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**Arnold Walter Nursing and Rehabilitation Center
and 1199 Service Employees International Union,
United Healthcare Workers East.** Cases 22–
CA–180557 and 22–CA–186982

June 29, 2018

ORDER DENYING MOTION AND REMANDING

BY MEMBERS PEARCE, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge in Case 22–CA–180557 filed by 1199 Service Employees International Union, United Healthcare Workers East (the Union), on July 19, 2016, and a charge in Case 22–CA–186982 filed by the Union on October 25, 2016, the General Counsel issued the Order consolidating cases, consolidated complaint, and notice of hearing (consolidated complaint) on December 29, 2016, alleging that Arnold Walter Nursing and Rehabilitation Center (the Respondent) violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer on January 12, 2017.¹

Subsequently, the Respondent entered into a bilateral informal settlement agreement, which was approved by the Regional Director for Region 22 on March 3. The settlement agreement required, among other things, that the Respondent provide the Union with all of the relevant information it requested on April 28, 2016. It also required the Respondent, on request, to bargain in good faith with the Union about terms and conditions of employment for unit employees and, if an agreement is reached, to embody the understanding in a signed agreement.

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 reissue the Complaint previously issued on December 29, 2016. 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

¹ All subsequent dates are in 2017, unless otherwise noted.

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 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 July 20, the Region's compliance officer, by letter, notified the Respondent that it was not in compliance with the settlement agreement because the Region had not received the Respondent's certification that it had provided the Union with the requested information or bargained in good faith. The letter also advised the Respondent that the Region would file for default judgment unless it received the Respondent's certification that it had fully complied with the settlement agreement by August 3.

On February 15, 2018, the Regional Director issued a reissued order consolidating cases and consolidated complaint (reissued complaint), and, on February 16, 2018, the General Counsel filed a motion for default judgment with the Board. On February 20, 2018, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why the motion should not be granted. On March 6, 2018, the Respondent filed a response to the Notice to Show Cause, disputing the allegation that the settlement had been breached.²

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

Ruling on the Motion for Default Judgment

As stated above, the settlement agreement provides that, in case of breach by the Respondent, "the Regional Director will reissue the Complaint previously issued on December 29, 2016. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint." Here, however, the reissued complaint differs materially from the consolidated complaint because it includes post-settlement con-

² On April 26, 2018, the General Counsel filed a request for leave to submit a reply to the response with a reply brief attached. We do not pass on this request as it does not affect the disposition of the case.

duct that was not part of the original complaint.³ Although the legal theories of the allegations remain unchanged, the settlement agreement does not authorize the General Counsel to seek default judgment on the Respondent's post-settlement conduct as alleged in the reissued complaint.

We therefore deny the General Counsel's motion. We do so without prejudice to the General Counsel renewing the motion, if he so chooses, within 14 days from the date of this Decision and Order, and pursuant to a reissued complaint that complies with the terms of the settlement agreement.

³ For example, the December 29, 2016 consolidated complaint alleged that since "September 7, 2016 through and including December 2016," the Union requested bargaining with the Respondent, and that since September 7, 2016, the Respondent failed to bargain with the Union by refusing to schedule dates for bargaining. The reissued complaint, however, alleges that since June 20, 2017, the Union requested bargaining with the Respondent, and that since "June 20, 2017, and continuing to January 16, 2018," the Respondent failed to bargain with the Union by refusing to schedule dates for bargaining. In addition, the reissued complaint alleges, "[s]ince about June 20, 2017, and continuing to date, Respondent has failed and refused to fully comply with the settlement agreement . . . by refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees."

ORDER

IT IS ORDERED that the General Counsel's Motion for Default Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 22 for further appropriate action.

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

Mark Gaston Pearce, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD