

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

COMPREHENSIVE AT ORLEANS, LLC

and

Case 03-CA-196513

WILLIS A. HEISE, SR., an Individual

**COMPLAINT BASED ON BREACH OF AFFIRMATIVE PROVISIONS OF
SETTLEMENT AGREEMENT**

Based upon a charge filed herein by Willis A. Heise, Sr., an individual (Heise), against Comprehensive at Orleans, LLC (Respondent) alleging that it violated the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., by engaging in unfair labor practices, a Settlement Agreement and Notice to Employees (the Settlement) was approved on July 11, 2017, a copy of which is attached as Exhibit A. Pursuant to the Settlement, and pursuant to which Respondent agreed to take certain actions to remedy the unfair labor practices specified in the Settlement. Respondent has failed and refused to comply with the terms of the Settlement. Accordingly, pursuant to the terms of the Settlement and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), the following Complaint is issued.

I

The Charge herein was filed by Heise on April 10, 2017, and a copy was served on Respondent by U.S. mail on the same date.

II

(a) At all material times, Respondent, a limited liability company with a place of business in Albion, New York (Respondent's facility), has been engaged in the operation of a nursing home.

(b) Annually, Respondent, in conducting its business operations described above in paragraph II(a), derives gross revenues in excess of \$100,000.

(c) Annually, Respondent, in conducting its business operations described above in paragraph II(a), purchases and receives at its Albion, New York facility products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

III

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

IV

At all material times, CSEA Local 784 (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

V

At all material times, Brian Reader held the position of Respondent's Administrator and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

VI

(a) The following employees of 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 employees, part-time employees, wage-incentivized full-time employees, and wage-incentivized part-time employees, excluding all guards, watchmen, and confidential employees as defined by the Act and excluding department heads.

(b) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in a collective-bargaining agreement effective from January 1, 2015 through December 31, 2019.

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

VII

(a) About January 1, 2015, Respondent and the Union entered into the collective-bargaining agreement described above in paragraph VI(b), encompassing the terms and conditions of employment of the Unit.

(b) About January 1, 2017, Respondent failed to continue in effect all the terms and conditions of the agreement described in paragraph VI(b) by modifying the wage provision.

(c) The terms and conditions of employment described above in paragraph VII(b) are a mandatory subject for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in paragraph VII(b) without the Union's consent.

VIII

(a) About January 1, 2017, Respondent failed to increase the wage of its employee Heise in conformity with the terms of the collective-bargaining agreement described above in paragraph VI(b).

(b) Respondent engaged in the conduct described above in paragraph VIII(a) because Heise refrained from joining the Union and engaging in concerted activities, and to encourage employees to engage in these activities.

IX

By the conduct described above in paragraph VIII(b), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby encouraging membership in a labor organization in violation of Section 8(a)(1) and(3) of the Act.

X

By the conduct described above in paragraph VII(b) and (d), Respondent has been failing and refusing to bargain collectively 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)(1) and (5) of the Act.

XI

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs IX and X, the General Counsel seeks an Order requiring Respondent to:

1. Cease and desist from:
 - a. Unilaterally and without the consent of the Union modifying the terms of the parties' collective-bargaining agreement during the life of the agreement.
 - b. Encouraging membership in the Union by discriminating against nonmembers of that organization with respect to wages and other terms of employment.
 - c. In any like or related manner interfering with employees' rights under Section 7 of the Act.

2. Take the following affirmative actions:
 - a. Make whole Willis A. Heise, Sr., and any other affected bargaining unit employee, for the wages they lost because of the modification Respondent made to the wage provision of the parties' collective-bargaining agreement without the Union's consent.
 - b. Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payroll 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 of backpay due under the terms of such Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.
 - c. Post an appropriate notice.

WHEREFORE, the General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

NO HEARING OR ANSWER

Because Respondent has previously agreed 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 the Complaint, no Answer is required and no hearing is necessary.

Dated: August 16, 2017

/s/Paul J. Murphy

PAUL J. MURPHY

REGIONAL DIRECTOR

NATIONAL LABOR RELATIONS BOARD

REGION 03

130 S Elmwood Ave Ste 630

Buffalo, NY 14202-2465

Attachment

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WILLIS A. HEISE SR., an Individual

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CIVIL SERVICE EMPLOYEES ASSOCIATION

**AFFIDAVIT OF SERVICE OF: Complaint Based on Breach of Affirmative Provisions
of Settlement Agreement**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 16, 2017, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

Brian Reader , Administrator
Comprehensive Healthcare Maintenance
Services
14012 Route 31 West
Albion, NY 14411

**CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Willis A. Heise SR.
109 Heritage Estates
Albion, NY 14411

CERTIFIED MAIL

Aaron E. Kaplan , ESQ., Senior Associate
Counsel
Civil Service Employees Association, Inc.,
Local 1000, AFSCME, AFL-CIO
143 Washington Avenue
Albany, NY 12210-2303

FIRST CLASS MAIL

August 16, 2017

Katy L. Domagala, Designated Agent of
NLRB

Date

Name

/s/Katy L. Domagala

Signature