

Gal Tex Hotel Corporation d/b/a Admiral Semmes Hotel and Motor Hotel and Hotel and Restaurant Employees and Bartenders Union, Local 176, AFL-CIO.
Case 15-CA-2822.

May 9, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN AND JENKINS

On January 3, 1967, Trial Examiner Benjamin B. Lipton issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Respondent filed exceptions and a brief 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.

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 brief, and the entire record in the case, and hereby adopts the findings, conclusions,¹ and recommendations of the Trial Examiner, except as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Gal Tex Hotel Corporation d/b/a Admiral Semmes Hotel and Motor Hotel, Mobile, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified.

1. Delete the words "instructing employees to dissuade other employees from joining the Union" from paragraph 1(b).

2. Delete the words "instruct employees to dissuade other employees from joining a union" from the second indented paragraph of the Notice to All Employees attached to the Trial Examiner's Decision.

¹ Although we agree with the Trial Examiner's findings of independent 8(a)(1) violations in other respects, we are not persuaded that the evidence upon which the Trial Examiner relies

substantially supports his findings that Respondent (a) predicated future payment of the Federal minimum wage upon defeat of the Union in the Board election, and, (b) instructed an employee to dissuade other employees from joining the Union, and thereby further violated 8(a)(1)

Chairman McCulloch would not adopt the Trial Examiner's finding that Respondent violated Section 8(a)(1) by the wage increases it announced on October 29, 1965. Bearing particularly in mind the 17-month interval since the election of May 6, 1964, and the conceded absence of a record showing that Respondent was aware of the Union's "request to proceed," Chairman McCulloch is of the opinion that there is no substantial evidence to support a finding that the wage increases were motivated by a specific purpose to impinge upon employee freedom of choice, or to otherwise undermine employee support of the Union. Cf. *NLRB v Exchange Parts Company*, 375 U.S. 405, 409

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

BENJAMIN B. LIPTON, Trial Examiner: This proceeding was heard on October 4, 1966, in Mobile, Alabama, upon a complaint by the General Counsel¹ alleging that the Respondent discharged Inola Chandler in violation of Section 8(a)(3) and engaged in various independent violations of Section 8(a)(1) of the National Labor Relations Act, as amended. Respondent generally denied commission of any of the alleged unfair labor practices. At the hearing, all parties were represented and afforded full opportunity to present relevant evidence, to cross-examine witnesses, and to argue orally on the record. Briefs filed by the General Counsel and Respondent have been duly considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Respondent is a Texas corporation engaged in furnishing lodging and other related services to guests. This proceeding solely involves the Respondent's facility in Mobile, Alabama, operating under the name of Admiral Semmes Hotel and Motor Hotel. During the year preceding issuance of the complaint, the following jurisdictional facts obtained with respect to the Mobile operation: Gross volume of business was in excess of \$500,000. More than 25 percent of the rental income was received from, and more than 25 percent of the rental units were rented to, transient guests who stayed for periods of less than 1 month. Purchases of whiskies valued in excess of \$75,000 were made by Respondent within the State of Alabama, which whiskies were shipped directly to the State of Alabama from points outside the State. Respondent's denial notwithstanding, I find on settled precedents that Respondent is engaged in commerce within the meaning of the Act.²

¹ The charge by the Union was filed on April 6, 1966, and the complaint thereon was issued on June 28, 1966

² E.g., *Floridan Hotel of Tampa, Inc.*, 124 NLRB 261, *Gal Tex Hotel Corporation, d/b/a Admiral Semmes Hotel and Motor Hotel*, 154 NLRB 338

II. THE LABOR ORGANIZATION INVOLVED

Hotel and Restaurant Employees and Bartenders Union, Local 176, AFL-CIO, herein called the Union, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background and Prior Proceedings

On May 6, 1964, a directed election was held in Case 15-RC-2871 in an appropriate unit of "all employees"³ Of approximately 188 eligible voters, 63 votes were cast for, and 107 against, the Union. On August 28, 1964, the Union's objections were sustained and the election was set aside by the Regional Director upon findings of employer interference and coercion.⁴ The holding of a second election, as directed, was suspended in view of charges filed by the Union and a complaint issued against Respondent alleging various violations of Section 8(a)(1). On August 6, 1965,⁵ the Board issued its Decision and Order (*supra*, fn. 2) with findings that Respondent coercively interrogated employees; threatened them with loss of privileges and other reprisals if they supported the Union; created the impression of surveillance of union activities; made statements of inevitable strikes and job loss should the Union prevail in the election; attempted to deter employees from assisting the Union in investigating and preparing cases before the Board on their behalf; and granted general wage increases as an inducement to reject the Union.⁶ Bearing the date of October 26, the Union filed a "request to proceed," which was docketed by the Regional Director on October 28. On November 4 and 5, discussions were held with all parties on the details of conducting a second election. On November 22, at the second election, 81 votes were cast for, and 97 against, the Union, with 3 ballots challenged. On November 26, the Union filed objections to this election. On February 10, the Regional Director found employer interference with the second election,⁷ ordered that it be set aside, and directed that a third election be held. On March 25, Respondent's "Request for Review" of the Regional Director's decision was denied by the Board. The pendency of the instant complaint proceeding, operates to block the holding of a third election.

B. The Wage Raise

On October 29, General Manager Frank C. Drane assembled the employees in each department and announced wage increases to be effective November 1. He told them that the raises were granted those employees

whose wages were "so substandard" that, as Respondent knew, they were "having a hard time living." As Drane recalled, the employees given the raise included, e.g., all waitresses, bakers, maids, hall boys, dishwashers, and "some kitchen help."⁸ On November 20, 2 days before the scheduled election, the employees received paychecks reflecting the increase for the payroll period ending November 15. Respondent had no practice of granting periodic raises to the employees. The last general raise was awarded in June 1964.⁹

In his first preelection speech to all employees (discussed *infra*), Drane's opening remarks were as follows:

I have called this meeting of your department in order to discuss a very important matter. It seems that just recently I was meeting with you folks to talk about a very pleasant subject—the wage increase I was able to get for you. Now I have to talk about a very unpleasant matter—the union. I must say, in all honesty, that this matter comes as a big disappointment to me. (It seems as though I no sooner did something *for* you, and had hardly turned around when, WHAM, some of you tried to hurt me and the hotel by starting this union up once again.)

Drane testified in justification of the wage action taken at this time. In early October, a "committee" of three or four maids complained to him about their hardships due to increased living costs and requested an increase in salary. He told them that the matter was already under discussion with the "home office" (in Galveston, Texas) and he would do what he could for them. Drane testified that he himself had made the wage decision, with the approval of the home office. As reason for the decision, he stated that it was "almost impossible to employ people at the wages we were paying, the ones that were on the low salaries."¹⁰ And "the turnover was almost unbelievable," because of the low wages being paid. He testified that, after this wage raise, it became less difficult to hire maids, and they stayed longer.

In presenting the defenses of Respondent, Drane's testimony consisted largely of generalizations and vague conclusions. No attempt was made to offer documentation or concrete evidence in support of such testimony. The employment difficulties described were related specifically only to the hiring and retention of maids, although obviously many other classifications were embraced in the wage raise. Concerning the rate of turnover, Drane stated that, without referring to payroll records (which he did not undertake), he had no data in terms of numbers or percentages over any specific period.

³ Excluding the piano players, the beauty and barber shops, technical employees, and the usual statutory exclusions.

⁴ The Regional Director found that Respondent's extensive campaign of literature and speeches was designed to produce an atmosphere of unreasoned fear among the employees, *inter alia*, by impressing upon them that their selection of a bargaining representative would be futile and would inevitably result in a strike, with dire consequences affecting the employees in loss of jobs and physical violence. Other objections involving credibility questions were not passed upon by the Regional Director.

⁵ All dates hereinafter are sequentially in 1965 or 1966, except as otherwise specified.

⁶ The earlier findings of the Board, of which official notice is taken, are properly considered evidence relevant in the present case with respect to Respondent's union animus and generally form the setting against which Respondent's further alleged violations herein must be evaluated. *Paramount Cap*

Manufacturing Company v NLRB, 260 F.2d 109, 113 (C.A. 8), *NLRB v Reed & Prince Manufacturing Company*, 205 F.2d 131, 139 (C.A. 1), *E V Prentice Machine Works, Inc.*, 120 NLRB 1691.

⁷ The Regional Director's action rested essentially upon Respondent's announcement and payment of a broad wage increase prior to the election—an issue also involved in the instant proceeding.

⁸ It was not indicated which employees were not included.

⁹ As earlier shown, this raise was held a violation.

¹⁰ The record shows, for example, that after the previous raise in June 1964, the daily wage rate for maids was \$3.45, and in November 1965, the rate was increased to \$3.99. The maids worked 6 days a week and sometimes were required to work on their designated day off. About 19 maids were employed when there was a "full house."

He relied upon information from the housekeeper, Thelma Ostrow,¹¹ who reported to him only in general terms from time to time, without supplying figures.¹²

In the prior complaint proceeding, which served to block the holding of a second election, the Board decision against Respondent came down on August 6. Under well-known procedures, if Respondent complied with the Board order in that case, by posting the prescribed notice for 60 consecutive days, it would normally permit the election to go forward. To be sure, this was a choice entirely within Respondent's discretion. For its part, the Union, having the benefit of the Board decision although the found violations were unremedied, could decide to file a "request to proceed"—which would similarly operate to allow the election. On October 28, such a request to proceed was formally on file with the Regional Director. The record does not show when Respondent received word of the Union's request to proceed or when the arrangement was made with Respondent setting the preelection conferences on November 4 and 5. In any case, it was within the realm of reasonable expectation that, following issuance of the Board's decision, a determination would be reached on the pending question of the second election. Furthermore, Respondent was well aware of the perils involved, particularly in light of the violation previously found with respect to its June 1964 wage action.

Board decisions hold that the promise or grant of wage increases in face of the possibility of a second election violates the Act, absent a clear showing of justification for such action unrelated to the election or to union activities.¹³ I am unable to find that such a showing of justification has been made or that General Manager Drane's testimony is acceptable to establish that legitimate business considerations motivated the granting of the raise in wages at this time. Because of its coercive practices, Respondent itself was the cause of the continuing delays by preventing the proper conditions for the holding of a free and fair election among the employees. It was scarcely proven that employment difficulties by reason of low wages or other factors had suddenly and significantly developed in October 1965. In view of the timing, it is immaterial that Respondent made no specific mention of the Union when it announced the wage increases.¹⁴ As shown, however, Respondent effectively exploited the pending grant of the raises in context of vehement attacks upon the Union in preelection speeches.¹⁵

On the basis of the entire record, including the background of the prior proceedings, I find that the wage increases were designed to undermine the Union's support among the employees, and that they did tend to influence the employees with regard to their selection of a bargaining representative.¹⁶ It is accordingly concluded that, in announcing and paying the wage raises (2 days before the election), and in exploiting in the election campaign such benefit accorded the employees, Respondent committed violations of Section 8(a)(1).

C. The Speeches

Within 2 weeks of the election scheduled for November 22, Drane delivered two speeches, about a week apart, to the assembled employees on each shift. He testified that he spoke entirely from prepared texts. These typewritten speeches, of substantial length, were placed in evidence by the General Counsel.

As to one allegation in the complaint, it was made clear in the taking of testimony that it pertained to a statement in Drane's first speech, *viz.*: "Oh, I know [the Union] will make lots of promises, and their secret agents from California and their agents from Atlanta will make things sound rosy but they will never put anything in writing." Under cross-examination, Drane stated that he was referring to Juanita Johnson, a waitress currently in Respondent's employ, as a secret union agent from California.¹⁷ It is my opinion that the employees were thus being led to believe that Respondent was aware of the identity and "secret" activities of union agents, including employees, engaged in the union campaign. Accordingly, I find that Respondent was thereby creating the impression of surveillance of union activities.¹⁸

As such, the speeches are not alleged in the formal complaint,¹⁹ in any offer to amend the same, or in the opening statement at the hearing. Nevertheless, General Counsel devotes a considerable portion of his brief to the speeches, contending violations, for example, in that Drane emphasized the inevitability of a strike, its dire consequences to the employees, and implied threats of job loss. The speeches have been considered to the extent that they plainly show Respondent's animosity toward the Union. However, the violations asserted in General Counsel's brief as arising from the speeches *per se* have not, in my view, been properly alleged or fully litigated, and therefore no findings are made thereon.²⁰

¹¹ Ostrow was not questioned on this subject, although she took the stand for Respondent.

¹² Elsewhere in the record it appears that Drane himself was directly involved in the hiring process.

¹³ E.g., *Ambox, Incorporated*, 146 NLRB 1520, 1521, reversed in pertinent part 357 F.2d 138, 141 (C.A. 5), *Northwest Engineering Company*, 148 NLRB 1136, *Gal Tex Corporation, d/b/a Admiral Semmes Hotel and Motor Hotel*, 154 NLRB 338, *supra*. Even if a promise or grant of benefit is not expressly related to union membership, it is deemed unlawful if it tends to interfere with the employees' self-organizational rights *Hermann Equipment Manufacturing Company, Inc.*, 156 NLRB 716.

¹⁴ *N.L.R.B. v. Exchange Parts Company*, 375 U.S. 405, 409, *Hermann Equipment Manufacturing Company, Inc.*, *supra*.

¹⁵ Although Drane flatly denied that he discussed the subject in his preelection conversations with individual employees, Geneva Crenshaw's credible testimony indicates that he did refer to the wage raise in his campaign talk to her, *infra*.

¹⁶ *N.L.R.B. v. Ambox Incorporated*, 357 F.2d 138, 141 (C.A. 5), cited by Respondent, is distinguishable on a number of grounds,

e.g., the strong presence here of union animus, and the fact that the wage increases here were announced and given *before* the election.

¹⁷ Inola Chandler testified that Drane said—"there was somebody in the building, he wasn't going to call no names, from California which was working for the Union, and he wished they would get out of the building and stay out."

¹⁸ *Rosen Sanitary Wiping Cloth Co., Inc.*, 154 NLRB 1185, *Brennan's, Inc.*, 147 NLRB 1545, 1546, *Dale Industries, Inc.*, 145 NLRB 1050, 1056.

¹⁹ One allegation of the complaint states that, in November 1965, Drane "informed the employees that he would not have any use for those employees who voted for the Union." Such language does not appear in either of the speeches, or in any of the testimony. As phrased, the allegation is ambiguous, and it is not clarified by the General Counsel, at the hearing or in his brief, by relation to any particular evidence. The allegation is therefore dismissed.

²⁰ This result is particularly applicable in view of a similar issue and disposition in the prior Board decision, *supra*.

D. *Juanita Johnson*

Johnson, a waitress employed from May 1964 until December 1965, was the individual identified by General Manager Drane as the "secret" union agent from California to whom he had referred in his preelection speech, *supra*. Her testimony was not contested by Respondent. On November 22, she acted as an observer for the Union in the Board election held on Respondent's premises. The polling periods were scheduled from 6 to 7 a.m. and from 12 to 4:30 p.m. After the balloting in the morning, Johnson looked for Union Representative Race in the hotel lobby and dining room and, not finding him, went to a small dining area reserved for the use of employees. She poured a cup of coffee and seated herself at a table, where she expected to be joined by Martha Cottrell, her supervisor. Assistant Manager Franklin Taylor stopped at her table. He asked her if she was scheduled to work, and was answered negatively. He said, "Well, what are you doing in that uniform?" She replied, "I didn't know I wasn't suppose to wear it." He "jerked up" the cup of coffee, carried it to the dirty dish rack in the kitchen, came back and demanded, "Now, get out . . . come on, now go." Johnson started walking with Taylor directly behind her, and he remarked to someone as they passed, "Don't worry, I will get rid of her myself." Various employees, including all the kitchen help, were present during the scene. Proceeding through sections of the building and across the parking lot, Taylor kicked Johnson's heels. When she finally turned and protested, he said she was not walking fast enough. As she entered her car and sat down, Taylor "grabbed the car door and slammed it so hard [she] thought the door was sprung." He ordered her to "get off" and not to come back until the next voting session.

Johnson regularly wears her uniform to and from work, as do most employees. Although the employees are instructed not to "go out anywhere" dressed in their uniform, they are allowed to remain on the hotel premises when they are not at work. In serving as election observer, she wore her uniform because she believed some of the employees might not recognize her in street clothes.

In its brief, Respondent argues that, by wearing her uniform, Johnson was "giving the impression that she was serving the interests of Respondent;²¹ and she was apparently campaigning on behalf of the Union in the interim between polling periods." These statements are completely unwarranted as a matter of evidence. It needs no elaboration that Johnson was subjected to a severely humiliating experience, in full view of other employees, and that Assistant Manager Taylor deliberately intended such an effect. It cannot be doubted that the underlying motive of Taylor's conduct was Johnson's role as election observer and her known activity on behalf of the Union. And it may readily be inferred that a further purpose was to demonstrate to other employees, preparing to vote in the election, Respondent's deep antipathy and the kind of discriminatory treatment they could expect by favoring the Union. It is amply evident that in all the elements of the incident, Respondent engaged in coercive conduct, violative of Section 8(a)(1), as alleged.²²

²¹ It does not appear that Respondent objected to her uniform while she was acting as an observer.

²² I would reach this conclusion even assuming, as I do not find, that waitresses were not permitted to remain on hotel premises, in or out of uniform, when they were not on duty.

²³ Drane did not testify concerning this conversation. Wilson was not called as a witness in the case.

E. *Other Incidents of Interference and Coercion*

Based on the employees' credited testimony concerning visits and statements of supervisors in the period preceding the scheduled election, I find that Respondent further violated Section 8(a)(1), by the following:

(1) *Ann Burrell*, a switchboard operator, was called to the office of Resident Manager Willis R. Wilson, who was present while Drane spoke to her about the Union. He said that he knew most of the employees had signed union cards, and that he knew "different ones" who had signed. At this point Burrell "volunteered" that she had signed a card. Drane said that he was aware that she had already done so.²³ By the statements, Drane created the impression among employees that their union activities were under Respondent's surveillance.

(2) While on duty as a maid, *Geneva E. Crenshaw* was visited by Drane, Wilson, and her immediate supervisor, Ostrow. Drane told her that if the Union were selected in the election, it "would go on strike," in which event he would not guarantee her a job. He also said that "if, we voted the Union out," by June 1 the law would be passed that the employees would get \$1.25 an hour. In addition, Drane referred to the wage raise effective November 1.²⁴ The violations which are found consist of: (a) urging upon an unsophisticated employee the inevitability of a strike, with a consequent threat to her job; and (b) predicating future payment of the Federal minimum wage upon defeat of the Union in the Board election.

(3) In their rounds, Drane and Ostrow spoke to *Norcis Lomax* during her work as a maid. Among other things, Drane said that, if the Union got in, she "will be sorry." He also stated that "he could not give us the \$1.25 an hour, but it was supposed to go in the first of October."

(4) Two weeks before the election, *Mary Sylvester*, a maid, was approached at work by Drane, in the company of Ostrow. He asked her how she was going to vote. She answered, ". . . for the Hotel, and not for the Union." A week later, she was similarly questioned by Ostrow, with Wilson present. She replied that she was leaving town, and would not vote. As to both occasions, it is found that Respondent engaged in coercive interrogations.

(5) *Thomas Dunn*, a night porter, was asked by Ostrow—"Are you with us?" He said, "Yes, ma'am, a hundred percent for you all."

(6) *Kenneth McCarty*, a hallboy, testified to certain conversations with supervisors, in material part, *viz*: On the day before the election, Ostrow and Drane met him in the hallway. Drane said, *inter alia*: "We are the ones that pay you, not the Union. The Union is telling a lie. Don't let them fool you. Be on our side, and if you do that we will be proud. Be sure to tell your friends, too, and let them know about it."²⁵

(7) On Thursday before the election, *Inola Chandler* was summoned by Ostrow to a room where Drane was waiting to speak to her. Among other things, Drane said, "I thought once, Inola, you was against the Union." She responded, "Why? What do you mean, when we went to court?" (She had testified at the prior Board hearing.) He said, "Yes." She then told him that she had asked him before the previous election to stop sending the numerous

²⁴ Drane and Ostrow were not questioned with respect to Crenshaw's testimony.

²⁵ E.g., *Bonnie Bourne, d/b/a Bourne Co.*, 144 NLRB 805, 808 (instructing an employee to dissuade other employees from joining the union).

campaign letters to her home, because her husband is a union man and "it like to broke up" her home. Continuing, she explained that she went to the Union and talked to them "because I wanted something did about it, and that is why I went to court." In this conversation, Drane also said, "you be with me, and I'll be with you." On this evidence, I find unlawful interrogation and an implied threat or promise of benefit.

F. Discharge of Inola Chandler

Until her termination on December 7, Chandler had been employed as a maid continuously since July 1961. Her testimony was corroborated in essential parts and stands unrefuted.

On Wednesday, November 10, she was notified that her niece's husband had been killed in Chicago. She requested and received permission of Housekeeper Ostrow to attend the funeral in Chicago, and was absent 3 days.²⁶ On Saturday, November 27, she was telephoned from Youngstown, Ohio, that her sister-in-law and sister-in-law's two brothers were killed in an automobile accident. At 7 a m., she called the hotel and was advised by Annie Sibley, the acting housekeeper, that Ostrow would be gone for the week.²⁷ She told Sibley she was unable to work because of the news she received of the deaths in her family. However, she tried to find a substitute maid, and, failing these efforts, reported to work. On Sunday afternoon, she telephoned Sibley and received permission to be absent in order to attend the funeral which had been arranged for the next Friday in Ohio. On Monday, November 29, she came to the hotel, showed her bus ticket to Sibley, and asked Sibley to advise Ostrow that she would report back to work the following Monday. When Sibley urged her to rest instead on that Monday, Chandler said, "Well, tell her I will be to work Tuesday."

Sibley verified the account given by Chandler. When Ostrow returned, Sibley told her what Chandler had said,—that she had gone to a funeral, and would be back one day next week. Ostrow made no comment and did not appear disturbed.

Monday night, December 6, upon her return from Ohio, Chandler promptly called the hotel and left word for Ostrow that she would come to work the next day. When she reported in the following morning, Ostrow told her, "I was not here when you left. I cannot use you no more. I have done hired a girl in your place."

On January 20, 1966, Chandler had occasion to speak to Drane when she telephoned to obtain her W-2 tax forms. He said he did not know of her termination until 2 weeks later, when Ostrow informed him that she "got into it with one of the maids and walked out, and came back a week later looking for a job."²⁸ Chandler told her that she had a death in the family and asked him if he had talked to Sibley and Wilson. He answered that he had, without indicating what they said Chandler asked for her job

back, and he replied, "You know, you can't make a supervisor work an employee when they don't want to."

Chandler was an active union adherent. She had solicited authorization cards from four employees prior to the original election. She had attended all seven union meetings held at the ILA Hall and the Battle House Hotel in the period immediately before the second election. Respondent's argument is unavailing that "there is no direct evidence" establishing its knowledge of Chandler's union activities. I find, rather, that the record affords substantial bases for a reasonable inference that Respondent knew or strongly suspected Chandler was an advocate of the Union. From the evidence of its persistent hostility, and its course of interrogations and instilling impressions of surveillance, Respondent showed that it was intent upon learning the identity of the prouction employees. General Manager Drane told Burrell that he knew "different ones" who had signed union cards. Chandler testified as a witness for the General Counsel in the prior complaint hearing. Her adamant objection to receiving Respondent's campaign literature at her home and her husband's strong union sentiments, all of which she forcibly made known to Drane, would scarcely indicate her opposition to the Union; rather the contrary.

Chandler was given no reason and no valid cause appears for her discharge. After 4-1/2 years of employment, she was terminated at a time when Respondent was ostensibly in desperate need of maids. She was diligent throughout in obtaining permission from management for her absences on account of the deaths in her family, and she had no record of absenteeism. Hyperbolic suggestions in Respondent's brief, e.g., that she "tended to be insubordinate to her superiors," and that "apparent" hostility existed between her and Ostrow—are devoid of support. Curious intimations in the record that, shortly prior to her discharge, she was being blamed for drinking and fighting on the job are similarly without foundation. In all these circumstances, the evidence of the General Counsel plainly justifies *prima facie* an inference of unreasonable and discriminatory action by Respondent. For its part, in practical effect, Respondent has offered no explanation, reason, or cause for the discharge. Indeed, its principals, Drane and Ostrow, did not even testify on the issue. It remains therefore to be found that Respondent discharged Chandler for discriminatory reasons in violation of Section 8(a)(3).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the Respondent's operations described in section I, above, have a close, intimate, and substantial relationship 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.

²⁶ Chandler testified that she had never been off from work before.

²⁷ Sibley testified that, in Ostrow's absence, she would "take over," and Ostrow would tell the employees that Sibley was "in charge" and to carry out Sibley's instructions. Chandler also testified that when Ostrow was on vacation Sibley, an inspector, took her place. On this undisputed evidence, I find that Sibley functioned as a supervisor within the meaning of the Act during Ostrow's absence.

²⁸ Sibley had no knowledge of Chandler being involved in an altercation with any other employee. Also indicative of unfounded accusations against Chandler is her testimony of another conversation with Drane, on Friday prior to the election. He had asked her why she had transferred from the evening shift to the day shift (sometime in 1964). And she said, "because you were fussing at Mrs. Ostrow about me smoking and drinking on the job." Drane then replied that he knew nothing about it. Chandler flatly testified that she does not smoke or drink.

V. THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. A broad cease-and-desist order appears warranted in view of the discriminatory discharge, the other serious violations here committed, and the indicated propensity generally of Respondent to violate the Act.²⁹

Respondent contends in effect that Inola Chandler was made a proper offer of reinstatement which she rejected. She testified to the pertinent events without contradiction. On September 29, 1966 (a few days before the instant hearing), General Manager Drane and his assistant, Wilson, appeared at the plant of her present job and were escorted by her supervisor to her work station. All of the other help stopped working during the conversation. After preliminary comments, Drane stated he had an opening at the hotel and wanted her to come to work in the morning. She replied she would give him a number and let him "call somebody and talk to them" (presumably the Union). He said he did not wish to talk to a second or third party, but wanted an answer from her. Allowing her time to think about it, he instructed her to telephone him at 6 o'clock, which she agreed to do. At 6 p.m. sharp, she called the hotel and was informed by the operator that Drane left word not to ring his office or room. She was also told, upon inquiry, that Wilson was out and to call back. When she later called again, Wilson was still unavailable. At both times she left a message for Wilson to tell Drane that she had called as she had promised—"and please, don't they come back down on my job..." It is argued in Respondent's brief that, after receiving so abrupt a message from a former employee, who was "short spoken with Drane on several occasions," it is hardly reasonable that Drane "would construe the message as anything but a curt refusal of employment." It is unnecessary to pass upon General Counsel's challenge of Respondent's good faith in the circumstances and manner under which the reemployment offer was made.³⁰ The fact is, as Respondent concedes, that Drane agreed to let Chandler give him her answer by telephone at 6 p.m. In turn, Chandler fulfilled all she was reasonably obliged to do, by repeatedly attempting to speak to Drane or Wilson and by leaving messages for them, on and after the appointed time. Respondent made no further moves to communicate with her, although it could readily have done so by telephone, letter, or at the Board hearing just a few days hence. The onus was upon Respondent, as the wrongdoer. In the particular circumstances, I find that Respondent was not relieved of its statutory duty to reinstate Chandler, as it failed to make a bona fide offer under conditions permitting an unequivocal rejection by the discriminatee.³¹

It will therefore be recommended that Respondent offer Inola Chandler immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings suffered by reason of the discrimination against her, by payment to her of a sum of money equal to that which she normally would have earned, absent the discrimination, from the date of

the discrimination to the date of the offer of reinstatement, less net earnings during such period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. Backpay shall carry interest at the rate of 6 percent per annum, as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716. Further, it will be recommended that Respondent preserve and upon request make available to the Board, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful in determining the amounts of backpay due and the rights of reinstatement under the terms of these recommendations.

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

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminatorily discharging Inola Chandler, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
4. By the foregoing, and by other acts and conduct interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. 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 the case, it is recommended that Respondent, Gal Tex Hotel Corporation d/b/a Admiral Semmes Hotel and Motor Hotel, Mobile, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Discouraging membership in Hotel and Restaurant Employees and Bartenders Union, Local 176, AFL-CIO, or in any other labor organization, by discharging employees, or in any other manner discriminating in regard to hire or tenure of employment or in any term or condition of employment.
 - (b) Coercively interrogating employees concerning their union sentiments; creating among the employees the impression that their union activities are under surveillance; instructing employees to dissuade other employees from joining the Union; directly or impliedly threatening them with job loss, or other reprisals, to discourage their union membership or activity; or promising or granting them wage increases, or other benefits, to influence them with regard to their selection of a bargaining representative.
 - (c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

employment. However, no further violations were alleged.

³¹ *Leading Sales Co., Inc.*, 155 NLRB 755. *Leo Rosenblum, d/b/a Crown Handbag of California*, 137 NLRB 1162, 1164

²⁹ *NLRB v. Express Publishing Company*, 312 U.S. 426, *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532 (C.A. 4)

³⁰ General Counsel argues that Drane's purpose was to harass Chandler and cause her embarrassment at her place of

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Inola Chandler immediate and full reinstatement to her formerly or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings, as set forth in "The Remedy" section of the Trial Examiner's Decision.

(b) Notify the above-named employee if presently serving in the Armed Forces of the United States of her right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(d) Post at its Mobile, Alabama, hotel and motel copies of the attached notice marked "Appendix."³² Copies of said notice, to be furnished by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by 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 to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 15, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.³³

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

³² In the event that this Recommended Order is 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 is 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."

³³ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 15, 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 NOT discourage membership in Hotel and Restaurant Employees and Bartenders Union,

Local 176, AFL-CIO, or in any other labor organization, by discharging employees, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT coercively interrogate employees concerning their union sentiments; instruct employees to dissuade other employees from joining a union; or instill in employees the impression that their union activities are under surveillance.

WE WILL NOT directly or impliedly threaten employees with job loss, or other reprisal, to discourage their union membership or activity.

WE WILL NOT promise or grant employees wage increases, or other benefits, to influence them with regard to their selection with a bargaining representative.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the 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, and to engage in any other activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL offer Inola Chandler immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights or privileges previously enjoyed.

WE WILL make the above-named employee whole for any loss of pay she may have suffered by reason of the discrimination against her.

All our employees are free to become, or refrain from becoming, members of the above-named labor organization, or any other labor organization.

GAL TEX HOTEL
CORPORATION D/B/A
ADMIRAL SEMMES HOTEL
AND MOTOR HOTEL
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

Note: We will notify the above-named employee if presently serving in the Armed Forces of the United States of her right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

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, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana 70113, Telephone 527-6361.