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Covenant Care, LLC d/b/a Huntington Park Nursing and Rehabilitation and SEIU, United Long Term Care Workers Union, Local 6434. Case 21-CA-39575

February 10, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS
PEARCE AND HAYES

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 by SEIU, United Long Term Care Workers Union, Local 6434 on November 10, 2010, the Acting General Counsel issued the complaint on December 1, 2010, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following SEIU, Service Employees International Union's certification in Case 21-RC-21140. (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, and asserting affirmative defenses.

On December 17, 2010, the Acting General Counsel filed a Motion for Summary Judgment. On December 20, 2010, 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 Respondent filed a response and a cross-motion for summary judgment.

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 case.

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 un-

fair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California limited liability company, with a facility located at 6425 Miles Avenue, Huntington Park, California, has been engaged in the operation of a nursing care facility.

During the 12-month period ending June 10, 2009, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$100,000 and purchased and received at its Huntington Park, California facility goods valued in excess of \$5000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that SEIU, Service Employees International Union (the Union), is a labor organization within the meaning of Section 2(5) of the Act, and that SEIU, United Long Term Care Workers Union, Local 6434, is a labor organization within the meaning of Section 2(5) of the Act.²

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on July 7, 2009, the Union was certified on September 23, 2010, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time certified nursing assistants (CNAs), restorative nursing assistants (RNAs), activities assistants, dietary assistants, housekeepers, laundry aides, maintenance employees, and central supply employees employed by the Employer at its facility located at 6425 Miles Avenue, Huntington Park, California; excluding all other employees, LVN's, professional employees, social services employees, medical records employees, guards and supervisors as defined in the Act.

¹ The Respondent's cross-motion for summary judgment is therefore denied.

² The instant unfair labor practice charge was filed by Local 6434, and Local 6434 wrote the Respondent on October 4, 2010, requesting recognition. The complaint alleges, and the Respondent admits, that this request was on behalf of the Union.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

On about October 4, 2010, the Union, by letter, requested that the Respondent bargain with it as the exclusive collective-bargaining representative of the unit.

Since about November 5, 2010, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about November 5, 2010, 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, 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 the 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).

ORDER³

The National Labor Relations Board orders that the Respondent, Covenant Care, LLC d/b/a Huntington Park Nursing & Rehabilitation, Huntington Park, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with SEIU, Service Employees International Union, the Un-

³ Consistent with our recently issued decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), we have ordered the Respondent to distribute the notice electronically if it is customarily communicating with employees by such means. For the reasons stated in his dissenting opinion decision in *J. Picini Flooring*, 356 NLRB No. 9, Member Hayes would not require electronic distribution of the notice.

ion, 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, bargain with the Union as the exclusive collective-bargaining 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 certified nursing assistants (CNAs), restorative nursing assistants (RNAs), activities assistants, dietary assistants, housekeepers, laundry aides, maintenance employees, and central supply employees employed by the Employer at its facility located at 6425 Miles Avenue, Huntington Park, California; excluding all other employees, LVN's, professional employees, social services employees, medical records employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Huntington Park, California, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 21, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. 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 the facility involved in this proceeding, 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 about November 5, 2010.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

⁴ 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 and Order of the National Labor Relations Board."

sponsible official on a form provided by the Region at-
testing to the steps that the Respondent has taken to
comply.

Dated, Washington, D.C. February 10, 2011

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) 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 vio-
lated 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
- Choose representatives to bargain with us on your behalf

Act together with other employees for your bene-
fit and protection

Choose not to engage in any of these protected
activities.

WE WILL NOT fail and refuse to recognize and bargain
with SEIU, Service Employees International Union 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, bargain with the Union and put
in writing and sign any agreement reached on terms and
conditions of employment for our employees in the fol-
lowing bargaining unit:

All full-time and regular part-time certified nursing as-
sistants (CNAs), restorative nursing assistants (RNAs),
activities assistants, dietary assistants, housekeepers,
laundry aides, maintenance employees, and central sup-
ply employees employed by us at our facility located at
6425 Miles Avenue, Huntington Park, California; ex-
cluding all other employees, LVN's, professional em-
ployees, social services employees, medical records
employees, guards and supervisors as defined in the
Act.

COVENANT CARE, LLC D/B/A HUNTINGTON
PARK NURSING & REHABILITATION