

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

HYATT HOTELS CORPORATION d/b/a
HYATT REGENCY INDIANAPOLIS
Employer/Petitioner

and

Case 25-RM-612

UNITE HERE, LOCAL 1
Union

ORDER WITHDRAWING NOTICE OF HEARING
AND DECISION AND ORDER DISMISSING PETITION

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, and pursuant to Section 3(b) of the Act and Sections 102.63(a) and (b) and 102.71 of the National Labor Relations Board's Rules and Regulations, an investigation was conducted regarding the petition filed in this matter.

I. ISSUE

Hyatt Hotels Corporation d/b/a Hyatt Regency Indianapolis (herein called the Employer) filed the instant petition requesting that the National Labor Relations Board (herein called the Board) conduct a secret-ballot election within a unit of certain employees of the Employer. The Employer claims that UNITE HERE, Local 1 (herein called the Union) has presented a claim to be recognized as the representative of certain employees of the Employer and therefore there exists a question affecting commerce concerning the representation of these employees within the meaning of Section 9(c)(1). The Union, however, claims that it has made no present demand for recognition and that the petition should not be processed.

II. DECISION

After careful investigation and consideration, I find that the Union has not claimed to represent certain employees of the Employer, and thus no question affecting commerce exists concerning the representation of certain employees of the Employer. Accordingly, and for the reasons more fully set forth below, the Notice of Hearing is hereby withdrawn and the petition dismissed.¹

¹ There is no merit to the Employer/Petitioner's contention that a hearing must be held in this matter. It is well established that Regional Directors are vested with authority to dismiss petitions without holding a formal hearing when the Regional Director finds that there is not reasonable cause to believe that a question concerning representation affecting commerce exists.

III. EMPLOYER'S ASSERTIONS²

The Employer claims that since the summer of 2008, the Union has sought recognition from the Employer as the exclusive collective bargaining representative of its employees. The Union initially demanded a neutrality and card-check recognition agreement, which the Employer declined to sign. According to the Employer, since that time the Union's conduct in acting as the majority representative of its employees; engaging in picketing, public demonstrations and a boycott of the hotel; and soliciting city officials and community leaders for support constitutes a present demand for recognition.

The Employer contends that the Union has assisted and joined employees in filing complaints with government agencies, claiming credit for any alleged improvements in working conditions as a result. The Employer also points to Indianapolis employees' participation on the bargaining committee in the Union's negotiations with the Employer's Chicago hotels, as well as Chicago employees' show of support for the Indianapolis employees. Additionally, the Employer contends that the Union's communications with guests and clients of the hotel regarding a "labor dispute" at the hotel is evidence that the Union has informed third parties that it already is the collective bargaining representative of the employees. Finally, according to the Employer, the Union has repeatedly demanded "affordable family healthcare," "a fair pension," and "a fair workload and a fair wage increase." These "demands" suggest that the Union purports to represent the employees.

In addition to these actions by the Union, the Employer contends that the Union has used coercive tactics to force the Employer to recognize and deal with it as the majority representative. Such tactics consist of a boycott of the hotel and numerous demonstrations which include the use of pickets, bullhorns and flyers distributed by the Union on behalf of the employees. During one of these demonstrations, demonstrators chanted: "What do we want? Contract. When do we want it? Now....".

IV. DISCUSSION

The Employer contends that the Union's conduct as set forth above constitutes a present demand for recognition within the meaning of Section 9(c)(1)(B) of the Act, thereby warranting the continued processing of the instant petition. In order for an employer to successfully petition for a Board-conducted representation election under Section 9(c)(1)(B) of the Act, a union or individual must have "presented to [the employer] a claim to be recognized as the representative defined in Section 9(a)." ³ Absent such a direct claim, the employer has no standing to seek, and

² Accompanying its Petition the Employer submitted a position letter with supporting documentation to support its claim that a question concerning representation exists and a secret-ballot election should be held to resolve such question.

³ Section 9(a) of the Act defines "representative" as a labor organization or individual "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes."

the Board lacks jurisdiction to conduct, an election.⁴ A claim of majority status (or demand for recognition) need not be stated in the precise terms of Section 9(a). The Board has found that submission of, or requests for, a proposed contract constitutes a valid claim.⁵ Similarly, direct attempts by a union to engage in *pro tanto* bargaining with an employer may establish a present demand for recognition.⁶ It is well settled law, however, that direct requests and picketing by a union to obtain a neutrality and/or card-check agreement from an employer do not constitute a present demand for recognition.⁷

Here, none of the Union's messages to the Employer, the public, or to third parties, whether viewed individually or in totality, constitutes a present demand by the Union for recognition as the majority representative of the Employer's employees. The evidence does not establish that the Union has done anything more than advance its organizational objective by handbilling, picketing and carrying out a consumer boycott of the Hyatt Regency Indianapolis.⁸ In particular, the Union's campaign literature claiming credit for any changes to the health and safety of its employees does not contain the detailed demands or contract proposals that would rise to the level of *pro tanto* bargaining so as to constitute a demand for recognition. Similarly, the generic campaign rhetoric that the Union directed to employees and to the public regarding affordable family healthcare, fair pension, a fair wage increase and other benefits does not amount to proposing a collective-bargaining agreement to the Employer for acceptance or directly demanding specific terms and conditions of employment.⁹

V. ORDER

Accordingly, I find that no question affecting commerce exists concerning the representation of certain employees of the Employer and the petition is hereby dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

⁴ See, e.g., *Rapera, Inc.*, 333 NLRB 1287 (2001) (plurality opinion); citing *The New Otani Hotel*, 331 NLRB 1078 (2000) and *Windee's Metal Industries*, 309 NLRB 1074 (1992).

⁵ See e.g., *Johnson Bros. Furniture Co.*, 97 NLRB 246 (1951); *Kimel Shoe Co.*, 97 NLRB 127 (1951).

⁶ See e.g., *State Mart, Inc.*, 166 NLRB 818 (1967) (area-standards picketing deemed recognitional in nature after union demanded contractually-equivalent benefits of a specific character).

⁷ *The New Otani Hotel*, supra; *Brylane, L.P.*, 338 NLRB 538 (2002).

⁸ Without passing on the merits of a Section 8(b)(7)(C) charge in these circumstances, I note the absence of such a charge or any evidence that the picket signs contained language establishing a recognitional object.

⁹ *State Mart*, supra.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **March 30, 2011**, at 5:00 p.m. (ET), unless filed electronically.

Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website **is accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹⁰ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

SIGNED at Indianapolis, Indiana, this 16th day of March 2011.

Rik Lineback
Regional Director
National Labor Relations Board
Region Twenty-five
Room 238, Minton-Capehart Building
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¹⁰ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.