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Silver Healthcare Center, a subsidiary of MIMA Health Management Corp. d/b/a MIMA Healthcare and District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO. Case 04-CA-252062

July 29, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Silver Healthcare Center, a subsidiary of MIMA Health Management Corp. d/b/a MIMA Healthcare (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO (the Union) on November 19, 2019, the General Counsel issued a complaint and notice of hearing on April 16, 2020, 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 9, 2020, the General Counsel filed with the National Labor Relations Board a motion for default judgment. Thereafter, on June 11, 2020, 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.

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 30, 2020, 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 disclose that the Region, by letter dated May 5, 2020, advised the Respondent that unless an answer was received by May 12, 2020, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

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, a corporation, has operated a facility providing long-term skilled nursing care and short-term post-acute rehabilitation at 1417 Brace Road, Cherry Hill, New Jersey (the Healthcare Center). During the 12-month period ending April 16, 2020, the Respondent, in conducting its business operations, received gross revenues in excess of \$100,000 and purchased and received at the Healthcare Center goods valued in excess of \$50,000 directly from points located outside 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 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, Marshall Klahr has held the position of human resources representative 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 at the Healthcare Center (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 licensed practical nurses, certified nurses' aides, nurses' aides, housekeepers, laundry aides, porters, maintenance employees, dietary aides, cooks and cooks' trainees, but excluding all other employees, registered nurses, clerical employees, managers, supervisors, quality assurance aides, rehabilitation employees, staffing coordinators, confidential employees, guards and professional employees, as defined in the National Labor Relations Act, and part-time employees (those working 15 hours or less per week), and temporary employees.

Prior to about April 4, 2017, Alaris at Cherry Hill (Alaris) operated the Healthcare Center. The Union had been the exclusive collective-bargaining representative of the unit employed by Alaris and had been recognized as the representative by Alaris. This recognition had been embodied in a collective-bargaining agreement effective by its terms from July 1, 2015, to June 30, 2020 (the Agreement).

About April 4, 2017, the Respondent purchased the Healthcare Center, and since then, the Respondent has continued to operate the Healthcare Center in basically unchanged form and has employed employees previously

employed by Alaris as a majority of the unit. Based on these facts, the Respondent has continued the employing entity and is a successor to Alaris.

About April 4, 2017, the Respondent entered into a recognition agreement with the Union and assumed the Agreement. Since at least then, the Union has been the designated exclusive collective-bargaining representative of the unit. At all times since April 4, 2017, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about July 8, 2019, by email message to Klahr, the Union requested that the Respondent furnish the Union with the following information concerning employees in the unit:

- (i) full-time equivalency status;
- (ii) seniority date;
- (iii) unit and floor;
- (iv) primary work shift; and
- (v) hourly rate of pay before and after a wage increase and the effective date of the wage increase.

On about August 6, 2019, the Union orally requested to Klahr that the Respondent furnish the Union with the following information:

- (i) a list of all employees in the unit who worked on Memorial Day 2019; and
- (ii) a list of all employees in the unit who worked in excess of 40 hours during the week of Memorial Day 2019.

On about August 8, 2019, by email message to Klahr, the Union requested, inter alia, that the Respondent furnish the Union with the following information concerning employees in the unit:

- (i) department, unit, and floor;
- (ii) hourly rate of pay before and after July 1, 2019;
- (iii) hours of regular shift (starting and ending times);
- (iv) employment status (full-time/part-time/temporary) and number of regularly scheduled hours of work per week;
- (v) leave of absence status;
- (vi) Facility Seniority;
- (vii) Bargaining Unit seniority;
- (viii) Classification Seniority;
- (ix) home address; and

- (x) “whether they are (or are not) setup for Union Dues Check-Off payroll deduction with the Employer.”

On about September 18, 2019, by email message to Klahr, the Union requested that the Respondent furnish to the Union the following information:

- (i) the name of a recommended uniform retailer that sells complete uniform sets for less than \$25.00;
- (ii) Unit employee Melody Hammon’s vacation accrual information for the past 12 months;
- (iii) Hammon’s current vacation balance; and
- (iv) Hammon’s seniority service dates.

On about October 2, 2019, by email message to Klahr, the Union requested that the Respondent furnish to the Union Hammon’s “vacation utilization, accrual, and her FTE [full-time equivalency] prorata basis.”

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 about July 8, 2019, the Respondent has failed and refused to furnish the Union with the information requested by it on that date, as described above.

Since about August 6, 2019, the Respondent has failed and refused to furnish the Union with the information requested by it on that date, as described above.

Since about August 8, 2019, the Respondent has failed and refused to furnish the Union with the information requested by it on that date, as described above, other than the information specified in paragraphs (i), (ii), (v), (vi), (ix), and (x) relating to housekeeping employees.

Since about September 18, 2019, the Respondent has failed and refused to furnish the Union with the information requested by it on that date, as described above.

Since about October 2, 2019, the Respondent has failed and refused to furnish the Union with the information requested by it on that date, as 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 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) of the Act by failing and refusing to furnish 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 furnish the Union with the information it requested on July 8, August 6, August 8, September 18, and October 2, 2019, to the extent that it has not already done so.

ORDER

The National Labor Relations Board orders that the Respondent, Silver Healthcare Center, a subsidiary of MIMA Health Management Corp. d/b/a MIMA Healthcare, Cherry Hill, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (the Union) by failing and refusing to furnish it with 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.

(b) 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) Furnish to the Union in a timely manner the information requested by the Union on July 8, August 6, August 8, September 18, and October 2, 2019, to the extent that it has not already done so.

(b) Post at its Cherry Hill, New Jersey facility copies of the attached notice marked “Appendix.”¹ Copies of the notice, on forms provided by the Regional Director for Region 4, 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 employ-

ees 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 July 8, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 4 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. July 29, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

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 representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection

¹ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (the Union) by failing and refusing to furnish it with 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 in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on July 8, August 6, August 8, September 18, and October 2, 2019, to the extent that we have not already done so.

SILVER HEALTHCARE CENTER, A SUBSIDIARY OF MIMA
HEALTH MANAGEMENT CORP. D/B/A MIMA
HEALTHCARE

The Board’s decision can be found at www.nlr.gov/case/04-CA-252062 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.

