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Baltimore Goodwill Industries, Inc. and Baltimore Regional Joint Board, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC. Case 5-CA-26024

April 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed on March 6, 1996, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on March 29, 1996, 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 5-RC-14245. (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.

On April 15, 1996, the General Counsel filed a Motion to Transfer Case to the Board and for Summary Judgment. On April 17, 1996, 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 April 23, 1996, 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 and response, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contention in the representation proceeding that the bargaining unit sought by the Union is inappropriate because it includes disabled individuals who are not "employees" within the meaning of the Act.

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

At all material times, the Respondent, a Maryland corporation with an office and place of business at the Woodlawn Social Security Complex located in Baltimore, Maryland, has been engaged in providing services and employment programs to individuals with special needs. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 performing contracts with the United States Government, and purchased and received materials, goods, and services valued at more than \$5000 directly from points outside the State of Maryland. 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 November 30, 1995, the Union was certified on February 6, 1996, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time janitorial and custodian employees, including cleaners, waxers, buffers and strippers employed by the Employer at the Woodlawn Social Security Complex, operations and annex buildings, located in Baltimore, Maryland, but excluding all other 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

Since February 8, 1996, the Union, by letter, has requested the Respondent to bargain, and since February 28, 1996, 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.

CONCLUSION OF LAW

By refusing on and after February 28, 1996, to bargain with the Union as the exclusive collective-bargaining representative of the 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), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Baltimore Goodwill Industries, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Baltimore Regional Joint Board, Union of Needletrades, Industrial and Textile Employees, 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 full-time and regular part-time janitorial and custodian employees, including cleaners, waxers, buffers and strippers employed by the Employer at the Woodlawn Social Security Complex, operations and annex buildings, located in Baltimore, Maryland, but excluding all other employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."¹ Copies of

¹ 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."

the notice, on forms provided by the Regional Director for Region 5 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.

Dated, Washington, D.C. April 30, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, 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 Baltimore Regional Joint Board, Union of Needletrades, Industrial and Textile Employees, 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 full-time and regular part-time janitorial and custodian employees, including cleaners, waxers, buffers and strippers employed by us at our Woodlawn Social Security Complex, operations and annex buildings, located in Baltimore, Maryland, but excluding all other employees, guards and supervisors as defined in the Act.

BALTIMORE GOODWILL INDUSTRIES, INC.