



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 2
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March 5, 2019

Louis Cannon
Baker & Hostetler, LLP
Washington Square, Suite 1100
1050 Connecticut Ave., S.W.
Washington, DC 20036-5403

Re: Club Quarters Hotel
Times Square - Midtown
Case 02-RC-232157

Dear Mr. Cannon:

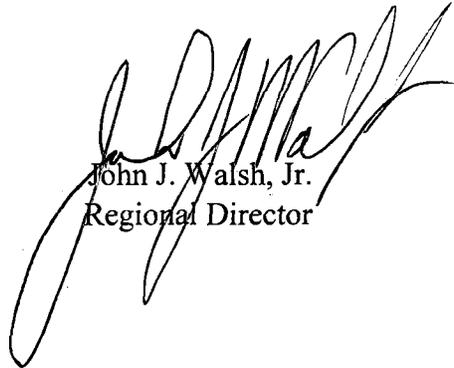
On January 2, 2019, pursuant to a Decision and Direction of Election, the Region conducted an election in this case, but the ballots were not counted and instead were impounded. Thereafter, the Board remanded the matter for the purpose of re-opening the record to determine the unit's appropriateness. An Order issued reopening the hearing, whereupon the Employer sought permission to amend its Statement of Position to expand the unit. Petitioner, in turn, sought permission to amend its petition to narrow the unit it had originally sought.

On February 28, 2019, the day scheduled for the reopening of the hearing, the Region approved Petitioner's request to withdraw the Petition. On March 1, 2019, the Employer sought reconsideration of that approval, arguing essentially that Section 9(c)(3) prohibits the conduct of an election within 12 months from January 2, 2019.

Section 9(c)(3) provides, in pertinent part, that, "no election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held." It is well-settled that under Section 9(c)(3), the prior election must be a "valid" election. *Security Aluminum Co.*, 149 NLRB 581 (1964). Since no Tally of Ballots or certification issued, the voting conducted on January 2, 2019, was not a "valid election." Section 11111 of the NLRB Representation Casehandling Manual provides, in relevant part, that a withdrawal request submitted prior to conclusion of a hearing should be approved without prejudice. There is no ambiguity that, pursuant to the Board remand in this case, which directed the Region, "...to conduct a hearing on those issues [eligibility and unit scope]," Petitioner's withdrawal request was made prior to the closing of the hearing which was ordered to be re-opened in this matter. Thus, the approval of Petitioner's request to withdraw its petition without prejudice was appropriate. Further, it appears that the invalid January 2 election

is not a bar to the filing and processing of a new petition seeking an election to take place as soon as practicable. Indeed, on March 5, the Union filed a new petition in its narrowed unit in Case 02-RC-237044. The Employer may raise its objection with respect to that petition and it will be duly considered in that case.

Very truly yours,

A handwritten signature in black ink, appearing to read "John J. Walsh, Jr.", is written over the typed name and title. The signature is fluid and cursive, with a large loop at the end.

John J. Walsh, Jr.
Regional Director

cc: Roxanne Rothschild, Executive Secretary