Holiday Inns, Inc. d/b/a Holiday Inn on the Bay *and* Hotel Employees and Restaurant Employees Union of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL–CIO. Case 21–CA–29962

May 17, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

On February 15, 1995, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions with a brief in support and the Charging Party filed an answering brief.[1]

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Holiday Inns, Inc. d/b/a Holiday Inn on the Bay, San Diego, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel filed a motion to strike the Respondent's exceptions and brief and the Respondent filed an opposition to the motion. We deny the General Counsel's motion to strike the Respondent's exceptions and brief.

Robert R. Petering, for the General Counsel.
Tara L. Wilcox and *John D. Collins (Sheppard, Mullin, Richter & Hampton)*, of San Diego, California, for the Respondent.
Thomas L. Tosdal (Georgiou, Tosdal, Levine & Smith), of San Diego, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. The charge in Case 21–CA–29962 was filed on March 17, 1994,[1] and an amended charge was filed on April 25. On May 10, the Regional Director for Region 21 of the National Labor Relations Board (the Board), issued a second order consolidating cases, amended consolidated complaint, and notice of hearing, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) on the basis of the amended charge, and consolidating it for hearing and decision with a previously issued order consolidating cases, consolidated complaint, and notice of hearing, issued on the basis of two other unfair labor practice charges, Cases 21–CA–29543 and 21–CA–29658.

The hearing opened on September 20. Evidence was received concerning the allegations arising from the charge in Case 21–CA–29962. The hearing then was postponed to allow for further settlement negotiations concerning the allegations arising from the other two charges. Ultimately settlement was achieved in those cases and, on October 18, I issued an order severing and remanding them to the Regional Director and, moreover, closing the record. In consequence, the lone substantive issue left for resolution, as a result of the charge in Case 21–CA–29962, is whether there was a violation of Section 8(a)(5) and (1) of the Act by a refusal since February 9 to provide allegedly relevant and necessary information to the exclusive representative of employees in an appropriate bargaining unit.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Based on the entire record, on the arguments made by the parties in lieu of posthearing briefs, and on my observation of the demeanor of the single witness who was called to testify, I enter the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Holiday Inns, Inc. d/b/a Holiday Inn on the Bay (Respondent) had operated a hotel at 1355 North Harbor Drive in San Diego, California. In conducting those operations, it annually derives gross revenues in excess of $500,000 and, further, annually purchases goods valued in excess of $5000, which it receives directly from points outside of California. Therefore, I conclude that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all material times, Hotel Employees and Restaurant Employees Union of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL–CIO (the Union), has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The ultimate issue in this case is the producability from personnel files of nonunit employees and supervisors of information allegedly relevant to processing grievances of two unit employees who had been terminated.[2] At all material times since at least 1970, the Union has represented certain employees employed by Respondent. The Union and Respondent have been parties to successive collective-bargaining contracts, the most recent of which is effective from November 1, 1992, to October 31, 1995. That contract provides continued recognition of the Union as the exclusive collective-bargaining representative of employees in a unit, admittedly appropriate under Section 9(b) of the Act, of all em-

[1] Unless stated otherwise, all dates occurred in 1994.

[2] There is no allegation that those terminations had been motivated by considerations unlawful under the Act.

ployees listed on its ''Schedule A,'' excluding all other employees, guards, and supervisors as defined in the Act.

Among employees included in that unit are those classified as guest service representative. They work at the hotel's front desk. Each of them is assigned a separate lockable cashbox in which is kept his/her bank of between $200 and $500. When on duty, it is from that box that a guest service representative draws funds to make change for customers. Into it representatives place case payments received from customers for accommodations.

Banks are also maintained by personnel in the nonunit positions of guest service manager and assistant guest service manager. The amounts in their banks, however, are larger than those in the banks of guest service representatives.

On January 28, guest service representative Juanita Nelson was terminated for a $330 shortage discovered after she had left her cashbox unattended. Similarly, when a shortage of $235 was discovered in the bank of guest service representative Verita Pearson, after she had left her cashbox unattended, she, too, was terminated, on February 8. Grievances were filed on January 31 and on February 14, respectively, concerning both terminations.

In connection with the first of those grievances, by letter dated February 9 the Union requested ''any documentation regarding cash handling from the personnel records of Mindy Sears, Ross Steiber, Raquel Hackley, and Ray Craft.'' Sears and Hackley were guest service representatives who were part of the bargaining unit. Craft also had been a guest service representative at one time, but had been promoted to the position of guest service manager and, accordingly, was not a unit employee at the time of the February 9 request. Steiber was an assistant guest service manager who, at all material times, had not been a bargaining unit employee.

By letter dated February 28, the Union asserted that it was ''entitled to all documents issued to employees regarding similar alleged cash handling failures . . . necessary for [it] to process the Verita Pearson and Juanita Nelson grievance.'' That letter continues by stating that, ''I am requesting all documents issued to front desk personnel Union and nonunion for similar infractions from January 1993 forward.'' Finally, in a letter dated March 3, the Union requested, with reference to its ''request for information regarding the Verita Pearson and Juanita Nelson grievances,'' that Respondent supply ''any documentation issued to Joel Littlegraven, Ross Steiber, and Dwight McCoy regarding cash handling.''

Respondent produced the requested information to the extent that it pertained to employees in the unit represented by the Union. As to information pertaining to nonunit personnel, however, in a letter dated March 18, its director of human resources, Tara Tarries, stated that ''information you have requested will not be provided . . . because these are management employee files and for the following [four] reasons . . . .'' As to those reasons, the letter states that those files ''are protected under California privacy laws,'' are ''confidential and unattainable by [the Union] for any reason'' since those individuals are not employees covered by the collective-bargaining contract, and, under Respondent's confidentiality practice, ''The only employee information ever released to [the Union] has been for Bargaining Unit employees only.'' The final reason stated in the letter is that

> (4) Management employees are subject to Terms and Conditions of Employment with Standard[s] of discipline that are different than any hourly and/or Bargaining Unit employee. Further, they are governed by Holiday Inn Worldwide and Holiday Inn On the Bay policies and procedures and it is up to our Executives and officials to determine in what manner they shall be disciplined and for what reason. Their realm of responsibility is of a much broader scope than that of any bargaining unit employee. While we might choose to make allowances for certain incidents, we equally might choose to allow no room for error in areas for which a bargaining unit employee would never be held accountable. How we discipline and ''do not discipline'' non-bargaining unit employees is the sole choice and right of this employer and company and is not open for discussion with any outside organization or entity.

IV. DISCUSSION

''In general, the Board and the courts have held that information that aids the arbitral process is relevant and should be provided . . . [without regard to] whether the request for information is made at the grievance stage or after the parties have agreed to arbitration.'' (Citations omitted.) *Pennsylvania Power*, 301 NLRB 1104, 1105 (1991). As to the purpose for imposing that obligation, the Board explained in *Columbia University*, 298 NLRB 941 (1990):

> Whether to advance its position in its in-chief and rebuttal cases and in the cross-examination of the Respondent's witnesses at the arbitration hearing, or to assess the prospects for compromise or settlement during or after the hearing, or simply to be better informed generally about the terms and conditions of employment so that it could carry out its statutory duties and responsibilities, the Union was entitled to the information it sought. [Citations omitted.]

More specifically, in the context of the requests made in the instant case ''[a]rbtirators routinely consider employee work records in deciding whether employers have applied their disciplinary rules in a consistent, evenhanded, and nondiscriminatory manner,'' with the result that ''it is necessary to compare the employment history of employees disciplined for the same rule violations.'' *Pfizer, Inc*., 268 NLRB 916, 919 (1984). To be sure, the Union's three letters did not explicitly state that it was seeking ''documentation regarding cash handling,'' and ''documents issued to employees regarding similar alleged cash handling failures,'' for the purpose of ascertaining whether or not Respondent had acted consistently, evenhandedly and nondiscriminatorily in terminating Nelson and Pearson. Still, to persons knowledgeable in labor relations matters, that purpose would be obvious from the nature of the information being requested in the stated context of grievances being processed because of the two terminations.

Indeed, Respondent did not assert, and does not now contend, that it did not understand the purpose for the information requested by the Union. To the contrary, it supplied that information for other bargaining unit employees and, also, for Craft during the period that he had been a guest service representative, before being elevated to the nonunit position

of guest service manager. As to that period and, as well, to periods of employment outside of the bargaining unit by other individuals encompassed by the Union's requests, such as Assistant Guest Service Manager Steiber, Respondent has been unwilling to provide the information requested by the Union. But, a review of the reasons set forth in the March 18 letter, described in section III, supra, discloses that Respondent's unwillingness had not been based, even in part, on any asserted lack of understanding as to the Union's reason for requesting that information.

It is well-settled that with respect to nonunit personnel, a bargaining representative does not enjoy the relevancy presumption that exists concerning information pertaining to unit employees. ''When a union seeks nonunit information, however, the burden is upon the union, and in this case upon the General Counsel, to establish relevance without the benefit of any presumption.'' (Citations omitted.) *E. I. du Pont & Co. v. NLRB*, 744 F.2d 536, 538 (6th Cir. 1984). Nevertheless, ''the range of relevance is not limited by the boundries of the bargaining unit if it is shown that the requested information is relevant to the Union's statutory duty and obligations.'' *Safeway Stores*, 240 NLRB 836, 837–838 (1979). That is, information pertaining to nonunit employees must be produced whenever shown to be ''related to the Union's function as bargaining representative and reasonably necessary to performance of that function.'' *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 68 (3d Cir. 1965).

Consistent with the foregoing explanation pertaining to arbitral consideration of the employment history of other disciplined employees, comparative discipline is one area where information pertaining to nonunit employees, including supervisors, has been held ''related'' and ''necessary to performance of the [bargaining representative's] function.'' For example, in *NLRB v. Postal Service*, 888 F.2d 1568, 1571 (11th Cir. 1989), the court agreed that requested information concerning discipline of statutory supervisors should have been provided to a bargaining representative, because the underlying restriction, for which discipline had been meted out to bargaining unit employees, applied equally to supervisors and to unit employees. In consequence, concluded the court:

> given the nature of the rule involved and its applicability to both groups, the different degrees of responsibility accorded each group does not automatically translate into different standards of discipline in this instance, thereby compelling a finding that the requested information has no bearing on grievances.

In that regard, ''the information sought need not be totally dispositive of a grievance or dispute,'' *Doubarn Sheet Metal, Inc.*, 243 NLRB 821, 823 (1979), so long as it ''has 'some bearing' on whether the unit employees were harshly, unjustly or disparately treated'' Ibid.

Director of Human Resources Tarries testified, consistent with the above-quoted final reason of Respondent's March 18 letter, that Respondent ordinarily applies a progressive discipline procedure to unit employees—verbal warning, written warning, second written warning, final written warning coupled with suspension, and, ultimately, termination—that exists, but is rarely followed, with regard to managers: ''We expect people in management positions to be a lot more responsible . . . whereas hourly employees, we give them a lot more of the benefit of the doubt and take a lot more steps to make sure they understand everything that we expect from them.'' Consequently, were Respondent's discipline records to disclose that there had been guest service managers or assistant guest service managers who had not been terminated for cash shortages, then the Union would have at least a basis for arguing in arbitration that Nelson and Pearson had been afforded a lesser ''benefit of the doubt'' than had been accorded to those supervisors, contrary to Respondent's above-stated policy underlying its discipline procedure.

Such an argument might gain even greater force from the specific application of Respondent's discipline procedure to the offense of cash shortage after leaving a cashbox unattended. For, Tarries testified that whenever money from a bank disappears after being left unattended, the responsible individual—be he/she an employee, a guest service manager or assistant guest service manager—would be subject to immediate termination, without regard to the above-described progressive discipline procedure. So, were the requested records of nonunit employees, particularly managers and assistant managers, to reveal instances of discipline less than termination for the same offense as Nelson and Pearson had been terminated, those records would certainly be relevant to the overall collective-bargaining process. For, they would provide the Union with a basis in arbitration for arguing that those two terminated guest service representatives had been ''harshly, unjustly or disparately treated.'' Id.

Respondent further argues, however, that to make a statutorily valid information request pertaining to nonunit personnel, the bargaining representative must advance a more detailed showing to establish relevancy. That is, argues Respondent, the Union must also show a basis for having believed that the information sought actually existed: ''In our situation, we've heard nothing until just now from the Union that there is any need for this particular information from these two non-unit employees [Steiber and Craft, since the latter's appointment as guest service manager] that it requests information about . . . as to why those two individuals may be believed to have committed similar cash handling violations as was the case with Ms. Pearson and Mrs.Nelson.'' In fact, the record is devoid of specific evidence concerning the Union's basis for having specifically named Steiber and Craft among those for whom information was requested. Yet, in the circumstances, that void does not operate to invalidate the Union's request for information regarding those two individuals.

To be sure, the statutory right to information does not license labor organizations to engage in open-ended and wideranging examinations of personnel files of nonunit employees and supervisors. Still, information requests are evaluated in the context of the situation in which each is made, because the statutory duty to provide information turns upon ''the circumstances of the particular case.'' *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 153 (1956).

The instant case does not present a situation when information is being requested solely to determine whether or not contractual violations have occurred and, concomitantly, to determine whether or not grievances should be filed concerning those contract violations. Rather, this case presents a situation where grievances already have been filed and the bargaining representative is attempting to process them on be-

half of the affected employees. More specifically, the Union was seeking to ascertain whether Respondent's disciplinary response to other cash shortages had been comparable to its terminations of Nelson and Pearson, or whether it had differed. As set forth above, discipline for comparable infractions by others is an avenue along which a bargaining representative necessarily would travel in processing terminated employees' grievances. *NLRB v. Postal Service*, supra. For, that information would have at least ''some bearing'' on its decisions as to which arguments ''to advance . . . at [an] arbitration hearing,'' as well as on ''the prospects for compromise or settlement,'' *Columbia University*, supra, and, perhaps also, on a determination concerning whether or not to even continue processing the grievances.

In view of those considerations, and given the ''discovery-type'' standard applied to information requests under the Act, it was not necessary for the Union to make a further, more detailed, showing of relevance for requesting information concerning discipline of Steiber and Craft, while employed as guest service manager, for cash shortages. If there were no such records, Respondent merely had to say as much. If they did exist, then Respondent is obliged to produce them for evaluation by the Union and, perhaps, for consideration by an arbitrator. *Pfizer, Inc*., supra.

Respondent's more-detailed-showing argument as applied to Steiber and Craft is somewhat puzzling, given the context in which it is now raised. First, at no point in the March 18 letter did Respondent challenge the substantive basis for the Union's requests for information pertaining to those two individuals. That is, at no point in that letter did Respondent question the Union's reason for seeking information concerning Steiber and Craft, after the latter's elevation to manager. Nor did Respondent seek a more detailed explanation for the Union's choice of those two individuals. As a result, its more-detailed-showing contention is raised somewhat belatedly.

Second, as described in section III, supra, the Union's February 28 letter asked for ''all documents issued to front desk personnel Union and non-union for similar infractions.'' Yet, Respondent never contended, and does not now do so, that the Union needed to make a more detailed showing of actual existence of those records before its request could be regarded as a valid one under the Act. Surely, that general request, by implication, would encompass Steiber and Craft. It is somewhat inconsistent to now challenge the basis for the Union's specific requests pertaining to them, but not to similarly challenge the Union's failure to show that it knew of actual discipline records at the time it requested disciplinary records of front desk personnel for cash shortages, which necessarily would include Steiber and Craft. In any event, the evidence is sufficient to support the conclusion that the Union made a proper request for relevant information in context of its desire to process grievances on behalf of Nelson and Pearson.

Ordinarily that penultimate conclusion would suffice for an ultimate conclusion that a respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information such as that requested in the Union's letters of February 9 and 28 and March 3. Respondent, however, advances a two-prong confidentiality defense which, it argues, should serve to preclude any conclusion that its partial refusal violated the Act. As to that latter point, Respondent urges that since the Board must first balance a bargaining representative's need for information against an employer's confidentiality defense(s) for not producing it, there should be no conclusion that an unfair labor practice has been committed until that balance has been struck and, then, the employer persists in refusing to produce the requested information.

In that respect, Respondent seems to be contending that, when confidentiality defenses are raised to requests for information, the Board should follow a procedure similar to that utilized whenever jurisdictional disputes arise under Section 8(b)(4)(D) of the Act: First a determination is made as to which competing group is entitled to perform disputed work and, then, a conclusion that an unfair labor practices has occurred is reached only if a labor organization representing a nonprevailing group persists in proscribed activity. The problem with such an analogy is that the Act provides for that two-step procedure, but it make no similar provision for such a procedure under any other subsections of Section 8(a) and (b). That is, the ordinary procedure is for employers and labor organizations to pursue whatever course they choose. Then, where balancing is necessary to evaluate the lawfulness of those chosen courses, parties must accept the risk of being found to have violated the Act whenever a chosen course ends up on the losing side of whatever balance is ultimately is struck.

Certainly there is some logic to the alternative procedure suggested by Respondent. Yet, it is not one provided by the Act. It has not been mandated by the Board. Nor is it one that has been required by any decision of the Supreme Court or by any opinion of any circuit court of appeals. Consequently, I reject Respondent's argument that it be, in effect, created in the context of this case.

With respect to the first prong of its confidentiality defense, Respondent has presented evidence that disciplinary records are part of files to which access is restricted on the basis of Respondent's own confidentiality policy. That policy, contends Respondent, should outweigh whatever need the Union may have for access to disciplinary records to pursue Nelson's and Pearson's grievances. But to be effective, the statutory policy favoring information disclosure for grievance processing cannot be held hostage to particular individuals employers' determinations of what is and what is not confidential.

Certainly, confidentiality considerations have a place as a defense in the general statutory scheme of information disclosure. *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). Still, it is not an unlimited one. Standing by itself, an employer's desire to shield information from disclosure on the basis of confidentiality cannot suffice to preclude disclosure which promotes statutory policies. See, e.g., *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). As concluded above, the statutory policy of collective bargaining is promoted by disclosure of information concerning discipline imposed for comparable infractions. And there is no recognized established public policy against disclosure of such information. ''The information in question concerns willful activity of a kind that the Respondent has itself made the public basis for discipline and discharges of employees.'' *Postal Service*, 289 NLRB 942, 944 (1988).

Furthermore, in this case, as in that one, there has been no showing that employees or supervisors expect disciplinary

records to remain confidential, nor that Respondent has made a commitment to them to maintain confidentiality of disciplinary records. Indeed, there is not even evidence that any individual, supervisor or nonsupervisor, ever ''made any request to [Respondent] that it refrain from disclosing'' records of his/her discipline. *NLRB v. Illinois-American Water Co*., 933 F.2d 1368, 1378 (7th Cir. 1978). In these circumstances, it cannot be concluded that Respondent's confidentiality policy outweighs its statutory duty to provide the Union with relevant information that is necessary for the latter to effectively process the grievances of Nelson and Pearson.

The second prong to Respondent's confidentiality defense is based squarely on article 1, section 1 of the State of California's constitution:

> All people are by nature free and independent and have inalienable rights. Among them are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and possessing and obtaining safety, happiness, and privacy.

Respondent argues that California courts have interpreted the privacy portion of that provision to prohibit disclosure of personnel files of employees not involved in underlying litigation or in a dispute. Respondent, however, has pointed to no California case prohibiting disclosure of information from personnel files to a bargaining representative pursuant to the mandate of the Act. Nor could a state impose such a prohibition.

''If employee conduct is protected under 7, then state law which interferes with the exercise of these federally protected rights creates an actual conflict and is preempted by direct operation of the Supremacy Clause.'' (Citations omitted.) *Brown v. Hotel & Restaurant Employees & Bartenders*, 468 U.S. 491, 501 (1984). Section 7 of the Act expressly accords employees a right ''to bargain collectively through representatives of their own choosing,'' and one aspect of that general right is the derivative right to have grievances processed properly under a contract negotiated, during collective bargaining, by that representative on behalf of employees whom it represents. A state constitutional provision that precludes some aspect of the exercise of that Section 7 right would necessarily ''interfere with [employee] exercise of these federally protected rights [and] create[] an actual conflict'' with their implementation.

To be sure, the records at issue here are those of nonunit employees and supervisors who did not select the Union as their bargaining representative and who are not represented by it. As concluded above, however, disclosure of disciplinary records for comparable offenses is necessary for the Union to perform its representative function under the Act on behalf of employees whom it does represent. Accordingly, to that extent it is not significant that the records at issue are not those pertaining to employees whom the Union actually represents. Access to them is relevant and is necessary to preserve the economic balance that Congress struck to protect employee rights set forth in Section 7 of the Act. Consequently, article 1, section 1 of California's constitution cannot serve to bar production of all information requested by the Union in its letters of February 9 and 28 and March 3. By failing and refusing to provide all of it, Respondent violated Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

Holiday Inns, Inc. d/b/a Holiday Inn on the Bay has committed unfair labor practices affecting commerce by failing and refusing to produce for Hotel Employees and Restaurant Employees Union of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL–CIO—the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of employees in a bargaining unit, appropriate within the meaning of Section 9(b) of the Act, of: All employees listed on ''Schedule A'' of the 1992–1995 collective-bargaining contract between those parties; excluding all other employees, guards and supervisors as defined in the Act—relevant information needed by that labor organization to bargain effectively on behalf of employees in that bargaining unit.

REMEDY

Having concluded that Holiday Inns, Inc. d/b/a Holiday Inn on the Bay has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to immediately supply Hotel Employees and Restaurant Employees Union of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL–CIO with all information requested in that labor organization's letters of February 9 and 28 and March 3, 1994, which is necessary for that labor organization to perform its responsibilities as bargaining representative for employees in the appropriate bargaining unit of all employees listed on ''Schedule A'' of the parties' 1992–1995 collective-bargaining contract; excluding all other employees, guards, and supervisors as defined in the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Holiday Inns, Inc. d/b/a Holiday Inn on the Bay, San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to promptly furnish relevant information requested by Hotel Employees and Restaurant Employees Union of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL–CIO, necessary for it to perform its responsibilities as the bargaining representative of employees in an appropriate bargaining unit of

> [a]ll employees of Holiday Inns, Inc. d/b/a Holiday Inn On The Bay listed on ''Schedule A'' of the 1992–1995 collective-bargaining contract between the parties; excluding all other employees, guards and supervisors as defined in the Act.

[3] 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.

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

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

(a) Immediately supply the above-named labor organization with all information requested in its letters of February 9 and 28 and March 3, 1994, which is relevant and necessary for it to perform its responsibilities as the bargaining representative of employees in the appropriate bargaining unit described in paragraph 1,a, above.

(b) Post at its San Diego, California hotel copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to promptly furnish relevant information requested by Hotel Employees and Restaurant Employees Union of San Diego, Local 30, Hotel Employees and Restaurant Employees International Union, AFL–CIO, that is necessary for that labor organization to perform its responsibilities as bargaining representative of employees in the appropriate bargaining unit of

> [a]ll employees of Holiday Inns, Inc. d/b/a Holiday Inn On The Bay listed on ''Schedule A'' of the 1992–1995 collective-bargaining contract between it and the above-named labor organization; excluding all other employees, guards and supervisors as defined in the National labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of any of your rights set forth above which are guaranteed by the National Labor Relations Act.

WE WILL immediately supply the above-named labor organization with all information requested in its letters of February 9 and 28 and March 3, 1994, which is relevant and necessary for it to perform its responsibilities as the bargaining representative of employees in the appropriate bargaining unit described above.

HOLIDAY INNS, INC. D/B/A HOLIDAY INN ON THE BAY