

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

STAMFORD HOSPITALITY, LP,
d/b/a STAMFORD PLAZA HOTEL AND
CONFERENCE CENTER, LP

Employer ¹

and

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 371

Petitioner

Case No. 34-RC-080390

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of all full-time and regular part-time service and maintenance employees employed by the Employer at its Stamford, Connecticut hotel facility. Petitioner and the Employer agree that the above-described employees should be included in the unit, and that the unit should exclude banquet employees, clerical employees, all other employees, and guards, professional employees, and supervisors as defined in the Act.

Notwithstanding the agreement on the appropriate inclusions and exclusions from the petitioned-for unit, the Employer claims that the petition must be dismissed because certain of the petitioned-for service and maintenance employees are jointly employed by the Employer and un-named subcontractors who are not parties to this case, while certain other unidentified employees are employed solely by the Employer. However, no direct evidence was proffered by the Employer in support of its joint employer claim. Instead, the Employer points to the unfair labor practice complaint currently pending before Administrative Law Judge Steven Fish in Case No. 34-CA-13031, as well as a recent "Ruling and Order" issued on March 22, 2012 (herein

¹ The Employer's name appears as stipulated at the hearing.

referred to as the March 22 Order) by the U. S. District Court for the District of Connecticut on the 10(j) petition filed in the matter of *Kreisberg v. Stamford Plaza Hotel and Conference Center L.P.*, Case No. 3:12cv104, 2012 U.S. Dist. LEXIS 39264 (3/22/12). Alternatively, the Employer argues that the petition should be blocked pending the ALJ and Board decisions in Case No. 34-CA-13031.

According to the Employer, prior to the issuance of the March 22 Order, certain of the petitioned-for service and maintenance employees had been subcontracted, the legality of which is currently pending before ALJ Fish. Although the Employer acknowledges that the previously subcontracted employees were restored to its payroll in accordance with the March 22 Order, it claims that it only did so in order to be in compliance pending appeal. The Employer also relies upon the following stipulation reached with the Petitioner at the hearing: “. . . before the Employer complied with the district court order, the employees at issue in the district court case were jointly employed by the Employer and the respective contractors described in that case.” Citing *Oakwood Care Center*, 343 NLRB 659 (2004), the Employer asserts that the petitioned-for unit combines employees who are jointly employed by the Employer and subcontractors, with employees who are employed solely by the Employer, which would improperly compel the formation of a multi-employer unit without the consent of all parties.

The Employer’s claims are meritless. There is no record evidence showing that, since the subcontracted employees were restored to the Employer’s payroll pursuant to the March 22 Order, those employees are jointly employed by the Employer and other unidentified subcontractors. Moreover, the Employer’s claims are inherently contrary to the March 22 Order, in which the District Court found reasonable cause to believe that the Employer terminated certain service and maintenance employees and subcontracted their work in order to avoid the Petitioner’s organizing effort.² Because the District Court also found that the Petitioner’s organizing drive had been “frozen” by the Employer’s termination and subcontracting scheme, and that the Employer had “structured its present subcontracting arrangements so as to continue thwarting

² The District Court referred to the service employees as “housekeeping” employees.

unionization efforts,” the Employer was ordered by the District Court to restore the *status quo ante* by offering 28 named service and maintenance employees immediate reinstatement to their former positions, and to refrain from “subcontracting their jobs” because of their union activities.

Clearly, the District Court’s restoration of the *status quo ante* contemplated the employment arrangement that existed prior to the subcontracting, i.e., employment of certain service and maintenance employees *solely* by the Employer, which of necessity precludes any claim that those service and maintenance employees continue to be jointly employed by the Employer and unidentified subcontractors. Moreover, the Employer’s claim that the unidentified subcontractors continue to employ certain service and maintenance employees jointly with the Employer runs directly counter to the portion of the March 22 Order requiring the Employer to refrain from “subcontracting their jobs” because of their union activities.

As noted above, the Employer acknowledges that it has complied with the March 22 Order. In this regard, I take administrative notice of the District Court’s subsequent “Ruling and Order” dated May 7, 2012, in which the District Court denied the Employer’s motion for a stay of the injunction pending appeal. In doing so, the District Court specifically noted the sworn affidavit proffered by the Employer in support of its motion, which affirmed that the affected employees had been offered reinstatement on April 27, 2012, and that the District Court’s Order had been posted at the Employer’s hotel facility on April 26, 2012. Moreover, there is nothing in the May 7 “Ruling and Order” supporting the Employer’s claim that any service and maintenance employees are jointly employed by the Employer and the unidentified subcontractors.

Finally, the Employer’s alternative claim that the petition must be blocked pending the ALJ and Board decisions in Case No. 34-CA-13031 would effectively nullify the entire purpose of Section 10(j) of the Act. As noted by the District Court in the March 22 Order, the 10(j) petition was filed by the Board in order to re-ignite the Petitioner’s organizing campaign while the case wound its way through the lengthy administrative process. And that is precisely what happened as a result of the District Court’s grant of the injunction request. The Petitioner filed the petition in this case only 11 days after the service and maintenance employees were reinstated to the

Employer's payroll, and the Petitioner has requested that the Board continue to process the petition notwithstanding the pendency of Case No. 34-CA-13031.³ Thus, the Employer's assertion that the petition cannot proceed at this time, and must instead await the outcome of the administrative process, is contrary to the Board's blocking charge policy and would render the entire 10(j) process meaningless.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.⁴
2. 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 Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section

³ I reject the Employer's meritless claim that the Petitioner's Request to Proceed should not be honored because the charge in Case No. 34-CA-13031 is a "Type II" charge under the Board's blocking charge policy. That policy, set forth in detail in Section 11730 of the Board's Casehandling Manual, describes a Type II charge (in Section 11730.3) as alleging conduct which, if proven, would be inherently inconsistent with the petition itself. That is not even remotely the case here, where the charge solely alleges conduct that interfered with employee free choice (Type I). Moreover, Section 11730 specifically states that "the [blocking charge] policy is not intended to be misused by a party as a tactic to delay the resolution of a question concerning representation raised by a petition. Rather, the blocking charge policy is premised solely on the Agency's intention to protect the free choice of employees in the election process." Blocking the instant petition, as requested by the Employer, would not protect employee free choice in the election process and would simply serve as a tactic to delay the resolution of the question concerning representation raised by the petition, and would also be contrary to the rationale of the March 22 Order.

⁴ The Employer's request that this Decision and Direction of Election be written by another regional director is denied. The Employer points to no specific evidence of bias in support of its request, merely arguing instead that as a "party litigant" to the 10(j) proceeding it would be "inappropriate" for me to decide this case. It is longstanding Agency practice for regional directors to issue decisions in representation cases while related unfair labor practice cases are pending before that director involving the same parties and the same issues. (See, for example, *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), where the Board directed a regional director to conduct a hearing and issue a decision in a pending decertification petition regarding the issue of whether the employer's alleged violations of Section 8(a)(5) caused the filing of the petition). I see no basis for departing from standard Agency practice in this case.

2(6) and (7) of the Act, and there is no bar to an election in this matter.⁵

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service and maintenance employees employed by the Employer at its Stamford, Connecticut facility; but excluding all other employees, banquet employees, clerical employees, and guards, professional employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

Ineligible to vote: 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 strike's commencement 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 The petition in this case was filed on May 7, 2012 and initially processed under the Board's Revised Rule, effective April 30, 2012, governing the processing of representation petitions. A court decision that issued late in the day on May 14, 2012, held that the Revised Rule was inoperative. As a result, this case is now being processed in accordance with the rules that were in effect immediately before April 30, 2012. The Petitioner and the Employer both agreed to waive any objections they might have, and any right to contest in any forum any aspect of the processing of this case, including but not limited to the certification of representative or certification of results, based on the fact that this case was initially processed under the Revised Rule. The Petitioner and the Employer also requested the Board to continue processing the case from its status at the time of the court decision by following the procedures in place before April 30, 2012.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, Local 371.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights 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. *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 (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned 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, on or before May 30, 2012. No extension of time to file this list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision on Remand may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found at the Agency's Website at www.nlr.gov. Select the **E-Gov** tab and click on **E-Filing**, then select the type of document you wish to file electronically and you will navigate to detailed instructions on how to file the document. **This request must be received by the Board in Washington by June 6, 2012.**

Dated at Hartford, Connecticut this 23rd day of May, 2012.

/s/ Jonathan B. Kreisberg
Jonathan B. Kreisberg, Regional Director
National Labor Relations Board, Region 34