

Hotel Ramada of Nevada d/b/a Tropicana Resort & Casino and International Union of Operating Engineers, Local 501, AFL-CIO. Cases 28-CA-16241-2

June 30, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS
LIEBMAN AND HURTGEN

Pursuant to a charge filed on January 24, 2000, the General Counsel of the National Labor Relations Board issued a complaint on February 24, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 28-RC-5818. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 24, 2000, the General Counsel filed a Motion for Summary Judgment. On May 25, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

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

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the ground that the Union waived its right to represent the employees in the bargaining unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.¹ See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

¹ In its answer, the Respondent denies the appropriateness of the bargaining unit. However, as the Respondent concedes in its response, the Respondent stipulated to the appropriateness of the unit in the representation case. Accordingly, we find that the Respondent's denial raises no material issue of fact warranting a hearing. *General Fabrications Corp.*, 330 NLRB 410 fn. 2 (1999).

² In its answer and response, the Respondent argues that the General Counsel's motion should be denied in light of the suit it filed in the United States District Court for the District of Nevada (Case No. CV-S-99-1650-JBR (RLH)), alleging that the Union breached its collective-bargaining agreement with the Respondent by seeking to represent the unit employees. It is well settled, however, that "the pendency of

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Hotel Ramada of Nevada d/b/a Tropicana Resort & Casino, is a corporation engaged in the hotel and gaming industry at its facility in Las Vegas, Nevada. During the 12-month period ending January 24, 2000, the Respondent, in the course and conduct of its business operations, purchased and received at its Las Vegas facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Nevada. During the 12-month period ending January 24, 2000, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held January 6, 2000, the Union was certified on January 18, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All slot mechanics employed in the slot repair department at the Employer's [the Respondent's] facility located at 3801 Las Vegas Boulevard South in Las Vegas, Nevada; excluding all guards, secretaries and all other employees and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since January 25, 2000, the Union has requested the Respondent to bargain and since January 25, 2000, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 25, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an

collateral litigation does not suspend a respondent's duty to bargain under Section 8(a)(5)." *Maywood Do-Nut Co.*, 256 NLRB 507, 508 (1981). Accordingly, we find no merit in the Respondent's contention.

understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Hotel Ramada of Nevada d/b/a Tropicana Hotel & Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 501, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) 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) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All slot mechanics employed in the slot repair department at the Employer's [the Respondent's] facility located at 3801 Las Vegas Boulevard South in Las Vegas, Nevada; excluding all guards, secretaries and all other employees and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 28

³ If 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."

after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 25, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

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 refuse to bargain with International Union of Operating Engineers, Local 501, AFL-CIO as the exclusive representative of the employees in the bargaining.

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

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All slot mechanics employed in the slot repair department at our facility located at 3801 Las Vegas Boulevard South in Las Vegas, Nevada; excluding all guards, secretaries and all other employees and supervisors as defined by the Act.

HOTEL RAMADA OF NEVADA D/B/A
TROPICANA HOTEL & CASINO