This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Seventeenth and Champa Streets, Denver, Colorado, Telephone No. 297–3551.

Tucson Ramada Caterers, Inc. *and* Catering Industry Employees Local #413 and Bartenders Union Local #476 through the Local Joint Executive Board, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO.

Case No. 28–CA–1149. August 18, 1965

DECISION AND ORDER

On May 25, 1965, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, finding that the Respondent has 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 attached Trial Examiner's Decision and memorandum of law in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Brown and Zagoria].

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 Trial Examiner's Decision, the Respondent's exceptions and memorandum of law, and the entire record in the case, and hereby adopts the findings,[1] conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that Respondent, Tucson Ramada Caterers, Inc., Tucson, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

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[1] The Trial Examiner found that, although an employee overheard Lillian Berne, secretary-treasurer of the Respondent, tell Issie Berne, president of the Respondent, that she wished she knew who had signed union cards as they should all be discharged; he found this not to be violative of Section 8(a)(1) of the Act because there was no evidence that this statement "was intended for hearing by employees." In the absence of exceptions thereto, we adopt this finding *pro forma*.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This matter was heard at Tucson, Arizona, on February 10 and 11, 1965. The complaint [1] alleges that Respondent, Tucson Ramada Caterers, Inc., has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. Briefs have been submitted by the General Counsel and Respondent.

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

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

Tucson Ramada Caterers, Inc., is an Arizona corporation maintaining its principal office and place of business at Tucson, Arizona, where, under a lease from the operator of a motel, it is engaged in the selling and serving of food and beverages as a bar, restaurant, and coffee shop. These sales and services are made to members of the traveling public, interstate and intrastate, and exceed $500,000 per annum in value. Respondent annually purchases goods, supplies, and equipment valued in excess of $10,000 which are shipped to it directly and indirectly from points outside the State of Arizona. I find that the operations of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Catering Industry Employees Local #413 and Bartenders Union Local #476 through the Local Joint Executive Board, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Introduction; the issues*

In May 1964, the Union commenced an organizational campaign among Respondent's previously unorganized kitchen, bar, and dining room employees. This group totaled approximately 50 and constitutes a unit hereinafter found to be appropriate for the purposes of collective bargaining. By the end of August, 32 or 33 authorization cards were obtained.

On August 25 Secretary Eva Davis of the Union wrote to President Issie Berne.[2] Davis stated that a majority of Respondent's employees had designated the Union as their bargaining representative, requested recognition, and asked for a meeting to negotiate a contract. She offered to submit signed authorization cards to any mutually agreed-upon neutral party for a cross-check.

On August 26 counsel for Respondent replied and stated that "we prefer to have the signed authorization and membership cards examined to determine if you represent a majority of the employees in the bargaining unit." A meeting was arranged and duly held on August 31. Later that day, counsel for Respondent, *inter alia,* declined to recognize the Union without a Board certification, offering to consent to such an election.

On September 3 the Union filed a petition for certification of representatives in Case No. 28–RC–1257, and on September 16 the parties agreed to a consent election to be held on September 28. The election was held, the Union lost, and objections were filed on September 29. On October 29, 1964, the Regional Director found merit in the objections, ordered the election set aside, and directed the holding of a second election. On November 13, 1964, the Union withdrew its petition for an election and this was approved by the Regional Director. As indicated, the instant unfair labor practice charge was filed on September 30 and the complaint issued on November 18.

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[1] Issued November 18, 1964, and based upon a charge filed September 30, 1964, by Catering Industry Employees Local #413 and Bartenders Union Local #476 through the Local Joint Executive Board, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, herein called the Union.

[2] Berne is the principal stockholder of Respondent. His wife, Lillian Berne, is a stockholder and is secretary-treasurer. Both are active in the operation of the business

The complaint alleges that on and after August 25, 1964, following receipt of the Union's request for recognition, Respondent engaged in various types of conduct violative of Section 8(a)(1) of the Act including interrogation, threats, and unilateral grants of wage increases. The General Counsel also alleges that Respondent lacked a good-faith doubt of the Union's majority and that by refusing to recognize and bargain with the Union on and after August 31, 1964, it has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

B. *Interference, restraint, and coercion*

President Berne was aware of the union organizational campaign as early as June 26, when he discovered organizer Jesse Quaid signing up employees in the coffee shop. On Sunday, July 12, an organizational meeting was held at the home of employee John Clark.[3] Berne testified that he learned of this meeting "a couple of days" later. Employee Tony Haro, who had attended, volunteered to Berne the information that the party had been held. Berne vaguely claimed herein that "some circumstance" had brought up the discussion of the meeting, but, unimpressively, was unable to recall just what it was.

However, Haro, on this occasion, orally gave Berne the names of those employees who attended the meeting and Berne wrote them down. As Berne uncontrovertedly testified, Haro volunteered the information. However, as I read Berne's testimony, he proceeded to interrogate Haro concerning those present and recorded their names. This, I find, went beyond being an interested listener.

Patricia Riba was employed as a waitress by Respondent until September 5, 1964. Sometime in August, and apparently around August 26, Berne was talking with another waitress, Helen Klitus, and Riba came upon the scene; Berne was aware of her presence. Riba then heard Berne state "if necessary I could fire the whole bunch and replace them." Because of other conduct by Berne set forth below, and on the entire picture, I find that Berne was referring to the Union and its request for recognition received that date. Klitus was readily available to refute Riba but was not called as a witness, Berne denied making the statement. Berne's hostility to the Union is shown elsewhere and his recollection of certain events, particularly a Christmas party described below, was less than objective. Accordingly, Riba has been credited herein.

After receiving the Union's demand for recognition on August 26, Berne spoke with employee Edward Matthews. The latter uncontrovertedly testified that Berne asked whether anyone had shown him "any Union cards" and if Matthews had signed a card. Although Matthews replied in the negative, Berne told him that he should not have done so. It may be noted that Matthews' name was on the list of those attending the union meeting on July 12 and previously furnished to Berne by Haro.

On August 29 Berne spoke with employees John Clark and Frank Gregorio.[4] Clark testified, and I find, that Berne had the Union's request for recognition in his hand and asked the two if they had authorized the Union to speak for them. Gregorio replied in the negative. Clark replied that he had signed a card and that the Union had signed up a majority. Clark and Berne then went to Berne's office where Berne argued with Clark that a union could not help them because Arizona was a right-to-work State. Berne was not questioned concerning the earlier part of the conversation, but denied any reference to right to work.

That same afternoon, according to Clark, Lillian Berne spoke to him, asking how he could sneak behind her back and "bring the Union in."[5] She then stated that she would like to "stick a knife" into everyone who had signed a card. According to Lillian Berne, she had been cool to Clark because she resented the holding of a union meeting at his home, considering this to be a matter for union personnel rather than company employees. When she appeared on this occasion, Clark asked if she was angry with him. She replied that she was disgusted with him, that she had no objection to him belonging to a union, that she was angry because he ignored the fact that Issie Berne had helped him financially, and with

[3] Respondent's defense to the refusal-to-bargain charge, *viz*, that minors were present and beer served on this occasion, is treated below.

[4] The General Counsel concedes in his brief, contrary to his original contention, that Gregorio is not a supervisor. The record supports Respondent's position that Gregorio is not a supervisor within the meaning of the Act.

[5] Issie Berne testified that he had passed on to Lillian Berne the information concerning the union meeting at Clark's home.

clothes, and that this was "just like knifing him [Berne] in the back." On cross-examination, Clark flatly rejected the suggestion that Lillian Berne had so spoken and reaffirmed his testimony on direct.

Clark was a clear and forthright witness who impressed me as telling the truth. The record well demonstrates that both Issie and Lillian Berne were much involved emotionally in this matter. And, as will appear, Clark's version of the Christmas party, described below, is found to be the more reliable. Accordingly, the testimony of Clark, who is still in Respondent's employ, has been credited herein. I find, under these circumstances, that the remark attributed to Lillian Berne constituted a threat of reprisal to those engaging in union activities.

Late in August, Berne approached employee Myrtle Hairfield who had been on vacation during July. He asked if she was a union member and Hairfield replied in the negative. Berne was not questioned concerning this.[6]

A union meeting was held on Sunday, September 6. According to Hairfield, Berne approached her the following day and asked how the meeting had gone; Hairfield evaded an answer. Berne persisted, asking why she had attended this meeting. Berne did not recall the conversation.

Similarly, on September 7, Berne approached Edward Matthews, as the latter uncontrovertedly testified, and stated that he knew Matthews had signed a card and that he should not have done so. Berne further stated that he knew Matthews' cousins, Willie and Lewis Blake, had signed cards and told Matthews to speak with them "against the Union."

Eugene Manley, a member of the Union and out of work, was told by a bartender employed elsewhere that Respondent needed a bartender for Sunday work. He called upon Berne on September 16 and introduced himself, explaining that he had heard of the vacancy, and asked for work. Berne asked where Manley had previously worked and Manley duly responded. Berne also asked if he belonged to the Union and Manley replied in the affirmative. Berne then stated that Manley was "wasting your time, I wouldn't hire you under any consideration." Manley asked if Berne was angry with Jack Kelley, business agent of Bartenders Union Local #476. Berne replied that he was, because he, Berne, had "hired a couple of his Union hands and then he come in here and tried to organize the place." According to Berne, Manley applied for the job and was told that there was no vacancy. Berne then suggested that if he was a union member he should contact Kelley who might locate a position for him.

Respondent stresses that it had hired employees through the Union and the record so demonstrates. On the other hand, it further appears that this was not an exclusive hiring system, but rather a situation where Respondent hired applicants directly and also contacted the Union when it needed employees.

What is significant is that Respondent has not contacted the Union for help since it requested recognition in August. Stated otherwise, the inference is warranted that Respondent utilized the union as a nonexclusive source of employees so long as it did not seek recognition as their bargaining representative.

Another matter is of interest in this area, although not alleged in the complaint and therefore not passed upon as such. Berne uncontrovertedly testified that he use an employment application form which requires the applicant to disclose his union membership, if any. I deem his inquiry concerning union membership, as testified by Manley, to be entirely consistent with the use of such a form.

Berne also testified that he promoted an employee to work as bartender "about 2 months" prior to February 11, 1965, the date on which Berne testified herein. There is no evidence as to when the vacancy occurred. Moreover, it would seem that this was a situation where the two regular bartenders had become reluctant to work a long Sunday shift. In view of the foregoing factors, I credit Manley herein.

Following this in chronological order, the General Counsel presented evidence that, on or about September 19, Berne spoke with Nellie Shook. Her testimony is not clear and at best relates to the receipt by Shook of a letter from Berne, or from the Union, and attributes nothing to Berne beyond an inquiry concerning receipt of a letter.

Willie Blake, Jr., testified that around the last of September he overheard Issie and Lillian Berne speaking with each other in the kitchen. Lillian Berne told her husband that "he ought to fire every damn one of them" and that she wished

[6] No reliance is placed herein on other statements by Berne or Hairfield that day. They reflect only his opinion that a strike might ensue. I similarly do not rely on other remarks by Berne, in answer to a question by Hairfield, that she should get the answer from a union official.

she "knew who signed those damn cards." He also testified that on the following day he overheard Lillian Berne state to an employee named Helen [apparently Klitus] that she wished "she knew who signed those damn cards."

Blake was most vague concerning the latter conversation, variously placing it in June, August, and September. And there is no evidence that the former statement was intended for hearing by employees. Under these circumstances, I base no finding adverse to Respondent upon these two incidents, although, in evaluating Respondent's overall conduct, the earlier statement by Lillian Berne is entitled to weight herein.

Also not relied on herein are several other incidents. There is testimony by Manny Bonillas who applied for a job in late December 1964. Berne told him that three or four prior applications had been filed, gave him an application, and, at the end of the conversation, asked if Bonillas belonged to the Union. Bonillas replied in the affirmative and did not get the job. This inquiry does not go beyond the employment form, not attacked herein, and in any event would be cumulative. There is also evidence that Tony Haro applied for work on January 5, 1965, after quitting in September 1964, and was required by Berne to give a written affidavit reflecting the information previously supplied by him orally in July identifying those who attended the July 12 meeting; this was allegedly done upon advice of Respondent's counsel.

John Clark testified that on Thursday, February 6, 4 days prior to testifying herein, Berne told him that he wanted to find out who stated that Lillian Berne wished to plunge a knife into someone and that he would discharge the culprit. Again, this reflects Respondent's attitude toward the Union, but this was not alleged in the previously issued complaint which was not amended.

It is also clear that Respondent unilaterally gave an unprecedented number of wage increases during the month of September 1964, between the receipt of the Union's demands for recognition on August 26 and the ultimate holding of the election on September 28. Thus, 9 increases were given September 2, 2 on September 3, 3 on September 16, and 1 on September 24, making a total of 15.[7]

By contrast, during the other months of 1964, the number of raises ranged between zero and seven; indeed, except for September, the raises from May through December ranged from zero to three per month. There is no evidence of a set pattern of raises or salary evaluation prior to September. And there is evidence that only one of those receiving a raise, Edward Matthews, had previously asked for it during June.

This concentration of wage increases, absent any explanation therefor, warrants the inference that they were calculated and were concentrated to influence the employees in the area of choice of a bargaining representative. It may be noted that this concentration of wage increases on September 2 was announced for the first time on September 4 when the paychecks were handed out. This was the date that the Respondent learned that the Union had filed a petition for an election on the previous day and, I find, was more than pure coincidence. I find that these wage increases in September 1964 were reasonably calculated and intended to undermine the Union.

I find that Respondent has engaged in conduct violative of Section 8(a)(1) of the Act by the following conduct which, on the entire picture, carried a coercive implication: By questioning an employee concerning the identity of employees who attended a union organizational meeting; by stating that union adherents would be discharged; by interrogating employees concerning their union membership and asking if they had seen or signed cards; by threatening employees with reprisals because they had signed union cards; by questioning an employee concerning attendance at a union meeting; by telling an employee that he should not have signed a union card and instructing him to speak against the Union to relatives who had signed such cards; by telling an admitted union member that he would not be hired by Respondent under any circumstances because the Union had attempted to organize the establishment; and by unilaterally granting wage increases reasonably calculated to influence the electorate in a forthcoming representation election.[8]

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[7] Two were to Joseph Briskin and Lucian Hamby. Respondent conceded herein that their interests were managerial in nature and that they should be excluded from the unit. These two are not considered in the discussion that follows

[8] No adverse findings are based upon certain evidence that Respondent reduced meal content and uniform allowances; aside from the fact that the former is controverted, these were not alleged in the complaint.

C. *Refusal to bargain*

Appropriate Unit

The complaint alleges, Respondent's answer admits, and I find that all kitchen, dining room, and bar employees in the food and beverage departments of Respondent, excluding office employees, guards, watchmen, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Majority Representation

There were 50 employees in the unit at the time material herein, *viz,* August 26, when Respondent received the Union's request for recognition, and August 31, 1964, when the parties met and Respondent refused recognition on the basis of a card check.[9]

The General Counsel introduced in evidence 32 cards signed by employees within the bargaining unit on dates prior to August 25. All were currently signed with the exception of that of Helen Klitus who joined the Union in 1960, has continuously been a member, has voluntarily paid dues and has not been subject to a dues checkoff I find that her card and the others which authorized the Union to "represent me in my behalf, to negotiate and execute any all agreement pertaining to wages, hours and conditions of work" are clear, unambiguous, and mean what they say. All signatures were witnessed by persons who identified them herein. Except for Respondent's contention that several were signed at a meeting where beer was served, treated and rejected below, there is not the remotest indication of any undue influence.

I find, therefore, that on August 26, when the Union's request for recognition was received, and that on August 31, when Respondent declined same absent a Board certification, the Union was, and now is, the representative of the employees in the above-described appropriate unit within the meaning of Section 9(a) of the Act

Refusal to Bargain

As noted above, the Regional Director set aside the election of September 28 on the basis of timely objections, one of which was the granting of the wage increases described above The Union thereafter withdrew its petition and this was approved by the Regional Director It is current Board policy, on this posture, that the Union's loss of the election does not preclude consideration of the instant refusal-to-bargain charge. *Bernel Foam Products Co., Inc.,* 146 NLRB 1277, and *Irving Air Chute Company, Inc., Marathon Division,* 149 NLRB 627.

Turning to the sequence of events, Eva Davis, secretary of the Union, wrote to Respondent on August 25, 1964, as follows:

> This will advise you, as of this date, the majority of your kitchen, dining room, food and beverage department employees have chosen Hotel, Motel, Restaurant Workers' Local No. 413 and Bartenders Local No. 476, thru the Local Joint Executive Board, as their collective bargaining representative.
>
> We therefore request recognition as the exclusive bargaining representative of the afore-mentioned employees. We further request that you meet with us, as soon as possible, for the purpose of negotiating a collective bargaining agreement covering wages, hours and other conditions of employment.
>
> Should you have any doubt as to our representing a majority of your employees in the above-described bargaining unit, we will be more than willing to submit the signed authorization and membership cards of your employees to a neutral party, mutually agreed upon, and to allow that third party to compare these cards with your present payroll.
>
> We realize, of course, there may be some aspects of this matter you feel should first be resolved before the recognition requested above can be granted. If so, we want you to know we are more than willing to meet with you or your representatives for the purpose of discussing such issues, if any, for mutually satisfactory disposition.

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[9] Herman Gray appears on the payroll for the week ending August 26, but not on that for the week ending September 2. He worked four Sundays during August, according to Berne. The calendar indicates that the last Sunday in August was August 30. While this is debatable, he has not been included in the unit and his timely and appropriately signed card has not been relied on below.

> In the event you are willing to accept our offer to submit these authorization cards for a check, you may reach us at the above address. We will then meet with you or your representatives for the purpose of selecting the third party to carry out that comparison of cards and current payroll.

This was received on August 26, and the same day counsel for Respondent replied, in part, as follows:

> In accordance with your letter we prefer to have the signed authorization and membership cards examined to determine if you represent a majority of the employees in the bargaining unit. If you will be good enough to contact me, I will be pleased to discuss with you the mechanics of arranging for an examination of the authorization and membership cards. Any meetings or discussion that we may have with you will be without prejudice to the rights of our client to pursue any rights or remedies which they may have under existing law.[10]

A meeting was arranged for the morning of August 31, and attended by Eva Davis, Gustava Hollohan Murray, International representative of Local 476, James Kelley, a business agent of 476, organizer Jesse Quaid, and counsel for Respondent, Raymond Hayes. The position of the Union is basically reflected in a typed memorandum which it brought to the meeting and presented to Hayes. The memorandum states:

> We, the undersigned Union and Employer agree to a cross check of employees' authorization cards of employees who are on the payroll period of August 14 thru 21, 1964, and who are in the bargaining unit (Culinary Workers, Bartenders, Food & Beverage Dept) of the employer.
>
> It is agreed that an impartial person will be selected agreeable by both parties to make the cross check.
>
> In the event the Union represents a majority (51%) of the employees within the bargaining unit, the employer agrees to recognize the Union and to, in good faith, immediately negotiate and sign a collective bargaining agreement with the Union.
>
> In the event the Union does not represent 51% of the employees, the Union agrees not to press claim for recognition for a year from the date of the payroll agreed upon.

According to Murray, Hayes asked to see the cards and Quaid responded that he would show them to an impartial person. Hayes asked whom the Union had in mind to conduct a cross-check and the union representatives named three local persons, including a local judge, a priest, and an ex-mayor, not necessarily in that order. Hayes responded that all enjoyed a good reputation.

There is some difference between the testimony of Hayes, on the one hand, and that of the witnesses for the Union, but for the purposes of this discussion I am taking Hayes' testimony at face value. Thus, in addition to the facts found above, Hayes stated that Respondent had a "serious question" as to the method by which the signatures to these cards had been obtained; that under the circumstances it would be desirable for the Union to file a petition for an election, to which Respondent would consent; and that if the Union did not file, Respondent would. He stated that he would contact his client at lunch, ascertain whether he would agree to a card check, and notify the Union that afternoon.

Hayes duly telephoned the union office that afternoon, advised that Respondent would not agree to a card check, asked if the Union would file for an election if Respondent consented, and Murray replied that it would. She testified, and I find, that Hayes, when asked why Respondent would not agree to a cross-check, replied that the employees who signed the cards did not know what they were signing. Hayes candidly admitted herein that he made no independent investigation concerning the cards, that his position was based solely upon information supplied by Berne, and that this information related solely to the union meeting on July 12, the presence of minors at the meeting, and the serving of beer.

This presents for consideration the well-identified meeting of July 12, and the record discloses the following facts. John Clark arranged for a union meeting to be held at his home at 3 p.m. Eight or nine employees attended, as did Union Representatives Quaid, Davis, and Murray. Several cards were signed during

[10] It may be noted that this reply is silent as to any suggestion that the Union go through an election.

the meeting, which ended at approximately 4:30 p.m., and the union representatives left. Thereafter, cokes and beer were served. Several bottles of beer were consumed by those present, although they were assisted in great measure by a nonemployee friend of Clark who arrived at the close of the meeting and immediately proceeded to make substantial inroads into the supply. While at least several of those present were minors, it does not appear that any of them drank a bottle of beer. In any event, no beer was consumed until after the meeting closed and cards were signed prior to the close.

On the face of the foregoing, there is absolutely nothing to support Respondent's defense herein which perforce amounts to a claim, although not so stated, that the cards were signed under the influence of beer. Moreover, there is evidence that Respondent does not uniformly maintain so sacrosanct a position about minors being present while alcohol, indeed in the form of hard liquor, is being served.

Issie and Lillian Berne have a son, David, who was 18 years of age as of February 1965. He was therefore 16 or 17 at the time of a private Christmas party held by the Bernes for their employees in December 1963. Minors attended this party and hard liquor was served, although, according to Berne, none was served to minors. Berne originally testified that his son did not tend bar on this occasion. His assistant, Joseph Briskin, claimed that he, Briskin, was the bartender on this occasion together with one Anthony Klitus, a regular bartender for Respondent, and that David Berne did not function in this capacity.

However, John Clark identified David Berne as the only bartender; he recalled that young Berne served liquor and that employee Tony Haro, referred to above and a minor, became intoxicated. Similarly, employee Myrtle Hairfield recalled that David Berne was working behind the bar and further that he served hard liquor. She recalled neither Briskin or Klitus as being on the scene. Klitus did not testify.

Berne subsequently changed his testimony and recalled that his son did work behind the bar on this occasion, assisting Briskin when the latter "got busy," but claimed that his son served only soft drinks. The testimony of Lillian Berne is to the same general effect. Needless to say, this tends to leave bartender Klitus in limbo, as it were, because while firmly, if not eagerly, placed on the scene by Briskin, he was promptly removed therefrom by Issie and Lillian Berne.

Be that as it may, I believe and find that young Berne served behind the bar on this occasion. I do not dispute the testimony of Berne that his son neither drinks nor smokes. But the fact immediately appears that, even if he served only soft drinks, Respondent deemed his proximity to hard liquor to be less serious than the proximity of older boys, the latter his employees, to beer.

To sum up, I find, on a clear preponderance of the evidence, that Respondent did not entertain a good-faith doubt as to the genuineness of the Union's majority. I believe and find that it seized upon the furtive report from employee Haro concerning the July 12 meeting, entirely devoid of any evidence of undue influence upon the card signers, and utilized it as a device to avoid recognition. Moreover, it thereafter engaged in conduct heretofore found to be violative of the Act which was reasonably calculated to dissipate the Union's majority. *Fred Snow, et al., d/b/a Snow & Sons* v. *N.L.R.B.*, 308 F. 2d 287 (C.A. 9), and *N.L.R.B.* v *Trimfit of California, Inc.*, 211 F. 2d 206 (C.A. 9).

I find, in view of the foregoing circumstances, that Respondent, by denying recognition to the Union on August 31, 1964, has refused to bargain within the meaning of Section 8(a)(5) of the Act. I further find that by unilaterally granting entirely discretionary and in no way automatic wage increases in September in heavy concentration, Respondent has likewise engaged in conduct violative of Section 8(a)(5) of the Act and that by said refusal to bargain Respondent has engaged in conduct violative of Section 8(a)(1) of the Act. *N.L.R.B.* v. *Benne Katz, etc, d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736; *N.L.R.B.* v. *Elliott-Williams Co., Inc.*, 345 F. 2d 460 (C.A. 7); *N.L.R.B.* v. *Winn-Dixie Stores, Inc., etc.*, 341 F. 2d 750 (C.A. 6); *Indiana Rayon Corporation*, 151 NLRB 130; *Frank C. Varney Co., Inc.*, 151 NLRB 280; and *Anthony O. Grimaldi, d/b/a Superior Rambler*, 150 NLRB 1264.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, and occurring in connection with its operations set forth 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 thereof.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act. I shall further recommend that Respondent be ordered to bargain with the Union, upon request, concerning rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

The unfair labor practices committed by Respondent involve conduct in derogation of the principles of good-faith collective bargaining. The inference is warranted that it maintains an attitude of opposition to the purposes of the Act with respect to the protection of employee rights in general. It will accordingly be recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1 Tucson Ramada Caterers, Inc., is an employer within the meaning of Section 2(2) of the Act.

2. Catering Industry Employees Local #413 and Bartenders Union Local #476 through the Local Joint Executive Board, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All kitchen, dining room, and bar employees in the food and beverage departments of Respondent, excluding office employees, guards, watchmen, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Catering Industry Employees Local #413 and Bartenders Union Local #476 through the Local Joint Executive Board, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, has been, since August 26, 1964, and now is, the exclusive representative of the employees in the above-described appropriate unit within the meaning of Section 9(a) of the Act.

5. By refusing to recognize and bargain with the Union on and after August 31, 1964, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the foregoing conduct, and in the respects heretofore enumerated, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is hereby ordered that Respondent, Tucson Ramada Caterers, Inc., Tucson, Arizona, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain with Catering Industry Employees Local #413 and Bartenders Union Local #476 through the Local Joint Executive Board, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, as the exclusive representative of its employees in the above-described appropriate unit.

(b) Questioning employees concerning the identity of employees who attend union organizational meetings; stating to employees that union adherents will be discharged; interrogating employees concerning union membership and if they have seen or signed union cards; threatening employees with reprisals because they have signed union cards; questioning employees concerning attendance at union meetings; telling employees that they should not have signed union cards and to speak against the union with relatives who had signed such cards; telling union members that they will not be hired because a union attempted to organize the establishment; and unilaterally granting wage increases for the purpose of influencing votes in a representation election.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named labor organization as the exclusive representative of the employees in the above-described appropriate unit with respect to rates of pay, wages, hours of work, or other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its premises in Tucson, Arizona, copies of the attached notice marked "Appendix."[11] Copies of said notice, to be furnished by the Regional Director for Region 28, shall, after being duly signed by Respondent, be posted by it immediately upon receipt thereof, and be maintained 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 28, in writing, within 20 days from the date of receipt of this Decision, what steps it has taken to comply herewith.[12]

[11] In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order".

[12] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner 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, upon request, bargain with Catering Industry Employees Local #413 and Bartenders Union Local #476 through the Local Joint executive Board, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, as the exclusive bargaining representative of all kitchen, dining room, and bar employees in our food and beverage departments, excluding office employees, guards, watchmen, and supervisors and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL NOT question employees concerning the identity of employees who attend union organizational meetings; state to employees that union adherents will be discharged; interrogate employees concerning union membership and ask if they have seen or signed union cards; threaten employees with reprisals because they have signed union cards; question employees concerning attendance at union meetings; tell employees that they should not have signed union cards and direct them to speak against the union with relatives who have signed such cards; tell union members that they will not be hired because a union attempted to organize the establishment; and unilaterally grant wage increases for the purpose of influencing votes in a representation election.

WE WILL NOT in any other 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 the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

TUCSON RAMADA CATERERS, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1015 Tijeras Street, NW., Albuquerque, New Mexico, Telephone No. 247–2520, if they have any question concerning this notice or compliance with its provisions.

International Brotherhood of Electrical Workers, Local Union No. 781, AFL–CIO [1] *and* Georgia Pacific Corporation, Tissue Products Division.[2] *Case No. 3–CD–134. August 18, 1965*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges by Georgia Pacific alleging that the Respondent had violated Section 8(b)(4)(D) of the Act by engaging in conduct to force Georgia Pacific to assign certain work to members of the IBEW rather than to its employees who are represented by International Brotherhood of Pulp, Sulphite and Paper Mill Workers, and its MacDonough Local No. 387, AFL–CIO.[3] A hearing was held before Hearing Officer, Thomas J. Sheridan, on April 15, 22, and 23, 1965. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Briefs were filed by Georgia Pacific, IBEW, and Paper Mill Workers and have been duly considered.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Brown and Jenkins].

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[1] Herein called IBEW or Respondent. The name of this Union was amended at the hearing.

[2] Herein called Georgia Pacific or Employer.

[3] Herein called Paper Mill Workers. The name of this Union was amended at the hearing.