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Lifeforce and Local 881, United Food and Commercial Workers. Case 13–CA–091617

December 21, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

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 the Union on October 18, 2012, the Acting General Counsel issued the complaint on November 1, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain following the Union’s certification in Case 13–RC–074795. (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 November 26, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On November 27, 2012, the Acting General Counsel filed a correction to that motion. On November 28, 2012, 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.

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.

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.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a not-for-profit corporation with an office and place of business in Rosemont, Illinois, has been engaged in the business of providing services related to whole and processed blood products.

During the past calendar year, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Rosemont, Illinois facility goods, products, materials, and services valued in excess of \$50,000 directly from points outside the State of Illinois.

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 the Union, Local 881, United Food and Commercial Workers, 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 on March 30, 2012, the Union was certified on September 19, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Account Managers and Team Account Managers in the Recruitment department employed by the Employer at its facility located at 5505 Pearl Street, Rosemont, Illinois; but excluding all other employees, office clerical employees and guards, professional employees 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*

At all material times, Diane Merkt has held the position of vice president of administration and chief compliance officer and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On October 3, 2012, the Union, by letter, requested that the Respondent meet to bargain collectively with it

¹ The Respondent’s request that the complaint be dismissed is therefore denied.

as the exclusive collective-bargaining representative of the unit. Since about October 15, 2012, 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 October 15, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the 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); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Lifesource, Rosemont, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 881, United Food and Commercial Workers, 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 Account Managers and Team Account Managers in the Recruitment department employed by the Employer at its facility located at 5505 Pearl Street, Rosemont, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Rosemont, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, 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 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 October 15, 2012.

(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.

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."

LIFESOURCE

Dated, Washington, D.C. December 21, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, 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 the National Labor Relations Act and has ordered us to post and abide by 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 Local 881, United Food and Commercial Workers 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 listed above.

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 full-time and regular part-time Account Managers and Team Account Managers in the Recruitment department employed by us at our facility located at 5505 Pearl Street, Rosemont, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

LIFESOURCE