NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Racetrack Food Services, Inc. and Casino Food Services, Inc., Single Employer *and* UNITE HERE, Local 274. Case 4–CA–35158

December 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On July 25, 2008, Administrative Law Judge Wallace H. Nations issued the attached decision. Respondent Racetrack Food Services, Inc. (Racetrack) filed exceptions and a supporting brief, the General Counsel and Charging Party each filed an answering brief, Racetrack filed a reply brief, and the General Counsel filed a cross-exception.

The National Labor Relations Board[1] has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Racetrack Food Services, Inc., Bensalem, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. December 31, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Randy M. Girer, Esq., for the General Counsel.
Henry E. Van Blunk, Esq., of Newtown, Pennsylvania, for the Respondent Employer.
Arlus J. Stephens, Esq., of Washington, D.C., for the Charging Party Union.

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[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Some of Racetrack's exceptions argue that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that Racetrack's contentions are without merit.

[2] We adopt the judge's finding that Racetrack violated Sec. 8(a)(1) and (5) by failing to respond to the Union's information request, which includes, among other things, the names, addresses, and telephone numbers of nonunit employees. On brief, Racetrack contends that providing the Union with the addresses and telephone numbers of nonunit employees might expose it to identity theft claims if that information is mishandled. In ordering Racetrack to furnish the requested information about nonunit employees, "we do not preclude the Respondent, at the compliance stage of this case, from making 'a particularized showing' of legitimate and significant confidentiality concerns related to specific information requested by the Union that must be balanced against the Union's need for that information." *National Broadcasting Co.*, 352 NLRB No. 15, slip op. at 1 fn. 2 (2008) (citing *Jacksonville Area Assn. for Retarded Citizens*, 316 NLRB 338, 341 fn. 14 (1995)).

Chairman Schaumber notes that in raising its confidentiality concerns, Racetrack failed to "offer to accommodate both its concern and its bargaining obligations." *Wisconsin Bell, Inc.*, 346 NLRB 62, 64 (2005) (citing *SBC California*, 344 NLRB 243, 243 fn. 3 (2005)).

Where, as here, a union requests nonunit information based on its belief that a single-employer relationship exists, it must demonstrate a reasonable objective basis for that belief. See generally *Contract Flooring Systems*, 344 NLRB 925, 925 (2005) (citing *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994)); *Cannelton Industries*, 339 NLRB 996, 997 (2003) (citations omitted). Under Board law, "the requesting union need not inform the signatory employer of the factual basis for its requests, but need only indicate the reason for its request." *Contract Flooring*, 344 NLRB at 925 (quoting *Corson & Gruman Co.*, 278 NLRB 329, 334 (1986), enfd. 811 F.2d 1504 (4th Cir. 1987)). Chairman Schaumber acknowledges this as current Board law and applies it for the purpose of deciding this case. See generally *Contract Flooring*, 344 NLRB at 925.

We agree with the judge that Racetrack violated Sec. 8(a)(1) and (5) by closing the Turfside Restaurant and Bar on Wednesday and Thursday nights without first providing the Union notice and an opportunity to bargain over the matter. Racetrack argues that the management-rights clause in the parties' then-expired contract permitted this conduct. As the judge found, however, "any purported waiver of a union's right to bargain in a management-rights clause does not survive the expiration of the agreement, absent evidence of the parties' intention to the contrary." *The Bohemian Club*, 351 NLRB No. 59, slip op. at 3 (2007). There is no such evidence in this case.

Chairman Schaumber acknowledges that *The Bohemian Club* represents current Board law and applies it for the purpose of deciding this case. See *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1319 fn. 5 (2006).

The judge observed, among other things, that Racetrack would be obligated to bargain over the effects of its decision concerning the Turfside Restaurant and Bar even if the decision itself were not a mandatory subject of bargaining. In light of our finding that this decision was a mandatory subject of bargaining, we find it unnecessary to reach this issue.

[3] The judge's remedy provides that Racetrack make whole any employees adversely affected by its unlawful closing of the Turfside Restaurant and Bar, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). However, as this unlawful conduct did not result in cessation or denial of employment, any make-whole award should instead be calculated as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See *CAB Associates*, 340 NLRB 1391, 1393 (2003).

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on March 10, 2008. The original charge was filed by UNITE HERE, LOCAL 274 (herein Union) on February 7, 2007. First, second and third amended charges were filed by the Union on March 23, April 16 and May 13, 2007, respectively. After an investigation by Region 4 and the issuance of a memorandum from the Division of Advice on November 26, 2007, the Union withdrew certain allegations. The Regional Director approved the partial withdrawal on December 14, 2007. A complaint and notice of hearing was issued on December 28, 2007 and an amendment to the complaint issued on January 17, 2008. The complaint alleges, inter alia, that Racetrack Food Services, Inc. and Casino Food Services, Inc. (RFS, Racetrack, and CFS, Casino, or Respondents) constitute a single employer. The complaint further alleges that Respondents violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), by failing to respond to the Union's information requests and by unilaterally changing terms and conditions of employment for bargaining unit employees. In their answer, Respondents denied single-employer status and all substantive allegations and raised an affirmative defense that the Board should not assert jurisdiction under Section 103.3.[1]

At the hearing, the General Counsel and Respondent entered into a partial settlement of the issues in this case. The Charging Party objected to this partial settlement. The parties were given a specified period of time to file briefs in support of their respective positions. After receiving and considering these briefs, I issued my Order approving partial settlement and closing the record in this case. My reasons for approving the partial settlement are set forth in the Order and are incorporated herein by reference.

Following approval of the partial settlement, the following complaint allegations remain for determination:

> 1. Whether Respondent Racetrack violated the Act by failing and refusing to provide the Union the following requested information:
>
> a. A list of the names, addresses and telephone numbers of CFS employees.
>
> b. Identity of all managers, supervisors, forepersons or other supervisory persons with authority to hire, fire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline employees, or responsibly direct employees, or to adjust their grievances, or effectively recommend such action, with respect to employees in racing operations and employees in slot gaming operations, respectively, including the individuals' titles and dates of employment.
>
> c. The identity of all individuals actively involved in day-to-day management of racing operations and slot gaming operations, including their dates of employment and each of the duties.
>
> 2. Whether Respondent Racetrack violated the Act by closing the fifth floor dining room and bar (Turfside Terrace Restaurant and Bar) on Wednesday and Thursday nights, without giving the Union an opportunity to bargain over that decision and its effects.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Respondent, Charging Party, and the General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondents Racetrack Food Services, Inc. and Casino Food Services, Inc., corporations, have admitted the jurisdictional allegations of the complaint. They provide food and beverage services at Philadelphia Park Racetrack in Bensalem, Pennsylvania. They admit and I find that they are employers 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.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Commencing on May 10, 2000, RFS began providing food and beverage concessions at the Philadelphia Park Racetrack facility. At the same time, RFS entered into a collective bargaining agreement with the Union for the period May 10, 2000 through November 20, 2003. RFS and the Union extended the parties' contract through June 30, 2006. The contract was further extended by the parties to August 31, 2006. The Union represents a unit of Respondent's employees described as follows:

> All full-time and regular part-time bartenders, bus persons, cashier-counterpersons, cooks, utility persons, dishwashers, waitstaff and commissary helpers, but excluding hostesses, captains, maitre'd's, supervisory chefs, supervisory employees, managerial or foreman employees, security personnel, watchmen, professional employees, office or secretarial employees, guards and supervisors as defined in the Act, and employees currently represented by other labor organizations.

Prior to June 2006, RFS operated concession areas open to the public on the first floor, third floor, fifth floor and an outside bar and patio area at the Philadelphia Racetrack facility. Additionally, RFS operated out of kitchens on the first and third floors. In 2006, the Pennsylvania Gaming Board issued a license to Greenwood Gaming and Entertainment, Inc., to operate slot machines at Philadelphia Park. As a result, renovations to the building were made to allow for the introduction of slot machines. The food and beverage concession for the casino areas was awarded to Casino Food Services, Inc. Commencing in the summer of 2006, RFS no longer provided food and beverage concessions on the first and third floors. RFS never bargained with the Union regarding RFS no longer providing food and beverage concessions on the first and third floors.

On January 9, 2007, the Union requested that the parties commence bargaining. The parties agreed to meet on January 30, 2007. On January 17, 2007, the Union sent an information request regarding both bargaining unit and non-bargaining unit

[1] Respondent has withdrawn this defense.

information. By letter dated January 26, 2007, RFS advised it was only authorized to bargain over RFS employees.

On February 7, the Union filed a charge against RFS alleging an unfair labor practice for failing to negotiate a new collective bargaining agreement that would include individuals not employed by RFS and for failing to provide the requested information.

B. The Relevant Facts Relating to the Issues

At the hearing, the parties entered into a stipulation of facts and introduced into evidence General Counsel's exhibits 1 through 25. The parties stipulate as follows:

1. Philadelphia Park Casino and Racetrack ("Philadelphia Park") is a duly registered fictitious name used for the operation of a racetrack and casino located at 3001 Street Road in Bensalem, Pennsylvania.

(a) The racetrack dates back to 1974 (when it was known as Keystone Park).

(b) Greenwood Racing, Inc. ("Greenwood"), through its subsidiaries, is the current owner and operator of Philadelphia Park.

(c) Since at least the 1980s, Philadelphia Park has provided customers with live thoroughbred horse race meets and more recently simulcast thoroughbred horse trotter race meets with wagering, through licensing from the Pennsylvania State Horse Racing Commission.

(d) The Commission issued a license to Keystone Turf Club, Inc. and a license to Bensalem Racing Association, Inc. ("Keystone/Bensalem"), both subsidiaries of Greenwood.

2. In 2005, Greenwood Gaming and Entertainment, Inc. ("GG&E"), a subsidiary of Greenwood G&E Holding, Inc., which is a subsidiary of Greenwood, obtained a license from the Pennsylvania Gaming Control Board to operate slot machines at Philadelphia Park.

(a) Around mid-December 2006, slot machines became operational at Philadelphia Park.

(b) There are approximately 2,700 slot machines in operation at Philadelphia Park.

3. The facility at Philadelphia Park currently consists of a racetrack and six-story grandstand building adjacent to the racetrack.

(a) Prior to June 2006, the six-story building housed food and beverage concessions, pari-mutuel betting and other services for racetrack patrons.

(b) Prior to June 2006, the food and beverage concession operations at Philadelphia Park consisted of the following:

i. 1st Floor—bar called the "Finish Line," dining room; a concession stand selling hot dogs and burgers; and a second concession stand selling hotdogs and cans of beer on the weekends.

ii. 3rd Floor—restaurant and bar called the "Sports View Bar & Grill," and a concession stand selling hot dogs and burgers.

iii. 5th Floor—bar in the dining room, and dining room food service.

iv. Outside—bar and patio area, called "My Juliette," located next to the racetrack and open during the summer

v. Kitchen—Kitchens were located on the 1st and 3rd floors.

4. In April 2000, Keystone/Bensalem contracted with Racetrack Food Services, Inc. (RFS), a subsidiary of Greenwood, to provide food and beverage services at Philadelphia Park.

(a) From May 10, 2000 through November 2006, all Philadelphia Park food and beverage concessions were serviced by RFS.

i. Prior to May 10, 2000 all food and beverage concessions were provided by companies not affiliated with Greenwood.

(b) As of December 2006, RFS employed about 45-50 employees.

5. Since May 10, 2000, UNITE HERE Local 274 (Union) represented the RFS employees.

(a) From 1982 to May 10, 2000, the Union represented the employees of Filly Foodservice Company, Inc. and its predecessor companies (not affiliated with Greenwood), which provided food and beverage services at Philadelphia Park.

(b) The most recent contract between RFS and the Union was effective from May 10, 2000 to November 20, 2003. (GC Exh. 3.)

(c) RFS and the Union extended this contract to June 30, 2006 through a Memorandum of Understanding. (GC Exh. 4.)

(d) RFS and the Union further extended the contract to August 31, 2006. (GC Exh. 21.)

6. During 2005 and 2006, Philadelphia Park was renovated to allow for the introduction of the casino and slot machines. The six story grandstand building was restructured, as follows:

i. 1st Floor—Casino operation: the "Poker Bar," and a concession stand called the "Grab & Go."

ii. 2nd Floor—Business offices.

iii. 3rd Floor—Casino operation: Steak house, buffet, the "Circle Bar," and a kitchen.

iv. 4th Floor—Kitchen, providing food preparation and storage for Casino operations and for Racetrack operations. The renovations created separate workstations for Casino operations and for Racetrack operations. The main storage area, containing foodstuffs including drygoods and frozen foods, was used for both Casino and Racetrack operations. Cooking utensils were used commonly by both Casino and Racetrack operations.

v. 5th Floor—Racetrack operation; Turfside Terrace Restaurant/Bar (with 400 person dining room), the Finish Line Bar, one concession stand.

7. Since December 2006, the casino is open to the public 24 hours a day, 365 days a year.

8. There is live horse racing on Saturdays, Sundays, Mondays and Tuesdays, with occasional Wednesdays and Fridays.

(a) Starting in June 2006, the 5th floor racetrack Turfside Terrace Restaurant/Bar was open to the public Wednesday, Thursday, Friday and Saturday nights, and 7 days a week during the daytime. The Turfside Terrace Restaurant/Bar opened at 11 a.m. every day. On Wednesday, Thursday, Friday and Saturday, the Turfside Terrace Restaurant/Bar closed at around

9:30 or 10 p.m.

(b) Starting in June 2006, the Finish Line Bar was open to the public 7 days and 7 nights a week, starting from 11:00 AM and closing at around 11:30 p.m. or 12 a.m.

9. In November 2006, Casino Food Services, Inc. (CFS), a subsidiary of Greenwood, was incorporated.

(a) In November 2006, GG&E entered into an agreement with CFS to provide food and beverage concessions at the casino at Philadelphia Park.

(b) In November and December 2006, approximately 200 CFS food and beverage managers and employees were hired, in the following classifications:

i. bartenders, bar backs, bus persons, cocktail servers, cooks, counter persons, dishwashers, food runners, hosts/hostesses, pantry workers, servers, service bar workers and commissary employees.

ii. Specifically, CFS hired the following number of employees in each position: bartender-28; buffet server-30; grab n go-7; cooks-31; sous-chef-3; wait staff-14; Parkettes (cocktail servers)-43; steward-11; hostess-1.

10. RFS is owned by Greenwood.

(a) Its directors are Michael A. Jaffe, Anthony D. Ricci and Matthew W. Hayes.

(b) Its officers are Michael A. Jaffe (President), Anthony D. Ricci (Vice President) and Matthew W. Hayes (Secretary/Treasurer).

(c) Day to day management of RFS is performed by Michael A. Jaffe, Ken Trout (head cook), Janet Gannon (guest service manager) and Tom Trenich (supervisor).

11. CFS is owned by Greenwood. In December 2006 and January 2007:

(a) Its directors were Francis E. Perko, Jr., Francis E. McDonnell and Matthew W. Hayes.

(b) Its officers were Francis E. Perko, Jr. (President), Francis E. McDonnell (Secretary) and Matthew W. Hayes (Treasurer).

(c) Day to day management of CFS was performed by the President and numerous other managers and supervisors.

12. In December 2006 and January 2007, the Union was in possession of the following information in connection with its belief that RFS and CFS constituted a single employer. RFS does not stipulate to the factual accuracy of all the following information; RFS stipulates that the Union believed in good faith that the following information was correct and accurate.

(a) Common ownership: Mr. Watche "Bob" Manoukian is the majority owner of the parent holding company (Greenwood Racing, Inc.), RFS and CFS.

i. Greenwood is the majority shareholder (100%) of Keystone and Bensalem.

ii. GG&E is owned 100% by Greenwood G&E Holding, which is owned 100% by Greenwood.

(b) Common management: RFS and CFS have corporate officials and managers in common with each other and with Greenwood and its subsidiaries.

i. Andrew Green is an employee of Green Racing Management Co. ("Green Racing Management"), a subsidiary of Greenwood that provides administrative support to the Greenwood subsidiaries.

A. Andrew Green is identified on the Philadelphia Park website as Senior Vice President of Administration.

ii. Robert Green is brother to Andrew Green

A. Robert Green is president of Green Racing Management.

B. Robert Green was identified to the Pennsylvania Gaming Control Board as "director, chairman and shareholder" of the gaming subsidiary of Philadelphia Park.

iii. Anthony Ricci is an officer for RFS.

A. Anthony Ricci is Secretary/Treasurer for Green Racing Management.

B. Anthony Ricci is an officer or director for Greenwood, Bensalem and Keystone.

C. Anthony Ricci is identified on the Philadelphia Park website as Chief Financial Officer.

D. Anthony Ricci was described in May 2006 to the Horse Racing Commission as "an integral member of the management team since 1993."

iv. Michael Jaffe is President of RFS.

A. Michael Jaffe is identified on the Philadelphia Park website as Vice President of Food and Beverage.

v. During October and November 2006, interviews were conducted to hire CFS employees.

A. The CFS interviews were conducted by Dave Gottlieb (RFS manager at that time), David Jonas (President and CEO of Greenwood Gaming Services, Inc., and CEO of Greenwood Gaming & Entertainment, Inc., which are both subsidiaries of Greenwood), Robert Green, Andrew Green and Wendy Hamilton.

vi. During November 2006, Michael Jaffe (RFS president), David Gottlieb (RFS supervisor), Francis Perko (CFS officer), Ken Trout (RFS head chef), Marc Wirzberger (CFS supervisor) and Michael Coughlin (RFS supervisor, who became a CFS supervisor) supervised both RFS and CFS employees.

vii. In mid-December 2006, on the loading dock, CFS manager (Storeroom supervisor) Nicole McKeown directed RFS employees to unload from three trucks, goods for both CFS and RFS.

A. Unloading goods from trucks was considered CFS work.

viii. In late December 2006/ early January 2007, CFS supervisor Michael Coughlin directed RFS employees to put away stock for both CFS and RFS in 4th floor storeroom.

A. This was considered CFS work.

(c) Centralized control of labor relations

i. In 2003, Andrew Green represented RFS in negotiations with the Union.

ii. During 2005 and 2006, Andrew Green met with Union Joint Board Manager Lynne Fox about negotiating a new contract once the casino became operational. Green told Fox that he would be the negotiator for all labor unions at the Park.

iii. During the early summer of 2006, Andrew Green invited Union bargaining representative Lynne Fox and Union Business Agent Andre Vigliarolo to visit Philadelphia Park to meet with the new Vice President of Human Resources. Green didn't state her name. When the Union representatives met Green at Philadelphia Park, he said that the Vice President of Human Relations too busy to meet. Green told them: "You will be dealing with me anyway for negotiations."

iv. During summer 2006, Green invited Fox twice to the Philadelphia Park facility to see the progress of renovations.

v. On June 28, 2006, Andrew Green emailed Lynne Fox with a list of proposed job categories for the temporary casino facility and suggested starting pay rates. The emailed list of job classifications for casino employees included bar back, bartender, bus, cocktail, cooks, counter, dishwasher, food runner, host, pantry, server, service bar and commissary. (GC Exh. 5.)

vi. During mid- or late November 2006, Union representatives met with Green and Anthony Ricci at an office located at Philadelphia Park. At no time during the meeting did Green or Ricci raise an argument that there would be any separation of food and beverage work at the Park. During the meeting Ricci stated that the company would agree to include in the established RFS bargaining unit all of the new CFS classifications except for the kitchen and cocktail servers. The Union did not agree to this.

vii. About a week later, in a telephone conversation between Fox and Ricci, Ricci offered to include in the RFS bargaining unit all the CFS classifications, including the kitchen servers, but not the cocktail servers. Fox refused this offer.

(d) Interrelation of operations

i. From mid-November to mid-December 2006, RFS employees trained employees who would be working for CFS when the casino opened.

ii. In October and November 2006, RFS employees supplied beverages to the executives who were interviewing applicants for CFS food and beverage positions. RFS employees prepared cookies for interviewees and hot meals for interviewers. The interviews occurred on a floor serviced by RFS employees.

iii. In late November and early December 2006, RFS head chef Ken Trout told RFS employees to keep CFS employees busy. RFS employees trained CFS employees in bar backing. The CFS employees performed RFS work duties for a few days.

iv. From mid-November to mid-December 2006, RFS cooks trained new CFS buffet cooks in food preparation and in use of kitchen equipment. The CFS cooks began using kitchen equipment in the 4th floor kitchen to prepare food for the 3rd floor CFS buffet line.

v. In December 2006, CFS supervisor Mike Coughlin directed RFS employees to put skids of food deliveries away in the storeroom.

vi. In December 2006 CFS manager Nicole McKeown directed RFS employees to unload three trucks full of surveillance equipment for the casino.

vii. In early 2007, CFS supervisors came to the 5th floor to inform employees that there was overflow from the casino buffet on the 3rd floor, and that patrons would be directed to the racetrack dining room on the 5th floor. Thereafter 25 people came up to the dining room.

viii. In December 2006 and early 2007, RFS and CFS cooks worked side by side in the 4th floor kitchen, using the same equipment including knifes, ladles, pans and other kitchen items.

ix. In December 2006 and early 2007, RFS and CFS cooks used the same prep food in the 4th floor kitchen, including bacon, chopped lettuce, tomatoes and sliced meats.

x. In December 2006 and early 2007, all pans and dishes from the 3rd floor casino buffet come to the 4th floor to be washed. All pans and other kitchen items were washed in the 4th floor kitchen, regardless whether they were used by CFS or RFS cooks.

xi. In December 2006 and early 2007, RFS and CFS cooks assisted each other on their work lines: for example, helping out when needed by opening/shutting the door to an oven, carrying heavy items, or removing items from the stove.

xii. From December 2006 to March 2007, CFS and RFS used the same commissary area to get supplies and food prep materials. Until March no forms were required to be filled out to request supplies.

xiii. On December 17, 2006 a party was held on the 5th floor (Racetrack) with two CFS cooks cooking the food and an RFS server and RFS bus person providing food service to the party.

xiv. In December 2006, CFS cooks began preparing food for the casino buffet using RFS line equipment such as fryer, charbroiler and steamer.

13. In February 2007, the Union learned that Michael Jaffe (president of RFS) and David Jonas conferred with a representative from the Pennsylvania State Department of Health concerning problems at a bar on the 3rd floor, which is entirely a casino operation.

(a) RFS does not stipulate to the factual accuracy of this information. RFS stipulates that the Union believed in good faith that this information was correct and accurate.

14. Subsequent to the filing of the charge in this matter, the following facts relevant to the Single Employer issue were disclosed by RFS to the Regional Director in connection with her investigation of this charge, although all this information was not necessarily known to the Union in December 2006 and January 2007:

(a) Common ownership: Mr. Watche "Bob" Manoukian is the majority owner (approximately 91%), through holding companies, of the parent holding company (Greenwood).

i. Greenwood is the majority shareholder (100%) of CFS and RFS.

(b) Common management: RFS and CFS have corporate of-

ficials in common with each other and with Greenwood and its subsidiaries.

i. Anthony Ricci (Vice President of RFS) holds the following positions:

A. Secretary/Treasurer and Director for Greenwood.

B. Treasurer and Director for GG&E.

C. Secretary/Treasurer and Director for Bensalem.

D. Secretary/Treasurer and Director for Keystone.

E. Director for Greenwood G&E Holding, Inc.

F. Secretary/Treasurer and Director for Green Racing.

ii. Matthew Hayes is a director for both RFS and CFS. Hayes holds the following positions:

A. Secretary/Treasurer for RFS.

B. Treasurer for CFS.

C. Director and Treasurer for Greenwood Gaming Services, Inc., another subsidiary of Greenwood.

D. Secretary/Treasurer for Keystone.

iii. Robert Green (brother to Andrew Green) holds the following positions:

A. President, Chairman of the Board and Director of Greenwood G&E Holdings, Inc.

B. President and Director of Greenwood Racing.

C. President, Chairman of the Board and Director of GG&E.

D. President and Director of Bensalem.

E. President and Director of Keystone.

15. The Union was in possession of the following information in December 2006 and January 2007, in connection with its belief that RFS and CFS employees constituted a single bargaining unit (in addition to the information stated above in paragraph 12, related to common management, common labor relations and interrelations of operations).

(a) RFS and CFS employees use the same parking lot.

(b) RFS and CFS employees use the same employee entrance to Philadelphia Park.

(c) RFS and CFS employees use the same swipe card locations to clock in.

(d) During this time period, RFS and CFS employees used the same employee cafeteria.

(e) RFS and CFS employees share one loading dock where all supplies arrive.

(f) RFS and CFS employees use the same payroll office on the 2d floor.

(g) A single payroll company (Green Racing) provides payroll services for multiple companies at Philadelphia Park, including CFS and RFS.

(h) RFS and CFS employees smoke in the same smoking cafeteria.

(i) RFS and CFS employees in similar classifications wear the same or similar uniforms.

(j) RFS and CFS employees wear uniforms identified as Philadelphia Park.

(k) RFS and CFS employees use the same requisition system for supplies.

(l) RFS and CFS employees share the same locker room on the 2d floor.

(m) RFS and CFS applicants may apply for jobs on the Philadelphia Park website.

16. In the charge and amended charges, the Union has alleged, inter alia, that RFS and CFS were a single employer and that the RFS and CFS employees constituted a single bargaining unit. (See Charge filed February 7, 2007, First Amended Charge filed March 22, 2007, Second Amended Charge filed April 16, 2007 and Third Amended Charge filed May 14, 2007. [(GC Exhs. 1((a)(c)(g) and (e).]

17. The Single Employer issue was settled pursuant to a unilateral Informal Settlement Agreement approved by the Administrative Law Judge. (GC Exh. 20.)

18. The Division of Advice issued a Memorandum dated November 26, 2007 finding that the CFS employees were not appropriately included in the RFS bargaining unit. This Memorandum was released to the public. (GC Exh. 18.) On December 14, 2007, the Union withdrew the allegation. (GC Exh. 19.)

19. The Union was concerned about the loss of work performed by RFS employees because once the Casino opened CFS employees began performing food and beverage work on the first floor that had been historically performed by RFS employees prior to the renovations.

20. The Union believed that it would represent all food and beverage employees employed at Philadelphia Park and if not all food and beverage employees, then those employees who were performing food and beverage work in locations where Union-represented employees historically performed the work.

21. On January 9, 2007, Fox sent the attached letter to Andrew Green. (GC Exh. 6.)

22. Green responded to Fox by phone verbally and agreed to meet with Fox to negotiate on January 30, 2007.

23. On January 17, 2007, Fox sent the attached letter to Andrew Green. (GC Exh. 7.)

24. RFS received the January 17, 2007 letter.

25. On January 17, 2007, Fox sent the attached information request to Andrew Green. (GC Exh. 8.)

26. RFS received the January 17, 2007 information request.

27. On January 26, 2007, RFS president Jaffe sent the attached letter to the Union. (GC Exh. 9.)

28. In a meeting on January 30, 2007 with the Union, Jaffe and RFS counsel informed the Union representatives that the newly hired CFS employees were a separate bargaining unit and that they did not intend to negotiate regarding those workers. RFS representatives stated that they would not respond to the Union's January 17 information request. Union representative Lynne Fox stated that it would be difficult for the Union to negotiate intelligently on behalf of RFS workers without the requested information.

29. On June 7, 2007, Fox sent the attached information request to Andrew Green. (GC Exh. 10.)

30. RFS received the June 9, 2007 information request.

31. On June 9, 2007, Jaffe sent the attached letter to Fox in response to her June 7, 2007 letter. (GC Exh. 11.)

32. On June 14, 2007, Fox sent the attached letter to Jaffe. (GC Exh. 23.)

33. On June 26, 2007, Jaffe sent the attached letter to Fox. (GC Exh. 12.)

34. On July 3, 2007, Fox sent the attached letter to Jaffe.

(GC Exh. 13.)

35. On July 5, 2007, Jaffe sent the attached letter to Fox. (GC Exh. 14.)

36. On July 10, 2007, Fox sent the attached letter to Jaffe. (GC Exh. 15.)

37. On July 12, 2007, Jaffe sent the attached letter to Fox. (GC Exh. 16.)

38. On July 13, 2007, Fox sent the attached letter to Jaffe. (GC Exh. 17.)

39. The Union sought the information in its January 17 and June 7, 2007 information requests in connection with its dispute with RFS concerning, and to pursue its investigation into (a) whether a single-integrated employer situation existed, (b) whether the RFS and CFS employees constituted a single unit and (c) whether RFS bargaining unit work was being performed by CFS employees.

40. The Union sought the information in its January 17 and June 7, 2007 information requests in connection with its representational responsibilities to police the contract with RFS and preserve work for bargaining unit employees.

(a) The Union had concerns about loss of work to the bargaining unit, including:

i. Its good faith belief that CFS employees (cooks) were doing RFS work, in November and December 2006;

ii. The elimination, starting April 18, 2007, of employee shifts on Wednesday and Thursday nights in the 5th floor Turfside Terrace Restaurant/Bar; and

iii. The assignment of food-and-beverage work to CFS employees in the My Juliette patio area, during the summer 2007, as described below in paragraph 46(a).

(b) The Union did not inform RFS, at the time that it made its January 17 and June 7, 2007 information requests, that the information sought was relevant to its concerns about policing the Union's contract with RFS and preservation of work for bargaining unit employees.

i. The Union did inform RFS of its concerns about loss of bargaining unit work in its letter dated July 10, 2007. (GC Exh. 15.)

(c) The Union learned on November 26, 2007 that the Division of Advice had determined that the CFS employees and RFS employees did not constitute a single bargaining unit.

41. The information request allegation was partially settled pursuant to a unilateral Informal Settlement Agreement approved by the Administrative Law Judge. (GC Exh. 20.)

(a) In compliance with the Informal Settlement Agreement, on March 9 and 10, 2008, RFS provided to the Union the documents attached as GC Exhibit 24.

42. To date, RFS has failed to provide the following information in response to the Union's information requests:

(a) As set forth in subparagraph 6(a)(1) of the Complaint specifically a list showing all CFS food and beverage workers including each employee's name, address and telephone number and

(b) As set forth in subparagraphs 6(a)(3) and 6(a)(4) of the Complaint.

43. RFS will consent to and will comply in full with any final Order issued directing it to respond to the Union's information requests.

44. RFS will not defend against production of the information requested, if so ordered, on the ground that it (a) is not a single employer with CFS or (b) is not in possession of the information.

45. In June, 2006, RFS employees began working in the 5th floor Turfside Terrace Restaurant/Bar. However there are no signs directing patrons to the 5th Turfside Terrace Restaurant/Bar or the Finish Line Bar, resulting in reduced patronage for Turfside Terrace Restaurant/Bar.

46. In April 2007, without giving notice to the Union and without giving the Union an opportunity to bargain, RFS closed the 5th floor (Racetrack) Turfside Restaurant and Bar on Wednesday and Thursday nights, eliminated employee shifts and reduced hours worked by RFS employees, because of lack of business on those nights and because of costs, including labor costs.

(a) As of the summer 2006, in the grandstand building, all racing food and beverage outlets were located on the 5th floor.

i. RFS employees also traditionally staffed, on Saturdays and Sundays during the summer months, food and beverage outlets known as My Juliette and the patio area, located outside by the racetrack.

ii. During the summer 2007, My Juliette and the Patio area were staffed on several nights by CFS employees. Prior to summer 2007, only RFS employees had staffed the My Juliette and patio area food and beverage outlets.

(b) The 5th floor restaurant/bar is known as Turfside Terrace.

(c) Another bar on the 5th floor is known as the Finish Line bar.

(d) The sole access to the Turfside Terrace and Finish Line Bar is by elevator, stairway or escalator. The Philadelphia Park patrons usually use the elevator.

(e) The Turfside Terrace Restaurant/Bar and the Finish Line Bar were closed for renovations in 2004.

(f) The Turfside Terrace Restaurant/Bar and the Finish Line Bar reopened in June 2006.

(g) In December 2006, a sign was posted at the elevators indicating that racing was located on the 5th floor.

(h) From December 2006 to the present, there were no signs on the casino floors which informed Philadelphia Park patrons that there were any restaurants or bars on the 5th (racing) floor.

47. The hours of the Turfside Terrace Restaurant/Bar, when it re-opened, were Monday through Sunday (day time) and Wednesday through Saturday evenings.

(a) From the summer 2006 through April 18, 2007, RFS employees staffed the Turfside Terrace Restaurant/Bar working the following shifts:

i. Monday through Sunday, 10 AM to 4:30 PM

ii. Wednesday through Saturday: 4:30 PM to close (9 to 10 PM, or earlier if there were no customers).

(b) The employees per shift were scheduled as follows:

i. All shifts: 1 bartender, 2 cooks, 1 dishwasher

ii. Servers:

A. Saturday day: 6

B. Saturday night: 2
C. Sunday: 5
D. Friday night: 2
E. Wednesday and Thursday nights: 1

(c) Scheduling was done on a weekly basis by Kylie Waters, guest services manager, or by a RFS employee, Janet Gannon.

(d) Weekly schedules were kept by the RFS manager in a book located at guest services on the 5th floor.

48. In April 2007, RFS decided to close the Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights only.

(a) There was no other change to the operation, décor or menu of the Turfside Terrace Restaurant at that time.

(b) Michael Jaffe was the individual responsible for this decision.

49. The Turfside Terrace Restaurant/Bar was closed, effective April 18, 2007, on Wednesday and Thursday nights only, because of

(a) declining revenues due to a lack of patronage and

(b) costs of operation including the labor costs associated with employing waitress(es), bartender(s), cook(s), dishwasher(s) and other employees in the Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights.

50. Michael Jaffe informed employees of his decision that the Turfside Terrace Restaurant/Bar was being closed on Wednesday and Thursday nights due to lack of work.

(a) At the time that Michael Jaffe informed the employees of his decision to close the Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights, he also informed Cynthia Cramer.

i. Cynthia Cramer had been the Union's shop steward.

ii. Cynthia Cramer has resigned her position as shop steward from the Union in February 2007.

iii. The shop steward is not authorized by the Union to act as the Union's agent to receive notice of unilateral changes.

iv. The contract does not authorize the shop steward to act as the Union's agent to receive notice of unilateral changes.

v. RFS did not give advance notice to the shop steward that the Turfside Terrace Restaurant/Bar was being closed on Wednesday and Thursday nights. Jaffe informed Cynthia Cramer after the decision had already been made.

51. All employee shifts on Wednesday and Thursday nights were eliminated, as of April 18, 2007.

52. All RFS employees, who had previously worked in the 5th floor Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights, were transferred to other shifts.

(a) At least one employee (Michelle Pollak) lost a shift due to RFS's decision to close the Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights. Her shift was changed from Saturday/Sunday (double shifts) and Wednesday/Thursday nights to the following: Saturday/Sunday (double shifts), every Tuesday (day shift) and every other Monday. Her work hours were reduced by one shift, every other week.

(b) Several other employees, including Mark Coughlin, Patricia Cramer and Denise Phillips, who had worked on Wednesday or Thursday nights, were transferred to other shifts.

(c) Employees who were transferred from Wednesday or Thursday night shifts to other shifts may have "bumped" employees with lesser seniority from the shifts that they had been working.

(d) RFS weekly payroll records are attached as an exhibit. (GC Exh. 22.)

53. The 5th floor Turfside Terrace Restaurant/Bar has been closed since around April 18, 2007, to the present, on Wednesday and Thursday nights only.

54. RFS did not give notice to the Union at any time regarding:

(a) Its decision to close the 5th floor Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights;

(b) Its decision to eliminate employee shifts in the 5th floor Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights;

(c) The effects on the RFS bargaining unit of the closure of the 5th floor Turfside Terrace Restaurant/Bar and elimination of employee shifts on Wednesday and Thursday nights.

55. The Union did not learn of the closing of the 5th floor Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights until after it had occurred.

(a) The Union learned from employees of the closing of the 5th floor Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights.

56. RFS has not bargained with the Union regarding:

(a) Its decision to close the 5th floor Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights;

(b) Its decision to eliminate employee shifts in the 5th floor Turfside Terrace Restaurant/Bar on Wednesday and Thursday nights;

(c) The effects on the RFS bargaining unit of the closure of the 5th floor Turfside Terrace Restaurant/Bar and elimination of employee shifts on Wednesday and Thursday nights.

57. RFS has withdrawn its defense to NLRB jurisdiction in the matter under Section 103.3 of the Act.

The exhibits are by number:

1. The formal papers in this proceeding.
2. A Motion to Amend Complaint.
3. The collective bargaining agreement between RFS and the Union for the period of May 10, 2000 through November 30, 2003.
4. An extension of the collective bargaining agreement from December 1, 2003 through June 30, 2006.
5. A letter dated June 28, 2006 listing proposed job categories and proposed pay for each for what is called the temporary casino facility. This letter or email was sent by Andrew Green to the Union.
6. A letter from the Union to RFS dated January 9, 2007 requesting bargaining.
7. A letter dated January 17, 2007 from the Union to RFS that reads:

"When we get together for negotiations on January 30, 2007, please be prepared to discuss the gaming operations that are just now commencing. The food and beverage employees in those operations fall clearly within our existing bargaining unit, or the very least, constitute an accretion to it. Nevertheless you

may not be applying the terms and conditions of the current collective bargaining agreement to those employees. The information request accompanying this letter is designed to determined whether the agreement has in fact been violated with [the] respect to those employees as well as to test the accuracy of what we believe are their working conditions.

If it turns out that you are not applying the terms and conditions of the agreement to the food and beverage workers deployed in the gaming operations, then Local 274 will promptly file a grievance for violation of the agreement. If you admit that the company is not following the agreement in establishing the terms and conditions of the employment of these workers, then this letter is itself the Union's grievance against the Company for these violations.

In any event, at the upcoming negotiations, the Union will want to discuss the employees being used in food and beverage for the gaming operations. We don't believe there are any special circumstances that warrant different treatment of these workers as compared to others in the unit but we wish to explore that subject to be sure."

8. A letter dated January 17, 2007 by the Union requesting, inter alia, the information that is the subject of this hearing.

9. A letter dated January 26, 2007 from RFS to the Union which reads:

"I have been forwarded your correspondence dated January 17, 2007, which I understand was received on January 23, 2007, regarding negotiations for a successor Collective Bargaining Agreement between Racetrack Food Services, Inc. and Local 274, UNITE HERE.

Please be assured that, as President of Racetrack Food Services, Inc., I am prepared to discuss and negotiate any of the terms and conditions of employment for those employees of Racetrack Food Services, Inc. who perform work within the jurisdiction of the Union and under and pursuant to the Concession Agreement between the Employer and the Licensees of the Pennsylvania State Horse Racing Commission. However, I do wish to avoid any misunderstandings about the scope of negotiations.

I am only able to negotiate on behalf of Racetrack Food Services, Inc. I am not able, nor authorized, to negotiate on behalf of any other company or entity who might conduct operations in the Philadelphia Park Grandstand building."

10. A letter dated June 7, 2007 from the Union to RFS that in part reads:

"This will serve as a request for an update on bargaining for the now-expired collective bargaining agreement.

As you are aware, Region 4 of the National Labor Relations Board is currently considering whether the Company has violated federal labor law by, inter alia, its refusal to bargain with the Union over the newly hired food and beverage workers. We maintain that they are included in the preexisting bargaining unit while the Company has denied this.

Meanwhile, we intend to proceed with the negotiations. Whether or not the employer agrees about whether the casino workers are in the unit, the union needs and is entitled to know about their terms and conditions of employment, to be able to assess what it may accomplish for the racetrack workers in the negotiations. Therefore, we again request the following information concerning the food and beverage and slot attendant workers in the casino side of the operations: [information request omitted here].

11. A letter from RFS to the Union, which reads:

"I have been forwarded your correspondence dated June 7, 2007, which you sent to Mr. Andrew Green. As you have been previously advised, Mr. Green does not work for Racetrack Food Services, Inc., nor is he involved with the negotiations for a new collective bargaining agreement. Accordingly, all communications regarding a new collective bargaining agreement for Racetrack Food Services, Inc. should be addressed to my attention.

As I explained in my letter of January 26, 2007 and when we met on January 30, 2007, I am prepared to discuss and negotiate any of the terms and conditions of employment for those employees of Racetrack Food Services, Inc. who perform work within the jurisdiction of the Union and under and pursuant to the Concession Agreement between the Employer and the Licensees of the Pennsylvania State Horse Racing Commission. However, I am not able, nor authorized, to provide information about any other company or entity who might conduct operations in the Philadelphia Park Grandstand Building.

Finally, I am somewhat confused by your statement that the Union has been waiting for the response of Racetrack Food Services, Inc. regarding the Union's proposals for subcontracting and successorship. It was the Union who broke off negotiations. I remain willing to discuss and negotiate any of the terms and conditions of employment for those employees of Racetrack Food Services, Inc. who perform work within the jurisdiction of the Union and under and pursuant to the Concession Agreement between the Employer and the Licensees of the Pennsylvania State Horse Racing Commission with you and your bargaining committee. Kindly advise as to your availability."

12. A letter from RFS to the Union, dated June 26, 2007. To understand this letter, the reader is referred to Exhibit 23, which is a letter referenced in Exhibit 12. Exhibit 12 reads:

"Thank you for your letter of June 14, 2007, though I am somewhat offended that you would claim that your dealings had always been with Andy Green. I seem to recall many instances when you and I met to discuss various issues, including negotiations of a collective bargaining agreement.

My recollection of the January 30, 2007 meeting is also different from your recollection. I recall that you announced that since I was unable to negotiate for employees in a separate and distinct company that you were leaving and advised that it would be in the hands of the attorneys.

We advised several times that we would be more than happy to discuss any issues that related to employees of Racetrack Food Services that were members of Local 274, but you had no substantive issues to present. You did have language proposals on subcontracting and successorship clauses and we did take said proposals without any prompting. However, you along with the numerous people you brought with you, left the negotiations once you handed out the proposals and your prepared written statement regarding employees of another employer.

As you are aware, I am only able to negotiate on behalf of Racetrack Food Services, Inc. I am not able to negotiate on behalf of any other company or entity who might conduct operations in the Philadelphia Park Grandstand Building. Further, since I do not work for Casino Food Services I do not have any information regarding the terms and conditions of employment for those employees who work for a separate and distinct legal entity."

13. A letter from the Union to RFS dated July 3, 2007, which reads:

"Please accept this letter in response to yours of June 26. You continue on behalf of Philadelphia Park to spin the historical facts for the Company's benefit in the National Labor Relations Board proceedings. The fact is that we negotiated collective bargaining agreements with Andy Green as the management principal. That you are 'offended' to be reminded of the truth is ridiculous.

In that regard, please provide us with the titles of all positions Andy Green has held with 'Racetrack Food Services, Inc.' and documentation in support.

We appreciate your acknowledgement of Philadelphia Park's failure to respond to the Union's bargaining requests on subcontracting and successorship. You admit that the Company took those proposals back from negotiations and has never responded to either.

The Company's excuses for failing to provide the requested information are without merit and unacceptable. If it is a simply a matter of you lacking internal authority to provide the information, then the Company should get someone else to provide it. Historically that was Andy Green. Playing games with corporate identity, as the Company is trying to do here, is no way to conduct good-faith collective bargaining.

That said, we are available to meet for bargaining on July 23. Unless I hear from you, we will assume that we will meet at 11:00 a.m. Please let us know the location."

14. A letter from RFS to the Union dated July 5, 2007, which reads:

I see no point in continuing in this unproductive letter writing regarding other entities and employees that operate at the Philadelphia Park Grandstand Building. Suffice it to say that I disagree with your position and that this will be ultimately resolved by the legal process that you initiated with the NLRB.

Racetrack Food Services, Inc. has not responded to your request on subcontracting and successorship as the Union broke off negotiations. When you left the bargaining table you advised that there was no point in discussing the issues in the contract until after the unfair labor practice you were going to file was resolved. I am more than willing to consider these proposals in connection with a replacement collective bargaining agreement for those employees who work for Racetrack Food Services, Inc. and represented by Local 274, however it is not possible to consider these two items in a vacuum. Once I have all the proposed items from the Union I will be in a better position to respond.

Mr. Van Blunk and I look forward to meeting with you on July 23, 2007 to negotiate any of the terms and conditions of employment for those employees of Racetrack Food Services, Inc. who perform work within the jurisdiction of the Union and under and pursuant to the Concession Agreement between the Employer and Licensees of the Pennsylvania State Horse Racing Commission. Please meet with me in the waiting area on the fourth floor of the grandstand building."

15. A letter from the Union to RFS dated July 10, 2007 and which reads:

"This letter shall serve as a reply to yours of July 5. Your letter does not answer our information request. First, we have requested information about terms and conditions for the other food and beverage workers employed at Philadelphia Park, whom you refer to as 'casino side'. We are entitled to all the information we have requested because, among other reasons: 1) it is a single employer operation; 2) the same corporate entities own, operate and fund both 'sides' and thus their ability to pay is most certainly at issue, and 3) management is having 'casino side" workers do the work traditionally done by the so-called 'racetrack side.'

The most recent information request, which you have also failed to answer, asked for the titles of all positions Andy Green has held with 'Racetrack Food Services, Inc.' and documentation in support. If the answer is 'none', please just say so.

We would like responses to these information requests before the 23rd.

Your recollection of the last bargaining session is incorrect. At no time did the Union declare negotiations to be over. Therefore we reject the Company's excuse for failing to respond to the Union's proposals on subcontracting and successorship. We note that the Company's failure to respond, to either proposal, continues to date.

Your new excuse for the Company's continued failure to respond.—i.e., that you are waiting for the Union to give the Company a proposal on every conceivable issue that may come up, before the Company will respond to any of them—is unlawful."

16. A letter from RFS to the Union and dated July 12, 2007 and which reads:

"As I stated in my letter of July 5, 2007, I am not going to continue trading letters regarding issues currently

being reviewed by the NLRB. Further, I do not intend to debate whose recollection of the January 30, 2007 meeting is correct as, in my estimation, it will not further the process.

I disagree that our position on not wanting to negotiate only two (2) issues at a time is unlawful. As previously stated, we are willing to consider these issues or any issues regarding the terms and conditions of employment for those employees of Racetrack Food Services, Inc. who perform work within the jurisdiction of the Union and under and pursuant to the Concession Agreement between the Employer and Licensees of the Pennsylvania State Horse Racing Commission. However, it is not fair to ask the Employer to address the issues piecemeal. I am not asking you to come up with a proposal for every conceivable issue, just the items you want to address in the replacement collective bargaining agreement. Obviously, if an unforeseen issue arises during the course of negotiations we will deal with it.

In light of the foregoing kindly advise if you still wish to meet on July 23, 2007."

17. A letter from the Union to RFS dated July 13, 2007, and which reads:

"In direct response to your question: 'yes' we do still want to meet on July 23, 2007. However, I question Philly Park's good faith motive in meeting on the 23rd, as you still refuse to directly answer the questions I have posed to you on numerous occasions. Specifically:

Will you answer our information requests?

Will you provide this information prior to our meeting on July 23rd?

These are not difficult questions and yet you continue to refuse to answer. I will once again ask for your direct and unambiguous response and you can save the choreographed editorial comments that quite obviously have been written for you.

As to your comments on piecemeal bargaining, we will see what transpires at the negotiations. The bottom line is that you have still not responded to our proposals and it certainly appears that you do not intend to."

18. An advice memorandum from the Board's Division of Advice dated November 26, 2007, which in its conclusionary portion states:

"The Region submitted this 8(a)(5) case for advice on whether a single employer of a group of food and beverage employees lawfully refused to bargain with the Union over a new, larger group of employees performing similar work at the same site because the new group was neither a lawful accretion to nor an expansion of the existing bargaining unit.

We agree with the Region that (1) the new, larger group is not an accretion to the existing unit because the two groups experience no employee interchange, have separate day-to-day supervision, and the Board will not accrete a larger group of employees into a smaller unit; (2) the new group is also not a mere expansion of the existing unit, notwithstanding their similar skills and duties, because the two groups lack a sufficient community of interest given the absence of employee interchange and common day-to-day supervision; (3) there is insufficient evidence that the single employer in fact agreed to bargain with the Union in an overall unit of both groups of employees; and (4) the parties' existing bargaining agreement does not apply to the new group of employees."

19. A letter from the Region to RFS stating that the Region had approved the Union's withdrawal of that portion of the charge that it filed in this case alleging a violation of Section 8(a)(1) and (5) because of RFS's refusal to bargain with the Union concerning the casino food and beverage employees employed at Philadelphia Park, and by unilaterally closing the first floor pizza concession stand, removing work duties assigned to bar back employees, and transferring employee Faith Garcia.

20. The partial settlement approved by me in an earlier order. The settlement is dated March 10, 2008 and provides for the supplying of certain information to the Union, specifically that information referenced at subparagraphs 6(a)(1), 6(a)(2), 6(b) and 6(c) of the Complaint. The partial settlement agreement contains the caveat that RFS and CFS does not admit that the two entities are a single employer and reserves the right to deny Single Employer status in any future proceeding.

21. A memorandum of understanding between the Union and RFS extending the expiration date of the collective bargaining agreement from July 1, 2006 and August 31, 2006.

22. A listing of RFS employees' hours by week for specified weeks.

23. A letter dated June 14, 2007 from the Union to RFS, which reads:

"Please accept this letter in response to yours of June 9. As you know, my dealings have always been with Andy Green. I understand that Philadelphia Park is trying to set up a divide between the so-called 'racetrack side' and the so-called 'casino side," but we know Mr. Green and Mr. Ricci have bargained this agreement in the past. Nonetheless, if the Company is requesting I direct my correspondence to you, I will comply.

Your letter acknowledges that the Company has not answered the Union's bargaining proposals on subcontracting and successorship, which I left with you and your attorney when we met on January 30, 2007. You may recall that your attorney didn't even want to look at the proposals, and only took them after my insistence. We would like to receive the Company's answers on these proposals as soon as practicable.

Regardless of whether the so-called 'casino side' workers are in or out of the Union's bargaining unit, the Company has an obligation to provide information about them because they are so comparable to the so-called 'racetrack side' workers and work side by side with them in the same workplace. The Company has this information, can collect it, and therefore has an obligation to pro-

vide it to us. Accordingly, we ask again that you provide the requested information."

24. A complete compilation of the information supplied by RFS and CFS to the Union pursuant to the partial settlement agreement.

25. This is a stipulation of facts which when taken with the Exhibits discussed above constitute all of the facts in this record. The Stipulation is as follows:[2]

C. Discussion and Conclusions

1. Did Racetrack violate Section 8(a)(5) of the Act by failing to provide the Union with information that it requested on January 17, 2007, including names, addresses and phone numbers of Casino employees, and names titles, dates of employment, and duties of Casino supervisors, managers and company representatives?

An Employer has a duty to furnish to a union, on request, information that is relevant and necessary to perform its role as exclusive bargaining representative of unit employees. *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.,* 385 NLRB 432, 435–436 (1967). Such information may be needed for bargaining, for administering and policing a contract, for communicating with unit employees or for preserving unit work, among other reasons. *H&R Industrial Services, Inc.,* 351 NLRB No. 81 (2007).

The relevance of the information request is evaluated by a liberal, discovery-type standard. *NLRB v. Acme Industrial Co.,* supra. at 437. Information that is potentially relevant and will be of use to the union in fulfilling its duties as bargaining representative must be provided. *Pennsylvania Power & Light Co.,* 301 NLRB 1104, 1104–1105 (1991). The requested information need not be dispositive of the issue for which it is sought, but need only have some bearing on it. Id. at 1105. An employer must furnish information of even probable or potential relevance to the union's duties. *Conrock Co.,* 263 NLRB 1293, 1294 (1982). The employer's obligation extends to information involving labor-management relations during the term of an existing contract and in preparation for negotiations for a future contract. *Southern California Gas. Co.,* 346 NLRB 449, 452 (2006). The employer's obligation also extends to information that would allow the union to decide whether to process a grievance. *NLRB v. Acme Industrial,* 385 U.S. at 436; *Bickerstaff Clay Products*, 266 NLRB 983, 985 (1983). The union is not required to establish in advance exactly how the information sought would be helpful in pursuing the grievance. *Blue Diamond Co.,* 295 NLRB 1007 (1989). In determining whether information relating to a grievance is relevant, the Board does not pass on the merits of the union's claim that the employer has breached the contract. *National Broadcasting Co., Inc.,* 352 NLRB No. 15, slip op. at 8 (2008); *Certco Distribution Centers,* 346 NLRB 1214 (2006).

Information pertaining to bargaining unit employees is presumptively relevant and necessary and must be provided. *Sheraton Hartford Hotel,* 289 NLRB 463 (1988). Where the requested information involves matters outside the bargaining unit, the union has the burden of establishing its relevance and need. *Tri-State Generation,* 332 NLRB 910 (2000). In keeping with the liberal standard of relevance, this burden is not a heavy one and only requires the union to demonstrate more than a mere suspicion of the matter for which the information is sought. *Sheraton Hartford Hotel,* supra at 463–464. When there has been a showing of relevance, the Board has consistently found a duty to provide information such as competitor data, labor costs, production costs, restructuring studies, income statements, and wage rates for non-unit employees. *The Earthgrains Co.,* 349 NLRB 389, 394 (2007).

Where information concerns a purported single-employer relationship between the Respondent and a nominally separate employer, the Union bears the burden of establishing the relevance of the requested information. *National Broadcasting Co., Inc.,* supra, at 8 (employer ordered to provide, inter alia, names and addresses of non-unit employees and names of managers and supervisors for non-unit employees where union had good faith belief that single employer relationship existed). The Board need only decide whether the information has some bearing on these issues, or would be of use to the union. Id.

The union must have a reasonable objective basis for believing that an alter ego or single employer relationship exists. *Shoppers Food Warehouse,* 315 NLRB 258, 259 (1994). The union need not inform the employer of the factual basis for its requests, but need only indicate the reason for its request. *H&R Industrial Services, Inc.,* supra (alter ego relationship claimed); *Corson & Gruman Co.,* 278 NLRB 329, 334 (1986) (single employer or alter ego relationship claimed). However, when the circumstances surrounding the request are reasonably calculated to put the employer on notice of a relevant purpose, which the union has not specifically spelled out, the employer is obligated to divulge the requested information. *Clear Channel Outdoor, Inc.,* 347 NLRB 524 (2006).

A union has satisfied its burden when it demonstrates that it had, at the relevant time, a reasonable belief supported by objective evidence, for requesting the information. *Cannelton industries,* 339 NLRB 996, 997 (2003); *National Broadcasting Co., Inc.,* supra. A union may rely on hearsay or other type of evidence which may not be reliable or accurate to demonstrate that its belief of single employer or alter ego status is reasonable. *National Broadcasting Co.,* supra*; Dodger Theatricals Holdings, Inc.*, 347 NLRB 953 (2008).

To demonstrate the relevance of the information request, the General Counsel must show either (1) that the union demonstrated relevance of the nonunit information or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances. *Disneyland Park,* 350 NLRB No. 88, slip op. at 3 (2007). The burden then shifts to the respondent to establish that the information is not relevant, does not exist, or for some other valid and acceptable reason need not be furnished. *Harmon Auto Glass,* 353 NLRB No. 24, slip op. at 2 (2008).

Based on the Union's direct representations to Racetrack management, the relevance of the non-unit information was

[2] GC Ex. 26 is a copy of the stipulation electronically recorded on a compact disk.

clearly communicated.[3] The Union stated three reasons why it sought the information: (1) to investigate the possible filing of a grievance; (2) to prepare for negotiations for the Racetrack bargaining unit; and (3) to police the contract, as Racetrack and Casino employees were performing comparable work and the Union had concerns that Casino employees were performing or encroaching on work traditionally done by Racetrack employees.

The Union's January 17, 2007 request for bargaining stated the Union's good faith belief that the Casino employees fell within the Racetrack bargaining unit, or constituted an accretion to that unit. Based on this belief, the Union requested information, stating that the information was necessary to determine whether the contract had been violated. The Union indicated its intent to file a grievance if it determined that the contract had been violated with respect to the Casino employees.[4] The Union's February 7 charge and June 7 information request reiterated its claim that Racetrack and Casino employees constituted a single unit.[5]

The Union amended the charge on March 22 to allege that Racetrack and Casino were a single employer. This claim was implicit in the Union's initial request. Certainly, based on Andrew Green's June 28, 2006 email (GC ex. 5), the Union had reason to believe, when it requested bargaining and information, that it would be negotiating with Racetrack concerning Casino food and beverage workers.

Racetrack was aware of the facts underlying the Union's claim that it and Casino were a single employer. Certainly Racetrack was aware that Casino employees were performing food and beverage work similar to that of bargaining unit employees, under similar working conditions, which was the basis for the Union's claim that Racetrack and Casino employees constituted a single unit, employed by a single entity. Racetrack's principals were also aware of the multiple corporate links between Racetrack and Casino in common ownership and management. Moreover, based on Andrew Greene's June 25 email, the Union had, at that time, an objective basis to believe that Racetrack would be negotiating with the Union concerning the newly hired Casino food and beverage workers. Even if the Union did not formally advise Racetrack of its single employer claim until the charge was amended, the circumstances were reasonably calculated to put Racetrack on notice of the relevance of the Union's information request.

As stipulated, the Union sought information in connection with its dispute with Racetrack concerning, and to pursue its investigation into (a) whether a single employer situation existed, (b) whether Racetrack and Casino employees constituted a single unit and (c) whether bargaining unit work was being performed by Casino employees. As stipulated, the Union sought the information in connection with its representational responsibilities to police the contract with Racetrack and preserve bargaining unit work. The Union also had concerns about loss of unit work, including (a) its good faith belief that Casino cooks had been doing Racetrack work in November and December 2006; (b) the elimination on April 18, 2007 of employee shifts on Wednesday and Thursday nights in the Turfside Terrace; and (c) the assignment of food and beverage work to Casino employees in the My Juliette patio area during the summer of 2007. The Union had a reasonable, objective good faith basis for its beliefs. As stipulated, the Union had in is possession, when it made the January 17 information request, information supporting its claims that Racetrack and Casino employees constituted a single bargaining unit and that Racetrack and Casino were a single employer. The Union could reasonably rely on the information in its possession, even if it were hearsay and possibly unreliable and incorrect. *National Broadcasting Co., Inc.,* supra, slip op. at 9; *Dodger Theatricals,* 347 NLRB 953 (2006).

As the Union had a reasonable objective basis for its beliefs, it was entitled to the information requested. In *Mohenis Services, Inc.,* 308 NLRB 326, 328–329 (1992), the Board found that the union had a reasonable basis for believing that two entities were a single employer and that two groups of employees constituted a single appropriate unit. Even where the Union's accretion claim ultimately failed, the information requested (including names and addresses of non-unit employees) was relevant to that claim. When the union made its request, the

[3] In *Disneyland Park,* supra at 3, the Board found no violation where an employer refused to provide information about subcontractors. The union failed to establish the relevance of the information request. The information's relevance was not apparent from surrounding circumstances such that the employer should have been aware of the union's concerns, and it was not shown that the union had a reasonable belief supported by objective evidence that the information sought was relevant. The Board stated that a union must do more than cite contractual provision to show relevance. It must set forth at least some facts to support its claim (although it need not prove breach of contract to acquire information). Here the union stated its reasons why it sought the information. Further, Racetrack was well aware of the Union's concerns, from the outset, that Racetrack and Casino employees were performing the same food and beverage duties, under similar circumstances and in the same locations (such as the fourth floor kitchen). Moreover, the parties have stipulated to the Union's good faith belief that Casino and Racetrack employees formed a single unit.

[4] Although the contract had expired on August 31, 2006, it was certainly possible that, had the Union filed a grievance, Racetrack might have agreed to resolve the Union's claims through the grievance procedure.

[5] This is not a case where information was requested solely to support an unfair labor practice charge. Because the Board's procedures do not include pretrial discovery, the Board has found refusals to furnish information lawful where information requests relate to pending charges. *Saginaw Control & Engineering, Inc.,* 339 NLRB 541, 543-44 (2003)(no violation where union was merely seeking to support ULP charge). If the request's timing and the information's relationship to the charges show that the union sought information in order to bolster its charges, the Board will not find a refusal to provide the information unlawful. *Ralphs Grocery Co.,* 352 NLRB No. 18, slip op. at 7 (2008); *Stephan Co.,* 352 NLRB No. 14, slip op. at 1 fn. 2 (2008). Here, from the outset, the Union requested information about non-unit employees based on its belief that Casino employees fell within the bargaining unit, and its concern that Racetrack and Casino, as a single employer, were not applying the contract to Casino employees. Initially, the Union anticipated filing a grievance. The Union filed a charge only after Jaffe stated on January 30 that he would not provide information about Casino employees. The evidence does not establish that the Union sought information merely to support a charge. The fact that the Union was mistaken in its belief, in January 2007, that Racetrack and Casino employees formed a single unit does not relieve Racetrack of its duty to provide information.

information was relevant to an ongoing dispute between the employer and the union, and accordingly, the union was entitled to receive it. See also *National Broadcasting Co.,* supra*;* and *G.E. Maier Co.,* 349 NLRB 1052 (2007). I find the information request in the instant case to be relevant to (a) investigate whether Casino and Racetrack employees were part of a single unit, in anticipation of filing a grievance; (b) investigate whether Casino and Racetrack were a single employer; (c) investigate information related to negotiations for the Racetrack unit: and (d) investigate the possible loss of unit work to Racetrack employees, as part of the Union's duty to police the contract. Pursuant to this finding, the Respondent has a legal obligation to supply the information requested. *National Broadcasting Co., Inc., supra; NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435 (1967); *Public Service Co. of Colorado,* 301 NLRB 238, 246 (1991); *Certco Distribution Centers,* 346 NLRB 1214–1215 (2006); *Comar, Inc.,* 349 NLRB 342 (2007); *Frito-Lay,* 333 NLRB 1296 (2001); *NLRB v. Rockwell Standard Corp.,* 410 F.2d 953, 957 (6th Cir. 1969); *United Graphics,* 281 NLRB 463 (1986); *Blue Diamond Co.,* 295 NLRB 1007 (1989); *Duquesne Light Co.,* 306 NLRB 1042, 1044 (1992); *Trim Corporation of America,* 349 NLRB 608, 613 (2007).

The Union's claim that Casino employees constituted an accretion to or an expansion of the Racetrack bargaining unit was ultimately rejected by the General Counsel's Division of Advice. However, when the Union made its request for information, it had a good faith belief that there was a single unit of employees. It information request was relevant to that belief and to the possible filing of a grievance claiming potential contract violations. Even if the Union was mistaken in its claims, the information should have been provided, as the Union established the relevance of its request. *Otay River Constructors,* 351 NLRB No. 69 (2007); *Certco Distribution Centers, supra.* Racetrack has not shown that it cannot provide the information requested and based on the proven close relationship of Casino and Racetrack, I will recommend that it be ordered to provide it.

2. Did Racetrack violate the Act by closing the fifth floor dining room and bar on Wednesday and Thursday nights, without providing notice to the Union or an opportunity to bargain over the decision or its effects on the bargaining unit?

An employer violates Section 8(a)(5) of the Act when it makes a material and substantial change in wages, hours, or any other term of employment that is a mandatory subject of bargaining, at a time when employees are represented by a union. *Fresno Bee,* 339 NLRB 1214 (2003); *NLRB v. Katz,* 369 U.S. 736, 743 (1962).

Respondent effectively eliminated two evening shifts at its fifth floor dining room, by shutting down the restaurant and bar on Wednesday and Thursday nights, assigning employees to different shifts and reducing hours for at least one employee. Racetrack's unilateral change affected the entire bargaining unit of employees who were or might have been scheduled to work those nights. It actions affected, at a minimum, five employees in a unit of about 45–50 employees; the bartender, cooks, dishwasher and servers who had been scheduled to work on Wednesday and Thursday nights. One employee lost a shift every other week. Additional employees may have lost hours because of the unilateral change. Employees may have lost income from tips because of the change in schedule and elimination of shifts. The changes, affecting at least 10% of the bargaining unit, were substantial and material. *Blue Circle Cement,* 319 NLRB 954 (1995); *Professional Eye Care,* 289 NLRB 738, 754 (1988).

By eliminating two shifts, the Respondent has not made a basic change in the nature and scope of its food service operation that excuses the bargaining duty. In *Dubuque Packing Co.,* 303 NLRB 386 (1991), the Board put forth a two-part test to determine whether a decision to relocate bargaining unit work is a mandatory subject of bargaining. Initially, General Counsel must show that the decision did not constitute a basic change in the nature of the operation. The employer may rebut to show, inter alia, that labor costs (direct and/or indirect) were not a factor, or if they were a factor, the union could not have offered concessions which could have changed the employer's decision. Even where there is no obligation to bargain over the decision, there remains the duty to bargain over it effects. Such bargaining must occur before the decision is implemented. *Good Samaritan Hospital,* 335 NLRB 901,902 (2001); *Kiro, Inc.,* 317 NLRB 1325, 1327 (1995); *John R. Crowley & Bros.,* 297 NLRB 770 (1990). In the instant case, I find that there was an obligation to bargain over the decision as it was a mandatory subject of bargaining. There was no change to the nature of the operation. The restaurant continues to operate exactly as it always has since it was opened, albeit with a reduced schedule.

Racetrack admitted that labor costs were a factor in its decision. The Board has stated that when labor costs underlie a decision to change terms and conditions of employment, the decision is particularly amenable to bargaining. *Comar, Inc.,* supra0; *Holly Farms Corp.,* 311 NLRB 273, 278 (1993). The Union might have offered concessions or other options to prevent the closure of the restaurant on two nights, for example, reduced or alternate staffing arrangements. *Geiger Ready-Mix Co.,* 315 NLRB 1021, 1024 (1994)("Employer must offer something more than a self-serving assertion that there was nothing the bargaining agent . . . could do to change its mind."); *San Luis Trucking, Inc.,* 352 NLRB No. 34, slip op. at 20–21 (2008)(:[T]he Respondents' bald assertion that bargaining would not have changed their decision is insufficient to establish that their decision to subcontract . . . was not a mandatory subject of bargaining.")

However, as noted above, even if Racetrack were not obligated to bargain over its decision, it is still obligated to bargain over the effects of that decision. *Holly Farms Corp.,* supra. (Decision to integrate divisions involved change in scope and direction of business; bargaining not required because decision did not involve labor costs; however employer was obligated to bargain about effects.) Racetrack would be obligated to bargain over the effects even if the decision itself were not a mandatory subject of bargaining. *First National Maintenance,* 452 U.S. 666, 677 fn. 15 (1981). (Decision to close part of business was not a mandatory subject of bargaining, but employer was under a duty to bargain about the results or effects of decision.)

The extent of effects bargaining will vary depending on circumstances. In *Litton Business Systems,* 286 NLRB 817, 819–

20 (1987), the employer was not obligated to bargain about an economically motivated decision to change its printing processes, but was obligated to explore alternatives to layoff, including retraining, transferring employees, etc., to reduce the scope of the layoffs. In *First National Maintenance,* supra, the employer's termination of a contract with a customer resulted in the elimination of jobs, and thus the only meaningful effect to bargain was severance pay. In *Holmes & Narver,* 309 NLRB 146, 147 (1992), the Board found that the union could potentially offer many alternatives to downsizing, including wage reduction, modified work rules, nonpaid vacations, work reassignments, etc.

Even if Racetrack is only obligated to bargain over the effects of its decision, it is required to provide advance or "preimplementation notice." *Willamette Tug & Barge,* 300 NLRB 282, 282–283 (1990). Racetrack gave no notice to the Union of its decision at any time. Racetrack's reliance on the management rights clause, Article 10 of the expired contract, is unavailing. No contract was in effect when Racetrack implemented these changes. Unlike other terms in a contract, the effect of a management rights clause and any purported waiver of a union's right to bargain in such a clause do not survive expiration of the contract, absent evidence of the parties intentions to the contrary. *The Bohemian Club,* 351 NLRB No. 59, slip op. at 3 (2007); *Long Island Head Start,* 345 NLRB 973 (2005). There is no evidence that the parties intended Article 10 to continue in effect after the contract expired. Any purported waiver expired with the contract. The clause cannot authorize the post-expiration changes at issue here.

A union is not required to request bargaining when a change in employees' terms and conditions of employment is present as a fait accompli, or where it would be futile to do so. *Windstream Corporation,* 352 NLRB No. 9, slip op. at 8(2008). "A union does not waive its right to bargain over unilateral changes by failing to engage in the futile act of trying to turn back the clock and bargain over an action the employer has already taken." *The Bohemian Club,* supra, slip op. at 3. Racetrack never notified the Union about the closure of the restaurant. The Union learned about Racetrack's actions from the unit employees. A request to bargain after the change had already been announced and implemented would have been futile. Accordingly, the Union did not waive its rights herein by failing to request bargaining.

The announcement of the decision to close the restaurant to the shop steward did not constitute notice to the Union. Patricia Cramer, the former steward, was no longer the shop Steward when Jaffe announced to the employees his decision to close the restaurant. Even if she were still serving as steward, the shop steward was not authorized by the Union, or by the contract, to receive notice from Racetrack regarding changes to terms and conditions of employment for the bargaining unit. The notice requirement is not satisfied by an announcement to or discussion with a shop steward or the affected employees. *Remgrit Corp.,* 297 NLRB 803, 809 (1990).

CONCLUSIONS OF LAW

1. Respondents Racetrack Food Services, Inc., and Casino Food Services, Inc., are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, UNITE HERE, Local 274, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Racetrack Food Services, Inc., violated Section 8(a)(1) and (5) of the Act by:

(a) Failing and refusing to supply the Union with information requested by it on January 17, 2007; and

(b) Closing the fifth floor dining room and bar on Wednesday and Thursday nights, without providing notice to the Union and giving the Union an opportunity to bargain over that decision or its effects on the bargaining unit.

4. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent should be ordered to provide the Union with the information it requested on January 17, 2007. It should further be ordered to rescind the unilaterally implemented changes in terms and conditions of employment of bargaining unit employees put into effect on April 18, 2007, by re-opening the Turfside Terrace Restaurant and Bar on Wednesday and Thursday evenings, and make any employees adversely affected by the unlawful act whole for any loss of earnings or other benefits suffered as a result of the unlawful actions taken against them, as prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). Respondent should further be ordered to, on request, bargain with the Union concerning the terms and conditions of employment of the bargaining unit, and if an understanding is reached, embody the understanding in a written agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Racetrack Food Services, Inc., of Bensalem, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with UNITE HERE, Local 274 (the Union) as the exclusive collective bargaining representative of its employees in the following bargaining unit, by failing and refusing to provide relevant information requested by the Union:

> All full-time and regular part-time bartenders, bus persons, cashier-counterpersons, cooks, utility persons, dishwashers, waitstaff and commissary helpers, but excluding hostesses, captains, maitre'd's, supervisory chefs, supervisory employ-

[6] If 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.

ees, managerial or foreman employees, security personnel, watchmen, professional employees, office or secretarial employees, guards and supervisors as defined in the Act, and employees currently represented by other labor organizations.

(b) Refusing to bargain collectively with the Union by unilaterally changing the terms and conditions of employment of the bargaining unit employees.

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

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

(a) Provide the Union with the information it requested on January 17, 2007.

(b) Rescind the unilaterally implemented changes in terms and conditions of employment of bargaining unit employees, which were put into effect on April 18, 2007, by re-opening the Turfside Terrace Restaurant and Bar on Wednesday and Thursday evenings.

(c) On request, bargain with the Union as the exclusive collective-bargaining representative of its employees in the bargaining unit described above concerning the terms and conditions of employment of the bargaining unit and, if an understanding is reached, embody that understanding in a signed agreement.

(d) Make employees whole for any loss of earnings and other benefits suffered as a result of the unlawful actions taken against them, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Bensalem, Pennsylvania, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 4, 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 January, 2007.

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.

Dated, Washington, D.C. July 25, 2008

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with UNITE HERE, Local 274 (the Union) as the exclusive collective bargaining representative of its employees in the following bargaining unit, by failing and refusing to provide relevant information requested by the Union:

All full-time and regular part-time bartenders, bus persons, cashier-counterpersons, cooks, utility persons, dishwashers, waitstaff and commissary helpers, but excluding hostesses, captains, maitre'd's, supervisory chefs, supervisory employees, managerial or foreman employees, security personnel, watchmen, professional employees, office or secretarial employees, guards and supervisors as defined in the Act, and employees currently represented by other labor organizations.

WE WILL NOT refuse to bargain collectively with the Union by unilaterally changing the terms and conditions of employment of the bargaining unit employees.

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

WE WILL provide the Union with the information it requested on January 17, 2007.

WE WILL rescind the unilateral implemented changes in terms and conditions of employment of bargaining unit employees, which were put into effect on April 18, 2007, by re-opening the Turfside Terrace Restaurant and Bar on Wednesday and Thursday evenings.

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

WE WILL make employees whole for any loss of earnings and other benefits suffered as a result of the unlawful actions taken

[7] 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."

against them.

RACETRACK FOOD SERVICES, INC. AND CASINO FOOD SERVICES, INC.