

since has been, the exclusive representative of all the employees in the aforesaid appropriate unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. By refusing to bargain with the above-named Union with respect to wages, on February 4, 1960, and by refusing on February 10, 1960, and at all times thereafter, to recognize or bargain with said Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

4. By the foregoing conduct the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed 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.

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

6. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by unilaterally granting individual wage increases.

[Recommendations omitted from publication.]

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**Hilton Hotels Corporation d/b/a Hilton Hotel and Local 628,  
Bartenders & Culinary Workers Union, Hotel & Restaurant  
Employees & Bartenders International Union, AFL-CIO.**  
*Case No. 28-CA-655. May 12, 1961*

#### DECISION AND ORDER

On December 14, 1960, Trial Examiner Howard Myers 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.

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 McCulloch and Members Leedom and Fanning].

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 the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

We are satisfied, as apparently was the Trial Examiner, that Theodore Coombes did not engage in union activity during working hours. Accordingly, we reject, as having no basis in fact, the Respondent's defense that it discharged Coombes because he engaged in union activity during working hours. For the reasons indicated in the Intermediate Report, we find, as did the Trial Examiner, that the Respondent discharged Coombes because of his protected union activity, in violation of Section 8(a)(3) and (1) of the Act.

## 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, Hilton Hotels Corporation, doing business as Hilton Hotel, El Paso, Texas, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & 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 purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

(b) Discouraging membership in Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, or in any other labor organization, by discharging or refusing to reinstate any of its employees or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

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

(a) Offer to Theodore Coombes immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges.

(b) Make whole Theodore Coombes for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to the date of the Respondent's offer of reinstatement, less his net earnings during said period, said backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

(c) Preserve and, upon request, make available to the Board or to its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due Theodore Coombes and his right of reinstatement under the terms of this Order.

(d) Post at its establishment at El Paso, Texas, copies of the notice attached hereto marked "Appendix."<sup>1</sup> Copies of said notice, to be

<sup>1</sup> 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."

furnished by the Regional Director for the Twenty-eighth Region, shall, after being duly signed by the Respondent's authorized representative, be posted for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-eighth Region, in writing, within 10 days from the date of this Order, as to what steps the Respondent has taken to comply herewith.

## 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 in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities.

WE WILL offer to Theodore Coombes immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become, or remain or to refrain from becoming or remaining, members of the above-named Union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

HILTON HOTELS CORPORATION DOING  
BUSINESS AS HILTON HOTEL,  
*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 AND RECOMMENDED ORDER

## STATEMENT OF THE CASE

Upon a charge duly filed on August 10, 1960,<sup>1</sup> by Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel<sup>2</sup> and the Board, through the Regional Director for the Sixteenth Region, issued a complaint, dated September 26, against Hilton Hotels Corporation doing business as Hilton Hotel, herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended from time to time, 61 Stat. 136, herein called the Act.

Copies of the charge, complaint, and notice of hearing were duly served upon Respondent and copies of the complaint and notice of hearing were duly served upon the Union.

Specifically, the complaint alleged that Respondent discharged T.H. Coombes on or about August 1, and thereafter refused to reinstate him, because Coombes had engaged in union or concerted activity.

On October 7 Respondent duly filed an answer denying the commission of the unfair labor practices alleged.

Pursuant to due notice, a hearing was held on October 21 at El Paso, Texas, before the duly designated Trial Examiner. Each party was represented by counsel and participated in the hearing. Full opportunity was afforded the parties to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally at the conclusion of the taking of the evidence, and to file briefs with the Trial Examiner on or before November 15. Briefs have been received from the General Counsel and from Respondent, which have been carefully considered.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

## FINDINGS OF FACT

## I. RESPONDENT'S BUSINESS OPERATIONS

Respondent, during all times material operated, and now operates, hotels in various cities of the United States. Its El Paso, Texas, hotel, here involved, employs approximately 170 employees and 75 percent of its guests stay less than 1 month. It has a gross total annual revenue in excess of \$500,000, and during the 12-month period immediately preceding the issuance of the complaint herein, it received goods, materials, and services valued at approximately \$20,000, directly from points located outside the State of Texas.

Upon the basis of the foregoing facts, the Trial Examiner finds, in line with established Board authority and contrary to Respondent's contention, that Respondent is engaged in, and during all times material was engaged in, business affecting commerce within the meaning of Section 2(6) and (7) of the Act and that its operations meet the standards fixed by the Board for the assertion of jurisdiction.<sup>3</sup>

## II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership employees of Respondent.

## III. THE UNFAIR LABOR PRACTICES

## A. Prefatory statement

The sole issue here to be resolved is whether, as the General Counsel contends, Theodore Coombes was discharged on August 1, for engaging in protected concerted activities or, as Respondent contends he was discharged for cause.

In support of its position Respondent contended, at the hearing and in its brief, that Coombes who was first employed from about February 9, 1957, until about

<sup>1</sup> Unless otherwise noted, all dates herein mentioned refer to 1960.

<sup>2</sup> This term specifically includes counsel for the General Counsel appearing at the hearing.

<sup>3</sup> See Case No. 33-RC-785, a representation proceeding involving the same employer and the same labor organization here involved wherein the Board asserted jurisdiction on October 7, 1960.

August 5, 1959, was discharged on the latter date because he "had been repeatedly reprimanded and warned about absences without leave, about appearing for work under the influence of alcohol or suffering from the after-effects of alcohol, about unauthorized departure from the kitchen [where he worked] as steak chef while he was on duty, about the use of profane, vulgar or abusive language within the hearing of the patrons of the hotel, and about arguing with other employees in a loud voice"; and that Coombes was discharged on August 1, for the sole reason that he was "away from his job [on July 29, 1960] and was not where he was supposed to be and he was soliciting for the Union away from his job and at the same time talking to a man and interfering with this man's work."

Coombes' ability as a chef is not in issue for the record convincingly establishes, and the Respondent admits, that Coombes was the best steak-house chef it ever had in its employ.

#### B. *The pertinent facts*

Coombes was rehired about April 1, 1960, as a chef in Respondent's steak house. His hours of employment normally were from about 3 or 3:30 p.m. until about 11:30 p.m. and he normally worked said hours 7 days a week.

About a week or so prior to Coombes' August 1 discharge, Juan Alonzo, Coombes' immediate supervisor and the person who supervises the preparation of all food served at Respondent's El Paso hotel restaurants and who has the authority to discharge cooks or other kitchen employees, called Coombes from the kitchen into the employees' dining room and queried Coombes about his union affiliations. In fact, Alonzo opened the conversation by asking Coombes, "How about the Union?" When Coombes replied, "Well, it's all right, I guess," Alonzo stated, "It won't work in El Paso." Alonzo also stated to Coombes on that occasion that he was aware of the latter's union membership, adding that cooks, whether employed on the West Coast or on the East Coast "have to belong to the Union." Thereupon, Coombes stated, "Well, I've been a member [of the Union] for a long time."

During June and July, Coombes, prior to and after his work hours, solicited membership for the Union from amongst his coworkers. This solicitation, which took place on Respondent's premises, resulted in Coombes obtaining about 50 signed union cards.

On Thursday, July 28, the Union filed a representation petition with the Board.<sup>4</sup> On Saturday morning, July 30, Leonardo Pineda, a Respondent linen room employee, told his immediate supervisor, Housekeeper Lynde, that on the previous evening Coombes had given him some cards "from the Union" and he then showed Lynde the cards.<sup>5</sup> Lynde thereupon picked up the telephone and called Respondent's general manager, James E. Murphy. However, Lynde was unable to speak to Murphy because he did not answer the telephone.

On August 1, when Pineda reported for work, Lynde told Pineda that Murphy wanted to see him, whereupon Pineda went to Murphy's office.

Although denying that Lynde had told him the reason why Pineda wanted to see him, Murphy testified that as soon as Pineda entered his office he asked Pineda to sit down and then said, "Leonardo, now tell me what happened between you and Tony Coombes on Friday, the 29th?"; that Pineda then related his purported July 29 conversation with Coombes; that Pineda also mentioned that Coombes had given him some cards; that he then drew up a statement reciting what Pineda had told him which, after the statement had been typed by his secretary, he had Pineda sign and swear to it; that Pineda had left his office, "The next thing I did was to call Mr. Gorny<sup>6</sup> and tell him to pull Tony's [Coombes] time card and also to notify Tony upon his arrival that I would like to see him in my office"; that "Tony came into the office and I asked Tony to have a seat and I told Tony then that he was discharged or fired"; that "Tony asked me why and I told Tony that I had a statement here from

<sup>4</sup> The record establishes, and the Trial Examiner finds, that Respondent received a copy of this petition prior to Coombes' discharge.

<sup>5</sup> Pineda testified that at exactly 6 p.m. on Thursday, July 29, while he was en route to check certain guest rooms, Coombes stopped him and "talked to me about the union" and also gave him some cards. Coombes denied that he ever talked to Pineda about the Union or ever gave Pineda any cards. The Trial Examiner credits Coombes' denial and rejects Pineda's testimony with respect to his purported conversation with Coombes. This finding is buttressed by the fact that Coombes particularly impressed the Trial Examiner as being a person who is careful with the truth and meticulous in not enlarging his testimony beyond his actual memory of what occurred or what was said. On the other hand, Pineda did not so impress the Trial Examiner.

<sup>6</sup> Wolfgang Gorney, Respondent's assistant manager.

a man. It was signed and notarized and witnessed and everything that Tony was away from his job and was not where he was supposed to be and he was soliciting for the Union away from his job and at the same time talking to a man and interfering with this man's work"; that when Coombes inquired whether his work had anything to do with his discharge, "I told Tony no, that I thought that he was the best steak-house cook that we ever had"; and that, in fact, Coombes was the best steak-house cook Respondent ever employed.

Coombes testified that when he reported for work on August 1 he noticed that his timecard was not in the rack; that when he asked the watchman where his card was he was informed by the watchman that he was "to see Mr. Murphy before I come [sic] to work"; that he thereupon went to Murphy's office and asked Murphy "What's the beef, Mr. Murphy?"; that Murphy replied, "You're fired"; that when he inquired as to the reason for his discharge Murphy stated, "For Union activity"; that when he asked whether his work played any part in Murphy's decision to fire him, Murphy replied in the negative; and that the following then ensued:

"Well," I says [sic], "Well, the Union is here. I've been a member as you know for years." He said, "Yes, I know that." I says [sic], "What's the matter now?" He said, "Well, it isn't your work. You are the best we ever had here. It's just your Union activities, . . . You're fired." . . . he told me that he had a written statement by an employee that I was soliciting on the job while I should have been working. I said, "No, Mr. Murphy, I did not solicit on the company's time. . . . I'll admit I solicited on my own time, in the basement in the shower room, either before going to work or after."

In the light of the entire record, the Trial Examiner is convinced, and finds, that Coombes' version of what transpired during his conversation with Murphy on August 1, referred to immediately above, is substantially in accord with the facts. This finding is supported by the fact that, as found above, Coombes particularly impressed the Trial Examiner as being a person who is careful with the truth and meticulous in not enlarging his testimony beyond his actual memory of what occurred or what was said, whereas Murphy, on the other hand, gave the Trial Examiner the impression that he was studiously attempting to conform his testimony to what he considered to be the best interest of Respondent.

Coombes testified further, and the Trial Examiner finds, that about 2 weeks prior to the opening of the hearing herein he called upon Murphy and the following conversation ensued:

I said, "How do you do?" He [Murphy] said, "How do you do, Tony?" "I come back after my job back." . . . He says, "I can't do it. You have a case against us on the 21st, . . . I couldn't hire you back until after the case or otherwise. I absolutely couldn't" . . . he says, "I haven't anything against you. You're the best cook we ever had in the hotel. You're tops. It's you and the Union versus the Hilton Hotel."

### C. Concluding findings

Upon the entire record in the case, the Trial Examiner finds that the Respondent's apparent defense, that had the solicitation not taken place during working hours Coombes would not have been discharged, is merely an obfuscation to conceal Respondent's unlawful intent. The record is convincingly clear that Coombes was discharged because of his union activities and affiliation.

The Trial Examiner further finds that Respondent discriminatorily discharged Coombes in violation of Section 8(a)(3) of the Act, thereby discouraging membership in the Union, and since such act interfered with, restrained, and coerced Respondent's employees in the exercise of the rights guaranteed in Section 7 of the Act, it was likewise violative of Section 8(a)(1) thereof.<sup>7</sup>

<sup>7</sup> Of course, disbelief of the reasons advanced by Respondent does not itself make out a violation. The burden is on the General Counsel to establish discriminatory motive, not on Respondent to disprove it. But here, the General Counsel more than amply met that burden. Likewise it goes without saying, as the Fifth Circuit pointed out in *N.L.R.B. v. T. A. McGahey, Sr. et al. d/b/a Columbus Marble Works*, 233 F. 2d 406 (C.A. 5), "Management can discharge for good cause or bad cause, or no cause at all," provided the discharge was not motivated by any purpose proscribed by the Act. But, the court also pointed out that where the evidence reveals that the real and dominant purpose for the discharge was discriminatory, as here, then a finding of a violation of Section 8(a)(3) of the Act is clearly warranted.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and, such of them as have been found to constitute unfair labor practices, 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 unfair labor practices violative of Section 8(a)(1) and (3) of the Act, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has discriminated in regard to the hire and tenure of employment, and the terms and conditions of employment, of Coombes, the Trial Examiner will recommend that the Respondent offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. The Trial Examiner will also recommend that the Respondent make Coombes whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of the Respondent's offer of reinstatement, less his net earnings during that period.

Loss of pay shall be computed and paid in accordance with the formula adapted by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

The unfair labor practices found to have been engaged in by Respondent are of such a character and scope that in order to insure Respondent's employees their full rights guaranteed them by the Act it will be recommended that Respondent cease and desist from in any manner interfering with, restraining and coercing its employees in their rights to self-organization.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

## CONCLUSIONS OF LAW

1. Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Coombes, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

[Recommendations omitted from publication.]

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**Flemingsburg Manufacturing Company and Amalgamated Clothing Workers of America, AFL-CIO.** *Case No. 9-CA-2149.*  
*May 12, 1961*

## DECISION AND ORDER

On February 9, 1961, Trial Examiner Phil Saunders issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative