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**VCNL, LLC d/b/a Vineyard Court Nursing and Rehabilitation Center and Retail Wholesale and Department Store Union.** Case 15–CA–144945

July 14, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON  
AND MCFERRAN

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 and an amended charge filed by Retail Wholesale and Department Store Union (the Union) on January 23, 2015, and February 4, 2015, respectively, the General Counsel issued the complaint on February 6, 2015, alleging that VCNCL, LLC d/b/a Vineyard Court Nursing and Rehabilitation Center (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 15–RC–114384. (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.

On May 19, 2015, the General Counsel filed a Motion for Summary Judgment and on May 21, 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 a response.

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 objections to the election.<sup>1</sup>

All representation issues raised by the Respondent were or could have been litigated in the prior representa-

<sup>1</sup> Although the Respondent in its answer to the complaint denies the dates on which the Union is alleged to have requested bargaining and further denies that it refused to bargain with the Union, by letter dated May 14, 2015, attached to the General Counsel’s Motion as Exh. S, the Respondent stipulated that it has refused to recognize or bargain with the Union because it is testing certification. The letter acknowledges that the Union requested bargaining in December 2014, and that by email dated December 18, 2014, the Respondent informed the Union that it intended to test certification and has not engaged in bargaining.

tion 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.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has had a place of business in Columbus, Mississippi (the facility), and the facility has provided long term residential health care.<sup>2</sup>

In conducting its operations annually, the Respondent derived gross revenues in excess of \$100,000, and purchased and received at its Columbus, Mississippi facility goods valued in excess of \$5000 directly from points outside the State of Mississippi.

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 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 January 3, 2014, the Union was certified on November 19, 2014, as the exclusive collective-bargaining representative of employees in the following appropriate unit:

Included: All full time and regular part-time service and maintenance employees, including the CNAs, Dietary Employees, Housekeeping employees, Laundry employees, Maintenance employees, Activity Employees, and Social Services Director; Excluded: All Registered Nurses, Licensed Practical Nurses, MDS Coordi-

<sup>2</sup> The Respondent’s answer denies the complaint allegations that it is a limited liability corporation engaged in providing health care and nursing services to individuals, but admits that it has a place of business in Columbus, Mississippi and that the facility provides long-term residential healthcare. Further, its answer admits all of the complaint’s jurisdictional allegations, including that it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act and is a health care institution within the meaning of Sec. 2(14) of the Act. Therefore, we find that the Respondent’s denials do not raise any issues warranting a hearing.

nator, Treatment Nurse, QAPI Coordinator, Medical Records Nurse, Professional employees, Office Clerical employees, Guards, and Supervisors as defined by 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*

In December 2014, the Union, by email and by letter, requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit. Since about December 18, 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 December 18, 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 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 that 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, VCNCL, LLC d/b/a Vineyard Court Nursing and Rehabilitation Center, Columbus, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Retail Wholesale and Department Store Union 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 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 service and maintenance employees, including the CNAs, Dietary Employees, Housekeeping employees, Laundry employees, Maintenance employees, Activity Employees, and Social Services Director; Excluded: All Registered Nurses, Licensed Practical Nurses, MDS Coordinator, Treatment Nurse, QAPI Coordinator, Medical Records Nurse, Professional employees, Office Clerical employees, Guards, and Supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in Columbus, Mississippi, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 15, 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. If 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 December 18, 2014.

<sup>3</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."

(c) Within 21 days after service by the Region, file with the Regional Director for Region 15 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 14, 2015

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Mark Gaston Pearce, Chairman

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Harry I. Johnson, III, Member

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Lauren McFerran, 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 Retail Wholesale and Department Store Union 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:

Included: All full time and regular part-time service and maintenance employees, including the CNAs, Dietary Employees, Housekeeping employees, Laundry employees, Maintenance employees, Activity Employees, and Social Services Director; Excluded: All Registered Nurses, Licensed Practical Nurses, MDS Coordinator, Treatment Nurse, QAPI Coordinator, Medical Records Nurse, Professional employees, Office Clerical employees, Guards, and Supervisors as defined by the Act.

VCNCL, LLC D/B/A VINEYARD COURT NURSING AND REHABILITATION CENTER

The Board's decision can be found at [www.nlr.gov/case/15-CA-144945](http://www.nlr.gov/case/15-CA-144945) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

