Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO. Case 4–RC–21263

May 30, 2008

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

The National Labor Relations Board has considered objections to an election held March 31, 2007, and the administrative law judge's decision recommending disposition of them.[1] The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 324 votes for and 149 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the administrative law judge's findings and recommendations as modified below, and finds that a certification of representative should be issued.

Background

The Union's victory in the March 31, 2007[2] election among the Employer casino's dealers followed vigorous critical-period campaigning by both the Union and the Employer.[3] The Union's campaign materials included letters and resolutions from Federal, State, and local elected officials. These materials, collectively, expressed support for the Union and for employees' right to organize, card-check recognition, a peaceful and lawful collective-bargaining process, and the proposed Employee Free Choice Act.[4] These materials were posted on the Union's website and made publicly available to the dealers.[5]

The Union also held a press conference/rally on Sunday, March 25, 6 days before the election, at which three elected officials (United States Representative Robert Andrews, State Senator James "Sonny" McCullough, and State Assemblyman Jim Whelan) signed a document titled "Certification of Majority Status." This document states that the signers had conducted a confidential examination of the authorization cards submitted to the Union by the Employer's dealers, and that, based on this examination, a majority of the employees in the proposed unit had authorized the Union to represent them for collective-bargaining purposes.[6] The document further states that

> The verification of the Union's majority was conducted by means of a comparison of a copy of the original signed cards and a list of current eligible employees in the bargaining unit provided by Trump Plaza Hotel and Casino to the Union in accordance with NLRB rules.

Only two Trump Plaza dealers attended the March 25 event.[7] The poster-board "Certification" document signed at this event was kept in the Union's office from March 26 until the election, and flyer-sized photocopies were left on a table in the Union's office, along with other literature, for visitors to take. However, there is no evidence as to whether any dealers saw the poster or copies thereof at the Union's office prior to the election.

The Employer filed objections relating to the Union's use of the Government officials' letters and resolutions and the March 25 "Certification of Majority Status."[8]

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[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] All dates are in 2007, unless otherwise specified.

[3] At the start of the campaign, the Union requested recognition from the Employer and offered to prove its majority status by means of a card check, but the Employer did not respond.

[4] The election at issue was a part of a citywide union campaign to represent the dealers at Atlantic City's casinos. Thus, many of the elected officials' letters and resolutions addressed the citywide campaign or the March 17 election at Caesar's Atlantic City, rather than just the Trump Plaza campaign. The Atlantic City Council's resolution, which, inter alia, stated that the dealers were actively organizing and had "chosen the UAW as their exclusive representative," was dated March 21, by which time the Caesar's dealers had already voted in favor of the Union.

[5] Most of the documents were also included (albeit in reduced size) in a mailing the Union sent to all of the dealers on the *Excelsior* list.

[6] This description is consistent with the language of the authorization cards, which state that the signer authorizes "the United Auto Workers to represent me in collective bargaining." The authorization cards' text does not limit or condition the Union's use of them.

[7] A local television channel broadcast a brief report about the event on that evening's 11 o'clock news, but there is no evidence that any dealers saw the broadcast.

[8] In response to the March 25 "Certification," National Right to Work (NRTW) filed an unfair labor practice charge shortly before the election. That charge is being held in abeyance pending resolution of the election objections at issue here. In light of NRTW's interest in the resolution of the issues raised by the "Certification," it was permitted to file amicus briefs in this case.

After a hearing, Chief Administrative Law Judge Robert A. Giannasi recommended finding that none of the allegedly-objectionable conduct justified setting aside the election.

Analysis

It is well settled that "[r]epresentation elections are not lightly set aside." *Safeway, Inc.*, 338 NLRB 525 (2002) (quotation marks and citations omitted). As the judge did, we conclude that the Employer failed to meet its heavy burden of demonstrating that the alleged objectionable conduct reasonably tended to interfere with employees' free and uncoerced choice in the election.

1. We adopt the judge's analysis of the letters and resolutions by Government officials. We rely, in particular, on *Chipman Union, Inc.*, 316 NLRB 107 (1995). As with the Congresswoman's letter at issue in that case, reasonable employees would recognize the documents at issue here as expressions of opinion by the various officials who composed them.[9] Like the judge, we find *Columbia Tanning Corp.*, 238 NLRB 899 (1978), distinguishable in material respects. That case involved a State Commissioner of Labor's Greek-language letter, printed on official stationery, sent 24 hours before an election to Greek-speaking voters—voters with limited English proficiency and limited understanding of Federal and State jurisdiction over labor relations—who cast a determinative number of votes in the election, which was decided by a narrow margin. Significantly, the record evidence in that case, unlike the evidence here, supported a finding that the voters at issue were particularly susceptible to confusion about the relationship between the State Commissioner of Labor and the Federal National Labor Relations Board.[10] Further, the close vote margin in *Columbia Tanning* made any voter confusion more likely to affect the outcome than it would be here, where there was a wide margin, even if any such confusion was likely. Thus, in this case, we conclude that reasonable voters would not have concluded that the letters and resolutions, either individually or in the aggregate, reflected the Board's endorsement of the Union or otherwise raised doubts about the Board's neutrality.[11]

2. Regarding the Union's March 25 card-check "Certification," we conclude that this event/document does not justify setting aside the election, given the absence of evidence that more than a few voters were aware of the "Certification" and the wide margin of the Union's victory. Thus, we need not address whether the "Certification" would have a tendency to coerce reasonable employees' free choice in the election.

As the parties stipulated, only two Trump Plaza dealers attended the March 25 rally. No evidence was presented indicating that they told their coworkers about it.[12] The written "Certification" poster and paper copies were kept in the union hall for almost a week, but again, there is no record evidence that any dealers saw them or that they were otherwise disseminated among the voters. These facts are particularly significant in view of the large size of the unit (about 530 employees, about 475 of whom voted) and the 175-vote margin favoring the Union.

The Board's longstanding rule in assessing election objections is that the objecting party must show not only that prohibited conduct occurred but also that, viewed

[9] The 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: some expressly touted positive aspects of the Union; others stated the hope for a lawful and peaceful election campaign or for casino neutrality and recognition by card check; and still others supported the Employee Free Choice Act (a position essentially immaterial to the imminent Trump Plaza election). We conclude that a reasonable employee would recognize these diverse documents as reflecting various officials' separate viewpoints.

[10] Representative Andrews, who wrote a personal letter of support for the Union on his personal letterhead, and who participated in the March 25 card check, is Chairman of the House of Representatives Subcommittee on Health, Employment, Labor, and Pensions. But the documents in the record identify him only as "Congressman," with no mention of his labor subcommittee affiliation. Thus, his title and affiliation simply could not have confused voters in the way that the State Commissioner of Labor's title may have confused voters in *Columbia Tanning*. Moreover, absent evidence that the Trump Plaza voters were unusually susceptible to confusion due to limited language skills or limited understanding of U.S. Government, we will not assume that they could not differentiate between a legislator's political role and a Board representative's expressly neutral administrative role.

[11] Contrary to the judge, we find it unnecessary to apply Board law regarding a party's dissemination, as election propaganda, of altered ballots or Board notices. See *SDC Investment, Inc.*, 274 NLRB 556 (1985), superseded by *Ryder Memorial Hospital*, 351 NLRB No. 26 (2007). The judge also considered, inter alia, the Board's more general standard regarding misleading election propaganda. See *Midland National Life Insurance Co.*, 263 NLRB 127, 131–133 (1982) (holding that the Board would not set aside elections because of a party's misleading campaign propaganda, except in cases of forgery that preclude employees from recognizing campaign propaganda for what it is). To the extent that it may be appropriate to assess the letters and resolutions as misleading propaganda, we agree with the judge's analysis of *Midland National*. We further find that the election propaganda at issue would not be objectionable under the standard that the U.S. Sixth Circuit Court of Appeals applies. See *Van Dorn Plastic Machinery Co. v. NLRB*, 736 F.2d 343, 348 (6th Cir. 1984) ("There may be cases where no forgery can be proved, but where the misrepresentation is so pervasive and the deception so artful that employees will be unable to separate truth from untruth and where their right to a free and fair choice will be affected."). Under either standard, reasonable voters would have recognized the representations as originating from the Union or from third parties, rather than from the Board, and would have identified them as propaganda. We also find it unnecessary to rely on the judge's speculation about Representative Andrews' motives for conducting the card check. *Chipman Union*, 316 NLRB at 107 fn. 3.

[12] Similarly, no evidence was presented that even a single employee saw the March 25 television news report about that day's events.

objectively, it interfered with voters' exercise of free choice. See, e.g., *Frito Lay, Inc.*, 341 NLRB 515, 515 (2004); *Picoma Industries*, 296 NLRB 498, 499 (1989). The party seeking to set aside an election also bears a heavier burden where the vote margin is large. *Avis Rent-A-Car System*, 280 NLRB 580, 581–582 (1986).

In the absence of evidence establishing that the Certification was widely disseminated among the unit employees, and given the Union's substantial margin of victory (175 votes and more than a 2–1 margin), we find that the record does not permit a reasonable inference that the document could have influenced enough employees to affect the results of the election. See *Amveco Magnetics, Inc.*, 338 NLRB 905 (2003). We thus decline to set aside the election.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:[13]

Included: All full-time and regular part-time dealers employed by the Employer at its Mississippi and the Boardwalk, Atlantic City, NJ facility.

Excluded: All other employees, cashiers, pit clerks, clerical employees, engineers, guards and supervisors as defined in the Act.

Dated, Washington, D.C. May 30, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Henry R. Protas, Esq., for the Regional Director.
Theodore M. Eisenberg, Esq. and *Brian A. Caufield, Esq. (Fox Rothchild, LLP)*, of Roseland, New Jersey, for the Employer.
William T. Josem, Esq. (Cleary & Josem, LLP), of Philadelphia, Pennsylvania, for the Petitioner.

[13] The Stipulated Election Agreement further stated:
Voting Subject to Challenge: All full-time and regular part-time dual-rate dealers/supervisors may vote subject to challenge by the parties.

William L. Messenger, Esq. (National Right To Work Legal Defense Foundation, Inc.), for amicus curiae, Mark Mix, on brief.[1]

RECOMMENDED DECISION AND ORDER ON OBJECTIONS

ROBERT A. GIANNASI, Administrative Law Judge. Pursuant to a notice of hearing on objections to election issued by the Regional Director for Region 4 on April 23, 2007, I conducted a hearing on this matter on May 23, 2007, in Philadelphia, Pennsylvania. Based on the evidence submitted in that hearing, as well as the stipulations and contentions of the parties, including in their very helpful post-hearing briefs, I make the following findings and conclusions.

Pursuant to a stipulated election agreement, the Board conducted a secret ballot election on March 31, 2007, in a unit of the Employer's full-time and regular part time dealers at its Mississippi and the Boardwalk, Atlantic City, New Jersey facility. The Petitioner Union (hereafter the Union) won the election by a vote of 324 to 149, with 1 challenged ballot that is not determinative. The employer submitted the following 5 objections to the election:

Objection 1

Acting in concert with representatives of the federal, state and local governments, via television, the Union's web site, and written and other communications, to secure 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 fundamentally undermining governmental (and NLRB) neutrality, which is the sine qua non of a fair election.

Objection 2

Acting in concert with representatives of the federal government in "certifying" the Union's majority status "in accordance with NLRB rules," through a sham card check, thereby creating the false impression that: (a) a valid card check had been conducted, (b) the NLRB had authorized, approved of and recognized the validity of the card check,

[1] Mark Mix, the president of the National Right to Work Legal Defense Foundation, submitted a motion to file a brief amicus curiae, along with the brief itself. Mr. Mix had earlier filed an unfair labor practice charge in Case 4–CB–9834, alleging that the certification of the Petitioner Union's card majority by a panel that included Congressman Robert Andrews amounted to a violation of the Act. That charge is being held in abeyance pending the outcome of this case, in which the certification is alleged as an objection to the Petitioner's election victory. No party has objected to the motion. I grant the motion and accept the brief because of the relationship between the objection and the charge and because it is in the interest of the deciding official to have the benefit of the brief, which I have read and considered. Nothing in the helpful brief submitted by amicus is persuasive enough to convince me that the certification of the card majority by the panel of non-Board officials warrants overturning the results of the election.

and (c) the Union was the certified representative of the dealers before an election was conducted.

Objection 3

Acting in concert with representatives of the federal government 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.

Objection 4

Acting in concert with members of the federal, state and local governments, to destroy the laboratory conditions necessary for a free and fair election by creating the impression that the government viewed the unionization of the Trump Plaza as a desirable outcome and governmental objective.

Objection 5

By the above and other acts, the Union destroyed the laboratory conditions necessary for a free and fair election.

The Facts

The election in this case was part of an overall organizing campaign by the Union to gain representation rights for the card dealers employed by all Atlantic City casinos.

The Union filed its election petition with respect to the Employer's dealers on February 15, 2007. Two days later, the Union sent a letter to the Employer asserting that a majority of its dealers had designated the Union to serve as their exclusive bargaining representative. The letter stated that the Union was prepared to prove its majority status "through signed authorization cards." It also asked the Employer to contact the Union to agree on a procedure by which the Employer would recognize the Union "based on a review of the authorization cards." Er. Exh. 9. The Employer did not respond to that letter.

After the parties agreed to the details of a Board election, both the Employer and the Union engaged in extensive campaigning to convince the voters of the soundness of their positions. The parties stipulated that the Employer distributed "numerous handouts" during the election period, "urging the dealers to vote no." Tr. 48–49. The Employer concedes that it "waged a vigorous campaign" against selection of the Union (Er. Br. 21). The Press of Atlantic City, the main local newspaper, covered the campaign, especially during the last few days before the March 31 election (Un. Exh. 2, 3 & 4, Tr. 51–53).

In addition, the Union obtained the support of local and federal elected officials, who issued letters and resolutions that were carried on the Union's website and made publicly available to the dealers, as well as other interested individuals and groups. Most of the letters generally supported the Union's overall campaign to represent the Atlantic City dealers, with a specific focus, at least in terms of the timing of the letters, on the first of the Board elections in the campaign. The dealers working for Caesar's Atlantic City voted on March 17, 2007; the Union won that election by a margin of 572 to 128, a fact that the Union trumpeted in its campaign literature in advance of the election in this case (Er. Exh. 2).

On March 22, 2007, the Union addressed a letter to the Employer's dealers in advance of the March 31 election. That letter included attachments of earlier letters of support from elected officials that had been prepared before the Caesar's election (Er. Exh. 2, Tr. 30–31). Those letters also appeared separately on the Union's website (Er. Exhs. 4a, 4g, Tr. 33–34, 35–36). One attachment was a March 12, 2007 letter addressed to "Dear Friends," from United States Congressmen Christopher Smith and Frank LoBiondo, expressing their support for the Union in its overall campaign. The letter stated that the congressmen understood that 75% of the dealers had signed authorization cards, but that there was "still the important election vote set for this Saturday," referring to the Caesar's election. The rest of the letter discussed the recently introduced Free Choice Act, proposed legislation that would provide for union recognition based solely on authorization cards. The letter ended by reiterating the congressmen's support for the employees' right to join a union and also the Free Choice Act. Er. Exh. 4b. Another attachment was a similar letter of support, addressed to "Casino Employees" and dated March 8, 2007, and it came from State Senate President Richard Codey and State Assembly Speaker Joseph Roberts. The letter stated that the authors "strongly support [the] dealers' rights to decide whether or not they wish to join a labor union." It closed by stating an expectation that "all parties involved will allow the collective bargaining process to proceed in a peaceful and lawful manner that respects our State's proud labor tradition." Er. Exh. 4c. Also attached was a letter, addressed to casino employees and dated March 9, 2007, and came from U.S. Congressman Robert Andrews. It referred to the Union's overall campaign, with particular emphasis on the "important decision" the employees faced as to "whether you and your co-workers will unionize." Still another attachment was a March 6, 2007 letter from Joe Kelly, an Atlantic County Freeholder, to the General Manager of Caesar's Atlantic City, urging that employer not to engage in an "aggressive campaign" that would "spread fear and intimidate workers." His letter also offered to help in discussing a code of conduct for the upcoming election "or any other issue." Er. Exh. 4e.

The Union's March 22 letter also contained, as an attachment, an undated resolution of support signed by about 60 elected State Assemblymen and Senators. The resolution supported the Union's effort to organize the dealers and urged "casino management" to respect its employees' opinions and democratic right to organize a union free from employer interference and abuse of power." It also stated that this is what the signers expected from "responsible businesses," and noted that they would be "paying attention to how employees are treated throughout this process." Er. Exh. 2 (attachment); Tr. 30–31.

Another Union website item included a favorable resolution by the Atlantic City Council. On March 21, the Council passed a resolution calling on all Atlantic City casinos to remain neutral with respect to the organizing rights of the dealers. The resolution stated that the dealers were actively engaged in organizing drives and had "chosen the UAW as their exclusive representative." The resolution further affirmed the right of em-

ployees to form unions and supported the Employee Free Choice Act, referred to above. The resolution also called on the casinos to honor a request for majority card check recognition with an agreement for a "neutral third party verification and appropriate negotiations." Er. Exh. 4f.

On March 25, about a week before the election in this case, the Union held a press conference, at which three elected officials signed and displayed a so-called Certification of Majority Status. The certification, which specifically focused on the Employer's dealers, stated as follows:

> We, the undersigned, conducted a confidential examination of Union authorization cards for the purpose of determining whether a majority of full time and regular part-time dealers, dual-rate dealers, and dual-rate supervisors at Trump Plaza Hotel and Casino have authorized the International Union, UAW (the "Union") to represent them in collective bargaining.
>
> The verification of the Union's majority was conducted by means of a comparison of a copy of the original signed cards and a list of current eligible employees in the bargaining unit provided by Trump Plaza Hotel and Casino to the Union in accordance with NLRB rules.
>
> The undersigned certify that, based on our confidential examination of the cards, as described above, the majority of Trump Plaza Hotel and Casino full-time and regular part-time dealers, dual-rate dealers and dual-rate supervisors have authorized the UAW to represent them for the purposes of collective bargaining.

After the date, the following names and signatures appear on the document: U.S. Congressman Robert Andrews; State Senator James "Sonny" McCullough; and State Assemblyman Jim Whelan. Er. Exh. 3. The original of the certification document, which was in poster board form, was kept in the Union's offices from March 26 until the date of the election on March 31. Paper copies were also reproduced and made available on a table in the Union's offices for whoever wanted to take them (Tr. 31–32).

On the evening of March 25, on the eleven o'clock news, a local television station, WMGM-TV, Channel 40, aired a report on the press conference. The report, which featured a snippet from Congressman Andrews, stated that Andrews led a bipartisan "card check" authorization for the dealers at the Employer. The report stated that the results of the "card check" showed "certification of majority status for forming a Union at Trump Plaza, and that this came on the heels of an election victory by the Union at Caesar's Casino the week before. After Congressman Andrews stated his support for the dealers, the broadcast continued by stating that the three legislators listed above and Reverend Reginald Floyd signed the "card count" to "confirm verification that the dealers want to join [the Union]" The broadcast, which lasted about one minute, ended by stating that "[t]he actual vote will be held this Saturday." The station's broadcast viewing area includes the areas in which most, if not all, of the Employer's dealers live. Er. Exhs. 5, 6, 7, and 8; Tr. 37–40.

The Employer also points out that one of the Union's website postings (Er. Exh. 4h) includes a statement that the Employer "has No Right to know who is or is not signing card! Those cards will go from the person you return them to, to the union reps, to the National Labor Relations Board, where they stay until we are certified." The posting generally dealt with possible employer interference with employee rights and assuring employees that they would be protected from such interference. The authorization cards that were collected during the Union campaign were straightforward and contained no limitations or conditions as to their use. They provided that the employee signing the card authorized "the United Auto Workers to represent me in collective bargaining." Un. Exh. 1.

Discussion and Analysis

When, as here, an objection is filed alleging that the "laboratory conditions" of a Board election were violated, the decisional standard—an objective test—is "whether the conduct reasonably tends to interfere with the employees' free and uncoerced choice in the election." *Double J Services,* 347 NLRB No. 58, slip op. at 1–2 (2006) (not reported in Board volumes), quoting from *Baja's Place, Inc.,* 268 NLRB 868 (1964). The burden of proof on that issue, which is on the party asserting the objection, is a heavy one because there is a strong presumption that ballots cast under Board rules and supervision reflect the true desires of the electorate. See *Safeway, Inc.,* 338 NLRB 525 (2002), and *Antioch Rock & Ready Mix*, 327 NLRB 1091, 1092 (1999). As shown below, I find that the Employer has not met its burden in this case.

No participant in a Board election is permitted to suggest that the agency conducting the election endorses a particular choice in that election. But the Board trusts employees to distinguish between Board endorsements and election propaganda by parties. See *SDC Investment, Inc.,* 274 NLRB 556 (1985), in which the Board clarified its position on the issue of whether circulation by a party of altered reproductions of Board ballots during an election campaign is objectionable conduct. The Board does not apply a per se rule in those circumstances. "When the party responsible for preparation of the altered ballot is clearly identified on the face of the material itself, employees would know that the document emanated from a party, not the Board, and thus would not be led to believe that the party has been endorsed by the Board." On the other hand, "[w]hen the source of the altered ballot is not clearly identified, it becomes necessary to examine the nature and contents of the material in order to determine whether the document has the tendency to mislead employees into believing that the Board favors one party's cause." Id. at 557. See also *3-Day Blinds*, 299 NLRB 110 (1990). Indeed, since its decision in *Midland National Life Insurance Co.*, 263 NLRB 127 (1982), the Board has eschewed making judgments on alleged misrepresentations by parties, leaving assessment of alleged misrepresentations to the good judgment of the voters. This applies as well to misrepresentations of Board law or Board actions, which in no way impugn the Board's neutrality. *Riveredge Hospital*, 264 NLRB 1094, 1095 (1982). "[T]he mere fact that a party makes an untrue statement, whether of law or fact, is not grounds for setting aside an election." *John W. Galbreath & Co.,* 288 NLRB 876, 877 (1988).

Using a similar analysis, the Board has repeatedly held that letters of endorsement by elected state or Federal officials do not compromise the Board's neutrality, absent specific evidence that voters could not discern the difference between statements about labor relations by those officials and statements by the Board and its representatives. See *Chipman Union, Inc.*, 316 NLRB 107, 108 (1995), and cases there cited. In *Chipman Union*, the Board readily distinguished the only Board case that overturned an election on somewhat similar grounds, *Columbia Tanning Corp.*, 238 NLRB 899 (1978). In *Columbia Tanning*, a state commissioner of labor had sent a letter, in Greek, specifically endorsing the petitioning union 24 hours before the election. The Board ruled in that case that the employees, many of whom were recent Greek immigrants, lacked familiarity both with English and the complexities of state and Federal jurisdiction over labor relations. Consequently, according to the Board, in a fairly close election in which the number of Greek employees was twice the margin of victory, those employees could reasonably have confused the state commissioner of labor with the Board. As the Board made clear in *Chipman Union*, the proponent of the objection must show that the employees could not distinguish between statements by other governmental officials and statements by the Board and its officials. See also *Saint-Gobain Abrasives, Inc.*, 337 NLRB 82 (2001), and *Ursery Companies*, 311 NLRB 399 (1993), which rejected claims similar to that made by the Employer in this case.

Applying these principles to the facts in this case, I find that the Employer has not shown that the alleged endorsements by elected public officials amounted to an endorsement of the Union by the Board or the government generally. Nor has the Employer shown that the certification by a panel of certain elected officials and a cleric of the Union's card majority amounted to the Board's certification of a Union election victory.

The Employer's efforts to distinguish this case from *Chipman Union* and related cases adverse to its position are unpersuasive. First of all, the statements of support from the elected officials in this case were at most implicit endorsements. They generally supported the right of the dealers to form a union and asked for the casinos to recognize this right. Moreover, the alleged endorsements, both in the cited cases adverse to the Employer's position and in this case, were from officials who are elected representatives. Those representatives speak for themselves, not for the government generally or for any agency of the government with authority over the Board. Some of the officials who made statements in this case were state representatives with no possible authority over the Board, which is a federal agency. These officials do not run elections and no reasonable person voting in a Board election and reading those letters would think any differently, particularly since the Union was clearly identified as the party distributing or disseminating the letters of support. Thus, unlike in *Columbia Tanning*, there is no inherent confusion in the electorate that the officials who issued the statements of support could be representatives of the National Labor Relations Board. Nor has the Employer submitted any evidence that any voters were so limited in intelligence, the English language, or common knowledge that they would believe that the Board endorsed the Union.

Indeed, the letters by the elected officials in this case were addressed generally to the Union's campaign to organize all the dealers working for Atlantic City casinos, not just the dealers of the Employer. Most urged the casinos, including the Employer, to remain neutral and not interfere with employee rights; others asked for a card check to determine whether the Union had majority support without the need for an election. None of the letters or resolutions suggested that the Board election was futile because some governmental entity over which the authors had control would supersede the Board in its supervision of the election. Nor would any reasonable voter think that was the case.[2]

In its brief (Br. 15–17, 18), the Employer attempts to bring this case within the orbit of *Columbia Tanning*. That attempt is unavailing. For example, the Employer states that the offending letter in *Columbia Tanning* did not mention the NLRB or the federal government whereas the letters in this case did. But, unlike in *Columbia Tanning*, the references to the Board and the federal government in the letters involved in this case had nothing to do with whether either of those entities endorsed the Union. The Board's concern with the use of the word "labor" in the title of the letter writer in *Columbia Tanning* was that the employees could, in the circumstances of that case, have perceived the writer to be somehow connected to the Labor Board. No such references to the NLRB in the letters sent in this case could be so viewed. Thus, the Employer has failed to show that the Union's distribution of the letters of support from elected representatives interfered with employee free choice.

The Employer also focuses on the "certification" of a panel of state and federal officials—as well as a cleric—that the Union possessed a majority of cards signed by the Employer's dealers authorizing the Union to represent them. But that certification contained nothing indicating that it was a document of the National Labor Relations Board and it could not possibly be equated with the Board's certification of the results of a Board election. If that were true, there would be no reason for the Board to hold the election at all. Thus, the Employer's characterization of the panel certification as amounting to a "declaration of Union victory with the NLRB's imprimatur" (Er. Br. 16) is unpersuasive. Likewise unpersuasive is the contention by amicus (Br. 8) that the panel certification essentially states "that a particular [party] has actually won the election."

First of all, the word "certify" has a generic meaning far beyond that used in Board parlance for the verification of election results. Its dictionary meaning is "to attest as certain" or "to testify to or vouch for in writing." Random House Webster's Unabridged Dictionary (Second Edition, 1998). In this respect, the certification complained about was simply a verification by

[2] At the hearing (Tr. 19), and again in its brief (Er. Br. 17, 19), the Employer seems to distinguish the cases adverse to its position by stating that, in those cases, there were single letters of endorsement from one Congressman in each, whereas here there were multiple letters of endorsement. But there is no basis in the cases or in common sense for the proposition that the number of letters of endorsement would make a difference, where, as here, the letters are all from sources that could not reasonably equated to a Board endorsement.

the panel that certain facts existed, namely the Union possessed a majority of cards. Secondly, the certification was limited to the Union's card majority, not its victory in a Board election. It is, of course, perfectly lawful for an employer to recognize a union on the basis of a verified card majority. Indeed, the Union had asked the Employer to do just that in a letter sent contemporaneously with the election petition. The Employer declined to even answer that letter. To a certain extent, Congressman Andrews was participating in the verification of the Union's card majority as a counter to the Employer's failure to submit to a card check. He also sought to illustrate his support for the Free Choice Act, which would mandate recognition after a card check of majority status. He made clear his support for the Free Choice Act in the letter he sent to the dealers. In these circumstances, I find that no one would equate the card check certification with a Board certification of election results.[3]

Contrary to the contentions of the Employer (Er. Br. 13) and of amicus (Br. 7), the statement that the certification of the Union's card majority was done "in accordance with NLRB rules" does not advance their positions. It is clear that the statement about Board rules applied only to the comparison of the cards with the Employer's list of employees. No reasonable person would have believed that this was the equivalent of a Board election. That distinction has long been recognized in Board law. An employer who does not commit serious unfair labor practices may insist on a Board election, whether or not a union obtains a card majority. See *Linden Lumber v. NLRB,* 419 U.S. 301 (1974).

The public broadcast of the press conference of the certification adds nothing of substance to the alleged objection, except that the "certification" was widely reported. Although the newscaster reporting on the certification stated that it came on "the heels of last week's similar election at Caesar's Casino," neither the Union nor the elected officials involved in the certification were responsible for that statement. It was made by a private third party. Indeed, in its last few words, the broadcast made clear that the "actual election" would be held on Saturday, March 31, an election that the Union won by a margin of 2 to 1. Thus, in these circumstances, it was clear to any reasonable viewer that the card check certification was not the equivalent of a Board election and that neither the Board nor the federal government favored the Union's victory in the actual Board election.

Nor did the Employer show that the employees had limitations in their understanding of the role of the Labor Board in Board elections, as opposed to the role of other government entities or officials. Thus, the Employer has not shown that the employees could not discern the difference between a certification by non-Board officials of a card majority and a certification or other endorsement of the Union by the Board or its representatives. Accordingly, the Employer has not met its burden of proving that the statements by three elected officials and a cleric with respect to the Union's a card majority had a reasonable tendency to interfere with the Board election in this case.

Conclusions and Recommended Order

In accordance with the above findings, I overrule the Employer's objections to the election in this case and conclude that the election was valid. Accordingly, I order that the Regional Director issue the appropriate certification.[4]

Dated at Washington, D.C. June 29, 2007

[3] The Employer also contends (Er. Br. 15) that the panel's use of the authorization cards in determining whether a majority of the unit had signed cards somehow amounted to a misuse of the cards and misled "dealers as to the legal import of the certification." That contention is without merit. Significantly, the authorization cards themselves contained no limitation on their use. The signers simply authorized the Union to represent them in collective bargaining. They certainly could be used to request voluntary recognition from the Employer, which the Union unsuccessfully attempted to accomplish in this case. The Union's website did emphasize that the Employer had no right to know who signed the cards. And it was in this context that the website further stated that the cards would eventually go to the Board and stay there. None of those statements, however, prohibited use of the authorizations for card check purposes. Nor do the website statements add anything that would reasonably convert the panel's certification of the card majority into an endorsement by the Board of an election victory by the Union. Indeed, the website statements clearly came from the Union, not the Board or any other government entity.

[4] Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, within 14 days from the date of issuance of this recommended decision and order, either party may file with the Board in Washington, D.C. an original and eight copies of exceptions thereto. Immediately upon filing such exceptions, the party filing them shall serve a copy upon the other parties and a copy with the Regional Director. If no exceptions are filed to this decision and recommended order, the Board may adopt the decision and order as its own.