

Volunteers of America—Minnesota-Bar None Boys Ranch and Teamsters Local No. 638, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 18-CA-8542

17 April 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

Upon a charge filed by the Union 1 December 1983, the General Counsel of the National Labor Relations Board issued a complaint 5 December 1983 against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 6 October 1983, following a Board election in Case 18-RC-13483, the Union was certified as the exclusive collective-bargaining representative of the Respondent's employees in the unit found appropriate. (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(g), amended Sept. 9, 1981, 46 Fed. Reg. 45922 (1981); *Frontier Hotel*, 265 NLRB 343 (1982)). The complaint further alleges that since 20 October 1983 the Respondent has refused to bargain with the Union. On 15 December 1983 the Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On 11 January 1984 the General Counsel filed a Motion for Summary Judgment. On 19 January 1984 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.

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

Ruling on Motion for Summary Judgment

In its response to the Motion for Summary Judgment, the Respondent argues that the National Labor Relations Board does not have jurisdiction over it because the Volunteers of America is a religious church engaged primarily in a religious mission. In his Decision and Direction of Election, issued 1 September 1983, in the representation proceeding,¹ the Acting Regional Director for Region 18 concluded that jurisdiction should be asserted over the Respondent. He determined that the Respondent is an unincorporated nonprofit unit of the

National Society of Volunteers of America (the National Society). He further determined that the Respondent provides an essentially secular charitable service in a nonsectarian manner; that patient eligibility and employee hiring for the Respondent are without regard to religious affiliation; that the employees in the petitioned-for unit are not required to join the National Society; and that their duties do not include propagation of the National Society's substantive religious convictions. By telegram dated 28 September 1983, the Board denied Respondent's Request for Review.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce any newly discovered and previously unavailable evidence. Nor does it allege any special circumstances that would require the Board to re-examine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an unincorporated nonprofit unit of the National Society of Volunteers of America, which is an incorporated, nonprofit, religious, and charitable organization, operates a co-educational residential treatment facility for children and adolescents with emotional, neurological, and developmental difficulties at its facility in Anoka, Minnesota. During the 12-month period ending 30 June 1983, the Respondent derived gross revenues in excess of \$500,000, of which approximately \$100,000 came directly from sources outside the State of Minnesota. We find that the Respondent is an employer engaged in commerce within the meaning of Section 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.

¹ The hearing in the representation case was held 19 August 1983.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held 29 September 1983 the Union was certified 6 October 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time maintenance, laundry, housekeeping and childcare workers employed by the Employer at its facility located at 22426 St. Francis Boulevard, Anoka, Minnesota; excluding office clerical employees, professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since 19 October 1983 the Union has requested the Respondent to bargain, and since 20 October 1983 the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after 20 October 1983 to 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); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Volunteers of America—Minneso-

ta-Bar None Boys Ranch, Anoka, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local No. 638, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive 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 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 maintenance, laundry, housekeeping and childcare workers employed by the Employer at its facility located at 22426 St. Francis Boulevard, Anoka, Minnesota; excluding office clerical employees, professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

(b) Post at its facility in Anoka, Minnesota, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees 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.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² 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."

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 refuse to bargain with Teamsters Local No. 638, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exer-

cise of the rights guaranteed you by Section 7 of the Act.

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 bargaining unit:

All full-time and regular part-time maintenance, laundry, housekeeping and childcare workers employed by the Employer at its facility located at 22426 St. Francis Boulevard, Anoka, Minnesota; excluding office clerical employees, professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

VOLUNTEERS OF AMERICA—MINNESOTA—BAR NONE BOYS RANCH