UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

MARRIOTT HARTFORD DOWNTOWN HOTEL Employer/Petitioner and UNITE HERE, LOCAL 217 Union	Case No. 34-RM-88

DECISION AND ORDER

Upon a petition 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 102.71 of the National Labor Relations Board's Rules and Regulations, an investigation was conducted in this matter. In accordance with that investigation, I find that UNITE HERE Local 217 (herein called the Union) has not claimed to represent certain employees of the Employer/Petitioner (herein called the Employer), and thus no question affecting commerce exists concerning the representation of certain employees of the Employer.[1] Accordingly, and for the reasons set forth in detail below, I shall dismiss the petition.

I. Facts[2]

The Employer operates a Marriott hotel located at the "Adriaens Landing" development project in downtown Hartford, Connecticut. The hotel, which was constructed in connection with the construction of the adjacent Connecticut

[1] There is no merit to the Employer'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. *PSM Steel Construction, Inc*., 309 NLRB 1302, fn. 1 (1992), citing Board's Rules and Regulations Secs. 102.63 and 102.71. See also *New Otani Hotel & Garden*, 331 NLRB 1078 (2000).

[2] The facts set forth below are undisputed and are based upon an affidavit enclosed with the petition, the Employer's extensive position statement (with attached exhibits), and the Union's two position statements.

Convention Center, began operations in August 2005. During a telephone conversation on August 22, 2005, confirmed in writing the same day, Steve Mathews, the Union's Connecticut Director, requested that the Employer "begin discussions about a Labor Peace agreement at the Marriott hotel." In this regard, the City of Hartford maintains a "Living Wage and Labor Peace Ordinance" (herein called the LWO). Section 2-761 states that the purpose of the LWO is "to establish a living wage for all service workers employed for work performed in execution of service contracts and development projects with the city". Section 2-762 of the LWO defines "development project manager", inter alia, as "a person who has a leasehold interest on a property where a development project is located that has a duration of twenty (20) or more years." Section 2-766 of the LWO states that:

> All development project managers are required to sign a written agreement with any labor organization seeking to represent employees at the development project which agreement provides a procedure for determining employee preference on the subject of whether to be represented by a labor organization for collective bargaining and further provides that the labor organization will not strike the development project in relation to the organizing campaign.

By the Fall of 2005, the Employer and the Union had not entered into an agreement pursuant to the LWO, nor any other type of agreement. As a result, the Union admittedly sought community support for its organizing drive through boycott and outreach activity among the hotel's clients and State legislators. In this regard, the Greater Hartford Convention and Visitors Bureau received a letter dated September 15, 2005, signed by 23 individuals and community groups, stating, inter alia, that:

> Adriaen's Landing was built with public money on public land and we have high expectations for the permanent jobs there. Here in our City we want to protect workers' rights to pursue equality, opportunity, a voice on the job, and a better life by forming a union. We would like to discuss with you our interest in ensuring that the workers' rights are honored.

The Connecticut Convention Center received a similar letter dated December 12, 2005, from the Connecticut Center for a New Economy, which was signed by 25 different community organizations. The Employer also

received a letter dated December 14, 2005 from The Connecticut Conference, United Church of Christ, which was copied to the Union and the Mayor of Hartford. That letter stated, inter alia:

> I write with concern about [the Employer's] refusal in August to meet with UNITE HERE Local 217 to consider together a labor peace agreement as the City of Hartford requires in its ordinances.
>
> We had understood that [the Employer] had developed a good relationship at the Hilton with unionized workers, and so we are surprised that you would not meet with union representatives in this instance. I urge you to do so as soon as possible.
>
> The Connecticut Conference of the United Church of Christ is the oldest and largest Protestant denomination in Connecticut, with 250 churches in the 169 towns of the state. We will be the host for the 50th Anniversary General Synod of the United Church of Christ with 7,000 participants in June of 2007. We have a keen interest in labor peace - not only because of the potential impact of unrest on our event, but simply because our denomination supports strongly the rights of workers to organize and thus to have a foothold in negotiating their working conditions and wages and benefits. For us, it is a theological and Biblical conviction that drives us: every person is due respect and the opportunity to contribute productively to our society and to be fairly treated in return.
>
> I urge you to sign a labor peace agreement that will establish ground rules through which workers in Hartford at your sites will be able to exercise their right to choose to form a union. Needless to say, I also write to urge that you do all that you can to avoid a labor dispute that will affect either the General Synod in 2007, or our own Connecticut Conference Annual Meeting which is scheduled for the Convention Center in October of 2006. While this is a smaller event, expecting about 750 people from our churches, it is a statewide event that is important in giving people the experience of downtown Hartford in a positive way that will result in more events being scheduled here.
>
> Please, sit down with UNITE HERE and resolve the issues, establishing labor peace agreement as soon as you can. Hartford needs your enlightened leadership in this regard.

The Employer's counsel received a letter dated January 9, 2006 from the Deputy Corporation Counsel for the City of Hartford stating, inter alia, that the City considered the Employer to be a "development project" within the meaning of the LWO, thereby requiring the Employer to enter into an agreement (herein

called a labor peace agreement) pursuant to Section 2-766 of the LWO. The letter further stated, inter alia:

> We understand that your client has rebuffed the attempts by at least one labor organization to enter into such an agreement for the Hotel. Please be advised that in the event that [the Employer] fails to comply with the Ordinance, the City has the right under the [Tax Assessment Fixing Agreement-Marriott Hotel, Hartford CT (the Agreement)] to terminate the same (see Section 2-770). The benefits conferred to your client under the Agreement are significant and substantial, and the City expects, and did indeed bargain for, in entering into the Agreement, full compliance by your client with the Ordinance. If [the Employer] continues to remain in non-compliance with the Ordinance, the City will terminate the Agreement and revoke the remaining conferred tax benefits.

The Capital City Economic Development Authority received a letter from the Union dated January 18, 2006, stating the following:

> We are concerned that there is no labor peace agreement in effect for the operations of the Adriaen's Landing Convention Center. This could force convention center workers to rely solely upon the National Labor Relations Board process, which is often characterized by employer intimidation, harassment, strikes, and picket lines. This is not in anyone's best interest. We can create a more humane and fair process for the workers to choose whether or not they want to unionize, built on the model followed by the Omni when it opened in New Haven.
>
> Therefore, we would like to arrange a meeting with the appropriate officials from CCEDA and the company with which it has contracted to operate the facility, in order to explore the possibility of settling a labor peace agreement.
>
> Please let us know at your earliest convenience of the possibility of arranging such a meeting.

The Employer received a letter dated February 23, 2006 from the Speaker and Majority Leader of the State of Connecticut House of Representatives, acting on behalf of the "House Democrats", stating, inter alia:

> We write to request that the [Employer] submit to the Capitol City Economic Development Authority (CCEDA) the certified payroll described in C.G.S. § 31-57f (h)(2) for employees at the Convention Center and Hotel components of Adriaen's Landing. Further, we also want to express our concern that the [Employer] continues to refuse to negotiate a labor peace agreement with UNITE HERE Local 217 and SEIU for workers at the Convention Center and

Hotel.

* * *

Second, the State of Connecticut has invested millions of taxpayer dollars in the Convention Center and Hotel components of Adriaen's Landing. When the General Assembly approved the public funding for Adriaen's Landing, it did so believing that the [Employer] would follow all applicable laws and ordinances of governmental authorities, including the City of Hartford ordinance requiring a no-strike agreement between all development project managers and labor organizations seeking to represent employees at the development project.

Labor peace agreements protect all sides by setting the ground rules for workers to determine whether to be represented by a labor organization and preventing a labor organization from striking during the organizing campaign. We raise these concerns because it is our intention not to personally attend events scheduled at the Convention Center or Hotel if a picket line or boycott results from the absence of a labor peace agreement between the [Employer] and affected labor organizations.

We, therefore, ask that the [Employer] reconsider its decision to refuse to negotiate a labor peace agreement with UNITE HERE Local 217 and SEIU. Such negotiations would go a long way towards ensuring that events scheduled at the Convention Center and Hotel in the weeks and months ahead are not disrupted by unnecessary labor disputes.

The Employer received a letter from the Christian Activities Council dated March 10, 2006, stating, inter alia:

Every year we host an awards dinner to recognize those who have made a contribution to our organization. We were enthusiastic about considering the beautiful new Marriott Hotel for our awards banquet. We have decided not to patronize the Marriott at this time, however, because we have learned of your refusal to negotiate a labor peace agreement with local unions. We will have our event this May at the Hartford Hilton instead, where we know that those who prepare and serve our meals are union members.

The Adrian’s landing development is the result of millions of dollars of public subsidy, intended to boost the local economy. The local community has a right to expect good jobs in return. None of this public investment should be used to interfere with workers' legal rights. Yet before the doors of the convention center and hotel even opened, you hired a notorious union-busting law firm.

> We ask that you allow your employees the freedom to choose whether or not to unionize, without intimidation from union-busting experts and without facing discrimination. We ask that you meet with labor representatives to reach a labor peace agreement. Our community deserves nothing less.
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> We represent 36 congregations in the greater Hartford area, collectively representing over 14,000 members of the United Church of Christ. Our commitment to worker justice, based on our faith, requires that we not cross a picket line. Until you have reached an agreement to honor workers' rights to organize we will not conduct our business at the Marriott Hotel or the Connecticut Convention Center and will encourage our members will (sic) decline to participate in events at Adriaen's Landing of other organizations with which we are affiliated and involved.

The Employer received a letter from the Universal Health Care Foundation of Connecticut dated March 13, 2006, stating:

> I am writing in support of the workers employed by the Adrian's Landing hotel and convention center complex in Hartford. The Universal Health Care Foundation of Connecticut (UHCF) is proud to support workers reaping the benefits of economic development through jobs that help them join the middle class. UHCF is a $50 million grant making institution providing approximately $2.5 million in health care related grants statewide.
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> We view the hotel and convention center as an important part of the economic revitalization of the capital city, providing needed employment and economic development opportunities for many Hartford area residents. We understand that the [Employer] is refusing to negotiate a labor peace agreement with the unions that represent hotel and convention workers. This refusal denies those workers a fair process for choosing whether or not to form a union. We wholeheartedly support the right to organize of the workers employed by the hotel and convention center facilities. It is all too often the key to building their economic security.
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> Because of the nature of the Foundation's work, we regularly convene large meetings. Last year, our convening activities and event sponsorship support totaled over $50,000. In 2006, we anticipate spending $75,000 in convening activities alone, attracting more than 500 people. We are often asked to participate in or co-sponsor meetings, conferences and special events of other organizations. However, from this point forward, our use of the convention center facilities will be conditional

on the [Employer] negotiating a labor peace agreement with the unions.

> We call on you to sit down in good faith and work things out so that a labor dispute can be avoided at this important facility in the Hartford area.

On April 6, 2006, the Employer received a second letter from Mathews, on behalf of the Union, which stated:

> UNITE HERE Local 217 will be commencing an organizing drive among the employees of the Hartford Marriott Hotel.
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> We are prepared to begin discussions to determine whether we might reach a "labor peace" agreement setting ground rules for organizing. We would be interested in discussing an approach of the kind approved in *HERE Local 217 v. J.P. Morgan Hotel*, 996 F.2d 561 (2nd Cir. 1993).[3] Under such an approach, UNITE HERE would agree not to strike, boycott, or picket the facility in the course of the organizing.
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> Because unions and employees are permitted to strike, boycott, or picket under the N.L.R.A., regardless of their representational status, organizing drives are often attended by conflict. We believe that it would be in the best interests of the Hotel and the Union to avoid such conflict in favor of mutually agreed ground rules.
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> Labor peace agreements have been or are in place at other major Connecticut facilities during the time when employees decided whether or not to be represented by a union, including the Omni New Haven at Yale, the Hartford Hilton, the Goodwin Hotel, and the proposed hotel facilities at Utopia studios.
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> We would very much appreciate the opportunity to sit down and discuss our options, and we are available to meet on the following dates (omitted).

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[3] A review of that reported decision reveals that the parties' three-page neutrality agreement therein included a "card check" procedure by which the union could show that it had the support of a majority of the employees. The neutrality agreement also provided that the union could solicit support from a designated bargaining unit of 90 hotel employees; that the union would forego the right to picket authorized under the Act; that the union would have access to hotel employees in non-public areas of the hotel; that the union would notify the hotel in advance of visits by its representatives, and that during those visits it would not coerce or threaten hotel employees or interfere with hotel operations; and that the employer would not interfere with the organizing effort or mount a campaign with its employees opposing the union.

On April 18, 2006, the Employer filed the instant petition. In support of that petition, the Employer proffered an affidavit in which it states that the Employer "has consistently maintained its position that its employees should have the right to freely and fairly express their choice of whether or not they wish to be represented by the Union through a democratic election conducted by the National Labor Relations Board pursuant to the terms established by the National Labor Relations Act."

On April 22, 2006, the Hartford Courant, a newspaper of general circulation in Connecticut, reported that "Union organizers, politicians, clergy and others plan to protest today in front of the Connecticut Convention Center and its adjacent hotel, a rally to focus attention on the process by which workers at the two facilities should unionize." The story quoted a Union representative that "the issue is giving workers the right to choose whether they want to engage in collective bargaining", and that the Union wanted the Employer to sign a labor peace agreement that would set ground rules for an organizing campaign that go beyond the existing laws.

II. Analysis and Conclusion

The Employer contends that the Union's conduct described 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 support of its contention, the Employer relies upon the dissenting opinion of former Member Hurtgen in *New Otani Hotel & Garden*, supra, 331 NLRB at 1082, and former Member Cowen in *Brylane, L.P.*, 338 NLRB 538, 539 (2002), wherein they each asserted that a demand for a card-check agreement equals a present demand for recognition. The Employer further claims that the Union's reliance upon the LWO "is tantamount to a present demand for recognition" because the LWO requires a development project manager to enter

into a labor peace agreement only where there is a labor organization "seeking to represent employees."[4]

I find, in accordance with well established Board law, that the Union's activities for the purpose of seeking the Employer's acceptance of a process that would enable it to eventually obtain recognition does not constitute evidence of a present demand for recognition that would support the processing of an employer petition. *New Otani Hotel*, supra; *Brylane, LP,* supra; *Windee's Metal Industries*, 309 NLRB 1074 (1992). [5]

In reaching the above conclusion, I further find, contrary to the Employer's contention, that the Union's reliance upon the LWO does not constitute a present demand for recognition within the meaning of Section 9(c)(1)(B). In this regard, the LWO merely contemplates the existence of a labor organization that is "seeking to represent employees". As noted by the Board in the cases cited above, a union organizing campaign, which is what occurs when a union is "seeking to represent employees", does not constitute a demand for recognition. If it did, employers would be able to short circuit the organizing process by filing a petition and precipitating an election at a time when the union has not had an opportunity to organize. This would be clearly contrary to Congress' intention set forth in Section 9(c)(1)(B). *Windee's Metal Industries*, supra.

Finally, I note that nowhere in the correspondence generated by the Union in support of its organizing activities, as set forth above, does any person or group request or demand that the Employer recognize the Union. Rather, the sole request made by such persons and groups, including the City of Hartford and the State of Connecticut "House Democrats", is that the Employer enter into a labor peace agreement within the meaning of the LWO. In this regard, and

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[4] The Employer maintains that it is not subject to the LWO. It does not maintain that the LWO is pre-empted by the National Labor Relations Act, and no determination is being made herein regarding that question.

[5] It should be noted that Regional Directors' are bound to apply existing Board law. In this regard, the Board majority in both *New Otani Hotel* and *Brylane* rejected the dissenting opinions advanced by former Members Hurtgen and Cowen.

contrary to the Employer's apparent contention, the LWO does not require or contemplate a card-check agreement.[6] Accordingly I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

Right to Request Review

Under the provisions of Section 102.71 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, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at www.nlrb.gov. This request must be received by the Board in Washington by May 16, 2006.

Dated at Hartford, Connecticut this 2nd day of May, 2006.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

[6] Moreover, and contrary to the Employer's contention, the Union's suggestion in its April 6 letter to the Employer that it "would be interested in discussing an approach of the kind approved in *HERE Local 217 v. J.P. Morgan Hotel*" is too vague and ambiguous to amount to a demand for a card check agreement.