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Stamford Hospitality, LP d/b/a Stamford Plaza Hotel and Conference Center, LP and United Food and Commercial Workers Union, Local 371.
Case 34–CA–092068

March 13, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

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 by the Union on October 25, 2012, the Acting General Counsel issued the complaint on December 5, 2012, alleging that the Respondent, Stamford Hospitality, LP d/b/a Stamford Plaza Hotel and Conference Center, LP, has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain following the Union’s certification in Case 34–RC–080390. (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.

On January 29, 2013, the Acting General Counsel filed a Motion for Summary Judgment and a supporting memorandum. On January 30, 2013, 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 Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of the issues raised in the representation proceeding, including its assertion that the President’s recess appointments are constitutionally invalid, and the Board lacks the authority to act. We reject this argument.¹

¹ We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President’s recess appointments were not valid. See *Noel Canning v. NLRB*, ___ F.3d ___ (D.C. Cir. 2013). However, as the court itself acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Alocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in

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. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has provided hotel guest room and suite accommodations, meeting rooms, and other event space at its facility located in Stamford, Connecticut (the Respondent’s facility).

During the 12-month period ending October 31, 2012, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Connecticut.

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, United Food and Commercial Workers Union, Local 371, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on June 22, 2012, the Union was certified on August 1, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:²

All full-time and regular part-time service and maintenance employees employed by the Employer at its Stamford, Connecticut facility; but excluding all other employees, banquet employees, clerical employees, and guards, professional employees, and supervisors as defined in the Act.

litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act.

² We have corrected the unit description set forth in the complaint to conform to the unit found appropriate in the Regional Director’s Decision and Direction of Election and certified in the Regional Director’s Supplemental Decision on Objections and Certification of Representative.

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

By letters dated August 2 and October 3, 2012, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about August 2, 2012, the Respondent has failed and refused to recognize and bargain with the Union. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about August 2, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the 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 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); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Stamford Hospitality, LP d/b/a Stamford Plaza Hotel and Conference Center, LP, Stamford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to recognize and bargain with United Food and Commercial Workers Union, Local 371 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 collective-bargaining 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 service and maintenance employees employed by the Employer at its Stamford, Connecticut facility; but excluding all other employees, banquet employees, clerical employees, and guards, professional employees, and supervisors as defined in the Act.

- (b) Within 14 days after service by the Region, post at its facility in Stamford, Connecticut, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 34, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. 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 August 2, 2012.

- (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 at-

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."

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 13, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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.

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 fail and refuse to recognize and bargain with United Food and Commercial Workers, Local 371 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 listed above.

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 service and maintenance employees employed by us at our Stamford, Connecticut facility; but excluding all other employees, banquet employees, clerical employees, and guards, professional employees, and supervisors as defined in the Act.

STAMFORD HOSPITALITY, LP D/B/A STAMFORD PLAZA HOTEL AND CONFERENCE CENTER, LP