

Grand Court Facilities, Inc., XV, and Knightsbridge Associates, L.P., d/b/a Grand Court-Adrian Associates and Local 79, Service Employees International Union, AFL-CIO. Case 7-CA-43004

July 20, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on April 27, 2000, the General Counsel of the National Labor Relations Board issued a complaint on May 2, 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 following the Union's certification in Case 7-RC-21654. (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 May 26, 2000, the General Counsel filed a Motion for Summary Judgment. On June 2, 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 its refusal to furnish information that is alleged as relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification based on its objections to the election in the underlying representation proceeding.

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). Accordingly, we grant the Motion for Summary Judgment.

While the Respondent denies that the information sought by the Union is necessary and relevant to the Union's role as the exclusive collective-bargaining representative, we find that the information is pre-

sumptively relevant to that role and Respondent has provided no basis to rebut that presumption.¹ *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Verona Dyestuff Division*, 233 NLRB 109 (1977). Accordingly, Respondent's denial does not raise a matter that warrants a hearing.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Grand Court Facilities, Inc., XV, and Knightsbridge Associates, L.P. d/b/a Grand Court-Adrian Associates, is engaged in the operation of an assisted living facility at its facility in Adrian, Michigan. During the 12-month period ending December 31, 1999, the Respondent, in the course and conduct of its business operations, purchased and received at its Adrian facility products, goods, and materials valued in excess of \$10,000 from other enterprises located within the State of Michigan, each of which received the goods and materials directly from points located outside the State of Michigan. During the 12-month period ending December 31, 1999, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000. 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 21, 1999, the Union was certified on February 2, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time CNAs, nurse aides, housekeeping employees, dietary aides, cooks, food service employees, and maintenance employees employed by Respondent at its facility located at 1200 Corporate Drive, Adrian, Michigan, but excluding all RNs, LPNs, office clerical

¹ This finding applies to items 1-7 of the Union's February 25, 2000 request for information. Items 8-10 seek Medicare and Medicaid cost and reimbursement information and IRS form 990. These items seek financial information which the Board has held is not presumptively relevant, and that the Union must therefore demonstrate its relevance. *Troy Hills Nursing Home*, 326 NLRB 1465 fn. 2 (1998) (summary judgment denied with respect to such information). Here, as in *Troy Hills*, the Union did not specify in its request why it wanted the Medicare and Medicaid cost and reimbursement information or the IRS form, and neither the complaint nor the Motion for Summary Judgment explain why the Respondent had an obligation to provide the information. *Id.* Thus, to the extent that the complaint alleges an unlawful refusal to provide the information requested in items 8-10, and the Motion for Summary Judgment covers items 8-10, we deny the motion and decline to order the Respondent to provide that information.

employees, managerial employees, security 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 February 25, 2000, the Union has requested the Respondent to bargain and to furnish information, and, since March 9, 2000, 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 March 9, 2000, 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 referred to in items 1–7 of its February 25, 2000 letter.

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); and *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, Grand Court Facilities, Inc., XV, and Knightsbridge Associates, L.P. d/b/a Grand Court-Adrian Associates, Adrian, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 79, Service Employees International Union, 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 CNAs, nurse aides, housekeeping employees, dietary aides, cooks, food service employees, and maintenance employees employed by Respondent at its facility located at 1200 Corporate Drive, Adrian, Michigan, but excluding all RNs, LPNs, office clerical employees, managerial employees, security employees, guards, and supervisors as defined in the Act.

(b) Furnish the Union information it requested by letter dated February 25, 2000, including, but not limited to, the name, wage rate, job classification and date of hire for each employee in the unit; copy of employee benefit plans, personnel policies and work rules; and job description for each classification in the unit.

(c) Within 14 days after service by the Region, post at its facility in Adrian, Michigan, copies of the attached notice marked “Appendix.”² Copies of the notice, on forms provided by the Regional Director for Region 7 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 March 9, 2000.

(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.

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.”

DECISIONS OF THE 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 Local 79, Service Employees International Union, 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 CNAs, nurse aides, housekeeping employees, dietary aides, cooks, food service employees, and maintenance employees employed by Respondent at its facility located at 1200 Corporate Drive, Adrian, Michigan, but excluding all RNs, LPNs, office clerical employees, managerial employees, security employees, guards, and supervisors as defined in the Act.

WE WILL furnish the Union with information necessary and relevant to its role as the exclusive collective-bargaining representative of the above unit.

GRAND COURT FACILITIES, INC., XV, AND
KNIGHTSBRIDGE ASSOCIATES, L.P., D/B/A
GRAND COURT-ADRIAN ASSOCIATES