

Beverly Enterprises—Minnesota, Inc. d/b/a Golden Crest Healthcare Center and United Steelworkers of America, AFL—CIO, CLC. Case 18—CA—16616—1

February 16, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND KIRSANOW

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 October 7, 2002, the General Counsel issued the complaint on October 15, 2002, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union certification in Cases 18—CA—16415 and 18—CA—16416. (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(b); *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 December 17, 2002, the General Counsel filed a Motion for Summary Judgment and a brief in support. On December 18, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 22, 2003, the Respondent filed a motion to revoke certification and opposition to the General Counsel's motion. The Union filed a brief in support of the General Counsel's motion and in opposition to the Respondent's motion.

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 contention, raised and rejected by the Board in the representation proceeding, that RNs and LPNs, who act as charge nurses, are statutory supervisors.¹ In addition, the Re-

¹ See *Golden Crest Healthcare Center*, 348 NLRB No. 39 (2006), in which the Board, on remand from the Eighth Circuit Court of Appeals, specifically considered whether, under *NLRB v. Kentucky River Community Health Care*, 532 U.S. 706 (2001), the Respondent's RNs and LPNs who act as charge nurses assign and responsibly direct other employees, and the scope or degree of independent judgment used in the exercise of that authority. The Board found that the Respondent's charge nurses are employees, and not supervisors, under Sec. 2(11) of the Act.

spondent denies that it is obligated to provide the information requested by the Union because the Union was improperly certified.

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 for information. The complaint alleges, and the Respondent admits, that by letter dated August 30, 2002, the Union requested the following information:

1. A listing of the names, addresses, job titles, dates of hire, dates of birth, present wage rates, the date of each employee's last pay increase, and the number of hours each employee works per pay period.

2. Names of those in the unit who have health insurance coverage and whether it is single coverage or family coverage, the amount the employee has to pay for this coverage, and the total premium cost for single and family coverage.

3. The same information in item number 2 for dental coverage.

4. Job descriptions for each job in the unit.

5. Information as to holiday benefits, vacation benefits, sick leave benefits, any life insurance benefits, pension benefits, with respect to the unit.

6. Any present policy manual that pertains to the unit employees.

In its answer, the Respondent relies on its challenge to the Union's certification as a defense to its refusal to provide the Union with the requested information. It does not specifically deny that the information is necessary for and relevant to the Union's duties as the exclusive collective-bargaining representative of the unit. It is well-established that all of the foregoing types of information are presumptively relevant and must be furnished on request. See, e.g., *Streicher Mobile Fueling, Inc.*, 340 NLRB 994, 995 (2003); *Super K-Mart*, 322 NLRB 583 (1996); *Maple View Manor*, 320 NLRB 1149 (1996), *enfd.* 107 F.3d 923 (D.C. Cir. 1997). The Respondent has not provided any basis for rebutting this presumption.

Accordingly, we grant the Motion for Summary Judgment, and will order the Respondent to bargain and to furnish the information requested by the Union.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a Minnesota corporation with an office and place of business in Hibbing, Minnesota, has been engaged in the operation of nursing home facilities, including a skilled nursing facility at its Hibbing, Minnesota location.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in the conduct of its business operations described above, derived revenues in excess of \$1 million and purchased and received at its Hibbing, Minnesota facility, goods and services valued in excess of \$50,000 directly from points located outside the State of Minnesota.

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 representation elections held on April 8, 1999, the Union was certified on April 15, 1999. On September 29, 2006, that certification was reaffirmed, and the Board reissued a certification of representative finding that the Union was certified as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its Hibbing, Minnesota facility; excluding guards and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

By letter dated August 30, 2002, the Union requested the Respondent to recognize and bargain with it as the exclusive collective-bargaining representative of the certified unit, and to provide it with specific information. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as

the exclusive collective-bargaining representative of the unit.

Since about September 13, 2002, the Respondent has failed and refused to meet and bargain with the Union and to furnish it with the requested information. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing, since September 13, 2002, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to provide the Union with 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 shall also order the Respondent to furnish the information requested by the Union.

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), 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, Beverly Enterprises—Minnesota, Inc. d/b/a Golden Crest Healthcare Center, Hibbing, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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

(b) Refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(c) 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 The Respondent's motion to revoke certification is therefore denied.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and 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 agreement in a signed agreement:

All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its Hibbing, Minnesota facility; excluding guards and supervisors as defined in the Act, and all other employees.

(b) Furnish the Union with the information it requested on August 30, 2002.

(c) Within 14 days after service by the Region, post at its facility in Hibbing, Minnesota, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 18, 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 September 13, 2002.

(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.

³ 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."

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 a 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 recognize and bargain with United Steelworkers of America, AFL-CIO, CLC, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive collective-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, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time registered nurses and licensed practical nurses employed by us at our Hibbing, Minnesota facility; excluding guards and supervisors as defined in the Act, and all other employees.

WE WILL furnish the Union with the information it requested on August 30, 2002.

BEVERLY ENTERPRISES-MINNESOTA, INC. D/B/A
GOLDEN CREST HEALTHCARE CENTER