CCF Hotels Services, Inc., d/b/a Cleveland Clinic Guest House, Bolton Square Hotel Corporation Co., Intercontinental Hotel and Conference Center, and Intercontinental Suites *and* Teamsters Local Union No. 507, a/w International Brotherhood of Teamsters. Case 8–CA–36999

May 22, 2007

DECISION AND ORDER

BY MEMBERS SCHAUMBER, KIRSANOW, AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on January 23, 2007, the General Counsel issued the complaint on February 28, 2007, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 8–RC–16826. (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(b); 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 March 21, 2007, the General Counsel filed a Motion for Summary Judgment. On March 22, 2007, 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 Union filed a brief in support of the General Counsel's Motion. The Respondent filed a brief in opposition to the General Counsel's Motion and in response to the Notice to Show Cause.

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

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. The Respondent's affirmative defenses essentially argue that the Union was improperly certified, and therefore the Respondent is under no legal duty to recognize or bargain with the Union.

All representation issues raised by 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, and will order the Respondent to bargain with the Union.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, an Ohio corporation with offices and places of business located in Cleveland, Ohio, at 9801 Carnegie Avenue, 8800 Euclid Avenue, and 9601 Euclid Avenue, herein called the Respondent's facilities, has been engaged in the management and operation of hotels.

Annually, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $500,000, and it purchased and received goods in excess of $50,000 from points located outside the State of Ohio.

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 that Teamsters Local Union No. 507, a/w International Brotherhood of Teamsters (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 representation election held July 7, 2006, the Union was certified on September 13, 2006, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time maintenance department employees, including engineers, shift engineers, engineering coordinator, HVAC, HVAC mechanics, laundry mechanics, plumber, painter, electrician, maintenance technician, and senior maintenance technician but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

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

B. Refusal to Bargain

By letter dated November 17, 2006, the Union requested that the Respondent bargain with it as the exclusive collective-bargaining representative of the Unit. By

[1] Thus, we deny the Respondent's request that the complaint be dismissed and for such other relief as may be appropriate.

letter dated December 22, 2006, the Respondent informed the Union that it would not bargain because it was challenging the Union's certification. We find that Respondent's refusal to bargain with the Union constitutes an unlawful refusal to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing and refusing since December 22, 2006, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the 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 from failing and refusing to recognize and bargain with the Union, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

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); and 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, CCF Hotels Services, Inc., d/b/a Cleveland Clinic Guest House, Bolton Square Hotel Corporation Co., Intercontinental Hotel and Conference Center, and Intercontinental Suites, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Teamsters Local Union No. 507, a/w International Brotherhood of Teamsters, as the exclusive collective-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, recognize and 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:

> All full-time and regular part-time maintenance department employees, including engineers, shift engineers, engineering coordinator, HVAC, HVAC mechanics, laundry mechanics, plumber, painter, electrician, maintenance technician, and senior maintenance technician but excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Cleveland, Ohio, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 8, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of its facilities 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 December 22, 2006.

(c) Within 21 days after service by the Region, file with the Regional Director 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.

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 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

[2] 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."

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 Union No. 507, a/w International Brotherhood of Teamsters, as the exclusive collective-bargaining 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, recognize and 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 bargaining unit:

> All full-time and regular part-time maintenance department employees, including engineers, shift engineers, engineering coordinator, HVAC, HVAC mechanics, laundry mechanics, plumber, painter, electrician, maintenance technician, and senior maintenance technician but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

CCF HOTELS SERVICES, INC., D/B/A CLEVELAND CLINIC GUEST HOUSE, BOLTON SQUARE HOTEL CORPORATION CO., INTERNCONTINENTAL HOTEL AND CONFERENCE CENTER, AND INTERCONTINENTAL SUITES