



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 37
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Honolulu, HI 96850-7245

Agency Website: www.nlr.gov
Telephone: (808) 541-2814
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June 30, 2014

Sarah E. Hartsfield
Staff Attorney
National Right To Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22151-2110

Re: UNITE HERE Local 5
(Hyatt Regency Waikiki Resort & Spa)
Case 20-CB-127565

UNITE HERE! Local 5
(Hyatt Regency Waikiki Resort & Spa)
Case 20-CB-127695

Dear Ms. Hartsfield:

We have carefully investigated and considered your charges that UNITE HERE Local 5 has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charges for the reasons discussed below.

The charges allege that UNITE HERE Local 5 (Union) retroactively enforced an expired union security clause. Based on the investigation, I have decided to dismiss this allegation because formal proceedings will not effectuate the purposes of the Act. The Board will “[i]n appropriate circumstances . . . infer an unlawful threat concerning the collection of dues and fees.” *Service Employees Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB 234, 235 (2010). However, in order to determine whether such a threat has been made, the Board will “evaluate the entirety of [a document’s] message in its overall context . . .” *Id.* The handbill at issue in *Pomona Valley Hospital* was distributed by the union in the context of a heated labor dispute. In contrast, the facts in the instant cases occurred a number of months after the parties reached a collective-bargaining agreement during a time of labor peace. In this context, the language in the Union’s March 31, 2014 communication could not properly be viewed as a threat but rather as an effort to collect back dues from those employees who would like to be members in good standing with the Union. Further, in a later letter to the charging parties, the Union clarified its March 14, 2014 communication by explaining that it was seeking to collect back dues only from those employees who wish to become members in good standing.

The charges also allege that the Union has failed to provide employees with notice of their rights to become or remain nonmembers and with financial information about the reduced financial core fees that they would be required to pay as a nonmember objector. Based on the investigation, I have also decided to dismiss this charge allegation. The evidence indicates that

the Union satisfied the notice requirement by, among other things, sending the charging parties letters forwarding the percentage of the reduction in dues and fees and information reflecting the basis for the Union's calculation of the reduction. The Union's actions in this case fall within the wide range of reasonableness afforded a union in satisfying its duty of fair representation. *See, e.g., California Saw and Knife Works*, 320 NLRB 224, 234-235 (1995).

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **July 14, 2014**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than July 13, 2014. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before July 14, 2014**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202) 273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after July 14, 2014, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to

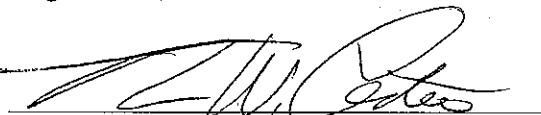
June 30, 2014

keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

JOSEPH F. FRANKL
Regional Director

By:



THOMAS W. CESTARE
Officer in Charge

Enclosure

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