

Puerto Rico Hotel Casino Associates, d/b/a Condado San Juan Hotel & Casino and Federacion General de Trabajadores de Puerto Rico. Case 24-CA-6378

March 26, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Union August 12, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Puerto Rico Hotel Casino Associates, d/b/a Condado San Juan Hotel & Casino, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On January 10, 1992, the General Counsel filed a Motion for Summary Judgment. On January 16, 1992, 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 but did not contest the allegations of the motion. The allegations in the motion are therefore 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 the allegations in the Complaint not previously denied shall be deemed to be admitted by it to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Acting Regional Director, by letter dated December 3, 1991, notified the Respondent that unless an answer was received by December 20, 1991, a Motion for Summary Judgment would be filed, and that a debtor-in-possession in bankruptcy is not excused from the requirement of filing an answer and that the Bankruptcy Code's automatic stay does not apply to this proceeding.

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 limited partnership, has been engaged in the operation of a hotel and casino facility located at Ashford Avenue, Condado, San Juan, Puerto Rico. In the course and conduct of its business operations during the 12 months preceding issuance of the complaint, the Respondent derived gross revenues in excess of \$500,000 and purchased and received goods and products in excess of \$50,000 from suppliers located outside the Commonwealth of Puerto Rico. 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

1. The following employees of the Respondent constitute units appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

Unit A: Included: All service and maintenance employees, including housekeeping employees, food and beverage department employees, and croupiers employed at its hotel located at Ashford Avenue, Condado, San Juan, Puerto Rico.

Excluded: All other employees, administrative, professional and executive personnel, office clerical employees, front desk auditors, casino cashiers and their assistants, pool attendants, guards and supervisors as defined in the Act.

Unit B: Included: All front desk clerks and cashiers employed by Respondent at its hotel located at Ashford Avenue, Condado, San Juan, Puerto Rico.

Excluded: All other employees, administrative, professional and executive personnel, office clerical employees, front desk auditors, casino cashiers and their assistants, pool attendants, guards and supervisors as defined in the Act.

2(a) Since in or about 1982, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in Unit A described above, and since in or about 1982, the Union has been recognized as such by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period of July 2, 1988, to July 1, 1991.

(b) Since in or about 1984, and at all times material herein, the Union has been designated exclusive

collective-bargaining representative of the Respondent's employees in Unit B described above and, since in or about 1984, the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period of July 1, 1990, through June 30, 1991.

(c) Since 1982 in Unit A and since 1984 in Unit B, the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the above-described units, and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

3(a) Since on or about July 29, 1991, the Respondent changed existing terms and conditions of employment of the employees in the units described above by unilaterally implementing its bargaining proposals, as set forth in a document entitled "Union Contract Proposal Points" dated June 28, 1991, as modified on July 24, 1991.

(b) On or about July 1, 1991, the Respondent discontinued the existing employees' medical insurance plan.

4(a) The subjects set forth in paragraph 3 above relate to wages, hours, and other terms and conditions of employment of employees in the units described above and are mandatory subjects for the purposes of collective bargaining.

(b) The Respondent engaged in the acts and conduct described above in paragraph 3(a) without bargaining with the Union to the point of impasse.

(c) The Respondent engaged in the acts and conduct described in paragraph 3(b) above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and conduct.

CONCLUSION OF LAW

By the acts and conduct described in paragraphs 3 and 4 above, and by each of said acts, the Respondent did refuse to bargain collectively in good faith, and is refusing to bargain collectively in good faith, with the Union as the exclusive representative of the employees in the above-described appropriate units, and thereby did engage in, and is 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 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, upon request of the Union, to rescind the unilateral changes found above. We shall order the Respondent to make whole all unit employees, if any, who incurred a loss of wages or benefits as a result of the Respondent's unilateral changes, such amounts to be computed in accordance with the Board's decision in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), with interest thereon to be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall further order the Respondent to make unit employees whole for any expenses incurred as a result of its discontinuance of the existing medical insurance plan, as provided in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest in the manner set forth in *New Horizons for the Retarded*, above.

ORDER

The National Labor Relations Board orders that the Respondent, Puerto Rico Hotel Casino Associates, d/b/a Condado San Juan Hotel & Casino, Condado, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Federacion General de Trabajadores de Puerto Rico as the exclusive representative of the employees in the appropriate units set forth below by changing existing terms and conditions of employment of unit employees by unilaterally implementing its bargaining proposals set forth in a document entitled "Union Contract Proposal Points" without bargaining with the Union to the point of impasse, or by discontinuing the existing unit employees' medical insurance plan without providing prior notice to the Union or affording it the opportunity to negotiate and bargain as the employees' exclusive representative. The appropriate units are:

Unit A: Included: All service and maintenance employees, including housekeeping employees, food and beverage department employees, and croupiers employed at its hotel located at Ashford Avenue, Condado, San Juan, Puerto Rico.

Excluded: All other employees, administrative, professional and executive personnel, office clerical employees, front desk auditors, casino

cashiers and their assistants, pool attendants, guards and supervisors as defined in the Act.

Unit B: Included: All front desk clerks and cashiers employed by Respondent at its hotel located at Ashford Avenue, Condado, San Juan, Puerto Rico.

Excluded: All other employees, administrative, professional and executive personnel, office clerical employees, front desk auditors, casino cashiers and their assistants, pool attendants, 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) On request of Federacion General de Trabajadores de Puerto Rico, rescind the unlawful unilateral changes.

(b) On request of the Union, reinstate the unlawfully discontinued employee medical plan.

(c) Make employees whole for the losses suffered as a result of the unlawful unilateral changes, as set forth in the remedy section of this decision.

(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 facility in Condado, Puerto Rico, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 24, 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.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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

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 fail and refuse to bargain with Federacion General de Trabajadores de Puerto Rico as the exclusive representative of the employees in the appropriate units set forth below by changing existing terms and conditions of employment of the unit employees by unilaterally implementing our bargaining proposals without bargaining with the Union to the point of impasse, or by discontinuing the existing unit employees' medical insurance plan, without notice to the Union or affording it the opportunity to negotiate and bargain. The appropriate units are:

Unit A: Included: All service and maintenance employees, including housekeeping employees, food and beverage department employees, and croupiers employed at its hotel located at Ashford Avenue, Condado, San Juan, Puerto Rico.

Excluded: All other employees, administrative, professional and executive personnel, office clerical employees, front desk auditors, casino cashiers and their assistants, pool attendants, guards and supervisors as defined in the Act.

Unit B: Included: All front desk clerks and cashiers employed by Respondent at its hotel located at Ashford Avenue, Condado, San Juan, Puerto Rico.

Excluded: All other employees, administrative, professional and executive personnel, office clerical employees, front desk auditors, casino cashiers and their assistants, pool attendants, guards and supervisors as defined in the Act.

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 of the Union, rescind the unlawful unilateral changes, and WE WILL, on request of the Union, reinstate the unlawfully discontinued employee medical plan.

WE WILL make employees whole for the losses suffered as a result of the unlawful unilateral changes.

PUERTO RICO HOTEL CASINO ASSOCIATES, D/B/A CONDADO SAN JUAN HOTEL & CASINO