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Williamsville Suburban, LLC and 1199 SEIU United Healthcare Workers East.

Sheridan Manor, LLC and 1199 SEIU United Healthcare Workers East. Cases 03–CA–167978 and 03–CA–168008

January 11, 2017

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND MCFERRAN

The General Counsel seeks a default judgment in these cases pursuant to the terms of bilateral informal settlement agreements. Upon charges filed by 1199 SEIU United Healthcare Workers East (the Union) on January 20, 2016 against Williamsville Suburban, LLC (Respondent Williamsville) in Case 03–CA–167978 and against Sheridan Manor, LLC (Respondent Sheridan) in Case 03–CA–168008, Respondent Williamsville and Respondent Sheridan (collectively, the Respondents) entered into bilateral informal settlement agreements with the Union, which were approved by the Regional Director for Region 3 on May 11, 2016. The settlement agreements, which were identical to one another, required the Respondents to (1) furnish the Union with the information it requested on December 15, 2015, and January 4 and 12, 2016; (2) post appropriate notices; and (3) notify the Regional Director what steps they have taken to comply with the agreements.

Each of the settlement agreements also contained the following provision:

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 issue a complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. 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 letters dated May 16 and 18, 2016, respectively, the Compliance Officer for Region 3 sent Respondent Williamsville and Respondent Sheridan a copy of the conformed settlement agreement for Cases 03–CA–167978 and 03–CA–168008, along with a cover letter advising them of the steps necessary to comply with the settlement agreements. The letters requested each Respondent to return a signed and dated Notice to Employees and a completed Certification of Compliance form by May 25, 2016, and to provide the requested information to the Union by May 31, 2016. The Respondents failed to comply.

By email dated June 7, 2016, the Compliance Officer notified the Respondents' counsel that the Respondents had not supplied the information required by the settlement agreements, returned the signed and dated Notices to Employees, or returned the Certification of Compliance forms. The email advised that the Respondents had 14 days from the date of the email to cure this default or the Region would issue complaint(s) in this matter pursuant to the terms of the settlement agreements. About June 17, 2016, Respondent Williamsville provided certain information. On June 21, 2016, the Compliance Officer informed the Respondents' counsel that the produced information was not sufficient and extended the default date to June 27, 2016. The Respondents failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreements, on July 14, 2016, the Regional Director issued a consolidated complaint, and the General Counsel filed a Motion for De-

fault Judgment with the Board. On July 20, 2016, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Respondents filed a response.

Ruling on Motion for Default Judgment

In their response to the Notice to Show Cause, the Respondents assert that the Board should deny the General Counsel's motion. The Respondents contend that they "did not materially default on the terms of the [s]ettlement [a]greements" and that "upon information and belief, Respondents have provided information responsive to the Union's information requests of December 15, 2015, January 4, 2016 and January 12, 2016, and have posted the required notices." The Respondents state that "[e]mail exhibits attached to the General Counsel's papers confirm that in fact information was provided to the Union pursuant to the [s]ettlement [a]greements."

In his motion, the General Counsel alleges that the Respondents have failed to comply with the terms of the settlement agreements by failing to provide the Union with all the requested information and failing to send to the Regional Office signed copies of the Notice to Employees along with completed Certification of Compliance forms. Indeed, the Respondents do not directly dispute the General Counsel's assertion that they failed to comply with the settlement agreements. Rather, the Respondents assert that they "did not *materially* default on the terms of the [s]ettlement [a]greements" (emphasis added), and they argue that they "have provided information responsive to the Union's information requests" as shown by the exhibits attached to the General Counsel's motion. However, the exhibits do not demonstrate that the Respondents provided all the information requested by the Union on December 15, 2015, and January 4 and 12, 2016. In fact, the exhibits show that Respondent Williamsville provided insufficient information to the Union and Respondent Sheridan provided none. Thus, the Respondents fail to dispute the assertions made by the General Counsel that all the information required to be furnished under the terms of the settlement agreements has not been provided. Also, the Respondents provide no support for their claim that they have posted the Notice to Employees or explain their failure to provide the Region with a signed and dated Notice or completed Certification of Compliance forms.

The noncompliance provisions in the settlement agreements provide that "[t]he only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement." As described, the Respondents have not shown that they have fully complied with the agreements. The

settlement agreements further provide 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 that the Respondents have not provided the required information and have otherwise failed to comply with the terms of the settlement agreements, we find that the Respondents have failed to raise any material issue of fact warranting a hearing.¹

Accordingly, we grant the General Counsel's Motion for Default Judgment and find, pursuant to the noncompliance provisions of the settlement agreements set forth above, that all of the allegations in the complaint are true.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Williamsville has been a corporation with an office and place of business in Williamsville, New York, where it operates a nursing home. Annually, Respondent Williamsville derives gross revenues in excess of \$100,000. Annually, Respondent Williamsville purchases and receives at its Williamsville, New York facility goods and materials valued in excess of \$5000 directly from points outside the State of New York.

At all material times, Respondent Sheridan has been a corporation with an office and place of business in Tonawanda, New York, where it operates a nursing home. Annually, Respondent Sheridan derives gross revenues in excess of \$100,000. Annually, Respondent Sheridan purchases and receives at its Tonawanda, New York facility goods and materials valued in excess of \$5000 directly from points outside the state of New York.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and health care institutions within the meaning of Section 2(14) of the Act. We also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ See, e.g., *Bristol Manor Health Care Center*, 360 NLRB 38, 39 (2013) (company's failure to respond to specific allegations that it had breached settlement agreement by failing to provide information, as set forth in General Counsel's motion, and failure to come forward with anything specifically supporting its general denial that it had breached settlement agreement warranted finding that the complaint allegations were true).

² See *U-Bee, Ltd.*, 315 NLRB 667, 668 (1994).

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 Respondents within the meaning of Section 2(11) of the Act and agents of the Respondents within the meaning of Section 2(13) of the Act.

Nicole Gallagher	-	Williamsville Administrator
Moshe Kelman	-	Owner
Legal Representative	-	Unnamed
Mark Smeltzer	-	Sheridan Administrator
Sharon Zeames	-	Williamsville Administrator

The following employees of Respondent Williamsville (Williamsville unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Licensed Practical Nurses, Certified Nursing Assistants, Range of Motion Aides, Activities Aides, Rehab Aides, Unit Clerks, and Maintenance Department employees, excluding all Nurse Managers, other managers, guards, confidential employees and supervisors as defined by the Act, and all other employees.

At all material times, Respondent Williamsville has recognized the Union as the exclusive collective-bargaining representative of the Williamsville unit. This recognition has been embodied in a collective-bargaining agreement effective from July 27, 2013, through August 1, 2016.

The following employees of Respondent Sheridan (Sheridan unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:³

All full-time and regular part-time Licensed Practical Nurses, Certified Nursing Assistants, Unit Secretaries employed by the Employer at its 2799 Sheridan Dr., Tonawanda, NY facility, excluding all other clerical employees, confidential employees, guards, professional employees and supervisors as defined by the Act and all other employees.

At all material times, Respondent Sheridan has recognized the Union as the exclusive collective-bargaining representative of the Sheridan unit. This recognition has been embodied in a collective-bargaining agreement effective from May 20, 2015, through April 30, 2017.

³ We have corrected a typographical error in the Sheridan unit description.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Williamsville Unit and the Sheridan Unit (Units).

About December 15, 2015, and January 4 and 12, 2016, the Union requested in writing that Respondent Williamsville and Respondent Sheridan furnish the Union with the following information on a weekly basis:

- Hours worked by bargaining unit employees as well as agency employees.
- Lists of any/all new hires including bargaining unit and agency employees.

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

Since about December 15, 2015, the Respondents have failed and refused to furnish the Union with the information requested by it as described above.

CONCLUSION OF LAW

By the conduct described above, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees in violation of Section 8(a)(5) and (1) of the Act. The Respondents' unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The General Counsel requested that we find all the allegations in the complaint to be true. We have done so and have found that the Respondents violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with certain requested information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the units. Accordingly, we shall order the Respondents to cease and desist from such conduct and to furnish the Union with the information that it requested on or about December 15, 2015, and January 4 and 12, 2016, by providing the Union, on a weekly basis:

- Hours worked by bargaining unit employees as well as agency employees.

- Lists of any/all new hires including bargaining unit and agency employees.⁴

ORDER

A. The National Labor Relations Board orders that Respondent Williamsville Suburban, LLC, Williamsville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with 1199 SEIU United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of the unit employees by failing and refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:

All full-time and regular part-time Licensed Practical Nurses, Certified Nursing Assistants, Range of Motion Aides, Activities Aides, Rehab Aides, Unit Clerks, and Maintenance Department employees, excluding all Nurse Managers, other managers, guards, confidential employees and supervisors as defined by the Act, and all other 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 the Union with the information it requested on or about December 15, 2015, and January 4 and 12, 2016, providing, on a weekly basis:

- Hours worked by bargaining unit employees as well as agency employees.
- Lists of any/all new hires including bargaining unit and agency employees.

And email to the Compliance Officer copies of its responses to these information requests.

(b) Within 14 days after service by the Region, post at its facility in Williamsville, New York copies of the attached notice marked "Appendix A."⁵ Copies of the no-

⁴ The General Counsel also requests that the Respondents "email to the Compliance Officer copies of [their] responses to the Union's information requests." In the circumstances of this case, we shall grant this remedy.

⁵ 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."

tice, on forms provided by the Regional Director for Region 3, 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 15, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 3 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.

B. The National Labor Relations Board orders that Respondent Sheridan Manor, LLC, Tonawanda, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with 1199 SEIU United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of the unit employees by failing and refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:

All full-time and regular part-time Licensed Practical Nurses, Certified Nursing Assistants, Unit Secretaries employed by the Employer at its 2799 Sheridan Dr., Tonawanda, NY facility, excluding all other clerical employees, confidential employees, guards, professional employees and supervisors as defined by the Act and all other 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 the Union with the information it requested on or about December 15, 2015, and January 4 and 12, 2016, providing, on a weekly basis:

- Hours worked by bargaining unit employees as well as agency employees.
- Lists of any/all new hires including bargaining unit and agency employees.

And email to the Compliance Officer copies of its responses to these information requests.

(b) Within 14 days after service by the Region, post at its facility in Tonawanda, New York, copies of the attached notice marked "Appendix B."⁶ Copies of the notice, on forms provided by the Regional Director for Region 3, 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 15, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 3 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 11, 2017

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁶ 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."

APPENDIX A

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
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with 1199 SEIU United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of our unit employees by failing and refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the following employees in the collective-bargaining unit:

All full-time and regular part-time Licensed Practical Nurses, Certified Nursing Assistants, Range of Motion Aides, Activities Aides, Rehab Aides, Unit Clerks, and Maintenance Department employees, excluding all Nurse Managers, other managers, guards, confidential employees and supervisors as defined by the Act, and all other 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 the Union with the information it requested on or about December 15, 2015, and January 4 and 12, 2016, providing, on a weekly basis:

- Hours worked by bargaining unit employees as well as agency employees.
- Lists of any/all new hires including bargaining unit and agency employees.

And WE WILL email to the Board's Compliance Officer copies of our responses to these requests.

WILLIAMSVILLE SUBURBAN, LLC

The Board's decision can be found at www.nlr.gov/case/03-CA-167978 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.



APPENDIX B

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
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with 1199 SEIU United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of our unit employees by failing and refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the following employees in the collective-bargaining unit:

All full-time and regular part-time Licensed Practical Nurses, Certified Nursing Assistants, Unit Secretaries employed by us at our 2799 Sheridan Dr., Tonawanda, NY facility, excluding all other clerical employees, confidential employees, guards, professional employees and supervisors as defined by the Act and all other 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 the Union with the information it requested on or about December 15, 2015, and January 4 and 12, 2016, providing, on a weekly basis:

- Hours worked by bargaining unit employees as well as agency employees.
- Lists of any/all new hires including bargaining unit and agency employees.

And WE WILL email to the Board's Compliance Officer copies of our responses to these requests.

SHERIDAN MANOR, LLC

The Board's decision can be found at www.nlr.gov/case/03-CA-167978 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.

