

First Healthcare Corp., d/b/a Hamilton Rehabilitation and Healthcare Center and New England Health Care Employees Union, District 1199, AFL-CIO. Case 34-CA-8356

July 31, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Pursuant to a charge and amended charge filed on April 29 and May 20, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on May 27, 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 forward information following the Union's certification in Case 34-RC-1531. (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 June 19, 1998, the Acting General Counsel filed a Motion for Summary Judgment. On June 23, 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, but in its response 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.¹ See *Pitts-*

¹ Member Hurtgen did not participate in the underlying representation proceeding, and Member Brame dissented in that proceeding and he remains of that view. However, they agree that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass v. NLRB*, supra. In light of this, and for institutional reasons, they agree with the decision to grant the Acting General Counsel's Motion for Summary Judgment.

burgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941).

In its answer, the Respondent denies that the requested information is relevant and necessary to the Union's role as bargaining representative and asserts that it is without knowledge sufficient to admit or deny that the Union is a labor organization. However, at the representation hearing in Case 34-RC-1531, the Respondent stipulated that the Union is a labor organization within the meaning of the Act. Thus, the Respondent is precluded from raising that issue here. See *Woodlands Health Center*, 325 NLRB No. 51 (Feb. 10, 1998). In addition, the information requested April 1, 1998, and alleged in the complaint to be relevant and necessary,² is presumptively necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit inasmuch as the request relates to the terms and conditions of employment of the unit employees. The Respondent has not attempted to rebut the relevance of the information requested by the Union. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union. See *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977).

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 Delaware corporation, with an office and place of business in Norwich, Connecticut, has been engaged in the operation of a skilled and semi-skilled nursing facility providing health care services to the general public. During the 12-month period ending April 30, 1998, the Respondent, in conducting its operations, derived gross revenues in excess of \$100,000 and purchased and received at its 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.

²The complaint alleges that the following requested information is relevant: (1) a list of all employees in the bargaining unit including address, telephone number, date of birth, date of hire, wage rate, hours worked per week, and shift; (2) wage scales for each job classification; (3) all benefit plans offered, terms of eligibility and their costs to both the Employer and employee, and the number and names of participants in each plan; (4) all other benefits offered and terms of eligibility; (5) the total assets of any 401(k) plan, its performance record, all actuarial information and summary plan descriptions, and the number and names of each participant; and (6) a copy of the personnel policy/policy manual.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held March 19, 1998, the Union was certified on March 31, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time licensed practical nurses (LPNs), LPN charge nurses, certified nursing assistants (CNAs), dietary aides, cooks, chefs, bedmakers, maintenance employees, physical and occupational therapy aides, medical records clerk/payroll coordinator, and data entry clerk employed by the Employer at its Norwich, Connecticut facility; but excluding RNs, RN charge nurses, Director of Nursing Services, facility supervisors, infection control nurse, care plan coordinators, staff development coordinator, staff development nurse, occupational health and safety nurse, assessment nurse, special care unit coordinator, rehabilitation director, human resources and payroll manager, business office manager, food services supervisor, director of activities, social worker, occupational therapy assistant, physical therapy assistant, maintenance director, and guards, other professional employees 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 April 1, 1998, the Union has requested the Respondent to bargain and to furnish information that is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, and, since that 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 April 1, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the 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. We also shall order the Respondent to furnish the Union the information requested on April 1, 1998, with the exceptions of social security numbers and all of item 7 (which, as noted above, are not alleged to be relevant and necessary).

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, First Healthcare Corp., d/b/a Hamilton Rehabilitation & Healthcare Center, 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 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 licensed practical nurses (LPNs), LPN charge nurses, certified nursing assistants (CNAs), dietary aides, cooks, chefs, bedmakers, maintenance employees, physical and occupational therapy aides, medical records clerk/payroll coordinator, and data entry clerk employed by the Employer at its Norwich, Connecticut facility; but excluding RNs, RN charge nurses, Director of Nursing Services, facility supervisors, infection control nurse, care plan coordinators, staff development coordinator, staff development nurse, occupational health and safety nurse, assessment nurse, special care unit coordi-

nator, rehabilitation director, human resources and payroll manager, business office manager, food services supervisor, director of activities, social worker, occupational therapy assistant, physical therapy assistant, maintenance director, and guards, other professional employees and supervisors as defined in the Act.

(b) Furnish the Union the information it requested April 1, 1998, with the exceptions of social security numbers and all of item 7.

(c) Within 14 days after service by the Region, post at its facility in Norwich, Connecticut, copies of the attached notice marked "Appendix."³ 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 April 1, 1998.

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

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.

³If 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."

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, 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 licensed practical nurses (LPNs), LPN charge nurses, certified nursing assistants (CNAs), dietary aides, cooks, chefs, bedmakers, maintenance employees, physical and occupational therapy aides, medical records clerk/payroll coordinator, and data entry clerk employed by us at our Norwich, Connecticut facility; but excluding RNs, RN charge nurses, Director of Nursing Services, facility supervisors, infection control nurse, care plan coordinators, staff development coordinator, staff development nurse, occupational health and safety nurse, assessment nurse, special care unit coordinator, rehabilitation director, human resources and payroll manager, business office manager, food services supervisor, director of activities, social worker, occupational therapy assistant, physical therapy assistant, maintenance director, and guards, other professional employees and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested April 1, 1998, with the exceptions of social security numbers and all of item 7.

FIRST HEALTHCARE CORP., D/B/A HAMILTON REHABILITATION & HEALTHCARE CENTER