

Hilton Hotels Corporation and Hilton Inns, Inc. d/b/a Hilton Inn and Skyriders Club, Inc. and Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO. *Case No. 28-CA-696. November 9, 1961*

DECISION AND ORDER

On August 24, 1961, Trial Examiner David F. Doyle 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 Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report, together with a supporting brief.

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 [Members Rodgers, Fanning, and Brown].

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 findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Hilton Hotels Corporation and Hilton Inns, Inc. d/b/a Hilton Inn and Skyriders Club, Inc., their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, as the exclusive representative of all its employees at the Hilton Inn and Skyriders Club, Inc., El Paso, Texas, excluding office clerical employees, professional employees, technical employees, guards, and all supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed 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 collectively with the Union as the exclusive bargaining representative of all the employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Hilton Inn and Skyriders Club, Inc., in El Paso, Texas, copies of the notice attached hereto marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for the Twenty-eighth Region, shall, after being duly signed by the Employer's representative, be posted by the Employer immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Employer to insure that said notices are not altered, defaced, or covered by other material.

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

¹ 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"

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 bargain collectively upon request with Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, as the exclusive representative of all employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment, or other terms or conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is :

All employees of the Employer at the Hilton Inn and Skyriders Club, Inc., El Paso, Texas, excluding office clerical employees, professional employees, technical employees, guards, and all supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

HILTON HOTELS CORPORATION AND HILTON
INNS, INC. D/B/A HILTON INN AND SKY-
RIDERS CLUB, 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 AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding, with all parties represented, was tried before the duly designated Trial Examiner in El Paso, Texas, on June 1, 1961, on complaint of the General Counsel and answer of Hilton Hotels Corporation and Hilton Inns, Inc. d/b/a Hilton Inn and Skyriders Club, Inc.,¹ herein called the Employer. The issue litigated was whether the Employer had violated Section 8(a)(1) and (5) of the Act by refusing to bargain with Local 628, Bartenders & Culinary Workers Union, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, herein called the Union.

Upon the entire record, and from my observation of the witnesses, I hereby make the following:

FINDINGS AND CONCLUSIONS

The Proceedings in the Representation Case

As the culmination of an organizing campaign among the employees of the Hilton Inn and Skyriders Club, Inc., located at El Paso, Texas, on March 29, 1960, the Union filed a petition for certification as the collective-bargaining representative of the employees at that inn and club. This case was docketed as Case No. 33-RC-770 (not published in NLRB volumes) and pursuant to the Board's Rules and Regulations, Series 8, a hearing was held on April 7, 1960. At the hearing the Employer appeared by counsel and participated fully. Thereafter the Employer filed a brief with the Board and moved to dismiss the petition on the ground that the Board was without jurisdiction over the Employer's business operations, for a variety of reasons. The Board duly considered the transcript of testimony and the Employer's brief, and on June 20, 1960, issued its Decision and Direction of Election rejecting specifically each of the objections of the Employer.

Pursuant to the aforementioned Decision and Direction of Election, an election was held on July 19, 1960, among the employees in the unit determined to be appropriate by the Board, and a tally of ballots was made. The challenged ballots were sufficient in number to affect the outcome of the election, and the Employer timely filed objections to the election. Certain of these objections reiterated the arguments of the Employer, previously submitted to the Board, but the objections stated some arguments not theretofore advanced. These new objections were as follows:

A. The National Labor Relations Board allowed eighty-one (81) aliens to vote. These aliens have little or no knowledge of the English language, did not understand the issues, the posted notices or the ballots.

B. The National Labor Relations Board provided notices which were posted, printed only in the English language.

C. The National Labor Relations Board used ballots for the election printed only in the English language.

¹ Hilton Inns, Inc has been added to the title pursuant to amendment permitted by order herein. See discussion under heading, "The business operations of the Employer."

The Regional Director's report on objections and challenged ballots, issued on August 25, 1960, quoted pertinent portions of the Board's Decision and Direction of Election and in answer to the new objections set forth above, the report stated the following:

The Employer stated that Objections 2A, B and C are based upon what transpired at the election and the facts to support the conditions were developed at the time of and in the course of the election. These objections are based on the alien status and lack of understanding of the English language of the employees. The Employer had no additional evidence to offer at this time on these objections and no additional argument to submit but stated only these objections were self explanatory.

The investigation of these objections revealed that 127 out of a possible 140 employees voted during the election. Both Petitioner and the Employer conducted a propaganda campaign including leaflets, letters and speeches by the Employer to assembled employees prior to the election, during which information with regard to the purpose of the election, the issues and voting procedure [sic]. Neither party prior to the election raised any objection to the standard Notice of Election in the English language and neither party requested that notices or ballots be prepared in any language other than English, although they had opportunities to do so at the hearing, when notices were distributed and at the pre-election conference. There was considerable discussion about the election at the employer's place of business prior to the election. There was only one void ballot which indicated that the voters understood how to mark the ballot. None of the voters requested information or instructions during the election. The Employer does not suggest in his objection what language would be appropriate but from custom and practice in the area it is assumed that he had reference to the Spanish language.

Two-A would appear to challenge the eligibility of aliens to vote in a Board-Conducted election. The aliens, if such they be, appeared on the eligibility list prepared by the Employer. No challenge to their eligibility was made at the time of the election.

The Regional Director, upon the basis of the above, then recommended that the objections be found to be without merit.

On November 1, 1960, the Board issued its Supplemental Decision and Direction disallowing the Employer's objections and ordering the challenged ballots to be opened and tallied. The decision stated the following as to certain of the Employer's objections:

As no exceptions were made to the Regional Director's recommendation that the stipulation of the parties withdrawing their challenges to the above 16 ballots be withdrawn be accepted, and that such ballots be opened and counted, we shall adopt his recommendation *pro forma*. As to Objections 1-A through 1-D, we agree with the Regional Director that issues raised were previously considered and decided by the Board in the above Decision and Direction, and as the exceptions contain nothing not previously considered by the Board we shall adopt the Regional Director's recommendation and overrule the objections. As to Objections 2-A, 2-B and 2-C, relating to alleged failure of the Regional Director to provide notices and ballots in Spanish for Spanish speaking voters, we find that there is no evidence indicating that the Regional Director acted arbitrarily or capriciously in having the election conducted in English rather than in both English and Spanish, or that the problem was in fact raised prior to the Election. We note that the designated observers certified that the election was fairly conducted, that approximately 90 percent of the eligibles voted, and that only one ballot was declared void. Cited as authority by the Board was *V. LaRosa & Sons, Inc.*, 121 NLRB 671, 673.

On November 10, 1960, the challenged ballots were opened and a revised tally of ballots issued. The revised tally showed the petitioner received 73 votes, while 53 votes were cast against the Union, and 1 ballot was void.

On November 15, 1960, the Employer timely filed objections to the counting of challenged ballots. These objections stated the following:

The agent or agents of the National Labor Relations Board, responsible for the conduct of the election and the handling of the ballots in this case, did not take the proper safeguards to protect the challenged ballots between the time of the election on July 19, 1960, and the time the challenged ballots were opened and counted on November 10, 1960.

STATEMENT IN SUPPORT OF OBJECTIONS:

On November 10, 1960, the undersigned, Wm. P. Kilgore, Industrial Relations Counsel for Hilton Hotels Corporation doing business at the Hilton in El Paso, Texas, arrived at the 33rd Sub-Regional Office of the National Labor Relations Board at 405 East Franklin Street, El Paso, Texas, at a few minutes before 10:00 a.m. He was joined there a few minutes later by Mr. Benjamin Clark, Mr. Andrew Block and Mr. R. D. Faver, all employees of the Hilton Inn. Two representatives of the union were present, and Mr. L. L. Porterfield, representing the National Labor Relations Board.

At approximately 10:00 a.m., Mr. Porterfield placed on the desk, in front of him, a manila envelope, approximately 9" by 12", which was sealed with a piece of Scotch tape, approximately $\frac{3}{4}$ of an inch wide and 2 to 3 inches long. This was the only seal holding the flap of the envelope closed. Mr. Porterfield broke this seal and removed the challenged ballots. The undersigned, Mr. Kilgore, immediately asked to look at the manila envelope. Mr. Porterfield handed the envelope to Mr. Kilgore, and upon examination, it was clearly obvious that the envelope had been sealed sometime in the past, by using the mucilage, which is placed on the envelope when it is manufactured. This original sealing of the envelope in the usual and customary manner, had been unsealed and in so doing, left marks on the envelope and on the flap, which clearly showed that the original sealing of the envelope had been broken. There was some writing on the envelope, approximately half-way of the long dimension; however, there were no signatures of the observers to the election or of the Board Agent, who conducted the election, across the flap of the envelope where it had been previously sealed. The attention of the company representatives present, to wit: Mr. Benjamin Clark, Mr. Andrew Block, and Mr. R. D. Faver, was directed to the condition of this envelope. The envelope was dog-eared and showed considerable wear at the point where the flap joined the body of the envelope.

The undersigned, Wm. P. Kilgore, immediately called the attention of Board Agent Porterfield to the fact that the envelope had obviously been tampered with; however, no explanation was offered as to how or why the envelope, containing the challenged ballots, had been opened, during the time that it was supposedly in the safe custody of the National Labor Relations Board.

Mr. Porterfield proceeded to open small envelopes that had not been previously reopened, at which time, the undersigned, Wm. P. Kilgore, accompanied by Msrs. Clark, Block, and Faver, left the office, before the small envelopes had been completely opened, and before any challenged ballots had been counted.

On November 21, 1960, the Regional Director issued his report on employer's objection to the counting of challenged ballots, recommending that the Union be certified as the bargaining representative of the employees in the appropriate unit. This report in part stated the following:

After the counting of the ballots on July 19, 1960, the Board Agent in charge of the election placed all 16 of the challenged ballots into a separate manila envelope. This was a used manila envelope which had at one time been sealed by the flap. After the challenged ballots had been placed in this envelope, a single piece of Scotch tape, approximately 4 inches in length and $\frac{3}{4}$ inch in width, was used to seal the flap of this envelope. Neither the Board Agent in charge of the election nor any of the observers placed their signatures across such seal. The challenged ballots placed in such envelope, as described above, remained in the files of the 33rd Subregional office until 10:00 A.M. on November 10, 1960, at which time the Board Agent removed the envelope from the file, which contained the 16 challenged ballots, broke the seal and proceeded to count the 16 challenged ballots.

Conclusions of Law:

Upon the basis of the foregoing acts, it is concluded that Employer's objection to the counting of the challenged ballots on the ground that the envelope containing such challenged ballots, which had been sealed by the Board Agent but not initialed by the parties, casts doubt upon the integrity of the Board's election process, is without merit.

Neither statute, Board's rules and regulations, nor regional office practice requires that challenged ballots sufficient to affect election results be placed in sealed carton, initialed by all parties pending Board or Regional Office determination. The subregional Office at all times had custody of the challenged ballot envelopes; and there was no showing that the challenged ballot envelopes

subsequently opened in the presence of observers, had previously been opened or tampered with.

Cited as authority for the recommendation was *N. Sumergrade & Sons*, 123 NLRB 1951.

On February 10, 1961, the Board issued its Second Supplemental Decision and Certification of Representatives.² The Board rejected the Employer's objections in the following language:

The employer contends that the Board's agents did not properly safeguard the secrecy of the 16 challenged ballots between the date of the election and the opening of the challenged ballots. The report indicates that at the counting of the ballots on July 19, 1960, the Board Agent conducting the election discovered that the identification tab had been torn from one of the challenged ballot envelopes. The Regional Director found that the observers agreed that the loose tab belonged to the only challenged ballot envelope that was missing a tab, and that this envelope, with the loose tab placed inside, should be included with the other challenge envelopes. All 16 challenge envelopes were then placed in a used manila envelope and the flap was sealed with a single strip of cellophane tape. No signature or initials were placed over the seal by the Board Agent or the observers. This manila envelope remained in the possession of the Thirty-Third Subregional Office until it was opened on November 10, 1960, when the challenged ballots were opened and counted. Upon these facts the Regional Director concluded that the Employer's objection was without merit and recommended that it be overruled. We agree with this recommendation. As indicated in the Employer's exceptions, it was aware of the manner in which the challenged ballots had been impounded at the time it entered into the stipulation withdrawing the challenges. Nor is there any evidence that the envelope containing the challenged ballots left the custody of Board Agents at any time after the ballots were impounded. The Employer, therefore, cannot now be heard to complain of the particular means used to impound the ballots. Moreover, the Board's rules do not require that challenged ballots be impounded by any special method such as cartons or envelopes with special seals and signatures thereupon. We are satisfied that the particular means used herein to impound the ballots did not interfere with the secrecy of the challenged ballots.

Finally, the Employer suggests that there may have been some irregularity in the handling of the challenged ballot envelope with the identification tab torn off. It also asserts it did not agree to include such envelope with the other 15 challenged ballot envelopes. However, it is immaterial whether or not the Employer agreed to include such ballot, as it is clear that one vote could not affect the results as shown by the Revised Tally. (Footnotes in original omitted here)

The Union was thereupon certified as the collective-bargaining representative of the employees of the Employer in the appropriate unit.

The above narrative sets forth the history of the proceeding up to the present unfair labor practice case.

The Instant Case

I. THE BUSINESS OPERATIONS OF THE EMPLOYER

Upon the basis of the Board's Decision and Direction of Election in Case No. 33-RC-770 and the Board's Decision and Order, dated December 14, 1960, reported at 131 NLRB 486, of which I take judicial notice, and the evidence adduced at the instant hearing, I make the following findings:

Hilton Hotels Corporation operates hotel properties in many of the principal cities of the United States and other nations, constituting a worldwide chain of hotels. This particular corporation conducts three hotels in New York City, two in Chicago, Illinois, one in Albuquerque, New Mexico, one in Boston, Massachusetts, one in Buffalo, New York, two in Cincinnati, Ohio, one in Cleveland, Ohio, one in Columbus, Ohio, one in Dallas, Texas, one in Dayton, Ohio, one in Denver, Colorado, one in Detroit, Michigan, one in El Paso, Texas, one in Fort Worth, Texas, one in Hartford, Connecticut, one in Honolulu, Hawaii, one in Houston, Texas, two in Los Angeles, California, one in Pittsburgh, Pennsylvania, one in St. Louis, Missouri, one in Washington, D.C., and has hotels under construction in New York City, San Francisco, California, and Portland, Oregon.

² General Counsel's Exhibit No. 12.

Amendment of Employer's Name

At the instant hearing, counsel for the Employer testified that in January 1961, Hilton Hotels Corporation sold and transferred the property and management of the Hilton Inn and Skyriders Club, Inc., to Hilton Inns, Inc. He stated that Hilton Inns, Inc., was a wholly owned subsidiary and successor of the Hilton Hotels Corporation. He also said that Hilton Inns, Inc., a Delaware corporation, operates hotel establishments in California, Texas, Louisiana, and Georgia, all of which were formerly operated by Hilton Hotels Corporation.

In the course of the hearing, the Charging Party and General Counsel moved to amend the name of the Employer in the instant proceeding to Hilton Hotels Corporation and Hilton Inns, Inc. d/b/a Hilton Inn and Skyriders Club, Inc., on the basis of the parent-subsiary relationship of the two corporations. The motion is hereby granted.

Prior to the hearing, Mr. Blackstone, manager, Hilton Inn and Skyriders Club, Inc., Airport Road, El Paso, Texas, was served with a *subpoena duces tecum* which required him to testify and bring with him certain records of the business operations of the Employer. Blackstone failed to appear in response to the subpoena. At that point in the hearing, counsel for the parties then stipulated that Hilton Inns, Inc., is the successor to Hilton Hotels Corporation in the operation of Hilton Inn and Skyriders Club, Inc., at El Paso, Texas.

Upon the basis of the above, I find that Hilton Hotels Corporation and Hilton Inns, Inc., constitute one employer for jurisdictional purposes, the operations of the Employer meet the jurisdictional standards established by the Board, and that the Employer is an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION; MAJORITY STATUS; APPROPRIATE UNIT; CERTIFICATION

Upon all the evidence, I find that the Union is, and at all times material hereto has been, a labor organization within the meaning of Section 2(5) of the Act.

Upon all the evidence, I also find that at all times material hereto the Union was the representative of a majority of the employees in an appropriate unit described as follows:

All employees of the Employer at the Hilton Inn and Skyriders Club, Inc., El Paso, Texas, excluding office clerical employees, professional employees, technical employees, guards, and all supervisors as defined in the Act.

I also find that the Union was certified as the exclusive representative of the employees in the aforesaid unit on February 10, 1961.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

The complaint alleges that about April 3, 1961, and at all times thereafter, the Employer refused to bargain collectively with the Union in violation of Section 8(a) (1) and (5) of the Act.

The answer denies the commission of unfair labor practices.

At the hearing and in its brief the Employer contended that: (1) it was not engaged in interstate commerce in the operation of the Hilton Inn and Skyriders Club, Inc., at El Paso, Texas, and (2) that the Board had not accomplished a lawful and proper election among the employees in the appropriate unit and for that reason the certification issued by the Board was not valid.

The Evidence

Shortly after the certification of the Union on March 4, 1961, Manuel Parron, International representative of the Union, addressed the following letter to Roland D. Blackstone, manager, Hilton Inn and Skyriders Club, Inc., El Paso, Texas. The letter reads in part as follows:

Pursuant to the certification of representatives issued by the National Labor Relations Board on February 10, 1961, I request a meeting to open negotiations with the Hilton Hotel Corporation d/b/a Hilton Inn & Skyriders Club, Inc. with respect to wages, hours and working conditions of your employees, in the unit found appropriate by the Board in Case No. 33-RC-770. I wish to open negotiations on March 27, 1961, or the earliest date convenient to you after that.

On March 8, 1961, the law firm of Sweeney, Irwin & Foye, by Peter W. Irwin, replied as follows:

Mr. C. N. Hilton, Jr., has requested that I answer your letter to him of March 4, 1961.

Representative of the Hilton Inn in El Paso will be available for negotiations on the morning of March 14, 1961, and will be happy to meet with you at that time.

Due to previous commitments, the next convenient time will be sometime during the second week in April, 1961.

May we suggest that negotiations be held in the offices of Mr. William P. Kilgore.

In the event the March 14th date is acceptable to you, I would appreciate your advising Mr. Blackstone at the Hilton Inn as quickly as possible so that suitable arrangements may be made.

On March 30, 1961, the Union answered that because Parron was out of El Paso he had not received the letter and was unable to commence negotiations on the dates suggested and asked that a meeting be scheduled in April 1961. This letter also rejected the Employer's offer to meet in the office of Kilgore, his labor relations representative, and asked that negotiations be held in a neutral place.

However, on April 3, 1961, the Employer, by its attorney, Peter W. Irwin, performed an about-face in regard to negotiations. In a letter of that date, counsel for the Employer wrote to Parron as follows:

DEAR SIR: In response to your letter dated March 30, 1961, please be advised that since my letter of March 8, 1961, I have examined in detail the record in case #33-RC-770.

As a result of that examination, as well as the facts surrounding the election and challenge of ballots, I have advised the Hilton Inn that, in my opinion, the certification is invalid.

For that reason, your request to negotiate is respectfully denied.

Very truly yours,

Thereafter, on April 14, the Union filed the instant charge.

The General Counsel's case consisted of the record of proceedings before the Board up to that date and the above correspondence.

The Alleged Defenses

The first defense of the Employer is that the Board has no jurisdiction over the business operations of the Hilton Inn and Skyriders Club, Inc., at El Paso, Texas. That contention I have rejected heretofore in my finding as to the business operations of the Employer.

The second contention of the Employer is that the Board has not accomplished a lawful and proper election among the employees of the Employer and, as a result, the certification issued by the Board to the Union is invalid. The Employer's first contention in this regard is that the notices of election and ballots were not provided in both the English and Spanish languages.

Gilbert Feliciano testified that he was the observer for the Union at the election. He testified that prior to the election both the Union and the Employer conducted propaganda campaigns in both English and Spanish to acquaint the employees with the issues to be resolved by the election. Feliciano also said that he was present during all the time that the balloting was taking place and that none of the employees asked for any help, instructions, or explanation of the election procedures in the course of the balloting. Feliciano testified in a forthright manner and I credit his testimony in its entirety.

From his testimony and the fact that 127 employees out of a possible 140 voted and that there was only one void ballot, I conclude that there was no need for printing either the ballots or other election material in the Spanish language. From all the evidence it is clear that the employees knew the effect of their votes and were able to make a free choice in the election. In find no merit in this contention of the Employer.

The third contention of the Employer is that the agents of the Board did not properly safeguard the challenged ballots between the date of the election and the date on which the challenged ballots were opened. William P. Kilgore, the labor relations advisor for the Employer, testified that he had a conversation with James Mast, attorney for the Board, on August 22 or 23, 1960. On this occasion, Kilgore noticed that Mast had in his file a brown manila envelope which was sealed only by means of a piece of scotch tape along the flap of the envelope. He could see that the flap itself was not gummed to the body of the envelope. Later, during the month of November 1960, Kilgore went to the offices of the Board to attend the opening of the challenged ballots. He noticed on this occasion that Mr. Porterfield, the Board agent, had what appeared to be the same brown manila envelope in his hands.

When the representatives of the parties were assembled, Porterfield proceeded to remove the scotch tape from the envelope and to remove its contents—some smaller brown envelopes of the type used for challenged ballots. After Porterfield had removed the contents of the envelope, Kilgore asked him if he could see the envelope. Porterfield handed the envelope to Kilgore who examined it and then passed it to his associates. Kilgore testified that he observed that this envelope had at one time been sealed with the mucilage on the flap, that it had been opened, and that it had been resealed by the scotch tape. Kilgore testified that he also noticed that at least one of the challenged ballots had been separated along the perforation. At that point, Kilgore decided that the procedure in connection with the challenged ballots was improper and he withdrew from the meeting.

On this point Gilbert Feliciano testified that when the challenged ballots were removed from the ballot box at the closing of the polls at the election, the observer for the Employer and he both noticed that one challenged ballot had been torn along the perforation by the voter. This was obviously a mistake, so the two observers agreed, with the consent of the Board agent, that this ballot, the only one of its kind, could be impounded with the other challenged ballots without regard to the fact that the perforated portions of the ballot had been separated. Feliciano also said that Porterfield, the Board agent, placed the challenged ballots in a brown manila envelope which evidently had been used before. They noticed that the mucilage on the flap had been separated from the body of the envelope, but on this occasion Porterfield sealed the envelope by placing the scotch tape across the flap. Feliciano also stated that when the envelope was opened in Porterfield's office the seal of scotch tape was intact on the envelope and in the same condition as when he saw it sealed, immediately after the election.

On this point, I credit the testimony of Feliciano. He testified in a forthright, clear, and positive manner. He was present at the election when the challenged ballots were sealed in the manila envelope, and he was present at the counting of challenged ballots when the envelope was unsealed. His testimony is direct positive proof of the regularity of the election procedure. For contrary reasons I must reject the testimony of Kilgore. He was not present at the sealing of the challenged ballots, and has no personal knowledge of the condition of the envelope or seal at that time. His testimony is entirely speculative and conjectural on this point, and his charge that the agents of the Board did not perform their duty in safeguarding the challenged ballots is without factual foundation. As a witness, Kilgore was patently partisan and interested, and he appeared to be vindictive toward the agents of the Board.

Upon all the credible evidence, I am satisfied that there was no irregularity in the conduct of the election. I find, therefore, that the General Counsel has proven by a preponderance of the evidence that the Employer has committed the unfair labor practices alleged in the complaint.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Employer set forth in section III above, occurring in connection with the operations of the Employer described in section I, above, have a close, intimate, 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 Employer has engaged in certain unfair labor practices, it will be recommended that the Employer cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Also having found that the Union represented, and now represents, a majority of the employees in the appropriate unit, and that the Employer has refused to bargain collectively with it, the Trial Examiner will recommend that the Employer, upon request, bargain collectively with the Union.

Upon the basis of the above 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. Hilton Hotels Corporation and Hilton Inns, Inc. d/b/a Hilton Inn and Skyriders Club, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. All employees of the Employer at the Hilton Inn and Skyriders Club, Inc., El Paso, Texas, excluding office clerical employees, professional employees, technical

employees, guards, and all supervisors as defined in the Act, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union was on July 19, 1960, and, at all times thereafter, has been and is the exclusive representative of all the employees in the aforesaid unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on April 3, 1961, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of all its employees in the aforesaid appropriate unit, the Employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act, as amended.

6. By the aforesaid refusal to bargain, the Employer has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, as amended.

7. 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.]

Claussen Baking Company, Petitioner and Local 15-A, Retail, Wholesale and Tobacco Workers, affiliated with Retail, Wholesale and Department Store Union, AFL-CIO. Case No. 11-RM-71. November 9, 1961

SECOND SUPPLEMENTAL DECISION, ORDER, AND DIRECTION OF THIRD ELECTION

Pursuant to a Supplemental Decision, Order, and Direction of Second Election¹ issued by the Board on May 4, 1961, a second election by secret ballot was conducted on May 26, 1961, under the direction and supervision of the Regional Director for the Eleventh Region, among the employees in the unit found appropriate. After the election, the parties were furnished a tally of ballots which showed that of approximately 61 eligible voters, 61 valid ballots were cast, of which 30 were for and 31 against the Union. On June 1, 1961, the Union filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, Series 8, the Regional Director conducted an investigation of the objections and thereafter issued and duly served upon the parties his report on objections, in which he recommended that the objections be overruled and that the results of the election be certified.

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 Brown].

The Board has considered the Union's objections, the Regional Director's report, the Union's exceptions, and the entire record in this case, and concludes, for reasons indicated below, that objection No. 1 raises material and substantial issues affecting the election results.

¹ Not published in NLRB volumes.