

RICHARD S. ROSENBERG  
BALLARD ROSENBERG GOLPER & SAVITT, LLP  
500 North Brand Boulevard, Twentieth Floor  
Glendale, CA 91203-9946  
Telephone: 818-508-3700  
Facsimile: 818-506-4827

MATTHEW T. WAKEFIELD  
BALLARD ROSENBERG GOLPER & SAVITT, LLP  
1200 New Hampshire Avenue NW, Third Floor  
Washington, DC 20036  
Telephone: 202-689-8905  
Facsimile: 202-689-8907

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

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

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

Respondent,

and

LAW ENFORCEMENT EMPLOYEES  
BENEVOLENT ASSOCIATION,

Charging Party

**CASE 04-CA-076289**

**RESPONDENT'S RENEWED  
OPPOSITION TO GENERAL  
COUNSEL'S MOTION FOR SUMMARY  
JUDGMENT AND RENEWED  
RESPONSE TO BOARD'S NOTICE TO  
SHOW CAUSE**

## I. INTRODUCTION

Respondent Sands Bethworks Gaming, LLC d/b/a Sands Casino Resort Bethlehem (“Respondent”) submits this Renewed Opposition to General Counsel’s Motion for Summary Judgment and Renewed Response to Board’s Notice to Show Cause. On November 12, 2014, pursuant to the United States Supreme Court decision in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), the Board issued a Decision, Certification of Representative, and Notice to Show Cause in this matter.<sup>1</sup> The Board stated therein, in relevant part:

### NOTICE TO SHOW CAUSE

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although the Respondent’s legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

The General Counsel is granted leave to amend the complaint on or before November 24, 2014, to conform with the current state of the evidence.

The Respondent’s answer to the amended complaint is due on or before December 8, 2014.

NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before December 29, 2014 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the General Counsel’s motion for summary judgment. Any briefs or statements in support of the motion shall be filed by the same date.

As of December 29, 2014, the General Counsel has not issued an amended complaint. On November 25, 2014, Regional Attorney Daniel Halevy advised counsel for Respondent that an amended complaint would not be issued unless and until Charging Party renewed its request to bargain and Respondent refused that request.<sup>2</sup>

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<sup>1</sup> *Sands Casino Resort Bethlehem*, 361 NLRB No. 102 (2014).

<sup>2</sup> We wish to bring to the Board’s attention that both this (04-CA-076289) and another case (04-CA-115226) involve the same parties and overlapping facts and legal issues. On April

As discussed herein, Respondent urges the Board to deny the General Counsel’s motion and to direct a hearing to: (1) permit Respondent to fully litigate the issue of whether the certification of Charging Party Law Enforcement Employees Benevolent Association (“Charging Party” or “LEEBA”) violates Section 9(b)(3) of the Act, and (2) determine whether Charging Party has disclaimed interest in representing Respondent’s security officers and/or impermissibly delegated or transferred its Section 9(a) responsibilities to another purported labor organization.<sup>3</sup>

## **II.    *FACTS***

The record in these proceedings reveals an unlawful affiliation between Charging Party and nonguard labor organizations. Among other things, former United Steelworkers (“USW”) official George Bonser (who is one of Respondent’s security officers) brought in LEEBA as a cover for a USW organizing campaign which was planned and orchestrated long before it became public in May 2011. After the July 2011 election, Bonser advised Respondent that Charging Party would be eliminated from the bargaining process. Although Respondent was barred during the post-election hearing from questioning witnesses or subpoenaing any documents concerning these issues—even as to facts and circumstances which arose after the pre-election hearing—the evidence points to the inevitable conclusion that Bonser intended to replace Charging Party as the security officers’ representative with a labor organization that he and/or the USW would control (hereinafter “Local 777”).

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8, 2014, in Case 04-CA-115226, the General Counsel filed with the Board a Motion for Summary Judgment and a Memorandum in Support of Motion. On April 11, 2014, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause. On April 25, 2014, Respondent filed with the Board its Opposition to General Counsel’s Motion for Summary Judgment and Response to Board’s Notice to Show Cause in Case 04-CA-115226.

<sup>3</sup> Respondent is not seeking to relitigate any matters which have been fully litigated. Respondent also is not waiving any issues or arguments that it is permitted to raise, if necessary, before the U.S. Court of Appeals.

In February 2012, Bonser advised Respondent that he had become the president of the union (presumably Local 777).<sup>4</sup> In April 2012 Respondent discovered a website which boasts that Local 777, rather than Charging Party, represents Respondent’s security officers.<sup>5</sup> The “Welcome” page states that it is for the “*employees* of the Sands Resort and Casino [sic] of Bethlehem, PA *who comprise Local 777* of LEEBA.”<sup>6</sup> The “About Us” page states, “*We have organized as local* [sic] 777 of the Law Enforcement Employees Benevolent Association . . . .”<sup>7</sup>

In addition to evidence which Respondent previously sought to introduce into the record—and which the post-election hearing officer improperly rejected—the Local 777 website reveals additional evidence of Charging Party’s and/or its delegatee’s continuing desire to affiliate with non-guard unions. On the “Union Made in America” page, the website commands Respondent’s security officers and “unionized workers” in production (nonguard) positions in the United States to financially “support each other.”<sup>8</sup>

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<sup>4</sup> Section 102.24 of the Board’s Rules and Regulations provides, in relevant part: “It is not required that either the opposition or the response be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing.” Nonetheless, attached hereto as Exhibit A is a notice of Sands Security Officers Monthly Union Meeting for February 15, 2012. Among other things, the notice advises that “nominations will be held for the positions of: President . . . .” Bonser advised Respondent that he was the only nominee for the position of President. Attached hereto as Exhibit B is Respondent’s March 8, 2012 letter to LEEBA which further addresses this issue.

<sup>5</sup> Attached hereto as Exhibit C are copies of the publicly accessible pages (last checked May 4, 2012) from the website: [www.leeba777.org](http://www.leeba777.org).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

On August 8, 2013, Charging Party's president and treasurer signed "under penalty of perjury" a U.S. Department of Labor, Office of Labor Management Standards Form LM-3 Labor Organization Annual Report.<sup>9</sup> On the Form LM-3, Charging Party declared as "true, correct, and complete" that "we *no longer represent* Seagate Police Officer [sic] *nor any other private sector* [sic] *under the National Labor* [sic] *Board*."<sup>10</sup> The DOL's Buffalo office received the completed Form LM-3 on August 12, 2013.<sup>11</sup>

### III. *DISCUSSION AND ANALYSIS*

#### A. *A Hearing Should be Held to Determine Whether the Charging Party is Directly or Indirectly Affiliated With a Non-Guard Labor Organization*

A hearing in this matter should be held as the Board is not permitted to ignore or vary from Section 9(b)(3) of the Act, which prohibits the Board from certifying a union "as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." In *Brinks, Inc. of Florida*, 276 NLRB 1 (1985), after the employer refused to bargain with the union raising the same issue in response to the General Counsel's Motion for Summary Judgment, the Board held:

The Respondent has raised a substantial and material issue regarding the *Union's possible affiliation* with an organization that admits nonguards to membership. *If such affiliation were established, the Board would be statutorily precluded*, by Section 9(b)(3) of the Act, from certifying the Union as the bargaining representative of the guard unit for which it petitioned. Under these special circumstances, we find that the *Respondent is entitled to an evidentiary hearing* on the affiliation issue. Therefore, we *deny the General Counsel's Motion for*

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<sup>9</sup> Attached hereto as Exhibit D is a copy of Charging Party's Form LM-3 which was signed and filed in August 2013.

<sup>10</sup> *Id.* (emphasis added). However, in the public sector, Respondent does not dispute Charging Party's assertion that it represents the New York City Department of Environmental Protection Police.

<sup>11</sup> *Id.*

**Summary Judgment** and remand this proceeding to the Regional Director to direct an evidentiary hearing before an administrative law judge on the issue of the Union's alleged affiliation with an organization that admits nonguards to membership.

*Id.* at 2 (emphasis added) (footnotes omitted).<sup>12</sup>

In his report on objections, the hearing officer twice mistakenly transformed the *Brinks of Fla.* “substantial and material issue” into a requirement that an employer produce “substantial and material evidence.” He then compounded the error by using the elevated burden of proof to justify barring the Employer from subpoenaing or introducing any evidence.

In *Henry Ford Health Sys. v. NLRB*, 105 F.3d 1139 (6th Cir. 1997), the court rejected the Board's position “that it would be contrary to the intent of Congress to allow an employer to establish noncertifiability by collateral litigation.” *Id.* at 1145. Rather, the court explained that “a policy of requiring definitive evidence but permitting collateral litigation is required by the plain language of the statute.” *Id.*

**B. A Hearing Should be Held to Determine Whether Charging Party has Disclaimed Interest and/or Impermissibly Delegated or Transferred its Section 9(a) Responsibilities to Local 777**

Even assuming *arguendo* that Charging Party does not admit non-guards to membership and it is not directly or indirectly affiliated with a nonguard labor organization, a hearing should be held to determine whether Charging Party has disclaimed interest and/or delegated or transferred its Section 9(a) responsibilities to Local 777. *See, e.g., Sisters of Mercy Health Corp.*, 277 NLRB 1353 (1985) (finding a disclaimer of interest where OPEIU transferred representation, at the request of employees, from OPEIU Local 417 to Local 7). A union may not delegate or transfer to another union its representative responsibilities, even if the two unions are

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<sup>12</sup> After a full evidentiary hearing in that case the administrative law judge and the Board found no violation of Section 9(b)(3). The U.S. Court of Appeals disagreed. *Brinks, Inc. of Fla.*, 283 NLRB 711 (1987), *enf. denied* 843 F.2d 448 (11th Cir. 1988).

closely affiliated. *See, e.g., Goad Co.*, 333 NLRB 677, 677 n.1, 680 (2001) (employer lawfully refused to bargain with Plumbers Local 562 after Plumbers Local 420 delegated its responsibilities to Local 562); *Sherwood Ford, Inc.*, 188 NLRB 131, 134 (1971) (employer lawfully refused to bargain with Teamsters Local 604 after Automobile Salesmen's Local 1 delegated its responsibilities to Local 604).

The statutory duty of fair representation may not be delegated because only employees have the statutory power to confer Section 9(a) status on an elected representative. *See Standard Oil Co.*, 92 NLRB 227, 236 (1950) (employees voted to be represented by local not international or both), *remanded on other grounds* 196 F.2d 892 (6th Cir. 1952). An employer has a duty to recognize and bargain with only its employees' Section 9(a) representative, and a negative duty to deal with no other purported representative. *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 683-84 (1944).

If it is established that Charging Party has disclaimed interest and/or impermissibly delegated or transferred its responsibilities to Local 777 (or any other labor organization), the General Counsel's Complaint should be dismissed. In view of Charging Party's sworn statement that "we no longer represent . . . any private sector" employees and other evidence indicating that a delegation or transfer occurred, a hearing should be held to determine whether Charging Party has disclaimed interest and/or impermissibly delegated or transferred its responsibilities to Local 777.

#### **IV. CONCLUSION**

Respondent respectfully requests that the Board deny General Counsel's Motion for Summary Judgment and that it direct an evidentiary hearing before an administrative law judge to: (1) permit Respondent to fully litigate the issue of whether the certification of the Charging Party violates Section 9(b)(3) of the Act and (2) determine whether Charging Party has

disclaimed interest in representing Respondent's security officers and/or impermissibly delegated or transferred its Section 9(a) responsibilities to another purported labor organization.

Dated: December 29, 2014

BALLARD, ROSENBERG, GOLPER, & SAVITT  
RICHARD S. ROSENBERG  
MATTHEW T. WAKEFIELD

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

**Exhibit A**

**SANDS SECURITY OFFICERS**  
**MONTHLY UNION MEETING**

Wednesday, February 15, 2012

TIMES:	7:30 a.m.	WHERE:	Comfort Inn
	1:00 p.m.		3 <sup>rd</sup> Street
	3:30 p.m.		Bethlehem, PA

Nominations will be held for three positions for negotiating committee. Also nominations will be held for the positions of: President, Vice-President/Chief Steward, Recording Secretary and two Shop Stewards for each shift. Elections will be held Wednesday, March 21, 2012.

## **Exhibit B**



March 6, 2012

Terrence P. Dwyer, Esq.  
18 North 7<sup>th</sup> Street  
Stroudsburg, PA 18360  
Email Address: [TPDLAW@aol.com](mailto:TPDLAW@aol.com)

**VIA CERTIFIED MAIL & EMAIL**

**Re: Letter regarding LEEBA dated March 2, 2012**

Dear Mr. Dwyer:

Your letter dated March 2, 2012 raises several concerns. First you state in the letter that LEEBA and/or Mr. Wynder have filed the Labor Organization Notification form and the Labor Organization Registration Application form as required by the Pennsylvania Gaming Control Board ("PGCB") Regulations. However, contrary to your assurances, as of this writing the PGCB has not yet received any of the required filings.

Additionally we are also still unclear as to who is the real President of LEEBA. You indicate in your letter that Mr. Wynder is the President of LEEBA and emphatically deny that Mr. Bonser is the President. However elections were held on February 15, 2012 for, among other positions, the position of President. We have been informed by Mr. Bonser that he was the only candidate on the ballot for the position and is now therefore the duly elected President of LEEBA. It is disturbing that an individual associated with your union would assert that he holds the role of President in seeking to meet with us and that you would contradict that assertion.

These facts frankly underscore our view that the union was improperly certified in the first instance. We intend to seek judicial review of that decision by the NLRB and will not be engaging in negotiations with your entity in advance of a proper determination by the courts.

Regards,

  
\_\_\_\_\_  
Holly L. Eicher, Esq.  
Vice President – General Counsel

Cc: Mr. Robert J. DeSalvio

## **Exhibit C**



# LEEBA Local 777

[Home](#)[Made in USA](#)[About Us](#)[Home](#)

## Welcome

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Welcome to the Law Enforcement Employees Benevolent Association Local 777 web site. This site is being developed for the purpose of bringing unity and information to the employees of the Sands Resort and Casino of Bethlehem, PA who comprise Local 777 of LEEBA. Here they can find minutes of meetings, view a calendar of events, use forums for sharing information and ideas, help in the decision making process by using polls, and other tools and services to support their work.

We hope you enjoy your visit and learn more about us as we do our part to serve our employer, ourselves, and the communities in which we live. We also hope you'll support our efforts to keep the working people of this great country gainfully employed and prosperous enough to make positive differences in our local and global communities.

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[Home](#)

## Union Made in America

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As we are unionized workers among those hoping to return the working class people of this country to a financial state where home ownership and college education are attainable goals, we must support each other. We can not spend our hard earned dollars supporting companies that outsource U.S. jobs to other countries and those companies that reduce the standard of living here by paying employees minimum wages so profits can go to the "shareholders" before employees (for example) can have health care.

This is a partial list of U.S. companies that employ unionized workers here at home to produce products Americans use everyday.

- Gulden's Mustard
  - Heinz Catsup
  - Ken's Salad Dressings
  - Arizona Iced Tea
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# LEEBA Local 777

[Home](#)[Made in USA](#)[About Us](#)[Home](#)

## About Us

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This is the web site of the people providing security services to the patrons of the Sands Resort and Casino of Bethlehem, PA. We have organized as local 777 of the Law Enforcement Employees Benevolent Association (<http://www.leeba.org>) as a union of workers dedicated to serving our employers, The Sands, our community, and our friends and families.

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[Home](#)[Made in USA](#)[About Us](#)

# LEEBA Local 777

[Home](#)**User account**[Log in](#)[Request new password](#)**Username \***

Enter your LEEBA Local 777 username.

**Password \***

Enter the password that accompanies your username.

**Exhibit D**

# FORM LM-3 LABOR ORGANIZATION ANNUAL REPORT

FOR USE ONLY BY LABOR ORGANIZATIONS WITH LESS THAN \$260,000 IN TOTAL ANNUAL RECEIPTS

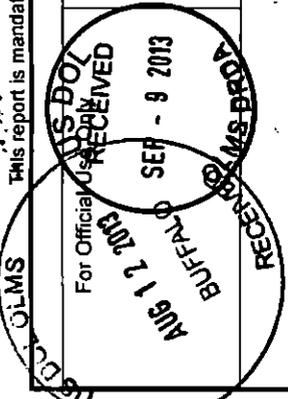
This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

1. FILE NUMBER: 544-264

2. PERIOD COVERED: From MO 01 DAY 01 YEAR 2012 Through MO 12 DAY 31 YEAR 2012

3. (a) AMENDED — If this is an amended report correcting a previously filed report, check here:  (b) TERMINAL — If your organization ceased to exist and this is its terminal report, see Section XII of the instructions and check here:



8. MAILING ADDRESS (Type or print in capital letters.)

First Name: KENNETH  
Last Name: WYNDER  
P.O. Box - Building and Room Number (if any):  
Number and Street: 277 MAIN STREET  
City: CATSKILL  
State: NY ZIP Code + 4: 12414-1512

4. AFFILIATION OR ORGANIZATION NAME (if "No," provide address in item 56): LAW ENFORCEMENT EMPLOYEES BEN ASS.

5. DESIGNATION (Local, Lodge, etc.):  
6. DESIGNATION NUMBER:  
7. UNIT NAME (if any):

9. Are your organization's records kept at its mailing address? Yes  No   
(If "No," provide address in item 56.)

56. ADDITIONAL INFORMATION (If more space is needed, attach additional pages properly identified.)

Item Number: 19  
DESCRIPTION: DECEASED WE NO LONGER REPRESENT SEAGATE POLICE OFFICER NOR ANY OTHER PRIVATE SECTOR UNDER THE NATIONAL LABOR BOARD.

57. SIGNED: [Signature] PRESIDENT 58. SIGNED: [Signature] TREASURER  
(If other title, see instructions.) (If other title, see instructions.)  
08/08/2013 518 943-5065 08/08/2013 518 943-5065  
Date Telephone Number Date Telephone Number



**24. ALL OFFICERS AND DISBURSEMENTS TO OFFICERS**

Enter Amounts in Dollars Only — Do Not Enter Cents

FILE NUMBER: 544 - 264

(A) Name <small>(List all persons who held office during the reporting period even if they received no salary or other disbursements. Use all capital letters.)</small>	(B) Title <small>(Enter title of officer, such as PRESIDENT or TREASURER.)</small>	Status (C)*		Gross Salary (before taxes and other deductions) (D)	Allowances and Other Disbursements (E)	Total (F)
		MI	MI			
1. WYNDER PRESIDENT	KENNETH A		C	0	0	0
2. ANDREANI VICE PRESIDENT	JOSEPH A		C	0	0	0
3. MELTICHE 1ST VICE PRESIDENT	ROBERT		C	0	4300	4300
4. WHITTICK TREASURER	STEFEN		C	0	0	0
5. LUCK RECORDING SECRETARY	PETER		C	0	0	0
6.						
7.						
8. Totals from additional pages (if any)				0		
9. Totals of Lines 1 through 8						
Enter the total from Line 11 in				Item 45	10. Less Deductions	
					11. Net Disbursements	

\*Code for Status (C): past officer — P; continuing officer — C; new officer during the reporting period — N. (If any officer was not elected at a regular election in accordance with your organization's constitution and bylaws, explain in Item 56 on page 1.)

**Enter Amounts in Dollars Only — Do Not Enter Cents**

FILE NUMBER: 544 - 264

STATEMENT A ASSETS AND LIABILITIES		Start of Reporting Period (A)	End of Reporting Period (B)	LIABILITIES Item	Start of Reporting Period (C)	End of Reporting Period (D)
Item	ASSETS					
25.	Cash.....	0	0	32. Accounts Payable.....	0	0
26.	Loans Receivable.....	0	0	33. Loans Payable.....	0	0
27.	U.S. Treasury Securities.....	0	0	34. Mortgages Payable.....	0	0
28.	Investments.....	0	0	35. Other Liabilities.....	0	0
29.	Fixed Assets.....	0	0	36. TOTAL LIABILITIES..	0	0
30.	Other Assets.....	0	0	37. NET ASSETS (Item 31 less Item 36)...	0	0
31.	TOTAL ASSETS.....	0	0			

STATEMENT B RECEIPTS AND DISBURSEMENTS		CASH RECEIPTS	AMOUNT	CASH DISBURSEMENTS	AMOUNT	
Item				Item		
38.	Dues.....		6800	45.	To Officers (from Item 24).....	4300
39.	Per Capita Tax.....		0	46.	To Employees (less deductions).....	0
40.	Fees, Fines, Assessments & Work Permits.....		0	47.	Per Capita Tax.....	0
41.	Interest & Dividends.....		0	48.	Office & Administrative Expense.....	0
42.	Sale of Investments & Fixed Assets.....		0	49.	Professional Fees.....	2500
43.	Other Receipts.....		0	50.	Benefits.....	0
44.	TOTAL RECEIPTS.....		6800	51.	Contributions, Gifts & Grants.....	0
				52.	Purchase of Investments & Fixed Assets.....	0
				53.	Loans Made.....	0
				54.	Other Disbursements.....	0
				55.	TOTAL DISBURSEMENTS.....	6800

**If total receipts reported in Item 44 are \$250,000 or more, your organization must file Form LM-2 instead of this form.**

## PROOF OF SERVICE

On December 29, 2014, I served the foregoing document described as: **RESPONDENT'S RENEWED OPPOSITION TO GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT AND RENEWED RESPONSE TO BOARD'S NOTICE TO SHOW CAUSE** via e-mail to:

- 1) Terrence P. Dwyer, Esq., counsel for Charging Party, at [tpdlaw@aol.com](mailto:tpdlaw@aol.com); and
- 2) Daniel E. Halevy, Esq., Regional Attorney, at [daniel.halevy@nrb.gov](mailto:daniel.halevy@nrb.gov).

I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States of America. Executed on December 29, 2014.

By: \_\_\_\_\_  
Matthew T. Wakefield