

Le Fort Enterprises, Inc. d/b/a Merry Maids of Boston and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 7, AFL-CIO. Case 01-CA-123707

May 22, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND JOHNSON

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 International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 7, AFL-CIO, the Union, on March 5, 2014, the General Counsel issued the complaint on March 14, 2014, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 01-RC-097257. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Sections 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 April 1, 2014, the General Counsel filed a Motion for Summary Judgment and a memorandum in support. On April 2, 2014, 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 recognize and bargain, but contests the validity of the certification on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Board lacks jurisdiction over the Respondent and that the Union was not properly certified.¹

¹ In addition, the Respondent's answer asserts as affirmative defenses that the complaint fails to state a claim on which relief can be granted; the proceeding is barred by waiver, estoppel, and unclean hands; and some or all of the allegations set forth in the charge are untimely. The Respondent has not offered any explanation or evidence to support these bare assertions. Thus, we find that these affirmative defenses are insufficient to warrant denial of the General Counsel's Motion for Summary Judgment in this proceeding. See, e.g., *George Washington University*, 346 NLRB 155 fn. 2 (2005); *Circus Circus Hotel*, 316 NLRB 1235 fn. 1 (1995).

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 decisions 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.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business located at 1644 Dorchester Avenue, Dorchester, Massachusetts, and has been engaged in the business of providing cleaning services to private residences.

The Respondent, in conducting its business operations described above, annually derives gross revenues in excess of \$500,000, and paid franchise fees in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts.

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 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 28, 2013, the Union was certified on December 3, 2013, as the exclusive collective-bargaining representative of the employees in the following appropriate unit (the unit):

All full-time and regular part-time maids and housecleaners employed by the Employer at its 1644 Dorchester Avenue, Dorchester, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

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

² The Respondent's requests that the complaint be dismissed with prejudice, and that it be granted judgment for costs and attorneys' fees, and any other relief the Court deems appropriate are therefore denied.

B. Refusal to Bargain

By letter dated January 7, 2014, and by electronic mail dated February 6, 2014, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about February 6, 2014, the Respondent has failed and refused to recognize and 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 February 6, 2014, 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); 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, Le Fort Enterprises, Inc. d/b/a Merry Maids of Boston, Dorchester, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 7, AFL-CIO 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 maids and housecleaners employed by the Employer at its 1644 Dorchester Avenue, Dorchester, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

(b) Within 14 days after service by the Region, post at its facility in Dorchester, Massachusetts, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 1, 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 about February 6, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 1 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.

³ 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."

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 International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 7, AFL-CIO 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 maids and housecleaners employed by us at our 1644 Dorchester Avenue, Dorchester, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

LE FORT ENTERPRISES, INC. D/B/A MERRY
 MAIDS OF BOSTON

The Board's decision can be found at www.nlr.gov/case/01-CA-123707 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

