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Alaris at Hamilton Park Health Care Center *and* 1199 SEIU United Healthcare Workers East. Case 22–CA–180566

May 14, 2018

DECISION AND ORDER

BY MEMBER PEARCE, MCFERRAN, AND KAPLAN

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 July 19, 2016, the Regional Director for Region 22 issued a complaint on October 26, 2016, against Alaris at Hamilton Park Health Care Center (the Respondent) alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with requested information.

Subsequently, the Respondent entered into an informal settlement agreement, which was approved by the Regional Director on January 13, 2017. The settlement agreement required the Respondent to post at its facility a Board Notice to Employees and to provide the Union with specified information it had requested. The settlement agreement also contained the following provision:

> **PERFORMANCE —** . . . 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 re-issue the Complaint that previously issued on October 26, 2016. 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 all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. 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 at the last address provided to the General Counsel.

By letter dated February 22, 2017, the Region's compliance officer notified the Respondent that it had not complied with the terms of the settlement agreement. This letter advised the Respondent that unless it fully complied with the agreement by March 8, 2017, the Regional Director would revoke the settlement agreement, reissue the complaint, and file a motion for default judgment. The Respondent failed to comply.

On March 20, 2018, the Regional Director reissued the complaint and vacated the settlement agreement. On March 29, 2018, pursuant to the performance provision of the settlement agreement, the General Counsel filed a Motion for Default Judgment with the Board. On April 4, 2018, 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 a response, and the General Counsel and the Union filed replies.

The Board has delegated its authority in this proceeding to a three-member panel.[1]

Ruling on Motion for Default Judgment

In its brief response to the Notice to Show Cause, the Respondent purports to "certify" that it has complied with the terms of the settlement agreement. Without any supporting details or exhibits, the Respondent broadly asserts that the information it provided to the Union in September 2016, October 2016, and, pursuant to the settlement agreement, in January 2017 was "responsive to the Union's information request."

Both the General Counsel and the Union contend in their replies to the Respondent's response that the Respondent has not provided many of the requested documents, and the General Counsel included an attachment detailing the requested information not yet produced. The Respondent does not directly dispute the General Counsel's Motion. The Respondent only stated that it provided documents "responsive to the Union's information request," not that it provided all of the information the Union requested. Full compliance with the settlement agreement requires providing all of the requested information. Moreover, the Respondent's general denial that it breached the settlement agreement of-

[1] Member Emanuel took no part in the consideration of this case.

Exhibit A

fered nothing that would specifically refute the General Counsel's detailed account of the Respondent's breach.

As noted above, the noncompliance provision in the settlement agreement provides that "[t]he only issue that the Charged Party may raise before the Board [is] whether it defaulted on the terms of this Settlement Agreement." As described, the Respondent has not shown that it has fully complied with that agreement. The settlement agreement further provides that "[t]he 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." Therefore, in light of the undisputed assertions by the General Counsel and the Union that the Respondent has not provided all of the required information and has not complied with the terms of the settlement agreement, we find that the Respondent has failed to raise any material issue of fact warranting a hearing.[2]

Accordingly, we grant the General Counsel's Motion for Default Judgment and find, pursuant to the noncompliance provisions of the settlement agreement set forth above, that all of the allegations in the reissued complaint are true.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New Jersey corporation with an office and place of business at 525 Monmouth Street in Jersey City, New Jersey, has been engaged in the operation of a long-term care facility.

During the 12 months preceding the reissued complaint, a representative period, the Respondent, in conducting its business operations, derived gross revenues in excess of $100,000. During the 12 months preceding the reissued complaint, the Respondent, in conducting its business operations, received at its Jersey City, New Jersey facility goods valued in excess of $5000 directly from points located 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

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 employees excluding Licensed Practical Nurses, Registered Nurses, office and clerical employees, supervisors, watchmen and guards as defined in 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 from March 1, 2012, to June 30, 2016.

At all material times, 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 these proceedings:

1. Since about April 28, 2016, the Union, by electronic mail and regular mail, has requested that the Respondent furnish the Union with the following information described in its April 28, 2016 letter.

(a) For each employee in a bargaining unit position from January 1, 2014, through date of production:

> (i) Lists of all employees with their corresponding date of hire, job title, current hourly rate of pay, regular hours of work, and overtime hours quarterly.
>
> (ii) Whether employee is no-frills or per diem.
>
> (iii) Whether the employee has opted out of health insurance coverage, pursuant to the contract, upon proof of coverage.

(b) Payroll registers for all individuals working in classifications covered by the collective-bargaining agreement from July 1, 2015, through the date of production.

(c) Gross bargaining unit payroll for 2014, 2015, and through the date of production.

(d) Gross bargaining unit payroll for 2014, 2015, and through the date of production excluding overtime.

(e) Copies of work schedules for each department and shift from February 2016 through the date of production.

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

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[2] See, e.g., *Williamsville Suburban, LLC*, 365 NLRB No. 14, slip op. at 2 (2017) (granting a motion for default judgment where the respondents failed to support their general denial that they had breached the settlement agreement by not providing all of the requested information); *Bristol Manor Health Care Center*, 360 NLRB 38, 39 (2013) (same).

[3] See *U-Bee, Ltd.*, 315 NLRB 667, 668 (1994).

Exhibit A

3. Since about April 28, 2016, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By the conduct described above in paragraphs 1 through 3, 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 take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 22 on January 13, 2017, by furnishing the Union with the information set forth in paragraph 1 of this decision.[4]

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 each unfair labor practice." However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies, and we will not, sua sponte, include them.[5]

ORDER

The National Labor Relations Board orders that the Respondent, Alaris at Hamilton Park Health Care Center, Jersey City, New Jersey, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Furnish the Union in a timely manner the information requested by the Union on April 28, 2016, that is not already provided, specifically the information set forth above in paragraph 1 of this Decision.

2. 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. May 14, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] The General Counsel's Motion for Default Judgment indicates that the Respondent has complied with its obligation under the Settlement Agreement to post the agreed-upon Notice to Employees. The Respondent's response to our Notice to Show Cause, subsequent to the Motion, appears to admit that it posted the notice later than it initially certified to the Regional Director. Because the General Counsel's Motion does not allege that the Respondent has not complied with its notice-posting obligation (notwithstanding the General Counsel's reply protesting the Respondent's tardiness and false certification), and the Respondent has posted the notice, we do not order notice-posting here.

[5] The General Counsel specifically requested in his Motion for Default Judgment that the Board issue "an Order requiring Respondent to fulfill all of its undertakings in the January 13, 2017 Settlement Agreement." We construe the General Counsel's Motion as seeking enforcement of the unmet provisions of the Settlement Agreement. See, e.g., *Perkins Management Services*, 365 NLRB No. 90, slip op. at 4 fn. 3 (2017).

Exhibit A