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UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

TO : Robert S. Fuchs, Regional Director
Region 1

DATE: April 10, 1987
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560-7540-8060-1700
560-7540-8060-3300

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: Hotel, Restaurant, Institutional Employees and Bartenders Union, Local 26
(John Hancock Mutual Life Insurance Co.)
Case 1-CC-2155

This case was submitted for advice whether John Hancock Mutual Life Insurance Company ("Hancock") is a single or joint employer with Hotels of Distinction, Inc. ("Distinction"); and whether the Union violated Section 8(b)(4)(i)(ii)(B) by picketing an annual meeting of Hancock's policyholders and by making certain threats in connection with the 1987 Boston Marathon, which receives substantial funding from Hancock.

The Union has been involved for some time in a campaign to organize the employees of the Back Bay Hilton Hotel, which is owned by Hancock. Hancock has contracted with Distinction to operate and manage the hotel. Although Hancock has retained the right to review and approve salaries of more than $50,000 and annual expenditures in excess of $25,000, Distinction has complete control over the operation of the hotel, including overall labor relations policies and day-to-day labor relations. Based on this evidence, we agree with the Region that Hancock is neither a single nor a joint employer with Distinction and, therefore, Hancock is a neutral in the Union's dispute with Distinction. 1/

The Union also has recently begun an organizing campaign among Hancock's food service employees.

Hancock is the chief corporate sponsor of the Boston Marathon, which is conducted by the Boston Athletic Association

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1/ Parklane Hosiery, 203 NLRB 597 (1973); Laerco Transportation and Warehouse, 269 NLRB 324 (1984); TLI, Inc., 271 NLRB 798 (1984). The fact that Hancock has reserved the right to "participate in" the negotiations of any future collective bargaining agreements at the hotel does not indicate actual or prospective control over labor relations, especially in view of the minor role played by Hancock, under a similar contractual provision, at another hotel owned by Hancock and operated by Distinction. Cf. TLI, Inc., supra.

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("BAA"). Hancock contributes approximately $1 million and free advertising to the BAA for marathon expenses, but otherwise has no involvement with the operations of the BAA, its employees, or the conduct of the marathon itself. The BAA has no relationship whatsoever with Distinction. Accordingly, it is clear that the BAA is a neutral to any dispute the Union may have with either Hancock or Distinction.

Initially, we conclude that the Union violated Section 8(b)(4)(ii)(B) by picketing the Hancock annual policyholder meeting on February 9, 1987. Thus, assuming that the Union has a lawful, primary dispute with Hancock arising from its attempt to organize the Hancock food service employees, it is clear that the Union's appeal on February 9 was based on the hotel dispute. In this regard, we note that the Union's January 28, 1987 memorandum to the Hancock employees, urging them to attend the policyholder meeting, was in terms of the hotel dispute. Also, the Union's statements at the meeting indicated that at least an object of the Union's activity on that day was to enmesh Hancock in the Union's dispute with Distinction. Finally, picket signs identified Permenter, a Distinction management consultant, as a "union buster." As stated above, Hancock is a neutral to the hotel dispute. Thus, the picketing violated Section 8(b)(4)(ii)(B). And, insofar as employees of Hancock used the entrance to the Hancock Hall during the Union's picketing, or were the object of the Union's appeals, the Union violated Section 8(b)(4)(i)(B) by this conduct.

Further, we conclude that the statements made by Union President Domenic Bozzotto to various radio, television and newspaper reporters, which were broadcast or published in various media, constituted threats to disrupt the Boston Marathon in an unlawful manner. In Butchers Union Local 506 (Adolph Coors Co.), 268 NLRB 475 (1983), the Board found a violation of Section 8(b)(4)(ii)(B) because the union had threatened to picket and boycott a public event without giving assurances that it would confine itself to lawful activities. Citing cases holding that "[u]nqualified or ambiguous threats will be construed against the union as threats to the secondary's business relationship with the primary," 2/ the ALJ, whose decision was adopted by the Board, held that the burden was on the Respondent to clearly indicate a lawful product boycott and picket, if that was what Respondents intended." 268 NLRB at 478. As in that case, we

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2/ E.g., Sheet Metal Workers Local 418 (Young Plumbing & Supply), 227 NLRB 300, 311-12 (1976).

find President Bozzotto's statements, taken as a whole, to be overbroad and ambiguous, in that they permit the inference that the Union intends to do more than engage in privileged activities. Thus, in answer to questions about his plans for Marathon Day, Bozzotto responded with such unqualified statements as: "Well, we rule nothing out"; "As far as we're concerned, there is no such thing as too outrageous"; "nothing will be deemed too radical or far out"; and "If you look at the logistics of the marathon it is so simple . . . You can disrupt it with one person or 1,000 persons." Moreover, in response to a reporter's question as to whether the union would interfere with the runners, Bozzotto replied "there's nothing we've ruled out. I think everything is possible." Although we recognize that these statements may have been taken out of the context of the interviews in which they were made, nonetheless the Union does not appear to have made any attempt to clarify its intended conduct so as to assure the neutrals that it plans to engage only in lawful activity at the marathon, as required by Adolph Coors Co., supra, and cases cited therein. Indeed, by using the term "disrupt," it has stated its intention to engage in unlawful activity. Accordingly, we would argue that the statements go far beyond an announcement of an intent to engage in constitutionally permitted publicity appeals. 3/

The Union apparently contends that it has a primary dispute with Hancock based on an organizational campaign among Hancock's food service employees. The contention has no merit. First, it appears that all, or virtually all, of the Union's statements and conduct have referred to the hotel dispute, and not to any food service dispute. Thus, the Union's claim that it has a primary dispute with Hancock regarding the food service employees would appear to be pretextual. Further, even if the Union referred to the food service employees, its conduct would nonetheless be unlawful. In this regard, it is clear that at least an object of the Union's statements and conduct have been to enmesh Hancock in the hotel dispute. Finally, it is clear that the Union has no dispute with BAA, the entity that actually stages and runs the marathon.

With respect to remedy we recognize the Union's constitutional rights to make certain lawful appeals to the public at the marathon. Thus, the Region should make clear to

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3/ Compare Packerland Packing, 218 NLRB 833(1975, where the union made clear that its conduct would be confined to lawful activities.

the court that we seek to enjoin only those activities that are statutorily proscribed. The proposed injunction should require the Union, first, to cease and desist from threatening, coercing or restraining John Hancock at its place of business with the object of affecting Hancock's relationship with Distinction. Second, it should enjoin the Union from engaging in 8(b)(4)(B) conduct at the marathon, including, but not limited to, such activities as threatening or engaging in disruptive activities at the marathon, interfering with the runners, standing in the roadway or engaging in confrontational picketing of the BAA or any other neutral. 4/

With particular respect to confrontational picketing of Hancock at the marathon site, such picketing would be enjoined, even if that activity were confined to the alleged primary dispute with Hancock concerning its food service employees. Thus, we do not view the location of the marathon as a business situs of Hancock. Hancock is simply one of the financial supporters of the marathon and it hopes to derive commercial advertising benefit from its participation. Any Hancock employees who work at the marathon apparently will not be paid for this work by Hancock but, rather, will volunteer their services to the event. Thus, they are not working at the marathon in their capacity as Hancock employees, and they will not be subject to Hancock control. Finally, although the finish line of the race is near the Hancock headquarters at the John Hancock Tower, that building is across a public plaza and approximately 150 yards from the finish tape. Accordingly, if the Union wishes to picket Hancock or otherwise appeal to its customers or employees on the day of the marathon in support of

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4/ It should be made clear to the court that we do not seek to enjoin appeals to the public, even if those appeals are made by means of signs, placards or patrolling along the side of the roadway, if those appeals do not involve "a confrontation in some form between union members and employees, customers, or suppliers who are trying to enter the . . . premises." Chicago Typographical Union No. 16 (Alden Press, Inc.), 151 NLRB 1666, 1669 (1965), quoting NLRB v. United Furniture Workers of America, 337 F.2d 936, 940 (2nd Cir. 1964). Similarly, if a reasonable number of Union agents peacefully pass out handbills, which simply communicate the message that Hancock has a financial interest in the hotel, such conduct would be constitutionally permissible, even if there is no producer-distributor relationship between the Hotel and Hancock.

any primary dispute it may have with Hancock, it can do so at the entrance to the John Hancock Tower, without disrupting the race.

H.J.D.