

Gate of Spain Restaurant Corporation¹ and Culinary Workers and Bartenders Union Local No. 814, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. Cases 31-CA-2055 and 31-RC-1519

August 27, 1971

**DECISION, ORDER, AND DIRECTION
OF SECOND ELECTION**

BY CHAIRMAN MILLER AND MEMBERS BROWN
AND JENKINS

On April 13, 1971, Trial Examiner Maurice Alexandre issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that certain conduct of Respondent interfered with the election which had been conducted pursuant to stipulation of the parties in Case 31-RC-1519, and recommended that the election be set aside, the petition in Case 31-RC-1519 be dismissed, and a bargaining order be issued. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision together with 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 proceeding 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 exceptions and brief, and the entire record in this proceeding and, finding merit in certain of Respondent's exceptions, adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

We agree that Respondent violated Section 8(a)(1) of the Act in the instances and manner set forth by the Trial Examiner in his Decision. We also agree that certain of the Union's objections to the election

conducted in Case 31-RC-1519 are meritorious and require us to set aside that election. In reaching this conclusion, however, we have considered only those objections to the election which occurred on or subsequent to the date on which the petition was filed.² Finally, we do not agree with the Trial Examiner's finding that the Union represented a majority of the unit employees or with his recommendation that a bargaining order should issue.

The appropriate unit consists of 45 employees, 26 of whom had signed cards which, in printed English, clearly and unambiguously authorized the Union to represent the signatories thereof for collective-bargaining purposes. There is no meritorious dispute concerning 16 of the cards. The remaining cards were signed by Mexican employees, some of whom are unable to read, write, speak, or understand English. The record shows that, among others in this group, Jiminez, Garcia, and Modesto were completely unaware of the existence of the Union at the time they signed their cards, that they had a complete lack of understanding of the purpose or function of a union, that they did not know either the purpose of an authorization card or the effects of their signatures thereon, that no one explained that purpose or effect to them, that they did not understand that purpose even when, at the hearing, they read that section of the ballot explaining that purpose, and that they affixed their signatures to their cards, and voted, for purposes other than set forth on the cards. In these circumstances, we find, contrary to the Trial Examiner, that these three employees did not authorize or intend to authorize the Union to represent them or to bargain on their behalf when they signed the cards they could not read. Accordingly, we shall not count these three cards.³

We also find, in agreement with the Trial Examiner, that the authorization cards signed by Barajas and Nevarez are invalid and cannot be counted because they signed their cards in reliance on the material misrepresentation that the purpose of the cards was "to get rid of the assistant manager."⁴

Therefore, since the Union at best had valid authorization cards from only 21 of the 45 employees in the appropriate bargaining unit, we find, contrary to the Trial Examiner, that the Union did not represent a majority of the unit employees.⁵

Inasmuch as the Union lacked majority status, the bargaining order recommended by the Trial Exam-

NLRB 376; *River Togs, Inc.*, 160 NLRB 58, 65; *Lifetime Door Company*, 158 NLRB 13, 21-22; *Freeport Marble & Tile Co., Inc.*, 153 NLRB 810, 822, 824.

⁴ The record indicates an antipathy between many of the Mexican employees and Respondent's assistant manager who, these employees believed, was prejudiced against them.

⁵ In view of our findings herein, we deem it unnecessary to pass on the validity of other authorization cards in dispute.

¹ The name of this party appears as amended at the hearing.
² *Joanna Western Mills Co.*, 119 NLRB 1789, 1791; *West Texas Equipment Company*, 142 NLRB 1358, 1360; *Jasper Pool Car Service, Inc.*, 175 NLRB No. 167.

³ *Brancato Iron Works, Inc.*, 170 NLRB 75; *Breaker Confections, Inc.*, 163 NLRB 882, 887. Cf. *N.L.R.B. v. Security Plating Company, Inc.*, 356 F.2d 725 (C.A. 9); *Snyder Tank Corporation*, 177 NLRB No. 94; *Lake City Foundry Company, Inc.*, 173 NLRB 1081, 1095; *Holmes Foods, Inc.*, 170

er is not an appropriate remedy herein. However, Respondent's unfair labor practices, as reflected in the objections to the election which fall within the purview of our consideration, are not so insubstantial or limited in their impact as to have had no material effect on the results of the election. We find, therefore, that by announcing, on the date the petition was filed, its intent to effectuate new health, welfare, and dental plans, as well as a wage increase, and by effectuating that intent a few days later, Respondent interfered with the employees' free choice in the election which was conducted in Case 31-RC-1519. Accordingly, we shall set aside the election and direct a new election.

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 Respondent, Gate of Spain Restaurant Corporation, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order, as so modified:

1. Delete paragraph B, 1, of the Trial Examiner's recommended Order and renumber paragraphs B, 2, and B, 3, as B, 1, and B, 2, respectively.
2. Delete the last paragraph of the Trial Examiner's recommended Order.
3. Substitute the attached Appendix for the Trial Examiner's Appendix.

IT IS FURTHER ORDERED that the election held on September 4, 1970, among Respondent's employees be, and it hereby is, set aside, and that Case 31-RC-1519 be, and it hereby is, remanded to the Regional Director for Region 31 for the purpose of conducting a new election at such time as he deems circumstances permit the free choice of a bargaining representative.

[Direction of Second Election⁶ omitted from publication.]

⁶ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that 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 whenever proper objections are filed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT unlawfully question our employees.

WE WILL NOT promise our employees wage increases or other benefits to induce them to vote against unionization.

WE WILL NOT grant our employees wage increases or other benefits to induce them to vote against unionization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by the National Labor Relations Act.

GATE OF SPAIN
RESTAURANT
CORPORATION
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213-824-7351.

TRIAL EXAMINER'S DECISION

MAURICE ALEXANDRE, Trial Examiner: On July 29, 1970,¹ Culinary Workers Local 814 filed a petition for certification as collective-bargaining representative of Respondent's employees. On August 6, Respondent and Local 814 entered into a Stipulation for Certification Upon Consent Election. An election was conducted on September 4, at which time 39 ballots were cast, of which 15 were

¹ All dates hereafter mentioned refer to 1970 unless otherwise stated.

for Local 814, 23 were against, and one was challenged. On September 11, Local 814 filed objections to conduct by Respondent affecting the election, together with an unfair labor practice charge. On September 14, Respondent filed its response to the objections. On November 9, the Regional Director issued a complaint, based on the said charge, alleging that Respondent had violated Section 8(a)(1) of the National Labor Relations Act, as amended. On the same date, the Regional Director issued a report on the objections filed by Local 814 in which he concluded that the issues raised by the objections could best be resolved at the hearing upon the complaint, and he accordingly consolidated the two matters for the hearing. In its answer to the complaint, Respondent denied the commission of the unfair labor practices alleged. The consolidated proceedings were heard in Los Angeles, California, on January 5, 6, and 7, 1971. The issues presented are (1) whether or not Respondent unlawfully interfered with, restrained, and coerced employees; and (2) if so, whether or not a bargaining order is warranted. The latter issue turns in part on whether or not Local 814 had a majority.

Upon the entire record, my observation of the witnesses, and the briefs filed by the General Counsel and the Respondent, I make the following:

FINDINGS AND CONCLUSIONS²

I. THE UNFAIR LABOR PRACTICES

Respondent, a subsidiary corporation of Specialty Restaurants Corporation, is engaged in the business of operating a public restaurant known as Gate of Spain in Santa Monica, California. The managerial hierarchy at all material times included the following individuals: Joseph Alvarado—Respondent's restaurant manager, Jack Nichols—Respondent's budget director and the administrative controller of Specialty Restaurants Corporation, and Kenneth Dennis—vice president and division manager of Specialty Restaurants Corporation. On July 24 and 25, a number of Respondent's employees signed authorization cards designating Local 814 as their bargaining representative (see *infra*). It is undisputed that the following incidents took place on and after the latter date:

1. About 5:30 p.m. on July 25, Alvarado asked Employee Chymbur whether he had received one of the Union cards that were being passed around.

2. About 11:30 p.m. on July 25, Alvarado told Employees Escala, Hunter, and Koteru that he had heard rumors that somebody was passing out Union cards and asked them what they knew about it and about the Union, why they wanted a union, and what were the employees' grievances. Escala and Hunter told Alvarado that the employees were unhappy about Respondent's health and welfare plan, its dental plan, the rotation of work stations, the frequent change in managers, the lack of communication between management and employees, job security, and wage scales. Alvarado agreed with most of their grievances, implied that he would try to correct them, and

stated that he would try to arrange a meeting at which they could repeat their grievances to Dennis.

3. During the afternoon of July 27, Dennis and Nichols asked Employees Escala, Chymbur, and Cosio about their complaints, and the three employees repeated the various matters which troubled them. Dennis and Nichols agreed that working conditions were not satisfactory, promised to correct some of the complaints, and stated that they would investigate the others. Specifically, they promised to clean up the men's room, to rotate Chymbur's work station in view of his seniority, to ascertain whether better insurance plans could be obtained for the employees and to have an insurance man talk to them, and to give preference in work assignments to senior employees in accordance with company policy.

4. At a meeting of unit employees on July 29, Respondent announced that a new health and welfare plan and a new dental plan would become effective August 1, and an insurance representative explained that the proposed plans were superior to "the union plan." The new plans were put into effect on the latter date.

5. On July 29, Respondent posted on the restaurant bulletin board an announcement that the minimum wage rates of unit employees would be increased as of August 1, because wage rate increases under Local 814's contract would go into effect on that date, and because it was Respondent's policy to pay to its employees wage rates equal to or greater than Union rates in the area. On that date, a number of unit employees received wage increases.

6. During their conversation on July 27, Dennis and Nichols told Employees Escala, Chymbur, and Cosio that they intended to call a general meeting of employees at which the latter would elect new employee-members to the profit-sharing committee which, together with company members, jointly administered a profit-sharing fund maintained by Respondent. At that time, the committee was inactive and there was a backlog of unpaid claims against the fund. They asked Chymbur, who had been on the old committee, why nothing had been done about the backlog. Chymbur replied that no information could be obtained from Respondent's central office. They then stated that the situation would be remedied by the new committee. The general meeting was held in August, at which time Alvarado and other company representatives addressed the meeting. After they left, the employees elected their representatives to the committee.

The General Counsel contends that the above incidents involved unlawful interrogation, promises to remedy grievances and otherwise improve terms and conditions of employment, and effectuation of such promises. In its brief, Respondent does not discuss Alvarado's interrogation of Chymbur on July 25. With respect to Alvarado's interrogation of and promises to Employees Escala, Hunter, and Koteru later the same day, Respondent contends that their "discussion" was not unlawful because it was held in response to employee complaints, because the three men were given an opportunity to air their grievances in a totally noncoercive atmosphere, and

² No issue of commerce is presented. The complaint alleged and Respondent admitted facts which, I find, establish that Respondent is an employer engaged in commerce and in operations affecting commerce

within the meaning of the Act. I further find that Local 814 is a labor organization within the meaning of the Act.

because at worst the meeting represented one isolated instance of discussion with only 2 out of 45 employees. With respect to the incident on July 27, Respondent contends that no promises of improved benefits were made. I agree with the General Counsel.

The undenied interrogation on July 25 regarding Union activity was unlawful because it was not accompanied by the necessary safeguards, *i.e.*, the existence of a valid purpose for obtaining the information sought, communication of such purpose to the questioned employees, and assurances that there would be no reprisals against them. The undenied promises of benefit improvements on July 25 and 27³ were similarly unlawful because they were clearly designed to discourage the unionization attempt, of which Respondent was aware. In the light of the entire record, it is obvious that none of Respondent's unlawful conduct can be regarded as isolated.

Respondent further contends in its brief that neither the wage increase nor the improvement in insurance benefits adopted on August 1 constituted unlawful conduct. Respondent does not advance any reason which would support its contention regarding the improved insurance benefits, and I know of none. Respondent knew of the unionization attempt as early as July 25; it announced the new insurance plan on July 29, the day on which the petition for certification was filed; the announcement was coupled with an explanation of why the plan was superior to the "union" plan; and the plan was permitted to become effective August 1, *i.e.*, after Respondent had received the petition.⁴ I accordingly find that the announcement and adoption of the improved insurance benefits were timed to discourage the employees from unionizing and hence were unlawful.

With respect to the wage increase, Respondent contends that it was adopted pursuant to its parent's established policy of requiring its nonunion restaurants to pay to their employees wages equal to or better than those paid to union employees in the area, who were scheduled to receive an increase on August 1 under Local 814's contract. The difficulty with this contention is that the record fails to establish that Respondent and its parent have adhered to such a policy. The responsibility for reviewing the wages paid by Respondent and other restaurants operated by its parent was in the hands of Nichols, an official of the parent. On June 10, 1968, Nichols notified Respondent and three other Specialty restaurants that their wages did not reflect company policy. On February 12, 1970, he sent a similar notification to one of Specialty's restaurants, but testified he was not certain whether he had sent such a notification to Respondent at that time. He further testified that he made no review of Respondent's wages in 1969, and that he did not know whether Respondent had in fact increased its wages to meet the rates provided by the Union contracts effective on September 30, 1968, and on August 1, 1969. The evidence shows that it had not. Thus,

³ It is true, as Respondent points out, that Chymbur testified that Dennis and Nichols did not promise to correct all the grievances described on July 27. However, the record established that they did agree to correct some of them.

⁴ See Respondent's letter of September 14 filed in response to Local 814's objections.

⁵ Banuelos, Barajas, Luis Casillas, Nevarez, and Talavera.

immediately prior to August 1, 1970, Respondent respectively paid \$10.00, \$12.96, and \$9.20 for an 8-hour day to its busboys,⁵ dishwashers,⁶ and waiters.⁷ Yet the Union contract rates for those categories as early as September 30, 1968, were \$10.50, \$13.75, and \$9.85. Immediately prior to August 1, 1970, Respondent respectively paid \$16.49 and \$9.20 for an 8-hour day to its pantrymen⁸ and cocktail waitresses.⁹ Yet the Union contract rates for those categories as early as August 1, 1969 were \$19.50 and \$11.35. I accordingly find that prior to the adoption of its wage increase on August 1, 1970, Respondent had not adhered to a firm policy of meeting the Union scale. Absent a legitimate explanation for increasing wages as of August 1, 1970, *i.e.*, after it received Local 814's petition, it is reasonable to infer, and I find, that the increases were unlawfully timed to persuade the employees to reject Local 814 as their bargaining representative.

Finally, the Respondent's brief does not discuss the reactivation of the defunct profit-sharing committee. I find that Respondent's conduct relating to such reactivation was part and parcel of its attempt to remedy employee grievances (which included complaints about unpaid claims) in order to discourage unionization.¹⁰

II. CONCLUSIONS OF LAW

A. By the conduct described above, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

B. The said unfair labor practices affect commerce within the meaning of the Act.

III. THE OBJECTIONS TO THE ELECTION

The objections in Case 31-RC-1519 are based upon the above conduct found to constitute unfair labor practices. I find that such conduct interfered with a free choice in the election held on September 4.

IV. THE REMEDY

In order to effectuate the policies of the Act, I find it necessary and recommend that Respondent be ordered to cease and desist from the unfair labor practices found, and from in any other manner interfering with, restraining or coercing its employees.

The General Counsel contends that on July 26 Local 814 had authorization cards signed by a majority of Respondent's employees in an appropriate unit, and that Respondent's unfair labor practices warrant the issuance of a bargaining order. Accordingly, he requests that the election in Case 31-RC-1519 be set aside, and that Respondent be ordered to recognize and bargain with Local 814 as the representative of the unit employees. Respondent contends that the record fails to establish the alleged majority. I agree with the General Counsel.

⁶ Ignacio Garcia, Modesto, and Jimenez.

⁷ Chymbur, Cosio, Escala, Jaime Flores, Hunter, Paoletti, Alfonso Flores, David Flores, and Gonzalez.

⁸ Jose Flores and Pedro Casillas.

⁹ Buchanan and Perry.

¹⁰ I find the record insufficient to establish that the committee also acted as a grievance committee.

A. The complaint alleged, the answer admitted, and I find that the following constituted a unit appropriate for the purposes of collective bargaining under the Act: All employees employed by Respondent at the Gate of Spain but excluding office clerical employees, guards, professional employees and supervisors within the meaning of the Act.

B. The parties are in agreement that there were 45 employees in the above unit on July 26.¹¹ The General Counsel introduced authorization cards signed by 26 of such employees on or before July 26 and contends that all were valid.¹² The cards signed by the first 16 of the named employees are admittedly valid. However, Respondent challenges the validity of the remaining cards. For the reasons noted below, I find that 8 of the 10 cards are valid.

1. Respondent contends that the cards signed by Jose Flores and Banuelos are invalid since the cards were printed in English, and since the evidence shows that the said two employees know little or no English. It is undisputed, and I find, that the authorization cards unambiguously designated Local 814 as collective-bargaining agent. The record shows and I further find that Jose Flores understands and reads some English, and that he knew that the card "was for the union." Accordingly, I find that his card should be counted.

I also find that the card signed by Banuelos should be counted even if, as several witnesses testified, he knows virtually no English.¹³ There is no evidence that Banuelos was aware of the purpose of the card. But even assuming that he was unaware of its purpose because of an inability to read the card, it would not be invalid. When an employee signs a card which authorizes a union to act as his bargaining agent, the union, acting on behalf of all the signers, should be able to, and frequently does, rely on the card in attempting to further the employees' interests. The act of signing an authorization card is thus a serious matter and is not to be lightly performed. For this reason, if an employee is unable to read or understand the card, he is under an obligation to take steps to ascertain its meaning and purpose before signing. If he fails to do so, he should "be bound by what [he] sign[s]" (*N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 607) and the failure is not a basis for invalidating his card.¹⁴ Here, the record fails to show that Banuelos had no opportunity to inquire about and ascertain the meaning and purpose of his card or that any material misrepresentation was made to him. His card should be counted.

2. Respondent contends that the card signed by Modesto is invalid because he knows no English and his card was not explained to him. Modesto testified that he

cannot read English, that he reads little Spanish, and that he thought the card "was for some insurance," although no one told him so. The evidence establishes that Employee Hoag called a number of employees one at a time to Respondent's pantry where their signatures were obtained on authorization cards, and that Jose Flores helped Modesto and three others¹⁵ by filling out their cards for them while each of them was in the pantry. Jose Flores testified that he did not tell Modesto and the other three employees that the card was "for the Union," but that he did tell them it was for the purpose of trying to get rid of Respondent's assistant manager. I find that Jose Flores was an unreliable witness and I do not credit his testimony regarding what he told Modesto and the others. It follows that any misunderstanding on the part of Modesto concerning the purpose of the card did not stem from a misrepresentation, and thus is not dispositive. Nor is the validity of his unambiguous card governed by his subjective intent or understanding. *N.L.R.B. v. Gissel Packing Company*, *supra*; *N.L.R.B. v. American Art Industries, Inc.*, *supra*. I find Modesto's card to be valid.

3. Respondent contends that the cards signed by Barajas, Nevarez, and Talavera are invalid because they do not know English and because the true import of the cards signed by the latter two was not explained to them. None of the three men testified, but there is testimony that they do not know English.

I find no evidence to support Respondent's assertion regarding Talavera and conclude that his card is valid. Employee Jaime Flores testified that he gave cards to Barajas and Nevarez; that because he felt that they would not sign if informed of the true purpose of the cards, he told them that their purpose was to get rid of the assistant manager; that he observed them sign their cards; but that he did not receive the cards back nor see the balance of the cards filled out. The General Counsel contends that their cards are valid for three reasons. The first is that other employees may have spoken to Barajas and Nevarez about bringing in a union before they signed the cards, or between the time they signed and the time they completed and returned them to Local 814. I reject this argument as speculative. The second reason is that even assuming that one of the reasons Barajas and Nevarez signed the cards was to get rid of the assistant manager, that reason is not inconsistent with the object of obtaining union representation. The difficulty with this argument is that it assumes that the discharge of the assistant manager was not their only reason for signing, and that a desire for union representation was another. There is no basis in the record for such assumptions. The third reason is that there is no

¹¹ In its brief, Respondent abandoned its contention that Hoag was a supervisor.

¹² The 26 were as follows:

Bonnie Buchanan
Alfonso Flores
David Flores
Jaime Flores
Augustine Gonzalez
Joseph Hoag
Joline Jung
Frank Mancera
Manuel Oshiro
John Paoletti

Robert Chymbur
Josie Cosio
Alex Escala
Jose Flores
Ismael Banuelos
Salvador Barajas
Florencio Nevarez
Raul Talavera
Luis Casillas
Ignacio Garcia

Holly Perry
Virginia Pogan
Sharon Wilkison

Alberto Jimenez
Arturo Modesto
Pedro Casillas

¹³ Banuelos did not testify.

¹⁴ The decision in *N.L.R.B. v. American Art Industries, Inc.*, 415 F.2d 1223, 1228-1229 (C.A. 5), cited by the General Counsel, may or may not support this view. Although the Court stated that it was irrelevant that certain of the card signers knew no English and could not read the cards, there was evidence that they were among the employees who demonstrated their support for the designated union by actively participating in a strike and picketing.

¹⁵ Ignacio Garcia, Jimenez, and Pedro Casillas, discussed below.

evidence establishing that the two signers relied on Jaime Flores' misrepresentation. This argument places the shoe on the wrong foot. Where, as here, a material misrepresentation concerning the purpose of an authorization card is made, the presumption is that the signer relied on it, and the card is invalid. Where objective evidence of nonreliance is presented, the presumption is rebutted and the card is valid. Here, I find that the misrepresentation to Barajas and Nevarez, neither of whom knew English, was material; and that since there is no evidence of nonreliance thereon, their cards are invalid and should not be counted.

The instant case is distinguishable from *Marie Phillips, Inc.*, 178 NLRB No. 53, where the Board held that despite a misrepresentation to the card signer that a majority of the employees had already signed cards, the card was valid absent objective evidence of reliance on the misrepresentation. My interpretation of that decision is that it applies to the particular misrepresentation there involved, which did not relate to the purpose of the card; that since such misrepresentation constituted "sales talk or puffing," it did not involve the kind of information on which employees should ordinarily be expected to rely and there is no presumption of reliance; and that the card will accordingly be counted, absent objective evidence of reliance. In my view, the decision does not apply to a misrepresentation, like that involved here, which relates to the purpose of the card and which, being the kind of significant information on which employees should normally be expected to rely, requires a presumption of reliance.

4. Respondent contends that the cards signed by Ignacio Garcia, Jimenez, and Pedro Casillas are invalid because they do not know English, because Garcia thought his card was for the purpose of getting rid of the assistant manager, because Jimenez thought his card was for that purpose as well as for the purpose of obtaining "work improvements," and because Pedro Casillas was told by Employee Hoag that the card was for the purpose of getting rid of the assistant manager. According to Garcia, Jose Flores told him that he "imagined" that the purpose of the card was to vote to try to get rid of the assistant manager. According to Pedro Casillas, he was told by Employee Hoag that his card was for that purpose. According to Jimenez, he was told by an unidentified person that his card was for that purpose and to obtain work improvements. The statement attributed by Garcia to Jose Flores was at best an expression of opinion by the latter and did not amount to a factual representation. Jimenez could not identify the source of the information given him. As for Pedro Casillas, I do not credit this testimony as to what Hoag told him. It is clear from the record that Hoag's knowledge of Spanish is minimal, and I am not persuaded that he was able to communicate in

¹⁶ In reaching this conclusion, I have not relied on the testimony of Hoag who, I find, was an unreliable witness. Nor have I given consideration to the prehearing affidavits signed by Jose Flores, Modesto, Ignacio Garcia, Jimenez, and Pedro Casillas, and offered by the General Counsel to impeach their testimony and to establish that they were told the true purpose of the authorization cards which they signed. In view of the testimony showing that the signatures on the affidavits were obtained under unusual circumstances, I reserved decision regarding their admissibility in evidence. In his brief, the General Counsel does not rely on, and indeed

Spanish to Casillas, who knows no English, that the purpose of the card was to get rid of the assistant manager. I accordingly find that any misunderstanding which Garcia, Casillas, and Jimenez may have had concerning the purpose of their cards did not stem from a misrepresentation. And as stated above, their subjective understanding is not dispositive. Their cards should be counted.

5. Respondent contends that the card signed by Luis Casillas is invalid because he does not know English and was told by Employee Escala that its purpose was to get rid of the assistant manager. Casillas did not testify. Employee Escala testified that Casillas filled out the entire card in his presence after he told Casillas that the card was one of the fastest ways to try to get rid of the assistant manager. Accordingly, I reject Escala's testimony that Casillas did not understand English and find that Casillas was able to read the card. There is thus no evidence that Casillas was misled about the purpose of the card, and I find that the card was valid.

In sum, I find that 8 of the 10 cards attacked by Respondent are valid;¹⁶ and that since 16 additional cards are admittedly valid, Local 814 had valid cards signed by 24, hence a majority, of the 45 employees in the unit.

C. I further find that Respondent's unfair labor practices were so coercive in nature that they have obviated the possibility of a fair rerun election, and that a bargaining order is necessary to repair the unlawful effect of such unfair labor practices. *Great Plains Steel Corp.*, 183 NLRB No. 96, and cases cited therein. I therefore recommend that the requested bargaining order be issued, that the election in Case 31-RC-1519 be set aside, that the petition in that case be dismissed, and that all proceedings held in connection therewith be vacated.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:¹⁷

ORDER

Respondent, Gate of Spain Restaurant Corporation, its officers, agents, successors, and assigns, shall:

A. Cease and desist from:

1. Unlawfully interrogating its employees, and unlawfully promising to improve and improving their terms and conditions of employment.

2. In any other manner interfering with, restraining, or coercing its employees.

B. Take the following affirmative action:

1. Upon request, bargain collectively with Culinary Workers and Bartenders Union Local 814, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, as the exclusive bargaining representative of all the employees in the unit herein found appropriate, with respect to rates of pay, wages, hours of employment,

makes no mention of, such affidavits. Accordingly, I find that he has abandoned and in effect withdrawn his offer of the affidavits.

¹⁷ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

2. Post at its restaurant in Santa Monica, California, copies of the attached notice marked "Appendix."¹⁸ Copies of said notice on forms provided by the Regional Director for Region 31, after being signed by a representative of the Respondent, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter in conspicuous places. Reasonable steps

¹⁸ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

3. Notify the Regional Director for Region 31, in writing, within 20 days from the receipt of this Decision what steps have been taken to comply herewith.¹⁹

It is further recommended that the election in Case 31-RC-1519 be set aside, that the petition in that case be dismissed, and that all proceedings held in connection therewith be vacated.

¹⁹ In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith."