United States of America
Before The National Labor Relations Board
Region 2

ACE HOTEL NEW YORK,
Employer

and

Case No. 02-RC-071384

NEW YORK HOTEL & MOTEL TRADES COUNCIL,
Petitioner

and

CONSOLIDATED COMMERCIAL WORKERS OF AMERICA, LOCAL 528, AFFILIATED WITH NOITU-IUJAT,
Intervenor

INTERVENOR'S EXCEPTIONS TO THE CORRECTED REPORT ON OBJECTIONS AND RECOMMENDATIONS

Intervenor, Consolidated Commercial Workers of America, Local 528, Affiliated with NOITU-IUJAT, by its attorneys, Kreisberg & Maitland, LLP, as and for its Exceptions to the Corrected Report on Objections and Recommendations in the above-captioned proceeding ("Corrected Report"), pursuant to Section 102.69 of the Board's Rules and Regulations, states as follows:

1. Annexed hereto as Exhibit "A" is the Confidential Witness Affidavit of Kaydee Bonilla, sworn to April 3, 2012, submitted during the investigation of Intervenor's Amended Objections to the Conduct of the Election and to Conduct Affecting the Results of the Election ("Amended Objections"), and made part of the record.

2. Annexed hereto as Exhibit "B" is the Confidential Witness Affidavit of Maria Braithwaite, sworn to April 2, 2012, submitted during the investigation of Intervenor's Amended

Objections, and made part of the record.

3. Annexed hereto as Exhibit "C" is the Confidential Witness Affidavit of Gerald Hustick, sworn to March 30, 2012, submitted during the investigation of Intervenor's Amended Objections, and made part of the record.

4. Intervenor excepts to the recommendation that Objection 1 be overruled, on the ground that it is well established that threats made by third-parties can invalidate the election. See, Westwood Horizons Hotel, 270 NLRB 802 (1984); O'Brien Memorial, 310 NLRB 93 (1993); Lamar Advertising of Janesville, 340 NLRB 979 (2003); and Duralam Inc., 284 NLRB 1419 (1987). The threats made herein, as set forth in the Affidavits submitted herewith, even if not made by agents or representatives of the Petitioner, but rather by third parties, rendered a free election impossible. See, PPG Industries, 350 NLRB 225 (2007).

5. Intervenor excepts to the recommendation that Objection 3 be overruled, and states that the Regional Director erroneously determined that the Board's holding in Randall Warehouse House of Arizona, 347 NLRB 591 (2006), was inapplicable because here Petitioner did not photograph the employee in question, but rather published a preexisting photograph of the individual. Intervenor contends that such distinction is irrelevant. Intervenor further contends that the use of Bullard's photograph without his consent, in the manner used as described in the Corrected Report and in the body of the campaign leaflet, constituted objectionable conduct.

6. Intervenor excepts to the recommendation that Objections 4 and 5 be overruled, and states that the threats made to employees, as stated in the Affidavits, including the visit made to an employee's family business, restrained and coerced employees, prevented a free and fair election, and was highly objectionable conduct.

7. Intervenor excepts to the recommendation that the unalleged objectionable conduct discovered during the course of the investigation was insufficient to have interfered with the conduct of the election and therefore not a basis for setting aside the election. To the extent that such recommendation is based on the conclusion that such conduct was engaged in by third-parties and not Petitioner's agents, under the authorities cited in Paragraph 4 above, the conduct of such third-parties is grounds for invalidating the election. Moreover, the conduct found, as set forth in the Corrected Report is in fact and law sufficient to invalidate the election.

WHEREFORE, for all of the foregoing reasons, Intervenor's exceptions should be sustained and the election invalidated.

Dated: New York, New York
May 31, 2012

KREISBERG & MAITLAND, LLP
Attorneys for Intervenor
75 Maiden Lane, Suite 603
New York, New York 10038
(212) 629-4970

By: _____
Jeffrey L. Kreisberg, Esq.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JANE SPATH, being duly sworn, states as follows:

I am over 18 years of age, not a party to the within action, and reside at Great Neck, New York.

On May 31, 2012, I served the annexed INTERVENOR'S EXCEPTIONS TO THE CORRECTED REPORT ON OBJECTIONS AND RECOMMENDATIONS upon the person(s) or parties designated below by mailing a true and complete copy of same in a postage pre-paid envelope, and depositing same in a post office or official depository of the United States Postal Service within New York State, at the last known address of the addressee(s) as set forth herein.

Karen P. Fernbach, Acting
Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza - Room 3614
New York, New York 10278-0104

Joseph E. Farelli, Esq.
Pitta & Giblin LLP
120 Broadway, 28th floor
New York, New York 10271

Peter D. Conrad, Esq.
Proskauer Rose, LLP
11 Times Square
New York, New York 10036-6581

Jane Spath
JANE SPATH

Sworn to before me this
31st day of May 2012

Notary Public

JEFFREY L. KREISBERG
Notary Public, State of New York
No. 02KR4962731
Qualified in Suffolk County
Commission Expires Feb. 26, 2014

A

Ace Hotel New York
Case 02-RC-071384

Confidential Witness Affidavit

I, Kaydee Bonilla, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 21 Broadway Terrace, Apt #1 D, NY, NY 10040

My cell phone number (including area code) is: 347-296-5887

My e-mail address is: Kaydeemarie922@yahoo.com

I am employed by The Ace Hotel

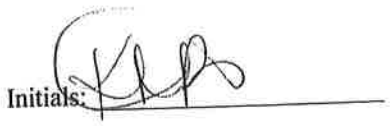
located at 20 West 29th Street, NY, NY

1. I started working at the Ace Hotel on or about September 27, 2011. I was hired by Adina Han, Housekeeping Director. My title is Room Attendant. My responsibilities include cleaning guess rooms in an assigned area. My supervisor is Adena Han. Adina reports to Jan, whose last name I do not know. I do not know how many room attendants there are, but I believe there are approximately 50 of us.
2. I did not become a member of Consolidated Commercial Workers of America, Local 528. I did fill out the paperwork and gave it to Adina, but I never became a member. My understanding is that local 528 union was not collecting dues, because there was a pending election. I was not part of any committee for local 528. I am a supporter of Local 528.

Privacy Act Statement
The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, www.nlrb.gov. Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

Initials

1 3. In or about the beginning of November 2011, local 6 distributed a newsletter. In most of
2 the pages they were slandering someone. I remember I saw Brad's picture. It seemed
3 someone had taken a picture of his ID. They also slandered three supervisors, Yang, Ines,
4 whose last names I do not know and Conniel Tate-Severino. The letter had Local 6 logo
5 in the front.
6 4. In or about November 2011, during the Thanksgiving week. There was houseman by the
7 name Sangpo Tenzin a local 6 supporter. He was talking to Liz, an Asian woman, whose
8 last name I do not know. He was asking Liz why she thought she should vote for local 6.
9 Liz said to him that she heard that if we did not vote for local 6, we would be replaced by
10 a cleaning company. Sangpo said that did not apply to them, because of seniority rules. I
11 understand seniority rules are that the people who come last are the ones who are laid off.
12 I did not say anything.
13 5. In or about the week of November 28, 2011. I saw Cy Gomez, Supervisor from the
14 engineering department. He was right by his office in the hallway. I told him I heard a
15 rumor that we would be replaced by a cleaning company. He told me that I should not
16 worry about it. He said I should not pay attention to those people. I also spoke to Crystal
17 about that comment. Crystal was there during my conversation with Cy.
18 6. In or about the end of November 2011, or the beginning of December 2011, Amanda
19 Rodriguez, Room Attendant and I were in the locker room. Amanda told me that the
20 Asians were talking that we would be replaced by a cleaning company. I asked Amanda
21 who she heard that from. Amanda said she heard that from Liz. I told Amanda I had
22 spoken with Cy and he told me not to worry about it. Those were the only two instances
23 in which I heard about being replaced.

Initials: 

7. In or about the end of November 2011, or the beginning of December 2011, I read an article in a newsletter from local 6, stating that people in the housekeeping department should walk around with recorders to protect themselves from management. It stated that the hotel was in cahoots with local 528 and that they needed to protect themselves.
8. In or about Mid February 2012, Daniel Last Name Unknown, Houseman, went into a room I was cleaning. It was some time between 10:00 a.m. and 12:00 noon. He said he was there to find out how many checkouts I had. A checkout is a room that has a pending arrival. Checkout rooms must have everything replenish, including shower curtains, which is the responsibility of the Houseman. He changed the curtain in that room. Before he left he told me that if I did not vote for Local 6 that we were going to lose our jobs. I understood by "we" he meant the people I associate with. They are: Crystal Lopez, Louis Cruz, Brad Bullard, Elizabeth Mansueta, and Maria B. All of us are Local 528 supporters as well as employees who were hired after August 11, 2011. At that time, I thought it was a joke. I did not say anything to him. And then he said "do the right thing, or else you are going to get fired". Then he left. The conversation lasted approximately 6 minutes. At lunch time on the same day I told Crystal about the conversation with Daniel. I did not tell anyone else about the conversation I had with Daniel.
9. In or about the third week of February 2012, Crystal and I were going into the linen closet. Daniel last name unknown was coming back from the linen closet with a cart. He pushed the cart into Crystal. He hit Crystal in the hip area. Crystal said to Daniel "what the f**k". I did not say anything to Daniel. He laughed and kept moving forward. I went into the room I was cleaning. Crystal said she was going to speak with Ines last name

Initials:

unknown, Supervisor of Human Resources. I do not know if Crystal went to talk to her or not.

10. From the time this incident occurred until the election on March 2, 2012, I saw Daniel approximately 4 or 5 times. On those occasions Daniel would stare make noises as though he was annoyed. I just kept walking. I did not say anything. There were at least two times that I was with Crystal. Other than Daniel nobody else threatened me that I was going to lose my job. I did not hear any conversation of any other workers being threatened. The only incident I know of Crystal and Daniel the Houseman is the one regarding with the linen cart.

11. On or about March 2, 2012, Louis Cruz, Houseman, had the day off. The day before the election on March 1, 2012, he told me that he would be there the following day to vote. He never showed up. I did not hear from him on Saturday. He was invited to attend my daughter's party. On Sunday night he texted me, Crystal and Brad. He said he had a warrant for something small and that he had been arrested. He said that local 6 had instigated something. I did not have any other conversations with Louis about his arrest.

12. In or about the week of March 12, 2012. Crystal told me she was on the elevator with Chris, an Engineer whose last name I do not know and Daniel, whose last name I do not know. This Daniel is different than the one describe in this affidavit in previous paragraphs. The person I am referring to in this paragraph is Hispanic. He is an Engineer. Crystal told me that while she was on the elevator with them, Chris was staring at her. She also told me that when she was leaving the elevator Chris said that she had to watch her back.

Initials: _____

13. On or about the week of March 12, 2012, the day after Crystal told me what happened, we both went to talk to Ines, the supervisor. Ines took down Crystal statement and said that she would investigate. She said that if anything else happened in the future, we should let her know. There have been no other incidents since that date.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 5 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: April 2, 2012 **Signature:** Kaydee Bonilla

Signed and sworn to before me on April 3, 2012 **at**

New York, NY

Maria Patricia Belonis, Board Agent
National Labor Relations Board

Initials:

B

Ace Hotel New York
Case 02-RC-071384

Confidential Witness Affidavit

I, Maria Braithwaite, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 33 Sherwood Avenue, Bridgeport, CT, 06605
(Legal address 100-05 92nd Avenue, New York, NY)

My home telephone number (including area code) is: 203-870-1520

My cell phone number (including area code) is: 917-376-2042

My e-mail address is: 5grandphotos@gmail.com

I am employed by The Ace Hotel

located at 20 West 29th Street, NY, NY

1. I have been employed at the Ace Hotel since August 4, 2011. I was hired by Adina Han, Director of housekeeping. My title is a room-attendant. My responsibilities included cleaning the rooms, changing linens, and refreshing the rooms.

2. On or about October 2011, I became a member of Consolidated Commercial Workers, Local 528, after my probation period. I do not pay union dues. Nobody at the site pay union dues because of a vote was taken regarding union dues.

Privacy Act Statement
The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, www.nlrb.gov. Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

Initials MB

3. I am part of a Local 528 Committee. I do not know the exact name of the committee. My responsibilities in the committee include informing Jerry Hustick, union representative of any issues that may come up among the workers in the unit regarding work. I also inform him of any changes proposed by unit members regarding the way the work is being done.

4. In or about February 2012, I sat in the Mess Hall, which is the way the lunchroom or cafeteria is referred to. Julissa Rivera, Room Attendant, Junior Perreira, Painter, and Denny, whose last name I do not know, and I sat together to have lunch. Denny, and Junior bought KFC chicken and they asked me to hold the leftovers in my locker because they were afraid that if they left them in the engineering office other guys would tamper with the food. Denny and Junior were Local 528 supporters. Chris Last Name Unknown and Danny Last Name Unknown were Local 6 supporters.

5. In or about February 2012, I sat in the Mess Hall, with David Cespedes, Engineer Helper and Julisa Rivera, Room Attendant. Julissa asked David what he thought about the union situation. David responded something like it was bogus and that people take it too far and too seriously. He also said why would anyone take something they already have andjeopardize it for something that is uncertain. I asked what he thought about Chris's Last Name Unknown, an Engineer. He said Chris just wants to intimidate people to go his way. Julisa and I agreed. Chris has openly supported Local 6 during the campaign.

Initials: MB

6. In or about November 2011, I do not recall the exact date, I went into work and saw a newsletter all over the ping-pong table in the Mess Hall. I took one and put it my bag, so I could read it when I went to one of the rooms. The newsletter was a Local 6, campaign letter. In the center of the newsletter they had an article about Bradford Bullard and how he is a thug in the hotel. There was a picture of his drivers' license. Someone took a picture of his ID from the book that we sign in and out every day. I know it was from the book because in the picture I could see his name from the slot that the card is kept in.

7. On or March 1 2012, I was covering the second or the third floor at approximately 3:00 p.m. Daniel Last Name Unknown, Houseman, came into the room to change the shower curtain. He told me he wanted to talk to me about the Union. He said that 528 in the past, had done nothing for us. He said that Dominick Bentivegna, union representative, did not do anything. He went on to tell me about his experience in previous hotels. He also asked me what I thought about the schedule. He asked if it should be rotated or set by seniority. I told him that we should have a rotating scheduled because I never get weekends off to spend with my husband unless I requested. He told me I was wrong. He said we should respect the seniority. He said I should have an open mind because local 528 is not going to do what they say they are going to do. The conversation lasted about 20 minutes. There were no witnesses to our conversation. I told Julissa Rivera about my conversation with Daniel when we were in the locker room before I went home. I also told Brad Bullard right after the conversation happened. Brad told me not to worry about it. He said I had my own opinion and to get through the day.

Initials: MB.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 4 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: April 2, 2012 **Signature:** Maria Braithwaite
Maria Braithwaite

Signed and sworn to before me on April 2, 2012 **at**

New York, NY

Maria Patricia Belonis, Board Agent
National Labor Relations Board

Initials: MB

C

Ace Hotel New York
Case 02-RC-071384

Confidential Witness Affidavit

I, Gerald Hustick, being first duly sworn upon my oath, state as follows:

have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I work at: Consolidated Commercial Workers of America, Local 528 affiliated with NOITU-IUJAT located at: 148-06 Hillside Avenue, Jamaica, NY 11435
My title is: Vice-President

My office telephone number (including area code) is: 718-291-3434 ext. 648

My cell phone number (including area code) is: 516-885-6358

My e-mail address is: Gerry87@optonline.net

1. Since on or about the beginning of October 2011 through March 2, 2012, local 528 and local 6 were campaigning for an election that took place on March 2, 2012. At the time we did not know when. I went to the Ace Hotel located at 20 West 29th Street, NY, NY, 10001, on daily basis. Local 528 represents housekeeping, maintenance, engineers and doormen at the Ace Hotel since 2008. Roger Santos, Local 528 Representative and Cathy Guan, another Local 528 representative also went with me. The purpose of the visits was to meet all the employees. All three of us, went to cafeteria and walked the various floors of the hotel and meet with the union members. We would be in the cafeteria from 7:00 am to 9:30 am; from noon until 2:00 pm; and from 3:30 pm, to 5:00 pm. We were there at those times because they were when the majority of the people would be there while they were taking their breaks and also their lunch time.

Initials: GH

2. On or about February 2012, we would visit the hotel 7 days a week. I did not see any Local 6 union officials in the hotel during the campaign.

3. On or about October 14, 2011, Local 528 scheduled a contract proposal and campaign meeting with all the members at the hotel to collect proposals for contract negotiations. Local 528 has a committee, which is composed of 5 employees including, Brad Bullard, Louis Cruz, Maria Braithuaite, Crystal Lopez, and Joseph Mule. I told the committee members about a week before, that the meeting would take place on Friday in the cafeteria, between 12:00 noon at 2:00 pm with all the members. The day of the meeting only ten people showed up for the meeting, including Daniel Ling, Migmar Wangdu, and 3 other a Local 6 supporters whose names I do not know and local 528 committee members. I decided to investigate the reason why there was a low turnout to attending the meeting. I asked the committee to find out why people did not show for the meeting.

4. On or about October 15, 2011, through phone calls and talking to the committee members each one of them told me that people did not show to the meeting because they were intimidated and that they had been threatened with their jobs if the supported local 528 or if they showed up at a meeting for local 528.

5. On or about November 16, 2011, December 8, 2011, and February 22 and 23, 2012, contract and bargaining meetings were scheduled and people did not show up. I talked to the committee members and they told me that people did not come in because they were intimidated. All five of the committee people told me that all the employees were

Initials: GH

receiving phone calls at home from local 6 supporters telling them that if they supported local 528 or attended the meetings they would lose their jobs. I do not know how they would lose their jobs. Each of the committee members also informed me that local 6 supporters were visiting them at home. I do not know who the supporters were making the visits. Each or the committee members told me that the people receiving visits were the Chinese women in the housekeeping department, which is approximately 26 women.

6. On or about February 28, or 29 2012, prior to the election, a Chinese woman, whose name I do not remember approached me at the cafeteria with Wei Mei, a Local 528 representative. She told me that she was threatened with losing her job by local 6 supporters. I do not know by whom. She also told me that local 6 supporters went to her family business, a Florist, in China town and told her family that she had to vote for Local 6. I do not know who visited the Florist.

7. On or about March 2, 2012, Louis Cruz was not present at the election. Louis is a Local 528 supporter. His scheduled days off are Friday and Saturday. March 2, 2012 which was a Friday, Louis was scheduled to be off. Brad Bullard and Louis's girlfriend whose name I do not know called him on the cell phone, but they received no answer. Brad told me that a lead man had called him from the company, I do not know who, to remind him to come to the office to vote. Brad said that during that conversation with the lead man the police had taken his cell phone and that they did not have any other information. Brad told me the following day that Louis had been bailed out. Louis called me on Sunday, March 4, 2012. He confirmed the information that Brad had told me.

Initials: GH

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 4 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: March 30, 2012 **Signature:** _____
Gerald Hustick

Signed and sworn to before me on **March 30, 2012** **at**

New York, NY

_____
Maria Patricia Belonis Board Agent
National Labor Relations Board

Initials: GH