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**The Riverboat Hotel and International Union of Operating Engineers, Stationary Engineers Local 39, AFL-CIO. Case 32-CA-14682**

June 30, 1995

**DECISION AND ORDER**

BY MEMBERS BROWNING, COHEN, AND  
TRUESDALE

Pursuant to a charge filed by the Union on April 24, 1995, the General Counsel of the National Labor Relations Board issued a complaint on May 5, 1995, 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-3944. (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 an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On May 25, 1995, the General Counsel filed a Motion for Summary Judgment and memorandum in support. On May 30, 1995, 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 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, but attacks the validity of the certification on the basis of its arguments in support 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.<sup>1</sup> We therefore find that the Respondent has

<sup>1</sup> On June 20, 1995, the Respondent filed a motion to reopen the record in the representation proceeding to receive newly discovered evidence consisting of an employee affidavit which Respondent asserts it received for the first time during a May 1995 unfair labor practice hearing in an unrelated case. We deny the Respondent's motion. Even assuming arguendo that the Respondent's proffered evidence is newly discovered and previously unavailable, it would not alter our finding in the representation proceeding that a postelection

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). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all times material herein, the Respondent, a Nevada corporation with its principal office and place of business in Reno, Nevada, has been engaged in the operation of a hotel and casino. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and has purchased and received goods and materials valued in excess of \$50,000 which originated outside the State of Nevada. 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 on November 3, 1994, the Union was certified on March 16, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All Engineering Department engineers, including utility engineers and apprentice engineers employed by the Employer at its Reno, Nevada hotel and casino facility; excluding all other employees, including professional and office clerical employees, managers, 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**

About March 30, 1995, the Union, by letter, requested the Respondent to bargain, and since about April 4, 1995, 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.

\_\_\_\_\_ evidentiary hearing on the Respondent's objections was unwarranted. Although the affidavit indicates that certain supervisors may have engaged in proumion conduct, it does not indicate that such conduct was coercive in nature or whether the conduct occurred during the critical period.

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

## CONCLUSION OF LAW

By refusing on and after April 4, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, 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.

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, The Riverboat Hotel, Reno, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Stationary Engineers Local 39, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(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 Engineering Department engineers, including utility engineers and apprentice engineers employed by the Employer at its Reno, Nevada hotel and casino facility; excluding all other employees, including professional and office clerical employees, managers, guards and supervisors as defined in the Act.

(b) Post at its facility in Reno, Nevada, copies of the attached notice marked "Appendix."<sup>2</sup> 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 shall be taken by the Respondent 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.

Dated, Washington, D.C. June 30, 1995

Margaret A. Browning, Member

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</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."

## 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 International Union of Operating Engineers, Stationary Engineers Local 39, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

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 Engineering Department engineers, including utility engineers and apprentice engineers employed by us at our Reno, Nevada hotel and casino facility; excluding all other employees, including professional and office clerical employees,

managers, guards and supervisors as defined in the Act.

THE RIVERBOAT HOTEL