

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HILTON HOTELS CORPORATION d/b/a THE RENO
HILTON

and

Case 32--CA--6051

PROFESSIONAL, CLERICAL AND MISCELLANEOUS
EMPLOYEES LOCAL UNION NO. 995, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA

DECISION AND ORDER

Upon a charge filed by the Union 9 November 1983, the General Counsel of the National Labor Relations Board issued a complaint 19 December 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 28 July 1983, following a Board election in Case 32--RC--1716, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (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), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (Nov. 9, 1982).) The complaint further alleges that since about 2 September 1983 the Company has refused to bargain with the Union. About 30 December 1983 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 16 January 1984 the General Counsel filed a Motion for Summary Judgment, with exhibits attached, submitting, in effect, that the Respondent's answer to the complaint raises no bona fide issues of fact requiring a hearing. On 19 January 1984 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 no response to the Notice to Show Cause and, accordingly, the averments in the Motion for Summary Judgment stand uncontroverted.

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

Ruling on Motion for Summary Judgment

On 28 July 1983 the Board issued a Decision and Certification of Representative in which it considered a hearing officer's Report on Objections to the 17 November 1982 election and the Respondent's exceptions to the hearing officer's report. The Board, after having viewed the record in light of the exceptions and briefs, adopted the hearing officer's findings and recommendations that the Respondent's objections be overruled and the Union certified.

In its answer to the complaint, the Respondent admits substantially all of the factual allegations in the complaint including its refusal to bargain with the Union which has been certified as the collective-bargaining representative of the employees in the appropriate unit described in the complaint. The Respondent's answer raises no bona fide issues of fact and denies only the legal conclusions to be drawn from the factual allegations pleaded in the complaint and admitted in the answer. The Respondent in its answer claims, as it did in its objection to the election and exceptions to the hearing officer's report, that, although a majority of the employees on 17 November 1982 voted for the Union, the voters were influenced to vote for the Union

because of threats. The Respondent also denies in its answer that the Union has been and is the exclusive representative of employees in the unit.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company in the answer were litigated in the prior representation proceeding. The Company did not file a response to the Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Company 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 Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a Delaware corporation with an office and place of business in Reno, Nevada, has been engaged in the operation of a hotel providing food and lodging for guests where during the past 12 months in the course and conduct of its business operations it derived gross revenues in excess of \$500,000 and purchased and received goods or services valued in excess of \$5,000 that originated outside the State of Nevada. We find that the Company 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 17 November 1982 the Union was certified 28 July 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All warehouse employees and shipping/receiving clerks employed by the Respondent at its Reno, Nevada facilities; excluding all other employees, guards, supervisors, and gaming employees, as defined in the Act.

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

B. Refusal to Bargain

Since about 9 August 1983 by telephone and on 24 August 1983 by letter the Union has requested the Company to bargain, and since about 2 September 1983 the Company 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.

Conclusions of Law

By refusing about 2 September 1983 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company 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); 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, Hilton Hotels Corporation d/b/a The Reno Hilton, Reno, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Professional, Clerical and Miscellaneous Employees Local Union No. 955, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 warehouse employees and shipping/receiving clerks employed by the Respondent at its Reno, Nevada facilities; excluding all other employees, guards, supervisors, and gaming employees, as defined in the Act.

(b) Post at its facility in Reno, Nevada, copies of the attached notice marked "'Appendix.'"¹ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 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 has taken to comply.

Dated, Washington, D.C. 30 April 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

¹ 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.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain with Professional, Clerical and Miscellaneous Employees Local Union No. 955, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive 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, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All warehouse employees and shipping/receiving clerks employed by the Respondent at its Reno, Nevada facilities; excluding all other employees, guards, supervisors, and gaming employees, as defined in the Act.

HILTON HOTELS CORPORATION
d/b/a THE RENO HILTON

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Breuner Building, Second Floor, 2201 Broadway, P.O. Box 12983, Oakland, California 94604, Telephone 415--273--6122.