

**Missouri Protection and Advocacy Services and  
Local 50, Service Employees International  
Union, AFL-CIO, CLC. Case 14-CA-22564**

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On June 30, 1993, 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 14-RC-11214. (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 August 13, 1993, the General Counsel filed a Motion for Summary Judgment. On August 17, 1993, 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.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent denies the Union's request and its refusal to bargain and attacks the validity of the certification on the basis of its objections to the election and the Board's unit determination in the representation proceeding.<sup>1</sup>

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.

<sup>1</sup>The Respondent's answer denied a number of complaint allegations. None of these denials warrants a hearing as other record evidence establishes the General Counsel's allegations. Thus, the Respondent denied the complaint allegation that the Union is a labor organization notwithstanding that the parties stipulated to the Union's labor organization status in the underlying representation case; the Respondent denies the February 4, 1993 certification of the Union notwithstanding its request for review of that certification, and the Respondent denies that the Union requested bargaining notwithstanding the copy of the demand letter of June 9 was attached as an exhibit to the General Counsel's motion together with a copy of the returned receipt (Exhs. 16 and 17).

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is, and has been at all times material here, a not-for-profit corporation organized under and existing by virtue of the laws of the State of Missouri, with offices and places of business in Kansas City, Jefferson City, and St. Louis, Missouri, where it has been engaged in providing advocacy, legal, and training services to persons with disabilities.

During the 12-month period ending May 31, 1993, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 and during the same period of time, purchased and received at its Missouri facilities goods valued in excess of \$5000 directly from points located outside the State of Missouri. 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**

**A. The Certification**

Following the election held January 6, 1993, the Union was certified on February 4, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All employees employed by the Employer at its Jefferson City, Missouri; Kansas City, Missouri; and Saint Louis, Missouri facilities, EXCLUDING all guards and 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 May 12, 1993, and again on June 9, 1993, the Union requested the Respondent to bargain and, since June 15, 1993, the Respondent, by failing to respond to the Union's letters, 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 June 15, 1993, 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, Missouri Protection and Advocacy Services, Jefferson City, Missouri, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with Local 50, Service Employees International Union, AFL-CIO, CLC 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 employees employed by the Employer at its Jefferson City, Missouri; Kansas City, Missouri; and Saint Louis, Missouri facilities, EXCLUDING all guards and supervisors as defined in the Act.

(b) Post at its facility in Jefferson City, Missouri, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be

<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."

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.

Dated, Washington, D.C.  
September 16, 1993

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John Neil Raudabaugh, Member

(SEAL) 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 Local 50, Service Employees International Union, AFL-CIO, CLC 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 employees employed by us at our Jefferson City, Missouri; Kansas City, Missouri; and Saint Louis, Missouri facilities, EXCLUDING all guards and supervisors as defined in the Act.

MISSOURI PROTECTION AND ADVOCACY  
SERVICES