CONCLUSIONS OF LAW

1. International Chemical Workers Union, Local 16, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. By discriminatorily discharging employee Till on April 29, 1959, to discourage membership in and activity on behalf of the above-named labor organization, and thereby interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Floridan Hotel of Tampa, Inc. *and* Hotel & Restaurant Employees and Bartenders Union, Local No. 104, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL–CIO. *Case No. 12–CA–1414. March 2, 1961*

DECISION AND ORDER

On August 30, 1960, Trial Examiner John C. Fischer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Fanning and Kimball].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, to the extent consistent with our Decision herein.

We agree with the Trial Examiner, for the reasons set forth hereinafter, that the Respondent violated Section 8(a)(1) of the Act.

Shortly before April 1, 1960, the incumbent certified union, the Charging Party herein, distributed stewards' and members' union buttons to be worn by all stewards and members. On or about April 1, 1960, the Employer issued a bulletin promulgating "a rule that no badges of any kind will be worn by any employee so that they may be seen by any customer or guest." The reason stated in the bulletin for

the issuance of the rule was that the Employer did "not feel that it lends to the dignity of our Hotel for employees to openly display badges of any sort, whether it be a union badge, lodge, or what have you." The bulletin was posted on all bulletin boards and handed to many employees in the kitchen, linenroom, engineroom, and service department, as well as to employees in the public dining room and lounge and bar. The Respondent enforced this rule against the wearing of these buttons with threats to employees either of discharge or of having to "suffer the consequences" for any violations thereof. Such threats were made not only to employees having contact with the public, but also to categories of employees having no contact with the public, such as glass washer and cook in the kitchen, engineer in the engineroom, trashman, and freight elevator operator.

Like the Trial Examiner, we find that the rule was broader than Respondent's claimed or stated purpose in that it prohibited all employees from wearing union buttons or insignia while at work in the Respondent's hotel, regardless of their contact with customers or guests. The rule was thus applicable in instances which lacked the special circumstances claimed by the Respondent as making the rule necessary.[1] We, therefore, find in agreement with the Trial Examiner that the promulgation of this broad rule and the implementation thereof with threats of discharge or of other penalty interfered with, restrained, and coerced the employees in the exercise of their rights under Section 7 of the Act and thus violated Section 8(a)(1) of the Act.[2] We need not consider, however, whether a different rule which would cover only those employees who are in continuous and daily contact with the public would also be violative of Section 8(a)(1) of the Act. Contrary to our dissenting colleague, our order herein is designed solely to prohibit the Employer's use of a broad rule prohibiting all employees, whether or not in contact with the public, from wearing union buttons.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Floridan Hotel of Tampa, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating and maintaining a rule prohibiting its employees from wearing union buttons or insignia, threatening to discharge or otherwise discipline employees for violations thereof, thereby inter-

[1] *Kimble Glass Company*, 113 NLRB 577.

[2] *Spielman Motor Sales, Inc.*, 127 NLRB 322. We do not adopt the unsupported finding of the Trial Examiner that the rule was issued in an attempt to dissipate the Union's majority. It appears that it was intended, rather, to prevent the Union from gaining additional members. In any event, its effect was as indicated in our Decision herein.

fering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Hotel & Restaurant Employees and Bartenders Union, Local No. 104, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, and to refrain from any any all such activities.

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

(a) Post at its hotel at Tampa, Florida, copies of the notice attached hereto marked "Appendix."[3] Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by Respondent's representative, 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.

(b) Notify the Regional Director for the Twelfth Region, in writing, within 10 days from the date of this Decision and Order, what steps the Respondent has taken to comply herewith.[4]

[3] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

[4] Member Kimball disagrees with the breadth of the Order entered herein as he would find not violative of the Act that portion of the Respondent's rule which forbids the wearing of union buttons by employees who are in continuous and daily contact with the public. As the Board expressly disavowed and did not pass upon the question of whether a rule applicable to the wearing of union buttons by employees who are in continuous and daily contact with the public would be violative of the Act, the Order as presently phrased is too broad. It would encompass a rule applicable to such employees and as it thus goes beyond the scope of the findings and decision in this case, it exceeds the Board's statutory authority in the premises.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT promulgate and maintain a rule prohibiting our employees from wearing union buttons or insignia, threatening to discharge or otherwise discipline our employees for violations

thereof, thereby discouraging membership in Hotel & Restaurant Employees and Bartenders Union, Local No. 104, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Hotel & Restaurant Employees and Bartenders Union, Local No. 104, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain from any and all such activities.

FLORIDAN HOTEL OF TAMPA, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon charges filed by Hotel & Restaurant Employees and Bartenders Union, Local No. 104, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL–CIO, herein called the Union, against Floridan Hotel of Tampa, Inc., herein called the Respondent the General Counsel of the National Labor Relations Board caused a complaint to issue on May 18, 1960, alleging that the Respondent had violated Section 8(a)(1) of the National Labor Relations Act, as amended (61 Stat. 136). In its answer, Respondent denied the commission of any unfair labor practices, moved to dismiss the complaint, and upon being overruled stood on its affirmative defenses.

Pursuant to notice, a hearing was held before the duly designated Trial Examiner in Tampa, Florida, on July 5, 1960. The General Counsel and Respondent were represented by counsel and the Union was represented by an International representative. The parties were afforded full opportunity to be heard, to introduce evidence, to present oral argument, and to file briefs. Counsel for the General Counsel and for Respondent argued orally at the conclusion of the hearing and thereafter filed briefs on the stipulated and controverted facts.

Upon a consideration of the entire record and the "Memorandum of Authorities," I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Florida corporation maintaining its hotel business at 905 Florida Avenue, Tampa, Florida. Respondent admits, and I find, that Respondent is engaged in commerce within the meaning of the Act.

Respondent is engaged in the operation of a 345-room, 19-story hotel in Tampa, Florida, which operation includes a tap room, a dining room, cocktail lounge, and banquet and party facilities. Approximately 50 percent of the guests of Respondent's hotel come from outside of the State of Florida, and remain in the hotel for a period of less than 1 month. Respondent's gross annual revenues during the year 1958 amounted to more than $930,000, of which $540,000 was received from the rental of rooms, $187,000 was received from food sales, and $209,000 was received from the sale of beverages.

II. THE LABOR ORGANIZATION INVOLVED

Hotel & Restaurant Employees and Bartenders Union, Local No. 104, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL–CIO, was certified by the National Labor Relations Board on October 19, 1959, as the exclusive bargaining representative for Respondent's employees in an appropriate unit, and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Stipulated Facts

It was stipulated and agreed by counsel for General Counsel and counsel for Respondent as follows:

At all times material herein approximately 130 employees were in the employ of Respondent in the appropriate unit for which the Union had been certified. Of that 130, approximately 110 employees are members of the Union and 20 employees are not. At sometime shortly prior to April 1, 1960, the Union distributed to its members union pins to be worn by them. One union pin was distributed for wearing by the employees generally, and another pin was distributed to those employees who were union stewards.

On or about April 1, 1960, Respondent promulgated a rule and issued a bulletin incorporating such rule, which bulletin has been received in evidence as General Counsel's Exhibit No. 2, and this bulletin was posted throughout the hotel wherever there are bulletin boards, and was delivered by hand to many of Respondent's employees, including employees in the Crystal Room, the Sapphire Room, the kitchen, the linenroom, the engineroom, and the service department.

Following the posting of the bulletin, General Counsel's Exhibit No. 2, Respondent orally advised employees of the promulgation of the rule and of its enforcement, as follows:

(a) On or about April 2 and 6, 1960, Peter Anderson, headwaiter, told Renee Smith, cocktail waitress, to remove her union pin or suffer the consequences.

(b) On or about April 2, 1960, Peter Anderson told Manuel Alvarez, glass washer, to stop wearing his union pin or suffer the consequences.

(c) On or about April 5, 1960, Stanley Wade, assistant manager of the hotel, told Renee Smith, Bartender Albert Tracy, and Alva Kennedy, cashier, Sapphire Room, to take off their union pins or suffer the consequences.

(d) On or about April 2, 1960, Virgil D. Smith, president of Respondent, told Ruth Gunn, hostess in the Crystal Dining Room, to tell the employees to take off their union pins, and if they reported to work with them on they would be fired.

(e) On or about April 2, 1960, Hostess Ruth Gunn told Fern White, waitress, to take off the union pin, as management did not like the employees wearing it.

(f) On or about April 4, 1960, Ruth Gunn told Fern White and other waitresses not to wear their union pins, because Virgil D. Smith had said they would be fired if they continued wearing their pins. During the above conversation it was pointed out to Hostess Ruth Gunn that the waitresses were wearing their pins underneath the lapels of their uniforms, and that the pins could not be seen by guests. Hostess Gunn told the employees to remove the pins despite their inconspicuousness.

Prior to this incident and subsequent thereto, several of the waitresses in the Crystal Dining Room openly displayed their union pins upon their uniforms.

(g) On or about April 9, 1960, several of the waitresses reported to work wearing their union pins, and Hostess Gunn took down their names and told them not to wear their union pins or suffer the consequences. Several waitresses attempted to explain the wearing of the pins, and called over Jean Valdez, a fellow waitress, to explain the situation to Hostess Gunn. At this time J. B. Pickard, manager of the Hotel, joined the discussion, and told the waitresses the management would not allow them to wear union pins, and if they continued to do so they would have to suffer the consequences.

(h) On or about April 5, 1960, Chef Ed Mortem explained to the kitchen personnel the rule against the wearing of union pins.

(i) On or about April 8, 1960, Stanley Wade, assistant manager of Respondent, went into the kitchen and told Cook Sam Smith that he would hold Smith personally responsible for anyone wearing union pins the following day, and that if anyone wore union pins in the future in the kitchen they would have to suffer the consequences.

(j) On or about April 7, 1960, Housekeeper Howard Brown called a meeting of all employees under his supervision, including maids and a trashman, and told them not to continue wearing union pins, and if they did they would be fired.

(k) On or about April 2, 1960, Raymond Murgado, superintendent of services, called a meeting of the employees under his supervision and told them to take off their union pins, and if they continued wearing their pins they would suffer the consequences.

(l) On or about April 5, 1960, Stanley Wade, assistant manager of Respondent, told Elpidio Hajaistrom, bell captain, not to wear his union pin any longer, and if he continued to wear it he would suffer the consequences.

(m) On or about April 5, 1960, Stanley Wade went into the engineroom and told Engineer Ervin Kuhn that yesterday was the last day any of the employees could wear union pins, and further that if he did not take his off he would have to suffer the consequences.

Respondent, as one of the operations in its hotel, has a public dining room called the Crystal Dining Room, and a lounge and bar called the Sapphire Room. Among the employees employed in the Crystal Dining Room and the Sapphire Room are waitresses, cashiers, and bartenders, who have frequent and daily contact with the guests and customers of Respondent. Among these are waitresses Renee Smith, Fern White, and Jean Valdez and Bartender Albert Tracy.

The Respondent does not furnish the waitresses with their uniforms, but prescribes its form as per its agreement with the Union, namely, a standard hotel uniform of white nylon. As to the bartenders, the Respondent furnishes their jackets.

Respondent also maintains a kitchen, in which are employed cooks, dishwashers, and glass washers. Among those employed in the kitchen are Manuel Alvarez, a glass washer, and Cook Sam Smith. Neither Sam Smith nor Manuel Alvarez, nor any employees in the kitchen, have any contact with the public in the performance of their duties. Respondent furnishes the cooks with an apron and the glass washers with a jacket.

The Respondent also has a department which is known as its services department, which includes its maids, a trashman, an engineer, and a freight elevator operator. Respondent furnishes the maids with standard maid uniforms. The maids perform the duties usually performed by maids in hotels, and have limited contact with the public. The trashman has no contact with the public. Engineer Ervin Kuhn and Freight Elevator Operator Anthony Courzis, for whom Respondent does not furnish the uniforms, have no contact with the public.

In the operation of its hotel, Respondent also employs bellboys, doormen, and front elevator operators. These individuals perform the duties usually performed by employees with such classifications. Respondent furnishes employees in these classifications with standard uniforms, and these employees have frequent and daily contact with the public.

In concluding his opening statement and instructions at the trial, the Trial Examiner stated that any party would be entitled upon request made before the close of the case to file a brief or proposed findings and conclusions, or both, to the Trial Examiner. Counsel for each party availed himself of this opportunity to submit legal conclusions and argument on the novel situation presented by the stipulated facts. Because of the importance and interest of the legal propositions involved therein, the Trial Examiner is setting forth, verbatim, portions of such arguments and conclusions of counsel.

The entire issue of this case centers on a work rule issued by Respondent on April 1, 1960, which is quoted as follows:

BULLETIN

> A number of guests have called to the attention of the Management that many employees are wearing union badges during working hours and on uniforms.
>
> We do not feel that it lends to the dignity of our Hotel for employees to openly display badges of any sort, whether it be a union badge, lodge, or what have you.
>
> Therefore, there is hereby established a rule that no badges of any kind will be worn by any employee so that they may be seen by any customer or guest.
>
> Management
> HOTEL FLORIDAN

The General Counsel and union counsel state the issue as being whether establishment by a hotel of a rule prohibiting employees from wearing union insignia, and enforcement of said rule by supervisors and agents of said hotel through threads of discharge for the continued wearing of such insignia, violates Section 8(a)(1) and (7) of the Act. Respondent counsel presents the question for determination as being whether it is lawful for a hotel to promulgate in the interest of its business

relations with its customers and guests a rule prohibiting its employees from wearing badges of any kind (union buttons in the present case (where such badges are displayed so that they may be seen by any customer or guest at the hotel.

The General Counsel argued, and the Trial Examiner agrees:

The right of employees to wear union insignia at work has long been established and recognized as a reasonable and legitimate form of union activity,[1] and the rule has been followed through the years until the present.[2] Interference with such activity is "presumptively invalid, in the absence of special circumstances" which makes such interference "necessary in order to maintain production and discipline." [3] An employer cannot restrict the wearing of passive inoffensive advertising insignia which do not interfere with discipline or efficient production.[4]

In dealing with this right, the Board has considered the problem, where, in the main, the employees were employed in factories, shops, or other similar places where little or no contact with the public was involved.[5] It is noted, however, that in *W. T. Grant Company*,[6] the Board held that wearing of union buttons by two girls employed in the store constituted a protected activity and that the company violated Section 8(a)(1) simply because of interrogation of the two employees about their wearing of the union pins. While it is true that the question of the rights of employees who deal with the public to wear union insignia was not raised by the Board, inasmuch as the employees there dealt with the public, there can be no distinction between this case and the situation at hand.

This right of employees to wear union insignia at work is not an unqualified right, however. In discussing this right the Board has spoken of special circumstances which permit an employer to request removal of union badges.[7] In defining these circumstances, the Board has spoken in terms of "incendiary atmosphere" and "preventing violence." [8] Although stating there would be circumstances wherein an order prohibiting the display of union insignia would be justified, the Board has further qualified that statement saying such a prohibition must still be only on a temporary basis.[9]

In the instant case, there existed no such special circumstances as defined by the Board. Although the Union was engaged in an organizational campaign to increase its membership in the bargaining unit to 100 percent, as testified to by the business agent of said Union, no heated campaign tactics were being utilized, no union rivalry existed, the atmosphere was placid, and violence was unthought of. No special circumstances existed to permit prohibition of the display of union badges.

Respondent contends the wearing of union pins by union members at its hotel detracts from the dignity of the hotel and is offensive to many of its guests; it contends the rule was applicable to only that segment of the union employees who have contact with the public; and it contends that it should be allowed an exception to the stated law governing the rights of employees to wear union pins as a legitimate form of union activity. This is not the case. The rule was issued in an attempt to dissipate the Union's majority within the bargaining unit. The rule was circulated throughout the entire hotel and made applicable to all employees. Respondent has even stipulated to threatening statements made by its supervisors and agents to not only those employees who have contact with guests, but also to those employees who have little or no contact with the public. Not only were the waitresses and bellboys threatened with discharge or intimated dire circumstances, but the glass washer, cooks, and other kitchen personnel, engineers, trashman, and freight elevator operator were also threatened and they have no contact with the patrons. The maids also were not excluded from the applicability of this rule, for the rule was posted on their bulletin board and they, too, were threatened with discharge. Respondent, since issuance of its rule, has not

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[1] *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793, 802.

[2] *Spielman Motor Sales, Inc.*, 127 NLRB 322.

[3] *Boeing Airplane Company*, 103 NLRB 1025, 1026.

[4] *Caterpillar Tractor Company, a Corporation* v. *N.L.R.B.*, 230 F. 2d 357 (C.A. 7).

[5] *Spielman Motor Sales, Inc., supra; G & S Manufacturing, Inc.*, 123 NLRB 1602; *United Butchers Abattoir, Inc.*, 123 NLRB 946; *Murphy Diesel Company*, 120 NLRB 917.

[6] 94 NLRB 1133, enfd. 199 F. 2d 711 (C.A. 9).

[7] *Nebraska Bag Company*, 122 NLRB 654; *Commercial Controls Corporation* v. *N.L.R.B.*, 258 F. 2d 102 (C.A. 2); *Kimble Glass Company*, 113 NLRB 577; *Boeing Airplane Company* v. *N.L.R.B.*, 217 F. 2d 369 (C.A. 9).

[8] *Boeing Airplane Co.* v. *N.L.R.B., supra.*

[9] *Ibid.*

revoked the rule's applicability, but instead, has left its impact to remain as issued.

The design of the pins is far from being offensive and appears to be in good taste. The pins carry no message other than identifying data on their faces and are so small that only the more astute observer would take note of them. In regard to the possibility that the pins are offensive to the guests of the hotel, apparently one of the greater concerns of the hotel, Respondent appears to have acted too hastily in attempting to assure that no insult to its patrons resulted in the display of such an innocuous pin. It apparently issued its rule upon the representation of one patron. Certainly this one man, who allegedly was rebuffed by the appearance of the pins, does not represent a true crosssection of the opinion of the hotel guests.

Respondent goes further, however, and says that because of the decisions handed down in the nonsolicitation rule cases, it, too, should be allowed to bridge the rights of its employees with regard to the wearing of union pins. The General Counsel submits first that the nonsolicitation rules are not applicable to the situation existing in this case, and that a broadening of the scope of those cases would subvert the intent and purpose of the Act. Secondly, General Counsel submits that the law is well settled as to the rights of employees to wear union insignia at their place of work and to deny these employees the right to wear union insignia at work would be a denial of rights contrary to the Acts and decisions of the Board and courts interpreting said Act. The rights of the employees of this hotel are no less than the rights of other employees who have had their rights not only defined by the Board, but also protected through the years by both the Board and courts.

Beyond the real purpose of the issuance of the rule by the hotel, which was to interfere with the rights of its employees and eradicate union representation at the hotel, the mere issuance and enforcement thereof had the unavoidable result of deterring employees from the exercise of their rights as guaranteed them by the Act.

Union Counsel Garrett wrote an exhaustive brief for the Trial Examiner in which he cited numerous Board and court cases supporting the General Counsel's and complaint Union's concept of the law applicable to the stipulated facts of this case. Because it covers the same area although more intensively, and because of lack of space in this report, the Trial Examiner will not set it forth, but will make it a part of this report by reference.

In his comprehensive brief to the Trial Examiner, Respondent Counsel Frank argued:

> Respondent is a rather large hotel located in the heart of downtown Tampa, Florida, and among other things, maintains therein a public dining room, known as the Crystal Dining Room, and a lounge and bar known as the Sapphire Room. In these operations Respondent employs waitresses, cashiers and bartenders who have frequent and daily contact with Respondent's guests and customers. In addition, in its operations as a hotel Respondent employs bellboys, doormen and elevator operators who perform the duties usually performed and known to be performed by such employees in such classifications. All of these employees have frequent and daily contact with the public. In addition Respondent employs maids who perform duties usually performed by maids in hotels, that is, in cleaning of the rooms and halls, making up of the beds and the like. The maids have a limited contact with the public. Respondent also employs in its operations other employees classified as engineers, cooks, dishwashers, etc.
>
> Respondent furnishes uniforms to the bellboys, doormen, elevator operators and maids. The bartenders are furnished with jackets. Although waitresses are not furnished with uniforms the hotel prescribes their uniforms which are "standard hotel uniforms of white nylon." The cooks are furnished with their aprons and other kitchen help furnished jackets. On February 2, 1960, Respondent entered into a collective-bargaining agreement with the Union in question, which had been certified as the bargaining representative of Respondent's employees. In the bargaining unit there are approximately 130 employees of which approximately 110 are members of the union. Prior to the signing of the union contract the union issued approximately 10 to 20 pins to the employees; however, a major portion of the union pins were issued to the employees after the contract was signed and it was on or about April 1, 1960, that Respondent promulgated the rule in question, prohibiting the wearing of badges or pins of any kind so they may be seen by Respondent's

guests or customers. Although the intent of the rule we feel is made clear by the rule itself, Respondent submitted the testimony of its President to show clearly the purpose of the issuance of the rule.

The President testified that the hotel management did not feel that the wearing of badges added to the dignity of the hotel and that it was not fitting to have such a thing, where the employees are in contact with the public, that might antagonize any portion of the hotel's customers. Respondent does a substantial amount of business with officials from large firms and manufacturing companies and prior to the issuance of the rule one business man called the wearing of the union pins to the attention of the President. The intent of the rule was to limit the wearing of the pins in public areas or in any manner so as to possibly annoy the guests of the hotel and the rule was not issued with any intent to discourage union activity in the hotel. After the rule was issued Respondent, through its supervisory personnel, on several occasions warned employees displaying union pins that if they continued to do so they would be subject to disciplinary action for violating the rule.

The above are the simple and undisputed facts of the case. The question presented is novel and to the writer's knowledge, has never been decided by the Board or the Courts. We recognize that there is a line of authorities, *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793, being the main decision, which holds that the employees' rights guaranteed by the Act have been violated where the Company prohibits the wearing of union insignia; however, it is our position that these authorities are not controlling in this case. Furthermore, the Supreme Court in the *Republic Aviation* case, *supra,* did not hold that in every instance a rule prohibiting the wearing of union insignia would be unlawful. The Court made the statement that they did not find any exceptional circumstances there which would give the employer the right to issue such a rule.

We submit the facts and circumstances of the present case are exceptional and such that would make a rule of the kind in question reasonable. It is quite obvious that by the very nature of hotel operations the hotel employees are daily coming in contact with the public, consisting of businessmen and others in all walks of life, many of whom share mixed feelings concerning unionism. It is therefore only reasonable for the hotel to adopt a rule prohibiting the displaying of union badges in order that these guests might not be offended. This case might be viewed in a different light had the rule been issued at a time when union organizational activities were at their peak. Even under such circumstances we would submit that the rule would be reasonable; however, be that as it may, at the time the rule in the present case was placed into effect almost all of the employees were members of the union and union organizational activity had ceased since an election had already been conducted and the Union and the Respondent had entered into a collective-bargaining agreement. Also, the case might have a different result had the Respondent issued a rule with the intent of discouraging union activity but the record discloses no such evidence. To the contrary the undisputed evidence is the rule was issued without any intent to discourage union activity.

We feel that this case is deserving of a principle of law analogous to that set forth in the case of *Marshall Field & Co.* v. *N.L.R.B.* 200 F. 2d 375 (C.A. 7), wherein a special exception was made in the case of retail stores. It was held that retail selling employees may be forbidden to engage in union activity in a store's public areas during both their working and nonworking time. This ban was extended not only to the selling floors but to areas to include elevators, escalators, stairs, corridors, and public restaurants. In the *Marshal Field* case, *supra,* the Board, as we assume General Counsel will here, relied heavily upon the *Republic Aviation* case, *supra.* The Court states:

> Granted that inconvenience to employer for some dislocation of property rights may, under some circumstances, be necessary to safeguard the right to collective bargaining, we do not think such circumstances exist in the case at bar.

The only difference we can see between the *Marshall Field* case, *supra,* and the present one is that in the former case the rule which was held lawful was enforced during organizational activity and in the present case such activity had virtually ceased. This to us is even stronger reasoning for upholding the rule. As we view the matter it is a question of balancing all the equities and reasons of the parties involved. Here, on the one hand we have the hotel's

business to think of and the probability that the wearing of union insignia would offend the hotel's guests. On the other hand the Union had been certified, the collective bargaining contract had been consummated with almost all of the employees being members of the union, and therefore no such need to engage in campaign activities.

If this involved a mining camp, steel mill, factory, or other work shop, the wearing of union badges, of course, would have no effect on the business operations of the Company. This is not the case. We have here a business which deals in selling a service to its customers and its employees come in constant and personal contact with the guests. We say, therefore, that the prohibiting of anything these employees do, whether it be wearing of pins or engaging in other conduct, which may be displeasing to any person doing business with Respondent should be lawful.

One other point, although we feel the Trial Examiner has already indicated and that is a ruling on Respondent's motion to strike the testimony of Jean Valdez. This witness testified to a meeting occurring at the end of February or the first part of March 1960 in which a supervisor is alleged to have made certain statements. Respondent moved to strike on the ground that such testimony was immaterial to the issue before the Trial Examiner and further that it was remote to the alleged incident charged in the complaint. Apparently General Counsel had hoped to show animus toward the union imputed to Respondent by the things said at this meeting; however, this meeting occurred a month or more prior to the issuance of the rule in question and on the record constitutes an isolated incident, remote and unconnected with the promulgation of the rule. Conclusion—It is respectfully submitted that the rule adopted by Respondent prohibiting the wearing of badges is reasonable and Respondent's conduct in connection therewith does not violate the Act. Therefore, the complaint should be dismissed.

Trial Examiner's Conclusion

The promulgation of a rule by hotel management prohibiting *all* its employees, regardless of their contact with the public, from wearing union insignia while at work on its premises and enforcing this rule with pain of discharge is violative of Section 8(a)(1) of the Act for the reason that the right of employees to wear such union insignia at work has been long recognized by the Board and courts as a reasonable and legitimate form of union activity. Such rule interferes with, restrains, and coerces employees in their exercise of rights guaranteed by Section 7 of the Act. It is so found and held, and it will be recommended that a proper cease-and-desist order issue.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimated, and substantial relation 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 the Respondent has engaged in unfair labor practices within the meaning of the Act by acts of interference, restraint, and coercion, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Hotel & Restaurant Employees and Bartenders Union, Local No. 104, affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]