ESCNC, LLC d/b/a Surgery Center of Northern California *and* Teamsters Local No. 150. Case 20–CA–358895

July 21, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

This is a refusal-to-bargain case in which ESCNC, LLC d/b/a Surgery Center of Northern California (the Respondent) is contesting Teamsters Local No. 150's (the Union's) certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on January 22, 2025[1] by the Union, the General Counsel issued a complaint on April 29, 2026, 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 and to furnish relevant and necessary information following the Union's certification in Case 20–RC–353543. (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 May 22, 2026, the General Counsel filed a Motion for Summary Judgment. On May 28, 2026, 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 June 11, 2026, the Respondent filed a response to the Board's Notice and opposition to the General Counsel's motion.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to provide information but contests the validity of the certification based on its contentions, raised and rejected in the representation proceeding, that it was denied due process in the underlying representation proceeding and that the Acting Regional Director and the Board misapplied the factual record and applicable law concerning community of interest and Section 2(11) supervisory status.[2]

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[1] In its answer to the complaint, the Respondent claims that it lacks sufficient information to admit or deny the allegations in par. 1 of the complaint, pertaining to filing and service of the charge. A copy of the charge is attached as Exh. 9 to the General Counsel's motion, showing the filing date as alleged, and the Respondent has not contested the authenticity of this document.

[2] In its response to the Board's Notice to Show Cause and opposition to the General Counsel's Motion, the Respondent admits that it has refused to bargain with the Union to test its certification and that issues that were raised, or could have been raised, in the underlying representation proceeding generally cannot be relitigated. Nevertheless, it argues that the Board should deny the General Counsel's Motion, citing *Sub-Zero Freezer Co.*, 271 NLRB 47 (1984), and *St. Francis Hospital*, 271 NLRB 948 (1984). *Sub-Zero Freezer* and *St. Francis Hospital* are two of a limited number of cases in which the Board has departed from the rule that, in a certification-testing unfair labor practice case, issues that had been presented to and decided by the Board in a prior, related representation case cannot be relitigated and will not be reconsidered. Having reviewed the facts and arguments presented by the Respondent in its response to the Notice to Show Cause, we find no basis for departing from our longstanding rule or disturbing our order denying review of the Regional Director's decision in the underlying representation case.

For the same reason, we reject the Respondent's various denials and affirmative defenses in its answer to the complaint, which raise issues that were, or could have been litigated in the underlying representation case. Those include the Respondent's denial that the unit is appropriate (par. 5(a)), claim that the certification is invalid and improper (par. 5(b)), denial that the Union has been the exclusive collective-bargaining representative of the unit since December 20, 2024 (par. 5(c)), denial that it has violated the Act (par. 8), denial that its unfair labor practices affect commerce (par. 9), affirmative defense that bargaining would be unlawful because the unit is not appropriate (aff. def. 11), and affirmative defense that the underlying representation proceeding violated the Respondent's due process rights (aff. def. 13). Moreover, the Respondent's admission in its response to the Notice to Show Cause that it "has elected to test the Union's certification through a technical refusal to bargain" is sufficient to establish a violation of the Act. *Randalls Food & Drug, L.P.*, 369 NLRB No. 100, slip op. at 1 fn. 1 (2020) (citing *Biewer Wisconsin Sawmill, Inc.*, 306 NLRB 732 (1992)).

The Respondent's additional affirmative defenses—its blanket denial of unspecified allegations (aff. def. 1); its assertion that the Board's unfair labor practice procedures violate Sec. 10(b) of the Act and constitutional due process (aff. def. 5); its claim that the complaint raises claims and seeks remedies that exceed the Board's authority, are punitive and contrary to precedent, and violate the Constitution (aff. def. 6); its allegation that the Board lacks subject matter jurisdiction to consider or decide threshold constitutional matters (aff. def. 7); its assertion that the complaint fails to state a claim (aff. def. 8); its claims that the Respondent acted lawfully and in good faith (aff. defs. 9-10), and its claim that the complaint fails to comply with the Administrative Procedure Act (aff. def. 12)—are bare assertions offered without any additional argument or support. Therefore, they 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) (citing cases), enfd. sub nom. *Operating Engineers Local 501 v. NLRB*, 949 F.3d 477 (9th Cir. 2020).

Lastly, we find no merit to the additional constitutional claims raised in the Respondent's answer. With regard to its contention that the Board's members and administrative law judges are unconstitutionally insulated from Presidential removal (aff. def. 2), there is no evidence that the Respondent suffered any harm from their removal protections. See *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1 fn. 4 (2023) (citing *Collins v. Yellen*, 594 U.S. 220, 257-258 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), rev'd per curiam on other grounds 598 U.S. 623 (2023)); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 148-149 (4th Cir. 2023) ("[R]egardless of how we answer the constitutional question presented by the removal provisions, we would be required to deny the petition because K & R has not asserted any harm resulting from the allegedly unconstitutional statutes.").

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).

We also find that there are no factual issues warranting a hearing with respect to the Respondent's refusal to furnish the Union with requested information. The complaint alleges, and the Respondent admits, that about January 7, 2025, the Union requested in writing that the Respondent furnish it with the following information:

(i) A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and Social Security number;

(ii) A copy of all current company personnel policies, practices or procedures;

(iii) A statement and description of all company personnel policies, practices or procedures other than those mentioned in (ii), above;

(iv) A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, childcare or any other plans which relate to the employees;

(v) Copies of all current job descriptions;

(vi) Copies of any company wage or salary plans;

(vii) Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year. A copy of all witness statements for any such discipline;

(viii) A statement and description of all wage and salary plans which are not provided under number (vi), above.

The complaint further alleges, and the Respondent admits, that since about January 17, 2025, the Respondent has failed and refused to furnish the information requested by the Union.[3]

It is well established that information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request.[4] See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2002). Specifically, with the exception of the request for e-ployee Social Security numbers,[5] the information requested by the Union as to unit employees is presumptively relevant for purposes of collective bargaining, and the Respondent has not asserted any basis for rebutting the presumption.[6] We find, therefore, that the Respondent unlawfully refused to furnish the information

The Respondent's assertion that a hearing in this matter would violate its "rights under the Fifth and Seventh Amendments to the United States Constitution" (aff. def. 3) is also unpersuasive. The Supreme Court has considered, and rejected, that the Act implicates the Seventh Amendment right to a trial by jury. See *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48-49 (1937); see also *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 453-55 (1977) (reaffirming that the Act created a public right and that Congress could therefore assign the adjudication of that right to the Board without violating the Seventh Amendment).

Nor is there merit to the Respondent's claim (aff. def. 4) that the agency "unconstitutionally exercises legislative, executive, and judicial powers within the same administrative proceedings." "[T]he Supreme Court has held that administrative agencies can, and often do, investigate, prosecute, and adjudicate rights without violating due process." *Illumina, Inc. v. Fed. Trade Comm'n*, 88 F.4th 1036, 1047 (5th Cir. 2023) (citing *Withrow v. Larkin*, 421 U.S. 35, 47, 56 (1975)). See also *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1174 (D.C. Cir. 1998); *NP Red Rock, LLC, d/b/a Red Rock Casino Resort Spa v. NLRB*, No. 24-1221, 2026 WL 1676491 (D.C. Cir. June 10, 2026).

[3] To the extent the Respondent denies (in whole or in part) the complaint allegations pertaining to the Union's request for bargaining and information and the Respondent's response thereto (complaint pars. 6(a), 6(b), 7(a) and 7(c)), we reject those denials and partial denials as bases for denying the General Counsel's Motion. Exhibits 7 and 8, appended to the General Counsel's motion, establish that by letter dated January 7, 2025, the Union requested bargaining and information, and by letter dated January 17, 2025, the Respondent's Human Resources Manager declined the request to bargain and refused to furnish the Union with the requested information. The Respondent does not contest the authenticity of these exhibits; indeed, in its opposition to the General Counsel's Motion, the Respondent does not address the information requests at all.

[4] Although the complaint does not specifically state that the information request was limited to unit employees, we find that the request indicates that it should be so construed. See, e.g., *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003).

[5] The Board has held that employee Social Security numbers are not presumptively relevant and that the requesting union must demonstrate the relevance of such information. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997) (per curiam). Here, the Union's request did not specify why it wanted this information, and the Union has not otherwise demonstrated its relevance. See *Pallet Cos.*, 361 NLRB 339, 340 fn. 4 (2014), enfd. mem. 634 F. App'x 800 (D.C. Cir. 2015) (per curiam). We therefore deny summary judgment as to this item and remand this issue to the Region for further appropriate action.

[6] In its answer, the Respondent claims that it does not have sufficient information to admit or deny par. 7(b) of the complaint, alleging that the requested information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. We find this response insufficient to preclude summary judgment, as the Respondent provides no legal or factual argument, calling into question the information's presumptive relevance.

sought by the Union. See, e.g., *NP Sunset LLC d/b/a Sunset Station Hotel Casino*, 367 NLRB No. 62, slip op. at 1-2 (2019), enfd. mem. 792 F. App'x 557 (9th Cir. 2020); *CVS Albany, LLC, d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), enfd. mem. 709 F. App'x 10 (D.C. Cir. 2017) (per curiam); *Metro Health Foundation*, supra. Accordingly, we grant the Motion for Summary Judgment.[7]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a California limited liability company, with an office and place of business in Roseville, California (the Respondent's facility), and has been engaged in the business of providing outpatient ophthalmic medical services.

During the 12-month period ending July 31, 2025, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $250,000 and purchased and received at the Respondent's facility goods and materials valued in excess of $5000 directly from points outside the State of California.

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 institution within the meaning of Section 2(14) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.[8]

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following an election conducted by secret ballot on December 11, 2024, the Regional Director issued a Certification of Representative in Case 20–RC–353543 on December 20, 2024, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time, regular part-time, and per diem Registered Nurses, Licensed Vocational Nurses, Medical Assistants, Front Desk/Patient Admissions, Surgical Technicians, and Technicians; excluding all other employees, guards, and supervisors as defined by the Act.[9]

On March 27, 2026, the Board denied the Respondent's request for review of the Acting 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

About January 7, 2025, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees, and since about January 17, 2025, the Respondent has failed and refused to recognize and bargain with the Union.

About January 7, 2025, the Union requested that the Respondent furnish it with the information described above, and since about January 17, 2025, the Respondent has failed and refused to furnish the requested information. With the exception of Social Security numbers, the requested information for unit employees is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

We find that, with the exception of the failure and refusal to furnish Social Security numbers, these failures and refusals constitute 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 January 17, 2025, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and by failing and refusing since about January 17, 2025, to furnish the Union with requested information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Respondent's unit employees, 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 Union with the information it requested on January 7, 2025, with the exception of employee Social Security numbers.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided

[7] The Respondent's request that the complaint be dismissed is therefore denied.

[8] In its answer, the Respondent claims that it does not have sufficient information to admit or deny the Union's status as a labor organization under Sec. 2(5) of the Act. The Respondent could have, but did not, challenge the Union's labor organization status in the representation proceeding, and it has presented no argument concerning that issue in its opposition to the General Counsel's Motion.

[9] The Surgery Scheduler and Charge Nurse are neither included in nor excluded from the bargaining unit.

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), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent ESCNC, LLC d/b/a Surgery Center of Northern California, Roseville, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Teamsters Local No. 150 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions 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. 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, regular part-time, and per diem Registered Nurses, Licensed Vocational Nurses, Medical Assistants, Front Desk/Patient Admissions, Surgical Technicians, and Technicians; excluding all other employees, guards, and supervisors as defined by the Act.[10]

(b) Furnish to the Union in a timely manner the information requested by it on January 7, 2024, with the exception of employee Social Security numbers.

(c) Within 14 days of service by the Region, post at its facility in Roseville, California copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 20, 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 January 17, 2025.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 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 General Counsel's Motion for Summary Judgment is denied with respect to the allegation concerning Social Security numbers in paragraph 7(a)(i) of the complaint, and that this allegation is remanded to the Regional Director for Region 20 for further appropriate action.

Dated, Washington, D.C. July 21, 2026

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, 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

[10] The Surgery Scheduler and Charge Nurse are neither included in nor excluded from the bargaining unit.

[11] 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."

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 Teamsters Local No. 150 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of our unit employees.

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, regular part-time, and per diem Registered Nurses, Licensed Vocational Nurses, Medical Assistants, Front Desk/Patient Admissions, Surgical Technicians, and Technicians; excluding all other employees, guards, and supervisors as defined by the Act.[12]

WE WILL furnish to the Union in a timely manner the information requested by the Union on January 7, 2025, with the exception of employee Social Security numbers.

ESCNC, LLC D/B/A SURGERY CENTER OF NORTHERN CALIFORNIA

The Board's decision can be found at www.nlrb.gov/case/ 20-CA-358895 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.

[12] The Surgery Scheduler and Charge Nurse are neither included in nor excluded from the bargaining unit.