

**GranCare, Inc., and its Division, St. Anthony Nursing Care Center and St. Anthony Employee Council. Case 7-CA-37976**

June 20, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX  
AND HIGGINS

On February 21, 1996,<sup>1</sup> the Regional Director for Region 7 of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has engaged in, and is engaging, in certain unfair labor practices. About March 6, the Respondent filed an answer to the complaint, and about March 8 the Respondent filed an amended answer to the complaint. The Respondent admits in the amended answer the factual allegations of the complaint. Thus, the Respondent admits that it withdrew recognition of the St. Anthony Employee Council (the Charging Union) as the exclusive collective-bargaining representative of an appropriate unit and, without the consent of the Charging Union, repudiated the collective-bargaining agreement which was effective from October 1, 1995, to October 1, 1997. The Respondent, however, denies that it violated the Act and asserts, as an affirmative defense, that it withdrew recognition from the incumbent Charging Union pursuant to an agreement between GranCare, Inc. and Service Employees International Union (SEIU), dated November 6, 1995.

On April 4 the General Counsel, by counsel, filed a Motion for Summary Judgment with exhibits attached. Counsel for the General Counsel submits that the Respondent's amended answer reveals that there are no disputes with respect to any relevant or material facts which would necessitate a hearing before an administrative law judge.

On April 8 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On April 19, 1996, the Respondent filed a response denying that it has committed any unfair labor practices, noting that it has admitted certain of the allegations in the complaint, but again asserting that its actions were taken pursuant to an agreement between itself and Service Employees International Union, dated November 6, 1995.

**Ruling on motion for intervention**

On May 9 Service Employees International Union Local 79 filed a motion for intervention in this proceeding, with exhibits attached.<sup>2</sup> On April 23 the Gen-

eral Counsel filed an opposition to the motion. On May 7 Local 79 filed a reply to the General Counsel's opposition.

Local 79's intervention efforts are grounded in unfair labor practice charges it filed against GranCare on August 9, 1995, in Case 7-CA-37469(3).<sup>3</sup> There is also a charge (Case 7-CA-37722) dated September 22, 1995, attached to the motion. Both charges include allegations that GranCare maintained "illegal company unions," in violation of Section 8(a)(2) of the Act at various facilities, including St. Anthony. A consolidated complaint issued in Cases 7-CA-37469(3), 7-CA-37609, and 7-CA-37579, on October 26, 1995. However, this complaint did not include allegations involving the Respondent's St. Anthony facility, the facility involved here.<sup>4</sup>

GranCare and SEIU (Local 79's parent organization), signed an agreement effective from November 6, 1995, to April 30, 1998. The relevant part of that agreement reads as follows:

GranCare and SEIU agree to settle outstanding NLRB charges and objections filed by SEIU in conjunction with elections conducted at Clinton-Aire and Bedford Villa facilities. Within two weeks of successful negotiation and ratification of this agreement, the three regional master agreements, and settlement of charges and objections filed by SEIU before the NLRB *related to these facilities* [emphasis added], GranCare shall disband its employee councils in all [Michigan] facilities where they exist, including Clinton-Aire.<sup>5</sup>

Another agreement dated January 29 also contained the same provision.

Local 79 contends that resolution of this case will affect the enforceability of the agreement between itself and GranCare and that its interests are not adequately represented by the Respondent.

The General Counsel argues, in his opposition to the motion, that Local 79 has no standing to intervene. The General Counsel asserts that SEIU Local 79 withdrew a charge that the St. Anthony Employee Council has been unlawfully dominated by the Respondent. According to the General Counsel, SEIU Local 79 did so only after the Regional Director had decided to dismiss that portion of the charge based on the lack of any evi-

the motion is dated April 17, 1996. Apparently, Local 79 served the General Counsel with the motion before filing it with the Board.

<sup>3</sup>There is an amended charge dated September 18, 1995, also with the Case 7-CA-37469(3) containing allegations against the Respondent's Clinton-Aire facility.

<sup>4</sup>Thus, the General Counsel has never alleged that the Respondent unlawfully dominated or interfered with the St. Anthony Employee Council in violation of Sec. 8(a)(2).

<sup>5</sup>The parties also agreed "to resolve outstanding disputes where possible." Local 79 submitted the agreement as an exhibit in the related case, *GranCare, Inc., d/b/a Nightengale Nursing Care Center*, Case 7-CA-38264 (323 NLRB 1053), issued this date.

<sup>1</sup> All dates are in 1996, unless otherwise noted.

<sup>2</sup> We note that the motion is date stamped as being received by the Board on May 9 but the signature on the affidavit of service of

dence of such domination. The General Counsel also states that there are no pending charges involving alleged employer domination of the St. Anthony Employee Council.

Local 79, in its reply to the General Counsel's opposition, reiterates that its participation in this proceeding is essential to determine what it views as the ultimate issue—whether the Respondent is unlawfully refusing to bargain with a bargaining representative of the employees' own choosing or whether the Respondent has ended an unlawful relationship with an organization that it established and dominated. Local 79's motion is essentially premised on the contention that the determination in this case will affect the enforceability of the agreement between Local 79 and GranCare. We deny Local 79's motion for intervention for reasons explained below.

We note that, as a general rule, an agreement or contract cannot abrogate the legal rights of a person or organization not party to that agreement. This basic principle of contract law is implicitly recognized, with regard to Board approved settlements in NLRB Casehandling Manual (Part One), ULP, Section 10134.3, which provides that:

In every CA case in which the contemplated settlement provides for the disestablishment of a labor organization, or for the withdrawal and/or withholding of recognition from a labor organization, or for ceasing to give effect to part or all of an existing collective-bargaining contract with a labor organization, that organization should be a party to the settlement. It must, before approval of the agreement,

- a. Be a party or signatory to the agreement itself; or
- b. File with the Regional Director a letter or other document stating that it has knowledge of the proceedings and of the contemplated settlement and that it waives any right to be a party to the proceedings or to contest the settlement; or
- c. File with the Regional Director an affidavit signed by the last executive officer of the organization certifying that the organization is dissolved and out of existence and that it does not claim to represent any of the employees in the unit involved.

Where, in a formal settlement, either b or c is used, the letter, document, or affidavit must be made part of the record (see sec. 10166.5).

Local 79 withdrew its charge that the Respondent had violated Section 8(a)(2) of the Act and entered into a non-Board agreement with the Respondent to disestablish, inter alia, the St. Anthony Employee Council. The St. Anthony Employee Council was not and has not been a party to that agreement. We find

that, under these circumstances, the agreement between the Respondent and SEIU, which essentially constitutes an agreement to violate Section 8(a)(5), as discussed below, does not give Local 79 a legal interest sufficient to confer standing to intervene in this proceeding. We, therefore, deny the motion for intervention.

#### Ruling on Motion for Summary Judgment

In its answer, the Respondent admits that it withdrew recognition from the Charging Union as the exclusive collective-bargaining representative of its employees in the appropriate unit, defined below, and repudiated the entire collective-bargaining agreement, without the consent of the Charging Union. The Respondent, however, defends its actions on the grounds that it acted pursuant to the November 6, 1995 agreement between itself and Service Employees International Union.

For the reasons stated above, the agreement between the Respondent and SEIU does not provide a valid basis either to withdraw recognition from the Charging Union or to repudiate the collective-bargaining agreement. At all times material, the Respondent and the Charging Union were parties to a collective-bargaining agreement covering employees in an appropriate unit. During the term of the contract, the Charging Union enjoyed an irrebuttable presumption of majority status. Consequently, the Respondent's withdrawing recognition from the incumbent Charging Union before the expiration of the contract, and its repudiation of the contract, violated Section 8(a)(5) and (1) of the Act. See *Belcon, Inc.*, 257 NLRB 1341, 1346 (1981).

Thus, as we find that the affirmative defense submitted by the Respondent to be inadequate and because there are no material facts in dispute, we grant the General Counsel's 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 corporation, with an office and place of business in, Warren, Michigan, the St. Anthony facility, has been engaged in the business of operating nursing care centers for the disabled and elderly at various facilities in the State of Michigan. The St. Anthony facility is the only facility involved in this proceeding. During calendar year 1995, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$1 million and purchased and received medical supplies, and other goods and materials valued in excess of \$50,000 at its St. Anthony facility and other Michigan facilities directly from points outside the State of Michigan.

We find that at all material times, the Respondent has been 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, and that the Charging Union has been a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute an unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time nurse aides, orderlies, restorative nursing aides, ward clerks, dietary aides, housekeeping employees, laundry employees, cooks, maintenance and activity aides; but excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

Since about 1990 and at all material times, the Charging Union has been the designated exclusive collective-bargaining representative of the unit and until about November 7, 1995, has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from October 1, 1995, to October 1, 1997.

About November 7, 1995, the Respondent, by its agent, Percell Smith, withdrew its recognition of the Charging Union as the exclusive collective-bargaining representative of the unit and repudiated the entire collective-bargaining agreement without the consent of the Charging Union. The collective-bargaining agreement relates to wages, hours, and other terms and conditions of employment of the unit which are mandatory bargaining subjects.

By withdrawing recognition from the Union as the exclusive collective-bargaining representative of the appropriate unit, and by repudiating the entire collective-bargaining agreement without the Union's consent, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

## CONCLUSIONS OF LAW

1. The Respondent, GranCare, Inc., and its Division, St. Anthony Nursing Care Center, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate bargaining unit is:

All full-time and regular part-time nurse aides, orderlies, restorative nursing aides, ward clerks, dietary aides, housekeeping employees, laundry employees, cooks, maintenance and activity aides;

but excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of the Charging Union as the exclusive collective-bargaining representative of the unit.

5. The Respondent violated Section 8(a)(5) and (1) of the Act by repudiating the entire collective-bargaining agreement, effective from October 1, 1995, to October 1, 1997, without the consent of the Charging Union.

## 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 and to take certain affirmative action designed to effectuate the policies of the Act. Thus, we shall require that the Respondent recognize and bargain collectively and in good faith with the Charging Union and abide by the collective-bargaining agreement effective from October 1, 1995, to October 1, 1997. We shall also require the Respondent to make employees whole for any loss of earnings or other benefits they may have sustained by reason of the unfair labor practices found above, as computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, we shall require the Respondent to post an appropriate notice to unit employees.

## ORDER

The National Labor Relations Board orders that the Respondent, GranCare, Inc., and its Division, St. Anthony Nursing Care Center, Warren, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully withdrawing recognition from the St. Anthony Employee Council as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time nurse aides, orderlies, restorative nursing aides, ward clerks, dietary aides, housekeeping employees, laundry employees, cooks, maintenance and activity aides; but excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

(b) Repudiating the collective-bargaining agreement effective from October 1, 1995, to October 1, 1997.

(c) 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) Recognize and bargain collectively and in good faith with the St. Anthony Employee Council.

(b) Abide by the collective-bargaining agreement with the Charging Union, effective from October 1, 1995, to October 1, 1997.

(c) Make unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the unfair labor practices found above, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its St. Anthony facility in Warren, Michigan, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 13, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

<sup>6</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."

## 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.

Section 7 of the Act gives employees these rights

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to be engaged in any of these protected concerted activities.

WE WILL NOT unlawfully withdraw recognition from the St. Anthony Employee Council as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time nurse aides, orderlies, restorative nursing aides, ward clerks, dietary aides, housekeeping employees, laundry employees, cooks, maintenance and activity aides; but excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT fail to give effect to the collective-bargaining agreement with the St. Anthony Employee Council effective by its terms from October 1, 1995, to October 1, 1997.

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 recognize and bargain collectively and in good faith with the St. Anthony Employee Council.

WE WILL abide by the collective-bargaining agreement effective from October 1, 1995, to October 1, 1997.

WE WILL make employees whole for any loss of earnings or other benefits they may have sustained by reason of our withdrawal of recognition from the St. Anthony Employee Council and/or our failure to give effect to the collective-bargaining agreement.

GRANCARE, INC., AND ITS DIVISION, ST.  
ANTHONY NURSING CARE CENTER