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Ponce de Leon Healthcare, Inc., a wholly owned subsidiary of Chartwell Healthcare Inc., d/b/a El Ponce de Leon Convalescent Center and Unite! (Union of Needletrades, Industrial and Textile Employees, AFL-CIO/CLC). Case 12-CA-19053

July 3, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND WALSH

Upon a charge filed by UNITE! (Union of Needletrades, Industrial and Textile Employees, AFL-CIO/CLC), the Union, on September 22, 1997, and an amended charge filed on February 25, 1998, the General Counsel of the National Labor Relations Board issued a complaint on June 30, 1998, against Ponce de Leon Healthcare, Inc., a wholly owned subsidiary of Chartwell Healthcare Inc., d/b/a El Ponce de Leon Convalescent Center, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On July 17, 1998, the Respondent filed an answer to the complaint. On May 1, 2001, however, the Respondent filed a motion to withdraw its answer, and on May 4, 2001, the Regional Director issued an order approving withdrawal of the Respondent's answer.

On May 11, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On May 16, 2001, 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 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 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.

On July 26, 1999, the Respondent filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of Texas. On August 11, 1999, J. Marc Hesse, Esq., re-

quested to withdraw as the Respondent's counsel. On January 11, 2001, the Regional Director issued an order rescheduling the hearing, which was served on David Elmquist, Esq., counsel for the designated Chapter 7 trustee of the Respondent's bankruptcy estate. On May 1, 2001, the Respondent, through Elmquist, sought permission to withdraw the Respondent's answer to the complaint after having been advised that withdrawal of the answer would obviate the necessity of a hearing and would result in the filing of a motion for summary judgment.

The Respondent's withdrawal of its answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹

Accordingly, in light of the Respondent's withdrawal of its answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation, with an office and place of business in Miami, Florida, has been engaged in the business of operating an extended care nursing facility located in Miami, Florida. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000, and purchased and received at its Miami, Florida facility goods valued in excess of \$50,000 directly from points outside the State of Florida. 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 the Union is a labor organization within the meaning of Section 2(5) of the Act.

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 Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

² Although the motion notes that the Respondent is in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

Kenneth Hawkins
Iris Rubio

Nursing Administrator
Social Worker

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

Included: All full-time and regular part-time employees employed in the kitchen department, dietary employees, helpers, laundry employees, maintenance employees, maids and nurses aides employed by the Respondent at 335 SW 12th Avenue, Miami, Florida 33130.

Excluded: All other employees, guards and supervisors as defined in the Act.

Since in or about May 1996, and at all material times, the Union has been the designated collective-bargaining representative of the unit employees employed by the Respondent, and since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a letter dated November 30, 1996, and a collective-bargaining agreement effective by its terms from February 20, 1998, to March 1, 2001.

At all material times, since May 1996, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

On or about September 8, 1997, the Respondent, by Kenneth Hawkins, bypassed the Union and dealt directly with the unit employees by asking employees at a meeting whether the Respondent should shut down its operations or reduce its work force.

On or about September 8, 1997, the Respondent changed the employees' working conditions by laying off employees without providing them and the Union with 1 week's notice as required by the collective-bargaining agreement, and by laying off employees without respect to their seniority.

These subjects relate to wages, hours, and other terms and conditions of employment of the unit, and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

Since on or about September 8, 1997, the Union, by Dale Ewart, has requested that the Respondent furnish the Union with the following information:

A list of employees laid off since September 8, 1997, and to be laid off, their dates of hire and effective dates of their layoffs.

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 employees. Since September 8, 1997, the Respondent has failed and refused to furnish the Union with the information it requested.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has 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 Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally laying off employees without respect to their seniority and without providing them and the Union with 1 week's notice, we shall order the Respondent to offer the laid-off employees immediate and 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 previously enjoyed, and to make them whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. 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).³ We shall also order the Respondent to remove from its files any reference to the unlawful layoffs of its employees, and to notify in writing each of the employees who were unlawfully laid off that this has been done.

Further, having found that the Respondent has failed to provide the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, Ponce de Leon Healthcare, Inc., a wholly owned subsidiary of Chartwell Healthcare Inc., d/b/a El

³ The identification of the individuals who were laid off without respect to their seniority is left to the compliance stage of these proceedings.

Ponce de Leon Convalescent Center, Miami, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bypassing the Union and dealing directly with unit employees by asking employees at a meeting whether the Respondent should shut down its operations or reduce its work force.

(b) Unilaterally changing employees' working conditions by laying off employees without providing them and the Union with 1 week's notice, and by laying off employees without respect to their seniority, without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct.

(c) Failing to provide the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(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) Within 14 days from the date of the compliance Order, offer the unlawfully laid-off employees 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 previously enjoyed.

(b) Make whole the unlawfully laid-off employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct.

(c) Within 14 days from the date of the compliance Order, remove from its files any reference to the unlawful layoffs, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(d) 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, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Furnish to the Union in a timely manner the following information it requested on September 8, 1997: A list of employees laid off since September 8, 1997, and to be laid off, their dates of hire and effective dates of their layoffs.

(f) Within 14 days after service by the Region, post at its facility in Miami, Florida, copies of the attached notice

marked "Appendix."⁴ 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. Reasonable steps shall be taken by the Respondent 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 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 September 8, 1997.

(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. July 3, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, 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 bypass the Union and deal directly with our unit employees by asking employees whether we should shut down our operations or reduce our work force.

⁴ 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 unilaterally change our employees' working conditions by laying off employees without providing them and the Union with 1 week's notice, and by laying off employees without respect to their seniority without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct.

WE WILL NOT fail to provide the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of our unit employees.

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 compliance Order, offer the unlawfully laid-off employees 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 previously enjoyed.

WE WILL make whole the unlawfully laid-off employees for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct.

WE WILL, within 14 days from the date of the Board's compliance Order, remove from our files any reference to the unlawful layoffs of our employees, and WE WILL, within 3 days thereafter, notify each of the unlawfully laid-off employees in writing that we have done so and that we will not use the unlawful layoffs against them in any way.

WE WILL furnish to the Union in a timely manner the following information it requested on September 8, 1997: A list of employees laid off since September 8, 1997, and to be laid off, their dates of hire and effective dates of their layoffs.

PONCE DE LEON HEALTHCARE, INC., A WHOLLY OWNED SUBSIDIARY OF CHARTWELL HEALTHCARE, INC., D/B/A EL PONCE DE LEON CONVALESCENT CENTER