Pick-Mt. Laurel Corporation *and* Local 170, Bartenders, Hotel, Motel & Restaurant Employees Union, AFL–CIO. Case 4–CA–8533

January 12, 1979

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On May 5, 1978, Administrative Law Judge Leonard M. Wagman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, which has been modified in certain respects.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pick-Mt. Laurel Corporation, Mount Laurel, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with Local 170, Bartenders, Hotel, Motel & Restaurant Employees Union, AFL–CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees engaged in housekeeping, laundry, repair and maintenance, restaurant and bar activities, exclusive of front desk, telephone office, security (including guards), supervisory personnel and employees of concessionaires.

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

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

(a) Upon request, recognize and bargain collectively with the above-named Union as the exclusive representative of all employees in the appropriate unit described above with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such an understanding in a signed agreement.

(b) Upon their unconditional applications to return to work, give its striking employees immediate and full reinstatement to their former jobs or, if these jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any replacements, and make them whole for any loss of earnings they may suffer as a result of Respondent's refusal, if any, to reinstate them in a timely fashion, by paying to each of them a sum of money equal to that which each would have earned as wages during the period commencing 5 days after the date on which each unconditionally offers to return to work to the date of Respondent's offer of reinstatement, less any net earnings during such period, with backpay and interest thereon to be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[4]

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[1] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] The Administrative Law Judge found that Respondent could not rely on the Union's solicitation of authorization cards as an objective consideration supporting its belief that the Union had lost its majority status because he found that the solicitation occurred on February 25, 1977, after Respondent's refusal to bargain. The record shows, however, that the Union's card solicitation took place on February 23, 1977, before Respondent's refusal to bargain. Nevertheless, we agree with the Administrative Law Judge's conclusion that Respondent may not rely upon the solicitation because, as the Board has previously held, a union's organizational efforts may not be equated with a lack of majority status as organizational efforts only indicate a union's desire to have more members. (See, e.g., *Tahoe Nugget, Inc. d/b/a Jim Kelley's Tahoe Nugget*, 227 NLRB 357 (1976), enfd. 585 F.2d 293 (9th Cir. 1978).)

The Administrative Law Judge further found that Respondent could not rely upon the circumstances surrounding the execution of the contract outside the 10(b) period to attack the validity of the contract. He did not consider, however, Respondent's further contention that those circumstances should constitute an objective consideration supporting a reasonably based doubt of majority status.

For the reasons noted by the Court of Appeals in *Tahoe Nugget, supra*, we find that Respondent may not rely on the circumstances surrounding the Union's initial recognition by Respondent's predecessor as a basis to support a reasonably based doubt of majority status. And we find that the relationship within the 10(b) period would also not give a basis for doubt of majority status. See *Ivo H. Denham and Geraldine A. Denham, d/b/a The Denham Company*, 187 NLRB 434, 444–445 (1970), enfd. in pertinent part 469 F.2d 239 (9th Cir. 1972).

[3] The Administrative Law Judge found, and we agree, that Respondent's employees engaged in an unfair labor practice strike. He neglected, however, to order that they be offered reinstatement upon their unconditional offer to return to work. Our Order remedies this inadvertent error.

[4] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The Board has found that the 5-day period is a reasonable accommodation between the interests of the employees in returning to work as quickly as possible and the Employer's need to effectuate that return in an orderly manner. See *Drug Package Company, Inc.*, 228 NLRB 108 (1977). Accordingly, if Respondent herein has already rejected, or hereafter rejects, unduly delays, or ignores any unconditional offer to return to work, or attached

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(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Mount Laurel, New Jersey, hotel and restaurant facilities copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

unlawful conditions to its offer of reinstatement, the 5-day period serves no useful purpose and backpay will commence as of the unconditional offer to return to work. *Newport News Shipbuilding & Dry Dock Company*, 236 NLRB 1637 (1978).

[5] In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to recognize and bargain collectively with Local 170, Bartenders, Hotel, Motel & Restaurant Employees Union, AFL–CIO, in the following appropriate unit:

All employees engaged in housekeeping, laundry, repair and maintenance, restaurant and bar activities at the Employer's Mt. Laurel, New Jersey, hotel and restaurant facilities, but excluding front desk, telephone, office, security (including guards), supervisory personnel and employees of concessionaires.

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

WE WILL recognize and, upon request, bargain with the Union as the exclusive representative of our employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL, upon their unconditional offer to return, give the employees who engaged in the strike commencing February 25, 1977, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, dismissing, if necessary, any replacements, and make them whole with interest from 5 days after the date on which each unconditionally offers to return to work to the date of the offer of reinstatement for any loss of pay during the period less net earnings.

PICK-MT. LAUREL CORPORATION

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge: Upon a charge and an amended charge filed by Local 170, Bartenders, Hotel, Motel & Restaurant Employees Union, AFL–CIO (referred to herein as the Union), the Regional Director for Region 4 issued a complaint and notice of hearing on April 22, 1977, against Pick-Mt. Laurel Corporation (referred to herein as Pick). Thereafter, at the hearing held before me on May 31, 1977, the Regional Director amended the complaint. The amended complaint alleged in substance that on and since February 24, 1977, Pick has violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by refusing to bargain with the Union as the exclusive collective-bargaining representative of a unit of Pick's employees at its Mt. Laurel, New Jersey, restaurant and hotel facility. The amended complaint also alleged that on and after February 25, 1977, Pick's Mt. Laurel employees engaged in an unfair labor practice strike. Pick, by its answer, as amended, denied commission of the alleged unfair labor practices.

Upon the entire record, including portions of the transcript and depositions made in an ancillary proceeding entitled *"Peter W. Hirsch, Regional Director of the 4th Region of the National Labor Relations Board, etc.* v. *Pick-Mt. Laurel Corporation,"* Civil Action No. 77–0891 in the United States District Court for the District of New Jersey, which by stipulation were included in the record of the instant case,[1] and my observation of the demeanor of the single

[1] I accept the parties' written stipulation of July 13, 1977, that pp. 6 and 7 of Jt. Exh. III, which are portions of the testimony given in the same ancillary proceeding be added to the record in this proceeding. I also accept the additional stipulations of fact tendered by the parties on the same date.

witness who testified before me, and after due consideration of the briefs filed by the General Counsel and Pick, respectively, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Since February 9, 1977, Pick-Mt. Laurel Corporation, a New Jersey corporation has operated a hotel and restaurant facility at Mt. Laurel, New Jersey, when, as will be found below, it became an employer successor at that facility to MLH Development Company (referred to herein as MLH). Pick admitted that its estimated gross annual revenue from the operation of its Mt. Laurel facility would exceed $500,000. Pick also admitted that its estimated annual purchases of goods originating outside the State of New Jersey would exceed $2,000. Pick admitted, and I find from the foregoing, that Pick is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Pick admits, and I find, that Local 170, Bartenders, Hotel, Motel & Restaurant Employees Union, AFL–CIO, is, and, at all times material herein, has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues Presented*

The questions presented in the instant case are: (1) Whether Pick as the successor employer at its Mt. Laurel Hilton Inn facilities was obligated to recognize and bargain with the Union as the exclusive bargaining representative of a unit of hotel and restaurant employees which at the inception of Pick's successorship were covered by a collective-bargaining agreement between Pick's predecessor and the Union, and: (2) Whether the strike of Pick's Mt. Laurel Hilton Inn employees on February 25, 1977, 1 day after Pick's refusal to recognize and bargain with the Union, was an unfair labor practice strike.

B. *The Facts*

Pick has operated the hotel and restaurant facilities involved in the instant case since February 9, 1977. On that day, P–B Associates, a limited partnership which included Pick as a general partner, acquired those facilities, known as the Mt. Laurel Hilton Inn, from MLH Development Company, a Michigan Corporation and on the same day turned over managerial control of that facility to Pick. As of February 9, 1977, MLH Development Company, doing business as Mt. Laurel Hilton Inn, and the Union were party to a 3-year collective-bargaining agreement, executed on June 1, 1975, and effective from December 5, 1974, until December 4, 1977. Under article I of that agreement, MLH recognized the Union:

> . . . as the sole and exclusive bargaining representative of its employees who are engaged in housekeeping, laundry, repair and maintenance, and restaurant and bar activities, exclusive of front desk, telephone, office, security (including guards), supervisory personnel, and employees of concessionaires, in all matters relating to collective bargaining, such as wages, hours of work, working conditions and adjustment of grievances.

Article II, section 1, of the same agreement contains the following union-security provision:

> It shall be a condition of employment, that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement shall remain members in good standing, and those who are not members on the effective date of this Agreement, shall on or after the ninetieth (90th) day following the effective date of this Agreement become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date shall, on or after the thirtieth (30th) day following the beginning of such employment, become and remain members in good standing in the Union. Any employee who does not maintain his membership in good standing in the Union as aforesaid shall be discharged by the Employer upon notification from the Union.

The Union and MLH reached substantial agreement on the terms of their collective-bargaining agreement by April 22, 1975, 6 to 7 weeks before the Mt. Laurel Hilton Inn began operations and about 2 weeks before MLH had hired any employees at those facilities.[2]

In the course of hiring maids and housemen for the Mt. Laurel Hilton Inn in May 1975, Executive Housekeeper Sandy Arnold, and other supervisors told prospective employees that a condition of employment at the Mt. Laurel Hilton was that they become union members following a 90-day grace period.[3] MLH's assistant food and beverage director, Wayne Gotta, who hired employees for the Mt. Laurel Hilton Inn from May 1975 until February 9, 1977, regularly required new employees at the time of employment, to execute an application for membership in the Union as well as a union dues-checkoff authorization card. Between May 2 and September 1, 1975, MLH told new employees that they were required to become union members within 90 days of their hire, the dues-checkoff authorization and membership application were not activated until the expiration of 30 days from the date of execution.

Prior to February 9, 1977, the Union processed grievances and monitored MLH's performance of contract provisions affecting health and welfare benefits, seniority rights, severence pensions, holiday pay, and other wage

[2] General Counsel's objection to the inclusion of p. 30, ll. 10–20 and 22 of Jt. Exh. 1, concerning the execution date of the agreement is overruled.

[3] General Counsel's objection to employee Shaffer's testimony regarding his acquisition of union membership in 1975 and his inquiry as to how to resign from the Union, at p. 105, ll. 6–18, at p. 107, ll. 14–25, at p. 111, ll. 9–16, and p. 113, ll. 15–25 Jt. Exh. 2, are overruled.

I also overruled General Counsel's objection to the testimony of Sandy Arnold at p. 116, ll. 3–25, and p. 117, ll. 2–19, Jt. Exh. 2, regarding enforcement of the collective-bargaining agreement's union-security provision and employee sentiment toward the Union prior to February 9, 1977.

provisions of the collective-bargaining agreement.[4] Union officers Natale and McBride frequently visited the Mt. Laurel Hilton Inn in connection with the contract.

At the time Pick took control of the Mt. Laurel Hilton Inn, on February 9, and thereafter until at least May 31, 1977, the date of the hearing, the employee complement remained the same as before the change of ownership. The approximately 80 employees in the unit as of February 9 were employed under the same supervisors, including the general manager, Daniel Cummings, and retained the same job classifications as they enjoyed under MLH.[5] By February 24, the unit comprised 103 employees. Pick retained the same furnishings and maintained the physical plant as it had been under MLH. The hotel, restaurant, and bar operations under Pick continued in the same manner as under MLH. Prices remained the same and the name of the facility remained Mt. Laurel Hilton Inn. Business customers continued to use the Inn's meeting facilities as they had under MLH. Finally there was no hiatus in operations of the Mt. Laurel Hilton.

It appears that unit employees expressed some dissatisfaction with the Union in 1976 and early 1977. In October 1976, Cummings heard that several employees, who were then behind in union dues payments had complained when "large chunks of dues" were taken from their wages. General Manager Cummings himself received seven complaints during the period between the summer of 1976 and February 9, 1977. Of the seven complaining employees, one was terminated in 1976, three complained about the Union's performance, and only three expressed a desire to resign from the Union.

In the autumn of 1976, Executive Housekeeper Sandy Arnold, and Food and Beverage Director Wayne M. Gotta told Cummings of employee complaints about having lump sums taken from their paychecks for union dues.

Employee Lorah, a union steward in the housekeeping department testified that in early January 1977, she had five to seven conversations with fellow employees of whom she named four regarding the possibility of replacing the Union as collective-bargaining representative. From these discussions, Lorah concluded that a majority of the participants did not want the Union to represent them for bargaining purposes. Assistant Housekeeper Fallon was present at one or two of these discussions.

From conversations and overheard talk, Assistant Housekeeper Fallon was of the opinion by February 18 that 90 percent of the 24 or 25 employees in her department were "totally against the Union." However, she identified only six housekeeping department employees who expressed such sentiments directly to her. Fallon told Sandy Arnold of these six conversations, but there was no showing of when they occurred or when Arnold learned of them. There was no showing that Fallon conveyed this information to any other member of Pick's management.

In February 1977, Cummings concluded from what he had heard that the Union did not enjoy majority support. During the period from February 9 to February 24, 1977, Cummings reported to Pick's Vice President and Treasurer Ralph Lewy that individual employees had come to him saying that they no longer wished to belong to the Union and that he had received similar reports from his subordinate supervisors. Referring to these facts, Cummings expressed his opinion to Lewy that the Union did not have the support of a majority of the unit employees.

There is no evidence that any unit employee revoked his or her dues-checkoff authorization, resigned from the Union or attempted to file a petition, prior to Pick's refusal on February 24 to bargain with, or recognize the Union as collective-bargaining agent of the Mt. Laurel Hilton Inn employees. On that date, Union Vice President McBride requested payment of funds due under the health and welfare provisions of the collective-bargaining agreement from Pick's General Manager Cummings. Cummings refused to make the payment and advised McBride that Pick had ordered him "not to deal with the Union in any fashion."[6]

On February 25, McBride called a strike after informing the unit employees that Pick would no longer honor the contract or recognize the Union as their bargaining agent. The strike, which began on February 25, 1977, persisted at the time of the proceedings in the United States District Court for the District of New Jersey, in the latter half of May 1977. On that same day, Pick filed a representation petition with the Board's Region 4 in Case 4–RM–926, asserting its refusal to recognize the Union on February 24, 1977. The unit described in the petition corresponded to the unit described in the current collective-bargaining agreement.[7] Pick did not respond to the Union's final demand for recognition made by letter on March 1, 1977.

C. *Analysis and Conclusions*

The General Counsel contends that Pick, as successor to MLH, was obligated to recognize and bargain with the Union for the unit described in the 1975 contract between the Union and MLH, and that by failing to do so Pick violated Section 8(a)(5) and (1) of the Act. Pick defends its refusal to recognize and bargain with the Union on the grounds that as of February 24, 1977, the Union did not enjoy the support of a majority of unit employees and that Pick had a good-faith doubt of the Union's majority status.

[4] Pick's objection to Union Secretary-Treasurer and Business Manager Ralph Natale's testimony regarding the Union's implementation of the 1975 collective-bargaining agreement, at pp. 55–57, Jt. Exh. 1, is overruled.

[5] I have accepted the parties' stipulations that as of the payroll period ending February 4, 1977, the unit comprised 80 employees, and that as of the payroll period ending February 26, 1977, that number increased to 103. These stipulations included only employees who had earnings during the stated payroll periods.

[6] I sustained Pick's objection to a question seeking Union Secretary-Treasurer Natale's testimony regarding statements made by Pick's management to Union Vice President McBride out of Natale's presence, at p. 67, ll. 23–25 and p. 68, ll. 1 and 2, Jt. Exh. 1, on the ground that such question apparently called for hearsay.

[7] At the trial in the United States District Court, Respondent Pick presented evidence showing that the examination of the personnel files of 103 unit employees revealed that only 11 of those employees who were employed by Pick as of February 24, had signed a checkoff authorization card within the 6 months immediately preceding the hearing. However, on cross-examination Pick's witness, Sandy Arnold conceded that the review of Pick's files had occurred 2 or 3 days before the district court proceedings which began on May 18, 1977. Thus, this review of Pick's files played no part in Pick's decision in February to withdraw recognition from the Union and file a representation petition with the Board's Region 4.

For the reasons stated below, I find merit in the General Counsel's contentions.

It is clear from the foregoing facts, and I find, that Pick became a successor employer to MLH on February 9, 1977, when it assumed management control of the Mt. Laurel Hilton Inn. See *Border Steel Rolling Mills, Inc.*, 204 NLRB 814, 815 (1973).

Absent a reasonable good-faith doubt of the incumbent union's majority a successor employer is required to recognize the continuing representative status of the bargaining agent of its predecessor's employees in an appropriate bargaining unit taken over from that predecessor. *N.L.R.B.* v. *Burns International Security Services, Inc.*, 406 U.S. 272, 281 (1972). This doctrine applies not only where the union's representative status was established in a Board election but also where it arose by way of voluntary recognition accorded the union by the predecessor employer. *Eklund's Sweden House Inn, Inc.*, 203 NLRB 413, 416 (1973). The existence of such a contract, lawful on its face, raises the presumptions that the union was majority representative at the time the contract was executed and that its majority status continued at least through the term of the contract. *Barrington Plaza and Tragniew, Inc.*, 185 NLRB 962, 963 (1970). As the Board declared in *Barrington Plaza, supra* at 963:

> Following expiration of the contract, this presumption continues and is not dependent on independent evidence that the bargaining relationship was originally established by a certification or majority card showing. The presumption applies not only to a situation where the employer charged with a refusal to bargain is itself a party to the preexisting contract but also to a successorship situation such as we have here. The burden of rebutting this presumption rests, of course, on the party who would do so. It is true that a labor organization's continuing majority may not be questioned during the term of a contract. On the other hand, upon expiration thereof, the presumption of majority arising from a history of collective bargaining may be overcome by "clear and convincing proof" that the union did not in fact enjoy majority support at the time of the refusal to bargain. At such time, it is also a valid defense for the employer to "demonstrate by objective considerations that it has some reasonable grounds for believing that the union has lost its majority status."

Applying the foregoing doctrine to the instant case, I find that the General Counsel has shown that the Union's majority was based upon the collective-bargaining agreement between the Union and MLH. The contract was valid on its face. The record also shows that the Union actively administered and policed the collective-bargaining agreement up until February 24, 1977.

In reaching my conclusion that the MLH-Union contract established the Union's presumptive majority status, I have rejected Pick's contention that the circumstances surrounding the execution of that contract in 1975 could now be used to attack its validity. For, as the Board declared in *Barrington Plaza*, 185 NLRB at 964: "By virtue of the limitations proviso of Section 10(b) of the Act, the legality of the Union's initial recognition was no longer subject to direct attack under Section 8 of the Act at the time of the Respondent's refusal to bargain."

Nor do the subsequent unlawful acts of MLH in requiring new employees to execute applications for union membership and checkoff authorization cards on the first day of their employment help Pick's defense. For the Board has recognized that "the existence of such [unlawful] practices" do not excuse an employer from honoring an otherwise valid obligation to recognize and bargain with a union. *Ivo H. Denham and Geraldine A. Denham, d/b/a The Denham Company*, 187 NLRB 434, 445 (1970), enfd. in part 469 F.2d 239 (9th Cir. 1972). Moreover, there is no showing that specific incidents of MLH's unlawful practices occurred within the 6-month 10(b) period preceding the filing of the unfair labor practice charge in this case. Executive Housekeeper Arnold testified that as of February 9, 1977, only 30 of MLH's employees had been employed by MLH for 6 months or more. However, the record does not identify which or how many of the remaining 73 unit employees employed on February 24 were hired within the 10(b) period. Thus, Pick has failed to show that the Union's presumed majority as of February 24, 1977, was tainted by MLH's conduct occurring within 6 months of the filing of the unfair labor practice charge herein. I therefore reject Pick's argument that MLH's requirement that new employees execute applications for union membership and dues-checkoff authorizations immediately upon being hired permitted Pick's withdrawal of recognition on February 24, 1977. *N.L.R.B.* v. *Denham, supra*. I find that the 1975 contract between the Union and MLH was a valid collective-bargaining agreement giving rise to a presumption of majority status on February 24, 1977, the date on which Pick refused to recognize the Union.

Pick argues at page 19 of its brief that the Union's claim of majority status was rebutted by "prevalent and pervasive employee dissatisfaction" and the absence of a sufficient number of dues authorization cards to constitute a majority. In addition, Pick urges as further rebuttal evidence, the Union's attempt to solicit authorization cards on "the eve of the threatened strike" and the participation of less than a majority of the unit employees in that strike. However, review of the record and consideration of established Board law reveal that Pick's attack upon the Union's majority status is without merit.

I cannot find the "prevalent and pervasive employee dissatisfaction" claimed by Pick. The record shows 13 identified employees expressed to supervisors their desire to be rid of the Union as their bargaining representative. Fallon's testimony suggests that possibly 16 more employees harbored the same desire. However, these numbers do not add up to a majority as of February 24, 1977, when the unit comprised 103 employees. Nor do Gotta's and Arnold's reports to Cummings provide the requisite numbers to overcome the Union's presumed majority status. Moreover, "[s]uch evidence of employee sentiment is unreliable, since an employee, when engaging in conversation with supervisory personnel regarding his union sentiments, will tend to make statements he believes management would like to hear." *Valley Nitrogen Producers, Inc.*, 207 NLRB 208, 214 (1973). See also *Finally, Inc., d/b/a Palace Club*, 229 NLRB 1128, 1134 (1977).

More important, there is no evidence of any spontaneous employee effort to dislodge the Union. There was no decertification petition filed by the employees with the Board. Nor was there any petition presented to Pick expressing the employees' desire to oust the Union as their bargaining representative. Finally, not one dues-checkoff revocation was presented on behalf of any bargaining unit employee.

That less than a majority of the unit employees may have signed dues-checkoff authorization cards during the life of the contract does not detract from the Union's presumed majority status. For, as the Board pointed out in *Barrington Plaza and Tragniew, Inc.* (185 NLRB at 963):

> In the case of an incumbent union, majority union support is not to be confused with majority union membership. As was recently emphasized by the Fourth Circuit Court of Appeals in *Terrell Machine Co.* v. *N.L.R.B.*:
>
> > A showing that less than a majority of the employees in the bargaining unit were members of the union or paid union dues [is] not the equivalent of showing lack of union support. Manifestly . . . many employees are content neither to join the union nor to give it financial support but to enjoy the benefits of its representation. Nonetheless, the union may enjoy their support, and they may desire continued representation by it."

The remaining two grounds offered for doubting the Union's majority status, i.e., solicitation of checkoff authorization cards on February 25, 1977, and participation in the strike by a minority of the unit employees on and after that date, provide no assistance to Pick's defense. As both incidents occurred after Pick's refusal to recognize and bargain with the Union, neither had a bearing on the Union's majority status as of February 24, 1977, the date under scrutiny.

In sum, Pick has failed to sustain its burden of showing that the Union in fact no longer represented a majority of the employees in the contract unit at the time of Pick's refusal to recognize and bargain with the Union.

I also reject Pick's assertion that its refusal to recognize and bargain with the Union was based upon a reasonably grounded good faith doubt of the Union's continued majority. To succeed in this aspect of its defense, "it was incumbent on [Pick], under the Board's applicable standards, to demonstrate its reliance on objective considerations affording reasonable grounds for a good faith belief that amajority of the unit employees no longer desired representation by the Union." *Virginia Sportswear, Incorporated*, 226 NLRB 1296, 1301 (1976).

Pick based its asserted belief solely upon General Manager Cummings' reports to Pick Vice President Lewy. In the absence of a decertification petition or any other concrete indication that a majority of the unit employees had abandoned the Union, Cummings' reports were inadequate basis for the claimed good faith belief that the Union lacked majority status.

From the foregoing, I find that Pick has failed to establish either that the Union did not in fact enjoy majority support, or that it had reasonable grounds based on objective considerations for believing so at the time of its refusal to bargain with the Union.[8] Accordingly, I find that Pick was not justified in refusing to recognize and bargain with the Union as the majority representative of its employees in appropriate unit on and after February 24, 1977, and that by such conduct Pick violated Section 8(a)(5) and (1) of the Act.

Under settled law, "a strike is an unfair labor practice strike if only one cause, even if not the primary cause, was the employer's unfair labor practice, notwithstanding the presence of economic issues." *National Fresh Fruit & Vegetable Company and Quality Banana Co., Inc.*, 227 NLRB 2014, 2017 (1977). Accordingly, the strike which the Union called on February 25, 1977, at Pick's Mt. Laurel Hilton Inn was an unfair labor practice strike from its inception. For, according to the credited testimony of Union Vice President McBride, Pick's refusal to recognize and bargain with the Union was one of the reasons for the strike. From this circumstance, I find that the employees who participated in the strike which began on February 25, 1977, are entitled to the full reinstatement rights usually accorded unfair labor practices strikers. *National Fresh Fruit & Vegetable Company, supra.*

Conclusions of Law

1. Respondent Pick-Mt. Laurel Corporation is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 170, Bartenders, Hotel, Motel & Restaurant Employees Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All employees engaged in housekeeping, laundry, repair and maintenance, restaurant and bar activities, exclusive of front desk, telephone, office, security (including guards), supervisory personnel and employees of concessionaires, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. The Union at all times material hereto, has been the exclusive bargaining representative of all employees in the aforesaid appropriate bargaining unit within the meaning of Section 9(a) of the Act.
5. Respondent has in violation of Section 8(a)(5) and (1) of the Act refused on and after February 24, 1977, to recognize and bargain with the Union as the exclusive representative of the employees in the appropriate unit.
6. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.
7. The strike commencing on February 25, 1977, at Respondent's Mt. Laurel, New Jersey, facilities was an unfair labor practice strike.

The Remedy

Having found that Respondent has committed certain

[8] *Terrell Machine Company*, 173 NLRB 1480, 1481 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970).

unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom, and from like and related unfair labor practices, and that it take affirmative action provided for in the recommended Order below, which I find necessary to effectuate the policies of the Act.

[Recommend Order omitted from publication.]