

King Manor Care Center and Health Care Services Group, Inc. and 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board. Case 22-CA-18485

September 21, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY, OVIATT, AND RAUDABAUGH

On June 16, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing 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 22-RC-9913. (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 July 31, 1992, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On August 4, 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 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. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment. On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, King Manor Care Center and Health Care Services Group, Inc., a New Jersey corporation, at its facility in Neptune, New Jersey, has been engaged in the operation of a nursing home providing inpatient care. During the 12 months preceding issuance of the complaint, the Respondent derived gross revenues in excess of \$100,000 and during the same period, in conducting its operations, purchased products, goods, and materials valued in excess of \$5000 directly from points outside the State of New Jersey. We find that the Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) 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*

Following the election held March 9, 1990,¹ the Union was certified on December 30, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service and maintenance employees, including nurses aides, dietary aides, housekeeping employees and laundry employees employed by Respondent at its Neptune, New Jersey facility, excluding recreation aides, office clerical employees, technical employ-

¹ On November 17, 1988, the Regional Director issued a Decision, Order, and Direction of Election in which, inter alia, he approved the stipulation of the parties that King Manor Care Center and Health Care Services Group, Inc. were joint employers and directed an election to determine whether the employees would be represented by Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board or Local 6, International Federation of Health Professionals, the Intervenor, or neither. On January 12, 1989, the Regional Director issued a supplemental order reopening the record and a notice of hearing. Thereafter, on February 9, 1990, the Regional Director issued a Supplemental Decision and Direction of Election.

The Respondent and Intervenor filed requests for review which were denied by an evenly divided Board on August 24, 1990. Thereafter, the Respondent and Intervenor filed requests for reconsideration which were denied by the Board on May 22, 1991 (303 NLRB 19). On August 27 and 28, 1991, the Respondent and Intervenor, respectively, filed objections to conduct affecting the results of the election. On December 30, 1991, the Regional Director issued a Second Supplemental Decision and Certification of Representative. On January 23 and 28, 1991, the Respondent and Intervenor, respectively, filed requests for review of the Regional Director's determination which were denied by the Board on March 20, 1992.

ees, professional employees, guards, cooks and all other 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 January 22, 1992, the Union has requested the Respondent to bargain and, since January 22, 1992, including May 18, 1992, 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 January 22, 1992, including May 18, 1992, 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, King Manor Care Center and Health Care Center Services Group, Inc., Neptune, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board, 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 service and maintenance employees, including nurses aides, dietary aides, housekeeping employees and laundry employees employed by Respondent at its Neptune, New Jersey facility, excluding recreation aides, office clerical employees, technical employees, professional employees, guards, cooks and all other supervisors as defined in the Act.

(b) Post at its facility in Neptune, New Jersey, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22 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.

MEMBER DEVANEY, dissenting.

In the underlying representation proceeding, I would have granted the Respondent's and Intervenor's requests for review, which were denied by an evenly divided Board on August 24, 1990. I dissented at 303 NLRB 19 from the denial of the Respondent's motion for reconsideration on May 22, 1991. I later dissented from the denial of the Respondent's and Intervenor's requests from review of the Regional Director's certification of representative on March 20, 1992. Accordingly, I dissent from my colleagues' finding an 8(a)(5) violation here. Instead, for the reasons set out in my dissent at 303 NLRB 19, *supra*, I would find that the recognition agreement between the Respondent and Intervenor should bar the Union's petition for an election for a reasonable period of time. Accordingly, I would find no 8(a)(5) violation in the Respondent's refusal to bargain with the Union.

²If 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 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board 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 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 service and maintenance employees, including nurses aides, dietary aides, housekeeping employees and laundry employees employed at our Neptune, New Jersey facility, excluding recreation aides, office clerical employees, technical employees, professional employees, guards, cooks and all other supervisors as defined in the Act.

KING MANOR CARE CENTER AND
HEALTH CARE SERVICES GROUP, INC.