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.

Champlin Shores Assisted Living *and* SEIU Healthcare Minnesota. Case 18–CA–093766

February 14, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

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 by the Union on November 27, 2012, the Acting General Counsel issued the complaint on December 6, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 18-RC-087228. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Sections 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.

On December 26, 2012, the Acting General Counsel filed a Motion for Summary Judgment and Brief in Support of Motion. On December 28, 2012, 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 standard used to determine the appropriateness of the bargaining unit was improper. Specifically, the Respondent argues that *Specialty Healthcare & Rehabilitation of Mobile*, 357 NLRB No. 83 (2011), was wrongly decided.

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.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Washington corporation with an office and a place of business located in Champlin, Minnesota, has been engaged in the operation of an assisted living facility providing personal care and other services to its residents.

In conducting its operations described above, during the calendar year ending December 31, 2011, the Respondent derived gross revenues in excess of $250,000, and purchased and received goods and services at its Champlin, Minnesota facility valued in excess of $5000 directly from suppliers located outside the State of Minnesota.

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, SEIU Healthcare Minnesota, 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 October 5, 2012, the Union was certified on October 12, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by the Employer at its Champlin, Minnesota facility*; excluding all other employees, office clerical employees, managerial employees, and guards and supervisors as defined in the Act. *The parties stipulated at the hearing that regular part-time and casual/on call employees are limited by the standard established in *Davison-Paxon Co.*, 185 NLRB 2 (1970).

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

At all times since October 12, 2012, including by letters dated October 18 and November 8, 2012, the Union has requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit. By letter dated November 26, 2012, and

[1] The Respondent's request that the complaint be dismissed, and the certification of representative be revoked, is therefore denied.

at all times thereafter, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's failure and refusal to recognize and bargain with the Union constitutes a violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about November 26, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in an unfair labor practice 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, Champlin Shores Assisted Living, Champlin, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with SEIU Healthcare Minnesota, 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, regular part-time, and casual/on call resident assistants and medication technicians employed by the Employer at its Champlin, Minnesota facility*; excluding all other employees, office clerical employees, managerial employees, and guards and supervisors as defined in the Act. *The parties stipulated at the hearing that regular part-time and casual/on call employees are limited by the standard established in *Davison-Paxon Co.*, 185 NLRB 2 (1970).

(b) Within 14 days after service by the Region, post at its facility in Champlin, Minnesota, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 18, 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. In the event that, during the pendency of these proceedings, 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 about November 26, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director 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, 2013

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member
Sharon Block,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

[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."

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 SEIU Healthcare Minnesota, 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, regular part-time, and casual/on call resident assistants and medication technicians employed by us at our Champlin, Minnesota facility*; excluding all other employees, office clerical employees, managerial employees, and guards and supervisors as defined in the Act. *The parties stipulated at the hearing that regular part-time and casual/on call employees are limited by the standard established in *Davison-Paxon Co.*, 185 NLRB 2 (1970).

CHAMPLIN SHORES ASSISTED LIVING