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**Jackson Hospital Corporation d/b/a Kentucky River Medical Center and United Steelworkers of America, AFL-CIO-CLC. Case 9-CA-37909**

January 31, 2001

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge filed on September 7, 2000, the General Counsel of the National Labor Relations Board issued a complaint on November 16, 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 9-RD-1904. (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 December 11, 2000, the General Counsel filed a Motion for Summary Judgment. On December 13, 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 which stated that the Respondent seeks to test the certification issued by the Board in Case 9-RD-1904.

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, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.<sup>1</sup>

<sup>1</sup> In its answer to the complaint, the Respondent states as an affirmative defense that the issuance of the complaint on November 16, 2000 "constituted an abuse of administrative/prosecutorial discretion, in light of the pendency of proceedings in connection with Case 9-CB-10304." In Case 9-CB-10304 the Respondent alleged that the Union bargained in bad faith by conditioning bargaining over economic issues on the resolution of non-economic issues. This same allegation previously was raised by the Respondent in charges filed against the Union in Case 9-CB-10242. Case 9-CB-10242 was dismissed by the Regional Director on May 22, 2000, and the General Counsel denied the Respondent's appeal of that dismissal on July 19, 2000. On August 29, 2000, the Regional Director dismissed the bad-faith bargaining allegations of Case 9-CB-10304, and the General Counsel denied the Respondent's appeal of that dismissal on December 20, 2000. The dismissal of the allegations in Case 9-CB-10304 was consistent with the findings made by the General Counsel in dismissing the Respondent's charge in Case 9-CB-10242 and by the Board in overruling the Respondent's objections. Accordingly, we find that the Respondent's affirmative defense raises no issues warranting a hearing.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.<sup>2</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. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).<sup>3</sup> Accordingly, we grant the 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, has been engaged in the operation of an acute care hospital at Jackson, Kentucky. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received gross revenues in excess of \$250,000 and purchased and received at its Jackson, Kentucky facility goods valued at more than \$50,000 directly from points outside the Commonwealth of Kentucky. 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 is a health care facility 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**

*A. The Certification*

Following the election held December 10, 1999, the Union was certified on August 2, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time registered nurses, the team leader, and the continuing education coordinator; nonprofessional employees, including the medical records employees, admission employees and purchasing employees; and technical employees, including certified respiratory therapy technicians, x-ray technicians, licensed practical nurses, the DRG coordinator, medi-

<sup>2</sup> The Respondent's answer denies that the certified unit is appropriate. The Respondent, however, stipulated to the appropriateness of the unit in the underlying representation case. Further, any question regarding the appropriateness of the unit could and should have been raised in the representation proceeding. *Playhouse Square Foundation*, 291 NLRB 995 fn. 1 (1988). Accordingly, we find that the Respondent's denial of this allegation does not raise any issue warranting a hearing in this proceeding.

<sup>3</sup> Member Hurtgen did not participate in the underlying representation proceeding. He finds, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case.

cal lab technicians and the physical therapy assistant employed by Respondent at its 540 Jetts Drive, Jackson, Kentucky facility, but excluding the registered respiratory therapists, medical technologists, utilization review nurses, business office clerical employees, confidential employees and all other professional 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 about August 31, 2000, the Union has requested the Respondent to bargain and, since about August 31, 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.

#### CONCLUSIONS OF LAW

By refusing on and after August 31, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, 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.

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, Jackson Hospital Corporation d/b/a Kentucky River Medical Center, Jackson, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL-CIO-CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(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 appro-

priate 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, the team leader, and the continuing education coordinator; nonprofessional employees, including the medical records employees, admission employees and purchasing employees; and technical employees, including certified respiratory therapy technicians, x-ray technicians, licensed practical nurses, the DRG coordinator, medical lab technicians and the physical therapy assistant employed by Respondent at its 540 Jetts Drive, Jackson, Kentucky facility, but excluding the registered respiratory therapists, medical technologists, utilization review nurses, business office clerical employees, confidential employees and all other professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Jackson, Kentucky, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 9 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 31, 2000.

(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 31, 2001

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John C. Truesdale, Chairman

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Wilma B. Liebman, Member

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<sup>4</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."

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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 United Steelworkers of America, AFL-CIO-CLC as the exclusive representative of the employees in the bargaining unit.

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, the team leader, and the continuing education coordinator; nonprofessional employees, including the medical records employees, admission employees and purchasing employees; and technical employees, including certified respiratory therapy technicians, x-ray technicians, licensed practical nurses, the DRG coordinator, medical lab technicians and the physical therapy assistant employed by us at our 540 Jetts Drive, Jackson, Kentucky facility, but excluding the registered respiratory therapists, medical technologists, utilization review nurses, business office clerical employees, confidential employees and all other professional employees, guards and supervisors as defined in the Act.

JACKSON HOSPITAL CORPORATION D/B/A KENTUCKY RIVER MEDICAL CENTER