

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION  
357, AFL-CIO

and

Case 28-CC-115255

DESERT SUN ENTERPRISES LIMITED  
d/b/a CONVENTION TECHNICAL  
SERVICES

*Nathan Higley, Esq. and Larry A. Smith, Esq.*  
for the General Counsel.

*Michael A. Urban, Esq., The Urban Law Firm,*  
for the Respondent.

*Gregory E. Smith, Esq., and Amy Baker, Esq.,*  
*(Lionel Sawyer & Collins)* for the Charging Party.

DECISION

STATEMENT OF THE CASE

**Gerald A. Wacknov, Administrative Law Judge:** This case was tried before me in Las Vegas, Nevada on May 6, 2014. The captioned charge was filed on October 22, 2013, by Desert Sun Enterprises Limited d/b/a Convention Technical Services (Charging Party or Convention Technical Services), and an amended charge was filed by the Charging Party on January 14, 2014. On January 31, 2014, the Regional Director for Region 28 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging a violation by International Brotherhood of Electrical Workers, Local Union 357, AFL-CIO (Respondent or Union) of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

Since the close of the hearing, briefs have been received from counsel for the General Counsel (General Counsel) and counsel for the Respondent. Upon the entire record, I make the following:

## Findings of Fact

### I. Jurisdiction

5 Convention Technical Services has been a limited liability company with an office and  
place of business in Las Vegas, Nevada, engaged in furnishing portable electrical services in the  
convention industry. It annually purchases and receives at its Las Vegas facility goods and  
services valued in excess of \$50,000 directly from points outside the State of Nevada. It is  
admitted and I find that at all times material herein Convention Technical Services has been an  
10 employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act,

The Las Vegas Convention and Visitors Authority (the LVCVA) is a governmental entity  
that manages the Las Vegas Convention Center (LVCC) which includes common-situs  
exhibition halls where employees dispatched by the Respondent and other labor organizations  
15 perform work. The LVCVA annually purchases and receives at the LVCC facilities goods  
valued in excess of \$50,000 directly from points outside the State of Nevada. It is admitted and  
I find that at all times material herein the LVCVA has been a person within the meaning of  
Section 2(1) and Section 8(b)(4) of the Act.

### 20 II. The Labor Organization Involved

It is admitted and I find that the Respondent is, and at all times material has been, a labor  
organization within the meaning of Section 2(5) of the Act.

### 25 III. Alleged Unfair Labor Practices

#### A. Issues

The principal issue in this proceeding is whether the Respondent has violated Section  
30 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act by the conduct of Respondent’s  
business agent in advising the LVCVA that he, on behalf of the Respondent, was seeking strike  
sanction authorization from the Southern Nevada Building and Construction Trades Council  
against Convention Technical Services “for any and all jobs because of not paying area  
standards,” without further advising the LVCCA that if a picket line was established at the  
35 LVCC the Respondent intended to comply with the standards set forth in *Sailors Union of the  
Pacific (Moore Dry Dock), 92 NLRB 547 (1950)*.

#### B. Facts and Analysis

40 At the outset of the hearing the General Counsel and Respondent entered into a  
Stipulation of Facts. The Stipulation of Facts, in pertinent part, is as follows:

On October 9, 2013, Max Carter, Assistant Business Manager of Respondent, reported to  
Al Davis, Business Manager and Financial Secretary of Respondent, that Employer  
45 [Convention Technical Services] was performing work on the ABC Kids Show at the  
LVCC. Davis told Carter to get a strike sanction against Employer for Employer’s  
alleged failure to pay area standard wages and benefits.

5 Also on October 9, Max Carter prepared the strike sanction request letter, Al Davis signed it, and Carter sent it to the Southern Nevada Building and Construction Trades Council. He also sent the letter to selected members of the Board of Directors for the LVCVA.

Later the same day, October 9, 2013, the Trades Council sent its approval of a strike sanction against Employer to Carter.

10 Respondent's strike sanction request letter and the Trades Council's approval of this request did not inform anyone that, if it established a picket line, it would comply with the standards contained in *Sailors Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547 (1950).

15 The strike sanction request letter referred to above, on IBEW Local 357 letterhead and addressed to Darren Evans, Southern Nevada Building and Construction Trades Council, is as follows:

20 Dear Darren,

Please be advised that Local Union #357 of the International Brotherhood of electrical Workers is requesting a strike sanction against **Convention Technical Services**. This is for any and all jobs because of not paying area standards. (Original emphasis.) Your cooperation in this matter would be greatly appreciated.

25 Sincerely,

/s/ Al Davis

Al Davis

Business Manager/Financial Secretary

IBEW Local #357

30 cc. LVCVA Board Members

35 The foregoing Stipulation of the General Counsel and the Respondent constitutes an admission of each of the essential allegations of the complaint. Accordingly, upon receipt in evidence of the Stipulation, over the objection of the Charging Party,<sup>1</sup> the General Counsel moved for Summary Judgment. I verbally granted the General Counsel's motion on the record.

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<sup>1</sup> The Charging Party refused to enter into the Stipulation and takes the position that the Stipulation is incomplete. Accordingly, the Charging Party sought to introduce additional evidence in support of its argument that the Respondent's conduct was unlawful and masked a secondary intent. The Charging Party's proposed evidence is summarized as follows: That the Charging Party had a collective-bargaining agreement with another union; that the Regional Office's investigation of the charge was inadequate; and that as a result of the strike sanction request letter sent by the Respondent to the LVCVA board members "the strike threat caused a group of [the Charging Party's] employees to be taken from the show floor and replaced by other employees from the Respondent." I denied the Charging Party's request to present such evidence.

The purpose of the foregoing sequence of events was to place the issue directly before the Board in view of the fact that both the General Counsel and the Respondent believe that current Board law is no longer viable as a result of the refusal of the D.C. Circuit and the Ninth Circuit to enforce Board decisions requiring *Moore Dry Dock* assurances in similar circumstances.

5 The Board in *Sheet Metal Workers Local 15 (Brandon Regional Medical Center)*, 346 NLRB 199, 202 (2006), *enf. denied* 491 F.3d 429 (D.C. Cir. 2007), in agreement with the analysis of the administrative law judge, found that the union had violated the Act as a result of its failure to provide *Moore Dry Dock* assurances to a secondary employer under circumstances similar to those herein. While the Board discussed the matter in a different context, it summarized the current status and rationale of Board law on this issue, pertinent to the instant case, as follows, at page 199:

15 The purpose of the Board's requirement that unions provide secondary employers with *Moore Dry Dock* assurances in connection with an announcement to picket a common situs is to assure the secondary that the picketing will be confined to the primary employer. *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 749-750, 752 (2004).

20 The D.C. Circuit rejected the Board's approach and denied enforcement of the Board's order. In doing so it took notice of the Ninth Circuit's earlier rejection of current Board law in this area and adopted the reasoning of the Ninth Circuit in *NLRB v. Ironworkers Local 433*, 850 F.2d 551 (9th Cir.1988). In that case the Ninth Circuit, in denying enforcement of a Board order under similar factual circumstances, stated that "there is still considerable merit to the general legal principal that people should be presumed to be acting lawfully until proven otherwise," and that there was "no justification for requiring [*Moore Dry Dock* assurances] in the absence of evidence that the union intends to picket in an unlawful manner or that its conduct or statements would reasonably be so understood." *Id* at 557. See also another Ninth Circuit case denying enforcement of a similar Board order: *Plumbers Local 32 v. NLRB*, 912 F.2d 1108 ((9th Cir. 1990).

30 The briefs of the General Counsel and Respondent in support of a reversal of Board precedent and dismissal of the instant complaint are persuasive in setting forth legal and policy justifications for the dismissal of the complaint. However, as I am required to follow current Board law and as the General Counsel and Respondent will be submitting briefs to the Board on appeal, it is unnecessary to recount in this decision their arguments and legal and policy reasons favoring the adoption of circuit court precedent.

40 Accordingly, on the basis of the foregoing, and consistent with current Board law, I find that the Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act as alleged.

### Conclusions of Law and Recommendations

1. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
- 45 2. The Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act as alleged.

### REMEDY

Having found that the Respondent has violated Section (b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist from such violation and to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

### ORDER<sup>2</sup>

The Respondent, International Brotherhood of Electrical Workers, Local Union 357, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Unqualifiedly threatening to picket with the object of forcing The Las Vegas Convention and Visitors Authority, or any other employer to cease doing business with Desert Son Enterprises Limited d/b/a Convention Technical Services.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its business offices and meeting halls within its jurisdiction copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees/members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees/members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 22, 2013.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. July 28, 2014

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A handwritten signature in cursive script that reads "Gerald A. Wacknov".

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Gerald A. Wacknov  
Administrative Law Judge

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**APPENDIX**

**NOTICE TO EMPLOYEES AND MEMBERS**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

**WE WILL NOT** threaten, coerce, or restrain The Las Vegas Convention and Visitors Authority where an object thereof is to force or require The Las Vegas Convention and Visitors Authority to cease doing business with Desert Son Enterprises Limited d/b/a Convention Technical Services or any other person.

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 357,  
AFL-CIO**

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Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099  
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/28-CC-115255](http://www.nlr.gov/case/28-CC-115255) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.