

Oak Haven Nursing Home, Inc. and Service Employees International Union, Local 285, AFL-CIO, CLC. Case 1-CA-29220

August 25, 1992

### DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on March 23, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Oak Haven Nursing Home, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On July 23, 1992, the General Counsel filed a Motion to Transfer Proceeding to the Board and for Summary Judgment. On July 24, 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 no response. The allegations in the motion are therefore undisputed.<sup>1</sup>

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

#### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the acting Regional attorney, by letter dated June 4, 1992, notified the Respondent that unless an answer was received by close of business June 11, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

<sup>1</sup> According to the General Counsel's motion, service of the complaint was made by deposit in the mail on May 7, 1992. After search of the Regional Office files, the Region determined that the return receipt is not available. The Respondent has not replied to the complaint or the motion and its failure to do so cannot serve to defeat the Board's processes. *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

On the entire record, the Board makes the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent, a Massachusetts corporation, with an office and place of business in Roxbury, Massachusetts, has been engaged in business as a nursing home. During the calendar year ending 1991, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000 and purchased and received at its facility products, goods, and materials valued in excess of \$5000 directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(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

1. The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All nurse's aides, orderlies, maintenance employees, porters, cooks, relief cook, assistant cook, housekeepers, laundry employees, kitchen help, and all non-professional employees employed by the Employer at its Roxbury, Massachusetts facility, but excluding all licensed practical nurses, registered nurses, casual employees, office clerical employees, managerial employees, guards and supervisors as defined in the Act.

2. Since about May 1, 1987, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit, and since this date, the Union has been recognized as such representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement effective May 1, 1987, to April 1, 1990. At all times since about May 1, 1987, the Union has been the exclusive collective-bargaining representative of the unit.

3. About March 23, 1991, the Union and Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement.

4. Since about May 1, 1991, the Union has requested that the Respondent execute a written contract containing the agreement.

5. Since about February 1, 1992, the Respondent, orally, has failed and refused to execute the agreement.

6. Since about October 1991, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement in effect between the parties by failing to provide employee health insurance coverage and/or failing to pay health insurance premiums and failing to remit to the Union dues withheld from the wages of unit members. The Respondent engaged in the conduct without the Union's consent.

The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

#### CONCLUSIONS OF LAW

By failing to execute the collective-bargaining agreement, by failing to continue in effect all the terms and conditions of the collective-bargaining agreement in effect with the Union, by failing to provide employee health insurance coverage and/or failing to pay health insurance premiums, and by failing to remit to the Union dues withheld from the wages of unit members, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and in violation of Section 8(a)(5) and (1) of the Act.

The unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to execute the collective-bargaining agreement on demand by the Union, to abide by its collective-bargaining agreement with the Union by providing employee health insurance coverage and/or paying health insurance premiums relative to the provision of medical benefits for unit employees and by remitting to the Union dues withheld from the wages of its unit members relative to the provision of medical benefits for unit employees and to make its employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest

to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall also order the Respondent to furnish the Union the information requested.

#### ORDER

The National Labor Relations Board orders that the Respondent, Oak Haven Nursing Home, Inc., Roxbury, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to execute the March 23, 1991 collective-bargaining agreement on terms and conditions of employment of the unit employees.

(b) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement in effect between the parties.

(c) 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) Execute the March 23, 1991 collective-bargaining agreement on terms and conditions of employment of the unit employees. The bargaining unit includes:

All nurse's aides, orderlies, maintenance employees, porters, cooks, relief cook, assistant cook, housekeepers, laundry employees, kitchen help, and all non-professional employees employed by the Employer at its Roxbury, Massachusetts facility, but excluding all licensed practical nurses, registered nurses, casual employees, office clerical employees, managerial employees, guards and supervisors as defined in the Act.

(b) Continue all the terms and conditions of the collective-bargaining agreement in effect by providing employee health insurance coverage and/or paying health insurance premiums, and by remitting to the Union dues withheld from the wages of unit members and make unit employees whole for any expenses they may have incurred as a result of the Respondent's failure to make such contributions, with interest, as described in the remedy section of this decision.

(c) Bargain collectively and in good faith with the Union within the meaning of the Act.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records and reports, and other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Roxbury, Massachusetts, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, 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.

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

<sup>2</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 fail and refuse to sign, on demand by the Service Employees International Union, Local 285, AFL-CIO, CLC the collective-bargaining contract to which we agreed and WE WILL

NOT refuse to continue in effect all the terms and conditions of that collective-bargaining agreement. The appropriate bargaining unit includes:

All nurse's aides, orderlies, maintenance employees, porters, cooks, relief cook, assistant cook, housekeepers, laundry employees, kitchen help, and all non-professional employees employed at our Roxbury, Massachusetts facility, but excluding all licensed practical nurses, registered nurses, casual employees, office clerical employees, managerial employees, 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 execute the March 23, 1991 collective-bargaining agreement and abide by the agreement on terms and conditions of employment of the unit.

WE WILL continue in effect all the terms and conditions of the collective-bargaining agreement in effect by providing employee health insurance coverage and/or paying health insurance premiums, and remitting to the Union dues withheld from the wages of unit members.

WE WILL make unit employees whole for any expenses they may have incurred as a result of our failure to make such contributions, with interest.

WE WILL bargain collectively and in good faith with the exclusive collective-bargaining representative of our employees within the meaning of the Act.

OAK HAVEN NURSING HOME, INC.