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**Bally's Park Place Inc., d/b/a Bally's Atlantic City and International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO.** Cases 4-CA-36109 and 4-RC-21286

November 30, 2010

DECISION, CERTIFICATION OF REPRESENTATIVE, AND NOTICE TO SHOW CAUSE

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

On June 27, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 352 NLRB 768.<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 consolidated these proceedings and delegated its authority in both proceedings to a three-member panel.<sup>2</sup>

<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 decisions. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Member not assigned to the panel had the opportunity to participate in the adjudication of this case prior to the issuance of this decision.

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. The Board's June 27 decision, above, states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation proceeding. The prior proceeding, however, was also a two-member decision and we do not give it preclusive effect.

We have considered the postelection representation issues raised by the Respondent. The Board has reviewed the record in light of the exceptions and brief, and has adopted the administrative law judge's findings and recommendations<sup>3</sup> to the extent and for the reasons stated in the April 11, 2008 Decision and Certification of Representative,<sup>4</sup> which is incorporated herein by reference.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time dealers, keno and simulcast employees employed by the Employer at its Park Place and The Boardwalk, Atlantic City, New Jersey facility, excluding all other employees, cashiers, pit clerks, clerical employees, engineers, guards and supervisors as defined in the Act.

NOTICE TO SHOW CAUSE

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although the Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible

<sup>3</sup> The judge was sitting as a hearing officer in the representation proceeding.

We affirm the judge's finding that the Employer failed to carry its burden of proving that the alleged threats addressed to Joseph Wanek could have affected the results of the election given the limited evidence of dissemination, the large size of the unit, and the substantial margin of victory. In doing so, we do not rely on the judge's characterization of the views of "the majority of the Board" or any other aspect of his reasoning in note 27.

<sup>4</sup> 352 NLRB 316.

that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

1. The General Counsel is granted leave to amend the complaint on or before December 10, 2010 to conform with the current state of the evidence.

2. The Respondent's answer to the amended complaint is due on or before December 24, 2010.

3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before December 31, 2010 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the General Counsel's Motion

for Summary Judgment. Any briefs or statements in support of the motion shall be filed by the same date.

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

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD