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**Kwik Care Ltd. d/b/a VIP Health Care Services and Local 670, Retail, Wholesale and Department Store Union, AFL-CIO. Cases 29-CA-18565 and 29-CA-18603**

February 24, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

Upon charges filed on September 27 and October 7, 1994, the General Counsel of the National Labor Relations Board issued complaints in the above cases on November 15, 1994, 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 information following the Union's certification in Case 29-RC-8198.<sup>1</sup> (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 answers admitting in part and denying in part the allegations in the complaints and asserting affirmative defenses.

Thereafter, on January 24, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On January 27, 1995, 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 February 16, 1995, 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 answers the Respondent admits its refusal to bargain and to furnish necessary and relevant information,<sup>2</sup> but attacks the validity of the certification on the

<sup>1</sup> On January 18, 1995, the Regional Director issued an order consolidating the two cases.

<sup>2</sup> The complaint alleges that by letter dated August 22, 1994, the Union requested the following information from the Respondent:

(a) Names and addresses of current bargaining unit employees, showing job titles, dates of hire, weekly salary and number of hours worked.

(b) Amounts of the last three wage changes for each current bargaining unit employee.

(c) Actual hours worked by each bargaining unit employee for the past two calendar quarters.

(d) A list of all fringe benefits provided to each bargaining unit employee, including medical, hospital, Blue Cross/Blue Shield or other plans of insurance, life insurance, and the pay policy for holidays, vacation and sick days.

basis of its objections to the election in the representation proceeding.

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). We find that there are also no factual issues regarding the Union's request for information because the Respondent admits that it refused to furnish the information. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all times material, the Respondent, a New York corporation, with its principal office and place of business located at 116-06 Myrtle Avenue, Richmond Hill, New York (Richmond Hill facility), has been engaged in the business of providing home health care services to sick, infirmed, and aged persons.

During the past year, which period is representative of its annual operations generally, the Respondent, in the course and conduct of its operations, derived gross revenues in excess of \$500,000 and purchased and received at its Richmond Hill facility products, goods, and materials valued in excess of \$50,000 directly from firms located 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 the mail-ballot election held on February 9 through March 15, 1994, the Union was certified on August 1, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

(e) Any other information on compensation provided to bargaining unit employees.

It is well established that wage and employment information of this type is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

All full-time and regular part-time home health aides, personal care aides, homemakers and home attendants employed by Respondent from its locations at 116-06 Myrtle Avenue, Richmond Hill, New York; 99 Railroad Station Plaza, Hicksville, New York; 171 East Post Road, White Plains, New York; 71 East Eckerson Road, Spring Valley, New York; and 2432 Grand Concourse, Bronx, New York, excluding all office clerical employees, registered nurses, licensed practical nurses, confidential employees, managers, field nurse supervisors, on-call coordinators, field liaisons, coordinators, personnel coordinators, personal care aide trainees, guards and supervisors as defined in the Act.<sup>3</sup>

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

#### B. Refusal to Bargain

On about August 9 and 22, 1994, respectively, the Union requested the Respondent to bargain and to furnish necessary and relevant information, and, since about September 20, 1994, the Respondent 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.

#### CONCLUSIONS OF LAW

By refusing on and after September 20, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish necessary and relevant information requested by 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, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent 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 Re-

<sup>3</sup>The unit description set forth in the Regional Director's Supplemental Decision on Objections and Certification of Representative identifies the address in Richmond Hill, New York, as 110-20 Jamaica Avenue. The complaint, however, substitutes 116-06 Myrtle Avenue, which the complaint alleges is the location of the Respondent's principal office and place of business. The unit description set forth here is the unit description set forth in the complaint.

spondent 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, Kwik Care Ltd. d/b/a VIP Health Care Services, Richmond Hill, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 670, Retail, Wholesale and Department Store Union, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit 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 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 aides, personal care aides, homemakers and home attendants employed by Respondent from its locations at 116-06 Myrtle Avenue, Richmond Hill, New York; 99 Railroad Station Plaza, Hicksville, New York; 171 East Post Road, White Plains, New York; 71 East Eckerson Road, Spring Valley, New York; and 2432 Grand Concourse, Bronx, New York, excluding all office clerical employees, registered nurses, licensed practical nurses, confidential employees, managers, field nurse supervisors, on-call coordinators, field liaisons, coordinators, personnel coordinators, personal care aide trainees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Richmond Hill, New York, copies of the attached notice marked "Appendix."<sup>4</sup>

<sup>4</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."

Copies of the notice, on forms provided by the Regional Director for Region 29 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.

Dated, Washington, D.C. February 24, 1995

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William B. Gould IV, Chairman

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James M. Stephens, Member

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Margaret A. Browning, 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 670, Retail, Wholesale and Department Store Union, AFL-CIO as the exclusive representative of the employees in the bargaining unit, 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 unit:

All full-time and regular part-time home health aides, personal care aides, homemakers and home attendants employed by us from our locations at 116-06 Myrtle Avenue, Richmond Hill, New York; 99 Railroad Station Plaza, Hicksville, New York; 171 East Post Road, White Plains, New York; 71 East Eckerson Road, Spring Valley, New York; and 2432 Grand Concourse, Bronx, New York, excluding all office clerical employees, registered nurses, licensed practical nurses, confidential employees, managers, field nurse supervisors, on-call coordinators, field liaisons, coordinators, personnel coordinators, personal care aide trainees, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

KWIK CARE LTD. D/B/A VIP HEALTH  
CARE SERVICES