The Union of Union Staff (SEIU Healthcare Michigan)[1] *and* Sara Vitale. Case 07–CB–079543

February 7, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

The Acting General Counsel seeks a default judgment in this case pursuant to the terms of an informal unilateral settlement agreement. A charge and a first amended charge were filed by Sara Vitale (the Charging Party) on April 24 and June 27, 2011, respectively, against The Union of Union Staff (the Respondent), alleging that the Respondent violated Section 8(b)(1)(A) of the Act.

Subsequently, the Respondent executed an informal unilateral settlement agreement, which was approved by the Regional Director for Region 7 on August 2, 2012.[2] The settlement agreement required the Respondent to provide the Charging Party with a copy of her discharge grievance file, which she requested on December 21, 2011, and March 17, 2012. It also required the Respondent to post appropriate notices and provide signed copies of the notice for posting by SEIU Healthcare Michigan (the Employer), if so willing.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the allegations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon the Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated August 22, 2012, the Region sent the Respondent a copy of the approved settlement agreement and advised it to take the steps necessary to comply with the agreement. By letter dated October 29, 2012, the Acting Regional Director notified the Respondent that it had not complied with the terms of the settlement as it had not provided the Charging Party with a copy of her discharge grievance file, had not posted appropriate notices, and had not provided signed and dated notices for posting by the Employer. The letter advised the Respondent that its failure to comply with the settlement agreement within 14 days would result in the issuance of a complaint and the filing of a motion for default judgment. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, the Acting Regional Director issued a complaint on November 30, 2012. On December 19, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. On December 21, 2012, 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

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to furnish the Charging Party with a copy of her discharge grievance file as requested, by failing to post appropriate notices, and by failing to provide signed copies of the notice for posting by the Employer, if so willing. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we

[1] We have changed the caption to accord with our usual practice of including the employer's name in parentheses following the union's name in cases where the union is the charged party.

[2] By letter dated July 24, 2012, the Charging Party was given the opportunity to enter into the settlement agreement as executed by the Respondent or provide written objections to the approval of the settlement agreement. The Charging Party did not execute the agreement or submit any objections. By letter dated August 2, 2012, the Charging Party was advised of the Regional Director's intention to approve the settlement agreement and was provided with the opportunity to file an appeal of that decision. No appeal was filed.

find that all of the allegations in the complaint are true.[3] Accordingly, we grant the Acting 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 Employer, SEIU Healthcare Michigan, a labor organization, has been an unincorporated association with a facility in Detroit, Michigan, where it represents employees in bargaining with employers.

During the calendar year 2011, a representative period, the Employer, in conducting its business operations described above, collected and received dues and initiation fees in excess of $50,000, and remitted from its Detroit facility directly to the Service Employees International Union in Washington, D.C., dues and initiation fees in excess of $50,000.

We find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that The Union of Union Staff, the Respondent, 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 names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Norman Bomer	President/Interim President
Latoyia Combs	Steward

At all material times, by virtue of Section 9(a) of the Act, the Respondent has been the exclusive collective-bargaining representative of the following employees of the Employer (the unit):

> All full-time and regular part-time organizers, lead organizers, coordinators, member representatives, member satisfaction representatives, canvassers, home care organizers, paralegals, grievance administrators, research analysts, communications specialists, negotiators, and assistants employed by the Employer out of its offices located at 2604 Fourth Street, Detroit, Michigan, 120 N. Washington Square, Lansing, Michigan, and 2680 Vulcan Street, Muskegon, Michigan, but excluding all directors, assistant directors, presidential administrative assistants, information technology staff, liaisons, contingent lost time members, confidential employees, attorneys, member organizers, employees in the existing Office and Professional Employees International Union, AFL-CIO, Local 42 clerical bargaining unit, and guards and supervisors as defined in the Act.

At all material times, the Respondent and the Employer have maintained and enforced a collective-bargaining agreement covering the terms and conditions of employment of the unit, including a grievance and arbitration procedure.

Since about December 21, 2011, and March 17, 2012, the Charging Party, an employee in the unit, has requested, by email, that the Respondent provide her with a copy of her discharge grievance file.

Since about December 21, 2011, and continuing to date, the Respondent has failed and refused to provide the Charging Party with a copy of the requested file.

By failing and refusing to provide the Charging Party with a copy of her discharge grievance file, the Respondent, in connection with its representative status as described above, has breached its duty of fair representation owed to the Charging Party and the employees in the unit.

CONCLUSIONS OF LAW

1. By the conduct described above, the Respondent has breached its duty of fair representation owed to the Charging Party and the employees in the unit in violation of Section 8(b)(1)(A) of the Act.

2. The Respondent's unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, 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(b)(1)(A) by refusing to provide the Charging Party with a copy of her discharge grievance file, we shall order the Respondent to provide the Charging Party with a copy of the requested file.

ORDER

The National Labor Relations Board orders that the Respondent, The Union of Union Staff, Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to provide any employee with a copy of his or her discharge grievance file upon request.

[3] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

(b) In any like or related manner 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) Provide the Charging Party with a copy of her discharge grievance file.

(b) Within 14 days after service by the Region, post at its Detroit, Michigan facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members and employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with employees and members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 7 signed copies of the notice in sufficient number for posting by the Employer, SEIU Healthcare Michigan, at its Detroit, Michigan, facility, if it wishes, in all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 7 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 7, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, 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 AND MEMBERS
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 your employer 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 refuse or fail to provide an employee's grievance file to him or her upon request for such information.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL provide the Charging Party with a copy of her discharge grievance file.

THE UNION OF UNION STAFF