NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Tom Arand, P.C. d/b/a Animal Care Clinic *and* Equal Justice Center. Case 16–CA–26387

March 31, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charge filed by the Charging Party on August 26 and September 18, 2008, respectively, the General Counsel issued the complaint on December 30, 2008, against Tom Arand, P.C. d/b/a Animal Care Clinic, the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On February 9, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on February 12, 2009, 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.

Ruling on Motion for Default Judgment[1]

Section 102.20 of the Board's Rules and Regulations provides 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 stated that unless an answer was received by January 13, 2009, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 15, 2009, notified the Respondent that unless an answer was received by January 21, 2009, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer or a response to the Notice to Show Cause, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation, with a principal office and place of business located at 1401 South I H 35, Suite 11, Round Rock, Texas, 78664, has been engaged in business as a veterinary hospital.

During the calendar year preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $1,000,000 and purchased and received at its Round Rock, Texas facility products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Texas.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) 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/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Teri Burnett	Office/Practice Manager
Dr. Jay Meyer	President/Owner

On various dates in mid to late June 2008, the Respondent's employees concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by verbally expressing concerns to Burnett regarding perceived inappropriate conduct and/or favoritism by Meyer towards another employee.

On various dates in July 2008, the Respondent's employees, including Wendy Castellanos, concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by verbally expressing concerns to Burnett regarding perceived inappropriate conduct and/or favoritism by Meyer towards another employee.

On various dates in early August 2008, the Respondent's employees, including Wendy Castellanos and James Turpin, concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by verbally expressing concerns to Burnett regarding perceived inap-

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

propriate conduct and/or favoritism by Meyer towards another employee.

About August 20, 2008, the Respondent, by Meyer, orally promulgated and since then has maintained a work rule that prohibits employees from discussing wages and/or other terms and conditions of employment.[2]

About August 21, 2008, the Respondent discharged employee Wendy Castellanos.

About August 25, 2008, the Respondent discharged employee James Turpin.

The Respondent engaged in the conduct described above because Wendy Castellanos and James Turpin engaged in and/or the Respondent believed that Castallanos and Turpin engaged in the concerted conduct described above and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(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 violated Section 8(a)(1) of the Act by discharging Wendy Castellanos and James Turpin because they engaged in and/or the Respondent believed that they engaged in protected concerted activity, we shall order the Respondent to offer these 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 and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. 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] The Respondent shall also be required to remove from its files any and all references to the unlawful discharges of Castellanos and Turpin, and to notify these employees in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Tom Arand, P.C. d/b/a Animal Care Clinic, Round Rock, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engage in and/or the Respondent believes that they have engaged in protected concerted activities, or to discourage employees from engaging in such activities.

(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) Within 14 days from the date of this Order, offer Wendy Castellanos and James Turpin 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 or privileges previously enjoyed.

(b) Make Wendy Castellanos and James Turpin whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest, 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 and all references to the unlawful discharges of Wendy Castellanos and James Turpin, and within 3 days thereafter, notify these employees in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

[2] Although the complaint alleges these facts and requests an affirmative remedy for this allegation, the complaint does not allege that the Respondent's actions in this paragraph constitute an unfair labor practice. In these circumstances, we cannot find an unfair labor practice or provide a remedy for the Respondent's promulgation and maintenance of a work rule prohibiting employees from discussing wages and/or other terms and conditions of employment. Accordingly, the General Counsel's Motion for Default Judgment with respect to this issue is denied. Nothing herein precludes the General Counsel from amending the complaint to allege that the Respondent's promulgation and maintenance of the rule described above violated the Act. In the event that the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation, the General Counsel may renew the Motion for Default Judgment with respect to the amended complaint allegation.

[3] In the complaint, the General Counsel seeks "interest compounded on a quarterly basis" on all backpay owed to discriminatees. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Rogers Corp.,* 344 NLRB 504 (2005).

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Round Rock, Texas, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 16, 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 August 21, 2008.

(f) 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. March 31, 2009

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[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."

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 discharge or otherwise discriminate against you because you engage in and/or we believe that you have engaged in protected concerted activities, or to discourage you from engaging in such activities.

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 Wendy Castellanos and James Turpin 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 or privileges previously enjoyed.

WE WILL make Wendy Castellanos and James Turpin whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharges of Wendy Castellanos and James Turpin, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

TOM ARAND, P.C. D/B/A ANIMAL CARE CLINIC