

**No. 10-1412 & 11-1028**

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**UNITED STATES COURT of APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**TRUMP PLAZA ASSOCIATES, D/B/A  
TRUMP PLAZA HOTEL AND CASINO  
Petitioner/Cross-Respondent**

v.

**NATIONAL LABOR RELATIONS BOARD  
Respondent/Cross-Petitioner  
and**

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**INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AREOSPACE, AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, AFL-CIO**

**ON PETITION FOR REVIEW AND CROSS-APPLICATION  
FOR ENFORCEMENT FROM THE NATIONAL  
LABOR RELATIONS BOARD**

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**BRIEF FOR THE  
NATIONAL LABOR RELATIONS BOARD**

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1) of this Court, counsel for the National Labor Relations Board (“the Board”) certifies the following:

(A) Parties and Amici: Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino, the petitioner/cross-respondent herein, was respondent in the case before the Board. The Board is the respondent/cross-petitioner herein, and the Board’s General Counsel was a party in the case before the Board.

(B) Ruling Under Review: This case involves a petition for review and a cross-application for enforcement of the Board’s Decision and Order issued on December 13, 2010, and reported at 356 NLRB No. 53.

(C) Related Cases: This case (Board Case Number 04-CA-36217) was previously before this Court on petition for review and cross-application for enforcement of the Board’s Decision and Order issued on August 29, 2008, which was reported at 352 NLRB No. 146 (2008). Board counsel are unaware of any related cases pending before, or about to be presented before, this Court or any other court.

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**and**

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO**

**Intervenor**

---

**ON PETITION FOR REVIEW AND CROSS-APPLICATION  
FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD**

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**BRIEF FOR  
THE NATIONAL LABOR RELATIONS BOARD**

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**STATEMENT OF SUBJECT MATTER AND APPELLATE  
JURISDICTION**

This case is before the Court on the petition of Trump Plaza Hotel and Casino (“Trump Plaza”) to review, and the cross-application of the National Labor

Relations Board (“the Board”) to enforce, a Board Order issued against Trump Plaza on December 13, 2010, and reported at 356 NLRB No. 53 (2010). (A 164-67.)<sup>1</sup>

The Board had subject matter jurisdiction over the unfair labor practice proceedings below under Section 10(a) of the National Labor Relations Act (“the Act”) (29 U.S.C. § 160(a)). Because the Board’s Order is based, in part, on findings made in an underlying representation proceeding (Board Case No. 4-RC-21263), the record in that proceeding is also before the Court pursuant to Section 9(d) of the Act (29 U.S.C. § 159(d)). *See Boire v. Greyhound Corp.*, 376 U.S. 473, 477-79 (1964). The Court has jurisdiction to review the Board’s actions in the representation case solely for the purpose of “enforcing, modifying, or setting aside in whole or in part the [unfair labor practice] order of the Board.” (29 U.S.C. § 159(d)). The Board retains authority under Section 9(c) of the Act (29 U.S.C. § 159(c)) to resume processing the representation case in a manner consistent with the Court’s rulings. *See Freund Baking Co.*, 330 NLRB 17 n.3 (1999) (citing cases).

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<sup>1</sup> Record references are to the Deferred Appendix (“A”) and the Supplemental Deferred Appendix (“SA”). “Br.” references are to Trump Plaza’s opening brief. References preceding a semicolon are to the Board’s findings; those following are to the supporting evidence.

The Court has jurisdiction over this proceeding pursuant to Section 10(f) and (e) of the Act (29 U.S.C. § 160(f) and (e)), which provides for the filing of petitions for review and cross-applications for enforcement of final Board orders in this Circuit. The Board's Order is final with respect to all parties under Section 10(e) and (f) of the Act. Trump Plaza's petition for review, filed on December 15, 2010, and the Board's cross-application for enforcement, filed on February 8, 2011, were timely, as the Act places no time limit on such filings.

### **RELEVANT STATUTORY PROVISIONS**

The relevant statutory provisions are in the Addendum to this brief.

### **STATEMENT OF THE ISSUE PRESENTED**

Whether the Board acted within its discretion in overruling Trump Plaza's election objections and certifying the Union, and therefore properly found that Trump Plaza violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union upon demand.

### **STATEMENT OF THE CASE**

The Board found (A 164) that the Company violated Section 8(a)(5) and (1) of the Act (29 U.S.C. § 158(a)(5) and (1)) by refusing to bargain with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO ("the Union") as the certified collective-bargaining representative of an appropriate unit of company employees. Trump Plaza does

not dispute that it refused to bargain (Br. 7), but instead contests the Board's conclusion that the election was conducted fairly. The Board's findings in the representation proceeding and the unfair labor practice proceeding, as well as its Decision and Order, are summarized below.

## **I. THE BOARD'S FINDINGS OF FACT**

### **A. The Initial Representation Proceeding**

#### **1. The Union files an election petition and wages a campaign at Trump Plaza and other Atlantic City casinos; the Union wins the Trump Plaza election by a vote of 324 to 149**

On February 15, 2007, the Union filed its petition to represent a unit of Trump Plaza's full-time and regular part-time dealers at its Atlantic City, New Jersey casino. (A 155; 186-88.) Two days later, the Union sent Trump Plaza a letter stating that a majority of unit employees had designated the Union as their exclusive representative. In its letter, the Union offered to prove its majority status through signed authorization cards, and asked Trump Plaza to agree on a procedure for card-check recognition. (A 156; 209.) Trump Plaza did not respond to the Union's letter. (A 156.)

During that time period, the Union was waging a citywide campaign to represent dealers at various Atlantic City casinos, including at Caesar's Atlantic City Hotel & Casino ("Caesar's Atlantic City"), where, on March 17, the Union won an election by a wide margin. The Union obtained the support of various

Federal, state, and local officials for its citywide organizing campaign. These elected officials issued letters and resolutions generally supporting the Union's overall campaign, which the Union brought to the attention of Trump Plaza's employees. (A 155; 182-83.)

Specifically, on March 22, the Union notified employees via its website that the Atlantic City Council had passed a resolution calling on local casinos to remain neutral with respect to the dealers' organizing rights and to honor the Union's request for card-check recognition. (A 157; 196-203.) Also on March 22, the Union sent Trump Plaza's employees a letter enclosing copies of an undated resolution signed by about 60 state assemblymen and senators, as well as 5 letters of support from individual politicians at the local, state, and Federal level that were prepared for the Caesar's Atlantic City election. (A 156-57; 192-94, 196-203.) The resolution supported the Union's general organizing efforts and urged "casino management" to respect employees' right to organize free from employer interference. The resolution also noted that the signatories would be "paying close attention to how employees are treated throughout this process." (A 155; 169-70, 192-94.)

As for the letters that the Union forwarded to Trump Plaza employees, they included a March 6 letter from an Atlantic City Freeholder, Joe Kelly, to Caesar's Atlantic City, urging that employer not to engage in an "aggressive campaign" and

offering help in discussing a code of conduct for the election. (A 155; 200.)

Freeholder Kelly expressed a “sincere hope” that Caesar’s Atlantic City would “take the high road when it comes to this organizing effort.” (A 192-200.) The second letter, dated March 8, from New Jersey State Senate President Richard Codey and State Assembly Speaker Joseph J. Roberts, noted that they “strongly support[ed] [the] dealers’ rights to decide whether or not they wish to join a labor union,” and expected “all parties involved” to “allow the collective bargaining process to proceed in a peaceful and lawful manner . . . .” (A 155; 198.) Codey and Roberts also expressed their “complete support and respect for the collective bargaining process.” (A 192-94, 198.) The third letter, also from a state senator, Nicholas Asselta, noted “respect [for] the right of employees to bargain collectively” and stated that he would “continue to work closely with unions . . . .” (A 192-94.) The fourth letter, dated March 9, from United States Congressman Robert Andrews, referred to the Union’s overall campaign and the “important decision” that employees faced about whether to unionize. (A 155; 192-94, 200.) Congressman Andrews added that he “recognize[d] and support[ed]” employees’ rights “under Federal and state labor laws to participate in an organizing campaign.” (A 192-94, 199.) The fifth letter, dated March 12, from United States Congressmen Christopher Smith and Frank LoBiondo, offered “strong support for [employees’] efforts to exercise [their] right to organize and strengthen [their]

voice at the workplace.” (A 155; 192-94, 197.) The Union also attached to its cover letter an undated resolution supporting the Union’s overall organizing efforts, which was signed by 60 elected state assemblymen and senators. The resolution urged “casino management” to respect employees’ right to organize free from employer interference. (A 156-57; 192-94.)

On March 25, the Union held a press conference at which three elected officials conducted a mock card-check ceremony and a local minister signed a poster board displaying a mock certification to “confirm verification that the dealers want to join [the Union].” (A 157; 205, A\*.) Only 2 unit employees were present out of the 530-member bargaining unit. (A 154; 182.) A local television channel broadcast a brief report about the event on that evening’s eleven o’clock news. Although the broadcast showed the poster board, it was barely visible on the television screen. The broadcast ended with the statement, “the actual vote will be held this Saturday.” (A 158; A\*.) Three stories in a local newspaper also mentioned the event, but without using the term “certification.” There is no evidence that any unit employee saw the broadcast or read the newspaper stories. (A 153 n.7, 162 n.3; 205.) Subsequently, the Union kept the poster board in its office until the election was over, and also made smaller paper copies available on a table, but there is no evidence that any unit employee ever saw them. (A 154, 157; 170-71, 195.)

On March 31, the Board conducted a secret ballot election pursuant to a stipulated agreement. (A 155; 72-77.) The Union won the election by a vote of 324 to 149, with one challenged, non-determinative ballot. (A 154; 77.)

## **2. The Board certifies the Union over Trump Plaza's objections**

Trump Plaza submitted five objections to the election. (A 154-55; 78-79.) In its first objection, Trump Plaza alleged that the Union, by sharing politicians' letters and resolutions with unit employees, "secured partisan advantage by misrepresenting to voters that the government at all levels and through all of its agencies, and explicitly and implicitly through its agency, the National Labor Relations Board, endorsed and supported the Union in the election, thereby . . . undermining governmental (and NLRB) neutrality . . . ." (A 155; 78-79.)

Objections two and three specifically pertained to the March 25 press conference. (A 154; 78-79.) Objection two accused the Union of "acting in concert with representatives of the [F]ederal government" in "certifying" the Union's majority status "in accordance with NLRB rules," through a "sham card check." Objection three alleged that the Union had conspired with the same representatives to "usurp and arrogate to itself the exclusive function of the NLRB to certify representative status, and thereby create the impression among voters that the Union was certified before an election was held[,] and that opposition to the Union was futile." (A 154; 78-79.)

The fourth objection accused the Union of acting in concert with “members of the Federal, state, and local governments, to create the impression that the government viewed the unionization of Trump Plaza as a desirable outcome and governmental objective.” (A 154; 78-79.) The fifth objection was a standard catchall that reiterated the preceding objections. (A 155; 78-79.)

After a hearing, the administrative law judge issued a recommended decision and order overruling Trump Plaza’s objections, finding that the conduct complained of was not coercive, and concluding that the election was valid. (A 82-86.) On May 30, 2008, the Board’s only two sitting members issued a Decision and Certification of Representative, reported at 352 NLRB 628 (2008). (A 80-86.) The two-member Board adopted the judge’s findings and recommendations with modifications. In particular, the Board overruled the mock card-check objections on grounds that differed from those recommended by the judge. The Board concluded that the lack of evidence of dissemination of the mock card-check press conference and the Union’s wide margin of victory made it unlikely that the event could have affected the outcome of the election. Accordingly, the Board overruled Trump Plaza’s objections, and certified the Union as the representative of Trump Plaza’s unit employees. *Id.* at 628.

## **B. The Initial Unfair Labor Practice Proceeding and the Prior Appeal**

On June 5, 2008, the Union requested that Trump Plaza recognize and bargain with it as the exclusive collective-bargaining representative of the unit. Trump Plaza refused the Union's request on June 25, 2008. (A 165 n.5.) Pursuant to a charge filed by the Union, the Board's General Counsel issued a complaint alleging that Trump Plaza's refusal to bargain violated Section 8(a)(5) and (1) of the Act (29 U.S.C. § 158(a)(5) and (1)). In its answer, Trump Plaza admitted its refusal to bargain, but claimed that the refusal was not unlawful because the Union's certification was improper. (A 164 n.3.) The General Counsel then moved for summary judgment against Trump Plaza, arguing that Trump Plaza was merely seeking to relitigate issues resolved in the representation proceeding. (A 159.) The Board transferred the proceeding to itself and served upon Trump Plaza a Notice to Show Cause why it should not grant summary judgment. (A 159.) Trump Plaza filed a response. (A 159 n.1.)

On August 29, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding (A 159-61), reported at 352 NLRB No. 146, 2008 WL 4056280, finding that Trump Plaza violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union. *Id.*, at \*2. Thereafter, Trump Plaza filed a petition for review in this Court, and the Board's General Counsel filed a cross-application for enforcement. The Court put the case in abeyance

pending resolution of *New Process Steel L.P. v. NLRB*, 130 S. Ct. 2635 (2010).

After the Supreme Court issued its decision in *New Process Steel* on June 17, 2010, holding that the two-member Board lacked authority to issue decisions when there were no other sitting Board members, this Court granted the Board's motion to remand the case for further proceedings consistent with the Supreme Court's decision.

### **C. Board Proceedings after This Court's Remand**

On September 29, 2010, the Board issued a further Decision and Certification of Representative and Notice to Show Cause, which is reported at 355 NLRB No. 202. (A 162-63.) In its Decision, Certification, and Notice, the Board noted that it did not give preclusive effect to the two-member decision; that it had considered the post-election issues raised by Trump Plaza; and that it was adopting with modification the judge's findings and recommendations to the extent and for the reasons stated in the May 30, 2008 Decision and Certification of Representative.

Thereafter, the Board's Acting General Counsel issued an amended complaint alleging that Trump Plaza violated Section 8(a)(5) and (1) of the Act (29 U.S.C. § 158(a)(5) and (1)) by refusing to bargain with the Union. (A 164 n.3; 9-11.) Trump Plaza filed an amended answer admitting its refusal to bargain. (A 164; 12-15.) Based on Trump Plaza's answer, the General Counsel filed a

supplemental memorandum in support of his motion for summary judgment.

Trump Plaza filed a response. (A 164 n. 3.)

## **II. THE BOARD'S CONCLUSIONS AND ORDER**

On the foregoing facts, the Board (Chairman Liebman and Members Becker and Pearce) found that Trump Plaza violated Section 8(a)(5) and (1) of the Act (29 U.S.C. § 158(a)(5) and(1)) by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of its dealers. (A 165.) In reaching that conclusion, the Board found that the issues raised by Trump Plaza in the unfair labor practice proceeding were or could have been litigated in the underlying representation proceedings. Further, the Board found that Trump Plaza neither offered to adduce any newly discovered or previously unavailable evidence, nor alleged the existence of any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.

The Board's Order requires Trump Plaza to cease and desist from the unfair labor practices found and from, in any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights under Section 7 of the Act (29 U.S.C. § 157). (A 165-66.) Affirmatively, the Order requires Trump Plaza to recognize and bargain with the Union upon request, to embody any understanding reached in a signed agreement, and to post copies of a remedial notice. (A 166.)

## SUMMARY OF ARGUMENT

The Board did not abuse its discretion in overruling Trump Plaza's election objections and certifying the Union as the duly elected collective-bargaining representative of Trump Plaza's casino dealers. First, the Board reasonably overruled Trump Plaza's objection contending that the Union improperly circulated letters and resolutions authored by local, state, and Federal elected officials. Those officials had no connection to the Board, and their statements merely expressed their personal, generalized views on unionization. It is settled that elected officials are not required to remain neutral in organizing campaigns, but may seek to persuade employees, provided that their statements do not compromise the Board's neutrality. The Board reasonably found that the statements here did not tend to mislead voters into believing that the Board endorsed the Union, or that the Board's neutrality was otherwise compromised. That the Union disseminated multiple documents does not change this conclusion.

The Board also reasonably overruled Trump Plaza's objections concerning the mock card-check "certification." As the Board emphasized, given the absence of evidence that more than 2 voters in a unit of 530 employees were even aware of the event, and the Union's wide margin of victory, the record did not permit an inference that the event could have influenced enough voters to affect the election results. Accordingly, the Board did not need to decide whether such a mock

“certification” would be objectionable if observed by a sufficient quantum of voters to affect the election outcome.

## **ARGUMENT**

### **THE BOARD ACTED WITHIN ITS DISCRETION IN OVERRULING TRUMP PLAZA’S ELECTION OBJECTIONS AND CERTIFYING THE UNION, AND THEREFORE PROPERLY FOUND THAT TRUMP PLAZA VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY REFUSING TO BARGAIN WITH THE UNION UPON DEMAND**

Trump Plaza admits that it has refused to bargain with the Union. Therefore, the Court must uphold the Board’s conclusion that Trump Plaza violated Section 8(a)(5) and (1) of the Act (29 U.S.C. § 158(a)(5) and (1)) unless, as Trump Plaza argues, the Union was improperly certified. As we show below, Trump Plaza’s challenge to the Union’s certification lacks merit.

#### **A. Applicable Principles and Standard of Review**

Section 8(a)(5) of the Act (29 U.S.C. § 158(a)(5)) makes it an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees.” Section 8(a)(1) of the Act (29 U.S.C. § 158(a)(1)) makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed” in Section 7 (29 U.S.C. § 157) of the Act. Section 7, in turn, grants employees “the right to self-organization [and] to bargain collectively through representatives of their own choosing . . . .”

Trump Plaza does not dispute that it has refused to bargain with the Union. (Br. 7.) Therefore, the sole issue presented by this case is whether the Board acted within its discretion in overruling Trump Plaza's objections to pre-election conduct by the Union and third-party elected officials that allegedly affected the results of an election that the Union won by a two to one margin. If the Board acted within its discretion, Trump Plaza's refusal to bargain violated Section 8(a)(5) and (1) of the Act.<sup>2</sup> See, e.g., *Pearson Educ., Inc. v. NLRB*, 373 F.3d 127, 130 (D.C. Cir. 2004); *C.J. Krehbiel Co. v. NLRB*, 844 F.2d 880, 882, 886 (D.C. Cir. 1988) (*per curiam*).

“Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.” *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). *Accord Kwik Care Ltd. v. NLRB*, 82 F.3d 1122, 1126 (D.C. Cir. 1996); *Amalgamated Clothing Workers of Am. v. NLRB*, 424 F.2d 818, 827 (D.C. Cir. 1970). Thus, on questions that arise in the context of representation elections, the Court “accord[s] the Board an especially ‘wide degree of discretion,’” and the Court will only overturn the Board’s order to bargain upon finding that the Board abused that wide discretion. *Antelope Valley Bus Co. v.*

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<sup>2</sup> A violation of Section 8(a)(1) of the Act is derivative of a violation of Section 8(a)(5). *Brewers and Maltsters, Local Union No. 6 v. NLRB*, 414 F.3d 36, 41 (D.C. Cir. 2005) (citing *Exxon Chem. Co. v. NLRB*, 386 F.3d 1160, 1164 (D.C. Cir. 2004)).

*NLRB*, 275 F.3d 1089, 1095 (D.C. Cir. 2002) (quoting *A.J. Tower*, 329 U.S. at 330).

A party seeking to overturn a Board-administered election thus shoulders a “heavy burden.” *Kwik Care Ltd.*, 82 F.3d at 1126. The objecting party must show not only that election misconduct occurred, but, where a party to the election perpetrated the alleged misconduct, the objecting party must also show that the conduct “interfered with the employees’ exercise of free choice to such an extent that [it] materially affected the results of the election.” *C.J. Krehbiel Co.*, 844 F.2d at 882. Where a third party perpetrated the alleged misconduct, the objecting party must show that the conduct was “so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” *Pacific Micronesia Corp.*, 219 F.3d 661, 668 (D.C. Cir. 2000) (quoting *Overnite Transp. Co. v. NLRB*, 140 F.3d 259, 264-65 (D.C. Cir. 1998)). These determinations are “fact-intensive” and thus are “especially suited for Board review.” *Family Serv. Agency v. NLRB*, 163 F.3d 1369, 1377 (D.C. Cir. 1999).

This Court’s “review of the Board’s factual conclusions is ‘highly deferential.’” *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830, 834 (D.C. Cir. 1998) (quoting *LCF, Inc. v. NLRB*, 129 F.3d 1276, 1281 (D.C. Cir. 1997)). Under the Act, the Board’s findings of fact are conclusive if supported by substantial evidence considered on the record as a whole. 29 U.S.C. § 160(e). Hence, “[i]f

there is substantial evidence to support the Board's conclusions, [this Court] will uphold the Board's conclusions even if [this Court] would have reached a different result had [it] considered the question de novo.” *Perdue Farms*, 144 F.3d at 834 (citation and quotation marks omitted). As shown below, Trump Plaza failed to meet its heavy burden of demonstrating that the election results should have been set aside.

**B. The Board Did Not Abuse Its Discretion in Overruling Trump Plaza’s Meritless Election Objections**

The Board reasonably overruled Trump Plaza’s objection alleging that the Union engaged in objectionable conduct by circulating letters and resolutions authored by local, state, and Federal elected officials unconnected to the Board, expressing their personal, general views on unionization. (A 153; 157.) Trump Plaza failed to meet its burden of showing that the documents gave voters the impression that *the Board* supported the Union in the election. It is settled that politicians are not required to remain neutral in organizing campaigns, but may seek to persuade employee-voters, where, as here, their statements do not tend to mislead voters into believing that the Board endorsed the union, or that the Board’s neutrality was otherwise compromised. That the Union transmitted multiple documents to Trump Plaza employees does not change this conclusion.

The Board also reasonably overruled Trump Plaza’s objections concerning the mock card-check “certification.” As the Board explained, there was no

evidence that more than 2 voters in a unit of 530 were even aware of the event.

Given the Union's wide margin of victory, the Board appropriately concluded that the record did not permit a reasonable inference that the event could have influenced enough voters to affect the election outcome. (A 153-54; 162 n.3.)

**1. The Board reasonably overruled Trump Plaza's objections to the letters and resolutions of support from government officials**

Trump Plaza contends (Br. 19-31) that the Board should have set aside the election results because the Union shared with unit employees several letters and resolutions generally supporting the Union's overall campaign. Those documents were authored by politicians at the local, state, and Federal level who indisputably had no connection to the National Labor Relations Board, an independent Federal agency. Contrary to Trump Plaza's contention (Br. 27-32), the Board properly concluded that unit employees would not have reasonably construed the letters and resolutions at issue in this case, either individually or in the aggregate, as the Board's endorsement of the Union. (A 153.) Accordingly, as shown below, Trump Plaza cannot meet its heavy burden to have this Court overturn the election.

**a. Principles governing objections based on statements of support by elected officials**

Trump Plaza asserts (Br. 19-31) that the Board should have set aside the election because the Union transmitted letters and resolutions supporting the Union from various elected officials who have no connection to the

Board. Contrary to Trump Plaza's contention, the Board, with court approval, "has long held that public officials' involvement in union election campaigns is not objectionable." *Affiliated Computer Servs.*, 355 NLRB No. 163, 2010 WL 3446126, at \*2 (citing *Micronesian Telecomms. Corp. v. NLRB*, 820 F.2d 1097, 1102 (9th Cir. 1987) (government officials' active campaigning not objectionable in the absence of evidence it caused confusion regarding the Board's impartiality or interfered with employee free choice)). After all, as the Board further noted in *Affiliated Computer Servs.*, 2010 WL 3446126, at \*2, it "lacks authority to control the expressive activity of other public officials." See generally *Pacific Micronesia Corp.*, 219 F.3d at 668. Thus, "[p]ublic officials . . . like other third parties, are not required to remain neutral and may properly seek to persuade employees," provided that their actions do not go "beyond persuasion to create 'a general atmosphere of fear and reprisal,'" which is not alleged here. *Affiliated Computer Servs.*, 2010 WL 3446126, at \*2 (citation omitted). As this Court recognizes, "[i]f the rule were otherwise, the electoral process would be subject to endless manipulation by politicians and their allies in labor or management." *Pacific Micronesia Corp.*, 219 F.3d at 668.

In seeking to overturn the election results here, Trump Plaza ignores this basic principle and erroneously tries to shoehorn the facts into a narrow line of

cases recognizing that in certain circumstances, conduct impugning *the Board's* neutrality may be objectionable. The problem for Trump Plaza, however, is that none of the documents about which it complains fit within this narrow exception. The authors of the documents at issue here have no connection to the National Labor Relations Board, and therefore could not have compromised its neutrality under longstanding precedent.

Thus, in *Columbia Tanning*, 238 NLRB 899, 900 (1978)—a case involving highly unusual circumstances not present here, and the only case in which the Board has ever overturned an election based on a letter from a government official—a state commissioner of labor wrote a letter written in Greek to Greek-speaking employees endorsing the union. *Id.* at 899 n.1. The Greek-speaking employees cast a determinative number of votes in the election, which was decided by a narrow margin. *Id.* Because they were “recent immigrants who in all likelihood were not familiar with the complexities of state and Federal jurisdiction over labor relations,” the Board found that the letter created a “potential for confusion” that eliminated “*the Board's* appearance of impartiality.” *Id.* at 900 (emphasis added). Thus, the Board predicated its holding on its long-held concern that “no participant in a Board election should be permitted to suggest . . . that *this Government agency* endorses a particular choice” in the election. *Id.* (emphasis added). In short, the letter at issue in *Columbia Tanning* was objectionable

because in the unique circumstances of that case, it could have misled recent immigrants into thinking that the neutrality of the independent Federal agency charged with conducting the election—the National Labor Relations Board—was compromised. Further, as the Board noted here (A 153), the narrow vote margin made any confusion more “likely to affect the outcome.”

The following year, in *Huntsville Manufacturing Co.*, 240 NLRB 1220, 1220 (1979), the Board further explained its holding in *Columbia Tanning*. It re-emphasized that “the thrust of . . . [its] analysis has not . . . departed from the concept of interference with *the Board’s* processes.” *Id.* (emphasis added). Using terms that directly undercut Trump Plaza’s claims here, the Board cautioned that *Columbia Tanning* “did not hold . . . that a document which appears to be somehow related to the United States Government, and which also contains an arguably partisan message, thereby amounts to objectionable conduct.” *Id.* Instead, the Board noted, its concern was “with how closely a document mimics a *Board* publication—and under what circumstances it can be said that employees might be susceptible to such mimicry.” *Id.* at 1223 (emphasis added).

Since that time, the Board’s inquiry has continued to focus on whether allegedly objectionable correspondence impugns the Board’s neutrality. Thus, in *Ursery Cos.*, 311 NLRB 399, 399 (1993), the Board rejected a claim that a letter from a state legislator endorsing the union somehow “eliminated the NLRB’s

appearance of impartiality.” In overruling this election objection, the Board emphasized that (unlike the recent immigrants in *Columbia Tanning*) “the employees [we]re not so politically naïve that they would [have] be[en] unable to distinguish between a Connecticut State Representative and the NLRB, and to recognize that the former is a state legislator and the latter a Federal agency with no connection to each other.” *Id.* at 399 n.2.

In *Chipman Union, Inc.*, 316 NLRB 107, 108 (1995)—a case on which the Board (A 153) placed particular reliance here—the Board again found unobjectionable a letter endorsing the union that was authored by an individual Congresswoman unconnected to the Board. That letter simply urged employees to “fight and continue to strive for fairness in the workplace” and noted the “importan[ce of] . . . unit[ing], organiz[ing] and support[ing] each other.” *Id.* In concluding that the employer had failed to show that its employees would have construed the letter as an “official institutional endorsement” of the union, the Board emphasized the lack of any evidence that the employees—unlike the new immigrants in *Columbia Tanning*—were unable to “discern the difference between statements about labor relations by an individual member of Congress and statements by the Board and its representatives.” *Chipman Union*, 316 NLRB at 108 (distinguishing *Columbia Tanning* on this basis). Indeed, as the Board noted,

the letter did not even mention the Board, or indicate that the Congresswoman had any specific authority over labor matters in Congress. *Id.* at 108.

Since deciding *Chipman Union*, the Board has continued to adhere to these principles, and to distinguish *Columbia Tanning* based on its unique facts. *See Saint-Gobain Abrasives, Inc.*, 337 NLRB 82 (2001) (letter from congressman unobjectionable); *Bloomfield Health Care Ctr.*, 352 NLRB 252, 256 (2008) (letter signed by group of state representatives unobjectionable), *enforced*, 372 Fed.Appx. 118, 120 (2d Cir. 2010); *Affiliated Computer Servs.*, 355 NLRB No. 163, 2010 WL 3446126, at \*2 (letter from congressman unobjectionable).

As shown below, the Board, applying these principles, appropriately found (A 156-57) that the instant case is controlled by *Chipman Union* and distinguishable from *Columbia Tanning*, and therefore that the documents cited by Trump Plaza were not objectionable.

**b. The Board reasonably determined that Trump Plaza failed to meet its burden of showing that the elected officials' letters of support and resolutions compromised the neutrality of the agency conducting the election**

The Board reasonably found (A 153 & n.10, 157) that employees would recognize the documents at issue as expressions of the authors' individual opinions rather than as official government endorsements of the Union that somehow compromised the Board's neutrality. As noted above, letters of endorsement by elected officials do not compromise the Board's neutrality absent specific evidence

that voters could not distinguish how statements about labor relations by elected officials differ from statements about labor relations by the Board and its representatives. *Chipman Union*, 316 NLRB at 108.<sup>3</sup>

In this case, Trump Plaza takes issue (Br. 30-32) with five letters from elected officials at the local, state, and Federal level, and resolutions that had been prepared for the prior week's Caesar's Atlantic City representation election. (A 156-57; 192-94, 196-203.) The Board reasonably found that these documents, like the letter in *Chipman Union*, were not objectionable.

To begin, as the Board emphasized, none of the signatory officials here suggested that he held an office connected to or with authority over the Board. (A 157.) *See Chipman Union*, 316 NLRB at 107 (no suggestion of authority over labor matters in congressperson's letter); *Affiliated Computer Servs.*, 355 NLRB No. 163, 2010 WL 3446126, at \*2 (Aug. 27, 2010) (same). Indeed, Trump Plaza

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<sup>3</sup> Trump Plaza erroneously suggests that the Board should have broken with precedent, and applied to the elected officials here a standard that is applicable only to Board agents. *See* Br. 23, 24, n.8 (citing *North of Market Senior Servs., Inc. v. NLRB*, 204 F.3d 1163, 1168 (D.C. Cir. 2000) (if a Board agent's acts "destroy confidence in the Board's election process, or . . . could reasonably be interpreted as impugning the election standards, the election must be set aside") (internal quotation marks omitted). As shown above, however, the Board appropriately distinguishes between conduct by its representatives and conduct by parties unconnected to the Board. With respect to the former, the impartiality of the agency conducting the election is at stake. By contrast, as the case law discussed above makes clear, the conduct of individuals unconnected to the Board does not compromise Board neutrality absent unique circumstances like those presented in *Columbia Tanning*.

would have been hard pressed to show that the local and state officials who signed most of the documents at issue here were somehow connected to the National Labor Relations Board—or that its casino dealers were confused about the local and state affiliation of those individuals. As the Board emphasized, the record failed to establish any such confusion here: the state and local officials had “no possible authority over the Board . . . and no reasonable person voting in an election would think any differently.” (A 153, 157.)

As for the two letters signed by three individual United States congressmen, the Board reasonably found that Trump Plaza likewise failed to establish that its casino dealers “were so limited in intelligence, the English language, or common knowledge” as to be incapable of “differentiat[ing] between a legislator’s political role and a Board representative’s expressly neutral administrative role.” (A 153 n.10, 157.) For example, as the Board noted (A 157 n.10), voters would not have been confused by the letter that Congressman Andrews sent on his personal letterhead—a letter that did not even mention his chairmanship of the House Subcommittee on Health, Employment, Labor, and Pensions, a legislative committee that, in any event, is distinguishable from the Board. (A 192-94.)

Further, Trump Plaza utterly failed to show that the casino dealers in this case lacked familiarity with “the complexities of state and Federal jurisdiction.” *Chipman Union*, 316 NLRB at 107-08. In this regard, the Board (A 153)

appropriately distinguished the casino dealers here from the recent immigrants in *Columbia Tanning*, 238 NLRB at 900. Unlike Trump Plaza’s casino dealers, the Greek-speaking immigrants in *Columbia Tanning* could not be expected to readily discern the difference between the state “‘Department of Labor’ and the Federal ‘National Labor Relations Board,’ particularly in light of the fact that both contain[ed] the word Labor in their titles.” Accordingly, they “undoubtedly viewed a letter from the ‘Commissioner of Labor,’ bearing an insignia and formal letterhead, as an official document from a person in Government with authority over labor matters.” *Id.* By contrast, as the Board explained here (A 153 n.10), there was no evidence that Trump Plaza’s casino dealers “were unusually susceptible to confusion due to limited language skills or limited understanding of U.S. Government.”<sup>4</sup> The facts of this case thus closely align with those of *Chipman Union*, not those of *Columbia Tanning*.

Moreover, the statements of support from the elected officials here “were at most implicit endorsements” that “reasonable employees would recognize as expressions of opinion by the various officials who composed them.” (A 153, 157.) *See Chipman Union*, 316 NLRB at 107 (overruling objection where

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<sup>4</sup> Similarly, it cannot be suggested that the casino dealers who voted overwhelmingly for union representation were “so politically naïve” as to be unable to distinguish an Atlantic City Freeholder, or even a United States Congressman, from the National Labor Relations Board. *See Ursery Cos.*, 311 NLRB at 399 n.2.

congresswoman's letter was merely her "personal expression" of opinion that did not even explicitly endorse the union). Far from expressing direct support for the Union in its campaign to win the Trump Plaza election, the letters and resolutions were generic and benign. Thus, the letters merely offered general support for the right to organize and expressed hope that "casino management" would refrain from harassing and intimidating employees in the period leading up to the election. (A 155; 192-94, 196-203.) The documents generally noted the signatories' general support for employees' "rights to decide whether or not they wish to join a labor union" and for proposed legislation dealing with card check recognition. (A 155; 197-98, 200.) For example, one state senator noted his personal "respect [for] the right of employees to bargain collectively" and stated that he would "continue to work closely with unions . . . ." (A 192-94.) Further, the letters were not even prepared specifically for the Trump Plaza election, but for the Caesar's Atlantic City election. Thus, an Atlantic City Freeholder specifically expressed his "sincere hope" that Caesar's Atlantic City would "take the high road when it comes to this organizing effort." (A 192-94, 200.) Given the tenor and substance of these statements, the Board reasonably found them unobjectionable.

That the Union disseminated multiple documents to Trump Plaza employees does not change the Board's conclusion that the letters and resolutions were unobjectionable. No authority supports Trump Plaza's assertion (Br. 29-31) that

the dissemination of multiple documents by elected officials unconnected to the Board somehow rendered their benign and generic content objectionable. Rather, as the Board reasoned, “[t]he dissemination of multiple documents does not require a different result from *Chipman Union*, which involved a single letter. The letters and resolutions here differed from one another [and] a reasonable employee would recognize these diverse documents as reflecting various officials’ separate viewpoints.” (A 153 n.9.) See *Overnite Transp. Co.*, 140 F.3d at 268 (“the cumulative impact of allegedly objectionable conduct may not be used to turn a number of insubstantial objections to an election into serious challenge”) (internal citations and quotation marks omitted).

In sum, the burden is on the objecting party to show by specific evidence that there has been prejudice to the election. *NLRB v. Mattison Mach. Works*, 365 U.S. 123, 123-24 (1961). Trump Plaza failed to meet its burden of showing that the letters and resolutions at issue, which were authored by elected officials unconnected to the Board, compromised the Board’s neutrality, given the complete absence of evidence that voters would have confused those elected officials with the Board, an independent Federal agency.

**2. The Board reasonably overruled Trump Plaza’s objections concerning the mock card-check “certification” and press conference, given the absence of evidence that more than two voters in a unit of 530 were aware of the event, and the Union’s wide margin of victory**

Trump Plaza also contends (Br. 32-46) that the Board should have set aside the election results based on the Union’s mock card-check “certification.” As shown below, however, given the absence of evidence that more than two voters were aware of this event, and the Union’s substantial margin of victory, the Board appropriately concluded that the record “did not permit a reasonable inference” that the event “could have influenced enough employees to affect the results of the election.” (A 154, 156, 162 n.3.)

**a. Trump Plaza failed to show that the mock “certification” affected the election outcome**

The Board reasonably found (A 153, 162 n.3) that Trump Plaza failed to meet its heavy burden of showing that the Union’s March 25 mock card-check “certification” and related developments interfered with voters’ exercise of free choice so as to warrant setting aside the results of an election in which the Union prevailed by a margin of 176 votes. Contrary to Trump Plaza’s contention (Br. 32), it could not show that the Union’s conduct was objectionable, given the absence of evidence that more than 2 voters in a unit of 530 were aware of the event, and the Union’s 2:1 margin of victory. *See Hollingsworth Mgmt. Serv.*, 342

NLRB 556, 556 (2004) (objection overruled where only one employee, who was not even eligible to vote, in a unit of over 170 employees claimed that a union representative said he would lose his job unless the union got in); *Amveco Magnetics, Inc.*, 338 NLRB 905, 905 (2003) (objection overruled where there was no evidence that even one employee saw the employer's improper campaign propaganda). In these circumstances, the Board appropriately concluded (A 153) that it did not need to address the hypothetical question of whether such conduct would be objectionable if more employees had observed it.

There was simply no evidence of dissemination here. Trump Plaza presented no evidence that any unit employees saw the brief report about the press conference on the eleven o'clock news of a local television station, or noticed the three stories in a local newspaper that mentioned the event. (A 152-53 & n.7, 162 n.3; 205.) Moreover, as the Board noted, although the Union hung the poster-sized mock "certification" on its office wall, and left flyer-sized copies of the document on a table, the stipulated facts do not state that any unit employees actually saw those items, and Trump Plaza did not otherwise satisfy its burden of proof on that issue. (A 162 n.3.) In these circumstances, the Board appropriately declined to overturn the results of an election won overwhelmingly by the Union. *See Overnite Transp. Co.*, 140 F.3d at 268 (upholding Board determination to overrule electioneering objection where there was no evidence that alleged incidents of

photography and videotaping by union supporters were widely disseminated to employees).

The Board also reasoned that the Union's wide margin of victory, in conjunction with the absence of evidence that more than 2 voters in a unit of 530 knew about the mock "certification," made it unlikely that the event could have affected the outcome of the election. (A 154; 77.) In taking into account the Union's 2:1 margin of victory, the Board acted in accordance with settled principles. *See Millard Processing Servs., Inc. v. NLRB*, 2 F.3d 258, 264 (8th Cir. 1993) (upholding Board determination to overrule objection where union won election by a margin of 114 to 84); *NLRB v. Earle Indus.*, 999 F.2d 1268, 1273 (8th Cir. 1993) ("that the union prevailed in the election by thirty-four votes in a unit of 320 employees, a margin of more than ten percentage points, lends further support to the Board's conclusion that the events . . . did not materially affect the outcome") (citing *Avis Rent-A-Car Sys., Inc.*, 280 NLRB 580, 581-82 (1986)). The Board (A 154) reasonably interpreted the wide margin of victory as further evidence that Trump Plaza failed to establish that the mock card-check "certification" interfered with voters' exercise of free choice.

The Board carefully evaluates each case on its facts, as this Court has counseled. *See C.J. Krehbiel*, 844 F.2d at 885. Moreover, contrary to Trump Plaza's contention (Br. 47), the Board has consistently held that "[t]he party

seeking to set aside an election [] bears a heavier burden where the vote margin is large.” (A 154) (citing *Avis Rent-A-Car Sys.*, 280 NLRB at 581-82). Indeed, Trump Plaza’s claim that the Board’s treatment of vote margins is “unprincipled” (Br. 46) is at odds with the very cases that it cites. *See, e.g., Goffstown Truck Ctr., Inc.*, 356 NLRB No. 33, 2010 WL 4859828, \*\*2-3 (overturning election that union won by a three-vote margin where union organizer told two employees that she was there “on behalf of the NLRB”); *Robert Orr-Sysco Food Servs.*, 338 NLRB 614, 615 (2002) (vote margin was a factor in overturning the election where union-supporter employees threatened voters “whose ballots might have been determinative”); *Columbia Tanning*, 238 NLRB at 899 (small vote margin made it more likely that voter confusion could have affected the election outcome).<sup>5</sup>

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<sup>5</sup> The remaining cases cited by Trump Plaza (Br. 46-47), where the Board overturned elections for reasons unrelated to the vote margin, tell the Court absolutely nothing—except that, in entirely different circumstances, the Board has had occasion to overturn elections in the past. *See, e.g., Hudson Aviation*, 288 NLRB 870, 870 (1988) (argument between officiating Board agent and employer’s assistant manager); *N.L. Atlas Bradford*, 240 NLRB 517, 517 (1979) (union used prior unfair labor practice notice as campaign propaganda); *Westside Hosp.*, 218 NLRB 96, 96 (1975) (union organizer threatened employee with deportation unless he supported union and signed authorization card).

- b. The Court lacks jurisdiction to consider Trump Plaza’s belated and meritless contention that the Board departed from precedent in finding that the mock card-check “certification” did not affect the election outcome, given the absence of evidence that many voters knew about the event**

As shown above (p. 9), in its 2008 Decision and Certification of Representative, and again in its 2010 Decision, Certification of Representative, and Notice to Show Cause, the Board overruled Trump Plaza’s objections concerning the mock card-check “certification” based on the absence of evidence that enough voters knew about the event to have affected the election outcome. The Board’s reasoning differed from that of the administrative law judge, who had recommended overruling the objections on the ground that the mock card-check “was not the equivalent of a Board election” and did not show that the Board “favored the Union’s victory in the actual Board election.” (A 153-54, 156-58, 162 n.3). But, the Board, having found insufficient evidence that enough employees were aware of that event to affect the election outcome, did not need to address the judge’s recommended finding. (A 153-54.)

In the proceedings below, Trump Plaza never exercised its right to file a motion for reconsideration challenging the Board’s determination to adopt a rationale that differed from the administrative law judge’s. Instead, Trump Plaza attempts to bypass the Board and bring its challenge directly to the Court, contending for the first time (Br. 43-45) that the Board “depart[ed], without

explanation from established precedent” by holding that Trump Plaza failed to meet its burden of showing dissemination. As explained below, however, the Court lacks jurisdiction to consider this newly-minted contention.

Specifically, under Section 10(e) of the Act (29 U.S.C. § 160(e)), “[n]o objection that has not been urged before the Board . . . shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.” Thus, where, as here, a particular objection was not raised before the Board, a reviewing court, in the absence of extraordinary circumstances not present here, lacks jurisdiction to consider the claim. *See Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665 (1982) (court lacks jurisdiction to consider issue not raised before Board); *Int’l. Ladies’ Garment Workers’ Union, Upper South Dept., AFL-CIO v. Quality Mfg. Co.*, 420 U.S. 276, 281 n.3 (1975) (failure to file motion for reconsideration bars judicial review of contention not raised before Board).

Trump Plaza had every opportunity to file with the Board a motion for reconsideration pursuant to Section 102.65(e)(1) of the Board’s Rules and Regulations (29 C.F.R. § 102.65(e)(1)) but did not do so. Accordingly, the Court lacks jurisdiction to consider Trump Plaza’s argument. *See W & M Props. of Conn., Inc. v. NLRB*, 514 F.3d 1341, 1345 (D.C. Cir. 2008) (Court lacks

jurisdiction to consider issue not raised in motion for reconsideration) (citing *Quality Mfg. Co.*, 420 U.S. at 281 n.3).

In any event, there is no merit to Trump Plaza's claim that the Board departed from precedent in requiring the objecting party to prove dissemination. The cases Trump Plaza cites do not advance its claim. Thus, Trump Plaza erroneously relies (Br. 44) on *Goffstown Truck Ctr., Inc.*, 356 NLRB No. 33, 2010 WL 4859828, at \*2 (Nov. 18, 2010), a distinguishable case in which the Board found that a union organizer engaged in objectionable conduct by "donn[ing] a false cloak of Board authority" and telling two employees that she was acting "on behalf of the NLRB" in a small unit where the union won the election by just three votes. *Id.* at \*3.

Nor does Trump Plaza help itself by citing (Br. 45) *Crown Bolt, Inc.*, 343 NLRB 776, 777 (2004). There, the Board held that it would not presume dissemination of plant closure threats and instead would require proof by the objecting party. If anything, this holding is of a piece with the Board's recognition that Trump Plaza, as the objecting party, had the burden of proving dissemination. (A 154.) Although the Board noted in *Crown Bolt, id.* at 779, that such proof could include circumstantial evidence, Trump Plaza failed to present any such evidence. Particularly in this age where multiple news and information sources are readily available, the Board could reasonably conclude (A 154) that one local

television station's brief airing of video footage, and a local paper's publication of three articles, did not create an inference that voters viewed those sources in sufficient numbers to affect the Union's decisive victory.

## CONCLUSION

Based on the foregoing, the Board respectfully requests that the Court enter a judgment denying Trump Plaza's petition for review and enforcing the Board's Order in full.

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NATIONAL LABOR RELATIONS BOARD

September 2011

**ADDENDUM****RELEVANT STATUTORY AND REGULATORY PROVISIONS****Section 7 of the Act (29 U.S.C. § 157) provides in relevant part:**

Employees shall have the right to self-organization, to form, join, or assist labor organizations . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .

**Section 8(a)(1) of the Act (29 U.S.C. § 158(a)(1)) provides in relevant part:**

It shall be an unfair labor practice for an employer . . . to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 . . . .

**Section 8(a)(5) of the Act (29 U.S.C. § 158(a)(5)) provides in relevant part:**

It shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees . . . .

**Section 10(a) of the Act (29 U.S.C. § 160(a)) provides in relevant part:**

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 [section 158 of this title]) affecting commerce.

**Section 10(e) of the Act (29 U.S.C. § 160(e)) provides in relevant parts:**

The Board shall have power to petition any court of appeals of the United States. . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order. . . .

The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

**Section 10(f) of the Act (29 U.S.C. § 160(f)) provides in relevant part:**

Any person aggrieved by a final order of the Board . . . may obtain a review of such order . . . in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. . . .

**Board Rule & Regulation 102.65(e)(1) (29 C.F.R. § 102.65(e)(1)) provides in relevant part:**

A party to a proceeding may, because of extraordinary circumstances . . . move after the decision or report for reconsideration . . . . No motion for reconsideration . . . . will be entertained by the Board or by any Regional Director with respect to any matter which could have been but was not raised pursuant to any other section of these rules . . . . A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on for the motion.



UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRUMP PLAZA ASSOCIATES, D/B/A	*	
TRUMP PLAZA HOTEL AND CASINO	*	
	*	
Petitioner/Cross-Respondent	*	Nos. 10-1412,
v.	*	11-1028
	*	
	*	Board Case No.
NATIONLA LABOR RELATIONS BOARD	*	04-CA-36217
	*	
Respondent/Cross-Petitioner	*	
	*	
and	*	
	*	
INTERNATIONAL UNION, UNITED AUTOMOBILE,	*	
AREOSPACE, AND AGRICULTURAL IMPLEMENT	*	
WORKERS OF AMERICA, AFL-CIO	*	
	*	
Intervenor	*	

**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

I certify foregoing document was served on all those parties or their counsel of record through the CM/ECF:

/s/Linda Dreeben  
Linda Dreeben  
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Dated at Washington, DC  
this 12th day of September, 2011