

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WESTIN ST. FRANCIS LIMITED PARTNERSHIP
d/b/a THE WESTIN ST. FRANCIS HOTEL ¹

Employer

And

JOVENTINO BANEZ,

Case 20-RD-2279

Petitioner

And

HOTEL EMPLOYEES, RESTAURANT EMPLOYEES
LOCAL 2, AFFILIATED WITH HOTEL EMPLOYEES,
RESTAURANT EMPLOYEES INTERNATIONAL UNION,
AFL-CIO ²

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer is a Delaware Limited Partnership with a place of business in San Francisco, California, where it is engaged in

¹ The Employer's name appears as stipulated to by the parties.

² The Union's name appears as amended at the hearing

the hotel business, providing food, beverages and lodging to its patrons. The parties further stipulated, and I find, that during the calendar year ending December 31, 1998, the Employer received gross revenues valued in excess of \$500,000, and purchased and received goods and/or services valued in excess of \$5,000 which originated from points located outside the State of California. Based on the parties' stipulation to such facts, it is concluded that it would effectuate the purposes and policies of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Union (herein also referred to as Local 2) is a labor organization within the meaning of the Act.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons:

The Petitioner seeks an election to decertify the Union in a unit comprised of all doormen, banquet housemen and housekeeping housemen employed by the Employer; excluding all other employees, managers, guards and supervisors as defined in the Act.

The Union contends that the petition should be dismissed for several reasons, including that the petitioned-for unit which is limited to the Employer's facility is not coextensive with the recognized multi-employer unit; that the petition is barred by the Board's recognition bar doctrine; and that the petitioned-for unit is inappropriate because it does not include classifications represented by Local 2 which have been merged with the classifications formerly represented by Service Employees International Union, Local AFL-CIO, herein called Local 14, into a single unit. The Union also contends that the petition should be dismissed because a unit limited to the classifications set forth in the

petition is inappropriate under traditional community of interest doctrines. The Hearing Officer refused to allow the Union to present evidence on the last issue, ruling that the issue was irrelevant. The Union has excepted to that ruling and has asked that this issue be addressed herein if the case is not dismissed on other grounds. The Petitioner takes the opposite position on these issues, further contending that the merger of Local 14 into the Union was invalid because Local 14 members were not accorded due process rights in the transfer of membership to Local 2.

Background. The record reflects that since 1994, the Employer, as a member of the San Francisco Hotel Multi-Employer Group (herein called the Multi-Employer Group), has been bound to two collective-bargaining agreements between Local 14, and the Multi-Employer Group that were effective by their terms for the period August 11, 1994 to August 16, 1997 and August 11, 1997 to August 10, 1999 (herein called the Local 14 Agreements). The recognition clause of each of the Local 14 Agreements states that the Multi-Employer Group recognizes Local 14 as:

the sole representative for collective bargaining purposes of all their employees falling within the jurisdiction of said Union, excepting and excluding clerical employees and supervisors as defined in the National Labor Relations Act and shall also exclude:

Purchasing Agent,

Head Houseman/Woman (who has the right to hire and fire),
and who does not perform manual duties, except in
emergencies.

House Officers (who are delegated policing responsibilities)

Receiving Clerks.

Appendix “D” to the 1994-1997 agreement and Appendix “G” to the 1997-1994 agreement each list the Employer as an employer-member of the Multi-Employer Group.

The record reflects that by letter to Local 14’s membership dated July 20, 1998, SEIU International President, Andrew L. Stern, informed the employee-members of Local 14 that a hearing had been conducted before a Hearing Officer in San Francisco on June 24, 1998, as to whether changes in Local 14’s jurisdiction would be in the best interest of the membership; whether Local 14’s jurisdiction should be transferred to other SEIU local unions or to other international unions; and whether a trusteeship should be imposed on Local 14. In his letter, Stern stated that after considering all the evidence submitted at the hearing, the Hearing Officer had issued a Report and Recommendation to the International Union’s Executive Board stating that it “was clearly in the best interests of the 800 hotel members of Local 14 to be transferred to HERE Local 2, which already represents 6,000 to 7,000 members in many of the same hotels in San Francisco.”³ Stern’s letter recited that the Hearing Officer’s Report had further found that the interests of the approximately 1,000 members of Local 14 other than the hotel workers would best be served by merging them with SEIU Local 1877’s membership. Stern’s letter further stated that the International Union’s Executive Board had voted to accept these recommendations and that on July 17, 1998, a trusteeship had been imposed on Local 14. The letter went on to request the cooperation of the membership to ensure a

³ The record reveals that Local 2 has represented hotel employees in San Francisco for several decades and has bargained its last 2 collective-bargaining agreements with the employer-members of the Multi-Employer Group on a multi-employer basis as had Local 14. The classifications of employees historically represented by Local 2 include room cleaners, bellmen, PBX operators, stewards, porters, kitchen/restaurant employees, banquet servers and other hotel employee classifications.

smooth transition from membership in Local 14 to membership in Local 2 and Local 1877.

The record contains a document entitled “Agreement” (the Agreement) that was executed by Local 2 and the Multi-Employer Group on August 9, 1998. Appendix “A” to this document lists the Employer as an employer-member of the Multi-Employer Group and thereby bound to the Agreement. This document states that the parties agree as follows:

1. Upon presentation by Local 2 of signed bargaining authorization cards which demonstrate to the satisfaction of a mutually agreed-upon neutral third party that Local 2 has been designated as the collective bargaining agent for a majority of the doormen, housemen and other employees in the appropriate multi-employer bargaining unit covered by the current collective bargaining agreement between the Employers and Local 14 and the execution of a written disclaimer of interest by Local 14, the Employer both individually and as members of the Multi-Employer Group agree to the following:

- A. Upon receipt of Local 14’s disclaimer of interest, immediately recognize and bargain in good faith with Local 2 as the exclusive statutory collective bargaining representative for the employees in said multi-employer bargaining unit pursuant Section 9 of the Act;
- B. Upon receipt of Local 14’s disclaimer of interest, immediately recognize and commence dealing in good faith with Local 2 as the successor in interest to all of the contractual rights, duties and obligations of Local 14 under the current collective bargaining agreement covering said multi-employer unit;
- C. The Employers will maintain in full force and effect for the full term of their current collective-bargaining agreement with Local 14, all of the wages, hours, benefits and other terms and conditions of employment set forth in said agreement, including but not limited to the provisions requiring membership in Local 2 as a condition of employment, the provisions regarding checkoff of Local 2 union dues, initiation fees and assessments and the provisions regarding processing and arbitration of Local 2 grievances;

- D. Upon receipt of a timely written reopenener notice from Local 2, the employers will immediately commence good faith bargaining with Local 2 for a successor collective bargaining agreement;
- E. By entering into this agreement the employers irrevocably waive their right to seek an NLRB representation election, or otherwise determine Local 2's majority status by any means other than the card check procedure specified in said agreement prior to extending recognition to Local 2.

The record discloses that following the execution of the Agreement, Local 2 distributed authorization cards among the employees represented by Local 14 in the multi-employer unit. The record contains a document entitled "Card Check Certification," which is dated August 21, 1998, and signed by Federal Mediation and Conciliation Service Commissioner David Weinberg, certifying that based on the seniority lists provided by the employer-members of the Multi-Employer Group and the authorization cards presented to him by the Union, he had determined that Local 2 possessed a majority of valid cards signed by employees in the Local 14 bargaining unit.

The record also contains a letter from SEIU Local 14 Deputy Trustee, Ben Monterroso, to the attorney for the Multi-Employer Group that is dated September 28, 1998. This letter recites the terms of the agreement between Local 2 and the Multi-Employer Group described above and states that Local 14 has no objections to the terms of this agreement. The letter further states that Local 14:

disclaims any interest in further representation of the employees in the multi-employer bargaining unit covered by its current agreement with the Employers provided that the San Francisco Hotel Multi-employer Group complies with all of its obligations under the agreement and lawfully recognizes HERE Local 2 as the bargaining representative of these workers.

The record reflects that in March 1999, Local 2 commenced bargaining with the Multi-Employer Group over the terms of a new collective-bargaining agreement covering the employees who had formerly been represented by Local 14 in the multi-employer unit and its own membership. The record also contains a letter from Local 2 President, Mike Casey, to the Employer's Managing Director, Michael Cassidy, dated March 17, 1999, confirming the parties' understanding that that the Employer would be negotiating a successor collective-bargaining agreement with Local 2 as part of the Multi-Employer Group. This letter is countersigned by Cassidy. As of the date of the hearing, however, no new agreement had been reached. There record contains no evidence that the Employer has ever timely withdrawn its membership in the Multi-Employer Group.

Analysis. It is well established that the appropriate unit in a decertification election must be coextensive with the certified or recognized unit. *Campbell's Soup Co.*, 111 NLRB 234 (1955). If the parties have, by the agreement, changed the scope of the unit, then it is that unit which is the appropriate unit for a decertification election. *Delta Mills, Inc.*, 287 NLRB 367 (1987); *Tom Kelly Ford, Inc.*, 264 NLRB 1080, 1081-82 (1982); *Clohecy Collision, Inc.*, 176 NLRB 616, 616 (1969). In the instant case, the petitioned-for unit is not coextensive with the multi-employer unit covered under the current Local 14 contract with the Multi-Employer Group. Under the terms of the Agreement between Local 2 and the Multi-Employer Group described above, Local 2 became the successor in interest to all of the contractual rights, duties, and obligations of Local 14 under this Agreement covering said multi-employer unit. Because the petition herein was not filed in the multi-employer unit covered under the Local 14 contract and

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in which Local 2 has been recognized by the Multi-Employer Group as the exclusive bargaining representative, the instant petition must be dismissed.

Given my disposition of the case based on the foregoing analysis, it is unnecessary to address the other issues raised by the parties. Accordingly, the petition herein will be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by June 25, 1999.

DATED at San Francisco, California, this 11th day of June, 1999.

Alan B. Reichard, Acting Regional Director
National Labor Relations Board
Region 20
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