NOT TO BE INCLUDED
IN BOUND VOLUMES

PHG
Bethlehem, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SANDS BETHWORKS GAMING, LLC
d/b/a SANDS CASINO RESORT BETHLEHEM
Employer

and

Case 4-RC-21833

LAW ENFORCEMENT EMPLOYEES
BENEVOLENT ASSOCIATION
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held July 21, 2011, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The corrected tally of ballots shows 51 for and 35 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions[1] and briefs, has adopted the hearing officer's findings[2] and recommendations,[3] and finds that a certification of representative should be issued.

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[1] In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the Employer's Objections 2 and 5, and the portion of Objection 3 involving an alleged promise of a position as union membership coordinator.

[2] The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Law Enforcement Employees Benevolent Association, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

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[3] Although we agree that the evidence the Employer sought to adduce in support of Objection 1 was properly rejected by the hearing officer, we find that even considering the rejected evidence in the light most favorable to the Employer, that evidence would not have been sufficient to warrant a finding that the Petitioner was indirectly affiliated with United Steelworkers Local 2599 and thereby disqualified from representing the Employer's employees under Sec. 9(b)(3) of the Act. The proffered evidence would not establish that the Petitioner was materially dependent on United Steelworkers Local 2599 or had a lack of freedom and independence in formulating its own policies and deciding its own course of action. *Wells Fargo Guard Services,* 236 NLRB 1196, 1197 (1978); *Magnavox Co.*, 97 NLRB 1111, 1113 (1952). The rejected evidence shows, at most, comity, mutual sympathy or common purpose, and does not amount to indirect affiliation between the Petitioner and United Steelworkers Local 2599 within the meaning of Sec. 9(b)(3) of the Act. *International Harvester Co.*, 81 NLRB 374, 376 (1949). Accordingly, we adopt the hearing officer's recommendation that Objection 1 be overruled.

In adopting the hearing officer's recommendation that Objection 3 be overruled, we find it unnecessary to pass on whether the hearing officer erred in identifying which, and how many, employees actually received and used the baseball tickets provided by the Petitioner. Even if the facts are as alleged by the Employer, and two employees, rather than one, actually used the tickets, the Petitioner's conduct still would not warrant setting aside the election. Although the tickets were valuable to those who used them, only three employees, in a unit of 92, had possession of the tickets, only two actually used the tickets, and the Petitioner won the election by 16 votes. Thus, the tickets were not received by a sufficient number of employees to affect the results. No conditions were placed on who could receive the tickets, and receipt of the tickets was not in any way contingent on union support. Moreover, the tickets were distributed about 9 weeks before the election, and would not likely be perceived as being given in return for union support. Under these circumstances, the tickets were insufficient to cause reasonable employees to feel constrained to support or vote for the Petitioner. Even considered cumulatively, the baseball tickets and the observer's dinner paid for by the Petitioner (also alleged to be objectionable) were not received by a sufficient number of employees to affect the results of the election. Accordingly, we adopt the hearing officer's recommendation to overrule Objection 3.

All full-time and regular part-time security guards employed by the Employer at its 77 Sands Boulevard facility, excluding the locksmith, all other employees, and supervisors as defined in the Act.

Dated, Washington, D.C., February 10, 2012.

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD