



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

February 12, 2021

Clerk of Court
United States Court of Appeals
for the Eleventh Circuit
56 Forsyth Street, NW
Atlanta, GA 30303-3147

Re: *NLRB v. Tropical Wellness Center, LLC*, Board Case Nos. 12-CA-167884 and 12-CA-171371

Dear Clerk:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's orders 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 name and address also appear on the service list.

I am counsel of record for the Board and all correspondence should be addressed to me.

Very truly yours,

/s/David Habenstreit

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

cc: Service List

SERVICE LIST

RESPONDENT:

Lee Stein
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Boca Raton, FL 33498

Email: leescottstein@gmail.com

RESPONDENT'S REGISTERED AGENT:

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RESPONDENT:

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David Mahler
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Tropical Wellness Center, LLC
4700 Dixie Hwy NE Ste. 101
Palm Bay, FL 32905-6096

REGIONAL DIRECTOR:

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National Labor Relations Board
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Phone: (813) 228-2641

CHARGING PARTY:

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CHARGING PARTY:

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practices occurred in Florida. The Board's final order issued on December 16, 2020.

B. Proceedings Before the Board

1. The General Counsel issued a consolidated complaint on June 30, 2016, an amended consolidated complaint on August 23, 2016, and a further amended the complaint on September 22 and 29, 2016, charging Respondent with certain violations of the Act. The Respondent filed answers.

2. Following a hearing before Administrative Law Judge Elizabeth M. Tate, the judge issued a decision on November 4, 2020, finding that Respondent had violated the Act and recommending that an order be issued requiring that the Respondent cease and desist from the unfair labor practices found, and take certain affirmative action to remedy those unfair labor practices, including posting an appropriate notice.

3. On November 4, 2020, 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 December 2, 2020.

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 December 16, 2020, the Board issued an order adopting the administrative law judge’s findings and conclusions, and directing the 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. *Purolator Armored, Inc. v. NLRB*, 764 F.2d 1423, 1431-32 (11th Cir. 1985). *Accord, e.g., NLRB v. Mooney Aircraft*, 310 F.2d 565, 565 (5th Cir. 1962); *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.

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

Dated in Washington, D.C.
this 12th day of February 2021

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case Nos.:
TROPICAL WELLNESS CENTER, LLC	:	12-CA-167884
	:	12-CA-171371
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 Tropical Wellness Center, LLC, its officers, agents, successors, and assigns, enforcing its order dated December 16, 2020, in Case Nos. 12-CA-167884 and 12-CA-171371, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Tropical Wellness Center, LLC, its officers, agents, successors, and assigns, shall abide by said order (See attached Order and Appendix).

Mandate shall issue forthwith.

ENTERED

NATIONAL LABOR RELATIONS BOARD

v.

TROPICAL WELLNESS CENTER, LLC

ORDER

Tropical Wellness Center, LLC, Palm Bay, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to recognize and bargain with the International Association of Machinists and Aerospace Workers,¹ AFL-CIO (Union) as the exclusive collective- bargaining representative of employees in the following appropriate unit:

All full-time and part-time technicians I, technicians II, lead technicians, counselors, therapists, nutritionist/spiritual advisors, and front desk/receptionists employed by Tropical Wellness Center, LLC.

- (b) Failing and refusing to maintain in effect agreed-to terms and conditions of employment pursuant to collectively bargained agreements during the terms of the collectively bargained agreements, without the Union's consent.
- (c) Failing and refusing to remit employees' union dues through payroll deductions, as authorized by employees and pursuant to the collective-bargaining agreement, without the Union's consent.
- (d) Failing and refusing to make monthly pension payments to IAM Labor Management Pension Fund, IAM National Pension (the IAM Pension Fund) pursuant to the parties' collectively bargained agreements, without the Union's consent
- (e) Refusing to bargain with the Union by failing and refusing to furnish information requested by the Union that is relevant and necessary to the

¹ References to the Union include, collectively, three related entities: the charging party (the IAMAW), IAM District Lodge 166 (AFL-CIO), and IAM Local Lodge 971.

Union's role as the exclusive collective-bargaining representative of bargaining unit employees.

- (f) Failing and refusing to meet and confer with the Union, upon request, regarding grievances filed pursuant to the collective-bargaining agreement.
 - (g) Laying off bargaining unit employees because they joined and assisted the Union and engaged in protected concerted activity and/or in order to discourage union activity.
 - (h) 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) Recognize the Union as the exclusive collective bargaining representative of employees in the unit described above, and, upon request, bargain with the Union concerning wages, hours, and other terms and conditions of employment of unit employees.
 - (b) Maintain in effect the terms of collectively bargained agreements with the Union concerning the terms and conditions of employment of unit employees during the terms of the agreements, unless the Union consents to the Respondent's proposed changes.
 - (c) Remit to the Union all outstanding dues owed by unit employees since July 19, 2016, which were unlawfully withheld, in the manner set forth in the Remedy section of this decision.
 - (d) Remit to the IAM Pension Fund outstanding monies owed for unit employees since July 19, 2016 in the manner set forth in the Remedy section of this decision.
 - (e) Upon request, promptly furnish the Union with information requested that is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of bargaining unit employees; specifically, within 14 days from the date of the Board's Order, furnish the information requested by the Union on about November 4, 2015.
 - (f) Rescind the layoffs of employees Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and

Heather Moore Strobe, and other bargaining unit employees laid off on March 4, 2016, if any.

- (g) Within 14 days from the date of the Board's Order, Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
- (h) Make whole Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, for any loss of earnings and other benefits suffered as a result of the unlawful layoffs, in the manner set forth in the remedy section of the decision.
- (i) Compensate Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, for their search-for-work and interim expenses regardless of whether those expenses exceed their interim earnings.
- (j) Compensate Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, for the adverse consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director of Region 12, 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.
- (k) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful layoffs, and within 3 days thereafter notify Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, in writing that this has been done and that the layoffs will not be used against them in any way.
- (l) 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.

- (m) Within 14 days after service by the Region, post at its facility in Palm Bay, Florida, copies of the attached notice marked “Appendix”². Copies of the notice, on forms provided by the Regional Director for Region 12, 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 addition, due to the mass layoff of employees and the likely potentiality that employees have dispersed, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and all former employees employed by the Respondent at any time since July 19, 2017.
- (n) 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.

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 of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means.

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 a representative 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 fail and refuse to recognize and bargain with the International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the following unit:

All full-time and part-time technicians I, technicians II, lead technicians, counselors, therapists, nutritionist/spiritual advisors, and front desk/receptionists employed by Tropical Wellness Center, LLC.

WE WILL NOT fail and refuse to maintain in effect agreed-to terms and conditions of employment pursuant to collectively bargained agreements, without the Union's consent.

WE WILL NOT fail and refuse to remit employees' union dues that you authorized to be deducted from your payroll, without the Union's consent.

WE WILL NOT fail and refuse to make monthly pension payments to IAM Labor Management Pension Fund, IAM National Pension (IAM Pension Fund) pursuant to the collective-bargaining agreement, without the Union's consent

WE WILL NOT lay you off because you joined and assisted any union, engaged in protected concerted activity, or in order to discourage your union activity.

WE WILL NOT fail and refuse to promptly furnish information requested by the Union that is relevant and necessary to the Union's role as your representative.

WE WILL NOT fail and refuse to meet and confer with the Union, upon request, regarding grievances filed pursuant to the collective-bargaining agreement.

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 recognize the Union as your exclusive collective bargaining representative, and, upon request, bargain with the Union concerning your wages, hours, and other terms and conditions of employment.

WE WILL maintain in effect the terms of collectively bargained agreements with the Union concerning your terms and conditions of employment, unless the Union consents to proposed changes.

WE WILL furnish to the Union the information requested on November 4, 2015 and WE WILL furnish information requested by the Union that is relevant and necessary to its role as your collective bargaining representative.

WE WILL remit to the Union on your behalf the Union dues owed since July 19, 2015, without seeking recoupment from employees.

WE WILL remit to the IAM Pension Fund, pension payments owed for bargaining unit employees from July 19, 2015.

WE WILL rescind the layoffs of employees Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any.

WE WILL, within 14 days from the date of the Board's Order, offer Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, for any loss of earnings and other benefits suffered as a result of the unlawful layoffs.

WE WILL compensate Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, for their search-for-work and interim expenses regardless of whether those expenses exceed their interim earnings.

WE WILL compensate Travis Beaver, Greg Dombal, Joanne James, Jamie Kollock, Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobe, and other unit employees laid off on March 4, 2016, if any, for the adverse consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director of Region 12, 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.

MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (813) 228-2641.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
 :
 :
 Petitioner : No.
 v. :
 : Board Case Nos.:
 TROPICAL WELLNESS CENTER, LLC : 12-CA-167884
 : 12-CA-171371
 Respondent :

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:

David Mahler
6330 N. Andrews S. Ave., #154
Ft. Lauderdale, FL 33309

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Lee S. Stein
4700 Dixie Hwy
Suite 101
Palm Bay, FL 32905

David Mahler, Owner
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4700 Dixie Hwy NE Ste. 101
Palm Bay, FL 32905-6096

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

Dated at Washington, D.C.
this 12th day of February 2021