

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Troutbrook Company LLC d/b/a Brooklyn 181 Hospitality LLC and New York Hotel & Motel Trades Council, AFL-CIO (HTC), Intervenor-Cross Petitioner.** Case 29-RC-216327

December 13, 2018

ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND KAPLAN

The National Labor Relations Board<sup>1</sup> has carefully considered the Employer's request for review and stay of the Regional Director's decision on objections to rerun election and certification of representative, as well as the Intervenor-Cross Petitioner's opposition brief. The request

<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> Chairman Ring and Member Kaplan express no view with respect to whether they agree or disagree with revisions made to the Board's election rule, but they agree that the revisions apply here and warrant denial of the Employer's request to stay the certification of representative.

With respect to the Employer's Objection 12, we observe that it relies on conduct that occurred on the date of the first election, but before and

for review is denied as it raises no substantial issues warranting review.<sup>2</sup>

Dated, Washington, D.C. December 13, 2018

\_\_\_\_\_  
John F. Ring, Chairman

\_\_\_\_\_  
Lauren McFerran, Member

\_\_\_\_\_  
Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

during the time that the first election was being held. Conduct that occurs before and during the first election, even if it occurred on the date of the election, cannot form the basis for an objection to a rerun election because it does not occur within the critical period for the rerun election. See *Nestle Co.*, 248 NLRB 732, 733 fn. 3 (1980) (“[I]t is only conduct occurring between the two elections which may properly be considered in regard to the objections.”), *enfd.* 659 F.2d 252 (D.C. Cir. 1981) (unpublished).