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Prompt Medical Transportation, Inc. d/b/a Prompt Ambulance Service, Prompt Central, Inc., and GSM Group and International Association of EMTs and Paramedics (IAEP), SEIU Local 5000. Case 13–CA–202127

March 29, 2018

ORDER DENYING MOTION AND REMANDING

BY CHAIRMAN KAPLAN AND MEMBERS MCFERRAN
AND EMANUEL

The General Counsel has moved for default judgment in this case based on its assertion that the Respondent, Prompt Medical Transportation, Inc. d/b/a Prompt Ambulance Service, Prompt Central, Inc., and GSM Group, failed to file an appropriate answer to the complaint. Upon a charge filed by International Association of EMTs and Paramedics (IAEP), SEIU Local 5000 (the Union) on July 10, 2017,¹ the General Counsel issued a complaint and notice of hearing on August 18, alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). Copies of the charge and the complaint were properly served on the Respondent by certified mail and by personal service. The Respondent did not file an answer to the original complaint within the 14-day time period set forth in Section 102.20 of the Board’s Rules and Regulations. On October 18, the Region notified the Respondent that it had failed to file an answer to the complaint by the specified deadline and that, unless the Respondent filed an appropriate answer by October 25, a Motion for Default Judgment would be filed. By letter dated October 24, the Respondent, acting pro se, denied that it had violated the Act.²

On November 7, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On November 14, the Board issued an order transferring the proceeding from the Region to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response to the Motion for Default Judgment or to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ All dates refer to 2017 unless otherwise indicated.

² No notice of appearance has been filed on behalf of the Respondent.

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that a respondent “must specifically admit, deny, or explain each of the facts alleged in the complaint, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial.” It also 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. The complaint here alleges, at paragraph VI (a), that

[s]ince about June 28, 2017, the Union has requested orally and in writing that Respondent furnish the Union with the following information: “An audited and certified true copy of any and all financial statements as it pertains to Collective Bargaining Unit members employed by Prompt Medical Transportation, Inc. d/b/a Prompt Ambulance Service.”

The complaint further alleges, at paragraph VI (b), that the information requested by the Union is necessary for and relevant to the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit, and alleges at paragraph VI (c) that “[s]ince about June 28, 2017,” the Respondent has “failed and refused to furnish the Union with the information requested by it as described above in paragraph VI (a).”

Complaint paragraph VII alleges that, by this conduct, the “Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5).”

The Respondent submitted its October 24 letter to the Region via electronic filing and email. The text stated in full:

Re: Prompt Medical Transportation d/b/a Prompt Ambulance Service, Prompt Central, Inc. and GSM Group, Case No. 13-CA-202127

This letter constitutes the response of Prompt Medical Transportation d/b/a Prompt Ambulance Service, Inc. (“the Company” or “Prompt”) to the allegations in the above-referenced Charge filed by the International Association of EMTs and Paramedics, SEIU Local 5000 (“the Union”) and to the request for evidence contained in your October 18, 2017 letter.

The Company denies that it has violated the National Labor Relations Act (“NLRA” or “the Act”).]

I. ARGUMENT

During a recent impact bargaining session on August 9, 2017, there was a discussion between the mediators and management for Prompt for releasing financial statements. It was agreed a mutually agreeable statement would be drafted and the union would have access to financial statements.

The union was presented with such a statement on September 21[], 2017.

The next scheduled bargaining session was October 3, 2017. At that meeting the union said they agreed to not look at financial statements as long as we had a severance package to present. We had never indicated to the mediators or the union that such a severance package was possible. The union left after only being on site less than two hours. There was no mention from them or the mediators on proceeding with going over financial statements.

II. CONCLUSION

Prompt has not failed to bargain with the Union. There is no substance or merit to the allegations of the Charge.

If you require any other information regarding Prompt's position in this matter, please let me know. We will offer our full cooperation to the Board to help you resolve this matter as expeditiously as possible.

We would like the opportunity to discuss any questions you might still have regarding this matter. We can be reached at the number that appears below.

In his motion for default judgment, the General Counsel asserts that the Respondent's October 24 letter is not a sufficient answer to the complaint because it "fail[s] to specifically admit, deny, or explain each of the facts alleged in the complaint or whether Respondent was without knowledge, as required by Section 102.20" of the Board's Rules and Regulations, and because the "Respondent has simply attempted to argue that the charge has no merit by stating facts not yet in evidence." The General Counsel also asserts that the Respondent's October 24 letter "fails by form," arguing that the letter does not follow the Board's E-Filing rules because it is "not a pdf file" and "was only electronically filed and electronically mailed" to Region 13. Finally, the General Counsel asserts that the Respondent failed to comply with Section 102.21 of the Board's Rules and Regula-

tions because the "Respondent did not serve a copy of its October 24, 2017, letter on the Union."

Analysis

We recognize that the Respondent does not appear to have legal representation in this proceeding. In determining whether to grant a Motion for Default Judgment on the basis of a respondent's failure to file a sufficient answer, the Board typically shows "some leniency toward respondents who proceed without benefit of counsel." *Clearwater Sprinkler System*, 340 NLRB 435, 435 (2003). Indeed, "the Board will generally not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer, which can reasonably be construed as denying the substance of the complaint allegations." *Id.* (citation omitted); see also *Carpentry Contractors*, 314 NLRB 824, 825 (1994).³

Having duly considered this matter, we find that, given the Respondent's pro se status, default judgment is not appropriate here. The Respondent's timely filed October 24 letter effectively denies complaint paragraph VI (c), which contains the operative facts of the alleged unfair labor practice relating to the Union's information request. The letter expressly denies the 8(a)(5) and (1) refusal-to-bargain allegation in complaint paragraph VII, insofar as the letter asserts that "Prompt has not failed to bargain with the Union." Finally, the letter provides what is essentially an affirmative defense: that the Respondent engaged with mediators about the release of financial information, that the Respondent "agreed a mutually agreeable statement would be drafted and the union would have access to financial statements," and that the "union was presented with such a statement."

³ In *Carpentry Contractors*, the complaint alleged that the respondent had failed to pay wages as required by the union contract and failed to make fringe-benefit contributions. In letters sent pro se to the Region, the respondent asserted that it had "[paid] employees wages according [to] their job sites" and that it had paid "some fringes" but was late on others. *Id.* at 824. The Board found that these letters constituted a sufficient answer as they "appear[ed] to be denials of the complaint allegation" and "attempt[ed] to provide an explanation for the Respondent's conduct." *Id.* at 825. Accord *Sam Kiva Management*, 329 NLRB 387, 387 (1999) (finding pro se respondent's letter stating that parties were currently bargaining to be a sufficient answer where the complaint alleged a refusal-to-bargain with the newly certified union). Cf. *LBE, Inc.*, 356 NLRB 542, 542-543 (2011) (granting default judgment where pro se respondent's claim that it had provided requested information to the NLRB did not answer allegation that it failed to provide the information to the union, and where the respondent's assertion—"the allegation is unfounded"—referred to conduct not alleged in the complaint); *Clearwater Sprinkler System*, supra at 435-436 (granting default judgment where the respondent's answer, asserting that it was bargaining in good faith as of December 2002, failed to address the complaint's 8(a)(1), (3), and (5) allegations, including the allegation that the respondent had been failing to bargain since June 2002).

In our view, the Respondent's letter can reasonably be construed as a denial of the substance of the complaint's allegation and as an affirmative identification of material facts in dispute, such as whether the parties reached an agreement with regard to the scope of the Respondent's required response to the information request and whether the Respondent provided a responsive document in accord with that agreement.

Although the Respondent's letter does not respond to each and every allegation in the complaint and is not in a form that comports with the Board's Rules and Regulations, we find that it adequately denies the unfair labor practice allegation. All other complaint allegations, including single-employer status, jurisdiction, agency, service, and the Union's role as the exclusive collective-bargaining representative of a unit of the Respondent's employees, are deemed admitted.⁴ See Section 102.20 of the Board's Rules and Regulations. Further, because the Respondent's letter was filed without benefit of counsel, we will not preclude a hearing on the merits simply because of the Respondent's failure to comply with all our procedural rules.⁵

⁴ Cf. *Dunbinclipped Inc.*, 339 NLRB 1104, 1105 (2003) (finding answer insufficient where respondent's blanket denial of all complaint allegations left it unclear whether "the General Counsel would be needlessly put to the proof on such matters as service of the charge, jurisdiction, and agency").

⁵ Although it does not appear that the Respondent's letter was served on the Charging Party as required by Sec. 102.21 of the Board's Rules and Regulations, we note the pro se basis on which the Respondent was proceeding. See *Dismantlement Consultants*, 312 NLRB 650, 651 fn. 6 (1993) (citing *Acme Building Maintenance*, 307 NLRB 358,

Accordingly, we deny the General Counsel's Motion for Default Judgment.

ORDER

IT IS ORDERED that the General Counsel's motion for default judgment is denied and the proceeding is remanded to the Regional Director for Region 13 for further appropriate action.

Dated, Washington, D.C. March 29, 2018

Marvin E. Kaplan, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

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359 fn. 6 (1992)); cf. *Active Metal Mfg.*, 316 NLRB 974, 974-975 (1995) (pro se respondent's timely-filed answer rejected where respondent failed to serve charging party or its counsel despite repeated efforts by the region to apprise respondent of its obligation under the Board's Rules). Additionally, the Respondent's failure to file its letter as a "pdf" file is not grounds for granting the General Counsel's motion for default judgment.