

People Care, Incorporated and 1199 National Health and Human Service Employees' Union.
Case 2-CA-27207

September 16, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On June 22, 1994, 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 and to furnish relevant and necessary information following the Union's certification in Case 2-RC-21209. (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 an answer admitting in part and denying in part the allegations in the complaint.

Thereafter, on July 25, 1994, the General Counsel filed a Petition for Summary Judgment and Issuance of Decision and Order and Motion to Strike Parts of Respondent's Answer and Memorandum in Support, with exhibits attached. On July 28, 1994, 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 August 26, 1994, 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 the jurisdictional allegations of the complaint,¹ but denies all the remaining allegations, including that the unit is appropriate, that the Union was certified as and is the exclusive bargaining representative of the unit, that the Union has requested the Respondent to bargain and to furnish relevant and necessary information, and that the Respondent has refused to do so.

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

¹Although the Respondent denies par. 2(a) of the complaint, which describes the nature of the Respondent's business, the Respondent stipulated to that description in the underlying representation case. Accordingly, and as the Respondent admits the remaining jurisdictional allegations in the complaint, in agreement with the General Counsel, we find that the Respondent's denial does not raise any jurisdictional issue warranting a hearing in this proceeding.

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).

As indicated, the Respondent's answer also denies the allegations in the complaint relating to the Respondent's refusal to meet and bargain with the Union. However, we find that those denials also do not raise any issue warranting a hearing in this proceeding. The complaint's allegations in this regard are fully supported by various letters from the Union to the Respondent requesting bargaining and from the Respondent to the Region indicating that the Respondent intended to test the Union's certification in the court of appeals, all of which are attached as exhibits to the General Counsel's motion. The Respondent has not disputed the authenticity of that correspondence in response to the Notice to Show Cause. We therefore find, based on these letters, that the Union requested the Respondent to bargain and that the Respondent is refusing to do so.²

However, in agreement with the Respondent, we find that material issues of fact are raised with respect to the allegations in the complaint regarding the Respondent's failure to provide requested information.³ In letters to the Region and the Union dated May 23 and June 14, 1994, respectively, and again in its response to the Notice to Show Cause, the Respondent has contended, *inter alia*, that most if not all the information has already been provided to the Union in the representation proceeding, and that, to the extent the

²See *Biewer Wisconsin Sawmill*, 306 NLRB 732 (1992). In this regard, we reject as immaterial the Respondent's contention that the Union was dilatory in seeking bargaining. Even assuming *arguendo* that this were true, it is clear, based on the Respondent's correspondence to the Region, that the Respondent would have refused to bargain in any event in order to test the Union's certification. Cf. *Walt Disney World Dolphin Hotel*, 314 NLRB 154 fn. 1 (1994).

³The complaint alleges that by letter dated February 17, 1994, the Union requested the following information from the Respondent:

1. The names and addresses of each current employee and his/her title and current assignment, date of first employment, number of years with the agency, and date of birth. The latter information is particularly important to pension coverage questions.

2. The wages being paid to each of the present employees.

3. A description of all benefits provided to employees, including but not limited to pension, health insurance, life insurance, vacations, holidays, sick leave, other leave policies and copies of any benefit plans, summary plan descriptions, or other documents describing such benefits.

4. Any employee manuals or memoranda describing work requirements or personnel practices affecting employees in the bargaining unit.

5. A description of the procedure by which employees are selected for assignment to particular cases (clients) and a listing of all such assignments made within the last 6 months showing the name of the employee assigned, the name of the client and the date of the assignment, and the reason for her selection for that assignment.

Union requests the names of home care clients to which employees have been assigned, such work assignment information is confidential and could not be provided in any event. Thus, as there appears to be material issues of fact with respect to whether the Respondent has unlawfully failed to provide the Union with some or all of the requested information, we shall deny the General Counsel's Motion for Summary Judgment with respect to the refusal-to-provide-information allegations, and remand those allegations for further appropriate action.

However, as it is clear, as found above, that the Respondent is refusing to bargain generally in order to contest the Union's certification, we find that it would effectuate the purposes and policies of the Act to grant summary judgment with respect to the refusal-to-bargain allegation of the complaint. Accordingly, we grant the Petition for Summary Judgment with respect to that allegation.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a New York corporation, with its principal place of business located at 500 Eighth Avenue, New York, New York, has been engaged in the business of providing house-keeping services to various disabled and elderly individuals. Annually, the Respondent, in the course and conduct of its business operations, derives gross revenues in excess of \$500,000 and purchases and receives at its facility products, goods, and materials valued in excess of \$25,000 directly from points outside the State of New York. 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 a mail-ballot election counted on July 6, 1993, the Union was certified on September 24, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time home health care workers employed by the Employer, including certified home health aides, personal care aides, quality compliance technicians, junior aides and housekeepers employed by the Employer out of its facility located at 500 Eighth Avenue, New

York, New York, excluding all other employees, including registered nurses, licensed practical nurses, office clericals and professional employees, 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*

On or about November 30, 1993, and January 3 and February 15, 1994, the Union, by letter, requested the Respondent to bargain. Since on or about November 30, 1993, the Respondent has failed and refused to meet and bargain with the Union. 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 November 30, 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 the 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, People Care, Incorporated, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with 1199 National Health and Human Service Employees' Union 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.

⁴In view of our grant of the Petition for Summary Judgment in this respect, we find it unnecessary to pass on the General Counsel's motion to strike parts of the Respondent's answer.

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 home health care workers employed by the Employer, including certified home health aides, personal care aides, quality compliance technicians, junior aides and housekeepers employed by the Employer out of its facility located at 500 Eighth Avenue, New York, New York, excluding all other employees, including registered nurses, licensed practical nurses, office clericals and professional employees, guards and supervisors as defined in the Act.

(b) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 2, 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.

⁵ 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."

IT IS FURTHER ORDERED that the allegations in the complaint regarding the Respondent's refusal to provide information to the Union are remanded to the Regional Director for further appropriate action.

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 1199 National Health and Human Service Employees' Union 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 home health care workers employed by us, including certified home health aides, personal care aides, quality compliance technicians, junior aides and housekeepers employed by us out of our facility located at 500 Eighth Avenue, New York, New York, excluding all other employees, including registered nurses, licensed practical nurses, office clericals and professional employees, guards and supervisors as defined in the Act.

PEOPLE CARE, INCORPORATED