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304 NLRB No. 126

D-4274
San Jose, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

E-Z-8 MOTELS, INC.

and

Case 32-CA-11884

HOTEL EMPLOYEES & RESTAURANT EMPLOYEES UNION, LOCAL 19, HOTEL EMPLOYEES & RESTAURANT EMPLOYEES INTERNATIONAL UNION

September 12, 1991

DECISION AND ORDER

By Members Devaney, Oviatt, and Raudabaugh

On July 9, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 32--RC--3319. (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 its answer admitting in part and denying in part the allegations in the complaint.

On August 7, 1991, the General Counsel filed a Motion for Summary Judgment. On August 13, 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 a response.

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

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

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). Although Respondent has denied that the Union requested bargaining, Respondent does not deny that the Union requested certain information on May 30, 1991, or that Respondent refuses to recognize the Union. The Board has held that a request for information is a request to bargain.[1] Respondent also denies that the information requested, i.e., the name, job classification, hire date and current mailing address of each unit employee, is not relevant and necessary. It is well settled that such information regarding unit employees is presumptively relevant to and necessary for the Union's performance as the exclusive representative for purposes of collective bargaining of the unit employees. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

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[1] National Eastern Corp., 294 NLRB No. 24, slip op. at 3 fn. 4 (May 30, 1989).

Findings of Fact

I. Jurisdiction

The Respondent, E-Z-8 Motels, Inc., a California corporation, has been engaged in the operation of a motel with an office and place of business in San Jose, California, where it annually derives gross revenues in excess of $500,000 and purchases and receives goods and services valued in excess of $5000 which originated 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

A. The Certification

Following the election held October 18, 1990, the Union was certified on May 22, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time employees including working lead-housekeeper, housekeeping, laundry, front desk and maintenance employees employed by Respondent at its 2050 North First Street, San Jose, California facility; excluding office clerical employees, managerial employees, guards and supervisors 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 May 30, 1991, the Union has requested the Respondent to bargain and to furnish information, and, since May 30, 1991, the Respondent 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 on and after May 30, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, 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. We also shall order the Respondent to furnish the Union the information requested.

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, E-Z-8 Motels, Inc., San Jose, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Hotel Employees & Restaurant Employees Union, Local 19, Hotel Employees & Restaurant Employees International Union, AFL--CIO, as the exclusive bargaining representative of the employees in the

bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(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 employees including working lead-housekeeper, housekeeping, laundry, front desk and maintenance employees employed by Respondent at its 2050 North First Street, San Jose, California facility; excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in San Jose, California, copies of the attached notice marked ''Appendix.''[2] 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

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[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.''

shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) 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. September 12, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Hotel Employees & Restaurant Employees Union, Local 19, Hotel Employees & Restaurant Employees International Union, AFL--CIO as the exclusive representative of the employees in the bargaining unit, and

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit 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, 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 bargaining unit:

> All full-time and regular part-time employees including working lead-housekeeper, housekeeping, laundry, front desk and maintenance employees employed by Respondent at its 2050 North First Street, San Jose, California facility; excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

E-Z-8 MOTELS, INC.

(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, 2201 Broadway, Second Floor, Oakland, California 94612-3017, Telephone 415--273--6122.