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VHS of Michigan, Inc. d/b/a Detroit Medical Center and Local 283, International Brotherhood of Teamsters (IBT). Case 07–CA–162818

March 29, 2016

DECISION AND ORDER

BY MEMBERS MISCIMARRA, 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 and amended charge filed by Local 283, International Brotherhood of Teamsters (IBT) (the Union), the General Counsel issued the complaint on November 9, 2015, alleging that VHS of Michigan, Inc. d/b/a Detroit Medical Center (the Respondent) has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 07–RC–155360. (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(d). *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 affirmative defenses.

On November 27, 2015, the General Counsel filed a Motion for Summary Judgment. On December 1, 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. On December 15, 2015, the Respondent filed a brief in opposition to the Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the complaint, the Respondent denies the allegations in complaint paragraph 10, which asserts that since about September 18, 2015, the Respondent has failed and refused to recognize and bargain with the Union. However, the Respondent does not contend that it has bargained with the Union or that its denial of complaint paragraph 10 raises a genuine issue of material fact warranting a hearing. Rather, in its opposition to the motion for summary judgment the Respondent makes clear that it is refusing to bargain with the Union in order to seek judicial review of the Regional Director's Deci-

sion and Direction of Election and her later Certification of Results of Election in the underlying representation proceeding.¹ Thus, the Respondent contests the validity of the Union's certification on the basis of its contentions, already raised and rejected in the representation proceeding, (1) that the self-determination election² that added the client service representatives I and II³ to the existing unit of laboratory assistants and senior laboratory assistants violated the Board's Health Care Rules concerning units in acute care hospitals,⁴ which the Respondent asserts require any addition to the unit to include all unrepresented nonprofessional classifications; (2) that the client service representatives lack a community of interest with the laboratory assistants; and (3) that the election to determine the inclusion of the client service representatives was contrary to the recognition clause in the parties' unexpired collective-bargaining agreement. Therefore, we conclude that the Respondent's denial of complaint paragraph 10 does not raise an issue warranting a hearing and that the Respondent admits its refusal to bargain with the Union.

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 or 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 corporation with facilities in Detroit, Michigan, and has been engaged in the operation of acute care hospitals.

¹ The Respondent did not file a request for review with the Board of either of the Regional Director's actions. Sec. 102.67(g) of the Board's Rules and Regulations states that "The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding." Nonetheless, in ruling on the General Counsel's motion, we have reviewed the record in reaching our decision here.

² See *Globe Machining & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942).

³ The parties refer to the disputed classifications interchangeably as "client service representatives" and "client services representatives."

⁴ 29 CFR §103.30(c).

In conducting its operations during the calendar year ending December 31, 2014, the Respondent derived gross revenues in excess of \$250,000 and purchased and received at its Detroit, Michigan facilities goods and materials valued in excess of \$5000 directly from points located outside the State of Michigan.

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 18, 2015, in Case 07-RC-155360, the Regional Director issued a certification that the Union is the exclusive collective-bargaining representative of the full-time and regular part-time client service representatives I and client service representatives II employed by the Respondent as part of the existing unit of laboratory assistants and senior laboratory assistants that the Union currently represents.

Based on this certification, the following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time client service representatives I, client service representatives II, laboratory assistants, and senior laboratory assistants employed by the Respondent at and out of its facilities; but excluding group leaders, guards and supervisors as defined in the Act and all other employees.

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.

B. *Refusal to Bargain*

On September 18 and October 2, 2015, the Union requested in writing that the Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about September 18, 2015, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit, including the client service representatives I and II.

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).

CONCLUSION OF LAW

By failing and refusing since September 18, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the client service representatives I and II 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) of the Act. 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 violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.⁵

ORDER

The National Labor Relations Board orders that the Respondent, VHS of Michigan, Inc. d/b/a Detroit Medical Center, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain in good faith with Local 283, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the client service representatives I and II 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 client service representatives I and client service representatives II employed by the Employer at or out of its facilities as a part of the following appropriate unit concerning 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 client service representatives I, client service representatives II, laboratory assistants, and senior laboratory assistants employed by

⁵ The complaint requests 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 *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997), and cases cited there.

the Respondent at and out of its facilities; but excluding group leaders, guards and supervisors as defined in the Act and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 7, 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 September 18, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 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. March 29, 2016

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁶ 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 Local 283, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the client service representatives 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 as the exclusive collective-bargaining representative of the client service representatives I and client service representatives II employed by the Employer at or out of its facilities as a part of the following appropriate unit concerning 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 client service representatives I, client service representatives II, laboratory assistants, and senior laboratory assistants employed by us at and out of our facilities; but excluding group leaders, guards and supervisors as defined in the Act and all other employees.

VHS OF MICHIGAN, INC. D/B/A DETROIT
MEDICAL CENTER

The Board's decision can be found at www.nlr.gov/case/07-CA-162818 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.

