Anchor Inns, Inc. d/b/a Anchor Inn Hotel of St. Croix *and* Gastronomical Workers Union of Puerto Rico, Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. Case 24-CA-4250

July 18, 1980

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

Upon a charge filed on December 10, 1979, by Gastronomical Workers Union of Puerto Rico, Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, herein called the Union, and duly served on Anchor Inns, Inc., d/b/a Anchor Inn Hotel of St. Croix, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 24, issued a complaint and notice of hearing on February 6, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 8, 1979, following a Board election in Case 24-RC-6207, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about July 10, 1979, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 29, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 28, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, and thereafter, on May 8, 1980, an amendment thereto. Subsequently, on May 12, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause, captioned as its response to the Motion for Summary Judgment.

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.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent essentially contests the validity of the Union's certification. Respondent contends that the November 13, 1978, election must be set aside and a new election directed because (1) the unit certified included a supervisor and thus did not constitute an appropriate bargaining unit, and (2) threats against unit employees created a general atmosphere of intimidation and fear of reprisal which prevented a fair election. Respondent contends, in the alternative, that the Board and the Regional Director erred in denying Respondent a hearing in the underlying representation case, since Respondent presented material and substantial evidence in support of its objections to conduct affecting the results of the election. The General Counsel maintains that Respondent is attempting to relitigate the issues it raised in the related representation proceeding. We find merit in the General Counsel's position.

Review of the record herein, including the record in Case 24-RC-6207, reveals that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on December 15, 1978, which resulted in a vote of four to one in favor of the Union, with one vote challenged. Thereafter, Respondent filed timely objections to conduct affecting the results of the election. The objections alleged, in substance, that an agent of the Petitioner threatened employees with loss of their jobs if they did not vote for the Union. On March 20, 1979, after an investigation, the Regional Director issued his "Report and Recommendation on Objection," in which he found the objection to be without merit and recommended that it be overruled, and that the Union be certified. Respondent filed exceptions to the Regional Director's report essentially reiterating its objections and requesting that a new election be directed.

On May 8, 1979, the Board issued its Decision and Certification of Representative[2] in which it

[1] Official notice is taken of the record in the representation proceeding, Case 24-RC-6207, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] Not reported in bound volumes of Board Decisions.

ommendations, overruled Respondent's objections, and certified the Union.

Subsequently, Respondent filed a motion for reconsideration of the Board's Decision and Certification, alleging new and previously unavailable evidence establishing misconduct sufficient to warrant setting aside the election. The Board denied the motion for reconsideration on September 20, 1979, on the grounds that there was insufficient showing that the proffered evidence was previously unavailable and that, if considered, it would require a different result. It thus appears that Respondent is attempting to raise herein issues which were raised and determined in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a United States Virgin Islands corporation with its principal office and place of business located in Christiansted, St. Croix, Virgin Islands, where it is engaged in the operation of a resort facility providing hotel, restaurant, entertainment, and related services and facilities. During the past 12 months, a representative period, Respondent, in the course and conduct of its business, derived gross revenues in excess of $500,000, and purchased and received supplies and materials valued in excess of $50,000, which originated from sources located outside the United States Virgin Islands.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Gastronomical Workers Union of Puerto Rico, Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All service and maintenance employees employed by Respondent at its facility in St. Croix, U.S. Virgin Islands, but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On December 15, 1978, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 24, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on May 8, 1979, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about June 12, 1979, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 10, 1979, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since July 10, 1979, and at all times thereafter, refused to bargain collectively with the Union as the exclu-

[3] See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941), Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

sive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Anchor Inns, Inc. d/b/a Anchor Inn Hotel of St. Croix, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Gastronomical Workers Union of Puerto Rico, Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All service and maintenance employees employed by Respondent at its facility in St. Croix, U.S. Virgin Islands, but excluding all other employees, office clerical employees, professional 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. Since May 8, 1979, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 10, 1979, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Anchor Inns, Inc. d/b/a Anchor Inn Hotel of St. Croix, Christiansted, St. Croix, U.S. Virgin Islands, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Gastronomical Workers Union of Puerto Rico, Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All service and maintenance employees employed by Respondent at its facility in St. Croix, U.S. Virgin Islands, but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex-

ercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Christiansted, St. Croix, U.S. Virgin Islands' facility copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 24, 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 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 24, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[3] In the event that this 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 Judgement of the United States Court of Appeals enforcing an Order of the National Relations Board."

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 concerning rates of pay, wages, hours, and other terms and conditions of employment with Gastronomical Workers Union of Puerto Rico, Local 610, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

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

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All service and maintenance employees employed by the Employer at its facility in St. Croix, U.S. Virgin Islands, but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

ANCHOR INNS, INC. D/B/A ANCHOR INN HOTEL OF ST. CROIX