



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

May 21, 2019

Molly Dwyer, Clerk
United States Court of Appeals
for the Ninth Circuit
Post Office Box 193939
San Francisco, CA 94119-3939

Re: *NLRB v. RadNet Management Inc. d/b/a San Fernando Valley
Interventional Radiology and Imaging Center and RadNet Management
Inc. d/b/a San Fernando Valley Advanced Imaging Center*
Board Case Nos. 31-CA-222587 and 31-CA-225390

Dear Ms. Dwyer:

I am enclosing a copy of the National Labor Relations Board's application for enforcement of its order in this case. Within 40 days of the Court's docketing of this application, I will file the agency record and a certified list of its contents.

Please serve a copy of this application on the Respondents, RadNet Management Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center and RadNet Management Inc. d/b/a San Fernando Valley Advanced Imaging Center, whose addresses appear on the service list. I have served a copy of the application on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional

Director, whose name and address also appear on the service list, with a copy of any correspondence the Court sends to counsel in this case. The Board attorneys directly responsible for this case are Usha Dheenani (202) 273-2948 and Rebecca Johnston (202) 273-1066.

Very truly yours,

/s/ David Habenstreit

David Habenstreit

Acting Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

1015 Half Street, SE

Washington, DC 20570

Encls.

SERVICE LIST

NLRB v. RadNet Management Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center and RadNet Management Inc. d/b/a San Fernando Valley Advanced Imaging Center

Board Case Nos. 31-CA-222587 and 31-CA-225390

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Respondent

RadNet Management Inc. d/b/a San
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Respondent/Additional Service

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Respondent/Additional Service

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Charging Party's Counsel

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Charging Party

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Los Angeles, CA 90064-1753

Regional Director

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner)	
)	
v.)	Board Case Nos.
)	31-CA-222587
RADNET MANAGEMENT INC. D/B/A SAN)	31-CA-225390
FERNANDO VALLEY INTERVENTIONAL)	
RADIOLOGY AND IMAGING CENTER AND)	
RADNET MANAGEMENT INC. D/B/A SAN)	
FERNANDO VALLEY ADVANCED IMAGING)	
CENTER)	
)	
Respondent)	

**APPLICATION FOR ENFORCEMENT
OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

The National Labor Relations Board hereby applies to the Court for enforcement of its Order issued against RadNet Management Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center and RadNet Management Inc. d/b/a San Fernando Valley Advanced Imaging Center, on February 14, 2019, in Board Case Nos. 31-CA-222587 and 31-CA-225390, reported at 367 NLRB No. 88. The Board seeks enforcement of its Order in full.

The Court has jurisdiction over this application pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)). Venue is proper in this Circuit because the unfair labor practices occurred in Encino and Panorama City, California.

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Dated at Washington, DC
this 21st day of May 2019

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner)	
)	
v.)	Board Case Nos.
)	31-CA-222587
RADNET MANAGEMENT INC. D/B/A SAN)	31-CA-225390
FERNANDO VALLEY INTERVENTIONAL)	
RADIOLOGY AND IMAGING CENTER AND)	
RADNET MANAGEMENT INC. D/B/A SAN)	
FERNANDO VALLEY ADVANCED IMAGING)	
CENTER)	
)	
Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Dated at Washington, DC
this 21st day of May 2019

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.

RadNet Management Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center and RadNet Management Inc. d/b/a San Fernando Valley Advanced Imaging Center and National Union of Healthcare Workers. Cases 31–CA–222587 and 31–CA–225390

February 14, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

This is a refusal-to-bargain case in which Respondent RadNet Management Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center (SFV Interventional Radiology) and Respondent RadNet Management Inc. d/b/a San Fernando Valley Advanced Imaging Center (SFV Advanced Imaging) (collectively, the Respondent)¹ dispute the Union's certification as bargaining representative in the underlying representation proceedings. Pursuant to charges filed on June 21, 2018, and August 9, 2018, by the National Union of Healthcare Workers (the Union), the Regional Director issued an order consolidating cases, consolidated complaint, and notice of hearing on August 22, 2018, alleging that 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, at each facility, following the Union's certification in Cases 31–RM–209388 and 31–RM–209424. (Official notice is taken of the record in the representation proceedings as defined in the Board's Rules and Regulations Secs. 102.68 and 102.69(d). See *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer for each facility, admitting in part and denying in part the allegations in the complaint.

On October 10, 2018, the General Counsel filed a Motion for Summary Judgment. On October 17, 2018, the Board issued an order transferring the proceeding to the

¹ In referring to the Respondents as "Respondent," we are tracking the language used by the General Counsel in the underlying consolidated complaint.

² In its responses to the Notice to Show Cause and oppositions to the motion for summary judgment for each facility, the Respondent argues that the Board should deny the General Counsel's motion, citing, among other cases, *St. Francis Hospital*, 271 NLRB 948, 949 (1984) (Board reconsidered and vacated its earlier decision in the underlying representation proceeding and formulated a revised approach to health care employee units), and *Sub-Zero Freezer Co.*, 271 NLRB 47, 47 (1984) (Board reconsidered and reversed its earlier decision in the underlying representation proceeding). *St. Francis Hospital* and *Sub-Zero Freezer* are two of a limited number of cases in which the Board has departed

Board and a Notice to Show Cause why the motion should not be granted. For each facility, the Respondent filed a combined response to the Notice to Show Cause and opposition to the Motion for Summary Judgment, and an amended answer to the consolidated complaint newly asserting affirmative defenses. The General Counsel filed a reply.

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 certifications of representative based on its objections to the elections in the underlying representation proceedings.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceedings. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it shown 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).²

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, RadNet Management Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center and RadNet Management Inc. d/b/a San Fernando Valley Advanced Imaging Center, has been a corporation with an office and place of business in Los Angeles, California, and has been engaged in the operation of administering diagnostic imaging services.

In conducting its operations during the 12-month period ending November 9, 2017, the Respondent purchased and

from the rule that, in a certification-testing unfair labor practice case, issues that had been presented to and decided by the Board in a prior, related representation case cannot be relitigated and will not be reconsidered. Having reviewed the facts and arguments presented by the Respondent in its responses to the Notice to Show Cause and oppositions, we find no basis for departing from our longstanding rule or disturbing our orders denying review of the Regional Director's decisions in the underlying representation cases. See *Memorial Hospital of Salem County*, 357 NLRB No. 119, slip op. at 1–2 fn. 5 (2011) (not reported in Board volumes), enf. sub nom. *Salem Hospital Corp. v. NLRB*, 808 F.3d 59 (D.C. Cir. 2015); see also *Local 340, New York New Jersey Regional Joint Board*, 365 NLRB No. 61, slip op. at 3 fn. 6 (2017).

received at its Los Angeles, California facility goods valued in excess of \$5000 directly from points outside the State of California and derived gross revenues in excess of \$100,000.

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 representation elections held on December 6, 2017, in Case 31–RM–209388 (SFV Interventional Radiology) and December 8, 2017, in Case 31–RM–209424 (SFV Advanced Imaging), the Union was certified on March 14, 2018, as the exclusive collective-bargaining representative of the employees in the following appropriate units:³

SFV Interventional Radiology Unit

Included: All full-time, regular part-time, and per diem Technical employees employed by the Employer at its facility at San Fernando Valley Interventional Radiology and Imaging Center located at 16311 Ventura Blvd., Suite 120, Encino, CA 91436;

Excluded: All other employees, managers, confidential employees, physicians, service employees, office clericals, and guards and supervisors as defined by the Act, as amended.

SFV Advanced Imaging Unit

Included: All full-time, regular part-time, and per diem Technical employees employed by the Employer at its facility at San Fernando Valley Advanced Imaging Center located at 14860 Roscoe Blvd., Suite 101, Panorama City, CA 91402;

Excluded: All other employees, managers, confidential employees, physicians, service employees, office clericals, and guards and supervisors as defined by the Act, as amended.

The Union continues to be the exclusive collective-bargaining representative of the employees in the above appropriate units under Section 9(a) of the Act.

³ The Respondent subsequently filed requests for review in both cases. On June 1, 2018, the Respondent sent letters to the Union in which it stated that it did not recognize the Union as the collective-bargaining representative of its employees because its requests for review were currently pending before the Board. The Board ultimately denied the

B. *Refusal to Bargain*

By email dated July 26, 2018, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the employees in the two units. In letters dated July 27, 2018, the Respondent informed the Union that it would not recognize and bargain with the Union in either the SFV Interventional Radiology Unit or the SFV Advanced Imaging Unit in order to test the Board's certifications of those Units. Since that date, the Respondent has failed and refused to 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 July 27, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, 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, RadNet Management Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center and RadNet Management Inc. d/b/a San Fernando Valley Advanced Imaging Center, Los Angeles, California, its officers, agents, successors, and assigns, shall

Respondent's requests for review in Cases 31–RM–209388 and 31–RM–209424 by unpublished orders dated July 25 and 26, 2018, respectively. We need not pass on whether the Respondent's June 1 letters themselves constitute a refusal to bargain, given the Respondent's July 27, 2018 letters to the Union discussed below.

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the National Union of Healthcare Workers (the Union) as the exclusive collective-bargaining representative of the employees in the SFV Interventional Radiology and SFV Advanced Imaging bargaining units.

(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 units concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

SFV Interventional Radiology Unit

Included: All full-time, regular part-time, and per diem Technical employees employed by the Employer at its facility at San Fernando Valley Interventional Radiology and Imaging Center located at 16311 Ventura Blvd., Suite 120, Encino, CA 91436;

Excluded: All other employees, managers, confidential employees, physicians, service employees, office clericals, and guards and supervisors as defined by the Act, as amended.

SFV Advanced Imaging Unit

Included: All full-time, regular part-time, and per diem Technical employees employed by the Employer at its facility at San Fernando Valley Advanced Imaging Center located at 14860 Roscoe Blvd., Suite 101, Panorama City, CA 91402;

Excluded: All other employees, managers, confidential employees, physicians, service employees, office clericals, and guards and supervisors as defined by the Act, as amended.

(b) Within 14 days after service by the Region, post at its facilities in Encino and Panorama City, CA, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 31, 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

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

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 July 27, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 31 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. February 14, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, 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

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the National Union of Healthcare Workers (the Union) as the exclusive collective-bargaining representative of our employees in the SFV Interventional Radiology and SFV Advanced Imaging bargaining units.

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 units:

SFV Interventional Radiology Unit

Included: All full-time, regular part-time, and per diem Technical employees employed by the Employer at its facility at San Fernando Valley Interventional Radiology and Imaging Center located at 16311 Ventura Blvd., Suite 120, Encino, CA 91436;

Excluded: All other employees, managers, confidential employees, physicians, service employees, office clericals, and guards and supervisors as defined by the Act, as amended.

SFV Advanced Imaging Unit

Included: All full-time, regular part-time, and per diem Technical employees employed by the Employer at its facility at San Fernando Valley Advanced Imaging

Center located at 14860 Roscoe Blvd, Suite 101, Panorama City, CA 91402;

Excluded: All other employees, managers, confidential employees, physicians, service employees, office clericals, and guards and supervisors as defined by the Act, as amended.

RADNET MANAGEMENT INC. D/B/A SAN FERNANDO VALLEY INTERVENTIONAL RADIOLOGY AND IMAGING CENTER AND RADNET MANAGEMENT INC. D/B/A SAN FERNANDO VALLEY ADVANCED IMAGING CENTER

The Board's decision can be found at <https://www.nlr.gov/case/31-CA-222587> 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.

