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**Chicago Parking Company, Inc. and Auto Livery Chauffeurs, Embalmers, Funeral Directors, Apprentices, Ambulance Drivers and Helpers, Taxicab Drivers, Miscellaneous Garage Employees, Car Washers, Greasers, Polishers, and Wash Rack Attendants Union, Local 727, An Affiliate of the IBT.** Case 13–CA–45440

January 11, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER  
AND HAYES

The Acting General Counsel seeks default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge filed in Case 13–CA–45440 by Teamsters Local 727, the Union, on July 22, 2009, the General Counsel issued a complaint on January 29, 2010, alleging that the Respondent had violated Section 8(a)(5), (3), and (1) of the Act. The Union also filed a charge against the Respondent in Case 13–CA–46019 on May 17, 2010.

Subsequently, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 13 on June 23, 2010. Among other things, the settlement agreement required the Respondent to (1) post a notice to employees; (2) offer Dejene Bahiru reinstatement to his former position; (3) expunge any reference to his discharge from its files and notify Bahiru in writing that the Respondent had done so; and (4) pay Bahiru and Fikadu Mikkonen backpay in the amounts of \$30,579.60 and \$563.20, respectively, to be paid in 12 monthly installments of \$2,548.30 to Bahiru from July 12, 2010, to June 13, 2011, and in 2 monthly installments of \$281.60 to Mikkonen from July 12, to August 9, 2010.

The settlement agreement also contained the following provision:

NONCOMPLIANCE WITH SETTLEMENT AGREEMENT—The Charged Party agrees that in a case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to, failure to make timely installment payments of moneys, and after 15 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by Charged Party, the Regional Director shall issue complaint in the instant case, (*or, if the Regional Director*

*has withdrawn the complaint pursuant to the terms of this Settlement Agreement, the Regional Director shall reissue the complaint previously filed in the instant case*). Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just-issued complaint concerning the violations alleged therein. Charged Party understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it would not contest the validity of any such allegations, and the Board may enter findings, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an Order requiring the Charged Party to Show Cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether Charged Party defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an Order providing full remedy for the violations found as is customary to remedy such violations, including but not limited to provisions of this Settlement Agreement. The parties further agree that the Board Order and a U.S. Court of Appeals Judgment may be entered hereon *ex parte*.

As set forth in the Acting General Counsel's Motion for Default Judgment, the Respondent fully complied with the reinstatement and notice-posting requirements in the settlement agreement, partially complied with the expungement requirement,<sup>1</sup> and on July 16, 2010, paid its first installment of backpay owed to the discriminatees. On August 10, 2010, the Respondent remitted to the Region its second installment of backpay, but with an overpayment to Mikkonen. The Respondent has failed to make any additional payments since that time.

By letter dated August 30, 2010, the compliance officer for Region 13 returned the check made payable to Mikkonen in an amount exceeding that due and requested that the Respondent submit a payment for the

<sup>1</sup> Although the Acting General Counsel's motion indicates that the Respondent notified the Regional Director that it has expunged from its files discriminatee Bahiru's discharge, the motion further indicates that the Respondent has failed and refused to notify Bahiru in writing that it has done so as required by the settlement agreement. In addition, the motion indicates that the Respondent has failed to comply with the settlement provision requiring that it execute the collective-bargaining agreement with the Union.

correct amount owed within 15 days. The Respondent did not reply to this August 30 letter.

By emails dated September 15, 27, and 29, 2010, the Region again requested the Respondent to comply with the settlement agreement, and advised that unless the Respondent submitted the past-due payments by October 4, 2010, the Regional Director would file a motion for default judgment in accordance with the noncompliance provision of the settlement agreement. The Respondent failed to comply.

Accordingly, on October 18, 2010, the Regional Director reissued the complaint and the Acting General Counsel filed its Motion for Default Judgment with the Board. On October 20, 2010, the Board issued an order transferring the proceedings 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.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to remit the agreed-upon amounts due to Dejene Bahiru and Fikadu Mikkonen, notify Dejene Bahiru that his discharge has been expunged from its files, and execute the collective-bargaining agreement with the Union. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued complaint are true.<sup>2</sup> Accordingly, we grant the Acting 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, an Illinois corporation with an office and place of business in Chicago, Illinois, has been engaged in the business of providing doorman, valet, and parking services to Chicago-area condominium buildings and restaurants.

During the calendar year preceding issuance of the reissued complaint, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 for its customers within the State of Illinois, such as Smith and Wollensky, Tavern at the Park,<sup>3</sup> and Keefer's.

The Respondent's customers described above are themselves enterprises which are directly engaged in interstate commerce in that they have each purchased and received at their Illinois facilities goods valued in excess of \$50,000 directly from points outside the State of Illinois.

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 Teamsters Local 727 is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals 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:

Juan Olivares      President and Director of Operations

Luis Gonzalez      Secretary and General Manager

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 full-time and regular part-time cashiers, hikers, attendants, porters, maintenance men/custodians, drive men, washers, collectors, customer service representatives (excluding those who do sales and/or marketing), drivers, dispatchers, bellmen, doormen and supervisors who perform bargaining unit work; but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, who do not perform bargaining unit work.

Since at least 2006, and at all material times thereafter, the Union has been the designated collective-bargaining representative of the unit and since then the Union has been recognized as the representative by Valet Parking Service (VPS). This recognition has been embodied in a collective-bargaining agreement between the Union and VPS, effective November 1, 2006, through October 31, 2011.

Since at least November 1, 2006, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

At all material times through about October 2008, VPS had a contract for unit work at a condominium building located at 888 South Michigan Avenue, Chicago, Illinois (888 S. Michigan).

<sup>2</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

<sup>3</sup> The complaint refers to "Tavern In The Park," which appears to be a typographical error.

As of some time in October 2008, VPS terminated its contract with 888 S. Michigan.

About November 1, 2008, the Respondent assumed the contract described above with 888 S. Michigan, and since then has continued to operate the business of VPS in basically unchanged form at 888 S. Michigan, and has employed as a majority of its employees individuals who were previously unit employees of VPS at 888 S. Michigan.

Upon assumption of the VPS contract at 888 S. Michigan as described above, the Respondent made it perfectly clear to the unit that they would be employed under the same conditions as they had been with VPS.

Based on the operations described above, the Respondent has continued the employing entity and is a "perfectly clear" successor to its predecessor, VPS, at 888 S. Michigan.

The Respondent engaged in the following conduct:

1. About late January 2009, the Respondent, by Juan Olivares, at 888 S. Michigan, interfered with employees' exercise of Section 7 rights by telling Dejene Bahiru that the Respondent is not a union company.

2. About late January 2009, the Respondent, by Juan Olivares, at 888 S. Michigan, interfered with employees' exercise of Section 7 rights by telling Dejene Bahiru that the Respondent would not pay anything for the Union.

3. About late January 2009, the Respondent, by Juan Olivares, at 888 S. Michigan, impliedly promised Dejene Bahiru nonunion medical insurance.

4. About late February 2009, the Respondent, by Juan Olivares, at 888 S. Michigan, interrogated Dejene Bahiru about his interest in the Union.

5. About April 15, 2009, the Respondent, by Luis Gonzalez, at 888 S. Michigan, interfered with employees' exercise of Section 7 rights by telling Dejene Bahiru that the Respondent is not a union company.

6. About April 15, 2009, the Respondent, by Luis Gonzalez, at 888 S. Michigan, interrogated Dejene Bahiru about his interest in union benefits.

7. About April 15, 2009, the Respondent, by Luis Gonzalez, at 888 S. Michigan, interfered with employees' exercise of Section 7 rights by telling Dejene Bahiru that he was no longer a union member when in fact he was.

8. About April 15, 2009, the Respondent discharged its employee Dejene Bahiru. The Respondent engaged in this conduct because the named employee of the Respondent joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

9. Commencing sometime in November 2008, on a date unknown to the Regional Director but known to the

Respondent, the Respondent unilaterally terminated all benefits, including Health and Welfare benefits, of its unit employees at 888 S. Michigan that were the unit employees' terms and conditions of employment that had been provided under the collective-bargaining agreement described above.

10. The subject set forth in paragraph 9 relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

11. Inasmuch as the Respondent is a perfectly clear successor to VPS as described above, the Respondent was not entitled to make any unilateral changes to the terms and conditions of the unit employees' employment that existed under the collective-bargaining agreement described above.

12. The Respondent engaged in the conduct described in paragraph 9 without notice to the Union and without providing the Union an opportunity to bargain about any such changes.

13. About January 2009, the Respondent, by Juan Olivares, at 888 S. Michigan, bypassed the Union and dealt directly with its unit employee Dejene Bahiru by offering him nonunion health insurance.

14. About February 2009, the Respondent, by Juan Olivares, at 888 S. Michigan, bypassed the Union and dealt directly with its unit employee Dejene Bahiru by offering him nonunion health insurance.

#### CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 1-7, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. By the conduct described above in paragraph 8, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

3. By the conduct described above in paragraphs 9-14, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) and affecting 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 take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent shall comply with the remaining unmet terms of the settlement agreement approved by the Regional Director for Region 13 on June 23, 2010, by paying to the discriminatees the remaining backpay owed under the settlement agreement, notifying Dejene Bahiru in writing that any reference to his unlawful discharge has been removed from its files, and executing the collective-bargaining agreement with the Union. The remaining backpay due under the settlement agreement shall be paid with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In limiting our affirmative remedies to those enumerated above, we note that the Acting General Counsel is empowered under the noncompliance provisions of the settlement agreement to seek “full remedy for the violations found as is customary to remedy such violations, including but not limited to provisions of this Settlement Agreement,” including full backpay. However, in his Motion for Default Judgment, the Acting General Counsel has not sought such additional remedies and we will not, *sua sponte*, include them.<sup>4</sup>

<sup>4</sup> See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The Acting General Counsel has requested, in his motion for default judgment, that the Board issue “an appropriate Remedial Order including the payment of full backpay in the amount of \$25,764.60 (Bahiru being owed \$25,483; Mikkonen being owed \$281.60), plus interest, as liquidated damages; an order that Respondent notify Bahiru in writing that his discharge by Respondent has been expunged from his file; and an order that Respondent execute the 2006–2011 collective-bargaining agreement with the Union.” Accordingly, we construe this as a request to enforce the unmet terms of the settlement agreement.

## ORDER

The National Labor Relations Board orders that the Respondent, Chicago Parking Company, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Remit \$25,764.60, plus interest, to Region 13 of the National Labor Relations Board to be disbursed to Dejene Bahiru and Fikadu Mikkonen, in accordance with the terms of the settlement agreement approved by the Regional Director on June 23, 2010.

2. Execute and apply the collective-bargaining agreement between the Union and predecessor Valet Parking Service, effective November 1, 2006, through October 31, 2011, to its employees at the 888 S. Michigan Avenue and 321 N. Clark (Reid Murdoch) buildings in Chicago, Illinois.

3. Notify Dejene Bahiru, in writing, that any reference to his unlawful discharge has been removed from its files and that the unlawful discharge will not be used against him in any way.

4. 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. January 11, 2011

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD