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Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and Local Joint Executive Board of Las Vegas a/w UNITE HERE International Union. Case 28–CA–224209

November 26, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on July 23, 2018,¹ by Local Joint Executive Board of Las Vegas a/w UNITE HERE International Union (the Union), the General Counsel issued the complaint on August 6, alleging that Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain following the Union’s certification in Case 28–RC–208266. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On August 21, the General Counsel filed a Motion for Summary Judgment. On August 24, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the Union filed a reply to the response.

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

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but contests the validity of the certification on the basis of its objections to the election in the representation proceeding, which alleged that the Union and its agents or representatives engaged in objectionable conduct.²

¹ All dates hereinafter are in 2018 unless otherwise noted.

² In addition to denying that the Union’s certification was proper, the Respondent’s answer also asserts as an affirmative defense that the complaint fails to state a claim on which relief can be granted. The Respondent has not offered any explanation or evidence to support this bare assertion. Thus, we find that this affirmative defense is insufficient to warrant denial of the General Counsel’s Motion for Summary

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

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Henderson, Nevada (the facility), and has been engaged in operating a hotel and casino.

During the 12-month period ending July 23, the Respondent, in conducting its operations described above, purchased and received at its Henderson, Nevada facility goods valued in excess of \$50,000 directly from points outside the State of Nevada and derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on November 8 and 9, 2017, the Union was certified on March 23³ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

INCLUDED: All regular full-time and regular part-time and regular on-call Banquet Bartenders, Banquet Porters, Banquet Servers, Bar/Beverage Porters, Bartenders, Bell Captains, Bell Persons, Beverage Servers, Bus Persons, Concession Workers, Catering Beverage Porters, Cooks, Cook’s Helpers, Counter Attendants, Food Servers, Gourmet Hosts/Cashiers, Host/Cashiers, IM Porters, Kitchen Runners, Kitchen Workers, Lead Banquet Porters, Lead Counter Attendants, Lucky VIP

Judgment in this proceeding. See *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995).

³ By unpublished order dated July 18, the Board denied the Respondent’s request for review of the Regional Director’s Decision and Certification of Representative.

Attendants, Lucky VIP Bartenders, Pantry Workers, Pantry Workers 11, Resort Guest Room Attendants, Resort Housepersons, Resort Steakhouse Cooks, Resort Suite Guest Room Attendants, Room Runners, Service Bartenders, Sprinters, Status Board Operators, Steakhouse Captains, Stove Persons, Sushi Cooks, Team Member Dining Room Attendants, Turndown Guest Room Attendants, Utility Porters, VIP Attendants, VIP Bartenders, VIP Lounge Bartenders, VIP Servers employed by the [Respondent] at Green Valley Ranch Resort Spa Casino.

EXCLUDED: All other employees, including all front-desk employees, valet parkers, gaming employees (dealers, slot attendants, cage cashiers), inspectresses, engineering and maintenance employees, office clerical employees, confidential employees, and all guards, managers and supervisors as defined by the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

Following its certification, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the employees in the bargaining unit set forth above, and since about July 23, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the bargaining-unit employees.⁴ We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since July 23 to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices

affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

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

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino, Henderson, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local Joint Executive Board of Las Vegas a/w UNITE HERE International Union (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

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

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

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All regular full-time and regular part-time and regular on-call Banquet Bartenders, Banquet Porters, Banquet Servers, Bar/Beverage Porters, Bartenders, Bell Captains, Bell Persons, Beverage Servers, Bus Persons, Concession Workers, Catering Beverage Porters, Cooks, Cook's Helpers, Counter Attendants, Food Servers, Gourmet Hosts/Cashiers, Host/Cashiers, IM Porters, Kitchen Runners, Kitchen Workers, Lead Banquet Porters, Lead Counter Attendants, Lucky VIP Attendants, Lucky VIP Bartenders, Pantry Workers, Pantry Workers 11, Resort Guest Room Attendants,

⁴ The Respondent denies the complaint allegation that since about April 3, the Union has requested that the Respondent recognize it and bargain with it as the exclusive collective-bargaining representative of the employees in the bargaining unit set forth above. However, the Respondent does not assert that the Union did not request to bargain. In fact, it admits that since about July 23, it has failed and refused to recognize and bargain with the Union, thereby implicitly admitting that the Union requested to bargain. Further, in its response to the Notice to Show Cause, the Respondent states that it is admitting its refusal to bargain because it disagrees with the Board's resolution of the underlying representation proceeding. Accordingly, as a determination regarding the specific date on which the Respondent received the Union's request to bargain does not affect the remedy, the Respondent's denial regarding the Union's April 3 request to bargain does not raise an issue of fact warranting a hearing.

Resort Housepersons, Resort Steakhouse Cooks, Resort Suite Guest Room Attendants, Room Runners, Service Bartenders, Sprinters, Status Board Operators, Steakhouse Captains, Stove Persons, Sushi Cooks, Team Member Dining Room Attendants, Turndown Guest Room Attendants, Utility Porters, VIP Attendants, VIP Bartenders, VIP Lounge Bartenders, VIP Servers employed by the [Respondent] at Green Valley Ranch Resort Spa Casino.

EXCLUDED: All other employees, including all front-desk employees, valet parkers, gaming employees (dealers, slot attendants, cage cashiers), inspectresses, engineering and maintenance employees, office clerical employees, confidential employees, and all guards, managers and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its Henderson, Nevada facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by Region 28, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 the closed facility at any time since July 23, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 28 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. November 26, 2018

John F. Ring,

Chairman

⁵ 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."

Lauren McFerran, Member

William J. Emanuel Member

(SEAL) 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 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 fail and refuse to recognize and bargain with the Local Joint Executive Board of Las Vegas a/w UNITE HERE International Union (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All regular full-time and regular part-time and regular on-call Banquet Bartenders, Banquet Porters, Banquet Servers, Bar/Beverage Porters, Bartenders, Bell Captains, Bell Persons, Beverage Servers, Bus Persons, Concession Workers, Catering Beverage Porters, Cooks, Cook's Helpers, Counter Attendants, Food Servers, Gourmet Hosts/Cashiers, Host/Cashiers, IM Porters, Kitchen Runners, Kitchen Workers, Lead

Banquet Porters, Lead Counter Attendants, Lucky VIP Attendants, Lucky VIP Bartenders, Pantry Workers, Pantry Workers 11, Resort Guest Room Attendants, Resort Housepersons, Resort Steakhouse Cooks, Resort Suite Guest Room Attendants, Room Runners, Service Bartenders, Sprinters, Status Board Operators, Steakhouse Captains, Stove Persons, Sushi Cooks, Team Member Dining Room Attendants, Turndown Guest Room Attendants, Utility Porters, VIP Attendants, VIP Bartenders, VIP Lounge Bartenders, VIP Servers employed by us at our Green Valley Ranch Resort Spa Casino.

EXCLUDED: All other employees, including all front-desk employees, valet parkers, gaming employees (dealers, slot attendants, cage cashiers), inspectresses, engineering and maintenance employees, office clerical employees, confidential employees, and all guards, managers and supervisors as defined by the Act.

STATION GVR ACQUISITION, LLC D/B/A GREEN VALLEY RANCH RESORT SPA CASINO

The Board's decision can be found at www.nlr.gov/case/28-CA-224209 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

