

unit placement. Under all of these circumstances, including the fact that process engineers and technicians perform work of a technical nature, chiefly in separately situated and separately controlled areas, and the absence of any bargaining history at the Employer's plant, we find that process engineers and technicians are technical employees who have interests that differ considerably from those of the production and maintenance employees, and we shall therefore exclude them from the unit.<sup>2</sup>

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees including leadmen, assemblers, tool and cutter grinders, machinists, toolmakers, painters, and finishers, inspectors, testers, maintenance men, electricians, porters, trainees, material handlers, parts packagers, stockroom helpers, raw material stockroom helpers, chauffeurs, planners, expeditors, coverage analysts, coverage clerks, traffic analysts, and traffic clerks; but excluding process engineers, technicians, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]<sup>3</sup>

<sup>2</sup> *The Sheffield Corporation*, 134 NLRB 1101, 1105, 1107.

<sup>3</sup> An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 5 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

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**Sands Motor Hotel and Catering Industry Employees Local No. 413 and Bartenders Union Local No. 476 through the Local Joint Executive Board, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. Case 28-CA-1280. January 11, 1967**

### DECISION AND ORDER

On March 10, 1966, Trial Examiner Maurice M. Miller issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a  
162 NLRB No. 66.

supporting memorandum. The General Counsel filed an answering brief in support of the Trial Examiner's Decision.

The National Labor Relations Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the exceptions, the memorandum, the answering brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The only issues presented by the Respondent to the Board are whether the Board should assert jurisdiction over the Respondent's operations, and whether an asserted good-faith doubt that the Board would assert jurisdiction constitutes a valid defense to the complaint alleging an unlawful refusal to bargain. As we agree with the Trial Examiner that the Board should assert jurisdiction and that a good-faith doubt as to the Board's assertion of jurisdiction is not a valid defense, we approve and adopt his conclusion that the Respondent violated Section 8(a)(5).

[The Board adopted the Trial Examiner's Recommended Order.]

#### DECISION OF THE TRIAL EXAMINER

##### STATEMENT OF THE CASE

Upon a charge filed September 30, 1965, and duly served thereafter, the General Counsel of the National Labor Relations Board caused a Complaint and Notice of Hearing to be issued and served on a business partnership doing business as Sands Motor Hotel, to be designated as Respondent in this Decision. The Complaint was issued November 4, 1965; therein, the respondent partnership was charged with unfair labor practices affecting commerce within the meaning of Section 8(a)(5) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519. Respondent, through its subsequently-filed answer, denied the Complaint's jurisdictional allegations, and further denied the commission of any unfair labor practice.

Pursuant to notice, a hearing with respect to the issues was held at Tucson, Arizona, on February 1, 1966, before Trial Examiner Maurice M. Miller. The General Counsel and Respondent were represented by counsel. Each party was afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues.<sup>1</sup> Since the hearing's close, briefs have been received from counsel for the General Counsel and Respondent; these have been duly considered.

Upon the entire testimonial record, documentary evidence received, and my observation of the witnesses, I make the following:

##### FINDINGS OF FACT

###### I. THE BUSINESS OF THE RESPONDENT

Throughout the period with which this case is concerned, Sands Motor Hotel has been maintained and operated by the partnership previously noted, duly orga-

<sup>1</sup> The transcript in this case, when supplied, contained numerous mistranscriptions. On February 25, 1966, I issued an order to show cause why the transcript should not be corrected in certain designated respects. By letters subsequently received, counsel for General Counsel and Respondent have advised that they have no objection to the corrections proposed. My order is hereby made part of the record, and the corrections therein specified are hereby directed to be made.

nized under, and functioning by virtue of Arizona law. This respondent firm has maintained and presently operates the motor hotel designated in Tucson, Arizona; there, within its motor hotel facility, it rents rooms and performs other hotel services for transients and other persons. In connection with its business, respondent partnership—throughout the period with which this case is concerned—leased part of the property which its motor hotel occupies to a separate corporation, Sands Restaurant, Inc.; therein, the corporate lessee so designated maintains and operates a coffee shop, dining room, cocktail bar, banquet room, and kitchen.

During the 1964 calendar year, Respondent and Sands Restaurant, Inc., considered together, derived more than \$500,000 gross annual income from their motor hotel and restaurant operations combined. (The record contains a stipulation that, during the period designated, Respondent derived \$326,700 gross income from providing motor hotel services, while Sands Restaurant, Inc., derived \$227,150 from providing restaurant services.) Counsel have stipulated, further, that more than \$50,000 of Respondent's gross annual revenue, during the period designated, derived from hotel services provided for persons whose trips had originated outside of the State. During the same period—so the record shows—the respondent partnership's lessee, Sands Restaurant, Inc., purchased goods which equaled or exceeded \$50,000 in value from local purveyors, which purveyors had, in turn, purchased such goods from out-of-State sources.

General Counsel contends, herein, that, though respondent partnership's 1964 gross revenue fell short of the yearly total required to satisfy the Board's discretionary standard for the hotel industry, defined in *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261, specifically, statutory policies would be effectuated, under the circumstances of this case, should the Board assert jurisdiction. More particularly, General Counsel contends that the specific "business enterprise" with which this case is concerned, though comprised of both respondent partnership and a completely separate corporation functioning as respondent partnership's restaurant lessee, has been held out to the public as one single integrated enterprise. Cf. *Trade Winds Motor Hotel and Restaurant*, 140 NLRB 567, 568. Therefore, so the argument runs, the degree to which a labor dispute at Respondent's facility would affect commerce certainly would be "equal to, if not appreciably greater than" the degree to which such a dispute would affect some "normal" motel operation with \$500,000 yearly gross revenue, over which the Board considers itself required to assert jurisdiction.

Respondent contends, by way of rebuttal, that its motor hotel facility functions in a manner factually distinguishable from the combined facility with which *Trade Winds* was concerned; specifically, counsel for the partnership argues that the record will not warrant a determination that Respondent's motor hotel, considered together with the restaurant which functions on its premises, has really been held out to the public as a single, integrated business.

The record shows, however, that the so-called separate restaurant facility—which includes a coffee shop, dining room, cocktail bar, banquet room, and kitchen—is located completely on motel property; that the facility in question is physically connected with the motel through a covered, glass-enclosed corridor; that the motel's sign designates the complete facility as "Sands Motor Hotel" while a separate sign, somewhere within the parking area nearest the coffee shop, merely bears the legend "Coffee Shop" on one side and "Sands Motel" on the other; that Respondent's motel loudspeaker "paging" system has a restaurant connection whereby motel guests may be paged there; that motel guests are permitted to charge restaurant meals to their motel bill, and that approximately twenty percent of the motel's guests normally do so; that some further percentage of the motel's guests, not susceptible to precise determination, patronize the restaurant without charging their bills; that the restaurant provides room service for motel guests sixteen hours per day, seven days per week, using the motel's uniformed bellmen for food and beverage deliveries; (The restaurant, so the record shows, pays respondent partnership \$80 per month for making its motel bellmen available to provide this service. Though the record reflects some suggestion that this sum may be distributed among the motel's bellmen, no concrete testimony was proffered regarding the manner of its distribution.) that the motel rooms contain posted notices regarding the availability of such room service; that Respondent's property provides substantial car

parking space, within which motel guests may, should they choose, park close to their rooms and restaurant guests may park close to one of that facility's several outer doors; that the parking area most conveniently situated for restaurant users—located on the southeast corner of Respondent's property—is not, however, specifically posted, marked, or physically segregated for parking by restaurant guests only; that Respondent advertises within a local newspaper under the name of "Sands of Tucson" specifically, and that such advertisements normally feature the fact that the facility advertised provides not only motor hotel service, but, likewise, restaurant, bar, and dining room service. I so find.

Though respondent partnership and Sands Restaurant, Inc., Respondent's lessee, clearly constitute separate business entities, with no common ownership, direction, or control, there can be no doubt that Respondent's motor hotel facility and Sands Restaurant, Inc., do supplement each other. Taken as a whole, therefore, the present record will, in my opinion, fully warrant a determination that the combined facility is realistically "held out to the public" as one single-integrated business. The relationship between the motor hotel and restaurant, *inter sese*, may be nothing more, truly, than a lessor-lessee relationship; guests of the combined facility, whether motel guests, restaurant guests, or both, find themselves, however, confronted with nothing calculated to reveal that the two facilities have "separate" legal status. (Though the restaurant facility may—concededly, so the record shows—derive some "large or substantial portion" of its business from local residents, rather than motel guests, such local custom—providing some 79% of the restaurant's gross revenue—cannot, really, detract from the restaurant's role as supplementary to Respondent's motor hotel facility. While a witness, O. J. Newton, the restaurant corporation's owner-manager, conceded that the restaurant's menu forms normally provide no really clear-cut clue regarding the motor hotel facility's separate character. The single copy of that menu proffered for the record designates the restaurant as "Sands" without further specification. Respondent contends that *the Tucson community* does not "have the impression" that the motor hotel-restaurant facility is a single, integrated business, but cites nothing in the combined facility's public "image" reasonably calculated to *negate* that impression.) In some respects, Respondent's precise relationship with Sands Restaurant, Inc., may be factually distinguishable from that which the Board considered in *Trade Winds*; several presumptive distinctions between Respondent's situation and that which the Board found in the cited case have been cited in Respondent's brief. Whatever differences there may be, however, reflect distinctions not sufficiently significant, in my opinion, to dictate a different result. The fact that Charging Unions and Sands Restaurant, Inc., presently maintain a collective-bargaining contract limited to restaurant facility workers cannot be considered relevant to the question whether the combined motel-restaurant facility has been "held out to the public" as a single, integrated business. Similarly, the fact that Sands Restaurant, Inc., may be *free* to use names other than "Sands" to designate its Tucson restaurant facility or that its menu may sometimes bear the designation "Newton's" without a further specification of separateness provides no substantial justification for a determination that no "holding out" of the sort noted in the *Trade Winds* case takes place.

With matters in this posture, determination seems warranted that Respondent is now, and at all times material has been, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act, as amended. And, with due regard for relevant jurisdictional standards which the Board presently applies—see *Siemons Mailing Service*, 122 NLRB 81; *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261; *Trade Winds Motor Hotel and Restaurant*, 140 NLRB 567, and related cases—I find assertion of the Board's jurisdiction in this case warranted and necessary to effectuate statutory objectives.

## II. THE LABOR ORGANIZATION INVOLVED

Catering Industry Employees Local No. 413 and Bartenders Union Local No. 476, functioning through the Local Joint Executive Board, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, designated as the Union, Unions, or Local Board within this Decision—are labor organizations within the meaning of Section 2(5) of the Act, as amended, which admit certain of Respondent's employees to membership.

## III. THE UNFAIR LABOR PRACTICES

A. *The appropriate unit*

Within his Complaint, General Counsel has designated the worker unit claimed to be appropriate for the purposes of collective bargaining at Respondent's motor hotel facility—pursuant to Section 9(b) of the statute—as follows:

All housekeeping and maintenance department employees, front desk men and bell men at the Employer's [Tucson] facility,<sup>2</sup> exclusive of office clerical, professional employees, watchmen and guards, and supervisors as defined in the Act.

Though, within its answer, Respondent has formally challenged this bargaining unit definition, counsel for the partnership did declare, while the hearing was in progress, that Respondent really had no substantial question to raise regarding the bargaining unit's composition.

Counsel did note some reservations with respect to bargaining unit coverage for his client's hotel "maintenance department" workers; specifically, he cited the possibility that some of them might be found performing watchmen/guard work sufficiently to warrant their exclusion from the bargaining group. Regarding this possibility, however, the record reveals that bargaining unit coverage for Respondent's motor hotel "maintenance department" workers as such has not been challenged; counsel merely noted that *particular maintenance department workers* might subsequently be found excludable, should a determination be found warranted that their work compassed a substantial amount of watchman/guard duty.

The bargaining unit which the Union claimed the right to represent is clearly appropriate for that purpose. Cf. *Arlington Hotel Company, Inc.*, 126 NLRB 400, 401-404. Basically, Respondent makes no contrary contention. Though the Union's first demand for recognition may not have contained a specification of those job classifications which the Board customarily "excludes" from bargaining units, such a failure of *negative definition* cannot be considered consequential, particularly in view of Respondent's concession regarding the propriety of the bargaining unit defined within the Complaint.

With matters in this posture, the worker's group which General Counsel's Complaint has designated appropriate for collective-bargaining purposes would seem to warrant such designation. Upon the present record, I conclude that this group does constitute a unit appropriate for collective-bargaining purposes, within the meaning of Section 9(b) of the statute.

B. *The Union's status as majority representative*

Consistent with his contention regarding the Union's right to recognition as the representative of Respondent's employees, General Counsel proffered, for the record, cards signed by 21 workers whereby these workers designated the Union as their bargaining representative, and solicited union membership. Respondent made no significant protest. With respect to several cards, counsel did contend that the record fails to show the particular worker's signed in the presence of the card's collector; determination would seem to be clearly warranted, however, that each card's purported signer did personally tender his or her "signed" card to the person who solicited signatures. The cards were received. (Their tenor reveals, patently, that—when Respondent's workers signed them—they both designated and selected the Union as their bargaining representative, and sought union membership. Respondent has proffered no contention that the cards contained no clear statement regarding their purpose, or that card signers were, in any way, confused or misled with respect to their significance.) The cards in question had been signed by Respondent's workers, so the record shows, between August 22 and September 6, 1965, pursuant to solicitation, mainly, by certain of their fellows.

<sup>2</sup> Referred to erroneously within General Counsel's Complaint, as the Employer's *Phoenix* facility. Counsel for Respondent concedes within his brief that his client does *not* have any Phoenix facility; and the record clearly, shows that this case was litigated with the partnership's *Tucson* facility in mind throughout. Though the Complaint thus reflected a patent error, none of the parties were misled; counsel's contention that the Complaint should be dismissed because "fatally" defective must, therefore, be rejected. Consistent with this view, General Counsel's motion to amend complaint, filed while this Decision was being prepared, will be granted; thereby, the document's unit description will be conformed to the proof, which clearly relates to Respondent's Tucson motor hotel.

On September 7, 1965, Respondent concededly had 33 employees within the several job classifications previously found to constitute a unit appropriate for the purposes of collective bargaining. The record contains a stipulation that all 21 workers shown to have signed union cards were, then, still on Respondent's payroll. And counsel for Respondent conceded—while the hearing was in progress—that, should any motor hotel "maintenance department" workers ultimately be found to possess substantial watchmen/guard responsibility, the exclusion of such workers from the bargaining unit herein found appropriate would not affect the Union's presumptive status—on September 7th specifically—as the designated representative for a mathematical majority of Respondent's workers within the specified bargaining group. The record reflects no contention and, indeed, provides no factual justification for any contention that turnover since September 7, 1965, has destroyed the Union's presumptive majority status; so far as the testimony shows, only one card signer has left Respondent's employ since the date designated.

With matters in this posture, General Counsel contends, and Respondent, despite its formal denial substantially concedes, that, at all times since September 7, 1965, and continuing to date, the Union has been the designated and selected representative, for the purposes of collective bargaining, of a majority of Respondent's employees within the bargaining unit previously described. I so find. By virtue of Section 9(a) of the statute, therefore, the Union has been, and is now entitled to recognition as the exclusive representative of all Respondent's employees within the described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

### C. *The refusal to bargain*

On September 7, 1965, Local Joint Executive Board Secretary Eva Mae Davis dispatched a letter, which Respondent concededly received the next day, wherein the partnership was requested to recognize and bargain with the Local Joint Board, functioning for its constituent Unions previously named herein, which claimed to be the designated and selected representative of a majority of Respondent's motor hotel facility workers. (Respondent was told that—should it have a doubt regarding the Local Joint Board's status as representing a majority of workers within the specific bargaining group designated—that body would be willing to submit the signed authorization and membership cards of Respondent's employees to a neutral party, mutually agreed upon, for the purpose of a payroll check.) Sometime thereafter, this letter was brought to the attention of Sterling Peck, Respondent's general manager. The latter, forthwith, placed a telephone call to the Board's Resident Office in Phoenix, where he spoke with the resident Board representative. His testimony regarding their conversation reads as follows:

A. I told Mr. Cherry that I represented a motel and I asked him under what circumstances the National Labor Relations Board would assert jurisdiction and I was advised by him that they would not assert jurisdiction with a—under a five hundred thousand dollar gross sale.

Q. And relying on that, was that why you never contacted the union?

A. That's correct.

Peck, however, conceded that during his conversation with the Board's representative, Respondent's relationship with Sands Restaurant, Inc., was neither mentioned nor discussed.

On September 20, 1965, Secretary Davis dispatched a second letter to Respondent, wherein she referred to the Local Joint Board's September 7 request that respondent partnership recognize and bargain with it—functioning in behalf of its constituent Unions—as the representative of the partnership's Tucson motor hotel facility workers. Respondent's reply was requested. Counsel have stipulated, however, that Respondent never dispatched a reply with respect to either Local Joint Board letter noted.

### Conclusion

There can be no doubt, with matters in their present posture, that Respondent's refusal to acknowledge the Local Joint Board letters constituted a refusal to bargain, violative of the statutory mandate.

Conceding *arguendo*, that General Manager Peck may have taken his cue from a statement by this Board's Phoenix representative to the effect that its statutory

justification would not be asserted with respect to any motel which did less than \$500,000 worth of gross business during a calendar year, the general manager's claimed "good faith" reliance upon such a bare statement of principle cannot exculpate respondent partnership. The Board has held, with judicial concurrence, that, whatever the doubts a respondent firm may have concerning its legal or discretionary jurisdiction, such doubts constitute no defense to charges of refusal to bargain. *Howell Chevrolet Company*, 95 NLRB 410, 414, enfd. 204 F.2d 79, 31 (C.A. 9), affd. 346 U.S. 482; *The Strang Garage Company*, 93 NLRB 900, 905-906, enfd. *sub nom. N.L.R.B. v. Conover Motor Company, et al.*, 192 F.2d 779, (C.A. 10). Certainly, such a respondent firm's mere "doubts" regarding the Board's capacity or readiness to compel compliance with its statutory mandate can hardly be considered sufficient to dictate this agency's dismissal of clearly supportable "refusal to bargain" charges, particularly when, as in this case, those doubts were never even communicated to the Union following its request for recognition.

Well-established decisional doctrine, further, teaches that respondent firms, when confronted with union representation claims bottomed upon designation cards signed by a majority of the workers within some presumptively appropriate bargaining unit, refuse to bargain in violation of the statute should their refusal be found motivated, not by any bona fide doubt regarding the union's majority, but rather by their determination to reject the collective-bargaining principle. Since a majority of Respondent's workers within a proper bargaining group had, clearly, designated the Unions as their bargaining representative before September 8, 1965, when respondent partnership received the Local Joint Board's first recognition letter, Respondent's demonstration of complete disregard for the letter in question, together with the Local Joint Board's follow-up letter—without so much as a courtesy of a reply—must, itself, be considered a rejection of the collective-bargaining principle. See *Bernard Happach d/b/a 14th Street Market*, 151 NLRB 560, enfd. 353 F.2d 629 (C.A. 7), in this connection.

Within its decision confirming the Board's order with respect to the cited case, the Court of Appeals noted, particularly, that:

At no time in any of the meetings did Happach express any doubt as to the Union's majority, ask for proof of the Union's majority status, or give any reason other than advice of counsel for his refusal to recognize the Union.

With respect to the present respondent partnership, likewise, the record is barren of testimony that General Manager Peck communicated any doubt regarding the Union's claimed status as the representative of an employee majority within its proposed bargaining unit, or that he proffered any reason whatsoever, for refusing recognition.

Again, the Board has held that, when a respondent firm fails to make any effort to verify a union's claim of status as the representative of a worker majority, such conduct reflects a rejection of the collective-bargaining principle. See *George Groh and Sons*, 141 NLRB 931, 939-940; *Air Filter Sales & Service of Denver, Inc.*, 142 NLRB 384, 391, in this connection. Respondent made no such effort when first confronted with the Local Joint Board's letters.

With matters in this posture—particularly because of Respondent's substantive concession regarding the propriety of the workers' group previously, herein defined as appropriate for the purposes of a collective bargain; the Unions' clear demonstration of majority status within the designated bargaining unit; the Local Joint Board's two written requests for recognition which respondent partnership never acknowledged; and, finally, Respondent's conceded reliance upon nothing more than a bare statement of principle, chargeable to a Board representative, which the partnership's general manager considered a definitive representation that the Board would not be disposed to assert its jurisdiction in aid of the Local Joint Board's demand—determination seems clearly warranted that Respondent has refused to bargain, in violation of the statute. I so find.

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

The activities of Respondent set forth in section III, above, since they occurred in connection with the business operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and, absent correction, would tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Since it has been found that Respondent committed, and continues to commit an unfair labor practice, it will be recommended that the Board issue an order requiring that it cease and desist therefrom and take certain affirmative action, including the posting of appropriate notice, designed to effectuate the policies of the Act, as amended.

Respondent's course of conduct, previously summarized, does not, however, disclose a pervasive posture of resistance to the purposes of the statute regarding the protection of employee rights in general. No broad cease-and-desist order could properly be considered warranted. My recommendation, therefore, will be that Respondent be ordered merely to cease and desist from any continued refusal to bargain with the Union, and that it be further ordered to cease and desist from interference with, restraint, or coercion of its Tucson motor hotel workers in any like or related manner.

In the light of the foregoing findings of fact, and upon the entire record in this case, I make the following:

## CONCLUSIONS OF LAW

1. Sands Motor Hotel, designated as Respondent herein, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act, as amended.

2. Catering Industry Employees Local No. 413 and Bartenders Union Local No. 476, functioning through the Local Joint Executive Board, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO are labor organizations within the meaning of Section 2(5) of the Act, as amended, which admit employees of Sands Motor Hotel to membership.

3. All housekeeping and maintenance department employees, front desk men, and bell men at Respondent's Tucson facility, exclusive of office clerical, professional employees, watchmen and guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of a collective bargain, within the meaning of Section 9(b) of the Act, as amended.

4. At all times material herein, subsequent to September 7, 1965, the Union has been entitled to recognition as the exclusive representative of Sands Motor Hotel employees within the unit described above, pursuant to the provisions of Section 9(a) of the Act, as amended, for the purposes of collective bargaining with respect to rates of pay, wages, hours of work, and other terms and conditions of employment.

5. By its refusal to recognize or bargain with Local Joint Board representatives on September 8, 1965, and thereafter, Respondent has refused to bargain with the Union or Unions in good faith; thereby, Respondent has engaged and continues to engage in unfair labor practices affecting commerce, within the meaning of Sections 8(a)(5) and 2(6) and (7) of the Act, as amended.

## RECOMMENDED ORDER

Upon these findings of fact and conclusions of law and upon the entire record in the case, it is recommended that the Board, pursuant to Section 10(c) of the National Labor Relations Act, as amended, order that Respondent, Sands Motor Hotel, its owners, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Any continued refusal to bargain with Catering Industry Employees Local No. 413 and Bartenders Union Local No. 476, functioning through the Local Joint Executive Board affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, as the exclusive representative of all housekeeping and maintenance employees, front desk men, and bell men at Respondent's Tucson facility, exclusive of office clerical, professional employees, watchmen and guards, and supervisors as defined in the Act, as amended.

(b) Interference with, restraint or coercion of employees, through any course of conduct subject to proscription as a refusal to bargain, in connection with their exercise of the right to self-organization, to form labor organizations, to join or assist Catering Industry Employees Local No. 413 and Bartenders Union Local No. 476, or any other labor organization, to bargain collectively through representatives of their own free choice, and to engage in other 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 necessary to effectuate the policies of the Act, as amended:

(a) Upon request, bargain collectively in good faith with Catering Industry Employees Local No. 413 and Bartenders Union Local No. 476 functioning through Local Joint Executive Board, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, as the exclusive representative of all Respondent's employees within the unit found appropriate herein for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its office and place of business in Tucson, Arizona, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice to be furnished by the Regional Director for Region 28, as the Board's agent, shall be posted immediately upon their receipt, after being duly signed by a representative of the respondent partnership. When posted, they shall remain posted for 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 ensure that these notices are not altered, defaced, or covered by any other material;

(c) File with the Regional Director of Region 28, as the Board's agent, within 20 days from the date of this Decision, a written statement setting forth the manner and form in which it has complied with this Recommended Order.<sup>4</sup>

<sup>3</sup> Should the Board adopt this Recommended Order, the words, "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. Further, should 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" in said notice

<sup>4</sup> Should the Board adopt this Recommended Order 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 bargain, upon request, with Catering Industry Employees Local No. 413 and Bartenders Union Local No. 476, through the Local Joint Executive Board, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, as the exclusive representative of all our employees within the bargaining unit described as appropriate in the Trial Examiner's Decision in this case, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and embody in a signed agreement any understanding reached.

WE WILL NOT, through any course of conduct subject to proscription as a refusal to bargain, 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 labor organizations previously designated or any other labor organizations, to bargain collectively through representatives of their own free choice, and to engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activity.

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

SANDS MOTOR HOTEL,  
*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 Avenue NW., Albuquerque, New Mexico 87101, Telephone 247-2583.