Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel *and* Hotel, Motel, Restaurant Employees & Bartenders Union Local No. 86, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO. Case 32-CA-159 (formerly 20-CA-12499)

March 16, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND TRUESDALE

On February 1, 1978, Administrative Law Judge James S. Jenson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 and hereby orders that Respondent, Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel, Stateline, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Respondent places particular reliance on an employee petition as evidence of a loss of employee support for the Union, and therefore asserts that the evidence in this case is stronger than that in *Sahara-Tahoe Hotel*, 229 NLRB 1094 (1977), enfd. 581 F.2d 767 (9th Cir. 1978), in which the Board found that Respondent did not have sufficient objective bases to support a good-faith doubt of the Union's majority status in a unit of kitchen and culinary employees. In our view, the employee petition here is a slender thread which, by itself, is an inadequate consideration to support a good-faith doubt. The petition is signed by barely 30 percent of the unit; it is undated; the wording, as noted by the Administrative Law Judge, does not unambiguously indicate a desire not to be represented by the Union; and, although more than 2 weeks elapsed between the expiration of the last collective-bargaining agreement and Respondent's withdrawal of recognition, no attempt was made to refile the petition with the Board. We therefore cannot accord much weight to this insubstantial factor in the absence of other probative evidence to support a doubt of majority.

APPENDIX

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

After a hearing at which all parties had the opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice.

WE WILL NOT refuse or fail to do the following and 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 recognize and, upon request, bargain with Hotel, Motel, Restaurant Employees & Bartenders Union Local No. 86, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate unit described below, with regard to the wages, hours, working conditions, and other terms and conditions of employment of the unit employees and, if an understanding is reached, embody such understanding in a signed agreement. The unit found appropriate for the purposes of collective bargaining is:

All employees employed by the Respondent in its hotel-service operations at its Stateline, Nevada, operations, including housekeeping personnel; parking lot attendants; front desk employees; timekeepers; casino porters; and bellmen, excluding casino employees; bartenders and culinary workers; office clerical employees; carpenters; employees in the engineering department; warehouse employees; stage hands; guards and supervisors as defined in the National Labor Relations Act.

SAHARA-TAHOE CORPORATION, D/B/A SAHARA-TAHOE HOTEL

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge: This case was heard before me in South Lake Tahoe, California, on July 12 and 13, 1977. The complaint, which issued on April 15, 1977, pursuant to a charge filed on February 18, 1977, alleges that Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel, herein called Respondent, has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. Admitting that it has withdrawn recognition

and refused to bargain collectively with the Union, Respondent contends such action was lawful on the ground that its belief that a majority of the employees no longer desired union representation was based upon objective considerations. All parties were given full opportunity to appear, to introduce evidence, examine and cross-examine witnesses, to argue orally and to file briefs. Extensive briefs have been filed by both the General Counsel and Respondent and have been carefully considered.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Nevada corporation with a place of business in Stateline, Nevada, where it is engaged in the operation of a combination hotel, bar, restaurant, and gambling casino. During the year immediately preceding issuance of the complaint, Respondent, in the conduct of its business operations, received gross revenue in excess of $500,000 and purchased and received goods and materials valued in excess of $50,000 directly from outside the State of Nevada. Respondent admits and I find that Respondent is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issue*

Respondent operates a combination hotel, bar, restaurant and gambling casino in Stateline, Nevada, sometimes referred to as Lake Tahoe and South Lake Tahoe. At times material herein, Dietrich Mayring has been Respondent's vice president and general manager. Thomas Aro was the assistant manager, and Vesta Valentine has been the director of personnel. Al Bramlet was the Union's international trustee, Howard Lawrence was the Union's director of administration, Bobbi Swan was the Union's business representative, as were Russ Robinson and Robert Weber. Joseph Coniglio and Peggy Wagner were employees on whose behalf the union filed grievances.

On May 13, 1970, the Union was certified as the collective-bargaining representative of all employees employed by Respondent in its hotel-service operations at its Stateline, Nevada, operations, including housekeeping personnel; parking lot attendants; front desk employees; timekeepers; casino porters; and bellmen, excluding casino employees; bartenders and culinary workers; office clerical employees; carpenters; employees in the engineering department; warehouse employees; stage hands; guards and supervisors as defined in the National Labor Relations Act. Thereafter, the parties entered into two successive collective-bargaining agreements covering the employees in the certified unit, the first expiring November 30, 1973, and the last on November 30, 1976. At the time both agreements were negotiated, Respondent was a member of the Reno Employers Counsel;[1] however, both agreements were signed individually by Respondent, and it is clear that the employees involved herein were not part of a multiemployer unit.[2]

By letter dated September 27, 1976, the Union notified Respondent that it desired "to change and modify for the period following November 30, 1976 the terms and conditions of our current collective-bargaining agreement with you." By letter dated September 28, 1976, Respondent advised the Union that it, too, desired to "modify, amend, or terminate" the agreement, and that it was willing to meet at a mutually agreeable date. There was no further communication between the parties regarding negotiations until the Union's letter of November 29, 1976, transmitting copies of its proposed agreement to Respondent and asking that Respondent advise it "of a date, time, and place convenient to you to begin contract negotiations." By letter dated December 16, 1976, Respondent advised Howard Lawrence, the Union's director of administration, that "we do not believe that your organization currently represents a majority of any employees at the Sahara-Tahoe Hotel in an appropriate bargaining unit. For this reason we respectfully decline your request to commence negotiations."

On February 18, 1977, the Union filed the charge initiating this proceeding. In a recent case involving the parties to this proceeding[3] the Board stated:

> It is well settled that the existence of a prior contract, lawful on its face, raises a dual presumption of majority—a presumption that the Union was the majority representative at the time the contract was executed, and a presumption that its majority continued at least through the life of the contract.[3] Following the expiration of the contract, the presumption continues and, though rebuttable, the burden of rebutting it rests on the party who would do so.[4] To withdraw recognition lawfully, either this presumption must be overcome by competent evidence that the Union in fact did not represent a majority at the time of the withdrawal,[5]

[1] Respondent resigned from the Reno Employers Counsel in August 1974.

[2] Par. VI of the complaint alleges the certified unit described herein as an appropriate unit. While Respondent's answer denied the appropriateness of said unit, it failed to offer any evidence to rebut its appropriateness. Accordingly, it is found that the unit set forth above is appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act.

[3] *Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel*, 229 NLRB 1094 (1977), pending before the Court of Appeals for the Ninth Circuit on a petition for review and a cross-application for enforcement.

[3] *Shamrock Dairy, Inc., Shamrock Dairy of Phoenix, Inc., and Shamrock Milk Transport Co.*, 119 NLRB 998 (1957), and 124 NLRB 494 (1959), enfd. 280 F.2d 665 (D.C. Cir. 1960), cert. denied 364 U.S. 892. See also *Bartenders, Hotel, Motel and Restaurant Employers Bargaining Association of Pocatello, Idaho*, 213 NLRB 651 (1974).

[4] *Barrington Plaza and Tragniew, Inc.*, 185 NLRB 962 (1970), enforcement denied on other grounds *sub nom. N.L.R.B. v. Tragniew, Inc., and Consolidated Hotels of California*, 470 F.2d 669 (9th Cir., 1972).

[5] No such evidence is present in this record.

or the Employer must establish on the basis of objective facts that it had a reasonable doubt as to the Union's continuing majority status. This latter test, which Respondent claims it meets, requires more than mere evidence of the Employer's subjective state of mind.[6] For the test to be met, the assertion must be supported by objective considerations; that is, some reasonable ground for believing that the Union has lost its majority status.[7]

[6] *Celanese Corporation of America*, 95 NLRB 664 (1951).

[7] *Laystrom Manufacturing Co.*, 151 NLRB 1482, 1483 (1965), enforcement denied 359 F.2d 799 (7th Cir., 1966). See also *Emerson Manufacturing Company, Inc.*, 200 NLRB 148 (1972), and *Terrell Machine Company*, 173 NLRB 1480 (1969), enfd. 427 F.2d 1084 (4th Cir., 1970), cert. denied 398 U.S. 929.

As in the earlier case, the record herein does not disclose by competent evidence that the Union in fact did not represent a majority at the time of the withdrawal. Hence, the sole issue here is whether Respondent had a reasonable doubt based upon objective considerations that the Union did not represent a majority of its hotel-service employees when it withdrew recognition and refused to bargain with the Union as the collective-bargaining representative of said employees on and after December 16, 1976.

B. *Sequence of Events*

1970

May 13—Union certified by Board.

September 28—First collective-bargaining agreement signed for term of 3 years. No grievances filed during term of contract.

1973

December 1—Second collective-bargaining agreement signed for term ending midnight November 30, 1976.

1974

June 7—Union placed under trusteeship.

July—Union opened office at South Lake Tahoe and commenced membership drive in both hotel service and food and beverage employee units.

August 2—Respondent resigned from Reno Employer's Counsel.

September 16—Respondent advised the Union that unless it objected by September 20, Respondent proposed to institute additional benefits for hotel-service employees, including additional holidays, increased sick pay and vacation benefits, and one meal per 8-hour shift. The Union did not respond to the letter and the changes were instituted.

September 19—Letter from Respondent to Union objecting to paid organizers soliciting employees on Respondent's premises to join the Union, and advising that supervisors had been instructed not to respond to requests for information from union representatives without the approval of Respondent's vice president and general manager.

October 1—Letter from Respondent to union trustee regarding food and beverage unit matter, and calling attention to fact union representatives had made visits to hotel-service employees without giving advance notice to Respondent as required by article III of the collective-bargaining agreement.[4]

November 18—Respondent advised the Union by letter that a group of hotel-service employees had requested Respondent pay overtime after 5 instead of 6 consecutive days worked, and that it therefore proposed to pay 1-1/2 times after 40 hours per week and 2 times after 48 hours if the Union did not object. The Union did not respond to the letter and the change was instituted.[5]

November 30—Food and beverage contract expired and Respondent refused to negotiate a new food and beverage agreement on ground it doubted the Union's majority status.[6] Union commenced picketing Respondent's premises and picketed until September 1975. The record fails to show whether any of Respondent's employees engaged in a work stoppage or whether the picketing was directed at Respondent's customers. In any event, it does not appear that any of Respondent's employees declined to cross the picket line.

1975

January—Dietrich Mayring became Respondent's vice president and general manager.

February 14—Union protested termination of Joseph Coniglio and requested that he be reinstated.

February 18—Respondent letter to Union denying reinstatement of Coniglio.

February 22—Union advised Respondent it intended to arbitrate Coniglio's discharge.[7]

April 9—In accordance with article III of contract, Union advised Respondent by letter that Bobbi Swan was the Union's representative authorized to visit Respondent's premises to enforce the agreement, and that Russ Robinson was the alternate representative.

April 11—Letter from Mayring to Lawrence reminding him that article III of the agreement provided that the designated representative notify the hotel manager in advance of each visit.

April 21—Mayring letter advising Lawrence that soliciting membership in the Union is not within the purview of "administration" as used in the contract, and further advising that the Company had a long standing "no solicitation" rule, which Respondent expected the authorized representative to abide by.

April 23—Mayring letter to Lawrence confirming telephone conversation of that date wherein it was agreed that

[4] Art. III, entitled *Interviews*, reads:

The Union will submit in writing the name of one (1) and an alternate Representative authorized to visit the Employer's premises during the period of this Agreement for the purpose of assisting in the administration of this contract. Whenever a visit to the Employer's premises is required, the Representative shall notify the Hotel Manager or his designated representative in advance of each visit. It is understood that said visits will be at such times and in such a manner as to least interfere with the performance of work by employees.

[5] Sec. 3 of art. V, entitled *Salaries*, provided:

Nothing in this contract shall be interpreted to preclude the employer from giving employees an increase in the scale for any class, or individual class, during the period that this contract is in full force and effect.

[6] *Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel, supra.*

[7] On October 17 the Union's attorney advised Arbitrator Sam Kagel that he had been selected to arbitrate the Coniglio dispute. On December 17 Respondent's attorney advised Mayring that the Union's attorney had received no response from Kagel regarding the matter. Lawrence testified that the matter was never arbitrated because Coniglio disappeared.

only one union representative at a time would be allowed on Respondent's premises to assist in administration of the contract, and that the visits would not be used to solicit membership in the Union.

Mid-year—Union commenced holding monthly meetings with hotel-service employees. In addition, informal meetings were held from time to time at coffee shops, bars, and the union hall.

October 17—Letter from union attorney advising Arbitrator Sam Kagel that he had been selected to arbitrate the Coniglio grievance.

October 21—Respondent's attorney advised Mayring that an arbitrator had been selected to hear the Coniglio grievance.

October 30—Letter from Lawrence to Mayring requesting names, addresses, and phone numbers of unit employees, and for permission to post meeting notices on hotel premises.

November 5—Letter from Mayring to Lawrence declining request for names, addresses, and phone numbers of unit employees and for use of bulletin board to post notices of union meetings. Letter contains offer to meet to discuss alternatives to request.

November 11—Letter from Lawrence to Mayring renewing request for names, addresses, and telephone numbers of unit employees and for use of bulletin board.

November 14—Letter from Lawrence to Mayring advising that pursuant to article III of the contract, Swan would continue as the Union's representative authorized to enforce the agreement, and that Robert Weber was replacing Russ Robinson as the alternate representative.

November 18—Letter from Mayring to Lawrence in response to the latter's November 11 letter, again declining to furnish names, addresses, and telephone numbers of unit employees and denying use of bulletin board.

December 8—Letter from Mayring to Lawrence wherein Mayring objected to the fact that when Swan visited the hotel premises, she solicited employees to attend union meetings. Letter advised, in pertinent part, that contract permitted visits by authorized representative "*only*, 'for the purpose of assisting in the administration of this contract.' In my opinion soliciting union membership or soliciting employees to attend union meetings is not within the purview of 'assisting in the administration' of the contract. . . . However, in view of her utter disregard for the contract, we now find it necessary to have your representative accompanied by a security guard until the purpose of her visit has been determined." Mayring issued instructions to security department to accompany Swan and to make written reports on her visits to the hotel.

December 10—Letter from Lawrence to Mayring renewing for a second time the Union's request for the names, addresses, and telephone numbers of unit employees. The letter states in pertinent part: "We need this information to administer our contract in the following areas. First, we have received reports that some unit employees are receiving a paid lunch and some are not. We wish to survey the employees to discover the extent of this practice. Second, the Union has received many inquiries from unit employees concerning the amount and type of insurance coverage that may be available. Once again, the most efficient method available to the Union is to survey unit employees. There are other areas of administrating the contract where the information we request would be an invaluable aid."

December 12—Letter from Mayring to Lawrence again denying request for list of names, addresses, and telephone number of unit employees, and advising that while the contract makes no mention of unit employees entitlement to paid lunches, that all employees of the hotel, including unit employees, "receive a meal ticket entitling them to a paid lunch." Booklets explaining insurance coverage available to unit employees were also enclosed. First of five security reports (Resp. Exh. 11(a)) that Swan had been on premises that day advising unit employees, *inter alia*, of a union meeting.[8]

Late December—Limo driver Wolchow first learned his job was covered by a union contract and expressed dissatisfaction with that fact to officials of Respondent.

1976

January 26—Lawrence's letter protesting termination of Peggy Wagner and requesting grievance meeting.

February 4—Union and Respondent representatives met on Wagner grievance.

February 24—Letter from Valentine to Lawrence confirming telephone conversation of February 12 to the effect that the termination of Wagner "will stand."[9]

Second of five security reports that Swan was on hotel premises. (Resp. Exh. 11(c)).

April 7—Third of five security reports that Swan had been on hotel premises. (Resp. Exh. 11(d)).

June 21—Fourth of five security reports that Swan on premises. (Resp. Exh. 11(b)). The report states, *inter alia*, "She [Swan] told me that they had a good turn out at last meeting they had."

July—Union's Lake Tahoe office closed. Thereafter, Lake Tahoe area serviced from Union's Reno office.

July 22—Fifth security report that Swan on hotel premises. (Resp. Exh. 11(e)).

Summer (July and August)—Two union meetings with unit employees to discuss new contract proposals.

September—Wolchow requested address and phone number of NLRB from Mayring, and was warned that his proposed petition had to be circulated on his own time. Wolchow called NLRB Regional Office in San Francisco and was informed of the procedures for filing decertification petition. Wolchow testified Valentine told him there were approximately 250 employees in the unit. Valentine testified she told him there were "somewhere in the neighborhood of 280." Wolchow circulated among unit employees a petition headed "The undersigned are employees of Sahara-Tahoe Hotel, who do not want to belong to any culinary union." (Resp. Exh. 5.) Eighty-two signatures are affixed to the document. Wolchow testified he "contacted about 150 people, and out of the 150 I didn't run into anyone that was objecting to getting rid of the Union, and out of that I got 83 [sic] signatures out of 150. . . . There was some of them that was reluctant to sign the petition" . . . but that no one

[8] The other reports were made on February 24, April 7, June 21, and July 22, 1976.

[9] Lawrence testified the Union had concluded there was no merit to the Wagner grievance.

refused to sign because they wanted to keep the Union in. Wolchow testified he told employees the purpose of the petition was "So we could get out from underneath the contract and do our own bargaining." Respondent learned Union's Lake Tahoe office had been closed.

September 27—Letter from Union (Bramlet) notifying Mayring of the Union's desire to "change and modify" contract due to expire November 30, 1976.

September 28—Letter from Aro notifying Union (Bramlet) of Respondent's desire to "modify, amend, or terminate" contract.

September 29—Wolchow forwarded paper with signatures to 20th Region Office of the Board with following covering letter: "The undersigned employees of Sahara-Tahoe Hotel, do not want to be represented by the Culinary Union and are requesting an election."[10]

October 5—Letter from Board agent to Wolchow advising that an election could not be held "in the culinary unit" in view of charges pending before the Board in Washington, D.C.[11]

October 19—Having learned from Aro that the case then pending before the Board in Washington involved the bar and culinary unit, Wolchow wrote Field Examiner Engler of the Board's San Francisco Regional Office as follows:

> Referring to your letter dated Oct. 5, 1976. The contract that is before the National Labor Relations Board in Washington, D.C. does not cover Transportation, Front Desk, Housekeeping, Reservations, P.B.X., and Hotel Services. This contract runs from December 1, 1973 thru November 30, 1976. The contract disputed covered Food and Beverage Employees and had different dates.

October 21—Letter from Field Examiner Engler to Wolchow informing him of the Board's procedures for filing a decertification petition, and that in view of the insulated period, one could not be filed until after the collective-bargaining contract expired on November 30.

Letter from Wolchow to Mayring outlining his efforts and correspondence with the NLRB regarding the filing of a decertification petition, and enclosing a copy of the petition containing employee signatures. In Mayring's absence, the letter was directed to Aro.

October 28 (approximately)—Wolchow met with Aro in Mayring's absence. Wolchow informed Aro that he had contacted 150 employees and that none of them seemed interested in the Union; that they all wanted to withdraw from it; and that he would like some help. Wolchow also told him that the employees who had declined to sign the petition ". . . wanted to get out from the Union, but they just didn't want to be bothered signing the petition, didn't want to get involved in the petition."

Aro discussed the meeting with Mayring and had Valentine check the validity of the 82 signatures on the petition.

At Mayring's request, Valentine determined the employee turnover among the hotel-service employees was 278 percent in 1973, 325 percent in 1974, and 290 percent in 1975.

November 29—Letter from Lawrence to Aro enclosing two copies of Union's proposed agreement and requesting date, time, and place to commence contract negotiations.

December 16—Letter from Aro to Lawrence reading as follows:

> This will acknowledge receipt of your letter of November 29, 1976.
>
> As I am sure you are aware, a number of factors have occurred over the past months in connection with your claim to be the bargaining representative of certain of our employees. In view of these considerations, you should know that we do not believe that your organization currently represents a majority of any employees at the Sahara Tahoe Hotel in an appropriate bargaining unit.
>
> For these reasons we respectfully decline your request to commence negotiations.

C. *Findings and Conclusions Regarding Factors Relied on by Respondent for Withdrawing Recognition From the Union*

In its brief, Respondent enumerates the following factors Mayring relied upon in reaching his conclusion that the Union did not represent a majority of the employees in the hotel service unit: (1) Valentine's explanation of the trusteeship and other details of the June 1974 meeting of the Reno Employers Counsel;[12] (2) the lack of hotel-service employees' support for the Union picket line established at the hotel in 1975; (3) the fact that the majority of the union activity which took place seemed to consist of solicitation of members rather than administration of the contract; (4) the high turnover rate in the unit; (5) the fact only two grievances had been filed in the last 6 years; (6) the changes in terms and conditions of employment without union objection;[13] (7) the fact the Union office had closed; (8) the attempted filing of the decertification petition supported by more than 30 percent of the employees in the unit; (9) statements made by Wolchow that more than 50 percent of the employees in the unit stated they did not want the Union.

The withdrawal of recognition in the hotel-service unit

[10] The unit was not spelled out.

[11] On January 21, 1976, Administrative Law Judge Richard D. Taplitz issued a decision in Case 20-CA-9623 recommending dismissal of a complaint alleging violations of Sec. 8(a)(1), (3), and (5) of the Act. The Charging Party there, as here, was the Union, and involved a unit of Respondent's bar and culinary workers. Contrary to the administrative law judge's findings, on June 2, 1977, the Board issued its decision in *Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel, supra,* finding Respondent violated Sec. 8(a)(5) of the Act. As previously noted, that case is presently before the United States Court of Appeals for the Ninth Circuit on a petition for review and a cross-application for enforcement.

[12] Valentine testified she learned the Union "was in the process of bankruptcy, that it was going to be put into trusteeship, that Al Bramlet was probably going to be appointed the trustee out of Las Vegas, that there was a possibility of a merger with the Las Vegas Culinary Union and the Reno Local, and . . . that they were going to import union organizers from Las Vegas to assist in boosting the membership in the northern Nevada area."

[13] On September 15, 1974, Respondent advised the Union that unless the Union objected, it proposed to make certain changes and additions to employee fringe benefits. Also in 1974, the maids requested a meeting with the hotel manager, wherein they requested overtime pay after 5 instead of 6 consecutive days work. By letter dated November 18, 1974, the Respondent informed the Union that it proposed to institute the change if the Union did not object. The Union did not object in either instance.

took place in a context free of any other alleged unfair labor practices.[14]

In several recent cases involving either Respondent herein or other employees in the Lake Tahoe area, the Board considered and rejected a number of the factors relied upon by Mayring as the basis for Respondent's withdrawal of recognition from the Union.

The first factor relied upon by Mayring, that the Union was to be placed under trusteeship because of financial difficulties, was considered by the Board in *Sierra Development Company d/b/a Club Cal-Neva*, 231 NLRB 22, 23 (1977). Citing *Nevada Lodge*, 227 NLRB 368 (1976), the Board stated, "it would be sheer speculation to make an evaluation of employee support of the Union based on the fact that the Union was placed in trusteeship by its International because of its poor financial condition." This factor was also considered by the Board in *Finally, Inc., d/b/a Palace Club*, 229 NLRB 1128 (1977). Thus, while the appointment of a trustee, rumors of bankruptcy, and a concerted organizing effort in the northern Nevada area may indeed indicate the Union was in financial trouble, these factors may not be used as a basis for a belief that the Union lacked majority support.

Another factor cited by Mayring was the lack of employee support for the picket line established by the Union in 1975. It is clear from the record that the dispute between the Union and Respondent at that time was over withdrawal of recognition in the bar and culinary unit, not involved herein. While the record tends to show Respondent's employees crossed the picket line, Respondent, upon whom the burden rests to show "objective considerations" sufficient to rebut the presumption of the Union's majority status, has failed to show whether the picket line was intended to cause a work stoppage or was instead intended to exert economic pressure on Respondent through its customers. Moreover, citing *Palmer Asbestos & Rubber Corporation*, 160 NLRB 723 (1966), the Board reiterated its position in *Coca Cola Bottling Works*, 186 NLRB 1050, 1053 (1970) that "the mere failure of employees to support a strike called by their bargaining representative does not give rise to a presumption that these employees have repudiated the Union as their bargaining representative."

The next factor cited by Respondent in deciding to withdraw recognition from the Union was the fact the majority of the union activity which took place seemed to consist of soliciting members rather than administrating the contract. As noted by the General Counsel, "because Nevada is a right to work state, an ongoing function of any active union is the solicitation of membership." Further, the Board held in the earlier *Sahara-Tahoe* case that (229 NLRB at 1096):

> . . . even if Respondent had a reasonable basis for believing that a majority of its employees were not union members or did not financially support the Union, such knowledge does not establish a reasonable basis for believing that the Union had lost majority support.[14]

[14] Pending, however, in the Ninth Circuit Court of Appeals is the petition for review and the cross application for enforcement of the Board's decision, heretofore cited, involving a similar withdrawal of recognition and refusal to bargain issue in the bar and culinary workers unit.

[14] Moreover, Respondent's attempt to use low union membership as a gauge of union support is especially tenuous because Nevada is a "right to work" State. See *Wald Transfer & Storage Co. and Westheimer Transfer & Storage Co., Inc.*, 218 NLRB 592 (1975), enfd. 535 F.2d 657, (5th Cir. 1976).

The Board held similarly in *Finally, Inc., d/b/a Palace Club, supra,* and *Nevada Club, Inc., supra.* Moreover, the correspondence between the parties and the testimony of the witnesses show clearly that the Union's activities were not limited to recruiting new members. In addition to seeking enforcement of the collective-bargaining agreement, Respondent held both formal and informal meetings with employees, visited Respondent's premises, solicited employee complaints, filed two grievances, discussed bargaining demands with employees, and drafted a contract proposal for Respondent's consideration.

Respondent cites the high turnover rate among employees in the unit as a basis for believing the Union lacked majority support, 278 percent in 1973, 325 percent in 1974, and 290 percent in 1975. While high turnover is one circumstance to be considered, the Board has stated in this regard:

> Finally, Respondent relied on the turnover of employees to support its belief that the Union had lost majority support. This argument must also be rejected. The Board has ruled, with court approval, that turnover among employees cannot, by itself, be used as a basis for belief that a union has lost majority support since it is presumed that, absent evidence that would justify a contrary conclusion, new employees will support the union in the same ratio as those whom they have replaced.[11] Here there is no independent evidence from which it may be inferred that Respondent's new employees did not want the Union to represent them. Therefore, given our findings above, the turnover of employees cannot, by itself, be used as a basis for belief that the Union had lost majority support. (*Dalewood Rehabilitation Hospital, Inc. d/b/a Golden State Habilitation Convalescent Center*, 224 NLRB 1618 (1976). Accord: *Sierra Development Company, d/b/a Club Cal-Neva, supra; Finally, Inc., d/b/a Palace Club, supra; Nevada Club, Inc., supra.*)

[11] *Laystrom Manufacturing Co.*, 151 NLRB 1482 (1965); *Washington Manor, Inc., d/b/a Washington Manor Nursing Center (South)*, 211 NLRB 315 (1974).

Still another factor in Mayring's decision to withdraw recognition from the Union was the fact only two grievances had been filed by the Union in the last 6 years. Similar contentions have been rejected by the Board in situations, as here, where Respondent has not demonstrated that grievances existed and were unprocessed by the Union, or that the Union was lax in carrying out its obligations in this regard. *Sierra Development Company, d/b/a Club Cal-Neva, supra; Finally, Inc., d/b/a Palace Club, supra; Nevada Club, Inc., supra.* In fact, Director of Personnel Valentine testified Respondent abided by the terms of the collective-bargaining agreement, a fact not necessarily conducive to the filing of grievances. Further, the record does not show that the Union ever abandoned its representative status; nor has Respondent pointed to a single instance where the

Union failed to represent an employee properly or where an employee expressed dissatisfaction because the Union failed to represent him. *Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel, supra.* In that case the Board stated further that the Union's limited contacts with Respondent may merely indicate that the Union and Respondent enjoyed a harmonious relationship and that the Union was given no reason to file written grievances.

Lack of employee support for the Union's ability to administer the contract, contends Respondent, is demonstrated by the fact that in 1974 the maids requested a meeting with the hotel manager, instead of proceeding through their collective-bargaining representative, when they sought overtime pay after 5 instead of 6 consecutive days work. Respondent contends also that the Union's failure to respond to its notification of the resulting proposed changes in overtime pay, and to notification that Respondent proposed to make changes and additions to the fringe benefits of the unit employees, is evidence of the Union's failure to properly represent the unit employees. Respondent also points out that some of the wages paid unit employees were greater than those negotiated and listed in the contract wage scale. The simple answer to the latter point is that the collective-bargaining agreement contains a scale for "minimum wages," and under article V, section 3, Respondent retained the right to increase wages.[15] With respect to the employees' 1974 act of bypassing the Union and contacting Respondent's hotel manager directly with respect to overtime pay after 5 instead of 6 consecutive working days, such conduct merely shows, at most, that some employees may not have known that the Union already represented the employees and that the Union already had a contract with Respondent. As discussed *infra,* while there was a high rate of turnover among the unit employees, there is a presumption that the new employees will be presumed to support the Union in the same ratio as those whom they have replaced. This act, however, could hardly be construed to indicate that they did not want the Union to represent them. See, for example, *Sahara-Tahoe Corporation,* 229 NLRB at 1095-96. Nor can the Union's failure in 1974 to object to beneficial changes and additions to the fringe benefits be construed as an abandonment of its representatives responsibilities, or as evidence that the Union was either unable to administer the contract or that the employees did not want the Union to represent them. In this regard, it is noted that in 1974 Respondent recognized the Union's capacity as the representative of all of the unit employees by not instituting the proposed changes until after giving the Union an opportunity to object.

The fact the Union closed its Lake Tahoe office in the summer of 1976 is cited by Mayring as another factor he considered when he withdrew recognition from the Union. The record shows the office was initially opened in July 1974; that prior to that time the Union serviced Respondent's employees from its Reno office; and that after the office closed in the summer of 1976, the Union continued to service the unit employees with representatives from the Reno office. Moreover, on July 22, 1976, Swan was known by Respondent to have been servicing the unit employees as is evidenced by the security report of that date (Resp. Exh. 11(e)). That report recites that Swan went from floor to floor in both the main hotel and annex, and then to the employees cafeteria, advising the maids of a union meeting that evening. This constitutes clear evidence within the knowledge of Respondent that the Union had not abandoned the unit employees. Moreover, whether the Union chose to service the unit employees from its Reno, South Lake Tahoe, or perhaps some other office, is an internal union matter and does not in any way reflect a lack of employee support for the Union.

Another factor which Mayring testified contributed to his decision to withdraw recognition from the Union was the attempt of employee Wolchow to file a decertification petition with the Board supported by slightly more than 30 percent of the unit employees. The document containing 82 employees' signatures was introduced into evidence by Respondent. Of significance in making a determination whether the document signifies a rejection of the Union as their collective-bargaining representative is the legend written at the top, which reads: "The undersigned are employees of Sahara-Tahoe Hotel, who do not want to *belong* to any culinary union." (Emphasis supplied.) The Respondent's contention with respect to the meaning of the document fails to distinguish between wanting to be a union member, and desiring to have union representation. *Sierra Development Company, d/b/a Club Cal-Neva, supra* at 1096. As noted heretofore, Nevada is a "right to work" state. Hence, contrary to Respondent's contention that the document represents a rejection of the Union's representative status, the signatures affixed thereto may more logically be taken as an indication that the employees are voicing their right under state law not to *belong* to a union. In any event, a decertification petition was not in fact filed, nor do the signatures of slightly more than 30 percent of the employees indicate a rejection of the Union by a *majority* of the employees.

The Respondent contends further, however, that the loss of majority representative status is further bolstered by Wolchow's representation that he had been advised by more than 50 percent of the unit employees that they didn't want the Union. It is clear from the record that Wolchow was the only employee with whom Respondent's representatives spoke regarding the employees' likes or dislikes regarding the Union. Aro testified that Wolchow told him he had talked to "around 150 some—odd people . . . [and] there was very little, if no interest whatsoever in the union; that the people that did sign obviously were definitely against it. And those that didn't—he said they just didn't want it, but were afraid to really get involved with getting their names on a piece of paper." Wolchow testified that he contacted about 150 people and that he "didn't run into anyone that was objecting to getting rid of the union . . . [that] there was some of them that was reluctant to sign the petition," and that no one told him they were refusing to sign because they wanted to keep the Union. Wolchow's version of his conversation with Aro was to the effect that he had "contacted 150 people and that none of them seemed to be interested in the union; that they all wanted to

[15] Art. V, sec. 3 reads:

> Nothing in this contract shall be interpreted to preclude the employer from giving employees an increase in the scale for any class, or individual class, during the period this contract is in full force and effect.

withdraw from it . . ." that the difference between 82 signatures and 150 people with whom he talked was due to the fact "they just didn't want to be bothered signing the petition, didn't want to get involved in the petition."

In *Dalewood Rehabilitation Hospital, Inc., etc., supra* at 1619, the Board acknowledged that while employees statements are some indication of employee dissatisfaction, "they are entitled to little weight to the extent they purport to convey the sentiments of employees other than themselves. Otherwise, a few antiunion employees could provide the basis for a withdrawal of recognition when in fact there is actually an insufficient basis for doubting the union's continued majority." As noted before, Wolchow is the only employee who expressed employee sentiments to Respondent's executives. His sentiments, insofar as they purport to convey the sentiments of other employees, are entitled to little, if any, weight. When a comparison is made between the wording at the top of the petition signed by the 82 employees—that "The undersigned . . . employees . . . do not want to *belong* to any culinary union"—with the September 29, 1976, letter that Wolchow sent the Regional Office of the Board enclosing the petition[16]—that "The undersigned . . . do not want to be *represented* by the culinary union and are requesting an election"—the danger inherent in giving weight to statements or representations by one employee as to the sentiments of employees other than himself, is all too obvious. It may well be that Wolchow did not want to be *represented* by the Union. However, the signers of the petition indicated that they did not want to *belong* to the Union. The distinction between not wanting to *belong* and not wanting to be *represented* by the Union has been long recognized by the Board and courts, as set forth heretofore.[17]

After considering the evidence in the light of the Board and court precedents cited above, I conclude that Respondent has failed to show that it had a reasonably based doubt upon objective considerations that the Union did not enjoy majority status at the time it withdrew recognition from the Union, and that by withdrawing recognition and refusing to bargain with the Union on December 16, 1976, Respondent violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hotel, Motel, Restaurant Employees & Bartenders Union Local No. 86, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All employees employed by Respondent in its hotel-service operations at its Stateline, Nevada, operations, including housekeeping personnel; parking lot attendants; front desk employees; timekeepers; casino porters; and bellmen, excluding casino employees; bartenders and culinary workers; office clerical employees; carpenters; employees in the engineering department; warehouse employees; stage hands; guards and supervisors as defined in the National Labor Relations Act.

4. At all times material herein, the Union has been, and is, the exclusive representative of all employees in the above described appropriate unit for the purposes of collective bargaining.

5. By withdrawing recognition from the Union and by refusing to bargain with the Union as the exclusive bargaining representative of the employees in the unit described above, concerning the wages, hours, working conditions, and other terms and conditions of employment of the employees in the unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

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

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[18]

The Respondent, Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain with Hotel, Motel, Restaurant Employees & Bartenders Union Local No. 86, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate unit described below, with regard to the wages, hours, working conditions, and other terms and conditions of employment of the unit employees:

> All employees employed by the Respondent in its hotel-service operations at its Stateline, Nevada operations, including housekeeping personnel; parking lot attendants; front desk employees; timekeepers; casino porters; and bellmen, excluding casino employees; bartenders and culinary workers; office clerical employees; carpenters; employees in the engineering department; warehouse employees; stage hands; guards and

[16] Resp. Exh. 6.

[17] Casting further doubt on the probative value of the petition is the fact that at least some of the employees apparently took it lightly and signed spurious names, e.g., Babe Ruth and Johnny Bench.

[18] 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.

supervisors as defined in the National Labor Relations Act.

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

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

(a) Recognize and, upon request, bargain collectively with Hotel, Motel, Restaurant Employees & Bartenders Union Local No. 86, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate unit described below, with regard to the wages, hours, working conditions, and other terms and conditions of employment of the unit employees, and if an understanding is reached, embody such an understanding in a signed agreement. The unit found appropriate for the purpose of collective bargaining is:

> All employees employed by the Respondent in its hotel-service operations at its Stateline, Nevada operations, including housekeeping personnel; parking lot attendants; front desk employees; timekeepers; casino porters; and bellmen, excluding casino employees; bartenders and culinary workers; office clerical employees; carpenters; employees in the engineering department; warehouse employees; stage hands; guards and supervisors as defined in the National Labor Relations Act.

(b) Post at its Stateline, Nevada, place of business copies of the attached notice marked "Appendix."[19] Copies of the notice on forms provided by the Regional Director for Region 32, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for a period of 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 the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[19] 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 Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."