

Alton Riverboat Gambling Partnership d/b/a Alton Belle Casino and Seafarers International Union of North America, Atlantic, Gulf, Lake and Inland Waters District, AFL-CIO and Hotel Employees and Restaurant Employees, Local 15, AFL-CIO. Cases 14-CA-21601 and 14-CB-7793

July 29, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On May 26, 1993, Administrative Law Judge George F. McInerney issued the attached decision. The Respondent Employer and the Respondent Union each filed exceptions and a supporting brief. The General Counsel filed cross-exceptions, to which the Respondent Employer filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs, and has decided to affirm the judge's rulings,¹ findings,² and conclusions as modified and to adopt the judge's recommended Order as modified and set forth in full below.³

AMENDED CONCLUSIONS OF LAW

1. Respondent Alton Riverboat Gambling Partnership d/b/a Alton Belle Casino is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Seafarers International Union of North America, Atlantic, Gulf, Lake and Inland Waters District, AFL-CIO and Hotel Employees and Restaurant Employees International Union, Local 15, AFL-CIO are both labor organizations within the meaning of Section 2(5) of the Act.

¹ The Respondent Union has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We find it unnecessary to pass on the judge's findings that the Respondent Employer violated Sec. 8(a)(2) and (1) by its supervisor, Food and Beverage Manager Sharon Hawkins, advising employee Tim Dalpiaz that it had selected the Respondent Union as the employees' collective-bargaining representative and that the Respondent Union violated Sec. 8(b)(1)(A) and (2) by accepting such assistance, because these additional findings would not materially affect the remedy. See *Chef's Pantry, Inc.*, 247 NLRB 77 fn. 1 (1980).

³ The General Counsel has filed cross-exceptions to the Conclusions of Law, recommended Order, and notice. We have amended them to conform to the judge's findings.

3. Respondent Alton Belle Casino, by aiding and assisting Respondent Seafarers International Union in organizing its employees, by interfering with the employees' free choice of bargaining representatives, and by providing facilities and assistance by the presence of supervisors at union organizational meetings, has violated Section 8(a)(1) and (2) of the Act.

4. By maintaining an overly broad no-solicitation rule, Respondent Alton Belle Casino has violated Section 8(a)(1) of the Act.

5. By recognizing Respondent Seafarers International Union on August 23, 1991, entering into a recognition agreement on August 30, 1991, and a collective-bargaining agreement on September 7, 1991, containing union-shop and checkoff provisions with Respondent Seafarers International Union, Respondent Alton Belle Casino has violated Section 8(a)(1), (2), and (3) of the Act.

6. By accepting the assistance of Respondent Alton Belle Casino in organizing the employees of Alton Belle Casino, Respondent Seafarers International Union violated Section 8(b)(1)(A) of the Act.

7. By accepting recognition on August 23, 1991, entering into a recognition agreement on August 30, 1991, and a collective-bargaining agreement with Respondent Alton Belle Casino on September 7, 1991, Respondent Seafarers International Union violated Section 8(b)(1)(A) and (2) of the Act.

ORDER

A. Respondent Employer Alton Riverboat Gambling Partnership d/b/a Alton Belle Casino, Alton, Illinois, each of its partners, and their officers, agents, successors, and assigns, and/or their executors, administrators, heirs, and devisees, shall

1. Cease and desist from

(a) Recognizing and bargaining with the Respondent Union as the exclusive collective-bargaining representative of the employees at its Alton, Illinois facility, unless and until the Respondent Union has been certified by the National Labor Relations Board as the exclusive bargaining representative of any such employees in an appropriate bargaining unit.

(b) Aiding or assisting any labor organization by interfering with employees' free choice of bargaining representatives by providing facilities and assistance by the presence of supervisors at union organizational meetings to any union in its organizational campaign.

(c) Recognizing any labor organization which has been aided and assisted in the manner described above in this section.

(d) Entering into any collective-bargaining agreement with any labor organization aided and assisted in the manner described above in this section.

(e) Giving effect to any union-shop or checkoff provisions in a collective-bargaining agreement dated September 7, 1991.

(f) Maintaining an overly broad rule that prohibits unauthorized solicitation and distribution at all times, including employees' nonworking time.

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

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its overly broad no-solicitation rule.

(b) Immediately withdraw and withhold recognition from the Respondent Union, Seafarers International Union of North America, Atlantic, Gulf, Lake and Inland Waters District, AFL-CIO for any employees of the Respondent Employer, Alton Belle Casino, at its Alton, Illinois facility, unless and until the labor organization has been certified by the National Labor Relations Board as the exclusive representative of any such employees.

(c) Cease giving effect to the Memorandum of Understanding dated August 30, 1991, and the collective-bargaining agreement dated September 7, 1991, or any modification, amendment, extensions, or renewal of the agreement, provided, however, that the Respondent Employer, Alton Belle Casino, shall not be required to vary or abandon any wage increase or other benefit, terms, and conditions of employment which may have been established pursuant to the performance of the agreement.

(d) Jointly and severally with the Respondent Union, Seafarers International Union, reimburse its employees for all dues, initiation fees, and assessments which those employees have caused to be paid pursuant to the collective-bargaining agreement executed September 7, 1991, plus interest, which is to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(e) Post at its Alton, Illinois locations copies of the attached noticed marked "Appendix A."⁴ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

⁴If this 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 read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Employer has taken to comply.

B. Respondent Union Seafarers International Union of North America, Atlantic, Gulf, Lake and Inland Waters District, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting recognition or bargaining with the Respondent Employer, Alton Riverboat Gambling Partnership d/b/a Alton Belle Casino, or otherwise acting as the exclusive collective-bargaining representative of the employees employed by the Respondent Employer at its Alton, Illinois facility, unless and until the Respondent Union has been certified by the National Labor Relations Board as the exclusive bargaining representative of such employees in an appropriate unit.

(b) Accepting aid and assistance from the Respondent Employer, Alton Belle Casino, in connection with the organization of the Alton Belle Casino's employees.

(c) Entering into any memorandum of agreement or understanding which recognizes the Respondent Union, Seafarers International Union, as the exclusive bargaining representative of employees of the Respondent Employer, Alton Belle Casino, or otherwise accepting such recognition.

(d) Entering into any collective-bargaining agreement with the Respondent Employer, Alton Belle Casino, covering that employer's employees.

(e) Entering into any such agreement with the Respondent Employer, Alton Belle Casino, which contains union-shop and checkoff provisions.

(f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with the Respondent Employer, Alton Belle Casino, reimburse all employees of Respondent Alton Belle Casino for any dues, initiation fees, and assessments which those employees have caused to be paid to the Respondent Union, Seafarers International Union, plus interest, which is to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(b) Post at its St. Louis, Missouri office, and in prominent places on the Alton Belle Casino property where employees will see the copies of the attached notice marked "Appendix B."⁵ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places

⁵See fn. 4, supra.

including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

IT IS FURTHER ORDERED that the amended consolidated complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX A

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT recognize or bargain with Seafarers International Union of North America, Atlantic, Gulf, Lake and Inland Waters District, AFL-CIO (the Union) as the collective-bargaining representative of our employees at our Alton, Illinois facility until the Union has been certified by the National Labor Relations Board as the representative of such employees.

WE WILL NOT aid or assist any labor organization by interfering with employees' free choice of bargaining representatives by providing facilities and assistance by the presence of supervisors at union organizational meetings.

WE WILL NOT recognize any labor organization which we have aided or assisted in its organizational efforts.

WE WILL NOT enter into any collective-bargaining agreement with any labor organization which we have aided or assisted in its organizational efforts.

WE WILL NOT give effect to any union-shop or checkoff provisions in a collective-bargaining agreement dated September 7, 1991.

WE WILL NOT maintain an overly broad rule that prohibits unauthorized solicitation and distribution at all times, including employees' working time.

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

WE WILL rescind the overly broad no-solicitation rule.

WE WILL immediately withdraw and withhold recognition from the Seafarers International Union as the representative for any of our employees, unless and until the Union has been certified by the National Labor Relations Board as the exclusive representative of these employees.

WE WILL cease giving effect to the Memorandum of Understanding dated August 30, 1991, and the collective-bargaining agreement dated September 7, 1991, or any modification, amendment, extension, or renewal of the agreement, provided, however, that we shall not vary or abandon any wage increase or other benefit, terms, and conditions of employment which may have been established pursuant to the performance of the agreement.

WE WILL jointly and severally with the Union, Seafarers International Union, reimburse our employees for all dues, initiation fees, and assessments which those employees have caused to be paid pursuant to the collective-bargaining agreement executed September 7, 1991, plus interest.

ALTON RIVERBOAT GAMBLING PART-
NERSHIP D/B/A ALTON BELLE CASINO

APPENDIX B

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT accept recognition or bargain with Alton Riverboat Gambling Partnership d/b/a Alton Belle Casino (the Employer) or otherwise act as the collective-bargaining representative of its employees at its Alton, Illinois facility until the Union has been certified by the National Labor Relations Board as the representative of these employees.

WE WILL NOT accept aid or assistance from the Alton Belle Casino in organizing Alton Belle Casino employees.

WE WILL NOT enter into any recognition agreement with Alton Belle Casino covering Alton Belle Casino employees or otherwise accept such recognition.

WE WILL NOT enter into any collective-bargaining agreement with Alton Belle Casino covering Alton Belle employees.

WE WILL NOT enter into any collective-bargaining agreement with Alton Belle Casino containing union-shop and checkoff provisions.

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

WE WILL jointly and severally with the Employer, Alton Belle Casino, reimburse its employees for all dues, initiation fees, and assessments which those employees have caused to be paid pursuant to the collec-

tive-bargaining agreement executed September 7, 1991, plus interest.

SEAFARERS INTERNATIONAL UNION OF
NORTH AMERICA, ATLANTIC, GULF,
LAKE AND INLAND WATERS DISTRICT,
AFL-CIO

Lucinda L. Flynn, Esq., for the General Counsel.
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Illinois, for the Respondent Employer.
Barry J. Levine, Esq. (Souders & Levine), of St. Louis, Mis-
souri, for the Respondent Union.
Edward T. Linehan, Esq., of St. Louis, Missouri, for the
Charging Party.

DECISION

GEORGE F. MCINERNEY, Administrative Law Judge. Based on a charge filed in Case 14-CA-21601 on September 4, 1991,¹ and amended on October 21, by Hotel Employees and Restaurant Employees, Local 15, AFL-CIO (HERE); the Acting Regional Director for Region 14 of the National Labor Relations Board (the Regional Director) and the Board issued a complaint on October 24, alleging that Alton Riverboat Gambling Partnership d/b/a Alton Belle Casino (Alton Belle, the Company, or the Respondent) had violated and was continuing to violate certain provisions of the National Labor Relations Act (the Act).

The Respondent filed timely answers to this complaint, denying the commission of any unfair labor practices.

On February 10, 1992, HERE filed a new charge, Case 14-CB-7793, against Seafarers International Union of North America, Atlantic, Gulf, Lake and Inland Waters District (SIU). As a result of this charge, the Regional Director, on March 16, 1992, issued an order consolidating Cases 14-CA-21601 and 14-CB-7793, and issued a consolidated complaint alleging violations of the Act by Alton Belle and the SIU. Timely answers were filed by Alton Belle and the SIU.

Pursuant to a notice of hearing contained in the consolidated complaint, the matter came on to be heard before me at St. Louis, Missouri, on April 13, 1992, and on several other dates in 1992, concluding on July 10, 1992. At the hearing all parties were represented by counsel and had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, to present motions and to appeal from adverse rulings, and to argue orally. After the hearing concluded,² the General Counsel, Alton Belle, and the SIU filed briefs which have been carefully considered.

Based on the entire record, including my observations of the witnesses, and their demeanor while testifying, I make the following

¹ All dates herein are in 1991 unless otherwise specified.

² After the hearing, a number of affidavits of witnesses who testified during this hearing were submitted as Respondent Company (RC) and Respondent Union (RU) Exhibits RC-RU (a)-(q). By agreement of all parties, those exhibits are received into evidence.

FINDINGS OF FACT

I. JURISDICTION

The Alton Riverboat Gambling Partnership is a partnership organized and existing under the laws of the State of Illinois. Under license from the State and from the city of Alton, Illinois, the partnership maintains an office in the city of Alton, and operates a riverboat and barge complex also in the city of Alton, where customers may eat and drink on the barge section which is permanently tied up to a landing, and participate in games of chance, located on the boat, named the *Alton Belle*, which operates scheduled cruises up and down the Mississippi River.

It is alleged in the complaint that the partnership will annually derive gross revenues in excess of \$500,000 from its business operations, and that it will annually purchase and receive at its Alton locations goods and materials valued at over \$5000 directly from points outside the State of Illinois, and goods and materials valued at over \$5000 from suppliers located within the State of Illinois who themselves are engaged in interstate commerce.

There is no dispute about these facts and I find that the partnership is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The complaint alleges, the answers admit, and I find that the Respondent, Seafarers International Union of North America, Atlantic, Gulf, Lake and Inland Waters District, AFL-CIO, and the International Union, Hotel Employees and Restaurant Employees, and its Locals 1 and 15, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.³

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Alton Riverboat Gambling Partnership is made up of two general partners, Metro Tourism and Entertainment, Inc., and J. Connors Group, Inc., both Illinois corporations.⁴ John Connors is the president of J. Connors Group, and John Thomas Long (Tom Long) is president of Metro Tourism and Entertainment, Inc. Connors was not named in the complaint as an officer of the partnership, and he does not figure significantly in the event herein, as far as the record illuminates those events. Tom Long, a partner in the law firm of Farrell and Long, located in the Alton area, acts as general counsel and chief financial officer for the operation. During this hearing, it appeared that Long acted as the chief operat-

³ The International Brotherhood of Electric Workers, Local 649, AFL-CIO, CLC filed a petition on November 4, 1991, in Case 14-RC-11113 claiming to represent certain general maintenance employees of Alton Belle, and another petition on February 24, 1992, in a unit of housekeeping employees. Copies of these petitions have been received in evidence. I also note that there was some talk on the record here of an interest by the Teamsters Union of some unidentified employees here, but no petition has been filed.

⁴ There are no limited partners. No offering prospectus had been prepared at the time of this hearing, and no attempts had been made to sell limited participations in the partnership.

ing officer of Respondent Alton Belle and was finally responsible for all day-to-day decisions.

The Alton Belle, along with others, applied for a license from the Illinois Gambling Board (IGB), the agency established by the State to administer riverboat gambling operations within the State. In the course of the licensing procedure, hearings were held by the City Council of the city of Alton. Tom Long appeared at these hearings, representing Alton Belle, and made a presentation around May 1990. Rick Watts, a member of the Alton City Council and also an employee of Alton Belle, testified that in the course of questioning Long stated that if his group got the license, he would run a union operation.⁵ In his testimony, Watts noted that a number of local union representatives, business agents, union presidents, and the vice president of the Alton area labor council, were present during these hearings, but he did not recall seeing or hearing from representatives of the SIU or HERE in connection with the hearings.

After these hearings, Alton Belle was awarded a license to operate a riverboat gambling casino from Alton, on the Mississippi River, sometime early in 1991.⁶

The site chosen by Alton Belle for the location of its gambling complex is at the river end of Piasa Street, a main street in the city of Alton.⁷ The street crosses a set of railroad tracks at the top of an embankment leading down to the river and then turns south to a large parking lot and a public park which commemorates the seventh and final Lincoln-Douglas debate on October 15, 1858.

The record does not reveal what onshore preparations had to be made, but at the top of the embankment there were two entrances, by means of canopied gangways, to two barges tied up to the shore. The first, or onshore, barge is fairly small, and holds a ticket booth for embarking customers and a guard house for the use of security personnel. The second, offshore, barge is considerably larger, with a superstructure designed to look like a 19th century river steamer. In this barge there is a large dining area on the first level, and upstairs a buffet-type restaurant and a cocktail lounge. Another gangway leads from this barge to the *Alton Belle* herself, a real boat which houses the gambling facilities and provides service of drinks and snacks but no lunches or dinners.

All of this construction continued through the spring and summer. By the middle of August Alton Belle was ready to begin hiring people to work on the boat and the barges as crew, maintenance, food and beverage, reservationists, ticket takers, gift shop help, guards, and casino dealers.⁸

Looking at the exhibits showing dates of hire and payrolls for the middle and end of August, it appears that about 187 people were hired in the period between August 14 and 31.

Tom Long, in a graphic but politically incorrect phrase, described the situation at Alton Belle in late summer as like

a "Chinese fire drill." Along with the hiring of these 187 people as deckhands, reservationists, food and beverage people, buspersons, waitpersons, bartenders, cooks, maintenance and cleaning staffs, not to mention the hiring and training of casino personnel, who are not involved here, there were the completion of construction, remodeling, installation of equipment, plumbing, wiring, air conditioning, painting, pipe-fitting, moving in of food, beverages, linens, all kinds of supplies, measuring and fitting uniforms. All the multitude of details in completing this multifaceted, multiphase project must have created this situation which could only be described as (hopefully politically correctly) chaotic.

Barbara Ann Dahlen, a personnel specialist with Alton Belle, worked together with the General Counsel on the preparation of an exhibit showing the dates of hire (and of separation, where applicable) of employees hired between May 20, 1991, and April 6, 1992. Dahlen, in her testimony, described this document, which is the only evidence we have in the record of these sometimes critical dates, as "our best guess as to when (an individual) started with the company."⁹ Dahlen added that in the beginning only one person was keeping these records, and that Dahlen herself had been working from January 1992 until the date of her testimony on June 3, 1992, to try to correct many mistakes in the hiring process. Moreover, Dahlen pointed out, there is no way to know from company records whether the date shown on General Counsel's Exhibit 44 was the date one was actually accepted and hired, or whether that was the date the employee actually started work.¹⁰

B. Early Organization Efforts by SIU

As I indicated at the hearing, I find, based on testimony here, and my own reading in the press and watching television news, that there was, and is, considerable publicity, both local and national, about the establishment of riverboat gambling operations in Iowa, Mississippi, Missouri, Kentucky, and, of course, Illinois. There is widespread national interest in the growth of casinos not only on the rivers, but in cities like New Orleans and Chicago, and on Indian reservations. Local interest is also high, and in areas of the country where economic conditions are depressed and jobs are scarce, I think it can be logically inferred that local unions as well as local citizens are interested in what new jobs will be created by the opening of casinos.¹¹ Therefore, I find that the licensing process and the ensuing construction were well known in the Alton-St. Louis area, and beyond the local area as well.

Certainly the interest of HERE was awakened. On March 22, Tom Long testified that he attended a meeting at the

⁹See G.C. Exh. 44.

¹⁰I appreciate the fact that in some cases an employer might purposefully sow confusion and mistakes in records to impede or thwart employee organization, or effective investigation of those records, but there is no indication of that sort of finagling here. All the records were made available to the General Counsel, who helped to prepare G.C. Exh. 44. Some corrections were made by Dahlen, and other discrepancies will be discussed as we go along here. G.C. Exh. 44 is, obviously, a poor benchmark, but it is all we have, and we will work with it as best we can.

¹¹This was apparent in Alton at least as early as February 1991, according to the testimony of Mary F. Jarrett, president of the Charging Party, Local 15, of HERE.

⁵Long affirmed, in his own testimony, that he had said this. He added that the Alton area was union-oriented and it would be advisable to operate as a union company.

⁶All dates herein are in 1991 unless otherwise specified.

⁷The corporate offices of Alton Belle are at 219 Piasa, about a block up from the river and the casino complex.

⁸These last two groups are not involved in any of the events in this case, except for the security guards in their official capacities as keepers of the entrances to the facilities. Casino employees such as croupiers, dealers, and cashiers were not mentioned in any of the events occurring here.

Hyatt Regency Hotel in Chicago with Thomas W. Hanley, president of HERE Local 1, in Chicago and vice president of the International concerning the organization of some of Alton Belle's employees. This meeting will be discussed more in detail later in section III, E of this decision, but I would just note that Long certified that in the course of the meeting he told Hanley that other unions had "contacted" Alton Belle about organizing, including Teamsters, Steelworkers, and the SIU.

Unfortunately, this last comment was not followed up in the examination of Long by all counsel, and it is not known who from the SIU contacted Long, when it happened, what was said during that contact, or whether that contact, or other unknown contacts, led to the SIU's organizational campaign at Alton Belle.

The next contact revealed in the record is a copy of Alton Belle visitors' log for August 6, which shows that Tony Sacco, assistant vice president of the SIU of North America, Atlantic, Gulf, Lake and Inland Waters District, signed in at the security check point at 11 a.m. and out again at 11:05 a.m. As with Long's mention of contact with the SIU before March 22, there was no followup on this visit to the site.

Apart from these two allusions to contacts between Alton Belle and the SIU, continuity of contact between these parties began with the visit of Augustine Tellez to the landing about August 12. Tellez is an International vice president of the SIU International, and vice president of collective bargaining of the Atlantic, Gulf, Lake and Inland Waters District of the International Union. He testified that he first heard of Alton Belle through the Union's legislative department, a group charged with tracking down and following any legislation or other developments which would have an impact on the maritime industry. There was also talk in the industry, at meetings, trade conferences, exhibitions, and conversations about this new development on the rivers. As Tellez put it "You show up (at meetings) and pick up and hear about anything."

Pursuing this information, Tellez traveled, alone, from SIU headquarters in a suburb of Washington, D.C. to Alton around August 12, and noted that work was progressing, but the *Alton Belle* herself had not yet arrived at the landing.¹² He was not asked by counsel if he spoke to anyone from the Alton Belle organization, or what else he may have done while he was in Alton. Indeed, there is no explanation in the record of why an International vice president of the SIU would make a solo trip from Camp Springs, Maryland, to Alton, Illinois, just to look at a barge under construction on the bank of the Mississippi River,¹³ and, then, apparently, turn around and return to Maryland. There the record shows a resident office of the SIU in St. Louis, staffed with, at least, a resident agent named Joe Seigler.

Tellez returned to Alton on August 19, again unaccompanied by any other SIU officer or agent.¹⁴ He testified that

the boat had arrived, and that he attempted to get onto the landing, but was refused entry. He went to Long's office, got his permission to board, and returned to the landing. He testified that he asked one of the deckhands, Jeff Zeller, to get the crew together, and he met with them up on the top level of the second barge. Tellez made what he called his "sales pitch" to the employees and got them to sign cards.

After that, Tellez testified he "found out there were a number of reservationists employed." He had lunch with one of that group, Nancy Peyman, who took a number of union authorization cards and obtained signatures from other reservationists.¹⁵

A total of 31 cards were secured on this 1 day of organizing activity. All were signed by individual employees, but all were dated August 19 by Tellez when he received them. On that same day, Tellez wrote to Long (on stationery bearing the address of the Union's St. Louis office) stating that the SIU had been "designated by a majority of your unlicensed employees to represent them for the purpose of collective bargaining." He demanded that Long recognize the SIU as the bargaining representative for Alton Belle's unlicensed employees.¹⁶

It is difficult, and, indeed, may be impossible given the state of this record, to determine just how many employees were actually employed on August 19. Taking the deckhands first, we have General Counsel's Exhibit 44 which shows that, as of August 19, only two employees had been hired before that date, Kori Agne, who was hired on August 12 as deckhand, but who was identified in the record as a first mate; and Raymond Wagonblast, who was hired on August 12 as an engineer. However, Barbara Dahlen, Alton Belle's personnel specialist, testified that she had added marginal notes to General Counsel's Exhibit 44, which were received with the document in evidence, showing that at least two more deckhands were hired before August 19. Moreover, a document entitled "Alton Belle Casino Deck Crew Payroll" (G.C. Exh. 33) for the period August 12¹⁷ through 25, shows that, on August 19, there were nine employees actually working. If we eliminate the "licensed" employees, Hollinger, Moselle, and Hawkins, captains; Agne and Wendle, mates; Crank and Wagonblast, engineers; this leaves only two rank-and-file crewmembers actually working as of August 19.

Looking at the reservationists, General Counsel's Exhibit 44 shows 33 hired by August 19. Another payroll document, General Counsel's Exhibit 31, shows that 22 people received wages for the "pay date" of August 19. I note, however, that all of the employees listed on this latter document are shown on General Counsel's Exhibit 44 as having been hired before August 12. The term "pay date" on General Counsel's Exhibit 31 must, then, signify it applies to those who were working prior to August 12. Using the 31-employee

¹²I note also that by August 12 there were only 29 employees shown on G.C. Exh. 44 as being hired, of whom 21 were classified as reservationists who, the evidence shows, do not work on the landing, but at 219 Piasa Street.

¹³There is no indication in the record that he went aboard, or attempted to go aboard, the barge.

¹⁴This is surprising since Tellez testified that up to this time he had some experience in negotiating contracts, but had no experience in organizing employees.

¹⁵Tellez testified that these employees not only handled reservations, but also served as greeters and hostesses on the boat.

¹⁶Based on my experience with maritime terminology, I infer and find that Tellez used the word "unlicensed" to denote all employees except for those licensed as masters, mates, pilots, and engineers, all of whom exercise supervisory functions on board a working vessel, and have traditionally been represented by other labor organizations.

¹⁷Apparently, the boat arrived at the landing about August 12 since Kori Agne, the mate, is shown on G.C. Exh. 33 as working on that day.

figure from General Counsel's Exhibit 44, there were 19 cards signed by those hired on or before August 19.

Using the cards signed by the two rank-and-file crew members who were working by August 19,¹⁸ and the 19 cards signed by reservationists, we get 21 cards out of a total of 35 employees in the deckhand and reservationist departments.

This would constitute a majority of all the employees then working in these two departments, even allowing for roughness of the figures I have used,¹⁹ but the demand for recognition specified a unit of all unlicensed employees. It does not include any of the food and beverage employees, hostesses, service persons, buspersons, bartenders, cooks, dishwashers; housekeeping employees, gift shop employees, or maintenance and utility people. My estimate of the number of people in these categories, as of August 19, is 125 employees. A payroll submitted by Alton Belle (R.C. Exh. 20) shows 96 employees in the food and beverage area reporting for work as early as August 14, although the evidence shows that these people were in training, and they did not start full time until either late in August or early September.

Notwithstanding the existence of this large number of current employees who seem to come within the Union's demand, and whose existence must surely have been known to officials of Alton Belle, Long replied to Tellez' letter of August 19, on August 22, stating that on proof of majority status, they would recognize the SIU as bargaining representative for "certain employees" as requested by the Union, based on the majority of employees on the payroll as of August 19, and specifying that the offer to recognize would expire on September 4.

At the same time,²⁰ a letter was prepared by a Monsignor Salvatore Polizzi, of St. Roch's Church in St. Louis, addressed jointly to Tellez and Long, and stating that he had been given 31 "pledge cards" by the SIU; that he had compared the signatures on those cards against "those submitted by" Alton Belle; and that he verified that the "signatures are the same and prove that the Seafarers International Union has majority status for Union representation purposes."

Again, on August 22, Tellez wrote to Long, noting the Monsignor's letter, and demanding recognition for "the non-supervisory personnel employed by the Company at the Alton Belle Riverboat Casino." On August 23, Long granted recognition for "all nonsupervisory personnel," as requested by the Union.

When questioned by the General Counsel on the bases he used to extend recognition to the SIU for this group Tom Long was vague and cagy. He said that he did not rely on payrolls to see how many people appeared there, nor did he recall looking at any documents to make his decision. He stated later in his testimony that he "had a pretty good feel

for it" (the number of employees), then added even later that he "probably" had a sheet or something, a running calculation of how many people they had employed, and that is all he would have referred to. Long felt that he still had many people to hire when he recognized the Union on the basis of the cards, but they were fully staffed at that time for reservation agents and deckhands.²¹

As part of his sales pitch to prospective members, Tellez, and other organizers who followed him at the Alton Belle property, emphasized particularly the opportunities for SIU members to transfer to other properties organized by the SIU, from Hawaiian cruise ships to river cruisers like the *Delta Queen* and *Mississippi Queen*. Another prominent inducement used by Tellez and his associates, was the Harry Lundberg School of Seamanship. This institution, a joint labor-management financed endeavor, furnishes courses and training for persons engaged in the maritime industry in a variety of skills necessary to good seamanship and advancement through the ranks. Among other types of training is a series of drills designed to equip a crew to pass Coast Guard requirements to obtain certification as a seagoing vessel.

What happened here was that, around August 19, apparently after speaking to the deckhands on the *Alton Belle*, Tellez requested of Ken Conklin, the head of the Lundberg School, that he send a person out to Alton to train the crew of the *Alton Belle* in basic firefighting, emergency procedures, first aid, and rescue techniques in preparation for the Coast Guard certification. The person who was sent, Ben Cusic, did not testify here, but in a memorandum addressed to Conklin, Tellez, and several other people, he laid out his activities aboard the *Alton Belle* from August 22 to 30. Apparently, when he arrived there was no plan for handling emergencies, and no training under way to implement such procedures. Cusic assembled a group including Ralph Fish, program coordinator for Alton Belle; Joe Hollinger, ship's captain; a retired Coast Guard captain; and the ship's designer, a naval architect.

In cooperation with this group, Cusic designed a "Ships Station Bill" (a comprehensive plan for handling emergencies and assigning officers and crew to specific duties in that plan), and Cusic himself began training the crew in firefighting and emergency procedures. These efforts proved successful and by August 30 the Coast Guard granted its certification and the *Alton Belle* was pronounced fit to carry passengers and crew up and down the Great River. Having accomplished this, Cusic returned to the Lundberg Institute and does not appear again in this proceeding.

Now all this may seem simple, expeditious, and efficient. The latter two adjectives are accurate, but this incident certainly is not simple. For example, how did Cusic happen to come to Alton at that time? Tellez testified that he advised the deckhands that he "would be flying in instructors to train them in firefighting, lifesaving and abandon-ship drills." At one point in his testimony Tellez said that "I flew the guy

¹⁸Ray Bourland and Jeff Zeller.

¹⁹The figures are based on my best understanding of the documents in evidence. I have not counted the card of Frank Bock Sr., who claims he was not hired until August 20 and that he did not sign a card until "a couple of weeks" after that. I do not question the cards signed by the reservationists, even though it may appear that some were not working on August 19 (G.C. Exhs. 41 and 42), and one, Suzanne Pickerell, testified she signed on August 21.

²⁰The testimony of Tellez and Long shows that their correspondence was hand-delivered between the parties, resulting in outgoing and incoming letters bearing the same date.

²¹This last is probably true. A staffing chart for deckhands (G.C. Exh. 39) shows that excluding the captains, mates, and engineers there are 5 deckhands assigned to each of these shifts, for a total of 15. As of August 23, there were 11 deckhands hired. I do not have as close a figure for the reservationists, but the hiring list (G.C. Exh. 44) shows that, starting with 33 as of August 19, there were 22 new hires down to April 6, 1992, and 8 separations leaving an increase of 15 over the original number.

in” to prove his point in his sales pitch to the boat crew. He testified at another point that he could not recall if he got the Company’s permission to bring Cusic in. He thought it could have been worked out between the school and the Company. Tellez also said that he could have notified Long or Ralph Fish, Alton Belle’s program coordinator, that Cusic was coming, but he did not know who paid Cusic’s expenses or fees for coming to Alton and conducting the evaluation and training.

Tom Long was equally vague. He testified that he believed it was “one of our marine people” that contacted the Lundberg Institutes—or it may have been Doherty or Tellez who “volunteered to bring him out here.” Long also pleaded ignorance on the question of who paid for this, maybe Cusic wasn’t paid, but Long finally stated that Alton Belle did not pay him.

One statement that Long made seemed to me to be straightforward and unequivocal. He pointed out that we had to realize his position at this point (late in August) and understand that they would do “anything to get up and going. We needed to get up and going. It was a very tense time in the business. And anyone who was willing to help, I think that we gladly accepted their help.”

This statement is extremely revealing. The situation was that the Partnership had advanced large sum of money in preparing the site; moving in and constructing elaborate superstructures on the barges; fitting out the boat; equipping restaurants, kitchens, gambling rooms; and beginning, around August 14, hiring hundreds of employees. It must have seemed critical, even desperate, to begin to start some cash flowing in. But they could not begin to achieve any significant cash flow until the authorities permitted the games to begin. The Alton Belle could not realize any cash from the games until the boat left the landing and proceeded up the River. The boat could not leave the landing until it received Coast Guard certification. But, as of August 22 there wasn’t even a plan on how to go about preparing for the Coast Guard certification, nor, apparently, anyone connected with the Company who was qualified to formulate a plan and implement its provisions.

Then, on August 19, in the midst of this crisis, Augustine Tellez walked into Long’s office and asked for permission to solicit Alton Belle employees on the boat. This may have been coincidental, or it may not. The record shows that the SIU had made a strategic policy decision to try to organize the riverboat gambling business on a wall-to-wall basis, that is, not only the crewmembers, but also food and beverage, housekeeping, maintenance, and reservationists, hostesses, and greeters. The Alton Belle was one of the first, it not the first boat, to be ready to sail. Long testified that he had had some contact with the SIU, along with other unions, before March 23, when he met with a HERE representative in Chicago.

But, unfortunately, the rest is silence. We know that Tellez and Long met on August 19, when Tellez obtained permission to go on board the boat. We know that they talked when letters were delivered back and forth between August 19 and 23, but no one asked what they said in these meetings, neither on direct nor on cross-examination, and we have only evasive and dissembling answers, or protestations of ignorance as to how it was arranged for Cusic to be dispatched

to Alton and who or how he or his employer was to be paid for the vital service he rendered the Company.

The confluence of the Company’s need to begin operations, and the Union’s desire to implement a national policy of organizing the riverboat gambling industry could lead to cooperation, and freedom of access to the Employer’s facilities, which I do not believe would be unlawful, or it could lead to favoritism, assistance, or even domination of the Union by the Company, which would be unlawful.

The facts so far would support an inference that in their conversations between August 19 and 23, Long agreed to cooperate with the SIU in its organizational efforts, and Tellez agreed to get Cusic out to prepare the boat and its crew for Coast Guard certification. I infer and find that something like this did happen, but I do not think that I can reach a further inference that these two men conspired to keep out or hinder organizational efforts by other unions, or that they agreed to use supervisors to assist in organization.

It seems that neither Tellez nor Long knew much about what they were doing. Tellez had no experience in organizing, and he went, in these several days from August 19 to 22, to places where he saw, or was told, employees of Alton Belle were located. Long went along with this, but he should have known that the numbers of people his staff had hired, and who were actually working in training sessions and in clean up operations at that time constituted a far larger number than that estimated by himself or Tellez.

Despite testimony from Tellez and Long that the unit they were talking about in their exchanges of letter between August 19 and 23 was composed only of the deckhands and reservation agents, it is clear from Tellez’ testimony that he really wanted all of the nonlicensed personnel employed by Alton Belle.²² Pondering these developments, and the fact that he himself had to leave town, Tellez called for assistance. Brian J. Doherty is an assistant vice president of the United Industrial Workers, a part of the SIU, Atlantic, Gulf, Lakes and Inland Waters District and, according to his undenied testimony, he has had considerable experience in organizing hundreds of employees for the Union.

C. Later Organizing by SIU

1. The August 27 meeting

Tellez called Doherty about August 23. Doherty’s travel vouchers show that he arrived in the St. Louis–Alton area on Monday, August 26. He met there with Byron Kelly, vice president of the SIU, Atlantic, Gulf, Lakes and Inland Waters District, and Tony Sacco, the SIU representative in the St. Louis area. On the afternoon of August 26, Doherty got aboard the boat and went on a training cruise which was a part of Ben Cusic’s training program. After this, Doherty said, he was no longer allowed on the boat as they were installing gaming tables and slot machines under tight security imposed by the Illinois Gaming Commission.

Doherty was, however, allowed on the barge, which was also referred to as the dinner barge, which, as we have noted, housed a “fine dining” room called the Piasa House on the first level, or deck, and lounge bar and buffet areas on the

²² Again noting that there never has been any concern shown by either the SIU or HERE, with the dealers, croupiers, cashiers, or others actually employed in the Casino operations.

second level. Kitchens and storage areas were also located on this barge.

Doherty testified that he was on and off the barge all day on August 27, soliciting cards, and speaking to individuals and small groups, up to 10 or 12 people. On that day he was accompanied by Sacco and Kelly. Doherty said that these meetings took place all over, in the buffet, the lounge, and the kitchen or on the sidewalk by the railroad tracks on shore, and in the Lincoln-Douglas park. He described the employees he met as being of mixed ages, some 17 or 18 years old, some in their thirties or forties.

As a result of his activities on August 27, Doherty obtained 31 cards, which were introduced here by the General Counsel. He did mention meetings in the lounge and buffet areas. Julie Ventimiglia, a hostess in the buffet restaurant, signed a card dated on August 27. She testified that she was called into a meeting or a training session, on August 27 or 28 by Food and Beverage Manager Robert Feltus. She attended a meeting in the buffet area about 4 o'clock where the assistant Food and Beverage Director Jay Vaughn, introduced the SIU representatives, including Doherty. The union representatives passed out cards and employees, including Ventimiglia, signed them. She remembered that Vaughn was there during the card signing, and Supervisors Feltus and Sharon Hawkins, were in and out of the area during that time. After that, Ventimiglia testified the Company ran a training session.

Donna Brown, a buffet server and an August 27 card signer, testified that she was called by Jay Vaughn or Robert Feltus to come in to a training session on August 27. Jay Vaughn introduced Doherty, Tony Sacco, and Bill Ellis, then the union people told the employees there that the SIU had been picked by the Company to represent them. Vaughn and Feltus were present when Brown signed her card, and Vaughn was present in the room all during the meeting. Brown did say that Doherty told the employees that they were under no obligation to sign cards.

Kellee Laird, also a buffet server, differed from the testimony of Brown and Ventimiglia in that she said she was scheduled to go in to work on August 27 and was not called in. Laird said that Vaughn introduced the union representatives, he did not recall their names, and said that she got paid for all the work she did that day, including the time spent at the union meeting.

There may be some confusion here in that there is no other evidence that anyone was called in for a union meeting on August 27. As we shall see, below, there is a lot of evidence that calls were made on August 27, but for union meetings to be held on August 28. Brian Doherty did not mention this meeting on August 27 specifically, although he did testify that he had met and obtained cards from groups of as many as 10 or 11 people on August 27. The Alton Belle payroll records for August 27 show 10 "AM" buffet servers were at work on that day for periods from one-half hour to 2-6/10 hours. There were also seven "PM" buffet servers who worked that day, and four hostesses. Julie Ventimiglia, a hostess, Kellee Laird, and AM buffet server, and Donna Brown, a PM buffet server, all worked on August 27. None of these employees worked on August 28.

From these facts, which are undisputed, I conclude that there were meetings on August 27 at which these employees who testified, together with 28 others, signed cards. Some of

the circumstances of the meeting, or meetings, are in question. Ventimiglia and Brown both testified that Jay Vaughn, an admitted supervisor, introduced the SIU representatives. Ventimiglia said that Vaughn, as well as Supervisors Robert Feltus and Sharon Hawkins, were in and out of the area where the meeting was taking place. Brown corroborated this, and added that Brian Doherty told the employees, at the meeting she attended, that the SIU had been picked by the Company to represent its employees.

Doherty testified, particularly concerning meetings held on August 28, that supervisors could have been present during those meetings, but that he just didn't know who the supervisors were at that early stage in this connection with the organization effort. He did deny that any supervisor introduced him or other SIU agents to the employees. Doherty spent a long time on the witness stand and I had ample opportunity to observe him, and to note his demeanor, while he was testifying. Based on my observations, and on his experience in the labor movement, I do not believe that he would have said, to any group of employees, that the SIU had been "Picked by the Company" to represent them. What he admitted that he did say, to groups of employees, and in the warmth of organizational zeal, was that the SIU was "their Union," a statement which was not true at the time he said it, but could easily have been understood by Donna Brown, as well as others who did or did not testify here, that the SIU and Alton Belle were in agreement on the SIU as the Union for Alton Belle's employees. Moreover, I cannot understand a person of Brian Doherty's experience in organizing employees not being able to pick out supervisors and management representatives, even on his first day aboard the barge. Their attitudes, the attitudes of employees toward them, their identifying name tags, their more formal dress, and their movements, as described by a number of employees, in and out of the areas where the meetings were being held, all should have alerted Doherty to at least request that any management people leave the area. This he did not do, neither on August 27, nor on August 28, when he must have noticed Vaughn, Feltus, and Hawkins as more familiar faces among new groups of employees.

2. The August 28 meetings

On August 28, Doherty and his associates had at least two meetings on the barge, one in the morning and one in the afternoon, and Doherty himself conducted a third meeting at Alton Belle corporate offices at 219 Piasa Street, a block and half or so from the boat landing.

Bob Brickley, Alton Belle's director of food and beverages, was not an impressive witness, but I do credit his testimony that Tom Long had called him and told him to cooperate with the SIU. Then, late in August, he was asked by SIU representatives to get hold of employees to come in for a meeting the next day. Conforming to Long's instructions, Brickley in turn instructed Mary Ogelsby, the head chef, Supervisor Robert Feltus, and Mark Clark,²³ to call employees to come in the next day for meetings.

²³ Clark was a sous-chef, and his status as a supervisor was questioned by the Company. However, Clark's job description, and his own testimony, show that he had authority to responsibly direct the work of others, and that, in the absence of the head chef, he per-

Continued

These people made a number of calls on the evening of August 27 and told employees to report in the next day for a meeting.²⁴ There is general agreement that the employees called were not told the reason for the meeting, nor were they told whether or not attendance was mandatory, or whether they would be paid for attending. From all of the testimony by the employees, I find that they assumed that attendance was mandatory and that they would be paid.

The meetings on the morning and the afternoon of August 28 were held in the lounge area on the second floor or deck) of the barge, a large room with a bar on one side and 15 or 20 tables with chairs arranged in rows filling the remainder of the room. As employees arrived they came upstairs on their own, or were sent upstairs by Mary Ogelsby or other supervisors.

Doherty acted as spokesperson for the SIU, and he was accompanied again by Sacco and Kelly. He gave a sales pitch for the Union, emphasizing the Lundberg School, training and "career enhancement" available through the SIU and on vessels where it represented all the employees. He talked about the advantages of unionizing, passed out SIU pins and hats, applications for membership, and authorization cards.

In reply to questions, Doherty said he told people that it was a free country, that they didn't have to sign the authorization cards, but pointed out that a lot of the people were signing he thought that they should sign up too. He did say that he told the employees that the SIU intended to become the river boat gambling union for the whole country. He said "we're going to be your Union," and "we are your Union," an "aggressive and authoritative" technique he said he uses with large groups and has found to be successful.

A number of employees testified as to their impressions of these meetings. It is difficult from the record to tell whether employees attended the morning or afternoon sessions, unlike some union organizing meetings, no attendance sheet was compiled by the Union. Only one attendance, for the afternoon meeting, was produced from company records. From the record, I think it is safe to say that the scenario was, for all practical purposes, the same at both meetings.

Theresa Ann Columbo, a busser on the morning shift, testified that she attended the afternoon meeting on August 28. She received a message at her home on August 27 to come in to work at Alton Belle the next day. She was not told what the meeting was for or why she was being asked to attend. Columbo rode in to the landing with her sisters Mary Huntsman and Joyce McKay, and a friend, Joy Motley. When they arrived on the barge, they were told by Mary Ogelsby that they were to go to the lounge area upstairs for a union meeting.

When they went upstairs they found 55 or 60 employees gathered there, as well as four SIU people. The only one Columbo remembered was Tony Sacco. Robert Feltus, the night food and beverage manager at that time, was there throughout the meeting standing at a corner of the bar. Jay

Vaughn and Sharon Hawkins were walking in and out during the meeting, but they were not present for the whole meeting.

According to Columbo, Sacco spoke to the employees, saying, among other things, "we are your union. We are representing you for the Alton Belle Casino." Cards and applications were handed out, and, thinking that the SIU was already their union, Columbo signed a card. While she and other employees were signing cards, Feltus was directly behind him, and Hawkins was at the door of the lounge, looking in to the lounge.

Columbo also signed a sign-in sheet there in the lounge. She asked Feltus if she had to sign, and he told her that she had to sign her name and the date if she wanted to get paid for attending the meeting.²⁵

Mary Huntsman, Theresa Columbo's sister, who rode with her to the August 28 meeting, testified about the meeting in general agreement with Columbo. Huntsman did describe the meeting as lasting 20 or 30 minutes, whereas Columbo estimated the time as a half hour to 45 minutes. Huntsman also placed Jay Vaughn as present during the meeting along with Feltus. She also thought she got paid for attending the meeting.

Patricia Edgell, a utility worker, said she was called by Mary Ogelsby, who told her to report to work for a union meeting on August 28. At her meeting only 15 to 20 employees were present, but Mark Clark, Robert Feltus, and another, unidentified, woman were present. According to Edgell, they were not looking at employees while they were signing their authorization cards. Edgell also assumed she was going to be paid.

Linda Woodfin, a food waitperson in the first floor dining room of the barge, drove in on August 28, a scheduled workday, with Jacquelin Poe, a coworker. Woodfin testified that she and Poe went first to the dining room and found no one there. They then went upstairs where they saw Jay Vaughn, Sharon Hawkins, and Robert Feltus. They asked Feltus if they were supposed to be there and he said they were.

They went in to the lounge, where Brian Doherty told them that he was conducting a meeting, but would hold another meeting for them when he was finished. Woodfin and Poe went to the back of the room and sat at the same table. Someone gave them authorization cards. Woodfin called Feltus over and asked him what was going on. He answered that "this is the Union," and told them that "You're here to sign up for the Union." Woodfin asked what if they didn't want to. At first Woodfin testified that Feltus "shrugged" and walked away. Later, under examination by counsel for HERE, she said that, in reply to her question, Feltus said, "You have to sign up for the Union. If you want to work here. The Company—the owners decided they want a union. This is the Union that they want. So you have to sign up for the Union." Still later, on cross-examination, and after referring to her affidavit, Woodfin returned to her origi-

formed some of the duties of that position. I find that Clark was a supervisor within the meaning of Sec. 2(11) of the Act.

²⁴At this time, before the restaurants and bar had opened to the public, employees had been assigned to training sessions either in advance, or on call. These sessions were anywhere from 1 to 3 or 4 hours in length, for which they were paid. Apparently, a number of people had not been scheduled to come in on August 28, which resulted in a number of calls by the supervisors.

²⁵There was confusion and contradiction among many of the witnesses here as to whether employees were or were not paid for attending the meeting. The payrolls submitted in evidence are not much help because they are either not complete, or they show employees paid for hours where it is impossible to distinguish training session hours from time spent in union meetings. I do not have enough evidence to find that all, or any, employees were paid for this time.

nal statement that, after her question, Feltus just shrugged and walked away.

Jacquelin Poe agreed with Woodfin that Jay Vaughn, Sharon Hawkins, and Robert Feltus were around the area where the Union was holding the meeting. Her version of the conversations with Feltus described him as replying to questions about signing the cards, that the Company had decided that this was going to be “our Union,” and that if they wanted to work they had to sign.

Poe then testified that she and Woodfin asked Doherty about the cards, to which he replied that it wasn’t official but they needed to sign the cards. The SIU was going to be their union—there wasn’t going to be a “vote or anything,” but it was just a preliminary type of thing.

Mary Louise Smith was another waitperson in the Piasa House restaurant on the first floor of the barge. At the meeting Smith was seated near Woodfin and Poe at a table with another employee named Robert A. Buhlman. Smith testified that Buhlman called Feltus over while the meeting was going on. He had been at Woodfin’s and at a couple of other tables where employees were seated, but Smith did not know what was said at these tables. When he came to Smith’s table, Buhlman asked him what the Union was doing there, because Feltus had been telling the employees that they were nonunion. Feltus said he didn’t know anything about the Union until he came in and his boss (Brickley) told him to have everybody in the lounge because the SIU was having a meeting.

Like Woodfin and Poe, Smith mentioned seeing Feltus, Vaughn, and Hawkins either standing at or near the bar or passing through during the meeting.

Robert Feltus testified that he had been asked if the employees were going to be union, before the SIU came into the picture. He had merely said to these employees that there was no union at that time. On the evening of August 27, he had called a number of employees about a meeting on August 28, but no one asked whether they were going to get paid. He did attend a meeting between 11 a.m. and 11 p.m. on August 28. However, he said that after he found out it was a union meeting he was “in and out,” or just standing, watching the proceedings. Feltus denied that he told Woodfin and Poe that they had to sign cards.

Sharon Hawkins also was on the barge on the morning of August 28. She denied even telling anyone to sign a card, and she claimed that, throughout the meeting, she sat in the back of the buffet area with Mary Oglesby, Mark Clark, and Jay Vaughn.²⁶

Another meeting was held on August 28 at Alton Belle corporate offices at 219 Piasa, a block or so from the landing where the barges and the boat are located.

Brian Doherty testified that he went around to a side entrance of the building at 219 Piasa.²⁷ He went in that entrance and up to the third floor. At first Doherty denied that

²⁶ The buffet on the second level of the barge is separated by a hallway from the lounge area.

²⁷ The building is three stories high with a store front on Piasa Street itself where the reservationists were located in August 1991. The building is on a corner, and there is a side street which rises sharply, going up from Piasa. There is a door at a level between the second and third floors and this was used as an entrance to the actual corporate offices, a few steps up from the entrance, on the third floor.

he met anyone in the third floor corridor, but then said that he did meet Director of Maintenance Terry Oster and said “hello” to him. Doherty then went down to a room at the rear of the building where he met with a number of maintenance and utility employees. He got cards signed and left.

Rickey Wayne Edgell (husband of Patricia Edgell, who testified about one of the meetings on the barge), a housekeeper, testified that he was called on August 27 by Terry Oster who told him to come in on August 28 at 3 p.m. Edgell asked if he was to work and Oster said no, that he wanted him to come in and sign up for “your union.” Edgell attended the meeting in the backroom on the third floor at 219 Piasa with 15 or 20 others. The SIU representatives (Edgell said there were two) gave a sales pitch for the SIU and Edgell, along with others, signed cards. He stated that no one told him he had to sign.

Terry Oster testified that Doherty and another, unidentified, SIU representative came in to see him in the last week of August. They told him they were SIU representatives and asked if they could speak to his employees. Oster checked with Long who told him that if they wanted to speak, that was fine. Oster then called or talked to people who worked for him and told them about a meeting at 219 Piasa at 3 p.m. A number of employees came in and Oster himself looked in on the meeting. He left, but an assistant, Joyce Appleton, may have stayed.²⁸ Oster denied ever instructing people to come to the meeting to sign authorization cards.

D. *The Testimony of Mary Oglesby*

Mary E. Oglesby, a former executive chef of Alton Belle, was first interviewed for that position in March and was hired on June 14, 1991. She remained as the executive chef during the period we are considering in this case, and, as will have been noted, she appeared in her supervisory capacity calling employees in for meetings on August 28, and if not a participant, at least as an observer to some of those meetings. Although Oglesby had known and worked with Food and Beverage Director Bob Brickley, and was personally chosen by him as executive chef, fortune did not smile on their relationship, which first soured, then spoiled, resulting in her resignation on March 10, 1992, and her subsequent filing of a charge with the Equal Employment Opportunity Commission.²⁹

Since the testimony of this individual witness, if credited, has a significant impact on Alton Belle’s later recognition of the SIU, and on counsel for Alton Belle, I thought it best to consider this testimony in a separate subsection.

Oglesby testified on June 4, 1992. The record here shows that she gave an affidavit to an agent from Region 14 on April 6, 1992. I note, after hearing her testimony, and reading that testimony carefully after the close of the hearing, that it is apparent that Oglesby’s testimony formed the basis for several amendments to the complaint herein which were made at the opening of the hearing on April 13, 1992. I did comment on June 4 about the effect of this witness on coun-

²⁸ Appleton was admitted to be supervisor. However, there is no evidence as to how long she stayed at the meeting.

²⁹ Other than her statement that she had been verbally and physically abused, neither the events leading up to Oglesby’s resignation nor the substantive allegations of the charges laid before the EEOC were explored at this hearing.

sel, but I will state at this point that my evaluation of Oglesby's testimony is in no way influenced by her order of appearance among the General Counsel's witnesses, nor am I influenced in any way by the fact that the General Counsel declined to produce some transcribed notes which resulted from Oglesby's interview by a Board agent, in the presence of counsel for Alton Belle, while she was still employed there. I have read Oglesby's testimony as carefully as I observed her demeanor while she was testifying. I have compared her testimony with other witnesses, those brought in by Alton Belle and the General Counsel, and I have considered the fact that one witness, Linda Warner, was not called by anyone. Warner's absence was explained only by Alton Belle's personnel officer, Barbara Dahlen, who said that Warner was no longer employed by Alton Belle. There was no indication that Warner was missing, or otherwise unavailable to a subpoena by the General Counsel or the Company.

With these postulates, I turn to the testimony itself. Oglesby stated that she was interviewed by Bob Brickley on March 23, 1991. During the course of the interview she asked him if the Alton Belle operation was going to be a "union house." Both she and Brickley had worked in places where there had been unions. Brickley said it was going to be union, but, in response to another question, said that the union was not going to be HERE, there "were other irons in the fire."

They had another meeting before June 14 when Oglesby actually began working. Oglesby and Brickley met for lunch around June 3. The purpose of the lunch was to have Oglesby meet Linda Warner, Brickley's assistant. At this meeting Brickley told the two women that the union at Alton Belle would be the SIU, that Long "was working on a deal and everything at that point was really, supposedly, tied up."

Toward the end of June, after Oglesby had reported to work on June 14, Warner and Oglesby were in Brickley's office at 219 Piasa. The subject of unions came up and Brickley told them that the SIU "would be the union for everybody, that this union had been hand-picked by Mr. Long, and the reason that it was going to be the Seafarers Union is because they had put a lot of money into lobbying for riverboat gambling."

Another incident occurred around the end of July. Oglesby said that she was sitting in for Brickley, who was out of his office, and she took a call from Tom Long. She told him that Brickley was out, and he told her that he was in Chicago negotiating with the SIU; and that the SIU would be the union, and to have Brickley wait for a call from him later that afternoon.

Not too long after that, still in July, Oglesby testified that Tony Sacco and Brian Doherty came in to 219 Piasa. Sacco and Doherty introduced themselves as union representatives and gave out "some pins and hats."

During the first week of August, Oglesby was on the barge where she had some employees doing cleaning work. Brian Doherty was there and he asked if he could speak to these employees, Gene Naylor, Bea Jozak, Jack Milster, and Virgil Alexander. Oglesby agreed and brought the employees up to the buffet area. Doherty then told them that the SIU was their union representative, and had them fill out membership cards. The employees objected to signing the cards, and Oglesby, who had remained there while Doherty was talking to the people, told them that "the Alton Belle Casino

was a union house, and to work there they had to be a member of the union. She had them sign the cards."

In another incident, Oglesby testified that she filled out a union authorization card for her daughter, Ann Marie Oglesby, and gave the card to Doherty.

In August, in the period between August 12 and 18, Oglesby encountered two HERE representatives, a man and a woman, in the kitchen on the barge where she was working. They were looking through refrigeration units, and Oglesby went up to them and asked who they were. They said they were from HERE. Oglesby told them they were not allowed in the kitchen and they had to leave. After some words were exchanged, they left. Oglesby called Brickley and told him about the incident. He called her back and told her that if she saw HERE people in the landing area, to ask them to leave, and, if they didn't, then call security. Oglesby added that SIU representatives were allowed, at that time, on the landing and in the kitchen.

Later, Brickley told Oglesby that there were going to be problems with HERE and that they were going to be allowed to have a meeting and to pass out flyers. But on the day before this meeting Brickley told Oglesby to call everyone scheduled for the evening shift and tell them not to come to work that night. People actually working when the meeting was scheduled were to be sent home. Sharon Hawkins, Jay Vaughn, and Mark Clark, later joined by Robert Feltus, were to make the calls to employees to tell them not to come in. Calls like those were made on more than one occasion.

At the end of August, on the 26th, 27th, or 28th, Brickley informed Oglesby that there was going to be a meeting (for the SIU) and the supervisors, Oglesby, Clark, Hawkins, Vaughn, and Feltus, needed to make employees aware of it. So, as Oglesby put it "again," they called employees, but this time telling them that they were required to come in, rather than stay home, for meetings.

Hawkins, Vaughn, Clark, and Oglesby were present while the morning meeting was going on. The meetings were in the lounge, and the supervisors were sitting on the side of a stairwell going down to the first level, just outside the lounge area. Oglesby said that she could hear what was going on so that she could report back to Brickley.

After the meeting was over, a number of employees were concerned about signing up with the SIU. Oglesby told them that this was a union house, and they had to sign cards to work there.

Oglesby also stated that the employees who attended this SIU meeting were paid for the time spent there. She was not asked how she happened to know this.

Bob Brickley, the food and beverage director, and supervisor of the various department managers, Vaughn, Hawkins, Feltus, and Oglesby, within the food and beverage position of the operation, testified that he had known Mary Oglesby for 6 or 7 years and that he had hired her as executive chef at Alton Belle.

Brickley was not an open or forthcoming witness. Many of his answers were delivered in single syllables to somewhat leading questions propounded by counsel for Alton Belle. In several respects his testimony corroborated that of Oglesby. For example, he said that he "could have discussed" unions during conversations with Oglesby before she was hired, but he did not recall what was said. He also agreed with Oglesby's testimony about calling in employees

on August 27, but he denied that any of the employees who attended the union meetings on August 28 were paid for that time, although they may have been paid for training, or other work performed for the Company on that day. Brickley denied that he told Oglesby that the operation would be union (although it must have been generally known that Tom Long had stated publicly that Alton Belle would be a union house), and he denied that he had told Oglesby and Linda Warner that the union was going to be the SIU, "hand-picked" by Long because of their lobbying efforts before the Illinois legislature to get riverboat gambling legislation passed by the legislature. Brickley did say that he, Warner, and Oglesby went to lunch every day for a period between June and August 1991, but he did not remember any talk about unions or lobbying.

Indeed, Brickley said, he was surprised when Tellez showed up at 219 Piasa Street on August 21 or 22 and that HERE had not appeared, even though their offices were right next door to 219 Piasa.

In the August 27 telephoning, Brickley told Oglesby and the other supervisors to call the employees in because he had been told by Tom Long to "cooperate" with the SIU, and he was asked by SIU representatives to get hold of employees for a meeting on August 28.

The differences, and they are important differences, between the testimony of Oglesby and Brickley concern the question of whether Brickley told Oglesby and Linda Warner that Tom Long had "hand-picked" the SIU as the union for Alton Belle because of services rendered in getting the Illinois to push through the riverboat gambling bill. Brickley denied these allegations specifically. His testimony was supported by Tom Long, who testified that he was not aware of the SIU lobbying at the Illinois legislature during consideration of the riverboat gambling bill, nor, in fact, was he aware of any other union so occupied.

Steve Jackson, a political field representative employed by the SIU, testified that he does lobbying and aids in political campaigns on behalf of the SIU. He covers a midwestern territory, including Indiana, Kentucky, Missouri, and Illinois. Jackson stated that there had been "absolutely" no lobbying and no money expended on riverboat gambling, except in Missouri and possibly in Texas. As far as Illinois was concerned, Jackson said he monitored the course of the legislation through reading newspapers or clippings sent to him by "friends." He was equally emphatic that he did not lobby, and that no one else did, on behalf of the SIU.

Beyond Oglesby's references to Brickley's conversations, there is no further testimony on the subject of lobbying by the SIU. Tom Hanley, the president of HERE Local 1 in Chicago and vice president of the HERE International, would certainly have been in a position to know if there was any lobbying going on. Hanley's interest in politics is demonstrated, as we shall see, by his friendship with former Illinois Governor Jim Thompson, and the passage of the riverboat gambling bill must have involved most serious political considerations, would have made him aware of what was going on in the corridors and cloakrooms of the State Capital in Springfield while the legislation was being studied and debated. Yet Hanley mentioned nothing about any lobbying by the SIU, or by HERE.

On the question of lobbying, which goes to the origin of Brickley's statements to Oglesby, I would be naive if I did

not realize that a proposal such as the authorization of gambling on riverboats would bring on efforts by many people who could gain by the enactment of the proposal, and, on the negative side, by those who feared, or were offended by it. Both the SIU, a union hurt by the decline of the American shipping industry, and HERE, always interested in more jobs for its members, and having experience with casino gambling in Las Vegas and Atlantic City,³⁰ could well have seen jobs in this bill and could have, overtly or covertly, attempted to assist in the passage of the legislation. But there is no evidence of that here, and I am constrained to find that there has been no showing that the SIU engaged in any lobbying before the Illinois legislature in support of the riverboat gambling legislation.

This finding still leaves the question of whether, even in the absence of any lobbying efforts by the SIU, Brickley said that the Union would be the representative of Alton Belle employees, a prediction which did, lobbying or no lobbying, come to pass, proved to be accurate.

To settle this question, I think it is necessary to look at the rest of Oglesby's testimony, other findings, and undisputed facts in order to measure credibility.

The first factor is Oglesby's memory on dates. She had a firm and outgoing demeanor, her voice was clear and positive, and she showed no hesitation in her recital of the facts. But her description of a meeting with Sacco and Doherty at 219 Piasa in July is clearly at variance with the facts as testified to by Doherty, by Terry Oster, by Brickley, and by Tom Long that Doherty was never even in Alton until August 26.

Oglesby's next misstatement on dates was with reference to a meeting between SIU representatives and employees Gene Naylor, Bea Jozak, Jack Milster, and Virgil Alexander in the first week of August at which time these employees signed authorization cards. The record here (G.C. Exh. 44) shows that all of these employees were hired on August 14 and could not have met with the Union on the barge in the first week of August. Moreover, the record (G.C. Exh. 11) shows that Milster and Naylor signed cards on August 27, and Alexander and Jozak on August 28.

Oglesby also testified that these employees were reluctant to sign the authorization cards until Oglesby herself told them that they had to sign if they wanted to work. Naylor and Jozak testified that no management people told them to sign cards. Milster had left his job at Alton Belle on September 22, and Alexander was not called to testify.

Another assertion which Oglesby made was that sometime before August 28 (the date was not given but it must have been between August 12 and 27, in the order of Oglesby's testimony). Brickley told her that HERE was going to hold a meeting on the Alton Belle property, but that she and other supervisors were to call "everyone scheduled for the evening shift" and tell them not to come in that night. People actually working were to be sent home before the meeting. Oglesby, Sharon Hawkins, Jay Vaughn, Robert Feltus, and Mark Clark all made calls. This, according to Oglesby, was done on more than one occasion. Aside from the chronology of this testimony, there were no HERE representatives present on the barge or on the boat until August 29, nor were

³⁰ See testimony of Walter J. Elliott, secretary-treasurer of HERE Local 165, from Las Vegas, who was brought in to aid the HERE campaign at Alton Belle.

there ever, so far as I can find in this record, any requests for meetings by HERE.

I also note that Oglesby made herself available to the General Counsel, and gave an affidavit on April 6, 1992, concerning the events in which she participated. From April 12 to June 4, 1992, the General Counsel presented 14 employee witnesses, almost all of whom testified about being called in to attend a meeting, which turned out to be an SIU meeting. None of these employees were asked any questions about whether they had ever been called and told not to attend any meetings, or not to come to work on any specific day.

With regard to the confrontation between Oglesby and HERE representatives in the kitchen, described by Oglesby as occurring between August 12 and 18, before the telephone calls to tell people not to come in for HERE meetings, Mary F. Jarrett, president of HERE Local 15, testified that she was on the barge on August 29, with another HERE representative. There was no one around so they went into the kitchen, at which point Mary Oglesby kicked them out.

Some of the incidents related by Mary Oglesby did happen, and at the times she described. However, her testimony is so ridden with errors in time, and in chronological order, and is so contradicted by testimony of others, for example, Gene Naylor and Bea Jozak, and by Mary Jarrett, all of whom I find to be credible witnesses, that I cannot credit Oglesby's statements allegedly made concerning Brickley. These statements attributed to Brickley are, in the light of this record, just not credible.³¹

Since I have found her testimony not to be credible in certain instances, I find that her claim that she filled out and signed an authorization card with the name of her daughter, Ann Marie Oglesby, and gave the card to Brian Doherty about the first week of August is not credible. As I have noted Doherty was not in Alton until August 26. Ann Marie was not hired until August 14, and there is no card for Ann Marie among those cards submitted in evidence here by the General Counsel.

E. *The HERE Organizing Campaign*

In amendments to the complaint herein made at the opening of the hearing on April 13, 1992, the General Counsel alleged that at various times in August 1991, including August 19–21 and 27–30, Alton Belle rendered unlawful aid assistance to the SIU. In furtherance of this allegation, the General Counsel alleges a course of disparate treatment between the SIU and the HERE unions, with the former allowed access and favorable treatment, and the latter denied access and given unfavorable treatment.

To evaluate this position it is necessary to review the organizing campaign mounted by HERE, and its reception by Alton Belle. Almost all of the facts on this issue are undisputed and may be simply stated.

Mary F. Jarrett, who was called as a witness by Respondent Alton Belle was, at all times material here, the full-time

president of HERE Local 15. The Local has two employees beside Jarrett, her husband, Ben Jarrett, vice president and organizer, and Lea Adaire, secretary. Up until August 31, 1991, the Local had its offices at 217 Piasa Street in Alton, next door to Alton Belle's corporate headquarters at 219 Piasa.

Jarrett was aware of the Alton Belle situation which was apparently on again and off again for some time.

Finally, in February 1991, Jarrett called Lakin, who was one of Alton Belle partners. She met with Lakin, on February 22, expressing the interest of the Local in representing Alton Belle employees. Lakin referred her to Tom Long.

In March, Jarrett talked to Dale Stormer, of Toledo, Ohio, an International vice president of HERE who was in charge of a district including Alton. She told Stormer that they were getting ready to "start up the boat"; that she had contacted Lakin and a public relations man for the boat whose name was Vanader. Vanader had asked Jarrett to send him copies of contracts that the Local had in the area.

Later, in April, Stormer called her and said that Alton Belle was going to be an International organizing campaign, and that they were handling this campaign and campaigns for all the riverboat gambling casinos.

Meanwhile, Thomas W. Hanley, president of Local 1 in Chicago and an International vice president of HERE, had begun his own campaign. He set up a meeting with Tom Long at the Hyatt Regency Hotel in Chicago on March 22.³² Hanley was accompanied by a man named Sonny Grees, described as a "consultant." They discussed the Union's interest in organizing riverboats, and Hanley presented Long with a document entitled "Neutrality Agreement" and asked him to sign it.³³ Long guessed that this paper meant that he was recognizing the HERE union, and he refused to sign it.³⁴ When the meeting ended, Hanley said that Long told him he would call, but he never did. After this, Hanley testified that he called Long "constantly" at his home, at the boat, and the casino offices. Never once was a call returned.³⁵

After the first meeting, on March 22, Long got back to Alton and read a "massive" article in the St. Louis Post-Dispatch on connections between HERE and "the mob." Long was very concerned and began inquiring about this matter. According to Long, his business "had to be absolutely, pristine, clean," and they could not "have any association with anybody who has any type of tainted character or reputation. We just can't tolerate it."

³² The meeting was set up by one Greg Baines, a former candidate for state treasurer in Illinois, and a "long time political friend" of Long's. According to Long, Baines accompanied him to the meeting. Hanley, in his testimony, described this meeting as taking place in June. Later it was stipulated that the meeting was, as testified to by Long, on March 22.

³³ This agreement expresses the intent by the Company to remain neutral in any union organizing campaigns, to recognize HERE on the basis of a card check, and to allow HERE access to its employees.

³⁴ His guess was wrong, but, as noted above, Long admitted that he was not knowledgeable about labor laws.

³⁵ The facts are, as stipulated by the parties, that there were no telephone records of any calls from Hanley to Long in the period from March to August 1991. This fact, as well as Hanley's poor memory, and scattergun recollection of events leads me to doubt his credibility with respect matters material to the issues here.

³¹ I have, in coming to this conclusion, considered the testimony of counsel for Alton Belle. But I have not considered the absence, without explanation, of Linda Warner, an alleged witness to Brickley's statements, as giving rise to any inferences against the Respondents, or against the General Counsel. Nor have I considered the late appearance of Mary Oglesby as a witness as a factor in my decision as to credibility.

Back at Local 15, Jarrett testified that Hanley called her in July and asked her to send him any information she had on what was going on with Alton Belle. She complied, sending him clippings from newspapers, including advertisements for employment. After that she talked to Hanley about every other week, giving him all the information she had. He told her that the International was handling the matter and that she was not to worry about it. Jarrett and her husband felt strongly that they should go down to the boat and hand out leaflets, talk, or do something, but she was told that the International was handling the campaign and she was to do nothing. Thus, when people called her, including Patricia and Rick Edgell, Sheril Carpenter, and a woman named Robin, she told them that she would like to get cards from them when the International started organizing.

What Hanley did to handle the campaign was to set up another meeting, this time at the law offices of former Illinois Governor Thompson, on August 23, between Hanley, Long, and Thompson. At this meeting, Hanley again expressed an interest in organizing Alton Belle. Long told him to come on down to Alton and that he would give HERE the same cooperation as the SIU. Long also said that he had recognized the SIU for the deckhands. Hanley replied that HERE had a "deal" with SIU (or were going to work out a deal) and the recognition of the deckhands did not concern HERE.

The HERE organization drive finally commenced with the arrival of Hanley, Terry Maloney, Curt Calabrese, and James Davern in Alton on the evening of August 27. On the next day Hanley sent his crew down to the landing to start the campaign. Terry Maloney, secretary, business representative, and organizer for Local 1, testified that, on August 28, he went to Local 15's office, which was still at 217 Piasa. There he found out that the SIU was holding a meeting at Alton Belle's headquarters next door at 3 p.m. When people were leaving that meeting, the HERE people tried to talk to people leaving the meeting. Maloney testified that his group (Maloney, Calabrese, and Davern) then heard of a meeting on the barge at 4 p.m. They went down to the landing, but were refused admittance to the barge because they did not have passes.

In the meantime, Hanley met with Tom Long around 3 or 4 p.m. Long and Hanley went down and Long showed him around the boat. Long said that the SIU had been around for 3 or 4 days, but that Hanley would have the boat to "himself" on August 28,³⁶ 29, 30, and September 3 and 4.

The next day, August 29, the HERE representatives met with and in Local 15's headquarters at 217 Piasa. Long gave them three passes, Long then brought three of the HERE representatives onto the barge and up to the lounge area on the second level. They set up tables with literature and talked to three or four people. They stayed until noon, but there were no people there.³⁷ In the afternoon they went back and waited around again. During this afternoon there was at least one confrontation with Brian Doherty. Doherty wanted to use the same area where the HERE people had their tables set up in order to talk to 10 or 12 security guards. They told him to leave and he moved to the other end of the room. About 4

p.m., Long came by and told the HERE representatives to leave.

James Davern, a vice president and organizer for Local 1, testified that there was a meeting scheduled for August 29 at 4:30 p.m. He did not say who scheduled the meeting, but the HERE representatives were told to leave before it started.

Brian Doherty testified about another confrontation on August 29, where voices were raised and it looked as if there was going to be trouble on board the barge. He testified that later that day or evening he and Augie Tellez went to Local 15's offices and spoke to Hanley. They worked out an agreement to refrain from confrontations and arguments, and to leave each other alone during the organizing efforts.

However, the row on August 29 came to the attention of management, and Long ordered that all union representatives would be barred from the landing on September 3 and 4 after the Labor Day weekend.³⁸

The HERE people from Chicago returned home for the weekend, and came back on September 3. They were joined by Walter Elliott, a HERE official from Local 165 in Las Vegas, Vincent Sirabella, HERE's director of organizing, and an organizer named Papageorge. The HERE representatives were told by Maury Sterner, manager of the Alton Belle Casino, and John Connors, president of one of Alton Belle general partners, that no union people could get on the property for the next 2 days, September 3 and 4. They were required to move to the other side of the street from the entrance to the landing, and they attempted to organize from that point, and at meetings conducted in a local restaurant. They continued to have meetings at the restaurant up until September 7,³⁹ at which time a collective-bargaining agreement was signed by the SIU and Alton Belle.

It is clear from these undisputed facts that HERE was aware of the Alton Belle operation early on; that HERE, through Tom Hanley, and a political friend of Tom Long's, made contact with Long and, at the Hyatt Regency meeting on March 22, expressed their interest in organizing Alton Belle. At this meeting Hanley asked Long to sign an agreement to recognize the HERE Union on presentation of verified authorization cards. As noted above, Long refused to sign. Then, having made that original gesture, HERE did nothing, Hanley did not call Long. Hanley and District Director Dale Stormer warned off efforts by Local 15, expressly telling President Jarrett to stay away from any organizing efforts. After this, the inaction continued through the summer, until, at another meeting between Long and Hanley on August 23, by which time 180 employees had been hired by Alton Belle, Long told Hanley that the SIU was in the picture and that Alton Belle had recognized that Union for the deckhands.

Even after that, HERE delayed, not arriving in Alton until August 27 of August, and not even approaching management, or going down to the landing area, until after 3 o'clock in the afternoon of August 28, by which time, as described in the next section of this decision, the SIU had secured a majority of cards in an overall unit of deckhands, reservationists, food and beverage, maintenance, and utility

³⁶ Long is reported by Hanley as saying this sometime after 3 p.m. on August 28. Hanley must have been mistaken about that first date.

³⁷ The payrolls submitted in evidence here show very few people working on August 29.

³⁸ There was no organizing activity, so far as I can tell, on August 30, and over the Labor Day holiday, August 31 and September 1 and 2.

³⁹ The original charge in this case, 14-CA-21601, was filed on September 4.

employees. By the time HERE had obtained passes to go on to the landing on August 29, the SIU had demanded recognition based on a majority of signed cards, which demand was agreed to, after a card check, on August 30.

Thus, it would seem that the SIU majority, if otherwise lawfully obtained, was not obtained on the basis of disparate treatment between a union which was on the scene and organizing, and another union which had no presence at the scene until after the majority had been obtained.

F. *The Alton Belle-SIU Contract*

The General Counsel maintains that the contract entered into between Alton Belle and the SIU was sketchy, hastily drafted, and cozily negotiated at breakneck speed, with no real benefits not already available in the Alton Belle employee handbook, thereby leading to a conclusion that the contract was part of a charade, of a piece with the fast-shuffle ecclesiastical verification of signatures, the premature recognition of August 23, and the precipitate organizational tactics rushed through by Brian Doherty with the help of Alton Belle's supervisors and managers.

Looking in this section at the contract and the circumstances of its negotiation, I do not believe that there is any evidence in this record to show that the contract was not negotiated and agreed on in any wise differently from other contracts entered into between two parties who are sincerely interested in coming to an agreement. To be sure, the negotiations were hasty. This could mean that the parties were attempting to forestall the organizational efforts of HERE, or it could mean that the parties were trying to finalize their agreement before the casino operations were to begin on September 9.

The contract proposals and documents give every appearance, on their surfaces, of legitimacy. The SIU opened the negotiations with a "shell" contract proposal, calling for recognition of the Union, definition of the unit, union shop, hiring hall, checkoff grievance and arbitration, safety, and a few other provisions, leaving the economic issues for later negotiation. These shell contracts are more common in the public sector, where economic conditions are set by legislative bodies, rather than by collective bargaining, but they are also used in the private sector.

The Company responded with a set of full blown contract proposals, which then served as the basis for negotiations.

The testimony of Tom Long, Augie Tellez, and Brian Doherty shows me that there were some conflicts, some differences, but these were negotiated, rather than being imposed by one side or the other. The basics of the Union's initial proposal, fundamental issues like union shop, checkoff, and a binding arbitration procedure, remained in the agreement reached.

I cannot make a determination on the economic issues in the absence of any basis of comparison with, say, the SIU agreements on the river with towboat operators, or with the often-mentioned *Delta Queen* and *Mississippi Queen* cruise ships. Nor can I compare this contract with agreements covering restaurants, hotels, and/or lounges in the Alton area to see whether the wages paid and benefits offered compared favorably or unfavorably.

In the absence of any such evidence, I cannot find that the negotiations or the contract itself lead to a conclusion that

the process was a collusive effort to deceive HERE, or the employees, or the Labor Board, or all three.

G. *The Recognition of the SIU*

I have departed from a strict chronological order in describing events here because I wanted to place before the reader of this decision all of the events which might serve to illuminate the motivations of Alton Belle and the SIU in the actions leading up to, and including, the Company's recognition of the Union.

Augustine Tellez testified that after the employee meetings on August 28, he, with Byron Kelley, and Brian Doherty, determined, generally, what an appropriate unit would be at Alton Belle, and they estimated the numbers of employees they thought it would take to run the operation. Having figured all that out, they determined that they had a majority of cards for that unit.

The figures in the document I have used throughout this decision, General Counsel's Exhibit 44, show that, as of August 28, 195 people had been hired.⁴⁰ These included the deckhands, reservationists, utility, housekeeping, maintenance, bussers, bartenders, cocktail and food servers, gift shop, and kitchen employees. The union people estimated that they had a total of 137 cards. My figures, eliminating the licensed shipboard personnel, show a total of 122 cards, which would constitute a majority of these currently employed.

On the question of whether a representative complement of employees were then on the payroll, General Counsel's Exhibit 44 shows that by April 6, 1992, just before the opening of this hearing, a total of 292 people had been hired. Of these, my figures show that 92 had been separated from employment. This leaves a total of 200 employees as of April 6, 1992, showing that the total of 187 as of August 28, 1991, was in fact a representative complement of employees.

As far as the unit is concerned, no one has raised any question as to the appropriateness of the unit contained in a Memorandum of Understanding executed by Long and Tellez on August 30:

All full time and regular part time employees of Alton Riverboat Gambling Partnership at its Alton Belle Casino, but excluding all gambling dealers and all slot department employees and others directly involved with the dealers of line games, supervisors, managers, guards and all other employees excluded under the National Labor Relations Act.

This definition was changed slightly in the parties' collective-bargaining agreement signed on September 7 by adding after the words "all other personnel directly involved with line games" the words "all accounting department personnel, including cashiers."

In the absence of any objection to this description of the unit as contained in the September 7 contract, and insofar as the question of the unit may be relevant here, I find that the unit as described in the contract is an appropriate unit.

⁴⁰G.C. Exh. 44 shows that as of August 28, 8 of these employees had been separated from the Company, leaving the total actually working as of that date to be 187.

After concluding that the SIU had a majority, based on signed and valid authorization cards, in an appropriate unit, Byron Kelley wrote to Long on August 29 claiming this majority and offering to submit the authorization cards for an independent confirmation (of their validity). A total of 137 cards were submitted by the Union's political field representative, Steve Jackson,⁴¹ to the Reverend Michael A. Campbell of the Church of Saint Raphael the Archangel in St. Louis.

Father Campbell duly verified the signatures and reported them to be valid, by letter dated August 30.⁴²

That same day, Long and Tellez prepared and signed the Memorandum of Understanding recognizing the SIU as the collective-bargaining representative for the above-described unit, and agreeing to commence bargaining for an agreement.

Standing by itself, these last stages of the organizing effort by the SIU, the submission of the cards to Father Campbell, the priest's certification, the numbers of cards compared to the current number of employees, a reasonable complement of staff, the unit claimed to be represented, and the recognition by the Employer, all appear to be orderly and legitimate.

The General Counsel, however, points to a number of circumstances outside of these last stages of the recognition process to urge that I find that the Employer in fact unlawfully assisted the SIU, and that the recognition itself constitutes a violation of Section 8(a)(2) of the Act. Concurrently, the SIU, by accepting such unlawful assistance, has violated Section 8(b)(1)(A) of the Act. The contract is invalid, the SIU must be disestablished as the bargaining agent for Alton Belle's employees, and the Union must pay back all dues which it has received under the unlawful terms of the contract.

As may be noted above, I have had considerable difficulty with some of the General Counsel's positions here. I do not believe the testimony of Mary Oglesby, whose inconsistencies and demonstrably untrue statements made her testimony worthless in proving a predisposition by Alton Belle toward the SIU or threats to employees either to sign up or have no job. As far as HERE is concerned, the testimony of Mary Jarrett, which was corroborated by Tom Hanley (unwittingly, perhaps), shows that HERE was not prejudiced at all by any actions of Alton Belle or the SIU. HERE was just too late. By the time that HERE representatives got to the place where organization could take place, it was after 4 o'clock on the afternoon of August 28, and, by that time, the SIU already had its majority of authorization cards. With respect to the contract as a tell-tale for an illegal recognition, there is really no evidence of collusion, or a sweetheart deal. The General Counsel's references to scribbled notes taken during bargaining are not convincing. Notes taken during

contract negotiations are almost always scribbled and frequently incomprehensible, even to the author, 6 or 8 months later. I will grant the General Counsel that Augie Tellez was a forgetful witness, but in the absence of any objective evidence to show comparisons between the contract provisions noted here, and other agreements either on the river or in the hotel or restaurant business, I cannot say that the contract is evidence of unlawful intent by either of the parties.

On the question of pay to employees for attending SIU meetings, I do not find that it has been established whether or not the employees were paid. Some of them were involved in training, or in cleaning, or other chores preparatory to the opening of the casino, some may have worked an hour or two, and been also paid for a union meeting, others may have not. Payrolls submitted for August 19, 27, and 28 do not permit any objective way to decide whether a credited hour was devoted to work, or to the Union.

Moreover, despite the General Counsel's assertion that I should believe the nine employees still employed at the time they testified, I find the testimony of these employee witnesses to indicate poor memories in many cases. Several of them were engaged in a wage dispute with Alton Belle and the Union, while others had signed cards for HERE, which brings up possible conflicts. I do not credit too much of their testimony. I believe, because there really is no dispute, that supervisors were present at the meetings on August 27 and 28, but I do not believe the several allegations that supervisors told employers to sign cards or lose their jobs.

I do, however, agree with the General Counsel on two issues. I believe, as I have already indicated, that the recognition by Alton Belle of the SIU on August 23 was premature, and that the unit, considering that it purported to be for "all nonsupervisory personnel," did not represent a representative complement, nor, indeed, did it represent anywhere close to a majority of employees already working.

I, therefore, find that Alton Belle violated Section 8(a)(1) and (2) of the Act, and that the SIU violated Section 8(b)(1)(A) of the Act by the recognition and acceptance of that recognition on August 23. The fact that, in my opinion, neither the Employer nor the Union knew they were doing anything wrong, in fact I do not believe they knew what they were doing at all, makes any difference in this conclusion. *Price Crusher Food Warehouse*, 249 NLRB 433 (1980); *Allied Products Corp.*, 220 NLRB 732 (1975).

The second issue on which I am in agreement with the General Counsel's conclusion, although perhaps not with her reasons, is the issue of the second recognition on August 30.

In looking at the reasons for this recognition I note, of course, the premature recognition of August 23. The cards used in that recognition I have found to be valid (not 31 however, but 22) and they continued to be valid in the count of the August 30 recognition in the larger, appropriate unit. However, the effect of that earlier, unlawful, action must have had an effect on the employees' impressions of the status of the SIU. So that when Brian Doherty, in his "sales" message to larger groups of employees on August 27 and 28 spoke of the SIU being "their union," the employees who knew about the earlier recognition, may, as several people testified, have felt that the game was already over and the SIU was their representative.

Doherty, on the whole, was a credible enough witness, but he did slip when he said he never asked management to

⁴¹ Jackson testified here on the question of lobbying, described above, but he was asked no questions about the submission of the cards to Father Campbell.

⁴² There is no evidence of what Father Campbell used to compare the signatures, or where he got the comparison data. The General Counsel urges that I disbelieve the assertion in the letters both from Father Campbell on August 30, and from Monsignor Polizzi of St. Roch's Church in St. Louis for the first 31 cards, because neither cleric was produced to verify their letters. However, no evidence was introduced by the General Counsel casting any doubt on the signatures. All those who testified about the cards admitted their signatures to be genuine. I admitted all these cards into evidence and I have no reason to doubt their authenticity.

bring employees in for meetings. He did not want them “herded” in, as he put it. However, based on credible testimony from Bob Brickley and Terry Oster, ask, Doherty did, and herded, the employees were.

Then, at the meetings on August 27 and 28, the employees, having been called in,⁴³ were literally “herded” up to the lounge area. All of the witnesses did not agree on the details of the meeting, but all were in basic agreement on some facts. There were at least three SIU representatives present, most remembered Brian Doherty, and that a sales pitch was made to them, including the phrase “we are your union.” All agreed that there were a number of supervisors there. Robert Feltus figures prominently in the testimony as standing leaning against the bar throughout the meeting.⁴⁴ Feltus also went around to several tables and answered questions about the cards and applications which had been passed out by the Union.⁴⁵ Other supervisors who were prominent at the meetings were Sharon Hawkins, Jay Vaughn, and Mary Oglesby. Vaughn was said by several witnesses to have been present through the whole of at least one meeting, in the lounge; Hawkins passed through on a number of occasions; Brickley at least once; and Oglesby was around the hallway between the lounge and the buffet area.

Doherty is an experienced and obviously skilled organizer with dozens of campaigns notched on his belt. As such, I cannot believe that by his second day, having had pretty much free run of the barge and landing areas, he did not know who the supervisors were. He testified that he did know Louis Drieth, the head of security, and had asked him to leave an area where he was talking to employees. I find that he must have known Feltus, Vaughn, Hawkins, and Oglesby, by the time of the meetings on August 28. Brickley, he did know, because he asked Brickley the day before to call the employees in for the meetings. I do not credit Doherty’s denial that he knew the supervisors, and I do believe that he acquiesced in their presence at his organizational meetings.⁴⁶ The impact on employees of statements that the SIU was their union, together with the constant presence of supervisors at the meeting, witnessing the card signing, in the case of Feltus, answering employee questions while the meeting was going on, must have been profound. Several employees felt obliged to sign because of the presence of the supervisors.

Based on these facts, I find that the conduct of these meetings in this manner constituted coercion of employees and unlawful assistance by Alton Belle, and unlawful acceptance of such assistance by the SIU, is violation of Section 8(a)(1) and (2) and Section 8(b)(1)(A) of the Act.

⁴³ I cannot find that the supervisors who made the calls said to everyone that the meetings were mandatory, although a few may have been told that.

⁴⁴ Feltus himself testified that he attended only one of the meetings. He would have been easily recognized as he is a tall, good-looking, well-dressed man, and he was the only African-American who testified here.

⁴⁵ I credit Feltus and Mary Smith, who testified that he did not tell employees they had to sign cards, over Linda Woodfin and Jackie Poe, who said that he did. I note that Poe and Woodfin were involved in a grievance over wages with both management and the SIU at the time of the hearing.

⁴⁶ I infer and find, also, that Alton Belle must have agreed to have these supervisors remain at the meetings. Otherwise Brickley, who was there, could have told them all to leave.

Having so found, I find that all of the cards obtained as a result of these unlawful conditions are tainted and may not be counted toward a majority. Therefore, I find that the recognition on August 30 is invalid and unlawful, and further violations on the part of the Company and the Union of Section 8(a)(1) and (2) and Section 8(b)(1)(A) of the Act.

The next step, which must necessarily follow, is that the contract negotiated on the basis that the Union was the lawfully recognized bargaining representative is itself invalid and unlawful. Alton Belle, by entering into such a contract, containing union-shop and checkoff provisions, has violated Section 8(a)(1), (2), and (3) of the Act, and the SIU has violated Section 8(b)(1)(A) and 8(b)(2) of the Act. *Farmers Energy Corp.*, 266 NLRB 722 (1983); *Siro Security Service*, 247 NLRB 1266 (1980); *Famous Castings Corp.*, 301 NLRB 404 (1991).

H. The 8(a)(1) Violation

The General Counsel alleges in the complaint that the Alton Belle employee manual, given to each employee on hiring, contains, on page 18, a specific prohibition of solicitation “during working hours,” and from distributing literature, pamphlets, or other materials in “Company areas.” This would appear to be a violation of Section 8(a)(1). *Our Way, Inc.*, 268 NLRB 394 (1983), even though there is no evidence that it was ever enforced *Independent Stations Co.*, 284 NLRB 394 (1987).

However, the Company amended the rule by a notice to employees, posted on the company bulletin board by Rick Watts, a personnel assistant, on October 9, 1991. This did not, apparently, have much effect, because nine different employees who identified the employee manual testified that they had never seen the notice of the revision. I think the General Counsel is correct that the original rule was in effect during all the events which make up this case. Furthermore, I think that the posting of a notice off in some corner on a bulletin board would not have as much of a therapeutic effect as a revision of the manual, deleting the offensive rule, or at least a distribution of the notice to all employees.

I, therefore, find that by promulgating and maintaining an invalid no-solicitation rule, Alton Belle has violated Section 8(a)(1) of the Act.

I. The Due-Process Issue

The Respondent Company, through its counsel, has taken issue throughout this hearing with the Board’s practice on pretrial discovery, release of witnesses’ affidavits and files, memorandum, and other materials developed during the investigations and pretrial stages of Board proceedings. A section of Alton Belle’s brief contains further arguments and citations in support of these positions.

As far as I am concerned, I am satisfied that I have conducted the hearing under the *Jencks* rule, *Jencks v. U.S.*, 353 U.S. 657 (1957), and the Board’s adoption of that rule, *Ra-Rich Mfg. Corp.*, 121 NLRB 700 (1958). I, therefore, deny Alton Belle’s motion to dismiss the complaint in its entirety, contained in its brief.

As postscript to this ruling, I would note that we had considerable discussion during the presentation of the General Counsel’s witnesses of the problems created for Alton Belle’s counsel by the fact that he did not have available,

while cross-examining these witnesses, the prehearing affidavits of subsequent witnesses. Counsel's position was that if he had had the affidavit of one witness while cross-examining a prior witness, that cross-examination "would have been far more meaningful."

At one point, counsel stated in the record that all of the pretrial statements of the employee witnesses who had testified should be made a part of the record so that he "may be able to establish what I think is the significant prejudice in the failure of the Board to provide that information and other related information to me prior to the onset of the hearing."

Seeing some merit in this proposition, I authorized the General Counsel to make copies of the affidavits of 15 employees who testified in this proceeding. These affidavits were turned over to all counsel and made a part of the record in this case.

Just for the record, I note that there is no indication in Respondent Company's brief that these affidavits, or the absence of them during the hearing, showed significant prejudice, or any prejudice, or were used for any purpose.

THE REMEDY

Having found that Respondent Alton Belle has engaged in certain unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act, I shall recommend that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act. In addition, Respondent Alton Belle shall be ordered to withdraw and withhold all recognition from Seafarers International Union until such time as the Union has been certified by the Board as the exclusive representative of the employees involved here, and to cease giving any effect to a collective-bargaining agreement Alton Belle entered into with the Seafarers International Union on September 7, 1991, or any modification, amendment, extensions, or renewal of the agreement, provided, however, that nothing in the Order herein shall require Alton Belle to vary or abandon any wage increase or other benefit, terms, and conditions of employ-

ment which may have been established pursuant to the performance of the agreement.

Having found that Respondent Seafarers International Union has engaged in certain unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act. In particular, I shall recommend that the Respondent Union reimburse to all employees who are or have been covered by the agreement of September 7, 1991, all dues or fees paid to the Respondent Union pursuant to union-shop and checkoff provisions contained in that contract.

CONCLUSIONS OF LAW

1. Respondent Alton Riverboat Gambling Partnership d/b/a Alton Belle Casino is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Seafarers International Union of North America, Atlantic, Gulf, Lake and Inland Waters District, AFL-CIO, and Hotel Employees and Restaurant Employees International Union, and its Local Unions 1 and 15 are all labor organizations within the meaning of Section 2(5) of the Act.

3. By aiding and assisting Respondent Seafarers International Union in organizing its employees Respondent Alton Belle has violated Section 8(a)(1) and (2) of the Act.

4. By entering into a recognition agreement on August 30, 1991, and a collective-bargaining agreement on September 7, 1991, containing union-shop and checkoff provisions with Respondent Seafarers International Union, Respondent Alton Belle has violated Section 8(a)(1), (2), and (3) of the Act.

5. By accepting the assistance of Respondent Alton Belle in organizing the employees of Alton Belle, Respondent Seafarers International Union violated Section 8(b)(1)(A) of the Act.

6. By entering into a recognition on August 30, 1991, and a collective-bargaining agreement with Alton Belle on September 7, 1991, the Respondent Seafarers International Union violated Section 8(b)(1)(A) and (2) of the Act.

[Recommended Order omitted from publication.]