

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

SANDS BETHWORKS GAMING, LLC d/b/a  
SANDS CASINO RESORT BETHLEHEM

and

Case 04-CA-115226

LAW ENFORCEMENT EMPLOYEES  
BENEVOLENT ASSOCIATION

**MOTION FOR SUMMARY JUDGMENT**

Counsel for the General Counsel, pursuant to Sections 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board (herein called the Rules and the Board, respectively), moves for Summary Judgment and requests the Board to transfer, and continue before the Board, the Complaint issued herein and the proceedings related thereto. In support of the Motion, Counsel for the General Counsel avers as follows:

1. On December 26, 2013, the Regional Director for the Fourth Region of the Board issued a Complaint and Notice of Hearing in the above-captioned matter. (Exhibit 1.)

The Complaint alleges that Respondent, Sands Bethworks Gaming, LLC d/b/a Sands Casino Resort Bethlehem, violated Section 8(a)(1) and (5) of the Act by refusing to provide information requested by the Union, Law Enforcement Employees Benevolent Association. On January 9, 2014, Respondent filed its Answer. (Exhibit 2.)

2. The Complaint alleges, and Respondent's Answer admits:

(a) The filing and service of the charge and amended charge;

(b) The facts and conclusions concerning the business of, and the Board's jurisdiction over, Respondent; and

(c) That the Union was certified as the exclusive collective-bargaining representative of the unit of employees involved in this matter (herein the Unit), elsewhere described in the Complaint as: "All full-time and regular part-time security guards employed by Respondent at its 77 Sands Boulevard, Bethlehem, Pennsylvania facility, excluding the locksmith, all other employees and supervisors as defined in the Act."

3. The Complaint further alleges, and Respondent's Answer admits that:

(a) On or about June 24, 2013, the Union requested that Respondent furnish the following information to the Union:

"...copies of all witness statements that were received by [Respondent] concerning the February 10, 2013 write-up of Security Officer Tyler Fenstermaker, TM #34073, which led to his PIP and Career Decision Day."

(b) On or about August 14, 2013, the Union requested that Respondent furnish the following information to the Union:

"...copies of all witness statements or notes taken of verbal witness statements relied upon by [Respondent] in making its decision on or about February 10, 2013, to issue Tyler Fenstermaker discipline, a PIP and a Career Decision Day."

(c) Since on or about June 24, 2013, Respondent has failed and refused to furnish the Union with the information it requested in paragraphs (a) and (b) above.

4. Respondent denies that the requested information is relevant to, and necessary for, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit. However, as argued in the attached Memorandum in Support of

this Motion, the information is presumptively relevant and necessary for the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

5. (a) In its Answer, Respondent further denies that the Union is a labor organization within the meaning of Section 2(5) of the Act. However, Respondent stipulated to the Union's labor-organization status in Case 04-RC-021833. (Exhibit 3.) On June 21, 2011, the Regional Director issued a Decision and Direction of Election in that case and on July 22, 2011, a majority of Unit employees voted in favor of Union representation.

(b) Respondent filed Objections to the election. On October 17, 2011, a Hearing Officer of the Board issued a Report on Objections recommending that Respondent's Objections be overruled and that a Certification of Representation issue. Respondent filed Exceptions to the Hearing Officer's Report.

(c) On February 10, 2012, the Board adopted the Hearing Officer's Report and certified the Union as the exclusive collective-bargaining representative of the Unit.

6. (a) Respondent is refusing to bargain with the Union. Accordingly, the Union filed an unfair labor practice charge in Case 04-CA-076289.

(b) The Acting General Counsel filed a Motion for Summary Judgment in Case 04-CA-076289, and the Board found that Respondent was violating Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union as the exclusive collective-bargaining representative of the Unit. *Sands Bethworks Gaming, LLC d/b/a Sands Casino Resort Bethlehem*, 358 NLRB No. 49 (2012). The Board ordered Respondent to bargain with the Union and to post an appropriate Notice to Employees.

7. In concluding that Respondent was violating Section 8(a)(1) and (5) of the Act, the Board found, among other things, that the Union is a labor organization within the meaning of Section 2(5) of the Act, and ordered Respondent to bargain. *Id.*, 358 NLRB No. 49, 2012 WL 1952191, \*2. Having stipulated to the Union's status as a labor organization within the meaning of Section 2(5) of the Act, having been ordered to bargain with the Union, and having refused to do so, Respondent by stipulation and conduct, has admitted that the Union is an "organization of any kind... 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" within the meaning of Section 2(5). Respondent's denial is only to the legal conclusion in this case; it has not alleged any facts that would warrant a finding contrary to its prior stipulation or the Board's finding that the Union is a statutory labor organization.

8. Respondent's Answer incorporates affirmative and other defenses it raised in Case 04-CA-076289, including that the Board at the time it ruled on Respondent's Objections was improperly constituted and that the certified Unit was inappropriate. Respondent has petitioned the D.C. Circuit Court of Appeals for review of the Board's Decision and Order in Case 04-CA-076289, 358 NLRB No. 49, partly on the ground that the Board was improperly constituted. Respondent's petition for review and the Board's cross application for enforcement are in abeyance while the U.S. Supreme Court decides the Board appointment issue in *Noel Canning v. NLRB*, D.C. Cir. Nos. 12-1115 and 12-1153.

9. In Respondent's Answer, it justifies its refusal to provide the requested information on the ground that the Union's information request was based on an "improper

purpose.” Respondent offered no facts in support of its conclusion. The Union’s written requests themselves show that they were sought to pursue “bargaining,” a proper purpose under the Act. (The Union’s written requests for information are attached to this Motion as Exhibits 4 and 5.)

10. Counsel for the General Counsel submits that Respondent has raised no question of fact requiring a hearing, and as a matter of law, Respondent has no valid defense to the Complaint. Respondent’s refusal to provide information essentially derives from its refusal to recognize and bargain with the Union.

Now, therefore, the undersigned Counsel for the General Counsel moves that: (1) the Complaint and this proceeding be transferred to and continued before the Board; (2) the Board find the allegations of the Complaint to be true; (3) the Board issue a Decision and Order based on such findings requiring Respondent, among other things, to furnish to the Union the information described above; and (4) the Board grant such other and further relief as may be appropriate.

Signed at Philadelphia, Pennsylvania, this 8<sup>th</sup> day of April, 2014.



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EDWARD J. BONETT JR.  
Counsel for the General Counsel  
National Labor Relations Board, Region Four  
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

SANDS BETHWORKS GAMING, LLC d/b/a  
SANDS CASINO RESORT BETHLEHEM

and

Case 04-CA-115226

LAW ENFORCEMENT EMPLOYEES  
BENEVOLENT ASSOCIATION

**COMPLAINT AND NOTICE OF HEARING**

Law Enforcement Employees Benevolent Association, herein called the Union, has charged that Sands Bethworks Gaming, LLC d/b/a Sands Casino Resort Bethlehem, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in this proceeding was filed by the Union on October 21, 2013, and a copy was served by first class mail on Respondent on October 23, 2013

(b) The amended charge in this proceeding was filed by the Union on November 20, 2013, and a copy was served by first class mail on Respondent on November 20, 2013.

2. (a) At all material times, Respondent has operated a casino and hotel at 77 Sands Boulevard in Bethlehem, Pennsylvania, herein called the Resort.

(b) During the past 12-month period, Respondent, received gross revenues in excess of \$500,000 and purchased and received at the Resort goods valued in excess of \$5000 directly from points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, Kathy Birkbeck held the position of Respondent's Human Resources Representative and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

**EXHIBIT #1**

5. (a) The following employees of Respondent at the Resort, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security guards employed by Respondent at its Resort located at 77 Sands Boulevard, excluding the locksmith, all other employees and supervisors as defined in the Act.

(b) On February 10, 2012, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since February 10, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. (a) On or about June 24, 2013, by letter to Kathy Birkbeck, the Union requested that Respondent furnish the following information to the Union:

...copies of all witness statements that were received by [Respondent] concerning the February 10, 2013 write-up of Security Officer Tyler Fenstermaker, TM #34073, which led to his PIP and Career Decision Day.

(b) On or about August 14, 2013 by letter to Kathy Birkbeck, the Union requested that Respondent furnish the following information:

...copies of all witness statements or notes taken of verbal witness statements relied upon by [Respondent] in making its decision on or about February 10, 2013, to issue Tyler Fenstermaker discipline, a PIP and a Career Decision Day.

(c) The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(d) Since on or about June 24, 2013, Respondent has failed and refused to furnish the Union with the information it requested as set forth above in subparagraphs (a) and (b).

7. By the conduct described above in paragraph 6(d), Respondent has been refusing to bargain collectively with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

8. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Complaint. The Answer must be **received by this office on or before January 9, 2014 or postmarked on or before January 8, 2014.** Unless

filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this Regional Office.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at <http://www.nlrb.gov>, click on the **File Case Documents tab**, and then follow the detailed instructions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two (2) hours after 12:00 noon (Eastern Time) on the due date for the filing, a failure to timely file the Answer 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. The Board's Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of the Answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may **not** be filed by facsimile transmission. If no Answer is filed, or if an Answer is untimely filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that at **10:00 a.m.** on **March 19, 2014**, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, 7<sup>th</sup> Floor, Philadelphia, Pennsylvania. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania on this 26<sup>th</sup> day of December, 2013.



**DANIEL E. HALEVY**

Acting Regional Director, Fourth Region  
National Labor Relations Board

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Attorneys for Employer  
SANDS BETHWORKS GAMING, LLC  
d/b/a/ SANDS CASINO RESORT BETHLEHEM

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**FOURTH REGION**

SANDS BETHWORKS GAMING, LLC  
d/b/a/ SANDS CASINO RESORT  
BETHLEHEM,

Respondent,

and

LAW ENFORCEMENT EMPLOYEES  
BENEVOLENT ASSOCIATION,

Charging Party

**NLRB CASE NO. 04-CA-115226**  
**RESPONDENT'S ANSWER TO**  
**COMPLAINT**

Pursuant to sections 102.20 and 102.21 of the National Labor Relations Board's Rules and Regulations, SANDS BETHWORKS GAMING, LLC d/b/a/ SANDS CASINO RESORT BETHLEHEM ("Respondent") answers the Complaint in the above-captioned matter as follows:

1(a). Answering paragraph 1(a), Respondent admits that it received a copy of the charge on or about October 23, 2013. Respondent lacks knowledge of the remaining allegations and, on that basis, denies each and every other allegation set forth therein.

1(b). Answering paragraph 1(b), Respondent admits that it received a copy of the amended charge on or about November 20, 2013. Respondent lacks knowledge of the remaining allegations and, on that basis, denies each and every other allegation set forth therein.

2(a). Answering paragraph 2(a), Respondent admits the allegations set forth therein.

2(b). Answering paragraph 2(b), Respondent admits the allegations set forth therein.

2(c). Answering paragraph 2(c), Respondent admits the allegations set forth therein.

3. Answering paragraph 3, Respondent lacks knowledge of the allegations and, on that basis, denies each and every allegation set forth therein.

4. Answering paragraph 4, Respondent admits the allegations set forth therein.

5(a). Answering paragraph 5(a), Respondent denies each and every allegation set forth therein.

5(b). Answering paragraph 5(b), Respondent admits the allegations set forth therein.

5(c). Answering paragraph 5(c), Respondent denies each and every allegation set forth therein.

6(a). Answering paragraph 6(a), Respondent admits that Kathie Birkbeck received a letter containing the language quoted in paragraph 6(a) but otherwise denies the allegations set forth therein.

6(b). Answering paragraph 6(b), Respondent admits that Kathie Birkbeck received a letter containing the language quoted in paragraph 6(b) but otherwise denies the allegations set forth therein.

6(c). Answering paragraph 6(c), Respondent lacks knowledge of the allegations and, on that basis, denies each and every allegation set forth therein.

6(d). Answering paragraph 6(d), Respondent admits the allegations set forth therein.

7. Answering paragraph 7, Respondent denies each and every allegation set forth therein.

8. Answering paragraph 8, Respondent denies each and every allegation set forth therein.

WHEREFORE, Respondent prays that the Complaint be dismissed in its entirety.

**AFFIRMATIVE DEFENSES**

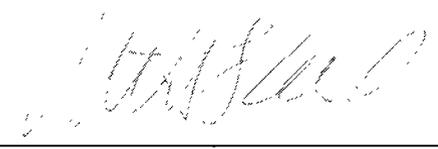
1. Respondent incorporates herein by reference all affirmative and other defenses raised in Case 04-CA-076289.

2. The Union's information request was based upon an improper purpose.

Dated: January 9, 2014

BALLARD, ROSENBERG, GOLPER, & SAVITT, LLP

By: \_\_\_\_\_

  
MATTHEW T. WAKEFIELD  
Attorneys for Respondent  
SANDS BETHWORKS GAMING, LLC  
d/b/a/ SANDS CASINO RESORT BETHLEHEM

**PROOF OF SERVICE**

On January 9, 2014, I served the foregoing document described as: **RESPONDENT'S ANSWER TO COMPLAINT** via e-mail to Terrence P. Dwyer, Esq., counsel for Charging Party, at [tpdlaw@aol.com](mailto:tpdlaw@aol.com).

I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States of America. Executed on January 9, 2014.

By:   
\_\_\_\_\_

Matthew T. Wakefield

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

Correct Name of Employer:  Sands Bethworks Gaming, Llc D/B/A Sands Casino Resort Bethlehem
Case No. 4-RC-21833
Correct Name of Petitioner:  Law Enforcement Employees Benevolent Association

***STIPULATION***

We stipulate and agree that:

1. We have been informed of the procedures at formal hearings before the National Labor Relations Board by service of the Statement of Standard Procedures with the Notice of Hearing. The Hearing Officer has offered to us additional copies of the Statement of Procedures.
2. To the extent the formal documents in this proceeding do not correctly reflect the names of the parties, the formal documents are amended to correctly reflect the names as set forth above.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.
4. The Petitioner claims to represent the employees in the unit described in the Petition herein and the Employer declines to recognize the Petitioner.
5. There is no collective bargaining agreement covering any of the employees in the unit sought in the Petition herein and there is no contract bar to this proceeding.
6. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

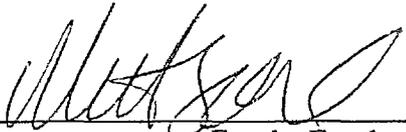
Set forth commerce facts below:

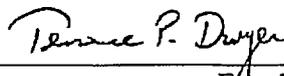
*limited liability company*

*W  
10*

Sands Bethworks Gaming, LLC d/b/a Sands Casino Resort Bethlehem, a Pennsylvania ~~corporation~~, is engaged in the operation of a gaming casino located at 77 Sands Boulevard, Bethlehem, PA. During the past 12-month period, the Employer received gross revenue in excess of \$500,000 from the operation of its gaming casino and during that same period, the Employer purchased and received goods and services valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

Upon approval of this Stipulation by the Hearing Officer it may be admitted, without objection, as a Board exhibit in this proceeding.

  
\_\_\_\_\_  
For the Employer

  
\_\_\_\_\_  
For the Petitioner

RECEIVED:

  
\_\_\_\_\_  
Hearing Officer

Date: 5/23/11

Board Exhibit No. 2



**Law Enforcement Employees Benevolent Association (LEEBA)**  
18 North 7<sup>th</sup> Street, Suite 100  
Stroudsburg, PA 18360  
610-393-2356

June 24, 2013

Kathy Birkbeck  
Human Resource Dept.  
Sands Casino Resort  
Bethlehem, PA 18015

Dear Kathy:

I am requesting copies of all witness statements that were received by you concerning the February 10, 2013 write-up of Security Officer Tyler Fenstermaker, TM #34073, which led to his PIP and Career Decision Day.

You can have them sent to the Security Administration Department addressed to me or mailed to me at 2116 Birch St., Easton, PA 18042. I would appreciate receiving this information by 5:00 pm on Wednesday, July 3, 2013.

Thank you for your attention to this matter.

Sincerely,

George W. Bonser  
Lead Delegate  
Law Enforcement Employees Benevolent Association (LEEBA)



Law Enforcement Employees Benevolent Association  
18 North 7<sup>th</sup> Street Suite 100  
Stroudsburg, PA 18360  
610-393-2356

August 14, 2013,

Kathy Birkbeck  
Human Resource Dept.  
Sands Casino Resort  
Bethlehem, PA 18015

Dear Kathy:

I am responding to your letter dated July 12, 2013 concerning my request for statements that I had asked for in the Tyler FENSTERMAKER write up on February 10, 2013. It is my understanding that you were confused and needed clarification on the request that I made on June 24, 2013. This letter will attempt to make clear to you what information I am seeking.

The Union requests copies of all written witness statements, or notes taken of verbal witness statements, relied upon by the Employer in making its decision, on or about February 10, 2013, to issue Tyler FENSTERMAKER discipline, a PIP, and a Career Decision Day.

LEEBA, the certified bargaining representative of the Sands Security Officers, seeks this information in order to determine if Mr. FENSTERMAKER was treated in an unfair and/or discriminatory manner, and the Union needs this information to determine if it will pursue this issue in bargaining with the Employer, or in another forum.

You can have the information I seek sent to me thru the Security Administration Office addressed to me or it can be mailed to my home address at 2116 Birch St. Easton, Pa 18042. I am requesting to have this information by 5:00 PM, Friday, August 23, 2013. Thank you for your attention to this matter.

Sincerely,

George W. Bonser  
Lead Delegate

Law Enforcement Employees Benevolent Association (LEEBA)

