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Madison Center, Genesis Eldercare, Inc. and Communication Workers of America, Local 1040, AFL-CIO. Case 22-CA-23580

January 13, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on September 27, 1999, and an amended charge filed October 20, 1999, the General Counsel of the National Labor Relations Board issued a complaint on October 26, 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 and to furnish information following the Union's certification in Case 22-RC-11729. (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 November 22, 1999, the General Counsel filed a Motion for Summary Judgment. On November 24, 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 its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis that it includes persons who are supervisors within the meaning of the Act and because alleged supervisors engaged in objectionable conduct. The Respondent also alleges that it was denied a fair hearing prior to the Region's Direction of Election, and that the Regional Director's manner of deciding voter eligibility denied the Respondent administrative due process.

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. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request to bargain and for information. The Respondent admits that by letters dated September 2 and September 15, 1999, the Union requested that the Respondent bargain collectively with the Union, and that by letter dated September 2, 1999, the Union requested that the Respondent furnish the following information: a current list of all employees in the bargaining unit, showing clear and legible names, hourly rate of pay, hire date, shift, regular schedule hours per week, whether they are full-time or part-time, the current enrollment status of each unit employee's participation in benefit programs, i.e., health insurance, 401k, dental, etc., and whether the employee is enrolled as an individual, husband-wife, parent-child, family, etc. The Respondent's answer admits that it refused to provide 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, however, that information concerning the terms and conditions of employment of unit employees is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436, 437 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977). The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to recognize and bargain with the Union and to furnish it the information requested.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and a place of business in Matawan, New Jersey, has been engaged in the operation of a nursing home providing residence and patient care. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000, and purchased goods valued in excess of \$5000 which were received by the Respondent at its Matawan, New Jersey facility directly from points outside the State of New Jersey.

¹ Member Hurtgen dissented from the Board's denial of the Respondent's request for review of the Regional Director's Decision and Direction of Election. He also dissented from the Board's denial of the Respondent's request for review of the Regional Director's Supplemental Decision overruling the Respondent's Objections to the election and certifying the Union as the exclusive bargaining representative of the unit employees. He adheres to both views. However, he agrees 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*, 313 U.S. 144, 162 (1941). In light of this, and for institutional reasons, he agrees with the decision to grant the General Counsel's Motion for Summary Judgment.

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 June 18, 1999, the Union was certified on July 9, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time registered nurses employed by Respondent at its Matawan, New Jersey facility, excluding director of nursing, assistant director of nursing, clinical coordinators, MDS coordinators, clinical reimbursement coordinators, nurse supervisors, managers, administrators, confidential employees, office clerical 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 September 2, 1999, the Union has requested the Respondent to bargain and to furnish information, and, since September 2, 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 September 2, 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), *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, Madison Center, Genesis Eldercare, Inc., Matawan, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Communication Workers of America, Local 1040, 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 registered nurses employed by Respondent at its Matawan, New Jersey facility, excluding director of nursing, assistant director of nursing, clinical coordinators, MDS coordinators, clinical reimbursement coordinators, nurse supervisors, managers, administrators, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on September 2, 1999.

(c) Within 14 days after service by the Region, post at its facility in Matawan, New Jersey, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22 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 no-

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."

tice to all current employees and former employees employed by the Respondent at any time since September 2, 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. January 13, 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 refuse to bargain with Communication Workers of America, Local 1040, 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 registered nurses employed by us at our Matawan, New Jersey facility, excluding director of nursing, assistant director of nursing, clinical coordinators, MDS coordinators, clinical reimbursement coordinators, nurse supervisors, managers, administrators, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on September 2, 1999.

MADISON CENTER, GENESIS ELDERCARE, INC.