

1949

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

Utah Supreme Court

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Callister, Callister & Lewis; Attorneys for Petitioner;

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**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.

FILED
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REPLY BRIEF OF PETITIONER

CALLISTER, CALLISTER & LEWIS

Attorneys for Petitioner

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Case No.
7212

STATEMENT OF FACTS

In reply to the brief of the defendants, this petitioner will discuss the Assignments of Error in the order in which they are set forth.

ASSIGNMENT OF ERROR NO. 1

**THE ORDER OF THE UTAH LABOR RE-
LATIONS BOARD, DATED THE 27TH DAY
OF JULY, 1948, IS VOID IN THAT IT IS NOT
SUPPORTED BY ANY FINDINGS OF FACT**

AS PROVIDED FOR, IN TITLE 49-1-18, SUBSECTION (c), UTAH CODE ANNOTATED 1943.

The defendants contend that the Utah Labor Relations Board did make a finding of fact as provided for by Title 49-1-18, Utah Code Annotated 1943. It is admitted that the trial examiner made specific findings of fact as set forth in his intermediate report (Tr. 157, 159). The petitioner in its objections (Tr. 173, 174) objected to the findings and intermediate report of the trial examiner.

Subsection (e) of Title 49-1-18, Utah Code Annotated 1943, provides in part as follows:

“ - - No objection that has been urged before the board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances - - ”

The petitioner, in filing its objections, was complying with the provisions of the Act as set forth herein. Failure to comply would have prevented this petitioner from objecting to the actions of the Board before this Honorable Court.

A quick perusal of the intermediate report of trial examiner (Tr. 157, 159) will disclose subject matters other than findings of fact.

The order of the Utah Labor Relations Board (Tr. 175) did not refer to the findings of fact of the inter-

mediate report of the trial examiner. It merely stated "concurs with the trial examiner's report."

The defendants contend that the petitioner's Assignment of Error No. 1 is highly technical.

The assignment is not technical, but goes to the fundamental principle that an administrative agency, in performing its duties should comply with the statute which created it.

It is a very simple matter to state findings as provided by law, and there can be no excuse for failure to do so.

ARGUMENT

ASSIGNMENT OF ERROR NO. 2

THE BOARD ERRED IN FAILING TO MAKE FINDINGS ON MATERIAL ISSUES.

FAILING TO MAKE FINDINGS WITH RESPECT TO THE UNIT APPROPRIATE FOR THE PURPOSES OF COLLECTIVE BARGAINING, IN PROCEEDINGS UNDER BOTH SECTIONS 49-1-17 AND 49-1-18.

As we have previously set forth in our initial brief, the National Labor Relations Board in applying and interpreting the National Labor Relations Act (Wagner Act) (for particular reference see Title 29, Section 159, United States Code Annotated, Subsection (b), identical with Section 49-1-17, Subsection (b), Utah Code Annotated 1943) has held that in determining the appropriate unit the Board examines the unit or units proposed by the union or unions in light of the following factors:

(1) the history, extent, and type of organization of the employees in the plant; (2) the history of their collective bargaining, including any contracts with their employer; (3) the history, extent, and type of organization, and the collective bargaining, of employees in other plants of the same employer, or of other employers in the same industry; (4) the skill, wages, work and working conditions of the employees; (5) the desires of the employees; (6) the eligibility of the employees for membership in the union or unions involved in the proceeding and in other labor organizations; and (7) the relationship between the unit or units proposed and the employer's organization, management and operation of the plant. See: 5 Labor Relations Manual, Page 30.

The National Labor Relations Board has also in interpreting Title 29, Section 159, United States Code Annotated, Subsection (b) (identical with Section 49-1-17, Subsection (b) Utah Code Annotated 1943) held that a determination is required in two types of cases: (1) cases involving petitions for certification of representatives and (2) cases involving charges that an employer has refused to bargain collectively with a representative of his employees. See: 5 Labor Relations Manual, page 31.

Therefore, we are confronted with the proposition that it is essential and necessary to make a finding as to what constitutes an appropriate unit for the purposes of collective bargaining not only at the conclusion of the hearing on a petition for representation and certifica-

tion, but also under a complaint charging that the employer has refused to bargain collectively with the representatives of his employees.

The record discloses that this has not been done with respect to the petition for certification and representation, nor has it been done in the proceedings of the complaint charging the employer with failure to bargain with the representative of his employees.

Even if the report of the trial examiner (Tr. 157) was the findings of the board in this matter, there is nothing in the report that constitutes a finding as to what constitutes an appropriate unit within the requirement as set forth by the National Labor Relations Board, *supra*. In paragraph six of the report of the trial examiner, it is admitted that he finds that the Utah Labor Relations Board had heretofore certified the Hotel and Restaurant Employees Alliance, Local No. 815, as the sole collective bargaining representative for employees in a collective bargaining unit which it then describes.

The defendants apparently take the position that respondent is raising highly technical objections on this appeal.

There are certain fundamental requirements to be met by the Utah Labor Relations Board in issuing its decisions, and in the opinion of the petitioner, they have not been met by the Utah Labor Relations Board.

We call the court's attention to the fact that the only evidence introduced in the hearing on the petition

for representation and certification in respect to what constitutes an appropriate unit was by Mr. Green, representative of the Union.

At Tr. Page 89, Mr. Green admits that he is basing his allegations or statements on what other people have told him. Mr. Green further admits (Tr. 89) that he has never been employed by the Hotel Utah, that he does not know much about the operations of the Hotel Utah by being on the premises (Tr. 90). Mr. Green (Tr. 95, 96) did not know whether there were other service classifications besides those set forth in paragraph 9 of Exhibit 1. He states there could be, but he didn't know whether or not there were any.

A reading of Mr. Green's testimony will definitely lead one to the conclusion that he knew nothing about the operations of the hotel, had never been on the premises, and that all he knew about it was ascertained from other people. In other words, his sole testimony was based upon hearsay.

The Utah Labor Relations Board in determining an appropriate unit, relied solely and wholly on hearsay testimony of Mr. Green.

It would seem that in view of the interpretation placed upon the National Labor Relations Act by the National Labor Relations Board, and a careful reading of the Utah Statute, that it is incumbent upon the Board to make a more thorough investigation than was done in this case.

Particular attention is called to Exhibit 1, paragraph 9, which was a contract entered into between the Hotel Utah Company and several of its employees, and which did not include service units in addition to that requested by the union in this case.

The agreement did not contain the service employees known as passenger elevator operators or valet shop employees, bus boys and lobby porters as requested in the unit filed with the Board by the union. In other words, the union by the only testimony as to previous bargaining history of the company and its employees, introduced testimony to the effect that the bargaining history reflected a different type of unit than that as requested by Mr. Green.

The petitioner confesses that it did not, and purposely so, introduce evidence as to what would constitute an appropriate unit. This petitioner contends that even though this court should hold that the Utah Labor Relations Board had made a finding as to what constitutes an appropriate unit, that there is no evidence whatsoever to sustain such a finding.

There is a reason and a purpose why the Board in its investigation proceedings should investigate various factors as enunciated by the National Labor Relations Board.

Just to take the word of the union as to what constitutes an appropriate unit, and that on hearsay evidence, does not meet the requirements of the Utah

law. We refer this Honorable Court to the Declaration of Policy set forth in Title 49-1-19, Utah Code Annotated 1943, as amended by Chapter 66, Laws of Utah 1947. It will be observed that it states that there are three interests involved, that of the public, the employee and the employer.

In reading Section 49-1-17, Subsection (b) Utah Code Annotated 1943, it will be observed that the board should 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 then it goes on to say, *and otherwise effectuate the policies of this act*, (italics ours) the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof.

In other words, in order to effectuate the policies of this act, consideration must be had as to more than just the request of the union. It must be remembered that the Utah Act was for the purpose of creating and maintaining industrial peace in labor controversies. The public is a party to such controversies. It is incumbent upon the board in making rulings as to what constitutes an appropriate unit to make sure that such a unit as determined by them will go towards maintaining industrial peace. Certainly more of an investigation should be had as to what should constitute a homogeneous unit with respect to comparable methods of pay, community of interests and working conditions, etc.

CONCLUSION

In conclusion, may we reiterate our position that findings should be made by the Utah Labor Relations Board on material issued as required by the Utah Labor Relations Act. That only compliance with the provisions of that act will help to insure industrial peace. That to conduct a hearing and make no further investigation as to what should constitute an appropriate unit as was done in this case certainly does not go toward maintaining industrial peace.

Respectfully submitted,

CALLISTER, CALLISTER & LEWIS

Attorneys for Petitioner