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**Louisville-Jefferson County Public Defender Corp.
and American Federation of Teachers, Local
4590, AFL-CIO.** Case 9-CA-37242

February 23, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND HURTGEN

Pursuant to a charge filed on December 6, 1999, the General Counsel of the National Labor Relations Board issued a complaint on December 8, 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 9-RC-17284. (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 January 10, 1999, the General Counsel filed a Motion for Summary Judgment and a memorandum in support. On January 11, 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 failed to file 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 but attacks the validity of the Board's certification of the Union on the ground that the Respondent is a "political subdivision" within the meaning of Section 2(2) of the Act, and is therefore exempt from the Board's jurisdiction.

All representation issues raised by the Respondent, including the jurisdictional issue, were or could have been litigated in the prior representation proceeding.¹ 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

¹ The Respondent's contention that it is an exempt "political subdivision" was fully considered by the Board in the underlying representation proceeding. Although the Respondent's answer also denies the appropriateness of the unit, we find that the Respondent's denial does not raise any litigable issue in this proceeding. Under the Board's Rules, the Respondent had the opportunity to litigate the unit issue in the representation proceeding. The Respondent, however, chose not to do so, and instead stipulated to the appropriateness of the unit. By entering into this stipulation, the Respondent agreed that the unit described there was appropriate. Accordingly, we find that the appropriate unit is as stated in the complaint.

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 nonprofit corporation, has been engaged in the business of providing legal representation to indigent persons in Jefferson County, Kentucky at its offices/facilities located at Louisville, Kentucky.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$250,000 and purchased and received at its Louisville, Kentucky facilities goods valued in excess of \$5000 directly from points outside the Commonwealth of Kentucky.

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 October 1, 1999, the Union was certified on October 12, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time nonsupervisory staff attorneys, including law school graduates who are awaiting bar results, employed by [Respondent] at its Louisville, Kentucky facility, excluding all office clerical employees and all other professional employees, 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*

About November 30, 1999, the Union requested the Respondent to bargain, and, since about November 30 and December 1, 1999, orally and in writing, 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 November 30, 1999, 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, Louisville-Jefferson County Public Defender Corp., Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with American Federation of Teachers, Local 4590, 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 nonsupervisory staff attorneys, including law school graduates who are awaiting bar results, employed by [Respondent] at its Louisville, Kentucky facility, excluding all office clerical employees and all other professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Louisville, Kentucky, copies of the attached notice marked "Appendix."² Copies of the notice, on

² 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."

forms provided by the Regional Director for Region 9, 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 30, 1999.

(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.

Dated, Washington, D.C. February 23, 2000

John C. Truesdale,	Chairman
Wilma B. Liebman,	Member
Peter J. Hurtgen,	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 American Federation of Teachers, Local 4590, 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 nonsupervisory staff attorneys, including law school graduates who are awaiting bar results, employed by us at our Louisville, Kentucky facility, excluding all office clerical employ-

ees and all other professional employees, guards and supervisors as defined in the Act.

Louisville-Jefferson County Public
Defender Corp.