Hotel Employees and Restaurant Employees International Union, Local 274, AFL–CIO *and* CHC Hotel & Resorts, Inc. d/b/a Sheraton University City Hotel. Case 4–CE–106

September 21, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On September 17, 1996, Administrative Law Judge James L. Rose issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief. The Employer filed an answering brief that adopted and incorporated the General Counsel's answering brief.

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[1] 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, Hotel Employees and Restaurant Employees International Union Local 274, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

William E. Slack Jr., Esq., for the General Counsel.
Deborah A. Krull, Esq., of Philadelphia, Pennsylvania, for the Respondent.
Robert A. Indeglia Jr., Esq., of Providence, Rhode Island, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES ROSE, Administrative Law Judge. This matter was tried before me at Philadelphia, Pennsylvania, on July 23, 1996, upon the General Counsel's complaint which alleged that the Respondent entered into and maintained an agreement which violated Section 8(e) of the National Labor Relations Act.

The Respondent generally denied that it committed any violations of the Act and affirmatively contends that the contract article in question was a lawful attempt to preserve bargaining unit work.

On the record as a whole, including my observation of the witnesses, briefs and arguments of counsel, I hereby make the following findings of fact, conclusions of law and recommended Order.

I. JURISDICTION

The Charging Party, CHC Hotel & Resorts, Inc., d/b/a Sheraton University City Hotel, (the Hotel) is a Pennsylvania corporation engaged in the operation of a hotel and restaurant in Philadelphia, Pennsylvania. In the conduct of this business, the Hotel annually has gross revenues in excess of $500,000 and annually purchases and receives goods directly from outside the Commonwealth of Pennsylvania valued in excess of $50,000. It is admitted, and I find, that the Hotel is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Hotel Employees and Restaurant Employees International Union, Local 274, AFL–CIO (the Union) is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

For many years the Union has represented a unit of the Hotel's employees and has entered into successive collective-bargaining agreements with the Hotel. The agreement effective from August 1, 1991, to September 30, 1995, contained the following clause:

ARTICLE III. *SUCCESSORS*

> This Agreement's terms and provisions shall be applicable to and binding upon any successor, assignee, lessee or concessionaire of Employer, provided that the sale, transfer or lease of premises is to one who operates the same business as did the Employer and shall include the leasing of part of the presently operating establishment.

During negotiations for the successor agreement, counsel for the Hotel offered the opinion that this clause violates Section 8(e) and should therefore not be included in the new contract. The Union disagreed and ultimately prevailed. The new agreement, effective October 1, 1995, through September 30, 1998, contains article III without change.

B. Analysis and Concluding Findings

Section 8(e) proscribes agreements between employers and unions whereby the employer agrees to cease doing business with any other person. Early on, however, the Supreme Court held that Section 8(e) would not prohibit agreements whose primary objective was the preservation of bargaining unit work, as distinct from a secondary objective of advancing the union's interests elsewhere. *National Woodwork Mfrs. Assn. v. NLRB,* 386 U.S. 612 (1967). Further, "doing business" within the meaning of Section 8(e) does not include the sale or transfer of an entire business. *E.g., Mine Workers of America (Lone Star Steel Co.),* 231 NLRB 573 (1977).

The General Counsel argues that article III requires any lessee or concessionaire of the Hotel to be bound by the terms of the agreement. Such therefore amounts to a union-signatory clause and is unlawful, citing *inter alia, Chicago Dining Room Employees Local 42,* 248 NLRB 604 (1980) and *Hotel & Restaurant Employees Local 531 (Verdugo Hills Bowl),* 237 NLRB 1204 (1978), enfd. 623 F.2d 61 (9th Cir. 1980).

The Respondent maintains that the clause does not require a lessee or concessionaire to become a party to the contract, that nothing in the clause would permit the Union to force the Hotel to put pressure on a lessee or concessionaire, and finally, representatives of the Union testified that they did not intend to en-

[1] In adopting the judge's finding of a violation, Member Hurtgen notes that the issue of whether the sale or transfer of a business constitutes "doing business" within the meaning of Sec. 8(e) is not presented in this case.

force the clause unlawfully. I disagree and conclude that article III is unlawful on its face as to lessees and concessionaires.

In these types of cases, the Board has distinguished between the sale or transfer of an enterprise, which is generally considered not an 8(e) business transaction, *e.g. Machinists District 71 (Harris Truck & Trailer),* 224 NLRB 100 (1976), and a lease, which is a form of "doing business" within the meaning of Section 8(e), *e.g., Vedurgo Hills Bowl,* supra.

Since the terms of the agreement would be binding on any lessee or concessionaire, in effect the Hotel would be prohibited from doing business with such potential lessee or concessionaire who refused to be bound by that agreement. Therefore, as the Board found, in considering a similar clause in *Chicago Dinning Room Employees,* supra*.,* such was a typical "union signatory clause," not limited in its effect simply to preserving bargaining unit jobs.

Counsel for the Respondent agrees that a clause requiring a future lessee to sign a contract is violative of Section 8(e), but argues that here article III merely requires a future lessee or concessionaire comply with its terms. I reject the argument that such a distinction makes a substantive difference. I simarily reject the argument that counsel for the Respondent stated in negotiations that they would not attempt to enforce the clause to achieve an unlawful result. Since I find article III unambiguous, such evidence of intent is not controlling. I conclude that on its face article III is violative of Section 8(e) as to lessees and concessionaires, notwithstanding that in part it tends to protect bargaining unit work.

IV. REMEDY

The General Counsel argues that the appropriate remedy here should not require voiding of article III in its entirety, but rather that the Union should be ordered to cease from entering into or enforcing only those portions of article III which require a lessee or concessionaire to be bound by the agreement. I conclude that such would be the appropriate remedy here. *Teamsters Local 291 (Lone Star Industries),* 291 NLRB 581 (1988).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Hotel Employees and Restaurant Employees International Union Local 274, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Entering into, maintaining, enforcing, or giving effect to those portions of article III of its collective-bargaining agreement with CHC Hotel and Resorts, Inc., d/b/a Sheraton University City Hotel which provide that the agreement shall be applicable to and binding on any lessee or concessionaire.

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

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

(a) Within 14 days after service by the Region, post at its union office copies of the attached notice marked "Appendix."[3] 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 members, 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.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by CHC Hotel and Resorts, Inc. d/b/a Sheraton University City Hotel, if willing, at all places where notices to employees are customarily posted.

(c) 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.

APPENDIX

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

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

WE WILL NOT enter into, maintain, enforce, or give effect to those portions of article III of our collective-bargaining agreement with CHC Hotel and Resorts, Inc., d/b/a Sheraton University City Hotel, which require any lessee or concessionaire to be bound by that agreement.

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

HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES
INTERNATIONAL UNION, LOCAL 274, AFL–CIO

[2] 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.

[3] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Pursuant To A Judgment Of The United States Court Of Appeals Enforcing An Order Of The National Labor Relations Board."