

**Heartland Human Services and American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO.** Case 14-CA-087886

March 18, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN  
AND BLOCK

The Acting General Counsel seeks summary judgment in this case on the ground that there are no genuine issues of material fact as to the allegations of the complaint, and that the Board should find, as a matter of law, that the Respondent has violated Section 8(a)(1) of the Act by advising its employees that it would withdraw recognition from the Union, and Section 8(a)(5) and (1) of the Act by, among other things, withdrawing recognition from the Union.

Upon a charge and an amended charge filed by American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO (the Union), the Acting General Counsel issued the complaint on October 19, 2012, against Heartland Human Services (the Respondent), alleging that the Respondent violated Section 8(a)(1) of the Act by advising its employees that in light of the results of a decertification election, it believed that a majority of them did not want the Respondent to recognize the Union and that it would take measures to support that determination. The complaint further alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish necessary and relevant information requested by the Union, refusing to attend a scheduled labor-management meeting, refusing to provide dates for bargaining as requested by the Union, and withdrawing recognition from the Union. The Respondent filed an answer on October 30, 2012, and an amended answer on December 4, 2012, admitting all of the factual allegations in the complaint, denying all of the legal conclusions in the complaint, and asserting an affirmative defense.

On December 10, 2012, the Acting General Counsel filed with the Board a Motion for Summary Judgment. On December 11, 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. On January 10, 2012, the Respondent filed a response to the Notice to Show Cause, arguing that a genuine issue of material fact exists concerning whether the Union lost majority support, and that therefore, a finding of summary judgment against the Respondent is not warranted.

Ruling on Motion for Summary Judgment

The complaint alleges, and the Respondent admits, that the Union was certified as the exclusive collective-bargaining representative of the unit employees, that a decertification election was conducted on June 4, 2012, that a revised tally of ballots showed that a majority of valid votes had not been cast for the Union, and that the Board adopted the hearing officer's recommendation in Case 14-RD-063069 that a rerun election be conducted. The complaint further alleges, and the Respondent admits, that it told its employees that, in light of the results of the decertification election, it believed that a majority of its employees did not want it to recognize the Union and that it would take measures to support that determination. In addition, the complaint alleges, and the Respondent admits, that it refused to give necessary and relevant information requested by the Union, refused to attend a scheduled labor-management meeting, refused to provide dates to bargain as requested by the Union, and withdrew recognition from the Union.

The Respondent asserts as an affirmative defense that it is not required to recognize and bargain collectively with the Union as the exclusive bargaining representative of its employees because it has a reasonable belief that the Union does not enjoy the majority support of the employees in the collective-bargaining unit. The Respondent further asserts that its reasonable belief is based exclusively on the Union's loss of the June 4, 2012 representation election and the Board's erroneous order to conduct a rerun election in Case 14-RD-063069.

We find that there are no issues warranting a hearing because the Respondent has admitted the crucial factual allegations set forth above. The Respondent claims that its admitted conduct is not unlawful because the Union lost the decertification election and the Board erred in ordering a rerun election. For the reasons that follow, we find no merit in this defense.

The Board has long held that where, as here, a union is certified, the presumption of majority status "is not rebutted by an election that is contested by the filing of objections or by determinative challenged ballots. Accordingly, an incumbent union is entitled to be treated as the employees' bargaining representative until a final determination is made that the union is no longer the employees' representative." *W. A. Krueger Co.*, 299 NLRB 914, 916 (1990). Under this precedent, contrary to the Respondent's assertion, the Union's majority status does not present a genuine issue of fact at this time, because no final certification has issued in the decertification case. As a matter of law, the Respondent is not entitled to question the Union's majority status or withdraw recognition until such final certification issues.

The Respondent asserts in this unfair labor practice proceeding that the Board erred in ordering a rerun election in the decertification case, Case 14–RD–063069. However, the Respondent litigated this issue in the representation case. 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). Nor has the Respondent offered to adduce any other evidence at a hearing concerning its answer and amended answer to the complaint. 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, an Illinois corporation with an office and place of business in Effingham, Illinois (the Respondent’s facility), has been engaged in providing residential and outpatient mental health services.

In conducting its operations during the 12-month period ending September 30, 2012, the Respondent derived gross revenues in excess of \$100,000, and purchased and received at its facility goods valued in excess of \$20,000 directly from points located 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, is a health care institution within the meaning of Section 2(14) of the Act, and that the Union, American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Jeff Bloemker	Executive Director
Debra Johnson	Human Resources Director

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collec-

tive bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by Respondent at its Effingham, Illinois facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

On February 1, 2006, the Union was certified as the exclusive collective-bargaining representative of the unit. The most recent collective-bargaining agreement covering the unit was effective from August 21, 2009, through August 20, 2011. At all material times since February 1, 2006, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On June 4, 2012, pursuant to a petition filed in Case 14–RD–063069, an election was conducted in the unit. (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). See *Frontier Hotel*, 265 NLRB 343 (1982).)

The tally of ballots made available at the conclusion of the election disclosed that 19 ballots were cast for the Union, 18 votes were cast against the Union, and there was 1 challenged ballot, which was sufficient to affect the results of the election.

On June 11, 2012, the Union filed objections to the election. On June 28, 2012, a hearing on the challenged ballot and the objections was held. On July 18, 2012, the hearing officer issued a report recommending that the challenged ballot be opened and counted. If the revised tally of ballots disclosed that a majority of valid votes had not been cast for the Union, the hearing officer recommended that a rerun election be conducted, having further recommended that three objections be sustained. On August 9, 2012, the Respondent filed exceptions to the hearing officer’s report. On September 28, 2012, the Board adopted the hearing officer’s report, findings, and recommendations.

On October 12, 2012, the challenged ballot was opened and counted. The revised tally of ballots disclosed that a majority of valid votes had not been cast for the Union and a rerun election will be conducted at an appropriate date, time, and place to be determined by the Acting Regional Director.

About August 8, 2012, the Respondent, by Executive Director Bloemker, by memo, advised employees that in light of the results of the election, the Respondent believed it was the will of the majority of employees that the Respondent not recognize the Union as their representative and that appropriate measures would be taken to support that determination.

Since about July 9, 2012, the Union, by email, has requested that the Respondent furnish the Union with the name, job title, department, division (if applicable), home address, home phone number, work address, work phone number, email address, work shift, seniority date, rate of pay, and pay step number of each employee in the bargaining unit. Since about July 16, 2012, the Union, by email, reiterated its request that the Respondent furnish the Union with the information set forth above. Since about July 9, 2012, the Respondent has failed and refused to provide the Union with the requested information. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

About July 16, 2012, the Union, by email, advised the Respondent that, pursuant to the collective-bargaining agreement effective from August 21, 2009, through August 20, 2011, a labor-management meeting was scheduled for July 23, 2012. About July 23, 2012, the Respondent failed and refused to attend the labor-management meeting. The labor-management meeting relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent refused to attend the scheduled meeting without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

About July 16, 2012, the Union, by email, requested that the Respondent provide dates to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about July 16, 2012, the Respondent has failed and refused to bargain with the Union by refusing to schedule dates for bargaining. About July 31, 2012, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit.

#### CONCLUSIONS OF LAW

1. By advising employees that in light of the results of the election, the Respondent believed it was the will of the majority of employees that the Respondent not recognize the Union as their representative and would take appropriate measures to support that determination, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By failing and refusing to provide the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit; by fail-

ing and refusing to attend a scheduled labor-management meeting, without prior notice to the Union and without affording the Union an opportunity to bargain over this conduct; by failing and refusing to schedule dates to bargain with the Union; and by withdrawing its recognition of the Union as the exclusive collective-bargaining representative of the unit, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found the Respondent violated Section 8(a)(1) by advising its employees that, in light of the results of the election, it believed that it was the will of the majority of employees that the Respondent not recognize the Union as their representative and that it would take appropriate measures to support that determination, we shall order the Respondent to cease and desist from so advising its employees.

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with necessary and relevant information, we shall order the Respondent to furnish the Union with the information requested on July 9, 2012. Having also found that the Respondent violated Section 8(a)(5) and (1) by, since July 16, 2012, failing and refusing to attend a scheduled labor-management meeting and by failing and refusing to schedule dates to bargain with the Union, we shall order that the Respondent, upon request, attend a scheduled labor-management meeting and provide dates to the Union for bargaining.

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by withdrawing its recognition of the Union as the exclusive collective-bargaining representative of the unit employees on July 31, 2012, we shall order the Respondent to recognize and bargain on request with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.<sup>1</sup>

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<sup>1</sup> The Acting General Counsel has requested a notice-reading remedy. We agree that this special remedy is appropriate to dispel the ef-

## ORDER

The National Labor Relations Board orders that the Respondent, Heartland Human Services, Effingham, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Advising employees that in light of the results of the election, the Respondent believed it was the will of the majority of employees that the Respondent not recognize the Union as their representative and that it would take appropriate measures to support that determination.

(b) Failing and refusing to recognize and bargain collectively and in good faith with American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(c) Failing and refusing to furnish the Union with requested information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

(d) Failing and refusing to attend a scheduled labor-management meeting.

(e) Failing and refusing to provide dates to the Union for bargaining.

(f) Withdrawing recognition from the Union and failing and refusing to bargain with the Union as the exclu-

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facts of the Respondent's unlawful conduct where the Respondent has engaged in multiple 8(a)(5) and (1) violations, including refusing to bargain with the Union and withdrawing recognition from the Union—after objectionable conduct required setting aside the election—and where the Respondent's unlawful repudiation of the collective-bargaining relationship had a unitwide impact after its executive director directly informed all employees that the Respondent was withdrawing recognition from the Union. See *HTH Corp.*, 356 NLRB 1397, 1404 (2011), *enfd.* 693 F.3d 1051 (9th Cir. 2012). The Respondent's unlawful conduct will have a magnified impact on its employees because of its high official's direct action. See *Jason Lopez' Plant Earth Landscape*, 358 NLRB 383, 383–384 (2012); *McAllister Towing & Transportation Co.*, 341 NLRB 394, 400 (2004), *enfd.* mem. 156 Fed. Appx. 386 (2d Cir. 2005); *Federated Logistics & Operations*, 340 NLRB 255, 257 (2003), *enfd.* 400 F.3d 920 (D.C. Cir. 2005). Reading of the notice enhances the chances for a fair rerun election because the notice-reading remedy “is an ‘effective but moderate way to let in a warming wind of information and, more important, reassurance.’” *McAllister*, 341 NLRB at 400, citing *U.S. Service Industries*, 319 NLRB 231, 232 (1995), quoting *J. P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969), *enfd.* 107 F.3d 923 (D.C. Cir. 1997). This remedy “serves as a minimal acknowledgement of the obligations that have been imposed by law and provides employees with some assurance that their rights under the Act will be respected in the future.” *Whitesell Corp.*, 357 NLRB 1119, 1124 (2011); accord: *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), *enfd.* mem. 273 Fed. Appx. 32 (2d Cir. 2008). Therefore, we will require that the Respondent's executive director or, at the Respondent's option, a Board agent in the executive director's presence, read the remedial notice to the Respondent's employees.

sive collective-bargaining representative of the unit employees.

(g) 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, recognize and 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 employees employed by Respondent at its Effingham, Illinois facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

(b) Furnish to the Union in a timely manner the information requested on July 9, 2012.

(c) On request, attend scheduled labor-management meetings.

(d) On request, schedule dates to bargain with the Union.

(e) Within 14 days after service by the Region, post at its facility in Effingham, Illinois, copies of the attached notice marked “Appendix.”<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representatives, shall be posted 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, copies of the notice to all current employees and former employees employed by the Respondent at any time since about July 9, 2012.

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<sup>2</sup> 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.”

(f) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to the employees by the Respondent's executive director or, at the Respondent's option, by a Board agent in the executive director's presence.

(g) 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.

#### 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 advise you that in light of the election results, we believe that it is the will of the majority of our employees that we not recognize the Union as your representative and that we would take appropriate measures to support that determination.

WE WILL NOT fail and refuse to recognize and bargain with American Federation of State, County and Muni-

pal Employees (AFSCME), Council 31, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

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

WE WILL NOT fail and refuse to attend a scheduled labor-management meeting.

WE WILL NOT fail and refuse to schedule dates to bargain with the Union.

WE WILL NOT withdraw recognition from the Union and fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of the 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, recognize and 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 employees employed by us at our Effingham, Illinois facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL furnish to the Union in a timely manner the information requested on July 9, 2012.

WE WILL, on request, attend scheduled labor-management meetings.

WE WILL, on request, schedule dates to bargain with the Union.

HEARTLAND HUMAN SERVICES