

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of July, two thousand twenty.

Present:

Peter W. Hall,
Debra Ann Livingston,
Denny Chin,
Circuit Judges.

NATIONAL LABOR RELATIONS BOARD

Petitioner,

and

1199 SEIU UNITED HEALTHCARE
WORKERS EAST

Intervenor,

v.

ATLANTICARE MANAGEMENT LLC d/b/a
PUTNAM RIDGE NURSING HOME

Respondent.

No. 20-1129

Board Case Nos.
02-CA-177329 et al.

JUDGMENT ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the motion of the National Labor Relations Board for entry of a default judgment enforcing its Order against Respondent Atlanticare Management LLC d/b/a Putnam Ridge Nursing Home, its officers, agents, successors, and assigns, dated February 11, 2020, in Case Nos. 02-CA- 177329, 02-CA-193189, 02-CA-198370, 02-CA-206253, and 02-CA-210245, reported at 369 NLRB No. 28, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Second Circuit that the Respondent, Atlanticare Management LLC d/b/a Putnam Ridge Nursing Home, its officers, agents, successors, and assigns, shall abide by and perform the directions of the Board set forth in its Order. (See attached Order and Appendix.)

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

The seal of the United States Court of Appeals for the Second Circuit is circular. It features a blue outer ring with the text "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside the ring, the words "SECOND CIRCUIT" are written in a smaller font, flanked by two small stars.

NATIONAL LABOR RELATIONS BOARD

v.

ATLANTICARE MANAGEMENT LLC
D/B/A PUTNAM RIDGE NURSING HOME

ORDER

Respondent, Atlanticare Management LLC d/b/a Putnam Ridge Nursing Home, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging, reducing the merit wage increases provided to, or otherwise discriminating against employees for supporting 1199 SEIU United Healthcare Workers East (the Union) or any other labor organization.
 - (b) Changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.
 - (c) Failing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Respondent's unit employees by refusing to meet with the Union at reasonable times to engage in collective bargaining.
 - (d) Refusing to bargain collectively with the Union by failing and refusing to furnish, and failing to furnish in a timely manner, requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.
 - (e) Promulgating and maintaining an overly broad rule that prohibits employees from engaging in union business on company property or during work hours.
 - (f) 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 from the date of this Order, offer Catherine Thomas full reinstatement to her former job or, if that job no longer exists, to a

substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

- (b) Make Catherine Thomas whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the Board's decision reported at 369 NLRB No. 28.
- (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter, notify the employee in writing that this has been done and that the discharge will not be used against her in any way.
- (d) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:
 - Included: All full-time and regular part-time employees, including LPNs, CNAs, receptionists, unit secretaries, dietary aides, housekeeping aides, rehab aides, rehab techs, restorative aides, laundry aides, maintenance workers, activities leads/aides, and hospitality aides, including those per diem employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election
 - Excluded: All other employees, all employees in the therapy department, RNs, cooks, professional employees, office clerical employees, guards and supervisors as defined in the Act
- (e) Rescind the reduction of unit employees' annual merit wage increases.
- (f) Make affected employees whole for any loss of earnings and other benefits suffered as a result of the unilateral and discriminatory reduction of their annual merit wage increases, in the manner set forth in the remedy section of the Board's decision reported at 369 NLRB No. 28.
- (g) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 2, 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.
- (h) Furnish to the Union in a timely manner the information requested by the Union in paragraphs 1, 2(i), 3, 6, 7, 8, 9, 10, 12, and 17(b)-(k) of its

January 6, 2016 information request and in its April 19, 2016 information request.

- (i) Rescind the memorandum issued on April 15, 2016, which prohibits employees from engaging in union business on company property or during work hours.
- (j) 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.
- (k) Within 14 days after service by the Region, post at its Brewster, New York facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 2, 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 any time since December 4, 2015.
- (l) Within 21 days after service by the Region, file with the Regional Director for Region 2 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.

IT IS FURTHER ORDERED that the certification of the Union issued by the Board on December 14, 2015, is extended for a period of 1 year commencing from the date on which the Respondent begins to bargain in good faith with the Union.

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 discharge you, reduce your merit wage increases, or otherwise discriminate against you for supporting 1199 SEIU United Healthcare Workers East (the Union) or any other labor organization.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT fail to bargain in good faith with the Union as the exclusive collective-bargaining representative of our unit employees by refusing to meet with the Union at reasonable times to engage in collective bargaining.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish or failing to furnish in a timely manner requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT promulgate and maintain an overly broad rule that prohibits you from engaging in union business on company property or during work hours.

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, within 14 days from the date of the Board's Order, offer Catherine Thomas full reinstatement to her former job or, if that job no longer exists, to a

substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Catherine Thomas whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest, and WE WILL also make her whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Catherine Thomas, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

Included: All full-time and regular part-time employees, including LPNs, CNAs, receptionists, unit secretaries, dietary aides, housekeeping aides, rehab aides, rehab techs, restorative aides, laundry aides, maintenance workers, activities leads/aides, and hospitality aides, including those per diem employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election

Excluded: All other employees, all employees in the therapy department, RNs, cooks, professional employees, office clerical employees, guards and supervisors as defined in the Act

WE WILL rescind the reduction of your annual merit wage increases.

WE WILL make affected employees whole for any loss of earnings and other benefits suffered as a result of the unilateral and discriminatory reduction of their annual merit wage increases, with interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 2, 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.

WE WILL furnish to the Union in a timely manner the information requested by the Union in paragraphs 1, 2(i), 3, 6, 7, 8, 9, 10, 12, and 17(b)-(k) of its January 6, 2016 information request and in its April 19, 2016 information request.

WE WILL rescind the memorandum issued on April 15, 2016, which prohibits you from engaging in union business on company property or during work hours.

ATLANTICARE MANAGEMENT LLC D/B/A PUTNAM RIDGE NURSING HOME

The Board's decision can be found at www.nlr.gov/case/02-CA-177329 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

