

Randall P. Kane, Inc., d/b/a The Catalyst and Hotel, Motel, Restaurant Employees & Bartenders International Union Local 483. Case 32-CA-81 (formerly 20-CA-11333)

February 23, 1979

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO
AND MURPHY

On June 21, 1977, the National Labor Relations Board issued a Decision and Order in this proceeding.¹ The Board, in agreement with Administrative Law Judge Richard J. Boyce, found that Respondent violated Section 8(a)(1) of the Act by, *inter alia*, threatening employees with various reprisals in the event they persisted in union activities or selected the Union as their representative, creating the impression of surveillance, interrogating employees about their union activities, and making unlawful promises; and violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employee Peter Puhl. The Board also found, in agreement with the Administrative Law Judge, that by April 13, 1976, the Union had secured valid authorization cards from a majority of unit employees and concluded that, because of Respondent's unfair labor practices commencing on April 5, 1976, these cards were a more accurate measure of the employees' free and uncoerced desire on the issue of representation than an election would be. Accordingly, the Board agreed with the Administrative Law Judge that the circumstances of the case warranted an order directing Respondent to recognize and bargain with the Union² and found that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to do so.

Thereafter, on August 28, 1978, the United States Court of Appeals for the Ninth Circuit issued a decision³ in which it granted enforcement of the Board's

¹ 230 NLRB 355.

² The Board modified the date of the bargaining order to the date of the Union's demand, April 19, 1976.

³ 581 F.2d 215.

⁴ The 15 signatures referred to include those of Lee Jackson, Jonathan Eckert, Samuel Casson, and Sue Phillips, who testified at the hearing, and those of 11 employees whose anticipated testimony was stipulated to by the parties.

Order relating to the violations of Section 8(a)(1) and (3) of the Act. The court, however, refused to approve the bargaining order or to enforce the alleged 8(a)(5) violation of the Act, and remanded that portion of the proceeding to the Board with instructions to receive evidence regarding the circumstances surrounding the signing of 15 challenged authorization cards counted by the Board as valid⁴ and to again examine the issue of whether or not the Union had a card majority at the time of its demand for recognition.

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, having duly considered the issue outstanding in the light of the decision of the United States Court of Appeals for the Ninth Circuit remanding the proceeding, and the statements of position on remand of the Charging Party, Respondent, and the General Counsel, has decided that the record contains insufficient evidence to enable it to determine the validity of the 15 challenged authorization cards. We shall therefore remand this proceeding to Administrative Law Judge Richard J. Boyce to take any additional evidence which the parties may wish to present as to the validity of the 15 cards in question and to thereafter issue a Supplemental Decision in this matter.⁵

ORDER

It is hereby ordered that this proceeding be, and it hereby is, remanded to Administrative Law Judge Richard J. Boyce for further action, including reopening the hearing for the limited purpose of allowing the parties to supplement the record regarding the circumstances surrounding the signing of 15 authorization cards and the preparation and issuance of a Supplemental Decision setting forth findings, including credibility resolutions if necessary, and conclusions of law on the validity of the challenged cards, and that thereafter Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall apply to such Supplemental Decision.

⁵ As the Administrative Law Judge noted and the court implied, the stipulation entered into by the parties as to the testimony of 11 of the card signers is of little meaning in the circumstances of this case. Accordingly, the Board no longer accepts that stipulation.