

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BELLAGIO, LLC,

Employer,

and

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES AND
MOVING PICTURE TECHNICIANS
ARTISTS AND ALLIED CRAFTS OF THE
UNITED STATES AND CANADA LOCAL
720, AFL-CIO,

Union.

Case No. 28-RC-088794

**BELLAGIO, LLC'S EXCEPTIONS TO HEARING OFFICER'S REPORT AND
RECOMMENDATIONS ON OBJECTIONS TO CONDUCT
AFFECTING RESULTS OF THE ELECTION**

Pursuant to section 102.69 of the National Labor Relations Board's Rules and Regulations, as amended, Bellagio, LLC (the "Employer") excepts to the Hearing Officer's Report and Recommendations on Objections¹ as follows:

1. To the finding that each of Bellagio's five objections be overruled because, in the Hearing Officer's opinion, the evidence is not sufficient to establish that the International Alliance of Theatrical Stage Employees and Moving Picture Technicians Artists and Allied Crafts of the United States and Canada, Local 720 AFL-CIO (the "Union"), by and through its agents and/or third parties, engaged in misconduct that warrants setting aside the results of the October 10, 2012 election (the "election."). (Report at pp. 1 and 21.)²

¹ Bellagio's brief in support of these exceptions is being submitted contemporaneously.

² The Report has page numbers, but it does not contain line numbers. Accordingly, citations to the Hearing Officer's findings are in the following format: Report at p. --.

2. To the finding that Union Business Agent J.T. Gorey (“Gorey”) credibly testified that he did not promise better representation to employees who voted yes because he knew that Nevada is a right to work state. (Report at p. 9.)

3. To the failure to credit Doug Spicka’s (“Spicka”) testimony that at an October 3, 2012 meeting at the Union hall, Gorey stated that: “Well, if somebody that voted yes for IATSE had some kind of a grievance, then we would get behind them 120 percent. And if we knew somebody voted no and didn’t want the Union in Bellagio, then we’d give them maybe 50 percent of backing towards resolving this grievance.” (Report at p. 9.)

4. To the failure to discredit Gorey’s denial that he made the October 3, 2012 statement quoted in Exception #3. (Report at p. 9.)

5. To the finding that Gorey did not inform employees that if they voted against Union representation that they would not receive full and fair representation from the Union when they file grievances and that Gorey did not therefore engage in misconduct that would have reasonably tended to interfere with employees’ freedom of choice. (Report at pp. 16-17.)

6. To the finding that Bellagio failed to establish that Robert Cohen was an agent of the Union within Section 2(13) of the Act. (Report at pp. 14-15.)

7. To the finding that the Union, through Cohen, did not threaten and coerce Lee Taggart in an attempt to make Taggart refrain from voting, (Report at p. 14.), and that Cohen’s statements and actions towards Taggart therefore did not tend to interfere with employees’ freedom of choice. (Report at p. 15.)

8. To the failure to discredit Gorey’s testimony regarding his communications with Alfonso Torres, including his testimony that he did not ask Torres to speak with Spicka, his

testimony that he had neither authorized Torres to speak on behalf of the Union in connection to the Bellagio Organizing effort, nor asked Torres to reach out to Spicka. (Report at p. 12.)

9. To the failure to draw an adverse inference against the Union for failing to call Torres as a witness as to the conversations he had with Spicka and Gorey, as well as the threats he made to Spicka. (Report at p. 12.)

10. To the finding that Bellagio failed to establish that Torres was an agent of the Union within the meaning of Section 2(13) of the Act. (Report at pp. 17-18.)

11. To the failure to properly consider the closeness of the election and the fact that an outcome determinative number of voters, Spicka, Taggart and Mbacke, were aware of Torres' threats of violence. (Report at pp. 18-19.)

12. To the finding that the Employer failed to establish that Torres was capable of carrying out his threats. (Report at p. 19.)

13. To the finding that the Employer failed to establish that members of the voting unit acted in fear of Torres' threats. (Report at p. 19.)

14. To the finding that Torres' conduct failed to create a general atmosphere of fear and reprisal rendering a free election impossible. (Report at pp. 17-19.)

15. To the finding that Aaron was not an agent of the Union within the meaning of Section 2(13) of the Act. (Report at p. 19.)

16. To the failure to properly consider the closeness of the election and the fact that an outcome determinative number of voters, Spicka and Taggart, were aware of Aaron's threat of violence. (Report at pp. 18-20.)

17. To the finding that the Employer failed to establish that Aaron was capable of carrying out his threat. (Report at p. 19-20.)

18. To the finding that the Employer failed to establish that members of the voting unit acted in fear of Aaron's threats. (Report at p. 19-20.)

19. To the finding that Aaron's conduct failed to create a general atmosphere of fear and reprisal rendering a free election impossible. (Report at pp. 17-20.)

20. To the finding that Aaron and Torres' conduct, when considered together, failed to create a general atmosphere of fear and reprisal rendering a free election impossible. (Report at pp. 17-20.)

21. To the failure to consider the totality of the circumstances, including the combined effect of Cohen, Torres and Aaron's misconduct, when determining whether the Employer established the existence of a general atmosphere of fear and reprisal that rendered a free election impossible. (Report at pp. 16-20.)

22. To the application of a third-party standard set forth in *Mastec Direct TV*, 356 NLRB No. 110 (March 7, 2011), which is a significant and unsupported departure from Board precedent, and to imposing a related requirement that the Employer establish that third parties are both capable of carrying out a threat and that members of the voting unit "acted in fear of that capability" in order to establish the existence of a general atmosphere of fear and reprisal that rendered a free election impossible. (Report at pp. 18-20.)

23. To the finding that Objection 1 should be overruled. (Report at p. 14, 16, 17, 19, 21.)

24. To the finding that Objection 2 should be overruled. (Report at p. 17, 19, 21.)

25. To the finding that Objection 3 should be overruled. (Report at p. 16, 21.)

26. To the finding that Objection 4 should be overruled. (Report at p. 14, 17, 19, 21.)

27. To the finding that Objection 5 should be overruled. (Report at p. 14, 16, 17, 19, 21.)

WHEREFORE, Bellagio respectfully requests the foregoing Exceptions to the Hearing Officer's Report And Recommendations On Objections To Conduct Affecting The Results Of The Election be granted, the election be set aside, and a new election be ordered.

Dated: December 4, 2012

Respectfully submitted,

JACKSON LEWIS LLP

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CERTIFICATE OF SERVICE

Case Name: BELLAGIO, LLC, 28-RC-088794

I, Paul Trimmer, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 3800 Howard Hughes Pkwy, Suite 600, Las Vegas, NV 89169. I am over the age of eighteen (18) years and am not a party to this action. I declare under penalty of perjury under the laws of the State of Nevada that the following is true and correct.

On December 4, 2012, electronically filed the **EMPLOYER'S EXCEPTIONS** with the National Labor Relations Board using the Board's electronic filing system. In addition, I served additional copies of the Exceptions as follows by US Mail:

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- [] BY ELECTRONIC MAIL (EMAIL): I attached a full, virus-free pdf version of the document to electronic correspondence (e-mail) and transmitted the document from my own e-mail address, christar@jacksonlewis.com, to the persons at the e-mail addresses above. There was no report of any error or delay in the transmission of the e-mail.
- [X] BY US Mail: I placed a true and correct copy of the document, enclosed in a sealed envelope, and caused such envelope to be delivered at the above address within 24 hours by overnight delivery service.

Executed on December 4, 2012, at Las Vegas, NV.

/s/ Paul T. Trimmer _____