

employees being offered and having accepted the increased commission rates, only dramatizes in this particular case the coercive effect upon the Delaware agents of the Respondent's "take it or leave it" attitude.

I find that by refusing, on demand, to discuss its proposed increase in commission rates offered to the Delaware debit agents on and after May 16, 1960, the Respondent unlawfully refused to bargain with the Union and thereby violated Section 8(a)(5) of the Act.

In keeping with the above finding, the total Intermediate Report is hereby amended by adding the following paragraph 5(a) under Conclusions of Law:

5. (a) By refusing, upon request, to bargain with the Union respecting compensation increases offered by the Respondent to the employees, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

In all other respects I deem the provisions of the Preliminary Report, including the "cease and desist" sections of the Recommendations and the Appendix notice, sufficient to include the additional unfair labor practice finding made here.

Spink Arms Hotel Corporation, d/b/a Continental Hotel and Bartenders and Hotel and Restaurant Employees Local Union No. 58, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, Petitioner. Case No. 25-RC-2008. October 31, 1961

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before John W. Hines, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the Board finds:

1. The Employer operates its sole establishment, the Continental Hotel, in Indianapolis, Indiana. During 1960, the Employer had a gross income of over \$900,000 and received goods, supplies, and materials valued in excess of \$50,000 directly from outside the State of Indiana.¹ While conceding that its dollar volume meets the Board's standard for the assertion of jurisdiction in the hotel industry, the Employer moves to dismiss the petition on the ground that it operates a "residential hotel" over which the Board declines to assert jurisdiction under that standard.² Thus, the Employer contends that the Board's

¹The hotel is divided into two main parts, the hotel proper and the annex, referred to herein jointly as the hotel. The Union contends that only the hotel proper should be considered for jurisdictional purposes. The annex is a separate building connected to the hotel proper by a door in the basement and has a separate main and rear entrance. However, the manager of the Employer testified that there is no separate management of any kind and that it maintains central rental, service, and maintenance facilities for both the annex and the hotel proper. We find that the Union's contention is without merit and that the totality of the Employer's operations must be considered. *The T H Rogers Lumber Company*, 117 NLRB 1732

²"For purposes of application of this standard, a permanent or residential hotel or motel is one as to which 75 percent of its guests may be regarded as permanent guests, that is they remain for a month or more." *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261, 264

definition of a permanent or residential hotel as "one as to which 75 percent of its guests . . . remain for a month or more" should be applied by interpreting "guests" as meaning "guest days," i.e., the number of permanent guests and the number of transients, multiplied by the respective number of days of their actual tenancy through the year, so that the proportion of each class of guests may be determined. The Petitioner, on the other hand, contends that the *Floridan Hotel*³ standard should be interpreted literally and the determination should be based on the actual number of individual guests throughout the year who stayed more than a month.

In view of the disagreement which has arisen in this case, the definition set forth in the *Floridan Hotel* case appears to be ambiguous and should be clarified. However, neither of the above positions reflects the Board's intention at the time of the adoption of the above standard. Rather, although stated in terms of "guests," the Board intended that the determination as to the residential character be made on the basis of an annual computation of either: (1) the percentage of rental units occupied by permanent guests who stay more than a month, or (2) the percentage of the gross rental income which was derived from permanent guests. Thus, if in an annual period a hotel or motel rents 75 percent or more of its rental units to guests who remain for a month or receives 75 percent or more of its rental income from such guests, it is a permanent or residential hotel or motel over which the Board will not assert jurisdiction. Stated conversely, if on an annual basis an establishment rents more than 25 percent of its rental units to transient guests who remain less than a month, or receives more than 25 percent of its rental income from such guests, it is a transient hotel over which the Board will assert jurisdiction.

In the instant case the hotel is divided into approximately 293 rental units. During 1960, the Employer accommodated 4,000 individual guests, of whom 700 stayed a month or more and occupied an average of 190 rental units from which the Employer derived \$319,314 in rental income. During this same period, 103 rental units were occupied by 3,300 transient guests from whom the Employer derived rental income of \$150,848.

It is thus clear that under either of the criteria set forth above the Employer operates a transient hotel over which the Board will assert jurisdiction, as approximately 35 percent of its rental units were occupied by transient guests during 1960, and about 32 percent of its gross income from room rentals was derived from transient guests.

Accordingly, we find that it will effectuate the purposes of the Act to assert jurisdiction herein. We therefore deny the Employer's motion to dismiss the petition.

³ *Ibid.*

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The parties agree as to the appropriateness of a unit of all employees, but have not agreed as to the unit placement of three annex employees, whom the Employer would include. An elevator operator, a mail clerk and a houseman work in the annex. The record shows that these employees are supervised by the maintenance supervisor, who also supervises maintenance employees in the hotel proper. The annex employees punch the same clocks, are paid the same rate of pay, and receive the same fringe benefits as employees of similar classification in the hotel proper. Further, there is some interchange between these employees and other maintenance employees. In view of the foregoing, we find that the annex employees have common interests with the other employees and shall include them in the unit.

Accordingly, we find that the following employees of the Employer at its Indianapolis, Indiana, hotel constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

All employees, including annex employees, but excluding the watchmen,⁴ night auditor room clerk, assistant night auditor room clerk, office clericals, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBERS RODGERS and LEEDOM took no part in the consideration of the above Decision and Direction of Election.

⁴The parties stipulated that Charles B. Williams, the relief watchman, should be included in the unit because his primary duties are in maintenance. The record shows that Williams works 40 hours a week as a maintenance man but relieves the watchmen for 8 hours each Saturday. During the 8 hours as relief watchman he has authority to see that hotel property is not taken from the premises. There are no other employees performing guard duties on this day. We find that Williams is a "guard" within the meaning of Section 9(b) (3) of the Act and shall exclude him. *Walterboro Manufacturing Corporation*, 106 NLRB 1383.

Robert Pitcher, Fred Pitcher and Henry Gradwohl, d/b/a Gradwohl & Pitcher and Carpet, Linoleum & Soft Tile Layers Union No. 1238. Case No. AO-27. October 31, 1961

ADVISORY OPINION

This is a petition filed by the Carpet, Linoleum & Soft Tile Layers Union No. 1238, herein called the Petitioner, for an advisory opinion in conformity with Section 102.98 of the Board's Rules and Regulations, Series 8.