

**Cottage Hospital of Grosse Pointe and Michigan Association of Police-911. Case 7-CA-32443**

February 28, 1992

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On November 15, 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 7-RC-19433. (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 February 3, 1992, the General Counsel filed a Motion for Summary Judgment. On February 6, 1992, 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 answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's determination that the Union is a labor organization within the meaning of Section 2(5) of the Act in the representation proceeding. The Respondent also denies the allegation that it has failed and refused to provide the Union with the information requested that is relevant and necessary to the Union's role as bargaining representative on the ground that the Union is not a labor organization within the meaning of Section 2(5) of the Act.

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. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). There

are no factual issues regarding the Union's request for information because the Respondent admitted that it refused to furnish the information on the basis that the Union is not a labor organization within the meaning of Section 2(5) of the Act. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Michigan corporation, has been engaged, at all times material, in the operation of a health care facility at 159 Kercheval in the city of Grosse Pointe Farms, Michigan. During the calendar year ending December 31, 1990, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$250,000. During this same period of time, the Respondent purchased from points located outside the State of Michigan goods and materials valued in excess of \$50,000 and caused those goods and materials to be shipped directly to its Michigan facility. 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.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

The Union was certified on December 31, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time guards as defined in the Act, employed by the Respondent at its facility located at 159 Kercheval, Grosse Pointe Farms, Michigan; but excluding supervisors as defined in the Act and all other employees.

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

**B. Refusals to Bargain**

Since June 4, 1991, the Union has requested the Respondent to commence collective-bargaining negotiations for the unit employees, and since June 4, 1991, Respondent has refused. Since January 9, 1991, the Union has requested the Respondent to furnish information necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the

unit employees, and since January 9, 1991, the Respondent has refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

By refusing on and after June 4, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and by refusing on and after January 9, 1991, to furnish the Union requested information, 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. We also shall order the Respondent to furnish the Union the information requested.

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, Cottage Hospital of Grosse Pointe, Grosse Pointe Farms, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Michigan Association of Police-911, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(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 guards as defined in the Act, employed by the Respondent at its facility located at 159 Kercheval, Grosse Pointe Farms, Michigan; but excluding supervisors as defined in the Act and all other employees.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Grosse Pointe Farms, Michigan, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, 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.

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

<sup>1</sup> 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 Michigan Association of Police-911 as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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 bargaining unit:

All full-time and regular part-time guards as defined in the Act, employed by the Respondent at its facility located at 159 Kercheval,

Grosse Pointe Farms, Michigan; but excluding supervisors as defined in the Act and all other employees.

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