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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

September 24, 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 amended 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 initially 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.

The Board denied the General Counsel’s Motion for Default Judgment on May 10, 2019, because the complaint did not include certain factual allegations necessary for finding the alleged violation.¹ *H.W. Weidco/Ren LLC d/b/a S. Jersey Extended Care*, 367 NLRB No. 126 (2019). Nevertheless, the Board found that “[n]othing 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.” *Id.* slip op. at 2.

On May 20, 2019, the General Counsel issued an amended complaint consistent with the Board’s direction. The Respondent again failed to file an answer. On July 18, 2019, the General Counsel filed with the Board a Second Motion for Default Judgment. On July 24, 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, to which the Respondent failed to respond.

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.

¹ As explained in her dissent in *H.W. Weidco/Ren LLC d/b/a S. Jersey Extended Care*, 367 NLRB No. 126, slip op. 3 (2019), Member McFerran would have granted the General Counsel’s motion for default

In addition, the amended complaint affirmatively stated that unless an answer was received by June 3, 2019, the Board may find, pursuant to a motion for default judgment, that the allegations in the amended complaint are true. Further, the undisputed allegations in the General Counsel’s motion disclose that the Region, by letter dated July 8, 2019, advised the Respondent that unless an answer was received by July 15, 2019, 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 amended complaint to be admitted as true, and we grant the General Counsel’s Second Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

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 amended 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.

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 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.

II. ALLEGED UNFAIR LABOR PRACTICES

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

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

judgment in the first instance, because her view is that the complaint sufficiently stated the alleged violation as required under Sec. 102.15 of the Board’s Rules and Regulations and raised no due process concerns.

All full-time and part-time janitors, dietary and kitchen employees, nurse's aides, orderlies, laundry, housekeeping employees, cooks, and restorative aides employed at the company's nursing home in Bridgeton, New Jersey, excluding all business office clerical employees, technical employees, registered nurses, confidential employees, managerial employees, and professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

Since about 1993, and 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 was effective from April 15, 2014, through April 15, 2018, and was extended by agreement of the parties to May 31, 2019.

At all material times since at least 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The following events occurred, giving rise to this proceeding.

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.

At all material times, including on December 27, 2017, Rosalind Hickman was in the unit.

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.

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.

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.

ORDER

The National Labor Relations Board orders that the Respondent, H.W. Weidco/Ren LLC d/b/a South Jersey Extended Care, Bridgeton, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing the requests of employees for union representation during investigatory meetings which they reasonably believe may result in discipline.

(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 after service by the Region, post at its Bridgeton, New Jersey facility copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 4, 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 its Bridgeport, New Jersey facility at any time since December 27, 2017.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 4 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. September 24, 2019

Lauren McFerran,

Member

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

Marvin E. Kaplan, Member

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 refuse your requests for union representation during investigatory interviews that you reasonably believe may result in discipline.

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

H.W. WEIDCO/REN LLC D/B/A SOUTH JERSEY
EXTENDED CARE

The Board's decision can be found at www.nlrb.gov/case/04-CA-213035 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.

