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Lawrence Klein, P.C., Michael Brumer, P.C. and Albert Kalajian, P.C., A Copartnership, d/b/a The Comprehensive Foot Care Group; Citywide Foot Care, P.C.; Fulton Foot Care Assoc., P.C.; Metrotech Foot Care, P.C.; 34th Street Foot Care Assoc., P.C.; Jamaica Foot Care Assoc., P.C.; 3rd Avenue Foot Care Assoc. P.C. and Medical and Health Employees Division of Journeymen's and Production Allied Services of America and Canada International Union, Local 157. Cases 29-CA-20625, 29-CA-21215, 29-CA-21263, and 29-CA-21553

February 20, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS HURTGEN
AND BRAME

Upon charges filed by the Union on January 13, July 31, August 7, and November 5, 1997, and an amended charge filed by the Union on September 18, 1997, the General Counsel of the National Labor Relations Board issued a consolidated complaint on November 26, 1997, against Lawrence Klein, P.C., Michael Brumer, P.C. and Albert Kalajian, P.C., a copartnership, d/b/a The Comprehensive Foot Care Group (Respondent Comprehensive); Citywide Foot Care, P.C. (Respondent Citywide); Fulton Foot Care Assoc., P.C. (Respondent Fulton); MetroTech Foot Care, P.C. (Respondent MetroTech); 34th Street Foot Care Assoc., P.C. (Respondent 34th Street); Jamaica Foot Care Assoc., P.C. (Respondent Jamaica); 3rd Avenue Foot Care Assoc. P.C. (Respondent 3rd Avenue), collectively, the Respondents, alleging that they have violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act. Although properly served copies of the charges, amended charge, and consolidated complaint (complaint), the Respondents failed to file an answer.

On January 12, 1998, the General Counsel filed a Motion for Summary Judgment with the Board. On January 14, 1998, 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.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the 325 NLRB No. 55

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 notes that unless an answer is filed within 14 days of service all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 17, 1997, notified the Respondents that unless an answer were received by December 29, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondents have been jointly owned by Lawrence Klein, P.C., Michael Brumer, P.C., and Albert Kalajian, P.C., copartners. Respondent Comprehensive, Respondent Citywide, Respondent Fulton, Respondent MetroTech, Respondent 34th Street, Respondent Jamaica, and Respondent 3rd Avenue, all of which are New York corporations, have maintained their principal office and place of business located at 491 Fulton Street, Brooklyn, New York (the Brooklyn facility), and various other places of business in the New York City metropolitan area, where they have been engaged in providing medical services, including foot care, to the public. During the 12-month period preceding issuance of the complaint, the Respondents, in the course and conduct of their business operations, collectively derived gross revenues in excess of \$250,000 and collectively purchased and received at their Brooklyn facility, or other facilities in the New York City metropolitan area, goods, products, and materials valued in excess of \$5000 directly from points outside the State of New York. At all material times, Respondent Comprehensive, Respondent Citywide, Respondent Fulton, Respondent MetroTech, Respondent 34th Street, Respondent Jamaica, and Respondent 3rd Avenue have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises. Based on their operations, the Respondents together constitute a single-integrated business enterprise and a single employer within the meaning of the Act. We find that the Respondents are now, and have been, 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 the Respondents (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All service employees employed in the Respondents' branch locations, excluding all guards and supervisors within the meaning of the Act.

Since about 1979, the Union has been the designated exclusive collective-bargaining representative of the Respondents' unit employees and has been recognized as such representative by the Respondents. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period from August 24, 1991, to August 23, 1994 (the 1991-1994 agreement). This agreement has automatically renewed itself from year to year, in accordance with certain provisions in that agreement which permit such extensions, the most recent renewal being until August 23, 1998, inasmuch as neither party to that agreement gave timely notice of intent to terminate or modify the agreement pursuant to the terms of the 1991-1994 agreement. The Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment for all such employees of the Respondents.

The 1991-1994 agreement, as extended to August 23, 1998 (the 1991-1998 agreement), requires the Respondents, inter alia, to honor a 40-hour workweek; to permit representatives of the Union to visit the shop at any time during working hours; to pay employees for Martin Luther King Day and Memorial Day; and to pay employees for 2 to 4 weeks of vacation, based on their length of service.

About late May 1997, the Respondents failed to increase the working hours of Doreen Coleman and about June 26, 1997, reduced her working hours. About July 1, 1997, the Respondents discharged Doreen Coleman and have since that date refused to reinstate or offer to reinstate her to her former position of employment. The Respondents engaged in this conduct because Coleman engaged in activities on behalf of the Union, and in order to discourage employees from engaging in such activities or other activities for the purpose of collective bargaining or other mutual aid or protection, and because she provided testimony to the Board in the investigation of the unfair labor practice charge in Case 29-CA-20625.

The Respondents reduced the working hours of employee Doreen Coleman about July 18, August 15, and

December 14, 1996, and June 26, 1997, and of employee Eulale Williams about June 16, 1997, and reduced the vacation pay of Coleman and Williams around August 1996. During the Union's visits pursuant to the 1991-1998 agreement, the Respondents precluded the Union's director of organization from visiting its members during working hours at the Jamaica facility about September 18, 1996, and at the Brooklyn facility about October 10, 1996. In 1997, the Respondents failed to pay certain unit employees for Martin Luther King and/or Memorial Day. These matters are mandatory subjects for the purpose of collective bargaining, and the Respondents engaged in the foregoing conduct without the Union's consent, thereby failing to continue in effect all the terms and conditions of the 1991-1998 agreement.

CONCLUSION OF LAW

By failing to increase the working hours of Doreen Coleman, by reducing her working hours, by discharging her and refusing to reinstate her or to offer her reinstatement, the Respondents have been discriminating against employees for giving testimony under the Act, and have also been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3), (4), and (1) and Section 2(6) and (7) of the Act.

By unilaterally failing to continue in effect all the terms and conditions of the 1991-1998 agreement by reducing the working hours and vacation pay of Doreen Coleman and Eulale Williams, precluding union visits, and failing to pay certain unit employees for Martin Luther King and/or Memorial Day, the Respondents have been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of their employees within the meaning of Section 8(d) of the Act, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) 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 the Respondents have violated Section 8(a)(3), (4), and (1) by failing to increase the working hours of Doreen Coleman, by reducing her working hours about June 26, 1997, by discharging her about July 1, 1997, and refusing to reinstate her or to offer to reinstate her since that time, we shall order the Respondents to offer Coleman immediate and full rein-

statement to her former job, including restoration of the working hours she enjoyed prior to the Respondents' unlawful actions or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and to make Coleman whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondents shall also be required to expunge from their files any and all references to the unlawful discharge of Coleman and to notify her in writing that this has been done.

Furthermore, having found that the Respondents violated Section 8(a)(5) and (1) by unilaterally reducing the working hours of Coleman about July 18, August 15, and December 14, 1996, and June 26, 1997, reducing the working hours of Eulale Williams about June 16, 1997, reducing the vacation pay of Coleman and Williams around August 1996, and failing to pay certain unit employees¹ for Martin Luther King and/or Memorial Day, as required by the 1991-1998 agreement, we shall order the Respondents to restore the working hours of Coleman and Williams and make Coleman and Williams and the other unit employees whole for any loss of earnings attributable to their unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra. We shall also order the Respondents to comply with the terms and conditions of the 1991-1998 agreement, including permitting representatives of the Union to visit the shop at any time during working hours.

ORDER

The National Labor Relations Board orders that the Respondents, Lawrence Klein, P.C., Michael Brumer, P.C. and Albert Kalajian, P.C., a copartnership, d/b/a The Comprehensive Foot Care Group; Citywide Foot Care, P.C.; Fulton Foot Care Assoc., P.C.; MetroTech Foot Care, P.C.; 34th Street Foot Care Assoc., P.C.; Jamaica Foot Care Assoc., P.C.; 3rd Avenue Foot Care Assoc. P.C., Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Reducing or failing to increase the working hours of employees, or discharging, refusing to reinstate, or refusing to offer reinstatement to employees because they engage in activities on behalf of the Union, or in order to discourage employees from engaging in such activities or other activities for the pur-

¹ We shall leave to the compliance stage of this proceeding the identity of the unit employees denied pay for these holidays.

pose of collective bargaining or other mutual aid or protection, or because they provide testimony under the National Labor Relations Act.

(b) Failing to continue in effect all the terms and conditions of the 1991-1998 agreement by reducing the working hours of unit employees, reducing their vacation pay, precluding visits by union representatives during working hours, or by failing to pay them for Martin Luther King and/or Memorial Day. The unit includes the following employees:

All service employees employed in the Respondents' branch locations, excluding all guards and supervisors within the meaning of the Act.

(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) Within 14 days from the date of this Order, offer Doreen Coleman full reinstatement to her former job, including restoration of the working hours she enjoyed prior to the Respondents' unlawful actions or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Doreen Coleman, Eulale Williams, and the unit employees whole for any loss of earnings and other benefits suffered as a result of the unlawful action taken against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Doreen Coleman and 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.

(d) Comply with the terms and conditions of the 1991-1998 agreement, including permitting representatives of the Union to visit the shop at any time during working hours.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at their facility in Brooklyn, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' au-

²If 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."

thorized representative, shall be posted by the Respondents 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 Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 18, 1996.

(g) 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.

Dated, Washington, D.C. February 20, 1998

William B. Gould IV, Chairman

Peter J. Hurtgen, Member

J. Robert Brame III, 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT reduce or fail to increase the working hours of employees, or discharge, refuse to reinstate, or refuse to offer reinstatement to employees because they engage in activities on behalf of the Medical and Health Employees Division of Journeymen's and Production Allied Services of America and Canada International Union, Local 157, or in order to discourage employees from engaging in such activities or other

activities for the purpose of collective bargaining or other mutual aid or protection, or because they provide testimony under the National Labor Relations Act.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1991-1998 collective-bargaining agreement with the Union by reducing the working hours of unit employees, reducing their vacation pay, precluding visits by union representatives during working hours, or by failing to pay them for Martin Luther King and/or Memorial Day. The unit includes the following employees:

All service employees employed in our branch locations, excluding all guards and supervisors within the meaning of the Act.

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 within 14 days from the date of the Board's Order, offer Doreen Coleman full reinstatement to her former job, including restoration of the working hours she enjoyed prior to our unlawful actions or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Doreen Coleman, Eulale Williams, and the unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful actions taken against them, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Doreen Coleman, and 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.

WE WILL comply with the terms and conditions of the 1991-1998 agreement, including permitting representatives of the Union to visit the shop at any time during working hours.

LAWRENCE KLEIN, P.C., MICHAEL BRUMER, P.C. AND ALBERT KALAJIAN, P.C., A COPARTNERSHIP, D/B/A THE COMPREHENSIVE FOOT CARE GROUP; CITYWIDE FOOT CARE, P.C.; FULTON FOOT CARE ASSOC., P.C.; METROTECH FOOT CARE, P.C.; 34TH STREET FOOT CARE ASSOC., P.C.; JAMAICA FOOT CARE ASSOC., P.C.; 3RD AVENUE FOOT CARE ASSOC. P.C.