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**Allison Enterprises, Inc. d/b/a Island Beachcomber Hotel**

**MLR Co., LLC d/b/a Island Beachcomber Hotel and United Steelworkers of America, Local 8249.**  
Case 24–CA–11565

November 29, 2011

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS BECKER  
AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that Allison Enterprises, Inc. d/b/a Island Beachcomber Hotel (Respondent Allison) and MLR Co., LLC d/b/a Island Beachcomber Hotel (Respondent MLR; collectively, the Respondents) have failed to file an answer to the second amended complaint. Upon a charge and amended charges filed by United Steelworkers of America, Local 8249 (the Union) on July 2 and September 9, 2010, and January 31, 2011, respectively, the Acting General Counsel issued the second amended complaint on August 8, 2011, against the Respondents, alleging that they have violated Section 8(a)(5) and (1) of the Act. The Respondents failed to file an answer.

On September 27, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 28, 2011, 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 Respondents filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a 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 second amended complaint affirmatively stated that unless an answer was received by August 22, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the second amended complaint are true. Further, the undisputed allegations in the motion disclose that the Region, by separate letters dated August 30, 2011, notified both Respondents that unless an answer was received by September 6, 2011, 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 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 Respondent Allison, a U.S. Virgin Islands corporation, with an office and place of business in St. Thomas, U.S. Virgin Islands (Respondent Allison's facility) has been engaged in the operation of a hotel named "Island Beachcomber Hotel" providing food, lodging, and hospitality services.

During the calendar year ending on April 30, 2010, Respondent Allison, in conducting its operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the U.S. Virgin Islands.

At all material times since May 1, 2010, Respondent MLR, a U.S. Virgin Islands corporation, with an office and place of business in St. Thomas, U.S. Virgin Islands (Respondent MLR's facility), has been engaged in the operation of a hotel named "Island Beachcomber Hotel" providing food, lodging, and hospitality services.

During the 12-month period preceding issuance of the second amended complaint, Respondent MLR, in conducting its operations described above, derived gross revenues in excess of \$500,000 and has purchased and received at its facility goods valued in excess of \$50,000 directly from stores, firms, and companies located in the U.S. Virgin Islands that in turn purchased those goods directly from points outside the U.S. Virgin Islands.

About May 1, 2010, Respondent MLR purchased the assets of Respondent Allison, including the trade name of "Island Beachcomber Hotel," pursuant to an asset purchase agreement effective May 1, 2010, and since then has continued to operate the business of the Island Beachcomber Hotel in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Respondent Allison.

Based on the operations described above, Respondent MLR has continued the employing entity and is a successor to Respondent Allison.

About May 1, 2010, Respondent MLR purchased the business of Respondent Allison and since then has continued to operate the business of Respondent Allison in basically unchanged form.

Before engaging in the conduct described above, Respondent MLR had knowledge of Respondent Allison's potential liability in the instant Board case, by means of Rebekah Saville, who at all material times was the gen-

eral manager of Respondent Allison and was retained by Respondent MLR, and continues to hold the position of general manager.

Based on the conduct and operations described above, Respondent MLR has continued the employing entity with notice of Respondent Allison's potential liability to remedy its unfair labor practices, and is a successor to Respondent Allison.

We find that Respondent Allison and Respondent MLR are employers 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.

## II. ALLEGED UNFAIR LABOR PRACTICES

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

Included: All employees employed by the Employer at its facility located in St. Thomas, USVI.

Excluded: All employees in the following departments and categories: Sales officers, Guest Recreation Facilities Personnel including Social Directress and Master of Ceremonies, Musicians and Entertainers, Security, Accounting Department, Administrative Personnel, Confidential Secretaries, Bartenders, Bookkeepers, Food & Beverage Manager, guards and supervisors as defined by the Act.

At all material times since at least February 15, 2006, the Union has been the designated exclusive collective-bargaining representative of the unit, and at least since then, the Union has been recognized as the representative by Respondent Allison. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective, by its terms, from February 15, 2006 to February 15, 2009.

From about at least February 15, 2006, until about May 1, 2010, the Union had been the exclusive collective-bargaining representative of the unit employed by Respondent Allison, and during that period of time the Union had been recognized as such representative by Respondent Allison. This recognition had been embodied in successive collective-bargaining agreements, the most recent of which is effective from February 15, 2006 to February 15, 2009.

Since about May 1, 2010, based on the facts described above regarding the purchase of Respondent Allison's assets by Respondent MLR and the events surrounding the purchase and operation of the business, the Union has

been the designated exclusive collective-bargaining representative of the unit.

At all times since at least February 15, 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 and until about May 1, 2010, Rebekah Saville held the position of Respondent Allison's general manager and has been a supervisor of Respondent Allison within the meaning of Section 2(11) of the Act and an agent of Respondent Allison within the meaning of Section 2(13) of the Act.

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

Rebekah Saville	General Manager
Michael S. Resch	Manager

Since about February 22, 2010, the Union requested, in writing, that Respondent Allison meet and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about February 22 to about May 1, 2010, Respondent Allison failed and/or refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

Since about May 6 and 11, and June 16, 2010, the Union requested, in writing, that Respondent MLR meet and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about May 6 and 11, and/or June 16, 2010, Respondent MLR has failed and/or refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

About October 2009, Respondent Allison unilaterally canceled the medical insurance plan of the unit.<sup>1</sup>

The subject set forth in the preceding paragraph relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the

<sup>1</sup> The second amended complaint alleges that Respondent Allison unilaterally canceled the unit's medical insurance plan in about October 2009, more than 6 months before the filing of the charge. However, the 6-month limitations period in Sec. 10(b) of the Act is an affirmative defense that is waived if not timely raised. See, e.g., *Newspaper & Mail Deliverers (New York Post)*, 337 NLRB 608, 609 (2002) (citing *Public Service Co.*, 312 NLRB 459, 461 (1993)). As the Respondents have failed to file an answer to the second amended complaint or a response to the notice to show cause, and have failed to raise a 10(b) defense, we therefore find the violations as alleged and issue an appropriate remedial order. See, e.g., *Malik Roofing Corp.*, 338 NLRB 930, 931 fn. 3 (2003); *J. F. Morris Co.*, 292 NLRB 869, 870 fn. 2 (1989), *enfd. mem.* 881 F.2d 1076 (6th Cir. 1989).

purposes of collective bargaining. Respondent Allison engaged in this conduct without affording the Union an opportunity to bargain with respect to this decision and/or conduct and/or the effects of this conduct.

By letter dated February 22, 2010, the Union requested that Respondent Allison furnish the Union with the following information:

1. A seniority listing of all bargaining unit employees.
2. Each bargaining unit employee's rate of pay and classification.
3. A copy of insurance coverage for bargaining unit employees and family members.
4. Cost of such insurance.

Since about February 22, 2010, Respondent Allison failed and/or refused to furnish the Union with the information requested by it as described above.

By letter dated August 4, 2010, the Union requested that Respondent MLR furnish the Union with the information described above.

Since about August 4, 2010, Respondent MLR has failed and/or refused to furnish the Union with the information requested by it as described above.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

#### CONCLUSION OF LAW

By the conduct described above, the Respondents have been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of their employees in violation of Section 8(a)(5) and (1) of the Act, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order the Respondents to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents violated Section 8(a)(5) and (1) by failing and refusing since about February 22 and May 6, 2010, respectively, to meet and bargain with the Union, and having found that Respondent MLR is a successor of Respondent Allison, we shall order Respondent MLR to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit, and if an understanding is reached, to embody the understanding in a signed agreement.

In addition, having found that Respondent Allison violated Section 8(a)(5) and (1) by unilaterally canceling the medical insurance plan for the unit employees in about October 2009, and having found that Respondent MLR had knowledge of Respondent Allison's potential liability in the instant Board case and is a successor of Respondent Allison, we shall order Respondent MLR, on request of the Union, to rescind the unilateral cancellation of the unit employees' medical insurance plan and restore the status quo ante that existed prior to the cancellation. Further, we shall order Respondent Allison and Respondent MLR, jointly and severally, to make the unit employees whole by reimbursing them for any expenses ensuing from Respondent Allison's failure to continue the unit employees' medical insurance plan, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), 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), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

Further, to remedy the Respondents' failure and refusal to furnish the Union with the information it requested on February 22 and August 4, 2010, we shall order the Respondents to provide the Union with the requested information.

Finally, in view of the fact that Respondent Allison sold its assets to Respondent MLR, we shall order Respondent Allison to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees who were employed at any time since October 2009, in order to inform them of the outcome of this proceeding.

#### ORDER

A. The National Labor Relations Board orders that the Respondent, Allison Enterprises, Inc. d/b/a Island Beachcomber Hotel, St. Thomas, U.S. Virgin Islands, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally canceling the medical insurance plan of the unit employees.

(b) Failing and refusing to furnish 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 unit employees.

(c) 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) Jointly and severally with Respondent MLR Co., LLC d/b/a Island Beachcomber Hotel, reimburse the unit employees for any expenses ensuing from its unlawful failure to continue their medical insurance plan, since October 2009, with interest, in the manner set forth in the remedy section of this decision.

(b) Furnish the Union with the information it requested on February 22, 2010, regarding unit employees.

(c) 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.

(d) 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, copies of the attached notice marked "Appendix A,"<sup>2</sup> in English and Spanish, to the Union and to all unit employees who were employed by the Respondent at any time since October 2009. In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.<sup>3</sup>

(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.

B. The National Labor Relations Board orders that the Respondent, MLR Co., LLC d/b/a Island Beachcomber Hotel, St. Thomas, U.S. Virgin Islands, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively and in good faith with United Steelworkers of

America, Local 8249 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All employees employed by the Employer at its facility located in St. Thomas, USVI.

Excluded: All employees in the following departments and categories: Sales officers, Guest Recreation Facilities Personnel including Social Directress and Master of Ceremonies, Musicians and Entertainers, Security, Accounting Department, Administrative Personnel, Confidential Secretaries, Bartenders, Bookkeepers, Food & Beverage Manager, guards and supervisors as defined by the Act.

(b) Failing and refusing to furnish 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 unit employees.

(c) 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) Meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request of the Union, rescind the unilateral cancellation of the unit employees' medical insurance plan and restore the status quo ante that existed prior to the cancellation.

(c) Jointly and severally with Respondent Allison Enterprises, Inc. d/b/a Island Beachcomber Hotel (Respondent Allison), reimburse the unit employees for any expenses ensuing from Respondent Allison's unlawful failure to continue their medical insurance plan, since October 2009, with interest, in the manner set forth in the remedy section of this decision.

(d) Furnish the Union with the information it requested on February 22 and August 4, 2010, regarding unit employees.

(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,

<sup>2</sup> 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."

<sup>3</sup> For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in St. Thomas, U.S. Virgin Islands, copies of the attached notice marked "Appendix B."<sup>4</sup> Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 24, 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, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.<sup>5</sup> 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 October 2009.

(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.

Dated, Washington, D.C. November 29, 2011

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Mark Gaston Pearce, Chairman

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Craig Becker, Member

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Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>4</sup> 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."

<sup>5</sup> See fn. 3, supra.

## APPENDIX A

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

- 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 unilaterally cancel the medical insurance plan of the unit employees.

WE WILL NOT fail and refuse to furnish 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 unit employees.

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, jointly and severally with Respondent MLR Co., LLC d/b/a Island Beachcomber Hotel, reimburse the unit employees for any expenses ensuing from our unlawful failure to continue their medical insurance plan, since October 2009, with interest.

WE WILL furnish the Union with the information it requested on February 22, 2010, regarding unit employees.

ALLISON ENTERPRISES, INC. D/B/A ISLAND  
BEACHCOMBER HOTEL

## APPENDIX B

NOTICE TO EMPLOYEES  
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## 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 meet and bargain collectively and in good faith with United Steelworkers of America, Local 8249 as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

Included: All employees employed by us at our facility located in St. Thomas, USVI.

Excluded: All employees in the following departments and categories: Sales officers, Guest Recreation Facilities Personnel including Social Directress and Master of Ceremonies, Musicians and Entertainers, Security, Accounting Department, Administrative Personnel, Confidential Secretaries, Bartenders, Bookkeepers, Food & Beverage Manager, guards and supervisors as defined by the Act.

WE WILL NOT fail and refuse to furnish 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 unit employees.

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 meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, on request of the Union, rescind the unilateral cancellation of the unit employees' medical insurance plan and restore the status quo ante that existed prior to the cancellation.

WE WILL, jointly and severally with Respondent Allison Enterprises, Inc. d/b/a Island Beachcomber Hotel (Respondent Allison) reimburse the unit employees for any expenses ensuing from Respondent Allison's unlawful failure to continue their medical insurance plan, since October 2009, with interest.

WE WILL furnish the Union with the information it requested on February 22 and August 4, 2010, regarding unit employees.

MLR Co., LLC D/B/A ISLAND BEACHCOMBER HOTEL