

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

STAMFORD PLAZA HOTEL AND CONFERENCE
CENTER AND STAMFORD PLAZA, LP, A JOINT
AND/OR SINGLE EMPLOYER

Employer

and

Case 34-RC-081443

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 371

Petitioner

**PETITIONER'S ANSWERING BRIEF TO EMPLOYER'S EXCEPTIONS
TO REPORT ON OBJECTIONS**

This petition involves an election in a unit of banquet housemen held on June 22, 2012, won by the Petitioner by a vote of 5 to 1. The same day, another election was held at the same location in Case No. 34-RC-80390. That other election was conducted in a unit of employees, including housekeepers, employed by one of the captioned joint and/or single employer entities. The Employer's objections to the instant election allege that there were threats and acts of violence that created an atmosphere of intimidation. The Regional Director recommended that the objection be overruled and the Union certified. The Employer has filed Exceptions.¹

In his Report on Objections, the Regional Director states that the Employer presented evidence of an argument among three housekeepers who were employed in the other bargaining unit. There is no allegation that the housekeepers were agents of

¹ The Employer filed two other objections that clearly relate only to the election in Case No. 34-RC-80390. The Employer has not excepted to the Regional Director's recommendation that Objections 2 and 3 be overruled.

the Union. The Regional Director noted, "There is no evidence or claim that this incident was disseminated to other employees or was known to any banquet housemen." (Report at 3). Therefore, he found that no evidence had been presented that the alleged altercation among employees in another bargaining unit had any affect on the instant election.

In its Exceptions, the Employer concedes that its objection relates to conduct by employees in the other bargaining unit. Nevertheless, the Employer asserts that it "seems strange" that the Regional Director would recommend overruling this objection where there was "no evidence that [the banquet housemen] were in any way separated from [the housekeepers] in the same building." (Except. at 1). The Employer goes on to dispute the Regional Director's finding that there was "no claim" that this incident was disseminated to other employees, pointing to the language of the objection in which the Employer alleged that the argument among housekeepers "created an atmosphere of intimidation...." Tellingly, the Employer does not challenge the Regional Director's finding that there was no **evidence** that this incident was disseminated to the banquet housemen.

The Employer's exceptions ignore the burden of proof. The objecting party has the burden to come forward with evidence to establish a *prima facie* case in support of the objections. While there is, in fact, little contact between banquet employees and housekeepers, it is not the Petitioner's burden to establish a lack of contact. It was the Employer's burden to establish the alleged incident was communicated to banquet housemen and that it was sufficient to create an atmosphere of fear and violence. The Employer cannot meet its burden by describing its own perceptions of what is "strange;"

it must present evidence. The Employer does not dispute the Regional Director's finding that there was no evidence that the alleged altercation among housekeepers "was known" to the employees in this bargaining unit. Therefore, the Employer failed to meet its burden of proof.

Accordingly, the Petitioner should be certified as bargaining agent for the employees in this unit forthwith.

RESPECTFULLY SUBMITTED
THE PETITIONER

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CERTIFICATE OF SERVICE

This is to certify that the foregoing Petitioner's Answering Brief to Employer's Exceptions to Report on Objections was electronically mailed, on this 3rd day of August 2012 to the following counsel of record:

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