

Mare-Bear, Inc. d/b/a Stardust Hotel & Casino and United Brotherhood of Carpenters & Joiners of America, Local Union No. 1780, AFL-CIO.
Case 28-CA-12165

June 23, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

On June 8, 1994, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The Charging Party filed a brief joining the General Counsel's answering brief and making certain other additional arguments, and the Respondent filed a brief in reply to the General Counsel's and the Charging Party's answering briefs.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt his recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Mare-Bear, Inc. d/b/a Stardust Hotel & Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent argues that the judge, in finding that the changes in Local 1780 brought about by the International Union's imposition of a trusteeship or "supervisorship" fatally eroded employee support, mischaracterizes its defense to the allegations that its withdrawal of recognition and refusal to bargain were unlawful. We note that although the judge's decision, at some points, mischaracterized the issue as whether the supervisorship had fatally eroded employee support, the judge correctly analyzed the legal issues raised by the Respondent: whether the supervisorship so altered Local 1780 as to destroy its continuity of representation and privilege the Respondent's refusal to bargain and withdrawal of recognition. We agree that the changes made in the operations of Local 1780 during the supervisorship were not "sufficiently dramatic" to alter its identity as the bargaining representative, and hence that the Respondent could not lawfully withdraw recognition on grounds of lack of continuity of representation. See *NLRB v. Food & Commercial Workers Local 1182 (Seattle-First Bank)*, 475 U.S. 192, 206 (1986).

Wanda Pate Jones, Esq., for the General Counsel.
Gregory E. Smith, Esq. (Smith & Kotchka), of Las Vegas, Nevada, for the Respondent.
Hope J. Singer, Esq. (Taylor, Roth, Bush & Geffner), of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial on March 8, 1994, in Las Vegas, Nevada, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 28 of the National Labor Relations Board (the Board) on October 7, 1993, based on a charge filed on August 30, 1993, and docketed as Case 28-CA-12165 by United Brotherhood of Carpenters & Joiners of America, Local Union No. 1780, AFL-CIO (the Charging Party or the Union) against Mare-Bear, Inc. d/b/a Stardust Hotel & Casino (Respondent).

The complaint alleges that Respondent wrongfully withdrew recognition of the Union as the exclusive representative for purposes of collective bargaining of a unit of Respondent's employees in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). Respondent admits withdrawing recognition from the Union but avers that its action was proper because the Union no longer properly represented the employees as the result of certain changes in the Union arising in the context of a supervisorship imposed by the International Brotherhood of Carpenters & Joiners of America.

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, to argue orally, and to file posthearing briefs. Briefs were due on April 12, 1994.

On the entire record here, including helpful briefs from the General Counsel, the Charging Party, and Respondent, and from my observation of the witnesses and their demeanor, I make the following¹

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent has been a state of Nevada corporation with an office and place of business in Las Vegas, Nevada, where it has been engaged in the operation of a hotel and casino. Respondent as part of its business operations annually enjoys revenues in excess of \$1 million and annually purchases and receives products, goods, and materials directly from other enterprises within the State of Nevada of a value in excess of \$50,000, each of which other enterprises received the products, goods, and materials directly from points outside the State. Respondent is therefore an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Although Respondent in its answer admitted that the union was a labor organization only until the supervision discussed infra, Respondent's position at trial and on brief seemed to

¹ The instant case had earlier been before the Board on a Motion for Summary Judgment. As a result of the filings in that aspect of the case as well as the pleadings and the stipulations of counsel at trial, by the time of the submission of posthearing briefs, there were few disputes regarding collateral matters. Where not otherwise noted, the findings here are based on the pleadings, the stipulations, admissions, and concessions of counsel at trial and on brief or unchallenged credible evidence.

concede that the Union has at all times been a labor organization within the meaning Section 2(5) of the Act, even while arguing it is not a labor organization with a continuity of representation respecting Respondent's employees.

In all events, as discussed *infra*, the record is clear and I find that the Union was at all times material a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Bargaining History

The Union has been a chartered local of the International Brotherhood of Carpenters & Joiners of America (the International) since 1929. In recent times the Union has represented employees in the carpentry and related trades employed by approximately 350 employers in certain counties in the State of Nevada. It owns a building in Las Vegas, Nevada, and from that site operates its general offices and a hiring hall.

In 1985 Respondent purchased the assets of its predecessor and assumed a collective-bargaining agreement with the Union. The contract continued by its terms into 1987 and covered a unit of Respondent's carpenter employees (the unit).² At relevant times there have been approximately seven or eight employees in the unit, all of whom have been union members. There is no dispute that the unit has at all times been appropriate for bargaining within the meaning of Section 9 of the Act.

In the normal course as the assumed contract approached expiration, collective bargaining ensued between the parties for a new agreement. Bargaining continued between Respondent and the Union without an agreement being reached until June 15, 1993. On that date Respondent counsel sent a letter to the Union, *inter alia*, withdrawing recognition of the Union as representative of employees in the unit. The letter states in part:

The Stardust has recently been informed that all of the business agents of Local 1780 have been fired, that all of the executive board members have been dismissed, and that all the elected officials of Local 1780 have been removed from office by the International Brotherhood of Carpenters and Joiners of America ("International Union"). The Stardust further believes this "takeover" by the International Union has been accomplished without any vote whatsoever of the bargaining unit employees who were represented by Local 1780.

This action by the International Union has effectively destroyed the existence of Local 1780. As the bargaining unit employees, therefore, have no representative of their choosing, the Stardust has no further bargaining obligation. In the absence of a vote of the members of the bargaining unit and in the absence of a "continu-

ity" of the organization, which includes a continuity of elected officers and representatives, the International Union officers and representatives, the International Union cannot simply take over the bargaining position of Local 1780. The International has never been recognized as the representative of the Stardust employees and the Stardust therefore has no obligation to bargain with the International Union.

Thereafter discussions were held between Respondent and the Charging Party counsel without resolution of the matter. The charge here was filed in August 1993. Although Respondent had as of the time of the hearing continued to apply the terms of the expired contract, it has at all times after June 15, 1993, continued to refuse to recognize the Union as the representative of its unit employees and has continued to refuse to meet and bargain with the Union respecting a new contract for the unit employees.

B. Events Concerning the Union in 1993

On January 28, 1993, the Union was placed under emergency supervision by the International.³ The emergency supervision lasted until May 1, 1993, at which time the Union was placed under nonemergency supervision. That supervision continued as of the hearing here.

Under the supervision, a supervisor was named by the International, the Union's bylaws were suspended and various officials of the Union were replaced. In essence, under the supervision the supervisor and his appointees assumed and maintained day-to-day control over the Union. The Union continued to represent employees, service contracts, negotiate new contracts, and organize. Respondent was the only employer to withdraw recognition of the Union based on the supervision. The Union maintained its offices and the operation of its hiring hall. Thus, the Union's autonomy had been withdrawn by the supervision and the identity of the Union's officials had been changed. The geographic and trade jurisdiction as well as the general operations of the Union were unchanged. No mergers between or among locals of the International or affiliations with other labor organizations were undertaken.

C. Analysis and Conclusions

1. Defining the issues in the case

a. The factual setting

Respondent had admittedly recognized and bargained with the Union respecting a unit of its employees. In June 1993 it withdrew recognition from the Union. There is no contention that the bargaining unit was, or is, inappropriate. Respondent makes a single contention in defending its withdrawal of recognition: Respondent claims that the Union ceased to represent unit employees because of changes in the Union resulting from the imposition of a supervisorship by the Union's International.

²The complaint and the answer describe the bargaining unit by reference to provisions of the last collective-bargaining agreement between the parties. That contract language essentially names carpenters as the represented employees and that is the term used here for the sake of brevity. Nothing in this unit description or elsewhere in this decision, however, is intended to derogate from or in some manner change the unit as it has historically been described and understood by the parties.

³"Supervision" and "Supervisor" are the International constitution's terms for what is known in other labor organizations as "trusteeship" and "Trustee." The Union is explicitly subordinate to the International and constitutionally susceptible to having its autonomy reduced or eliminated by the International under established procedures for creating supervisorships over locals.

The changes in the Union on which Respondent relies in support of its assertion that the Union ceased to represent its employees are also not in essential factual dispute. The dates of the imposition of an initial emergency and subsequent nonemergency supervisorship on the Union by the International are not in contention. There was no dispute respecting details of the imposition of the supervisorship or supervision, the appointment of a supervisor, the suspension of the Union's bylaws, and the replacement of the Union's officials. The supervision suspended the Union's previous autonomy as a local of the International and the day-to-day affairs of the Union were subsequently conducted by the supervisor and his newly appointed administration. Consistent with the International's procedures, no vote of the union membership or Respondent's unit employees took place to approve or ratify either the imposition of the supervisorship or the personnel changes that resulted therefrom.

b. *The legal setting*

The Board with court approval has evolved a doctrine holding that in certain situations changes in a labor organization which represents employees of an employer are significant enough to destroy its exclusive right to represent those employees and free the employer from its obligation to continue to recognize and bargain with the labor organization as the representative of its employees.

The Act recognizes that employees support for a certified bargaining representative may be eroded by changed circumstances. (*N.L.R.B. v. Food & Commercial Workers Local 182*, 475 U.S. 194, 198 (1986).)

The application of this general doctrine to the specific facts of this case was closely argued by the parties both at the hearing and in learned briefs. Those arguments will be set forth in detail, infra.

c. *The issue summarized*

As set forth above and agreed by the parties, the sole issue in this case is whether or not the supervisorship and consequential changes in the Union described above justified Respondent's withdrawal of recognition of the Union as representative of its employees. If the changes fatally eroded employee support for the Union, then Respondent's withdrawal of recognition of the Union was not improper and did not violate the Act as alleged, and the complaint will be dismissed. If the changes did not justify withdrawal of recognition, then Respondent has improperly withdrawn recognition from and refused to bargain with the Union and in so doing violated the Act as alleged in the complaint.

2. The argument of the parties

a. *Respondent's argument*

While noted briefly above, Respondent's single defense to its withdrawal of recognition of the Union as representative of its unit employees as presented in Respondent's posthearing brief may be set forth in greater detail as follows. Respondent asserts that the changes which occurred within the Union as part and parcel of the supervisorship imposed by the International so changed the Union that either union member or unit employee approval of the changes was

necessary for the Union to continue to represent employees. Since neither members of the Union nor the employees in the bargaining unit were consulted about the changes, argues Respondent, the Union no longer represented its employees and Respondent no longer had an obligation to recognize and bargain with the Union.

Respondent argues that in situations involving changes in labor organizations such as local union changes in affiliation with international unions and in cases of the merger or division of locals, the Board looks to the "continuity of representation" of the local union and considers such factors as the retention of local union autonomy and the retention of local officers and established procedures citing *NLRB v. Food & Commercial Workers Local 1182*, 475 U.S. 194, 200 (1986), and a host of Board and court cases.

Applying the Board's continuity of representation standard to the facts here, argues Respondent, the Union's loss of local autonomy, the suspension of the Union's bylaws, and the complete replacement of officialdom within the Union conclusively demonstrate that the presupervisorship Union has no continuity with the supervised Union as it existed after imposition of the supervision and replacement of its officers and other officials. In such situations the Board and the courts hold a question concerning representation is presented. Therefore, argues Respondent, the Union ceased to represent Respondent's employees at the time of the imposition of the supervisorship and institution of the personnel changes noted and as of that time Respondent no longer had an obligation to continue to recognize or bargain with the Union.

Addressing the General Counsel's contention that a trusteeship or supervisorship is irrelevant to any determination of an employer's bargaining obligation with a changed local union, Respondent argues that it is not the fact of trusteeship which is relevant but, rather, the changes to a labor organization that occurs under the trusteeship. Respondent cites *Charlie Brown's*, 271 NLRB 378 (1984), and *Quality Inn Waikiki*, 297 NLRB 497 (1989), as Board cases in which the fact of a trusteeship was considered by the Board as one of several factors considered in determining that unions had been so changed that they no longer represented employees as formerly and that after the changes a question concerning representation arose.

b. *The General Counsel and the Charging Party's argument*

Counsel for the General Counsel starts her argument by noting that the Union admittedly represented Respondent's employees in an appropriate unit for a considerable period. She correctly notes that the burden is on Respondent to justify its withdrawal of recognition and refusal to bargain with the Union in such a situation.

Turning to Respondent's defense, the General Counsel and the Charging Party argue that Respondent's legal argument is fundamentally flawed and that Respondent counsel is, in effect, incorrectly picking and choosing from portions of independent doctrines in order to justify Respondent's wrongful withdrawal of recognition. Thus, they argue that Respondent is improperly attempting to apply a "continuity" analysis which is only applied by the Board and courts in a very limited, highly specific set of factual circumstances, none of which is present in the instant case. The "continuity"

ity” doctrine, argue the Charging Party and the General Counsel, is applied exclusively to situations where there has been a threshold determination that there has been a fundamental change in a union of one of three types: (1) a division of a union into multiple parts, (2) a merger of a union with another union or unions, and (3) a change in the union’s affiliation with a superior organizational entity such as an international union.

After a determination has been made by the Board that such categorical changes have occurred one of the issues considered in certain cases is whether or not the change in the labor organization may be approved internally within the union or whether a question concerning representation is presented which requires in effect a new demonstration of majority supply (sic) in the unit. To determine this question, argue the Charging Party and the General Counsel, the Board uses what is here referred to as a continuity analysis. Since the Union undisputedly has not experienced a merger, division, or change in affiliation, that analysis is inappropriate here. The General Counsel and the Charging Party argue that the continuity arguments advanced by Respondent have never been and should not now be applied to other situations such as the one presented here where no such changed circumstances in the sense used in the Board cases have occurred.

Turning to the facts of the instant case, the Charging Party and the General Counsel argue that the Board and courts have long held that the imposition of a trusteeship on a local is not such a triggering circumstance like an affiliation or merger requiring further investigation of a union’s continuity of representation citing numerous cases many of which will be discussed, *infra*. The Charging Party and the General Counsel argue further that the cases cited by Respondent are all distinguishable on precisely this basis because they all involve union local divisions, mergers, affiliations, or other circumstances not present in the instant case.

The Charging Party and the General Counsel argue that there is no basis for finding that the Union experienced any changes relevant to its representational status. Since Respondent’s argument that the Union no longer represents its employees is not sustainable, argue the General Counsel and the Charging Party, the Union at all times material continued to represent unit employees and Respondent’s withdrawal of recognition is without justification and violates Section 8(a)(5) and (1) of the Act as alleged in the complaint.

3. Analysis

a. *What is the relevance of an imposed supervisorship or trusteeship to a local union’s unit member support?*

(1) Trusteeship generally

Before addressing the Board and court cases dealing with trusteeships imposed on subordinate union bodies by national or international unions, it is appropriate to consider briefly the history and nature of such trusteeships. Section 3(h) of the Labor-Management Reporting and Disclosure Act of 1959⁴ states:

⁴29 U.S.C. § 411–415. Act of September 14, 1959, Pub. L. 86–257, 86th Cong., 1st Sess., also referred to as the Landrum-Griffin Act.

“Trusteeship” means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

The concept in America labor history was discussed in H.R. 741 on H.R. 832⁵ at 13:

Trusteeships

Constitutions of many international unions authorize the international officers to suspend the normal processes of government of the local unions and other subordinate bodies, to supervise their internal activity and assume control over their property and funds. These “trusteeship” (or “receiverships” or “supervisorships,” as they are sometimes called) are among the most effective devices which responsible officers have to insure order within their organization. In general, they have been widely used to prevent corruption, mis-management of union funds, violation of collective-bargaining agreements, infiltration of Communists; in short to preserve the integrity and stability of the organization itself.

Congress also found trusteeships to be in need of regulation, however, and in Title III of the Landrum-Griffin Act established a regulatory scheme including reporting requirements, limitations on purposes for which trusteeships may be established, presumptions of validity and invalidity depending on the duration of the trusteeship, and enforcement provisions, including in some cases the involvement of the Secretary of Labor, enforceable in the district courts of the United States.

(2) The change, if any, in a labor organization’s status when in trusteeship

As the General Counsel and the Charging Party have argued, the simple fact of the imposition of a trusteeship on a union, without more, has long been held by the Board and the courts not to either deprive the labor organization of its status under Section 2(5) of the Act or otherwise to constitute a change in labor organization presenting a question concerning representation. E.g., *Sahara-Tahoe Hotel*, 229 NLRB 1094 (1977), *enfd.* 581 F.2d 767 (9th Cir. 1978), wherein the Board noted at 1095 fn 10: “[T]he imposition of a trusteeship is an internal union matter and is not probative of whether the Union represented a majority.”

In *Pioneer Inn v. NLRB*, 578 F.2d 835 (9th Cir. 1978), *enfg.* 228 NLRB 1263 (1977), the court stated at 838 fn. 1: “The imposition of trusteeship does not affect the Union’s status as exclusive bargaining representative. *Florida Mining & Materials Corp. v. NLRB*, 1 F.2d 65, 69–70 (5th Cir. 1973), *cert. denied* 415 U.S. 990 (1974).”

See also *Sahara-Tahoe Hotel*, 241 NLRB 106, 111 (1979); *Jim Kelley’s Tahoe Nugget*, 227 NLRB 357 (1976), *enfd.* 584 F.2d 293 (9th Cir. 1978); *Palace Club*, 229 NLRB 1128 (1977).

⁵86th Cong., 1st Sess., July 30, 1959, reprinted in 1 Leg. Hist. 759–833 (LMRDA 1959).

- (3) Are all changes in a trusted local irrelevant and immaterial to employee or member support?

Respondent on brief does not contend that a trusteeship, standing alone, constitutes a change in status ending a local union's representative status. Rather, argues Respondent, changes which occur as a result of or in the context of a trusteeship must be examined to see if they have destroyed union representational continuity. Thus, Respondent argues that the status of a local union under a trusteeship remains a relevant factor for consideration in that, if a trusteeship is not a disenfranchising event, neither should it be a screen or cloaking device to shelter otherwise disenfranchising changes from Board scrutiny.

Three cases were advanced by Respondent as demonstrating that a trusteeship is a relevant factor in considering union continuity issues: *Charlie Brown's*, 271 NLRB 37 (1984); *Waikiki Plaza Hotel*, 284 NLRB 23 (1987), enf. 783 F.2d 1444 (9th Cir. 1986); and *Quality Inn Waikiki*, 297 NLRB 497 (1989). The cases deal with two factual situations in which the Board specifically noted the existence of a trusteeship in finding a fatal loss of union continuity. The parties discussed these cases at length.

In *Charlie Brown's*, the Board refused to certify a local union which, after receiving a majority of valid votes, was placed in trusteeship and divided into two parts. The Board noted the trusteeship and held the union's division into two parts presented a question concerning representation. In footnote 3 at 378 the Board reviewed the Board law on mergers and divisions. The last sentence of the footnote states: "We do not here address the effect of trusteeship alone on the representative status of a labor organization." (271 NLRB 378 fn. 3 (1984).)

In *Waikiki Plaza Hotel* the Board denied an employer motion to reopen the record in an unfair labor practice case to show that a trusted local had merged, posthearing, with another local. The Board held the trusted local continued to represent the employer's employees. In *Quality Inn Waikiki* the Board returned to the events of *Waikiki Plaza Hotel* in the context of a now consummated merger of two locals. As a result of the merger the Board applied its continuity of representation standards to the local. On the facts of that case, the Board compared the local as it was before the trusteeship, rather than after the imposition of the trusteeship but before the merger, with the postmerger local. Finding no continuity of representation applying traditional standards, the Board found no continuing bargaining obligation on the part of the employer therein.

It is clear that, in each of the cited cases in which the fact of a labor organization's having been placed in trusteeship was considered in the context of a continuity of representation analysis, a merger of labor organizations or a division of a labor organization was also involved. No cases have been cited which apply a continuity of representation analysis where such traditional changes have not been present. Thus, as the Charging Party and the General Counsel argue, the cases are distinguishable from and not inconsistent with the line of cases, cited supra, holding that trusteeship is not, standing alone, relevant to the representational status of a labor organization or an employer's obligation to recognize and bargain with that labor organization as representative of its employees.

As noted, Respondent argues that changes which take place under a trusteeship or supervisorship should not be sheltered from consideration simply by the fact that the changes occurred under a trusteeship. Thus, Respondent argues, for example, that a merger or division of a labor organization at the direction of its International or the trustee under an imposed trusteeship must be considered a change under Board standards. I agree.

I conclude that the pure, isolated fact that a labor organization is under a trusteeship or supervisorship is irrelevant to the issue of the representative status of such a labor organization. I further find, however, that changes to a local union brought about by occurring coincident with the imposition of a trusteeship or supervision, rather than being in some fashion privileged or sheltered from consideration in a union continuity analysis under the Board's existing standards, may be considered as if the changes had occurred independent of any trusteeship or supervision. Thus, for example, as suggested by Respondent a merger of locals or a division of a trusted local into two parts undertaken by the local union as the result of a trusteeship or supervision would properly be considered by the Board in determining if the union had suffered a discontinuity of representation. Indeed, *Charlie Brown's*, supra, and *Quality Inn Waikiki*, supra, are consistent with this proposition.

b. Application to the instant case

Having concluded that the fact of trusteeship alone or in isolation is irrelevant, but that changes in the union occurring coincident with the trusteeship may be considered, it is appropriate to apply the standard to the instant case.

(1) Categories defined

There are two fundamentally different types of changes which may occur to a labor organization: changes to its constitutional or fundamental underpinnings or changes in the governance of the Union consistent with those underpinnings. The former category of change involves the change in the nature of the organization such as a change in its constitutional relationship to affiliated superior bodies such as an international union or such changes schisms or mergers which represent a change in the organization itself. The latter category of change involves changes which do not effect the structure or nature of the entity but rather act within it. Changes in the identity of officials of the entity or changes in the way the offices are administered are typical of such changes.

The basic or constitutional changes such as union mergers, divisions, and affiliation changes discussed by the Board and courts in the cases cited, supra, require employee or member approval in differing circumstances. The changes within the organization which do not change its structure do not. The exercise of existing constitutional procedures by an international union to place its subordinate local union under a trusteeship, as discussed in the cases quoted supra, is not a matter relevant to issues of employee support for the labor organization.

(2) The changes in the Union characterized

As discussed in greater detail supra, the Union here was put into supervisorship through the implementation of pre-

existing constitutional provisions. Existing rules and procedures were implemented. No changes in the constitutional relationship between the International and the Union were undertaken nor was the Union divided, merged, or reaffiliated. Thus, none of the traditional fundamental changes discussed in Board and court cases, *supra*, occurred.

Change did occur however. The Union lost its autonomy, its bylaws were suspended, and its officials were replaced. Such changes however are, in my view, precisely those changes which occur whenever a local is put in trusteeship or supervisorship by its parent body. In essence the changes the Union experienced are part and parcel of any imposition of a trusteeship or supervisorship. Loss of autonomy is an automatic consequence of the imposition of a trustee or supervisor. Suspension of local bylaws is no more than a consummation of that deprivation of autonomy. Replacement of some or all of a subordinate body's officials is again no more than another manifestation of the trustee's assumption of power.

Given all the above, I find that changes which occurred to the Union at relevant times here were limited to the changes essentially inherent in the process of imposing a trusteeship or supervision. I find no other changes, including, in particular, changes in the fundamental nature of the Union such as division, mergers, or changes in affiliation, occurred.

3. Summary

I have found that the changes at issue here are not of the type that the Board and courts have considered relevant to issues of employee support for the union that represents them. I have further found that the changes in their totality are no more than those necessarily involved in the imposition of a trusteeship—a process specifically found by the Board and the courts to be irrelevant to issues of employees' majority support for a union. The changes are therefore irrelevant to the issue of support of unit employees for the Union.

4. Conclusion

There has never been any dispute that the Union had been recognized by Respondent as the exclusive representative of Respondent's employees in an appropriate unit or that Respondent withdrew recognition of and thereafter failed to bargain with the Union concerning unit employees' terms and conditions of employment. The sole issue in this case is whether the changes to the Union under its supervision permitted Respondent to take the actions it did.

I have found above that the changes experienced by the Union under its supervision did not erode its support among unit employees and therefore did not justify Respondent's withdrawal of recognition nor its subsequent refusal to meet and bargain with the Union respecting a new contract for unit employees. Respondent has therefore by its wrongful withdrawal of recognition and refusal to bargain with the Union as representative of Respondent's unit employees violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.

REMEDY

Having found the Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action,

including the posting of a notice, designed to effectuate the policies of the Act.

I shall require Respondent to rescind its withdrawal of recognition of the Union as the exclusive representative of its unit employees for purposes of collective bargaining. I shall further require Respondent to notify the Union in writing that it has rescinded its withdrawal and to affirmatively assert that it recognizes the Union as the exclusive representative of unit employees. I shall further require Respondent to bargain with the Union, on request, concerning terms and conditions of employment of unit employees and, if a new contract is reached, to sign such contract.

On the basis of the findings of fact and on the entire record herein, I make the following

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union at all times material has represented a unit of all Respondent's carpenter employees excluding supervisors as defined in the Act (the unit).

4. The unit described above is appropriate for collective bargaining within the meaning of Section 9 of the Act.

5. Respondent violated Section 8(a)(5) and (1) of the Act by engaging in the following acts and conduct on and after June 15, 1993:

(a) Withdrawing recognition of the Union as the exclusive representative of Respondent's unit employees for purposes of collective bargaining.

(b) Failing and refusing to meet and bargain with the Union concerning rates of pay, wages, hours of employment, and other terms and condition of employment of the unit employees.

6. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The Respondent, Mare-Bear, Inc. d/b/a Stardust Hotel and Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing, withholding, and continuing to withhold recognition from the Union as the exclusive representative of Respondent's unit employees.

(b) Failing and refusing to meet and bargain with the Union concerning rates of pay, wages, hours of employment, and other terms and condition of employment of unit employees.

(c) In any like or related manner violating the provisions of the National Labor Relations Act.

⁶If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its withdrawal of recognition of the Union as the exclusive representative of its unit employees for purposes of collective bargaining and affirmatively recognize the Union as such representative notifying the Union in writing that this has been done.

(b) Meet and bargain with the Union, on request, concerning terms and conditions of employment of unit employees and, if a new contract is reached, reduce to writing and sign such contract.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all records necessary to insure that the terms of this Order have been fully complied with.

(d) Post at its Las Vegas, Nevada facility copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 28 in English and such additional languages as the Regional Director determines are necessary to fully communicate with employees, 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.

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

⁷If 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.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT withdraw recognition from United Brotherhood of Carpenters & Joiners of America, Local Union No. 1780, AFL-CIO as the exclusive representative of employees for purposes of collective bargaining in the following unit:

All carpenter employees of the Stardust Hotel & Casino excluding supervisors as defined in the National Labor Relations Act.

WE WILL NOT refuse to meet and bargain in good faith with the Union as the exclusive representative of the employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees and/or employee applicants in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL rescind our withdrawal of recognition of the Union as the exclusive representative of our unit employees and WE WILL affirmatively recognize the Union, in writing, as such representative.

WE WILL, on request, meet and bargain with the Union as the exclusive bargaining representative of our unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

MARE-BEAR, INC. D/B/A STARDUST HOTEL &
CASINO