United States Government

NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

November 10, 2010

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
14th Street, NW, Suite 5400 East
Washington, DC 20570-0001
VIA E-FILING

RE: Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino, Debtor-in-Possession
Cases 4-CA-36217 and 4-RC-21263

Dear Executive Secretary Heltzer:

Attached please find Counsel for the Acting General Counsel's Statement in Support of Motion for Summary Judgment in the above-referenced matter. Copies of the subject document have been served on this day to the parties listed below by email.

Sincerely,

Jennifer R. Spector
Counsel for the Acting General Counsel
(215) 597-9672
jennifer.spector@nlrb.gov

cc:
Brian A. Caufield, Esq., Fox Rothschild LLP, via email: bcaufield@foxrothschild.com
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

TRUMP PLAZA ASSOCIATES d/b/a
TRUMP PLAZA HOTEL AND CASINO,
DEBTOR-IN-POSSESSION

and Cases 4–CA–36217 and 4-RC-21263

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS

STATEMENT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

A. INTRODUCTION

On September 29, 2010 the Board issued a Decision, Certification of Representative, and Notice to Show Cause in these cases. In the September 29, 2010 Decision, the Board invited the parties to bring new facts to its attention. In addition, the Board permitted Counsel for the Acting General Counsel to file a statement in support of its original Motion for Summary Judgment filed on August 4, 2008. That Motion requested: (1) the Complaint and this proceeding be transferred to and continued before the Board; (2) the Board find the allegations of the Complaint to be true; (3) the Board issue a Decision and Order based on such findings requiring Respondent, inter alia, to recognize and bargain collectively with the Union as the exclusive collective bargaining representative of the Unit; and (4) the Board grant such other and further relief as may be appropriate. In response to the Board's Decision, Counsel for the Acting

General Counsel is filing this Statement in Support of Motion for Summary Judgment filed on August 4, 2008.

B. FACTS

The essential facts and supporting exhibits were described in the Motion filed in this matter on August 4, 2008. In February 2007, International Union, United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO (the Union) filed a petition seeking to represent a unit of dealers employed at Trump Plaza Associates, d/b/a Trump Plaza Hotel and Casino (Respondent) in Atlantic City, New Jersey. Conceding that the unit sought was appropriate, Respondent agreed to an election which was conducted on March 31, 2007. The Union received the majority of the votes cast by a count of 324 to 149.

Respondent filed Objections to the Election, which were set for hearing. A hearing was conducted on May 23, 2007. On June 29, 2007, the Administrative Law Judge who conducted the hearing issued a Report recommending that Respondent's Objections be overruled. Respondent filed Exceptions with the Board, but on May 30, 2008, a two-member quorum of the Board adopted the Administrative Law Judge's Report and Recommendations and certified the Union as the exclusive collective bargaining representative of the Unit employees. *Trump Plaza Hotel & Casino*, 352 NLRB 628 (2008).

The Union requested bargaining by letter dated June 5, 2008, and Respondent refused by letter dated June 25, 2008 on the ground that the Board's certification of the Union was invalid as a matter of law. The charge in this case was filed on July 1, 2008 and Complaint issued on July 10, 2008 alleging that the refusal to bargain was unlawful. Respondent submitted its Answer dated July 25, 2008, conceding the refusal to bargain but asserting that the Unit was not appropriate and that the certification of the Union was invalid. On August 29, 2008, a two-

member quorum of the Board issued a Decision and Order in this matter, which was reported at 352 NLRB No. 146 (2008). In its Decision and Order, the Board concluded that Respondent has been violating Section 8(a)(5) of the Act by refusing to bargain with the Union since June 25, 2008. The Board also issued an affirmative bargaining order. Thereafter, Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement of the Board's Order. Following the Supreme Court's Decision in *New Process Steel, L.P. v. NLRB*, ____ U.S. ____, 130 S.Ct. 2635 (2010), the Court of Appeals remanded this case for further proceedings consistent with *New Process Steel.*

On remand, the Board issued a Decision, Certification of Representative, and Notice to Show Cause on September 29, 2010. The September 29 Decision gave the General Counsel leave to amend the Complaint in this matter, and the Regional Director for Region 4 issued an Amended Complaint on October 8, 2010, attached as Exhibit A. Respondent filed an Answer to the Amended Complaint on October 21, 2010, attached as Exhibit B.

The Amended Complaint alleged, and Respondent admits, that since on or about February 17, 2009 it has been a Debtor-in-Possession with full authority to continue its operations and to exercise all powers necessary to administer its business.[1] The Amended Complaint further alleged, and Respondent also admits, that the Union renewed its request to bargain by letter of October 1, 2010, and that it did not respond to this letter.

Thus, all of the crucial facts – the Union's certifications, the requests to bargain and Respondent's refusals – are undisputed, and the only issue is whether Respondent's present refusal to bargain under the circumstances of this case is unlawful.

[1] United States Bankruptcy Court for the District of New Jersey, Chapter 11, Case No. 09-13654 (JHW).

C. ISSUE

Whether the Board should grant the Motion for Summary Judgment and order Respondent to recognize and bargain with the certified exclusive collective bargaining representative, where Respondent is principally contesting the validity of the findings made in the prior representation proceeding and fails to raise any issues warranting relitigation or any evidentiary hearing?

D. ARGUMENT

It is well-settled that issues raised, litigated and decided in a prior representation case may not be relitigated in a subsequent unfair labor practice proceeding, and that the findings on those issues are binding on the parties, absent newly discovered or previously unavailable evidence or special circumstances. See *Magnesium Casting Co. v. NLRB*, 401 U.S. 137, 141-143 (1971); *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 161-162 (1941); *Winchell Co.*, 305 NLRB 903 (1991). In the instant case, Respondent continues to insist that the Union should not be certified as the bargaining representative for the unit of employees at issue. This is the same position Respondent took in the underlying representation case, and Respondent does not contend that it has any newly discovered or previously unavailable evidence warranting relitigation or an evidentiary hearing.

In its Answer to the Amended Complaint, Respondent also asserts as an affirmative defense the Board's asserted failure to "adhere to proper procedure upon vacation and remand by the United States Court of Appeals." Respondent does not explain what "procedure" was assertedly improper, but in issuing its Decision, Certification of Representative, and Notice to Show Cause, the Board abided by both its own Rules and by its "general practice in cases

remanded from the courts of appeal." Decision, Certification of Representative, and Notice to Show Cause at fn. 2. As there was no impropriety in the Board's treatment of the case on remand, and as such a defense does not require an evidentiary hearing in any event, this defense is no bar to the Motion.

Thus, there are no factual issues in this case, and all of Respondent's substantive arguments were previously raised and rejected in the representation case. Summary Judgment is clearly appropriate and should be granted.

Signed at Philadelphia, Pennsylvania this 10th day of November, 2010.

JENNIFER RODDY SPECTOR
Counsel for the Acting General Counsel
National Labor Relations Board
Region Four

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

TRUMP PLAZA ASSOCIATES d/b/a
TRUMP PLAZA HOTEL AND CASINO,
DEBTOR-IN-POSSESSION

and Case 4–CA–36217

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, AFL–CIO

AMENDED COMPLAINT

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO, herein called the Union, has charged that Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino, Debtor-in-Possession, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.17 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Amended Complaint and alleges as follows:

1. The charge in this proceeding was filed by the Union on July 1, 2008, and a copy was served by first class mail on Respondent on July 2, 2008.

2. (a) At all material times, Respondent, a corporation, has been engaged in the operation of a casino at Mississippi Avenue and the Boardwalk in Atlantic City New Jersey, herein called the Casino.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), received gross revenues in excess of $500,000 and purchased and received at the Casino goods valued in excess of $5,000 directly from points outside the State of New Jersey.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

(d) Since on or about February 17, 2009, Respondent has been a debtor-in-possession with full authority to continue its operations and to exercise all

EXHIBIT A

powers necessary to administer its business (United States Bankruptcy Court for the District of New Jersey, Chapter 11, Case No.: 09-13654 (JHW).

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) The following employees of Respondent, herein called the Unit, 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 dealers employed by Respondent at its Mississippi and the Boardwalk, Atlantic City, New Jersey facility, excluding all other employees, cashiers, pit clerks, clerical employees, engineers, guards and supervisors as defined in the Act.

(b) On March 31, 2007, a representation election was conducted among the employees in the Unit, and a majority of the Unit selected the Union as their exclusive collective bargaining representative.

(c) On May 30, 2008, in Case 4-RC-21263, 352 NLRB No. 76, the Union was certified as the exclusive collective bargaining representative of the Unit by a two-member quorum of the Board.

(d) On June 17, 2010, the Supreme Court issued a decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, this case was remanded for further proceedings consistent with the Supreme Court's decision.

(c) On September 29, 2010, in Case 4-RC-21263, 355 NLRB No. 202, the Union was certified as the exclusive collective bargaining representative of the Unit by a three-member panel of the Board.

(d) At all times since March 31, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

5. (a) On or about June 5, 2008, the Union, by letter, requested that Respondent recognize the Union and bargain collectively with the Union as the exclusive collective bargaining representative of the Unit.

(b) By letter dated June 25, 2008, Respondent notified the Union that it refused to recognize and bargain with the Union as the exclusive collective bargaining representative of the Unit.

(c) On or about October 1, 2010, the Union, by letter, renewed its request that Respondent recognize the Union and bargain collectively with the Union as the exclusive collective bargaining representative of the Unit.

(d) The Union has received no response to its October 1, 2010 request.

6. By the conduct described above in paragraphs 5(b) and 5(d), Respondent has been refusing to bargain collectively with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

7. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Amended Complaint. The Answer must be **received by this office on or before October 22, 2010, or postmarked on or before October 21, 2010**. Respondent shall file an original and four copies of the Answer with this office and serve a copy of the Answer on each of the other parties.

An Answer may also be filed electronically by using the E–Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at http://www.nlrb.gov, click on **E–Gov**, then click on the **E–Filing** link on the pull–down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. A failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off–line or unavailable for some other reason. When an Answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three business days after the date of electronic filing. Service of the Answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The Answer may not be filed by facsimile transmission. If no Answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amended Complaint are true.

Signed at Philadelphia, Pennsylvania on this 8th day of October, 2010.

Dorothy L. Moore-Duncan

DOROTHY L. MOORE–DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

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

TRUMP PLAZA ASSOCIATES
d/b/a TRUMP PLAZA HOTEL AND CASINO,
DEBTOR IN POSSESSION

and **Cases 4-CA-36217**

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW) AFL-CIO

ANSWER

Respondent Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino, ("Trump Plaza") by and through its Attorneys Fox Rothschild LLP, hereby answers the Regional Director's Amended Complaint and Notice of Hearing ("Amended Complaint") as follows:

1. Trump Plaza is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Amended Complaint, except to admit that it received a copy of the charge in Case 4-CA-36217 on or about July 2, 2008.

2(a). Trump Plaza admits the allegation contained in Paragraph 2(a) of the Amended Complaint.

EXHIBIT B

2(b). Trump Plaza admits the allegation contained in Paragraph 2(b) of the Amended Complaint.

2(c). Trump Plaza admits the allegation contained in Paragraph 2(c) of the Amended Complaint.

2(d). Trump Plaza admits the allegation contained in Paragraph 2(d) of the Amended Complaint.

3. Trump Plaza admits the allegation contained in Paragraph 3 of the Amended Complaint.

4(a). Trump Plaza denies the allegation contained in Paragraph 4(a) of the Amended Complaint.

4(b). Trump Plaza admits that a representation election was conducted among the employees in the Unit, but denies that an uncoerced majority selected the Union as their exclusive bargaining representative.

4(c). Trump Plaza admits that a two-Member quorum of the Board issued a Certification of Representative on May 30, 2008, but denies that the Certification of Representative was valid.

4(d). Trump Plaza admits the allegation contained in Paragraph 4(d) of the Amended Complaint.

4(c). Trump Plaza admits that the Board issued a Certification of Representative on September 29, 2010, but denies that the Certification of Representative was valid.[1]

4(d). Trump Plaza denies the allegation contained in Paragraph 4(d) of the Amended Complaint.[2]

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[1] The paragraph number is identified as 4(c), but follows 4(d)

[2] The paragraph number is identified as 4(d), but follows the second 4(c).

5(a). Trump Plaza admits the allegation contained in Paragraph 5(a) of the Amended Complaint.

5(b). Trump Plaza admits the allegation contained in Paragraph 5(b) of the Amended Complaint.

5(c). Trump Plaza admits the allegation contained in Paragraph 5(c) of the Amended Complaint.

5(d). Trump Plaza admits the allegation contained in Paragraph 5(d) of the Amended Complaint.

6. Trump Plaza denies the allegation contained in Paragraph 6 of the Amended Complaint.

7. Trump Plaza denies the allegation contained in Paragraph 7 of the Amended Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

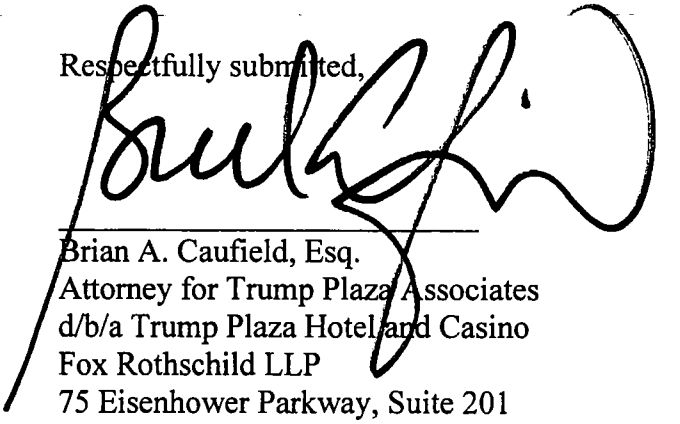
2. The alleged unit and Certification of Representative referenced in Paragraph 4, subparagraphs (a), (b), (c), (c), and (d), are not valid in accord with applicable law.

3. The September 29, 2010 Decision and Certification of Representative is invalid in that the Board did not adhere to proper procedure upon vacation and remand by the United States Court of Appeals.

4. The Board's Certification of Representative following a legislator's certification of majority status violates the separation of powers under the United States Constitution.

WHEREFORE, Trump Plaza respectfully requests that the instant matter be dismissed in its entirety.

Respectfully submitted,



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(973) 994-7537
(973) 992-9125/facsimile

Dated: October 21, 2010.

CERTIFICATE OF SERVICE

I, Brian A. Caufield, hereby certify that I served a true and correct copy of Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino's Answer in Case 4-CA-36217 upon the following individuals by first class mail:

(Original and 4 copies)

Dorothy L. Moore-Duncan, Regional Director
National Labor Relations Board, Region 4
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106-4404

(1 copy)

International Union, United Automobile, Aerospace &
Agricultural Implement Workers of America, AFL-CIO
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William Josem, Esq.
Cleary & Josem, LLP
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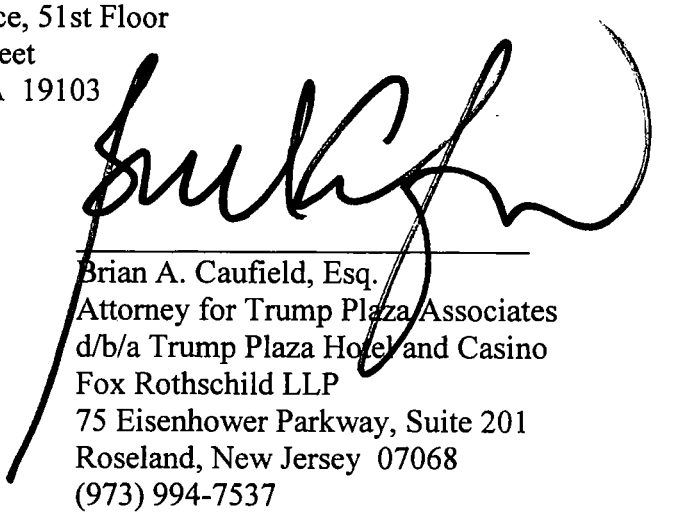

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Dated: October 21, 2010.