Aptos Seascape Corporation *and* Hotel, Motel, Restaurant Employees and Bartenders' International Union, Local 483, AFL–CIO. Case 20–CA–6474

December 14, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND KENNEDY

On September 20, 1971, Trial Examiner Maurice Alexandre issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Trial Examiner's Decision in light of the exceptions and briefs and has decided to affirm the Trial Examiner's rulings, findings,[2] and conclusions[3] and to adopt his recommended Order.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that Respondent, Aptos Seascape Corporation, San Diego, California, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order.

[1] Respondent's request for oral argument is hereby denied as the record, the exceptions, and briefs adequately present the issues and positions of the parties.

[2] We hereby correct the following inadvertent factual errors in the Trial Examiner's Decision, which in no way affected his Decision or our adoption thereof. The first sentence of paragraph 9 of sec. III, A, should be changed to show that it was the Union that requested an effective date of October 1 rather than Respondent The last sentence of that same paragraph should be changed to reflect the fact that Gold testified that he asked Determan whether he objected to disclosure to the Aptos' staff, rather than the union staff.

[3] Respondent has excepted to certain credibility findings made by the Trial Examiner. It is the Board's established policy not to overrule a Trial Examiner's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions were incorrect *Standard Dry Wall Products, Inc*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings.

[4] Respondent contends that it was prejudiced by the Trial Examiner's closing off of a line of questioning designed to show differences between two documents The Trial Examiner stated that he could compare the two documents himself; that was the reason for his ruling However, although received into evidence, the second document was not physically transmitted to the Trial Examiner with the other exhibits. He assumed, however, that the two documents were substantially different. We have now received the second document, and it is in fact different. In those circumstances, we find that his ruling was not prejudicial.

TRIAL EXAMINER'S DECISION

MAURICE ALEXANDRE, Trial Examiner: This case was heard in Monterey, California, on May 18, 1971, upon a complaint issued on February 26, 1971,[1] alleging that Respondent had violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by refusing to execute a written collective-bargaining contract embodying the terms of a complete agreement reached by Respondent and the Union covering a certified unit of Respondent's employees. In its answer, Respondent denied commission of the alleged unfair labor practices.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent's answer failed to deny, and thereby admitted, the following allegations of the complaint:

> Respondent, a California corporation with its principal office located in San Diego, California, is, and at all times material herein has been, engaged in the business of real estate development.
>
> Respondent has a place of business in Aptos, California, which includes the operation of a restaurant and commercial golf course, herein called the Aptos facility.
>
> Penasquitos, Inc., an Illinois corporation with its principal office located in San Diego, California, is, and at all times material herein has been, engaged in the business of real estate development.
>
> Aptos Seascape Corporation and Penasquitos, Inc., are, and at all times material herein have been, affiliated businesses under the common management of Irvin J. Kahn, and constitute a single integrated business enterprise. Irvin J. Kahn formulates and administers common labor policies for Aptos Seascape Corporation and Penasquitos, Inc.
>
> During the past year, Aptos Seascape Corporation and Penasquitos, Inc., have derived gross revenues in excess of $500,000 from their operations in the State of California.
>
> During the past year, Aptos Seascape Corporation and Penasquitos have received goods valued in excess of $50,000 from firms which in turn received those goods from outside the State of California.
>
> Respondent is, and at all times material has been, an employer engaged in commerce and operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

I find the facts to be as admitted, and that Respondent is, and at all times material herein has been, an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[1] Based on a charge filed on December 10, 1970, by Hotel, Motel, Restaurant Employees and Bartenders' International Union, Local 483, AFL–CIO (hereafter called the Union).

II. THE LABOR ORGANIZATION INVOLVED

Respondent has admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Evidence*

In December 1969, Union Secretary-Treasurer Arnold (now deceased) and Union President Gold met with Holbrook, the manager of Respondent's beach and country club. Holbrook greeted them by stating, "I have been expecting you because my grapevine tells me that the employees wish to be represented by the union." The Union representatives gave Holbrook a copy of the Union's master collective-bargaining agreement then in effect in the Monterey-Santa Cruz area. Holbrook stated that he was not the proper person to meet with and suggested that the Union representatives meet with Watson, Respondent's vice president. In early January 1970,[2] Gold and Arnold met with Watson, who stated that he had been informed by Holbrook that the Union represented the employees. At that time, they gave Watson a copy of the trust agreement governing the industrywide health and welfare insurance program which was referred to in the master contract. Watson raised some questions relating to the contract, expressed concern regarding the relation of employer contributions to employee health and welfare benefits, and requested the Union's cooperation in connection with a hotel which Respondent wished to erect.[3] In late January, Gold and another Union representative met with Watson, at which time they discussed certain specifics of the health and welfare plan. Thereafter, Holbrook informed the Union that Project Manager Lang had been "assigned as the person in charge."

On or about April 18, Arnold and Gold met with Lang and other company representatives. Lang stated that he had just taken over Respondent's entire construction development program, and had not yet had an opportunity to read and analyze the proposed contract and to discuss it with his staff. The Union agreed to his request that they meet again in early May. When they met as agreed, Lang requested a 1-year delay in negotiations, stating that by that time the hotel complex would be finished and the Company could then devote all its efforts to negotiations. When Arnold objected, Lang replied that he had had considerable experience as a trade unionist, that he knew all about delays in election procedures, and that "he had to stall for at least a year." He further stated that even if the Union were eventually to be certified, lengthy negotiations would take place because he intended to do everything possible to stall for a year.

Thereafter, the Union filed a petition for certification. On June 12, Respondent and the Union executed a Stipulation for Certification Upon Consent Election. Signing on behalf of Respondent was Don Determan,[4] as attorney for Respondent.[5] Determan testified that Wiggins, Kahn's house counsel and his superior, was also present on June 12, but that Determan signed the consent agreement as "a matter of convenience." The election was held on July 17, at which time 24 employees voted for the Union and 8 voted against. Following the counting of the ballots, Lang invited Determan, Gold, and other Union representatives (not identified in the record) to a cocktail lounge, where they engaged in general discussion. At its conclusion, Lang suggested a prompt meeting "for purposes of negotiations and wrapping up the contract." On July 27, the Board certified the Union as the exclusive collective-bargaining representative of the restaurant, bar, kitchen, and janitorial employees at Respondent's Aptos facility.

By letter dated July 30 and addressed to Lang, Gold forwarded two copies of the new 5-year master contract which the Union and the industry had agreed to, effective August 1, and requested a bargaining meeting. Receiving no reply, Gold telephoned Lang on or about August 19, and they agreed to meet on August 25. Gold and Lang met on that date,[6] at which time the latter stated he did not know whether he had the power to negotiate or whether someone else would be designated to negotiate for Respondent. Gold accused Respondent of resuming stalling tactics, and Lang promised to ascertain who was to represent Respondent. Gold suggested that since Lang might be the one designated, they should discuss the contract in order to save time. Lang agreed. They accordingly "went over" the master contract, agreed to minor modifications, and then discussed the trust agreement referred to in Section 23 of the contract. Lang requested Gold to reduce to writing and send him the modifications they had agreed to, together with an explanation of the trust agreement, and to call him in about a week.

In a letter dated August 28 and addressed to Lang, Gold stated:

> I wish to express my appreciation for the way our meeting went, and I thought you advanced many points that you raised, which I agreed to change.
> I would like to review these items, and subject to getting final approval from the "Home Office," the Union agrees to combine these changes into a Supplemental Agreement to be made a part of the Master Agreement.

The letter then set forth the changes which the Union proposed. Attached to the letter was a three-page document summarizing the industry insurance and pension program. Also enclosed, but not referred to in the letter, was a copy of the newly revised and printed trust agreement. The letter concluded by requesting Respondent's position on the proposed modifications. Thereafter, Gold called Lang, who

[2] All dates referred to hereafter relate to 1970 unless otherwise stated.

[3] The Union subsequently filed a brief in support of Respondent's petition to the Planning Commission relating to the hotel.

[4] Also referred to in the record as Detterman. His full name is Donald P. Determan.

[5] Determan is engaged in the private practice of law. However, he receives a salary from Irvin J. Kahn Corporation, which manages Respondent, and he devotes most of his time to the affairs of Kahn and its affiliated corporations.

[6] Arnold was then recovering from surgery and could not be present.

stated that he had forwarded "all of the documents" to his "home office," and that "a Mr. Wiggins was the person who would be empowered to enter into binding negotiations with the union." Gold, who had not asked Lang to identify Wiggins' position with Respondent, telephoned Wiggins, stated that he had been informed that Wiggins was the one empowered to enter into binding negotiations on behalf of Respondent, that Gold and Lang had reviewed the master contract and had agreed to certain modifications, and that he wished to meet in order to conclude the matter. Wiggins acknowledged that he was empowered to enter into binding negotiations, and asked Gold to call him on or about September 21. When Gold complied, they arranged to meet on September 28, and Wiggins advised Gold that Determan would accompany him to the meeting.

On September 27, Determan was informed by Wiggins that the latter would be unable to attend the meeting the following day because of a fire close to his home. Determan testified that he asked whether the meeting should be called off, that Wiggins replied in the negative, and that Wiggins stated, "Why don't you go ahead and see what they are talking about." In a prehearing affidavit, Determan stated that Wiggins "gave me no instructions on the way I was to handle negotiations with the Union."

On September 28, Determan went to the meeting place and met with Gold and Arnold. Determan informed them of the reason why Wiggins could not be present. Gold testified that he then asked Determan whether he had the power to enter into binding negotiations. Determan gave evasive and conflicting testimony as to whether Gold asked him that question, but finally admitted that Gold asked that question as soon as Determan arrived, and that Arnold repeated the question at the end of the meeting. Gold testified that Determan replied that he did have that power, and that he was handling other union negotiations for Respondent. Determan gave evasive and conflicting testimony regarding his reply, variously stating among other things that the subject was not discussed, that he did not recall discussion thereof, that he stated that he did not have that authority, that he believed that he so stated, that he stated that he was negotiating subject to ratification by his principal, that he stated that the Union's proposal would have to be evaluated by several persons, and that since neither he nor Wiggins had authority to bind Respondent he stated that those present "would at least be able to discuss the contract." He finally admitted that he "didn't have that much recollection" of the conversation. In his prehearing affidavit, Determan had stated: "I don't recall any discussion at the union hall about my authority to negotiate."

Gold testified that Determan had his own copy of the Union's master contract at their meeting, but that at the request of Determan, Gold gave him a copy of his letter of August 28 to Lang and the attachment thereto. Determan testified that he did not have a copy of the master contract when he arrived, and that a copy was furnished to him by Gold or Arnold. Determan's affidavit states: "I also had a copy of their standard master agreement which I glanced at but did not read in detail." Determan testified, in explanation of that statement, that it "doesn't say anything about when I received it." He further testified that he could not recall whether he and Wiggins had discussed the anticipated negotiations prior to September 28, or whether he had possession of "the file" relating thereto. In addition, he testified that he had no discussions with officials of Respondent until the day after the September 28 meeting.

Gold testified that Determan inserted in the master contract the changes set forth in the August 28 letter; that they then went through the contract section by section; that Determan expressed his approval of virtually all of its provisions; that they had a lengthy discussion regarding the insurance and pension plan;[7] that Determan requested an effective date of October 1; that he stated that when the final draft of the contract was prepared, it would be necessary to define the bargaining unit to conform to the Board's certification,[8] and to phrase the union-security provision so as to conform to the requirements of the Act; and that Gold agreed. Gold further testified that at the end of their discussion, he stated that it appeared that they had a contract; that Determan agreed and they shook hands; that Determan stated that he would have a final draft prepared, executed, and sent to the Union in about a week; that when in response to Gold's offer to prepare the final draft, Determan stated that he wished to do it, Gold acquiesced because he felt that as an attorney, Determan "had to earn a legal fee." In this connection, he further testified as follows:

> And I did propose two—as I testified, that I would be delighted to prepare the draft for him and have us execute it and have him take it to the proper authority after he reviewed it.
>
> And then he said, "No, I will do this work."
>
> And assuming—knowing he was an attorney, I didn't know that he was on a salary, on a retainer, or what have you, I felt this was the normal thing, and some attorneys want this done by the union. Some want to do it themselves. And signing it on the spot is—I have never signed anything on the spot until I saw the final draft, and I assumed that—and I know that he didn't have the power to sign it on the spot.

Gold testified that he asked Determan whether he objected to disclosure to the Union staff that an agreement had been reached; that Determan stated he had no objection; and that on the same day, Arnold advised the Union representative in the Santa Cruz area to inform the staff that a contract had been reached effective October 1.

[7] Gold testified that he could not recall whether Determan brought a copy of the trust agreement with him, that Gold had copies on the table when Determan arrived, but that the trust was not discussed during the meeting

[8] The master contract stated that the employer recognizes the Union as the sole representative for collective-bargaining purposes of "all employees coming under the Charter of the Union." The Board's certification defines the unit as follows: "All restaurant, bar, kitchen and janitorial employees employed by Respondent at its Aptos, California facility, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act."

Determan testified that at the meeting he glanced at each section of the master contract; that he may have stated that some of the sections were very standard and presented no legal problem; that some sections were legally less material than others; that he stated that there was no point in discussing some of the sections, such as Section 23 which referred to the trust agreement;[9] that he may have raised some minor points which might be a problem; but that he stated that this was not for him to decide. On cross-examination, however, Determan testified that he was not certain that he made the last statement. Determan further testified that neither he nor Gold stated that they had an agreement at the end of their meeting; but that on the contrary, he stated that the proposal would have to be evaluated by others and that he would submit a counterproposal as soon as possible. In this connection, he testified at one point as follows:

Q. So, it was understood that you were going to have to go back to San Diego and get this contract signed, wasn't it?

A. That is right, and revise it somewhat.

Q. All right.

Now, other than the revisions that are shown in General Counsel's Exhibit Four, were there any other revisions that were discussed at that meeting?

A. I believe I raised some questions, that I indicated that they would have to be either asked by the people at Aptos, or somebody else, relative to buttons on—for instance, the union buttons on—the buttons on their uniforms. I hadn't seen any, and to me that might offend the people to Aptos. I didn't know.

Q. So, other than union buttons, or some minor revisions, it was your understanding at the conclusion of the meeting of September the 28th that you had negotiated a complete agreement subject to the discussions by your principals in San Diego, is that correct?

A. That is incorrect.

Q. All right.

Then, would you explain to me what you had done on September the 28th?

A. I had glanced through the contract, number one, as I have previously indicated.

Q. Weren't you there to negotiate for your principal?

A. Definitely.

Q. So, you had negotiated, whatever that means to you.

Now, you have indicated to us in your testimony that you went through the contract, that you went through the letter of August the 28th. You were supposed to take it back to San Diego and ask for approval, approval, isn't that correct?

There wasn't any further negotiations to be done, was there?

A. Well, I have never completed a negotiation with anybody in one-half an hour over lunch.

Q. You were at the election in July, weren't you?

A. Yes.

Q. You were at the NLRB hearing leading to the election prior to that, weren't you?

A. Yes.

Q. You knew that this matter had gone on, by September 28th, over two months, didn't you?

A. (No response.)

Q. You knew that these parties had been waiting to finish an agreement?

A. Oh, yes, yes. I—

Q. Were you coming up there with an empty briefcase and an empty head? Didn't you know anything?

A. I hadn't been involved prior to September the 28th. After the election of July the 17th until the time of September the 28th, I might have been involved 20 seconds.

Gold testified that since he did not receive a signed contract, he telephoned Determan on or about October 6; that Determan stated that because he was flooded with legal work he might not be able to get to it for 4 weeks and implied that he wanted to postpone the effective date; that Gold replied that this was not what they had agreed to and would put the Union in an embarrassing position, but that he would advise Determan of the Union's views. By letter dated October 12, the Union requested Determan to state the effective date he desired. Receiving no reply, Gold on October 20 telephoned Determan, who stated that he was swamped with work and that he could not get to the contract for 2 or 3 weeks.

In early November, Gold again called Determan, who stated that he would do his best to get to the contract in a few days. By letter dated November 4, the Union's attorney, Leahy, complained to Determan that the contract had not yet been sent to the Union for execution. By letter dated November 9, addressed to Leahy, Determan stated:

> We have just received a draft of our proposed union agreement from Aptos. There will have to be some revisions made before we are able to send you and Pat Arnold a copy of our proposed contract.

Gold testified that he telephoned Determan on or about November 20 and heatedly asked what he meant by the "minor modifications" referred to in his letter; that Determan advised him to calm down, stating that he wished to make some minor changes in phraseology which would not change any of the substantive matters they had agreed to; and that Determan promised to send the contract as soon as he could. Gold further testified that during these conversations, Determan never stated that the contract was being reviewed by Respondent's officers, but attributed the delay only to the pressure of work.

On December 6, Union Attorney Leahy called Determan

[9] Determan testified that he asked for a copy of the trust agreement during the meeting, that Arnold obtained a copy for him, that it was lengthy, and that he stated that he would have to study it

and requested receipt of a contract by a specified date. Leahy then told Gold that he would file an unfair labor practice charge if a contract was not received from Determan by that date. The charge was filed on December 10. By letter dated December 15 and addressed to the Regional Office, Determan enclosed a notice of appearance on behalf of Respondent and stated:

> I am sure we will have no problem in resolving this situation. Our relations with the Union have been most satisfactory and we envision the finalization of an agreement in the near future.

By letter dated January 11, 1971, and addressed to Gold, Determan stated:

> Enclosed is our proposed Union Agreement.
>
> We would be most happy to meet with you in the near future and resolve any questions that may arise.

With respect to the proposed agreement referred to in the letter, Determan testified as follows on direct examination:

> Q. Now, as a result of your conversations, as a result of your meeting, as a result of being handed these various documents, did you, eventually, reduce to writing all of these things as well as your understanding of the agreements entered into?
>
> A. I entered a—I drafted a proposal on behalf of my client, Aptos Seascape Corporation, based upon these documents and my client's position.

Gold testified that Respondent's counterproposal reduced the benefits that the employees then enjoyed. Contrary to the General Counsel's brief, the record shows that the counterproposal was offered and received in evidence as part of General Counsel's Exhibit 5. Although the counterproposal was not physically transmitted to me with the other exhibits, I may assume from the existence of the instant controversy that the counterproposal differed from the agreement which, the General Counsel contends, was reached by Respondent and the Union on September 28, and that the difference is more than *de minimis*.

The complaint herein was issued on February 26, 1971. By letter dated March 9, 1971, Determan forwarded Respondent's answer to the complaint.

B. *Concluding Findings*

The General Counsel contends that Determan had actual or sufficient apparent authority to enter into a collective-bargaining agreement which was binding upon Respondent, that he reached a meeting of the minds with Gold and Arnold regarding all the terms of an agreement on September 28, and hence that Respondent's refusal to sign a written contract with the Union embodying their oral agreement violated Section 8(a)(5) and (1), as alleged in the complaint. Respondent contends that Determan did not have authority to bind Respondent, that he so informed Gold and Arnold, and that no agreement resulted from their negotiations on September 28.[10] I find that Respondent violated the above sections of the Act.

In *N.L.R.B.* v. *Coletti Color Prints, Inc.*, 387 F.2d 298 (C.A. 2), the Court stated:

> It does not necessarily follow that one hired by a company "to negotiate" a collective bargaining agreement with a union has authority to bind the company to the terms he negotiates without receiving subsequent approval of those terms by the company. [Citations omitted.] Under our present labor law, there certainly is no duty on the part of an employer to be represented at the bargaining table by a person with competent authority to enter into a binding agreement with the employees, although the bargainer's lack of such authority is a factor to be considered in evaluating the employer's good faith. . . .

Accord, *Standard Oil Company (An Ohio Corporation)*, 137 NLRB 690. Thus, an agent may lawfully be invested with the limited authority to negotiate a collective-bargaining contract which is subject to ratification by the employer. Such limitation upon the agent's authority, however, must be disclosed to the Union before agreement is reached. In *Brotherhood of Painters, Decorators and Paperhangers of America, Local 850, AFL–CIO, (Morgantown Glass and Mirror, Inc.)*, 177 NLRB No. 16, the Board held, *inter alia*, that a local union can lawfully defer signing a contract pending approval by its international where "the necessity for such approval is clearly understood by the parties." Although that case involved a union as principal, the same rule applies to an employer. Conversely, if the necessity for the employer's approval of an agreement made by his agent is not clearly understood, the employer's refusal to sign the agreement is unlawful. Stated otherwise, an agent appointed to negotiate a collective-bargaining contract is deemed to have apparent authority to bind his principal in the absence of notice to the contrary. *N.L.R.B.* v. *Ralph Printing & Lithographing Co.*, 75 LRRM 2267 (C.A. 8).[11] Whether or not this rule comports with "good technical contract rule" is not controlling. What is important is whether the rule states good collective-bargaining law. *Lozano Enterprises* v. *N.L.R.B.* 327 F.2d 814, 818 (C.A. 9); see also Section 2(13) of the Act. The rule, which imposes no hardship upon the principal, is dictated by the statutory policy of promoting industrial peace by encouraging collective bargaining. Clearly, the statutory policy would be thwarted by permitting a principal, after his agent has reached agreement, to state for the first time that the latter's authority was limited and that the agreement was subject to ratification.

Applying the foregoing principles to the instant case, I find that Determan should be deemed to have had apparent authority to bind Respondent when he engaged in negotiations with Gold and Arnold on September 28. No contention is or can be made that Determan, an attorney, was merely acting as Respondent's messenger on that date. In the past, he had represented the corporate complex to which Respondent belonged in labor matters, including negotiations, with little or no supervision or assistance. Wiggins gave him no instructions on how to handle the

[10] Respondent does not question the validity of the Union's certification.

[11] Cf. *United Steelworkers of America* v. *CCI Corporation*, 395 F.2d 529 (C.A. 10); *Tacoma Printing Pressmen's Union No. 44 (Valley Publishing Company)*, 131 NLRB 1090, and *Huttig Sash and Door Company*, 151 NLRB 470, enfd. as modified 362 F.2d 217 (C.A. 4), with *Operating Engineers Local Union No 3, AFL–CIO (California Association of Employers)*, 123 NLRB 922, and *Sheet Metal Workers Union, Local No 65, AFL–CIO (Inland Steel Products Company)*, 120 NLRB 1678.

September 28 negotiations with the Union. Determan testified that he possessed and exercised the power to negotiate on behalf of Respondent on that date, and the latter does not claim otherwise. Whether or not Respondent's officers knew on September 28 that Wiggins was not present during the negotiations, there is no doubt that they subsequently learned that Determan had been the sole negotiator. In addition, Determan continued to deal with the Union on behalf of Respondent after September 28. Indeed, so far as the record shows, he was the only one who did so. It was Determan who prepared Respondent's ostensible counterproposal to the Union, who entered a notice of appearance on behalf of Respondent after the unfair labor practice charge was filed, and who filed Respondent's answer to the complaint issued herein. At one point in his testimony, Determan referred to Respondent as "my client." At no time did Respondent disavow the existence or exercise of Determan's power to negotiate on its behalf, nor did it inform the Union that his authority was limited. Finally, I find that much of Determan's testimony is not credible, and I reject his version of what transpired on September 28. Rather, I credit Gold and find that Determan stated to Gold and Arnold on that date that he had the power to bind Respondent.[12] Since the Union was not informed that any agreement was subject to ratification by Respondent, I find that Determan possessed apparent authority to bind Respondent.

I further find that Determan reached a final agreement with Gold and Arnold on September 28 regarding all the terms and conditions of a collective-bargaining contract. That contract consisted of the provisions of the master contract as modified by the changes set forth in Gold's letter of August 28 to Lang, a change in Section 2 of the master contract so as to define the unit as set forth in the Board's certification, a change in Section 3 of the master contract so as to conform it to the provisions of the Act relating to union security and an effective date of October 1 for the contract. In so concluding, I rely on the following considerations:

(a) Prior to their meeting with Determan, Gold and Arnold had engaged in negotiations with Vice President Watson and later with Project Manager Lang, and the latter had indicated his approval of certain modifications of the master agreement.

(b) I do not credit Determan's testimony that he did not have possession of, and had not read, the pertinent documents prior to the September 28 meeting. The master agreement, the trust agreement referred to therein, the letter of August 28, and the summary of the trust agreement had been in the possession of Watson or Lang. Determan gave equivocal testimony as to whether he had "the file" and had discussed the anticipated negotiations with Wiggins prior to the meeting. He admittedly discussed the situation with Respondent's officers, but I do not credit his testimony that he first did so on the day after the meeting.

(c) Determan went through the master contract section by section with Gold and Arnold. They discussed the insurance and pension plan. Determan accepted the changes set forth in the August 28 letter. Gold and Arnold agreed to Determan's request for changes in the master contract relating to the unit and to union security. They also agreed to Determan's request for an effective date of October 1. I credit Gold's testimony that at the conclusion of the meeting, they shook hands and acknowledged that they had an agreement which was to be reduced to writing by Determan and signed by Respondent. Determan assented to Gold's request for his consent that the Union's staff be advised that an agreement had been reached.

(d) I credit Gold's testimony that Determan subsequently acknowledged the existence of an agreement; that the latter never denied such agreement, but merely stated he wished to make only insubstantial changes in phraseology; and that he continued to attribute his delay in preparing the written contract only to the pressure of other work, and not to any disagreement over its provisions.

In sum, I find that the negotiations did not take place for the first time at the September 28 meeting; that the parties had engaged in significant negotiations before that date; that Determan did not go to that meeting "with an empty briefcase and an empty head," but on the contrary was familiar with what had theretofore occurred; that he and the Union representatives concluded an agreement which he promised to reduce to writing; that Respondent was bound by that agreement; and that Respondent thereafter failed and refused to sign a written contract embodying that agreement.

These conclusions are in no way inconsistent with Gold's testimony that he knew that Determan did not have the power to sign a contract "on the spot." That testimony was nothing more than a recognition that the proper signatory would be an officer of Respondent rather than Determan. I accordingly find that Respondent's failure and refusal to sign such a contract violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By unlawfully failing and refusing to execute a written contract embodying the terms and conditions of an oral agreement reached with the Union, as found herein, Respondent engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.
2. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

THE REMEDY

I recommend that Respondent cease and desist from its unfair labor practices and take certain affirmative action which I deem necessary to effectuate the policies of the Act. Specifically, I recommend that Respondent forthwith sign a collective-bargaining contract embodying the terms of the agreement reached by Respondent and the Union, as found herein; that it give effect to such a written contract retroactively to October 1, 1970; and that it make whole its employees for any loss of wages or other employment benefits they may have suffered as a result of Respondent's failure to sign the agreement. The loss of earnings under the order recommended shall be computed in the manner set

[12] Cf. *Huttig Sash and Door Company*, 151 NLRB 470, 472 fn. 4, enfd. as modified 362 F 2d 217 (C.A. 4), with *United Steelworkers of America* v *CCI Corporation, supra.*

forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

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: [13]

ORDER

Respondent, Aptos Seascape Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to sign a written collective-bargaining contract embodying the terms of the agreement reached on September 28, 1970, by a representative of Respondent and representatives of Hotel, Motel, Restaurant Employees and Bartenders' International Union, Local 483, AFL–CIO, effective October 1, 1970.

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

2. Take the following affirmative action:

(a) Forthwith sign the agreement described in paragraph 1(a).

(b) Upon execution of the aforesaid agreement, give retroactive effect to the provisions thereof and, in the manner set forth in the section herein entitled "The Remedy," make whole their employees for any losses they may have suffered by reason of Respondent's failure to sign the agreement.

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

(d) Post at its facility in Aptos, California, in those places where notices to its employees are customarily posted, copies of the notice attached hereto and marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 20, shall, after being signed by Respondent's representatives, be posted by the Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

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

[13] 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.

[14] 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."

[15] 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 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith."

APPENDIX

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

WE WILL forthwith sign a written collective-bargaining contract embodying the terms of the agreement made on September 28, 1970, by our representative and those of Hotel, Motel, Restaurant Employees and Bartenders' International Union, Local 483, AFL–CIO, effective October 1, 1970.

WE WILL give retroactive effect to the terms and conditions of said contract, and we will make whole our employees for any losses they may have suffered by reason of our failure to sign the said contract.

WE WILL NOT fail or refuse to sign the above contract.

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

APTOS SEASCAPE
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, 13050 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 556–3197.