

NATIONAL LABOR RELATIONS BOARD

v.

ABLE BUILDING MAINTENANCE
AND ITS SUCCESSOR EMPIRE FACILITY SOLUTIONS, LLC

ORDER

A. Respondent Able Building Maintenance, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing to recall employees from layoff in response to their protected concerted activities and to discourage other employees from engaging in these or other protected concerted activities.
 - (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) Jointly and severally with Respondent Empire, and to the extent the Respondents have not already done so, make Mercedes Escate whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to recall her between September 27, 2016, and November 20, 2017, in the manner set forth in the remedy section of this decision, plus reasonable search-for-work and interim employment expenses.
 - (b) Jointly and severally with Respondent Empire, and to the extent the Respondents have not already done so, compensate Mercedes Escate for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, 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.
 - (c) 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.

- (d) Within 14 days after service by the Region, mail copies of the attached notice marked "Appendix A" to the extent it has not done so. Copies of the notice in English and in Spanish, on forms provided by the Regional Director for Region 22, after being signed by Respondent Able's authorized representative, shall be mailed by Respondent Able to the last known address of all employees who worked for Respondent Able at the Lyndhurst facility during the period of August 22, 2016, to August 13, 2017.
- (e) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Able has taken to comply.

B. Respondent Empire Facility Solutions, LLC, Brooklyn, New York, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
 - (a) Failing to recall employees from layoff in response to their protected concerted activities.
 - (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) Jointly and severally with Respondent Able, and to the extent the Respondents have not already done so, make Mercedes Escate whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to recall her between September 27, 2016, and November 20, 2017, in the manner set forth in the remedy section of this decision, plus reasonable search-for-work and interim employment expenses.
 - (b) Jointly and severally with Respondent Able, and to the extent the Respondents have not already done so, compensate Mercedes Escate for the adverse tax consequences, if any, of receiving a lump-sum backpay

award, and file with the Regional Director for Region 22, 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.

- (c) 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.
- (d) Within 14 days after service by the Region, and to the extent that Respondent Empire has not already done so, post at the building located at 9 Polito Avenue, Lyndhurst, New Jersey, copies of the attached notice marked "Appendix B." Copies of the notice in English and in Spanish, on forms provided by the Regional Director for Region 22, after being signed by Respondent Empire's authorized representative, shall be posted by Respondent Empire 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 Respondent Empire customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent Empire to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent Empire has gone out of business or closed the facility involved in these proceedings, Respondent Empire shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at any time since August 14, 2017.
- (e) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Empire has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN 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 fail to recall you from layoff in response to your protected concerted activities.

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, jointly and severally with Empire Facility Solutions, LLC, and to the extent we have not already done so, make Mercedes Escate whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to recall her from layoff between September 27, 2016, and November 20, 2017, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL, jointly and severally with Empire Facility Solutions, LLC, and to the extent we have not already done so, compensate Mercedes Escate for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 22, 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.

ABLE BUILDING MAINTENANCE

THE BOARD'S DECISION CAN BE FOUND AT WWW.NLRB.GOV/CASE/22-CA-194688 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.



APPENDIX B

NOTICE TO EMPLOYEES

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EMPIRE FACILITY SOLUTIONS, LLC

The Board's decision can be found at www.nlr.gov/case/22-CA-194688 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.

