

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

MARRIOTT HARTFORD DOWNTOWN HOTEL,
Employer/Petitioner,

UNITE HERE LOCAL 217
Union,

Case No. 34-RM-88

and

JOSEPH UCCELLO *et alia*,
Employees/Intervenors.

**MOTION OF EMPLOYEES JOSEPH UCCELLO AND WAVERLY JAMES
TO INTERVENE, WITH MEMORANDUM IN SUPPORT ATTACHED;
ALTERNATIVELY, MOTION FOR LEAVE TO FILE MEMORANDUM AS
AMICUS IN SUPPORT OF THE REQUEST FOR REVIEW**

Pursuant to R & R §102.65, Joseph Uccello and Waverly James

(“Employee/Intervenors”), employees of the Marriott Hartford Downtown Hotel, hereby move to intervene in this case. Because Employee/Intervenors’ interests are directly effected by the outcome of this case, see accompanying Declarations, they also invoke the Board’s inherent power to allow all parties to be heard, and allow them to protect their legal interests under §7 of the NLRA, 29 U.S.C. § 157, which are at the heart of this case.

Alternatively, if the Board denies this Motion to Intervene, Employee/Intervenors hereby move for leave to file this Motion as a Brief Amicus Curiae in support of their Employer’s Request for Review of the Regional Director’s decision of May 2, 2006, which dismissed the “RM” petition filed in this case.

I. INTRODUCTION: This case concerns the demand by UNITE HERE Local 217 (“UNITE HERE” or “union”) for a “neutrality agreement” with the Marriott Hartford Downtown Hotel (“Hotel” or “Employer”), in order for the union to represent the Hotel’s employees as their exclusive bargaining representative. (See Ex.1-3 attached to the Hotel’s Request for Review). Although the specifics of UNITE HERE’s “neutrality agreement” presumably remain to be negotiated, the union has indicated that it wants the same type of agreement that existed in HERE Local 217 v. J.P. Morgan Hotel, 996 F2d 561 (2d Cir. 1993), to wit: union access to employees, a waiver by the Hotel of its right under Section 8(c) of the Act to speak about the union (a.k.a. a “gag” clause); a waiver by the Hotel of its right to file for an “RM” election supervised by the NLRB; and an agreement to recognize the union via “voluntary recognition” after a “card check.” (See id., 996 F.2d at 563; see also Ex. 2 attached to the Hotel’s Request for Review).

Along with UNITE HERE’s demand for a “neutrality agreement” came the now common litany of pressure tactics that unions use against employers when seeking to organize employees from the “top-down”: pressure by local and Connecticut state politicians, a “corporate campaign,” threatened boycotts, and the entry of “religious” and other “activist” groups in relentless attacks on the Hotel. All of these elements were present here, as well as a City of Hartford “Living Wage Ordinance” that further pressures employers to agree to help organize their employees from the top-down. (See Exs. 4-12 attached to the Hotel’s Request for Review).

However, there is one major “fly in the ointment” in this situation: no one asked the employees of the Hotel whether they wanted to be represented by this power-hungry union, or whether they wanted to be grist for a “neutrality agreement” which gags their employer, provides the union with personal information about them and access to them in the workplace, and trades away their ability under §7 to choose or reject unionization via a secret-ballot election. (See Declarations of Employee/Intervenors attached hereto). Nowhere in the union’s demand for a neutrality agreement did it even hint at employee support for its top-down organizing campaign, presumably because such support is nonexistent. (See Ex.1-3 attached to the Hotel’s Request for Review).

As the attached Declarations of the Employee/Intervenors show, employees of the Hotel do not want to be grist for a “neutrality and card check” agreement. These Employee/ Intervenors wish to hear all sides of the story regarding the UNITE HERE union and its background and purposes. These Employee/Intervenors feel that they and their Employer have been unfairly pressured by the UNITE HERE demands for a “neutrality and card check” agreement, which they believe is antithetical to true employee free choice. Most importantly, these Employee/Intervenors fervently desire the freedom to choose – or refrain from choosing – a union, and would like a secret-ballot election supervised by the NLRB if UNITE HERE is to become their collective bargaining representative. These Employee/Intervenors therefore support their Employer’s filing of an “RM” petition, so that they can vote their consciences in private via an NLRB secret-

ballot election.

Finally, lest UNITE HERE claim that it is the true spokesman for the Hotel's employees, it must be remembered that these Employee/Intervenors, not the union, possess § 7 rights and interests. Lechmere, Inc. v. NLRB, 502 U.S. 527, 532 (1992) (by "its plain terms ... the NLRA confers rights only on employees, not on unions or their nonemployee organizers.")

For all of these reasons, the Board should allow the Employee/Intervenors to fully participate in this case, so they can advocate for a secret-ballot election without union, political and "community" pressure on their Employer or themselves.

II. STANDARDS GOVERNING INTERVENTION: The Employee/Intervenors recognize that their request to intervene at this stage of the proceedings is unusual, but such requests are not without precedent. See, e.g., Coast Radio Broadcasting Corporation d/b/a Radio Station KPOL (AFTRA Los Angeles Local), 166 NLRB 359, 363 n. 5 and 371 n. 2 (1967). In that case, the Board overruled an ALJ and granted a special appeal to allow employees to intervene in post-election challenges to their employer's "RM" petition. The Board obviously recognized that the employees' interest in the proceedings entitled them to appear as full parties.

Here, these Employee/Intervenors are directly affected by the outcome of this important case, but they were given no notice of the filing of the "RM" petition or the

pendency of the proceedings before the Regional Director, and were not served with any of the papers related to the Request for Review. Thus, these Employee/Intervenors only recently learned of the existence of this Request for Review, whereupon they promptly filed the instant Motion.

The Employee/Intervenors' Motion to Intervene is based on the broad provisions of NLRB Rules and Regulations § 102.65(b), which states:

Any person desiring to intervene in *any proceeding* shall make a motion for intervention, stating the grounds upon which such person *claims to have an interest in the proceeding*. The Regional Director or the hearing officer, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper, and such intervenor shall thereupon become a party to the proceeding.

(Emphasis added). The text of § 102.65(b) indicates that a person's "interest in the proceeding" is the relevant criterion for intervention, and the Board should not elevate form over substance in applying these rules.

In Camay Drilling Co., 239 N.L.R.B. 997, 998-99 (1978), the Board held that a party can intervene in an NLRB proceeding, even after the ALJ hearing is concluded, if it is an "interested party" under § 554 of the Administrative Procedures Act, 5 U.S.C. § 554. Section 554(c)(1) states that an "agency **shall give all interested parties** opportunity for ... (1) submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit."

(Emphasis added). In addition to this standard under § 554, the Board in Camay Drilling relied upon its inherent authority and the discretion provided to it in §10(b) of the Act, 29

U.S.C. §160(b), to permit pension fund trustees to intervene where the employer was accused of unlawfully terminating contributions to the trust fund.

“The word ‘interested’ is not defined in [the Administrative Procedures Act], nor is there a ready and convenient definition in the case law.” American Trucking Ass’n, v. U.S., 627 F.2d 1313, 1319 (D.C. Cir. 1980). Thus, “[w]hether the interest asserted by a particular petitioner to intervene will suffice to justify his participation will depend, as it should, on the facts of the particular situation.” Id. at 1322, citing Alleghany Corp. v. Breswick & Co., 353 U.S. 151, 173 (1957) and City of San Antonio v. CAB, 374 F.2d 326, 332 (D.C.Cir.1967). However, persons “with a concrete interest however small in the proceeding have a right to intervene.” Id. at 1320.

The Employees of the Hotel certainly have an “interest” in an “RM” petition calling for a secret-ballot election, for it is their § 7 rights that are at stake. As discussed below, the primary purpose of an NLRB election is to effectuate employee free choice as to union representation. No party has a greater interest in the conduct of a secret-ballot election than the employees themselves. If the Employee/Intervenors are not permitted to appear in this case, their interests in a secret-ballot election will not be fully protected by the current parties to the proceedings.

The Board has permitted employees to intervene in post-election proceedings in a variety of circumstances, in addition to those mentioned in Coast Radio Broadcasting Corporation d/b/a Radio Station KPOL (AFTRA Los Angeles Local), 166 NLRB 359,

