

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

RITZ CONDOMINIUM ASSOCIATION, INC.<sup>1</sup>

Employer

and

Case 4–RC–20362

TEAMSTERS UNION LOCAL 331, a/w  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO<sup>2</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

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, herein called 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 Employer operates an 18-floor condominium apartment building in Atlantic City, New Jersey that contains about 330 units. The most recent Dun & Bradstreet Information Report, of which I take notice, states that the Employer has been in existence since 1982 and employs 20 employees, including its officers. The Employer owns the premises on the first floor of the building and derives its revenues from maintenance fees paid by its members. The Employer's attorney confirmed on the record that the Employer "has at least a million dollars in gross revenue." However, the Employer's attorney declined to indicate the amount of the Employer's out-of-state purchases during the past year or to provide evidence as to this issue.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> Although the parties executed a stipulation at the hearing listing the Petitioner's name simply as "Teamsters Union Local 331," this stipulation does not reflect its full name. The Petitioner's full name appears as shown on the petition, consistent with the Board's requirement that the correct and complete name of the labor organization should appear on the ballot, case caption, and other papers. See NLRB Case Handling Manual (Part Two) Representation Proceedings Sec. 11198 and 11198.1. In this regard, the Petitioner's full name is listed in the caption in two other recent representation cases. See *G.N.O.C., Inc. d/b/a/ Atlantic City Hilton*, Case 4-RD-1929 and *Bally Park Place Casino Resort*, Case 4-RD-1942.

The Petitioner presented two employee witnesses. Their testimony revealed that the building's boiler was manufactured in Reading, Pennsylvania<sup>3</sup> and that the Employer regularly purchases parts for the boiler from Pennsylvania that cost about \$1800-\$1900 per year. Additionally, the Employer annually purchases light bulbs for the condominium units directly from out-of-state suppliers. The Employer also provides employees with health insurance benefits from Guardian Healthnet at an annual cost of \$40,000, and the employees submit their claims to an office in Bridgeport, Connecticut.

The Board's jurisdictional standard for residential condominiums requires that the Employer have gross annual revenues in excess of \$500,000. *Imperial House Condominium, Inc.*, 279 NLRB 1225 (1986); *enfd.* 831 F. 2d 999 (11<sup>th</sup> Cir. 1987); *30 Sutton Place Corp.*, 240 NLRB 752 (1979). I find that the Employer meets this test, based on the Employer's attorney's representation at the hearing that his client derived more than \$1,000,000 of gross revenues. Although the Employer now contends in its brief that the Board does not have jurisdiction because there is no record evidence concerning the Employer's gross revenues, the Employer is bound by its attorney's representation.<sup>4</sup> With respect to statutory jurisdiction, the record shows that the Employer annually purchases from out-of-state at least \$1800 worth of boiler parts, as well as light bulbs for the 18-story building. The Employer also purchases \$40,000 of health insurance for employees from a company that renders services from Connecticut. In these circumstances, the record evidence clearly establishes that the amount of Employer's purchases across state lines is more than *de minimis* and meets the requirements necessary to establish a basis for asserting statutory jurisdiction over the Employer. *Atlantic-Pacific Management*, 312 NLRB 242 (1993); *enfd.* 52 F.3<sup>d</sup> 260 (9<sup>th</sup> Cir. 1995); *Marty Levitt*, 171 NLRB 739 (1968).

The Board's *Tropicana* rule provides an additional basis for asserting jurisdiction. In *Tropicana Products*, 122 NLRB 121, 123 (1958), the Board held that jurisdiction may be asserted in any case in which an employer refuses, upon reasonable request, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards. On January 28, 2002, the Employer was served with a Notice of Representation Hearing scheduling the hearing for February 7. Although not retained until February 5, 2001, on February 4, the Employer's attorney requested postponement of the hearing. The request was denied. The Employer's attorney appeared at the hearing and stated that he had only recently been retained by his client and was "not in a position to come forth with" evidence on the issue of whether the Employer meets the Board's jurisdictional requirements. The Employer received, but did not complete, the Board's Commerce Questionnaire. In this case, the Employer's failure to provide evidence at the hearing despite adequate notice, or to submit the Commerce Questionnaire, constitutes a refusal to provide information sufficient to invoke the *Tropicana* rule. Accordingly, as the evidence indicates that the Employer meets the standards for statutory jurisdiction, I find that the Employer is an employer engaged in commerce within the meaning of the Act.

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<sup>3</sup> The record does not indicate when the Employer purchased the boiler.

<sup>4</sup> See *Kroger Co.*, 211 NLRB 363, 364 (1974) in which the Board stated, "it is generally accepted that a stipulation is conclusive on the party making it and prohibits any further dispute of the stipulated fact by that party or use of any evidence to disprove or contradict it."

3. The labor organization involved claims to represent certain employees of the Employer.

4. A 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.

5. The parties stipulated that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**All full-time and regular part-time maintenance technicians, boiler operators and engineers employed by the Employer, excluding all other employees, guards and supervisors as defined in the Act.**

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>5</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

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### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access

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<sup>5</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **March 8, 2002**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

### **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, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **March 15, 2002**.

Signed: March 1, 2002

at Philadelphia, PA

/s/

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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

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