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**Pittsburgh Athletic Association and Unite Here Local 57, AFL-CIO, CLC.** Case 06-CA-169088

August 29, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by UNITE HERE Local 57, AFL-CIO, CLC (the Union) on February 4, 2016, the General Counsel issued a complaint on May 25, 2016, against Pittsburgh Athletic Association (the Respondent), alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On June 24, 2016, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 28, 2016, the Board issued an order transferring the proceeding to the Board and 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 complaint affirmatively stated that unless an answer was received by June 8, 2016, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that by letter dated June 9, 2016, the Region advised the Respondent that unless an answer was received by the third business day following receipt of the letter, a motion for default judgment would be filed. The Respondent again failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the complaint to be admitted as true, and we grant the 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, a non-profit Pennsylvania corporation with an office and place of business in Pittsburgh, Pennsylvania, has been engaged in operating a social club and selling food, beverages, and services to members and their guests.

In conducting its operations during the 12-month period ending January 31, 2016, the Respondent derived gross revenues in excess of \$500,000 and purchased and received at its Pittsburgh, Pennsylvania facility, goods valued in excess of \$50,000 from other enterprises, including Sysco Food Service, located within the Commonwealth of Pennsylvania, which other enterprise had received these goods directly from points outside the Commonwealth of Pennsylvania.

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 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:

Jeffrey Borello	Co-General Manager
Thomas Trimbur	President, Board of Directors

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 full-time and regular part-time food and beverage and housekeeping employees employed by the Respondent at its Pittsburgh, Pennsylvania facility; excluding guards, professional employees and supervisors as defined in the Act and all other employees.

At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from March 1, 2012 to February 28, 2015.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about November 2015, the Respondent has failed to maintain health insurance for its unit employees.

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject of bargaining for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices 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. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to maintain health insurance, we shall order the Respondent to restore and maintain the unit employees' health insurance and to make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's failure to maintain health insurance, as set forth in *Kraft Plumbing & Heating, Inc.*, 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), plus interest computed as set forth in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).<sup>1</sup> In addition, in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), and *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall require the Respondent to compensate unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file reports with the Regional Director for Region 6 allocating

<sup>1</sup> To the extent that an employee has paid premiums that have been accepted by the insurer in lieu of the Respondent's delinquent payments during the period of the delinquency, the Respondent will reimburse the employee.

the backpay awards to the appropriate calendar year for each employee.

#### ORDER

The National Labor Relations Board orders that the Respondent, Pittsburgh Athletic Association, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to maintain unit employee's health insurance without first notifying UNITE HERE Local 57, AFL-CIO, CLC (the Union) and giving it an opportunity to bargain.

(b) 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) Restore and maintain the unit employees' health insurance as it previously existed.

(b) Make unit employees whole for any expenses resulting from the Respondent's failure to maintain health insurance, in the manner set forth in the remedy section of the decision.

(c) Compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 6, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year for each employee.

(d) 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 due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Pittsburgh, Pennsylvania copies of the attached notice marked "Appendix".<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, 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

<sup>2</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."

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. If 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 November 2015.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 6 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. August 29, 2016

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

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Lauren McFerran, Member

(SEAL) 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 to maintain your health insurance without first notifying UNITE HERE Local 57, AFL-CIO, CLC (the Union) and giving it an opportunity to bargain.

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 restore and maintain your health insurance as it previously existed.

WE WILL make you whole for any expenses resulting from our failure to maintain your health insurance, plus interest.

PITTSBURGH ATHLETIC ASSOCIATION

The Board's decision can be found at [www.nlr.gov/case/06-CA-169088](http://www.nlr.gov/case/06-CA-169088) 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 St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

