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**Lakeland Health Care Associates, LLC d/b/a
Wedgewood Healthcare Center and United Food
and Commercial Workers Union, Local 1625.**
Case 12–CA–27044

April 29, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER
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 on February 9, 2011, the Acting General Counsel issued the complaint on February 22, 2011, 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 12–RC–9426. (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 March 18, 2011, the Acting General Counsel filed a Motion for Summary Judgment. On March 23, 2011, 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.

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 Union’s certification based on its objections to the election in the representation proceeding.¹

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

¹ In its answer to the complaint, the Respondent alleges as an affirmative defense that the allegations of the complaint are barred by Sec. 10(b) of the Act. However, the Respondent has not presented any factual or legal basis in support of this defense, and its answer admits the complaint allegations that the charge was filed on February 9, 2011, and that it has refused to bargain with the Union since January 13, 2011. We therefore find that the Respondent’s 10(b) defense is without merit.

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.² 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 and shall order the Respondent to recognize and bargain with the Union.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida limited liability company with an office and place of business located in Lakeland, Florida, the Lakeland facility, has been engaged in the business of operating a nursing home.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$100,000, and purchased and received at its Lakeland, Florida facility goods and materials valued in excess of \$50,000 directly from points outside the State of Florida.

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 has been a health care institution within the meaning of Section 2(14) of the Act. We further find that United Food and Commercial Workers International Union, Local 1625 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following a representation election held October 21, 2010, the Union was certified on January 6, 2011, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:³

² Member Hayes would have granted review in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding, and that summary judgment is appropriate.

³ Although the certification of representative in Case 12–RC–9426 and the complaint in the instant proceeding describe the unit as “all licensed *practice* nurse team leaders” (emphasis added), there appears to be no dispute that the appropriate unit includes the Respondent’s licensed practical nurses, as referenced in the Acting General Counsel’s motion. Accordingly, we have corrected the unit description.

All licensed practical nurse team leaders employed at Respondent's facility located at 1010 Carpenter's Way, Lakeland, Florida; excluding all other employees, guards and supervisors as defined in the Act.

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

About January 12, 2011, the Union, by letter, requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about January 13, 2011, the Respondent has failed and refused to recognize and bargain with the Union. 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 January 13, 2011, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in 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.

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, Lakeland Health Care Associates, LLC d/b/a Wedgewood Healthcare Center, Lakeland, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Food and Commercial Workers International Un-

ion, Local 1625, 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 licensed practical nurse team leaders employed at Respondent's facility located at 1010 Carpenter's Way, Lakeland, Florida; excluding all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Lakeland, Florida, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 12, 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.⁵ 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 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 January 13, 2011.

(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 at

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 an Order of the National Labor Relations Board."

⁵ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 29, 2011

Wilma B. Liebman, Chairman

Craig Becker, 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 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

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 United Food and Commercial Workers International Union, Local 1625, 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 following bargaining unit:

All licensed practical nurse team leaders employed at our facility located at 1010 Carpenter’s Way, Lakeland, Florida; excluding all other employees, guards and supervisors as defined in the Act.

LAKELAND HEALTH CARE ASSOCIATES, LLC
D/B/A WEDGEWOOD HEALTHCARE CENTER