

Black Jack #1, Inc., d/b/a Northwoods Garden Nursing Center and Local 50, Service Employees International Union, AFL-CIO, CLC

Black Jack #1, Inc., d/b/a Halls Ferry Memorial Nursing Center and Local 50, Service Employees International Union, AFL-CIO, CLC. Cases 14-CA-22250, 14-CA-22539, and 14-CA-22538

February 28, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon charges filed in Case 14-CA-22250 on December 31, 1992, and in Cases 14-CA-22538 and 14-CA-22539 on June 17, 1993, by Local 50, Service Employees International Union, AFL-CIO, CLC (the Union), the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint, order revoking settlement agreement and notice of hearing on July 21, 1993, against Respondent Northwoods Garden Nursing Center, and Respondent Halls Ferry Memorial Nursing Center (collectively the Respondents), alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act.¹

On July 28, 1993, the Respondents filed an answer to the consolidated complaint. On October 27, 1993, the General Counsel issued an amendment to the consolidated complaint amending the consolidated complaint in certain respects. Thereafter, by letter dated November 8, 1993, the Respondents' new counsel submitted an entry of appearance and withdrew all answers in the above-captioned cases.

On January 31, 1994, the Acting General Counsel filed a Motion for Default Summary Judgment and Brief in Support with the Board. On February 2, 1994, 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 Respondents filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the 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 consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in

¹ On March 18, 1993, the Union and Respondent Northwoods executed a settlement agreement and notice to employees in Case 14-CA-22250. The complaint alleges that Respondent Northwoods' alleged conduct violated the terms of the settlement and, accordingly, vacates and sets aside the settlement.

the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment indicated that although the Respondents initially filed an answer to the consolidated complaint, they subsequently withdrew their answer. Such a withdrawal has the same effect as the failure to file an answer, i.e., the allegations are considered to be admitted.² Accordingly, we grant the Acting General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Respondent Northwoods, a Missouri corporation with an office and place of business in Florissant, Missouri, and Respondent Halls Ferry, a Missouri corporation with an office and place of business in St. Louis, Missouri, have each been engaged in the operation of a nursing home providing medical care.

During the 12-month period ending June 30, 1993, Respondent Northwoods and Respondent Halls Ferry, in conducting their business operations, each derived gross revenues in excess of \$100,000 and purchased and received at their respective Florissant and St. Louis facilities goods valued in excess of \$5000 directly from points outside of the State of Missouri.

We find that the Respondents are employers 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

The following employees of Respondent Northwoods (the Northwoods 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 service and maintenance employees employed by Respondent Northwoods at Respondent Northwoods' Florissant, Missouri facility, EXCLUDING RNs, LPNs, activity director, beautician, medical records clerks, dietary department head, house-keeping department head, laundry department head, maintenance department head, business office clerical and professional employees, guards, and supervisors as defined in the Act.

On April 2, 1990, the Union was certified as the exclusive collective-bargaining representative of the Northwoods unit employed by a predecessor of Respondent Northwoods. On July 11, 1990, that certifi-

² See *Maislin Transport*, 274 NLRB 529 (1985).

cation was amended to substitute and name Respondent Northwoods as the employer of the unit. Since July 11, 1990, Respondent Northwoods acquired the facility from its predecessor and agreed to recognize and bargain with the Union and abide by the terms and conditions of the collective-bargaining agreement described below.

Since April 2 and July 11, 1990, the Union has been recognized as the representative by Respondent Northwoods' predecessor and Respondent Northwoods respectively. This recognition has been embodied in a collective-bargaining agreement, which is effective from August 16, 1991, until August 15, 1993 (the Northwoods collective-bargaining agreement).

At all times since April 2, 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Northwoods unit.

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

All employees of Respondent Halls Ferry at its Saint Louis facility, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

In about 1969, the Union was certified as the exclusive collective-bargaining representative of the Halls Ferry unit employed by a predecessor of Respondent Halls Ferry.

Since about 1969, the Union has been recognized as the representative by Respondent Halls Ferry's predecessor at the St. Louis facility. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 25, 1991, until May 24, 1994.

At some time after May 25, 1991, Respondent Halls Ferry acquired the facility from its predecessor and agreed to recognize and bargain with the Union and abide by the terms and conditions of the collective-bargaining agreement described above (the Halls Ferry collective-bargaining agreement).

At all times since 1969, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Halls Ferry unit.

At all material times, the Northwoods collective-bargaining agreement has provided in article 27 that Respondent Northwoods shall provide individual medical coverage for its employees as specified in the agreement.

For the months of August, September, and October 1992, and January 1993, and continuing to date, Respondent Northwoods has failed and refused, without the Union's consent, to continue in effect all the terms and conditions of the collective-bargaining agreement

by failing to remit all fringe benefit contributions described above on behalf of all Northwoods unit employees, which terms and conditions are mandatory subjects of bargaining.

At all material times, the Halls Ferry collective-bargaining agreement has provided at article 11 and addendum 1 that Respondent Halls Ferry shall provide medical coverage for employees and make pension contributions on behalf of employees as specified in the agreement.

Since January 1993, and continuing to date, Respondent Halls Ferry has failed and refused, without the Union's consent, to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to remit all fringe benefit contributions described above on behalf of all Halls Ferry unit employees, which terms and conditions are mandatory subjects for the purposes of collective-bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondents have failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d) and 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. Specifically, having found that Respondents have violated Section 8(a)(5) and (1) by failing to remit all contractually required contributions for medical coverage on behalf of their unit employees, and that Respondent Halls Ferry has further violated Section 8(a)(5) and (1) by also failing to remit contractually required pension contributions on behalf of its unit employees, we shall order Respondents to make whole their unit employees by making all such delinquent contributions, including any additional amounts due in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216, fn. 7 (1979). In addition, Respondents shall reimburse unit employees for any expenses ensuing from their failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that

A. Respondent Black Jack #1, Inc. d/b/a Northwoods Garden Nursing Center, Florissant, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 50, Service Employees International Union, AFL-CIO, CLC, by failing to remit contributions for medical coverage on behalf of its employees in the following unit as required by article 27 of the 1991-1993 collective-bargaining agreement with the Union:

All full-time and regular part-time service and maintenance employees employed by Respondent Northwoods at Respondent Northwoods' Florissant, Missouri facility, EXCLUDING RNs, LPNs, activity director, beautician, medical records clerks, dietary department head, house-keeping department head, laundry department head, maintenance department head, business office clerical and professional employees, guards, and supervisors as defined in the Act.

(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) Honor article 27 of the 1991-1993 collective-bargaining agreement with the Union, and make the unit employees whole for its failure to do so for the months of August, September, and October 1992, and since January 1993, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Florissant, Missouri, copies of the attached notice marked "Appendix A."³ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places

³ 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."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. Respondent Black Jack #1, Inc. d/b/a Halls Ferry Memorial Nursing Center, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 50, Service Employees International Union, AFL-CIO, CLC, by failing to remit medical and pension contributions on behalf of its employees in the following unit as required by article 11 and addendum 1 of the 1991-1994 collective-bargaining agreement with the Union:

All employees of Respondent Halls Ferry at its Saint Louis facility, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

(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) Honor article 11 and addendum 1 of the 1991-1994 collective-bargaining agreement with the Union, and make the unit employees whole for its failure to do so since January 1993, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in St. Louis, Missouri, copies of the attached notice marked "Appendix B."⁴ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

⁴ See fn. 3, supra.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 1994

James M. Stephens, Chairman

Dennis M. Devaney, Member

John C. Truesdale, Member

(SEAL) 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 50, Service Employees International Union, AFL-CIO, CLC, by failing to remit contributions for medical coverage for our employees in the following unit as required by article 27 of the 1991-1993 collective-bargaining agreement with the Union:

All full-time and regular part-time service and maintenance employees employed by us at our Florissant, Missouri facility, EXCLUDING RNs, LPNs, activity director, beautician, medical records clerks, dietary department head, house-keeping department head, laundry department head, maintenance department head, business office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL honor article 27 of the 1991-1993 collective-bargaining agreement with the Union, and make our unit employees whole for our failure to do so for the months of August, September, and October 1992, and since January 1993.

BLACK JACK #1, INC. D/B/A NORTH-
WOODS GARDEN NURSING CENTER

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 50, Service Employees International Union, AFL-CIO, CLC, by failing to remit medical and pension contributions for our employees in the following unit as required by article 11 and addendum 1 of the 1991-1994 collective-bargaining agreement with the Union:

All employees at our Saint Louis facility, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL honor article 11 and addendum 1 of the 1991-1994 collective-bargaining agreement with the Union, and make our unit employees whole for our failure to do so since January 1993.

BLACK JACK #1, INC. D/B/A HALLS
FERRY MEMORIAL NURSING CENTER