

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

MOHAWK FLOORING AND
JANITORIAL SERVICE, INC.

and

Case 11-CA-22379

JUAN CARLOS HERNANDEZ
NAVARRETE, an Individual

Lisa R. Shearin, Esq., for the General Counsel.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case is before me pursuant to a Motion for Default Judgment. The case was set to be tried in Winston-Salem, North Carolina, on February 8, 2010, pursuant to an amended complaint that issued on January 22, 2010. The initial complaint issued on September 29, 2009.¹ The Respondent filed timely answers to both the complaint and amended complaint.

On February 5, 2010, contemporaneously with filing the answer to the amended complaint, Counsel for the Respondent, Attorney Richard J. Rutledge, Jr., filed a motion to withdraw as Counsel. He did not appear at the hearing. The President and Owner of the Respondent, Maurice Braswell, did appear. I explained to him his right to cross-examine witnesses and to present evidence. Notwithstanding my assurance that his rights would be protected, Braswell requested, and I granted, his request, to leave. I opened the hearing, received the formal papers, and then granted the motion of General Counsel to adjourn the hearing sine die in order for the Region to determine what course of action it wished to follow.²

Thereafter, on February 8, Attorney Rutledge filed a Motion to Withdraw Answer in which he states that he is entering a "limited appearance on behalf of Respondent" for the purpose of withdrawing the answers of the Respondent. The Motion represents (1) that the Respondent, "by and through its President ... understands that withdrawal of its Answer(s) ... may result in ... summary judgment;" (2) that a monetary judgment against Mohawk Flooring and Janitorial Service "may issue as a consequence;" and (3) that, "as a consequence of withdrawal of the Answer(s)" the Board's subpoena is withdrawn and that President Maurice Barnwell "will not be required to appear and testify ... in the proceedings."

¹ All dates herein are in 2009 unless otherwise indicated. The charge was filed on August 4. It was thereafter amended on September 17 and January 20, 2010.

² The cover sheets of the transcript and exhibits have been corrected to identify Mohawk as the Respondent instead of "Employer" and Navarrete as Charging Party instead of the "Petitioner."

On March 8, Counsel for the General Counsel filed a Motion for Default Judgment, attaching thereto various exhibits including Exhibit M, the Motion to Withdraw Answer. The Motion to Withdraw Answer is granted. The General Counsel’s Motion for Default Judgment with the attached exhibits is hereby made a part of the record and designated as ALJ Exhibit 1.

Ruling on Motion for Default Judgment

Pursuant to Section 102.20 of the Board’s Rules and Regulations, allegations in a complaint to which no answer is filed “shall be deemed to be admitted to be true.” Board precedent establishes that withdrawal of an answer to a complaint has the same effect as the failure to file an answer. See *Holcomb & Hoke Mfg. Co.*, 355 NLRB No. 4 (2010), citing *Maislin Transport*, 274 NLRB 529 (1985). Accordingly, I grant the General Counsel’s Motion for Default Judgment and find the allegations of the complaint to be admitted.

The adjourned hearing is hereby closed. On the entire record, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, Mohawk Flooring and Janitorial Service, Inc., Mohawk, was at all times material herein a North Carolina corporation with a worksite located in Davie County, North Carolina, where it engaged in the business of providing custodial operations and maintenance at the Davie County rest area. During the past 12 months, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 to the State of North Carolina, an entity that is engaged in interstate commerce. I find and conclude that the Respondent is now, 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.

II. Alleged Unfair Labor Practices

At all times material herein, the following-named person occupied the position set opposite his name, and has been, and is now, an agent of Respondent, acting on its behalf, and is a supervisor within the meaning of Section 2(11) of the Act:

Maurice Barnwell - President and Owner

In late July, at its Davie County worksite, the Respondent issued a company policy memorandum that promulgated an overly broad confidentiality policy, and the Respondent thereafter maintained and enforced that overly broad confidentiality policy.

In late September, President and Owner Maurice Braswell interfered with Board processes by interrogating employees about their communications with the Board and threatened to terminate employees in retaliation for their cooperation with the Board.

On July 17, the Respondent suspended, and on the same date, discharged Juan Carlos Hernandez Navarrete and, thereafter, failed and refused to reinstate him, because Navarrete engaged in concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Conclusions of Law

5 The Respondent, by promulgating, maintaining, and enforcing an overly broad confidentiality policy, by interrogating employees about their communications with the Board and by threatening to terminate employees in retaliation for their cooperation with the Board, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

10 The Respondent, by suspending and discharging Juan Carlos Hernandez Navarrete because he engaged in concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such concerted activities, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

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Remedy

20 Having found that the Respondent had engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having promulgated, maintained, and enforced an overly broad confidentiality policy, it must rescind that policy.

25 The Respondent having unlawfully discharged Juan Carlos Hernandez Navarrete, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from July 17, 2009, to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

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The General Counsel has moved that I award compound interest upon any backpay due. Consistent with the decision of the Board in *Glen Rock Ham*, 352 NLRB 516 (2008), not to deviate from its current practice of awarding simple interest, I deny that motion.

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The Respondent shall also be ordered to post an appropriate notice.

In view of the foregoing and on the entire record, I issue the following recommended³

ORDER

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The Respondent, Mohawk Flooring and Janitorial Service, Inc., Broadway, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

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(a) Promulgating, maintaining, and enforcing an overly broad confidentiality policy.

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Interrogating employees about their communications with the Board and threatening to terminate employees in retaliation for their cooperation with the Board.

5 (c) Suspending and discharging employees because they engage in concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such concerted activities.

10 (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.

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

15 (a) Rescind the unlawfully broad confidentiality policy.

(b) Within 14 days from the date of this Order, offer Juan Carlos Hernandez Navarrete full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

20 (c) Make whole Juan Carlos Hernandez Navarrete for any loss of earnings and other benefits suffered as a result of his unlawful suspension and discharge, in the manner set forth in the remedy section of the decision.

25 (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge, and within 3 days thereafter, notify Juan Carlos Hernandez Navarrete in writing that this has been done and that the suspension and discharge will not be used against him in any way.

30 (e) 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 determine the amount of backpay due under the terms of this Order.

35 (f) Within 14 days after service by the Region, post at its facilities in Davie County, North Carolina, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60
40 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
45 copy of the notice to all current employees and former employees employed by the Respondent at any time since July 17, 2009.

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

(g) 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.

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Dated, Washington, D.C., March 12, 2010.

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George Carson II
Administrative Law Judge

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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 had 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 promulgate, maintain, or enforce an overly broad confidentiality policy.

WE WILL NOT interrogate any of you about your communications with the National Labor Relations Board or threaten to terminate any of you in retaliation for your cooperation with the Board.

WE WILL NOT suspend or discharge any of you because you engage in concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our unlawfully broad confidentiality policy.

WE WILL, within 14 days from the date of the Board's Order, offer Juan Carlos H. Navarrete full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Juan Carlos H. Navarrete for any loss of earnings and other benefits suffered as a result of his unlawful suspension and discharge, in the manner set forth in the remedy section of the decision.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discharge, and within 3 days thereafter, notify Juan Carlos H. Navarrete in writing that this has been done and that the suspension and discharge will not be used against him in any way.

MOHAWK FLOORING AND JANITORIAL
SERVICE, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Republic Square, Suite 200, 4035 University Parkway, Winston-Salem, NC 27106-3325
(336) 631–5201, Hours: 8:00 a.m. to 4:30 p.m.

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 ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (336) 631-5220