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**Northeastern University and American Coalition of Public Safety.** Case 01–CA–329551

May 21, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS PROUTY  
AND WILCOX

This is a refusal-to-bargain case in which Northeastern University (the Respondent) is contesting the certification of the American Coalition of Public Safety (the Union) as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on November 8, 2023, by the Union, the General Counsel issued a complaint on December 15, 2023, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union’s certification in Case 01–RC–313126. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Sections 102.68 and 102.69(d). *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 March 25, 2024, the General Counsel filed a Motion for Summary Judgment. On March 28, 2024, 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 April 11, 2024, the Respondent filed a response to the Notice to Show Cause. On April 24, 2024, the Union filed a reply to the Respondent’s response to the Notice to Show Cause.

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 that it has refused to bargain but asserts that it has no duty to bargain and contests the validity of the Union’s certification of representative based on its contention, raised and rejected in the underlying representation proceeding, that the bargaining unit included statutory supervisors.<sup>1</sup>

<sup>1</sup> In its answer, the Respondent denies pars. 7 and 9 of the complaint, which state that the unit is appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act and that at all times since September 21, 2023, based on Sec. 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. The Respondent also denies paragraphs 11, 12, and 13 of the complaint, which allege that the Respondent failed and refused to bar-

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 has it established 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.<sup>2</sup>

gain with the Union as the exclusive collective-bargaining representative of the unit, that its failure to recognize and bargain with the Union violated Sec. 8(a)(5) and (1) of the Act, and that its unfair labor practices affect commerce within the meaning of Sec. 2(6) and (7) of the Act. The Respondent asserts, as an affirmative defense, that it had no duty to bargain in this matter because the unit as comprised includes statutory supervisors. The Respondent asserts that since the pre-election hearing in the representation case, the sergeants and sergeant detectives have acted as statutory supervisors, but the Respondent relies on evidence that was or could have been presented in the representation proceeding. The appropriateness of the unit was fully litigated and resolved in the underlying representation proceeding. Accordingly, we conclude that the Respondent’s denials of the allegations in paragraphs 7, 9, 11, 12, and 13 of the complaint and these affirmative defenses do not raise any issues warranting a hearing.

In addition, the Respondent asserts that it was willing to bargain over the detectives, but not the sergeants or the sergeant detectives, and that it was the Union who refused to bargain. The Respondent further asserts that it acted in good faith. The Respondent’s offer to bargain over a portion of the unit, however, does not obviate its obligation to bargain over the unit as certified. See *Tom Thumb Stores, Inc.*, 123 NLRB 833, 834–835 (1959) (a respondent cannot evade its obligation to bargain by rejecting an appropriate unit). The Respondent further asserts that the charge and the complaint were premature because the Respondent’s Request for Review of the Decision and Direction of Election was pending at the Board when the charge was filed and the complaint issued. This argument is without merit. The Respondent’s duty to bargain attached when the certification of representative issued. See *id.*

Moreover, the Respondent has admitted that it intended to test the certification. Such an admission permits a finding, notwithstanding the Respondent’s denials, that the Respondent has failed and refused to recognize and bargain with the Union. *Biewer Wisconsin Sawmill, Inc.*, 306 NLRB 732, 732 (1992).

Finally, the Respondent pleads that the complaint fails to state a claim upon which relief can be granted and that the complaint infringes upon the Respondent’s First Amendment rights. The Respondent has not, however, offered any explanation or evidence to support these bare assertions. Thus, we find that these affirmative defenses are insufficient to warrant denial of the General Counsel’s Motion for Summary Judgment. See, e.g., *Sysco Central California, Inc.*, 371 NLRB No. 95, slip op. at 1 fn. 1 (2022); *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1 fn. 1 (2018), *enfd.* 949 F.3d 477 (9th Cir. 2020); *George Washington University*, 346 NLRB 155, 155 fn. 2 (2005), *enfd. mem. per curiam* No. 06-1012, 2006 WL 4539237 (D.C. Cir. Nov. 27, 2006); *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995).

<sup>2</sup> The Respondent’s request that the complaint be dismissed is therefore denied.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent has been a private nonprofit university of higher education with its main facilities located in Boston, Massachusetts.

Annually, in conducting its operations described above, the Respondent derives gross annual revenue in excess of \$1 million, of which at least \$50,000 is received directly from points located outside the Commonwealth of Massachusetts.

Annually, in conducting its operations described above, the Respondent purchases and receives goods and services valued in excess of \$5000 directly from points outside the Commonwealth of Massachusetts.

We find that at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Certification*

Following an election conducted by secret ballot on September 11, 2023, the Regional Director issued a Certification of Representative in Case 01-RC-313126 on September 21, 2023, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time sergeants, sergeant detectives, and detectives employed by the Employer at its Boston, Massachusetts location, but excluding all managers and supervisors as defined in the Act.

On March 8, 2024, the Board denied the Respondent's request for review of the Regional Director's Decision and Direction of Election. The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

###### B. *Refusal to Bargain*

On about October 9 and 16, 2023, the Union requested that the Respondent bargain with the Union as the exclusive collective-bargaining representative of the unit. Since about October 16, 2023, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing since about October 16, 2023, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the 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 law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

#### ORDER

The National Labor Relations Board orders that the Respondent Northeastern University, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with American Coalition of Public Safety (the Union) as the exclusive collective-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 collective-bargaining representative of the employees in the following appropriate unit concerning 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 sergeants, sergeant detectives, and detectives employed by the Employer at its Boston, Massachusetts location, but excluding all managers and supervisors as defined in the Act.

(b) Post at its location in Boston, Massachusetts copies of the attached notice marked “Appendix.”<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 October 16, 2023.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 1 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. May 21, 2024

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Lauren McFerran, Chairman

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David M. Prouty, Member

<sup>3</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work, and the notices may not be posted until a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that “This notice is the same notice previously [sent or posted] electronically on [date].” 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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Gwynne A. Wilcox, 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 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 fail and refuse to recognize and bargain with American Coalition of Public Safety (the Union) as the exclusive collective-bargaining representative of our 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 listed above.

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 following appropriate bargaining unit:

All full-time and regular part-time sergeants, sergeant detectives, and detectives employed by the Employer at its Boston, Massachusetts location, but excluding all managers and supervisors as defined in the Act.

NORTHEASTERN UNIVERSITY

The Board’s decision can be found at [www.nlrb.gov/01-CA-329551](http://www.nlrb.gov/01-CA-329551) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

