

**Windsor Castle Health Care Facilities, Inc. and
New England Health Care Employees Union,
District 119, AFL-CIO. Case 34-CA-6259**

September 23, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On April 19, 1994, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions, with attachments, and the General Counsel filed a brief in answer to the Respondent's exceptions.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Windsor Castle Health Care Facilities, Inc., New Haven, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Darryl Hale, Esq., for the General Counsel.
Morris Tuchman, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on January 4, 1994, in Hartford, Connecticut. The complaint herein, which issued on September 17, 1993,¹ and was based on an unfair labor practice charge filed on August 4 by New England Health Care Employees Union, District 1199, AFL-CIO (the Union), alleges that Windsor Castle Health Care Facilities, Inc. (the Respondent) violated Section 8(a)(1) and (5) of the Act by refusing to furnish the Union with information it requested by letter on about July 1, said information being necessary and relevant to the Union as the representative of certain of Respondent's employees, and by failing and refusing to bargain with the Union.

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with an office and place of business in New Haven, Connecticut (the facility), has been engaged as a health care institution in the operation of a nursing home providing in-patient medical and professional care services for the elderly and infirm. During the 12-month

¹Unless indicated otherwise, all dates referred to herein relate to the year 1993.

period ending August 31, Respondent derived gross revenues in excess of \$100,000 and, during the same period, purchased and received at the facility goods valued in excess of \$5000 directly from points outside the State of Connecticut. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. FINDINGS AND CONCLUSIONS

The collective-bargaining unit involved herein is:

All service and maintenance employees employed by the Employer at its New Haven, Connecticut facility, but excluding office clerical employees, licensed practical nurses, registered nurses, and guards, professional employees, and supervisors as defined in the Act.

In October 1989 Respondent recognized 1115 Nursing Home and Service Employees Union (Local 1115) as the collective-bargaining representative of these employees, and on about October 16, entered into a collective-bargaining agreement with Local 1115 covering these employees. By Order dated March 4, the Board found that Respondent violated Section 8(a)(1), (2), and (3) of the Act by, among other things, assisting Local 1115 and by recognizing and entering into a contract with Local 1115, at a time when it did not represent an uncoerced majority of these employees. At the same time, the Board found that Local 1115 violated Section 8(b)(1)(A) and (2) of the Act. The remedy required, among other things, that Respondent would not give effect to the existing collective-bargaining agreement and would not recognize Local 1115, absent certification by the Board. The United States Court of Appeals for the Second Circuit enforced this Order on January 11, 1994.

Pursuant to an election, on June 16 the Board certified the Union as the exclusive collective-bargaining representative of Respondent's employees in the unit described above. Respondent and Local 1115's request for review of the Regional Director's Supplemental Decision and Certification of Representative, that was the basis for this certification, was denied by the Board by Order dated February 17, 1994. The Board's Order also denied Respondent's Motion for a Stay of Certification.

That brings us to the instant matter. The complaint alleges, and Respondent admits, that on about July 1, the Union, by letter, requested that Respondent furnish it with certain information and that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit employees. That the information requested by the Union in items 1, 2, 3(1-6), 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35(1, 2 & 3), 36, 37, and 38 of the letter described above is necessary for, and relevant to, the Union's performance of its duties as the collective-bargaining representative of the unit. That since about July 1, Respondent has refused to furnish the Union with the above-described information, and that since about July 1, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargain-

ing representative of the unit. Respondent, in its answer, admits all these allegations. I therefore find that Respondent has violated Section 8(a)(1) and (5) of the Act by refusing to provide the Union with the necessary and relevant information it requested of Respondent by letter on about July 1, and by failing and refusing to bargain with the Union, the exclusive collective-bargaining representative of certain of its unit employees.

CONCLUSIONS OF LAW

1. Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

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

All service and maintenance employees employed by the Employer at its New Haven, Connecticut facility, but excluding office clerical employees, licensed practical nurses, registered nurses, and guards, professional employees, and supervisors as defined in the Act.

4. Since on about July 1, 1993, Respondent has failed and refused to bargain with the Union, the exclusive bargaining representative of its employees in the above-mentioned appropriate unit, and has therefore violated Section 8(a)(1) and (5) of the Act.

5. Since on about July 1, 1993, Respondent has refused to furnish the Union with necessary and relevant information that it requested from Respondent in violation of Section 8(a)(1) and (5) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative for its employees in an appropriate unit, I shall recommend that Respondent be ordered, on request, to bargain in good faith with the Union, and on the conclusion of those negotiations, to embody in a written agreement all the agreed-on terms. Further, as I have found that Respondent has refused to furnish the Union with certain information requested in its July 1, 1993 letter, information that is relevant to, and necessary for, the Union as the collective-bargaining representative of certain of Respondent's employees, I shall recommend that Respondent be ordered to promptly provide the Union with the information requested in that letter under items 1, 2, 3(1-6), 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35(1, 2 & 3), 36, 37, and 38.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Windsor Castle Health Care Facilities, Inc., New Haven, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All service and maintenance employees employed by the Employer at its New Haven, Connecticut facility, but excluding office clerical employees, licensed practical nurses, registered nurses, and guards, professional employees, and supervisors as defined in the Act.

(b) Refusing to furnish the Union with information that it requested, which information is necessary for, and relevant to, the Union as the exclusive bargaining representative of the employees in the appropriate unit described above.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights as 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, negotiate and bargain with the Union as the exclusive collective-bargaining representative of its employees in the above-described collective-bargaining unit and, if these negotiations resulted in an agreement, to set forth that agreement in a signed written agreement.

(b) On request, promptly provide the Union with the information it requested in its letter dated on about July 1, 1993, under items 1, 2, 3(1-6), 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35(1, 2 & 3), 36, 37, and 38.

(c) Post at its facility in New Haven, Connecticut, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³If 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with New England Health Care Employees Union, District 1199, AFL-CIO, the exclusive collective-bargaining representative of our employees, in the following appropriate unit:

All service and maintenance employees employed by us at our New Haven, Connecticut facility, but excluding office clerical employees, licensed practical nurses, reg-

istered nurses, and guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT refuse to furnish the Union with requested information, when such information is necessary for, and relevant to, the Union as the collective-bargaining representative of the above-described employees.

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

WE WILL, on request, bargain in good faith with the Union on the terms and conditions of employment of our employees in the above-described unit and, on reaching an agreement, we will embody that agreement in a written memorandum.

WE WILL, on request, furnish the Union with the relevant and necessary information requested by the Union in its letter to us dated about July 1, 1993.

WINDSOR CASTLE HEALTH CARE FACILITIES, INC.