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Convalescent Center of Norwich, Inc., d/b/a Laurel Rose and New England Health Care Employees Union, District 1199, AFL-CIO. Case 34-CA-7762

April 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

Pursuant to a charge filed on February 3, 1997, the General Counsel of the National Labor Relations Board issued a complaint on February 26, 1997, 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 34-RC-1365. (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 March 24, 1997, the General Counsel filed a Motion for Summary Judgment. On March 26, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits that the Union was certified as the exclusive collective-bargaining representative of the unit, and that the Union requested bargaining, but denies that the unit is appropriate, that the Union is the exclusive bargaining representative of the unit, and that the Respondent has refused to bargain with the Union as the collective-bargaining representative of the allegedly appropriate unit.

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).

Nor do we find that the Respondent's denial that it has failed and refused to bargain with the exclusive-

bargaining representative of the appropriate unit raises any issue warranting a hearing in this proceeding. The Respondent admits that about January 22, 1997, the Union, by letter, requested the Respondent to bargain and the Respondent does not contend that it has offered or agreed to meet and bargain with the Union since that request. Rather, it is clear from the other denials in the Respondent's answer that the Respondent is in fact refusing to bargain with the Union in order to test the Union's certification.

Accordingly, we grant the Motion for Summary Judgment.¹

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 Norwich, Connecticut, has been engaged in the operation of a nursing home. During the 12-month period ending January 31, 1997, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$100,000 and purchased and received at its Norwich, Connecticut facility goods valued in excess of \$50,000 directly from points outside the State of Connecticut. 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 December 15, 1995, the Union was certified on January 17, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service and maintenance employees employed by the Employer including licensed practical nurses, therapeutic recreation directors, physical therapy aides, certified/registered nursing assistants, housekeeping employees, laundry employees, dietary employees, and porters; but excluding the administrator, the director of nursing, the assistant director of nursing, the infection control in-service coordinator, the minimum data set coordinator, registered nurses, the food service director, the therapeutic recreation department director, the maintenance director, the housekeeping/laundry director, the social service director, the admissions/market-

¹ Member Higgins did not participate in the underlying representation case. However, he agrees that the Respondent has not raised anything with respect to that case that is properly litigable before the Board in this test-of-certification case.

ing director, the business office manager, cooks, business office clerical employees, and guards, professional employees and other 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 January 22, 1997, the Union has requested the Respondent to bargain and, since the same date, 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 January 22, 1997, 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, Convalescent Center of Norwich, Inc., d/b/a Laurel Rose, Norwich, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with New England Health Care Employees Union, District 1199, AFL-CIO 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 service and maintenance employees employed by the Employer including licensed practical nurses, therapeutic recreation directors, physical therapy aides, certified/registered nursing assistants, housekeeping employees, laundry employees, dietary employees, and porters; but excluding the administrator, the director of nursing, the assistant director of nursing, the infection control in-service coordinator, the minimum data set coordinator, registered nurses, the food service director, the therapeutic recreation department director, the maintenance director, the housekeeping/laundry director, the social service director, the admissions/marketing director, the business office manager, cooks, business office clerical employees, and guards, professional employees and other supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Norwich, Connecticut, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 34 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 February 3, 1997.

(c) 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

²If 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."

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 30, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., 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 New England Health Care Employees Union, District 1199, AFL-

CIO 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 service and maintenance employees employed by us at our Norwich, Connecticut facility, including licensed practical nurses, therapeutic recreation directors, physical therapy aides, certified/registered nursing assistants, housekeeping employees, laundry employees, dietary employees, and porters; but excluding the administrator, the director of nursing, the assistant director of nursing, the infection control in-service coordinator, the minimum data set coordinator, registered nurses, the food service director, the therapeutic recreation department director, the maintenance director, the housekeeping/laundry director, the social service director, the admissions/marketing director, the business office manager, cooks, business office clerical employees, and guards, professional employees and other supervisors as defined in the Act.

CONVALESCENT CENTER OF NORWICH,
INC., D/B/A LAUREL ROSE