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Holmes Regional Nursing Center and UNITE! Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC. Case 12-CA-20491

March 20, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND LIEBMAN

Pursuant to a charge filed on November 12, 1999,¹ the General Counsel of the National Labor Relations Board issued a complaint on January 11, 2000, 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 12-RC-8386. (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 and asserting certain affirmative defenses.

On February 14, 2000, the General Counsel filed a Motion for Summary Judgment. On February 17, 2000, 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 alleged to be relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis that the Union was improperly certified because of the inappropriateness of the 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 un-

¹ In its answer to the complaint, the Respondent denied this allegation claiming that it is without personal knowledge as to the filing and service of the unfair labor practice charge in this case. The General Counsel has presented evidence of the filing and service of the charge and the Respondent has not challenged that evidence in its Response to the Notice to Show Cause. In these circumstances, we find sufficient a basis for concluding that the charge was filed and served as alleged.

fair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The Respondent admits that by letters dated November 5 and December 17, 1999, the Union requested that the Respondent furnish it with the following information:

1. A list of all employees, including their names, dates of hire, rates of pay, job classification, department, last known address, and phone number.
2. A copy of all current company personnel policies and procedures which relate to or have an effect on bargaining unit employees, including but not limited to leaves of absence, shifts, starting times, hiring rules, safety rules, vacation, holidays, and overtime.
3. A copy of all company fringe benefit plans, including pension, profit sharing, severance, stock initiative, health insurance, apprenticeship, training, legal services, child care, or any other plans which relate to the employees, and where applicable, copies of summary plan descriptions for such plans.
4. Copies of all current job descriptions for bargaining unit employees.
5. Copies of any company wage and salary plans, including schedules for employees on incentive jobs.
6. Any and all agreements signed with all subcontractors that relate to the bargaining unit employees' jobs, wages, benefits, and working conditions.

The Respondent's answer admits that it refused to furnish this information, but denies that the information requested is relevant and necessary for the Union's role as the exclusive bargaining representative of the unit employees. It is well established that employment information of the type requested is presumptively relevant for purposes of collective bargaining and must be furnished on request.² The Respondent has not attempted to rebut the relevance of the information requested by the Union in either its answer or its response to the Notice to Show Cause.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information.

On the entire record, the Board makes the following

² See *Masonic Hall*, 261 NLRB 436 (1982) and *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation with an office and place of business located in Melbourne, Florida, has been engaged in the business of operating an extended care nursing home facility. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$100,000 and purchased and received at its Melbourne, Florida facility goods and materials valued in excess of \$5000 directly from points located outside the State of Florida.

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 October 26, 1999, the Union was certified on December 10, 1999, 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) employed by Respondent as charge nurses at its facility located at 606 E. Sheridan Road, Melbourne, Florida; excluding, all other employees, MDS coordinators, office clerical employees, confidential 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*

Since November 5, the Union, by letters, has requested the Respondent to bargain and to furnish information, and, since December 10, 1999, 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 December 10, 1999, 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), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Holmes Regional Nursing Center, Melbourne, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with UNITE! Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CIC, 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) employed by Respondent as charge nurses at its facility located at 606 E. Sheridan Road, Melbourne, Florida; excluding, all other employees, MDS coordinators, office clerical employees, confidential employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on November 5 and December 17, 1999.

(c) Within 14 days after service by the Region, post at its facility in Melbourne, Florida, copies of the attached notice marked "Appendix."³ Copies of the notice, on

³ 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 12 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 December 10, 1999.

(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.

Dated, Washington, D.C. March 20, 2000

John C. Truesdale, 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 UNITE! Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC, 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) employed by us as charge nurses at our facility located at 606 E. Sheridan Road, Melbourne, Florida; excluding, all other employees, MDS coordinators, office clerical employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on November 5 and December 17, 1999.

HOLMES REGIONAL NURSING CENTER