UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Renaissance Hotel Operating Company,
Employer,

and

Unite Here Local 631,
Union,

and

Erubey Quintero and Suzanne Cohen,
Petitioners.

Case No. 28-RD-112742
and
Case No. 28-RD-113966

PETITIONERS' REQUEST FOR REVIEW

INTRODUCTION: Pursuant to NLRB Rules & Regulations § 102.71, Petitioners Erubey Quintero and Suzanne Cohen hereby submit this Request for Review. Petitioners' Request for Review should be granted because:

a) "a substantial question of law or policy is raised because of . . . a departure from[] officially reported Board precedent" (*see* § 102.71(1)(ii));

b) "there are compelling reasons for reconsideration of an important Board rule or policy" (*see* § 102.71(2)); and

c) "the Regional Director's action is, on its face, arbitrary or capricious" (*see* § 102.71(4)).

On December 30, 2013, the Director of Region 28 consolidated, and then

dismissed, two Petitions for Decertification Election filed by Renaissance Hotel employees Quintero and Cohen, respectively. (*See* Ex. 1). That dismissal was erroneous and must be reviewed by the Board, as it was based upon a wooden and outmoded application of the so-called "blocking charge" doctrine, which allows incumbent unions to entrench themselves and derail decertification elections based solely upon their own self-serving and spurious allegations of employer taint.

Review is also warranted because the Regional Director's dismissal order was issued in complete derogation of the controlling case of *Saint-Gobain Abrasives*, 342 NLRB 434 (2004), a case that the Regional Director wilfully ignored despite it being brought to his attention. (*See* Ex. 2).

In short, the Board should grant this Request for Review and order the Regional Director either to reinstate promptly the decertification petitions or, alternatively, to follow *Saint-Gobain* and hold a "causation hearing" regarding the underlying causes of employee dissatisfaction with the Unite Here union. Indeed, if the *Saint-Gobain* Board's determination to enhance employee free choice is a dead letter that Regional Directors can ignore at whim, the current Board should say so openly and publicly, and also justify publicly why decertifications – and only decertifications – can be squelched by mere conclusory and self-serving allegations of employer misconduct made by

incumbent unions greedily clinging to power – even when a majority of employees want them ousted.[1]

ISSUES: The issues presented are:

1) Should the Board overrule or substantially modify its "blocking charge" policies, which serve to entrench incumbent unions and allow them to raise spurious and self-serving allegations of employer misconduct in order to deny employees their fundamental rights under Sections 7 and 9 of the NLRA? The answer is "yes," as the Board's blocking charge policies are oppressive and burdensome, arbitrarily denying employees their freedom to reject an unwanted union. They should be overruled. *See, e.g., Mark Burnett Prod.*, 349 NLRB 706 (2007) (Chairman Battista, dissenting); and

2) Should the Board enforce its decision in *Saint-Gobain Abrasives*, 342 NLRB 434 (2004), or, alternatively, declare it to be a dead letter and overrule it? The answer is that the Board should scrap its "blocking charge" rules, or alternatively, enforce and strengthen the holding of *Saint-Gobain* so as to

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[1] Petitioners note that several Board Members have already expressed their antipathy toward employee free choice; are content to allow unions to squash efforts to decertify or deauthorize unpopular incumbent unions; and, are ready to overrule *Saint-Gobain*. *See Wellington Indus. Inc.*, 359 NLRB No. 18, n.6 (2012) ("For the reasons set forth by then-Members Liebman and Walsh in their dissenting opinion in *Saint-Gobain*, 342 NLRB at 435-436, we have substantial doubts as to whether that case was correctly decided and would consider overruling it in an appropriate case.").

enhance employees' rights to call for decertification elections at a time of their own choosing, under NLRA Sections 7 and 9.[2]

FACTS: Unite Here Local 631 represents a unit of approximately 136 waiters, banquet servers and other employees of the Renaissance Hotel in Phoenix, Arizona. Only a minuscule portion of these 136 employees are voluntary union members, the vast majority having chosen to exercise their rights under NLRA Sections 7 and 14(b) and resign from the union and not pay any dues. Because of their overwhelming opposition to this union's representation, the Renaissance Hotel employees have made two attempts to divest themselves of Unite Here Local 631.

Cleverly using and abusing the Board's "blocking charge" rules to stop the decertification efforts, Unite Here responded by hurling numerous allegations of "employer taint" up against the wall to see what would stick. To combat this attack on their Section 7 and 9 rights to hold a decertification

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[2] On December 9, 2004, the General Counsel issued OM 05-20, which provided casehandling guidance regarding *Saint-Gobain*. This memorandum construed *Saint-Gobain* very narrowly, claiming that it applied only where the Regional Director finds merit to an unfair labor practice charge and further finds, under the multi-factor causation test of *Master Slack*, 271 NLRB 78 (1984), that the ULP conduct caused the disaffection among employees. But such arbitrary and standardless "tests" have led Regions to ignore or downplay *Saint-Gobain's* core holding, which is another reason why review should be granted. For example, some Regions have reasoned that *Saint-Gobain* only applies when a decertification petition is dismissed, not when it is held in indefinite abeyance while the theoretically related ULP trial and inevitable appeals occur, even if that process takes years to conclude.

election, Petitioners Quintero and Cohen gave sworn statements to the Region's investigators denying the union's allegations of supervisory taint and employer misconduct. The employer denied the allegations as well.

But the Regional Director accepted the union's speculative, unproven, and false allegations, unilaterally determining that "employer interference" fatally tainted both decertification petitions – all without a neutral hearing or any cross examination of the union's witnesses. (*See* Ex. 1).

LEGAL ARGUMENT: Applying the Board's existing "blocking charge" policies, the Regional Director acted unilaterally as judge and jury to credit the union's allegations of supervisory taint and discredit the Petitioners' counter-evidence, as well as the employer's steadfast denials. This action destroys employee rights under NLRA Sections 7 and 9 by flatly forbidding Mr. Quintero and Ms. Cohen from having their decertification election.

Yet, other than sheer speculation concerning the union's allegations of employer taint, there has been no neutral factual showing that these allegations are true, nor has there been any showing of a "causal nexus" between any alleged employer taint and the employees' desire to throw off the unwanted union. This is wrong, for the very reasons the Board stated in *Saint-Gobain*, 342 NLRB at 434: "[I]t is not appropriate to speculate, without

facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights. Surely, a hearing and findings are prerequisites to such a denial."

In contrast with the Regional Director's decision to dismiss the Petitions and terminate employees' right to decertify because of unproven and untrue union allegations of taint, a fair system would allow all decertification petitions to proceed unimpeded by "blocking charges," or would require, at the very least, a union that files such "blocking charges" to immediately bear the burden of proving that a "causal nexus" exists before an independent judge. *See Saint-Gobain*; *see also Roosevelt Mem'l Park, Inc.*, 187 NLRB 517, 517-18 (1970) (party asserting election bar bears the burden of proof). Here, the union should either be put to that burden of proof, or the decertification election promptly be held.

Indeed, a fair system would do away with blocking charges entirely, since incumbent unions use and abuse them to "game the system" and brazenly halt efforts to unseat them. A fair system would also stop treating employees like ignorant sheep, too cowed and coerced by the employer to be able to vote even in the privacy of a secret-ballot election booth.

For example, if a *Saint-Gobain* causation hearing were held here, the

Board would hear from chambermaids and housekeepers at the Renaissance Hotel about how *the union* lies to them and threatens them if they support decertification. It is such lies and threats from *the union* that cause employee disaffection. The Board would also hear testimony that only a minuscule fraction of the 136 bargaining unit employees are voluntary dues paying members of Unite Here, the vast majority having opted out on their own volition.

Thus, a *Saint-Gobain* hearing would show that it is union malfeasance, arrogance and threats, not employer misconduct, that led the Petitioners and their fellow employees to attempt these two decertification efforts. Under no stretch of the imagination could the union ever prove the requisite "causal nexus" in this case, no matter what allegations it might fling against the employer. Yet the Regional Director has summarily dismissed the instant petitions without a hearing, and in the process has trampled employees' statutory right to a decertification election. *See* NLRA §§ 7 and 9(c)(1)(A)(ii).

Even assuming, *arguendo*, that some degree of employer taint had occurred in this case (which Petitioners deny), "[t]he wrongs of the parent should not be visited on the children, and the violations of [the employer] should not be visited on these employees." *In re Overnite Transp. Co.*, 333 NLRB 1392, 1398 (2001) (Member Hurtgen, dissenting); *see also*

International Ladies Garment Workers v. NLRB, 366 U.S. 731, 737 (1961) ("There could be no clearer abridgment of § 7 of the Act" than for a union and employer to enter a collective bargaining relationship when a majority of employees do not support union representation).

The fundamental and overriding principle of the Act is employee free-choice and voluntary unionism. *Pattern Makers v. NLRB*, 473 U.S. 95, 102-03 (1985). Since any "bar" to a decertification election deprives employees of rights expressly granted to them under the Act, *see* §§ 7 and 9(c)(1)(A)(ii), all such "bars" should be overruled, or strictly and narrowly construed, to prevent abuse of employee rights. *See Waste Mgmt. of Maryland, Inc.*, 338 NLRB 1002, 1002 (2003) ("finding of [an election] bar necessarily results in the restriction of the employees' right to freely choose a bargaining representative").

Similarly, employee free choice under Sections 7 and 9 is the paramount policy of the NLRA. *Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (employee free choice is the "core principle of the Act"); *NLRB v. Marion Rohr Corp., Inc.*, 714 F.2d 228, 230 (2d Cir. 1983) (the NLRA's preference for a secret-ballot election "reflects the important policy that employees not have union representation forced upon them, when by exercise of their free will, they

might choose otherwise"). A secret-ballot election conducted by the NLRB is the preferred forum for employees to exercise their right of free choice. *Levitz Furniture Co.*, 333 NLRB 717, 725-26 (2001) ("We agree with the General Counsel and the unions that Board elections are the preferred means of testing employees' support."). This right of employee free choice is sacrificed on the altar of "industrial stability" whenever a union self-servingly claims – even without proof or neutral fact finding – that the employer committed an infraction of the law.

Employees' statutory right to petition for a decertification election under NLRA Section 9 should not be trampled by arbitrary rules, "bars" or "blocking charges" that prevent the expression of true employee free choice in a secret-ballot election. Most of the Board's "bars" and "blocking charge" rules stem from discretionary Board policies (*see, e.g.*, Section 11730 of the Casehandling Manual concerning "blocking charges"), which have long since outlived their usefulness and should be reevaluated when industrial conditions warrant. *See IBM Corp.*, 341 NLRB 1288, 1291 (2004) (the role of the Board is "to adapt the Act to changing patterns of industrial life"). It is time for the Board to stop coddling unpopular and unwanted incumbent unions, and drastically alter, if not end, its "blocking charge" rules.

The Regional Director's reflexive application of the "blocking charge"

policies, and those policies themselves, ignore the fact that the Petitioners and their fellow employees have longstanding disagreements with this union and its conduct, irrespective of any employer infractions. Yet, the employees are being treated like children who cannot possibly make up their own mind. This is wrong. *See In re Overnite Transp. Co.*, 333 NLRB at 1398 (Member Hurtgen dissenting); *Mark Burnett Prod.*, 349 NLRB 706 (2007) (Chairman Battista, dissenting).

The Board's jurisprudence on blocking elections should be drastically overhauled. The Board has long operated under a system of presumptions that prevent employees from exercising their statutory rights under Sections 7 and 9 to hold a decertification election whenever a union files so-called "blocking charges." Basically, the Board refuses to conduct a decertification election while virtually all union unfair labor practice charges against the employer are pending. The rationale is that the employer infractions, if true, destroy the "laboratory conditions" necessary to permit employees to cast their ballots freely and without restraint or coercion. But what is the Board's rationale for allowing incumbent unions to "game the system" and unilaterally delay decertification elections – and only decertification elections – via even frivolous ULP charges? There is none!

The "blocking charge" practice is not governed by statute or even by

formal rules or regulations; rather, its creation and use lies within the Board's discretion to effectuate the policies of the Act. *American Metal Prods. Co.*, 139 NLRB 601 (1962); *see also* NLRB Casehandling Manual Section 11730 *et seq.*, which set forth the "blocking charge" procedures in detail. The "blocking charge" rules stop employees from exercising their paramount Section 7 rights to choose or reject representation, and must be substantially altered if not completely overruled.

In fact, the Board's "blocking charge" rules have faced severe judicial criticism. *See, e.g., NLRB v. Gebhard-Vogel Tanning Co.*, 389 F.2d 71 (7th Cir. 1968); *NLRB v. Minute Maid Corp.*, 283 F.2d 705 (5th Cir. 1960); *Lee Lumber*, 117 F.3d at 1458. Remarkably, the "blocking charge" rules deny decertification elections even where the employees themselves are *unaware* of the alleged employer misconduct, and where their disaffection from the union demonstrably springs from wholly independent sources – like union incompetence, harassment and arrogance. Use of "presumptions" to halt decertification elections serves only to entrench unpopular but incumbent unions, thereby forcing unwanted representation onto employees.

Judge Sentelle's concurring opinion in *Lee Lumber* highlights the unfairness of the Board's policies:

> As the court today notes in discussing the imposition of the bargaining order, "employee 'free choice' . . . is a core principle of the [National

> Labor Relations] Act." . . . (citing *Skyline Distribs. v. NLRB*, 99 F.3d 403, 411 (D.C. Cir.1996)). However, in cases like the present one, the Board, in the face of that core principle, presumes that the employees are incapable of exercising their core right because they might have been deceived as to the union's strength by the employers' apparent willingness to challenge the union. If that is the case, and a union is worth having, then why couldn't the unions so inform the employees out of it? To presume that employees are such fools and sheep that they have lost all power of free choice based on the acts of their employer, bespeaks the same sort of elitist Big Brotherism that underlies the imposition of the invalid bargaining order in this case. Consider anew the facts before us. In 1990, 85.7 percent of the employees of the bargaining unit signed a petition asking for a chance to exercise their free choice. Seven years later, those employees still have not had the election they sought because the Board presumes that the employers' refusal for a few days to bargain with the Union thoroughly fooled those poor deluded employees to such a point that neither the Union nor anyone else could possibly educate them of the truth known only to their Big Brother, the Labor Board.

117 F.3d at 1463-64.

Region 28 should be ordered to proceed to an immediate election without further delay. The uncertainty in this bargaining unit has dragged on too long, and it is time to hold the vote and let the chips fall where they may for all parties. Petitioners and their colleagues are not sheep, but responsible, free-thinking individuals who should be able to make their own choice about unionization. As one Board Member memorably stated, the Board must be mindful that "unions exist at the pleasure of the employees they represent. Unions represent employees; employees do not exist to ensure the survival or success of unions." *MGM Grand Hotel, Inc.*, 329 NLRB 464, 475 (1999)

(Member Brame, dissenting).

CONCLUSION: The Board should grant the Request for Review and order the Regional Director to reinstate and process this decertification petition. The Board should alter its "blocking charge" rules, which do a direct disservice to employee free choice by hindering employees' access to a secret-ballot election booth. The Board should, at the very least, order the Regional Director to comply with the ruling in *Saint-Gobain* before dismissing decertification petitions based on self-serving union allegations of employer taint.

Respectfully submitted,

/s/ Glenn Taubman

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Counsel for Petitioners Erubey
Quintero and Suzanne Cohen

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2014, all parties named below were served with this Request for Review by e-mail, fax, first class mail or NLRB e-filing as follows:

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National Labor Relations Board, Region 28
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Via: NLRB e-filing

/s/ Glenn Taubman
_____
Glenn M. Taubman

Exhibit 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

RENAISSANCE HOTEL OPERATING COMPANY,

Employer

and **Case 28-RD-112742**

ERUBEY QUINTERO, Employee

Petitioner

and

UNITE HERE Local 631

Union

RENAISSANCE HOTEL OPERATING COMPANY,

Employer

and **Case 28-RD-113966**

SUZANNE COHEN, Employee

Petitioner

and

UNITE HERE Local 631

Union

ORDER CONSOLIDATING CASES AND DISMISSING DECERTIFICATION PETITIONS

The Petitioners have filed decertification petitions pursuant to Section 9(c) of the National Labor Relations Act (the Act). The issue presented is whether the petitions

should be dismissed as a result of the alleged taint by supervisors of Renaissance Hotel Operating Company (the Employer) of the showing of interest submitted in support of the petitions. I have considered the evidence and the positions of the parties in this matter. As discussed below, because the Employer provided more than ministerial aid to its employees to secure their support for the decertification petitions, and therefore tainted them, I have determined that the petitions should be dismissed, based on my administrative investigation..

By way of background, UNITE HERE Local 631 (the Union) represents a unit consisting of the Employer's food & beverage and hotel employees at its property in Phoenix, Arizona. Petitioners Erubey Quintero and Suzanne Cohen filed decertification petitions on September 6 and 24, 2013, respectively, concerning a unit of approximately 136 employees. Cohen's petition used the identical showing of interest submitted by Quintero with the exception of two additional signatures submitted by Cohen. Although a representation hearing was held on each petition to address contract-bar issues presented by the parties, during the processing of these petitions the Union made allegations of supervisory taint in connection with the showing of interest submitted in support of the petitions. The Region conducted an administrative investigation into these allegations.[1]

The administrative investigation of the Union's allegations of taint disclosed that before Quintero's petition was filed, the Employer acted in a manner that tainted the showing of support submitted with both petitions. Specifically, the investigation established that Myrna Mendoza, an agent of the Employer working in the human resources department, solicited an employee to sign a petition to decertify the Union and threatened the employee

[1] The Union also filed unfair labor practice charges which allege violations of Section 8(a)(1) and (5), including allegations that the Employer has unlawfully supported the filing of the decertification petitions in these cases, has maintained and promulgated unlawful rules, and has otherwise violated the Act (Cases 28-CA-113793 and 28-CA-115712). These cases remain pending.

by ordering the employee to sign such a petition. Mendoza also promised the employee higher wages for employees, the reinstitution of an Employer-sponsored tuition-reimbursement program for employees if the Union were decertified, and help with the employee's prospects for job advancement. This same agent announced to several employees that a coworker and friend of petitioner Quintero had initiated a decertification petition. Furthermore, other employees observed Mendoza helping a cafeteria attendant create and write "no solicitation" signs intended to discourage employees from speaking to pro-Union employees and Union representatives. The cafeteria attendant subsequently distributed these signs to employees in the cafeteria and placed them on cafeteria tables.

In addition, a few days before Quintero filed the petition, the Employer restricted access to its property to a pro-Union employee while allowing greater access to pro-decertification employees. Specifically, one of the Employer's security guards assisted the decertification effort by directing an off-duty pro-Union employee to obtain prior authorization from the Employer to access the Employer's facility to engage in union activities and then evicting the employee from the facility because the employee had failed to comply with the directive. The Employer permitted off-duty pro-decertification employees to solicit employees at the facility without similar restrictions. The Employer's directive was also a discriminatory application of two of the Employer's overly-broad handbook rules that placed restrictions on off-duty employees' access to the facility without the Employer's authorization.

Board law is "clear that an employer may not solicit its employees to circulate or sign decertification petitions and may not threaten employees in order to secure their support for such petitions. An employer may not provide more than ministerial aid in the preparation or

filing of the petition." *Armored Transport, Inc.*, 339 NLRB 374, 377 (2003). Furthermore, solicitation of union authorization cards -- and by inference solicitation of signatures in support of a decertification petition -- is "inherently coercive absent mitigating circumstances" not present here. *Harborside Healthcare, Inc.*, 343 NLRB 906, 906 (2004).

By directly and indirectly soliciting employees' support for the decertification petitions, the Employer provided significantly more than ministerial aid to its employees to secure their support for the decertification petitions and thereby committed unfair labor practices. In addition, the Employer's announcement to employees of the existence of a decertification petition and the Employer's solicitation of an employee's signature to secure support for the petition were disseminated to at least six employees. Moreover, because the same Employer agent solicited signatures for a decertification petition, offered inducements to employees to sign the petition, announced that a decertification petition had been filed, and helped prepare and create pro-decertification signs to be distributed to employees, it is not unreasonable to infer that this agent "went beyond the permissible expression of personal opinion" when the agent spoke to other employees. See *Harborside*, 343 NLRB at 914. Under these circumstances, the Employer's conduct tainted the petition filed by Quintero and will be dismissed. See *Hall Industries, Inc.*, 293 NLRB 785, 790-91 (1989) (dismissing decertification petition where employer committed unfair labor practices by campaigning for decertification and stimulating the decertification effort). See also *SFO Good-Nite Inn, LLC*, 357 NLRB No. 16, slip op. at 1 (2011), enfd. 700 F.3d 1 (D.C. Cir. 2012) (unlawful for employer to withdraw recognition from union based on a petition that the employer unlawfully assisted, supported, or otherwise unlawfully encouraged, even absent specific proof of the misconduct's effect on employee choice); *Clement Brothers Co.*, 165 NLRB

698, 699 (1967), enfd. 407 F.2d 1027 (5th Cir. 1969) (unlawful for employer to recognize union that did not represent an uncoerced majority of employees, where coercion by employer of 7 employees out of 129 who signed union authorization cards in a unit of approximately the same size was sufficient to infer a larger pattern of coercion amid other violations and thus tainted petition).

Because Cohen's petition, filed on October 24, 2013, used the identical showing of interest submitted by Quintero with the exception of two new signatures, Cohen's petition is also tainted and also will be dismissed.

To effectuate the purposes of the Act and in order to avoid unnecessary costs or delay,

IT IS HEREBY ORDERED, pursuant to Section 102.72 of the National Labor Relations Board Rules and Regulations, Series 8, as amended (Rules and Regulations), that these cases be, and hereby are, consolidated.

IT IS FURTHER ORDERED, pursuant to Section 102.72 of the Rules and Regulations, that these cases be, and the same hereby are, administratively dismissed. [2]

Dated at Phoenix, Arizona, this 30th day of December 2013.

Cornele A. Overstreet, Regional Director

[2] **Right to Request Review:** Pursuant to the provisions of Section 102.71 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, any party may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on Monday, January 13, 2014, at 5 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it 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 a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review 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.

Exhibit 2

NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
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December 5, 2013

VIA E-MAIL and First Class Mail

Cornele A. Overstreet, Regional Director
National Labor Relations Board, Region 28
2600 North Central Avenue, Suite 1800
Phoenix, AZ 85004-3099

Re: *Renaissance Hotel Operating Co.*,
Case Nos. 28-RD-112742, 28-RD-113966 and related blocking charges

Dear Mr. Overstreet:

I understand from your agent, Johannes Lauterborn, that the Region has found merit to the union's "blocking charges" and is planning on dismissing these two decertification petitions.

Petitioners Mr. Quintero and Ms. Cohen oppose any blocks on their elections, and request that the Region hold a prompt hearing under *Saint-Gobain Abrasives*, 342 NLRB 434 (2004), at which UNITE can try to meet its burden of proof that the alleged employer misconduct had a "causal nexus" to the employees' disaffection from the union. *See, e.g.*, *Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 517-18 (1970) (party asserting a contract bar "bears the burden of proof that the contract was fully executed, signed and dated prior to the filing of the petition"). Since UNITE chooses to block Petitioners' elections, it must bear the burden of proving the "causal nexus."

Here, UNITE's blocking charges – even if meritorious, *arguendo* – unfairly deny employees their fundamental rights under Sections 7 and 9 of the Act to decertify an unpopular and unwanted union. The election is blocked even though there has been no showing of a "causal nexus" between the employees' desire to throw off this unwanted union and any alleged – and so far unproven – employer unfair labor practice. Speculation and supposition should not be cause to delay or completely deny an election.

Indeed, all bars squelch statutory rights under both § 7 and § 9(c)(1)(A)(ii) of the Act. *See Waste Management of Maryland*, 338 NLRB 1002 (2003) ("a finding of contract bar necessarily results in the restriction of the employees' right to freely choose a bargaining representative"). Accordingly, all election bars must be narrowly and strictly construed to minimize the infringement on employees' §§ 7 and 9 rights. After all, the fundamental and overriding principle of the Act is employee free-choice and "voluntary

unionism." *Pattern Makers v. NLRB*, 473 U.S. 95, 102-03 (1985); *see also Lee Lumber & Building Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) ("employee free choice . . . is a core principle of the Act.") citing *Skyline Distributors v. NLRB*, 99 F.3d 403, 411 (D.C. Cir. 1999).

In short, Petitioners oppose any and all delays, "blocks" or dismissals of their decertification petitions, and, to the extent the Region and UNITE are going to impose such draconian "remedies" on their petitions, a hearing under *Saint-Gobain Abrasives* should be held to ensure that employees' statutory rights to decertify an unwanted union are protected and not crushed.

If there are any questions about this matter, please do not hesitate to call me. Thank you for your prompt attention.

Sincerely,

/s/ Glenn M. Taubman

Glenn M. Taubman
Attorney for Petitioners

cc: All clients