

Aladdin Hotel Corp. d/b/a Aladdin Hotel and Professional, Clerical, Ground Maintenance, Parking Lot Attendants, Car Rental Employees, Warehousemen & Helpers Local 995, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 31-CA-7110

October 7, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND MURPHY

Upon a charge filed on June 6, 1977, by Professional, Clerical, Ground Maintenance, Parking Lot Attendants, Car Rental Employees, Warehousemen & Helpers Local 995, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Aladdin Hotel Corp. d/b/a Aladdin Hotel, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint on June 20, 1977, 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, 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 9, 1977, following a Board election in Case 31-RC-3292 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 May 25, 1977, 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. The complaint further alleges that commencing on or about May 16, 1977, and continuing thereafter, the Union has demanded that Respondent furnish it with the following information regarding the employees in the certified unit: (1) names and addresses; (2) classifications by department; (3) date hired and starting rate pay; (4) date of upgrade, if any, and rate of pay; (5) present rate of pay; (6) all health and

welfare, pension, and all other fringe benefits; and (7) vacation policy, and that, since on or about May 25, 1977, Respondent has refused and continues to refuse to furnish the Union with this information. On June 27, 1977, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On July 21, 1977, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 3, 1977, 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.

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 its response to the Notice To Show Cause, Respondent attacks the Union's certification on the basis of its election objections relating to its good-faith belief that the Union no longer represents a majority of the employees in the unit. Respondent has asserted that its change in operations and correlative change in the employee complement of the bargaining unit, predating certification, constituted "unusual circumstances" justifying its refusal to bargain. Also, on the basis of the Union's alleged lack of majority status, Respondent contends that it is under no obligation to furnish the information requested by the Union.

In view of the General Counsel's contention that this issue was raised and litigated in the representation proceeding, we have reviewed the record thereof. On May 9, 1977, the Board issued a Decision and Certification of Representative in Case 31-RC-3292² in which the Petitioner was certified as the bargaining representative of certain employees of Respondent in an appropriate unit. On May 11, 1977, Respondent moved the Board for reconsideration of its Decision or, alternatively, that the Decision be vacated and the case set for hearing because of the unit's expansion and turnover. Thereafter, on May 16, 1977, the Employer renewed its motions. On May 26, 1977, the Board ordered that the Employer's

¹ Official notice is taken of the record in the representation proceeding, Case 31-RC 3292, 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 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26

(C.A. 5, 1969); *Intertype Co., v. Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA, as amended.

² 229 NLRB 499.

motion for reconsideration be denied as lacking in merit.

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. We shall, accordingly, 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

Aladdin Hotel Corp. d/b/a Aladdin Hotel, a Nevada corporation, at all times material herein has operated a hotel and gambling casino in the State of Nevada. The principal office and place of business of Aladdin Hotel is at 3667 Las Vegas Boulevard South, Las Vegas, Nevada. During the past 12 months, Respondent, in the course and conduct of its business operations, received gross revenues in excess of \$500,000. During the same period, Respondent purchased goods valued in excess of \$50,000 that were shipped from points outside the State of Nevada directly to Respondent's Nevada location.

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

Professional, Clerical, Ground Maintenance, Parking Lot Attendants, Car Rental Employees, Warehousemen & Helpers Local 995, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 office clerical employees employed by the Employer at its facility located at 3667 Las Vegas Boulevard South, Las Vegas, Nevada; excluding all other employees, professional employees, supervisors and guards as defined in the Act.

2. The certification

On October 23, 1975, 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 31, 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 9, 1977, 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 May 16, 1977, 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 and to furnish to the Union certain information regarding the wages, hours, and terms and conditions of unit employees. Commencing on or about May 25, 1977, 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 or to furnish the requested information.

Accordingly, we find that Respondent has, since May 25, 1977, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit. We also find that Respondent has, since May 25, 1977, and at all times thereafter, refused to honor the Union's request for information which we deem relevant to it in its role as bargaining representative. By such refusals, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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).

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.

Having found further that Respondent, in violation of its duty under Section 8(a)(5) of the Act, refused to furnish the Union with names and addresses; classifications by departments; hiring dates and starting pay; dates of upgrade and rates of pay; present rates of pay; health, welfare, pension, and all other fringe benefits; and vacation policies for all employees in the unit represented by the Union, we shall order Respondent to promptly furnish the Union with such information, and to bargain collectively with the Union, upon request, concerning the manner and form in which such information shall be furnished the Union in the future and the intervals at which such information shall be brought up to date.

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 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

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

CONCLUSIONS OF LAW

1. Aladdin Hotel Corp. d/b/a Aladdin Hotel is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Professional, Clerical, Ground Maintenance, Parking Lot Attendants, Car Rental Employees, Warehousemen & Helpers Local 995, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All office clerical employees employed by the Employer at its facility located at 3667 Las Vegas Boulevard South, Las Vegas, Nevada; excluding all other employees, professional employees, supervisors and guards 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 9, 1977, 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 May 25, 1977, 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 refusing on or about May 25, 1977, and at all times thereafter, to furnish the above-named labor organization, upon request, a list of names and addresses; classifications by departments; dates of hiring and starting rates of pay; dates of upgrade, if any, and rates of pay; present rates of pay; all health and welfare, pension, and all other fringe benefits; and vacation policy of all employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By the aforesaid refusals 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.

8. 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, Aladdin Hotel Corp. d/b/a Aladdin Hotel, Las Vegas, Nevada, 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 Professional, Clerical, Ground Maintenance, Parking Lot Attendants, Car Rental Employees, Warehousemen & Helpers Local 995, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All office clerical employees employed by the Employer at its facility located at 3667 Las Vegas Boulevard South, Las Vegas, Nevada; excluding all other employees, professional employees, supervisors and guards as defined in the Act.

(b) Refusing to furnish Professional, Clerical, Ground Maintenance, Parking Lot Attendants, Car Rental Employees, Warehousemen & Helpers Local 995, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with the names and addresses; classifications by departments; dates of hiring and starting rates of pay; dates of upgrade, if any, and rates of pay; present rates of pay; all health and welfare, pension, and all other fringe benefits, and vacation policy of all employees in the appropriate unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise 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 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) Promptly furnish the above-named labor organization with the names and addresses; classifications by departments; hiring dates and starting pay; dates of upgrade and rates of pay; present rates of pay; health, welfare, pension, and all other fringe benefits; and vacation policies for all employees in the appropriate unit.

(c) Post at its Las Vegas, Nevada, facility copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 31, 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.

(d) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ 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."

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 Professional, Clerical, Ground Maintenance, Parking Lot Attendants, Car Rental Employees, Warehousemen & Helpers Local 995, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to furnish the above-named Union with the names and addresses; classifications by departments; dates of hiring and starting rates of pay; dates of upgrade, if any, and rates of pay; present rates of pay; all health and welfare, pension, and all other fringe benefits; and vacation policy of all employees in the appropriate unit.

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.

WE WILL promptly furnish the above-named labor organization with the names and addresses; classifications by departments; hiring dates and starting pay; dates of upgrade, if any, and rates of

pay; present rates of pay; all health and welfare, pension, and all other fringe benefits; and vacation policy of all employees in the appropriate unit. The bargaining unit is:

All office clerical employees employed by the Employer at its facility located at 3667

Las Vegas Boulevard South, Las Vegas, Nevada; excluding all other employees, professional employees, supervisors and guards as defined in the Act.

ALADDIN HOTEL CORP.
D/B/A ALADDIN HOTEL