

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PALMETTO PRINCE GEORGE OPERATING,
LLC d/b/a PRINCE GEORGE HEALTHCARE
CENTER,

Petitioner,

and

Petition for Review

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW

Petitioner Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center hereby petitions this Court for review of the Decision and Order issued by the National Labor Relations Board on September 8, 2015, in Case 10-CA-154373, a true and correct copy of which is attached hereto. The Decision and Order is captioned Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union and has been published at 363 NLRB No. 5 (Sept. 8, 2015).

Dated: September 25, 2015.

Respectfully submitted,

/s/ Nancy A. Beyer

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Prince George Operating, LLC

CERTIFICATE OF SERVICE

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I certify that on this 25th day of September 2015, the foregoing Petition for Review was served on all parties by serving a true and correct copy at the addresses listed below:

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/s/ John M. Hament
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NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union. Case 10–CA–154373

September 8, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
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 filed on June 17, 2015, by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union (the Union), the General Counsel issued the complaint on July 1, 2015, alleging that Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare 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 10–RC–144239. (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 an affirmative defense.

On July 22, 2015, the General Counsel filed a Motion for Summary Judgment. On July 23, 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 certification¹ on the basis of its contention that the registered nurses and licensed practical nurses included in the unit are supervisors within the meaning of the Act.

¹ The original certification of representative, issued on April 13, 2015, mistakenly listed the registered nurses and the licensed practical nurses as members of two separate collective-bargaining units. The Region issued a corrected certification of representative on May 20, 2015, which reflects that the registered and licensed practical nurses are in one bargaining unit.

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). 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 been a limited liability company operating a nursing home providing inpatient and outpatient medical care in Georgetown, South Carolina (the facility).

In conducting its business operations as described above, the Respondent annually derives gross revenues in excess of \$100,000, and purchases and receives at its facility goods valued in excess of \$5000 directly from points outside the State of South Carolina.

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.

We further find 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 6, 2015, the Union was certified on May 20, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time registered nurses and licensed practical nurses employed at the Employer's facility in Georgetown, South Carolina, excluding all other employees, housekeepers, laundry employees, certified nursing assistants, restorative nursing assistants, schedulers, unit secretaries, maintenance employees, dietary workers, medical records employees, social services employees, activities employees, central supply employees, drivers, licensed therapists, therapist assistants, rehab technicians, business office employees including accounts payable employees and accounts receivable employees, the Director of Nursing, the Assistant Director of Nursing, unit managers, MDS coordinators, office clerical employees, and guards and su-

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.

B. Refusal to Bargain

By letter dated June 2, 2015, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees.

Since about June 10, 2015, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

We find that the Respondent's conduct 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 June 10, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the 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), *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, Palmetto Prince George Operating, LLC d/b/a Prince George Healthcare Center, Georgetown, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers 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 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 registered nurses and licensed practical nurses employed at the Employer's facility in Georgetown, South Carolina, excluding all other employees, housekeepers, laundry employees, certified nursing assistants, restorative nursing assistants, schedulers, unit secretaries, maintenance employees, dietary workers, medical records employees, social services employees, activities employees, central supply employees, drivers, licensed therapists, therapist assistants, rehab technicians, business office employees including accounts payable employees and accounts receivable employees, the Director of Nursing, the Assistant Director of Nursing, unit managers, MDS coordinators, office clerical employees, and 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 Georgetown, South Carolina, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10, 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

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."

PRINCE GEORGE HEALTHCARE CENTER

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 June 10, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 10 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. September 8, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

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 United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers

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:

All full-time and regular part-time registered nurses and licensed practical nurses employed by us at our Georgetown, South Carolina facility, excluding all other employees, housekeepers, laundry employees, certified nursing assistants, restorative nursing assistants, schedulers, unit secretaries, maintenance employees, dietary workers, medical records employees, social services employees, activities employees, central supply employees, drivers, licensed therapists, therapist assistants, rehab technicians, business office employees including accounts payable employees and accounts receivable employees, the Director of Nursing, the Assistant Director of Nursing, unit managers, MDS coordinators, office clerical employees, and guards and supervisors as defined in the National Labor Relations Act.

PALMETTO PRINCE GEORGE OPERATING, LLC
D/B/A PRINCE GEORGE HEALTHCARE CENTER

The Board's decision can be found at www.nlr.gov/case/10-CA-154373 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.

