Santa Cruz Skilled Nursing Center, Inc. *and* Service Employees International Union, United Healthcare Workers-West. Cases 32–CA–23911, 32–CA–23943, 32–CA–23944, 32–CA–24006, and 32–CA–24103

May 29, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges filed by the Union, Service Employees International Union, United Healthcare Workers-West on May 27, June 9, July 16, and September 15, 2008, respectively, the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on February 27, 2009, alleging that the Respondent, Santa Cruz Skilled Care Nursing Center, Inc., has violated Section 8(a)(1) and (5) of the Act.[1] The Respondent failed to file an answer.

On April 3, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 7, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 21, 2009, the Union filed a response to the Order to Show Cause. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment[2]

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that, unless an answer was filed by March 13, 2009, all of the allegations could be found to be true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 27, 2009, notified the Respondent that, unless an answer was received by March 30, 2009, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with an office and place of business in Santa Cruz, California (the Facility), has been engaged in the operation of a skilled nursing facility. During the 12-month period preceding issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $100,000, purchased and received goods or services valued in excess of $5000 which originated from points outside the State of California, and received Federal Medicare funds in excess of $5000.

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.

[1] As set forth in the General Counsel's Motion for Default Judgment, although the charge in Case 32–CA–23911 named the Respondent as "Nazareth Healthcare," the charge was properly served at the Respondent's address. Further, the Respondent's counsel acknowledged by letter dated July 18, 2008, that the charge had been filed against the Respondent, and he responded to the allegations therein. The Region's investigation disclosed that the Respondent and Nazareth Healthcare share some elements of common ownership. The charges in Cases 32–CA–23943, 32–CA–23944, 32–CA–24006, and 32–CA–24103 named the Respondent as Santa Cruz Skilled Nursing Center, Inc.

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *New Process Steel v. NLRB*, ___ F.3d ___ 2009 WL 1162556 (7th Cir. May 1, 2009), petition for cert. filed __ U.S.L.W. __ (U.S. May 27, 2009) (No. 08–1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08–1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, ___ F.3d ___, 2009 WL 1162574 (D.C. Cir. May 1, 2009), petition for rehearing filed Nos. 08–1162, 08–1214 (May 27, 2009).

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following named individuals occupied the positions set forth opposite their respective names, and are supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Helen Richardson Davis	- Co-Owner
Mournir Kardosh	- Co-Owner
Ralph Unterbrink	- Administrator
Carol Frangieh	- Director of Operations
Bernie Arevelo	- Director of Staff Development
Heidi Rodriguez	- Director of Nursing

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the Respondent at the Facility performing work described in and covered by "Section 1. Recognition" of the September 2, 2008 through September 1, 2010 collective bargaining agreement between the Respondent and the Union (the Agreement); excluding all other employees, registered nurses, office employees, and supervisors as defined in the Act.

Since about November 5, 2007, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since that date has been recognized as such by the Respondent. Such recognition has been embodied most recently in the Areement.

At all times since November 5, 2007, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the employees in the unit.

The Respondent, at the Facility:

(a) In February 2008, acting through Helen Richardson Davis, during separate employee meetings:

> (1) Interrogated employees concerning why they wanted or supported the Union.
>
> (2) Solicited grievances from employees and promised to remedy these grievances in order to discourage employees from supporting the Union.

(b) On various occasions during March 2008, acting through Helen Richardson Davis, Carol Frangieh, Bernie Arevelo, and/or Heidi Rodriguez, engaged in surveillance of employees' union activities.

(c) About May 6, 2008, acting through Carol Frangieh, told a union representative that the representative could not speak Spanish to employees at the Facility.

(d) In mid-May 2008, acting through Helen Richardson Davis, interrogated employees concerning their union activities and told them to stop trying to get other employees to sign a prounion petition.

(e) In late May 2008, acting through Ralph Unterbrink, told employees that the Respondent had assigned another employee to observe employees' union activities and to report back to him on those activities.

(f) In late May 2008, acting through Helen Richardson Davis, told employees that those employees who supported the Union were "backstabbers."

(g) About May 28, 2008, acting through Helen Richardson Davis, asked employees how the Respondent could get employees not to support the Union, told employees that the Respondent would "fix" employees' problems with expired green cards, and threatened employees with reprisals if they were seen participating in informational picketing that the Union intended to conduct at the Facility.

(h) About May 29, 2008, acting through Ralph Unterbrink, at an employee meeting, told employees that they did not need the Union and that if they had problems, a "free attorney" from the labor commissioner or some other agency could help them.

(i) On various occasions during May 2008, acting through Helen Richardson Davis, at employee meetings:

> (1) Asked employees why they wanted the Union.
>
> (2) Told employees that raises for them were "frozen" until everything was finished with the Union, that it was because of the Union that employees could not get raises, and that she had to let go of a raise that she had intended to give employees because some of them wanted the Union.

(j) In May 2008, acting through Mournir Kardosh, at an employee meeting, promised employees benefits in order to discourage their support of the Union.

(k) In June 2008, acting through Helen Richardson Davis, during separate employee meetings:

> (1) Asked employees why they wanted the Union.
>
> (2) Told employees that they did not need the Union to get benefits because she would give them those benefits without the Union.

(l) On or about June 30, 2008, acting through Mournir Kardosh, at an employee meeting:

> (1) Told employees that their support for the Union would be futile because, with or without the Union, the Respondent was not going to change their benefits.

(2) Impliedly threatened employees with loss of employment by telling them that he did not want to spend any more money fighting the Union, that he was putting his own money into the Facility, and that the Facility was going to close, and that if it was not for him, the employees would not have a job.

(3) Promised employees benefits in order to discourage their support of the Union by asking them to give the Respondent "more time" and to wait because the Respondent would give them better benefits.

(m) About June 30, 2008, acting through Helen Richardson Davis, at an employee meeting, told employees that the Respondent had checked to see whether any employees had participated in a previous union leafleting activity.

About May 13, 2008, the Union, in writing, requested that the Respondent provide it with, inter alia, a copy of any policy stating that employees at the Facility could only speak English at the Facility (the May 13 Information).

About May 20, 2008, the Union, in a letter, requested that the Respondent provide it with certain information described in that letter relating to unit employees and their terms and conditions of employment at the Facility (the May 20 Information).

The May 13 Information and the May 20 Information are necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

Since about May 13, 2008, the Respondent has failed and refused to provide, and/or timely provide, the Union with the May 13 Information.

Since about May 20, 2008, the Respondent has failed and refused to provide, and/or timely provide, the Union with the May 20 Information.

On an unknown date in February 2008, the Respondent implemented a new program under which unit employees who successfully referred a certified nursing assistant for employment with the Respondent would receive a $250 bonus (the Bonus Program).

The Bonus Program relates to the wages, rates of pay, hours of employment, and other terms and conditions of employment of the employees in the unit and is a mandatory subject for the purposes of collective bargaining.

The Respondent implemented the Bonus Program without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the Bonus Program and the effects of the Bonus Program.

CONCLUSIONS OF LAW

1. By the conduct described above, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By failing and refusing to provide, or timely provide, the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit and by unilaterally implementing a Bonus Program without notifying the Union or affording it an opportunity to bargain with respect to the Bonus Program and the effects of the Bonus Program, the Respondent has failed and refused to bargain collectively and in good faith with the Union, in violation of Section 8(a)(5) and (1).

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by implementing a Bonus Program without notifying the Union and without affording it an opportunity to bargain with respect to the Bonus Program and the effects of the Bonus Program, we shall order the Respondent, if requested by the Union, to rescind the unilaterally-implemented Bonus Program, and to bargain, on request, with the Union over the Bonus Program and its effects. Further, having found that the Respondent has failed and refused to provide, and/or to timely provide the Union with information that is necessary for and relevant to its role as the exclusive collective-bargaining representative of the employees in the unit, we shall order the Respondent to provide the Union with the information it requested on May 13 and 20, 2008, in a timely manner.

ORDER

The National Labor Relations Board orders that the Respondent, Santa Cruz Skilled Nursing Center, Inc., Santa Cruz, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning their union sympathies and activities and concerning why they want or support the Union.

(b) Telling a union representative that the representative could not speak Spanish to employees at the Facility.

(c) Telling its employees to stop trying to get other employees to sign a prounion petition.

(d) Telling its employees that employees who support the Union are "backstabbers."

(e) Soliciting grievances from its employees and promising to remedy those grievances in order to discourage employees from supporting the Union.

(f) Engaging in surveillance of its employees' union activities and creating the impression that its employees' union activities are under surveillance.

(g) Threatening and impliedly threatening its employees with discharge, plant closure, denial of raises, and other reprisals if the employees selected the Union as their exclusive collective-bargaining representative, or if they participated in other protected concerted activities.

(h) Promising employees benefits in order to discourage its employees' support of the Union.

(i) Telling its employees that their support for the Union would be futile.

(j) Failing and refusing to provide, and/or timely provide, the Union with information that is necessary for and relevant to its performance of its duties as the exclusive collective-bargaining representative of the employees in the following unit:

> All employees employed by the Respondent at the Facility performing work described in and covered by "Section 1. Recognition" of the September 2, 2008 through September 1, 2010 collective bargaining agreement between the Respondent and the Union (herein called the Agreement); excluding all other employees, registered nurses, office employees, and supervisors as defined in the Act.

(k) Unilaterally implementing a bonus program without notifying the Union and without affording it an opportunity to bargain with respect to the Bonus Program and the effects of the Bonus Program.

(l) 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) In a timely manner, provide the Union with the information it requested on May 13 and 20, 2008, which is necessary for and relevant to its performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

(b) If requested by the Union, rescind the Bonus Program that was unlawfully implemented without notifying the Union or offering it the opportunity to bargain about the Bonus Program or its effects on the unit; provided, however, that nothing in this Order shall be construed as requiring the Respondent to rescind the Bonus Program unless the Union requests such action.

(c) On request, bargain with the Union concerning the Bonus Program and its effects.

(d) Within 14 days after service by the Region, post at its facility in Santa Cruz, California, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 32, 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. 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 February 2008.

(e) 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. May 29, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, 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

[3] 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."

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 interrogate our employees concerning their union sympathies and activities and concerning why they want or support the Union.

WE WILL NOT tell a union representative that the representative could not speak Spanish to employees at the Facility.

WE WILL NOT tell our employees to stop trying to get other employees to sign a prounion petition.

WE WILL NOT tell our employees that employees who support the Union are "backstabbers."

WE WILL NOT solicit grievances from our employees and WE WILL NOT promise to remedy those grievances in order to discourage employees from supporting the Union.

WE WILL NOT engage in surveillance of our employees' union activities and WE WILL NOT create the impression that our employees' union activities are under surveillance.

WE WILL NOT threaten or impliedly threaten our employees with discharge, plant closure, denial of raises, and other reprisals if the employees select the Union as their exclusive collective-bargaining representative, or if they participate in other protected concerted activities.

WE WILL NOT promise employees benefits in order to discourage employees' support of the Union.

WE WILL NOT tell employees that their support for the Union would be futile.

WE WILL NOT fail and refuse to provide, and/or timely provide, the Union with information that is necessary for and relevant to its performance of its duties as the exclusive collective-bargaining representative of the employees in the following unit:

> All employees employed by us at the Facility performing work described in and covered by "Section 1. Recognition" of the September 2, 2008 through September 1, 2010 collective bargaining agreement between us and the Union (the Agreement); excluding all other employees, registered nurses, office employees, and supervisors as defined in the Act.

WE WILL NOT unilaterally implement a Bonus Program without notifying the Union and without affording it an opportunity to bargain with respect to the Bonus Program and the effects of the Bonus Program.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights described above.

WE WILL, in a timely manner, provide the Union with the information it requested on May 13 and 20, 2008, which is necessary for, and relevant to, its performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

WE WILL, if requested by the Union, rescind the unilaterally implemented Bonus Program.

WE WILL, on request, bargain with the Union concerning the Bonus Program and its effects.

SANTA CRUZ SKILLED NURSING CENTER, INC.