

Henry Rodriguez, Sr., Henry Rodriguez, Jr., Monica Pritchett, and Christopher Pritchett, a California General Partnership d/b/a Life's Connections and Chris Mora and Constance Sifton.
Cases 32-CA-068654 and 32-CA-068656

September 18, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent failed to file an answer to the consolidated complaint. Upon charges filed on November 10, 2011, by Chris Mora in Case 32-CA-068654, and by Constance Sifton in Case 32-CA-068656, the Acting General Counsel issued an order consolidating cases, consolidated complaint and notice of hearing on April 10, 2012, against Henry Rodriguez Sr., Henry Rodriguez Jr., Monica Pritchett, and Christopher Pritchett, a California general partnership, d/b/a Life's Connections, the Respondent, alleging that it violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer.

On May 11, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on May 15, 2012, 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 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

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 consolidated complaint affirmatively stated that unless an answer was received by April 24, 2012, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true.¹ The Respondent failed to file an answer.

By separate letters dated April 27, 2012, the Region sent the Respondent and each of the four partners individually, at both their business and home addresses, a letter informing them that no answer to the consolidated

¹ The Acting General Counsel's motion and attachments confirm that the Respondent and each of the four partners individually were properly served with the consolidated complaint at both their business and home addresses.

complaint had been received and further advising them that unless an answer was received by May 4, 2012, a motion for default judgment would be filed. However, no answer was filed.²

In the absence of good cause being shown for the failure to file an answer to the consolidated complaint, we deem the allegations in the consolidated complaint and notice of hearing to be admitted as true, and 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 has been owned by Henry Rodriguez Sr., Henry Rodriguez Jr., Monica Pritchett, and Christopher Pritchett, as a California general partnership doing business as Life's Connections, with offices and places of business in Hollister and San Jose, California, and has been engaged in the provision of social services to disabled adults.

In conducting its operations during the calendar year ending December 31, 2011, the Respondent derived gross revenues in excess of \$250,000 and during the same period of time, purchased and received goods or

² The Region also sent a copy of the reminder letter to Attorney Gary J. Clifford, who had previously informed the Region that he represented Monica and Christopher Pritchett in a private lawsuit involving the Respondent. By letter to the Region dated May 3, 2012, Clifford stated, among other things, that the Respondent's partnership had been dissolved on April 20, 2012; that Henry Rodriguez Sr. and Henry Rodriguez Jr. had assumed full control of the business and had been in control for several months prior to the dissolution; that due to this the Pritchetts were never afforded the opportunity to participate in the instant proceeding; and that the partnership was never properly served with the complaint as the Rodríguezes had changed the Respondent's physical location when the complaint was served. The letter also stated that "[i]n the event that you intend to amend the complaint to include the Pritchetts individually please notify me and I will file a Notice of Appearance." However, despite numerous requests from the Region, Clifford did not file a notice of appearance.

By letter to the Region dated May 8, 2012, Clifford repeated that the partnership dissolved on April 20, 2012, and asserted that "it would be impossible for the Pritchetts to file an answer" because the complaint was issued against a respondent for which they have no authority to file an answer. Neither the May 3, 2012 letter nor the May 8, 2012 letter addressed the consolidated complaint allegations or purported to be an answer to the consolidated complaint. It is well established that a respondent's dissolution does not excuse it from filing an answer to a complaint. See *DRW Electric*, 356 NLRB No. 121 slip op. at 1 fn. 2 (2011) (not reported in Board volumes); *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100-1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15-16 (2000).

In addition, we agree with the Acting General Counsel's assertion in his motion that the purported fact that the "Buyout Agreement" was signed on April 20, 2012, has no legal impact in this proceeding, particularly because the alleged unfair labor practices occurred in October 2011, some 6 months before the Buyout Agreement was signed.

services valued in excess of \$1800 which originated outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the individuals named below 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:

Henry Rodriguez Sr.—Owner/Co-Executive Director
 Henry Rodriguez Jr.—Owner/Senior Case Manager
 Monica Pritchett—Owner/Co-Executive Director
 Christopher Pritchett—Owner/Director of Operations

The consolidated complaint alleges that the Respondent engaged in the following conduct.

1. On October 5, 2011, the Respondent, at its Hollister, California facility, acting through Henry Rodriguez Sr., threatened to terminate employees because they concertedly complained about a pay cut; told employees not to tell each other how much they were paid or to discuss their terms and conditions of employment with each other; and told employees that their protected concerted activities, including discussion about their wages, constituted insubordination and a breach of confidentiality.

2. On October 5, 2011, the Respondent, at its Hollister, California facility, acting through Monica Pritchett, threatened employees that their protected concerted activities, including discussion about their wages, constituted insubordination and would not be tolerated.

3. On October 7, 2011, the Respondent, at its Hollister, California facility, acting through Henry Rodriguez Sr. and Monica Pritchett, issued a written suspension notice to an employee which cited the employee's protected concerted activities as a reason for the issuance of the suspension and which prohibited the employee from discussing work-related subjects with coworkers while the employee was on suspension.

4. On October 20, 2011, the Respondent, at its San Jose facility, acting through Henry Rodriguez Sr., told an employee that the employee was being discharged because of the employee's protected concerted activities and because it had come to his attention that the employee had spoken to other employees about unionizing.

5. In about September and October 2011, the Respondent's employees Chris Mora and Constance Sifton engaged in concerted activities with each other and with

other employees for the purposes of collective-bargaining and other mutual aid and protection by contacting the State of California Department of Labor Standards Enforcement, by complaining about their pay schedule and a pay cut, and by discussing their wages and other terms and conditions of employment with each other and with other employees.

6. On October 7, 2011, the Respondent suspended employee Chris Mora.

7. On October 18 and 19, 2011, the Respondent eliminated the work hours of employee Constance Sifton.

8. On October 20, 2011, the Respondent terminated employee Constance Sifton.

9. On October 21, 2011, the Respondent terminated employee Chris Mora.

10. The Respondent engaged in the conduct described above in paragraphs 6–9 because Chris Mora and Constance Sifton engaged in the conduct described above in paragraph 5, and to discourage employees from engaging in these and other concerted activities.

11. The Respondent engaged in the conduct described above in paragraphs 7 and 8 because the Respondent mistakenly believed employee Constance Sifton formed, joined, or assisted a union, and engaged in concerted activity, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 1–4 and 6–9, 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) of the Act.

2. By the conduct described above in paragraphs 7, 8, and 11, the Respondent has been discriminating in regard to the hire or tenure or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. The unfair labor practices of the Respondent, described above, affect 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 cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent violated Section 8(a)(1) of the Act by discharging Chris Mora and Constance Sifton, and additionally violated Section 8(a)(3) by discharging Sifton, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist,

to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make whole Chris Mora and Constance Sifton for any loss of earnings or other benefits suffered as a result of the Respondent's unlawful actions against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).³

In addition, having found that the Respondent violated Section 8(a)(1) by suspending Chris Mora on October 7, 2011, and violated Section 8(a)(3) and (1) by eliminating the work hours of Constance Sifton on October 18 and 19, 2011, we shall order the Respondent to rescind Chris Mora's suspension and reinstate Constance Sifton's hours. We shall also order the Respondent to make Chris Mora and Constance Sifton whole for any loss of earnings or other benefits suffered as a result of the Respondent's unlawful actions against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, supra (for the unlawful suspension), and *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971) (for the unlawful elimination of work hours), with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

The Respondent shall also be required to remove from its files any and all references to the unlawful discharge of Chris Mora and Constance Sifton, the unlawful suspension of Chris Mora on October 7, 2011, and the unlawful elimination of the work hours of Constance Sifton on October 18 and 19, 2011. The Respondent shall notify Chris Mora and Constance Sifton in writing that this has been done and that the unlawful references will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Henry Rodriguez, Sr., Henry Rodriguez, Jr.,

³ The Acting General Counsel's motion seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. Further, the Acting General Counsel requests that the Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated the appropriate pay periods. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

Monica Pritchett, and Christopher Pritchett, a California General Partnership, d/b/a Life's Connections, Hollister and San Jose, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge employees because they concertedly complained about a pay cut.

(b) Telling employees not to tell each other how much they are paid or to discuss their terms and conditions of employment with each other.

(c) Telling employees that their protected concerted activities, including discussion about their wages, constitute insubordination and a breach of confidentiality.

(d) Threatening employees that their protected concerted activities, including discussion about their wages, constitutes insubordination and will not be tolerated.

(e) Issuing written suspension notices to employees which cite their protected concerted activities as a reason for the suspension and which prohibit employees from discussing work-related subjects with coworkers while they are on suspension.

(f) Telling employees that they are being discharged because of their protected concerted activities and because employees speak to each other about unionizing.

(g) Suspending employees because they engage in protected concerted activities, and to discourage employees from engaging in these activities.

(h) Eliminating employees' work hours because they formed, joined, or assisted a union and engaged in protected concerted activities, or because the Respondent believes they have done so, and to discourage employees from engaging in these activities.

(i) Discharging employees because they formed, joined, or assisted a union and engaged in protected concerted activities, or because the Respondent believes they have done so, and to discourage employees from engaging in these activities.

(j) 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) Within 14 days from the date of this Order, offer Chris Mora and Constance Sifton reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make whole Chris Mora and Constance Sifton for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Rescind the suspension of Chris Mora.

(d) Reinstate the work hours of Constance Sifton.

(e) Within 14 days from the date of this Order, remove from their files all references to the unlawful discharge of Chris Mora and Constance Sifton, the suspension of Chris Mora, and the elimination of the work hours of Constance Sifton, and, within 3 days thereafter, notify the discriminatees in writing that this has been done and that its unlawful conduct will not be used against them in any way.

(f) 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.

(g) Within 14 days after service by the Region, post at its facilities in Hollister and San Jose, California, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 32, 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. 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 facilities 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 5, 2011.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 32 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.

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."

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 has found that we violated the National Labor Relations Act 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 threaten to discharge you because you concertedly complain about a pay cut.

WE WILL NOT tell you not to tell each other how much you are paid or to discuss your terms and conditions of employment with each other.

WE WILL NOT tell you that your protected concerted activities, including discussions about your wages, constitute insubordination and a breach of confidentiality.

WE WILL NOT threaten you that your protected concerted activities, including discussions about your wages, constitute insubordination and will not be tolerated.

WE WILL NOT issue written suspension notices to you which cite your protected concerted activities as a reason for the suspension and which prohibit you from discussing work-related subjects with coworkers while you are on suspension.

WE WILL NOT tell you that you are being discharged because of your protected concerted activities and because you speak to each other about unionizing.

WE WILL NOT suspend you because you engage in protected concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT eliminate your work hours because you formed, joined, or assisted a union and engaged in protected concerted activities, or because we believe you engage in such activities and to discourage you from engaging in these activities.

WE WILL NOT discharge you because you formed, joined, or assisted a union and engaged in protected concerted activities, or because we believe you have done so and to discourage you from engaging in these activities.

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, within 14 days from the date of this Order, offer Chris Mora and Constance Sifton reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Chris Mora and Constance Sifton for any loss of earnings and other benefits suffered as a result of our discrimination against them, plus interest.

WE WILL rescind Chris Mora's suspension.

WE WILL reinstate the work hours of Constance Sifton.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful actions against Chris Mora and Constance Sifton, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that our unlawful conduct will not be used against them in any way.

HENRY RODRIGUEZ, SR., HENRY RODRIGUEZ,
JR., MONICA PRITCHETT, AND CHRISTOPHER
PRITCHETT, A CALIFORNIA GENERAL
PARTNERSHIP D/B/A LIFE'S CONNECTIONS