

Rush University Medical Center and Healthcare Professional, Technical, Office, Warehouse, Mail Order, Employees Union, Local 743, IBT. Case 13–CA–139088

February 27, 2015

DECISION AND ORDER

BY MEMBERS MISCIMARRA, 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 Healthcare Professional, Technical, Office, Warehouse, Mail Order, Employees Union, Local 743, IBT (the Union) on October 17, 2014, the General Counsel issued the complaint on October 29, 2014, alleging that Rush University Medical Center (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 13–RC–132042. (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 of the complaint, and asserting certain affirmative defenses.

On November 25, 2014, the General Counsel filed a Motion for Summary Judgment. On January 7, 2015, 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 an opposition and a supplement to its opposition.

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 on the basis of its arguments, raised and rejected in the representation proceeding, that the amended certification is inconsistent with the Board's Health Care Rule, Section 103.30 of the Board's Rules and Regulations, concerning appropriate units in acute health care facilities; that an amended certification should include the largest possible grouping of nonprofessional employees and at a minimum the nurse assistant II classification; and that the addition of a single

classification, patient care technician (PCT), will result in a proliferation of units.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 unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.² 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.³

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 Chicago, Illinois, has been engaged in the business of operating an acute care hospital.

During the calendar year preceding the issuance of the complaint, a representative period, the Respondent has derived gross revenues in excess of \$250,000 from providing acute care hospital services at its facility. In

¹ In support of its position, the Respondent, in its supplemental opposition to the General Counsel's motion, relies in part on three additional representation petitions filed by the Union that seek to include 10 additional classifications to the unit at issue in this proceeding. The Respondent contends that these petitions confirm that the amended certification was improvidently issued.

² To the extent that the Respondent requests the Board to treat the three additional representation petitions referred to in footnote 1 as newly discovered and previously unavailable evidence under Sec. 102.48 for purposes of the representation proceeding, we deny the Respondent's request. To qualify as newly discovered evidence in this context, such evidence (1) must have been capable of being presented at the original hearing and (2) could not have been discovered by reasonable diligence. *Manhattan Center Studios*, 357 NLRB 1677 (2011); see also *University of Rio Grande*, 325 NLRB 642, 642 (1998) (posthearing ruling by the Internal Revenue Service not newly discovered evidence). Because the petitions at issue, which were filed on December 23 and 24, 2014, did not exist either at the time of the hearing or before the issuance of the Board's Order denying review of the Acting Regional Director's Decision and Direction of Election in this proceeding, they do not constitute newly discovered evidence. *APL Logistics*, 341 NLRB 994, 994 fn. 2 (2004), enf'd. 142 Fed. Appx. 869 (6th Cir. 2005).

³ In the underlying representation proceeding, Members Miscimarra and Johnson stated that they would have granted review for the purpose of reviewing *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011). However, in the absence of a three-member majority to reconsider that case, they agreed to deny review. Accordingly, they agree 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.

the same period, the Respondent purchased and received goods and materials valued in excess of \$5000 directly from entities outside the State of Illinois for use at its facility.

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 a self-determination election on August 27 and 28, 2014, the Regional Director issued an amended certification of representative certifying that the Union is the exclusive collective-bargaining representative of the patient care technicians as part of the existing unit of nonprofessional employees it currently represents:⁴

Included: All full-time and regular part-time Patient Care Technician (PCT) employees, environmental aides, environmental specialists, environmental technicians, dietary workers, laundry workers, transport specialists, elevator operators, maintenance employees, central service technical assistants, nursing attendants, psychiatric aides, community health aides, lab helpers, operating room attendants, mail room clerks, unit clerks, geriatric technicians, patient service associates (PSAs), physical therapy aides, rehabilitation aides, pediatric assistants, pediatric nursing assistants, certified nursing assistants (CNAs), truck drivers (laundry & SPD), food service assistant I lead, food service assistant II lead, environmental specialist lead, transport specialist lead, unit clerk lead, and journeymen lead who are employed by Respondent at its main campus currently located at 1653 West Congress Parkway, Chicago, Illinois.

Excluded: Nurse Assistant II (NA II) employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, temporary and casual employees, regular part-time employees normally working less than seventeen (17) hours per week, and all other employees of the Hospital.

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

⁴ The primarily nonprofessional unit is a preexisting nonconforming unit under the Board's Health Care Rule. See Sec. 103.30(a) and (c) of the Board's Rules and Regulations.

B. *Refusal to Bargain*

By letter dated October 14, 2014, the Union requested that the Respondent meet to bargain collectively with it as the exclusive collective-bargaining representative of the patient care technicians, and since about October 17, 2014, the Respondent has failed and refused to do so.⁵

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 17, 2014, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the patient care technicians as part of 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.⁶

ORDER

The National Labor Relations Board orders that the Respondent, Rush University Medical Center, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Healthcare Professional, Technical, Office, Warehouse, Mail Order, Employees Union, Local 743, IBT as the exclusive collective-bargaining representative of the patient care technicians 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.

⁵ Although the complaint alleges that the Union requested that the Respondent meet to bargain with it as the exclusive collective-bargaining representative of the unit and that the Respondent refused, it is clear from the record, and the Respondent admits in its answer, that the Union requested bargaining over terms and conditions of employment that would apply to patient care technicians, and the Respondent refused to do so.

⁶ The complaint and the General Counsel's motion request that the Board require the Respondent to bargain in good faith with the Union as the exclusive representative of the unit for the period set forth in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *Winkie Mfg. Co.*, 338 NLRB 787, 788 fn. 3 (2003), aff'd. 348 F.3d 254 (7th Cir. 2003); *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997), and cases cited there.

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 patient care technicians as part of the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time Patient Care Technician (PCT) employees, environmental aides, environmental specialists, environmental technicians, dietary workers, laundry workers, transport specialists, elevator operators, maintenance employees, central service technical assistants, nursing attendants, psychiatric aides, community health aides, lab helpers, operating room attendants, mail room clerks, unit clerks, geriatric technicians, patient service associates (PSAs), physical therapy aides, rehabilitation aides, pediatric assistants, pediatric nursing assistants, certified nursing assistants (CNAs), truck drivers (laundry & SPD), food service assistant I lead, food service assistant II lead, environmental specialist lead, transport specialist lead, unit clerk lead, and journeymen lead who are employed by Respondent at its main campus currently located at 1653 West Congress Parkway, Chicago, Illinois.

Excluded: Nurse Assistant II (NA II) employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, temporary and casual employees, regular part-time employees normally working less than seventeen (17) hours per week, and all other employees of the Hospital.

(b) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."⁷ 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.

⁷ 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."

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 17, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 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 fail and refuse to recognize and bargain with Healthcare Professional, Technical, Office, Warehouse, Mail Order, Employees Union, Local 743, IBT as the exclusive collective-bargaining representative of the patient care technicians 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 the patient care technicians as part of the following bargaining unit:

Included: All full-time and regular part-time Patient Care Technician (PCT) employees, environmental aides, environmental specialists, environmental technicians, dietary workers, laundry workers, transport specialists, elevator operators, maintenance employees,

central service technical assistants, nursing attendants, psychiatric aides, community health aides, lab helpers, operating room attendants, mail room clerks, unit clerks, geriatric technicians, patient service associates (PSAs), physical therapy aides, rehabilitation aides, pediatric assistants, pediatric nursing assistants, certified nursing assistants (CNAs), truck drivers (laundry & SPD), food service assistant I lead, food service assistant II lead, environmental specialist lead, transport specialist lead, unit clerk lead, and journeymen lead who are employed by Respondent at its main campus currently located at 1653 West Congress Parkway, Chicago, Illinois.

Excluded: Nurse Assistant II (NA II) employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, temporary and

casual employees, regular part-time employees normally working less than seventeen (17) hours per week, and all other employees of the Hospital.

RUSH UNIVERSITY MEDICAL CENTER

The Board's decision can be found at www.nlr.gov/case/13-CA-139088 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.

