

Lakeside Community Hospital, Inc. and Hospital
and Health Care Workers Union, Local 250,
Service Employees International Union, AFL-
CIO. Case 20-CA-23437

July 10, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On June 28, 1991, the General Counsel of the National Labor Relations Board issued a complaint in this proceeding alleging that the Respondent has violated Section 8(a)(1) and (5) of the National Labor Relations Act by making certain unilateral changes during the period between a Board-conducted election and the Union's subsequent certification in Case 20-RC-16586.¹ On January 21, 1992, the Respondent filed an answer admitting in part and denying in part the allegations in the complaint issued in Case 20-CA-23437.²

On April 27, 1992, the General Counsel filed a Motion for Summary Judgment, with exhibits attached, submitting that with respect to the Respondent's renewed challenge to the certification in Case 20-RC-16586 the Board has already resolved this issue against the Respondent in *Lakeside I* and that the Respondent has otherwise raised no material factual issues warranting a hearing. On April 29, 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 to the complaint, the Respondent admits that it refused to bargain with the Union,

¹ On June 28 and September 26, 1991, the General Counsel consolidated this case with Cases 20-CA-23996 and 20-CA-24174 in which the complaints alleged a general refusal to bargain following the certification, as well as additional unilateral changes. The General Counsel filed a Motion for Summary Judgment in the consolidated proceeding on January 21, 1992. The Board, in *Lakeside Community Hospital*, 306 NLRB No. 99 (Feb. 28, 1992), (*Lakeside I*), granted the General Counsel's motion in Cases 20-CA-23996 and 20-CA-24174 with respect to the 8(a)(5) allegations that the Respondent refused to bargain with the Union after its certification and, in part, the allegations of unilateral changes. The Board also, at fn. 2, denied the Respondent's motion to dismiss the complaint in Case 20-CA-23437, severed the instant case, and remanded it to the Regional Director so that the Respondent might file a timely answer.

² The Respondent denied that the charge was filed and served on June 2, 1990. In the Motion for Summary Judgment, the General Counsel notes that the charge was filed and served on June 12, 1990, and attributes the June 2 date appearing in the complaint to a typographical error. Exhibits 1 and 3 attached to the motion establish that the charge was filed and served on June 12.

certified as the exclusive representative of employees in an appropriate unit, by making the alleged unilateral changes in its employees' rates of pay and other terms and conditions of employment. However, the Respondent challenges the certification in Case 20-RC-16586 by denying the appropriateness of the unit, the Union's majority status, the Union's status as a labor organization, the lawfulness of the certification, and its obligation to bargain with the Union. The Board resolved these certification issues contrary to the Respondent's position by granting summary judgment in *Lakeside I* (Cases 20-CA-23996 and 20-CA-24174).³

In its response to the Notice to Show Cause, the Respondent renews its earlier contention that the 8(a)(5) allegations in this proceeding are not based on a proper charge and that the complaint is thus invalid because each of the alleged unilateral changes occurred after the June 12, 1990 filing of the charge. As noted in *Lakeside I*, slip op. at fn. 2, this contention is contrary to the holding of *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307 (1959).

Accordingly, since we find that all the complaint allegations have been admitted or previously found to be true and since the Respondent raises no material issue warranting a hearing, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a health care institution with a place of business at Lakeport, California, where it operates an acute care hospital. During the calendar year ending December 31, 1990, Respondent had gross revenues in excess of \$250,000 and purchased products, goods, and materials valued over \$5000 which originated from outside the State of California. 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.

³ The certified unit is:

All full-time and regular part-time professional employees employed by the Employer at its Lakeport, California facility, including registered nurses, per diem registered nurses, nurse anesthetists, pharmacists, social services coordinators, in-service education employees, nursing coordinators, infection control employees, quality assurance employees, laboratory technologists, and respiratory therapists; excluding all nonprofessional employees, confidential employees, managerial employees, licensed vocational nurses, guards and supervisors as defined in the Act.

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 fail or refuse to bargain collectively with Hospital and Health Care Workers Union, Local 250, Service Employees International Union, AFL-CIO, the certified bargaining representative of our employees, by unilaterally granting bonuses to employees, changing their health insurance and life insurance programs, or increasing their base rate of pay without affording the Union notice of and an opportunity to bargain about these changes. The unit is:

All full-time and regular part-time professional employees employed by the Employer at its Lakeport, California facility, including registered nurses, per diem registered nurses, nurse anesthetists, pharmacists, social services coordinators, in-service education employees, nursing coordinators, infection control employees, quality assurance employees, laboratory technologists, and respiratory therapists; excluding all nonprofessional employees, confidential employees, managerial employees, licensed vocational nurses, guards and supervisors as defined in the Act.

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 regarding bonuses, changes in life and health insurance programs, and increases in base rates of pay.

LAKESIDE COMMUNITY HOSPITAL, INC.

II. ALLEGED UNFAIR LABOR PRACTICES

During the period between the Board-conducted election on May 2 and 3, 1990, and the Union's certification on May 17, 1991, the Respondent made certain unilateral changes in its unit employees' wages, hours, and other terms and conditions of employment. Commencing in July 1990, the Respondent granted bonuses to unit employees. In August 1990, the Respondent changed its unit employees' health and life insurance programs. Finally, in November 1990, the Respondent increased the base rate of pay for the unit employees. These changes are mandatory subjects of bargaining and were made without prior notice to the Union and without affording the Union an opportunity to bargain.⁴ Accordingly, we find that the Respondent, as specified in the Conclusions of Law below, has refused to bargain in good faith with the exclusive representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By granting unit employees bonuses commencing in July 1990, changing their health insurance and life insurance programs in August 1990, and increasing their base rate of pay in November 1990, all without affording the Union notice and an opportunity to bargain, 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,⁵ and, on request, to bargain with the Union regarding bonuses, changes in the insurance plans, and increases in the base rate of pay.

ORDER

The National Labor Relations Board orders that the Respondent, Lakeside Community Hospital, Inc., Lakeport, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Hospital and Health Care Workers Union, Local 250, Service Employees International Union,

AFL-CIO, the certified bargaining representative of the Respondent's employees, by unilaterally granting bonuses to employees, changing their health and life insurance programs, and increasing their base rate of pay without affording the Union notice of and an opportunity to bargain about these changes. The unit is:

All full-time and regular part-time professional employees employed by the Employer at its Lakeport, California facility, including registered nurses, per diem registered nurses, nurse anesthetists, pharmacists, social services coordinators, in-service education employees, nursing coordinators, infection control employees, quality assurance employees, laboratory technologists, and respiratory therapists; excluding all nonprofessional employees, confidential employees, managerial employees, licensed vocational nurses, 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 regarding bonuses, changes in the insurance plans, and increases in the base rate of pay.

(b) Post at its facility in Lakeport, California, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 20, 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.

⁴ Even though the Union was not certified until May 17, 1991, the Respondent acted at its peril in making unilateral changes pending the determination of the outstanding election objections and challenges. See, e.g., *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975).

⁵ Although we are ordering Respondent to cease and desist from such conduct, our Order is not to be construed as a requirement that Respondent rescind those benefits that were granted.

⁶ 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."