

Adolf V. Zeman, Esq., ABA 0411082
Email: azeman@dmgz.com
DeLisio Moran Geraghty & Zobel, P.C.
945 West Sixth Avenue
Anchorage, Alaska 99501
Telephone: 907-279-9574
Facsimile: 907-276-4231

Peter G. Fischer, Esq., *admitted pro hac vice*
Email: pfischer@stockesroberts.com
Stokes Roberts & Wagner
3593 Hemphill St.
Atlanta, GA 30337
Telephone: 404-766-0076
Facsimile: 404-766-8823

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

REMINGTON LODGING &)
HOSPITALITY, LLC,)
)
Petitioner,)
)
v.)
)
RICHARD AHEARN, in his official)
capacity as REGIONAL DIRECTOR of)
NATIONAL LABOR RELATIONS)
BOARD, REGION 19,)
)
Respondent.)
_____)

Case No. 3:10-cv-214

AMENDED VERIFIED PETITION FOR WRIT OF MANDATE

COMES NOW Petitioner, Remington Hospitality, LLC, and makes the following Amended Petition for Writ of Mandate pursuant to 28 U.S.C. § 1361. Respondent has refused and failed to discharge his duties of impartial investigation and procedure, leaving Petitioner without administrative recourse, and Respondent has failed to stay ancillary proceedings while the wishes of the employees, the effectuation of whose rights is the Respondent's primary mandate, can be ascertained and effectuated.

In support of this Petition, Petitioner shows as follows:

1. Petitioner, Remington Hospitality, LLC, is the management company for the Sheraton Anchorage Hotel in Anchorage, Alaska.

2. Respondent, Richard Ahearn, is the Regional Director of the National Labor Relations Board, Region 19, which encompasses Anchorage, Alaska.

3. The Union, UNITE HERE Local 878, is the union that has until recently represented a bargaining unit of workers at the Sheraton Anchorage Hotel.

4. The Union had been party to a collective bargaining agreement that it had reached with the Petitioner's predecessor at the Sheraton Anchorage, an agreement that expired by its terms on February 28, 2009. Beginning in October 2008, the parties began to engage in collective bargaining negotiations for a successor agreement.

5. As described in more detail in the Memorandum of Points and Authorities filed contemporaneously herewith, the Union failed to negotiate in good faith. Despite overwhelming evidence to support this assertion, Respondent dismissed Petitioner's Unfair Labor Practice ("ULP") charge against the Union for failure to bargain in good

faith, a decision that was summarily affirmed by the National Labor Relations Board without apparent investigation. Petitioner had exhausted its administrative remedies on that matter at that time.

6. Meanwhile, the Union filed over a dozen frivolous ULPs against Petitioner. Respondent issued a complaint against Petitioner on nearly all of the ULPs.

7. Respondent threatened to seek injunctive relief under 29 U.S.C. § 160(j) with respect to the termination of four employees who were discharged for insubordination and repeated violations of Hotel policy; a settlement was reached in which the four employees were reinstated with back pay and the threat of Respondent seeking Section 10(j) relief was withdrawn. Nevertheless, Respondent continues to pursue charges based on these terminations, even though the employees have been reinstated with full back pay and there is no remaining remedy to seek. Moreover, Respondent is seeking Section 10(j) relief that may include relief on these same matters that were settled by the parties, which settlement has already been effectuated by Petitioner. Petitioner is therefore being forced, without recourse, to defend charges that were settled and should be dismissed.

8. As described in more detail in the Memorandum of Points and Authorities, after the negotiating impasse was reached, the Union took a number of controversial actions, including the declaration of a boycott that hurt the Hotel's business and the employees' incomes, and a campaign of threats and harassment of employees and managers alike. In addition, the UNITE HERE Pension Trust announced to the

employees in late March 2010 that it was in "critical status" and that employee retirement benefits were being reduced effective immediately.

9. In June and July of 2010, the Hotel and its General Manager filed ULPs against the Union for the threats and vandalism against the managers and employees. The Regional Director has yet to act on these ULPs.

10. As a result of the Union's harassment and the sharp cut in pension benefits, the employees presented the Hotel with a petition of a majority of the bargaining unit members seeking to decertify the Union as their bargaining representative.

11. Faced with overwhelming evidence of the Union's loss of majority support among the bargaining unit employees, the Hotel was required by law to withdraw recognition of the Union as the employees' bargaining representative on July 2, 2010, while a hearing was pending on the already-extant charges against Petitioner,. The Union's response was to threaten employees who had "sided with management". The Union filed new ULPs alleging unlawful withdrawal of recognition.

12. Petitioner requested that the Regional Director stipulate to a continuance of the pending hearing on the previous complaint while the current ULPs, including the ULPs both by and against the Union, were investigated. The Regional Director refused to agree to a continuance. Because Petitioner could not devote its resources to defending on two fronts at once, it declined to participate in any investigation of the new ULPs filed against it. As a result, with less than a month of "investigation", Respondent issued a complaint on the Union's new ULPs. The ULPs filed by the Hotel against the Union

have yet to be acted upon. Meanwhile, Petitioner was deprived of due process, without recourse, because of the position it was placed in by the refusal of Respondent to agree to a continuance.

13. On the first day of the hearing on the previously issued complaint, Union president Marvin Jones and business agent Daniel Esparza gave testimony that made it apparent that the Hotel's charge against the Union for bad faith bargaining was well-founded, despite Respondent's dismissal of the charge. On August 24, 2010, Petitioner requested that Respondent reopen the charge due to the fraudulent concealment by the Union of this corroborating information expressed in the testimony of Messrs. Jones and Esparza. Respondent has not only not granted this request, he has failed entirely to respond to it. Petitioner has no recourse for Respondent's refusal to do his duty.

14. On September 23, 2010, Hotel employee Margarita Lucero filed a Decertification Petition with Respondent seeking to decertify the Union as the employees' bargaining representative.]

15. Because the primary mandate of the National Labor Relations Act is to effectuate the will of the employees with respect to their selection of a bargaining representative – or of no bargaining representative – the proper course of action is to call for an election in which the employees can express their wishes in a secret ballot election.

WHEREFORE, the Petitioner respectfully requests:

1. That this Court STAY all pending proceedings before the Board while the Decertification Petition filed by Margarita Lucero is processed and an election held;

2. That this Court DIRECT the Respondent to do his duty in the following ways once the election has been held:

a. Reopen ULP 19-CB-9969 filed by the Hotel alleging that the Union failed to bargain in good faith, in light of the new evidence that the Union failed to bargain in good faith and fraudulently concealed that fact from the Board during its investigation;

b. Dismiss the portions of the Consolidated Complaint relating to the suspension and termination of Troy Prichacharn, Lucy Dudek, Joanna Littau, and Gina Tubman;

c. Delay all pending hearings so Petitioner may participate in the investigation and defense of ULP charges filed after July 1, 2010;

d. Issue a judgment declaring injunctive relief pursuant to 29 USC 160(j) inappropriate in this case.

This Petition is further supported by a Memorandum of Points and Authorities filed contemporaneously herewith, along with exhibits thereto.

Respectfully submitted this 8th day of October, 2010.

/s/ Adolf V. Zeman

Adolf V. Zeman, Esq., ABA 0411082

Email: azeman@dmgz.com

DeLisio Moran Geraghty & Zobel, P.C.

945 West Sixth Avenue

Anchorage, Alaska 99501

Telephone: 907-279-9574

Facsimile: 907-276-4231

/s/ Arch Y. Stokes

Arch Y. Stokes, Esq., *admitted pro hac vice*

Email: astokes@stokesroberts.com

Karl M. Terrell, Esq., *admitted pro hac vice*

Email: kterrell@stokesroberts.com

Stokes Roberts & Wagner

Peter G. Fischer, Esq., *admitted pro hac vice*

Email: pfischer@stokesroberts.com

3593 Hemphill St.

Atlanta, GA 30337

Telephone: 404-766-0076

Facsimile: 404-766-8823

Arch Y. Stokes, Esq., *admitted pro hac vice*
Email: astokes@stokesroberts.com
Karl M. Terrell, Esq., *admitted pro hac vice*
Email: kterrell@stokesroberts.com
Peter G. Fischer, Esq., *admitted pro hac vice*
Email: pfischer@stokesroberts.com
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CERTIFICATE OF SERVICE

239599 – Petition for Writ of Mandate
Remington Lodging v. Richard Ahearn; 3:10-cv-214

I hereby certify that on the date below I electronically filed the above with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record:

Eric G. Moskowitz
Dawn L. Goldstein
Gary M. Guarino

This 8th day of October, 2010.

s/s Peter G. Fischer, Esq., *admitted pro hac vice*