



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

December 26, 2019

Clerk United States Court of
Appeals for the First Circuit
John Joseph Moakley, U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: *NLRB v. Prospect Charter Care, LLC*,
Board Case Nos. 01-CA-200126 and 01-
CA-214788

Dear Ms. Hamilton:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's order in this case, and a proposed judgment.

Please serve a copy of the application on Respondent, whose addresses appear on the service list. I have served a copy of the Board's application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of the judgment issued.

Very truly yours,

/s/ David Habenstreit

David Habenstreit
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

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RESPONDENT:

Marcelino La Bella
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200 High Service Ave
North Providence, RI 02904-5199

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CHARGING PARTY:

Christopher Callaci, GC
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National Labor Relations Board
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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
: No.
Petitioner :
v. :
: Board Case Nos.:
PROSPECT CHARTER CARE, LLC : 01-CA-200126
: 01-CA-214788
Respondent :

APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT
ENFORCING AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the First Circuit:

The National Labor Relations Board (the “Board”), pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its order against Prospect Charter Care, LLC (“Respondent”). The Board is entitled to summary enforcement of its order in full because Respondent failed to file with the Board exceptions to the administrative law judge’s decision. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because unfair labor

practices occurred in Rhode Island. The Board's final order issued on April 24, 2019.

B. Proceedings Before the Board

1. On March 27, 2018, the Board's General Counsel issued an order consolidating cases, consolidated complaint and notice of hearing in Case Nos. 01-CA-200126 and 01-CA-214788, charging Respondent with certain violations of the Act. Respondent filed an answer on April 10, 2018.

2. Following a hearing before an Administrative Law Judge Donna N. Dawson, the judge issued a decision on March 11, 2019, finding that Respondent had violated the Act and recommending that an order be issued requiring Respondent to cease and desist from the unfair labor practices found and take certain affirmative actions to remedy those unfair labor practices, including posting an appropriate notice.

3. On March 11, 2019, the Board issued an order transferring the proceeding to the Board and notifying the Respondent that the Board must receive exceptions to the administrative law judge's decision by April 8, 2019.

4. Section 10(c) of the Act (29 U.S.C. § 160(c)) provides that "if no exceptions are filed [with the Board] within twenty days after service [of the administrative law judge's decision] upon the parties, or within such further period as the Board may authorize, such recommended order shall become the order of

the Board and become effective as therein prescribed.” Section 102.46 and 102.48 of the Board’s Rules and Regulations (29 C.F.R. 102.46 and 102.48) implement this provision and provide that, in the event no exceptions are filed within 28 days, the decision of the administrative law judge shall be adopted by the Board and all objections and exceptions thereto are waived for all purposes.

5. Respondent did not file exceptions with the Board.

6. In the absence of any exceptions to the administrative law judge’s decision, on April 24, 2019, the Board issued an order adopting the administrative law judge’s findings and conclusions, and directing Respondent to take the action set forth in the Judge’s recommended order.

C. The Board Is Entitled to Summary Enforcement of Its Order

The Board is entitled to summary entry of a judgment enforcing its order because, by failing to file exceptions with the Board challenging the administrative law judge’s decision, the Respondent failed to raise any issues before the Board. Section 10(e) of the Act (29 U.S.C. § 160(e)) provides that “no objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused by extraordinary circumstances.” This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting this requirement, this Court and other circuits have consistently held that a

respondent's failure to file any exceptions before the Board entitles the Board, absent extraordinary circumstances, to summary entry of a judgment enforcing its order. *NLRB v. Izzzi*, 343 F.2d 753, 754 (1st Cir. 1965). *Accord, e.g., NLRB v. Tri-State Warehouse & Distrib.*, 677 F.2d 31, 31 (6th Cir. 1982); *NLRB v. Int'l Union of Operating Eng'rs, Local 86*, 357 F.2d 841, 846-47 (3d Cir. 1966); *NLRB v. Pugh & Barr, Inc.*, 194 F.2d 217, 218-21 (4th Cir. 1952). No extraordinary circumstances are present here.

WHEREFORE, the Board respectfully requests that the Court take jurisdiction of the proceedings, serve notice of the filing of this application upon Respondent, and enter judgment summarily enforcing the Board's order in full. A proposed judgment is attached.

Dated in Washington, D.C.
this 26th day of December, 2019

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
 : No.
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 v. :
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 PROSPECT CHARTER CARE, LLC : 01-CA-200126
 : 01-CA-214788
 Respondent :

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Prospect Charter Care, LLC, its officers, agents, successors, and assigns, enforcing its order dated April 24, 2019, in Case Nos. 01-CA-200126 and 01-CA-214788, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Prospect Charter Care, LLC, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

BY THE COURT

Margaret Carter, Clerk

/s/ TRUE COPY

ATTEST: _____
Margaret Carter, Clerk

NATIONAL LABOR RELATIONS BOARD

v.

PROSPECT CHARTER CARE, LLC

ORDER

Prospect Charter Care, LLC, North Providence, Rhode Island, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing to bargain in good faith with the Union over accommodations between confidentiality concerns regarding the mock and actual Joint Commission (JCAHO) reports and related documents requested by the Union and the Union's need for such information.
 - (b) Failing to provide documents related but not a part of the JCAHO survey, including any and all training documentation and names of Unit members who received training on any procedures resulting from these surveys, along with documentation requested of any changes in hospital procedures or policies, regardless what Respondent deems substantial, resulting from the mock and JCAHO surveys.
 - (c) Failing to provide the Union with the Aesculap Presentation summary and final reports and related documents requested by the Union, including any and all training documentation and names of Unit members who received training on any procedures resulting from these reports, along with documentation requested of any changes in hospital procedures or policies, regardless of what Respondent deems substantial.
 - (d) 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) Bargain in good faith with the Union over accommodations between

confidentiality concerns regarding the mock and actual JCAHO survey reports by the Union and the Union's need for such information.

- (b) Provide the Union with any and all training documentation and names for unit members who received re-training on any procedures resulting from the mock and actual JCAHO survey reports, including documentation of any changes in hospital procedures or policies, regardless of what Respondent deems substantial. Respondent should redact any identifying patient information, if contained therein.
- (c) Provide the Union with the Aesculap Presentation summary and final report and related documents requested by the Union, and failing to provide the Union with the Aesculap Presentation summary and final report and related documents requested by the Union, redacting any patient information if applicable.
- (d) Within 14 days after service by the Region, post at its Our Lady of Fatima Hospital facility in North Providence, Rhode Island copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, 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, the 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. In the event that, during the pendency of these proceedings, 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 May 3, 2017.
- (e) Within 21 days after service by the Region, file with the Regional Director 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.

APPENDIX

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 refuse to bargain in good faith with United Nurses and Allied Professionals, Local 5110 (the Union) by failing and refusing to bargain over reasonable accommodations between confidentiality concerns regarding mock and actual Joint Commission (JCAHO) reports requested by the Union and the Union's need for such information.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to provide it with requested documents, relating to training of Unit employees and policy and procedure changes resulting from mock and JCAHO reports.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to provide it with all requested documents relating to the Aesculap summary and final reports, including those related to training provided to Unit employees and policy and procedure changes resulting from the reports.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL bargain in good faith with the Union over accommodations between confidentiality concerns regarding the mock and actual JCAHO survey reports by the Union and the Union's need for such information.

WE WILL provide the Union with requested documents, relating to training and

policy and procedure changes resulting from mock and JCAHO reports, except any identifying patient information if contained therein.

WE WILL provide the Union with requested documents relating to Aesculap summary and final reports, including, training and policy and procedure changes resulting from them, except any identifying patient information if contained therein.

PROSPECT CHARTER CARE, LLC

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Region 1
10 Causeway Street, 6th Floor, Boston, MA 02222-1072
(617) 565-6700, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/01-CA-200126 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.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (857) 317-7816.

UNITED STATES COURT OF APPEALS
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CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment and proposed judgment, in the above-captioned case, has this day been served by first class mail upon the following parties at the addresses listed below:

Marcelino La Bella
Prospect Chartercare, LLC
200 High Service Ave
North Providence, RI 02904-5199

Louis J. Cannon Jr., Esq.
Baker & Hostetler, LLP
1050 Connecticut Ave. NW, Ste 1100
Washington, DC 20036-5318

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 26th day of December, 2019