

**Annapolis Emergency Hospital Association, Inc.,
d/b/a Anne Arundel General Hospital and Mary-
land Nurses Association, Inc., affiliated with The
American Nurses Association, Inc.** Case 5-CA-
7394

November 4, 1975

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS
FANNING AND JENKINS

Upon a charge filed on July 15, 1975, by Maryland Nurses Association, Inc., affiliated with The American Nurses Association, Inc., herein called the Union, and duly served on July 16, 1975, on Annapolis Emergency Hospital Association, Inc., d/b/a Anne Arundel General Hospital, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 5, issued a complaint on July 24, 1975, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 6, 1975, following a Board election in Case 5-RC-9128 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about July 14, 1975, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative of Respondent's employees in such unit, although the Union has requested and is requesting it to do so. On August 1, 1975, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 19, 1975, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, submitting that the Respondent is seeking to relitigate issues which the parties fully and exhaustively have litigated previously in Case 5-RC-9128. Subsequently, on September 8, 1975, the Board issued an order transferring the proceeding to

the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its response to the Notice To Show Cause, Respondent contends that the Union's certification must be rescinded because it is controlled by supervisors and that the election conducted on May 29, 1975, must be set aside because the Board erroneously directed that PRN nurses be permitted to vote as regular part-time employees without challenge. We find that Respondent's contentions in these respects are identical to those which it raised, and which were litigated and decided in the underlying representation proceeding, and must accordingly be denied.

The record in Case 5-RC-9128 shows that on February 21, 1975, after a hearing in which Respondent participated, the case was transferred to the Board for decision. The Board found that the PRN nurses were regular part-time employees (even though their work schedules were not prearranged) and that there was insufficient evidence to warrant their exclusion from the unit of professional nurses found appropriate. Further, the Board found no merit in the contention that the Union was dominated or controlled by supervisors, finding *inter alia* that the parties had stipulated that no supervisors hired by the Employer were included among the Union's officers and directors.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine

¹ Official notice is taken of the record in the representation proceeding, Case 5-RC-9128, 217 NLRB No. 148 (1975), as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enf'd 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151

(1967), enf'd 415 F.2d 26 (C.A. 5, 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

² See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(g) and 102.69(c).

the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Maryland corporation, is a nonprofit hospital engaged in community health care in Annapolis, Maryland. During the preceding 12 months, a representative period, Respondent derived, from its operations, gross revenue in excess of \$250,000. During the same period Respondent purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Maryland.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Maryland Nurses Association, Inc., affiliated with The American Nurses Association, Inc., is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time registered nurses employed by the Employer at its Franklin and Cathedral Streets, Annapolis, Maryland, location, but excluding all office clerical employees, all other employees, guards, patient care supervisors, evening and night supervisors, the I.V. therapy supervisor, coordinators, and all other supervisors as defined in the Act.

2. The certification

On May 29, 1975, a majority of the employees of Respondent in said unit, in a secret ballot election

conducted under the supervision of the Regional Director for Region 5, designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on June 6, 1975, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

On or about July 14, 1975, in anticipation of a request to bargain, Respondent notified the Union by letter that it declined to recognize and bargain with the Union as the exclusive collective-bargaining representative of all the employees in the above-described unit and, commencing on or about the aforementioned date and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since on or about July 14, 1975, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by

law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (C.A. 5, 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Annapolis Emergency Hospital Association, Inc., d/b/a Anne Arundel General Hospital, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Maryland Nurses Association, Inc., affiliated with The American Nurses Association, Inc., is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time registered nurses employed by the Employer at its Franklin and Cathedral Streets, Annapolis, Maryland, location, but excluding all office clerical employees, all other employees, guards, patient care supervisors, evening and night supervisors, the I.V. therapy supervisor, coordinators, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since June 6, 1975, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 14, 1975, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Annapolis Emergency Hospital Association, Inc., d/b/a Anne Arundel General Hospital, Annapolis, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Maryland Nurses Association, Inc., affiliated with The American Nurses Association, Inc. as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time registered nurses employed by the Employer at its Franklin and Cathedral Streets, Annapolis, Maryland, location, but excluding all office clerical employees, and all other employees, guards, patient care supervisors, evening and night supervisors, the I.V. therapy supervisor, coordinators, and all other supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Franklin and Cathedral Streets, Annapolis, Maryland, location copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

³ In the event that 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

notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Maryland Nurses Association, Inc., affiliated with The American Nurses Association, Inc. as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time registered nurses employed by the Employer at its Franklin and Cathedral Streets, Annapolis, Maryland, location, but excluding all office clerical employees, all other employees, guards, patient care supervisors, evening and night supervisors, the I.V. therapy supervisor, coordinators, and all other supervisors as defined in the Act.

ANNAPOLIS EMERGENCY
HOSPITAL ASSOCIATION,
INC., D/B/A ANNE
ARUNDEL GENERAL
HOSPITAL