

1948

Hotel Utah Company v. R. H. Ralrymple, Daniel
Edwards and H. Fred Egan, and Hotel and
Restaurant Employees Alliance, Local No. 815. :
Brief of Defendants

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Grover A. Giles; Attorney General; Herbert F. Smart; Assistant Attorney General; J. Arthur Bailey;

Recommended Citation

Brief of Respondent, *Hotel Utah Co. v. Ralrymple*, No. 7212 (Utah Supreme Court, 1948).
https://digitalcommons.law.byu.edu/uofu_sc1/940

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

In the Supreme Court of the State of Utah

HOTEL UTAH COMPANY,
a corporation,

Petitioner,

vs.

R. H. DALRYMPLE, DANIEL ED-
WARDS and H. FRED EGAN, consti-
tuting the Utah Labor Relations Board,
and HOTEL AND RESTAURANT EM-
PLOYEES ALLIANCE, LOCAL NO.
815,

Defendants.

Case No.
7212

BRIEF OF DEFENDANTS

GROVER A. GILES
Attorney General

HERBERT F. SMART
Assistant Attorney General
Attorneys for the Utah Labor
Relations Board

and

J. ARTHUR BAILEY
Attorney for Hotel and Restaurant
Employees Alliance, Local No. 815

FILED
JAN 13 1948
U. SUPREME CO

CONTENT

Findings No. 1:	
Labor Relations Board did make a Finding of Fact as provided for in Title 49-1-18, Sub-section (c), Utah Code Annotated, 1943	1
Findings No. 2:	
The Board made sufficient findings of the appropriate bargaining unit	3
Findings No. 3:	
The Board made findings with respect to whether the Appellant was engaged in intrastate commerce .	6

INDEX

	Page
CASES CITED:	
Building Service Employees L. No. 59 vs. Newhouse Realty Co., 95 P. 2d 507, 97 U. 562.....	8
Marshall Field and Co., vs. N.L.R.L., 135 F. (2) 391....	6
State vs. Pierce, 27 P. 2d 1083, 175 Wash. 461.....	2
Teamsters Local Union vs. Strevell-Paterson Hardware Co., 174 P. 2d 164, — Utah —.....	3
STATUTES:	
49-1-10, Utah Code Annotated, 1943.....	7
49-1-17 (b), Utah Code Annotated, 1943.....	3
TEXT:	
Words and Phrases, Perm. Ed. Vol. 8, P. 374.....	2

In the Supreme Court of the State of Utah

HOTEL UTAH COMPANY,
a corporation,

Petitioner,

vs.

R. H. DALRYMPLE, DANIEL ED-
WARDS and H. FRED EGAN, consti-
tuting the Utah Labor Relations Board,
and HOTEL AND RESTAURANT EM-
PLOYEES ALLIANCE, LOCAL NO.
815,

Defendants.

Case No.
7212

BRIEF OF DEFENDANTS

We agree with the Statement of Facts as made by the Appellant. The Assignment of Error of the Appellant will be discussed seriatim.

UTAH LABOR RELATIONS BOARD DID MAKE A FINDING OF FACT AS PROVIDED FOR IN TITLE 49-1-18 SUBSECTION (C), UTAH CODE ANNOTATED, 1943.

The record discloses that the Order of the Board, page 175 of the Record, is as follows :

“The Utah Labor Relations Board, after consideration of a statement of Objections to Inter-

mediate Report of Trial Examiner, Findings of Fact and Recommended Order filed by the Respondent, concurs with the Trial Examiner's Report issued July 12, 1948 and hereby orders:
* * *."

An examination of the Trial Examiners Report, page 157 to 159 of the Record reveals that the Trial Examiner set out ten specific findings of fact. The objection filed by the Respondent (Appellant herein) page 173 and 174 of the Record, in the second paragraph thereof, is an objection to the Findings of Fact of the Trial Examiner:

"This respondent objects to the findings of fact and each of them on the grounds and for the reasons that the same and each of them are not supported by evidence in this cause."

And again in the fifth paragraph of said objections:

"That said findings of fact and each of them are indefinite, ambiguous and uncertain, and constitute mere conclusions of the trial examiner and not based upon facts submitted in this cause."

Thus, the Trial Examiner made specific findings of fact which were treated as such and to which objections were taken by Appellant. The Board in its Order, specifically concurs with the Trial Examiner's Report.

Concur means to agree with, to coincide, to unite and combine (see Funk and Wagnall's Standard Dictionary).

Concur means "to act together, to agree, to assent to." State vs. Pierce, 27 P. 2d 1083, 175 Wash. 461. Words and Phrases, Perm. Ed. Vol. 8, P. 374.

In *Teamsters Local Union vs. Strevell-Paterson Hardware Co.*, 174 P. 2d 164,—Utah—, the Utah L.R.B., adopted the findings of the Trial Examiner, and did not make separate findings. The Court upheld those findings as were supported by the evidence.

It is the position of the Appellees herein that the concurrence of the Board in the Trial Examiner's Report was an adoption of the Trial Examiner's Findings of Fact and statement that the Appellant herein took specific objections to such findings and could not have been prejudiced in any manner since such matters were specifically drawn to the attention of the Board before its Order was released.

THE BOARD MADE SUFFICIENT FINDINGS OF THE APPROPRIATE BARGAINING UNIT

Section 49-1-17 (b), Utah Code Annotated, 1943 provides:

“The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.”

The Record reveals that the Board held a hearing in which both the union and the employer were represented and that subsequent to said hearing, the Board issued its Election Order, page 3 of the Record, as follows:

“Pursuant to the facts and evidence presented at the hearing held on March 4, 1948 at 10 a.m.

in Room 422, State Capitol, at which Respondent was represented by Louis H. Callister, Attorney, and Petitioner was represented by Fullmer H. Latter, President, Utah State Federation of Labor, an election is hereby ordered to be conducted by the Board during the week March 10, 1948 to March 17, 1948 between the hours of 7 a.m. and 7 p.m. among employees of Respondent in the following described unit:

All employees within the following classification: Bellboys, porters, elevator operators, baggage check-room attendants, doormen, page boys and valets, excluding front office employees, clerks, housekeeping department employees, culinary and banquet department employees, garage employees and all supervisory employees with authority to hire and fire such as superintendent of service, head porter, etc.

It is further ordered that the payroll period beginning February 16, 1948 to February 29, 1948 inclusive, shall be used for the purpose of determining eligibility to vote."

As the Court will observe, the Order of the Board sets out the unit in which the employees therein are entitled to vote. This Order is, of itself, a finding of an appropriate unit.

Likewise, the Notice of Election, page 8 of the Record, also sets out the described unit found by the Board as the appropriate unit for collective bargaining purposes. Subsequently the Appellant herein filed its Motion for Clarification, page 62 of the Record, basing it on the grounds that the word "etc." was ambiguous, un-

certain and indefinite and could not be understood. In response thereto, the Board issued its classifications of certificates, page 66 and 67 of the Record, in which it stated:

“It is the intent of the Board that ‘etc.’ means any other supervisory employees with related authority as is designated to the superintendent of service and the head porter by the above named Respondent.”

We do not agree with the Appellant that their needs to be a formal finding of fact of the appropriate unit by the Board. It is our position that the purpose of determining the appropriate unit is; first, to determine what employees in given services have such related work and interest as to constitute them an appropriate unit for collective bargaining purposes; and secondly, to inform the employees within the unit of the election in which they will determine whether or not they desire a collective bargaining representative.

Each of these requirements was fulfilled by the Notice of Election and the Election Notice.

Furthermore, the Election Order itself constitutes a finding of the appropriate unit and while it is not labeled as a finding of the Board, it in substance and fact constitutes such a finding.

We feel that Appellants argument herein is unduly technical. If the mere labeling on the Election Order had been that the Board has found this as the appropriate unit and then named the unit as appears on the Election Order it would have, according to Appell-

ant's argument, removed their objection. The only thing missing is the mere statement that this is a finding of fact. The Court will look beyond the form to the substance.

The Appellant argues that the evidence would not support such a finding. We call the Court's attention to the testimony of the witness, Green, page 3 to 5 inclusive of the Transcript, page 82 to 84 of the Record, in which the witness sets out the applicable unit in the hotel business. Such evidence is sufficient for the Board to enter a finding thereon. It is interesting to observe that the Appellant was represented at the hearing by counsel and M. J. Frampton, who was the Executive Assistant Manager of the hotel, but who did not testify to any unit which would be appropriate or which would be more appropriate than that requested by the union. Furthermore, the findings of the Board with respect to the appropriate unit will be upheld by the Court unless it is established that the action of the Board was arbitrary and capricious. (Marshall Field and Co. vs. N. L. R. L., 135 F. (2) 391.)

THE BOARD MADE FINDINGS WITH RESPECT TO WHETHER THE APPELLANT WAS ENGAGED IN INTRASTATE COMMERCE.

As we have heretofore stated in argument No. 1, it is the position of the Appellees that the findings of fact of the Trial Examiner are the findings of the Board by incorporation.

With respect to the question of whether there is suf-

ficient finding that the Appellant is engaged in intrastate commerce, the Court is directed to Finding of Fact No. 3, page 157 of the Record:

“That Respondent is engaged in the hotel and restaurant business in Salt Lake City, Utah, and that such hotel and restaurant business constitutes ‘commerce’ within the meaning of Title 49-1-10, Sub-section 6.”

The Court’s attention is further called to paragraph 1 of the Appellant’s answer to the Complaint, which is as follows:

“1. Admits the allegations contained in paragraph 1 and 2.”

Paragraphs 1 and 2 of the Record are as follows:

“1. That Hotel Utah, hereinafter referred to as Respondent, is a corporation organized under the laws of the State of Utah and as such is doing business in Salt Lake City, Utah.

“2. That Respondent is an employer within the meaning of Title 49-1-10, Sub-section (2).”

The admission in the Answer of the Appellant admits that the Appellant is engaged in business within the State of Utah and that it is an employer within the meaning of 49-1-10. We think such admission disposes of the question raised with respect to the Appellant engaging in intrastate commerce.

However, the Court’s attention is directed again to the testimony of the witness, Green, page 11 of the Transcript, page 90 of the Record in which the witness, Green, states that the Hotel Utah operates a coffee shop, a

laundry, furnishes food and beverage and hotel service, a dining room, a roof garden and banquet rooms and the usual hotel facilities. The Court's attention is also directed to the testimony of the witness, Frampton, pages 24 and 25 of the Transcript, pages 103 and 104 of the Record, in which the witness states that the Hotel Utah has a porter department, a freight man, service elevator, check man for guests of the hotel; that the hotel operates seven days a week and that there are employees in each of the service divisions enumerated. The testimony of these witnesses is substantial evidence to support finding of fact No. 3. Building Service Employees L. No. 59 vs. Newhouse Realty Co., 95 P. 2d 507, 97 U. 562. And we submit, even without such evidence, admissions in the pleadings are sufficient to establish the jurisdiction of the Utah Board in proceeding with the unfair labor practice.

We submit that the Order of the Board should be affirmed.

Respectfully submitted,

GROVER A. GILES

Attorney General

HERBERT F. SMART

Assistant Attorney General

*Attorneys for the Utah Labor
Relations Board*

and

J. ARTHUR BAILEY

*Attorney for Hotel and Restaurant
Employees Alliance, Local No. 815*