

Lakeside Community Hospital, Inc. and Hospital and Health Care Workers Union, Local 250, Service Employees International Union, AFL-CIO. Case 20-CA-23996

March 4, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On September 4, 1992, the General Counsel of the National Labor Relations Board issued an amended complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain, by bypassing the Union and dealing directly with unit employees, and by making certain unilateral changes in the terms and conditions of employment in the unit, which are mandatory subjects of collective bargaining, without prior notice to the Union and without having afforded the Union an opportunity to bargain as the exclusive representative of the unit following the Union's certification in Case 20-RC-16586.¹ (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 October 7, 1992, the General Counsel filed a Motion for Summary Judgment. On October 20, 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 both its answer and its response to the Notice to Show Cause, the Respondent admits its refusal to bargain and to making certain unilateral changes with respect to the rates of pay, hours of employment and/or other terms and conditions of employment of its unit employees and to bypassing the Union and dealing directly with its unit employees regarding their terms and conditions of employment. The Respondent, however, attacks the validity of the certification on the basis of its objections to the election and the Board's disposi-

¹ On February 28, 1992, the Board issued a Decision and Order, 306 NLRB No. 99, in which it granted the General Counsel's Motion for Summary Judgment, finding that the Respondent had refused to bargain with the Union after its certification and with respect to certain unilateral changes that were admitted by the Respondent. Certain other alleged unilateral change allegations in Case 20-CA-23996 were denied by the Respondent and were remanded to the Regional Director for further appropriate proceedings and are the subject of the instant proceeding.

tion of certain challenged ballots in the representation proceeding.²

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 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, 1992, 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.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held May 2 and 3, 1990, the Union was certified on May 17, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

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 res-

² The Board rejected these same affirmative defenses in its decision reported at 306 NLRB No. 99, as noted above. Further, although it usually is our policy to decline to issue a second bargaining order as to the same certification while the first such order is still extant where, as here, the appropriate relief for the alleged unfair labor practices is reimbursement to unit employees and that relief is unavailable under the earlier order, we will issue a second bargaining order. See *Chicago Educational Television Assn.*, 308 NLRB No. 22 fn. 1 (July 31, 1992) and cases cited therein.

In its answer, the Respondent admits the factual allegations of the amended complaint. In par. 7(a) of its answer, the Respondent inadvertently refers to par. 6(a) of the amended complaint, when it is clear that the reference should be to par. 7(a) of that complaint.

piratory therapists; excluding all nonprofessional employees, confidential employees, managerial employees, licensed vocational nurses, guards and supervisors as defined in the Act.

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

B. Refusals to Bargain

(1) Beginning in November 1990 and continuing thereafter, the Respondent has bypassed the Union and dealt directly with its unit employees as described below in paragraphs 3 through 8.

(2) Since March 19, 1991, including on May 24, 1991, the Union has requested the Respondent to bargain and, since May 19, 1991, including May 24, 1991, the Respondent has refused.

(3) About October or November 1990, January 1991, and February 3, 1991, the Respondent granted wage increases to its unit employees.³

(4) About February 3, 1991, the Respondent changed the on-call rates, overtime rates, shift differentials, and scheduling method of its unit employees.

(5) About April or May 1991, the Respondent implemented a blended wage rate method of payment which changed the Respondent's remuneration system for unit employees, including changes in base rate wages, holiday pay, vacation pay, shift differential, call-in pay, standby pay, and pay for other paid-time situations.

(6) About April or May 1991, the Respondent granted wage increases to its unit employees which resulted from the implementation of the blended wage rate method of payment.

(7) About May 12, 1991, the Respondent implemented an in-house registry for its unit employees.

(8) About July 2, 1991, the Respondent rescheduled the shifts of its laboratory employees, thereby eliminating standby duty.⁴

The Respondent took the actions described above in paragraphs 1 and 3-8 without providing the Union with notice of or an opportunity to negotiate and bargain as the exclusive representative of the employees with respect to such acts and conduct and the effects of such acts and conduct. We find that these actions constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

³The Respondent admits that it gave all employees a choice of receiving a 2-percent wage increase and additional vacation days or a 4-percent wage increase. The Respondent also admits that it granted a 17-percent wage increase for employees in the surgery department.

⁴The Respondent admits that on or about August 16, 1991, it rescheduled the shifts of its laboratory employees and states it stopped rescheduling these shifts on or about October 28, 1991. These matters are appropriately left to the compliance stage of this proceeding.

CONCLUSIONS OF LAW

1. By bypassing the Union and dealing directly with unit employees beginning in November 1990 and continuing thereafter regarding wages, hours, and other terms and conditions of employment, the Respondent has violated Section 8(a)(5) and (1) of the Act.

2. By refusing on and after March 19 and 24, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has violated Section 8(a)(5) and (1) of the Act.

3. By about October or November 1990, January 1991, and February 3, 1991, unilaterally granting unit employees wage increases; by about February 3, 1991, changing the on-call rates, overtime rates, shift differentials, and scheduling methods of its unit employees by on or about April or May 1991 implementing a blended wage rate method of payment thereby changing unit employees pay system including base rate wages, holiday pay, vacation pay, shift differential, call-in pay, standby pay, pay for other paid-time situations; by on or about April or May 1991, granting wage increases to unit employees as result of implementing its blended wage rate method of payment; by about May 12, 1991, implementing an in-house registry for unit employees; and by about July 2, 1991, rescheduling the shifts of its laboratory employees thereby eliminating standby duty without notice to or bargaining with the Union, 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 to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall further order the Respondent to reimburse the unit employees for any losses incurred as a result of its unilateral changes in the on-call rates, overtime rates, shift differentials, scheduling methods, implementing a blended wage rate method of payment thereby changing base rate wages, holiday pay, vacation pay, call-in-pay, standby pay, pay for other paid-time situations, implementing an in-house registry for unit employees, and rescheduling shifts and eliminating standby duty for its laboratory employees. Such reimbursements shall be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest computed

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

according to the formula set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

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.* 3650 F.2d 57 (10th Cir. 1965).

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) Refusing to bargain with Hospital and Health Care Workers Union, Local 250, Service Employees International Union, AFL-CIO (the Union), and by bypassing the Union and dealing directly with unit employees regarding wages, hours, and other terms and conditions of employment.

(b) Refusing to bargain with the Union by unilaterally granting unit employees wage increases; changing on-call rates, overtime rates, shift differentials, and scheduling methods for unit employees; implementing a blended wage rate methods that changed the unit employees' base rate wages, holiday pay, vacation pay, shift differential, call-in pay, standby pay, pay for other paid-time situations, implementing an in-house registry for unit employees; and rescheduling the shifts of laboratory employees, thereby eliminating standby duty.

(c) Refusing to bargain with Hospital and Health Care Workers Union, Local 250, Service Employees International Union, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(d) 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 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, licensed vocational nurses, guards and supervisors as defined in the Act.

(b) Make whole the unit employees by reimbursing them for any losses they may have incurred as a result of the following unilateral actions: the changes in on-call rates, overtime rates, shift differentials, and scheduling method; the implementation of a blended wage rate method of pay which changed their pay system, including their base rate wages, holiday pay, vacation pay, shift differential, call-in pay, standby pay, and pay for other paid-time situations; the implementation for them of an in-house registry; and the rescheduling of the shifts of laboratory employees that resulted in the elimination of standby duty. Such reimbursement shall be computed in the manner set forth in the remedy section of this decision.

(c) 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.

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

⁶If 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 Hospital and Health Care Workers Union, Local 250, Service International Union, AFL-CIO (the Union) as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to bargain with the Union by bypassing it and dealing directly with our unit employ-

ees regarding wages, hours, and other terms and conditions of employment.

WE WILL NOT grant an increase in wages and benefits or change the remuneration system for such wages and benefits, or make other changes in the terms and conditions of employment of our unit employees such as changing scheduling methods, on-call or overtime rates or shift differentials, establishing an in-house registry and rescheduling the shifts of our laboratory employees thereby eliminating standby duty, without notice to and affording the Union as the exclusive collective-bargaining representative of our unit employees an opportunity to negotiate and bargain about such matters.

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 wages, hours, and terms and conditions of employment for our employees in the bargaining unit:

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, inservice 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 make whole our employees by reimbursing them for any losses they have incurred as a result of our unilateral changes in the wages and benefits and the remuneration system of such wages and benefits including the changes in the on-call rates, overtime rates, shift differentials, scheduling methods, base rate wages, holiday pay, vacation pay, call-in pay, standby pay, other paid-time situations, and the rescheduling of shifts and elimination of standby duty for our laboratory employees.

LAKESIDE COMMUNITY HOSPITAL, INC.