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**St. John River District Hospital and Local 324, International Union of Operating Engineers (IUOE), AFL-CIO. Case 07-CA-183327**

December 29, 2016

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
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 August 30, 2016,<sup>1</sup> by Local 324, International Union of Operating Engineers (IUOE), AFL-CIO (the Union), the General Counsel issued the complaint on September 23, alleging that St. John River District Hospital (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 07-RC-170700. (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 in the complaint, and asserting affirmative defenses.

On October 13, the General Counsel filed a Motion for Summary Judgment. On October 14, 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.

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its contention, raised and rejected in the underlying representation proceeding, that the Regional Director improperly found that the bargaining unit did not include guards and found the certified bargaining unit appropriate. The Respondent also advances two procedural arguments in its answer to the complaint. First, the Respondent maintains that the Regional Director erroneously directed an election in this case less than 14 days after the Decision and Direction of Election, contrary to the Board's Rules and Regulations. As the Respondent did not raise this argument in its Request for Review in the representation proceeding, it is not properly litigable in this proceeding. The Respondent also disputes the asserted date of service

<sup>1</sup> All dates are 2016 unless otherwise indicated.

of the complaint and argues that the complaint erroneously states that its answer was due on October 7, when it was due on October 17. However, this argument does not raise an issue warranting a hearing because the Respondent in any event timely filed its answer on October 6.

All representation issues raised by the Respondent were or could have been litigated in the underlying 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 non-profit corporation with an office and facility in East China Township, Michigan (the East China facility), and has been engaged in the operation of an acute-care hospital.

In conducting its operations during the calendar year ending December 31, 2015, the Respondent derived gross revenues in excess of \$250,000 and purchased and received at its East China facility goods and supplies valued in excess of \$5000 directly from points 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 a healthcare 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*

At all material times, Joanne Tuscani held the position of the Respondent's Senior Director, Human Resources, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

Following a representation election held on April 19, the Union was certified on April 27 as the exclusive collective-bargaining representative of the employees in the following appropriate unit (the unit):

All full-time and regular part-time maintenance employees, including electricians, employed by the Employer at its facility located at 4100 River Road, East China Township, Michigan; but excluding office clerical employees, and guards and supervisors as defined in 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

About June 16, by letter, and about August 12, 22, and 29, by email, the Union requested the Respondent to recognize and bargain with it as the exclusive collective-bargaining representative of the unit. Since about June 16, the Respondent has failed and refused to do so.

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 16, 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, St. John River District Hospital, East China Township, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 324, International Union of Operating Engineers

(IUOE), AFL-CIO, 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 maintenance employees, including electricians, employed by the Employer at its facility located at 4100 River Road, East China Township, Michigan; but excluding office clerical employees, and guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in East China Township, Michigan, copies of the attached notice marked "Appendix."<sup>2</sup> 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 June 16, 2016.

(d) 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.

<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."

Dated, Washington, D.C. December 29, 2016

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, 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 Local 324, International Union of Operating Engineers (IUOE), AFL-CIO, as the exclusive collective-bargaining representative of our 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 in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate unit:

All full-time and regular part-time maintenance employees, including electricians, employed by us at our facility located at 4100 River Road, East China Township, Michigan; but excluding office clerical employees, and guards and supervisors as defined in the Act.

ST. JOHN RIVER DISTRICT HOSPITAL

The Board's decision can be found at [www.nlr.gov/case/07-CA-183327](http://www.nlr.gov/case/07-CA-183327) 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.

