago Midwest’s §9(a) status by, on March 17, 2009, demanding information to assuage its alleged confusion concerning its employees’ representative’s identity.³⁵ By October 2008, six months before the challenge, Continental had been recognizing Chicago Midwest for over three years.

Here, Continental should have suspected that Chicago Midwest was exercising §9(a) authority well before 2008. Chicago Midwest staff concluded a contract in 2005 and had been bargaining with Continental over daily problems also since 2005. Continental then had the option of clarifying Chicago Midwest’s status,³⁶ inquiring what limitations, if any,

³³ *Id.*, 1272.

³⁴ *Id.* Compare, *Morgan's Holiday Markets*, 333 NLRB 837, 849 (2001), where a union diligently sought information concerning a suspected violation.

³⁵ Decision, 6.

³⁶ *Newell Porcelain Co.*, 307 NLRB 877 (1992) (employer did not violate §8(a)(5) by refusing to bargain with international when international, to which §9(a) local had recently affiliated, failed to clarify whether international was the §9(a) representative or the local’s agent); *SEIU Local 250 (Assisted Care)*, 32-CB-5400 (Advice 6/28/02), text accompanying fn.24 (employer questioned whether unions “maintain[ed] true principal agent relationships; employer was ultimately unconvinced by unions’ assertions, employer refused to deal with any union other than the historic §9(a) representative). Compare *Association of Apartment Owners of the Royal Iolani*, 292 NLRB 107, 108 (1988) (when employer was confused about whether it should bargain with originally certified §9(a) representative or with

restricted its authority, and declining to bargain with Chicago Midwest if it determined that Chicago Midwest was attempting to function as a §9(a) representative.³⁷ Instead, Continental continued to recognize Chicago Midwest. By March 2009, Continental could no longer challenge Chicago Midwest's §9(a) status.

Section 10(b) is not a mere procedural technicality. As time passes, workers become attached to the union in which they're actually involved and that actually represents them. By, over time, accepting Chicago Midwest's representation, "the unit employees also have sanctioned [Chicago Midwest's] ... established status ... as their bargaining representative...."³⁸

C. Chicago Midwest retained its §9(a) status through the UNITE HERE split because it underwent no significant changes.

Continental's obligation to bargain with Chicago Midwest continued despite the March 2009 reorganization. An employer's obligation to bargain continues post-reorganization unless the reorganization results

affiliated union asserting that it now represented the employees because of a unit transfer, the employer "was under a duty, at the very least, of ascertaining whether the 'transfer' of jurisdiction to Local 555 had ever been consummated").

³⁷ *Goad*, 333 NLRB 677 (employer did not violate §8(a)(5) by refusing to bargain with union to which §9(a) representative attempted to transfer its §9(a) status).

³⁸ *Duquesne Light Co.*, 248 NLRB at 1273.

in “changes [that] are sufficiently dramatic to alter the union’s identity....”³⁹ Where “the changes are so great that a new organization comes into being,” that organization “should be required to establish its status as a bargaining representative” as if it were newly organizing the employees.⁴⁰ In other words, a drastically changed organization must establish anew its majority support through an election or otherwise.

Continuity is clearest when a union remains completely intact after affiliating with – or disaffiliating from – a larger organization.⁴¹ Here, the reorganization caused no changes in Chicago Midwest. Most significantly, their officers remain the same. And Chicago Midwest

³⁹ *NLRB v. Financial Institution Employees*, 475 U.S. 192, 206 (1986).

⁴⁰ *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 147 (2007), *enfd.* 550 F.3d 1183 (D.C. Cir. 2008).

⁴¹ *RTP Co.*, 323 NLRB 15 (1997) (formerly independent union sufficiently retained continuity after becoming UAW local when executive board remained largely unchanged, local retained its funds, and its officers “continue to be responsible ... for the day-to-day contract administration and grievance processing as well as the formulation of proposals for, and the negotiation of, any successor agreement”); *New London Convalescent Home*, 281 NLRB 893, 895 (1986), *enfd.* 815 F.2d 517 (2d Cir. 1987) (after National Union of Hospital and Health Care Employees disaffiliated from the RWDSU, in the certified union, an NUHHCE affiliate, all “officers and staff ... remained in the same capacities,” affiliate representatives continued to serve on the NUHHCE executive board, the affiliate’s jurisdiction remained the same, “methods for negotiation of collective-bargaining agreements and their administration by the” affiliate remained the same, etc.); *Avante at Boca Raton*, 334 NLRB 381 (2001) (local union retained continuity when its parent union affiliated with an international union).

representatives continue to assist the same shop floor leadership in negotiating and administering contracts.

II. The ALJ's holding that Chicago Midwest was not a servicing agent should be disavowed because the matter was neither alleged in the complaint nor litigated.

The ALJ held that Chicago Midwest “was [not] an agent of the collective-bargaining representative for purposes of compliance with any terms or conditions of the collective-bargaining agreement.”⁴² That Chicago Midwest was a servicing agent was neither alleged in the complaint nor at the hearing. In fact, Continental, in its brief to the ALJ, emphasized that this matter was not at issue. Continental wrote that its “alleged obligation to bargain with the Joint Board cannot be established by any purported agency relationship with Local 151. ...[T]he Joint Board is alleging that it has a direct and exclusive 9(a) relationship, not an assumed bargaining relationship as the agent of Local 151.”⁴³ The ALJ therefore erred by holding that Chicago Midwest was not a servicing agent.

⁴² Decision, 15.

⁴³ Post-Hearing Brief of Respondent Continental Linen Services, Inc., p.35.

Conclusion

For the reasons set forth above, Continental violated §8(a)(5).

Respectfully submitted,

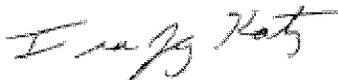


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Dated: November 11, 2010

Certificate of Service

I certify that Chicago Midwest's exceptions and supporting brief were served this day by electronic mail on Counsel for General Counsel A. Bradley Howell and on Counsel for Continental David M. Buday.



Ira Jay Katz
Counsel for Chicago Midwest

Dated: November 11, 2010

SETTLEMENT AGREEMENT

CONFIDENTIAL

UNITE HERE, SERVICE EMPLOYEES INTERNATIONAL UNION AND WORKERS UNITED

Contents

| | |
|---|-----------|
| I. PREAMBLE AND PARTIES | 3 |
| II. JURISDICTION IN THE UNITED STATES, PUERTO RICO AND CANADA | 3 |
| A. Future Jurisdiction | 3 |
| B. Current Units | 6 |
| C. Disputed Units | 10 |
| III. THE TRANSFER PROCESS AND RESOLUTION OF FUTURE JURISDICTION | 11 |
| A. Transfer of Current Units | 11 |
| B. Resolution of Future Jurisdiction | 13 |
| C. Pledge of Fair Representation | 13 |
| IV. ALLOCATION OF ASSETS and LIABILITIES | 14 |
| A. Escrowed Dues | 14 |
| B. Specific Pending Lawsuits | 14 |
| C. Outstanding Loan | 15 |
| D. Retiree Health Benefits and Life Insurance for UNITE HERE officer and staff retirees under the UH Staff Health Benefits Plan; Canadian Staff Plans | 15 |
| E. National Retirement Fund (NRF) | 17 |
| F. UH Staff Pension Fund | 17 |
| G. ILGWU Death Benefit Fund | 18 |
| H. WU/SEIU Joint Boards | 20 |
| I. UH and ILGWU Affiliates Assistance Funds | 21 |
| J. Vacation Pay | 21 |
| K. 275 7 th Avenue Building | 21 |
| L. Pooled Investment Fund | 24 |
| M. Amalgamated Bank | 25 |
| N. Undisclosed Assets | 30 |
| V. OUTSTANDING LITIGATION | 30 |
| A. NLRB matters: | 30 |
| B. Local 24 v. Chicago and Midwest Regional Joint Board | 31 |
| C. Clifford and Worhaug v Dagg | 31 |
| D. Saskatchewan | 31 |
| E. Puerto Rico Ethics Charges | 31 |
| F. <i>Garren v. First Union</i> | 32 |
| G. Dismissal of SDNY Cases | 32 |
| H. Dismissal of Philadelphia Cases | 34 |
| VI. NO INTERFERENCE COMMITMENT | 35 |
| A. No raiding | 36 |
| C. Indirect Action | 36 |
| D. NUHW | 36 |
| E. UAW/TWU/SEIU gaming council | 37 |

I. PREAMBLE AND PARTIES

UNITE HERE (UH), Service Employees International Union (SEIU) and Workers United (WU), an affiliate of SEIU (WU and SEIU collectively referred to herein as "WU/SEIU"), desire to resolve all their differences associated with the creation of Workers United and any and all related events to date (hereinafter "the Dispute"), except those in the Province of Ontario, Canada (outside of the Hull area). After thorough deliberations, the undersigned have reached a mutually satisfactory agreement that represents a global settlement of the Dispute. It is their intent that this settlement agreement will allow them to move forward to organize and mobilize workers to build the bargaining and political strength needed to win for working families in today's economy and to finally and fully resolve the Dispute.

The term "parties" as used in this Settlement Agreement means UNITE HERE, Workers United and SEIU and does not include any other entity or person. International Ladies Garment Workers Union ("ILGWU") is made an additional party to this Agreement for the purposes of carrying out specific provisions of the Agreement. The ILGWU is not a party to this Agreement for any purposes other than those specified.

II. JURISDICTION IN THE UNITED STATES, PUERTO RICO AND CANADA

The parties have analyzed the current bargaining units and future jurisdiction of each union according to the principle of building industry power for workers while respecting certain historical conditions. Accordingly they agree as follows:

A. Future Jurisdiction

1. HOTELS IN THE US/PUERTO RICO

UH shall have exclusive jurisdiction over future organizing of hotel workers

2. GAMING in the US/Puerto Rico.

UH shall have exclusive jurisdiction over future organizing of workers in its traditional jurisdiction in gaming (including racinos and video/slots), except that SEIU may organize security and parimutuels, as well as contracted-out cleaning if not in conflict with UH.

SEIU shall have exclusive jurisdiction over its traditional jurisdiction in racetracks such as cleaning, security and parimutuels.

3. FOOD SERVICE IN THE US/PUERTO RICO

Exclusive Jurisdiction (except as noted) over future organizing shall be determined as follows:

- a. Healthcare: WU/SEIU
- b. Prisons: WU/SEIU
- c. Public Institutions (except education): WU/SEIU
- d. Business & Industry: UH
- e. Parks & Recreation: UH
- f. Sports, Entertainment, & Convention Centers: UH
- g. K-12: Open to organizing by either UH or WU/SEIU including bundled services, subject to the “No-Interference Commitment” (Article VI of this Settlement Agreement); i.e., neither union will seek to represent workers already represented by the other.
- h. Higher Ed: Open to organizing by either UH or WU/SEIU, including bundled services, subject to the “No-Interference Commitment” (Article VI of this Settlement Agreement); i.e., neither union will seek to represent workers already represented by the other.

4. LAUNDRIES IN THE US/PUERTO RICO

WU/SEIU shall have exclusive jurisdiction over future organizing of workers in laundries, except that UH shall have exclusive organizing jurisdiction in Nevada and in the States of Massachusetts, Rhode Island, New Hampshire, Vermont and Maine.

3. FOOD SERVICE IN THE US/PUERTO RICO

All units of food service employees, not including employees of free-standing catering and restaurant employers, represented by any affiliate of UNITE HERE as of March 1, 2009 shall be transferred to or retained by UNITE HERE (and/or its affiliates as it directs), except units which shall be (1) transferred to or retained by WU/SEIU or their affiliates as directed by them as listed in Schedule D-1, (2) subject to resolution pursuant to a pending RC petition before the National Labor Relations Board (NLRB) as listed in Schedule D-2, or (3) subject to mediation and/or arbitration pursuant to Article II, Section C as listed in Schedule D-3. The Parties shall withdraw any unfair labor practice charges that block any of the elections for units in Schedule D-4 and shall not re-file those charges or any other charges, provided that a party may maintain or file charges as to which a Request to Proceed will be honored by the NLRB if the Party simultaneously files a Request to Proceed despite the pendency of the charges. If the NLRB refuses to honor the Request to Proceed with respect to charges necessary to effectuate the Parties' agreement in Article IV, Section A with respect to escrowed dues, then the charges shall be withdrawn immediately upon notice of such refusal and the Party filing the representation petition shall indemnify the charging Party for any escrowed dues to which the charging Party is entitled under this Agreement that are not recovered from the employer.

4. LAUNDRIES IN THE US/PUERTO RICO

All units of laundry employees represented by any affiliate of UNITE HERE as of March 1, 2009 shall be retained by or transferred to Workers United/SEIU, except for the units listed in Schedule E-1, which shall be retained by UNITE HERE or its affiliates. The laundries to be transferred to Workers United/SEIU are set forth in Schedule E-2.

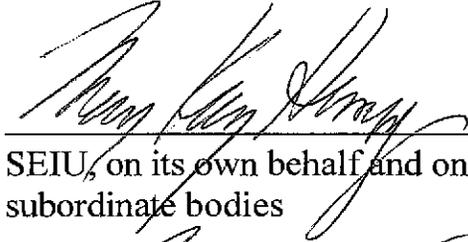
5. MANUFACTURING, NON-AIRPORT RETAIL and DISTRIBUTION IN THE US/PUERTO RICO

necessary to enable the enforcement of the provisions of this Agreement. The Parties agree that the obligations set forth herein shall be binding on the Parties and all of their subordinate bodies and affiliates. Accordingly, the Parties agree to sign this Agreement on behalf of the Parties, their officers and representatives; on behalf of their affiliates, including locals and joint boards; and on behalf of their affiliates' officers and representatives.

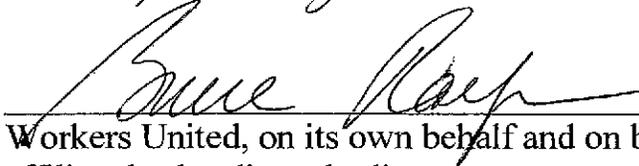
E. Confidentiality

While the Parties understand that the terms of the Settlement Agreement shall be disclosed as necessary to effectuate their implementation, they commit to maintaining the confidentiality of this resolution of internal union affairs and shall not provide this document to the public or to others not referenced above, except by mutual agreement.

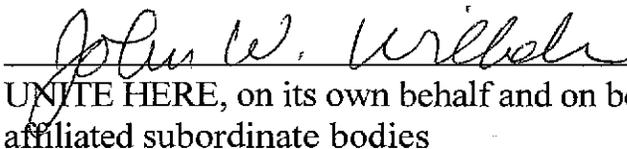
Signed by:



SEIU, on its own behalf and on behalf of all its locals and affiliated subordinate bodies



Workers United, on its own behalf and on behalf of all its locals and affiliated subordinate bodies



UNITE HERE, on its own behalf and on behalf of all its locals and affiliated subordinate bodies

International Ladies Garment Workers Union (ILGWU)

Effective 7/20/10

necessary to enable the enforcement of the provisions of this Agreement. The Parties agree that the obligations set forth herein shall be binding on the Parties and all of their subordinate bodies and affiliates. Accordingly, the Parties agree to sign this Agreement on behalf of the Parties, their officers and representatives; on behalf of their affiliates, including locals and joint boards; and on behalf of their affiliates' officers and representatives.

E. Confidentiality

While the Parties understand that the terms of the Settlement Agreement shall be disclosed as necessary to effectuate their implementation, they commit to maintaining the confidentiality of this resolution of internal union affairs and shall not provide this document to the public or to others not referenced above, except by mutual agreement.

Signed by:

SEIU, on its own behalf and on behalf of all its locals and affiliated subordinate bodies

Workers United, on its own behalf and on behalf of all its locals and affiliated subordinate bodies

UNITE HERE, on its own behalf and on behalf of all its locals and affiliated subordinate bodies



International Ladies Garment Workers Union (ILGWU)

Schedule E for LAUNDRIES in the US/Puerto Rico

1. The following units shall be retained by UNITE HERE or its affiliates as it directs:

| | | |
|--|-----------------|----|
| Churchill Linen Service, Inc. | Brockton | MA |
| Ameripride Linen & Apparel Service/ Maintenances | Worcester | MA |
| Ameripride Linen & Apparel Services / Rte Sales | Worcester | MA |
| Aramark Uniform Services | So. Lawrence | MA |
| Crown Linen Service | S. Boston | MA |
| Morgan Services, Inc. | Boston | MA |
| Purity Services Inc. | New Bedford, | MA |
| ANGELICA | Worcester | MA |
| AL PHILLIPS CLEANERS INC | LAS VEGAS | NV |
| BRADY LINEN SERVICES LLC | NORTH LAS VEGAS | NV |
| G&K SERVICES | LAS VEGAS | NV |
| MISSION INDUSTRIES OF NEVADA Plant #10 | LAS VEGAS | NV |
| MISSION LINEN - PLANT #28 | LAS VEGAS | NV |
| MISSION LINEN - PLANT #44 | N. LAS VEGAS | NV |
| MISSION LINEN - PLANT #50 | N. LAS VEGAS | NV |
| PARBAL CORP D/B/A PPE LAUNDRY | N. LAS VEGAS | NV |

2. The following units shall be transferred to Workers United/SEIU or their affiliates as they direct.

| | | |
|--|-----------|----|
| Angelica - Phoenix | Phoenix | AZ |
| Aramark - Phoenix | Phoenix | AZ |
| Sunstone Hotel Properties: Textile Care Services | Rochester | MN |
| ANGELICA | Houston | TX |
| Alsco | Spokane | WA |