Danbury Ambulance Service, Inc. *and* New England Health Care Employees Union, District 1199, SEIU. Cases 01–CA–238987 and 01–CA–240229

May 6, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge and amended charge filed on April 3 and August 8, 2019, respectively, and a charge filed on April 24, 2019, by New England Health Care Employees Union, District 1199, SEIU (the Union), the General Counsel issued a complaint on August 30, 2019, against Danbury Ambulance Service, Inc. (the Respondent), alleging that it violated Section 8(a)(5) and (1) of the Act.

The Respondent and the Union subsequently entered into an informal settlement agreement, which the Regional Director for Region 3 approved on September 23, 2019. Among other things, the settlement agreement required the Respondent to (1) post the Notice to Employees for 60 consecutive days in places where notices to employees are customarily posted; (2) provide the Union information requested on February 19, 2019; and (3) meet with the Union regarding the grievance filed by the Union relating to George Previs' termination. The settlement agreement also contained the following provision:[1]

> 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 reissue the complaint previously issued on August 29, 2019 in the instant case(s). 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 the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether Charged Party defaulted on the terms of this Settlement Agreement described above. The Board may then, without the 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/Respondent at the last address provided to the General Counsel.

By letter dated September 24, 2019, the Region's compliance officer sent the Respondent a copy of the conformed settlement agreement, with a cover letter explaining the remedial actions it was required to take in order to comply. Thereafter, by letter dated February 28, 2020, the Acting Regional Director notified the Respondent that it had failed to comply with the terms of the settlement agreement and that unless compliance was achieved within 14 days (by March 13), the Acting Regional Director would reissue the August 30, 2019 complaint and file a motion for default judgment with the Board based on the allegations in the complaint. Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on March 18, 2020, the Acting Regional Director reissued the complaint.

On March 19, 2020, the General Counsel filed a Motion for Default Judgment with the Board requesting that the Board issue a Decision and Order against the Respondent containing findings of fact and conclusions of law based on the allegations in the reissued complaint, and that the Board provide "an appropriate Remedial Order." On March 26, 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 did not file a response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.[2] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

[1] The settlement agreement inadvertently stated that the complaint issued on August 29, 2019. We note that the date of issuance was August 30, 2019.

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

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Danbury, Connecticut (its facility), where it provides ambulatory services. Annually, the Respondent, in conducting its operations described above, purchases and receives at its Danbury, Connecticut facility goods valued in excess of $50,000 directly from points outside the State of Connecticut.

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 New England Health Care Employees Union, District 1199, SEIU (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, Joseph DeSimone held the position of the Respondent's owner and/or president and/or CEO 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.

2. About April 18, 2019, the Respondent, by Joseph DeSimone, in a telephone call, interfered with an employee's Section 7 rights by denigrating the Union and blaming the Union for failing to return an employee to work.

3. 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.

> All full-time and regular part-time and per diem Employees, including EMTs, EMT-intermediates, EMT-paramedics, dispatchers and chair car drivers. Excluded from the bargaining unit are office Employees, mechanics, guards, professional and confidential Employees, and supervisors as defined in the Labor Management Relations Act of 1947, as amended.

4. 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 was effective from March 10, 2014, to March 10, 2017.

5. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

6. Since about February 19, 2019, the Union has requested, in writing, that the Respondent furnish the Union with the following information:

> Pursuant to the termination grievance filed on behalf of George Previs III please send the following information:
>
> - The incident and/or behavior that led to the Employee's termination, including any disciplinary or investigatory paperwork associated with the allegation and/or discipline that was issued;
> - Any and all statements obtained during your investigation into the discipline issued;
> - Any and all notes and/or reports made during your investigation (including any related reports to the state regarding the incident, if applicable);
> - Any record of past discipline and/or counseling of the grievant;
> - Any counseling, in-services, and/or records of trainings related to the matter the grievant was disciplined for;
> - Information on what disciplinary actions your agency has taken in the past 3-4 years for the same infractions;
> - A copy of the performance evaluations, letters of support, from the grievant's personnel file;
> - All documents that will be submitted at the grievance hearing to justify the employer's disciplinary actions.

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

8. Since about February 19, 2019, the Respondent, by Joseph DeSimone, has failed and refused to furnish the Union with the information requested by it.

9. Since about February 20, 2019, the Respondent, by DeSimone, has failed and refused to meet with the Union regarding an employee's termination grievance.

10. About April 18, 2019, Respondent, by DeSimone, in a telephone call, bypassed the Union and dealt directly with its employees in the unit by soliciting an employee to withdraw a grievance.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraph 2, the Respondent has been interfering with, restraining, and

coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By the conduct described above in paragraphs 8, 9 and 10, 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.

3. 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 take certain affirmative action designed to effectuate the policies of the Act, as requested by the General Counsel. Specifically, having found that the Respondent violated Section 8(a)(1) of the Act by interfering with employees' Section 7 rights by denigrating the Union and blaming the Union for failing to return employees to work, we will order the Respondent to cease and desist from such conduct and to post a remedial notice. Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union regarding employee George Previs' termination grievance and bypassing the Union and dealing directly with its employees in the unit by soliciting an employee to withdraw a grievance, we shall order the Respondent to meet with the Union concerning the grievance the Union filed regarding Previs' termination. And having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with necessary and relevant information requested since about February 19, 2019, we shall order the Respondent to provide the Union with the requested information.

In addition, we take this opportunity to announce and implement a temporary change in the Board's standard notice-posting remedy to adapt to the ongoing Coronavirus pandemic.[3] The standard notice-posting provision requires respondents to post copies of the remedial notice within 14 days after the notice is served on the respondent by the regional office. With so many businesses closed due to the pandemic, however, this requirement needs to be modified. It seems likely that many respondents may be unable to comply with the standard 14-day posting deadline. Furthermore, even if the notice could be posted in time, the whole point of the remedy will be defeated if employees (or members in union-respondent cases) are not present to read the notice. Accordingly, for the time being, we will omit from the notice-posting remedy the requirement that the notice be posted "within 14 days after service by the Region." Instead, we will provide that the notice must be posted within 14 days after the facility involved in the proceedings reopens and a substantial complement of employees have returned to work, and that it may not be posted until a substantial complement of employees have returned. In addition, employers that customarily communicate with their employees by electronic means may not be doing so while their businesses remain closed. Thus, any pandemic-related delay in the physical posting of paper notices will also apply to electronic distribution of the notice. These changes do not apply to respondents whose facilities remain open and staffed by a substantial complement of employees despite the pandemic. When conditions warrant, we will reinstate the standard language.

ORDER

The National Labor Relations Board orders that the Respondent, Danbury Ambulance Service, Inc., Danbury, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act by denigrating New England Health Care Employees Union, District 1199, SEIU (the Union) and blaming the Union for failing to return the Respondent's employees to work.

(b) Failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of the employees in the unit by failing and refusing to meet with the Union regarding employees' termination grievances and bypassing the Union and dealing directly with the employees in the unit by soliciting employees to withdraw grievances. The unit is:

> All full-time and regular part-time and per diem Employees, including EMTs, EMT-intermediates, EMT-paramedics, dispatchers and chair car drivers. Excluded from the bargaining unit are office Employees, mechanics, guards, professional and confidential Employees, and supervisors as defined in the Labor Management Relations Act of 1947, as amended.

(c) Failing and refusing to furnish the Union with the information requested since February 19, 2019.

[3] The Board has broad discretionary authority under Sec. 10(c) of the Act to fashion remedies that will best effectuate the policies of the Act, and remedial matters are traditionally within the Board's province and may be addressed sua sponte. *Indian Hills Care Center*, 321 NLRB 144, 144 fn. 3 (1996).

(d) 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) Meet with the Union regarding the grievance it filed in relation to George Previs' termination.

(b) Furnish to the Union, in a timely manner, the information it requested on February 19, 2019.

(c) Post at its Danbury, Connecticut facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 1, 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. The Respondent shall take reasonable steps 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 February 19, 2019.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 1 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. May 6, 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

Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act by denigrating New England Health Care Employees Union, District 1199, SEIU (the Union) and blaming the Union for failing to return our employees to work.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the exclusive collective-bargaining representative of the employees in the unit by failing and refusing to meet with the Union regarding employees' grievances and bypassing the Union and dealing directly with the employees in the unit by soliciting employees to withdraw grievances. The unit is:

> All full-time and regular part-time and per diem Employees, including EMTs, EMT-intermediates, EMT-paramedics, dispatchers and chair car drivers. Excluded from the bargaining unit are office Employees, mechanics, guards, professional and confidential Employees, and supervisors as defined in the Labor Management Relations Act of 1947, as amended.

WE WILL NOT fail and refuse to furnish the Union with the information it requested on February 19, 2019.

[4] 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."

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 meet with the Union regarding the grievance it filed in relation to George Previs' termination.

WE WILL furnish to the Union, in a timely manner, the information it requested on February 19, 2019.

DANBURY AMBULANCE SERVICE, INC.

The Board's decision can be found at https://www.nlrb.gov/case/01-CA-238987 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.