

Coastal International Security and International Union, Security, Police and Fire Professionals of America (SPFPA), and its Amalgamated Local 287. Case 05–CA–094692

February 19, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND MCFERRAN

The General Counsel seeks a default judgment in this case pursuant to the terms of a bilateral informal settlement agreement. Upon a charge filed by International Union, Security, Police and Fire Professionals of America (SPFPA), and its Amalgamated Local 287 (the Union) on December 11, 2012, the General Counsel issued the complaint on March 28, 2013, against Coastal International Security (the Respondent) alleging, among other things, that it violated Section 8(a)(5) and (1) of the Act when it failed and refused to continue in effect all the terms and conditions of the collective-bargaining agreement, effective by its terms from July 29, 2011, until July 31, 2014, by failing and refusing to terminate, upon the Union's valid request, employees who fail to become members of the Union pursuant to the agreement's union-security provisions. The Respondent filed an answer.

Subsequently, the Respondent and the Union entered into a bilateral informal settlement agreement, which was approved by the Regional Director for Region 5 on May 15, 2013. Among other things, the settlement agreement required that the Respondent (1) upon the Union's valid request, honor and comply with all union-security provisions contained in the collective-bargaining agreement;¹

¹ The collective-bargaining agreement contains the following provision entitled "Article 2-Union Security and Membership" which provides in pertinent part as follows:

All officers hereafter employed by The Employer in the classification covered by this agreement shall become members of the Union not later than the thirty-first (31st) day following the beginning of their employment, or the date of the signing of this agreement, whichever is later, as a condition of continued employment.

An officer who is not a member of the Union at the time this agreement becomes effective shall become a member of the Union within ten (10) days after the thirtieth (30th) day following the effective date of this agreement or within ten (10) days after the thirtieth (30th) day following employment, whichever is later, and shall remain a member of the Union, to the extent of paying an initiation fee and the membership dues uniformly required as a condition of acquiring or retaining membership in the Union, whichever employed under, and for the duration of, this agreement.

Officers meet the requirement of being members in good standing of the Union, within the meaning of this article, by tendering the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union or, in the alternative, by tendering to the Union the financial core fees and dues, as defined by the

and (2) post appropriate notices. The settlement agreement also contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on 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 a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

In June 2013, the Union advised the Respondent that certain employees had failed to pay dues as required by the union-security clause, despite repeated notices allowing for reasonable grace periods for payment. The Union requested that the Respondent discharge those employees.

In July 2013, the Respondent, by individual letters, informed the employees that the Union had requested their termination due to their failure to pay dues, and advised them that if they did not resolve their dispute with the

U.S. Supreme Court in *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), and *Beck v. Communications Workers of America*, 487 U.S. 735 (1988).

In the event the Union requests the discharge of an officer for failure to comply with the provisions of this article, it shall serve written notice on the Employer requesting that the employee be discharged effective no sooner than two (2) weeks of the date of that notice. The notice shall also contain the reasons for discharge. In the event the Union subsequently determines that the employee has remedied the default prior to the discharge date, the Union will notify the Employer and the officer, and the Employer will not be required to discharge that officer.

Union, they could be subject to progressive discipline, consisting of verbal warning, followed by written warning, suspension and final warning, and finally termination in the event the dispute is unresolved 2 months after the date of the verbal warning.

By letter dated August 21, 2013, the Regional Director for Region 5 notified the Respondent's attorney that the Respondent was in noncompliance with the settlement agreement. The letter stated that the Respondent had failed to present any evidence that it had honored the Union's requests to comply with the collective-bargaining agreement's union-security provisions and that if the Respondent did not remedy its noncompliance within 14 days, the Regional Director would issue a complaint and the General Counsel could seek default judgment.

On August 27, 2013, the Region's compliance officer further informed the Respondent's attorney that the Respondent's unilateral implementation of progressive discipline when responding to the Union's request for compliance with the union-security clause constituted a breach of the settlement agreement and requested a cure. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provision of the settlement agreement, on November 12, 2013, the Regional Director reissued the complaint, and the General Counsel filed a Motion for Default Judgment with the Board. On November 13, 2013, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. On November 26, 2013, the Respondent filed a response. The General Counsel filed a reply to the Respondent's response.

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

Ruling on Motion for Default Judgment

In its response to the Notice to Show Cause, the Respondent asserts that it has not breached the settlement agreement by failing to terminate employees upon the Union's request. Instead, the Respondent maintains that the settlement merely requires it to abide by the terms of the union-security clause, which, it contends, does not require the Respondent to terminate employees who fail to comply with that clause. Rather, the Respondent argues that it meets its contractual obligation to enforce the clause by applying its regular progressive disciplinary procedure to employees who are in default. The Respondent avers that it has informed the Union that this is

its practice and that the practice is consistent with the collective-bargaining agreement.²

In this regard, the Respondent argues that, while the union-security clause permits the Union to request the discharge of defaulting employees, it does not obligate the Respondent to abide by that request and the settlement agreement itself does not specify the manner in which the Respondent is to enforce the provision. The Respondent notes that during the settlement negotiations, it rejected the General Counsel's proposed language in the notice to employees, which stated that the Respondent would not refuse "to terminate," upon the Union's request, an employee who failed to comply with the union-security clause. Instead, the Respondent notes, the General Counsel agreed to its proposed language, which states that the Respondent will not refuse to comply with "all union-security provisions," contained in the collective-bargaining agreement. Based on this, the Respondent contends that it has not breached the settlement agreement.

Finally, the Respondent argues that it "has no choice" but to utilize progressive discipline in order to have sufficient time to replace terminated employees. The Respondent argues that its contract with the Federal Government to provide armed security at the Ronald Reagan Building requires strict qualification and training for employees, which takes several months to obtain. The contract further requires the Respondent to provide a specified number of security guards each day. The Respondent contends that if it imposed immediate termination under the union-security provision, it would default on its government contract and jeopardize the safety and security of employees and visitors to the Ronald Reagan Building.

In his reply, the General Counsel argues that the plain language of the union-security provision requires the discharge, at the request of the Union, of employees who are in derogation of their obligations under that clause. The General Counsel notes that the language of the union-security provision refers only to discharge, not progressive discipline, and that the provision provides the Respondent ample time to adequately staff the facilities involved. Finally, the General Counsel contends that the parties' modification of the settlement's notice language from that requiring "termination" to that requiring com-

² The Respondent also argues that neither the complaint nor the settlement agreement has any legal effect because the Board lacked a quorum when the complaint was issued and when the parties entered into the settlement agreement. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). For the reasons stated in *Durham School Services*, 361 NLRB 702-703 (2014), and *Pallet Cos.*, 361 NLRB 339, 339 (2014), we reject those arguments. See also *Bluefield Hospital Co.*, 361 NLRB 1389 (2014).

pliance with the union-security provision does not warrant a different result, as the provision itself clearly requires termination.

We agree with the General Counsel. The settlement agreement clearly and unequivocally requires the Respondent to abide by the contract's union-security provision that obligates the Respondent to discharge employees for failure to comply with that provision. The settlement agreement states that the Respondent will

honor and comply with all union-security provisions contained in [the] collective-bargaining agreement with the [Union] . . . upon the [Union]'s valid request and contemporaneous documentation that the [Union] has fulfilled its obligations to the employee (e.g., notifying the employee of precise amount of dues owed, the time period in question, the method of computation, the consequences of not complying, and a reasonable opportunity to meet the dues obligation)

Nothing in the union-security clause or in the settlement agreement suggests that "the consequences of not complying" means anything other than discharge. Further, the requirement that "[a]ll officers hereafter employed by The Employer [] shall become members of the Union [] as a condition of continued employment" can only mean that employment is terminated when the employee fails to comply, as any other interpretation would render the clause meaningless. See *Wire Products Mfg. Corp.*, 329 NLRB 155, 160, 163 (1999).³ Similarly, the provision that the "Employer will not be required to discharge [the] officer" if "the Union subsequently determines that the employee has remedied the default prior to the discharge date," makes clear that the only

³ In *Wire Products* the Board adopted the judge's finding that the respondent repudiated and refused to honor the contractual union-security clause by failing to discharge employees who were delinquent in their dues or fees payments. 329 NLRB at 160, 163. The relevant contract provisions in that case provided:

Section 4.1: All employees in the bargaining unit must as a condition of continued employment be either a member of the union and pay union dues or pay an agency fee to the union, but not both.

Section 4.4: Any employee required to pay an agency fee, membership dues, or initiation or reinstatement fee as a condition of continued employment who fails to tender the agency fee, reinstatement, or periodic dues uniformly required, shall be notified in writing of their delinquency. A copy of such communication shall be mailed to the company not later than fifteen (15) days prior to such request that the company take final action on the delinquency. (Emphasis in original.)

The Board rejected the respondent's argument that the union's request for "final action" did not require it to discharge an employee for nonpayment of dues or fees. The Board explained that the "plain meaning" of the union-security provision required the respondent, upon proper notice, to take "final action," which could only mean "discharge;" otherwise, "the payment of dues or fees is neither a condition of employment, nor a condition of continued employment and the union-security provision is meaningless." *Id.* (Emphasis in original.)

circumstance where the Respondent is not obligated to discharge an employee upon the request of the Union is when the Union notifies the Respondent that the employee has cured the delinquency. Accordingly, the Respondent was required to terminate employees upon the Union's request, provided the Union complied with its requirements under the collective-bargaining agreement and the Act.⁴ It is undisputed that the Respondent failed to do so.

The Respondent's contention that the union-security provision is subject to the contract's progressive discipline procedure lacks merit. The two provisions are wholly distinct. Article 7 of the collective-bargaining agreement addresses discipline for employee misconduct and includes a progressive discipline clause providing for increasingly severe penalties with each additional offense. Thus, article 7.1 describes discipline for "Unexcused Tardiness," 7.3 addresses "Call Offs," and 7.4 deals with 17 categories of "serious" misconduct, including alcohol and drug-related offenses, weapons offenses, insubordination, neglect of duty and assault.⁵ Moreover, article 7 specifies that for some misconduct, such as tardiness and "call off," particular disciplinary procedures ensue, but that in other circumstances, the Respondent has a degree of latitude in determining the consequences that will result from an employee's behavior.

In contrast, article 2, the union-security provision, is self contained and describes the requirement of union membership "as a condition of employment." That article further describes the means of maintaining such membership in good standing and the consequences of a failure to comply. There is no mention of misconduct or "corrective progressive disciplinary action." Although the provision allows for the possibility that employees may remedy membership default, the provision proscribes only one outcome for failure to cure deficiencies: discharge. Progressive discipline is plainly not an option.⁶

⁴ The parties' negotiation to change to the wording of the settlement agreement does not change the analysis. The original settlement proposal provided that the Respondent would not refuse "to terminate" an employee for failing to comply with the union-security clause. The language agreed to by the parties—that the Respondent would comply with "all union-security provisions"—does not mean that the union-security provision requires anything less than discharge. Nor is there any indication that the Respondent asserted as much when it proposed the language change. As discussed above, the meaning of the clause is clear, and thus the Respondent's obligation under the language of the settlement agreement is similarly clear.

⁵ Notably, art. 7 does not refer in any way to the failure to abide by the union-security provision.

⁶ Member Johnson finds no need to pass on the merits of the Respondent's interpretation of the settlement agreement's provisions. At this point in time, over a year and a half after the Respondent notified

We also reject the Respondent's argument that it should not be required "immediately" to terminate employees, because such action would result in the Respondent's defaulting on its contract with the Federal Government and would jeopardize the safety and security of employees and visitors at the unit employees' jobsite, the Ronald Reagan Building in Washington, D.C. Contrary to the Respondent's contention, the union-security clause does not require "immediate" termination of defaulting employees. Instead, it provides for an initial 31-day grace period during which employees may join the Union, followed by a requirement that the Union give at least 2 weeks' notice to the Respondent before a discharge can be effectuated. Moreover, an employee can cure any deficiencies and avoid discharge. Thus, this timeline cannot fairly be described as requiring immediate discharge of an employee. Furthermore, such a generalized defense, without more, is not a defense to failure to comply with the explicit terms of the contract. See *McIntyre Engineering Co.*, 293 NLRB 716, 717 (1989) (rejecting as "not a valid defense . . . or a relevant consideration" the company's economic defense that it would be unable to continue production if required to terminate "a high percentage of crucial skilled personnel" under the union-security provision); *St. Johns Mercy Medical Center*, 344 NLRB 391, 393 (2005), enfd. 436 F.3d 843 (8th Cir. 2006) (rejecting company's claim that it should be exempt from contractual union-security provision due to its difficulty in recruiting and retaining registered nurses because of nursing shortage).

The noncompliance provision in the settlement agreement provides that "[t]he only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement." As described, the Respondent has failed to comply with the settlement agreement. The agreement further provides that "[t]he 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." Accordingly, we grant the General Counsel's Motion for Default Judgment and find, pursuant to the noncompliance provisions of the settlement agreement set forth

employees that the Union had requested their termination due to their failure to pay dues, and advised them that if they did not resolve their dispute with the Union they could be subject to progressive discipline culminating in discharge, there is no claim that the Respondent has taken any further action or that the employees have met their dues obligations. In these circumstances, even under the Respondent's interpretation of the settlement agreement, there can be no factual dispute that it has defaulted on that agreement.

above, that all of the allegations in the reissued complaint are true.⁷

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a South Carolina corporation with an office and place of business in the District of Columbia and has been engaged in providing security services to firms and institutions, including the United States Government at the Ronald Reagan Building and International Trade Center in the District of Columbia.

In conducting its business operations described above, during the calendar year ending December 31, 2012, the Respondent performed services valued in excess of \$50,000 in States outside the District of Columbia.

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 the Union 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 have 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:

Maureen Dolan	Labor Relations Specialist
Sean Engelin	Director of Labor Relations
Janet Gunn	Vice President of Human Resources
Justin Reilly	Senior Legal Administrator

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 Security Officer Employees within the unit working at the Ronald Reagan Building in Washington, D.C., excluding all other employees including Sergeants, Lieutenants, Captains, office clerical employees and professional employees as defined in the National Labor Relations Act.

Since at least sometime around July 2011, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of

⁷ See *U-Bee, Ltd.*, 315 NLRB 667 (1994). Also, pursuant to the noncompliance provisions, we find that the Respondent's answer to the original complaint has been withdrawn.

the unit. This recognition has been embodied in a collective-bargaining agreement, effective by its terms from July 29, 2011, until July 31, 2014.

At all times since at least sometime around July 2011, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about June 12, 2012, the Respondent failed to continue in effect all the terms and conditions of the agreement described above by failing and refusing to terminate, upon the Union's valid request, employees who fail to become members of the Union pursuant to the union-security provisions within the agreement described above.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, 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) of the Act. The Respondent's unfair labor practices 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. We shall order the Respondent to comply with, upon the Union's valid request, article 2 of the collective-bargaining agreement, effective July 29, 2011, until July 31, 2014.

ORDER

The National Labor Relations Board orders that the Respondent, Coastal International Security, Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union, Security, Police, and Fire Professionals of America (SPCA), and its Amalgamated Local 287 (the Union) as the exclusive collective-bargaining representative of the unit employees by failing and refusing to comply with article 2 of the collective-bargaining agreement, effective July 29, 2011, until July 31, 2014, which requires that the Respondent terminate, upon the Union's valid request, unit employees who fail to become members of the Union. The unit is:

All Security Officer Employees within the unit working at the Ronald Reagan Building in Washington, D.C., excluding all other employees including Sergeants, Lieutenants, Captains, office clerical employees and professional employees as defined in the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

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

(a) Upon the Union's valid request, comply with article 2 of the collective-bargaining agreement, effective July 29, 2011, until July 31, 2014.

(b) Within 14 days after service by the Region, post at its facility at the Ronald Reagan Building and International Trade Center in Washington, D.C., copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 5, 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 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 June 12, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 5 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.

⁸ 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 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 fail and refuse to bargain collectively and in good faith with International Union, Security, Police, and Fire Professionals of America (SPCA), and its Amalgamated Local 287 (the Union) as the exclusive collective-bargaining representative of the unit employees by failing and refusing to comply with article 2 of the collective-bargaining agreement, effective July 29, 2011, until July 31, 2014, which requires that we terminate, upon the Union's valid request, unit employees who fail to become members of the Union. The unit is:

All Security Officer Employees within the unit working at the Ronald Reagan Building in Washington,

D.C., excluding all other employees including Sergeants, Lieutenants, Captains, office clerical employees and professional employees as defined in the National Labor Relations Act.

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, upon the Union's valid request, comply with article 2 of the collective-bargaining agreement, effective July 29, 2011, until July 31, 2014.

COASTAL INTERNATIONAL SECURITY

The Board's decision can be found at www.nlrb.gov/case/05-CA-094692 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

