

Bultman Enterprises, Inc. d/b/a Le Rendezvous Restaurant and Taber Partners I d/b/a Ambassador Plaza Hotel & Casino, a Radisson Plaza Hotel and Union Gastronomica de Puerto Rico, Local 610, HEREIU, AFL-CIO. Case 24-CA-7129

April 14, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

On June 3, 1996, Administrative Law Judge Benjamin Schlesinger issued the attached decision. Respondent Taber Partners I d/b/a Ambassador Hotel & Casino, a Radisson Plaza Hotel (the Ambassador Hotel) filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

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,¹ and conclusions as modified,² and to adopt the recommended Order as modified and set forth in full below.³

¹ Respondent Ambassador Hotel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 363 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² There are no exceptions to the administrative law judge's finding of Sec. 8(a)(1), (3), and (5) violations. We have carefully reviewed the judge's decision with respect to the joint employer and joint liability allegations to which Respondent Taber has excepted, and find that these issues merit further consideration. In light of the oral argument on these issues held by the Board on December 2, 1996, in *Jeffboat Division, American Commercial and Marine Services Co. and T.T. & O Enterprises, Inc.*, Case 9-UC-405; *M. B. Sturgis, Inc.*, Case 14-RC-11572; and *Value Recycle, Inc.*, Case 33-RC-4042, and the fact that the Board's decision in these cases is pending, we have decided to sever the issues of the joint employer status of the Ambassador Hotel and its joint liability for unfair labor practices engaged in by Respondent Bultman. These issues are subject to further consideration by the Board.

³ Because we are severing the joint employer and joint liability allegations from the remainder of this case, we shall issue two separate Orders: one Order for Respondent Ambassador Hotel and a separate Order for Respondent Bultman. We shall also issue separate notices to be posted by each Respondent.

The judge inadvertently omitted from his recommended Order language requiring Respondent Bultman to cease and desist from refusing to bargain with the Union. He also incorrectly described the unit concerning which Respondent Bultman must recognize and bargain with the Union. The judge further omitted from his recommended Order any reference to Respondent Bultman's failure to supply the Union with relevant information it had requested. We shall correct these inadvertent errors and omissions. In addition, because the record clearly shows that the majority of the Respondents' employees are Spanish-speaking, we also shall order that the notices shall be posted in both English and Spanish. Finally, because we find that Respondent Bultman has engaged in egregious unfair labor practices demonstrating a "general disregard for the employees' fundamental

ORDER

The National Labor Relations Board orders that:

A. Respondent Taber Partners I d/b/a Ambassador Plaza Hotel & Casino, a Radisson Plaza Hotel, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with discharge because of their union activities and membership in Union Gastronomica de Puerto Rico, Local 610, HEREIU, AFL-CIO, and in order to rid itself of the Union.

(b) In any like or related manner interfering with, restraining, or coercing its 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) Within 14 days after service by the Region, post at its facility in San Juan, Puerto Rico, copies of the attached notice marked "Appendix A."⁴ Copies of the notice written in both English and Spanish, on forms provided by the Regional Director for Region 24, after being signed by Respondent Ambassador Hotel's authorized representative, shall be posted by Respondent Ambassador Hotel and maintained for 60 consecutive days in conspicuous places including all places where notices to employees, and all places where notices to employees of Le Rendezvous restaurant, are customarily posted and were customarily posted prior to Respondent Ambassador Hotel's leasing of said restaurant to Respondent Bultman. Reasonable steps shall be taken by Respondent Ambassador Hotel to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Ambassador Hotel has gone out of business or closed the facility involved in these proceedings, Respondent Ambassador Hotel shall duplicate and mail, at its own expense, a copy of the notice in both English and Spanish to all current employees and former employees employed by Respondent Ambassador Hotel in its former restaurant concerned in the proceedings herein at any time since February 13, 1995.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Ambassador Hotel has taken to comply.

statutory rights," we shall substitute a broad cease-and-desist order. *Hickmott Foods, Inc.*, 242 NLRB 1357, 1357 (1979).

⁴ 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."

B. Respondent Bultman Enterprises, Inc. d/b/a Le Rendezvous Restaurant, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Union Gastronomica de Puerto Rico, Local 610, HEREIU, AFL-CIO as the representative of its employees in the following appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

INCLUDED: All employees employed by Respondent Bultman at its Le Rendezvous Restaurant located in the Ambassador Plaza Hotel & Casino in San Juan, Puerto Rico, including all former Food and Beverage department employees previously employed by Respondent Ambassador Hotel.

EXCLUDED: Food & Beverage Controller, Head Cashier (Food and Beverage department), Musicians, guards and supervisors as defined in the National Labor Relations Act.

(b) Failing and refusing to furnish the Union with information requested by it on March 8, 1995.

(c) Changing any term or condition of employment of its employees in the above unit, including wages and pension and health and welfare coverage, without first giving the Union an opportunity to bargain over such change.

(d) Failing to consider for employment, failing to hire, or otherwise discriminating against its employees to avoid having to recognize and bargain with the Union or any other labor organization.

(e) In any other manner interfering with, restraining, or coercing its 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) Within 14 days from the date of this Order, offer to all the following employees, whose names are set forth below, and all other persons formerly employed in the food and beverage department by Respondent Ambassador Hotel who Respondent Bultman failed to hire as of December 1, 1994, full reinstatement to the positions denied them or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging, if necessary to make room for them, employees hired from sources other than the employees who were formerly employed

by Respondent Ambassador Hotel in its Food and Beverage department:

Juan Colon Marin	Carmen Silva Rivera
Juanita Vega Laguer	Carmen Gisela del Prado
Lesley Ann Vazquez	Julio Alvarez
Elke Feliciano	Jesus Rivera Molla
Torres	
Luisa M. Pagan	Gladys Zambrana
Guillermo Guirona	Mariano Anderson Hilton
Figueroa	
Rafaela Pastrana	Carlos Martinez Negron
Ramirez	
Maria Lepin Castro	Cesar S. Miranda
Julian Reyes	Margarita Colon Roman
Jorge De Jesus	Jose N. Tubens Velez
Suarez	
Carmen D. Robles	Francisco Martinez Negron
Damaris Pimentel	Sixto Alicea
Antonio Valentin	Allan Roberto Gonzalez
Mercado	
Margarita Ortiz	Herenio De Jesus
Reyes	
Gilda Crescioni Ortiz	Olga Gonzalez
Luis Omar Rosario	Edwin Gonzalez
Perez	
Evelyn Gonzalez	Carmelo Mercado
Vazquez	
Rafael Negron	Juan Montañez Gonzalez
Calderon	
Hilda Martinez	Pablo Negron Diaz
David Negron	Raquel Ortiz Montero
Jeanette Vargas	Angelita Pardo
Miguel A. Martinez	Carmen Lidia Perez
Lazara Fleites	Benito Peña Rodriguez
Isidro Lebron	Jose Luis Ramos
Wilfredo Diaz Torres	Blanca Roman Colon
Jesus Ramon	Milagros Sierra
Lourdes M. Rivera	Wilbert Vazquez

(b) Make the above employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusals to consider for employment or to hire the employees named above, and within 3 days thereafter notify them in writing that this has been done and that the refusals to consider and hire will not be used against them in any way.

(d) On request of the Union, cancel any departures from the terms and conditions of employment that existed on November 30, 1994, retroactively restoring preexisting terms and conditions of employment, including wage rates and benefit plans, and make unit employees whole by paying them all wages and benefits that would have been paid absent such departures, from December 1, 1994, until it negotiates in good faith with the Union to agreement or impasse, in the manner set forth in the remedy section of the judge's decision.

(e) Recognize and, on request, bargain collectively and in good faith with the Union as the exclusive bargaining representative of its employees in the above unit, concerning the employees' rates of pay, hours of employment, and other terms and conditions of employment; and, if such understanding is reached, embody it in a signed document.

(f) Furnish the Union with the information it requested on March 8, 1995.

(g) Preserve, and, within 14 days of a 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 and determine the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in San Juan, Puerto Rico, copies of the attached notice marked "Appendix B."⁵ Copies of the notice, written in both English and Spanish, on forms provided by the Regional Director for Region 24, after being signed by Respondent Bultman's authorized representative, shall be posted by Respondent Bultman 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 Respondent Bultman to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Bultman has gone out of business or closed the facility involved in these proceedings, Respondent Bultman shall duplicate and mail, at its own expense, a copy of the notice in both English and Spanish to all current employees and former employees employed by Respondent Bultman at any time since February 13, 1995.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

attesting to the steps Respondent Bultman has taken to comply.

APPENDIX A

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 mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees with discharge because of their union activities and membership in Union Gastronomica de Puerto Rico, Local 610, HEREIU, AFL-CIO, and in order to rid ourselves of the Union.

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

TABER PARTNERS I, D/B/A AMBASSADOR
PLAZA HOTEL & CASINO, A RADISSON
PLAZA HOTEL

APPENDIX B

NOTICE TO EMPLOYEES
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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 mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain with Union Gastronomica de Puerto Rico, Local 610, HEREIU, AFL-CIO as the representative of our employees in the following appropriate unit with respect

⁵If this Order is enforced by a judgment of a United States court of appeals, the wording in the notice reading "Posted by an 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."

to rates of pay, wages, hours of employment, and other terms and conditions of employment:

INCLUDED: All employees employed by us at our Le Rendezvous Restaurant located in the Ambassador Plaza Hotel & Casino in San Juan, Puerto Rico, including all former Food and Beverage department employees previously employed by Respondent Ambassador Hotel.

EXCLUDED: Food & Beverage Controller, Head Cashier (Food and Beverage department), Musicians, guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT fail and refuse to furnish the Union with information requested by it on March 8, 1995.

WE WILL NOT change any term or condition of employment of our employees in the above unit, including wages and pension and health and welfare coverage, without first giving the Union an opportunity to bargain over such change.

WE WILL NOT fail to consider for employment, fail to hire, or otherwise discriminate against our employees to avoid having to recognize and bargain with the Union or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer to all the following employees, whose names are set forth below, and all other persons formerly employed in the food and beverage department by Respondent Ambassador Hotel who we failed to hire as of December 1, 1994, full reinstatement to the positions denied them or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging, if necessary to make room for them, employees hired from sources other than the employees who were formerly employed by Respondent Ambassador Hotel in its food and beverage department:

Juan Colon Marin	Carmen Silva Rivera
Juanita Vega Laguer	Carmen Gisela del Prado
Lesley Ann Vazquez	Julio Alvarez
Elke Feliciano Torres	Jesus Rivera Molla
Luisa M. Pagan	Gladys Zambrana
Guillermo Guirona Figuera	Mariano Anderson Hilton
Rafaela Pastrana Ramirez	Carlos Martinez Negron
Maria Lepin Castro	Cesar S. Miranda
Julian Reyes	Margarita Colon Roman
Jorge De Jesus Suarez	Jose N. Tubens Velez
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Damaris Pimentel	Sixto Alicea
Antonio Valentin Mercado	Allan Roberto Gonzalez
Margarita Ortiz Reyes	Herenio De Jesus
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Evelyn Gonzalez Vazquez	Carmelo Mercado
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Hilda Martinez	Pablo Negron Diaz
David Negron	Raquel Ortiz Montero
Jeanette Vargas	Angelita Pardo
Miguel A. Martinez	Carmen Lidia Perez
Lazara Fleites	Benito Peña Rodriguez
Isidro Lebron	Jose Luis Ramos
Wilfredo Diaz Torres	Blanca Roman Colon
Jesus Ramon	Milagros Sierra
Lourdes M. Rivera	Wilbert Vazquez

WE WILL make the above employees whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusals to consider for employment or to hire the employees named above, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the refusals to consider and hire will not be used against them in any way.

WE WILL, on request of the Union, cancel any departures from the terms and conditions of employment that existed on November 30, 1994, retroactively restoring preexisting terms and conditions of employment, including wage rates and benefit plans, and WE WILL make unit employees whole by paying them all wages and benefits that would have been paid absent such departures, from December 1, 1994, until we negotiate in good faith with the Union to agreement or impasse, with interest.

WE WILL recognize and, on request, bargain collectively and in good faith with the Union as the exclusive bargaining representative of our employees in the above unit, concerning the employees' rates of pay, hours of employment, and other terms and conditions of employment; and, if such understanding is reached, embody it in a signed document.

WE WILL furnish the Union with the information it requested on March 8, 1995.

BULTMAN ENTERPRISES, INC. D/B/A LE RENDEZVOUS RESTAURANT

Magdalena S. Revuelta and Antonio F. Santos, Esqs., for the General Counsel.

Edwin J. Seda Fernandez, Esq. (Axtmayer, Adsuar, Muniz & Goyco), of San Juan, Puerto Rico, for Respondent Bultman Enterprises.

Godwin Aldarondo-Girald, Esq., of Hato Rey, Puerto Rico, for Respondent Taber Partners.

Saul Ortiz, of San Juan, Puerto Rico, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BENJAMIN SCHLESINGER, Administrative Law Judge. In 1994 Respondent Taber Partners I, d/b/a Ambassador Plaza Hotel & Casino, a Radisson Plaza Hotel (the Hotel), determined that it would subcontract its restaurant because it was losing money; and it did, to Respondent Bultman Enterprises, Inc., d/b/a Le Rendezvous Restaurant (Enterprises). The complaint alleges, inter alia, that Enterprises failed to hire the former employees of the Hotel's restaurant to rid itself of Union Gastronomica de Puerto Rico, Local 610, HEREIU, AFL-CIO (the Union), which formerly represented the restaurant employees. Respondents, who are alleged to be joint employers, deny that they violated the National Labor Relations Act, 29 U.S.C. § 151 et seq., in any manner.¹

Jurisdiction, but not the joint employer status, is conceded. Enterprises is a Puerto Rico corporation with an office and place of business in San Juan, Puerto Rico, where it engages in the operation of a restaurant at the Hotel, providing food, beverages, and related services. Based on a projection of its operations since about December 1, 1994, when Enterprises commenced its operations, it will annually derive gross revenues in excess of \$500,000, will annually purchase and receive goods and supplies in excess of \$50,000, and will receive gross revenues in excess of \$50,000 from charges for meals and beverages through Visa, Master Charge, American Express, and Diners Club, all of which are located in the United States but not in Puerto Rico. The Hotel, with an office and place of business in San Juan, is duly authorized to do business under the laws of Puerto Rico and has been engaged in the operation of a hotel providing food, lodging, a casino, and related services. Taber Partners I (Taber), a resident of New York, has been engaged in operating a casino at the Hotel and Taber and the Hotel, during the 12 months preceding April 29, 1995, derived gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from points outside of Puerto Rico. I conclude that Taber, the Hotel, and Respondent are each employers engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

I also conclude, as Respondents admit, that the Union is a labor organization within the meaning of Section 2(5) of the Act. For 25 years or more, until about November 30, 1994, the Union had been the exclusive collective-bargaining representative of the following unit employed by the Hotel, which unit is appropriate for the purposes of collective bar-

gaining within the meaning of Section 9(b) of the Act. During that period, the Hotel recognized the Union as the representative of its employees and embodied its recognition in collective-bargaining agreements, the most recent of which was effective by its terms from June 1, 1991, to May 31, 1994. The unit was:

INCLUDED: All employees employed by Ambassador Plaza Hotel and Casino at its AMBASSADOR PLAZA HOTEL & CASINO, in San Juan, Puerto Rico, in the following departments: Housekeeping, Food and Beverage (including Food and Beverage checkers and cashiers), Laundry, Storekeeping, Telephone Department employees.²

EXCLUDED: All Executive and office personnel, Professional Personnel, Front Office employees, Repair and Maintenance employees, Managers, Assistant Managers, Secretaries to the Executives, confidential employees, Controllers or Auditors, Assistant Controllers, Night Auditors, Food & Beverage Controller, Accounts Receivable Supervisor, Accounts Payable Supervisor, Payroll Supervisor, Credit Manager, Personnel Manager, Head Cashier (Front Office and Food and Beverage), Head Storeroom and Receiving, Cashier Supervisor (over light shift only), Musicians, guards and supervisors as defined in the National Labor Relations Act.

In late March 1994,³ Linda Romano, Taber's chairman and assistant executive director, called Russell Bultman (Bultman), who had been the Hotel's general manager in 1989 and 1990, to ask whether he would be interested in purchasing the Hotel's restaurant. Bultman was interested, and the next week, in early April, Bultman and his brother, Randall, flew to Puerto Rico to examine the operation, which, according to Romano, was losing a "tremendous amount of money." Bultman requested financial information about the restaurant and returned to the United States, not to return to San Juan until July, after Romano hired him, commencing July 31, to "render consulting services to the Hotel in all aspects of its food and beverage operations."

Bultman found that the restaurant had high labor costs that seriously affected its profitability. As a result, in a "Business Review" in which he discussed four courses of action, he recommended leasing the Hotel's restaurant, which was then an "upscale a la carte Howard Johnson restaurant," and its ice cream parlor business "or sell all assets to a qualified outside concessionaire or buyer who would be totally responsible for its operation." The benefit of this recommendation was that the Hotel would terminate its relationship with the Union. "Since the [U]nion's collective bargaining agreement is only with the present restaurant ownership, any lease or sale of assets to an outside or unrelated party would terminate that agreement and free up the leasee or buyer to oper-

²This is the complaints allegation, which was admitted by Respondents. However, the collective-bargaining agreement contains some additional writing which appears, although quite illegible, to include "Bellmen and Doormen" in the unit. Those employees are not involved in this proceeding; and, by making my finding, I do not mean to exclude these employees (or others) if the agreement actually covers them.

³All dates hereinafter refer to 1994, unless otherwise stated.

¹The relevant docket entries are as follows: The Union filed its unfair labor practice charge on February 13, 1995, and amended it on April 28, 1995, when the complaint issued. The hearing was held in Hato Rey, Puerto Rico, on August 28-30, 1995.

ate the restaurant as deemed necessary and prudent." He added:

The critical element to the success of the leasee or buyer is the establishment of a non-union work force in the restaurant and lounges. The ability of a leasee or buyer to obtain positive cash flow and a reasonable rate of return will be the direct result of lowering wage and benefit levels in the restaurant. . . . [T]he resolution of the union issue gives the leasee or buyer the flexibility to make desired changes virtually free of labor agreement encumbrances.⁴

Bultman became a permanent fixture at the Hotel, at least from an observer's view, being fully involved in the running of the restaurant, making suggestions to the employees, and generally overseeing the product of the food operations. Word spread that he could be running the restaurant before long, particularly because the Hotel, during bargaining with the Union in May, had threatened that, if the Union would not agree to wage and other concessions, the Hotel would close the restaurant. Various of the Hotel's supervisors did nothing to dispel the rumors. In August, Dining Room Supervisor Jose Cruz told three waitresses, Carmen Silva, Carmen del Prado, and Juanita Vega, that it was a pity that such good employees would be left without a job because the Bultman brothers were going to take over the restaurant and they did not want the Union. When Vega asked Cruz why he said that, he answered that he could not explain anything else because it could get him in trouble. Word of the Bultmans' takeover became likely with Romano's advice to Union President Rangel Melendez on October 4 that, because of continuing losses of the Hotel's food and beverage operations, the Hotel had concluded that subcontracting its operations was the best solution for the restaurant to remain viable.

Talk of the Bultmans' new responsibility and attitude continued. Near the end of October or beginning of November, Supervisor Moises Brignoni and Receiving Manager Roberto Burgos told short order cook Juan Colon that it was a pity that, although there were good employees, they would have to leave on November 30 because the Bultman brothers could not work with the Union. In mid-November, Food and Beverage Senior Supervisor Noel Garcia told Silva, Vega, and del Prado that it was a pity that all the good employees had to leave because the Bultmans did not want the Union. On November 18, Romano wrote Melendez that, effective November 30, the Hotel would be closing its remaining di-

⁴ Although Bultman rejected other options, his motivation was the same. For example, if the Hotel wished to change the concept of the restaurant to be more upper scale 'California' neighborhood," the "union labor environment will undermine the change and assure that the concept change will fail." Specifically, the restaurant staff was not personable enough to create the enthusiasm for such a "stateside concept" and that collective-bargaining agreement would prevent their replacement. If the Hotel desired to change the concept and install a non-union work force," Puerto Rico law required that the restaurant be closed for 1 year and a day; and, when the restaurant reopened with a different staff, a work stoppage or strike would be likely among the other Hotel "unionized departments," which included housekeeping, laundry, storekeeping, telephone, and casino employees. *Ambassador Plaza Hotel & Casino*, 318 NLRB No. 113 (Sept. 13, 1995) (not published in Board volumes).

rectly operated food and beverage operation and would provide those services with a new concessionaire, Enterprises. Five days later, on November 23, Hotel General Manager Ralph Morales informed all employees that it was closing its food service operation; and that, if they were interested, they should apply for employment with Enterprises, which would be receiving applications and interviewing candidates beginning on November 28. Also in November, Kitchen Supervisor Melvin Arroyo told Vega, del Prado, and other employees that they would have to leave because the Bultmans did not want the Union and that Arroyo would meet them at Guayama Street, where the unemployment office is located, collecting unemployment. At the end of November, Supervisor Andres Hernandez told Vega that the employees would all be fired because "they were not going to start with a union." On November 30, Taber and Enterprises entered into an agreement granting Enterprises the concession, and the Hotel discharged its 55 food operations employees.

Two months earlier, in late September, Bultman, at Romano's request, wrote a memorandum describing the manner in which the transition of the restaurant from the Hotel to Enterprises would be accomplished and submitted it to Morales. Bultman testified that he did not see it after then, but I do not believe him. His explanation was contradictory, moving from his giving the document to Morales to obtain his thoughts and input, to the document being "lost or whatever," to the return to him of the memorandum by Morales, to his lack of discussions of the document with Morales because Morales' ideas were unimportant, to the document being merely "an informal presentation" for which Bultman wanted no feedback because Morales "had no say in the approval . . . of them," to Bultman's reading of the memorandum with Morales' comments:⁵ "I read it probably once or twice and then again more recently, and—where for a long period of time, six months, even more, I never read it at all. It was an evolutionary document of—of a particular moment in time." In sum, Bultman did not tell the truth very well. He was obviously uncomfortable that the document, which he had thought would be kept secret, had been obtained by the Union and had become part of the damning proof in this proceeding.

There was good reason for his discomfort and attempts to cover up. The memorandum was a blueprint for the conversion of the restaurant to a nonunion workplace. And there was good reason that Morales also should not be candid, because his comments revealed his complicity in attempting to ensure (1) that the restaurant and the other facilities that Bultman was to run would successfully lower payroll costs by removing most of the union personnel and (2) that any new employees would be insulated as best as possible from the Hotel's other unionized employees, who might tempt them to align themselves with the Union. Thus, Bultman wrote:

Companies-Critical Issue

Cross-Pollination

The issue facing the new entity is promoting and maintaining a non-union environment. Doing so is complicated by three factors. Even if we divide the employ-

⁵ Morales added comments to the margins of the memorandum.

ees into work groups or legal separate employees companies they will in fact have substantial contact with each other. The primary groups for interface also contain the largest number of employees. They are the kitchen and service groups of course, the banquet staff can be controlled if we utilize a small dedicated staff of on-call waits. Controlling their contact is not a problem.

Secondly, nearly all F/B [food and beverage] employees will eat in the F/B cafeteria so cross-pollination is a serious factor. We believe that we can overcome this by working closely (personally) with everyone and demonstrating through our daily actions that unionization is not required to be treated fairly by the new owners.

Lastly, the F/B cafeteria is used by other non F/B union employees, i.e., telephone operators, bellmen, etc. I strongly request that all non-F/B employees be required to eat in the housekeeping cafeteria.⁶ When the F/B operation is leased it assumes a status equal to La Scala and Jade Beach. No one fraternizes those two operations or visits their employees casually. The relationship and friendship between F/B and the rest of the hotel have long historical roots, but the transition in this area may be difficult to properly control if some steps are not taken to reduce contact to business only.

Another example of Bultman's fixation with separating employees whom he believed favored the Union from his own employees: "This area has little contact with their unit (Beverage). Pantry has little cross-pollination potential except for casino employees and use of the F/B cafeteria."

In order to start his business in a nonunion environment, Bultman considered it important that he not hire union members. Early in his memorandum, he wrote that the first act required was to meet with the supervisors "to discuss [the] decision to lease the restaurants" and the "[e]ffect upon supervisors and hourly employees." If appropriate, the Hotel should introduce the Bultmans as the new lessees, give them the date of the closings,⁷ and "develop [a] list of employees to be retained (if any), new wage rates, [and] answers to possible employee questionings." Although this indicates that there was a possibility that none of the Hotel's employees would be retained, Bultman wrote later:

Critical Issue: While we desire to retain the service of as many as 10-12 current union employees in the new company in a non-union environment we clearly recognize the inherent problems with reduced pay rates, reduced benefit levels, and loyalty to former associations.

But their retention was unclear. In the memorandum, Bultman spelled out some of the employees he was thinking of retaining. Because his emphasis throughout the memorandum was that his employees have the same antiunion philosophy as he had, the employees whom he picked and named in the memorandum were to have that bent; but Morales was not so sure. Beside the above-quoted paragraph, in which Bultman recommended the retention of as many as 10-12

employees, Morales commented: "DON'T." When Bultman wrote that he intended to terminate Gilda and Lily from the casino pantry and that Marta and Elke "may be keepers," Morales warned: "Marta may be contaminated." When Bultman wrote that he expected to retain Ute, Gladys, and one other employee to operate the ice cream parlor and possibly use Ute as a trainer or dining room supervisor, Morales warned: "Gladys may be contaminated."⁸

At the end of the memorandum, Bultman reverted to a discussion of the method of starting his restaurant operations in a nonunion setting but also keeping it that way. He wrote:

PAY RATES

An issue that makes interviewing individual employees for their attitude and philosophy difficult, in the sense that they ultimately be "happy" in the non-union, reduced benefit environment, is that of pay rates. It is absolutely imperative that for the business viability that wage rates for all job classifications be substantially reduced. While an employee may be initially happy to retain their job they may be unhappy in the longer run—30 days—when they finally understand what a reduction of 30-40% in hourly wage really means. A souring of attitude must be monitored at all times. A team approach and good camaraderie will be very important.

In order to protect F/B employee from unionization efforts it is more important to keep non F/B employees out of the restaurant area. Non F/B employees have no more business being in the kitchen, service areas, cashier area, etc. than F/B employees do "hanging out" in the croupier lounge, behind the working area of the front desk, in the casino cage, laundry, etc. As a lessee, neither La Scala nor Jade Beach [two other restaurants in the Hotel] would be expected to allow non-employees in their area. Once again, I strongly request that all non-F/B employees be required to take all meals and time clock functions to another area and leave this area alone. There is more danger of unionization from non-F/B employees than from within the department. We cannot keep ICP [ice cream parlor] employees from meeting kitchen or dining room employees. They will still work in the same area, use the same restrooms, cafeteria, and time clock. A wall or door won't stop fraternization. So why disrupt waitress service stations, room service, and equipment when it is not necessary.

This memorandum was ostensibly directed at the mechanics of closing the Hotel's restaurant and opening Bultman's. But there was an ultimate motivation, the destruction of the Union so that wages and benefits could be lowered and profits increased, without regard even for the Hotel's guests. As Bultman wrote: "In the future, when another concept is installed in the dining room all upgrades or changes should be done with the guest in mind and not unionization."

⁸I reject Bultman's and Morales' attempt to read something less sinister in the memorandum and Morales' comments in the margin. This comment is the worst. Morales explained that "contamination" referred only to an employee's behavior, service, and attitude; but those are hardly the type of impurities that he intended to warn Bultman about.

⁶Beside this sentence, Morales wrote: "AGREE."

⁷The memorandum, although not clear, appears to indicate that the date was to be kept confidential.

Beginning on November 27, at the Hotel, Bultman, Randall, and Garcia (who was still a supervisor of the Hotel) began interviewing candidates for employment with Enterprises. Colon gave the following example: He asked Garcia for an application for employment on November 28 and filled it out, returned it to Garcia, and inquired if he would be interviewed. Garcia responded that the current employees would not be interviewed. When Colon asked why, Garcia answered that those were the orders from the Bultmans. Garcia also told del Prado that the former employees would not be interviewed.⁹ Thirty-four other employees of the Hotel,¹⁰ despite filling out applications for employment with Enterprises, were similarly not interviewed; and Enterprises produced no evidence that it interviewed 16 other Hotel employees¹¹ who filled out applications for employment with Enterprises.

Pursuant to its agreement with the Hotel, Enterprises purchased the restaurant's furniture, equipment, supplies, uniforms, utensils, and food products. On December 1, it began to operate the restaurant providing the same services as before, with modifications in the menus and prices. The restaurant continued serving hotel guests, providing room service and service to the pool area. By December 1, Enterprises hired 6 out of the 8 supervisors who had been employed by the Hotel but, of 51 unit employees employed for the payroll period ending December 14, only 6 or 8 who had previously worked for the Hotel.¹² Enterprises paid them wages and provided benefits that were lower than those enjoyed by the Hotel's employees. During December, it distributed to its employees a document entitled "Radisson Ambassador Plaza Hotel, Howard Johnson's Restaurant, Employee Handbook" prepared by Bultman in October and November, while he was working as consultant for the Hotel.

Needless to say, Bultman also felt free to operate non-union. Earlier, on November 23, Melendez had requested that Bultman honor the Union's collective-bargaining agreement, which contained a successor clause, and continue to employ the Hotel's employees. He met with the Bultmans in late November and early December to ascertain their position.¹³ At

⁹Unfortunately, the official transcript reveals a translation that is a little more stilted than my finding, which is based on what I understood the witness to be saying.

¹⁰Lesley Ann Vazquez, Elke Feliciano Torres, Luisa M. Pagan, Guillermo Guirona Figueroa, Rafaela Pastrana Ramirez, Maria Lepin Castro, Julian Reyes, Jorge De Jesus Suarez, Carmen D. Robles, Damaris Pimentel, Antonio Valentin Mercado, Margarita Ortiz Reyes, Gilda Crescioni Ortiz, Luis Omar Rosario Perez, Evelyn Gonzalez Vazquez, Rafael Negro Calderon, Hilda Martinez, David Negron, Jeannette Vargas, Miguel A. Martinez, Lazara Fleites, Isidro Lebron, Wilfredo Diaz Torres, Jesus Roman, Lourdes M. Rivera, Julio Alvarez, Jesus Rivera Molla, Gladys Zambrana, Mariano Anderson Hilton, Carlos Martinez Negron, Cesar S. Miranda, Margarita Colon Roman, Jose N. Tubens Velez, and Francisco Martinez Negron.

¹¹Sixto Alicea, Herenio De Jesus, Allan Roberto Gonzalez, Olga Gonzalez, Edwin Gonzalez, Carmelo Mercado, Juan Montanez Gonzalez, Pablo Negro Diaz, Raquel Ortiz Montero, Angelita Pardo, Carmen Lidia Perez, Benito Pena Rodriguez, Jose Luis Ramos, Blanca Roman Colon, Milagros Sierra, and Wilbert Vazquez.

¹²Bultman may have offered jobs to as many as 11 employees.

¹³Melendez' actions persuade me that, contrary to Bultman's testimony, there was never any agreement between the Hotel and the Union that the work of the restaurant would be contracted out and the restaurant operated as nonunion. Otherwise, Melendez would not

first, Bultman was noncommittal, later commenting that the Union's continuing relationship depended on wage and benefit levels. Finally, on December 27, the Union again requested that Respondent recognize and bargain with the Union and that it refrain from making unilateral changes in its employees' working conditions. On January 11, 1995, Bultman refused to recognize the Union, stating: "We are an independent concessionaire who has leased the restaurant facility from the hotel. We have hired our own employees to operate our business."¹⁴ On March 8, 1995, the Union requested that Enterprises, as a successor employer, provide the following information: the names, job classifications, salaries, and dates of hire of its employees; their fringe benefits and weekly hours of work; the rules and regulations governing their terms and conditions of employment; and a copy of the contract or lease between Enterprises and the Hotel. On March 14, Enterprises refused to provide the information because it was not a successor employer.

A number of unfair labor practices are readily apparent. Hotel employees were repeatedly threatened with discharge because of the Bultmans' desire to rid themselves of the Union. Garcia, Arroyo, and Hernandez did not deny the threats. It is likely, then, that if those supervisors and agents were aware of the intentions of the Bultmans, it was common knowledge around the facility. I found that Cruz was, at best, evasive, starting with his initial testimony that he did not hear any rumors that the Hotel wanted to close the restaurant and subcontract, to his alteration that he had heard rumors, but was unable to give a date, but then gave a date. His recollections were vague, he fought with the counsel for the General Counsel, and he exhibited an unusual lack of curiosity about the reason that Bultman was constantly at the Hotel. Although Burgos also denied the threat, and tried to create the false impression that he had been fired by the Hotel and hired by Enterprises 2 or 3 weeks later, at last he was candid enough to admit that the rumors about the closing and subcontracting had been spreading all year. The Hotel's brief does not even deal with the allegations. Strangely, Enterprises' brief does, even though the threats occurred before Enterprises became the concessionaire; but it contends only that it is unlikely that the threats were even made, a contention that is not only unsupported by any evidence but also, in the circumstances, illogical. To the contrary, in light of what followed, the statements that the Bultmans were opposed to the Union and were trying to get rid of it and the threats that they were not going to hire the Hotel's employees conform not only with the Bultmans' thinking but also with the fact that they did not hire the Hotel's employees. I conclude that the Hotel violated Section 8(a)(1) of the Act by making all the threats alleged in the complaint.

It is also plainly evident that Enterprises refused to consider for employment the substantial portion of the Hotel's employees merely because Bultman wanted to operate non-union, as he stated in his September memorandum. Although all of the employees filed applications for employment, very

have pressed for recognition and compliance with the collective-bargaining agreement. Furthermore, Romano, with whom the agreement allegedly had been made, never testified; and all that the record reflects supporting Bultman is his and Morales' hearsay testimony, which I will not credit.

¹⁴I note that Bultman did not claim in this letter that the Union had agreed that he could operate his restaurant nonunion.

few were hired or even interviewed. Furthermore, many of the employees had been employed for years by the Hotel without discipline, even during the years that Bultman was the general manager of the Hotel. He took no disciplinary action against them then, and there is no factual basis for finding that the employees had become less than capable since then. Even some of the supervisors, whom I have otherwise discredited, considered the Hotel's employees good; and none appeared to have been asked their opinions about the qualifications of the employees. Indeed, the very supervisors who were considered capable enough for Bultman to rehire as supervisors for his new operation were the supervisors of the employees who were not hired. Bultman could not have considered those supervisors qualified if they could not weed out incompetent staff, whom Bultman now considered so inadequate.

Accordingly, I find that the sole reason that Bultman did not hire the employees was that they were "contaminated" by their affiliation with the Union and he wanted to avoid employing a work force with a majority represented by the Union, which had a contract with the Hotel. Obviously, the General Counsel has established a prima facie case that the prior employees' affiliation with the Union was a motivating factor in Bultman's refusal to consider them for employment. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). In addition, because I discredit Bultman's testimony that the employees' qualifications entered into his thinking, I find no credible evidence that he would have taken the same action for permissible reasons. Accordingly, I conclude that Enterprises violated Section 8(a)(3) and (1) of the Act. *NLRB v. Horizon's Hotel Corp.*, 49 F.3d 795, 804-805 (1st Cir. 1995).

A successor is required to recognize and bargain with the union that represented the employees of its predecessor, but is ordinarily free to set its initial hiring terms without preliminarily bargaining with the incumbent union. *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). However, where, as here, Enterprises hired its employees utilizing a discriminatory hiring policy, there is a presumption, because Enterprises may not benefit from its own violation of the Act, that it would have retained "substantially all" of the Hotel's employees, had it not been for its discriminatory hiring policy. Under these circumstances, Enterprises is legally obligated not only to recognize and bargain with the Union but also to maintain the terms and conditions of employment which existed under the predecessor until it bargains with the Union about any changes. By consequence, Enterprises additionally violated Section 8(a)(5) and (1) of the Act by refusing to recognize the Union. *State Distributing Co.*, 282 NLRB 1048 (1987). In addition, by unilaterally lowering the employees' wages and otherwise departing from the terms and conditions reflected in the Hotel's collective-bargaining agreement with the Union, Enterprises violated Section 8(a)(5) and (1) of the Act. It "was not free to fix initial terms of employment without consulting the Union." *Id.*

As part of its obligation to bargain in good faith pursuant to Section 8(a)(5) of the Act, an employer is obliged to furnish, or request, information needed by the bargaining representative for the proper performance of its statutory duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436

(1967). When information sought concerns wages and other terms and conditions of employment of bargaining unit employees, including, inter alia, job descriptions and other information pertaining to work schedules, duties and remuneration, the information is presumptively relevant and no specific showing of relevance is normally required. *Pfizer, Inc.*, 268 NLRB 916, 918 (1984); *Leland Stanford, Jr. University*, 262 NLRB 136, 139 (1982). The items requested by the Union were presumptively relevant, except for the agreement between the Hotel and Enterprises, which was obviously requested so that the Union could investigate its claim that Enterprises was a successor employer. By refusing to provide the Union with the requested information, Enterprises further violated Section 8(a)(5) and (1) of the Act.

The final allegation concerns the status of the Hotel and Enterprises, who the complaint alleges are joint employers. *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1123 (3d Cir. 1982), sets forth the oft-quoted test that a "joint employer" finding is warranted where:

one employer while contracting in good faith with an otherwise independent company, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer. Thus, the "joint employer" concept recognizes that the business entities involved are in fact separate but that they share or co-determine those matters governing the essential terms and conditions of employment. [Citations omitted; emphasis in original.]

The concession agreement (art. 5) required that Enterprises "adhere to the following norms":

(f) Employ only properly trained, courteous and efficient employees and require that they comply with all norms of the Hotel as to efficient and courteous service to its clients, and shall comply with all rules and regulations established by the Hotel for its own employees. Copy of such rules and regulations are attached hereto and may be amended from time to time. If amended, Hotel will provide Concessionaire a copy of such amendments. All employees of the Concessionaire shall be required as a condition to their employment by Concessionaire to attend orientation courses established by the Hotel for its employees.

(g) Take disciplinary or corrective action against any employee which the Hotel, at its sole discretion, deems inefficient or uncourteous to the Hotel's clients. All employees of Concessionaire shall be acceptable to the Hotel, and if the Hotel shall deem any one or more employees of Concessionaire unacceptable, Concessionaire shall forthwith, if legally permissible, dismiss or, after discussing the problem with the Hotel, transfer or take such disciplinary action as might be required.

The agreement further provided (art. 21):

(2) If, during the term of his Concession Agreement, (a) the Concessionaire defaults in fulfilling any of the covenants of this Concession Agreement . . . the Hotel may give to the Concessionaire notice of any such default . . . and if at the expiration of ten (10) days after the service of such a notice the default or event upon

which said notice was based continues to exist . . . all right, title and interest of the Concessionaire hereunder shall expire . . . and the Concessionaire will then quit and surrender the "Concession Area" to the Hotel, but the Concessionaire shall remain liable as hereinafter provided.

The Board has held, where similar provisions appeared in agreements between a licensor and licensee, that these are joint employers under the Act. *Globe Discount City*, 171 NLRB 830 (1968). The Board acknowledged that from the very nature of the business arrangement in that case, "[t]here flows . . . a need for the licensor to control the operations and labor relations of its licenses if they are to succeed in business together." *Id.* at 832. Although the Board made clear that it "would not postulate the existence of a joint-employer relationship merely on the basis of such a need," it would make that finding "where the license arrangements objectively demonstrate a response to that need." *Id.*, citing *Thriftdown, Inc.*, 161 NLRB 603, 606 (1966). As in *Globe Discount City*, the concession agreement in the present case is ample proof of such response. The Board in that case emphasized, *inter alia*, that the licensor maintained under the contract, as the Hotel did under the concession agreement, the right to require the discharge of the licensee's employees, who, in its opinion, are guilty of improper or discourteous behavior; the right to issue rules and regulations;¹⁵ and the right to declare the licensee in default of the agreement in the event of its failure to comply with any of the Hotel's controls.¹⁶

The Hotel contends that it is not a joint employer because there are several elements that must be present, among which is common ownership.¹⁷ To the contrary, *Browning-Ferris* makes a clear distinction between "single employer" and "joint employer" status, and specifically finds that "[i]n 'joint employer' situations no finding of a lack of arm's length transaction or unity of control or ownership is required, as in 'single employer' cases." 691 F.2d at 1122. The Hotel also relies on *Love's Barbeque Restaurant No. 62*, 245 NLRB 78 (1979), *enfd.* in pertinent part sub nom. *Kallman v. NLRB*, 640 F.2d 1094 (9th Cir. 1991). But its reliance is on the administrative law judge's decision, which was not discussed by the Board. Furthermore, there was in *Love's* no participation by the predecessor in the hiring process of the successor, as Taber's hiring of Bultman as a consultant, his subsequent rendition of his recommendations, the Hotel's adoption of his illegal plan (as evidenced by its granting him the concession),¹⁸ and Morales' comments on

¹⁵ That the Hotel's rules and regulations were not attached to the agreement is unimportant. Enterprises was nonetheless bound to comply with them.

¹⁶ In one incident, a pool bar attendant was accused of having sex with a customer, and the Hotel insisted that Bultman "deal with it." Bultman did so, because, under his concession agreement, he "could be forced to deal with it." *Ohio Inns, Inc.*, 205 NLRB 528 (1973).

¹⁷ The Board also considers functional integration of operations, centralized control of labor relations, and common management. *Radio Union v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965).

¹⁸ In addition, the supervisors had stated that Romano did not want the Union, which she wanted "out"; and that was the reason that she intended to give the concession of the restaurant to Bultman. In his recommendations, Bultman recognized that: "The hotel and res-

Bultman's memorandum so vividly evidence. Accordingly, I conclude that the Hotel and Enterprises are joint employers and jointly responsible to remedy the unfair labor practices found herein.¹⁹

The unfair labor practices found herein, occurring in connection with Respondent's business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Enterprises has engaged in certain unfair labor practices, I shall recommend that Respondents cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that Enterprises discriminatorily refused to consider for hire or to hire employees formerly employed by its predecessor, the Hotel, because of their union affiliation, I shall order Respondents to offer all individuals who would have been hired on and after December 1, 1994, employment in the positions for which they would have been hired absent Enterprises' unlawful discrimination or, if those positions no longer exist, to substantially equivalent positions, dismissing, if necessary, any and all persons hired to fill such positions. I shall also order Respondents to make whole all individuals whom Enterprises would have hired absent its unlawful discrimination for any loss of earnings and other benefits they may have suffered as a result of Respondents' unlawful conduct. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that Respondents also have unlawfully refused to bargain collectively with the Union, I shall order that they, on request, recognize and bargain collectively in good faith with the Union in the appropriate unit concerning rates of pay, wages, hours, and other terms and conditions of employment which Respondents would have been required to bargain about had the Union's lawful status been acknowledged on December 1, 1994, the date that Enterprises began operations at the Hotel. In addition, I shall order that Respondents cancel, on request by the Union, any changes in wages and benefits that Respondents made when Enterprises began operations at the Hotel and make whole any employees for any losses they suffered because of these unilateral changes from December 1, 1994, until Respondents negotiate in good faith with the Union to agreement or to impasse. Wages and other conditions not followed, for which the employees are entitled to be reimbursed, shall be computed as prescribed in *Ogle Protection Service*, 182 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), plus interest as prescribed above. Respondents shall also remit all payments they owe to the employee benefit funds in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), for any expenses resulting from Respondents' failure to make these payments.

restaurant will have a special relationship due to closely working together in several areas."

¹⁹ By consequence, the Hotel's motion to dismiss the complaint on the ground that it was not a joint employer is denied.

Interest on amounts payable to the funds shall be computed as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

[Recommended Order omitted from publication.]²⁰

²⁰ After the close of the hearing, the counsel for the General Counsel moved the admission of the last page of G.C. Exh. 12, which she said had been inadvertently omitted when it was originally received in evidence. Enterprises opposed that motion on the ground,

not that the page was not part of the original document, but that inadvertence is no reason that the page ought to be admitted. Unfortunately, people make errors; and errors deserve to be corrected. In the alternative, Enterprises requested that the hearing be reopened, but made no offer of any reason that it ought to be reopened and what proof Enterprises intended to submit to supplement or explain the page. Therefore, it appears that it would be a waste of the Board's precious resources to reopen the hearing and have me travel to Puerto Rico, for no purpose. I grant the General Counsel's motion.