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**Law-Den Nursing Home, Inc. and SEIU Healthcare Michigan.** Case 07–CA–233610

October 16, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND KAPLAN

The General Counsel seeks a default judgment in this case because Law-Den Nursing Home (the Respondent) has failed to file an answer to the complaint. Upon a charge and an amended charge filed by SEIU Healthcare Michigan (the Union) on January 3, 2019, and February 5, 2019, respectively, the General Counsel issued a complaint and notice of hearing on April 5, 2019, against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On June 19, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on June 20, 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 April 19, 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

<sup>1</sup> The General Counsel's motion for default judgment and attached exhibits indicate that the complaint and the April 23 reminder letter were served on the Respondent by both certified and regular mail. The certified mail receipts show that the Respondent's certified mail copies of both the complaint and the reminder letter were retrieved on May 18, 2019, and neither copy sent by regular mail was returned as undeliverable. The General Counsel's motion for default judgment was served on the Respondent only by regular mail, and it was not returned as undeliverable. Attached to the motion for default judgment is a June 19 affidavit provided by the Regional Director, stating that no document purporting to be an answer to the complaint had been filed by the Respondent as of that date.

It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the

disclose that the Region, by letter dated April 23, 2019, advised the Respondent that unless an answer was received by April 30, 2019, the Region may pursue a default judgment. Nevertheless, the Respondent failed to file an answer.<sup>1</sup>

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 in Detroit, Michigan (the Detroit facility), and has been operating as a nursing home.

During the calendar year ending December 31, 2018, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$100,000 and received goods and materials valued in excess of \$5000 directly from points located outside the State of Michigan.

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, Todd Johnson has held the position of the Respondent's Administrator and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

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 and regular part-time cooks, maintenance employees, medical attendants, laundry attendants and

purposes of the Act. See, e.g., *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd. sub nom. NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988).

The complaint alleges that the Respondent closed its Detroit, Michigan facility (the Detroit facility). It is well established that a respondent's asserted cessation of operations does not excuse it from filing an answer to a complaint. See, e.g., *UNY LLC d/b/a General Super Plating*, 367 NLRB No. 113 (2019); *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15–16 (2000); *Holt Plastering, Inc.*, 317 NLRB 451, 451 (1995).

food service workers employed at the Respondent's facility located at 1640 Webb, Detroit, Michigan, but excluding guards and supervisors as defined by the Act, and all other employees.

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 from May 13, 2017, through May 12, 2020.

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

About November 28, 2018, during bargaining over the effects of the closure of the Respondent's Detroit facility, the Respondent and the Union agreed that unit employees would be paid their accrued vacation pay and accrued sick pay prior to the date the Respondent's Detroit facility ceased operations and the Respondent terminated its employees.

About March 15, 2019, the Respondent ceased operations at its Detroit facility and terminated its employees.

About March 15, 2019, the Respondent failed to continue in effect the terms and conditions of the November 28, 2018 agreement described above by failing and refusing to pay unit employees their accrued vacation pay and accrued sick pay as agreed to by the Union and the Respondent on November 28, 2018.

The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

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

Since about November 16, 2018, the Union has requested, inter alia, by certified mail and by email, that the Respondent furnish the Union with the following information regarding the closing of the Detroit facility:

- (1) All current accrued benefits of bargaining unit employees, including accrued vacation pay and accrued sick pay;
- (2) Effective dates of any operational changes; and
- (3) If the closing of the Respondent's facility will be permanent.

<sup>2</sup> We decline the General Counsel's request for an affirmative bargaining order. The Respondent failed to adhere to the terms of its November 28, 2018 agreement with the Union. The appropriate remedy is to order the Respondent to honor the agreement. See *Bath Iron Works Corp.*, 345 NLRB 499, 501 (2005). Member McFerran would include

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 November 16, 2018, the Respondent has failed and refused to furnish the Union with the requested information described above.

#### CONCLUSION OF LAW

By the conduct described above, 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. The Respondent's unfair labor practices 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 to continue in effect the terms and conditions of the November 28, 2018 agreement described above by failing and refusing to pay unit employees their accrued vacation pay and accrued sick pay, we shall order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct, including by paying them their accrued vacation pay and sick pay, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Having further found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with requested information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to provide the Union with the information it requested since about November 16, 2018.<sup>2</sup>

We shall also order the Respondent to compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file with the Regional Director for Region 7, within 21 days of the date

the affirmative bargaining order requested by the General Counsel to remedy the failure to bargain allegation in the complaint, because enforcing a settlement agreement that the Union negotiated in the face of the Respondent's 8(a)(5) violations does not restore the status quo ante.

the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Finally, because the Respondent's facility is closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Law-Den Nursing Home, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with SEIU Healthcare Michigan (the Union) as the exclusive collective-bargaining representative of employees in the following unit by failing to continue in effect the terms and conditions of the agreement reached on November 28, 2018, to pay unit employees their accrued vacation pay and accrued sick pay:

All full-time and regular part-time cooks, maintenance employees, medical attendants, laundry attendants and food service workers employed at the Respondent's facility located at 1640 Webb, Detroit, Michigan, but excluding guards and supervisors as defined by the Act, and all other employees.

(b) Refusing to bargain collectively and in good faith with the Union 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 exclusive collective-bargaining representative of the Respondent's unit employees.

(c) 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) Honor and comply with the terms and conditions of the November 28, 2018 agreement, and rescind any and all changes to unit employees' terms and conditions of employment that the Respondent implemented by not applying that agreement to unit employees.

(b) Make unit employees whole for any loss of earnings or other benefits, including by payment to employees of their accrued vacation pay and accrued sick pay, suffered

as a result of the Respondent's failure to abide by and apply to unit employees the terms of the November 28, 2018 agreement, in the manner set forth in the remedy section of this decision.

(c) Furnish to the Union in a timely manner the information it requested by certified mail and email since about November 16, 2018.

(d) Compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay pay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(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. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

(f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix,"<sup>3</sup> to the Union and to all unit employees who were employed by the Respondent at any time since November 16, 2018. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 7 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. October 16, 2019

John F. Ring,

Chairman

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the

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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 fail and refuse to bargain collectively and in good faith with SEIU Healthcare Michigan (the Union) as the exclusive collective-bargaining representative of our employees in the following unit by failing to continue in effect the terms and conditions of the agreement reached on November 28, 2018, to pay your accrued vacation pay and accrued sick pay:

All full-time and regular part-time cooks, maintenance employees, medical attendants, laundry attendants and food service workers employed at our facility located at 1640 Webb, Detroit, Michigan, but excluding guards and supervisors as defined by the Act, and all other employees.

WE WILL NOT refuse to bargain collectively with the Union 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 honor and comply with the terms and conditions of the November 28, 2018 agreement.

WE WILL make you whole for any loss of earnings and other benefits, including by payment to you of your accrued vacation pay and accrued sick pay, suffered as a result of our unlawful failure to abide by and apply to you the terms of the November 28, 2018 agreement, plus interest.

WE WILL furnish to the Union in a timely manner the information it requested by certified mail and email since about November 16, 2018.

WE WILL compensate you for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

LAW-DEN NURSING HOME, INC.

The Board's decision can be found at [www.nlr.gov/case/07-CA-233610](http://www.nlr.gov/case/07-CA-233610) 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.

