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IN BOUND VOLUMES

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St. Croix, VI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GRAPETREE SHORES, INC.  
d/b/a DIVI CARINA BAY RESORT

and

Case Nos. 24-CA-10700  
24-RC-8566

VIRGIN ISLANDS WORKERS UNION

DECISION, ORDER, AND DIRECTION

On February 8, 2008, Administrative Law Judge Paul Bogas issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs<sup>1</sup> and has decided to adopt certain of the judge's rulings, findings,<sup>2</sup> and conclusions,<sup>3</sup> and to withhold judgment on others at this time.<sup>4</sup>

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<sup>1</sup> We deny the Respondent's request for oral argument, as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951).

<sup>3</sup> In the absence of exceptions, we adopt the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(1) of the

In Case 24-CA-10700, the complaint alleges that the Respondent violated Section 8(a)(1) by announcing to employees an improved 401(k) plan during the 2 days preceding a Board-conducted representation election held on July 13, 2006. The Charging Party won that election, 45 to 42, with 7 determinative challenged ballots. Those challenged ballots and the Respondent's and the Charging Party's respective election objections are the subject of Case 24-RC-8566. The Respondent's objections, Objections 1-4, allege that an employee who served as the Charging Party's election observer twice threatened other employees with violence and unspecified reprisals if the Charging Party did not win the election. The Charging Party's remaining objection, Objection 4, is based exclusively on the Respondent's alleged violation of Section 8(a)(1), described above.

The judge found that the Respondent's announcement of an improved 401(k) plan violated Section 8(a)(1), and therefore recommended sustaining the Charging Party's Objection 4. The

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Act by telling employee Vitalis Martin, "Vote for the hotel, everything would be all right." Also, no party excepted to, and we adopt *pro forma*, the judge's recommendation to sustain the challenge to the ballot of Matthew Moore.

<sup>4</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

judge recommended overruling the Respondent's objections because, based on his credibility determinations, he found that the Respondent failed to establish the conduct that it alleged to be objectionable. The judge further found that the conduct, even if it occurred, was not objectionable under *Cal-West Periodicals*, 330 NLRB 599 (2000). Finally, with respect to the two challenged ballots before him,<sup>5</sup> the judge found that employee Felicia Dixon was eligible to vote, but that employee Matthew Moore was not.

We adopt the judge's recommendations to overrule the Respondent's Objections 1-4,<sup>6</sup> as well as his resolution of the challenges to the ballots of employees Dixon and Moore.<sup>7</sup> To expedite the resolution of Case 24-RC-8566, however, we have decided not to rule at this time on the judge's unfair labor practice finding or his recommendation to sustain the Charging Party's Objection 4. Rather, we shall sever and remand Case 24-RC-8566 to the Regional Director for Region 24 for further processing, as described below.

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<sup>5</sup> The Regional Director found, and the parties agreed, that the ballots of Valmy Thomas and Rosa Aponte were cast by ineligible voters and should not be counted, and that the ballots of Ellen Henry, Karen Nystrom, and Linda Olbermann were cast by eligible voters and should be counted.

<sup>6</sup> In adopting the judge's recommendations to overrule the Respondent's Objections 1-4, we rely on his findings, based on his credibility rulings, that the Respondent did not establish the conduct that it alleged to be objectionable. We find it unnecessary to pass on the judge's analysis of those objections under *Cal-West Periodicals*, 330 NLRB 599 (2000).

<sup>7</sup> Again, there were no exceptions to the judge's recommendation to sustain the challenge to Moore's ballot.

ORDER

The National Labor Relations Board orders that Case 24-RC-8566 be severed from Case 24-CA-10700 and remanded to the Regional Director for Region 24 for action consistent with the Direction below.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 24 shall, within 14 days from the date of this decision, open and count the ballots of employees Ellen Henry, Karen Nystrom, Linda Olbermann, and Felicia Dixon. The Regional Director shall then prepare and serve upon the parties a revised tally of ballots. If the revised tally of ballots shows that the Virgin Islands Workers Union (Charging Party) has received a majority of the valid votes cast, the Regional Director shall issue a certification of representative. If the revised tally shows that the Charging Party has not received a majority of the valid votes cast, the Regional Director shall transfer the proceeding back to the Board for disposition of the Charging Party's Objection 4.

Dated, Washington, D.C., July 30, 2008.

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Peter C. Schaumber, Chairman

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Wilma B. Liebman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD