UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner	)	No. 17-2529
v.	)	
	)	Board Case No.:
PERKINS MANAGEMENT SERVICES COMPANY	)	13-CA-173696
	)	
Respondent	)	

MOTION TO DISMISS THE BOARD'S APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT ENFORCING THE BOARD'S ORDER

To the Honorable, the Judges of the United States
Court of Appeals for the Seventh Circuit:

Pursuant to F.R.A.P. Rule 42(b), the National Labor Relations Board (the Board), by its Deputy Associate General Counsel, respectfully moves to dismiss the Board's application for summary entry of a judgment enforcing the Board's order in the above-captioned case and shows as follows:

1. The Board's application for enforcement in the above-captioned case was docketed on July 27, 2017, Case No. 17-2529.

2. The Board and the Respondent have since reached an agreement that resolves the outstanding issues involved in the above-captioned case without further litigation and the costs associated therewith.

WHEREFORE, the Board respectfully requests that the Clerk enter an order dismissing the above-captioned proceeding, without prejudice, each side to bear its own costs.

/s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half St., S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 6th day of September, 2017

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	)	
Respondent	)	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's motion to dismiss, in the above-captioned case, has this day been served by first class mail upon the following party at the address listed below:

Tonya Ford
Perkins Management Services
7730 England St., Ste. A
Charlotte, NC 28273-5919

/s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half St., S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 6th day of September, 2017

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Perkins Management Services Company *and* Unite Here Local 1. Case 13–CA–173696

June 5, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Following the filing of a charge and an amended charge by Unite Here Local 1 (the Union) on April 8 and July 27, 2016, respectively, alleging that Perkins Management Services Company (the Respondent) violated Section 8(a)(5) and (1) of the Act, the parties entered into a bilateral informal settlement agreement which was approved by the Regional Director for Region 13 on August 2, 2016. Among other things, the settlement agreement required the Respondent to: (1) on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees for a reasonable period of time from the date of the approval of the settlement agreement by the Regional Director as required *by UGL-UNICCO Service Co.*, 357 NLRB 801 (2011); (2) meet for bargaining sessions with the Union once a month for no less than 6 hours a session for 6 months from the date the settlement was approved by the Regional Director, or until the parties execute a collective-bargaining agreement covering the terms and conditions of employment of the unit employees, whichever is sooner; (3) provide monthly summaries to the Region's compliance officer regarding the parties' progress and satisfaction with the bargaining progress; if the Region determines that continued monthly bargaining is necessary, the Region can require additional mandatory sessions of its choosing for one year; (4) provide the Union with the information it requested on July 7 and September 29, 2015 if it exists and promptly advise the Union if it does not exist; and (4) post appropriate notices in English and Spanish.

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 includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. 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 that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. 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 at the last address provided to the General Counsel.

On August 5, 2016, the Region's compliance officer sent the Respondent a copy of the conformed settlement agreement, with a cover letter advising the Respondent to take the steps necessary to comply with it. Also enclosed were copies of the Notices to Employees in English and Spanish, to be posted by the Respondent, and a Certification of Compliance form.

By email dated November 4, 2016, the compliance officer notified the Respondent that unless it fully complied with the terms of the settlement agreement within 14 days, the Region would issue a complaint and file a motion for default judgment with the Board. The email stated that "[a]lthough I have received information that the Respondent and Union have engaged in bargaining, based on information obtained from the Union regarding deficiencies in the information provided to it by Respondent; and in light of Respondent's failure to provide evidence that it had executed and posted the required Spanish Notice to Employees, I am providing this notification of default." Based on the Respondent's email response of November 17, 2016, assuring the Region that

it intended to provide the requested information, the Region did not issue complaint or file a motion for default judgment at that time.

By email dated November 28, 2016, the compliance officer notified the Respondent that it had failed to provide the Region with its certification of compliance with the information request portion of the settlement and that absent the Respondent's submission of evidence of full compliance further proceedings could be initiated. By email dated February 6, 2017, the compliance officer reminded the Respondent of its obligations to provide the Region with monthly summaries of the parties' bargaining progress and to provide the Union with outstanding requested information by February 21, 2017.

By email dated February 28, 2017, the compliance officer informed the Respondent that unless it fully complied with the settlement agreement by March 14, 2017, he would recommend that the Regional Director issue a complaint and file a motion for default judgment with the Board. Specifically, the compliance officer advised the Respondent that it had failed to furnish the Union with the outstanding requested information and failed to provide the Region with monthly summaries of the progress of bargaining. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on March 28, 2017, the Acting Regional Director issued a Complaint Based on Breach of Affirmative Provisions of Settlement Agreement (the complaint). On March 29, 2017, the General Counsel filed a Motion for Default Judgment with the Board. On March 30, 2017, 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.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to provide the Union with all of the information it requested on July 7 and September 29, 2015, and by failing to provide the Region with monthly summaries regarding the progress of bargaining.

Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the complaint are true.[1] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

[1] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Chicago, Illinois, (the Chicago facility) has been engaged in the business of providing food and beverage services to colleges and universities, including Chicago State University.

During the calendar year preceding issuance of the complaint, a representative period, the Respondent purchased and received at its Chicago facility goods, products, and materials valued in excess of $50,000 directly from points outside the State of Illinois.

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.

About June 23, 2015, after being awarded the dining, catering, and concession services contract at Chicago State University, the Respondent assumed the operations which had previously been performed by SDH Education West, LLC d/b/a Sodexo Campus Services (Sodexo).

Since about June 23, 2015, the Respondent has continued to provide the services previously performed by Sodexo, in basically unchanged form, at the location described above and has employed, as a majority of its employees, individuals who were previously employees of Sodexo.

Based on the operations described above, the Respondent has continued to be the employing entity of Sodexo's employees and is a successor to Sodexo.

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:

Nicholas Perkins —	President
Antwane Owens —	Chief Financial Officer
Tonya Ford . —	Human Resources Director
Freddie Lane, Jr. —	Chief Administrative Officer

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 service employees employed by the Employer at its food services operations located at Chicago State University, Chicago, Illinois; excluding confidential and office clerical employees, professional employees, student workers,

casual employees, managers, assistant managers, guards and supervisors as defined in the Act.

Since about 2012, the Union had been the exclusive collective-bargaining representative of the unit employed by the predecessor employers, including most recently Sodexo. During that time period, the Union had been recognized as such representative by predecessor employers, including Sodexo. This recognition had been embodied in successive collective-bargaining agreements, the most recent of which was effective from November 16, 2013 to July 31, 2016.

From about November 16, 2013 to June 22, 2015, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the unit employed by Sodexo.

Since about June 23, 2015, based on the facts described above, the Union has been the designated exclusive collective-bargaining representative of the unit.

At all times since about June 23, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit.

The following events occurred, giving rise to these proceedings.

1. About July 7, 2015, the Union, by email from Dan Abraham to Nicholas Perkins, requested that the Respondent recognize it as the exclusive collective-bargaining representative of the unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

2. Since about January 24, 2016, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

3. Since July 7, 2015, and continuing thereafter, the Union, by Dan Abraham, has requested that the Respondent furnish the Union with the following information:

(i) A list of all employees including name, address, phone number, wage rate, job classification and benefit plan participation.

(ii) A complete description of all company benefit plans including the cost to the company and the cost to the employee.

(iii) A copy of all current personnel policies, practices or procedures, and a full description of any unwritten policies, practices or procedures.

(iv) A copy of all current work rules, and a full description of any unwritten work rules.

(v) A copy of each current job description for all positions within the bargaining unit.

(vi) A copy of any attendance policy or program.

(vii) A copy of the Summary Plan Description, as well as the Plan, for the employer's current health care plan.

(viii) A copy of any rules, regulations, procedures, administrative manual or other policies or procedures which affect or relate to the company's health care plan.

(ix) A cost breakdown of the employer's current health care plan.

(x) The name, address and principal contact of the office which administers the health care plan.

(xi) The name and address of the "administrator" of the employer's health care plan, as that term is defined in the Employee Retirement Income Security Act.

(xii) A copy of any contract with any health care provider, insurer, or health care plan.

(xiii) A copy of any current profit-sharing plan, stock investment plan, 401(k) plan or similar plan affecting any employee, including a copy of the current Summary Plan Description and the plan itself.

(xiv) Copies of all disability plans or programs, including copies of all disability policies maintained by the company.

(xv) A copy of all company life insurance plans or programs covering any employee, including a cost breakdown or cost analysis of such plan.

(xvi) A copy of any company policy or procedure with respect to drug or alcohol abuse.

(xvii) A statement of any policies or procedures with respect to grooming, clothes, weight or height or any other personal affects.

(xviii) A list of all company uniforms or special clothing which the employees are required to wear, including a description of the uniforms or special clothing, the classification of employees which are required to wear these uniforms or special clothing, and a descrip-

tion of the circumstances under which they are to be worn.

(xix) A statement of all company policies regarding smoking.

(xx) A copy of all company policies or procedures with respect to discipline, including any company work rule, house rule, or other rule or regulation which may have disciplinary consequences for any employee for any worker employed in the bargaining unit.

(xxi) A statement of all company policies or procedures with respect to promotions.

(xxii) A statement of any and all company policies or programs relating to training.

(xxiii) Copies of all manuals, directives, policies, service manuals, maintenance manuals, and other materials related to employee training.

(xxiv) A statement of all company policies with respect to the handling of cash or non-cash transactions with customers.

(xxv) A copy of all company policies and procedures with respect to layoff and recall.

(xxvi) A copy of all tests which are given to applicants and employees, including application forms. If there is no written test given, provide a description of any other test given.

4. The information requested by the Union as described above in paragraph 3 (i)–(xxvi) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

5. To date, the Respondent has failed and refused to furnish the Union with the information requested by the Union as described above in paragraph 3 (ii)–(v), (vii)–(xii) and (xxi)–(xxvi).

CONCLUSION OF LAW

By the conduct described above in paragraphs 2 and 5, the Respondent has been failing and refusing to bargain collectively and in good faith with 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 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 take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the informal settlement agreement approved by the Regional Director for Region 13 on August 2, 2016, by providing monthly summaries regarding the progress of bargaining to the Compliance Officer of Region 13, and by furnishing the Union with the information set forth above in paragraph 3 (ii)–(v), (vii)–(xii), and (xxi)–(xxvi).

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations."[2] However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies and we will not, sua sponte, include them.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Perkins Management Services Company, Chicago, Illinois, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Provide monthly summaries regarding the progress of bargaining to the Compliance Officer of Region 13.

2. Furnish to the Union in a timely manner the information requested by the Union on July 7 and September 29, 2015 that it has not already provided, specifically the information set forth above in paragraph 3 (ii)–(v), (vii)–(xii), and (xxi)–(xxvi) of this Decision.

3. Within 21 days after service by the Region, file with the Regional Director for Region 13 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. June 5, 2017

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[2] As set forth above, the settlement agreement provided that, in case of noncompliance, the General Counsel may seek, and the Board may issue "a full remedy for the violations found as is appropriate to remedy such violations."

[3] See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The General Counsel specifically requested in his motion for default judgment that the Board issue "an Order requiring Respondent to fulfill all of its undertakings in the August 2, 2016 Settlement Agreement." Therefore we construe the General Counsel's motion as seeking enforcement of the unmet provisions of the settlement agreement.

Philip A. Miscimarra, Chairman

Lauren McFerran, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD