

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**RC OPERATOR, LLC  
d/b/a WILLOW TERRACE**

and

**NATIONAL UNION OF HOSPITAL AND  
HEALTH CARE EMPLOYEES DISTRICT  
1199C, AFSCME, AFL-CIO**

**Cases 4-CA-37630  
4-CA-37666  
4-CA-37715  
4-CA-37739  
4-CA-37746  
4-CA-37778**

**DECISION AND ORDER**

Statement of the Cases

On January 21, 2011, RC Operator, LLC d/b/a Willow Terrace, the Respondent, National Union of Hospital and Health Care Employees District 1199C, AFSCME, AFL-CIO, the Union, and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

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

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation<sup>1</sup> and the entire record, the Board makes the following:

**Findings of Fact**

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<sup>1</sup> The stipulated Order has been corrected to substitute language appropriate where the respondent is an employer ("officers, agents, successors, and assigns").

1. The Employer's business

The Respondent is a Delaware limited liability company with its principal office in Philadelphia, Pennsylvania. It operates a nursing home at One Penn Boulevard, Philadelphia, Pennsylvania (the Facility), where it is engaged in providing long-term care and assistance to residents.

Based on a projection of its operations since about July 2, 2010, at which time the Respondent commenced its operations at the Facility, the Respondent, in conducting operations there, will annually receive gross revenues in excess of \$100,000 and purchase and receive at the Facility goods valued in excess of \$5000 directly from points outside the Commonwealth of Pennsylvania.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization involved

At all material times, National Union of Hospital and Health Care Employees District 1199C, AFSCME, AFL-CIO has been a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

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 CNAs, RCNAs, Recreation Aides, Activity Aides, Unit Clerks, Housekeeping employees and Dietary employees employed by Respondent at the Facility, excluding all other employees, guards and supervisors as defined in the Act.

On August 30, 2010, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since August 30, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

**ORDER**

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, RC Operator, LLC d/b/a Willow Terrace, its officers, agents, successors and assigns, shall:

1. Cease and desist from

(a) (1) Indicating to employees that it would be futile for them to select National Union of Hospital and Health Care Employees District 1199C, AFSCME, AFL-CIO (the Union) as their collective-bargaining representative; (2) interrogating employees concerning their protected concerted activities and their Union activities; (3) creating the impression among employees that their protected concerted activities and their Union activities are under surveillance; (4) threatening employees that they may be discharged because they engaged in protected concerted activities or Union activities; and (5) telling employees that they have been discharged because they engaged in protected concerted activities or Union activities or because other employees were engaging in protected concerted activities or Union activities.

(b) Discharging or laying off employees, or extending their probationary period, or otherwise discriminating in regard to their hire or tenure of employment or any other term or condition of employment, in order to discourage membership in the Union or in any other labor organizations.

(c) Failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its full-time and regular part-time CNAs, RCNAs, Recreation Aides, Activity Aides, Unit Clerks, Housekeeping employees and Dietary employees employed by the Respondent at its One Penn Boulevard, Philadelphia, Pennsylvania facility (the Facility) (the unit employees), by (1) failing to respond in a timely and complete manner to the Union's request for bargaining for a collective-bargaining agreement covering the terms and conditions of the unit employees; (2) failing to provide, or to timely provide, to the Union requested information that is relevant and necessary for the Union to perform its duties as the exclusive collective-bargaining representative of unit employees; and (3) failing and refusing to bargain collectively and in good faith with the Union by making changes related to the wages, hours, and other mandatory terms and conditions of employment of unit employees without first notifying the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

(d) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Upon request, bargain collectively and in good faith with the Union concerning wages, hours, and other terms and conditions of employment of all the unit employees in the bargaining unit described below, and, if an understanding is reached, embody such understanding in a written, signed agreement:

All full-time and regular part-time CNAs, RCNAs, Recreation Aides, Activity Aides, Unit Clerks, Housekeeping employees and Dietary employees employed by Respondent at its One Penn Boulevard, Philadelphia, Pennsylvania facility, excluding all other employees, guards and supervisors as defined in the Act.

(b) Continue to bargain with the Union as the exclusive collective-bargaining representative of the unit employees as if the initial year of certification in the unit will not expire for 13 months, i.e., until September 30, 2011.

(c) Make whole the following employees for loss of pay they suffered by reason of the discrimination against them, by payment to them of the amounts set forth opposite their respective names and on or before the dates set forth in the Schedule that follows. All payments, in the form of separate checks made out to each of the employees named in the Schedule, will be made to Region Four of the Board at 615 Chestnut Street, 7th Floor, Philadelphia, PA 19106. The Respondent will make appropriate withholdings from the payment to each named employee. If any installment is not paid on or before the date due, the full unpaid amount shall become immediately due and payable and the Board may, without further notice, institute proceedings against the Respondent for the collection of the full indebtedness remaining due, with additional interest due on the entire unpaid balance from the date of default until full payment is received, computed in accordance with the formula set forth in *New Horizons for the Retarded, Inc.*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In order to ensure full payment under this Settlement Stipulation, the Respondent, as security for full payment, has executed a Confession of Judgment.<sup>2</sup>

Schedule

Employee Name	Amounts Due and Dates of Payment					TOTAL
	January 21, 2011	February 21, 2011	March 21, 2011	April 21, 2011	May 21, 2011	
Keith Davis	\$1253.33	\$1253.33	\$1253.33	\$1253.33	\$1253.33	\$6266.65
James Jones	\$981.89	\$981.89	\$981.89	\$981.89	\$981.89	\$4909.45

<sup>2</sup> The Confession of Judgment was filed with the U.S. District Court Eastern District of Pennsylvania on January 21, 2011 and a copy is attached to the Settlement Stipulation as Exhibit D.

Kenise Jones-Kennedy	\$2283.32	\$2283.32	\$2283.32	\$2283.32	\$2283.32	\$11,416.60
Tamika Kennedy	\$1010.49	\$1010.49	\$1010.49	\$1010.49	\$1010.49	\$5052.45
Tracey McKoy	\$2506.14	\$2506.14	\$2506.14	\$2506.14	\$2506.14	\$12,530.70
Barbara Moore	\$1122.81	\$1122.81	\$1122.81	\$1122.81	\$1122.81	\$5614.05
TOTAL	\$9157.98	\$9157.98	\$9157.98	\$9157.98	\$9157.98	\$45,789.90

(d) Upon request by the Union, bargain with the Union concerning the following unilateral changes affecting unit employees:

- (1) increases in employee-paid insurance premium rates for dental and vision health benefits for unit employees;
- (2) providing access at the Facility to representatives of insurance companies providing disability, accident, cancer and life insurance, and making these representatives available to unit employees to arrange the purchase of insurance;
- (3) elimination of break rooms at the Facility.

(e) Within 14 days of service by the Region, post at the Facility copies of the attached Notice to Employees marked "Appendix A." Copies of the Notice, on forms provided by Region Four, 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. In addition to physical posting of paper Notices, Notices shall be distributed electronically, by email, posting on an intranet or an internet site, or by other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent will take reasonable steps to ensure that the Notices are not altered, defaced or covered by any other material. If, during the pendency of these proceedings, the Respondent goes out of business or closes the Facility, it 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 August 18, 2010.

(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.

(g) Within 14 days of the Board's Order, remove from the Respondent's files any reference to the layoffs of Keith Davis and Barbara Moore and the discharges of James Jones, Kenise Jones-Kennedy, Tamika Kennedy and

Tracey McKoy, and within 3 days thereafter, notify those employees, in writing, that this was done and that the layoffs or discharges will not be used against them in any way.

Dated, Washington, D.C., June 1, 2011

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Mark Gaston Pearce, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**

## APPENDIX A

### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

#### PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

##### 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** extend your probation, discharge you, lay you off, or otherwise discriminate against any of you for supporting the National Union of Hospital and Health Care Employees District 1199C, AFSCME, AFL-CIO (the Union).

**WE WILL NOT** indicate to you that selecting the Union as your collective-bargaining representative would be futile.

**WE WILL NOT** interrogate you about your protected concerted activities or Union activities.

**WE WILL NOT** give you the impression that your protected concerted activities and Union activities are under surveillance.

**WE WILL NOT** threaten you that employees may be discharged because they engaged in protected concerted activities and activities on behalf of the Union.

**WE WILL NOT** tell employees that they have been discharged because they engaged in protected concerted activities and activities on behalf of the Union, or because other employees engaged in protected concerted activities or Union activities.

**WE WILL NOT** fail to respond in a timely and complete manner to the Union's request that we bargain for a collective-bargaining agreement covering the terms and conditions of employees in the following appropriate unit (the unit):

All full-time and regular part-time CNAs, RCNAs, Recreation Aides, Activity Aides, Unit Clerks, Housekeeping employees and Dietary

employees employed by the Employer at its One Penn Boulevard, Philadelphia, PA facility; excluding all other employees, guards and supervisors as defined in the National Labor Relations Act.

**WE WILL NOT** fail or refuse to furnish the Union with information it requests that is relevant to the Union's representational duties, and **WE WILL NOT** delay in providing such requested information, and **WE HAVE** furnished the Union with information it requested on September 3 and October 8, 2010.

**WE WILL NOT** change your dental and vision benefits, offer you disability, accident, cancer or life insurance benefits, change your break rooms, or make other changes in your terms and conditions of employment, without notification to the Union and affording the Union an opportunity to bargain about any proposed change.

**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 National Labor Relations Act. Some of these rights are described above.

**WE WILL** bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit set forth above, and if an understanding is reached, **WE WILL** reduce it to writing and sign it. **WE WILL** continue to bargain as if the initial year of certification in the unit will not expire for 13 months, i.e. until September 30, 2011.

**WE WILL**, upon request of the Union, bargain with the Union concerning the unilateral increase in the rates for your dental and vision benefits that we announced in September 2010 and concerning the unilateral changes made by removing your break room and replacing your break room with a unit manager's office.

Our former employees **Keith Davis, James Jones, Kenise Jones-Kennedy, Tamika Kennedy, Tracey McKoy** and **Barbara Moore** have waived their rights to immediate and full reinstatement to their former jobs. **WE WILL** pay our former employees **Keith Davis, James Jones, Kenise Jones-Kennedy, Tamika Kennedy, Tracey McKoy** and **Barbara Moore** for wages and benefits they lost as a result of their discharges or layoffs, plus interest.

**WE WILL** remove from our files any reference to the discharges and/or lay-offs of our former employees **Keith Davis, James Jones, Kenise Jones-Kennedy, Tamika Kennedy, Tracey McKoy** and **Barbara Moore** and **WE WILL** notify them that we have done so and that their discharges and/or layoffs will not be used against them in any way.

RC OPERATOR, LLC d/b/a  
WILLOW TERRACE

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board (NLRB) is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. The NLRB conducts secret-ballot elections to determine whether employees want union representation and 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 an agent at the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

National Labor Relations Board  
615 Chestnut Street, 7<sup>th</sup> Floor  
Philadelphia, PA 19106-4404  
(Telephone: 215-597-7601; facsimile: 215-597-7658)  
(Hours of Operation: 8:30 a.m. to 5:00 p.m.)