Shasta Regional Medical Center, LLC *and* SEIU, United Healthcare Workers–West *and* United Public Employees Union, Local 792, Laborers International Union of North America. Cases 20–CA–34236 and 20–CA–34237

August 24, 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 a charge filed by SEIU, United Healthcare Workers–West (SEIU) in Case 20–CA–34236 on January 2, 2009, and a charge filed by United Public Employees Union, Local 792, Laborers International Union of North America (Local 792), in Case 20–CA–34237 on January 2, 2009, the General Counsel issued the order consolidating cases, consolidated complaint and notice of hearing on February 26, 2009, against Shasta Regional Medical Center, LLC (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On June 9, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 10, 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. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment[1]

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 consolidated complaint affirmatively stated that unless an answer was received by March 12, 2009, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true. Further, the undisputed allegations in the motion disclose that the Region, by letter dated May 20, 2009, notified the Respondent that unless an answer was received by May 27, 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 acute care hospital facility located at 1100 Butte Street, Redding, California (the facility), has been engaged in the business of providing medical care and hospital services to patients.

During the 12-month period ending October 31, 2008, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $250,000 and purchased and received at its Redding, California hospital goods and materials valued in excess of $5000, which originated from points located outside the State of California.

Accordingly, 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 a health care institution within the meaning of Section 2(14) of the Act. Further, we find that United Public Employees Union, Local 792, Laborers International Union of North America and SEIU, United Healthcare Workers–West are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been 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:

Sandra Speer	Director, Human Resources
Philip Dionne	Chief Executive Officer

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

[1] 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 *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 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*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

> All regular full-time, regular part-time, and per diem registered nurses employed by Shasta Regional Medical Center.

From at least 2000 until October 31, 2008, Local 792 was the exclusive collective-bargaining representative of the RN unit employed by the Respondent, and during that period of time was recognized as such by the Respondent. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from June 1, 2006, through May 31, 2008.

From at least 2000 until about October 31, 2008, based on Section 9(a) of the Act, Local 792 was the exclusive collective-bargaining representative of the RN unit employed by the Respondent.

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

> All regular full-time, regular part-time, and per diem LVN and technical employees employed by Shasta Regional Medical Center in the classifications of LVN, Vascular techs, Echocardiology techs, Radiologic techs (X-ray techs, Special-Procedure techs, Surgery techs (OR techs, Scrub techs) Ultrasound techs, Nuclear Med techs, Paramedics, Respiratory Therapy techs, Ortho techs, Laboratory techs, E.E.G. techs, Physical Therapy assistants, and Pharmacy techs.

From at least 2000 until October 31, 2008, Local 792 was the exclusive collective-bargaining representative of the LVN/Technical unit employed by the Respondent, and during that period of time was recognized as such by the Respondent. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from December 1, 2006, to November 30, 2008.

From at least 2000 until about October 31, 2008, based on Section 9(a) of the Act, Local 792 was the exclusive collective-bargaining representative of the LVN/Technical unit employed by the Respondent.

The following employees of the Respondent (the Maintenance/Clerical Unit) constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All full-time, part-time and per diem service and maintenance, skilled maintenance and business office clerical employees employed by Shasta Regional Medical Center at its hospital facility located at 1100 Butte Street, Redding, California, including those classifications set forth in the collective-bargaining agreement between SEIU and Shasta Regional Medical Center effective from January 1, 2007, through December 31, 2010.

From at least 2000 until October 31, 2008, SEIU was the exclusive collective-bargaining representative of the Maintenance/Clerical unit employed by the Respondent, and during that period of time was recognized as such by the Respondent. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from January 1, 2007, through December 31, 2010.

From at least 2000 until about October 31, 2008, based on Section 9(a) of the Act, SEIU was the exclusive collective-bargaining representative of the Maintenance/Clerical unit employed by the Respondent.

1.(a) About October 31, 2008, the Respondent ceased doing business and terminated all employees employed in the RN Unit.

(b) The Respondent engaged in the conduct described in paragraph 1(a) without paying employees in the RN Unit their contractually-required severance payments.

(c) The subject set forth in paragraph 1(b) relates to wages, hours, and other terms and conditions of employment of the employees in the RN unit, and is a mandatory subject for the purposes of collective bargaining.

(d) The Respondent engaged in the conduct described in paragraph 1(a) without prior notice to Local 792 and without affording Local 792 an opportunity to bargain with the Respondent with respect to the effects of this conduct.[2]

(e) The Respondent engaged in the conduct described in paragraph 1(b) without prior notice to Local 792 and without affording Local 792 an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct.

2.(a) About October 31, 2008, the Respondent ceased doing business and terminated all employees employed in the LVN/Technical Unit.

[2] Although the complaint alleges that the conduct described in par.1(a) is a mandatory subject of bargaining, we need not address that allegation because there is no allegation that the failure to bargain about the *decision* to close violates the Act. The complaint specifically alleges that the conduct in paragraph 1(d)—the failure to give notice of or bargain about the *effects* of the closing—violates the Act. The Board has repeatedly found that the *effect* of such decisions on unit employees is a mandatory bargaining subject. See, e.g., *Nick and Bob Partners*, 340 NLRB 1196, 1198 (2003). Accordingly, we find that the complaint supports a cause of action as to the failure to bargain over the effects of the Respondent's decision to cease its operations and terminate its unit employees.

(b) The Respondent engaged in the conduct described in paragraph 2(a) without paying employees in the LVN/Technical unit their contractually-required severance payments.

(c) The subject set forth in paragraph 2(b) relates to wages, hours, and other terms and conditions of employment of the employees in the LVN/Technical unit, and is a mandatory subject for the purposes of collective bargaining.

(d) The Respondent engaged in the conduct described in paragraph 2(a) without prior notice to Local 792 and without affording Local 792 an opportunity to bargain with the Respondent with respect to the effects of this conduct. [3]

(e) The Respondent engaged in the conduct described in paragraph 2(b) without the consent of Local 792.

3.(a) About October 31, 2008, the Respondent ceased doing business and terminated all employees employed in the Maintenance/Clerical unit.

(b) The Respondent engaged in the conduct described in paragraph 3(a) without paying employees in the Maintenance/Clerical unit their contractually required severance payments.

(c) The subject set forth in paragraph 3(b) relates to wages, hours, and other terms and conditions of employment of the employees in the Maintenance/Clerical unit, and is a mandatory subject for the purposes of collective bargaining.

(d) The Respondent engaged in the conduct described in paragraph 3(a) without prior notice to SEIU and without affording SEIU an opportunity to bargain with the Respondent with respect to the effects of this conduct. [4]

(e) The Respondent engaged in the conduct described in paragraph 3(b) without the consent of SEIU.

[3] Although the complaint alleges that the conduct described in par. 2(a) is a mandatory subject of bargaining, we need not address that allegation because there is no allegation that the failure to bargain about the *decision* to close was unlawful. The complaint specifically alleges that the conduct in par. 2(d)—the failure to give notice of or bargain about the *effects* of the closing—violates the Act. Accordingly, we find that the complaint supports a cause of action as to the failure to bargain over the effects of the Respondent's decision to cease its operations and terminate its unit employees. See fn. 2, supra.

[4] Although the complaint alleges that the conduct described in par. 3(a) is a mandatory subject of bargaining, we need not address that allegation because there is no allegation that the failure to bargain about the *decision* to close was unlawful. The complaint specifically alleges that the conduct in par. 3(d)—the failure to give notice of or bargain about the *effects* of the closing—violates the Act. Accordingly, we find that the complaint supports a cause of action as to the failure to bargain over the effects of the Respondent's decision to cease its operations and terminate its unit employees. See fn. 2, supra.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of the unit employees within the meaning of Section 8(d) of the Act, and has thereby 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 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 violated Section 8(a)(5) and (1) by failing, since October 31, 2008, to make severance payments to the employees of the RN unit, the LVN/Technical unit, and the Maintenance/Clerical unit who were terminated when the Respondent ceased its operations at its Redding, California facility on October 31, 2008, we shall order the Respondent to make the unit employees whole by paying them their contractually-required severance payments. All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[5]

To remedy the Respondent's unlawful failure to provide the Unions prior notice and a meaningful opportunity to bargain regarding the effects on unit employees of its decision to cease operations at its Redding, California facility, we shall order the Respondent to bargain with the Unions, on request, about the effects of that decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representatives at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Unions. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order

[5] In the consolidated complaint, the General Counsel seeks compound interest computed on a quarterly basis for any monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham*, 352 NLRB 516, 516 fn. 1 (2008), citing *Rogers Corp*., 344 NLRB 504 (2005).

with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).[6]

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its decision to cease operations on the unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons* for the Retarded, supra.

Finally, in view of the fact that the Respondent has ceased doing business at its Redding, California facility, we shall order the Respondent to mail copies of the attached notice to the Unions and to the last known addresses of its former unit employees, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Shasta Regional Medical Center, LLC, Redding, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with United Public Employees Union, Local 792, Laborers International Union of North America (Local 792), as the exclusive collective-bargaining representative of the employees in the units set forth below, with respect to the effects of its decision to cease doing business at its Redding, California facility and terminate the unit employees:

The RN Unit:

All regular full-time, regular part-time, and per diem registered nurses employed by Shasta Regional Medical Center.

The LVN/Technical Unit:

All regular full-time, regular part-time, and per diem LVN and technical employees employed by Shasta Regional Medical Center in the classifications of LVN, Vascular techs, Echocardiology techs, Radiologic techs (X-ray techs, Special-Procedure techs, Surgery techs (OR techs, Scrub techs) Ultrasound techs, Nuclear Med techs, Paramedics, Respiratory Therapy techs, Ortho techs, Laboratory techs, E.E.G. techs, Physical Therapy assistants, and Pharmacy techs.

(b) Failing and refusing to bargain collectively and in good faith with SEIU, United Healthcare Workers–West (SEIU), as the exclusive collective-bargaining representative of the employees in the unit set forth below, with respect to the effects of its decision to cease doing business at its Redding, California facility and terminate the unit employees:

The Maintenance/Clerical Unit

All full-time, part-time and per diem service and maintenance, skilled maintenance and business office clerical employees employed by Shasta Regional Medical Center at its hospital facility located at 1100 Butte Street, Redding, California, including those classifications set forth in the collective-bargaining agreement between SEIU and Shasta Regional Medical Center effective from January 1, 2007, through December 31, 2010.

(c) Failing to pay its unit employees their contractually-required severance payments.

(d) 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.

[6] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990).

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

(a) On request, bargain collectively and in good faith with Local 792 and SEIU concerning the effects on unit employees of the Respondent's decision to cease doing business at its Redding, California facility as of October 31, 2008, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay to the terminated unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's failure to make contractually-required severance payments, with interest, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"[7] to the Unions and to all unit employees employed at the Redding, California facility as of October 31, 2008.

(f) 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. August 24, 2009

Wilma B. Liebman,, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[7] If this Order is enforced by a judgment of a United States court of appeals, the]words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
MAILED 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 mail 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 bargain collectively and in good faith with United Public Employees Union, Local 792, Laborers International Union of North America (Local 792), as the exclusive collective-bargaining representative of the employees in the units set forth below, with respect to the effects of our decision to cease doing business at our Redding, California facility and to terminate the unit employees:

The RN Unit:

All regular full-time, regular part-time, and per diem registered nurses employed by Shasta Regional Medical Center.

The LVN/Technical Unit:

All regular full-time, regular part-time, and per diem LVN and technical employees employed by Shasta Regional Medical Center in the classifications of LVN, Vascular techs, Echocardiology techs, Radiologic techs (X-ray techs, Special-Procedure techs, Surgery techs (OR techs, Scrub techs) Ultrasound techs, Nuclear Med techs, Paramedics, Respiratory Therapy techs, Ortho techs, Laboratory techs, E.E.G. techs, Physical Therapy assistants, and Pharmacy techs.

WE WILL NOT fail and refuse to bargain collectively and in good faith with SEIU, United Healthcare Workers–West (SEIU), as the exclusive collective-bargaining representative of the employees in the unit set forth below, with respect to the effects of our decision to cease

doing business at our Redding, California facility and to terminate the unit employees:

The Maintenance/Clerical Unit

All full-time, part-time and per diem service and maintenance, skilled maintenance and business office clerical employees employed by Shasta Regional Medical Center at its hospital facility located at 1100 Butte Street, Redding, California, including those classifications set forth in the collective-bargaining agreement between SEIU and us effective from January 1, 2007, through December 31, 2010.

WE WILL NOT fail to pay our terminated unit employees their contractually-required severance payments.

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 collectively and in good faith with Local 792 and SEIU concerning the effects on our unit employees of our decision to cease doing business at our Redding, California facility on October 31, 2008, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL make our terminated unit employees whole for any loss of earnings and other benefits suffered as a result of our failure to make contractually-required severance payments, with interest.

WE WILL pay to our terminated unit employees their normal wages for the period set forth in the remedy section of the Board's decision, with interest.

SHASTA REGIONAL MEDICAL CENTER, LLC