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800 River Road Operating Company LLC, d/b/a Woodcrest Health Care Center and 1199 SEIU United Healthcare Workers East. Case 22–CA–097938

July 10, 2013

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 February 7, 2013, the Acting General Counsel issued the complaint on February 19, 2013, 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 and to furnish relevant and necessary information following the Union’s certification in Case 22–RC–073078. (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 12, 2013, the Acting General Counsel filed a Motion for Summary Judgment. On March 13, 2013, 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 and to provide information, but contests the validity of the certification on the basis of issues raised in the representation proceeding. The Respondent also argues that the Board lacks a quorum under *NLRB v. Noel Canning*, 705 F.3d 490 (D.C. Cir. 2013), cert. granted 81 U.S.L.W. 3695 (U.S. June 24, 2013) (No. 12–1281), that it lacked authority to certify the Union in the underlying representation proceeding, and that the Regional Director and the Acting General Counsel were and are without authority to issue and prosecute the complaint.¹

¹ For the reasons stated in *Bloomington’s Inc.*, 359 NLRB No. 113 (2013), these arguments are rejected. Also based on these arguments, the Respondent previously moved to vacate the Decision and Certification of Representative in the underlying representation case. By un-

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).

We also find that there are no factual issues warranting a hearing with respect to the Union’s request for information. The complaint alleges, and the Respondent admits, that by letter dated January 18, 2013, the Union requested the following information:

1. The names, job title, date of hire, regular hours of work, hourly rate of pay and home address for all employees in the collective bargaining unit certified by the NLRB.
2. Documents showing any and all wage increases and/or bonuses paid to each bargaining unit employee since January 1, 2010.
3. Copies of daily work schedules for all nursing units showing the work schedule of bargaining unit employees on each unit for all shifts for the period November 1, 2012 to the present.
4. Manuals, employment handbooks and any other documents describing terms and conditions of employment for employees in the bargaining unit, including but not limited to, any such documents distributed to employees at any time between January 1, 2011 to the present.

It is well established that the foregoing type of information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of the information. Rather, the Respondent raises as an affirmative defense its contentions, rejected above, that the Union was improperly certified. We find that the Re-

published Order dated May 10, 2013 we denied that motion. The Respondent further moved to reopen the record in Case 22–RC–073078, arguing that it has newly discovered evidence of objectionable conduct. By unpublished Order dated May 31, 2013, we denied that motion. For the reasons stated here and in those Orders, we continue to reject the Respondent’s contentions.

spondent unlawfully refused to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware Limited Liability Company, with an office and place of business in New Milford, New Jersey, has been engaged in the operation of a rehabilitation and nursing facility.

During the 12-month period preceding issuance of the complaint, the Respondent has derived gross revenues in excess of \$100,000, and purchased and received at its New Milford, New Jersey facility goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of New Jersey.

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 a health care institution within the meaning of Section 2(14) of the Act, and that the Union, 1199 SEIU United Healthcare Workers East, 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 9, 2012, the Union was certified on January 9, 2013, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time non-professional employees including licensed practical nurses, certified nursing aides, dietary aides, housekeepers, laundry aides, porters, recreation aides, restorative aides, rehabilitation techs, central supply clerks, unit secretaries, receptionists and building maintenance workers employed by the Employer at its New Milford, New Jersey facility, but excluding all office clerical employees, cooks, registered nurses, dietitians, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, social workers, staffing coordinators/schedulers, payroll/benefits coordinators, MDS specialists, MDS data clerks, account payable clerks, account receivable clerks, all other professional 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 18, 2013, the Union, by letter, requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit. Since about January 18, 2013, the Respondent has failed and refused to recognize and bargain with the Union as the unit employees' exclusive collective-bargaining representative.

About January 18, 2013, the Union, by letter, requested that the Respondent furnish it with the information set forth above that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about January 18, 2013, the Respondent has failed and refused to furnish the Union with the requested information.

We find that these failures and refusals constitute 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 18, 2013, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit, and to furnish the Union with the requested information regarding the terms and conditions of employment of 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 recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information it requested.

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), enf. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, 800 River Road Operating Company LLC,

d/b/a Woodcrest Health Care Center, New Milford, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with 1199 SEIU United Healthcare Workers East as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) 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 concerning 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 non-professional employees including licensed practical nurses, certified nursing aides, dietary aides, housekeepers, laundry aides, porters, recreation aides, restorative aides, rehabilitation techs, central supply clerks, unit secretaries, receptionists and building maintenance workers employed by the Employer at its New Milford, New Jersey facility, but excluding all office clerical employees, cooks, registered nurses, dietitians, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, social workers, staffing coordinators/schedulers, payroll/benefits coordinators, MDS specialists, MDS data clerks, account payable clerks, account receivable clerks, all other professional employees, guards and supervisors as defined in the Act.

(b) Furnish to the Union in a timely manner the information requested by the Union on January 18, 2013.

(c) Within 14 days after service by the Region, post at its New Milford, New Jersey facility copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized

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."

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 its 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 18, 2013.

(d) 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.

Dated, Washington, D.C. July 10, 2013

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 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 1199 SEIU United Healthcare Workers East as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

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 as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning 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 non-professional employees including licensed practical nurses, certified

nursing aides, dietary aides, housekeepers, laundry aides, porters, recreation aides, restorative aides, rehabilitation techs, central supply clerks, unit secretaries, receptionists and building maintenance workers employed by us at our New Milford, New Jersey facility, but excluding all office clerical employees, cooks, registered nurses, dietitians, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, social workers, staffing coordinators/schedulers, payroll/benefits coordinators, MDS specialists, MDS data clerks, account payable clerks, account receivable clerks, all other professional employees, guards and supervisors as defined in the Act.

WE WILL furnish to the Union in a timely manner the information requested by it on January 18, 2013.

800 RIVER ROAD OPERATING CO. LLC, D/B/A
WOODCREST HEALTH CARE CENTER