

Presbyterian University Hospital and International Union of Operating Engineers, Local 95-95A, AFL-CIO. Case 6-CA-23161

April 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On January 4, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-10391. (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); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On April 5, 1991, the General Counsel filed a Motion for Summary Judgment. On April 9, 1991, 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 on April 22, 1991.

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 answer the Respondent admits that the Union requested that it recognize and bargain with the Union as the exclusive bargaining representative of the maintenance employees employed at the Respondent's Falk Clinic. The Respondent, however, denies that it refused to bargain with the Union concerning these employees, and attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

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 does it allege 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.¹ See *Pitts-*

¹As noted, the Respondent denies that it refused to recognize and bargain with the Union, as alleged in par. 12 of the complaint. The General Counsel, however, has submitted a copy of a November 12, 1990 letter from the Respondent's attorney to the Union acknowledging receipt of the Union's October 26, 1990 letter requesting recognition and bargaining, and declining to meet with the Union on the grounds that the Respondent had a good-faith

burgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Pennsylvania corporation, operates an acute care hospital in Pittsburgh, Pennsylvania. During the 12-month period ending October 31, 1990, a representative period, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$250,000 and, during the same period, purchased and received at its Pittsburgh, Pennsylvania facility goods and materials valued in excess of \$5000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act,³ 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 election held on April 20, 1990, the Union on October 22, 1990, was certified as the collective-bargaining representative of employees in the voting group described below, as part of the bargaining unit currently represented by the Union consisting of all maintenance department employees employed by the Respondent.⁴ The voting group consists of:

doubt that the Union represented a majority of its employees in an appropriate unit. The Respondent does not dispute the validity of the letter. In these circumstances, we find that the Respondent has refused to bargain with the Union, as alleged in the complaint. Further, it is clear from the letter, as well as from the affirmative defenses in its answer and its brief to the Board, that the Respondent contends it is under no legal obligation to bargain with the Union solely on the grounds that the certification was invalid. Accordingly, we find that the Respondent's denials raise no material issues of fact warranting a hearing.

²In view of our disposition here, the General Counsel's motion to strike all the Respondent's affirmative defenses is denied.

³The Respondent denies conclusional par. 5 of the complaint, which alleges that it is "an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act." We find its denial to be without merit. In this regard, we note that in its answer the Respondent admits the commerce data described in complaint pars. 3 and 4, as set forth here, which clearly establishes that it is engaged in commerce within the meaning of the Act, and that it satisfies the Board's statutory and discretionary jurisdictional standards. Further, the Respondent admits par. 2 of the complaint, which alleges that it is "engaged in the operation of an acute care hospital." Finally, we note that in the underlying representation proceeding the Respondent admitted that it was a health care institution, and did not contest the Regional Director's finding, adopted by the Board, that it was engaged in commerce within the meaning of the Act.

⁴The complaint alleges, and we find, that the Union has been recognized by the Respondent as the collective-bargaining representative of its maintenance department employees, and that the Respondent and Union have been parties to successive collective-bargaining agreements covering the employees, the most recent of which is effective by its terms for the period from April 1, 1989, to March 31, 1992. Although the Respondent denies this complaint

Continued

All maintenance employees employed by the Employer at its Falk Clinic, Pittsburgh, Pennsylvania facility; excluding all other employees and guards, professional employees 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 October 26, 1990, the Union has requested the Respondent to bargain and, since November 12, 1990, 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.

CONCLUSION OF LAW

By refusing on and after November 12, 1990, to bargain with the Union as the exclusive collective-bargaining representative of employees in the above-described voting group, 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, Presbyterian University Hospital, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 95-95A, AFL-CIO as the exclusive bargaining representative of the employees in the voting group who form part of the bargaining unit of employees currently represented by the Union con-

allegation, we note that the Board in the underlying representation proceeding affirmed the Regional Director's finding in this regard. Accordingly, the Respondent's denial constitutes an attempt to relitigate matters previously decided by the Board and is without merit.

sisting of all maintenance department employees employed by the Respondent.

(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 voting group who form part of the bargaining unit currently represented by the Union consisting of all maintenance department employees employed by the Respondent and, if an understanding is reached, embody the understanding in a signed agreement:

All maintenance employees employed by the Employer at its Falk Clinic, Pittsburgh, Pennsylvania facility; excluding all other employees and guards, professional employees and supervisors as defined in the Act.

(b) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 6, 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.

⁵If 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 International Union of Operating Engineers, Local 95-95A, AFL-CIO as the exclusive representative of the employees in the voting group who form part of the bargaining unit currently represented by the Union consisting of all maintenance department employees employed by us.

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 Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following voting group who form part of the bargaining unit consisting of all our maintenance de-

partment employees currently represented by the Union:

All maintenance employees employed by the Employer at its Falk Clinic, Pittsburgh, Pennsylvania facility; excluding all other employees and guards, professional employees and supervisors as defined in the Act.

PRESBYTERIAN UNIVERSITY HOSPITAL