

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**ACE HOTEL NEW YORK
Employer**

and

CASE NO. 02-RC-071384

**NEW YORK HOTEL & MOTEL
TRADES COUNCIL
Petitioner**

and

**UNITED ASSOCIATION OF WORKERS
OF AMERICA, LOCAL 528, affiliated with NOITU-IUJAT
Intervenor**

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record¹ in this proceeding, it is found that:

1. At the hearing herein, Intervenor sought to call witnesses, whose counsel contended would support its argument that the manner in which cards were solicited caused confusion among voters as to the identity of the labor organization seeking to represent them. In support of this argument, Intervenor indicated it was prepared to call witnesses who would testify that individuals soliciting cards said they were with Local 6, while the Petition was in fact was filed by the New York Hotel & Motel Trades Council, the Petitioner herein. Counsel for the Employer argued that if there were “genuine issues” among the unit employees as to the unions appearing on the ballot, it would be appropriate to resolve that issue prior to the election. Petitioner argued that showing of interest arguments are not appropriately the subject of a hearing, and if there had been any confusion, that issue should be appropriately raised as an objection. After hearing argument from all parties, the Hearing Officer ruled that evidence sought to be admitted by Intervenor was not relevant in a pre-election hearing. I find that the Hearing Officer’s rulings are correct, and are free from prejudicial error. The Board explained in *In Re River City Elevators, Inc.*, 339 NLRB No. 82 (2003), that “Congress has entrusted the Board with a wide degree of discretion

¹ Petitioner's post-hearing motion to correct the transcript is hereby granted and Intervenor's request to correct its name is also granted. The briefs submitted by the parties were duly considered. In that regard, the Intervenor's reliance on *CCI Construction Co., Inc.*, 326 NLRB 1319 (1998) is inapposite, as that case dealt with “confusion” among union business agents, not employees. Further, the servicing of a collective-bargaining agreement is an internal union matter, and therefore, irrelevant. It is well-settled that a union may assign bargaining to an undisclosed local and this is an internal matter outside the purview of the Board. *Gemex Corporation*, 120 NLRB 46 (1958).

in establishing the procedures and safeguards necessary to ensure employees' free choice in a Board election. *NLRB v. A. J. Tower Co.*, 329 U.S. 324, 330-331 (1946). The Board's showing-of-interest requirement represents an exercise of that discretion. Its purpose is to determine initially whether employee sentiment warrants the expenditure of Board resources required to hold an election.

Gaylord Bag Co., 313 NLRB 306, 306-307 (1993). It is an intra-agency administrative determination, and, as such, is not litigable by the parties. See, e.g., *O. D. Jennings & Co.*, 68 NLRB 516, 517-518 (1946).” This sound and consistent Board policy was appropriately invoked by the Hearing Officer in this instance. Even if Intervenor is raising some issue (i.e. confusion”) which does not go to the validity of the showing of interest, I agree that that issue is appropriately raised as an objection to the election. Clearly the pre-election campaigns of the parties have not been completed and the issues of who the Petitioner and the Intervenor are, and what the benefits of selecting either of them, or neither labor organization, can be fully explicated during the pre-election campaigns. Should confusion still exist, why there is such confusion, and whether this confusion affected the laboratory conditions are appropriately part of the post-election objection process. Therefore, the Hearing Officer’s rulings hereby are affirmed.

2. The parties stipulated and I find that Ace Hotel New York (the Employer), a New York corporation, with an office and place of business located at 20 West 29th Street , New York, New York, the only facility involved herein, provides room accommodations to guests. Annually, in the course and conduct of its business operations, the Employer derives gross revenues in excess of

confidential employees, clerical employees, security employees, and managers, and professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by Regional Director, Region 2, among the employees in the unit found appropriate at the time³ and place set forth in the notice of election⁴ to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the direction of election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof

³ Pursuant to Section 103.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this decision.

⁴ The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

\$500,000 and purchases goods and supplies valued in excess of \$5,000 directly from points located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that New York Hotel & Motel Trades Council (Petitioner), is a labor organization within the meaning of Section 2(5) of the Act, as amended.

The parties stipulated and I find that United Association of Workers of America, Local 528 (Intervenor), is a labor organization within the meaning of Section 2(5) of the Act, as amended.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) of the Act.²

5. The parties stipulated that the following unit is an appropriate unit for collective bargaining, and thus I find that unit is appropriate for the purposes of collective bargaining:

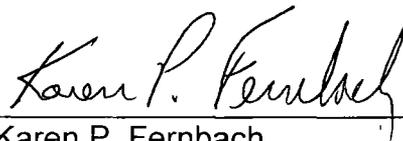
INCLUDED: All full-time and regular part-time maintenance employees, housekeeping employees, and guest service attendants employed by the Employer at its facility located at 20 West 29th Street, New York, NY.

EXCLUDED: All other employees, including Housing Development Corporation employees (in connection with services provided solely to the residential portion of the , food and beverage employees, reservations employees, front desk employees,

² The parties stipulated that while there has been a collective-bargaining relationship between Intervenor and the Employer, there is no contract barring the processing of this petition.

and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁵ Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by either, New York Hotel & Motel Trades Council or, United Association of Workers of America, Local 528, affiliated with NOITU-IUJAT or, neither of them.⁶

Dated at New York, New York,
February 3, 2012



Karen P. Fernbach
Regional Director, Region 2
National Labor Relations Board
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⁵ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **February 10, 2012**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

⁶ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **February 17, 2012**.