

**Grapetree Shares, Inc. d/b/a Divi Carina Bay Resort
and Virgin Islands Workers Union** Case 24–
CA–11101

April 10, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on January 14, 2009, the General Counsel issued the complaint on January 28, 2009, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 24–RC–8566. (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 and asserting affirmative defenses.¹

On February 19, 2009, the General Counsel filed a Motion for Summary Judgment. On February 24, 2009, 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.

Ruling on Motion for Summary Judgment²

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its objections to conduct alleged to have affected the election and the Board’s disposition of a challenged ballot in the representation proceeding.³

¹ The Respondent’s answer denies sufficient knowledge concerning the filing and service of the charge. Copies of the charge and affidavit of service thereof are attached as exhibits to the General Counsel’s motion, showing the dates as alleged, and the Respondent does not challenge the authenticity of these documents. Accordingly, we find that the Respondent’s denials in this regard do not raise any issue of fact warranting a hearing.

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

³ The Respondent also contests the validity of the Union’s certification on the basis that the Board lacked a quorum on August 18, 2008, when it certified the Union. However, this defense is without merit for the reasons stated above in fn. two.

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.⁴ See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.⁵

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a U.S. Virgin Islands corporation, with an office and place of business in Christiansted, St. Croix, U.S. Virgin Islands, herein called the hotel, has been engaged in the operation of a hotel and casino.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its hotel goods valued in excess of \$50,000 directly from points outside the U.S. Virgin Islands.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(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.⁶

The Respondent further contends that “the numerous changes in the bargaining unit—constitute sufficiently changed circumstances to warrant a refusal to bargain.” The Respondent has not presented any factual or legal basis in support of its argument. Further, the Board has long held that in unfair labor practice cases, such as this, involving an employer’s refusal to bargain during the initial year of certification, employee turnover does not constitute “unusual circumstances” relieving an employer of its obligation to bargain. See, e.g., *King Electric, Inc.*, 343 NLRB No. 54, slip op. at 1, fn. 1 (2004), (not reported in Board volume), enf. denied on other grounds 440 F.3d 471, 474 (D.C. Cir. 2006). Accordingly, we find that the Respondent’s assertions in this regard do not raise any issues of fact warranting a hearing.

⁴ We find no merit in the Respondent’s affirmative defense that “[t]o the extent that any allegations of the Complaint are outside the six-month statute of limitations for unfair labor practice charges,” those allegations are barred by the 6-month statute of limitations set forth in Sec. 10(b) of the Act. The Respondent has not presented any factual or legal basis in support of its asserted defense, and the unfair labor practice charge and complaint allegations are consistent with the time provisions of Sec. 10(b).

⁵ Thus, the Respondent’s requests that the complaint be dismissed and that it recover costs and attorneys’ fees are denied.

⁶ The Respondent’s answer denies sufficient knowledge regarding the Union’s status as a labor organization. The Respondent, however, stipulated in the underlying representation proceeding that the Union is

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on June 12, 2007, the Union was certified on August 18, 2008, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including food and beverage, kitchen, housekeeping, maintenance, front desk, communications, bell and guest services, gift shop, activities and grounds; excluding all other employees, office, clerical employees, guards, and supervisors as defined by the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

About December 17, 2008, the Union, by letter, by requesting the Respondent to provide information concerning bargaining unit employees, requested the Respondent to recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit.⁷ About December 22, 2008, by letter, the Respondent failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about December 22, 2008, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, 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.

a labor organization within the meaning of the Act. In addition, the Respondent denies that it operates a casino, stating that the casino is operated by Treasure Bay. On July 30, 2008, by unpublished Decision, the Board adopted in relevant part the findings of the administrative law judge asserting jurisdiction over the Respondent "as a corporation with an office and place of business in Christiansted, St. Croix, U.S. Virgin Islands, which operates a hotel and casino." Further, regardless of which entity actually operates the casino, there is no dispute that the Respondent is the employer of the employees in the certified bargaining unit. Accordingly, we find that the Respondent's answer does not raise any issues of fact warranting a hearing with respect to these allegations. See *All American Services & Supplies*, 340 NLRB 239 fn. 2 (2003).

⁷ The Board has held that "a request for relevant information constitutes a request for bargaining . . ." *Pak-Well*, 206 NLRB 260, 261 (1973), citing *Rod Ric Corp.*, 171 NLRB 922, enf. 428 F.2d 948 (5th Cir. 1970); cert. denied 401 U.S. 937 (1971).

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 recognize and bargain on request with the Union and, if an 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 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), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Grapetree Shores, Inc. d/b/a Divi Carina Bay Resort, Christiansted, St. Croix, U.S. Virgin Islands, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Virgin Islands Workers Union as the exclusive collective-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 full-time and regular part-time production and maintenance employees, including food and beverage, kitchen, housekeeping, maintenance, front desk, communications, bell and guest services, gift shop, activities and grounds; excluding all other employees, office, clerical employees, guards, and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in Christiansted, St. Croix, U.S. Virgin Islands, copies of the attached notice marked "Appendix."⁸

⁸ 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 for the [] Circuit."

Copies of the notice, on forms provided by the Regional Director for Region 24, 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 December 22, 2008.

(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 Federal labor law and has ordered us to post and obey this notice.

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain with Virgin Islands Workers Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

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 following bargaining unit:

All full-time and regular part-time production and maintenance employees, including food and beverage, kitchen, housekeeping, maintenance, front desk, communications, bell and guest services, gift shop, activities and grounds; excluding all other employees, office, clerical employees, guards, and supervisors as defined by the Act.

GRAPETREE SHORES, INC. D/B/A DIVI CARINA BAY RESORT