

By Howard Fine

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Hilton Takes Last Stand in War on 'Living Wage' **By HOWARD FINE - 7/7/2008** **Los Angeles Business Journal Staff**

It's an uphill battle and the Hilton Los Angeles Airport hotel is going it alone.

Other airport-area hotels decided after 18 months, hundreds of thousands of dollars spent and a defeat at the state's highest court to give up their challenge to Los Angeles' living wage ordinance. The law forces 12 hotels on Century Boulevard near the Los Angeles International Airport to pay higher wages. But the Hilton's owners have refused to yield, instead filing a lawsuit last week in a last-ditch bid to overturn the city's ordinance.

The lawsuit was filed June 30 in state Superior Court. However, on July 3, the city successfully petitioned to have the case moved to federal court.

Under the ordinance – which went into effect July 5 but could be halted if a federal judge issues an injunction this week – the 12 hotels must pay their workers the city's living wage. The wage has increased as of July 1 to \$10 an hour if an employer provides health benefits, or \$11.25 an hour if the employer does not.

All 12 hotels initially opposed the ordinance when it was passed in December 2006 and sought to overturn it. But during the battle that has ensued, the other hotels dropped their opposition, either agreeing to allow union organizing efforts or, more recently, agreeing to abide by the law.

One hotel owner, Peter Dumon of the Radisson Hotel, recently wrote an op-ed in the Los Angeles Times urging all the holdout hotel owners to comply with the city ordinance.

Sources on both sides of the dispute said that after the state Supreme Court upheld the ordinance and refused to consider a challenge based on how the ordinance was enacted, most hotel owners decided it wasn't worth spending more money and effort fighting the ordinance.

But the Hilton's owners, Fortuna Enterprises LP – consisting chiefly of the Hsu family led by Taiwanese businessman Henry Hsu – have long held the line against unionization efforts at the hotel, dating back to the late 1990s, when Fortuna opposed and successfully warded off a Teamsters organizing effort.

The hotel has cast its latest fight as a stand against government intrusion into their business at the behest of Unite HERE Local 11, the hotel and restaurant workers union. Unite HERE was one of the sponsors of the ordinance extending the living wage to the airport area hotels; the ordinance specifically exempts hotels that agree to union contracts. Unions heavily support city council members and the mayor.

"This has never been about money for the LAX Hilton," said general manager Grant Coonley. "This is about government overstepping its bounds to assist their labor allies in forcing businesses to accept union representation without a vote of our employees."

Coonley noted that many hotel employees are already paid more than the living wage and that tipped employees receive up to \$18 an hour, including tips.

'Desperate attempt'

Unite HERE officials did not return calls seeking comment. However, an official with the Los Angeles Alliance for a New Economy, which is closely allied with Unite HERE and other local unions, criticized Hilton management for deciding not to comply with the ordinance.

"This is a desperate attempt by the LAX Hilton to avoid following the court ruling and pay their workers a living wage," said Vivian Rothstein, deputy director of the L.A. Alliance.

In its lawsuit, the Hilton ownership challenged the city's right to impose wage requirements on businesses that do not have direct contractual or leasing arrangements with the city.

But that strategy faces long odds. While L.A. previously only required businesses to pay the living wage if they contract with or lease property from the city, other cities for years have targeted either all businesses in their jurisdiction or businesses in certain zones. Those cities include Santa Fe, N.M., and Berkeley, Emeryville and San Francisco in California.

The courts have generally upheld these ordinances. For example, three years ago, the New Mexico Court of Appeals upheld Santa Fe's living wage ordinance, which applies to all businesses within the city limits.

Emeryville's living wage measure targeting all hospitality workers in the city was approved by voters in Sept.

2005, with the courts rejecting a challenge by the Woodfin Suites Hotel. And Berkeley's living wage ordinance, which originally applied only to contractors but was expanded in 2000 to include businesses in the city's marina, was upheld by the 9th U.S. Circuit Court of Appeals in 2004.

Opponents of L.A.'s airport hotel area living wage ordinance say that unlike the Berkeley case, where businesses leased the land from the city, the airport area hotels have no such leases or any other contractual relationship with the city. They are targeted merely because they are near LAX; other hotels in the city are not required to pay the living wage.

The lawsuit also prominently notes that in writing the ordinance the city selected a "small number of private employers and force(d) them to pay higher wages in an industry that continues to experience contentious and protracted disputes with the local union."

However, city officials argue that the airport area hotels primarily serve and receive most of their business from a city-owned asset – LAX – and should thus be subject to city restrictions.

Michael Waterstone, a law professor specializing in employment law at Loyola Law School in Los Angeles, believes the city will prevail over the Hilton ownership.

"They are trying to make an issue of the contractual relationship with the city. I don't see how the lack of a contractual relationship means that the city can't do what it's doing," said Waterstone. "For the hotel, this is an uphill battle."

Indeed, this was tacitly acknowledged early on in the hotels' legal fight against the living wage. Instead of challenging

the right of the city to regulate wage payments at airport-area hotels, the hotel coalition chose to fight on procedural grounds.

When the initial ordinance targeting airport area hotels was passed in December 2006, the hotels immediately gathered enough signatures to place a referendum on the next citywide ballot, with the intention of campaigning against the measure. Faced with the referendum, city officials withdrew the ordinance and negotiated a “new” ordinance with the Los Angeles Area Chamber of Commerce and other business representatives.

However, the hotel owners opposed the negotiations; they argued in their first court challenge that the new measure was essentially identical to the one that had been scrapped and therefore should also be put to a vote.

Superior Court Judge David Yaffe agreed that similarity violated state law and threw out the ordinance. However, the ordinance was reinstated upon appeal and ultimately the state Supreme Court let the ordinance stand.

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