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**CSX Hotels, Inc., d/b/a The Greenbrier and International Union of Operating Engineers, Local No. 132, AFL-CIO.** Case 11-CA-19537

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On May 2, 2003, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and, solely for the reasons set forth below, has decided to affirm the judge's rulings, findings, and conclusions and adopt the recommended order.

The Respondent operates a hotel and resort in White Sulphur Springs, West Virginia. On June 12, 2002<sup>1</sup>, the Union, which represents employees at the Lynch Construction Company, discovered that Lynch was performing work traditionally performed by operating engineers on the premises of the Respondent, using nonunion employees of the Respondent. On June 20, after an unsuccessful attempt to resolve the issue with Lynch's management, the Union began picketing at the gate used by Lynch. After the union representatives had picketed for 10 to 15 minutes, police officer Philip Wickline arrived on the scene and told the pickets to move their illegally parked cars, which they did. Shortly after, the Respondent's general manager, Jack Damioli, and union representative Donald Huff agreed that the pickets would move to a different gate, with Damioli's assurance that Lynch would use that gate. An hour later, police officers Emmett Sullivan and Jerry Smith arrived at the picket site and told the pickets that, according to a city assemblage ordinance, they needed to get a permit before continuing their protest. The officers threatened that if the pickets did not comply with the ordinance, they would be arrested, so the pickets left. When the Union discovered that getting the required permit would take over 5 days, it decided to picket without a permit, believing that obtaining a permit would unreasonably delay its efforts to protest Lynch's actions, and that the ordinance was probably unenforceable.

<sup>1</sup> All dates are 2002 unless otherwise indicated.

On the morning of June 24, the Union returned to the Respondent's gate and continued to picket. Police Chief James Hylton testified that, when he arrived at his office at around 7:20 that morning, the Respondent's security officers Randy Thomas and Chuck Jones were waiting for him, and notified him of the return of the pickets. Around 10 minutes later, Hylton arrived at the picket site and, with Thomas standing next to him, told Huff that the pickets would have to leave because they were in violation of the city assemblage ordinance. Huff protested that his attorney, James McHugh, had advised him that he did not have to get a permit to picket. McHugh and Hylton drove back to the police headquarters together and phoned the city attorney, who instructed Hylton not to enforce the assemblage ordinance in this case.

That afternoon, after unsuccessfully attempting to reach the city attorney by phone, the Respondent's counsel sent him a fax, which stated in relevant part

Our overriding concern is for public safety. Highway U.S. 60 has a speed limit of fifty-five (55) miles per hour and the right of way is strictly limited . . . Therefore, it would seem prudent to follow proper legal procedure and require all picketing parties to obtain permits. We respectfully request the City to do its duty by enforcing the law and protecting the public's safety.

The judge concluded that the Respondent violated Section 8(a)(1) of the Act by contacting the police in order to seek the removal or arrest of the union representatives who were engaged in lawful picketing. We adopt this conclusion, specifically with respect to the Respondent's conduct on June 24.<sup>2</sup>

The Respondent admits that the Union's pickets were on public property. It is well settled that "an employer's exclusion of union representatives from public property violates Section 8(a)(1), so long as the union representatives are engaged in activity protected by Section 7 of the Act." *Bristol Farms*, 311 NLRB 437 (1993). In this case, the picketers were engaged in protected activity on public property. There is no basis to conclude that they somehow lost the protection of the Act by creating a traffic hazard or that their actions on public property somehow interfered with the Respondent's private property interests.

The Respondent, citing *Great American*, 322 NLRB 17 (1996), argues that Thomas and Jones lawfully went to the police chief's office on June 24, simply to notify the police of a matter of public safety. In *Great Ameri-*

<sup>2</sup> We find it unnecessary to pass on the judge's analysis of the events of June 20, as a violation on the basis of those events would be cumulative.

can, the Board found that an employer did not violate Section 8(a)(1) by summoning the police to evict union representatives handbilling on public property, because the handbillers were causing vehicular traffic to back up onto the street and infringing on the employer's private property interest in maintaining unimpeded customer access to its parking lot. Here, however, neither circumstance obtains. The judge found that the Respondent has not shown that the picketers were creating a traffic problem or were infringing on the Respondent's private property interests.

Nevertheless, the Respondent and our dissenting colleague assert that the Respondent acted lawfully in contacting the police because it was reacting to a "potentially dangerous traffic condition." In fact, it was the Respondent, through Damioli, that prescribed the site of the picketing by asking the picketers to relocate when they began their protected activity. The city attorney, in a letter to the Respondent, stated that there were only 3 pickets by the Respondent's gate when he drove by. Finally, when the Respondent's agents, Thomas and Jones, complained to the police about the picketing on the morning of June 24, they did not identify an actual or specific traffic problem, as the employer had in *Great American*, but, according to the testimony of Police Chief Hylton, simply stated "that picketers are down on 60 again, [and] they were having a lot of traffic and everything." As the judge found, there is no evidence of an actual or potential traffic problem as a result of the picketing.

Similarly, the Respondent's assertion that it was not seeking any particular action on the part of the police when Thomas and Jones went to report what they believed to be a potential traffic hazard is unpersuasive. The Respondent's subsequent actions show that the Respondent was not simply reporting a concern, but was actively seeking police removal of the pickets. Thus, immediately following the Respondent's complaint, Hylton went to the site of the pickets, and Thomas stood next to him as Hylton told the pickets they had to leave because they lacked a permit. Hylton's response indicates that the complaint that prompted it was not directed at remedying any perceived traffic hazard, e.g., by having the police regulate traffic, but rather at enforcement of the assemblage ordinance, which would simply have required the pickets to obtain a permit before continuing their activity. Furthermore, after the city attorney instructed the police not to enforce the assemblage ordinance against the pickets, the Respondent continued to pressure the city to intervene. In his letter faxed to the city attorney on the same day, the Respondent's counsel, while citing traffic safety concerns, again urges the city

to "require all picketing parties to obtain permits" and to "do its duty by enforcing the law."

Citing *Bill Johnson's Restaurant v. NLRB*, 461 U.S. 731 (1983), which involved the Board's injunction against an employer's state court libel suit, our dissenting colleague asserts that the First Amendment right to petition the government for redress of grievances privileges the Respondent's efforts to have the police put a stop to the picketing. Because the Respondent itself makes no such argument, we need not address it. Nevertheless, we reject the dissent's contention that the First Amendment is implicated in the context of this case.

In *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984), the Supreme Court rejected a similar argument. The employer there, also citing *Bill Johnson's*, argued that the First Amendment privileged its decision to report illegal alien employees to the Immigration and Naturalization Service (INS), in retaliation for their exercise of Section 7 rights. The Court observed

The reasoning of *Bill Johnson's Restaurants* simply does not apply. The employer in that case ... was asserting in state court a personal interest in its own reputation that was protected by state law. If the Court had upheld the Board in the case, it would have left the employer with no forum in which to pursue a remedy for an "actual injury." *Petitioners in this case, however, have not suffered a comparable, legally protected injury at the hands of the employees.* Petitioners did not invoke the INS administrative process in order to seek the redress of any wrongs committed against them. Indeed, private persons such as petitioners *have no judicially cognizable interest in procuring enforcement of the immigration laws by the INS.*

467 U.S. at 897 (emphasis added; citations omitted).

Here, similarly, the Respondent has shown no legally protected injury at the hands of the picketers and no judicially cognizable interest in procuring enforcement of the traffic laws. Indeed, as we have found, there was no reasonable basis at all for the Respondent to contact the police.

Accordingly, we find that the Respondent violated Section 8(a)(1) by contacting the police in order to seek the removal or arrest of the union representatives who were engaged in lawful picketing. Accord: *Wild Oats Community Markets*, 336 NLRB 179, 182 (2001) (rejecting First Amendment defense raised by employer-lessee store owner whose complaints to property owner led to police intervention against picketers).

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Greenbrier, White Sulphur Springs, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. September 30, 2003

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Wilma B. Liebman, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN BATTISTA, dissenting.

Contrary to my colleagues, I would find that the Respondent's act of contacting the police on June 24, 2002, did not violate Section 8(a)(1) of the Act. Rather, I would find that the Respondent lawfully contacted the police based on a concern that there was a potential traffic safety problem. In my view, citizens have a constitutional right to contact governmental authorities with respect to their reasonable concerns. That right is enshrined in the First Amendment, i.e., the right to petition the government for redress of grievances.

That right found particular expression in *Bill Johnson's Restaurant v. NLRB*, 461 U.S. 731 (1983). In that case, the Supreme Court held that the Board may not enjoin an employer's state court civil suit against employees, regardless of any motive to retaliate against employees for union activity, where the suit has a reasonable basis in fact and law. The Court emphasized that the right of access to the courts is an aspect of the First Amendment right to petition the government for redress of grievances.<sup>1</sup>

The right of citizens to contact their local police department (i.e. the executive branch of government) is another aspect of the constitutional right to petition the government for redress of grievances. Thus, at most, the right can be infringed only if the report to the police has no reasonable basis. The citizen does not have to be correct about his claim; he simply has to have a reasonable basis for making the claim.

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<sup>1</sup> In *BE&K v. NLRB*, 536 U.S. 516 (2002), the Court left open the issue of whether the Board could condemn a retaliatory lawsuit even if it lacked a reasonable basis. I need not resolve that issue here. For, as discussed below, I find that the Respondent acted with a reasonable basis.

In the instant case the Respondent did not have a retaliatory motive. Indeed, no party contests the fact that the Respondent did not even have a labor dispute with the Union. However, even if the Respondent had such a motive, the evidence shows that the Respondent had a reasonable basis for its report to the police. That report was based on a concern about public safety and the free flow of traffic. Police Chief Hylton, a neutral observer, credibly testified that the picketing occurred during a high-traffic period, i.e., when "people [are] going to work." A prior study had shown that 800 cars typically pass that area in a 2-hour period. As Hylton testified, drivers are "gawking" at the activity, and thus accidents can occur. Chief Hylton also testified that, when Respondent's security officers Thomas and Jones informed him of the picketing, they expressed concern about traffic. Finally, the letter from the Respondent's counsel to the city attorney noted the high speed limit on the road and stated that the Respondent's overriding concern was for public safety.

Concededly, the police ultimately decided not to act. However, as discussed above, the test is *not* whether the citizen is correct when he goes to the police nor is the test whether the police happen to agree with the citizen. Rather, the test is whether the citizen had a reasonable concern sufficient to warrant calling the matter to the attention of the police. Based on the above, the evidence shows that the Respondent had such a concern.

My colleagues cite *Great American*, 322 NLRB 17 (1996), for the proposition that an employer has to be justified when it goes to the police. However, *Great American* does not hold that the employer has to be correct. In that case, the employer did show that there was in fact a hazard, and thus no violation was found. But it is a classic non sequitur to say that a violation would be found if that showing has not been made. As discussed above, the Supreme Court precedent is to the contrary. That is, the citizen need show only a reasonable basis for going to the authorities.

The majority's reliance on *Sure-Tan, Inc. v. NLRB*<sup>2</sup> is also misplaced. In *Sure-Tan*, the employer violated Section 8(a)(3) by reporting its undocumented workers to the Immigration and Naturalization Service (INS) in retaliation for the employees' union activities. In the case at hand, no retaliatory motive for the Respondent's report to the police is alleged or supported by the record.

Moreover, the bases on which the *Sure-Tan* Court distinguished *Bill Johnson's* do not support the majority's view here. *Sure-Tan* involved immigration policy, which the Court found the employer had no cognizable interest

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<sup>2</sup> 467 U.S. 883 (1984).

in enforcing. By contrast, the instant matter of traffic safety is of concern not only to the public at large, but particularly to those who have nearby businesses which can be affected by traffic problems. Indeed, my colleagues themselves suggest that the Respondent had a private interest in having the pickets removed. Therefore, the Respondent had a clear interest in reporting the problem to the local authorities.

In addition, the Court found that *Sure-Tan*, unlike *Bill Johnson's*, presented no federalism concerns because the employer relied on another federal statute, rather than state or local law, to defend its action. Here, the safety issues cited by the Respondent are interests that are "deeply rooted in local feeling and responsibility."<sup>3</sup>

My colleagues cite *Bristol Farms*, 311 NLRB 437, for the proposition that an employer cannot exclude, from public property, union representatives engaged in Section 7 activity. However, that proposition has nothing to do with this case. The employer did not itself exclude the union representatives. The employer reported the matter to the police; it was then a police decision to exclude the representatives or not. Thus, the issue in the case, framed by the pleadings, is whether the act of going to the police was unlawful. As set forth above, that act was not unlawful.

My colleagues also argue that there was in fact no traffic problem or infringement of Respondent's private property interest. Assuming that this is so, it misses the mark. As discussed above, the issue is whether the Respondent had a reasonable concern about public safety and/or its own interests. In my view, Respondent had a reasonable concern.

My colleagues say that the Respondent sought the removal of the pickets, as distinguished from the regulation of traffic. Again, assuming arguendo that this is so, the point is irrelevant. The important point is that the Respondent had a reasonable basis for going to the police. The precise action to be taken was for the police to decide.

In sum, I conclude, in accordance with *Bill Johnson's*, that the Respondent had a reasonable basis for reporting the matter to the police. Accordingly, I would not condemn, as unlawful, the citizen's report to his local government.

Dated, Washington, D.C. September 30, 2003

Robert J. Battista, Chairman

NATIONAL LABOR RELATIONS BOARD

<sup>3</sup> Id. at 897, quoting *Bill Johnson's*, supra at 741.

*Jasper C. Brown, Esq.*, for the General Counsel.  
*Karl Terrell, Esq.*, of College Park, Georgia, and *Susan M. Kleisner, Esq. (Stokes & Murphy, P.C.)*, of White Sulphur Springs, West Virginia, for Respondent.  
*James P. McHugh, Esq. (Barrett Chafin Lowry Amos & McHugh)*, of Charleston, West Virginia, for the Charging Party.

## DECISION

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. The complaint<sup>1</sup> alleges that Respondent CSX Hotels, Inc., d/b/a The Greenbrier violated Section 8(a)(1) of the National Labor Relations Act by contacting the police department of the City of White Sulphur Springs<sup>2</sup> and attempting to interfere with lawful pickets on behalf of Charging Party International Union of Operating Engineers, Local No. 132, AFL-CIO (Union), engaged in protected activity on the public right of way. Respondent, while admitting the lawfulness of the protest, defends on the ground that it was in no way responsible for the actions of the police. I conclude that it was.

Respondent is a West Virginia corporation with a hotel and resort located in White Sulphur Springs, West Virginia, where it is engaged in providing food and lodging for guests. During the past 12 months ending November 27, 2002,<sup>3</sup> a representative period, Respondent purchased and received at its hotel and resort goods and materials valued in excess of \$50,000 directly from points outside West Virginia. I conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

On June 12, the Union found out that Lynch Construction Company (Lynch), with whom it had a collective-bargaining agreement, was performing work on Respondent's premises that had been traditionally performed by operating engineers, using employees who were employees of Respondent, not union members, and were being paid less than what its agreement provided. On June 17, union representatives confronted Lynch's president, who rebuffed their complaints and called Respondent's security personnel. Randy Thomas, Respondent's day shift supervisor of its security department, asked the union representatives to leave Respondent's property. On Thursday, June 20, at about 6:40 or 6:45 a.m., the Union began picketing at the gate used by Lynch's employees, the 18 to 20 pickets carrying signs protesting Lynch's payments of substandard wages and commission of unfair labor practices. After 10 or 15 minutes of picketing, Police Officer Philip Wickline, told the pickets to move their cars, which were parked in a no-parking zone. The pickets complied.

<sup>1</sup> This case was tried in Lewisburg, West Virginia, on March 6, 2003. The charge was filed on June 21, 2002, and the complaint was issued on November 27, 2002.

<sup>2</sup> All police officers mentioned are members of the police department of White Sulphur Springs.

<sup>3</sup> All dates are in 2002, unless otherwise stated.

Shortly after, Jack Damioli, Respondent's general manager, and Robert Wanko, its security director, appeared, Damioli advising the union representatives that the entrance that they were picketing would not be used by Lynch. Either Damioli or Donald Huff, one of the union representatives, suggested moving the pickets to the entrance that Lynch was using, based on Damioli's assurance that his facts were accurate and that Lynch would use only that entrance. The pickets moved. Damioli left, but Wanko remained. An hour later, Police Officers Emmett Sullivan and Jerry Smith told the pickets that their picketing violated a city ordinance requiring a permit for parades and public assemblies (they had a copy of the relevant section and gave it to Huff) and said that the pickets would have to leave. Huff protested that the pickets had the right to be there under the First Amendment of the United States Constitution and Section 7 of the Act and that the pickets were orderly and were not impeding egress and ingress. Sullivan threatened that, if the pickets did not leave, he would issue a citation. If they did not leave after he issued the citation, he would arrest the pickets, who would be taken to jail and could spend up to 30 days in jail, and that there could be up to a \$500 fine. As a result, the pickets left the area.

On Friday, the Union applied for a permit, but was advised that the required permit had to be approved 5 days in advance by the police chief, who was then out of town and would not return until the following week. The Union made the decision that obtaining a permit would unreasonably delay its efforts to protest what Lynch was doing and that the position of the police department was probably unenforceable; and so it recommenced picketing shortly after 6 a.m. on Monday, June 24. Police Chief James Hylton appeared, probably at about 7:30 a.m., and told Huff that he had been informed last week that he had to get a permit and had not obtained one. Huff protested that his attorney, James McHugh, had advised him that he did not have to get one. McHugh was there, and Hylton drove him back to police headquarters, where the Chief telephoned Mark Burnette, the city attorney, with whom he spoke and then McHugh spoke. Burnette told Huff not to enforce the ordinance in this instance.

Respondent steadfastly maintained throughout the course of the 6-hour hearing, and still does in its brief, that it had nothing to do with the action of the police. But its last witness, Chief Hylton, at the very last moment, shattered Respondent's defense. Hylton had been away from work the previous week and came in early on Monday morning, June 24, as he normally did, to catch up on what went on during his absence. There were Thomas and his assistant, Chuck Jones, who had come to his office, probably at about 7:20 a.m., to complain about the pickets being back. It was they who prompted the Chief to go to the picket line.

His testimony thus implicates Respondent, through two of Wanko's subordinates, in the police action, at least as of Monday morning, June 24. But his testimony also gives meaning to another bit of testimony of Officer Smith, who, after telling the pickets to leave on the prior Thursday, went over to Wanko, and announced only; "We advised them of the City Code and they're leaving and so are we." (Wanko did not deny that this was said, but merely could not recall it. He could admit only to

"pass[ing] some social amenities.") Why Smith should have given Wanko that cryptic message was unexplained, especially why Smith should have thought that Wanko would understand what "City Code" he was talking about—unless Wanko had previously advised someone in the police department about the necessity for a parade and assemblage permit, about which Wanko knew for 6 years. The other alternative is that Smith had discussed the ordinance with Thomas and Jones and merely went to report to their superior the result of his conversation with the union representatives, assuming that Wanko had knowledge of what his subordinates had been requesting. In either event, Respondent urged the police to do what they did.

All parties agree that the dispute here involved not Respondent, but Lynch and the Union. Yet Officer Smith went to Respondent to announce essentially that he was putting a stop to the demonstration. The fact is that, on Thursday, Wanko remained at the site for a substantial period of time, taking pictures of the Union's demonstration, and Thomas and Jones, his subordinates, were there, too. On Monday, both Thomas and Jones returned to the picket line at about the same time as Chief Hylton appeared, and Thomas stood next to the Chief when he was telling Huff that he had to have a permit. Neither testified to explain what they were doing at the police department on Monday morning and their involvement in this matter. Because they did not, I make an adverse inference that, assuming that Wanko did not participate in this incident the previous Thursday—and, because Officer Smith told him about the ordinance, there is ample reason for me to suspect, as I do, that Wanko did not tell the truth—clearly Thomas and Jones were involved, so that Officer Smith, confirming that he had done what had been asked of the department, told Respondent's principal representative.

There was additional proof of Respondent's involvement. Its counsel had been fully advised about the Union's protest. When the city attorney counseled the police not to become involved, Respondent's counsel telephoned him that morning and, failing to reach him, sent him a letter that day, by facsimile, seeking to persuade the city to enforce the ordinance requiring all picketing parties to obtain permits, adding: "We respectfully request the City to do its duty by enforcing the law and protecting the public's safety." No one explained the genesis of this letter, that is, who retained Respondent's counsel to write the letter and who provided counsel with the information to put in that letter. Even assuming that the letter was prepared and sent after the activity which is the subject of this proceeding occurred, the fact remains that Respondent was seeking the enforcement of a remedy which would stop the Union's picketing. Respondent's counsel did not testify, and I draw another adverse inference from the lack of testimony about the letter. In sum, I do not believe the protestations of Respondent and its witnesses. I find that Respondent was involved in the police action from its beginning.<sup>4</sup>

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<sup>4</sup> By so finding, I do not credit fully Officer Wickline's testimony about his chance meeting with Wanko early in the morning of June 20. That conflicted with Wanko's testimony, which placed the meeting at least 15 minutes earlier, before Wickline had ordered that the illegally

## Respondent's brief states

The Greenbrier does not dispute that Local 132 was peacefully and lawfully picketing in the right of way off Route 60 on June 20, 2002 and June 24, 2002. The Greenbrier does not dispute that the White Sulphur Springs police sought the removal of the picketers' vehicles and proceeded to enforce the local ordinance requiring picketers to obtain a permit.

With my findings of Respondent's involvement, the law is well settled. As the Board stated in *Bristol Farms, Inc.*, 311 NLRB 437-438 (1993),

It is beyond question that an employer's exclusion of union representatives from public property violates Section 8(a)(1), so long as the union representatives are engaged in activity protected by Section 7 of the Act. See, e.g., *Gainesville Mfg. Co.*, 271 NLRB 1186 (1984). [Footnote omitted.]

Respondent does not question that the Union, by peacefully and lawfully picketing Lynch, to protest what the Union claimed to be contractual violations and unfair labor practices, was engaged in activity protected by Section 7. I find that it was. Because Respondent admits that the Union's pickets were on public property, it could not make a threshold showing of any property interest entitling it to exclude the pickets from that area. *Snyders of Hanover, Inc.*, 334 NLRB 183 (2001); *TNT Technologies Ltd.*, 330 NLRB 78 fn. 3 (1999); *Food for Less*, 318 NLRB 646, 649 (1995), modified on other grounds 95 F.3d 733 (8th Cir. 1996); *Indio Grocery Outlet*, 323 NLRB 1138 (1997). Respondent's reliance on *Great American*, 322 NLRB 17 (1996), is misplaced. There was no showing that the Union's picketing was disturbing traffic or infringing on Respondent's private property interest of enabling its employees who were driving maintenance mowers to have unimpeded access to its property. I conclude that Respondent violated Section 8(a)(1) of the Act by contacting the police in order to seek the removal or arrest of the union representatives who were engaged in lawful picketing.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, including my review of the briefs filed by Respondent and the Union and my observation of the witnesses as they testified, I issue the following recommended<sup>5</sup>

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parked cars be moved. It was then that Wanko suggested to Wickline, a relatively new policeman, that there was no permit for the picketing.

<sup>5</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondent CSX Hotels, Inc., d/b/a The Greenbrier, White Sulphur Springs, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Contacting the police department of the City of White Sulphur Springs, West Virginia, in order to seek the removal or arrest of representatives of International Union of Operating Engineers, Local No. 132, AFL-CIO (Union), who were engaged in lawful picketing and distribution of Union-related literature to employees on a public right of way.

(b) 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) Within 14 days after service by the Region, post at its facility in White Sulphur Springs, West Virginia, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 2000.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

## APPENDIX

## NOTICE TO EMPLOYEES

## POSTED 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 any union  
 Choose representatives to bargain with us on your behalf  
 Act together with other employees for your benefit and protection

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<sup>6</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT contact the police department of the city of White Sulphur Springs, West Virginia, in order to seek the removal or arrest of representatives of International Union of Operating Engineers, Local No. 132, AFL-CIO (Union), who

were engaged in lawful picketing and distribution of Union-related literature to employees on a public right of way.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

CSX HOTEL, INC.