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**Able Building Maintenance and Service Employees International Union, Local 105.** Case 27–CA–168632

April 20, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. For the reasons explained below, we grant the General Counsel’s motion in part.

The Respondent provides maintenance services to various commercial office buildings in Denver, Colorado, and has been party to a collective-bargaining agreement with Service Employees International Union, Local 105 (the Union) since at least 2012. In July 2015, the Union requested to conduct a payroll review of the Respondent’s union and nonunion employees in the Denver metropolitan area, as permitted by the parties’ collective-bargaining agreement. Following its usual practice, the Union intended to perform an “initial review” based on a sampling of employees; if that review showed a sufficient number of errors, the Union would proceed to a full review. The Respondent agreed and provided the Union with an assortment of payroll records.

The initial review uncovered a number of errors and issues related to wages, overtime, and dues deduction. Accordingly, on October 16, 2015, the Union informed the Respondent that it intended to proceed with the full review. To that end, the Union requested that the Respondent furnish or allow the Union access to the following information, from September 2014 onward: (a) full payroll reports that include, for all employees, name, unique identifier, job title, union membership status, wage rate, hours worked, location(s) worked, overtime rate, overtime worked, hire date, and dues paid; and (b) building lists of all union and nonunion buildings in the Denver metropolitan area, as designated by the parties’ collective-bargaining agreement, with reports of additions and losses of buildings within the same period, and addresses for all buildings.

In November 2015, at the Respondent’s request, the Union provided documents showing the errors and issues uncovered by the initial review. Thereafter, the Union received no further response. Accordingly, on January 28, 2016, the Union filed an unfair labor practice charge alleging that the Respondent had violated Section 8(a)(5) and (1) of the Act by failing to provide the information

described above, which was relevant and necessary to the Union’s fulfillment of its collective-bargaining duties.

On June 29, 2016, the Regional Director for Region 27 approved an informal settlement agreement between the parties (the Agreement), pursuant to which the Respondent agreed to furnish the Union with the requested information and to post a Notice to Employees. The 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.

As set forth in the General Counsel’s Motion for Default Judgment, the Respondent fully complied with the Agreement’s notice-posting requirement. The Respondent also provided some information to the Union, but none of it was responsive to the Union’s request. Specifically, in July 2016 the Respondent started providing monthly dues reports, as required by the parties’ recently

renewed collective-bargaining agreement, and in August the Respondent furnished then-current lists of employees and of union and nonunion buildings. Those materials, however, did not cover the requested period (September 2014 to October 16, 2015) and thus did not satisfy the Union's request. Moreover, the dues reports did not contain sufficient information to determine whether the Respondent was paying the correct wages.

On September 14, 2016, the General Counsel issued a Complaint Based on Breach of Affirmative Provisions of Settlement Agreement, which alleged that the Respondent had violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the requested information to the Union. Thereafter, on December 5, 2016, the General Counsel filed the present Motion to Transfer Case to the Board and for Default Judgment. On December 6, 2016, 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 an opposition to the General Counsel's motion, and the General Counsel filed a response.

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

#### Ruling on Motion for Default Judgment

In its opposition dated December 20, 2016, the Respondent contends that, on that same day, it provided the Union with a list of union and nonunion buildings and payroll reports, all for the time period from September 2014 to October 2015. The Respondent submits that it has thus fully complied with the Agreement, and that the General Counsel's motion for default judgment is moot.

In a response dated January 19, 2017, the General Counsel acknowledges that the Respondent's list of union and nonunion buildings satisfies the relevant portion of the Union's information request. By contrast, the General Counsel asserts that what the Respondent describes as "payroll reports" is actually a large, company-prepared spreadsheet that does not include any actual payroll records (e.g., an employee list, copies of actual pay stubs, and other records extracted from the Respondent's payroll system) such as were provided when the Union conducted its initial review, and which the Union logically expected to receive for the full review. The General Counsel contends that the Respondent's spreadsheet is deficient in several ways. First, the lack of source documents means there is no way for the Union to substantiate the quality of the information provided. Second, and for the same reason, the Union cannot evaluate whether the spreadsheet information is complete. And third, the information is protected in a way that prevents the Union from searching, sorting, or manipulating the 188-page document as necessary to complete the pay-

roll-review process. The General Counsel also notes that the spreadsheet does not include any information regarding employees' work locations, which was part of the Union's request.

Under the parties' Agreement, the only issue the Respondent may raise in this proceeding is "whether it defaulted on the terms of this Settlement Agreement." Although the Respondent claims to have fully complied with that Agreement, we find that the General Counsel has shown that the information the Respondent provided does not satisfy the Union's request. Indeed, with respect to the requested payroll records, the Respondent itself has not disputed any of the deficiencies identified by the General Counsel. We observe, moreover, that the Respondent plainly was aware of the types of documents required for a full payroll review, as the Respondent had provided those source materials for the Union's initial review. Accordingly, in light of the General Counsel's undisputed assertion that the Respondent has not provided all of the requested payroll records information and thus has not fully complied with the terms of the Agreement, we find that the Respondent has failed to raise any material issue of fact warranting a hearing.<sup>1</sup>

Accordingly, we grant the General Counsel's Motion for Default Judgment and find, pursuant to the noncompliance provisions of the Agreement set forth above, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish or allow the Union access to full payroll reports that include, for all employees, name, unique identifier, job title, union membership status, wage rate, hours worked, location(s) worked, overtime rate, overtime worked, hire date, and dues paid.<sup>2</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, a California corporation with a principal office and place of business in Englewood, Colorado, has been engaged in the business of providing maintenance services to a variety of businesses, including high-rise office buildings, banks, universities, and other facilities. During the calendar

<sup>1</sup> See, e.g., *Bristol Manor Health Care Center*, 360 NLRB 38, 39 (2013) (granting default judgment upon finding that respondent failed to refute specific allegations—made in reply to respondent's response to the Board's notice to show cause—that respondent breached settlement agreement because much of the information covered by the agreement remained outstanding despite last-minute submissions).

<sup>2</sup> The Agreement stipulates that, in case of breach by the Respondent, "[t]he Board may . . . find all allegations of the Complaint to be true." However, the General Counsel does not dispute that the Respondent satisfied the Union's request for a list of union and nonunion buildings. Therefore, with the exception of that particular item, we find all the remaining complaint allegations to be true.

year preceding the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Englewood facility goods valued in excess of \$50,000 directly from points outside the State of Colorado. 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:

Dan Jaster	-	Operations Manager
Viviana Mendoza	-	Human Resources Representative

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 employees working in buildings of more than 50,000 square feet in the following counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Jefferson and Douglas; excluding clerical employees, management employees, sales personnel, guards, and supervisors as defined in the National Labor Relations Act.

Since at least July 1, 2012, and at all material times, the 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 from July 1, 2012 through July 2, 2016.<sup>3</sup> At all times since at least July 1, 2012, the Union has been the exclusive collective-bargaining representative of the Unit based on Section 9(a) of the Act.

Since about October 16, 2015, the Union has requested that the Respondent furnish or allow the Union access to the following information:

(a) Full payroll reports that include, for all employees, name, unique identifier, job title, union membership status, wage rate, hours worked, location(s) worked,

overtime rate, overtime worked, hire date, and dues paid; and

(b) Building lists of all union and nonunion buildings in the Denver metropolitan area, as designated by the parties' collective-bargaining agreement, with reports of additions and losses of buildings within the same period, and addresses for all buildings.

The requested information is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of employees in the Unit.

Since about October 16, 2015, the Respondent has failed and refused to provide the Union with the information requested by it as described above in paragraph (a).<sup>4</sup>

## CONCLUSIONS OF LAW

By the conduct described above, 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)(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 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 settlement agreement approved by the Regional Director for Region 27 on June 29, 2016, by furnishing or allowing the Union access to full payroll reports that include, for all employees, name, unique identifier, job title, union membership status, wage rate, hours worked, location(s) worked, overtime rate, overtime worked, hire date, and dues paid, from September 2014 until October 16, 2015.

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 each unfair labor practice identified in the Notice to Employees." However, the General Counsel's Motion for Default Judgment does not seek such additional remedies and we will not include them *sua sponte*.<sup>5</sup>

<sup>3</sup> Although not alleged in the Complaint, an affidavit submitted by the Union's financial specialist states that the parties have entered into a successor collective-bargaining agreement, effective from July 2, 2016, until July 5, 2020. (Sanchez Aff. 1 ¶ 3.)

<sup>4</sup> The information described in paragraph (b) was provided to the Union on December 20, 2016. See fn. 2, *supra*.

<sup>5</sup> See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The General Counsel's Motion for Default Judgment specifically requests that the Board issue an order "requiring Respondent to comply with the unmet terms of the Settlement Agreement."

## ORDER

The National Labor Relations Board orders that the Respondent, Able Building Maintenance, Englewood, Colorado, its officers, agents, successors, and assigns, shall take the following affirmative actions necessary to effectuate the policies of the Act.

1. Furnish or allow the Union access in a timely manner to the information it requested on or about October 16, 2015, and which the Respondent has not already provided, specifically, full payroll reports that include, for all employees, name, unique identifier, job title, union membership status, wage rate, hours worked, location(s) worked, overtime rate, overtime worked, hire date, and dues paid, from September 2014 until October 16, 2015.

2. Within 21 days after service by the Region, file with the Regional Director for Region 27 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. April 20, 2018

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

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William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD