

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL JOINT EXECUTIVE BOARD OF)	
LAS VEGAS a/w UNITE HERE)	Case 28-RC-245493
INTERNATIONAL UNION)	
)	
Petitioner,)	
and)	
)	
NP LAKE MEAD LLC d/b/a/ FIESTA)	
HENDERSON)	
Employer.)	
)	

**PETITIONER’S OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW OF
THE REGIONAL DIRECTOR’S ORDER**

Pursuant to Pursuant to Section 102.67(d) and (f) of the Rules and Regulations of the National Labor Relations Board, Petitioner Local Joint Executive Board of Las Vegas states its opposition to the Employer’s Request for Review of the Regional Director’s Order Denying Motions to Dismiss and Postpone Hearing Indefinitely. The Employer’s request raises no grounds for review under Section 102.67(d)(1) to (4) of the NLRB’s rules.

For the reasons set out in the Regional Director’s Order dated June 17, 2020 explaining the justification for proceeding with the hearing, the Order does not depart from any Board precedent. The only evidence in the record shows that the Employer has “temporarily” closed and will reassess reopening the property after assessing the performance of its other reopened properties. According to its own affidavit, the Employer’s parent corporation has already reopened 6 of 10 hotel-casinos in the greater Las Vegas area.

The Employer improperly relies on cases where an employer fundamentally changed its business operations before a RC election. In this case, the employees already voted back in September 2019. Region 28 initially certified the Union as the representative after counting the ballots, but then decided that one of the Employer's objections could be grounds for setting aside the election on October 17, 2019. The Board ruled that the case required a hearing before the election could be set aside. *See* NLRB, Order on 28-RC-245493 (Feb. 20, 2020). The Objections hearing scheduled for March 2020 was postponed due to the coronavirus.

Similarly, the Employer's reliance on *Servicios Correccionales de Puerto Rico*, 338 NLRB 452 (2002), has no merit. In that case, again, it was clear that the employer had lost the revenue contract to operate a unit of guards. The federal government had awarded the contract to a wholly separate employer. While the petitioner speculated that the original employer have become a joint employer of the guards, that argument was flawed because (1) it was speculative; and (2) the petitioner had not named the alleged joint employers on the RC petition. This case, where the employer's permanent loss of employees was certain and imminent, is distinguishable as the Regional Director found.

In this case, the evidence shows that there is no imminent, fundamental change to the company. Rather, the hotel-casino is closed—using the Employer's own word—"temporarily." The Employer's own Request for Review recognizes that bargaining representatives can remain the agent of employees even through a layoff that occurs while awaiting a decision on NLRB Objections. (Request for Review at 8.)

The Employer's case for extraordinary relief is unfounded.

Dated: June 23, 2020

Respectfully Submitted,

McCracken, Stemerma & Holsberry, LLP

By: /s/ Kimberley C. Weber
Kimberley C. Weber

CERTIFICATE OF SERVICE

I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled **PETITIONER'S OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S ORDER** was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 23RD day of June, 2020 as follows:

William B. Cowen, Regional Director
National Labor Relations Board, Region 21
U.S. Courthouse – Spring Street
312 North Spring Street, 10th Floor
Los Angeles, CA 90012

william.cowen@nlrb.gov

Cornele A. Overstreet
Regional Director
National Labor Relations Board
Region 28
2600 N. Central Avenue, Suite 1400
Phoenix, AZ 85004

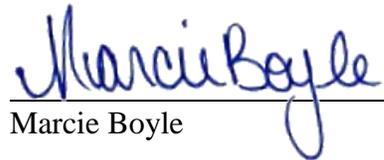
Cornele.Overstreet@nlrb.gov

Reyburn W. Lominack III
FISHER PHILLIPS
1320 Main Street, Suite 750
Columbia, South Carolina 29201

rlominack@fisherphillips.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 23, 2020 at San Lorenzo, California.



Marcie Boyle