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**Beverly Health and Rehabilitation Services, Inc.
d/b/a Beverly Health Care Center-West and
United Food and Commercial Workers Union
AFL-CIO, Local 1657.** Case 10-CA-30698

April 13, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
LIEBMAN

Pursuant to a charge filed on December 11, 1997, the General Counsel of the National Labor Relations Board issued a complaint on February 6, 1998, 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 10-RC-14816. (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 17, 1998, the General Counsel filed a Motion for Summary Judgment. On March 18, 1998, 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 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 its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of the Board's unit determination 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).

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 California corporation, with an office and place of business in Fairfield, Alabama, has been engaged in the operation of a skilled nursing facility. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, has received gross revenue in excess of \$100,000 at its Fairfield, Alabama facility and has received in excess of \$10,000 from Medicaid and Medicare. 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 September 26, 1997, the Union was certified on October 6, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Licensed Practical Nurse (LPN charge nurses), including Casual Licensed Practical Nurses (PRNs), employed by the Respondent at its Fairfield, Alabama facility, but excluding all other employees; temporary employees; LPN Unit Coordinators (LPN Unit Clerks); LPN Staff Development Coordinators (SDC); Restorative LPN Supervisors; Registered Nurses (RNs), including, but not limited to RN Supervisors, Care Plan RNs, and Medicare/LPN Staffing Coordinators; recreational service director; social service personnel; licensed therapists; business office clerical and confidential employees; dietary service managers; beauticians, 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 about October 13, 1997, the Union has requested the Respondent to bargain and to furnish information,¹ and, since that date, the Respondent has re-

¹ In its answer to the complaint, the Respondent has admitted that the requested information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, "except that such informa-

Continued

fused. 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 October 13, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, 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 also shall 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 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, Beverly Health and Rehabilitation Services, Inc. d/b/a Beverly Health Care Center-West, Fairfield, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union AFL-CIO, Local 1657, 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.

tion is not necessary for a unit which improperly includes Section 2(11) supervisors.”

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 Licensed Practical Nurse (LPN charge nurses), including Casual Licensed Practical Nurses (PRNs), employed by the Respondent at its Fairfield, Alabama facility, but excluding all other employees; temporary employees; LPN Unit Coordinators (LPN Unit Clerks); LPN Staff Development Coordinators (SDC); Restorative LPN Supervisors; Registered Nurses (RNs), including, but not limited to RN Supervisors, Care Plan RNs, and Medicare/LPN Staffing Coordinators; recreational service director; social service personnel; licensed therapists; business office clerical and confidential employees; dietary service managers; beauticians, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it requested about October 13, 1997.

(c) Within 14 days after service by the Region, post at its facility in Fairfield, Alabama, copies of the attached notice marked “Appendix.”² Copies of the notice, on forms provided by the Regional Director for Region 10 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 October 13, 1997.

(d) 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 13, 1998

William B. Gould IV, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, 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 United Food and Commercial Workers Union AFL-CIO, Local 1657 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the ex-

clusive 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 Licensed Practical Nurse (LPN charge nurses), including Casual Licensed Practical Nurses (PRNs), employed by us at our Fairfield, Alabama facility, but excluding all other employees; temporary employees; LPN Unit Coordinators (LPN Unit Clerks); LPN Staff Development Coordinators (SDC); Restorative LPN Supervisors; Registered Nurses (RNs), including, but not limited to RN Supervisors, Care Plan RNs, and Medicare/LPN Staffing Coordinators; recreational service director; social service personnel; licensed therapists; business office clerical and confidential employees; dietary service managers; beauticians, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested about October 13, 1997.

BEVERLY HEALTH AND REHABILITATION SERVICES, INC. D/B/A BEVERLY HEALTH CARE CENTER-WEST