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Narraguagus Bay Health Care Facility and Downeast Federation of Nurses & Health Professionals Local 5073, A.F.T., AFL-CIO, Case 1-CA-37634

April 20, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On a charge and an amended charge filed by the Union on October 8 and November 22, 1999, respectively, the General Counsel of the National Labor Relations Board issued a complaint on December 15, 1999, against Narraguagus Bay Health Care Facility, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On January 19, 2000, the Respondent filed an answer to the complaint. Subsequently, on March 7, 2000, the Respondent filed an amended answer in which it admitted all the allegations in the complaint.

On March 22, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On March 23, 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 no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

As noted above, the Respondent, in its amended answer of March 7, 2000, admitted all the allegations in the complaint. Thus, the Respondent, among other things, admitted that:

On or about October 8, 1999, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement . . . by failing to pay health insurance premiums as required by section 19.2.1 of the agreement. [This] subject . . . relates to wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining. Respondent engaged in the conduct . . . without the Union's consent. By the conduct . . . Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

As the Respondent has raised no defense, and has admitted its obligation to pay the health insurance premiums under the collective-bargaining agreement, we find that all the allegations of the complaint are true and that

the Respondent violated Section 8(a)(5) and (1) of the Act by failing to pay those premiums. Accordingly, we grant the General Counsel's 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 corporation with an office and place of business in Millbridge, Maine, has been engaged in the operation of a nursing home. Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$100,000, and purchases and receives at its Millbridge, Maine facility goods valued in excess of \$5000 directly from points outside the State of Maine. 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 it has been a health care institution within the meaning of Section 2(14) of the Act. We also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The unit set forth at Section 2.1 of the September 1, 1997 collective-bargaining agreement between the Union and the Respondent.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from September 1, 1997, to March 31, 2000.

At all times since at least September 1, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about September 1, 1997, the Respondent and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the unit, effective by its terms from September 1, 1997, to March 31, 2000.

On about October 8, 1999, the Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above by failing to pay health insurance premiums as required by section 19.2.1 of the agreement. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby 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 engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) by failing to pay health insurance premiums as required by the collective-bargaining agreement, we shall order the Respondent to restore the employees' health coverage. In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required premium payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Narraguagus Bay Health Care Facility, Millbridge, Maine, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to comply with the terms of the 1997–2000 collective-bargaining agreement with Downeast Federation of Nurses & Health Professionals Local 5073, A.F.T., AFL–CIO, by failing to pay health insurance premiums as required by section 19.2.1 of the agreement.

(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) Restore the employees' health coverage by paying the health insurance premiums as required by the 1997–2000 collective-bargaining agreement.

(b) Make the employees in the following unit whole for the Respondent's failure to pay the contractually required health insurance premiums, in the manner set forth in the remedy section of this decision.

The unit set forth at Section 2.1 of the September 1, 1997 collective-bargaining agreement between the Union and the Respondent.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and

copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Millbridge, Maine, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 1, 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 8, 1999.

(e) 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. April 20, 2000

Sarah M. Fox, Member

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 fail to comply with the terms of the 1997–2000 collective-bargaining agreement with Downeast Federation of Nurses & Health Professionals Local 5073,

¹ 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."

A.F.T., AFL-CIO, by failing to pay health insurance premiums as required by section 19.2.1 of the agreement.

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 restore the employees' health coverage by paying the health insurance premiums as required by the 1997-2000 collective-bargaining agreement.

WE WILL make the employees in the following unit whole for our failure to pay the contractually required health insurance premiums, with interest.

The unit set forth at Section 2.1 of the September 1, 1997 collective-bargaining agreement between the Union and the us.

NARRAGUAGUS BAY HEALTH CARE FACILITY