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Pennsylvania Interscholastic Athletic Association, Inc. and Office and Professional Employees International Union, AFL-CIO. Case 06-CA-175817

January 26, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE
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 May 9, 2016, and an amended charge filed on August 25, 2017, by Office and Professional Employees International Union, AFL-CIO (the Union), the General Counsel issued the complaint on August 29, 2017, alleging that Pennsylvania Interscholastic Athletic Association, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 06-RC-152861.¹ (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 September 18, 2017, the General Counsel filed a Motion for Summary Judgment. On September 20, 2017, 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 of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the lacrosse officials in the bargaining unit are independ-

¹ On July 11, 2017, the Board (Members Pearce and McFerran; then-Chairman Miscimarra dissenting) affirmed the Regional Director on review and found that the lacrosse officials in the bargaining unit are "employees" under Sec. 2(3) of the Act, rather than independent contractors. 365 NLRB No. 107, slip op. at 1 (2017). The Board denied review in all other respects. *Id.*, slip op. at 1 fn. 2.

ent contractors rather than "employees" under Section 2(3) of the Act, that the Respondent is a "political subdivision" rather than an "employer" under Section 2(2) of the Act, and that the bargaining unit is not an appropriate unit inasmuch as an election was conducted among employees when they were not actually officiating games.²

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.³

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 organization with an office and place of business in Mechanicsburg, Pennsylvania, whose primary purpose is providing uniformity of standards in the interscholastic athletic competitions of its member schools in the Commonwealth of Pennsylvania, including providing the member schools access to its pool of registered sports officials.

In conducting its operations annually, the Respondent purchases and receives at its Mechanicsburg, Pennsylvania facility goods and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

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.

² However, the Respondent admits that its refusal to bargain was designed to "obtain judicial review of the certification decision in [Case] 06-RC-152861" and that it "does not oppose the General Counsel's Motion for Summary Judgment."

³ Chairman Kaplan did not participate in the underlying representation proceeding. He agrees with his colleagues that summary judgment must be granted because the Respondent has not raised any litigable issue in this unfair labor practice proceeding.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the mail-ballot representation election held from August 24, 2015, to September 15, 2015, the Union was certified on September 25, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All registered sports officials employed by Pennsylvania Interscholastic Athletic Association (“PIAA”) who officiate at PIAA-sponsored boys and girls lacrosse games in the geographic areas of Pennsylvania designated as “District VII” and “District VIII” by the PIAA constitution; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

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 November 5, 2015, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees. Since November 11, 2015, the Respondent has failed and refused to recognize and bargain with the Union.

By letters dated July 31 and August 16, 2017, the Union renewed its request that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees. By letter dated August 18, 2017, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union.

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 November 11, 2015, and August 18, 2017, respectively, 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, Pennsylvania Interscholastic Athletic Association, Inc., Mechanicsburg, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Office and Professional Employees International Union, AFL–CIO (the 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 registered sports officials employed by Pennsylvania Interscholastic Athletic Association (“PIAA”) who officiate at PIAA-sponsored boys and girls lacrosse games in the geographic areas of Pennsylvania designated as “District VII” and “District VIII” by the PIAA constitution; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its Mechanicsburg, Pennsylvania facility, copies of the attached notice marked “Appendix.”⁴ Copies of the notice, on forms provided by the Regional Director for Re-

⁴ 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.”

gion 6, 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 November 11, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 6 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. January 26, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, 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 Office and Professional Employees International Union, AFL–CIO (the Union) 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 writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All registered sports officials employed by Pennsylvania Interscholastic Athletic Association (“PIAA”) who officiate at PIAA-sponsored boys and girls lacrosse games in the geographic areas of Pennsylvania designated as “District VII” and “District VIII” by the PIAA constitution; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION, INC.

The Board’s decision can be found at www.nlr.gov/case/06-CA-175817 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.

