

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

**HOME HEALTH CARE SERVICES OF  
NEW YORK INC.**

**and**

**1199 SEIU UNITED HEALTHCARE  
WORKERS EAST**

**Cases 29-CA-149313  
29-CA-151944  
29-CA-160463  
29-CA-163441  
29-CA-170383**

**LOCAL 713 INTERNATIONAL BROTHERHOOD  
OF TRADE UNIONS**

**and**

**1199 SEIU UNITED HEALTHCARE  
WORKERS EAST**

**Cases 29-CB-149315  
29-CB-151921  
29-CB-154504  
29-CB-160458  
29-CB-171315**

**DECISION AND ORDER**

**Statement of the Cases**

On April 28, 2016, Home Health Care Services of New York Inc. (Respondent HCS), Local 713, International Brotherhood of Trade Unions (Respondent Local 713), 1199 SEIU United Healthcare Workers East (the Charging Party or 1199 SEIU) and the 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 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 and the entire record, the Board makes the following

### **Findings of Fact**

#### **1. Respondent HCS's business**

At all material times Respondent HCS, a domestic corporation with its principal office and place of business located at 6520 New Utrecht Avenue, Brooklyn, New York and a place of business formerly located at 1650 Coney Island Avenue, Brooklyn, New York (Respondent HCS's Coney Island Avenue facility) and a place of business at 391 East 149th Street, #507, Bronx, New York, (Respondent HCS's Bronx facility), has been engaged in providing home health care services to patients living in New York City and surrounding areas.

In conducting its operations during the 12-month period ending December 31, 2015, which period is representative of its annual operations generally, Respondent HCS derived gross revenues in excess of \$100,000 and purchased and received at its Coney Island facility goods valued in excess of \$5,000 directly from entities located outside the State of New York.

At all material times, Respondent HCS has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

#### **2. The labor organizations involved**

At all material times, Respondent Local 713 has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) 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, the National Labor Relations Board orders that:

A. Respondent Home Health Care Services of New York Inc., Brooklyn and Bronx, New York, its officers, agents, successors and assigns shall:

#### **1. Cease and desist from**

(a) Telling employees that they have to sign a membership card for Respondent Local 713, or any other labor organization, unless Respondent HCS enters into a collective-bargaining agreement that requires employees to do so.

(b) Telling employees that they have to sign a membership card for Respondent Local 713, or any other labor organization, in order to get health insurance.

(c) Telling employees that they have to sign a membership card for Respondent Local 713, or any other labor organization, in order to get a pay raise.

(d) Unlawfully surveilling employees' union activities.

(e) Unlawfully giving the impression of surveilling employees' union activities by posting guards outside its facilities.

(f) Unlawfully telling employees that they cannot speak to union organizers.

(g) In any other 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 any 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.

(h) Supporting Respondent Local 713, or any other labor organization of its employees, including by encouraging membership in any labor organization by telephone calls and home visits to employees.

(i) Recognizing Respondent Local 713 as the representative of any of its employees for the purpose of dealing with HCS concerning grievances, labor disputes, wages, rates of pay, hours of employment or other terms and conditions of employment, unless and until that organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

(j) Discriminating in regard to hire or tenure of employment or any other term or condition of employment, by soliciting employees to sign Local 713 membership cards in order to encourage membership in Respondent Local 713 or in any other labor organization.

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

(a) Withdraw all recognition from Respondent Local 713 as representative of any of its employees for the purpose of dealing with the Respondent HCS with respect to grievances, labor disputes, wages, rates of pay, hours of employment and other conditions of employment, unless and until the organization has been certified by the National Labor Relations Board as such representative.

(b) Within 14 days of service by the Region, post at all of its New York City facilities copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by Region 29, after being signed by Respondent HCS's authorized representative, shall be posted by Respondent HCS 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, Respondent HCS shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent HCS at any time since January 12, 2015. Respondent HCS shall post and distribute by mail notices in Russian in addition to English. Respondent HCS will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material.

(c) In the event Respondent Local 713 becomes a party to this Formal Settlement, Respondent HCS shall post at the same places and under the same conditions, as set forth above, copies of the attached notice to employees marked "Appendix B" as soon as they are provided to Respondent HCS by Region 29.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent HCS has taken to comply.

B. Respondent Local 713, International Brotherhood of Trade Unions, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Restraining or coercing employees of Respondent HCS in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended, by accepting Respondent HCS's unlawful assistance in the form of:

i. Giving Respondent Local 713 membership applications to employees and/or prospective employees;

ii. Soliciting employee signatures on Respondent Local 713 membership applications during mandatory employee meetings, over the phone, or in person;

iii. Allowing Respondent Local 713 representatives to solicit employee signatures on Respondent Local 713 membership applications during mandatory employee meetings;

iv. Providing translators for Respondent Local 713 representatives at mandatory employee meetings;

(b) Restraining or coercing employees of Respondent HCS in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended, by promising benefits, such as health insurance or retirement benefits, in exchange for employees signing a Local 713 membership card.

(c) Causing or attempting to cause Respondent HCS to discriminate against any employees in regard to their hire or tenure of employment, or any term or condition of employment, in violation of Section 8(a)(3) of the Act, as amended, by conditioning employment on signing a Local 713 membership application.

(d) Using any Local 713 International Brotherhood of Trade Unions membership cards, which were signed on or before the date that Respondent Local 713 signs this Formal Settlement Agreement, in an effort to seek certification by the National Labor Relations Board as the exclusive representative of any Respondent HCS employees for the purpose of collective bargaining.

(e) Using any Local 713 International Brotherhood of Trade Unions membership cards, which were signed on or before the date that Respondent Local 713 signs this Formal Settlement Agreement, in an effort to seek Respondent HCS's voluntary recognition as exclusive representative of any Respondent HCS employees for the purpose of collective bargaining, through a card count performed by an independent arbitrator or any other means.

(f) Seeking certification by the National Labor Relations Board as the exclusive representative of any Respondent HCS employees for the purpose of collective bargaining, during a six month period beginning on the date that Respondent Local 713 signs this Formal Settlement Agreement.

(g) In any other manner restraining or coercing employees of Respondent HCS in the exercise of their right to self-organization, to form labor organizations, to join or assist any 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) Accept Respondent HCS's withdrawal of recognition of Respondent Local 713 as the exclusive representative of the Respondent HCS's regular full-time and part-time home healthcare aides for the purpose of collective bargaining, unless and until Respondent Local 713 has been duly certified by the National Labor Relations Board as the exclusive representative of those employees.

(b) Refrain from using any Respondent Local 713 membership cards that Respondent HCS employees signed on or before the date that Respondent Local 713 signs this Formal Settlement Agreement in an effort to seek certification by the National

Labor Relations Board as the exclusive collective bargaining representative of those employees.

(c) Within 14 days of service by the Region, post at its facility, located at 400 Garden City Plaza, Suite 106, Garden City, NY 11530, copies of the attached notice marked "Appendix B." Copies of the notice, on forms provided by Region 29, after being signed by Respondent Local 713's authorized representative, shall be posted by Respondent Local 713 and maintained for 60 consecutive days in conspicuous places, including all places where notices to members and employees are customarily posted. In addition to physical posting of paper notices, Respondent Local 713 shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent HCS at any time since January 12, 2015. Respondent Local 713 shall post and distribute by mail notices in Russian in addition to English. Respondent Local 713 will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C., August 3, 2016

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Mark Gaston Pearce, Chairman

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Kent Y. Hirozawa, Member

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Lauren McFerran, 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** tell you that you have to sign a membership card for Local 713, International Brotherhood of Trade Unions ("Local 713"), or any other labor organization, unless we enter into a collective-bargaining agreement that requires you to do so.

**WE WILL NOT** tell you that you have to sign a membership card for Local 713, or any other labor organization, in order to get health insurance.

**WE WILL NOT** tell you that you have to sign a membership card for Local 713, or any other labor organization, in order to get a pay raise.

**WE WILL NOT** unlawfully help Local 713, or any other labor organization, by giving union membership applications to employees and/or prospective employees.

**WE WILL NOT** unlawfully help Local 713, or any other labor organization, by asking you to sign a union membership application during mandatory employee meetings, over the phone, or in person.

**WE WILL NOT** unlawfully help Local 713, or any other labor organization, by allowing union representatives to ask you to sign a membership application during mandatory employee meetings.

**WE WILL NOT** unlawfully help Local 713, or any other labor organization, by providing translators for union representatives at mandatory employee meetings.

**WE WILL NOT** recognize Local 713, or any other labor organization, as the exclusive representative of our regular full-time and part-time home healthcare aides for the

purpose of collective bargaining, when that labor organization does not represent an uncoerced majority of those employees.

**WE WILL NOT** unlawfully watch out for your union activities.

**WE WILL NOT** unlawfully give the impression of surveilling your union activities by posting guards outside our facilities.

**WE WILL NOT** unlawfully tell you that you cannot speak to union organizers.

**WE WILL NOT** recognize Local 713 as the representative of any of our employees for the purpose of collective bargaining, unless and until that organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.

**WE WILL NOT** in any other manner interfere with, restrain, or coerce you in the exercise of your right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of your 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.

**WE WILL** withdraw recognition of Local 713 as the exclusive representative of our regular full-time and part-time home healthcare aides for the purpose of collective bargaining.

### **HOME HEALTH CARE SERVICES OF NEW YORK INC.**

The Board's decision can be found at [www.nlr.gov/case/29-CA-149313](http://www.nlr.gov/case/29-CA-149313) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



## APPENDIX B

### NOTICE TO MEMBERS 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 a representative to bargain on your behalf with your employer;  
Act together with other employees for your benefit and protection;  
Choose not to engage in any of these protected activities.

**WE WILL NOT** accept Home Health Care Services of New York Inc.'s ("the Employer") unlawful help, by the Employer giving Local 713, International Brotherhood of Trade Unions ("Local 713") membership applications to employees and/or prospective employees.

**WE WILL NOT** accept the Employer's unlawful help of asking you to sign a Local 713 membership application during mandatory employee meetings, over the phone, or in person.

**WE WILL NOT** accept the Employer's unlawful help of allowing Local 713 representatives to ask you to sign a membership application during mandatory employee meetings.

**WE WILL NOT** accept the Employer's unlawful help of providing translators for Local 713 representatives at mandatory employee meetings.

**WE WILL NOT** promise benefits, such as health insurance or retirement benefits, in exchange for you signing a Local 713 membership application.

**WE WILL NOT** cause the Employer to discriminate against you, by the Employer telling you that you must sign a Local 713 membership application, or risk losing your job.

**WE WILL** accept the Employer's withdrawal of recognition of Local 713 as the exclusive representative of the Employer's regular full-time and part-time home healthcare aides for the purpose of collective bargaining, unless and until Local 713 has been duly certified by the National Labor Relations Board as the exclusive representative of those employees.

**WE WILL NOT** use any Local 713 membership cards, which you signed on or before the date that Local 713 signed the National Labor Relations Board Formal Settlement Agreement, in an effort to seek certification by the NLRB as your exclusive representative for the purpose of collective bargaining.

**WE WILL NOT** use any Local 713 membership cards, which you signed on or before the date that Respondent Local 713 signed the National Labor Relations Board Formal Settlement Agreement, in an effort to seek the Employer's voluntary recognition as your exclusive representative for the purpose of collective bargaining, through a card count performed by an independent arbitrator or any other means.

**WE WILL NOT** seek certification by the National Labor Relations Board as the exclusive representative of any of the Employer's employees for the purpose of collective bargaining during a six month period beginning on the date that Respondent Local 713 signed the NLRB Formal Settlement Agreement.

**WE WILL NOT** in any other manner restrain or coerce you in the exercise of your right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of your 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.

### **LOCAL 713, INTERNATIONAL BROTHERHOOD OF TRADE UNIONS**

The Board's decision can be found at [www.nlr.gov/case/29-CA-149313](http://www.nlr.gov/case/29-CA-149313) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

