

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WRIGHT MEMORIAL HOSPITAL

and

Case 17--CA--10915

LOCAL UNION NO. 50, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL--CIO--CLC

DECISION AND ORDER

Upon a charge filed by the Union 24 March 1982, the General Counsel of the National Labor Relations Board issued a complaint and an amended complaint 20 April 1982 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act.

The complaint alleges that on 10 March 1982, following a Board election in Cases 17--RC--9137, 17--RC--9138, and 17--RC--9139, the Union was certified as the exclusive collective-bargaining representative of the Company'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 22 July 1982 the Company has refused to bargain with the Union. On 23 April and 18 August 1982 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 23 September 1982 the General Counsel filed a Motion for Summary Judgment. On 5 October 1982 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 Company filed a response.

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

Ruling on the Motion for Summary Judgment

In its answer to the amended complaint and opposition to the General Counsel's Motion for Summary Judgment, the Respondent admits the refusal to bargain as to employees classified in Unit A but contends that it did not violate the Act because the Union is not the exclusive bargaining representative of the employees described in Unit A.¹ The Respondent predicates its refusal to bargain on the grounds that since registered nurses were found to be supervisors in the underlying representation proceedings and therefore not a part of Unit A,² the Union's showing of interest was tainted by supervisory involvement and should have been investigated by the Regional Director.

The Respondent first raised this contention in a motion to dismiss the petitions after the elections were conducted and while the ballots were impounded. The Regional Director denied the motion. The decision was affirmed by the Board. The Respondent raised the same argument in its objections to the elections. The hearing officer found that the showing-of-interest requirement had been satisfied administratively throughout the election process. Additionally, he stated that the matter had been previously considered and dismissed by the Regional Director and the Board, but if the matter was one to be litigated there was insufficient evidence presented at the hearing to establish that the showing of interest was inadequate.

¹ The Respondent also admits the factual and legal allegations pertaining to service of the charge and complaint, that it is an employer engaged in
(Footnote continued)
(Footnote(s) 2 will appear on following pages)

In the Motion for Summary Judgment, the General Counsel urges that the Respondent, by its answer and refusal to bargain, is merely attempting to relitigate matters which could or should have been litigated in the representation proceedings, and that the issues raised by the Respondent as a justification for a hearing are either irrelevant or insufficient as a matter of law to justify a hearing now.

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 Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

commerce within the meaning of the Act, that the Union is a labor organization within the meaning of the Act, and that the unit is appropriate.

² 255 NLRB 1319 (1981).

³ Chairman Dotson did not participate in the underlying representation case.

Findings of Fact

I. Jurisdiction

The Company, a Missouri corporation, with an office and place of business in Trenton, Missouri, is engaged in the operation of a hospital. During the past calendar year, a representative period, the Company, in the course and conduct of its business operations within the State of Missouri, annually purchased goods and services valued in excess of \$50,000 from sources located outside the State of Missouri. Respondent, in the course and conduct of its health care operations, annually derives gross revenues in excess of \$250,000. We find that the Company 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.

II. The Alleged Unfair Labor Practices

A. Certification

Following the election held 4 December 1980 the Union was certified 10 March 1982 as the collective-bargaining representative of the employees in the following appropriate unit:

Unit A: All licensed practical nurses, X-ray technicians, laboratory technicians, medical record technicians, nurses aides, dietary department employees, laundry department employees, housekeeping department employees, maintenance department employees, out-patient clerical employees, central supply employees, central sterile employees, and admissions and switchboard employees but excluding all charge nurses, ambulance department employees, business office clerical employees, respiratory therapy employees, physical therapy employees, pharmacy employees, confidential employees, managerial employees, office clerical employees, and guards and supervisors as defined in the Act.

B. Refusal to Bargain

Since 16 July 1982 the Union has requested the Company to bargain, and since 22 July 1982 the Company 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 22 July 1982 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company 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.

The 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 commences 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, Wright Memorial Hospital, Trenton, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local Union No. 50, Service Employees International Union, AFL--CIO--CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

Unit A: All licensed practical nurses, X-ray technicians, laboratory technicians, medical record technicians, nurses aides, dietary department employees, laundry department employees, housekeeping department employees, maintenance department employees, out-patient clerical employees, central supply employees, central sterile employees, and admissions and switchboard employees but excluding all charge nurses, ambulance department employees, business office clerical employees, respiratory therapy employees, physical therapy employees, pharmacy employees, confidential employees, managerial employees, office clerical employees, and guards and supervisors as defined in the Act.

(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.

(b) Post at 701 East First Street, Trenton, Missouri, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 17, after being duly 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.

⁴ 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."

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

Dated, Washington, D.C.

6 July 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local Union No. 50, Service Employees International Union, AFL--CIO--CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

Unit A: All licensed practical nurses, X-ray technicians, laboratory technicians, medical record technicians, nurses aides, dietary department employees, laundry department employees, housekeeping department employees, maintenance department employees, out-patient clerical employees, central supply employees, central sterile employees, and admissions and switchboard employees but excluding all charge nurses, ambulance department employees, business office clerical employees, respiratory therapy employees, physical therapy employees, pharmacy employees, confidential employees, managerial employees, office clerical employees, and guards and supervisors as defined in the Act.

WRIGHT MEMORIAL HOSPITAL

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Tower II Building Gateway Centre, Room 616, Fourth at State, Kansas City, Kansas 66101, Telephone 913--236--3866.