

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

Employer

and

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 371

Petitioner

Case No. 34-RC-080390

**MEMORANDUM IN OPPOSITION TO REQUEST FOR REVIEW**

Pursuant to a Decision and Direction of Election, an election was held on June 22, 2012 in a unit of service and maintenance employees at the Employer's hotel (Dec. at 1).<sup>1</sup> The Petitioner prevailed in this election by a vote of 25 to 3, with 3 challenged ballots (Ibid, fn. 3). The Employer filed three objections, which were overruled by the Regional Director in his Supplemental Decision dated August 1, 2012. The Employer filed a timely Request for Review with respect to Objection 1, which reads:

There were threats of, and actual, violence that created an atmosphere of intimidation and actually intimidated voters who wanted to vote against the Petitioner.

(Ex. 1 to Dec.). This objection relates to a single incident that occurred the day before the election affecting, at most, three employees in the unit, two of whom were

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<sup>1</sup> Citations to the record shall be as here indicated:  
Supplemental Decision on Objections and Certification  
of Representative .....Dec. (followed by page number)  
Employer's Request for Review of Supplemental  
Decision.....Req. for Rev. (followed by page number)

committed Union supporters. The Employer's evidence in support of this objection, viewed in the light most favorable to the Employer, showed that there was an argument involving three housekeepers that was overheard by the Housekeeping Supervisor. Employee A was believed by her co-workers to have decided to vote against the Union. Employees B and C approached Employee A and told her not to tell anyone else if she intended to vote against the Union. The Employer presented hearsay evidence that Employee B pushed and struck Employee C. The Housekeeping Supervisor heard the argument and went to see what was occurring. She arrived on the scene in time to see Employee C pull Employee B by the arm and tell her to leave Employee A alone (Dec. 2-3). The Employer claims that Employee A also stated that her coworkers had threatened to sabotage her work (Dec. 2). The Housekeeping Supervisor immediately called the three employees into her office, and all three were promptly suspended pending investigation (Dec. 2; Req. for Rev. 3).

The Regional Director found that none of the individuals involved in the incident were agents of any party. Accordingly, he applied the five-factor test of Westwood Horizons Hotel, 270 NLRB 802 (1984), to determine whether the conduct of employees "was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." 270 NLRB at 803. Therefore, the Regional Director based his decision on the following: (1) the nature of the threat; (2) whether the threat encompassed the entire unit; (3) the extent of dissemination; (4) whether the person making the threat was capable of carrying it out, and whether it is likely that employees acted in fear of that capability; and (5) the timing of the threat. The Regional Director

concluded that, because the conduct at issue in this case affected only one employee, it could not have affected the results of an election won by a margin of 25 to 3.

The Employer does not dispute the Regional Director's finding that the employees involved were not agents of the Union, and it agrees that the Regional Director applied the proper legal standard. The Employer argues that a hearing should have been ordered so that the Employer could try to develop a record that the conduct was widely disseminated through the bargaining unit and that it therefore could have affected more than the one employee (Req. for Rev. 1-2). The Employer does not suggest what evidence it believes it could adduce at such a hearing. While the Employer indicates that there are witnesses it would like to subpoena, it does not suggest what those witnesses might say. Rather, the Employer seeks a hearing to "explore" what might have occurred (Req. for Rev. 2). The burden is on the objecting party to show that there are material and substantial issues warranting a hearing. Affiliated Computer Services, 355 NLRB 899, 901 n. 8 (2010); Park Chevrolet-Geo, 308 NLRB 1010, n. 1 (1992). The Employer cannot meet this burden through speculation and "exploration." Moreover, by immediately calling the involved employees into the Housekeeping Supervisor's office and then suspending them, the Employer quarantined other employees from any potential effects of this conduct. Thus, the Regional Director correctly found that there was no evidence that this incident affected other employees.

The Employer's other argument is that the Regional Director did not give sufficient weight to the allegation that the disputed incident involved "actual violence." The Employer contends that Employee A was "being beaten up...." (Req. for Rev. at 2). The Regional Director found, as described above, that there was some evidence that

Employee B pushed and hit Employee A, at which point another Union supporter, Employee C, pulled Employee B away. The Employer cites only one case in which the Board set aside an election based upon an altercation among employees who were not agents of a party. In Steak House Meat Co., 206 NLRB 28 (1973), an employee brandished a knife and threatened to kill another employee if he voted against the Union. The employee repeated his threats on two later occasions. The Board found that “the character of the conduct was so aggravated as to create an atmosphere of fear and reprisal rendering a free expression of choice of representative impossible.” 206 NLRB at 29. This contrast between that conduct and the instant case could hardly be starker. A single incident of pushing and hitting, quickly broken up, if it occurred, would hardly create a **general** atmosphere of fear rendering employees incapable of exercising free choice in a secret ballot election.<sup>2</sup>

Accordingly, the Employer’s Request for Review should be denied.

RESPECTFULLY SUBMITTED  
THE PETITIONER

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<sup>2</sup> The other cases cited by the Employer, while involving party conduct rather than disputes among employees, also involved much more violent and intimidating exchanges. In Cedars-Sinai Medical Center, the Board found that an agent or agents of the Union made repeated telephone calls to an employee threatening in explicit and colorful language to fry the employee’s kittens in a frying pan, stab the employee’s dogs, and run the dogs over with an automobile. In New Life Bakery, 301 NLRB 421 (1991), the employer’s plant manager threw a union agent against a fence and, in front of a group of employees, proceeded to beat him. The conduct was found to violate section 8(a)(1) of the Act but did not involve election objections. Thus, in addition to involving the conduct of a party, these cases also involved conduct that was much more intimidating than anything even hinted at by the Employer.

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Petitioner's Opposition to Request for Review was electronically mailed, on this 22<sup>nd</sup> day of August 2012 to the following counsel of record:

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