

**Micro Pacific Development Inc., d/b/a Saipan Grand Hotel and Hotel Employees & Restaurant Employees, Local 5, AFL-CIO and Commonwealth Labor Federation.** Case 37-CA-4979

August 19, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge filed by Hotel Employees & Restaurant Employees, Local 5, AFL-CIO and Commonwealth Labor Federation (the Union) on April 20, 1998, as amended on April 28 and 29, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on May 4, 1998, 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 and to furnish information following the Union's certification in Case 37-RC-3720. (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.

On July 21, 1998, the Acting General Counsel filed a Motion for Summary Judgment. On July 22, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 4, 1998, the Union filed a Joinder in the Acting General Counsel's Motion for Summary Judgment. The Respondent filed a response.

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

Ruling on Motion for Summary Judgment

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

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information.

The Respondent admits that by letter dated April 7, 1998, the Union requested that the Respondent furnish it with the following information:

1. A complete listing of all bargaining unit employees including each employee's date of hire, date of birth, sex, average numbers of hours worked each year since date of hire, date of contract expiration (where applicable), the classification indicated in each employee's contract (where applicable), the actual classification in which the employee works, wage rate, address and telephone number.

2. Weighted average wage rate.

3. Weighted average income from tips or service charges and the names and classifications of each employee[s] receiving such tips.

4. Cost per hour of health insurance, broken down by cost for contract workers and resident workers. Plan documents and/or insurance policies for medical, pension, workers compensation, disability benefits and/or separation allowances. Cost per hour providing the aforementioned benefits for bargaining unit employees.

5. Cost per hour of all other employee fringe benefits; including but not limited to: holiday pay, sick leave pay, vacation pay, housing, meals, and other paid leaves.

6. Copies of most recent employee handbook, rules and regulations governing employee conduct, and all revisions thereto.

7. Copies of the standard contract utilized for the employment of contract workers by the Hotel. If no standard contract exists, the Union would then request a copy of such contract worker's contract.

8. A listing of jobs currently being performed by what is commonly referred to on Saipan as "u-drive" employees.

9. Copies of contracts between the Hotel and any Company that provides employees to work in the Hotel in work that would otherwise be considered bargaining unit work.

10. Number of jobs subcontracted since October 5, 1995.

The Respondent's answer admits that it refused to provide this information and, by reason of its denial that the Union is the valid exclusive collective-bargaining representative, denies that the information requested is relevant and necessary for the Union's role as the exclusive bargaining representative of the unit employees. It is well established that such information is presumptively relevant and must be furnished on request. See *Masonic Hall*, 261 NLRB 436, 437 (1982); and *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977).

Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment<sup>1</sup> and will order the Respondent to recognize and bargain with the Union and to furnish it the requested information.<sup>2</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, a corporation of the Commonwealth of the Northern Mariana Islands (CNMI), with an office and place of business located in Suspue, on the Island of Saipan CNMI, (the Respondent's facility), has been engaged in the operation of a hotel and restaurant providing food and lodging.

During the calendar year ending December 31, 1997, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and during the same period of time, purchased and received at its Suspue, Saipan, CNMI facility, products, goods and materials valued in excess of \$5000 which originated from points located outside the CNMI.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(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.<sup>3</sup>

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Certification*

Following the election held October 5, 1995, the Union was certified on March 26, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees of the Employer employed in the CNMI at its Grand Hotel facility; excluding all managers, confidential and professional employees, guards, watchmen and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

<sup>1</sup> We accordingly, deny the Respondent's request for summary judgment.

<sup>2</sup> In its response to the Notice to Show Cause, the Respondent argues that the information sought as to "u-drive" employees relates to non-unit employees. In these circumstances we cannot find on this record that this information is presumptively relevant and accordingly we remand that issue to the Regional Director for further proceedings, as appropriate.

<sup>3</sup> In its answer, the Respondent states that it is without knowledge or information sufficient to form a belief as to whether the Commonwealth Labor Federation is a labor organization within the meaning of Sec. 2(5) of the Act. During the representation proceeding the Respondent did not question the Federation's status or the status of the Union as a labor organization. Its failure to raise this issue in the underlying representation precludes the Respondent from litigating the matter in this proceeding. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992).

##### B. *Refusal to Bargain*

Since about April 7, 1998, the Union, by letter, has requested the Respondent to bargain and to furnish information, and, since about April 14, 1998, the Respondent, by letter, 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.

#### CONCLUSION OF LAW

By refusing on and after April 14, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the 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, Micro Pacific Development, Inc., d/b/a Saipan Grand Hotel, Suspue, Saipan, Commonwealth of the Northern Mariana Islands, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with Hotel Employees & Restaurant Employees, Local 5, AFL-CIO and Commonwealth Labor Federation, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if

an understanding is reached, embody the understanding in a signed agreement:

All employees of the Employer employed in the CNMI at its Grand Hotel facility; excluding all managers, confidential and professional employees, guards, watchmen and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on April 7, 1998, except for Item No. 8 of that request.

(c) Within 14 days after service by the Region, post at its facility in Suspue, Saipan, Commonwealth of the Northern Mariana Islands, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 20 after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 14, 1998.

(d) 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 the Respondent has taken to comply.

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<sup>4</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 Hotel Employees & Restaurant Employees, Local 5, AFL-CIO and Commonwealth Labor Federation, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All employees employed by us in the CNMI at our Grand Hotel facility; excluding all managers, confidential and professional employees, guards, watchmen and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on April 7, 1998, except for Item No. 8 of that request.

MICRO PACIFIC DEVELOPMENT, INC., d/b/a  
SAIPAN GRAND HOTEL