

**Summa Corporation d/b/a Frontier Hotel and General Sales Drivers, Delivery Drivers and Helpers, Local 14, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 31-CA-12921**

12 June 1984

**DECISION AND ORDER**

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

Upon a charge filed 9 March 1983 and an amended charge filed 11 April 1983 by General Sales Drivers, Delivery Drivers and Helpers, Local 14, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Union, and duly served on Summa Corporation d/b/a Frontier Hotel, the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint 14 June 1983, against the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, amended charge, and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 9 November 1982, following a Board election in Case 31-RC-3680, the Union was duly certified as the exclusive collective-bargaining representative of the Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing about 19 November 1982, and at all times thereafter, the Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, by unilaterally changing medical and dental insurance coverage for employees, without prior notice to or bargaining with the Union, although the Union has requested and is requesting the Respondent to bargain. Thereafter, the Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On 29 July 1983 counsel for the General Counsel filed directly with the Board a Motion for Summa-

ry Judgment, with exhibits attached. Subsequently, on 3 August 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Respondent thereafter filed a response to the Notice to Show Cause.

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

Upon the entire record in this proceeding, the Board makes the following

**Ruling on the Motion for Summary Judgment**

In its answer to the complaint and its response to the Notice to Show Cause, the Respondent admits the request to bargain and its unilateral changes of insurance coverage, but attacks the Union's certification on due process grounds, based on its contentions previously made in the underlying representation proceeding. Specifically, the Respondent contends that it was improperly denied a hearing with respect to certain of its objections to conduct affecting the results of the second election in Case 31-RC-3680, and by the Board's refusal to order the Regional Director for Region 31 to transfer to the Board the Region's investigatory file concerning the Respondent's objections, prior to certifying the Union in *Frontier Hotel*, 265 NLRB 343 (1982).

Review of the record herein, including the record in Case 31-RC-3680, reveals that pursuant to the Board's 31 December 1980 "Order Vacating Decision and Order, Rescinding Certification and Remanding Proceedings to the Regional Director For Second Election and Direction of Second Election," and a Stipulation for Certification Upon Consent Election, a second election was held 7 February 1981 resulting in a vote of 160 for, and 68 against, the Union.<sup>2</sup> Thereafter, the Respondent filed timely objections to conduct affecting the results of the election alleging, in substance, that (1) during the election campaign the Union made misrepresentations of fact concerning job security and

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 31-RC-3680, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

<sup>2</sup> The first election, which the Union won, was conducted 21 January 1977 pursuant to the Stipulation for Certification Upon Consent Election. Subsequently, on 25 August 1978 the Board certified the Union as the exclusive bargaining representative of the employees in the unit stipulated to be appropriate. Thereafter, in *Frontier Hotel*, 242 NLRB 590 (1979), the Board issued a Decision and Order, in which it granted the General Counsel's earlier Motion for Summary Judgment, finding that the Respondent had violated Sec. 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union. The Respondent petitioned the United States Court of Appeals for the Ninth Circuit for review of the Board's bargaining order, and the Board cross-petitioned for enforcement. In *Frontier Hotel v. NLRB*, 625 F.2d 293 (9th Cir. 1980), the court denied enforcement of the Board's Order. Accordingly, on 31 December 1980 the Board issued its "Order Vacating Decision and Order, Rescinding Certification and Remanding Proceedings to the Regional Director for Second Election and Direction of Second Election."

strike procedures in the event of a union victory in the election; (2) union agents and organizers of the Union represented to employees that, if the Union did not win the election, there would be mass discharges for retaliatory reasons, and made other coercive statements to employees; and (3) a local newspaper published articles attempting unfairly to influence the outcome of the election by mischaracterizing the results of the first election and by reporting results of a statistically improbable poll of employees prior to the second election.

After investigation, the Regional Director issued his Report on Objections in which he recommended that the Respondent's objections be overruled in their entirety. Thereafter, the Respondent filed timely exceptions to the Regional Director's report, contending, inter alia, that it was improperly denied a hearing on its objections. At the same time, the Respondent filed a "Motion For Order Directing Regional Director To Transmit Record," requesting that the Board require that the Regional Director transmit the investigatory case file on the objections to the Board. On 9 November 1982 the Board, in *Frontier Hotel*, 265 NLRB 343, having considered the Regional Director's report, the Respondent's exceptions thereto, and the entire record, adopted the findings and recommendations of the Regional Director and certified the Union as the exclusive bargaining representative of the employees in the unit stipulated to be appropriate.

On 21 December 1982, pursuant to a charge filed by the Union against the Respondent in Case 31-CA-12665, the General Counsel issued a complaint and notice of hearing against the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act by refusing to bargain with the Union as the exclusive bargaining representative of its employees. After the General Counsel filed a Motion for Summary Judgment with the Board in that case, the Board on 23 May 1983 issued its Decision and Order in *Frontier Hotel*, 266 NLRB No. 155 (not reported in bound volumes), finding that the Respondent had violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union since about 23 November 1982.

It appears that the Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the prior representation proceeding.

It is well settled that in the absence of newly discovered or 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 which were or could have been litigated in a prior representation proceeding.<sup>3</sup>

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

In this proceeding, the Respondent contends that due process entitled it to a hearing on its objections to the election.<sup>4</sup> This is precisely the same issue raised by the Respondent in *Frontier Hotel*, 266 NLRB No. 155.<sup>5</sup> We reject the Respondent's contention for the reasons stated in our decision in that case. Accordingly, we conclude that the Respondent, by unilaterally changing medical and dental insurance coverage for employees, without providing the Union with prior notice or an opportunity to bargain, has violated Section 8(a)(5) and (1) of the Act, and we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Delaware corporation with an office and principal place of business located in Las Vegas, Nevada, where it is engaged in the operation of a hotel and casino. In the course and conduct of its business operations, the Respondent annually derives gross revenues in excess of \$500,000, and annually purchases and receives goods or services valued in excess of \$50,000, directly from suppliers located outside the State of Nevada.

<sup>3</sup> See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

<sup>4</sup> The Respondent also contends that the Board in the underlying representation case improperly refused to order the Regional Director to transmit to the Board the entire investigatory file respecting the objections to the election before certifying the Union as the exclusive bargaining representative of certain of the Respondent's employees in *Frontier Hotel*, 265 NLRB 343. We reject this contention for the reasons indicated in *Frontier Hotel*, 266 NLRB No. 155.

<sup>5</sup> We note that the United States Court of Appeals for the Ninth Circuit, by memorandum issued 5 April 1984, enforced the Board's Order in that prior proceeding.

Member Dennis finds that the Ninth Circuit's decision enforcing the Board's previous order is dispositive of the Respondent's challenge to the Union's certification, which the Respondent renews in the instant case. Accordingly, she finds it unnecessary to consider the Respondent's assertion that the Board should have reviewed the entire investigatory file in the underlying representation case.

We find, on the basis of the foregoing, that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

General Sales Drivers, Delivery Drivers and Helpers, Local 14, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. *The Representation Proceeding*

#### 1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All gaming casino dealers, shills, Keno writers and Keno runners employed by the Employer at its facility located at 3120 Las Vegas Boulevard South; excluding all other employees, including casino shift managers, assistant shift managers, pit bosses, pit floormen, boxmen, slot shift supervisors, floormen, slot mechanics, booth cashiers, change girls, casino cage cashiers, slot cage cashiers, coin counters and wrappers, pit clerks, credit clerks, office clerical employees, guards, and supervisors, as defined in the Act.

#### 2. The certification

On 7 February 1981 a majority of the employees of the Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 31, designated the Union as their representative for the purpose of collective bargaining with the Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit 9 November 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

### B. *The Request to Bargain and the Respondent's Refusal and Unilateral Changes*

Commencing about 19 November 1982, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Com-

mencing about 19 November 1982, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit, by unilaterally changing its medical and dental insurance coverage for employees in the bargaining unit.

Accordingly, we find that the Respondent has, since about 19 November 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unilaterally changed its terms and conditions of employment by changing medical and dental insurance coverage for its employees without first notifying the Union and affording it an opportunity to bargain, we shall order the Respondent, upon request of the Union, to rescind such changes, and to provide the Union with notice and the opportunity to bargain before implementing any changes in health insurance coverage affecting employees in the certified bargaining unit. Further, we shall order that the Respondent make whole the unit employees for losses of benefits, if any, suffered as a result of the Respondent's unilateral changes in medical and dental insurance coverage. In measuring actual damages, employees should be reimbursed for actual costs to the extent, if any, that those costs would have been paid under the health insurance coverage provided by the Respondent prior to the change in coverage effectuated by the Respondent about 19 November 1982, but were not covered by the health insurance

coverage provided by the Respondent after that change was made. We shall order that employees be made whole for any loss of benefits after 19 November 1982, and continuing, with interest, until the date on which the Respondent fully complies with the terms of our Order. The amounts due shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

The Board, on the basis of the foregoing facts and the entire record, makes the following

#### CONCLUSIONS OF LAW

1. Summa Corporation d/b/a Frontier Hotel is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Sales Drivers, Delivery Drivers and Helpers, Local 14, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All gaming casino dealers, skills, Keno writers and Keno runners employed by the Employer at its facility located at 3120 Las Vegas Boulevard South; excluding all other employees including casino shift managers, assistant shift managers, pit bosses, pit floormen, boxmen, slot shift supervisors, floormen, slot mechanics, booth cashiers, change girls, casino cage cashiers, slot cage cashiers, coin counters and wrappers, pit clerks, credit clerks, office clerical employees, guards, and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 9 November 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By unilaterally changing terms and conditions of employment about 19 November 1982 by changing medical and dental insurance coverage for employees in the bargaining unit without first notifying the Union and affording it an opportunity to bargain with respect to such changes, the Employer failed and refused to bargain in good faith with the Union and thereby has violated Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1).

#### ORDER

The National Labor Relations Board orders that the Respondent, Summa Corporation d/b/a Frontier Hotel, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing established terms and conditions of employment of the employees in the bargaining unit by changing medical and dental insurance coverage without first notifying the Union of such changes and giving it an opportunity to bargain with respect to such changes.

(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 which the Board finds will effectuate the policies of the Act.

(a) On request of the Union, rescind the changes in medical and dental insurance coverage made about 19 November 1982, and immediately reestablish the previously existing coverage.

(b) Prior to effectuating any changes in medical and dental insurance coverage for unit employees, notify the Union and afford it an opportunity to bargain with respect to such changes.

(c) Make whole any employees in the bargaining unit for losses in benefits, if any, as a result of the 19 November 1982 changes in medical and dental insurance coverage, in the manner set forth in the section of our Decision and Order entitled "The Remedy."

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Las Vegas, Nevada facility copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, 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

<sup>6</sup> 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."

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.

#### 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 collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Sales Drivers, Delivery Drivers and Helpers, Local 14, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the bargaining unit described below by unilaterally changing medical and dental insurance for such employees.

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 make whole any employees in the unit for losses of benefits, if any, with interest suffered as a result of our unilateral changes in medical and dental coverage.

WE WILL, on request of the Union, rescind the changes in medical and dental insurance coverage for employees in the unit described below, which we made about 19 November 1982, and immediately reestablish the previously existing coverage.

WE WILL, prior to making any changes in medical and dental insurance coverage affecting bargaining unit employees, notify the Union of such proposed changes and afford it an opportunity to bargain with respect to such changes. The appropriate bargaining unit is:

All gaming casino dealers, shills, Keno writers and Keno runners employed by the Employer at its facility located at 3120 Las Vegas Boulevard South; excluding all other employees, including casino shift managers, assistant shift managers, pit bosses, pit floormen, boxmen, slot shift supervisors, floormen, slot mechanics, booth cashiers, change girls, casino cage cashiers, slot cage cashiers, coin counters and wrappers, pit clerks, credit clerks, office clerical employees, guards, and supervisors, as defined in the Act.

SUMMA CORPORATION D/B/A FRONTIER HOTEL