

**Presbyterian University Hospital d/b/a University of Pittsburgh Medical Center and International Union of Operating Engineers, Local 95-95A, AFL-CIO.** Case 6-CA-26550

December 28, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

On August 18, 1994, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-10932. (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(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 15, 1994, the General Counsel filed a Motion for Summary Judgment. On September 19, 1994, 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 October 11, 1994, the Respondent filed a response.

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

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.<sup>1</sup>

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). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> 313 NLRB 1341 (1994).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a not-for-profit corporation with an office and facilities in Pittsburgh, Pennsylvania, has been engaged in the operation of an acute care hospital providing medical care.

During the 12-month period ending June 30, 1994, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 and purchased and received at its Pittsburgh, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Employer is 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, 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*

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the following unit which is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All stationary engineers, refrigeration engineers, electricians, painters, carpenters, plumbers, general maintenance, plasterers, all helpers and apprentices and working foreman employed in the Employer's maintenance department located at its Presbyterian University Hospital and Falk Clinic facilities in Pittsburgh, Pennsylvania; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

For approximately 22 years, and at all material times, the Union has been the exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from April 1, 1992, to March 31, 1997.

Following the election held March 16, 1994, a Certification of Results of Election issued on June 15, 1994, certifying that the Union may bargain for the voting group described below as part of the above-described unit of employees that it currently represents:

All full-time and regular part-time telecommunication specialists-I (voice) employed by the Employer at its Pittsburgh, Pennsylvania, facilities; excluding office clerical employees and guards,

professional employees and supervisors as defined in the Act, and all other employees.

At all times since June 15, 1994, the Union has been and continues to be the exclusive collective-bargaining representative of the unit, including the employees encompassed in the voting group, under Section 9(a) of the Act.

#### B. *Refusal to Bargain*

About July 1, 1994, the Union requested the Respondent to bargain with respect to the employees in the voting group who are now included in the unit. Since about July 12, 1994, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive bargaining representative of the employees in the voting group as part of the unit. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after July 12, 1994, to bargain with the Union as the exclusive collective-bargaining representative of the employees in the voting group as part of 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.<sup>2</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Presbyterian University Hospital d/b/a University of Pittsburgh Medical Center, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 95-95A, AFL-CIO, as the exclusive 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.

<sup>2</sup>The General Counsel has not specifically requested a remedy under *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), and we find that such a remedy would be inappropriate in this case. See *Edward J. DeBartolo Corp.*, 315 NLRB 1170, 1171 fn. 3 (1994).

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

(a) On request, bargain with the Union as the exclusive representative of the telecommunication specialists-I (voice) as part of the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All stationary engineers, refrigeration engineers, electricians, painters, carpenters, plumbers, general maintenance, plasterers, all helpers and apprentices and working foreman employed in the Employer's maintenance department located at its Presbyterian University Hospital and Falk Clinic facilities in Pittsburgh, Pennsylvania; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, 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.

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

<sup>3</sup>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 the National Labor Relations Act and has ordered us to post and abide by this notice.

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 refuse to bargain with International Union of Operating Engineers, Local 95-95A, AFL-CIO, as the exclusive representative of the 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 guaranteed you by Section 7 of the Act.

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 telecommunication specialists-I (voice) employees as part of the following bargaining unit:

All stationary engineers, refrigeration engineers, electricians, painters, carpenters, plumbers, gen-

eral maintenance, plasterers, all helpers and apprentices and working foreman employed in the maintenance department located at our Presbyterian University Hospital and Falk Clinic facilities in Pittsburgh, Pennsylvania; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

PRESBYTERIAN UNIVERSITY HOSPITAL  
D/B/A UNIVERSITY OF PITTSBURGH  
MEDICAL CENTER