

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

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GLEN COVE PROPERTY, LLC.		)	
d/b/a GLEN COVE MANSION HOTEL &		)	
CONFERENCE CENTER		)	
	Employer	)	
and		)	Case No. 29-RC-078447
		)	
LOCAL 811, WAREHOUSE		)	
PRODUCTION SALES & ALLIED SERVICE		)	
EMPLOYEES UNION		)	
	Petitioner	)	
		)	
		)	

**SUPPLEMENTAL REPORT ON OBJECTION**

On April 9, 2012,<sup>1</sup> Local 811, Warehouse Production Sales & Allied Service Employees Union, herein called the Petitioner or Local 811, filed a petition in Case No. 29-RC-078447 seeking to represent certain employees employed by Glen Cove Property, LLC. d/b/a Glen Cove Mansion Hotel and Conference Center, herein called the Employer. Pursuant to a Stipulated Election Agreement signed by the Petitioner and the Employer, and approved by the undersigned on April 19, an election by secret ballot was conducted on May 18 among the employees in the following unit:

All full-time and regular part-time front desk personnel, bus persons, laundry attendants, conference center preparation staff, fitness & recreation staff, housekeeping, audio-visual staff, food & beverage, and maintenance employees employed by the Employer at its facility located at 200 Dosoris Lane, Glen Cove, New York, but excluding all temp agency employees, special event staff, department heads, sales personnel, executives, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

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<sup>1</sup> All dates hereinafter are in 2012 unless otherwise indicated.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned Petitioner's objection during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

**Objection No. 1**

In its objection, the Employer alleges that the Board Agent conducting the election challenged the ballot of employee Carlos A. Quinones on behalf of the Petitioner, even though Petitioner's observer was present. The Petitioner asserts that this objection is without merit.

In its offer of proof, the Employer states that after Mr. Quinones arrived and stated his name, the Board Agent conducting the election said words to the affect of, "You are Carlos Quinones, your vote will be challenged, you are listed on the Union challenges." Mr. Quinones voted under the challenge procedure. The Employer's offer of proof states that the Petitioner's observer, Leopoldo Mejia, was present from the start of the election and did not challenge Mr. Quinones' vote or say anything during the exchange between the Board Agent and Mr. Quinones. Additionally, the Employer's offer of proof states that the Petitioner's observer challenged another voter later in the election. The Employer did not provide any evidence that the Board Agent's conduct was witnessed by anyone other than voter Quinones, Petitioner's observer Mejia and Employer's observer, Amy Chim, who was not an eligible voter.<sup>2</sup> Additionally, the Employer neither claimed nor provided any evidence that the Board Agent's conduct was disseminated to other voters.

The Petitioner does not dispute that the Board Agent challenged the vote of Mr. Quinones, that the Petition's observer was present at the time of the challenge, or that the Petitioner's observer did not state a challenge to Mr. Quinones' vote. However, the Petitioner argues that the results of

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<sup>2</sup> Ms. Chim was not on the *Excelsior* List and did not vote subject to challenge.

the election should not be set aside because the Board Agent's conduct did not affect the outcome of the election.

### **Discussion**

It is undisputed that the Board Agent challenged the ballot of Mr. Quinones on behalf of the Petitioner while the Petitioner's observer was present. Section 11338.2(b) of the Board's Casehandling Manual instructs Board Agents not to make challenges for parties when such parties have observers present.

The Board's election procedures are intended to provide "those safeguards of accuracy and security thought to be optimal in typical election situations." Polymers, Inc., 174 NLRB 282, 282 (1969). These procedures "are designed to ensure both parties an opportunity to monitor the conduct of the election, ballot count, and determinative ballot procedure." Paprikas Fono, 273 NLRB 1326, 1328 (1984). The Board recognizes that strict compliance with its election procedures does not guarantee the validity of an election; similarly, deviation from these procedures does not necessarily require setting aside an election. See St. Vincent's Hospital, LLC, 344 NLRB 586, 587 (2005) (stating that there is no "per se rule that . . . elections must be set aside following any procedural irregularity."). "The question which the Board must decide in each case in which there is a challenge to the conduct of the election is whether the manner in which the election was conducted raises a reasonable doubt as to the fairness and validity of the election." Polymers, 174 NLRB at 282. When conducting such an inquiry, the Board "requires more than mere speculative harm to overturn an election." Transportation Unlimited, 312 NLRB 1162, 1162 (1993); see also J.C. Brock Corp., 318 NLRB 403, 404 (1995).

In Galli Produce Co., 269 NLRB 478 (1984), the Board upheld an election during which a Board Agent similarly challenged a voter on behalf of the Union. In that case, the Board Agent reminded the Union's observer of the Union's intent to challenge a certain voter. Id. at 478 n.1. The

tally of ballots in Galli showed 11 votes cast in favor of the Union and 5 votes cast against, with 2 challenged ballots. Id. at 478. In overruling the Employer's objection, the Board reasoned that there was no basis for finding that the Board Agent's conduct affected the results of the election. Id.

Similarly in the case at hand, there can be no basis for finding that the Board Agent's conduct affected the results of the election. Here there was a 15 vote margin of victory, compared to the 6 vote margin in Galli. Thus, where the Board found that Board Agent conduct did not affect the results of the election where there was a 6 vote margin of victory, it must be concluded that similar conduct where there is a 15 vote margin of victory did not affect the election.

Furthermore, the Employer's offer of proof alleges only two voter witnesses, the challenged voter, Mr. Quinones and Petitioner's observer, Mr. Mejia.<sup>3</sup> The Employer did not claim or provide any evidence of dissemination of the Board Agent's conduct. Therefore, at most, the Board Agent's conduct could have impacted only 2 votes. As the Petitioner's margin of victory was greater than 2 votes, the Board Agent's conduct could not have affected the outcome of the election.

Because the evidence illustrates that this election could not have been affected by the Board Agent's conduct and raises no reasonable doubt as to the fairness and validity of the election, I recommend overruling the Employer's objection.

### **Recommendation**

I have recommended overruling the Employer's objection. Accordingly, I recommend that the Petitioner be certified as the exclusive bargaining representative for the employees of Glen Cove Property, LLC. d/b/a Glen Cove Mansion Hotel and Conference Center in the following appropriate unit:

All full-time and regular part-time front desk personnel, bus persons, laundry attendants, conference center preparation staff, fitness & recreation staff, housekeeping, audio-visual staff, food & beverage, and maintenance employees employed by the Employer at its facility located at 200 Dosoris

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<sup>3</sup> No evidence has been submitted as to whether Mr. Mejia voted before or after the alleged misconduct.

Lane, Glen Cove, New York, but excluding all temp agency employees, special event staff, department heads, sales personnel, executives, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

### **Right to File Exceptions**

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8 as amended, you may file exceptions to this Supplemental Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

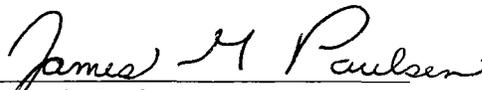
### **Procedures for Filing Exceptions**

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on September 27, 2012, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by

facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>4</sup> A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Brooklyn, New York, on this 13<sup>th</sup> day of September, 2012.



James G. Paulsen  
Regional Director, Region 29  
National Labor Relations Board  
Two MetroTech Center  
Suite 5100  
Brooklyn, New York 11201

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<sup>4</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

# **EXHIBIT A**

# NANESS, CHAIET & NANESS, LLC

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August 17, 2012

Hon. James Paulsen, Regional Director  
National Labor Relations Board, Region 29  
Two Metro Tech Center, Suite 5100  
Brooklyn, New York 11201-3838

Re: Glen Cove Property LLC d/b/a Glen Cove  
Mansion Hotel & Conference Center  
Case No. 29-RC-078447

Dear Director Paulsen:

Our firm is co-counsel on the above matter with Gregory Lisi, Esq. of Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana LLP. By this letter, I am objecting to the conduct of the election conducted by your office on August 10, 2012.

Upon information and belief, during the course of the election, the Board Agent challenged the ballot of employee Carlos A. Quinones on behalf of the Petitioner even though Petitioner's observer, Leopoldo Mejia, was present. Mr. Mejia did not voice a challenge to Mr. Quinones, although he did challenge at least one other voter during the course of the election.

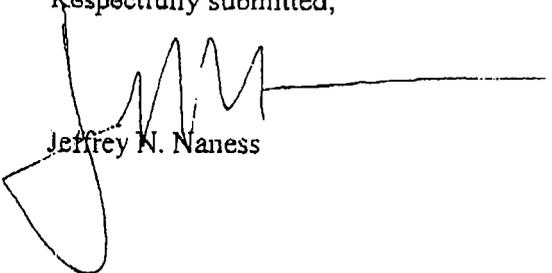
Based upon the above information, provided to the Employer by its observer, Amy Chin, the Board Agent acted in disregard of Section 11338.2(b) which states: "The Board agent will not make challenges for parties when such parties have observers present."

As it appears that in the instant matter, Petitioner has an observer present, the Board Agent should not have challenged the ballot of Mr. Quinones, and by doing so, evidenced partiality toward Petitioner, thus damaging the "laboratory conditions" required for the conduct of a fair election.

The Employer will make Ms. Chin available to provide a statement regarding the above at the Region's convenience.

# NANESS, CHAIET & NANESS, LLC

Respectfully submitted,

  
Jeffrey N. Naness

cc: Gregory Lisi, Esq.  
Forchelli, Curto, Deegan, Schwartz,  
Mineo, Cohen & Terrana LLP  
333 Earl Ovington Boulevard, Suite 1010  
Uniondale, New York

Ata Kashanian, General Manager  
Glen Cove Property LLC d/b/a Glen  
Cove Mansion Hotel & Conference Center  
200 Dosoris Lane  
Glen Cove, New York

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations showed 34 votes cast for the Petitioner, 15 votes cast against participating labor organizations and 5 challenged ballots. Challenges were not sufficient to affect the results of the election. A majority of the valid votes counted plus challenged ballots were cast for the Petitioner. The Employer filed a timely objection to conduct affecting the results of the election. On June 14, 2012 the undersigned issued a Report on Objection. On July 12, the Board issued a Decision, Order and Direction of Election adopting the Regional Director's findings and recommendations to sustain the Employer's objection, set aside and declare a nullity the election conducted on May 18. and ordering a second election be conducted.

On July 27, a Notice of Second Election issued scheduling a second election for August 10. Accordingly, an election by secret ballot was conducted on August 10, among employees in the unit set forth in the Stipulated Election Agreement and employed during the payroll period for eligibility ending July 6.

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	68
Number of void ballots	0
Number of ballots cast for the Petitioner	30
Number of votes cast against participating labor organizations	15
Number of valid votes counted	45
Number of challenged ballots	2
Number of valid votes counted plus challenged ballots	47

Challenges are not sufficient in number to affect the results of the election.  
A majority of the valid votes counted plus challenged ballots has been cast for the Petitioner.

The Employer filed a timely objection to conduct affecting the results of the election. The Employer's objection is attached hereto as Exhibit "A."