

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

**HORACE E. GREEN DAY CARE CENTER**

and

**Case No. 29-CA-28789**

**LOCAL 205, DISTRICT COUNCIL 1707,  
AFSCME**

**Ashok C. Bokde, Brooklyn, NY, Counsel for the General Counsel.**

**DECISION**

**Statement of the Case**

**STEVEN DAVIS, Administrative Law Judge:** Based on a charge filed on February 27, 2008 by Local 205, District Council 1707, AFSCME (Union), a complaint was issued on May 29, 2008 against Horace E. Green Day Care Center (Respondent). On June 15, 2008, a hearing was held before me in Brooklyn, New York.

The complaint was duly served on the Respondent's correct address and a return receipt therefore was signed by an agent of the Respondent. The complaint advised, pursuant to section 102.20 of the Board's Rules and Regulations, that the Respondent must file an answer to the complaint within 14 days of the service of the complaint, and that if it fails to do so, all the allegations of the complaint shall be deemed by it to be admitted to be true and shall be so found by the Board. The complaint advised that an answer thereto was required to be filed on or before June 12, 2008.

No answer having been filed by June 12, counsel for the General Counsel sent a letter by first class mail to the Respondent on June 13, 2008, informing it that he had voluntarily extended its time to file an answer and further advising it, pursuant to Section 102.20 of the Board's Rules and Regulations that if an answer was not filed by June 19, 2008, a default judgment would be sought.

At the hearing, no appearance was made by the Respondent, and counsel for the General Counsel made a motion for default judgment based on the Respondent's failure to file an answer. I granted the motion.

Based upon the fact that no answer was filed denying any of the allegations of the complaint, all such allegations are deemed to be admitted to be true. Upon the evidence presented in this proceeding, I make the following:

**Findings of Fact**

**I. Jurisdiction**

The complaint alleges and I find that the Respondent, a domestic corporation, having its principal office and place of business at 600 Hart Street, Brooklyn, New York, has been engaged in the business of providing infant day care services. During the past year, the

Respondent has derived gross revenues valued in excess of \$250,000, and purchased and received at its Brooklyn facility, goods and materials valued in excess of \$5,000 directly from suppliers located within New York State, which suppliers, in turn, purchased and received such goods and materials directly from suppliers located outside New York State.<sup>1</sup> I accordingly find and conclude that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. The Alleged Unfair Labor Practices**

**A. Section 8(a)(1) of the Act**

The complaint alleges and I find that on about January 2, 2008, the Respondent, by Bridget Erwat, its Executive Director and statutory supervisor (a) threatened its employees that it was futile for them to seek assistance from the Union and (b) threatened to close its facility if its employees sought the Union's assistance.

The complaint alleges and I find that on about January 25, 2008, the Respondent, by Irma Varner, its Chairperson of the Board of Directors and statutory supervisor, advised its employees that the Respondent did not resolve employees' complaints because they contacted the Union.

The complaint alleges and I find that on about February 4, 2008, the Respondent, by Bridget Erwat, told its employees that it was futile for them to seek assistance from the Union or engage in other concerted activities.

**B. Section 8(a)(1) and (3) of the Act**

The complaint alleges and I find that on or about the dates listed next to their names, the Respondent disciplined the following employees:<sup>2</sup>

|    |                  |                                      |
|----|------------------|--------------------------------------|
| 35 | Alda Valdez      | January 2, 2008<br>February 12, 2008 |
| 40 | Linda Matias     | January 2, 2008<br>January 4, 2008   |
| 45 | Hayette Williams | January 4, 2008                      |
| 50 | Samina Lucky     | January 4, 2008<br>February 12, 2008 |
| 55 | William Mendez   | January 14, 2008                     |
| 60 | Jessica Taveras  | February 14, 2008                    |

<sup>1</sup> A commerce questionnaire completed by the Respondent during the investigation of the charge states that the Respondent has 32 employees and received gross revenue of \$1,000,000 from the performance of services.

<sup>2</sup> This office was administratively advised that the discipline consisted of written memos or letters placed in the employees' files.

5 I find, as alleged in the complaint, that the Respondent engaged in such conduct because the employees named above engaged in Union activities, and to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

**III. Conclusions of Law**

10 By threatening employees as set forth above, and by advising employees that it did not resolve employees' complaints because they contacted the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

15 By disciplining employees as set forth above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

**Remedy**

20 Having found that the Respondent has violated Section 8(a)(1) and (3) of the Act, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the letters of discipline shall be expunged from the employees' files and that they should not be used against them in any way.

25 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

**ORDER**

30 The Respondent, Horace E. Green Day Care Center, its officers, agents, successors, and assigns, shall

1. Cease and desist from

35 (a) threatening its employees that it was futile for them to seek assistance from Local 205, District Council 1707, AFSCME.

(b) threatening to close its facility if its employees sought the Union's assistance.

40 (c) advising its employees that it did not resolve its employees' complaints because they contacted the Union.

(d) telling its employees that it was futile for them to seek assistance from the Union or engage in other concerted activities.

45 (e) disciplining its employees because they engaged in Union activities, and to

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50 <sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

discourage its employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

5 (f) 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.

10 (a) Rescind the discipline issued to Aida Valdez on January 2, 2008 and February 12, 2008.

(b) Rescind the discipline issued to Linda Matias on January 2, 2008 and January 4, 2008.

15 (c) Rescind the discipline issued to Hariette Williams on January 4, 2008.

(d) Rescind the discipline issued to Samina Lucky January 4, 2008 and February 12, 2008.

20 (e) Rescind the discipline issued to William Mendez on January 12, 2008.

(f) Rescind the discipline issued to Jessica Taveras on February 14, 2008.

25 (g) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discipline imposed on the above employees, and within 3 days thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

30 (h) Within 14 days after service by the Region, post at its facility in Brooklyn, NY, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, 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  
35 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  
40 January 2, 2008.

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50 <sup>4</sup> 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."

(i) 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.

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Dated, Washington, D.C., July 30, 2008

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Steven Davis  
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

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Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

10 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

15

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

20

WE WILL NOT threaten you that it was futile for you to seek assistance from Local 205, District Council 1707, AFSCME.

WE WILL NOT threaten to close our facility if you seek the Union's assistance.

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WE WILL NOT advise you that we did not resolve your complaints because you contacted the Union.

WE WILL NOT tell you that it was futile for you to seek assistance from the Union or engage in other concerted activities.

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WE WILL NOT discipline you because you engaged in Union activities, and to discourage you from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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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 rescind the discipline issued to Aida Valdez on January 2, 2008 and February 12, 2008.

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WE WILL rescind the discipline issued to Linda Matias on January 2, 2008 and January 4, 2008.

WE WILL rescind the discipline issued to Hariette Williams on January 4, 2008.

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WE WILL rescind the discipline issued to Samina Lucky January 4, 2008 and February 12, 2008.

WE WILL rescind the discipline issued to William Mendez on January 12, 2008.

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WE WILL rescind the discipline issued to Jessica Taveras on February 14, 2008.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline imposed on the above employees, and within 3 days

thereafter notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

**HORACE E. GREEN DAY CARE CENTER**

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

Two Metro Tech Center – Suite 5100

Brooklyn, NY 11201-3838

Hours: 9:00 a.m. to 5:30 p.m.

718-330-7713

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.