

**Consolidated Casinos Corp., Sahara Division and Consolidated Casinos Corp., Thunderbird Division, Respondent and James S. Miller, Charging Party and American Federation of Casino and Gaming Employees, Charging Party.**

**Consolidated Casinos Corp., Thunderbird Division and American Federation of Casino and Gaming Employees, Petitioner.**  
Cases 31-CA-367, 31-CA-423, and 31-RC-129.

May 24, 1967

## DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On November 8, 1966, Trial Examiner Thomas A. Ricci issued his Decision in the above-entitled proceeding, finding that 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. In addition, the Trial Examiner found merit in one of the objections to the election filed by the Union in Case 31-RC-129 and recommended that the results of the election be set aside. He also found that Respondent had not engaged in certain other unfair labor practices as alleged in the complaint and recommended dismissal of those allegations. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

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 considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

### 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, as modified below, and hereby orders that the Respondent, Consolidated Casinos Corp., Thunderbird Division, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

Delete the words "Sahara Division" from the Trial Examiner's Recommended Order and the notice wherever they appear.

IT IS ALSO ORDERED that the election in Case

31-RC-129, held on May 11, 1966, be, and it hereby is, set aside.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges unfair labor practices not specifically found in the Trial Examiner's Decision.

[Direction of Second Election<sup>2</sup> omitted from publication.]

<sup>1</sup> In the absence of exceptions by the General Counsel, we adopt the Trial Examiner's recommended dismissal of the 8(a)(3) allegation in the complaint. We shall delete Respondent's Sahara Division from the Order since the only unfair labor practice allegations pertaining to this portion of Respondent's operations are being dismissed. Respondent has also excepted to the Trial Examiner's ruling admitting into evidence the document "Report and Recommendations on Present Union Activity in Las Vegas," which was introduced by the Charging Union. As this exhibit is possibly relevant only to the 8(a)(3) allegation which we have dismissed, we find it unnecessary to rule upon Respondent's exception.

<sup>2</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 31 within 7 days after the date of issuance of the Notice of Second Election by the Regional Director. 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 when ever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

THOMAS A. RICCI, Trial Examiner: These cases, involving objections to conduct affecting the results of an election and unfair labor practice charges, were heard by Trial Examiner Thomas A. Ricci at Las Vegas, Nevada, on September 8, 1966, pursuant to a complaint issued on June 17, 1966, and an order of consolidation dated September 2. The complaint alleges a violation of Section 8(a)(3) of the Act. Briefs were filed by the General Counsel and the Respondent.

Upon the entire record,<sup>1</sup> and from my observation of the witnesses, I make the following:

#### FINDINGS AND CONCLUSIONS

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

Consolidated Casinos Corp., herein called the Respondent and the Employer, operates through several divisions, including Sahara Division and Thunderbird Division; this consolidated proceeding involves only these two divisions, each of which operates a gaming casino in Las Vegas, Nevada. During the calendar year 1965 the Respondent had gross receipts in excess of \$5 million from its gambling enterprises and purchased gambling supplies, including playing cards, dice, and other paraphernalia valued in excess of \$50,000 from suppliers located outside the State of Nevada. The Respondent moved to dismiss

<sup>1</sup> Two motions to correct transcript, unopposed, are granted. All parties also filed a posthearing stipulation agreeing to place in evidence three documents, marked Exhibits A, B, and C. The exhibits are hereby received in evidence.

the complaint on jurisdictional grounds. The Board having already considered the merits of this motion in another proceeding (*El Dorado, Inc., d/b/a El Dorado Club*, 151 NLRB 579), the motion is denied. I find that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to exercise jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

American Federation of Casino and Gaming Employees, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

The evidence at the hearing was almost all oral testimony by five men, two employees and three management agents. Their stories went both to the objections—conduct said to require setting aside the election at the Thunderbird Casino and directing a new one—and to the complaint allegation that James Miller was denied consideration for employment because each of these divisions of the Respondent—Sahara and Thunderbird—pursue a policy of not hiring applicants believed to be union members or adherents. Decision in both respects turns very largely on a question of credibility. The president of the local union, employed by the Thunderbird Casino and known there as organizer and outspoken unioner, testified that he was told by a supervisor before the election, that if he did not quit this sort of activity he would suffer for it. Another gambling casino worker, not employed by the Respondent, related how he accompanied Miller, an experienced craps dealer, to the managers of both the Sahara and Thunderbird Casinos, seeking employment, only to be told by both officers they would not consider hiring union members or persons associated with the Union in the past. The three company witnesses, the pit boss, and each of the managers, gave different versions of their conversations with the two employees; essentially the burden of their testimony was simply to deny the damaging statements attributed to them. It is a matter of who is to be believed.

If the threat of discharge was made to the president of the local, and if the casino managers in fact said no prounion applicants would be considered for employment, all before the election, the objections are valid and a new election must be held. Similarly, if the managers did say Miller had no chance of employment because of the union activities that were going on, they committed unfair labor practices, and such conduct must cease. If, instead, the denial of Respondent's witnesses are to be credited, the entire complaint fails of proof and the objections as well.

### A. *Violation of Section 8(a)(1)*

An organizational campaign among the Casinos operated by the Respondent in Las Vegas began late in October of 1965. On October 26 the Union filed a petition (Case 31-RC-129) for an election among the casino employees at the Thunderbird, a Decision and Direction of Election was issued by the Regional Director on January 11, 1966, and the election was conducted under Board supervision on May 11. Of the valid votes cast, 44 were for the Union and 72 against; the Union filed objections to conduct affecting the election, 2 of which are being heard here.

In the early stages, back in October, Otho Hill, a 21 dealer, became president of the union local, member of the executive board, and shop steward for the Thunderbird employees; his position and active organizational activities were admittedly known to the Respondent. He testified that about April 5, Bob Lee, then a graveyard pit boss at the Thunderbird, engaged him in conversation about the union campaign. The two had talked frequently on the subject, sometimes in light vein, sometimes seriously. The supervisor spoke against unionization and, as Hill said, they "needled" one another. On this occasion the shift supervisor invited Hill to consider a hypothetical situation and to venture an opinion. He voiced an assumption that if Hill were to circulate a petition stating that in the event the Union should lose the imminent election, and Hill then be discharged, the below-named employees would strike in protest. How many employees—Lee asked Hill—did the latter believe would sign such a petition? Hill said nothing, not knowing what to say. At this point, still according to Hill's testimony, Lee told him: "I don't want to tell you what to do, but you better back off this union before you bury yourself."

Hill continued to testify that a few days later, still before the election, again at their place of work, Lee offered to bet on the outcome of the election, and now "said that I had to be crazy to stick out my head for idiots, because they didn't care about me, and that he says that we were going to lose the election . . . and then I was going to be in one hell of a fix, because they had a list on these union guys, and he said I was at the top of the list."

Lee also recalled that he and Hill talked very frequently about the Union, maybe "100" times. He remembered the occasion in April when he asked Hill how many employees were likely to sign a petition promising to strike over his discharge in the event the Respondent should dismiss him following loss of the election by the Union. As Lee explained it, he started by asking Hill: "Is it your opinion that your job is in jeopardy," and that it was following this thought that he conceived the notion of asking Hill what support he supposed there might be for him among the employees. He added Hill's answer had been "maybe four or five."

Lee denied having threatened any employee at any time, or that he told Hill he should quit lest he "bury himself," or that he said there was a list of union employees of any kind. He did recall talk about a blacklist, but explained that all that consisted of was Hill asking him whether there was such a thing and his replying he never knew of any.

I credit Hill against Lee. These are sharp people; the subtlety in the supervisor's indirect method of raising the subject of retaliatory discharge of the union leader in no way minimizes the clear threat. The thought that Hill could well start thinking of the possibility of discharge after the election was no less effectively implanted in his mind. And the way the speculation was presented—even taking Lee's version—also served to stress the supervisors' further message to Hill that in the event of the misfortune, he could look for little help among his fellow workers. That the two men made a money bet over the outcome of the election does not alter their relationship. Sometimes they "kidded" one another, but Hill had no less reason for concern. Counsel for the Respondent asked him at the hearing whether he was "actually in fear" of his job, and the answer was "I am in fear of my job right now, Mr. Oliver."

Further, there is probative evidence that the

Respondent, Consolidated Casinos, as an overall entity, was opposed to self-organizational activities among its employees or having a union represent them. A 17-page document entitled "Report and Recommendations on Present Union Activity in Las Vegas," dated November 17, 1965, prepared and signed by Attorney John F. O'Hara, was placed in the hands of a union organizer by a member of the company negotiating team in December. The slot machine mechanics of the Mint Hotel, operated by the Respondent's Mint Division, were then represented by the Union on the strength of a newly issued Board certification. Sam Boyd, bargaining on behalf of the Company, handed the document—quite obviously by mistake—to Vivian Brooks, an organizer speaking for the Union during the negotiations. He called it the Company's counterproposal to the Union's demands; he picked it out of his briefcase by error.

It is a temperate statement of the employers' rights under the statute, and faithfully explains in detail the procedural mechanics whereby a desire to delay elections, or eventual bargaining, could defer for several years the day of a possible duty to bargain. It also advises how employer campaigning against unionization might defeat the campaign entirely. Among the pinpointed ideas of exact advice, is included: "There should be a careful program of screening future employees instituted immediately to avoid 'union plans' and undesirable employees."

The demeanor of Hill and Lee as witnesses is a major factor in the credibility resolution I make. I have no doubt Hill spoke truthfully. I find that Lee did warn Hill he might be prejudiced in his employment if he continued his union activity, that he indirectly but no less effectively threatened him with discharge that day, and that he later intimidated him by saying there was a list of prounion employees with Hill's name at the top. By all these statements the Respondent restrained and coerced the employees in violation of Section 8(a)(1) of the Act.

#### B. *Alleged Illegal Refusal to Employ Miller*

On the complaint allegation of illegal discrimination in employment, the General Counsel's witness was Robert Murphy, 8 years a craps dealer in Las Vegas, and an organizer for the Union, as well as member of its executive board. One evening in early March of 1966, while in the company of Miller, also a craps dealer, he met Mike Renis, manager of the Thunderbird Casino, in the bar of the Sahara Hotel, and introduced Miller to Renis. Murphy had worked under Renis at another location in 1959 or 1960, but had never been employed by Consolidated Casinos in any of its establishments. A few days later Murphy took Miller to see Renis at the Thunderbird Casino, where Miller said he was looking for work and requested an application. Renis answered he had no openings and there were no applications available. Miller then asked could he leave his name, and Renis replied, still as Murphy testified, "Look, I cannot hire you. I am not allowed to hire guys associated with the union . . . no sense in putting in an application." Miller then said he was not active with the Union, that he needed work because he had a family. Again Renis said: "I cannot help. I cannot hire anybody who was associated with the Union."

Continuing with his testimony, Murphy then related how, about 2 weeks later, still in March, he accompanied Miller to the manager of the Sahara Casino, John Hughes. Miller had worked for Hughes in that Casino in 1964, when

several dealers, including himself, had been released because of a fire in the place. He now reminded Hughes that he had been promised recall, and then told him how Renis had advised him he "was not allowed to work for you any time." Miller said he wished to work "at the Thunderbird, or one of the places in your organization." Hughes' answer was: "I am not going to put you to work . . . I will not hire anybody that was associated with union or a member . . . This is our right, that we do not hire anybody that was ever a member of the union . . . that is our prerogative." Miller then asked, "Why are you blacklisting me, and any member that wants to work," and added he understood the Mint [the third Casino operated by the Respondent in Las Vegas] was hiring dealers, and he would work there. Again Hughes said: "It is our prerogative . . . I don't care if you go to work in the Mint . . . but you are not going to work for this organization . . . you deal with the Del Webb Corporation." In the course of the conversation both Murphy and Miller said to Hughes they were no longer active in the Union.

Miller did not appear at the hearing.

Both Renis and Hughes testified for the Respondent. Renis, as manager, does all the hiring at the Thunderbird Casino. He recalled how Murphy introduced Miller to him one evening at the Sahara Bar, but he added that Miller asked for a job then, and that he said he was not hiring because his staff was sufficient. He also recalled the visit a few days later at the Thunderbird. Here, as Renis testified, Murphy asked would the manager put Miller to work and that again his answer was he needed no one and was not hiring. Renis also said he always has employment applications readily available, and had them then but that Miller did not request one. Renis also testified that at his first talk with the two men Murphy did say he was no longer associated with the Union, and then added he never knew Miller to have been active in union affairs, and that he, Renis, was indifferent on the entire subject.

Hughes' story of his talk with the two men in March is that when Miller started by asking why he had not been recalled after the fire in 1964, his reply had been that Miller had not applied. Murphy then said, according to Hughes, it was a shame a man could not obtain work at the Thunderbird, and that Renis had refused to hire Miller. At this point Hughes spoke again to say: "You ask me for a job here; I don't have anything . . . that was the extent of it." Hughes also recalled Miller saying he would go to the Mint, that he might have a chance there. As to any talk of union activities, Hughes' testimony is that he never knew Miller to have had anything to do with the Union before Murphy said that day in March that Miller "was no longer active in the Union," and no longer a member. Hughes also closed his testimony with saying it was of no moment to him whether his employees were unionized or not, and then denied he mentioned the Union at all during the conversation.

I do not credit Murphy, and this is very largely a resolution grounded on the demeanor of the witnesses. I have considered other facts which do bear some relationship to this question. The Respondent's policy with respect to the Union is to curb it if possible, and in keeping with that attitude the managers could well have spoken to Miller as Murphy testified. There is on the other hand an inherent weakness in Murphy's total story that more than offsets the probability concerning the statements charged to the managers. He had not worked for or with Renis for perhaps 6 years; he had never worked for the Respondent and he did not know Hughes at all. In explaining how it

came about that he accompanied Miller in both these job applications, Murphy said that "in this business" it helps to have a person who is "capable" recommend the applicant. I doubt he really believed his presence would help Miller.

His explanation becomes even more incredible in the light of his further statement that he had himself applied for employment of Hughes several times shortly before and been refused. "Well, in 1964 we filed a blacklisting charge against the Sahara Hotel, and I believe nine other establishments, and I personally had asked for a job from Mr. Hughes three or four different occasions, '64 and '65 and '66, and it was the same old story there: 'Out of work', and they weren't going to hire no dealers for now; they would not be hiring dealers until the future."

Implicit in this language is the thought that in Murphy's opinion the reason why he was denied employment was the blacklisting charged to the Respondent. And his demeanor while giving this testimony made the implication unmistakable. With this his conviction, his arrival with Miller in successive applications more likely had a purpose other than what he told at the hearing. It is at this point of my consideration of the total record that the failure of Miller to testify at the hearing becomes very significant.

I find therefore that when Miller applied for work at both the Thunderbird Casino and the Sahara Casino, he was told only there were no jobs available then. As there is no substantial evidence of illegal motivation in the refusal to employ him, I shall recommend dismissal of the complaint with respect to Miller.

#### IV. CASE 31-RC-129; THE OBJECTIONS

The election at the Thunderbird Casino which the Union lost was held on May 11, 1966. Upon investigation, the Regional Director ordered that a hearing be held on only two of the objections filed. One alleges that between January 11, the date of the Direction of Election, and the time of the election, the Respondent "discriminated against the members of the Petitioner and its adherents because of their membership in the Petitioner." The second alleges that during the same period the Employer "discriminated against applicants for employment who were members or expressed sympathy for the Union by refusing to hire them."

The violations of Section 8(a)(1) of the Act committed by Supervisor Bob Lee during the month preceding the election require that the election be set aside. These were not so innocuous and isolated statements that they can be brushed aside as counsel for the Respondent suggests in his brief. A message to the president of the union local that he might be discharged for having tried to establish the Union in the Casino, plus the further news that the Company kept a list of prounion employees, is a most serious impairment of the so-called laboratory conditions necessary for untrammelled expression of choice by the employee group. Accordingly I recommend, on the basis of the meritorious objections filed by the Union, that the results of the election be set aside and a new election be ordered within the discretion of the Regional Director, at such time as in his opinion the effect of the unfair labor practices shall have been dissipated by adequate

compliance with the remedial action recommended below.

#### V. 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.

#### VI. THE REMEDY

The Respondent must be ordered to cease and desist from restraining and coercing the employees in violation of Section 8(a)(1) of the Act, and to post adequate notices.

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

#### CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By Supervisor Bob Lee's threat to discharge employees in retaliation for union activity, and his warning that a list of prounion employees is maintained by the Company, the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

#### RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and on the entire record in the case, I recommend that Consolidated Casinos Corp., Sahara and Thunderbird Divisions, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from threatening employees with discharge in retaliation for their union activities, telling them the Company maintains a list of prounion employees, or in any like or related manner interfering with, restraining, or coercing employees in their exercise of the rights guaranteed in Section 7 of the Act.
2. Take the following action which I find will effectuate the policies of the Act:
  - (a) Post at its Casinos in the Sahara Hotel and Thunderbird Hotel in Las Vegas, Nevada, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director of Region 31, shall, after being duly signed by the Respondent's representative, be posted by Respondent immediately on receipt thereof, and be maintained by it 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

<sup>2</sup> 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."

(b) Notify the Regional Director for Region 31, in writing, within 20 days from the date of receipt of this Decision, what steps the Respondent has taken to comply herewith.<sup>3</sup>

IT IS HEREBY FURTHER RECOMMENDED that the complaint be dismissed to the extent that it alleges illegal discrimination in employment with respect to James S. Miller.

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<sup>3</sup> 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 31, 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 threaten our employees with discharge in retaliation for their union activities, or tell them that the Company is maintaining a list of union members or adherents.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form

labor organizations, to join American Federation of Casino and Gaming Employees, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

CONSOLIDATED CASINOS  
CORP., SAHARA DIVISION,  
AND CONSOLIDATED  
CASINOS CORP.,  
THUNDERBIRD DIVISION  
(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, Tenth Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California 90012, Telephone 688-5850.