

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

MARRIOTT HOTEL SERVICES, INC.

Employer

and

Case 05-RC-206350

**LAW ENFORCEMENT OFFICERS SECURITY
UNIONS, LEOSU-DC, LAW ENFORCEMENT
OFFICERS SECURITY AND POLICE
BENEVOLENT ASSOCIATION LEOS-PBA**

Petitioner

and

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32BJ**

Party in Interest

ORDER DENYING MOTION TO INTERVENE

On September 19, 2017, the Petitioner filed its petition herein, seeking a unit of all regular full-time and regular part-time security and delta officers who perform guard duties as defined in Section 9(b)(3) of the Act and who are employed by the Employer, excluding all other employees, confidential employees, managers, and supervisors as defined in the National Labor Relations Act. On September 20, 2017, Service Employees International Union, Local 32BJ (Local 32BJ) filed a motion to intervene in these proceedings. Local 32BJ's motion was supported by its status as the recognized collective-bargaining representative of the Employer's guard employees, a showing that is ordinarily sufficient to afford it the status of an intervenor. The Employer and Local 32BJ are currently parties to a collective-bargaining agreement, effective from December 1, 2014 through November 30, 2019, covering a unit of all full-time, regular part-time and Delta safety and security officers employed at the Gaylord National Resort & Convention Center, excluding administrative staff, managers, and supervisors.¹

In its motion, Local 32BJ admits that it is a "mixed guard/non-guard union." Section 9(b)(3) of the Act states, in relevant part, that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." The Board has interpreted Section 9(b)(3) "to

¹ The Region's administrative investigation of the instant petition established that the collective-bargaining agreement between Local 32BJ and the Employer does not serve as a bar to an election in this matter. A contract with a duration in excess of three years is not effective as a bar beyond the end of the third year, and the expiration date for the contract bar is the last day of the third year. The Region's administrative investigation established the instant petition was timely filed, as it was filed more than 60, but less than 90, days before the last day of the third year of the contract.

preclude a disqualified labor organization from taking advantage of the Board's election processes, including the privilege of being placed on the ballot as an intervenor with an accompanying certification of the arithmetical results" *University of Chicago*, 272 NLRB 873, 876 (1984).

Local 32BJ argues that while the Board's holding in *University of Chicago* precludes it from appearing on the ballot in any election in this matter, there is nothing within the decision or other applicable caselaw that prohibits it from participating in the proceedings surrounding the election. Local 32BJ contends that the Board's election rules contemplate participation in the election processes, even if a party is unable to appear on the ballot, for the "purposes of protecting [] interests in the unit it represents"². Given its status as the incumbent collective-bargaining representative of the unit sought in this petition, Local 32BJ asserts it has unique insight into the matters that will be considered during the course of negotiations over election arrangements. In support of its argument, Local 32BJ primarily relies on *Loomis Armored US, Inc*, 364 NLRB No 23 (2016). In *Loomis*, the Board addressed "whether an employer of security guards, having voluntarily recognized a 'mixed-guard union' as its guards' representative, lawfully may withdraw recognition if no collective-bargaining agreement is in place, even without an actual loss of majority support for the union." *Id* at p 1. The Board held in *Loomis* that "once an employer voluntarily recognizes a mixed-guard union as the representative of a unit of guards, the employer must continue to recognize and bargain with the union unless and until it is shown that the union actually has lost majority support among unit employees." *Id* at p. 7.

I consider that the Board's holding in *Loomis* is not directly applicable to the situation in this case. Rather, I conclude that, consistent with the holding in *University of Chicago*, permitting Local 32BJ to intervene in this matter is incongruous with the aforementioned Board precedent precluding disqualified labor organizations from taking advantage of the Board's election processes. As discussed above, the Region's administrative investigation of the instant petition established the petition was timely filed, and that there is no bar to an election. Moreover, there are no unit appropriateness issues before the Region, as the Petitioner is seeking to represent the same bargaining unit that Local 32BJ currently represents. Given the absence of litigable issues in this matter, there is no basis for permitting Local 32BJ's intervention. If such intervention were permitted, Local 32BJ would be able to influence a portion of the Board's election processes – the method and scheduling of a Board-conducted election, and existing

² As support for this argument, Local 32BJ, in its motion, makes reference to Section 11023.5 of the Board's Rules and Regulations. There is no such section in the Board's Rules and Regulations. It appears Local 32BJ was attempting to cite to NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11023.5 where it is noted that a union, which seeks to intervene based on its representation of other employees of the employer (other than the employees in the petitioned for unit), should be permitted to intervene and participate for the purpose of protecting its interests in the unit it represents. The facts in the instant case are distinguishable from those contemplated in the casehandling manual, because the Petitioner is seeking to represent the same bargaining unit that Local 32BJ currently represents, as well as because of the prohibition in Section 9(b)(3) of the Act against the Board certifying a mixed guard/non-guard union as the representative of a guard unit.

Board law is clear that disqualified labor organizations shall not be allowed to take advantage of the Board's election processes.

Accordingly, the Motion to Intervene is DENIED

Dated: September 25, 2017

/s/ Sean R. Marshall

Sean R. Marshall, Acting Regional Director
National Labor Relations Board, Region 05
Bank of America Center, Tower II
100 S. Charles Street, Ste 600
Baltimore, MD 21201