

**North of Market Senior Services, Inc. and Service Employees International Union, Local 790** Case 20-CA-28876

March 24, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on January 7, 1999,<sup>1</sup> the General Counsel of the National Labor Relations Board issued a complaint on January 22, 1999, 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 20-RC-17350. (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, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On February 16, 1999, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On February 18, 1999, 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 that the Union was certified as the exclusive collective-bargaining representative of the unit and that the Union requested and that it refused bargaining, but denies that the unit is appropriate and that the Union is the exclusive bargaining representative of the unit. The Respondent attacks the validity of the certification on the basis of its objections to the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.<sup>2</sup> The Respondent does not offer to ad-

<sup>1</sup> Although the Respondent's answer denies the complaint allegations as to the filing and service of the unfair labor practice charge for lack of sufficient information or belief as to the truth thereof, a copy of the charge and affidavit of service are attached to the General Counsel's motion, and the Respondent has not challenged the authenticity of those documents in its response to the Notice to Show Cause.

<sup>2</sup> The Respondent's answer denies that it is engaged in "business" operations, that it is an employer engaged in commerce, that the Union is a labor organization and that the unit is appropriate. In the underlying representation case, the Respondent executed a Stipulated Election Agreement in which it stipulated to the commerce facts alleged in the complaint, stipulated that it is an employer engaged in commerce within the meaning of the Act, stipulated that the Union is a labor organization and stipulated that the unit is appropriate for purposes of collective bargaining. Neither the Respondent's answer nor its Response to the Notice to Show Cause provides any basis for a hearing on any of these issues in this case. First, the complaint allegations referencing Respondent's activities as business rather than as charitable are

duce 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.<sup>3</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a nonprofit California corporation, with an office in San Francisco, California, has been engaged in providing health care and social services for low-income elderly people.

During the 12-month period ending December 31, 1998, the Respondent, in conducting its operations, derived gross revenues in excess of \$250,000 and purchased and received at its San Francisco, California facility goods and materials valued in excess of \$5000 which originated from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(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 January 6, 1998, the Union was certified on September 28, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer; excluding all employees employed by other employers, confidential employees, independent contractors, managers, guards, and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

descriptive and do not in any way affect the Respondent's legal status as an Employer. Second, the Respondent's response does not contest the underlying commerce facts set out below and in pars 2(b) and (c) of the complaint. Nor does the Respondent provide any explanation as to why its stipulation as to the appropriateness of the unit in the Stipulated Election Agreement is no longer valid. And finally, the Respondent's explanation in its Response for denying the labor organization status of the Union repeats contentions made in support of its objections to the election. In sum, the Respondent's denials do not raise issues warranting a hearing in this matter.

<sup>3</sup> Member Hurtgen dissented from the failure to provide a hearing on two of the Respondent's objections to the election. He agrees, however, that the Respondent does not raise any new matters in this proceeding that would warrant a hearing. Accordingly, for institutional reasons, he agrees that summary judgment is appropriate.

### B. Refusal to Bargain

About October 7, 1998, the Union requested the Respondent to recognize and bargain, and, about November 19, 1998, the Respondent 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 November 19, 1998, 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, North of Market Senior Services, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 790 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 employees employed by the Employer; excluding all employees employed by other employers, confidential employees, independent contractors, managers, guards, and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in San Francisco, California, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, 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 November 19, 1998.

(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 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.

WE WILL NOT refuse to bargain with Service Employees International Union, Local 790, 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 employees employed by us; excluding all employees employed by other employers, confidential employees, independent contractors, managers, guards, and supervisors as defined by the Act.

NORTH OF MARKET SENIOR  
SERVICES, INC.

<sup>4</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."