

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: July 8, 2010

TO : Wayne Gold, Regional Director
Region 5

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Peterson Companies 512-5012-8300
Case 5-CA-35697 512-5072-0400
512-5072-3900

This case was submitted for advice as to whether Peterson Companies ("Peterson") violated Section 8(a)(1) of the Act when it asked police who were already at the location to remove picketers. We conclude that Peterson did not violate the Act because it had a reasonable concern that the picketers had trespassed on its property. Accordingly, the charge should be dismissed, absent withdrawal.

FACTS

Peterson began developing the National Harbor site around 2000, buying property through two subsidiaries. In 2005, the Gaylord National Hotel and Convention Center ("Gaylord") purchased approximately 23 acres for its hotel and convention center from one of Peterson's subsidiaries. Gaylord developed that property and now operates a luxury hotel and convention center located at 201 Waterfront Street in the National Harbor complex in Oxon Hill, Maryland. In addition to the Gaylord, the National Harbor complex includes restaurants, private condominiums, shops, and other hotels.

On January 6, 2010,¹ 50 to 60 supporters of the Mid-Atlantic Regional Council of Carpenters, Local Union 491 ("Union") established an area standards picket outside the Gaylord on a portion of the Waterfront Street sidewalk, which is in front of the main entrance to the hotel and is situated between two driveway entrances to the hotel.² The

¹ All dates are in 2010 unless otherwise noted.

² There were two previous instances of picketing, in September and November 2009, but Peterson had no involvement in removing the Union from the property on those occasions and the charges were filed solely against Gaylord. The facts surrounding the earlier picketing are set forth in Gaylord National Hotel and Convention Center, Case 5-CA-35330, Advice memorandum dated June 30, 2010.

picketers established a single-file line and walked up the length of the sidewalk, turned around an orange road cone, and then walked back down the sidewalk in the opposite direction. On occasion, the picketers stepped onto the grassy areas surrounding both sides of the sidewalk.

An officer arrived at the scene and informed the Union that Gaylord had called the police to remove the picketers from its private property. A few minutes later, a second officer joined the first officer, and they conferred with Gaylord's Director of Security. The second officer informed the Union that, after conferring with Gaylord and Peterson, they had determined that the property between the sidewalk and the Gaylord hotel was Gaylord property; from the sidewalk to the street, the property belonged to Peterson. The officer also told the Union that Gaylord wanted them arrested if the picketers encroached on its property, that Peterson also did not want the picketers on its property, and that he would arrest them if they did not disband.

Peterson acknowledges that on January 6, police officers asked a Peterson representative whether he wanted the picketers removed from its sidewalk property located in front of the Gaylord, and that the Peterson representative replied that he wanted the picketers removed. Peterson asserts that it owns the sidewalk, and that its property interest in the land in question therefore entitled it to treat the picketers as trespassers under Maryland law. Peterson also points to the National Harbor Code of Conduct ("Code of Conduct"), that limits, among other things, solicitation, assembly, distribution of written materials, as well as interference with pedestrian movement on the private property within National Harbor. The Code further provides that persons or groups desirous of assembling or distributing written materials can submit an application and, if approved, engage in these activities in the Forum area of National Harbor. Accordingly, Peterson claims that, inasmuch as the Union picketers were on Peterson property, violating the Code of Conduct, and could impede pedestrian and vehicular traffic, it asked that the picketers be removed. It also asserts that it has applied the Code of Conduct in a uniform way, having sought the removal of other groups, including one as recently as September 2009.

After the January picket, the Prince George's County Police Law Office made a preliminary determination that the entire Gaylord National Hotel and Convention Center is private property, but contends it is still investigating the question. The Prince George's County Department of Public Works and Transportation ("Public Works") provided an engineering drawing of the Gaylord complex that shows a

sixty foot public right-of-way covering the entirety of the property where the Union picketed. A Public Works engineer confirmed that the public right-of-way includes the street, the sidewalks, and the grassy areas on both sides of the sidewalk.

ACTION

We conclude that Peterson did not violate Section 8(a)(1) by telling the police that the picketers should be removed because it had a reasonable concern that the Union picketers were trespassing on its private property. Accordingly, the Region should dismiss the complaint, absent withdrawal.

A party may seek to have the police take action against pickets where the party is motivated by a "reasonable concern," such as public safety or interference with its legally protected interests.³ As long as the party "is acting on the basis of a reasonable concern, Section 8(a)(1) is not violated merely because the police decide that, under all the circumstances, taking action" is unwarranted.⁴

We conclude that Peterson had a reasonable concern that the picketers were trespassing on its private property, notwithstanding that the best evidence obtained in the investigation indicates that the pickets were not on Peterson's private property. The Department of Public Works provided an engineering drawing that shows there is a sixty-foot public right-of-way covering the entirety of the property where the Union picketed in January; and a Public Works engineer confirmed that the public right-of-way includes the street, the sidewalks, and the grassy areas on both sides of the sidewalk. Nevertheless, because of the general uncertainty at the time of picketing regarding the width of the public right-of-way, Peterson had a reasonable concern that the picketers were trespassing on its private property. At the January picket, after conferring with Gaylord and Peterson representatives, the police determined that the property between the sidewalk and the Gaylord

³ Nation's Rent, Inc., 342 NLRB 179, 181 (2004) (trespass by picketers), citing Great American, 322 NLRB 17, 21 (1996) (handbilling causing interference with vehicular traffic). Accord Sprain Brook Manor Nursing Home, LLC, 351 NLRB 1190, 1191-1192 (2007).

⁴ Nation's Rent, 342 NLRB at 181 (employer had reasonable concern justifying call to police where pickets were trespassing on private property, using a police scanner, and following employees as they left the employer's facility).

hotel was Gaylord property, and from the sidewalk to the street, the property belonged to Peterson. Additionally, the police department's law office determined as a preliminary matter that the property involved was private property, and Peterson pays taxes on the property. Accordingly, in light of the confusion at the time of the picketing, and the continuing uncertainty during the Region's investigation, Peterson's concern that the pickets were trespassing on its private property was at least reasonable.

Therefore, because Peterson had reasonable concern that the picketers were trespassing on its property, it did not violate the Act when it told the police it wanted the picketers removed on January 6. Accordingly, the Region should dismiss, absent withdrawal, the charge that Peterson unlawfully asked the police to remove the picketers from the property.

B.J.K.