

**Dover Tavern Owners' Association and its Constituent Members: Idle Hour, Highway Tavern, Dutton Hotel, Old Tye Tavern, Marty's Essex Tavern, Grande's Tavern, East End Tavern, Fred's Tavern, Pal Office Cafe, Charlie's Taproom, Green Lantern, Ken's Tavern, Divvy's Tavern, Johnny's Tavern, Bill and Dot's Taproom and Bartenders Culinary Workers and Motel Employees Union, Local 158, AFL-CIO. Case 22-CA-3230**

January 5, 1968

### DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS  
BROWN AND JENKINS

Upon a charge filed by Bartenders Culinary Workers and Motel Employees Union, Local 158, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint dated September 26, 1967, against Dover Tavern Owners' Association and its 15 constituent members as named in the caption above, herein called the Respondents, alleging that the Respondents had engaged in and were engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the Respondents.

With respect to the unfair labor practices, the complaint alleges, in substance, that on or about July 14, 1967, the Union was duly certified by the Regional Director for Region 22 as the exclusive bargaining representative of the Respondents' employees in the appropriate unit and that, on or about August 25, 1967, and thereafter, the Respondents refused to recognize or bargain with the Union as such exclusive bargaining representative, although the Union requested the Respondents to do so.

On October 5, 1967, 10 of the Respondents filed an answer, denying the commission of the unfair labor practice alleged.

On or about October 19, 1967, the General Counsel filed with the Board a motion for summary judgment and a supporting memorandum, asserting that there were no issues of fact or law which had not already been litigated before and determined by the Board in a Decision and Direction of Election in a prior representation case,<sup>1</sup> and requesting an appropriate order remedying the violations as alleged in the complaint. Thereafter, on October 25, 1967, the Board issued an order transferring proceeding to the Board and notice to show cause

why the General Counsel's motion for summary judgment should not be granted. Pursuant thereto, the same 10 Respondents filed a memorandum in opposition to the motion.

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.

Upon the entire record in this case, the Board makes the following:

### RULING ON THE MOTION FOR SUMMARY JUDGMENT

The record before us establishes that on January 25, 1967, the Union filed a petition in Case 22-RC-3562 seeking to represent an appropriate unit of all bartenders employed by the members of the Dover Tavern Owners' Association at Dover, New Jersey. After a hearing, the Board issued the aforesaid Decision and Direction of Election on May 23, 1967, in which it found appropriate for bargaining a unit of all bartenders employed by the 15 named members of Dover Tavern Owners' Association, Dover, New Jersey, excluding all other employees, and supervisors as defined in the Act.

On June 19, 1967, an election was held in which nine votes were cast for the Union and six against. There were three challenged ballots, sufficient to affect the result. Thereafter the Regional Director, after a hearing, found 1 of the challenged employees to be ineligible to vote, thus reducing the total number of valid votes to 17, of which the 9 votes the Union received constituted a majority. No exceptions having been filed, the Union was certified on July 14, 1967.

On August 23, 1967, the Union requested that the Respondents bargain collectively with it. This request was refused, and on September 1, 1967, the Union filed the charge upon which these proceedings are predicated.

In their memorandum in opposition to the motion, the 10 Respondents denied, in substance, that: (1) the Association was currently in existence and (2) they or any of them were currently members of the Association. Affirmatively they contend, generally, that by February 1967 they had terminated their membership in and bargaining authorizations of the Association. But they made no specific response to the notice to show cause which raised any issues not already litigated and determined in the Board's Decision of May 23, 1967.

It is well settled that in the absence of newly discovered or previously unavailable evidence, a respondent in a Section 8(a)(5) proceeding is not entitled to litigate issues which were or could have been raised in the prior representation proceeding.<sup>2</sup>

<sup>1</sup> 164 NLRB 933.

<sup>2</sup> *Collins & Aikman Corporation*, 160 NLRB 1750.

All contentions now made were raised at the earlier hearing and were considered and rejected by the Board in the representation case. The one possible exception is the claim that at the time of the issuance of the complaint in the instant case the Association members who responded to the notice to show cause were no longer constituent members of the Association. Whether or not factually true, this is legally irrelevant. They were members of the Association until they attempted to withdraw during the representation case hearing; the Board has already considered the attempted withdrawal and found that it was of no effect; and the Union thereafter won an election and was certified as the representative of their employees. Thus, they may not refuse to bargain and defend that refusal by again claiming to have withdrawn from the Association. As there has been no offer of any newly discovered or legally relevant evidence raising a question as to identity of the individual tavern operators covered by the certification or as to the validity of the certification, no issue has been raised which requires an evidentiary hearing in the instant unfair labor practice proceeding.

As all material allegations of the complaint have either previously been found by the Board to be supported or have been admitted in this proceeding by the Respondents, and there are no matters requiring a hearing before a Trial Examiner, the General Counsel's motion for summary judgment is granted. On the basis of the record before it, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENTS

Respondent, Dover Tavern Owners' Association, herein called the Association, is an association of Employers whose members are engaged in the business of operating taverns in Dover, New Jersey. During the course and conduct of the business operations of the employer-members of the Association for the preceding 12 months, the employer-members received gross revenue valued in excess of \$500,000. During the same period of time, the employer-members of the Association purchased alcoholic beverages valued in excess of \$2,500 from New Jersey distributors who received such goods from places outside the State of New Jersey.

##### II. THE LABOR ORGANIZATION INVOLVED

Bartenders Culinary Workers and Motel Employees Union, Local 158, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Representation Proceeding*

##### 1. The unit

The following employees of the Respondents constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All bartenders employed by the 15 constituent members of Dover Tavern Owners' Association, Dover, New Jersey, excluding all other employees and supervisors as defined in the Act.

##### 2. The certification

On or about June 19, 1967, a majority of the employees of the Respondents voting in a secret mail ballot election conducted among the employees in said unit, under the supervision of the Regional Director for Region 22, designated the Union as their representative for the purpose of collective bargaining with the Respondents. On July 14, 1967, the Union was certified as the exclusive collective-bargaining representative of the employees in the said unit and the Union continues to be such representative.

#### B. *The Request to Bargain and the Respondents' Refusal*

Commencing on August 23, 1967, and continuing to date, the Union has requested and is requesting the Respondents to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. On August 25, 1967, and continuing to date, the Respondents did refuse, and continue to refuse, to bargain collectively with the Union as exclusive collective-bargaining representative of all employees in said unit.

Accordingly, we find that the Respondents have, since August 25, 1967, refused to bargain collectively with the Union as the exclusive bargaining representative of the employees in the appropriate unit, and that, by such refusal, the Respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

The activities of the Respondents set forth in section III, above, occurring in connection with their 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.

#### V. THE REMEDY

Having found that the Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that they cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

#### CONCLUSIONS OF LAW

1. Dover Tavern Owners' Association, including its 15 constituent members, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Bartenders Culinary Workers and Motel Employees Union, Local 158, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All bartenders employed by the 15 members of the Association, Dover, New Jersey, excluding all other employees and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 14, 1967, the above-named labor organization has been the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on August 25, 1967, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees in the appropriate unit, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, the Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and have thereby engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respond-

ents, Dover Tavern Owners' Association and its 15 constituent members, Idle Hour, Highway Tavern, Dutton Hotel, Old Tye Tavern, Marty's Essex Tavern, Grande's Tavern, East End Tavern, Fred's Tavern, Pal Office Cafe, Charlie's Taproom, Green Lantern, Ken's Tavern, Divvy's Tavern, Johnny's Tavern, Bill and Dot's Taproom, Dover, New Jersey, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, hours, and other terms and conditions of employment, with Bartenders Culinary Workers and Motel Employees Union, Local 158, AFL-CIO, as the exclusive bargaining representative of their employees in the following appropriate unit:

All bartenders employed by the members of Dover Tavern Owners' Association, Dover, New Jersey, excluding all other employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

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

(b) Post at their places of business in Dover, New Jersey, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by each Respondent representative, shall be posted by each Respondent immediately upon receipt thereof, and be maintained by each Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 22, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

#### APPENDIX

#### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT refuse to bargain collectively with Bartenders Culinary Workers and Motel

Employees Union, Local 158, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All bartenders employed by the members of Dover Tavern Owners' Association, Dover, New Jersey, excluding all other

employees and supervisors as defined in the Act.

[Signed by each individual member of Dover Tavern Owners' Association]  
(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, 614 National Newark Building, 744 Broad St., Newark, New Jersey 07102, Telephone 645-3088.