



Report Regarding Compliance with Domestic and International Labor Standards at The Westin Long Beach Hotel

Immigrant Rights Clinic

University of California, Irvine School of Law

Sam Cretcher and Sameer Ashar

Table of Contents

I. Introduction and Summary	1
II. Methodology and Legal Framework	3
III. Findings	5
A. Wages and Hours	5
i. Minimum Wage, Overtime, and Employee Expenses	5
ii. Rest and Meal Break Violations	7
B. Prevailing Labor Standards	8
C. Freedom of Association	10
i. Denial of Equal Access to Communicate with Workers regarding Unionization	10
ii. Threat to Reduce Wages if Workers Unionize	12
iii. Employer Implication of Disloyalty Due to Union Support	14
IV. Conclusion	18

I. Introduction and Summary


This report outlines the findings of the University of California, Irvine School of Law Immigrant Rights Clinic’s (“IRC”) investigation into working conditions and labor practices at the Westin Long Beach Hotel (“Hotel,” “Westin,” or “Company”). With nearly 500 guest rooms and more than 37,000 square feet of banquet and meeting space, the Hotel provides luxury accommodations and extensive banquet event services, and has an on-site restaurant.¹ It is staffed by a largely immigrant workforce.

The IRC initiated this investigation in response to a request from UNITE HERE Local 11 (“Union”), a labor union that is assisting workers at the Hotel in their effort to unionize and improve labor standards. The Union raised with the IRC a number of issues concerning the Hotel’s treatment of workers relating primarily to wages and hours and freedom of association. The IRC investigated these issues through interviews with workers, a review of relevant documents, and economic research. This report presents the results of our inquiry.

In undertaking this research, the IRC has evaluated the Hotel’s practices in relation to not only U.S. domestic law, but also international labor standards, as embodied in core conventions of the United Nations’ International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD)’s Guidelines for Multinational Enterprises. The OECD standards are relevant because the Hotel is subject to substantial nonlocal influence or control by AEW Capital Management (“AEW”), a U.S.-based affiliate of the French firm Natixis Global Asset Management (“Natixis”).²

¹ Located at 333 East Ocean Boulevard in downtown Long Beach, the Hotel is located twenty-five miles south of downtown Los Angeles and virtually adjacent to the Ports of Los Angeles and Long Beach. It is also centrally located between the region’s major airports: it is seven miles south of Long Beach Airport, twenty miles southeast of Los Angeles International Airport, and twenty-two miles northwest of John Wayne Airport.

² The principal owner of the property, Utah Retirement Systems (“URS”), which has a 95% ownership stake, has informed the Union that it has delegated authority over ownership matters to Natixis-affiliate AEW Capital Management. This authority includes the power to hire a local management operator “to maximize performance and to make sure that employees are treated fairly with respect to local market conditions and laws.” Letter from Utah Retirement Systems to



It bears noting that Westin Long Beach workers and the Union have engaged in various efforts to vindicate the workers' rights through the U.S. legal system. This has included a class action lawsuit alleging wage and hour violations in the California Superior Court and unfair labor practice charges with the National Labor Relations Board (NLRB), each of which involves ongoing litigation. The international standards considered here are in some cases more protective of workers' rights than are the domestic U.S. laws applicable in those proceedings.

As detailed in the pages that follow, the IRC's inquiry found the Hotel has violated workers' rights in the following areas:

- **Wages and Hours:** The Hotel has violated California wage and hour laws, including by failing to pay housekeepers for all of the time that they spend each day preparing their work materials and by denying workers in various departments the opportunity to take uninterrupted rest and meal breaks.
- **Prevailing Standards:** Economic data compiled by the Los Angeles Alliance for a New Economy (LAANE) indicate that the Hotel provides workers with substantially less generous health care benefits than the prevailing standard at similarly situated hotels in the region, thereby violating a key principle of the OECD Guidelines.³
- **Freedom of Association:** The Hotel has violated workers' rights to organize a union by threatening that the Hotel will lower workers' wages if they decide to unionize, conveying a view that support for unionization amounts to disloyalty, and denying union representatives equal access to the workforce to counter the employer's anti-union messages.

It is our hope that this report can provide useful information to stakeholders with an interest in seeing full compliance with domestic and international standards and decent labor practices at the Westin Long Beach Hotel, including entities with an ownership stake or that otherwise have influence over the Hotel's labor policies, as well as bodies with an oversight role, such as offices of the ILO and OECD.

UNITE HERE Local 11, Dec. 17, 2015. The current operator is Noble-Interstate Management Group-California LLC d/b/a The Westin Long Beach.

³ LAANE is a non-profit research and advocacy organization based in Los Angeles oriented toward creating good jobs and a healthy environment. For more information, see About LAANE, LAANE, <http://www.laane.org/who-we-are/about-laane/> (last visited April 4, 2016).

II. Methodology and Legal Framework

The IRC conducted the bulk of the legal and factual research presented herein. LAANE and the Union provided supplemental support, including research into the ownership and control of the Westin, as well as potential wage and hour and labor law violations.

The evidence on which our conclusions are based include:

- Interviews with and sworn affidavits by Hotel employees.
- Documents created by the Hotel, including pay stubs, the employee handbook, and benefits packet.
- Written communications and statements by the Hotel's principal owner, URS, and its representative, AEW (a subsidiary of Natixis).
- Documentation relating to benefit schemes at the Westin Long Beach peer-group hotels.

The IRC's principal fact gathering was conducted between September and December 2015, with some supplemental research during spring 2016.

We analyzed this evidence through a variety of legal lenses, including state and federal laws as well as international labor standards. These include:

California Labor Code. The California Labor Code, and Industrial Welfare Commission Wage Orders which it authorizes, establish minimum legal employment standards in California, including provisions governing minimum compensation and breaks.⁴

The National Labor Relations Act (NLRA). NLRA protects employees' right to engage in conduct that is concerted and purposed for mutual aid and protection. Under the NLRA, it is illegal for employers to interfere with this right or to discriminate against employees who exercise it.⁵

⁴ See, e.g., Cal. Labor Code Sections 216, 1194; Industrial Welfare Commission Order No. 5 (Public Housekeeping Industry).

⁵ NLRA Section 8(a)(1), (a)(3).

ILO Conventions 87 and 98. Both designated “fundamental” conventions by the ILO, Convention 87 protects the right to freely associate, while Convention 98 protects the right to organize and bargain collectively. Although ILO conventions 87 and 98 have not been ratified by the United States, they are nonetheless binding within its territories as a result of United States membership in the ILO.⁶

OECD Guidelines for Multinational Enterprises. The OECD established the Guidelines for Multinational Enterprises to promote “positive contributions by enterprises to economic, environmental, and social progress worldwide.”⁷ As relevant for this report, the Guidelines require compliance with domestic law and state that enterprises should “[r]espect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing” and “[o]bserve standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.”⁸

In the following section, these authorities are used as guides to evaluate working conditions and labor practices at the Hotel.

⁶ See ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (1998) (“All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.”), *available at* <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

⁷ OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES [hereinafter OECD GUIDELINES] (2011), Foreword, Page 4, *available at* <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

⁸ *Id.* at ch. 1, para. 2; ch. 5, paras. 1(a) and 4(a).

III. Findings

A. WAGES AND HOURS

The IRC's inquiry found that the Hotel appears to have violated California wage and hour laws with respect to workers in the Hotel's housekeeping, banquet, and restaurant departments. Note that each of the issues discussed below is also the subject of a class action lawsuit filed in August 2015 on behalf of Westin workers in the aforementioned departments.⁹

i. Minimum Wage, Overtime, and Employee Expenses

The IRC found the following with respect to workers in the housekeeping department.

First, Westin Long Beach housekeepers indicate that they have regularly worked "off the clock," in violation of California law on minimum wage and overtime. Housekeepers report that they have routinely arrived for work and performed fifteen or more minutes of labor before their official eight-hour shifts begin, but are not compensated for this time. This work, which includes restocking cleaning chemicals, assembling clean linen, and preparing other materials that they will need during their shift, has been performed in the housekeeping department in the plain view of managers.

Several facts help explain why this practice appears to have been so prevalent. The Hotel's housekeepers are responsible for maintaining its 469 guest rooms. During an eight-hour shift, a housekeeper is normally responsible for cleaning sixteen rooms, which is a relatively high quota for the hotel sector in the Los Angeles area. However, despite the heavy workload, workers report that management has discouraged overtime, requiring that all overtime be approved in advance. Moreover, employees are expected to have their materials ready and to begin working immediately after finishing

⁹ See *Juana Melara et al. v. Noble-Interstate Management Group LLC d/b/a The Westin Long Beach; Interstate Hotels & Resorts*, Superior Court of California, County of Los Angeles, Case No. BC591782. The IRC examined the question of whether violations have occurred with regard to at least some workers in these departments; we did not attempt to quantify the damages of such violations or assess the additional question of whether the requirements for litigation on a class basis under U.S. law are met. Further, the complaint is currently being litigated in state court and will be fully adjudicated in that forum.

a mandatory meeting which occurs after workers clock-in each morning. Those caught preparing their materials after the meeting have in some cases been scolded or disciplined. As a result, workers have felt compelled to arrive early to perform work before they clock-in.

California law requires that employers compensate all nonexempt employees for all “hours worked” at the applicable minimum wage.¹⁰ In addition, all hours worked beyond eight in one day must be compensated at a premium of one and one-half times the employee’s regular rate of pay.¹¹ Hours worked consist of “time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”¹² Under this rule, an employer is deemed to have “suffered or permitted [an employee] to work” if it knew or should have known that its employees were working off-the-clock.¹³

As the preparatory labor at issue here has been performed in management’s presence, the employer knew or should have known that work was performed and should have compensated employees for this time. Because the work has typically been performed prior to completing an eight-hour shift, the work should have been compensated at the time-and-a-half premium applicable for daily overtime in excess of eight hours of work.

Second, the Hotel appears to have violated California law by not reimbursing housekeeping staff for costs they incur as a result of their employment. Under the California Labor Code, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”¹⁴ The right to reimbursement is a broad one aimed at preventing employers from passing operating costs onto employees.¹⁵

In violation of this requirement, according to credible worker testimony, some employees in the housekeeping department have regularly purchased their own cleaning supplies and equipment, but have not been reimbursed for these expenses. Housekeeper Juana Melara stated that she has often purchased her own rubber gloves because those provided by her manager are of poor quality and frequently rip, exposing

¹⁰ Industrial Wage Commission Order. No. 5 § 4; Cal. Lab. Code §§ 216; 1194. In our view, there is no plausible argument that housekeepers would fall within the exemptions that the law recognizes for executive, administrative, or professional employees.

¹¹ IWC Wage Order No. 5. § 3(a).

¹² *Id.* at § 2(K).

¹³ *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 585 (2000).

¹⁴ Cal. Lab. Code § 2802(a).

¹⁵ *Guttuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

her to chemicals. According to Melara, the Hotel has long known about these purchases but has never reimbursed her for them.

ii. Rest and Meal Break Violations

Our inquiry found that the Hotel has appeared to have prevented workers in the housekeeping, banquet, and restaurant departments from taking uninterrupted rest and, in some cases, meal breaks. Applicable California law requires that employers authorize and permit their employees to take two uninterrupted ten-minute rest periods for every eight hours of work performed, as well as one uninterrupted half-hour meal period after five hours of work.¹⁶

Workers in the housekeeping department reported that they have generally been unable to take rest breaks because they would not have time to complete their room quota if they stopped working for two ten-minute periods during the course of their shift. Moreover, some workers who have taken their ten-minute breaks in the past have been chided by management in the housekeeping department for not working while on the clock.

Housekeepers also reported that they have sometimes been unable to take the thirty-minute meal period to which they are entitled after working five hours. While workers have generally attempted to take such breaks, they have also often felt that they must use this time to restock their supply carts because this is the only time when it is acceptable to departmental management to be in the downstairs storage area and away from the guest rooms they are assigned to clean. Thus, to avoid discipline, housekeepers have restocked their carts during their meal breaks.

Violations of the right to take uninterrupted rest breaks have also occurred in the Hotel's banquet and restaurant departments. Banquet workers serve food and drinks during banquets and other events at the Westin. Restaurant workers cook and serve meals at the Westin's onsite restaurant, The Grill. In both departments, workers reported that they have often been unable to take rest breaks due to the heavy workload, the lack of adequate staffing coverage, and the need to not leave customers unattended.

Meal period violations appeared to have occurred in the restaurant and catering departments as well, albeit with less frequency. In such cases, the denial occurred in the form of supervisors effectively shortening, delaying, or interrupting breaks. Banquet and restaurant employees reported that their meal breaks had been cut short by Westin supervisors who cited the need to attend to the requests of customers.

¹⁶ IWC Wage Order. No. 5 §§ 11, 12; Cal. Lab. Code § 226.7. The Wage Order provides that in the case of shifts of no more than six hours, a meal period may be waived by mutual consent of the employer and employee.

Abdul Estin – Banquet Server

Abdul Estin is one of the most senior banquet servers at the Westin, having worked at the Hotel for more than twenty-five years. He reported in October 2015 that he had



been able to take ten-minute breaks on only a handful of occasions during his entire career at the Hotel, with all such occasions occurring during the prior year. For a majority of his time at the Hotel, Estin was not aware that he had a right to take a break. He explained that, until very recently, no supervisor ever told him he could take a ten-minute break, and he never saw any other banquet server take one. Estin said he kept working because that is what his supervisors expected and because he understood that he must be in the banquet room at all times to attend to guests' needs.

California law requires employers to pay their employees one additional hour of pay at the employees' regular rate of compensation for each work day that a meal or rest period is not provided.¹⁷ Workers reported that the Westin has not provided such compensation when they have been denied the opportunity to take breaks.

Because the OECD Guidelines provide that “[o]beying domestic laws is the first obligation of enterprises,”¹⁸ the apparent violations of California law described here would also constitute violations of the Guidelines.

B. PREVAILING LABOR STANDARDS


Our inquiry also examined the Hotel's practices in light of the requirements of the OECD Guidelines to “[o]bserve standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.”¹⁹

To undertake this assessment, the IRC relied on support from LAANE, a public policy research and advocacy organization with expertise in labor market conditions in the Los Angeles-area hospitality sector. LAANE gathered data and provided quantitative analysis concerning how the Hotel compares in terms of wages and benefits to similarly situated hotels in the Los Angeles area. The IRC verified these findings by reviewing the underlying evidence and methodology employed by LAANE and performed supplementary analysis.

¹⁷ Cal. Lab. Code § 226.7(b).

¹⁸ OECD GUIDELINES, ch. 1, para. 2.

¹⁹ *Id.* at art. 5, para. 4(a).



The Westin is a full-service, upscale property with 469 guest rooms and tens of thousands of square feet of conference space. LAANE defined the Hotel's comparison group as business-oriented, upscale properties capable of serving as primary accommodations for conferences and major regional events within the Los Angeles-Long Beach metropolitan region. In total, twenty-two properties met these criteria.

The next step was to compare the Hotel's industrial relations and employment practices to those that prevail in the peer group. The Hotel's standards fall short of prevailing standards in both areas.

With regard to industrial relations, a majority—fifty-seven percent—of the comparison group hotels have a collective bargaining agreement negotiated between employees, through their union, and hotel management. These contracts provide for a range of specific standards, including a just cause job security provision, all of which are enforceable through grievance and arbitration processes. By contrast, the Westin Long Beach is a non-union employer, which operates under an at-will employment regime in which all standards are determined exclusively by management and employees can be terminated at any time for any reason not prohibited by law. As described below, the Hotel appears to have taken active steps to prevent its workers from unionizing.

In terms of employment standards, important differences can be found in the key area of employee benefits. The Hotel offers a health plan that is significantly more expensive for its employees than the most common health plans for employees of the comparison group hotels. At the Westin Long Beach, non-smoking employees must pay \$182 every two weeks, or \$364 every month, to maintain a family health insurance plan at Kaiser Permanente of Southern California ("Kaiser"), a major health management organization. A strong plurality of peer hotels also have Kaiser-administered health plans, but employees at these hotels are given the option of three tiers of health coverage. The most affordable tier of coverage at these properties does not assess any monthly fee for coverage of employees or their families, while the most comprehensive tier of service assesses a fee of just \$50 per month for family health coverage. Thus, Westin Long Beach employees must pay \$314 more per month (or \$3,768 more per year) for comprehensive family healthcare than employees at the comparison hotels. Put in other terms, the Westin Long Beach healthcare plan is seven times more expensive than the plans offered to employees at comparison hotels.

The difference in health plan costs between the Westin and the comparison group hotels is even more striking when considering the employees' income. Most workers at the Westin Long Beach appear to be paid the municipal minimum for the hospitality sector, \$13.80 per hour. At this wage, assuming a forty-hour workweek, a Westin employee must pay sixteen percent of his or her monthly salary for family health coverage. By contrast, assuming a forty-hour workweek, employees at Los Angeles-based comparison hotels who earn the applicable minimum wage of \$15.37 per hour

with the plans described above must only put two percent of their monthly income toward family health coverage.

The relatively high cost for employees of the Westin Long Beach's family health coverage means that Westin employees must bear a financial burden that is not placed on employees at a majority of the other large, upscale, business-oriented hotels in the Los Angeles region with which it competes. There is also no basis to assume that the wage and hour violations described above prevail in the sector, particularly as the majority of the Westin Long Beach's peer hotels have active unions that are recognized by management. In view of these findings, we conclude that the Hotel does not observe standards that are at least as favorable to workers as those that prevail among similarly situated employers and thus is not in compliance with the requirement of the OECD Guidelines in this area.

C. FREEDOM OF ASSOCIATION


On February 9, 2015, Westin Long Beach employees publicly launched a campaign to unionize. They did so by organizing a delegation to inform management of their desire for the workforce to make a free choice about unionization without management interference and to raise concerns about working conditions. Hotel management was not receptive to the workers' requests, and has instead waged a campaign to prevent workers from unionizing. This section examines Hotel's conduct in this regard, finding that it has violated employees' right to freedom of association under both domestic and international standards.

i. Denial of Equal Access to Communicate with Workers regarding Unionization

The Hotel has violated international labor standards by forcing workers to sit through what are commonly called "captive audience" or "forced listening" sessions, while denying union organizers comparable access to communicate with workers. As Human Rights Watch has described, captive audience meetings are sessions "in which employers require all workers to stop work and assemble for threat-filled presentations by management about the perils of union organizing without allowing workers comparable opportunities to hear from union representatives."²⁰

The Hotel held the captive audience sessions in June and July 2015, several months after the unionization campaign began. Separate meetings were held for English-speaking and Spanish-speaking workers. Senior managers, including the Hotel's human resources director, introduced the sessions. The presentations in Spanish were

²⁰ HUMAN RIGHTS WATCH, A STRANGE CASE: VIOLATIONS OF WORKERS' FREEDOM OF ASSOCIATION IN THE UNITED STATES BY EUROPEAN MULTINATIONAL CORPORATIONS [hereinafter HUMAN RIGHTS WATCH: A STRANGE CASE], at 121 (September 2010).



conducted by Jorge Sandoval, a representative of the Crossroads Group, a firm contracted by the Hotel, who told workers he was studying to become a lawyer.

During the presentations, titled “The Things the Union Does Not Want You to Know,” Sandoval told workers that unionization would harm them because, among other things, it would result in them earning lower wages and losing opportunities to perform overtime, while requiring them to pay costly union dues. Workers reported that the meetings lasted several hours (in at least one case three hours). Following the meetings, several workers approached pro-union activists and conveyed that the meetings had made them fearful of or opposed to unionizing.

Union organizers have had no comparable access to communicate with the Hotel workforce. Indeed, the organizers’ access to workers has been limited to attempting to speak to workers as they are arriving to or leaving work or by arranging to meet workers away from the workplace, an enormously laborious and difficult process.

U.S. domestic law does not prohibit employers from holding captive audience meetings (although statements made during such meetings may be unlawful, as described in the following subsection). However, the use of captive audience meetings—when coupled, as here, with a denial of union organizers of equal opportunities to communicate with the workforce about the advantages of unionization—violates workers’ rights under ILO Conventions 87 and 98.

The ILO’s Committee on Freedom of Association, the highest international body charged with interpreting the conventions, has held that the failure of U.S. labor law to “guarantee access of trade union representatives to the workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers, in order to apprise them of the potential advantages of unionization” violates the associational rights of employees.²¹ Human Rights Watch and others have roundly criticized the practice.²² The Hotel’s domination of access to the workforce to convey anti-union messages violates international standards.

The same practices would also constitute violations of the OECD Guidelines, which include broad protections for the right to organize and bargain collectively and are to

²¹ International Labor Organization, Committee on Freedom of Association, Complaint against the Government of the United States presented by the United Food and Commercial Workers International Union (UFCW), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET), Report No. 284, Case No. 1583 (1992).

²² HUMAN RIGHTS WATCH: A STRANGE CASE, at 10; HUMAN RIGHTS WATCH, UNFAIR ADVANTAGE: WORKERS’ FREEDOM OF ASSOCIATION IN THE UNITED STATES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS [hereinafter HUMAN RIGHTS WATCH: UNFAIR ADVANTAGE] at 26 (2000).

be interpreted consistent with the ILO Core Conventions, including Conventions 87 and 98.²³

ii. Threat to Reduce Wages if Workers Unionize

Our investigation found that the Hotel violated employees' rights under both U.S. law and international labor standards by threatening workers with negative consequences if they unionize.

Workers reported that, during the Spanish-language captive-audience meetings described above, Sandoval, the outside consultant hired by management, told the assembled workers that the Hotel would reduce employee wages if the employees organized with UNITE HERE. Sandoval told the workers that the City of Long Beach's Measure N, which secured living wages for hotel workers, would no longer apply to workers at the Westin if the workers unionized. He stated that, with the union and without Measure N protection, wages will fall below their current rate of more than \$13 an hour. As one employee recalled, Sandoval said that "[o]ne of the good things that the Union did was negotiate Measure N, but the union does not want you to know that if you accept the union, you are going to lose the \$13." In some cases, he said that workers' wages would be reduced to \$9 or \$10 per hour. This message was conveyed repeatedly in the series of meetings Sandoval held with various groups of Spanish-speaking workers.

A threat by an employer or its agent that employees' wages will be reduced if they unionize violates U.S. labor law. Section 8(a)(1) of the NLRA makes it unlawful for an employer "to interfere with, restrain, or coerce employees in the exercise" of Section 7 rights.²⁴ This provision has been interpreted to make unlawful employer communications to workers that contain a threat of reprisal or force.²⁵ To avoid this prohibition, employers sometimes attempt to frame anti-union messages to employees as "predictions," rather than unlawful threats. However, predictions of the consequences of unionization are permissible only where they are "carefully phrased on the basis of objective fact" and convey the "employer's belief as to demonstrably probable consequences beyond his control"²⁶

²³ OECD GUIDELINES, ch. 5, paras. 1-2 and comment 51 (noting that "[p]aragraph 1 of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO's 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation.")

²⁴ NLRA, 29 U.S.C. § 158(a)(1).

²⁵ *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969).

²⁶ *Id.* (citing *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263, 274, n.20 (1965)).

The statements made by Sandoval on behalf of the employer fall within the category of unlawful threats, rather than permissible predictions based on objective evidence. Sandoval cited no objective facts demonstrating that workers' wages would inevitably drop if the workers unionized.²⁷ While he pointed to a clause in Measure N of the Long Beach Municipal Code that states unions and employers *may* contract around the ordinance through bona fide collective bargaining agreements,²⁸ there is no provision of the Code that automatically removes unionized hotels from Measure N coverage, nor is there any basis to assume that workers or the union would agree during the course of collective bargaining to wages lower than the city-wide hotel sector minimum.

A particularly troubling aspect of the captive audience meetings is that the threats of retaliation apparently occurred only in the Spanish-language meetings. The attendees of these meetings, as compared to those of the English-language meetings, likely have less access to legal resources that could provide corrective information. Worker leaders reported that many workers believed Sandoval's claim and that it caused them to oppose unionization. For example, housekeeper Juana Melara reported that workers responded to the claim by exclaiming words to the effect of "No! We don't want to make less money. We're okay like this, without the union!" The threat had a clear and corrosive effect on the organizing efforts at the Westin.

The Union filed a charge with Region 21 of the NLRB asserting that the threat of reduced wages violates Section 8(a)(1) of the NLRA. On March 29, 2016, after investigating and concluding that the charge has merit, the Region filed a complaint against the Hotel.²⁹ The case, which remains pending, will be heard by an administrative law judge of the NLRB.

The threats of reduced wages also represent violations of international labor standards. ILO Convention 98 broadly prohibits "interference" with the exercise of freedom of association.³⁰ The ILO's Committee on Freedom of Association has found that such

²⁷ Compare, e.g., *Yoshi's Japanese Rest., Inc.*, 330 NLRB 1339, 1341 (2000) (manager's prediction that unionization would lead to job loss held unlawful in part because even if the manager sincerely believed such a result would occur, the manager "did not cite any objective facts" in communicating this prediction to employees) with, e.g., *In Re Tvi, Inc.*, 337 NLRB 1039, 1041 (2002) (statement predicting job loss due to dire economic circumstances held not unlawful where employer showed workers a document illustrating how much money the business was making daily and financial records indicating the business was not profitable).

²⁸ Long Beach Municipal Code § 5.48.020(d).

²⁹ NLRB Case Number 21-CA-162794, <https://www.nlr.gov/case/21-CA-162794> (last viewed on April 25, 2016).

³⁰ ILO Convention 98 declares that "workers shall enjoy adequate protection against acts of antiunion discrimination in respect of their employment. . . . Such protection shall apply more particularly in respect of acts calculated to— a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish union membership; b) cause the

employer conduct as imposing pressure, instilling fear, and making threats that undermine workers' exercise of their rights of association constitute prohibited "interference."³¹ Notably, the distinction recognized in U.S. domestic law between prohibited "threats" and permissible "predictions"—the sole plausible basis on which the Hotel might defend the statements at issue—has not been embraced in the context of international labor standards and has been harshly criticized by interpreters of international instruments, such as Human Rights Watch.³² Thus, even if the Hotel's conduct was not found to be unlawful under U.S. labor law, it would nevertheless violate international labor standards.³³

iii. Employer Implication of Disloyalty Due to Union Support

Our inquiry found that the Hotel violated domestic labor law and international labor standards by impliedly accusing an employee of disloyalty due to her leadership in the unionization movement.

The employee involved, Rosa Casarrubias, is a well-known worker leader. In February 2015, she led the delegation of employees to meet with Hotel management concerning working conditions and inform them of their desire to organize. Since then, she has worn a union button on the outside of her work uniform and regularly participated in

dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities." It states further that "workers' . . . organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration."

³¹ See INTERNATIONAL LABOR ORGANIZATION, FREEDOM OF ASSOCIATION: DIGEST OF DECISIONS AND PRINCIPLES OF THE FREEDOM OF ASSOCIATION COMMITTEE OF THE GOVERNING BODY OF THE ILO, 5th (revised) ed. (2006) [hereinafter ILO COMMITTEE ON FREEDOM OF ASSOCIATION DIGEST], paras. 35, 67, 514, 638, 682, 772, 780, 781, 786, 787, 803, 810, 837, 839, 858, 863, 864, 865. A concise summary of forms of interference identified by the ILO Committee on Freedom of association can be found at HUMAN RIGHTS WATCH: A STRANGE CASE at 10.

³² See, e.g., HUMAN RIGHTS WATCH: UNFAIR ADVANTAGE, at 29 ("Under U.S. law, employers and consultants have refined methods of legally "predicting"—as distinct from unlawfully threatening—workplace closures, firings, wage and benefit cuts, and other dire consequences if workers form and join a trade union. For example, a prediction that the workplace will be closed if employees vote for union representation is legal if the prediction is based on objective facts rather than the employer's subjective bias. While this distinction might be discernible to lawyers and judges, it is not clear to workers who hear managers holding superior economic power linking 'union' and 'closing' in captive audience and one-on-one discussions with employees.")

³³ This includes OECD GUIDELINES ch. 5, para. 1, which as reviewed above is to be interpreted consistent with the ILO Core Conventions.

picket lines during her break and public education campaigns going on outside of the Hotel. Management has been fully aware of her activities.

In August 2015, Casarrubias put in a request with the Hotel's Restaurant Manager that her shift be adjusted from six hours to seven-and-a-half hours. Casarrubias felt justified in her request because she had worked eight-hour shifts in the restaurant for a period of eight years ending in 2013. The manager initially responded positively, telling Casarrubias that she would begin seven-and-a-half-hour shifts on the next work schedule.

When the new schedule appeared, however, Casarrubias discovered that her schedule had not changed. She asked the manager whether he had changed his mind or simply forgotten about his promise. In response, he told her, "I gave the hours to employees that are loyal to the company." Casarrubias was confused, so the manager continued, "You know, they've *been* loyal and they *are* loyal to the company." Still confused, Casarrubias asked for clarification, and the manager again repeated his statement about employee loyalty.

It is well established that manager statements equating support for unionization to disloyalty toward the employer are coercive and therefore violate Section 8(a)(1) of the NLRA.³⁴ Such coercive conduct to dissuade workers from organizing would be likewise prohibited under ILO Conventions 87 and 98 and, by extension, the OECD Guidelines.³⁵

In the circumstances here, given Casarrubias's outspoken support for the union, there is no reasonable interpretation of the manager statements concerning employee loyalty other than of an allusion to her union support, with the implication that pro-union workers such as Casarrubias would be denied work opportunities available to workers

³⁴ See, e.g., *Ironwood Plastics, Inc. & Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, Uaw, Afl-Cio, 345 NLRB 1244, 1254 (2005) (holding that owner's statement that "he felt betrayed" about a potential union campaign implied that employees engaged in union activity were disloyal thus violating Section 8(a)(1) of the NLRA); *Oscar Enterprises, Inc.*, 214 NLRB 823 (1974) (holding that a statement equating employees' engagement in union activity with employee disloyalty "tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights in violation of Section 8(a)(1)"); *Radio Station WISN, Division of Hearst Corporation*, 169 NLRB 699, 701 (1968) (same).

³⁵ See, e.g., HUMAN RIGHTS WATCH: A STRANGE CASE (noting that the ILO Committee on Freedom of Association has found a range of employer conduct that "create[s] an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities" to be violative of Conventions 87 and 98); ILO Committee on Freedom of Association, para. 849 (noting that declarations of loyalty or other similar commitment should not be imposed as a condition for reinstatement).

who do not display support for unionization. The statements were thus violative of worker rights under both domestic and international standards.

The Union filed an unfair labor practice charge concerning the manager's statements with Region 21 of the NLRB. As with the charge concerning threats of wage reductions discussed above, the Region found merit to the charge based on its review of the facts and has included the allegations in a complaint issued against the Hotel on March 29, 2016.³⁶ Proceedings on this complaint remain pending.

The above incident is not the only circumstance in which Ms. Casarrubias's union activism has put her in the disfavor of Hotel management. For instance, prior to her taking on a leadership role in the unionization campaign, the Hotel's General Manager, Kenneth Pilgrims, was warm and friendly to Casarrubias. He would walk through the restaurant each morning and personally greet every employee who was working. Mr. Pilgrims would stop and shake Ms. Casarrubias's hand, and say things like, "Hi Rosa, how are you, how is your family doing, how are you feeling?" After she became involved in the unionization campaign, however, Pilgrims's attitude became openly hostile toward her. While he continued to greet other employees when he visited the Hotel restaurant, he would instead look at her, turn around, and walk away.


Casarrubias ultimately gained the confidence to ask Pilgrims why he was treating her so differently from the other workers. In response, Pilgrims frankly acknowledged that he was treating her differently because of her union activism. He told her "... you are with the Union, and you go outside to protest. This hurts the image of the hotel, this hurts the reputation of the hotel." Pilgrims continued, "You have to understand my position, I have a boss that I have to report everything to, this situation to. You decided to go with the Union."

This latter incident arguably constitutes unlawful interference with workers' protected activities under Section 8(a)(1) of the NLRA, which has been interpreted to prohibit employers from conveying that union activity might result in the loss of the employer's friendship or good will³⁷ and from expressing disappointment in an employee's decision to support unionization.³⁸ Whether or not such conduct at issue here is unlawful under U.S. domestic law, it appears to be a clear violation of ILO Conventions 87 and 98.

³⁶ NLRB 21-CA-162794.

³⁷ See, e.g., *Bonwit Teller, Inc.*, 170 NLRB 399, 406 (1968) (finding employer's statement to union supporter that she was "not a friend" of the employer and should look to her union friends for favors violated the Act); *Henry I. Siegel Co.*, 172 NLRB 825 (1968) *enfd.*, *Henry I. Siegel Co. v. N.L.R.B.*, 417 F.2d 1206, 1215 (6th Cir. 1969) (finding unlawful employer's statement that if the union won the pending representation election, the personal, friendly relationship existing between him and the employees would cease).

³⁸ *Sundance Constr. Mgmt., Inc.*, 325 NLRB 1013, 1014 (1998) (holding unlawful supervisor's statement that he was "disappointed" in an employee and thought the employee "knew better"



The IRC also learned that, shortly before the publication of this report, on April 25, 2016, the Hotel suspended Ms. Casarrubias without pay for three days for allegedly spilling honey on a table in the restaurant kitchen. The IRC has not had an opportunity to investigate the incident, which is the subject of another pending unfair labor practice charge. Needless to say, however, given the Hotel management’s outwardly hostile attitude toward her due to her union support, the circumstances of the suspension are deeply troubling and potentially constitute further violation of international human rights standards by the Hotel.

for participating on a picket line); *N.L.R.B. v. McCullough Envtl. Servs., Inc.*, 5 F.3d 923, 930 (5th Cir. 1993) (finding that supervisor unlawfully threatened employee with reprisals by telling him that the company would “look down” on him and everyone else that “went union”).

IV. Conclusion

As reviewed in detail above, the Hotel's labor and employment practices in the areas of wages and hours, observation of prevailing practices, and freedom of association appear to violate applicable domestic law and/or international labor standards, as well as best practices for the treatment of workers. We hope that this report will serve useful as entities with decision-making power over the Hotel, or an oversight role regarding its practices, respond to the workers' appeal for change.