UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STAMFORD PLAZA HOTEL & CONFERENCE CENTER, Employer	:	Case No. 34-RC-080390
and	:	
LOCAL 371, UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION Petitioner	:	June 8, 2012

PETITIONER'S OPPOSITION TO REQUEST FOR REVIEW

The Regional Director directed an election in a unit of service and maintenance employees employed by Stamford Plaza Hotel and Conference Center ("the Employer"). The Employer agrees that this is an appropriate unit. Nevertheless, the Employer has filed a Request for a Review seeking to delay the election.

This unit currently exists by virtue of a District Court Order, a copy of which is attached to the Employer's Request for Review. The District Court found, in a Section 10(j) proceeding, that there is a reasonable cause to believe that the Employer subcontracted a substantial portion of the jobs in the bargaining unit for the purpose of "thwarting unionization efforts." (District Court Ruling and Order, p. 3). The judge ordered the Employer to restore the subcontracted jobs to its payroll so that the Employer's actions would not frustrate the employees' efforts to organize. The Employer argues that the election should not go forward because the appropriate bargaining unit came into existence as a result of the District Court injunction. The

Employer's contention is designed to defeat the purpose of the 10(j) injunction. The Employer's argument should be rejected forthwith.

I. FACTS

The Union initially commenced an organizing campaign among employees in the unit last year. By June 2011, the Union had collected authorization cards from a substantial majority of the service and maintenance employees employed at the Employer's hotel (District Court Ruling and Order, p. 1). On June 24, the Employer announced that it had decided to subcontract its housekeeping operations to "Labor for Hire" and its maintenance functions to "New York Major Construction." The same employees were hired by these contractors to do the same work at the same location for substantially the same compensation (*Ibid*).

The Petitioner filed unfair labor practice charges alleging that this subcontracting was designed to frustrate the Union's organizing campaign. The General Counsel agreed, issuing Complaint alleging that the subcontracting was unlawful. The Regional Director sought injunctive relief on behalf of the Board pursuant to section 10(j) of the Act (*Ibid*, p.2). On March 22, 2012, Judge Mark Kravitz found reasonable cause to believe "that Stamford Plaza has structured its present subcontracting arrangements so as to continue thwarting unionization efforts." (p. 3). Accordingly, he ordered the Employer to refrain from subcontracting jobs and to restore the affected employees to their former positions (pp. 3-4).

The parties stipulated that the Employer has complied with this order. Therefore, it is undisputed that the housekeeping and maintenance employees are now directly employed by the Employer.

II. ARGUMENT

The Employer contends in its Request for Review that the Regional Director should have recused himself because he appeared as both a named party and an attorney in the injunction proceedings. The Employer claims that this creates some sort of conflict with the Regional Director's role as a decision-maker for the Board in this case. The Employer's argument disregards the fact that, in all of these procedings, the Regional Director has acted on behalf of the Board.

The Employer cites no cases to support this argument, choosing to rely instead on the generous use of italics and bold faced type to make his argument sound more compelling. The only "precedent" that he cites is the example of former Board Member Becker, who recused himself from cases in which he had previously appeared as an advocate for a union involved in the case. This example confuses the role of an attorney who represented an outside party with the role of a regional director who has acted consistently on behalf of the same party. In his role as a party and named attorney in the District Court litigation, and in his role in deciding the instant case, Regional Director Kreisberg has acted as a representative of and agent for the NLRB. There is simply no ethical conflict comparable to the conflict faced by an attorney who formerly represented a different party and later proceeds to decide a case in which the attorney has appeared as an advocate.[1]

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[1] It should be apparent that the Employer has submitted all of its arguments in this case in furtherance of the objective of delaying an election. If the Board finds merit to the Employer's argument that the Regional Director should have recused himself, the Board should grant review and then order the election on the basis of the undisputed facts of this case.

The Employer argues that this petition should be blocked by the pending unfair labor practice case, notwithstanding the Union's request to proceed with this election. The Board's policy is to honor a petitioner's request to proceed unless the unfair labor practice charge alleges "Type II" conduct that is inherently inconsistent with the petition. See CHM sec. 11730.3. The Employer argues that, if it prevails in the pending unfair labor practice proceedings, it would be allowed to restore the subcontracted operations, thus rendering the unit inappropriate. According to the Employer's argument, the petition should be blocked because such an outcome would "preclude" the finding of a question concerning representation in this unit.

In support of its rather absurd argument, the Employer cites to section 11730.3(b) of the Casehandling Manual. That section provides, in relevant part, that Type II charges include Section 8(a)(2) and (5), 8(b)(3), or other charges which allege violations that involve recognition issues. These charges include:

> allegations of 8(a)(5) or 8(b)(3) failure to recognize or bargain, or 8(a)(1) and/or (3) violations requiring a remedial bargaining order, or 8(a)(2) unlawful recognition. A determination of merit in such a charge may impose conditions upon or preclude the existence of the question concerning representation sought to be raised by the petition.

This language makes clear that an election must remain blocked where "a determination of merit" would preclude a question concerning representation. Here, the Employer is arguing just the opposite: that a finding of no merit would allow it to once again destroy the bargaining unit. There is nothing in this section of the Manual that even remotely supports the Employer's argument.

Moreover, the Employer's argument would undermine and frustrate the purpose of section 10(j). As explained by Judge Kravitz, the purpose of 10(j) relief is to prevent

an employer's unfair labor practices from undermining employees' collective bargaining rights while unfair labor practice proceedings wend their way through the administrative process. See Pet. Ex. 1, p. 3 and cases cited therein. If this petition is blocked pending issuance of an administrative law judge decision, an appeal to the Board, and possible court of appeals proceedings, then the Employer will have achieved its goal of frustrating employees' organizing activities just as effectively as if the district court injunction had never issued.[2]

III. CONCLUSION

The Employer's Request for Review should be denied.

RESPECTFULLY SUBMITTED
THE PETITIONER

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[2] In the unlikely event that the Employer prevails in the unfair labor practice case and reinstitutes the subcontracting arrangements, the impact of this change can be addressed in a unit clarification or other appropriate proceeding.

CERTIFICATE OF SERVICE

This is to certify that the foregoing Petitioner's Opposition to Request for Review was electronically mailed, on this 8th day of June 2012 to the following counsel of record:

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