

**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.**<sup>1</sup> *Case No. 25-CA-1365. December 7, 1961*

### DECISION AND ORDER

Upon charges duly filed by the Union and served upon the parties the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-fifth Region, issued a complaint dated May 11, 1961, against Spink Arms Hotel Corporation, d/b/a Continental Hotel, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. The Respondent filed a motion to dismiss on the grounds that the Board lacked jurisdiction, and it also filed an answer denying the commission of any unfair labor practices.

On June 19, 1961, all parties entered into a "Stipulation of Facts and of the Record," waving a hearing before a Trial Examiner and the issuance of an Intermediate Report and Recommended Order. They further agreed to submit the case directly to the Board for findings of fact, conclusions of law, and order based upon the stipulated record herein. By an order of the Board dated June 26, 1961, the stipulation was approved by the Board and made part of the record herein, and this proceeding was transferred to the Board. Thereafter, the Respondent and the General Counsel filed briefs with the Board.

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 Leedom, Fanning, and Brown].

The Board has considered the stipulation of the parties and the entire record in this case and hereby makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent operates its sole establishment, the Continental Hotel, in Indianapolis, Indiana. During 1960, the Respondent had a gross income of over \$900,000 and received goods, supplies, and materials value in excess of \$50,000 directly from outside the State of Indiana. In this period, some 32 percent of Respondent's gross income was derived from the rental of approximately 35 percent of its

<sup>1</sup> Hereinafter referred to as the Union.

rental units to transient guests. In these circumstances, and for the reasons set forth in *Spink Arms Hotel Corporation, d/b/a Continental Hotel*, 133 NLRB 1694, we find, contrary to Respondent's contentions, that the Respondent operates a transient hotel, that Respondent is engaged in commerce within the meaning of the Act, and that assertion of jurisdiction will effectuate the purposes of the Act.<sup>2</sup> We therefore deny Respondent's motion to dismiss the complaint on jurisdictional grounds.

## II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and we find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICE

In January 1961,<sup>3</sup> the Union announced an organizational drive among the Respondent's employees with the distribution of a handbill and authorization cards. On or about February 21, the Union requested that the Respondent recognize and bargain with it as the exclusive representative of its employees. The Respondent refused the request. On March 20, the Union issued another handbill to all employees which set forth reasons for joining the Union and requested the employees to sign and return an attached authorization card. On March 21, the Union filed a representation petition with the Board (Case No. 25-RC-2008).

Three days later (March 24) the Respondent's supervisors delivered to each employee a letter advising the employees of Respondent's opposition to the Union. Enclosed with the letter was a self-addressed postcard. The last paragraph of the letter stated:

We have attached to this letter a self-addressed postcard. If you agree with us please sign your name and address, and drop it in mail box.

Thank you.

The reverse side of the attached postcard read as follows:

MARCH—, 1961.

GENTLEMEN: I agree that I was not shown how I would be better off by joining the Union. I have, therefore, decided not to join.

Name\_\_\_\_\_

Address\_\_\_\_\_

<sup>2</sup> *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261, 264; *Spink Arms Hotel, etc., supra.*

<sup>3</sup> All dates herein are for the year 1961.

Approximately one-half of the employees returned the postcard. Of this group, one indicated no choice, and the remainder expressed agreement with the Respondent's antiunion position.

The General Counsel alleges that Respondent violated Section 8(a) (1) by distributing the aforementioned letter and postcard. The Respondent claims that its sole reason for the distribution was to "challenge the union's contention that the employees needed a union in order to be fairly treated," and that, under the principles enunciated in *Blue Flash Express, Inc.*, 109 NLRB 591, the complaint must be dismissed.

The Board has recently had occasion to pass upon similar employer conduct. See *Murray Envelope Corporation of Mississippi*, 130 NLRB 1574. As in that case, the cards here in question were similarly designed to ascertain which particular employees were union adherents<sup>4</sup> and to obtain express reaffirmation of opposition to the Union and "agreement" with the Respondent that the employees would be "better off" by rejecting it. Here, too, the cards were distributed during the pendency of a representation proceeding and in circumstances in which the Respondent had clearly demonstrated its hostility to the Union and to its employees' support of it. This form of interrogation in this context hardly fits *Blue Flash* situation.<sup>5</sup> We conclude that by distributing the cards here in issue, and requesting the employees to sign and return them, the Respondent unlawfully interrogated its employees, thereby violating Section 8(a) (1) of the Act and constituting unfair labor practices within Section 2(6) and (7) of the Act.

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

The activities of the Respondent set forth 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 Respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

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

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<sup>4</sup> This could be accomplished by the process of elimination, that is, those employees who return the postcard would be assumed to be proemployer and antiunion, and those who did not return it would be assumed to be union adherents.

<sup>5</sup> Cf. *The Chas. V. Weise Co.*, 133 NLRB 765.

## CONCLUSIONS OF LAW

1. Spink Arms Hotel Corporation, d/b/a Continental Hotel is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Bartenders and Hotel and Restaurant Employees Local Union No. 58, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(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, Spink Arms Hotel Corporation, d/b/a Continental Hotel, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively polling or interrogating employees concerning their membership, sympathies, or activities in behalf of the Bartenders and Hotel and Restaurant Employees Local Union No. 58, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the 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) Post at its establishment in Indianapolis, Indiana, copies of the notice attached hereto marked "Appendix."<sup>6</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by Respondent's representative, be posted by the 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

<sup>6</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"

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 you that :

WE WILL NOT coercively poll or interrogate our employees concerning their membership or sympathies or activities in behalf of the Bartenders and Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, nor will we interrogate our employees in any manner concerning their membership in or other activities on behalf of that or any other labor organization.

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

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization.

SPINK ARMS HOTEL CORPORATION,  
d/b/a CONTINENTAL 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.

**Offner Electronics, Inc. and Local 1031, International Brotherhood of Electrical Workers, AFL-CIO.** *Cases Nos. 13-CA-3464, 13-CA-3464-2, and 13-CA-3464-3. December 7, 1961*

DECISION AND ORDER

On December 13, 1960, Trial Examiner Eugene E. Dixon issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and is 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices, and also recommended that Gertrude Bojan, who he found had been discriminatorily discharged, should nevertheless not be reinstated. Thereafter, the Respondent, the General Counsel, and the Charging Party filed exceptions to the Intermediate Report and supporting briefs.