

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Atrium Hospitality LP d/b/a The Westin Southfield-Detroit and Catherine Walker. Case 07–CA–239593

January 5, 2021

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 Atrium Hospitality LP d/b/a The Westin Southfield-Detroit (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Catherine Walker on April 12, 2019, and amended charge filed on May 1, 2019, the General Counsel issued a complaint and notice of hearing on October 3, 2019, against the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On November 6, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On November 19, 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 to the notice. 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 states that unless an answer is received on or before October 17, 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 disclose that the Region, by letter dated October 23, 2019 (which enclosed a copy of the complaint),

¹ The General Counsel’s Motion for Default Judgment indicates that the return receipt for the certified mail copy of the complaint was not returned, and postal service tracking information indicates that the item was not delivered. However, the General Counsel simultaneously served a copy of the complaint by regular mail on counsel for the Respondent. “Under agency law as well as the Federal Rules of Civil Procedure, service of process on an authorized agent constitutes effective service on the agent’s principal. Restatement (Second) of Agency §268 (1958); Fed.R.Civ.P. 4(h)(1).” *United Electrical Contractors Assn.*, 347 NLRB

advised the Respondent that unless an answer was received by October 30, 2019, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.¹

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of 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 limited partnership with an office and place of business in Southfield, Michigan (the Southfield facility), and has been engaged in the business of operating a hotel and providing food and lodgings.

In conducting its operations during the 12-month period ending December 31, 2018, the Respondent derived gross revenues in excess of \$500,000. During this period of time, the Respondent purchased and received at its Southfield facility goods valued in excess of \$5000 directly from points 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 that Local 24, UNITE HERE!, AFL–CIO (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, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ruth Callahan	-	Outlets Supervisor
Sandra Delgadillo	-	Assistant General Manager
Julie Jankowski	-	Human Resources Manager
Alicia Jones	-	Outlets Supervisor
Earlene Smith	-	Accounting Manager
Michelle Strain	-	Outlets Manager

1, 2 (2006). The regular mail copy of the complaint sent to counsel for the Respondent was not returned, indicating actual receipt of the complaint. See, e.g., *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd.* sub nom. *NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988). Additionally, the General Counsel’s motion and attached exhibits indicate that the return receipt for the certified mail copy of the October 23, 2019 letter to the Respondent, which included a copy of the complaint, was returned, demonstrating that service was completed.

Jerry Tononi - General Manager

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:

Lead Cook, Line Cook, Prep Cook, Pantry Attendant, Pantry Attendant Lead, Cafeteria Attendant, Steward, Stewarding Lead, Receiving Clerk, Room Attendant, Public Area Attendant, Laundry Attendant, Laundry Lead, House Attendant, Housekeeping Lead, Bartender, Beverage Server, Food Server, Greeter, Bus Attendant, Outlet Lead, Room Service Server, Room Service Expediter, Captain, Server, Bartender, House Attendant, House Attendant Lead, Banquet Runner, Concierge, Concierge Lobby, Front Desk Agent, Night Front Desk Agent, Front Desk Lead, Operator, Night Operator, Luggage Attendant, Night Luggage Attendant, Door Attendant, Bell Captain, and Lead employed by Respondent at its facility located at 1500 Town Center Drive, Southfield, Michigan 48075, but excluding all managers, confidential employees, security personnel, and guards and supervisors under 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 December 5, 2016 to February 16, 2021.

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 this proceeding:

1. (a) About April 4, 2019, the Respondent, by Assistant General Manager Sandra Delgadillo, in Delgadillo's office at the Respondent's Southfield facility, denied the request of its employee Catherine Walker to be represented by the Union during an interview.

(b) The Respondent's employee Catherine Walker had reasonable cause to believe that the interview described in paragraph 1(a) would result in disciplinary action being taken against her.

(c) About April 4, 2019, the Respondent suspended its employee Catherine Walker because of the employee's request for union representation as described in paragraph 1.

(d) About April 9, 2019, the Respondent, by Human Resources Manager Julie Jankowski, at the Respondent's Southfield facility, denied backpay to its employee Catherine Walker because she requested a union representative on April 4, 2019.

2. The Respondent engaged in the conduct described above in paragraph 1(c) because the named employee of the Respondent engaged in Union activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the conduct described above in paragraph 1, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. By the conduct described above in paragraph 1(c), the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) 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 cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully suspended Catherine Walker because of her request for union representation and to discourage other employees from requesting union representation at meetings that they reasonably believe could result in discipline, we shall order the Respondent to rescind the unlawful suspension and make Walker whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, we shall order the Respondent to compensate Walker for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 7 allocating the backpay award to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016).

The Respondent shall also be required to remove from its files any reference to the unlawful suspension of Catherine Walker and to notify her in writing that this has been done and that the unlawful suspension will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Atrium Hospitality LP d/b/a The Westin

Southfield-Detroit, Southfield, Michigan, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Denying employees' requests for union representation at interviews that they reasonably believe can result in discipline.

(b) Suspending or otherwise discriminating against employees because they engaged in protected concerted activities and to discourage other employees from engaging in these activities.

(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) Make Catherine Walker whole for any loss of earnings or benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(b) Compensate Catherine Walker for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and 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 award to the appropriate calendar years.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension of Catherine Walker, and within 3 days thereafter, notify her in writing that this has been done and that the suspension will not be used against her in any way.

(d) 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.

(e) Post at its facility in Southfield, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places,

² 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

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 April 4, 2019.

(f) 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. January 5, 2021

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.

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."

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 deny your requests for union representation at interviews that you reasonably believe can result in discipline.

WE WILL NOT suspend or otherwise discriminate against any of you because you engage in protected concerted activities and to discourage other employees from engaging in these activities.

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 make Catherine Walker whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, plus interest.

WE WILL compensate Catherine Walker for the adverse tax consequences, if any, of receiving a lump-sum backpay award, 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 award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful suspension of Catherine Walker 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.

ATRIUM HOSPITALITY LP D/B/A THE WESTIN
SOUTHFIELD-DETROIT

The Board's decision can be found at <https://www.nlr.gov/case/07-CA-239593> 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.

