

Executive Hotel Plaza Associates, a partnership, d/b/a Kingston Hotel and Hotel Employees & Restaurant Employees of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL-CIO. Case 21-CA-27896

July 31, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

Upon a charge filed by the Union on January 24, 1991, and an amended charge filed on March 1, 1991, the General Counsel of the National Labor Relations Board issued a complaint on March 6, 1991, against Executive Hotel Plaza Associates, a Partnership, d/b/a Kingston Hotel, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.

On May 17, 1991, the General Counsel filed a Motion for Summary Judgment with exhibits attached. On May 23, 1991, 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. The allegations in the motion therefore are undisputed.

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

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in said complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that on March 26, 1991, the Respondent requested an extension of time to April 25, 1991, to file an answer to the complaint, which was granted by the Regional Director on March 28, 1991. As noted above, the Respondent has failed to file an answer and has failed to file a response to the Notice to Show Cause.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California general partnership, has been engaged in the operation of the Kingston Hotel in San Diego, California. Annually, in the course and conduct of its business operations, the Respondent derived gross revenues in excess of \$500,000, and annually purchased and received goods and products valued in excess of \$10,000 from suppliers located in the State of California which suppliers, in turn, purchased the same goods and products directly from suppliers located outside the State of California. 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

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

All kitchen employees, stockroom employees, lunch and dining room employees, bartenders and cocktail lounge employees, and housekeeping and service department employees employed by the Respondent; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

Since February 21, 1989, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and the Union has been recognized as the representative by the Respondent. Recognition has been embodied in a collective-bargaining agreement, which was effective by its terms for the period of February 21, 1989, to June 1, 1990, and extended by agreement of the Union and the Respondent to March 31, 1991. At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about September 1, 1990, the Respondent has failed and refused, and continues to fail and refuse, to bargain collectively with the Union as the exclusive representative of the unit employees by repudiating articles 3(h), 19, and 20 of the 1989-1991 collective-bargaining agreement in that, since July 1, 1990, the Respondent has failed and refused, and continues to fail and refuse, to make contractually required payments to the San Diego Bartenders and Culinary

Workers' Insurance Trust and the San Diego Bartenders and Culinary Workers' Pension Trust Fund, and has failed and refused to remit deducted union dues to the Union since October 1, 1990.

We find that, by the above acts and conduct, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive representative of its employees and that the Respondent thereby has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing since on or about July 1, 1990, to make contractually required payments to the San Diego Bartenders and Culinary Workers' Insurance Trust and the San Diego Bartenders and Culinary Workers' Pension Trust Fund, and by failing, since October 1, 1990, to remit deducted union dues to the Union, 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 engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make its unit employees whole by making all payments into the San Diego Bartenders and Culinary Workers' Insurance Trust and the San Diego Bartenders and Culinary Workers' Pension Trust Fund, as required by the collective-bargaining agreement, which have not been paid and which would have been paid in the absence of the Respondent's unlawful unilateral discontinuance of the payments;¹ and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), affd. mem. 661 F.2d 940 (9th Cir. 1981). We also shall order the Respondent to remit deducted union dues to the Union, as required by the collective-bargaining agreement until its expiration. All payments to employees and the Union shall be made with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Executive Hotel Plaza Associates, a Partnership, d/b/a Kingston Hotel, San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ We leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(a) Refusing to bargain with Hotel Employees & Restaurant Employees of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate unit set forth below, by failing to make payments to the San Diego Bartenders and Culinary Workers' Insurance Trust and the San Diego Bartenders and Culinary Workers' Pension Trust Fund, as required by the collective-bargaining agreement, and by failing to remit deducted union dues to the Union, as required by the collective-bargaining agreement until its expiration. The unit is:

All kitchen employees, stockroom employees, lunch and dining room employees, bartenders and cocktail lounge employees, and housekeeping and service department employees employed by the Respondent; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

(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) Make whole the unit employees by making payments on their behalf to the San Diego Bartenders and Culinary Workers' Insurance Trust and the San Diego Bartenders and Culinary Workers' Pension Trust Fund, as required by the collective-bargaining agreement with the Union, which have not been paid, and by reimbursing the unit employees for any expenses ensuing from the failure to make those payments, in the manner set forth in the remedy section of this decision.

(b) Remit deducted union dues to the Union, as required by the collective-bargaining agreement until its expiration, plus interest, in the manner set forth in the remedy section of this decision.

(c) 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 amounts due under the terms of this Order.

(d) Post at its facility in San Diego, California copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 21, 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

² 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."

customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by another material.

(e) 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 with Hotel Employees & Restaurant Employees of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate unit set forth below by failing to make contributions to the San Diego Bartenders and Culinary Workers' Insurance Trust and the San Diego Bartenders and Culinary Workers' Pension Trust Fund, as required by our collective-bargaining agreement with the Union. The unit is:

All kitchen employees, stockroom employees, lunch and dining room employees, bartenders and cocktail lounge employees, and housekeeping and service department employees employed by the Respondent; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to remit deducted union dues to the Union, as required by the collective-bargaining agreement until its expiration.

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 our unit employees by making payments on their behalf to the San Diego Bartenders and Culinary Workers' Insurance Trust and the San Diego Bartenders and Culinary Workers' Pension Trust Fund as required by the collective-bargaining agreement, which have not been paid, and by reimbursing our unit employees for any expenses ensuing from our failure to make the required payments, plus interest.

WE WILL remit to the Union all deducted union dues, as required by the collective-bargaining agreement until its expiration, plus interest.

EXECUTIVE HOTEL PLAZA ASSOCIATES,
A PARTNERSHIP, D/B/A KINGSTON HOTEL