Ramada Inns, Inc. *and* **Hotel and Restaurant Employees and Bartenders Local 631; and Construction, Production and Maintenance Laborers Union Local No. 383, AFL-CIO.** Case 28-CA-1765

March 3, 1969

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

Upon a charge filed by Hotel and Restaurant Employees and Bartenders Local 631 and Construction, Production and Maintenance Laborers Union Local No. 383, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 28, issued a complaint dated September 20, 1968, against Ramada Inns, Inc., herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 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 upon Respondent.

With respect to the unfair labor practices, the complaint alleges, in substance, that on July 26, 1968, the Union was duly certified as the exclusive bargaining representative of Respondent's employees in an appropriate unit, and that, since on or about July 29, 1968, and thereafter, Respondent has refused and is refusing to recognize and bargain with the Union as such exclusive bargaining representative, although the Union has requested and is requesting it to do so On October 3, 1968, Respondent filed its answer, which denied the commission of the unfair labor practices alleged.

On November 13, 1968, the General Counsel filed with the Board a Motion for Summary Judgment, asserting, in view of admissions contained in Respondent's answer and its letters to the Union dated August 5 and September 3, 1968, that there are no issues of fact or law requiring a hearing, and praying the issuance of a Decision and Order finding the violations as alleged in the complaint. On November 14, 1968, the Board issued an Order, transferring the proceeding to the Board and a notice to show cause why the General Counsel's Motion for Summary Judgment should not be granted Thereafter, Respondent filed a Response opposing the General Counsel's Motion for Summary Judgment, and the General Counsel filed a Counter-Statement

Pursuant to the provisions of Section 3(b) of the Act, the 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 December 18, 1967, the two locals comprising the Union filed a joint petition in Case 28-RC-1741, seeking to represent certain employees of Respondent at the Ramada East motor hotel in Phoenix, Arizona After a hearing, the Acting Regional Director for Region 28 issued a Decision and Direction of Election on February 8, 1968, in which he found appropriate for collective bargaining the following unit of employees

> Waitresses, waiters, bus boys, cashiers, cooks, cook's helpers, bakers, butchers, kitchen helpers, kitchen porters, dishwashers, maids, linen boys, room service waiters, bellmen, desk clerks, bartenders, bar boys, cocktail waitresses, laborers and groundkeepers employed by Respondent at Ramada East, Phoenix, Arizona, excluding all watch engineers and maintenance engineers, administrative employees, technical employees, guards and supervisors as defined in the Act.

On or about February 19, 1968, Respondent filed with the Board a Request for Review of the above-mentioned unit determination. On February 29, 1968, the Board issued its denial of said Request for Review

On March 14, 1968, pursuant to the Decision and Direction of Election, an election was held in which 68 valid votes were cast for the Union, 19 valid votes were cast against the Union, and 15 votes were challenged. Thereafter, Respondent timely filed Objections to Election.

On May 1, 1968, after an administrative investigation, the Acting Regional Director issued a Supplemental Decision on Objections and Order Directing Hearing. He found therein that Respondent's Objections 1 and 2 raised material and substantial questions of fact and credibility which could best be resolved at a hearing, and that Respondent's Objection 3 was without merit

Respondent filed with the Board a Request for Review of the Acting Regional Director's Supplemental Decision on Objections on May 2, 1968 The Request was denied on May 8, 1968

On May 27, 1968, the Hearing Officer issued his report, finding that Objections 1 and 2 were without merit and recommending that they be overruled. Respondent filed exceptions to the Hearing Officer's Report on June 10. Thereafter, on July 26, 1968, the Acting Regional Director issued a Supplemental Decision and Certification of Representative adopting the Hearing Officer's Report.

On August 6, Respondent filed with the Board a Request for Review of the Regional Director's Supplemental Decision and Certification of Representative The request was denied on August 26, 1968

On July 29, and again on August 28, 1968, the Union requested that Respondent bargain

collectively These requests were refused on August 5 and September 3, 1968, respectively On September 5, 1968, the Union filed the charge upon which the complaint was predicated.

In its Response to the Notice to Show Cause, Respondent contends in substance that. (1) the Board's unit determination, election procedure, and certification of representative were unlawful and invalid, (2) neither the Act nor the Board's Rules and Regulations provide for a summary judgment in unfair labor practice cases such as this one; (3) even if a summary judgment is otherwise lawful, a hearing is first required to determine (a) that Respondent had reason to believe that John T. Blake, the signator of the letters demanding that Respondent bargain, was an authorized representative of the joint locals comprising the Union and, therefore, (b) that a valid bargaining demand was made.[1]

Respondent's first contention seeks to relitigate contentions made and rejected in the representation case Respondent does not allege nor do we find any new evidence unavailable at the time of the hearing or special circumstances which warrant re-examination of the denials of the requests for review in the representation case Inasmuch as Respondent has already litigated such contentions, it has not raised any issue which is properly triable in this proceeding.[2]

Respondent secondly contends that summary judgment in this case is not authorized by the Act or the Board's Rules and Regulations We find no merit in this contention.[3]

As for Respondent's third contention, our examination of the record in this case and in Case 28-RC-1741, the underlying representation case, discloses that Blake had been acting on behalf of the Union in its August 6, 1968, Request for Review and that Blake filed and signed the Charge against Respondent in this case. Further, the Union in letters to Respondent on November 4 and 5, 1968, confirmed that Blake was acting on its behalf Moreover, copies of Respondent's replies to Blake's bargaining demands on behalf of the Union were part of the General Counsel's Motion, and Respondent does not contest their authenticity. These replies do not challenge Blake's authority to act on behalf of the Union. Indeed, the replies implicitly concede Blake's authority, for they proceed to set out other alleged reasons for not granting the bargaining demands. Having thus treated Blake as the authorized representative of the Union, and in the totality of the circumstances of this case, we find no merit in Respondent's present contention regarding Blake's lack of authority at the time of the demands. On the basis of the record before us, including the record in Case 28-RC-1741, we find that Respondent had no reasonable basis for questioning Blake's authority to bargain for and act on behalf of both locals comprising the Union. We regard as frivolous Respondent's denial in its answer that a valid bargaining demand was made

As all material issues have been previously decided by the Board, are admitted by Respondent's answer to this complaint, or are not proper questions of fact to be determined at a hearing, there are no matters requiring a hearing before a Trial Examiner. Accordingly, 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 RESPONDENT

Respondent is, and has been at all times material herein, a Delaware corporation engaged in operating motor hotels and restaurants and related services in the Phoenix, Arizona, area During the past year, which period is representative of all material times herein, Respondent, in the course and conduct of its business operations, purchased and had delivered directly from outside the State of Arizona, goods, supplies, and materials valued in excess of $50,000; and during the same 12-month period, Respondent, in the course and conduct of its operations, sold goods and services, the gross value of which exceeded $500,000. During the same period of time, in excess of 25 percent of the guests at Respondent's Ramada East motor hotel remained less than 1 month

Respondent admits, and we find, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Hotel and Restaurant Employees and Bartenders Local 631 and Construction, Production and Maintenance Laborers Union Local No. 383, AFL-CIO, are labor organizations 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 constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

Waitresses, waiters, bus boys, cashiers, cooks, cook's helpers, bakers, butchers, kitchen helpers,

[1] In its Answer to the complaint, Respondent denied, among other things, that a valid bargaining demand was made

[2] *E-Z Davies Chevrolet*, 161 NLRB 1389

[3] *Union Brothers Inc*, 162 NLRB 1505, 403 F 2d 883 (C A 4), *Brush-Moore Newspapers, Inc*, 161 NLRB 1620, *E-Z Davies Chevrolet*, 161 NLRB 1389, *Collins & Aikman Corp*, 160 NLRB 1750

kitchen porters, dishwashers, maids, linen boys, room service waiters, bellmen, desk clerks, bartenders, bar boys, cocktail waitresses, laborers, and groundkeepers employed by Respondent at Ramada East, Phoenix, Arizona; excluding all watch engineers, and maintenance engineers, administrative employees, technical employees, guards and supervisors as defined in the Act.

2. The certification

On March 14, 1968, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Acting Regional Director for Region 28, designated the Union as their representative for the purposes of collective bargaining with Respondent, and on July 26, 1968, the Union was certified as the collective-bargaining representative of the employees in said unit and continue to be such representative.

B *The Request to Bargain and Respondent's Refusal*

Commencing on or about July 29, 1968, and continuing to date, the Union has requested and is requesting Respondent to bargain collectively with the Union as the exclusive collective-bargaining representative of all the employees in the above-described unit. Since August 5, 1968, and continuing to date, Respondent has refused and continues to refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of all employees in said unit.

Accordingly, we find that the Union was duly certified by the Board as the collective-bargaining representative of the employees of Respondent in the appropriate unit described above and that the Union at all time since July 26, 1968 has been and now is the exclusive bargaining representative of all the employees in the aforesaid unit, within the meaning of Section 9(a) of the Act. We further find that Respondent has since August 5, 1968 refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in the appropriate unit and that by such refusal Respondent has engaged in, and is 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 acts of Respondent set forth in section III, above, occurring in connection with its operations as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it 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

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial year of certification as beginning on the date the Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit See. *Mar-Jac Poultry Company, Inc*, 136 NLRB 785, *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229, enfd. 328 F 2d 600 (C.A.5), cert denied 379 U S 817, *Burnett Construction Company*, 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A.10)

CONCLUSIONS OF LAW

1 Ramada Inns, Inc , is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hotel and Restaurant Employees and Bartenders Local 631 and Construction, Production and Maintenance Laborers Union Local No. 383, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act

3 All employees of Respondent normally working at the Ramada East, Phoenix, Arizona, as defined in section III, A, 1, *supra*, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 26, 1968, the Union has been the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act

5. By refusing on or about August 5, 1968, and at all times thereafter, to bargain collectively with the Union as the exclusive bargaining representative of all the employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act

6. By the aforementioned refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in, and is 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 Respondent, Ramada Inns, Inc , Phoenix, Arizona, its 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 Hotel and Restaurant Employees and Bartenders Local 631 and Construction, Production and Maintenance Laborers Union Local No. 383, AFL-CIO, as the jointly certified exclusive bargaining representative of its employees in the following appropriate unit

> Waitresses, waiters, bus boys, cashiers, cooks, cook's helpers, bakers, butchers, kitchen helpers, kitchen porters, dishwashers, maids, linen boys, room service waiters, bellmen, desk clerks, bartenders, bar boys, cocktail waitresses, laborers, and groundkeepers employed by Respondent at Ramada East, Phoenix, Arizona; excluding all watch engineers, and maintenance engineers, administrative employees, technical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed 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 jointly certified Unions as the exclusive representative of all employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at Ramada East, Phoenix, Arizona, copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 28, shall, after being duly signed by Respondent's representative, 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 by Respondent to insure that said Notices are not altered, defaced, or covered by any other material

(c) Notify said Regional Director for Region 28, in writing, within 10 days from the date of this Decision and Order, what steps Respondent has taken to comply herewith

[4] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the 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 our employees that

WE WILL NOT refuse to bargain collectively with Hotel and Restaurant Employees and Bartenders Local 631, and Construction, Production and Maintenance Laborers Union Local No 383, AFL-CIO, as the jointly certified 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 our employees in the exercise of the rights guaranteed them by Section 7 of the Act

WE WILL, upon request, bargain with the above-named jointly certified Unions, 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

> Waitresses, waiters, bus boys, cashiers, cooks, cook's helpers, bakers, butchers, kitchen helpers, kitchen porters, dishwashers, maids, linen boys, room service waiters, bellmen, desk clerks, bartenders, bar boys, cocktail waitresses, laborers, and groundkeepers employed by Respondent at Ramada East, Phoenix, Arizona, excluding all watch engineers, and maintenance engineers, administrative employees, technical employees, guards and supervisors as defined in the Act

RAMADA INNS, INC
(Employer)

Dated By
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Resident Office, Room 207 Camelback Building, 100 West Camelback Road, Phoenix, Arizona 85013, Telephone 602-261-3717.