Quantum Hotels, LLC, Metropolitan Lodging, LLC, Wick Road Hotel Management, LLC, alter egos d/b/a The Metropolitan Hotel, Romulus *and* Local 24, UNITE HERE!, AFL–CIO. Case 07–CA–065304

September 7, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES AND BLOCK

The Acting General Counsel seeks a default judgment in this case pursuant to the terms of an informal bilateral settlement agreement. Upon charges and amended charges filed by the Union on September 22, November 4 and17, December 23, 2011, and March 14, April 25, and May 25, 2012, the Acting General Counsel issued an amended complaint on May 31, 2012, against Quantum Hotels, LLC, Metropolitan Lodging, LLC, Wick Road Hotel Management, LLC, alter egos d/b/a the Metropolitan Hotel, Romulus (the Respondent) alleging that it violated Section 8(a)(5) and (1) of the Act.[1]

Subsequently, the Respondent and the Union entered into an informal bilateral settlement agreement, which was approved by the Regional Director for Region 7 on June 21, 2012. The settlement agreement required the Respondent to, inter alia: (1) furnish the Union with information it requested on July 21 and August 10, 2011; (2) upon request, rescind the suspension of premium payments to the Wayne County HealthChoice program for unit employee health insurance, payments to a 401(k) plan, and the life insurance plan; (3) make all unit employees whole for any losses they suffered as a result of the unilateral changes to terms and conditions of employment by making installment payments of liquidated backpay; (4) upon request, bargain collectively and in good faith with the Union with respect to wages, hours of employment, and other terms and conditions of employment; and (5) post appropriate notices, and mail notices to all current and former employees employed at any time since September 22, 2011.

The settlement agreement also contained the following provision:

> [Respondent] agrees that in case of non-compliance with any of the terms of this Settlement Agreement by [Respondent], and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by [Respondent], the Regional Director will reissue the amended complaint previously issued on May 31, 2012, in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the amended complaint. [Respondent] understands and agrees that the allegations of the aforementioned amended complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether [Respondent] defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the amended complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to [Respondent] on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon [Respondent] at the last address provided to the General Counsel.

By letter dated June 25, 2012, the Region sent the Respondent a copy of the approved settlement agreement, and advised the Respondent to take the steps necessary to comply with the settlement agreement. By letter dated June 28, 2012, the Respondent was sent a corrected copy of the settlement agreement. By letter dated July 2, 2012, the Regional Director notified the Respondent that it had not complied with the terms of the settlement agreement, by failing to submit the first backpay installment payment of $5000 that was due within 5 days of the Regional Director's approval of the settlement agreement. The letter further reminded the Respondent of its obligation to pay the backpay as described in the settlement agreement, and warned the Respondent that failure to forward the payment within 14 days would result in the Regional Director's reissuing the amended complaint and filing a motion for default judgment.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement, the Regional Director reissued the amended complaint on July 17, 2012. On July 19, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on July 20, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed

[1] Because the entities named above are alleged to be alter egos, they are collectively referred to as "the Respondent" herein.

no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to furnish the Union with requested information, failing to remit the agreed-upon backpay; and failing to post or mail the required notices to employees. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued amended complaint are true.[2] Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Quantum Hotels, LLC (Respondent Quantum) has been a limited liability company with an office and place of business in Romulus, Michigan, and has been engaged in the operation of the Metropolitan Hotel, Romulus, providing food and lodging.

At all material times, Respondent Metropolitan Lodging, LLC (Respondent Metropolitan Lodging) has been a limited liability company with an office and place of business in Romulus, Michigan, and has been engaged in the operation of the Metropolitan Hotel, Romulus, providing food and lodging.

At all material times, Respondent Wick Road Hotel Management, LLC (Respondent Wick Road) has been a limited liability company with an office and place of business in Romulus, Michigan, and has been engaged in the operation of the Metropolitan Hotel, Romulus, providing food and lodging.

At all material times, Respondent Quantum, Respondent Metropolitan Lodging, and Respondent Wick Road have had substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership.

About mid- or late 2011, Respondent Metropolitan Lodging was established by Respondent Quantum, as a continuation of Respondent Quantum.

About June 9, 2011, Respondent Wick Road was established by Respondent Quantum and Respondent Metropolitan Lodging as a continuation of Respondent Quantum and Respondent Metropolitan Lodging.

Based on the operations and conduct described above, Respondent Quantum, Respondent Metropolitan Lodging, and Respondent Wick Road, herein collectively referred to as the Respondent, are, and have been at all material times, alter egos within the meaning of the Act.

During the calendar year 2011, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $500,000 and purchased and received at the Romulus facility goods and supplies valued in excess of $50,000 from other enterprises in the State of Michigan, including the DTE Energy Company, which other enterprises received these goods and supplies directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Hanna Karcho	Organizer/Member
Remo Polselli	Organizer and Managing Member
Shane Reinhardt	General Manager (around 2009)
Doug White	Acting General Manager (until about mid-September 2011)
Devon Dallo	Acting General Manager (from about mid-September 2011)
Mike _____	General Manager
Glen Price	Manager
Mike Kralevic	Manager

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Cooks, Pantry Employees, Utility/Stewards, Bar Porters, Banquet Bartenders, Regular Banquet Servers, Banquet Servers, Banquet Bartenders, Dining Room/Bar Personnel, Coffee Break Servers, Lead Room Attendants, Room Attendants, House Persons, General Clean-up Attendants, Laundry/Valet employees, Inspectors, Servers, Room Service Servers, Bus Attendants, Hosts/Cashiers, Bartenders, Cocktail Serv-

[2] See *U-Bee, Ltd.* 315 NLRB 667 (1994).

ers, Baristas, Banquet Servers, Banquet House Persons, Lead Front Office Agent, Front Office Agent, Auditor, Driver/Guest Service Attendant, and Maintenance Employees; employed by Respondent at its Romulus facility; but excluding managers, supervisors, confidential employees, and guards, as defined by the Act.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement which was effective for the period October 1, 2008, through September 30, 2011.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

1. On about July 21, 2011, the Union, by letter, requested that the Respondent provide it with "a copy of all bargaining unit employees, classifications, full or part-time status, and rates of pay."

2. On about August 10, 2011, the Union, by letter, requested that the Respondent provide it with the following information for each employee: (a) name, gender, and date of birth; (b) job classification and salary or annual income of each member for the last 3 years; (c) current health insurance carrier and current level of coverage; (d) current cost of employee for participation in plan—both the employer contribution cost, if any, and the employee contribution cost, if any; (e) number of claims submitted by the employee under the plan for the last 3 years, and date of claim submission; (f) cost per claim submitted by the employee under the plan for the last 3 years; and (g) number of family members or dependents of the employee claimed under the plan.

3. On about August 10, 2011, the Union, by letter, requested that the Respondent provide it with "statements showing the monthly contribution for each eligible employee for the last three years for the 401(k)" and whether the Hantz group still administered the fund.

4. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

5. Since about July 21, 2011, the Respondent has failed and refused to provide the Union with the requested information described in paragraph 1.

6. Since about August 10, 2011, the Respondent has failed and refused to provide the Union with the information described in paragraphs 2 and 3.

7. Since about September 1, 2011, the Respondent unilaterally suspended contractually required premium payments to the Wayne County HealthChoice program for unit employees' health insurance.

8. Since about September 16, 2011, the Respondent has failed to pay the contractually required monthly amount of $30 per employee into a 401(k) retirement plan.

9. Since about September 16, 2011, the Respondent has failed to make contractually required contributions to a life insurance plan on behalf of its employees.

10. From about early April 2012 through May 2012, the Respondent closed its facility.

11. The subjects set forth in paragraphs 7, 8, and 9 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

12. The Respondent engaged in the conduct described in paragraphs 7, 8, and 9 without prior notice to the Union and without affording it a meaningful opportunity to bargain with the Respondent with respect to this conduct and its effects on the employees in the unit.

13. The Respondent engaged in the conduct described in paragraph 10 without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent concerning the effects of this conduct on the employees in the unit.

CONCLUSION OF LAW

By the acts and conduct described above in paragraphs 1 through 9 and 12 and 13, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent shall comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 7 on June 21, 2012, by paying the backpay due under the settlement agreement, with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010); providing the requested information to the Union; on request, rescinding the unilateral changes, and mailing the notice to employees to all unit employees employed by the Respondent at any time since September 1, 2011. In limiting our affirmative remedies to those enumerated above, we note

that the Acting General Counsel is empowered under the noncompliance provisions of the settlement agreement to seek "full remedy for the violations found as is customary to remedy such violations, including but not limited to provisions of this Settlement Agreement." However, in his Motion for Default Judgment, the Acting General Counsel has not sought such additional remedies and we will not, sua sponte, include them.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Quantum Hotels, LLC, Metropolitan Lodging, LLC, Wick Road Hotel Management, LLC, alter egos d/b/a the Metropolitan Hotel, Romulus, Romulus, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 24, UNITE HERE!, AFL–CIO (the Union) as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> Cooks, Pantry Employees, Utility/Stewards, Bar Porters, Banquet Bartenders, Regular Banquet Servers, Banquet Servers, Banquet Bartenders, Dining Room/Bar Personnel, Coffee Break Servers, Lead Room Attendants, Room Attendants, House Persons, General Clean-up Attendants, Laundry/Valet employees, Inspectors, Servers, Room Service Servers, Bus Attendants, Hosts/Cashiers, Bartenders, Cocktail Servers, Baristas, Banquet Servers, Banquet House Persons, Lead Front Office Agent, Front Office Agent, Auditor, Driver/Guest Service Attendant, and Maintenance Employees; employed by Respondent at its Romulus facility; but excluding managers, supervisors, confidential employees, and guards, as defined by the Act.

(b) Failing and refusing to provide the Union with the requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

(c) Unilaterally suspending contractually required premium payments to the Wayne County HealthChoice program for unit employees' health insurance.

(d) Failing to pay the contractually required monthly amount of $30 per employee into a 401(k) retirement plan on behalf of employees in the unit.

(e) Failing to make the contractually required contributions to a life insurance plan on behalf of employees in the unit.

(f) Failing to provide the Union timely notice of, and an opportunity to bargain over the effects of, its closure.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

(b) Provide to the Union the information it requested on July 21 and August 10, 2011.

(c) On request, rescind the unilateral suspension of payments to the Wayne County HealthChoice program for unit employees' health insurance, payments to the unit employees' 401(k) plan, and payments to unit employees' life insurance plan, and reinstate the Wayne County HealthChoice program, the 401 (k) plan, and the life insurance plan.

(d) Remit $20,455.35, plus interest, to Region 7 of the National Labor Relations Board to be disbursed to the unit employees in accordance with the settlement agreement approved by the Regional Director on June 21, 2012.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[4] to the Union and to all unit employees who were employed by the Respondent at any time since September 1, 2011.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

[3] In his motion for default judgment, the Acting General Counsel stated that the Respondent has failed to post or mail the notice to employees, furnish the requested information to the Union, or to submit the backpay required under the settlement agreement. The Acting General Counsel requested "[t]hat the Board issue a Decision containing findings of fact, conclusions of law, and an Order, all consistent with the allegations in the [reissued complaint], and the prayer for relief set forth therein, including the payment in full of backpay to the named discriminatees in the amount of $20,455.35, distributed as set forth in the [ ] Settlement Agreement." The settlement agreement divides the $20,455.35 into $5000 in backpay for each unit employee, as well as specified amounts for reimbursement for out-of-pocket health insurance expenditures paid by employees and payment of contractual 401(k) obligations, and thus provides a full make-whole remedy for the unit employees. The Acting General Counsel further requested that the Respondent be ordered to pay the unit employees this amount, plus interest. Accordingly, despite the motion's request that the Board's decision contain an order consistent with the prayer for relief in the amended complaint, we construe the Acting General Counsel's motion as a request to enforce the unmet terms of the settlement agreement.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed By Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. September 7, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

Local 24, UNITE HERE!, AFL–CIO (the Union) is the employees' exclusive collective-bargaining representative in dealing with us regarding wages, hours, and other working conditions of the employees in the following unit:

> Cooks, Pantry Employees, Utility/Stewards, Bar Porters, Banquet Bartenders, Regular Banquet Servers, Banquet Servers, Banquet Bartenders, Dining Room/Bar Personnel, Coffee Break Servers, Lead Room Attendants, Room Attendants, House Persons, General Clean-up Attendants, Laundry/Valet employees, Inspectors, Servers, Room Service Servers, Bus Attendants, Hosts/Cashiers, Bartenders, Cocktail Servers, Baristas, Banquet Servers, Banquet House Persons, Lead Front Office Agent, Front Office Agent, Auditor, Driver/Guest Service Attendant, and Maintenance Employees; employed by us at our Romulus facility; but excluding managers, supervisors, confidential employees, and guards, as defined by the Act.

WE WILL NOT fail or refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT refuse to meet and bargain in good faith with your Union regarding any proposed changes in health insurance before putting these changes into effect.

WE WILL NOT unilaterally suspend our premium payments to the Wayne County HealthChoice program for your health insurance without prior notice to the Union and without affording the Union a meaningful opportunity to bargain over the change and its effects on the unit.

WE WILL NOT unilaterally fail to pay the contractually required monthly amount of $30 per employee into a 401(k) retirement plan without prior notice to the Union and without affording the Union a meaningful opportunity to bargain over the change and its effects on the unit.

WE WILL NOT unilaterally fail to make contractually required contributions to a life insurance plan on your behalf without prior notice to the Union and without affording the Union a meaningful opportunity to bargain over the change and its effects on the unit

WE WILL NOT unilaterally close our facility temporarily without notice to the Union and without affording the Union an opportunity to bargain with Respondent over the effects of our conduct.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL provide the Union with the information it requested on July 21, 2011, of "a copy of all bargaining unit employees, classifications, full or part time status, and rates of pay."

WE WILL provide the Union with the information it requested on August 10, 2011, for each employee concerning (1) name, gender, and date of birth; (2) job classification and salary or annual income of each member for the last 3 years; (3) current health insurance carrier and current level of coverage; (4) current cost of employee participation in plan—both the employer contribution cost, if any, and the employee contribution cost, if any; (5) number of claims submitted by the employee under the plan for the last 3 years, and date of claim submission; (6) cost per claim submitted by the employee under the plan for the last 3 years; and (7) number of family mem-

bers or dependents of the employee claimed under the plan.

WE WILL, if requested by the Union, rescind the unilateral suspension of premium payments to the Wayne County HealthChoice program for your health insurance, payments to your 401(k) plan, and payments to your life insurance plan, that we made without bargaining with the Union, and reinstate these payments and restore the Wayne County HealthChoice program, the 401(k) plan, and the life insurance plan.

WE WILL make you whole for any losses you may have suffered because of the changes to terms and conditions of employment that we made without bargaining with the Union.

WE WILL, upon request, bargain collectively and in good faith with the Union as the exclusive bargaining representative of the unit.

QUANTUM HOTELS, LLC, METROPOLITAN LODGING, LLC, WICK ROAD HOTEL MANAGEMENT, LLC, ALTER EGOS D/B/A THE METROPOLITAN HOTEL, ROMULUS