

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

**ESPERANZA UNIDA, INC.**

**and**

Case 30-CA-18996

**VOCES DE LA FRONTERA**

**DECISION AND ORDER**

Statement of the Case

On December 13, 2011, Esperanza Unida, Inc., (the Respondent), Voces De la Frontera, (the Charging Party), 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 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 and the entire record, the Board makes the following:

**Findings of Fact**

The Respondent's business

Esperanza Unida, Inc. is a corporation with its principal office located in Milwaukee, Wisconsin. It is engaged in the operation of a training center and a day care center at its 1329 W. National Avenue, Milwaukee, Wisconsin and 611 W. National Avenue, Milwaukee, Wisconsin facilities, respectively.

In conducting its operations in Milwaukee, Wisconsin during the past one-year period ending September 30, 2011, the Respondent derived gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$5,000 directly from points located outside the State of Wisconsin.

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

## 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, Esperanza Unida, Inc., 1329 W. National Avenue, Milwaukee, Wisconsin and 611 W. National Avenue, Milwaukee, Wisconsin, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discriminatorily promulgating and maintaining the cell phone policy implemented on or about April 29, 2011;

(b) Questioning José Toledo (Toledo) about his fitness for duty;<sup>1</sup>

(c) Promulgating and maintaining the lunch break policy announced to Toledo on or about May 17, 2011;

(d) Discharging or otherwise discriminating against any employee because they engaged in protected concerted activities or because they filed unfair labor practice charges and/or testified before the NLRB; and

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to engage in concerted activities for the purpose of 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) Within 14 days of the approval of this Stipulation, the Respondent will give employees assurances that the cell phone policy implemented on or about April 29, 2011, will not be discriminatorily promulgated or maintained, and notify employees in writing that this has been done, with a copy of such written notice to be provided to the Regional Director of Region 30;

(b) Within 14 days of the approval of this Stipulation, rescind the lunch break policy announced to Toledo on or about May 17, 2011, and notify Toledo in writing that

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<sup>1</sup> In the event there is any question regarding Toledo's fitness for duty, the Respondent will not question him without prior approval of the Regional Director of Region 30.

this has been done, with a copy of such written notice to be provided to the Regional Director of Region 30;<sup>2</sup>

(c) Within 14 days of service by the Region, post at its 1329 W. National Avenue, Milwaukee, Wisconsin and 611 W. National Avenue, Milwaukee, Wisconsin facilities copies of the attached notice marked "Appendix C." Copies of the notice, in both English and Spanish, on forms provided by Region 30, 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. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. In addition, the Respondent shall duplicate and mail, at its own expense, a copy of the notice in both English and Spanish to all current employees and former employees employed by the Respondent at any time since April 29, 2011; and

(d) 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., December 30, 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>2</sup> Nothing in Paragraph 2(b) prohibits the Respondent from promulgating a non-discriminatory, non-retaliatory lunch break policy.

## APPENDIX C

### 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** do anything which interferes with, is a reprisal for, or which coerces or restrains you regarding these rights. More specifically,

You have the right to discuss your wages, hours, and other terms and conditions of employment. You also have the right to file unfair labor practice charges and participate in National Labor Relations Board proceedings. **WE WILL NOT** make or maintain rules about cell phone usage or lunch breaks because you have exercised these rights.

**WE WILL NOT** question you about your fitness for duty because you have discussed your wages, hours, or other terms or conditions of employment and/or because you filed unfair labor practice charges and participated in National Labor Relations Board proceedings.

**WE WILL NOT** discharge or otherwise discriminate against you because you engaged in protected concerted activities or because you filed unfair labor practice charges and/or testified before the NLRB.

**WE WILL**, within 14 days of the approval of this Stipulation, give you assurances in writing that the cell phone policy implemented on or about April 29, 2011, will not be discriminatorily promulgated or maintained, and **WE WILL** provide a copy of such written assurances to the Regional Director of Region 30.

**WE WILL**, within 14 days of the approval of this Stipulation, notify José Toledo in writing that we have rescinded the lunch break policy announced to him on or about May 17,

2011, and **WE WILL** provide a copy of such written notice to the Regional Director of Region 30.

ESPERANZA UNIDA, INC.  
(Employer)