

**Yet Wah Restaurant and Hotel and Restaurant Employees and Bartenders Union, Local 2, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. Case 20-CA-14622**

August 12, 1980

**DECISION AND ORDER**

BY MEMBERS JENKINS, PENELLO, AND TRUESDALE

On March 13, 1980, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Yet Wah Restaurant, San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge inadvertently stated that there were four union elections between 1975 and 1979, when in fact the evidence shows only that there were four different union administrations during this period.

<sup>2</sup> The Administrative Law Judge found, and we agree, that Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to allow a business representative of the Union access to its premises as required by the collective-bargaining agreement between Respondent and the Union. Although he included in his recommended Order a provision requiring Respondent to cease and desist therefrom, he inadvertently failed to include an affirmative provision requiring Respondent to allow such access to its premises as permitted by that agreement. We shall modify his recommended Order accordingly.

"(b) Allow the Union access to its premises to administer the collective-bargaining agreement which includes a proviso allowing the Union access for this purpose."

2. Substitute the attached notice for that of the Administrative Law Judge.

**APPENDIX**

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Hotel and Restaurant Employees and Bartenders Union, Local 2, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, by refusing upon request to supply relevant information needed by said Union to represent the employees in the appropriate bargaining unit and refusing to allow the above-described Union access to our premises to administer the collective-bargaining agreement which includes a proviso allowing the Union access for this purpose. The appropriate bargaining unit is:

All employees employed by us at 2140 Clement Street, San Francisco, California and who are employed in the job classifications listed in the Independent Restaurant & Tavern Agreement effective September 1, 1972; excluding all other employees, guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

WE WILL furnish, upon request, to the above-named Union the names, dates of hire, termination dates, social security numbers, work classifications, and wages for all employees employed by us since November 1978 in the appropriate unit.

WE WILL allow the above-named Union access to our premises to administer the collective-bargaining agreement which includes a proviso allowing the Union access for this purpose.

YET WAH RESTAURANT

## DECISION

## STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge: This proceeding, in which a hearing was conducted on November 28, 1979, is based upon an unfair labor practice charge filed on May 3, 1979, by the Hotel and Restaurant Employees and Bartenders Union, Local 2, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, herein called the Union, against Yet Wah Restaurant, herein called Respondent. A complaint issued against Respondent on July 12, 1979, on behalf of the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director of the Board, Region 20, alleging that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, herein called the Act, by refusing to furnish the Union with certain information and to allow the Union access to its premises. Respondent filed an answer to the complaint denying the commission of the alleged unfair labor practices.<sup>1</sup>

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs, I make the following:

## FINDINGS OF FACT

## I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Evidence*

Respondent is a corporation owned by Hoon Seng Chan and his wife. It owns and operates eight restaurants in San Francisco, California, and vicinity. In 1969 Chan, operating as a sole proprietor, opened his first restaurant,<sup>2</sup> and by April 1975 owned and operated two restaurants and was in the process of opening a third one located in San Francisco at 21400 Clement Street, herein referred to as the 2140 Clement Street Restaurant or the Restaurant, which opened on April 20, 1978.

On May 1, 1975, Chan signed a memorandum agreement with the several local unions<sup>3</sup> affiliated with the San Francisco Local Joint Executive Board of Culinary Workers, Bartenders, Hotel, Motel and Club Service Workers, herein called the Joint Board. The agreement is effective from May 1, 1975, until May 1, 1980, and provides for recognition of the several local unions as the sole collective-bargaining agency for all of Chan's employees who do work which falls under the constitutional jurisdiction of the unions and are employed at the 2140 Clement Street Restaurant or at any restaurant wholly or partly owned or operated by Chan. Under the terms of the agreement Chan agreed to "accept, adopt

and observe" all of the rules prescribed by the Independent Restaurant & Tavern Agreement governing employees' terms and conditions of employment.

The Independent Restaurant & Tavern Agreement referred to in the May 1, 1975, memorandum agreement is a conventional collective-bargaining agreement which, among other provisions, includes a union-security provision whereby employees are required to join the various signatory unions after 30 days of employment; a provision whereby the employer is obligated to make monthly contributions on behalf of eligible employees into certain health, welfare and pension trust funds; a provision whereby the employer agrees to hire applicants through the various local unions; a provision which states that "[p]roperly authorized representatives of the Union shall be permitted to investigate the standing of all employees and to investigate conditions to see that the Agreement is being enforced, provided that no interview shall be held during the rush hours, or unreasonably interrupt the duties of any employee;" a provision requiring the employer to post a work schedule specifying the name and classification of each employee and other related information and furnish a copy of the work schedule to the unions; and wage provisions.

The Memorandum agreement signed by Chan on May 1, 1975, was signed on behalf of the unions by Lawrence Tom, a business representative for Dining Room Employees Union, Local 9, one of the local unions affiliated with the Joint Board. In April 1975 Tom and Chan met on two occasions and discussed the signing of a collective-bargaining agreement covering the employees employed at the 2140 Clement Street Restaurant. These meetings culminated in their May 1, 1975, meeting at which time they signed the memorandum agreement. It is also undisputed that at this meeting Tom gave Chan a copy of the memorandum agreement and of the Independent Restaurant & Tavern Agreement referred to therein.

Tom and Chan are Chinese. Tom is fluent in English but his Chinese (Cantonese) is limited. Chan is fluent in Chinese (Cantonese) whereas his English is limited. Although Chan only understands a "little" English, Tom was sufficiently proficient in Cantonese so that Chan understood him when they spoke about uncomplicated matters. Present at the May 1, 1975, meeting, in addition to Tom and Chan, was Jack Louie, a bookkeeper for Local 9, who was fluent in both English and Cantonese. Tom brought Louie with him to this meeting to act as an interpreter because Tom intended to give the aforesaid agreements to Chan and explain them and knew that Chan had difficulty understanding and reading English.

The May 1, 1975, meeting lasted 2 hours and took place at the 2140 Clement Street Restaurant. Tom gave Chan copies of the memorandum agreement and the Independent Restaurant & Tavern Agreement. In response to Chan's questions Tom outlined some of Chan's obligations under these agreements. Chan questioned Tom specifically about his contractual obligation concerning union-security, wages, health and welfare, and work schedules. Tom went over the provisions of the Independent Restaurant & Tavern Agreement which con-

<sup>1</sup> Respondent admits that the Union is a labor organization within the meaning of Sec. 2(6) of the Act. Also, Respondent admits that Respondent is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act and meets that Board's applicable discretionary jurisdictional standard.

<sup>2</sup> In 1976 Respondent was incorporated.

<sup>3</sup> These unions were Dining Room Employees Union, No. 9; Bartenders' Union, No. 41; Cooks, Pastry Cooks & Assistants' Union, No. 44; Miscellaneous Employees' Union, No. 110; and Hotel, Motel & Club Service Workers' Union, No. 283.

tained the rates of pay for the various kinds of work performed by the Restaurant's employees. In answer to Chan's inquiry about health and welfare payments and the number of employees who had to comply with the union-security provision, Tom explained that all employees who worked a certain number of hours were covered under the contractual health and welfare and pension plans and that a permanent employee after working 30 days, must join one of the unions pursuant to the contractual union-security provision. Tom also explained that Chan must hire his employees through the signatory unions but if they were not able to supply him with applicants he could hire from other sources. In addition Tom told Chan that he was obligated to provide the signatory unions with a copy of the employees' work schedule. The meeting ended with Chan and Tom signing the Memorandum Agreement.

The aforesaid description of the May 1, 1975, meeting is based upon Tom's testimony.<sup>4</sup> Chan in effect testified that he met with Tom on two or three occasions in April 1975 at which time Tom threatened to picket the 2140 Clement Street Restaurant so as to interfere with the opening of the Restaurant if Chan did not "join the union" and assured Chan that so long as Chan agreed that six or seven of the Restaurant's employees would join the Union that there would be no picketing. Regarding this meeting with Tom on May 1, 1975, Chan did not deny that the meeting lasted 2 hours and admitted that Louie, who came with Tom, acted as an interpreter and that Tom explained to Chan "in a very general way" what he was signing, but did not explain all of the provisions contained in the Independent Restaurant & Tavern Agreement. Lastly Chan testified that he understood from what Tom said that his only obligation under the terms of the collective-bargaining agreement he signed on May 1, 1975, was to have six or seven employees join the Union and that he was not otherwise obligated to comply with the terms of the collective-bargaining agreement. Tom, on the other hand, specifically denied threatening to picket the Restaurant if Chan did not sign a collective-bargaining agreement or that he indicated to Chan that any agreement signed would only cover six or seven employees.

I have credited Tom's testimony, rather than Chan's, because of Tom's demeanor. In addition, Tom's account of his meetings with Chan was given in a straightforward manner, without evasiveness or inadequate memory. Chan's testimony was vague and evasive. It was lacking in specificity. He made no effort to describe his meetings with Tom in any detail. Regarding the crucial May 1 meeting at which it is undisputed that Chan signed the collective-bargaining agreement, his sole testimony was that Tom "in a very general way" explained what Chan was signing, but that Tom did not explain all of the provisions included in the Independent Restaurant & Tavern Agreement. Also Chan's testimony seems inherently implausible. Thus, it is undisputed that the May 1 meeting lasted 2 hours and that Louie came with Tom

<sup>4</sup> Jack Louie, who acted as an interpreter at the meeting, did not testify. He was not employed by the Union at the time of hearing herein having been terminated by Local 9 over 4 years prior to the hearing. The General Counsel unsuccessfully tried to locate Louie.

to act as an interpreter. If, as Chan would have me believe, Chan and Tom previously agreed to enter into a "sweetheart contract" why was it necessary for them to meet on May 1 for 2 hours with an interpreter and go over provisions included in the collective-bargaining agreement. Clearly, if Chan and Tom had intended not to enter into a real collective-bargaining relationship there would have been nothing for them to explain or discuss, certainly not to the extent of requiring an interpreter or 2 hours of explanation. Lastly, when the Union in 1978 and 1979 attempted to secure Respondent's compliance with the terms of the May 1, 1978, collective-bargaining agreement Respondent, as described in detail *infra*, took the position that the reason Respondent had no collective-bargaining obligation was that the nature of the employing enterprise had changed from a sole proprietorship to a corporation. It was not until the hearing in this case that Chan took the position that there was no collective-bargaining obligation because there was never an intent on the part of the parties to enter into a true collective-bargaining relationship. I am convinced that if this had been the case Chan would not have waited until the unfair labor practice proceeding to state this position but would have done so in 1978 and 1979 in reply to the Union's request that Respondent comply with the terms of the May 1, 1975, collective-bargaining agreement. It is for all of the aforesaid reasons that I have rejected Chan's testimony.

The collective-bargaining agreement signed by Chan was administered on behalf of the local unions by Local 9 Business Representative Tom from May 1, 1975, until October 1, 1978, when the local unions merged into the Union, the Charging Party in this case, and Tom was assigned to work in a different geographical area.

During the 5 months that the Restaurant was within the geographical area serviced by Tom he visited it once a month.<sup>5</sup> The record reveals that only six or seven of the Restaurant's employees paid union dues during this period of time or during any time material to this case and that the only Restaurant employees on whose behalf Chan contributed into the contractual health, welfare, and pension trust funds were the same six or seven employees. Tom testified that there should have been more than six or seven employees paying union dues under the terms of the union-security provision, considering the size of the Restaurant, but testified there was insufficient evidence to establish that Respondent was violating this part of the contract because each time he visited the Restaurant and questioned employees to determine whether Chan was complying with the union-security agreement that the employees whom he questioned told him they had just started working or had been working for only a week or were temporary employees just filling in for an absent employee for a short period of time.<sup>6</sup>

<sup>5</sup> He was unable to visit the Restaurant more frequently because he was responsible for servicing over 200 restaurants which employed approximately 1,500 members.

<sup>6</sup> Tom also testified that when a new business such as the Restaurant first opens there is usually a tremendous turnover of employees for the first several months.

Commencing on October 1, 1975, when the Union was formed as a result of the merger of the several local unions and Tom was reassigned, the Union made no effort to police its collective-bargaining agreement covering the Restaurant until the latter part of December 1978 when Union Business Representative Richard Leung was assigned the geographical area in which the Restaurant is located. During the period of time that the Union failed to administer the collective-bargaining agreement or otherwise represent the Restaurant's employees the record reveals that the Union's internal affairs were in a state of chaos: There was a lack of direction within the Union, business records were lost; the districts to which the several union business representatives were assigned to work were continually being revised; there were four union elections; the Union was placed under the trusteeship of the International Union, a state of affairs which lasted until May 1979; the Union was involved in an EEOC proceeding which resulted in a court-imposed consent decree requiring the Union to assign additional work to its already overburdened staff of business representatives.

When Union Business Representative Leung visited the Restaurant in late December 1978, he introduced himself to the employees who were working in the kitchen. They pointed out the Restaurant's manager. Leung introduced himself to the manager and asked for the employees' work schedule. The manager stated she knew nothing about the Union or a union contract and advised him to speak to a Mr. Hom, who she stated was Respondent's general manager, and gave him Hom's phone number and business address.

Leung phoned Hom. He introduced himself and asked Hom for a meeting to discuss the existing collective-bargaining agreement and Respondent's obligation under the agreement. Hom agreed to meet with Leung and they scheduled a meeting for later that week which took place in Respondent's office. Chan was present at this meeting. Leung asked for the employees' work schedule, stated that the collective-bargaining agreement covering the Restaurant was still in effect and that Respondent was obligated to abide by the terms of that agreement. Hom answered that he doubted the validity of the agreement because the business was now being operated as a corporation rather than as a sole proprietorship and advised Leung that Respondent's board of directors would meet to discuss the Union's request and decide whether the contract was a valid one. Leung insisted that the contract was valid and stated that he, Leung, had the right to visit the employees during working time so long as he did not interfere with their work. Hom told him not to visit the Restaurant as long as the validity of the contract was in doubt. Chan, who was present for the entire conversation, did not participate. He allowed Hom to do all of the talking.

Later that same day Leung visited the Restaurant during the employees lunch break and spoke to the approximately 20 employees who were eating lunch. He explained that they were covered by a collective-bargaining agreement and told them about the rates of pay they were entitled to be paid under the terms of the contract and about the contractual health and welfare bene-

fits. He also answered employees' questions. He left when the person who the employees had previously identified as the Restaurant manager asked him to leave the premises.

A few days later Leung phoned Hom and asked about the decision of the board of directors. Hom told him that the board of directors had concluded that the May 1, 1975, collective-bargaining agreement was not valid and referred Leung to the Company's lawyer, Norman Lew.

Leung phoned Lew, introduced himself and stated that the Union felt that its contract with Chan covering the Restaurant was valid since Chan was the president of Respondent. Lew answered that Respondent's position was that since the ownership of the Restaurant had changed from an individual proprietorship to a corporation that the contract was not valid. Leung stated that the Union thought it had a valid contract and the right to visit the Restaurant. Lew replied that the Company did not want him to visit the Restaurant so long as the matter of the contract was in dispute.

On June 13, 1979, the Union wrote Respondent the following letter:

As you know the Union has a contract with Yet Wah, running through May 1, 1980. For this reason we must request that you comply with its terms and provisions. Within the past six months the business agent has made repeated requests that Yet Wah do so, and these requests have been refused.

In accordance with section 5 of the General Rules of the Collective Bargaining Agreement, we therefore must have work schedules for all of your employees provided to us by June 21, 1979. These work schedules must include the full name of all employees, social security numbers, classification of each employee, wages paid to each employee and such other items as are listed in Section 5 on Page 13 of the Agreement.

In addition, we would request that you supply us with the following information as to all employees employed by Yet Wah since November, 1978:

- (1) Names
- (2) Dates of Hire
- (3) Termination dates of any employees terminated during that period
- (4) Social Security Numbers
- (5) Work Classification
- (6) Wages paid

In addition let me remind you of your obligation to call the Union in the event you will be hiring new employees. A search of your records indicates that you have not been doing so. You must call the hiring hall of the Union upon filling all vacancies.

Thank you for your cooperation in this matter, I remain. . . .

Respondent did not answer this letter.

### B. Discussion and Conclusion

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the names, dates of hire, termination dates, social security numbers, work classifications, and wages of the employees employed at the Restaurant and by refusing to permit a union business representative access to the premises of the Restaurant to administer the parties' collective-bargaining agreement.

The record, as described in detail above, establishes that during the relevant period of time there was a collective-bargaining contract in effect between Respondent and the Union covering the Restaurant's employees;<sup>7</sup> late in December 1978 or early in January 1979, while the contract was still in effect, Respondent refused to allow a union business agent access to its premises as required by the contract; and that as of June 1979, while the contract was still in effect, Respondent refused to furnish the Union with the names, dates of hire, termination dates, social security numbers, work classifications and wages for all employees employed since November 1978 at the Restaurant.

The law is settled that when an employer and a union enter into a collective-bargaining agreement, a presumption of majority status is raised and continues for the duration of the contract. See *Pioneer Inn Associates, d/b/a Pioneer Inn and Pioneer Inn Casino v. N.L.R.B.*, 578 F.2d 835, 838 (9th Cir. 1978). In the instant case Respondent argues that by refusing the Union access to the Restaurant and refusing to furnish to the Union the requested information that it did not violate Section 8(a)(5) and (1) of the Act because the Union lost the presumption of majority status flowing from the existence of its contract with Respondent inasmuch as (1) "There was no collective bargaining agreement intended" and (2) "Even assuming a valid collective bargaining agreement, the Union has abandoned and forfeited any rights thereunder." I reject Respondent's contentions.

In support of its contention that the parties by signing the May 1, 1975, memorandum agreement did not intend to operate a real collective-bargaining relationship, Respondent relies upon the testimony of Chan concerning the circumstances under which he signed the agreement and the fact that only six or seven employees ever joined the Union or had contractual health and welfare contributions made on their behalf. As described *supra*, I have

<sup>7</sup> I recognize that the recognition provision in the May 1975 "Memorandum Agreement" by its terms obligates Respondent to recognize the Union as the employees' bargaining representative at all eight of its restaurants. However, it is plain that it was the intent of the parties that the scope of the bargaining unit be limited to the Restaurant. Thus, when Tom negotiated the contract with Chan he knew that Chan owned and operated two other restaurants yet Tom's testimony and Chan's testimony establishes that when they negotiated the agreement it was their intent that the agreement would only cover the employees employed at the Restaurant and that this intent was manifested during the negotiations. In addition the preamble to the May 1, 1975, "Memorandum Agreement" states that the agreement is between "[the unions] and Hoon Seng Chan operating the business establishment at 2140 Clement Street." Finally, Respondent only contributed into the contractual health, welfare and pension trust funds on behalf of employees employed at the Restaurant. In sum the record reveals clear and objective understanding by both of the parties to the collective-bargaining agreement that the scope of the contractual bargaining unit was limited to the employees at the Restaurant.

rejected Chan's testimony. And, in the circumstances of this case, the fact that Respondent may not have complied with the contractual health and welfare and union-security provisions does not by itself establish that there was no intent by the parties to establish a real collective-bargaining relationship, rather it only demonstrates that the Union was negligent in administering the collective-bargaining agreement.<sup>8</sup> In short the record fails to establish that the collective-bargaining agreement herein was not a valid one or that the parties entered into this agreement with no intent to establish a true collective-bargaining relationship.<sup>9</sup>

In urging that the collective-bargaining agreement and the employees covered thereunder were abandoned by the Union, Respondent relies upon the fact that the Union made no effort to administer the contract or otherwise represent the employees from October 1, 1975, until late December 1978, a period of over 3 years. The record establishes that while the Union, due to a multitude of internal problems, failed to administer or otherwise enforce its contract with Respondent for over years the Union resumed its role as the employees' bargaining representative in late December 1978 when Union Business Representative Leung sought access to the Restaurant premises in order to enforce the collective-bargaining agreement. Respondent however refused to allow the Union access to its premises or to furnish the Union with information needed to determine whether Respondent was complying with the terms of the collective-bargaining contract.

The law is settled that where, as here, there is a valid collective-bargaining agreement, the agreement,

... calls into effect the long-established Board presumption of the Union's majority status during the term of the contract, irrespective of the degree to which the Union may or may not have been deficient in the administration of that agreement.

Moreover, even if one were to examine Board precedent as to when a union is regarded as "defunct"—so that its collective-bargaining agreement no longer constitutes a bar to petitions from competing unions—it is clear that, to preserve the viability of its agreement for contract-bar purposes, a recognized union need only show that it is willing and able to represent the covered employees at the time its status is called into question. [*Pioneer Inn Associates*, 228 NLRB 1263, 1264, *enfd.* on this point 578 F.2d 835, 839 (9th Cir. 1978).]

In this regard the record establishes that notwithstanding its inactivity prior to December 1978 the Union in December 1978 undertook to represent the employees, and enforce the terms of the governing collective-bargaining

<sup>8</sup> As discussed *supra*, the Union's failure to administer the collective-bargaining agreement for the greater part of its term was apparently due to internal union difficulties.

<sup>9</sup> In view of this conclusion I have found it unnecessary to consider the General Counsel's contention that the evidence pertaining to the circumstances surrounding the entering into of the May 1, 1975, collective-bargaining agreement is barred by either the panel evidence rule or Sec. 10(b) of the Act.

agreement but was precluded from doing so by Respondent's refusal to allow the Union access to its premises or to furnish the Union with information necessary for the Union to determine whether or not the Company was complying with its contractual obligations. In short the record demonstrates that the Union "[was] willing and able to represent the covered employees at the time its status [was] called into question." *Pioneer Inn Associates, supra*.<sup>10</sup>

Accordingly, I find that Respondent, by engaging in the above-mentioned conduct—refusing to furnish the Union the names, dates of hire, termination dates, social security numbers, work classifications, and wages for all employees employed since November 1978 at the Restaurant and refusing to allow a union business agent access to the premises as required by the contract—at a time when a valid contract between it and the Union was still in effect, violated Section 8(a)(5) and (1) of the Act as alleged by the General Counsel.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by Respondent at its restaurant located at 2140 Clement Street, San Francisco, California, and who are employed in the job classifications listed in the Independent Restaurant & Tavern Agreement effective September 1, 1972; excluding all other employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material the Union has been and is now the exclusive collective-bargaining representative of all the employees in the aforesaid bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by refusing to allow a union business representative access to its premises as required by the collective-bargaining agreement between Respondent and the Union and by refusing to furnish the Union with the names, dates of hire, termination dates, social security numbers, work classifications and wages for all employees employed since November 1978 in the appropriate unit.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing finding of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>11</sup>

The Respondent, Yet Wah Restaurant, 2140 Clement Street, San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Hotel and Restaurant Employees and Bartenders Union, Local 2, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, by refusing upon request to supply relevant information needed by said union to represent the employees in the appropriate bargaining unit and refusing to allow the Union access to its premises to administer the collective-bargaining agreement which includes a provision allowing the Union access for this purpose.

The appropriate bargaining unit is:

All employees employed by Respondent at 2140 Clement Street, San Francisco, California and who are employed in the job classifications listed in the Independent Restaurant & Tavern Agreement effective September 1, 1972; excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Furnish, upon request, the above-described Union the names, dates of hire, termination dates, social security numbers, work classifications and wages for all employees employed since November 1978 in the appropriate unit.

(b) Post at its office and place of business where notices to employees represented by the aforesaid Union in the bargaining unit hereinabove are customarily posted by Respondent, copies of the attached notice marked "Appendix."<sup>12</sup> Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees employed in the appropriate bargaining unit are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>10</sup> I note that, unlike *Pioneer Inn Associates*, here Respondent did not question the Union's majority status but only the validity of the governing collective-bargaining agreement. I also note that it was Respondent's refusal to allow the Union access to its premises so that it could determine whether Respondent was complying with the collective-bargaining agreement which precluded the Union from engaging in the type of representation activities on behalf of the employees which were found in *Pioneer Inn Associates*.

<sup>11</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the

findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>12</sup> In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."