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Salem Village Nursing & Rehabilitation Center, LLC and United Food and Commercial Workers International Union, Local 1546. Case 13-CA-336228

January 17, 2025

DECISION AND ORDER

BY CHAIR WILCOX AND MEMBERS KAPLAN
AND PROUTY

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 filed by the United Food and Commercial Workers International Union, Local 1546 (the Union) on February 21, 2024,¹ the General Counsel issued a complaint and notice of hearing on July 25 against Salem Village Nursing & Rehabilitation Center, LLC (the Respondent), alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent failed to file an answer.

On October 4, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on October 8, 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

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days of service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that, unless an answer was filed by August 8, 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 for default judgment disclose that the General Counsel, by letter dated September 20, advised the Respondent that unless an answer was filed by September 27, a motion for default judgment would be filed. Nonetheless, despite these notices, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, 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 limited liability corporation, with an office and place of business in Joliet, Illinois (the Respondent's facility), has been engaged in the business of providing short- and long-term nursing and rehabilitation services.

In conducting its operations during the calendar year ending December 31, 2023, the Respondent derived gross revenues in excess of \$100,000 and purchased and received at its Joliet, Illinois facility products, goods, and materials valued in excess of \$5000 directly from points outside the State of Illinois.

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

1. At all material times, the following individuals held the position set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Mark Suissa	- Owner
Matt Furgerson	- Chief Financial Officer

2. (a) The following employees of the Respondent (the 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 nurses aides, orderlies, housekeeping employees, laundry employees, dietary employees, maintenance employees, Social Service Department, ward clerks, activities department employees, psycho social aids, and Rehabilitation aides, excluding registered nurses, licensed practical nurses, all office and clerical, Department and Assistance Department Heads, guards, [and] supervisors as defined in the Act.

(b) Since about 2002, at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative of the unit.² This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 2021, to December 31, 2023.

3. (a) On about January 11, 2024, the Respondent informed the Union in writing of its decision to permanently close its facility and permanently lay off all its unit employees no later than April 10, 2024.

¹ Unless otherwise specified, all dates are 2024.

² We hereby correct an inadvertent error in the complaint, which alleged that the Respondent was the designated exclusive collective-bargaining representative of the unit.

(b) About March 15, 2024, the Respondent permanently laid off all its unit employees.

4. (a) About January 17, 2024, the Union requested that the Respondent bargain collectively about the effects of Respondent's decision to close its facility.

(b) Since about February 20, 2024, the Respondent has failed and refused to bargain collectively about the subject set forth above in paragraph 4(a).

(c) The subject set forth above in paragraph 4(a) relates to the wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

5. (a) Since about January 17, 2024, the Union has requested, in writing, that the Respondent furnish the Union with the following information: All bargaining unit employees' name, address, phone number, date of hire, classification, rate of pay, all earned contractual benefits (earned and pro-rated amounts; example: "vacation" amount taken and the amount owed), and any and all benefit related information for the calendar years of 2023 and 2024.

(b) The information requested by the Union, as described above in paragraph 5(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(c) Since about January 17, 2024, the Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 5(a).

CONCLUSION OF LAW

By the conduct described above in paragraphs 4 and 5, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of 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 refusing to bargain with the Union about the effects of its decision to close the facility and by failing and refusing to furnish the Union with the information requested that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Union, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision and to furnish the Union with the requested information. Because of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-

bargaining representative at a time when the Respondent might still have needed their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the unit employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on the unit employees of its decision to close its Joliet, Illinois facility; (2) the parties reach a bona fide impasse in bargaining; (3) the Union fails to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union subsequently fails to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent closed its Joliet, Illinois facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the unit employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the unit employees would normally have received during the applicable period and 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*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Additionally, we shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 13 allocating the backpay award to the appropriate calendar years for

each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016).

Finally, in view of the fact that the Respondent has closed its Joliet, Illinois facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Salem Village Nursing & Rehabilitation Center, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the United Food and Commercial Workers International Union, Local 1546 (the Union) as the exclusive collective-bargaining representative of the employees in the following bargaining unit by failing and refusing to bargain over the effects of the Respondent's decision to close its Joliet, Illinois facility:

All full-time and regular part-time nurses aides, orderlies, housekeeping employees, laundry employees, dietary employees, maintenance employees, Social Service Department, ward clerks, activities department employees, psycho social aids, and Rehabilitation aides, excluding registered nurses, licensed practical nurses, all office and clerical, Department and Assistance Department Heads, guards, supervisors as defined in the Act.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(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) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent's decision to close its Joliet, Illinois facility and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Compensate the unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the

backpay award to the appropriate calendar years for each employee.

(d) Furnish to the Union in a timely manner all bargaining unit employees' name, address, phone number, date of hire, classification, rate of pay, all earned contractual benefits (earned and prorated amounts; example: "vacation" amount taken and the amount owed), and any and all benefit related information for the calendar years of 2023 and 2024.

(e) 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.

(f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"³ to the Union and to the last known address of all unit employees who were employed by the Respondent at the time that it closed its facility on about April 10, 2024. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. January 17, 2024

Gwynne A. Wilcox, Chair

Mavin. E. Kaplan, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
MAILED 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 mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose a representative 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 fail and refuse to bargain collectively and in good faith with United Food and Commercial Workers International Union, Local 1546 (the Union) as the exclusive collective-bargaining representative of our employees in the following unit by failing to bargain with the Union over the effects of our decision to close our Joliet, Illinois facility:

All full-time and regular part-time nurses aides, orderlies, housekeeping employees, laundry employees, dietary employees, maintenance employees, Social Service Department, ward clerks, activities department employees, psycho social aids, and Rehabilitation aides, excluding registered nurses, licensed practical nurses, all office and clerical, Department and Assistance Department Heads, guards, supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the 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 listed above.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the effects of our decision to close our Joliet, Illinois facility on April 10, 2024, and **WE WILL** reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees limited backpay in connection with our failure to bargain over the effects of our decision to close our Joliet, Illinois facility, as required by the Decision and Order of the National Labor Relations Board.

WE WILL NOT compensate our unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 13, within 21 days of the date the amount

of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

WE WILL NOT furnish to the Union in a timely manner all bargaining unit employees' name, address, phone number, date of hire, classification, rate of pay, all earned contractual benefits (earned and prorated amounts; example: "vacation" amount taken and the amount owed), and any and all benefit related information for the calendar years of 2023 and 2024.

SALEM VILLAGE NURSING & REHABILITATION CENTER, LLC

The Board's decision can be found at <https://www.nlrb.gov/case/13-CA-336228> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

