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**First Student and Janeen Wallington.** Case  
14--CA--225201

June 14, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND KAPLAN

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Janeen Wallington filed a charge and an amended charge on August 6 and September 18, 2018,<sup>1</sup> respectively, alleging that the Respondent violated Section 8(a)(3) and (1) of the Act when it discharged her in response to a request from Teamsters Local 610 (the Union).

Subsequently, the Respondent executed a bilateral informal settlement agreement (the Agreement), which the Regional Director for Region 14 approved on October 2. Among other things, the Agreement required the Respondent to post a Notice to Employees and to comply with all provisions in the Notice. The Notice and the Agreement required that the Respondent, among other things, jointly and severally with the Union make the Charging Party whole for any loss of earnings and other benefits resulting from her discharge.<sup>2</sup> The Notice also required that the Respondent remove from its files all references to her discharge and notify her in writing that this has been done and that the discharge will not be used against her in any way. Finally, the Agreement required the Respondent to notify the Regional Director in writing of what steps it has taken to comply with the Agreement. 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.

By letter dated October 5, the Region's compliance officer sent the Respondent's counsel a copy of the conformed settlement agreement, with a cover letter explaining the remedial actions the Respondent was required to take to comply. On October 29 and November 8, the compliance officer inquired about the status of the Respondent's compliance with the terms of the Agreement by email with the Respondent's counsel. Thereafter, by letter dated November 29, the compliance officer notified the Respondent's counsel that the Respondent had failed to comply with the terms of the Agreement and that unless compliance was achieved within 14 days, the Regional Director would issue a complaint and possibly file a motion for default judgment with the Board. Despite additional communications between the compliance officer and the Respondent's counsel through January 11, 2019, the Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provision of the Agreement, on January 17, 2019, the Regional Director issued a Complaint Based on Breach of Affirmative Provisions of Settlement Agreement. On February 1, 2019, the General Counsel filed a Motion for Default Judgment with the Board, requesting that the Board issue a Decision and Order against the Respondent containing findings of fact and conclusions of law based on the allegations in the Complaint, and that the Board provide "a full remedy for each unfair labor practice

<sup>1</sup> All dates are in 2018 unless otherwise indicated.

<sup>2</sup> The Agreement indicates that the Respondent offered Wallington reinstatement on September 13.

alleged in the Complaint.” On February 14, 2019, 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 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.<sup>3</sup>

#### Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the Agreement by not providing the Region with proof of its compliance, including by failing to notify the Region (1) when it posted copies of the Notice to Employees, (2) that it kept the Notice posted for 60 consecutive days, (3) that it expunged Wallington’s discharge from its records, and (4) that it notified her in writing that it would not use the discharge against her in any way. Consequently, pursuant to the noncompliance provision of the Agreement set forth above, we find that all of the allegations in the complaint are true.<sup>4</sup> 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, First Student, has been a corporation with an office and place of business located in St. Charles, Missouri, and has been engaged in the business of furnishing bus services, including transportation services for school children.

During the 12-month period ending December 31, 2018, the Respondent, in conducting its operations described above, purchased and received at its St. Charles, Missouri facility goods valued in excess of \$50,000 directly from points outside the State of Missouri.

In conducting its operations during the same 12-month period, the Respondent derived gross revenues in excess of \$250,000.

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 Teamsters Local 610 is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICE

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:

Stephen Jones	—	Manager
Kristine Box	—	Safety Manager

About July 24, 2018, the Union requested that the Respondent discharge its employee Janeen Wallington (the Charging Party).

The Union engaged in the conduct described above because the Charging Party failed to pay dues when she was under no obligation to do so and notwithstanding the Union’s failure to properly notify the Charging Party of her obligation to pay dues.

About July 31, 2018, pursuant to the Union’s request, the Respondent discharged the Charging Party.

By engaging in the conduct described above, the Respondent has encouraged its employees to join the Union.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby encouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. The Respondent’s unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, and in accordance with the General Counsel’s request for a “full remedy” for the violation 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)(3) and (1) of the Act by terminating the employment of Janeen Wallington, we shall order the Respondent, if it has not already done so, to offer Wallington full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges she previously enjoyed. In addition, we shall order the Respondent, if it has not already been done, to make Wallington whole for any loss of earnings and other benefits suffered as a result of the unlawful action against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as

<sup>3</sup> Member Emanuel is recused and took no part in the consideration of this case.

<sup>4</sup> We note, however, that the complaint erroneously alleges that the Region approved the Agreement on October 10, rather than on October

2, 2018, as indicated by the signature page of the Agreement and the Motion for Default Judgment.

prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part, 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Wallington for any search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

The Respondent additionally shall be ordered to remove from its files any references to Wallington's discharge and to notify her in writing that this has been done and that the discharge will not be used against her in any way. We shall further order the Respondent, if it has not already been done, to compensate Wallington for any adverse tax consequences of receiving a lump-sum backpay award and to file with the Regional Director for Region 14 a report allocating the backpay award to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

#### ORDER

The National Labor Relations Board orders that the Respondent, First Student, St. Charles, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Encouraging or discouraging membership in Teamsters Local 610 by discharging or otherwise discriminating against employees in response to a union demand when it has reasonable grounds for believing the demand is unlawful.

(b) 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) Within 14 days from the date of this Order, and to the extent the Respondent has not already done so, offer Janeen Wallington full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) To the extent it has not already been done, make Janeen Wallington whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section

of this decision, plus reasonable search-for-work and interim employment expenses.

(c) Compensate Janeen Wallington for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Janeen Wallington, and within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in St. Charles, Missouri, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, 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 July 31, 2018.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 14 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.

<sup>5</sup> 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

Dated, Washington, D.C. June 14, 2019

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John F. Ring, Chairman

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Lauren McFerran, Member

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Marvin E. Kaplan, 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 encourage or discourage your membership in Teamsters Local 610 by discharging or otherwise discriminating against you in response to a union demand when we have reasonable grounds for believing that the demand is unlawful.

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, within 14 days from the date of the Board's Order, offer Janeen Wallington immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges enjoyed, to the extent it has not already been done.

WE WILL make Janeen Wallington whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest, to the extent it has not already been done, and WE WILL also make Janeen Wallington whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Janeen Wallington for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days of the date of the Board's Order, remove from our files any reference to the unlawful discharge of Janeen Wallington, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

FIRST STUDENT

The Board's decision can be found at [www.nlr.gov/case/14-CA-225201](http://www.nlr.gov/case/14-CA-225201) 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.

