Convalcare Corp. d/b/a Stockbridge Country Manor *and* SEIU Healthcare Michigan. Case 7–CA–51070

June 30, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

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 and compliance specification. Upon a charge filed by the Union on February 19, 2008, the General Counsel issued the complaint and compliance specification on April 25, 2008, against Convalcare Corp. d/b/a Stockbridge Country Manor, the Respondent, alleging that it had violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On June 4, 2008, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 9, 2008, 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. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the complaint and compliance specification affirmatively stated that unless an answer was filed on or before May 9, 2008, the Board could find all the allegations in the complaint and compliance specification are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated May 16, 2008, notified the Respondent that unless an answer was received by May 23, 2008, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, 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 corporation with an office and facility in Stockbridge, Michigan, has been engaged in the operation of a nursing home. During 2007, a representative period, the Respondent, in conducting its operations described above, derived gross revenue in excess of $100,000 and purchased and received at its Stockbridge facility goods and materials valued in excess of $50,000 directly from points outside the State of Michigan.

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 a health care institution within the meaning of Section 2(14) of the Act and that the Union, SEIU Healthcare Michigan (formerly known as Local 79, Service Employees International 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 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:

Paul Himelhoch	Owner/Administrator
Deborah Joseph	Office Manager/Business Manager

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 regular full-time and regular part-time nurse assistants, CENAs, bath and rehab aides, cooks dietary aides, laundry and housekeeping aides, and maintenance employees employed by the Respondent at its facility located at 406 West Main Street, Stockbridge, Michigan; but excluding the administrator, office manager, activity director, social worker, director of nursing, charge nurses, dietary supervisor, housekeeping supervisor, laundry supervisor, maintenance supervisors, probationary employees, and all other employees such as nurses, activity aides, office employees/staff, ward clerks, all other supervisors and guards as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of

[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 Schaumber and Member Liebman 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.

the unit and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period from January 1, 2002, through December 31, 2003, which agreement was extended on an annual basis by the Respondent and the Union or its predecessor.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. On about October 1, 2007, the Respondent and the Union reached an agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement effective from October 1, 2007, through September 30, 2010.

Since about October 1, 2007, the Respondent unilaterally failed to pay contractual wage raises to unit employees. Since about January 1, 2008, the Respondent unilaterally failed to pay vacation pay to unit employees.

On about February 19, 2008, the Respondent permanently closed its facility and terminated the employment of all employees in the unit.

Since about January 16, 2008, and continuing to date, the Respondent has failed and refused to provide the Union with a meaningful opportunity to bargain over the effects of the closing of its facility on the unit.

The subjects set forth above 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 set forth above without affording the Union notice and a meaningful opportunity to bargain about these changes and their effects on the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of 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)(5) and (1) of the Act by failing to pay contractual wage raises to unit employees since October 1, 2007, and by failing to pay vacation pay to unit employees since January 1, 2008, we shall order the Respondent to make unit employees whole by paying them the amounts set forth in the compliance specification, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws.[2]

To remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of its decision to permanently close its Stockbridge, Michigan facility, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result 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 been in need of 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, in order 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 employees for losses suffered as a result of the violations and to re-create 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).

Pursuant to *Transmarine*, the Respondent typically would be required to 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 the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of closing its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure 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

[2] In the complaint, the General Counsel seeks "interest calculated on a quarterly compound basis" for any monetary amounts owing to the employees. 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).

notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

Transmarine provides that the sum paid to these unit employees may not exceed the amount they would have earned as wages from the date on which the Respondent ceased doing business at the 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, *Transmarine* further provides that 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 is typically based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and is computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

Here, in the circumstances of the Respondent's cessation of operations, the General Counsel in the compliance specification seeks only the minimum 2 weeks of backpay due the terminated employees under *Transmarine*. Schedules A through D of the complaint and compliance specification set forth the amount due each employee. We shall grant the General Counsel's request and order the Respondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment.

Further, in view of the fact that the Respondent's facility is closed, 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 in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Convalcare Corp. d/b/a Stockbridge Country Manor, Stockbridge, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with SEIU Healthcare Michigan as the exclusive collective-bargaining representative of the employees in the unit by unilaterally failing to pay contractual wage raises to unit employees; failing to pay vacation pay to unit employees; and failing to provide the Union with a meaningful opportunity to bargain over the effects of its decision to permanently close its Stockbridge, Michigan facility and terminate the employees in the unit. The appropriate unit is:

> All regular full-time and regular part-time nurse assistants, CENAs, bath and rehab aides, cooks dietary aides, laundry and housekeeping aides, and maintenance employees employed by the Respondent at its facility located at 406 West Main Street, Stockbridge, Michigan; but excluding the administrator, office manager, activity director, social worker, director of nursing, charge nurses, dietary supervisor, housekeeping supervisor, laundry supervisor, maintenance supervisors, probationary employees, and all other employees such as nurses, activity aides, office employees/staff, ward clerks, all other supervisors and guards as defined in the Act.

(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) On request, bargain with the Union concerning the effects on the unit employees of the Respondent's decision to permanently close its Stockbridge, Michigan facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's failure to pay contractual wage raises, and vacation pay to unit employees, and for its failure to bargain with the Union concerning the effects on unit employees of its decision to permanently close its Stockbridge, Michigan facility, by paying them the backpay amounts following their names, plus interest accrued to the date of payment, as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

SCHEDULE D

Name	Amount
Jamie Allen	$770.00
Jessica Banwell	$1530.80
Linda Beifuss	$770.00
Sonya Brow	$910.00
Mary Clerkley	$910.00
Angela Cordero	$770.00
Kahran Dean	$1217.20
Sandra Ezrow	$910.00
Frances Fineran	$2745.20
Jennifer Flores	$967.67
Rose Gray	$950.00
Kathy Havens	$910.00
Alina Hawkins	$910.00
Amber Joseph	$720.00
Brian Marshall	$2076.80
David Marshall	$910.00
Evelyn Marshall	$970.00
Jessie Marshall	$2024.40
Rita Marshall	$5754.00
Linda Messner	$1537.47
Troy Minneboo	$1010.00
Gail Montgomery	$2091.60
Lois Montgomery	$3872.96
Dianna McInnes	$1530.00
India Neill	$910.00
Robert Nelson	$2572.00
Laura Nixon	$910.00
Beth Novak	$5050.00
Carolyn Olejniczak	$4986.80
Michael Patrick	$787.60
Debra Pena	$3338.00
Amber Puckett	$850.00
Toni Quinn	$1450.00
Tiffany Reeves	$770.00
Robyn Scott	$770.00
Amy Stevens	$770.00
Andrea Stone	$1530.00
Kimberly Tansley	$910.00
Doranne Taylor	$970.00
Heather Titus	$1662.78
Erika Wahl	$910.00
Mary Ward	$1468.98
Sarah Wasper	$1010.00
TOTAL	**$68,414.26**

(c) 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.

(d) 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 at-

tached notice marked "Appendix"[3] to the Union and to all unit employees who were employed by the Respondent at any time since October 1, 2007.

(e) 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.

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 fail and refuse to bargain collectively and in good faith with SEIU Healthcare Michigan as the exclusive collective-bargaining representative of the employees in the unit by unilaterally failing to pay contractual wage raises to unit employees; failing to pay vacation pay to unit employees; and failing to provide the Union with a meaningful opportunity to bargain over the effects of our decision to permanently close our Stockbridge, Michigan facility and terminate the employees in the unit. The appropriate unit is:

> All regular full-time and regular part-time nurse assistants, CENAs, bath and rehab aides, cooks dietary aides, laundry and housekeeping aides, and maintenance employees employed by us at our facility located at 406 West Main Street, Stockbridge, Michigan; but excluding the administrator, office manager, activity director, social worker, director of nursing, charge nurses, dietary supervisor, housekeeping supervisor, laundry supervisor, maintenance supervisors, probationary employees, and all other employees such as nurses, activity aides, office employees/staff, ward clerks, all other supervisors and guards as defined in the Act.

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, on request, bargain collectively and in good faith with the Union concerning the effects on the unit employees of our decision to permanently close our Stockbridge, Michigan facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL make the unit employees whole for any loss of earnings and other benefits suffered as a result of our failure to pay contractual wage raises, and vacation pay to unit employees, and to bargain with the Union concerning the effects on unit employees of our decision to permanently close our Stockbridge, Michigan facility, by paying them the amounts following their names, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws.

[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."

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Name	Amount
Jamie Allen	$770.00
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Dianna McInnes	$1530.00
India Neill	$910.00
Robert Nelson	$2572.00
Laura Nixon	$910.00
Beth Novak	$5050.00
Carolyn Olejniczak	$4986.80
Michael Patrick	$787.60
Debra Pena	$3338.00
Amber Puckett	$850.00
Toni Quinn	$1450.00
Tiffany Reeves	$770.00
Robyn Scott	$770.00
Amy Stevens	$770.00
Andrea Stone	$1530.00
Kimberly Tansley	$910.00
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TOTAL	**$68,414.26**

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COUNTRY MANOR