

Aaron Convalescent Home and National Union of Hospital and Nursing Home Employees, Local 1199H, an affiliate of Retail, Wholesale and Department Store Union, AFL-CIO and Non-Professional Employees of Nursing Homes, Hospital and Geriatric Services Union, Inc. Case 9-CA-6317

December 29, 1971

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

Upon a charge and amended charge filed on June 11 and 25, 1971, by National Union of Hospital and Nursing Home Employees, Local 1199H, an affiliate of Retail, Wholesale and Department Store Union, AFL-CIO, herein called Local 1199H, and duly served on Aaron Convalescent Home, herein called the Respondent, the Acting General Counsel of the National Labor Relations Board, by the Regional Director for Region 9, issued a complaint on August 10, 1971, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (2), and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, amended charge, complaint, and notice of hearing before a Trial Examiner were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges, in substance, that the Respondent and its agents, at its nursing homes in Cincinnati, Ohio, violated Section 8(a)(1), (2), and (3) of the Act. More specifically, the complaint alleges that, on various occasions, between on or about June 7 and 21, 1971, the Respondent violated Section 8(a)(1) by (1) engaging in surveillance of employees' activities on behalf of Local 1199H; (2) engaging in surveillance of the meeting place and meeting of employees with representatives of Local 1199H; (3) interrogating employees concerning their activities on behalf of Local 1199H; (4) threatening to discharge employees because of their activities on behalf of Local 1199H; (5) threatening employees that if they signed authorization cards for, or attended meetings conducted by, Local 1199H they would be discharged; (6) initiating and maintaining an unlawful no-solicitation rule forbidding all types of solicitation; and (7) restricting and interfering with the solicitation of employees and distribution of literature by Local 1199H by instructing employees not to receive literature from agents of

Local 1199H. The complaint further alleges that in or about December 1970,¹ the Respondent violated Section 8(a)(2) of the Act by illegally assisting Non-Professional Employees of Nursing Home, Hospital and Geriatric Services Union, Inc., by allowing said labor organization to solicit on its premises while excluding agents of Local 1199H and by soliciting signatures of new employees on authorization cards of said labor organization, thereby interfering with the formation or administration of a labor organization. Finally, the complaint alleges that the Respondent between on or about June 8, 1971, and on or about June 21, 1971, violated Section 8(a)(3) of the Act by demoting, transferring, and discharging certain employees, and at all times thereafter failing and refusing to reinstate them to their former positions, because of their membership in, sympathy for, and activities on behalf of Local 1199H, and in order to discourage membership in that Union.

On October 4, 1971, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment based upon the Respondent's failure and refusal to file a timely answer as required by Sections 102.20 and 102.21 of the Board's Rules and Regulations. Subsequently, on October 13, 1971, the Board issued an Order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On October 26, 1971, the Respondent filed an opposition combined with a general denial of the allegations of the complaint.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary
Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegations in the complaint not specifically denied or explained in an answer filed, unless the

¹ Inadvertently, the complaint sets forth the date as December 1971

respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on the Respondent specifically stated that unless an answer was filed to the complaint within 10 days from the service thereof "all of the allegations of the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the Motion in Support of Motion for Summary Judgment, counsel for the General Counsel made several oral requests of Respondent to file an answer to the complaint, but Respondent failed and refused to do so. Thereafter, on September 24, 1971, counsel for the General Counsel notified both the administrator and the assistant administrator of the Respondent, by registered mail, that unless the Respondent filed an answer to the complaint by the close of business on September 30, 1971, a Motion for Summary Judgment would be filed. Thereafter, on October 4, 1971, no answer having been filed, counsel for the General Counsel filed a Motion for Summary Judgment.

On October 26, 1971, the Respondent filed an answer and a Motion in Opposition to Motion for Summary Judgment, attaching thereto an affidavit of John J. Thomas, Respondent's president and chief executive officer. The Respondent generally denies the allegations of the complaint and submits, in substance, that its failure to file an answer was due to the absence of Thomas, who was on vacation, during the period from September 21 through October 8, 1971. On November 1, 1971, counsel for the General Counsel filed a reply to the Respondent's Motion in Opposition to General Counsel's Motion for Summary Judgment in which he submits that the Respondent offers no reason for its failure to file an answer from the date of the complaint on August 10, 1971, to the date of Thomas' absence from the city commencing on September 21, 1971. Moreover, there is no denial that the Respondent was aware of the 10-day period in which to file its answer, nor an explanation for its failure to ask for an extension of time within which to do so. Nor is any explanation given by the Respondent for its complete silence from August 10, 1971, until September 21, 1971.

As the Respondent has not filed an answer within 10 days from the service of the complaint, and as no good cause to the contrary has been shown, in accordance with the rule set forth above, the allegations of the complaint herein are deemed to be admitted to be true and are so found to be true.²

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio corporation, is engaged in the administration and operation of two convalescent homes, Aaron Convalescent Home and Alaska Convalescent Home, both in Cincinnati, Ohio. At all times material herein, Aaron Convalescent Home and Alaska Convalescent Home are, and have been, affiliated businesses with common officers, ownership, directors, and operators, constituting a single integrated business enterprise, whose directors and operators formulate and administer a common labor policy for the aforementioned companies, affecting the employees of said companies. During the past calendar year, a representative period, Respondent received gross revenues in excess of \$100,000. During the same period, Respondent purchased goods and services valued in excess of \$10,000 from firms located in the State of Ohio which, in turn, purchased those goods directly from points outside the State of Ohio and individually satisfy one of the Board's jurisdictional standards.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

National Union of Hospital and Nursing Home Employees, Local 1199H, an affiliate of Retail, Wholesale and Department Store Union, AFL-CIO, and Non-Professional Employees of Nursing Homes, Hospital and Geriatric Services Union, Inc., each is and has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Independent 8(a)(1) Violations*

At various times between on or about June 7, 1971, and on or about June 21, 1971, the Respondent and its agents (1) engaged in surveillance of employees' activities on behalf of Local 1199H; (2) engaged in surveillance of the meeting place and meeting of employees with representatives of Local 1199H; (3) interrogated employees concerning their activities on behalf of Local 1199H; (4) threatened to discharge employees because of their activities on behalf of Local 1199H; (5) threatened employees that if they signed authorization cards for or attended meetings

² *Wilson and Sons*, 193 NLRB No. 51, and cases cited therein.

conducted by Local 1199H they would be discharged; (6) initiated and maintained an unlawful no-solicitation rule forbidding all types of solicitation; and (7) restricted and interfered with the solicitation of employees and distribution of literature by Local 1199H by instructing employees not to receive literature from agents of Local 1199H.

Accordingly, we find that, by the aforesaid conduct, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed under Section 7 of the Act and that, by such conduct, the Respondent thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

B. *The 8(a)(2) Violation*

In or about December 1970 the Respondent illegally assisted Non-Professional Employees of Nursing Home, Hospital and Geriatric Services Union, Inc., by allowing said labor organization to solicit on its premises while excluding agents of Local 1199H and by soliciting signatures of new employees on authorization cards of said labor organization.

Accordingly, we find that by such conduct the Respondent interfered with the formation or administration of a labor organization and has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

C. *The 8(a)(3) Violations*

On June 8, 14, and 21, 1971, respectively, the Respondent demoted, transferred, and discharged Joann Banks, and on June 21, 1971, the Respondent also discharged Ella Mae Kemp, Thelma Harris, Roxie Young, and Regina Smith, and at all times thereafter failed and refused to reinstate them to their former positions because of their membership in, sympathy for, and activities on behalf of Local 1199H, and in order to discourage membership in that Union.

Accordingly, we find that, by the Respondent's aforesaid conduct it discriminated in regard to the terms and conditions of employment of its employees, thereby discouraging membership in a labor organization and that by such conduct the Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and

commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily demoted, transferred, and discharged Joann Banks and discriminatorily discharged Ella Mae Kemp, Thelma Harris, Roxie Young, and Regina Smith, and refused to reinstate them to their former positions, we shall order that the Respondent offer them immediate and full reinstatement to their former or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and to make them whole for any loss of earnings they may have suffered by payment to them of sums of money equal to the amount they normally would have earned as wages from the dates of the respective discharges of Kemp, Harris, Young, and Smith and from the date of the demotion, transfer, and discharge of Banks, less net earnings, in accordance with the formulas set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

As the unfair labor practices committed by the Respondent were of a character which go to the very heart of the Act, we shall order the Respondent to cease and desist from infringing in any other manner upon the rights of employees guaranteed by Section 7 of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Respondent, Aaron Convalescent Home, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. National Union of Hospital and Nursing Home Employees, Local 1199H, an affiliate of Retail, Wholesale and Department Store Union, AFL-CIO, and Non-Professional Employees of Nursing Homes, Hospital and Geriatric Services Union, Inc., are labor organizations within the meaning of Section 2(5) of the Act.

3. By the acts and conduct described in section III, A, B, and C, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor

practices within the meaning of Section 8(a)(1), (2), and (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Aaron Convalescent Home, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in surveillance of employees' activities on behalf of Local 1199H and of the meeting place and meeting of employees with representatives of said local.

(b) Interrogating employees concerning their activities on behalf of Local 1199H.

(c) Threatening to discharge employees because of their activities on behalf of Local 1199H and threatening employees that if they signed authorization cards for or attended meetings conducted by Local 1199H they would be discharged.

(d) Initiating and maintaining an unlawful no-solicitation rule forbidding all types of solicitation.

(e) Restricting and interfering with the solicitation of employees and distribution of literature by Local 1199H by instructing employees not to receive literature from agents of Local 1199H.

(f) Assisting Non-Professional Employees of Nursing Homes, Hospital and Geriatric Services Union, Inc., by allowing said labor organization to solicit on its premises while excluding agents of Local 1199H and by soliciting signatures of new employees on authorization cards of said labor organization.

(g) In any other manner rendering unlawful assistance or support to Non-Professional Employees of Nursing Homes, Hospital and Geriatric Services Union, Inc., or to any other labor organization.

(h) Demoting, transferring, or discharging employees because of their membership in, sympathy for, and activities on behalf of Local 1199H or otherwise discouraging membership in that Union.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer to Joann Banks, Ella Mae Kemp, Thelma Harris, Roxie Young, and Regina Smith immediate and full reinstatement to their former or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Notify immediately the above-named individuals, if presently serving in the Armed Forces of the United States, of the right to full reinstatement, upon

application after discharge from the Armed Forces, in accordance with the Selective Service Act and the Universal Military Training and Service Act.

(c) Make whole Joann Banks for any loss of pay she may have suffered by reason of her demotion, transfer, and termination by payment to her a sum of money equal to the amount she normally would have earned from the dates of her demotion, transfer, and termination to the date of the Respondent's offer of reinstatement in the manner set forth in the section entitled "The Remedy."

(d) Make whole Ella Mae Kemp, Thelma Harris, Roxie Young, and Regina Smith for any loss of pay each of them may have suffered by reason of the discrimination against them by payment to each of them of a sum of money equal to the amount they normally would have earned as wages from the date of their termination to the date of the Respondent's offer of reinstatement in the manner set forth in the section entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Rescind the application of the no-solicitation rule forbidding all types of solicitation or other activities protected by Section 7 of the Act.

(g) Post at its nursing homes in Cincinnati, Ohio, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ In the event that 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 be changed to 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

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT engage in surveillance of employees' activities on behalf of Local 1199H and of the meeting place and meeting of employees with representatives of said local.

WE WILL NOT interrogate employees concerning their activities on behalf of Local 1199H.

WE WILL NOT threaten to discharge employees because of their activities on behalf of Local 1199H and threaten employees that if they signed authorization cards for or attended meetings conducted by Local 1199H they would be discharged.

WE WILL NOT initiate and maintain an unlawful no-solicitation rule forbidding all types of solicitation.

WE WILL NOT restrict and interfere with the solicitation of employees and distribution of literature by Local 1199H by instructing employees not to receive literature from agents of Local 1199H.

WE WILL NOT assist Non-Professional Employees of Nursing Homes, Hospital and Geriatric Services Union, Inc., by allowing said labor organization to solicit on its premises while excluding agents of Local 1199H and by soliciting signatures of new employees on authorization cards of said labor organization.

WE WILL NOT in any other manner render unlawful assistance or support to Non-Professional Employees of Nursing Homes, Hospital and Geriatric Services Union, Inc., or to any other labor organization.

WE WILL NOT demote, transfer, or discharge employees because of their membership in, sympathy for, and activities on behalf of Local 1199H or otherwise discouraging membership in that Union.

WE WILL NOT in any like or related manner

interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL offer to Joann Banks immediate and full reinstatement to her former or, if that job no longer exists, to a substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay suffered as a result of her demotion, transfer, and discharge.

WE WILL offer to Ella Mae Kemp, Thelma Harris, Roxie Young, and Regina Smith immediate and full reinstatement to their former or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of discrimination practiced against them.

You are free to become and remain members of National Union of Hospital and Nursing Home Employees, Local 1199H, an affiliate of Retail, Wholesale and Department Store Union, AFL-CIO, or any other labor organization.

AARON CONVALESCENT
HOME
(Employer)

Dated _____ By _____
(Representative) (Title)

Notify immediately the above-named individuals, if presently serving in the Armed Forces of the United States, of the right to full reinstatement, upon application after discharge from the Armed Forces, in accordance with the Selective Service Act and the Universal Military Training and Service Act.

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 2407, 550 Main Street, Cincinnati, Ohio 44199, Telephone 216-522-3715.