

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

ISLAND HOSPITALITY MANAGEMENT 3, INC.,
D/B/A RESIDENCE INN BY MARRIOTT – WHITE PLAINS¹
Employer

and

Case No. 02-RC-127128

LOCAL UNION 514²
Petitioner

DECISION AND DIRECTION OF ELECTION

Island Hospitality Management 3, Inc., d/b/a Residence Inn by Marriott – White Plains (“the Employer”), is engaged in the hospitality business and operates a hotel in White Plains, New York. On April 23, 2014,³ Local Union 514 filed a petition seeking to represent all full-time and regular part-time housekeeping, housemen, engineering maintenance, and kitchen staff employees.

The sole issue presented at the hearing is whether the petition should be dismissed because the Petitioner is not a labor organization within the meaning of §2(5) of the National Labor Relations Act, as amended (“the Act”).

Upon the petition duly filed under Section 9(c) of the National Labor Relations Act (“the Act”), a hearing was held before a Hearing Officer of the National Labor Relations Board (“the Board”) on May 8, 2014.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding⁴ I find that:

¹ The Employer’s name has been corrected to reflect the correct name as stipulated at the hearing.

² The Petitioner’s name has been corrected to remove the reference to United Workers of America, as it was stipulated at the hearing that Petitioner is not affiliated with that or any other organization.

³ All dates hereafter are in 2014, unless otherwise indicated.

⁴ The parties waived the filing of briefs. Any arguments made by the parties on the record during the course of the hearing have been duly considered.

1. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed.

At the hearing, the Employer objected to the Hearing Officer's ruling to quash a subpoena *duces tecum*, which sought, among other things, the Petitioner's constitution and bylaws, and collective bargaining agreements between the Petitioner and other employers. The Hearing Officer correctly ruled that such evidence is not necessary to the determination of labor organization status. To the extent that the Employer sought to introduce such evidence for the purpose of challenging Mr. Gottlieb's credibility, I affirm the Hearing Officer's ruling to preclude such questioning and note that credibility is not assessed in pre-election hearings, which are merely fact-finding. *Marian Manor for the Aged and Infirm, Inc.*, 333 NLRB 1084 (2001).

2. The parties stipulated, and I find, that the Employer, a New York corporation with a place of business located at 5 Barker Avenue, White Plains, New York 10601, the only facility involved herein, is engaged in the retail operations of a residential hotel facility. Annually, in the course and conduct of business operations, the Employer derives gross revenues in excess of \$500,000 and purchases and receives goods, materials, and services valued in excess of \$5,000 directly from suppliers located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. As noted above, the Employer contends that the Petitioner is not a labor organization. For the reasons set forth below, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The only witness presented at this hearing was Josh Gottlieb, the President of the Petitioner. Accordingly, the record facts summarized below are based on Gottlieb's testimony.

Gottlieb is the Petitioner's sole officer. He assumed the office of president when the acting president stepped down; there was no election for the office.

Gottlieb testified that the Petitioner negotiates collective-bargaining agreements with various employers regarding employees' hours, wages, benefits, and other terms and conditions of employment. The Petitioner currently is a party to thirteen collective-bargaining agreements. Pursuant to these agreements, the Petitioner represents employees in grievances, arbitrations, negotiations over the agreements, and other matters, as it deems necessary.

Gottlieb testified that the Petitioner's members nominate representatives to serve on contract negotiating committees and choose their own shop stewards. Further, the

members vote to ratify the contracts and attend general membership meetings, which were held about four times in 2013.

In analyzing these facts, I note that Section 2(5) of the Act provides the following definition of "labor organization":

Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The statutory definition of a "labor organization" has long been interpreted broadly. *See Electromation, Inc.*, 309 NLRB 990, 993-994 (1992), *enf'd.* 35 F.3d 1148 (7th Cir. 1994). For a union to fall within the definition of a "labor organization," the Board has held that employees must participate in the union and it must exist for the purpose, in whole or in part, of dealing with employers on their behalf regarding their wages, hours of employment and other terms and conditions of employment. *See Alto Plastic Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). Under this definition, even an incipient union that has not yet actually represented employees may, nevertheless, be accorded Section 2(5) status if it was *formed* for the purpose of representing employees. *See Coinmach Laundry Corp.*, 337 NLRB 1286 (2002); *The East Dayton Tool & Die Company*, 194 NLRB 266 (1971); *Butler Manufacturing Company*, 167 NLRB 308 (1967).

A finding of labor organization status does not require proof that the entity in question has ever "dealt with" an employer. *Coinmach Laundry, supra*; *Armco, Inc.*, 271 NLRB 350 (1984); *Steiner-Liff Textile Products Co.*, 259 NLRB 1064, 1065 (1982). Rather, it is the intent of the organization that is critical in ascertaining labor organization status, regardless of the progress of the organization's development and what activities the organization has actually performed. *Edward A Utlaut Memorial Hospital*, 249 NLRB 1153, 1160 (1980). Indeed, even if it becomes inactive without ever having represented employees, it is still deemed to have been a statutory labor organization if its organizational attempts "[c]learly ... envisaged participation by employees," and if it existed, "for statutory purposes although they never came to fruition." *Comet Rice Mills*, 195 NLRB 671, 674 (1972).

Moreover, "structural formalities are not prerequisites to labor organization status." *Yale New Haven Hospital*, 309 NLRB 363 (1992) (no constitution, by-laws, meetings, or filings with the Department of Labor); *Butler, supra*, at 308 (no constitution, bylaws, dues, or initiation fees); *East Dayton, supra*, at 266 (no constitution or officers). Thus, the absence of a constitution or bylaws is an irrelevant consideration in analyzing whether a petitioner is a labor organization within the meaning of the Act. *Coinmach Laundry, supra*.

In the instant case, the record establishes that the Petitioner exists for the purpose of representing employees in collective bargaining with respect to wages, hours and

other terms and conditions of employment. The Petitioner's members participate in the organization by selecting shop stewards, nominating negotiating committee members, and voting to ratify collective-bargaining agreements. Based on this evidence, the limited requirements of Section 2(5) of the Act have been met.

Thus, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act based on the record evidence that it represents employees with respect to their terms and conditions of employment and that employees participate in the organization.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. At the hearing, the parties stipulated and I find that the following employees constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time housekeeping, houseman, engineering maintenance employees, and kitchen staff employed by the Employer.

EXCLUDED: All other employees, including engineering maintenance, front-of-house, and night auditor employees, clerical staff, managers, officers, guards, and professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit described above.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than twelve months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than twelve months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by **Local 514** or by **no** labor organization.

NOTICE OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within seven days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 2's office, 26 Federal Plaza, Room 3614, New York, New York, 10278, on or before **May 27, 2014**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

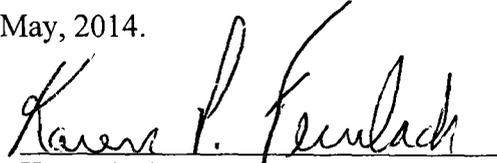
RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC, 20570. This request must be received by the Board in Washington by **June 3, 2014**.

In the Regional Office's initial correspondence the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may not be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for e-filing

can also be found on the National Labor Relations Board website at www.nlr.gov. On the home page of the website, select the E-Gov⁵ tab and click on E-Filing. Then select the NLRB office for which you wish to e-file your documents. Detailed e-filing instructions explaining how to file the documents electronically will be displayed.

DATED at New York, New York this **20th** day of May, 2014.



Karen P. Fernbach
Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, NY 10278

⁵ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Board/Office of the Executive Secretary and click on the “File Documents” button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the “Accept” button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the “Submit Form” button. Guidance for e-filing is contained in the attachment supplied with the Regional Office’s initial correspondence on this matter and is also located under “E-Gov” on the Board’s website.