

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SISTERS' CAMELOT

and

CHRISTOPHER ALLISON, An Individual

Case 18-CA-100514

**COUNSEL FOR GENERAL COUNSEL'S RESPONSE TO CHARGING
PARTY'S APPEAL FROM A COMPLIANCE DETERMINATION**

The Region respectfully requests the Board uphold the compliance determination at issue in this case. The substantive reasons underlying the Region's action are set forth in the Compliance Determination dated June 21, 2016, and the Region adheres to them. The Region briefly addresses the points made in Charging Party Christopher Allison's Appeal below.

I. **History**

On September 25, 2015, the National Labor Relations Board issued its Decision and Order (363 NLRB No. 13) (the Board Order). Following a compliance investigation, the Regional Director issued a compliance determination in this matter on June 21, 2016, over the objections of the Charging Party approving a settlement with Respondent. Allison appealed the Region's determination, and on November 1, 2016, the General Counsel denied Allison's appeal. Allison then filed a Request of Review.

II. The Compliance Investigation and Determination

To determine the make-whole remedy the Region gathered evidence from the Respondent and Allison. This investigation revealed that in response to a strike, the Employer eliminated its formal canvassing program and has not resumed that program. Although the backpay period for Allison begins on March 4, 2013 (date of Allison's termination), there was no work available for Allison to perform. On May 22, 2013, the Employer began performing some canvassing, albeit on an *ad hoc* basis. Since no canvassing occurred from March 4, 2013, through May 22, 2013, the Regional Director determined that no backpay was owed for this period of time. Additionally, on July 16, 2013, Allison began working for an interim employer and his earnings exceeded the earnings he would have made at Respondent from that point forward. Thus, the Regional Director determined that backpay is owed only for the period of May 22, 2013 through July 16, 2013.

The compliance investigation also revealed issues that impacted the required offer of reinstatement. Since, the evidence revealed that Respondent was no longer operating a formal canvassing program, the position that Allison was terminated from, no longer existed. It was determined that since Respondent was allowing one or two individuals to perform canvassing on an *ad hoc* basis, then Respondent needed to offer the same opportunity to Allison.

In addition, it was discovered and acknowledged by that Allison that he assisted in establishing a new charitable organization that performs similar functions to those of Respondent. Respondent expressed concerns and the Regional Director agreed that due to the similarities of the organization, there was a potential conflict of interest if

Allison were to return to work for Respondent and held a position of authority in a directly competing organization. Therefore, the Regional Director determined that it was appropriate for Respondent's job offer to Allison be contingent on Allison relinquishing any role he has as an officer or agent of the competing organization. However, Allison would be permitted to work for both entities just not in managerial position.

III. The Compliance Stipulation

Given the circumstances discovered during the compliance investigation, the Region concluded that the backpay amount and the job offer as described in the Compliance Stipulation constitute a reasonable compromise. A copy of the Compliance Stipulation is attached as Exhibit A. The Region calculated that the amount represents 70% of the calculated backpay potentially due to Allison, but determined that in light of the totality of the circumstances this resolution was acceptable. This includes the risks of litigation of this matter, including an appeal of the Board's Order and litigation in a subsequent compliance proceeding. Additionally, evidence presented to the Region by Respondent reflects its substantially diminished income and resources.

IV. The Charging Party's Appeal

On November 14, 2016, the Charging Party filed his request for review with the Board concerning the Region's compliance determination and the General Counsel's denial of his appeal of that determination. Allison raised 4 (four) main arguments in his appeal, most of these issues have been previously addressed by the Region and the General Counsel; however they will be summarized here as well.¹

¹Allison argues that the strike in this matter was an unfair labor practice strike. No such finding has been made by the Board. Allison has been properly treated as an unlawfully discharged employee entitled to the remedies of a discriminatee. Whether the strike was economic or an unfair labor practice strike is irrelevant.

First, Allison raised issues concerning the length of the backpay period. These concerns revolve around the elimination of the canvassing program and the strike. Allison argues that Respondent was not allowed to eliminate the canvassing program in response to the strike. He states that it would have “financial suicide” for Respondent to discontinue this program and that the Employer only did so due to the strike.

Respondent’s revenues have been substantially reduced due to the lack of a formal canvassing program.² This is how Respondent chose to respond to the strike. Allison argues that the strike could have ended at any time and only occurred due to the Employer’s actions. However, it is inappropriate for the Board to require Respondent to retain its previous method of operation.

Allison argued that he deserves full backpay from the day of his termination until he started his new job and that anything else is less than the spirit of the Board’s decision. As previously stated, there is no evidence anyone was performing canvassing between March 4, 2013 and May 22, 2013. Since there was no work available; there can be no backpay for that period of time.

Allison argues he should have had the right to cross the picket line and be a replacement worker. He claims that if had those rights he should get backpay from the day of his termination through the date he started completely offsetting his backpay. Allison is correct in arguing that he should have had the opportunity to be cross the picket line and be a replacement worker. This is exactly how he was treated. And backpay began when Respondent used its first replacement worker.

² Respondent provided records that established that its total revenues from January 1, 2015 until November 3, 2015 were only \$6,436.43.

Second, Allison raised an issue concerning Respondent taking the position that the *ad hoc* canvassers are independent contractors and therefore it is not the same job. The Region is uncertain of Allison's argument on this point. The *ad hoc* canvasser position is the only similar position that remains at Respondent and thus the Region determined it was substantially equivalent.

Third, Allison takes issue with the conditional offer of reinstatement and claims that his current employer and Respondent are not competitors. He argues that both organizations are working to distribute food to the needy. However, what Allison fails to acknowledge is that the two organizations compete over donation dollars and potential solicitation areas. He also claims that the offer states that he cannot canvass for both organizations, which it does not. It only restricts him from holding an officer or agent position with his current employer if he wants to canvass for Respondent.

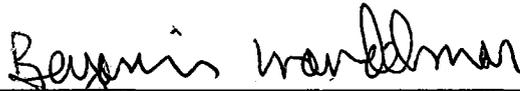
Lastly, Allison raises an issue concerning the amount of interest calculated. The resolution was reached for a lump sum amount of \$1000. This amount was prorated into the components required by the Board (wages, interest and excess taxes). This proration was done based on an interest calculation performed on January 30, 2016. The compliance investigation and settlement negotiations took some time and an agreement was finally reached about 4 months later. The calculation could be updated and the proration changed. However, that agreement was for a lump sum of \$1000 which was to include interest. Even if interest continued to accrue for the 4 months between calculation and settlement, it would have been around 1%, which is approximately \$11. At that point in the settlement process, the Region concluded this

amount to be an acceptable compromise given all of the factors previously mentioned and did not want to jeopardize a resolution for this nominal amount of interest.

V. **Conclusion**

For all of the reason stated, the Region respectfully submits that it properly calculated backpay consistent with the Board's Decision and Order and that the amount of backpay and the job offer in the Compliance Stipulation constitute a reasonable compromise.

Dated: December 22, 2016



Benjamin Mandelman
Counsel for the General Counsel
Region 18 – Subregion 30



Richard J. Neuman
Compliance Officer
Region 18 – Subregion 30
National Labor Relations Board
310 West Wisconsin Avenue, Suite 450
Milwaukee, WI 53203

Attachment

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region Eighteen

SISTERS' CAMELOT

And

Case 18-CA-100514

CHRISTOPHER ALLISON, An Individual

COMPLIANCE STIPULATION

It is hereby stipulated and agreed by and between the Sisters' Camelot (Respondent); Christopher Allison (Charging Party) and Region 18 of the National Labor Relations Board (Region 18), that:

1. On September 25, 2015, the National Labor Relations Board (the Board) issued an Order reversing the Administrative Law Judge's recommended Decision, and directing Respondent, inter alia, to make the Charging Party whole for any loss of earnings as a result of the discrimination against him.
2. This Stipulation, together with the Board's Order and the decision of the Administrative Law Judge, shall constitute the entire record herein.
3. Following issuance of the Board Order, Respondent, the Charging Party, and Region 18, reached agreement on the amount of backpay due and owing under the terms of the Order. Said agreement has been reduced to

writing in this Stipulation and based upon it the backpay obligation of Respondent will be discharged by payment to the Charging Party the sum of \$1000.00 (\$908.53 in earnings¹, \$75.44 in interest, \$16.03 in excess taxes).

4. Respondent will, within 14 days of notice that this stipulation has been approved by the Regional Director, convey payment to Region 18 in the form of a check, payable to the Charging Party, for the amount of \$1000.00, described in paragraph 3. No payroll withholdings or taxes should be withheld from this check. The Respondent will comply with IRS laws regarding the issuance of any appropriate tax forms as a result of this payment.
5. All parties agree that the backpay amount specified above is correct and constitutes the full backpay due pursuant to the Board's Order. All parties, therefore, hereby waive any right to a hearing or any other legal proceeding to dispute the accuracy of the amounts described above, or the findings of the Board and the Administrative Law Judge.
6. The Board's Order requires Respondent to reinstate the Charging Party to his former job, or if that job no longer exists, to a substantially equivalent position. Respondent has eliminated the fundraising canvass program. However, Respondent still allows individuals, operating on their own to conduct door-to-door solicitations. Respondent will provide the Charging Party with this same opportunity. Within 14 days after the approval of this

¹ The earnings are not considered wages, as earnings from the Employer have never been paid as wages in the past.

stipulation by the Regional Director, Respondent will do so by sending the Charging Party a signed copy of the letter in Attachment A. This letter will also satisfy Respondent's obligation to remove from its files any reference to the unlawful discharge of the Charging Party.

- 7 Within 14 days after the approval of this stipulation by the Regional Director, Respondent will post the appropriate Notice pursuant to paragraph 2(f) of the Board's Order. This will include mailing the notice to the last known address all canvassers that actively canvassed within 6 months of March 1, 2013 at its own expense. In addition, in accordance with paragraph 2(g) of the Board's Order, within 21 days after the approval of this stipulation by the Regional Director, Respondent will file with Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply with this Compliance Stipulation.
8. The Respondent agrees that in case of noncompliance with any of the terms of this Compliance Stipulation by the Respondent, and after 14 days notice from the Regional Director of the National Labor Relations Board of such noncompliance without remedy by the Respondent, the Regional Director will issue a Compliance Specification reflecting the backpay and interest due pursuant to the terms of the Compliance Stipulation, plus additional interest. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Compliance Specification. The Respondent understands and agrees that all of the

allegations of the aforementioned Compliance Specification will be deemed admitted and it will have waived its right to file an Answer to such Compliance Specification. The only issue that may be raised before the Board is whether the Respondent defaulted on the terms of this Compliance Stipulation. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Compliance Specification to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Respondent on all issues raised by the pleadings. The Board may then issue an Order providing a backpay remedy in accordance with the allegations of the Compliance Specification. The Board's order may be entered thereon ex parte and, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's Order, judgment may be entered thereon ex parte and without opposition from Respondent.

9. This Compliance Stipulation contains the entire agreement between the parties concerning the remedy issues, there being no agreement of any kind, verbal or otherwise, that varies, alters, or adds to it.

Sister's Camelot

By: Davidson 5/18/16
(Date)

Christopher Allison, an Individual

By: _____
(Date)

Recommended by:

Richard J. Neuman, Compliance Officer (Date)

Approved by:

Marlin O. Osthus, Regional Director (Date)

Marlin O. Osthus, Regional Director
Region 18
National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, Minnesota 55401

Attachments

[DATE]

Christopher Allison
[Street]
[City], [State] [Zip]

RE: Offer

Dear Mr. Allison:

Sisters' Camelot no longer operates a fundraising canvass program. Sisters' Camelot has allowed individuals, operating on their own initiative and without any direction or control by Sisters' Camelot, to conduct door-to-door solicitations for donations which they have shared with Sisters' Camelot. These individuals are not parties to contracts with Sisters' Camelot to provide any service of any kind, are not employed by Sisters' Camelot, and do not hold any formal role or position with the organization.

To facilitate resolution of this matter and to comply with the Board's Order, Sisters' Camelot hereby offers you the opportunity to solicit donations for the benefit of the organization on an ad hoc basis in a similar manner. However, it is Sisters' Camelot's understanding that you are presently an officer and/or agent of an organization that competes with Sisters' Camelot in the Twin Cities metropolitan area (North Country Food Alliance). To avoid an actual or apparent conflict of interest, this offer is necessarily contingent upon your agreeing to relinquish any role you may have as an officer or agent of any competing organization. Please let us know within 10 days of this letter if you accept this offer.

Finally, Sisters' Camelot has removed from its records any reference to the termination of your Independent Contractor Agreement, and shall not use the fact of that termination against you in the future.

On Behalf of the Collective,



David Senn
Collective Member

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 threaten you that selecting a union would be futile by stating that we would never accept a boss/employee relationship with the canvassers.

WE WILL NOT give you benefits in order to discourage you from engaging in union or other protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting IWW Sisters' Camelot Canvassers' Union or any other labor organization.

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 the Board's Order, offer Christopher Allison full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Christopher Allison whole for any loss of earnings and other benefits resulting from the termination of his contract, less any net interim earnings, plus interest.

WE WILL compensate Christopher Allison for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful termination of Christopher Allison's contract, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that the contract termination will not be used against him in any way.

SISTERS' CAMELOT

The Board's decision can be found at www.nlr.gov/case/18-CA-100514 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.

