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VIA ELECTRONIC FILING

Roxanne Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Re: Club Quarters Hotel Times Square - Midtown, Case Nos. 02-RC-232157 and 02-RC-237044

Dear Madam Executive Secretary:

This letter is being filed on behalf of Club Quarters Hotel Times Square (the "Employer") filed a Request for Review on March 5, 2019 in the above-referenced matters. As of March 5, the Regional Director, Region 2 ("Regional Director") had not ruled on the Employer's request that he reconsider his decision to accept the Petitioner's withdrawal of the petition in Case 02-RC-232157 and accept a new petition from Brotherhood of Amalgamated Trades, Local 514 (the "Union" or "Petitioner") in case 02-RC-237044 which seeks a unit consisting of a subset of employees who voted in a Board election on January 2, 2019, in violation of the plain language of Section 9(c)(3) of the Act as well as Board precedent interpreting that statutory provision.

On March 7, 2019 the Regional Director sent a letter to the undersigned denying the request for reconsideration. The Regional Director submitted a copy of that letter to your office.

The reasoning in the Regional Director's letter warrants a response. In his letter, he Regional Director has declared the January 2 election to have been "invalid" because there was no tally of ballots or certification of results. This conclusion is inconsistent with Board law, as set forth in the Employer's Request for Review. As the cases cited therein show, the Board has considered the election bar imposed by Section 9(c)(3) to apply in situations where an election has occurred but where the union withdraws a petition while determinative challenges and/or objections to the election are pending. *In re E Center*, 337 NLRB 983 (2002);

Baltimore Gas & Electric Company, 330 NLRB 3 (1999). It is inconceivable that the Regional Director, in light of the above precedents, which the Employer brought to his attention in its request for reconsideration, could have concluded that the election on January 2 was "invalid" within the meaning of Section 9(c)(3) of the Act and that it was appropriate to permit the Union to withdraw its petition without prejudice.

Indeed, the Regional Director cites in his letter an inapposite case, *Security Aluminum Co*., 149 NLRB 581 (1964), for the proposition that because there was no tally of ballots or certification in this case, the election was "invalid" and the Union should be free to conduct itself as though there was not a prior hearing and election. In *Security Aluminum Co*., as noted by the Board, the acting regional director "issued an order, in substance invalidating the election" and the employer failed to request review of that decision. 149 NLRB at 582. That is most assuredly not what happened here, and underscores that there needs to be a finding that an election was invalid before Section 9(c)(3) of the Act permits a second election. In contrast to *Security Aluminum Co*., there has not been an order issued either by the Board or the Regional Director declaring the January 2 election to have been invalid. The Regional Director appears to treat the Board's February 12 remand as a finding that his finding that a wall-to-wall unit is inappropriate. The Employer submits that that is a misreading of the Board's decision; rather, the decision focused on his failure evidence on relevant issues regarding unit scope. His mandate was to take evidence on those issues *as they pertained to the group of employees who had already voted in a Board election*. If, after hearing that evidence, the Regional Director finds that a wall-to-wall unit is appropriate, then the votes cast on January 2 should be counted. The fact that ballots were cast makes all the difference here: it *must* be determined whether the unit that voted was an appropriate one before a second election can be ordered lest the Act be violated.

The Employer reiterates its contention that it is fundamentally unfair that the hearing in this matter had to be reopened because of the Regional Director's error, and the Union now is permitted to take advantage of, and the Employer and employees both stand to be harmed by, that error. To permit the Union to withdraw without prejudice and re-file its petition here to circumvent Board rules was inappropriate.

The Regional Director also stated in his letter that the Employer is free to raise its election bar defense with regard to the petition in Case 02-RC-127044, and that such defense will be "duly considered." That remains to be seen; there may be irreparable harm as a result of the processing of the new petition. If permitted to continue processing the petition, the Regional Director will order an election among a subset of the employees who voted on January 2, 2019. Those ballots may be opened and tallied on the day of the election, and a certification might issue.

Assuming the Board agrees with the Employer's arguments in its Request for Review, what are the parties to do once this has happened? Ignore a certification in the second election (which will have been determined to have been inappropriate)? The risk of this happening is precisely the type of situation that screams out for immediate intervention in the form of a Board order staying the further processing of the petition in Case 02-RC-237044 pending consideration of the issues raised in the Employer's Request for Review.

The Employer, again, thanks the Board for its consideration of the Employer's position in this matter and its request for extraordinary relief.

Sincerely,

/s/

Louis J. Cannon

Cc: Sheri Preece, Esq. (counsel for Petitioner, via email)
John Walsh (via Board's e-filing system)
Jay Krupin
Charles Guzak