

Wayne View Convalescent Center, Inc. and Healthcare Services Group, Inc. and 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL-CIO. Cases 22-CA-19134 and 22-CA-19172

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On May 21, 1993, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing alleging that the Respondents have 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 Cases 22-RC-10633, 22-RC-10670, and 22-RC-10709, and failing and refusing to furnish the Union with necessary and relevant information. (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 Respondents filed answers and affirmative defenses admitting in part and denying in part the allegations in the complaint.

On October 12, 1993, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support, with exhibits attached. On October 14, 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. On November 8, 1993, Respondent Wayne View filed a response opposing the General Counsel's motion.¹

Ruling on Motion for Summary Judgment

In their answers the Respondents admit their refusal to bargain and to furnish information to the Union,² but attack the validity of the certification on the basis of the Board's determinations in the representation proceeding regarding the Union's labor organization

¹In its response the Respondent reasserts its affirmative defense that the Board should not issue a decision, or require it to bargain, in this case, until the Board has issued its decision in *Cedar Grove Convalescent Center*, Case 22-CA-17729, et al., JD (NY) 37-93. We find no merit to this contention.

²In their answers, the Respondents deny that the requested information is necessary for and relevant to the Union's performance of its duties. We note, however, that the description of the information sought on its face relates directly to the wages, hours, and terms and conditions of employment of the unit employees and we so find. Further, the Respondents have not attempted to rebut the relevance of the information in response to the Notice to Show Cause. Accordingly, we find that the Respondents' denials do not raise any issue warranting a hearing. See *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977).

status, the appropriateness of the unit, and the objections to the election.

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We, therefore, find that the Respondents have 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

At all material times Respondent Wayne View, a corporation, with a nursing home and place of business in Wayne, New Jersey, has been engaged in the business of providing health care and related services.

At all material times Respondent Healthcare, a corporation, with an office and place of business in Warminster, Pennsylvania, has been engaged in the business of providing housekeeping and related services to nursing homes and other businesses, including Respondent Wayne View at its Wayne facility.

During the 12-month period preceding the issuance of the complaint, Respondent Wayne View, in conducting its business operations, derived gross revenue in excess of \$100,000, and during the same period of time, purchased and received at its Wayne, New Jersey facility goods valued in excess of \$5,000 directly from points outside the State of New Jersey. We find that, at all material times, Respondent Wayne View has been an employer 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.

During the 12-month period preceding issuance of the complaint Respondent Healthcare, in conducting its business operations, performed services valued in excess of \$50,000 in States other than the State of Pennsylvania. We find that, at all material times, Respondent Healthcare has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, and terms and conditions of employment. We find that, at all material times, the Union has been 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 February 12, 1993, the Union was certified on March 25, 1993, as the collective-bargaining representative of the Respondents' employees in the following appropriate units:

UNIT 1:

All full time and regular part time nurses aides and dietary employees employed at Respondent Wayne View's Wayne facility, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.

UNIT 2:

All full time and regular part time housekeeping and laundry employees employed by Respondent Healthcare at Respondent Wayne View's Wayne facility, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.

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

B. *Refusal to Bargain*

Since about April 1, 1993, the Union has requested the Respondents to bargain and to furnish information, and, since April 1, 1993, the Respondents have refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 1, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units and to furnish the Union requested information, the Respondents have 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 Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them 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. We also shall order the Respondents to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondents begin 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 Respondents, Wayne View Convalescent Center, Inc. and Healthcare Services Group, Inc., Wayne, New Jersey, and Warminster, Pennsylvania, respectively, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL-CIO as the exclusive bargaining representative of the employees in the following bargaining units, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees:

UNIT 1:

All full time and regular part time nurses aides and dietary employees employed at Respondent Wayne View's Wayne facility, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.

UNIT 2:

All full time and regular part time housekeeping and laundry employees employed by Respondent Healthcare at Respondent Wayne View's Wayne facility, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.

(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 appropriate units on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish to the Union the information it requested on April 1, 1993.

(c) Post at the Respondents' facilities in Wayne, New Jersey, and Warminster, Pennsylvania, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director

³If 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."

for Region 22, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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 Respondents 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 Respondents have taken to comply.

Dated, Washington, D.C. November 23, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

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 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL-CIO as the exclusive representative of the employees in the bargaining units and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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 units:

UNIT 1:

All full time and regular part time nurses aides and dietary employees employed at Respondent Wayne View's Wayne facility, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.

UNIT 2:

All full time and regular part time housekeeping and laundry employees employed by Respondent Healthcare at Respondent Wayne View's Wayne facility, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL furnish to the Union the information it requested on April 1, 1993.

WAYNE VIEW CONVALESCENT CENTER,
INC. AND HEALTHCARE SERVICES
GROUP, INC.