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**Shore Club Condominium Association, Inc., a/k/a
S.C. Condominium Association, Inc. and Inter-
national Brotherhood of Teamsters, Local Union
No. 390, AFL-CIO.** Case 12-CA-23262

September 30, 2003

DECISION AND ORDER

CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on August 7, 2003,¹ the General Counsel issued the complaint on August 22, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 12-RC-8915. (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 affirmative defenses.

On September 11, 2003, the General Counsel filed a Motion for Summary Judgment. On September 15, 2003, 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 and cross-motion for summary judgment.

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

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification based on its contentions in the representation proceeding that the Board lacks jurisdiction and that the unit employees are in the domestic service of families and persons at their homes

¹ The Respondent's answer to the complaint states that it is without knowledge as to the filing date, service, or mailing dates of the charge by the Union, and therefore denies this allegation. However, copies of the charge and affidavit of service are attached as Exhs. G and I to the General Counsel's motion and the Respondent has not contested the authenticity of these documents. Further, the Respondent admits that it received a copy of the charge. Accordingly, we find that the Respondent has not raised any issue regarding filing and service of the charge warranting a hearing. See, e.g., *Corrections Corp. of America*, 330 NLRB 663 (2000), *enfd.* 34 F.3d 1321 (D.C. Cir. 2000).

and, therefore, are not "employees" under Section 2(3) of the Act.

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.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation, with an office and principal place of business located at 1910 North Ocean Drive, Ft. Lauderdale, Florida, has provided maintenance and security services to condominium owners, most of whom are residents, at a complex consisting of two residential buildings located at 1901 and 1905 North Ocean Drive, Ft. Lauderdale, Florida, and a recreational facility located at 1912 North Ocean Drive, Ft. Lauderdale, Florida. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Florida.³

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 election held April 17, 2003, the Union was certified on July 22, 2003, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time maintenance employees, including but not limited to the main or lead maintenance employee, painters and cleaners, employed by Respondent at its facility at Ft. Lauderdale,

² The Respondent's cross-motion for summary judgment and request to dismiss the complaint are therefore denied.

³ The foregoing findings are consistent with the Regional Director's findings and the parties' stipulation in the representation proceeding.

Florida *excluding* all office 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

On various dates since about July 3, 2003, the Union has requested the Respondent to bargain, and, since about July 22, 2003, the Respondent has failed and refused. We find that the Respondent's conduct constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing and refusing on and after July 22, 2003, 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.⁴

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by 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, Shore Club Condominium Association, Inc., a/k/a S.C. Condominium Association, Inc., Ft. Lauderdale,

⁴ We shall also order the Respondent to post the attached Notice to Employees. The General Counsel's complaint requests that the Respondent be ordered to post the Notice in English, Spanish, and Creole. However, the Respondent's answer generally denies that the requested relief is appropriate. Because there is no indication in the submitted record that the election notices in the underlying representation proceeding were posted in foreign languages, and the complaint or motion does not set forth any factual basis for posting the Notice in foreign languages, we shall leave to the compliance stage of this proceeding the determination of whether the Notice should also be posted in Spanish and Creole. See *Triple A Maintenance Corp.*, 283 NLRB 44, fn. 3 (1987).

dale, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Teamsters, Local Union No. 390, AFL-CIO, 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 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 maintenance employees, including but not limited to the main or lead maintenance employee, painters and cleaners, employed by Respondent at its facility at Ft. Lauderdale, Florida *excluding* all office employees, security employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Ft. Lauderdale, Florida, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 12, 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 facilities 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 July 22, 2003.

(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.

⁵ 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."

Dated, Washington, D.C. September 30, 1003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on
your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Brotherhood of Teamsters, Local Union No. 390, AFL-CIO as the exclusive representative of the employees in the bargaining.

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 maintenance employees, including but not limited to the main or lead maintenance employee, painters and cleaners, employed by us at our facility at Ft. Lauderdale, Florida *excluding* all office employees, security employees, guards and supervisors as defined in the Act.

SHORE CLUB CONDOMINIUM ASSN. A/K/A SC.
CONDOMINIUM ASSN., INC.