

**McLaren Medical Management, Inc., a wholly-owned subsidiary of McLaren Health Care Corp. and Local 459, Office and Professional Employees' International Union, AFL-CIO.** Case 7-CA-43291

November 20, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN AND HURTGEN

Pursuant to a charge filed on August 15, 2000, the General Counsel of the National Labor Relations Board issued a complaint on August 24, 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 certifications in Cases 7-RC-21705, 7-RC-21706, and 7-RC-21707. (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 September 27, 2000, the General Counsel filed a Motion for Summary Judgment. On September 29, 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 attacks the validity of the certifications on the basis of the Board's unit determinations in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.<sup>1</sup> 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.<sup>2</sup> See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

<sup>1</sup> Member Hurtgen did not participate in the Board's denial of the Employer's request for review of the Acting Regional Director's Decision and Direction of Elections. He finds, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding.

<sup>2</sup> Although the Respondent in its answer denies that it has refused to bargain with the Union (and that it has refused to provide requested

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 July 25 and 26, 2000, the Union requested that the Respondent furnish it with the following information:

1. A list of current MMMI bargaining unit employees with home addresses.
2. The current employee Policies and Procedures Manual.
3. A list of team leaders employed by MMMI in classifications covered by the bargaining unit and their rate of pay.
4. A list of casual employees employed by MMMI in classifications covered by the bargaining unit and their rate of pay.
5. A list of Occupational Health Sales Consultants and Occupational Health Account Reps employed by the Employer and their rate of pay.

Although the Respondent denies that this information is necessary for, and relevant to, the union's performance of its duties as collective-bargaining representative, it does so because it argues that the certified units are not appropriate for the purposes of collective bargaining. We reject this contention and find that the information as listed under items 1-4 relates to unit employees and is presumptively relevant. *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977). The Respondent has not attempted to rebut the relevance of the information requested in items 1-4, and we therefore find that no material issues of fact exist with respect to the Respondent's refusal to furnish this information.

Relevance cannot be presumed, however, with respect to item 5 because it appears to pertain to employees outside the bargaining unit. In these circumstances, the Union has the "initial burden to show relevancy." *NLRB v. Associated General Contractors*, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981). Here, the Union did not specify in its request why it wanted a list of occupational health sales consultants and occupational health account reps employed by the Respondent and their rate of pay. Furthermore, neither the complaint nor

---

information), the denials are based on the Respondent's position that the certified units are not appropriate for purposes of collective bargaining. Further, the General Counsel attached to the complaint a copy of an August 10, 2000 letter, sent by the Respondent to the Union, in which the Respondent stated that it "decline[d] to participate in negotiations" and "decline[d] to provide any information requested." The Respondent does not dispute the validity of the letter. In addition, it is clear from the Respondent's response to the Notice to Show Cause that the Respondent contends that it is under no legal obligations to bargain with, and provide information to, the Union solely on the ground that the certifications are invalid. Accordingly, we find that the Respondent's denials raise no material issue of fact warranting a hearing.

the motion for summary judgment explain why the Respondent had an obligation to provide this information.

Accordingly, we deny the Motion for Summary Judgment with respect to the information requested in item 5 and remand this issue to the Regional Director for further appropriate action. In all other respects, we grant the Motion for Summary Judgment, and we will order the Respondent to bargain and to furnish the requested information, with the exception of a list of occupational health sales consultants and occupational health account reps employed by the Respondent and their rate of pay.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, a corporation, with offices and facilities located throughout the State of Michigan, has been engaged in the operation of providing health care services. During the year ending December 31, 1999, the Respondent, in conducting its operations described above, received gross revenues in excess of \$250,000 and purchased goods valued in excess of \$50,000 from points located outside the State of Michigan and caused those goods to be shipped directly to its State of Michigan facilities.

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 elections held April 27, 2000, the Union was certified on May 5, 2000, in Cases 7-RC-21706 and 7-RC-21707, and on May 17, 2000, in Case 7-RC-21705, as the exclusive collective-bargaining representative of the employees in the following appropriate units (individually called the paraprofessional, technical and RN units and collectively called the units):

###### **PARAPROFESSIONAL UNIT** (Case 7-RC-21705):

All full-time and regular part-time paraprofessional employees of the Respondent at its facilities, excluding teaching practices, in the counties of Ingham, Eaton, Ionia, and Clinton, including all receptionists, medical assistants, medical records clerks, and physician billing clerks; but excluding professional employees, technical employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

###### **TECHNICAL UNIT** (Case 7-RC-21706):

All full-time and regular part-time technical employees employed by the Respondent at its facilities, excluding

teaching practices, located in the counties of Ingham, Eaton, Ionia, and Clinton, including licensed practical nurses and radiologic technologists; but excluding professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

###### **RN UNIT** (Case 7-RC-21707):

All full-time and regular part-time registered nurses employed by the Respondent at its facilities, excluding teaching practices, located in the counties of Ingham, Eaton, Ionia, and Clinton; but excluding physician assistants, nurse practitioners, nurse midwives, all other professional employees, technical employees, confidential employees, managerial 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 July 25 and 26, 2000, the Union, by letters, has requested the Respondent to bargain in each of the units and to furnish information, and, since August 10, 2000, the Respondent, by letter, has refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after August 10, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units and to furnish the Union items 1-4 of the 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 items 1-4 of the requested information.

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, McLaren Medical Management, Inc., a wholly-owned subsidiary of McLaren Health Care Corporation, Flint and Lansing, Michigan, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with Local 459, Office and Professional Employees' International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the individually named bargaining units, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the units.

(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 units, individually named the paraprofessional, technical, and RN units, on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

**PARAPROFESSIONAL UNIT** (Case 7-RC-21705):

All full-time and regular part-time paraprofessional employees of the Respondent at its facilities, excluding teaching practices, in the counties of Ingham, Eaton, Ionia, and Clinton, including all receptionists, medical assistants, medical records clerks, and physician billing clerks; but excluding professional employees, technical employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

**TECHNICAL UNIT** (Case 7-RC-21706):

All full-time and regular part-time technical employees employed by the Respondent at its facilities, excluding teaching practices, located in the counties of Ingham, Eaton, Ionia, and Clinton, including licensed practical nurses and radiologic technologists; but excluding professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

**RN UNIT** (Case 7-RC-21707):

All full-time and regular part-time registered nurses employed by the Respondent at its facilities, excluding teaching practices, located in the counties of Ingham, Eaton, Ionia, and Clinton; but excluding physician assistants, nurse practitioners, nurse midwives, all other professional employees, technical employees, confidential

employees, managerial employees, guards, and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on July 25 and 26, 2000, with the exception of a list of occupational health sales consultants and occupational health account reps employed by the Respondent and their rate of pay.

(c) Within 14 days after service by the Region, post at its facilities located in the counties of Ingham, Eaton, Ionia, and Clinton in the State of Michigan, copies of the attached notice marked "Appendix."<sup>3</sup> 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 August 10, 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.

IT IS FURTHER ORDERED that the allegations in the complaint regarding the Respondent's refusal to provide information to the Union in item 5 is remanded to the Regional Director for further appropriate action.

## 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 459, Office and Professional Employees International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the individually named bargaining

<sup>3</sup> 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."

units, 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 individually named bargaining units:

**PARAPROFESSIONAL UNIT:**

All of our full-time and regular part-time paraprofessional employees at our facilities, excluding teaching practices, in the counties of Ingham, Eaton, Ionia, and Clinton, including all receptionists, medical assistants, medical records clerks, and physician billing clerks; but excluding professional employees, technical employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

**TECHNICAL UNIT:**

All full-time and regular part-time technical employees employed by us at our facilities, excluding teaching

practices, located in the counties of Ingham, Eaton, Ionia, and Clinton, including licensed practical nurses and radiologic technologists; but excluding professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

**RN UNIT:**

All full-time and regular part-time registered nurses employed by us at our facilities, excluding teaching practices, located in the counties of Ingham, Eaton, Ionia, and Clinton; but excluding physician assistants, nurse practitioners, nurse midwives, all other professional employees, technical employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on July 25 and 26, 2000, with the exception of a list of occupational health sales consultants and occupational health account reps employed by us and their rate of pay.

MCLAREN MEDICAL MANAGEMENT, INC., A  
WHOLLY-OWNED SUBSIDIARY OF MCLAREN  
HEALTH CARE CORPORATION