

Accordingly, we would assign the work of driving the two trucks in question from the plant of Snowwhite Baking Company to the distant stores of Plumb Super Markets to the driver-salesmen group, represented under contract by the Respondent Teamsters.

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**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. July 19, 1962**

**SUPPLEMENTAL DECISION AND ORDER**

On March 2, 1961, the National Labor Relations Board issued its Decision and Order in this case,<sup>1</sup> finding that the Respondent had violated Section 8(a)(1) of the National Labor Relations Act. On March 9, 1962, the United States Court of Appeals for the Fifth Circuit entered its decision<sup>2</sup> denying the Board's petition for enforcement pending further consideration of certain issues by the Board.

In its original decision, the Board found that the Respondent, which operates a hotel, posted and distributed to its employees the following notice:

**BULLETIN**

A number of guests have called to the attention of the Management that many of the 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.

The Board found that this rule was actually enforced by the Respondent, with threats of discharge and other disciplinary action, against employees who did not meet the public as well as against those who did. The Board therefore concluded that the rule was broader than the Respondent's claimed or stated purpose in that it prohibited all employees from wearing union buttons or insignia, whether or not they met customers or guests of the hotel. Accordingly, the Board, after asserting that it was unnecessary to consider whether a different rule, covering only employees in continuous and daily contact with the public, would also be violative of Section 8(a)(1), ordered the

<sup>1</sup> 130 NLRB 1105.

<sup>2</sup> 300 F. 2d 204.

Respondent to cease and desist from promulgating and maintaining a rule prohibiting its employees from wearing union buttons or insignia, and from threatening to discharge or otherwise discipline employees for violations thereof.<sup>3</sup>

The court held that the Board's Order, based on the Board's findings, was too broad. It was the court's view that the rule did not, by its terms prohibit the wearing of buttons where they might not be seen by customers or guests. Accordingly, the court pointed out, the Board's determination that the Respondent's rule prohibited the wearing of union insignia by *all* employees was unsupported, and that a proper order would direct the Respondent only to cease and desist from prohibiting the wearing of union insignia by employees whose duties did *not* bring them into regular and frequent contact with guests and customers of the hotel. The court went on to state, with regard to the circumstances and conditions under which employees have the right to wear a union badge while at work—

If this is not a case where the employer has a right to prohibit the wearing of a badge by employees who are in contact with the public, then any rule prohibiting the wearing of a small neat button, such as is the union insignia here, might be regarded as violative of the Act. The Board expressly refrained from deciding this question. Since it has not passed upon the question, we do not consider it. We think the Board should have the opportunity of deciding the question if it sees fit to do so.

The court remanded the case to the Board for its further consideration and for the entry of such order as the Board might after reconsideration deem appropriate.

The Board, in accord with the court's opinion, has reconsidered this case on the basis that the Respondent's "Bulletin" prohibited the wearing of union buttons only by those employees who come in contact with the Respondent's hotel customers.

The record shows that Local 104, Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, herein called the Union, is the certified representative of the Respondent's 130 employees, and that on February 2, 1960, the Union and the Respondent entered into a collective-bargaining agreement. Shortly before April 1, 1960, the Union distributed stewards' and members' buttons to be worn as part of a campaign to increase its membership which consisted of about 110 of the Respondent's 130 employees. There was no rival union nor any antiunion faction. The buttons, which many employees began to wear in support of the Union's membership cam-

<sup>3</sup> Member Kimball, dissenting, asserted that he would have found such a rule valid if it applied only to employees who were in continuous and daily contact with the public and, therefore, that he found the Board's order too broad because it failed to contain such a limitation.

paign, were smaller than a dime and bore only the name or initials of the Union. On April 1, 1960, after one of the hotel guests had remarked about the buttons to management, the Respondent posted the bulletin set forth above.

The right of employees to wear union insignia at work has long been recognized as a protected activity.<sup>4</sup> The promulgation of a rule prohibiting the wearing of such buttons constitutes a violation of Section 8(a)(1) in the absence of evidence of "special circumstances" showing that such a rule is necessary to maintain production and discipline.<sup>5</sup> No "special circumstances" appear to have existed at the Respondent's hotel. As the facts show, there was no strike, and there was no union animosity or friction between groups of employees. The buttons were being worn only as part of the recognized and certified Union's campaign to increase its membership. Nor were the legends on the buttons provocative in any way. Indeed, there is no contention that a prohibition against wearing the buttons was in any way necessary to maintain employee discipline. Moreover, the evidence does not support the Respondent's assertion that the buttons, which were small, neat, and inconspicuous, detracted from the dignity of the hotel, and there is no evidence that they caused any diminution of the Respondent's business. Under these circumstances, we find that the fact that the employees involved come in contact with hotel customers does not constitute such "special circumstances" as to deprive them of their right, under the Act, to wear union buttons at work. The rule posted by the Respondent was therefore not necessary to maintain employee discipline or the services provided by the hotel.<sup>6</sup>

Accordingly, we find that the rule was, on its face, violative of Section 8(a)(1) of the Act.<sup>7</sup> As the Board originally found, and the court agreed, the rule was enforced against all the Respondent's employees. The Board, therefore, reaffirms its original Order issued herein.

MEMBER RODGERS took no part in the consideration of the above Supplemental Decision and Order.

<sup>4</sup> *Republic Aviation Corporation v. N.L.R.B.*, 324 U.S. 793.

<sup>5</sup> *Standard Fittings Co., Alstele Production Works, Inc., et al*, 133 NLRB 928; *Mayrath Company*, 132 NLRB 1628; *Bulton Insulation, Inc.*, 129 NLRB 1296; *Stewart Hog Ring Company, Inc.*, 131 NLRB 310; *Spielman Motor Sales, Inc.*, 127 NLRB 322; *The DeVilbiss Company*, 102 NLRB 1317.

<sup>6</sup> Cf. *United Aircraft Corporation, Pratt & Whitney Aircraft Division*, 134 NLRB 1632, where the Board did find "special circumstances" on the ground that there had been a strike, and animosity existed between the strikers and the nonstrikers which was inflamed and perpetuated by the wearing of buttons bearing provocative legends. See also *Caterpillar Tractor Company, a Corporation v. N.L.R.B.*, 230 F. 2d 357 (C.A. 7); *Boeing Airplane Company v. N.L.R.B.*, 217 F. 2d 369 (C.A. 9).

<sup>7</sup> *W. T. Grant Company*, 94 NLRB 1133, enf'd., 199 F. 2d 711 (C.A. 9); *Safeway Stores, Incorporated*, 110 NLRB 1718.