THC-Seattle, LLC d/b/a Kindred Hospital Seattle—First Hill *and* SEIU Healthcare 1199 NW. Case 19–CA–227218

July 31, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

The General Counsel seeks a default judgment in this case on the ground that THC-Seattle, LLC d/b/a Kindred Hospital Seattle—First Hill (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by SEIU Healthcare 1199 NW (the Union) on September 11, 2018, the General Counsel issued a complaint on December 28, 2018, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On February 5, 2019, the General Counsel filed a Motion for Default Judgment with the Board. 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 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 January 11, 2019, 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 January 17, 2019, notified the Respondent that unless an answer was received by January 24, 2019, a motion for default judgment would be filed. Nevertheless, 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, and 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 corporation with an office and place of business located in Seattle, Washington, and has been engaged in the business of operating an acute care hospital.

In conducting its operations during the preceding 12 months, the Respondent derived gross revenue in excess of $250,000 and, during the same period, purchased and received goods valued in in excess of $50,000 directly from suppliers located outside the State of Washington.

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 the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individual held the position set forth opposite his name and has been an agent of the Respondent within the meaning of Section 2(13) of the Act:

Doug McCoy – Chief Executive Officer

The following employees of the Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, regular part-time and per diem service and technical employees in the following classifications: Certified Nursing Assistant, Food Services Aide Handler, Cook, Environmental Services Aide, Licensed Practical Nurse, Materials Management Clerk, Monitor Technician, Phlebotomist, Radiology Technologist, Respiratory Care Practitioner, and Unit Secretary; excluding all other employees, confidential employees, professional employees, employees of the Sub Acute unit, managers, guards, and supervisors as defined by the Act.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from November 17, 2017, to October 30, 2020.

At all material times, the Union has been the exclusive collective-bargaining representative of the Unit employees within the meaning of Section 9(a) of the Act.

Since about August 10, 2018, the Union has requested in writing that the Respondent furnish it with the following items of information related to a filed grievance concerning sexual harassment

(1) All written communications between management regarding the complaint of sexual harassment and the subsequent investigation;

(2) All written communications to complainant regarding the complaint and following investigation;

(3) A list of people interviewed, any and all statements provided, and all notes taken during the interview process, including the identity of who conducted the interviews;

(4) A copy of all investigation notes regarding the complaint;

(5) A written conclusion of the investigation and all steps taken following the investigation;

(6) A copy of policies regarding sexual harassment and workplace violence;

(7) Training dates and outlines of the trainings provided for the management team on how to handle instances of sexual harassment; and

(8) A list of any and all allegations of sexual harassment in the past 2 years including the steps taken following those investigations.

The Union renewed the request in writing on August 22 and 28, 2018.

On August 28, 2018, the Union also requested in writing the personnel files of two specified employees.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

Since about August 10 and 28, 2018, the Respondent has failed and refused to furnish the information requested by the Union as described above.[1]

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect 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, we shall order it 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)(5) and (1) by failing and refusing to furnish the Union with certain information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on about August 10 and 28, 2018.

ORDER

The National Labor Relations Board orders that the Respondent, THC-Seattle, LLC d/b/a Kindred Hospital Seattle—First Hill, Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with SEIU Healthcare 1199 NW by failing and refusing to furnish it with requested information that is necessary and relevant to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(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) Furnish to the Union in a timely manner the information it requested on August 10 and 28, 2018.

(b) Within 14 days after service by the Region, post at its facility in Seattle, Washington, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 19, 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

[1] To the extent the request for all statements of people interviewed encompasses witness statements, Chairman Ring and Member Kaplan note that the concerns regarding the duty to disclose witness statements articulated by then-Members Miscimarra and Johnson in their dissenting opinions in *Piedmont Gardens*, 362 NLRB 1135, 1141–1151 (2015), enfd. on other grounds 858 F.3d 612 (D.C. Cir. 2017), warrant careful consideration in a future appropriate case. However, in the absence of any answer to the complaint or response to the Board's Notice to Show Cause, they concur in finding that the Respondent unlawfully failed to provide that information.

[2] 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."

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 August 10, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 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. July 31, 2019

John F. Ring, Chairman

Lauren McFerran, Member

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 refuse to bargain collectively with SEIU Healthcare 1199 NW by failing and refusing to furnish it with requested information that is necessary and relevant to the performance of its functions as the collective-bargaining representative of our unit employees.

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 furnish to the Union in a timely manner the information it requested on August 10 and 28, 2018.

THC-SEATTLE, LLC D/B/A KINDRED HOSPITAL SEATTLE – FIRST HILL

The Board's decision can be found at www.nlrb.gov/case/19-CA-227218 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.