Core Recoveries, LLC *and* Dzejlana Kostic. Case 09–CA–208361

May 28, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement (the Agreement). On October 20, 2017, the Charging Party filed an unfair labor practice charge alleging that Core Recoveries, LLC (the Respondent) violated Section 8(a)(1) of the Act. Subsequently, the parties executed the Agreement, which was approved by the Regional Director for Region 9 on June 28, 2018.[1]

Pursuant to the terms of the Agreement, the Respondent agreed to post a notice to employees (the Notice) at its facility in Louisville, Kentucky, and to "comply with all the terms and provisions of said Notice." Specifically, the Notice requires the Respondent to rescind a provision of its Non-Disclosure Agreement prohibiting employees from disclosing personnel/payroll information, as well as a provision of its Technology and Information Security Policy restricting employee communications "contrary to [the Respondent's] policy or business interests." The Notice further requires the Respondent to "furnish [employees] with inserts for [its] current Non-Disclosure Agreement and Technology and Information Security Policy that (1) advise [employees] that the provisions [at issue] have been rescinded, or (2) provide language of lawful rules, or publish and distribute revised Non-Disclosure Agreement and Information Security Policy that (a) do not contain the provisions [at issue] or (b) provide language of lawful rules."

The Agreement also contains the following noncompliance provision:

> The Charged Party agrees that in case of noncompliance 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 . . . . 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.

Subsequently, an unannounced compliance check by the Region revealed that the Respondent did not have Notices posted in break rooms as mandated by the Agreement. In addition, the Respondent informed the Region that it had verbally communicated to employees that the unlawful policies had been rescinded and that it would publish new policies at a later date. By email dated August 30, the Region notified the Respondent that its actions did not comply with the Agreement's requirement to either furnish employees with written inserts explaining the rescission, or provide them with language of new, lawful policies, and that it had failed to comply with the requirement of posting Notices in break rooms. By letter and email dated September 25, the Region notified the Respondent that it was not in compliance with the Agreement, that the Respondent had 14 days to cure its noncompliance, and that a complaint would issue and a motion for default judgment would be filed if the Respondent did not comply. The Respondent failed to cure its noncompliance. Accordingly, on November 14, pursuant to the noncompliance provision set forth above, the Regional Director issued a Complaint Based on Breach of Affirmative Provisions of Settlement Agreement.

On December 21, the General Counsel filed with the Board a Motion for Default Judgment (the Motion), together with a supporting memorandum, requesting "all relief that is just and proper to remedy the unfair labor practices found." On December 28, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be grant-

[1] All subsequent dates are in 2018 unless otherwise indicated.

ed. The Respondent did not file a 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

According to the Motion's uncontroverted allegations, the Respondent has failed to comply with the terms of the Agreement. Consequently, pursuant to the Agreement's noncompliance provision, we find that all of the allegations in the Complaint are true.[2] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Louisville, Kentucky, and has been engaged in the service of a third-party collection agency. In conducting its business operations during the 12-month period ending November 1, the Respondent performed services valued in excess of $50,000 in states other than the Commonwealth of Kentucky. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Matthew Korn held the position of the Respondent's chief operations officer, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, the Respondent has maintained a Non-Disclosure Agreement that prohibits employees from disclosing personnel/payroll information.

At all material times, the Respondent has maintained a Technology and Information Security Policy that restricts employee communications "contrary to [the Employer's] policy or business interest."

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[2] See *U-Bee, Ltd*., 315 NLRB 667, 668 (1994). Accordingly, we do not apply the analysis set forth in *Boeing Co.*, 365 NLRB No. 154 (2017), to the uncontested complaint allegations.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, and in accordance with the General Counsel's request for "all relief that is just and proper to remedy the unfair labor practices found," we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) of the Act by maintaining policies that prohibit employees from disclosing personnel/payroll information and restrict employee communications "contrary to [the Employer's] policy or business interests," we shall order the Respondent to rescind those provisions of its Non-Disclosure Agreement and Technology and Information Security Policy to the extent it has not already done so. Pursuant to *Guardsmark, LLC*, 344 NLRB 809, 812 fn. 8 (2005), enfd. in part 475 F.3d 369 (D.C. Cir. 2007), the Respondent may comply with our order of rescission by rescinding the unlawful provisions and republishing its policies without the unlawful rules. We recognize, however, as we did in *Guardsmark*, that republishing the policies could be costly. Accordingly, until it republishes the policies without the unlawful provisions, the Respondent may supply the employees either with inserts to the policies stating that the unlawful rules have been rescinded or with new and lawfully worded rules on adhesive backing that will correct or cover the unlawful rules. Any copies of the policies that include the unlawful rules must include the inserts before being distributed to employees. See, e.g., *Triple Play Sports Bar & Grille*, 361 NLRB 308, 315 (2014), enfd. mem. sub nom. *Three D, LLC v. NLRB*, 629 F. Appx. 33 (2d Cir. 2015). We shall also order the Respondent to notify the employees in writing that it has rescinded the unlawful work rules. Finally, we shall require the Respondent to post an appropriate notice to employees.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Core Recoveries, LLC, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a Non-Disclosure Agreement that prohibits employees from disclosing personnel/payroll information.

[3] The Notice attached to the parties' Agreement includes a provision requiring the Respondent to stop prohibiting employees who have access to its email system from using that system during nonworking time to engage in protected conduct. However, that language does not correspond to any allegation in the complaint. Accordingly, the notice below does not include that language.

(b) Maintaining a Technology and Information Security Policy that restricts employee communications "contrary to [the Employer's] policy or business interests."

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent it has not already done so, rescind the provision of its Non-Disclosure Agreement that prohibits employees from disclosing personnel/payroll information.

(b) To the extent it has not already done so, rescind the provision of its Technology and Information Security Policy that restricts employee communications "contrary to [the Respondent's] policy or business interests."

(c) Revise its policies to delete the above unlawful rules and advise employees in writing that it has done so and that the unlawful rules will no longer be enforced.

(d) Furnish employees with inserts for its current Non-Disclosure Agreement and Technology and Information Security Policy that (1) advise employees that the provisions described above have been rescinded, or (2) provide language of lawful rules, or publish and distribute revised versions of its Non-Disclosure Agreement and Technology and Information Security Policy that (a) do not contain the provisions described above, or (b) provide language of lawful rules.

(e) Within 14 days after service by the Region, post at its facility in Louisville, Kentucky, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 20, 2017.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 9 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. May 28, 2019

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John F. Ring, Chairman

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Lauren McFerran, Member

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William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain in our Non-Disclosure Agreement any rule prohibiting you from disclosing personnel/payroll information.

WE WILL NOT maintain in our Technology and Information Security Policy restrictions on your communications "contrary to [the Employer's] policy or business interests."

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, to the extent we have not already done so, rescind the provisions of our Non-Disclosure Agreement and Technology and Information Security Policy described above.

WE WILL revise our policies to delete the above unlawful rules, and WE WILL advise you in writing that we have done so and that the unlawful rules will no longer be enforced.

WE WILL furnish you with inserts for our current Non-Disclosure Agreement and Technology and Information Security Policy that (1) advise you that the provisions described above have been rescinded, or (2) provide language of lawful rules, or publish and distribute a revised Non-Disclosure Agreement and Technology and Information Security Policy that (a) do not contain the provisions described above, or (b) provide language of lawful rules.

CORE RECOVERIES, LLC

The Board's decision can be found at www.nlrb.gov/case/09-CA-208361 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.