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**Alaris Health at the Atrium and 1199 SEIU United Healthcare Workers East.** Case 22–CA–206004

September 26, 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. Upon a charge filed by 1199 SEIU United Healthcare Workers East (the Union) on September 12, 2017, the Regional Director for Region 22 issued a complaint on December 29, 2017, against Alaris Health at the Atrium (the Respondent), alleging that it violated Section 8(a)(1) of the National Labor Relations Act (the Act) by stating that it would not issue promised new uniforms to the employees because of the Union and violated Section 8(a)(5) and (1) of the Act by unilaterally changing terms and conditions of employment of unit employees by promulgating a new employee handbook without providing the Union notice and an opportunity to bargain regarding the changes and their effects. On January 12, 2018,<sup>1</sup> the Respondent filed its answer to the complaint. On March 19, the General Counsel moved to amend the complaint.<sup>2</sup>

Subsequently, the parties executed a bilateral informal settlement agreement and Notice to Employees (settlement agreement), which Administrative Law Judge Lauren Esposito approved on March 27.<sup>3</sup> Pursuant to the terms of the settlement agreement, the Respondent agreed to post a Notice to Employees at its facility in Jersey City, New Jersey. It also agreed to comply with all the terms and provisions of the Notice to Employees, which included, upon the Union's request, rescinding certain provisions of the revised employee handbook, as well as the acknowledgment forms concerning the handbook that had been signed by unit employees, and removing all references to, and copies of, the forms from its records and notifying the employees that it had done so. The Respondent also agreed to pay unit employees for lost wages and benefits as a result of these changes, and to rescind any discipline imposed on unit employees because of the changes to their terms and conditions of

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

<sup>2</sup> The motion sought to correct typographical errors and to include additional provisions in the new employee handbook.

<sup>3</sup> The judge granted the General Counsel's motion to amend the complaint on the same date.

employment. Finally, the Respondent agreed not to refuse to bargain in good faith with the Union and not to refuse to meet and bargain with it regarding changes in wages, hours, and working conditions before putting them into effect. The settlement agreement also contains the following noncompliance 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 reissue the complaint previously issued on December 29, 2017 in the instant case. 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 the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. 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/Respondent at the last address provided to the General Counsel.

By email dated April 25, the Union requested that the Respondent rescind certain handbook provisions and any signed employee acknowledgment forms, expunge copies of the forms and other references to them from its records, and inform the unit employees that it had done so. By emails dated April 25, May 2 and 18, the Union requested that the Respondent provide it with copies of all disciplines issued to unit employees since June 1, 2017, and provide it with specific information necessary to investigate the Respondent's backpay obligation pursuant to the remedial provisions of the settlement agreement. Since about April 25 and May 2, the Respondent has failed and refused to comply fully with the settlement agreement by failing and refusing to provide the requested discipline and backpay information.

By letter dated May 2, transmitted by email, the Region's compliance officer notified the Respondent of the

remedial actions that it was required to take in order to comply with the settlement agreement. The Respondent returned its Certification of Compliance Part Two form, dated July 11, with all sections either unmarked or marked as “N/A [not applicable].” On August 17, the Region’s compliance officer, by email, notified the Respondent that its Certification of Compliance Part Two form was deficient and required the Respondent to correct the form by August 24 to reflect the status of the Respondent’s compliance with the settlement agreement. The Respondent did not respond to this notification. By email dated August 24, the Region’s compliance officer reiterated the instruction in her August 17 email. The August 24 email further instructed the Respondent to provide documentation establishing that employee Julina Straker had been paid holiday pay owed or documentation showing that no pay was owed to that employee. The Region’s compliance officer also advised the Respondent that absent full compliance with the settlement agreement by September 7, the Regional Director would revoke the settlement agreement and reissue the complaint. The Respondent did not respond to the August 24 email. Pursuant to the performance provision set forth above, on May 6, 2019, the General Counsel, by the Regional Director, reissued the complaint (“the reissued complaint”) and vacated the settlement agreement.

On May 8, 2019, the General Counsel filed a Motion for Default Judgment with the Board. On May 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.

#### 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 settlement agreement. Consequently, pursuant to the noncompliance provision of the settlement agreement set forth above, we find that the Respondent’s answer to the complaint has been withdrawn and that all of the allegations in the reissued 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

<sup>4</sup> See *U-Bee, Ltd.*, 315 NLRB 667, 668 (1994).

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Jersey City, New Jersey (the Jersey City facility), has been engaged in the operation of a nursing home providing long-term residential care and related services.

In conducting its operations annually, the Respondent derived annual gross revenues in excess of \$100,000. The Respondent, in conducting its business operations annually, purchased and received at its Jersey City facility goods valued in excess of \$5000 directly from points outside of 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 is a health care institution within the meaning of Section 2(14) of the Act. We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, David F. Jasinski has held the position of the Respondent’s chief negotiator and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

2. At all material times, Marianne Alfano has held the position of the Respondent’s administrator and has been a supervisor of the Respondent within the meaning of Section 2(11) and an agent of the Respondent within the meaning of Section 2(13) of the Act.

3. 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 certified medical assistants/aides and personal care attendants employed by the Respondent at its 330 Ninth Street, Jersey City, New Jersey facility, but excluding all other employees including office clerical employees, maintenance employees, professional employees, guards and supervisors as defined in the Act.

(a) On June 6, 2016, the Board certified the Union as the exclusive collective-bargaining representative of the Respondent’s unit employees.

(b) At all times since June 6, 2016, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent’s unit employees.

4. About February 2017, by Marianne Alfano, in the employee break room at the Respondent’s Jersey City

facility, the Respondent promised employees that it would issue new uniforms to employees.

5. About February 2017, by Marianne Alfano, in the hallway at the Respondent's Jersey City facility, the Respondent informed employees that it would not issue new uniforms to employee because of the Union.

6. The Respondent engaged in the conduct described above in paragraph 5 in order to discourage employee support for the Union.

7. Since about 2013, the Respondent has maintained the following policies and or work rules in its employee handbook.

(a) If you must be late or absent from work, you *must* verbally notify your supervisor, department head and/or Administrator three (3) hours prior to the star[t] of your shift.

(b) Upon reasonable request, at the Company's discretion, employees may be allowed inspect their personnel files. [sic]

(c) If an employee works the holiday, that employee must, within 30 days take a day off with pay in lieu of the holiday time. [sic]

(d) 50 percent of your annual accrued unused vacation may be banked and will be available in subsequent years.

(e) Employees may bank up to 25 sick days for use for hospitalization (Employer may require proof of hospitalization).

8. About July 2017, the Respondent unilaterally changed terms and conditions of employment of the unit employees by promulgating a new employee handbook, containing the following provisions:

(a) If you have a change in any of the following items, please be sure to immediately notify the Administration.

- Updates on certifications, renewals or licenses

(b) Certain positions will require successful completion of competency testing, which may be based on observations of your work, for you to be qualified to hold that position.

(c) No vacation, sick days, or personal days can be used during the resignation notice period.

(d) If you must be late or absent from work, you must notify your supervisor, department head and/or Administrator generally more than two (2) hours prior to the start of your shift.

(e) Violence in the Work Place (Policy, Purpose, Procedure).

(f) If an employee works the holiday, that employee must, within thirty (30) days of that holiday, take a day off with pay in lieu [of] the holiday time or request within thirty (30) days to be paid for the holiday, which may be granted at the Employer's discretion.

(g) Compliance Program describing the "Facilities policies and procedures for detecting and preventing fraud, waste and abuse and its Code of Conduct.[""]

(h) All vacation time should be taken during the current vacation year and may only be carried over from one year to another in accordance with the attached Benefit Rider.

(i) You can carry the unused sick time up to a maximum of forty (40) hours to the following year.

9. About July 2017, the Respondent unilaterally changed terms and conditions of employment of the unit employees by promulgating the employee handbook described above in paragraphs 8(a) through (i).

10. The subjects set forth above in paragraphs 8(a) through (i) relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes of collective bargaining.<sup>5</sup>

11. The Respondent engaged in the conduct described above in paragraphs 8 and 9 without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

#### CONCLUSIONS OF LAW

1. By the conduct described above in paragraph 5, 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.

2. By the conduct described above in paragraphs 8, 9, and 11, the Respondent has been failing and refusing 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.

3. 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 comply with its obligations under the settlement agreement approved by the judge on March 27, 2018. Accordingly,

<sup>5</sup> The reissued complaint inadvertently misstates the paragraph numbers containing the allegations in this and the preceding paragraph. We correct the errors.

we shall order the Respondent to cease and desist from failing and refusing to bargain on request with the Union as the exclusive collective-bargaining representative of unit employees; from refusing to meet and bargain in good faith with the Union regarding any proposed changes in wages, hours, and terms and conditions of employment before putting such changes into effect; and from blaming the Union for the Respondent's decision not to provide new uniforms to bargaining unit employees. We shall also require the Respondent to take certain affirmative action designed to effectuate the policies of the Act, as set forth in the settlement agreement. Specifically, we shall order the Respondent to (1) post and comply with the notice as provided by the Regional Office in English and any additional language found appropriate by the Regional Director; (2) upon the Union's request, rescind the provisions of the employee handbook issued about July 2017, as set forth in the rider attached to the agreement and the notice herein; (3) upon the Union's request, rescind any acknowledgement forms related to that employee handbook that were signed by unit employees, expunge all references and copies of the acknowledgement forms from its files and records, and inform the unit employees that this has been done; (4) pay employees for the wages and benefits lost, if any, and rescind discipline, if any, because of the handbook changes to terms and conditions of employment made without bargaining with the Union; and (5) provide records necessary to analyze the amount of backpay due.

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations." The General Counsel, however, requested in his motion that the Board "requir[e] Respondent to fulfill all of its undertakings in the March 27, 2018 Settlement Agreement." In the particular circumstances of this case, we construe the General Counsel's motion as a request to enforce the terms of the settlement agreement, which provided for the specific remedial actions as set forth above and is consistent with the status quo remedy sought in the reissued complaint.<sup>6</sup> See, e.g., *Perkins Management Services*, 365 NLRB No. 90, slip op. at 4 fn. 3 (2017).

<sup>6</sup> Although the settlement agreement does not explicitly state that the Respondent must provide employee payroll records, the General Counsel stated in his motion that the Respondent failed to provide specific information necessary to investigate the Respondent's backpay obligation pursuant to the remedial terms of the settlement agreement. Here, the payroll records are necessary to enforce the unmet make-whole provision of the settlement agreement. Accordingly, the Order includes the Board's standard language requiring the Respondent to provide such records.

## ORDER

The National Labor Relations Board orders that the Respondent, Alaris Health at the Atrium, Jersey City, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with 1199 SEIU United Healthcare Workers East ("the Union") as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time, regular part-time and per-diem certified medical assistants/aides and personal care attendants employed by the Respondent at its 330 Ninth Street, Jersey City, New Jersey facility, but excluding all other employees including office clerical employees, maintenance employees, professional employees, guards and supervisors as defined in the Act.

(b) Refusing to meet and bargain in good faith with the Union regarding any proposed changes in wages, hours, and working conditions before putting such changes into effect.

(c) Blaming the Union for the Respondent's decision to not provide new uniforms to our unit employees.

(d) In any like or related manner interfering with the employees' rights under Section 7 of the Act.

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

(a) If requested by the Union, rescind those provisions of the employee handbook that were issued about July 2017, to unit employees, as set forth in the rider attached to the settlement agreement; if requested, rescind any acknowledgement forms related to that employee handbook that were signed by unit employees and expunge all references and copies of the acknowledgement forms from our files and records; and if requested, inform the unit employees that it has done all of the above.

(b) Pay unit employees for any wages and other benefits they lost, if any, and rescind discipline, if any, because of the handbook changes to terms and conditions of employment that were made without bargaining with the Union.

(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, post at its facility in Jersey City, New Jersey, copies of the attached notice marked "Appendix," in English and in additional languages if the Regional Director decided that it is appropriate. Copies of the notice, on forms provided by the Regional Director for Region 22, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(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 the Respondent has taken to comply.

Dated, Washington, D.C. September 26, 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 a representative 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 do anything to prevent you from exercising the above rights.

WE WILL NOT, upon request, refuse to bargain in good faith with 1199 SEIU United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of our employees in the following unit:

All full-time, regular part-time and per-diem certified medical assistants/aides and personal care attendants employed by the Respondent at its 330 Ninth Street, Jersey City, New Jersey facility, but excluding all other employees including office clerical employees, maintenance employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to meet and bargain in good faith with your Union regarding any proposed changes in wages, hours, and working conditions before putting such changes into effect.

WE WILL NOT blame the Union for our decision to not provide new uniforms to our unit employees.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL, if requested by the Union, rescind those provisions of the employee handbook that were issued in about July 2017, to our unit employees, as set forth in the attached rider; if requested, rescind any acknowledgment forms related to that employee handbook that were signed by unit employees and expunge all references and copies of the acknowledgment forms from our files and record; and if requested, inform the unit employees that we have done all of the above.

WE WILL pay you for the wages and other benefits you lost, if any, and rescind discipline, if any, because of the handbook changes to terms and conditions of employment that we made without bargaining with the Union.

ALARIS HEALTH AT THE ATRIUM

The Board's decision can be found at [www.nlr.gov/case/22-CA-206004](http://www.nlr.gov/case/22-CA-206004) 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.



**RIDER****REINSTATE THE FOLLOWING PROVISION:**

- Upon reasonable request, at the Company's discretion, employees may be allowed inspect their personnel files. (sic).

**DELETE THE FOLLOWING PROVISIONS:**

- Certain positions will require successful completion of competency testing, which may be based on observations of your work, for you to be qualified to hold that position.
- No vacation, sick days, or personal days can be used during the resignation notice period.
- If you must be late or absent from work, you must notify your supervisor, department head and/or Administrator generally more than two

(2) hours prior to the start of your shift.

- Violence in the Work Place (Policy, Purpose, Procedure).
- If an employee works the holiday, that employee must, within thirty (30) days of that holiday, take a day off with pay in lieu [of] the holiday time or request within thirty (30) days to be paid for the holiday, which may be granted at the Employer's discretion.
- Compliance Program describing the "Facility policies and procedures for detecting fraud, waste and abuse and its Code of Conduct."
- You can carry the unused sick time up to a maximum of forty (40) hours to the following year.