

**Volunteers of America, Los Angeles and AFSCME  
Social Service Union, Local 1108, AFL-CIO.  
Case 31-CA-13989**

20 September 1984

### DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS

Upon a charge filed by the Union 20 March 1984 the General Counsel of the National Labor Relations Board issued a complaint 11 April 1984 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act

The complaint alleges that on 5 March 1984 following a Board election in Case 31-RC-5613, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate (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), amended Sept 9, 1981, 46 Fed Reg 45922 (1981), *Frontier Hotel*, 265 NLRB 343 (1982)) The complaint further alleges that since 14 March 1984 the Company has refused to bargain with the Union and since 3 April 1984 the Company has refused to furnish information the Union requested On 23 April 1984 the Company filed its answer admitting in part and denying in part the allegations in the complaint

On 14 May 1984 the General Counsel filed a Motion for Summary Judgment On 16 May the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted

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

#### Ruling on Motion for Summary Judgment

The Company's answer admits its refusal to bargain and to furnish information that is necessary and relevant to the Union's role as bargaining representative, but attacks the validity of the certification based on its contention that the Board lacks jurisdiction because it is a religious organization The General Counsel argues that all material issues have been or could have been previously decided We agree with the General Counsel

The record, including the record in Case 31-RC-5613, reveals that the Regional Director issued a Decision and Direction of Election on 20 January 1984, in which, inter alia, he rejected the Respondent's contention that the Board is without jurisdiction because it is a religious organization The Re-

spondent thereafter filed a timely request for review, which the Board denied 21 February 1984 An election was held 22 and 24 February 1984 The tally of ballots shows that of approximately 34 eligible voters, 23 cast valid ballots for and 9 against the Union, there were 2 nondeterminative challenged ballots On 5 March 1984 the Regional Director certified the Union as the exclusive collective-bargaining representative of the employees in the unit found appropriate

By letter dated 29 February 1984, the Union requested that the Company bargain and furnish information concerning the names, job classifications, job descriptions, starting dates, wages, hours of work, overtime wages, incentives, and other benefits and payments of the unit employees Since 14 March, the Company has refused to bargain with the Union and, since 3 April, has refused to provide the requested information

It is well settled that in the absence of newly discovered and 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 that were or could have been litigated in a prior representation proceeding See *Pittsburgh Glass Co v NLRB*, 313 US 146, 162 (1941), Secs 102 67(f) and 102 69(c) of the Board's Rules and Regulations

All issues raised by the Company were or could have been litigated in the prior representation proceeding The Company 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 re-examine the decision made in the representation proceeding There are no factual issues regarding the Union's request for information because the Company, in its answer filed 23 April 1984, admitted that it refused to furnish the information We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding Accordingly we grant the Motion for Summary Judgment

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I JURISDICTION

The Company, a nonprofit California corporation, provides nonmedical care, shelter, and counseling for alcoholics at its facilities in Los Angeles, California, where it annually purchases and receives goods or services valued in excess of \$50,000 directly from suppliers outside the State We find that the Company is an employer engaged

in commerce within the meaning of Section 2(6) and (7) 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*

Following the election held 22 and 24 February 1984, the Union was certified 5 March 1984 as the collective-bargaining representative of the employees in the following appropriate unit:

**INCLUDED:** All Alcoholism Specialists I, II, and III, Record Specialists I, II, and III, cooks and janitors employed by the Employer in its Alcoholism Services Divisions at its facilities located at 4969 Sunset Blvd., Los Angeles, California, and 515 East Sixth Street, Los Angeles, California.

**EXCLUDED:** All detoxification supervisors, Drop-in Supervisors, Reception Center Supervisors, House Managers, Alcoholism Services Division Directors, Program Coordinators, Functional Services Coordinators, Records and Data Coordinators, Residential Services Coordinators, Budget Coordinators, Program Directors, Personnel Directors, Administrative Assistants, supervisors and guards within the meaning of the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

Since 29 February 1984 the Union has requested that the Company bargain and furnish the names, job classifications, job descriptions, starting dates, wages, hours of work, overtime wages, incentives, and other benefits and payments of the unit employees. Since 14 March, the Company has refused to bargain and, since 3 April, has refused to furnish the requested information. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

By refusing on and after 14 March 1984 to bargain with the Union and by refusing on and after 3 April 1984 to provide the Union requested information necessary and relevant to its function as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company 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, and to provide the Union, on request, with the necessary and relevant information requested 29 February 1984.

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 the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Volunteers of America, Los Angeles, California, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Refusing to bargain with AFSCME Social Service Union, Local 1108, 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.

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 employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement, and provide the Union with the information it requested 29 February 1984, including the names, job classifications, job descriptions, starting dates, wages, hours of work, overtime wages, incentives, and other benefits and payments of the unit employees:

**INCLUDED:** All Alcoholism Specialists I, II and III, Record Specialists I, II and III, cooks and janitors employed by the Employer in its Alcoholism Services Divisions at its facilities located at 4969 Sunset Blvd., Los Angeles, California, and 515 East Sixth Street, Los Angeles, California.

**EXCLUDED** All detoxification supervisors, Drop-in Supervisors, Reception Center Supervisors, House Managers, Alcoholism Services Division Directors, Program Coordinators, Functional Services Coordinators, Records and Data Coordinators, Residential Services Coordinators, Budget Coordinators, Program Directors, Personnel Directors, Administrative Assistants, supervisors and guards within the meaning of the Act

(b) Post at its facilities in Los Angeles, California, copies of the attached notice marked "Appendix"<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, 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

**CHAIRMAN DOTSON, dissenting**

In accordance with my previous statements that I would follow the policy set forth in *Ming Quong Children's Center*, 210 NLRB 899 (1974),<sup>1</sup> I would deny the General Counsel's Motion for Summary Judgment The Company is a nonprofit charitable institution which provides social services for alcoholics Thus, in the absence of evidence that this particular class of institutions has a massive impact on interstate commerce, I would decline to exercise jurisdiction over any labor dispute involving this type of employer

<sup>1</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"

<sup>1</sup> See my dissenting opinions in *Alan Short Center*, 267 NLRB 886 (1983), and *Salvation Army of Massachusetts*, 271 NLRB 195 (1984)

## 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** refuse to bargain with AFSCME Social Service Union, Local 1108, 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 employees in the bargaining unit

**INCLUDED** All Alcoholism Specialists I, II and III, Record Specialists I, II and III, cooks and janitors employed by the Employer in its Alcoholism Services Divisions at its facilities located at 4969 Sunset Blvd, Los Angeles, California, and 515 East Sixth Street, Los Angeles, California

**EXCLUDED** All detoxification supervisors, Drop-in Supervisors, Reception Center Supervisors, House Managers, Alcoholism Services Division Directors, Program Coordinators, Functional Services Coordinators, Records and Data Coordinators, Residential Services Coordinators, Budget Coordinators, Program Directors, Personnel Directors, Administrative Assistants, supervisors and guards within the meaning of the Act

**WE WILL**, on request, furnish the Union as it requested in its 29 February 1984 letter, the information that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the bargaining unit, including the names, job classifications, job descriptions, starting dates, wages, hours of work, overtime wages, incentives, and other payments and benefits of the unit employees

VOLUNTEERS OF AMERICA, LOS ANGELES