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FP Holdings, L.P. d/b/a Palms Casino Resort and Local Joint Executive Board of Las Vegas a/w Unite Here International Union. Case 28–CA–224729

May 13, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, 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 August 1, 2018,¹ by Joint Executive Board of Las Vegas a/w UNITE HERE International Union (the Union), the General Counsel issued the complaint on August 15, alleging that FP Holdings, L.P. d/b/a Palms Casino Resort (the Respondent) has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 28–RC–217964. (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 31, the General Counsel filed a Motion to Transfer and Continue Matter Before the Board and for Summary Judgment. The Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted on September 5. The Respondent filed a response, and the Charging Party filed a reply to the Respondent's response.²

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 Union's certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Union prematurely filed a representation petition that

did not include a substantial and representative complement of employees.³

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 has it shown 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 Motion for Summary Judgment.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, with an office and place of business located in Las Vegas, Nevada, has been engaged in operating a hotel casino.

During the 12-month period ending on August 1, 2018, the Respondent purchased and received 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 April 27 and 28, the Union was certified on May 9⁵ as the exclu-

³ The Respondent continues to posit that the Regional Director should have dismissed the Union's petition because it did not account for the potential increase in the Respondent's work force resulting from renovations. Additionally, the Respondent's answer 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 Judgment in this proceeding. See *Station GVR Acquisition, LLC*, 367 NLRB No. 38, slip op. at 1 fn. 2 (2018), citing *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995).

⁴ Member Emanuel did not participate in the underlying representation proceeding. He expresses no opinion on the merits of the Board's decision in that proceeding. Nonetheless, he agrees with his colleagues that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

¹ All dates hereinafter are 2018 unless otherwise noted.

² On January 23, 2019, we granted the General Counsel's Unopposed Motion to Sever and Remand Refusal to Provide Information Allegations. Accordingly, those allegations were remanded to the Regional Director for Region 28 for further appropriate action.

sive collective-bargaining representative of the employees in the following appropriate unit (unit):

All full-time and regular part-time Banquet Servers, Bakers, Bar/Beverage Porters, Bartenders, Banquet Bartenders, Banquet Porters, Beverage Servers, Bus Persons, Cooks, Cooks Helpers, Food Servers, Assistant Food Servers, Guest Room Attendants, Host/Cashiers, House Persons, Kitchen Workers, Lead Porters, Lead Banquet Porters, Mini Bar Attendants, Porters, Room Runners, Service Bartenders, Sprinters, Status Board, Specialty Cooks, Stover Persons, Team Member Dining Room Attendants, Uniform Room Attendants, Utility Porters, VIP Bartenders, and VIP Bar Hosts employed by [Respondent] at its facility in Las Vegas, Nevada, excluding all other employees employed by [Respondent], including Bell Persons, Butlers, Valet Parkers, Housekeeping Supervisors, Gaming Employees (including, but not limited to Dealers, Slot Attendants, Cage, and Cashiers), Drivers, Front Desk Employees, Engineering and Maintenance Employees, Lifeguards, Spa & Salon workers, Office Clerical Employees, Confidential Employees and all Guards, Managers, and Supervisors as defined by the [National Labor Relations Act (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

On May 16, the Union requested that the Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. Since May 17, the Respondent has failed and refused to recognize and bargain with the Union.

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 May 17 to recognize and bargain with the Union as the exclusive collective-bargaining representative of the 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.

⁵ By unpublished Order dated August 16, the Board denied the Respondent's request for review of the Regional Director's Decision and Certification of Representative.

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 on 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. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, FP Holdings, L.P. d/b/a Palms Casino Resort, Las Vegas, 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 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 on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Banquet Servers, Bakers, Bar/Beverage Porters, Bartenders, Banquet Bartenders, Banquet Porters, Beverage Servers, Bus Persons, Cooks, Cooks Helpers, Food Servers, Assistant Food Servers, Guest Room Attendants, Host/Cashiers, House Persons, Kitchen Workers, Lead Porters, Lead Banquet Porters, Mini Bar Attendants, Porters, Room Runners, Service Bartenders, Sprinters, Status Board, Specialty Cooks, Stover Persons, Team Member Dining Room Attendants, Uniform Room Attendants, Utility Porters, VIP Bartenders, and VIP Bar Hosts employed by [Respondent] at its facility in Las Vegas, Nevada, excluding all other employees employed by [Respondent], including Bell Persons, But-

lers, Valet Parkers, Housekeeping Supervisors, Gaming Employees (including, but not limited to Dealers, Slot Attendants, Cage, and Cashiers), Drivers, Front Desk Employees, Engineering and Maintenance Employees, Lifeguards, Spa & Salon workers, Office Clerical Employees, Confidential Employees and all Guards, Managers, and Supervisors as defined by the [National Labor Relations Act (the Act)].

(b) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for 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 any time since May 17, 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. May 13, 2019

Lauren McFerran, Member

Marvin E. Kaplan Member

William J. Emanuel Member

⁶ 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."

(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 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time Banquet Servers, Bakers, Bar/Beverage Porters, Bartenders, Banquet Bartenders, Banquet Porters, Beverage Servers, Bus Persons, Cooks, Cooks Helpers, Food Servers, Assistant Food Servers, Guest Room Attendants, Host/Cashiers, House Persons, Kitchen Workers, Lead Porters, Lead Banquet Porters, Mini Bar Attendants, Porters, Room Runners, Service Bartenders, Sprinters, Status Board, Specialty Cooks, Stover Persons, Team Member Dining Room Attendants, Uniform Room Attendants, Utility Porters, VIP Bartenders, and VIP Bar Hosts employed by us at our facility in Las Vegas, Nevada, excluding all other employees employed by us, including Bell Persons, Butlers, Valet Parkers, Housekeeping Supervisors, Gaming Employees (including, but not limited to Dealers, Slot Attendants, Cage, and Cashiers), Drivers, Front Desk Employees, Engineering and Maintenance Employees, Lifeguards, Spa & Salon workers, Office Clerical Employees, Confidential Em-

ployees and all Guards, Managers, and Supervisors as defined by the [National Labor Relations Act (the Act)].

FP HOLDINGS, L.P. D/B/A PALMS CASINO
RESORT

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-224729> 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.

