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H.W. Weidco/Ren LLC d/b/a South Jersey Extended Care *and* United Food and Commercial Workers Union Local 152. Case 04–CA–213035

May 10, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that H.W. Weidco/Ren, LLC d/b/a South Jersey Extended Care (the Respondent) failed to file an answer to the complaint. Upon a charge and amended charges filed by the United Food and Commercial Workers Union Local 152 (the Union) on January 16 and 31 and February 2, 2018, the General Counsel issued a complaint on June 26, 2018, alleging that the Respondent violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On July 25, 2018, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on August 3, 2018, 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.

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

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations 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. In addition, the complaint affirmatively stated that unless an answer was received by July 10, 2018, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated July 11, 2018, advised the Respondent that unless an answer was received by July 18, 2018, a motion for default judgment would be filed. Nonetheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true. Nevertheless, as discussed below, we deny the General Counsel's motion for default judgment without prejudice to renewing his motion in the event that the complaint is amended and the Respondent again fails to file an answer.

The Complaint Allegations

At all material times, the Respondent, a New Jersey limited liability company, has operated a rehabilitation and long-term care nursing facility in Bridgeton, New Jersey (the facility).

During the year preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $100,000 and purchased and received at the facility goods valued in excess of $50,000 directly from points outside the State of New Jersey.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health-care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

At all material times, the following named individuals held the positions at the facility 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:

Joshua Rosenberg	Administrator
Marquise Williams	Dietary Director

About December 27, 2017, the Respondent, by Joshua Rosenberg, at a conference room at the facility, denied the request of its employee Rosalind Hickman to be represented by a union representative during an investigatory interview.

Rosalind Hickman had reasonable cause to believe that the interview described above would result in disciplinary action being taken against her.

About December 27, 2017, the Respondent, by Joshua Rosenberg and Marquise Williams, at a conference room at the facility, conducted the interview described above with Rosalind Hickman, even though the Respondent denied the employee's request for union representation described above.

Analysis

We decline to grant the General Counsel's Motion for Default Judgment. The complaint does not include an explicit allegation that the Union is the exclusive bargaining representative of the unit employees, a necessary element of a *Weingarten* violation. See, e.g., *Provider Services Holdings, LLC*, 356 NLRB 1434, 1435 (2011). Nor does the complaint allege that Hickman is a unit employee. Absent the allegation of those necessary facts, we cannot find, for the purposes of this proceeding, that the Respondent violated the Act by denying Hickman a union representative. See, e.g., *Cannon Valley Woodwork, Inc.,* 333

NLRB No. 97, slip op at 1 fn. 1 (2001) (denying default judgment to the extent 8(a)(5) complaint alleged a failure to bargain over decision to close plant, as "the bare assertions of the complaint do not support a cause of action given the Supreme Court's decision in *First National Maintenance*"); *Rio Piedras Mfg. Corp.,* 236 NLRB 1198, 1198 fn. 1 (1978) (denying default judgment to the extent complaint alleged 8(a)(3) plant closure since General Counsel had failed to allege "facts, not disputed by an answer, showing that Respondent was continuing operations at other facilities," as required by *Darlington*).

We note that the case cited by our colleague, *Artesia Ready Mix Concrete, Inc.*, 339 NLRB 1224, 1226 (2003), presents a different situation. In that case, the complaint successfully pled all the elements necessary for finding the violations alleged.

Nothing herein will require a hearing if, in the event the complaint is appropriately amended, the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation. In such circumstances, the General Counsel may renew the motion for default judgment with respect to the amended complaint allegations.

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 4 for further appropriate action.

Dated, Washington, D.C. May 10, 2019

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting.

I would grant the Motion for Default Judgment. Both Section 102.15 of the Board's Rules and Regulations and Board precedent make clear that a complaint need not plead and substantiate each and every evidentiary element of an alleged violation—it is enough under a basic "notice pleading" standard to state clearly the violation alleged. *Artesia Ready Mix Concrete, Inc.*, 339 NLRB 1224, 1226 (2003). Unlike in civil litigation, in an administrative proceeding such as this—where the filing of the complaint is preceded by the filing of an unfair labor practice charge by a third party and an administrative investigation—the respondent is already aware of the charges against it and has been given an opportunity to present its position. Id. at 1226–1227 (citing *Patrician Assisted Living Facility,* 339 NLRB 1153 (2003)). In these circumstances, default judgment can ordinarily be appropriate without implicating due process concerns so long as the complaint provides sufficient notice of the basis of the General Counsel's claim. Id. at 1227. Contrary to my colleagues' view, the complaint here certainly meets that standard and raises no significant due process concerns. The omitted allegations from the complaint—the Union's representative status and the relevant employee's inclusion in the bargaining unit—are all implicit in the related allegations and established by the second amended unfair labor practice charge, which the Region served on the Respondent. Thus, the Respondent was in no way compromised in its ability to answer the complaint. Because it failed to do so, default judgment is appropriate.

Dated, Washington, D.C. May 10, 2019

Lauren McFerran, Member

NATIONAL LABOR RELATIONS BOARD