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**Bothell Pediatric and Hand Therapy and Yana A. Ishanina.** Case 19–CA–291046

September 29, 2022

**DECISION AND ORDER**

BY MEMBERS RING, WILCOX, AND PROUTY

The General Counsel seeks a default judgment in this case on the ground that Bothell Pediatric and Hand Therapy (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Yana Ishanina on February 22, 2022, the General Counsel issued a complaint and notice of hearing on June 30, 2022, against the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On August 31, 2022, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On September 6, 2022, 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.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**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 from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before July 14, 2022, 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 August 12, 2022, advised the Respondent that unless an answer was received by August 19, 2022, 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 an answer, we deem the allegations of 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 has been a State of Washington corporation with an office and place of business in Bothell, Washington (the facility), and has been engaged in the business of operating a medical and rehabilitation clinic.

In conducting its operation described above during the 12-month period preceding issuance of the complaint, which period is representative of all material times, the Respondent purchased and received at the facility goods valued in excess of \$250,000 directly from points outside the State of Washington.

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.

**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:

Leo McGee	-Human Resources Manager
Retta Longsine	-Therapy Lead

The following events occurred, giving rise to this proceeding.

1. About February 8, 2022, the Respondent's employee Yana Ishanina, at the Respondent's facility, engaged in a conversation with other employees about their pay.

2. (a) About February 9, 2022, the Respondent, by Retta Longsine, emailed its employees, including Ishanina, informing them that they could be discharged for discussing their pay and benefits.

(b) About February 15, 2022, the Respondent discharged its employee Ishanina.

(c) The Respondent engaged in the conduct described above in paragraphs 2(a) and (b) because Ishanina engaged in protected concerted activity described above in paragraph 1 and to discourage employees from engaging in this or other protected concerted activity.

**CONCLUSION OF LAW**

By the conduct described above in paragraph 2, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The unfair labor practices of the Respondent

described above affect 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 violated Section 8(a)(1) by discharging employee Yana Ishanina for engaging in protected concerted activity, we shall order the Respondent to offer her full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. We shall also order that the Respondent make Ishanina whole, with interest, for any loss of earnings and other benefits suffered as a result of the unlawful discharge. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Ishanina for her search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.<sup>1</sup>

Further, we shall order the Respondent to compensate Ishanina for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 19 allocating the backpay award to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay allocation report, we shall order the Respondent to file with the Regional Director for Region 19 a copy of Ishanina's corresponding W-2 form(s) reflecting the backpay award. *Cascade Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

<sup>1</sup> The General Counsel additionally seeks a make-whole remedy for Ishanina that includes payment for consequential damages incurred as a result of the Respondent's unfair labor practices. We have invited briefing on this issue in *Thryv, Inc.*, 371 NLRB No. 37 (2021). Accordingly, we decline to order this relief at this time.

The General Counsel further requests that we order the Respondent to draft and send a letter of apology to Ishanina for having discharged her

The Respondent shall also be required to remove from its files any reference to the unlawful discharge of Ishanina and to notify her in writing that this has been done and that the discharge will not be used against her in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, Bothell Pediatric and Hand Therapy, Bothell, Washington, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Telling employees that they could be discharged if they engage in protected concerted activities.

(b) Discharging or otherwise discriminating against employees because they engage in protected concerted activities or to discourage other employees from engaging in these activities.

(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) Within 14 days from the date of this Order, offer Yana Ishanina full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Yana Ishanina whole for any loss of earnings and other benefits suffered as a result of her unlawful discharge, in the manner set forth in the remedy section of this decision.

(c) Compensate Yana Ishanina for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 19, 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 year(s).

(d) File with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Yana Ishanina's corresponding W-2 form(s) reflecting the backpay award.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of

and for any hardship or distress it caused her. We deny this request because the General Counsel has not shown that this additional measure is needed to remedy the effects of the Respondent's unfair labor practices. See, e.g., *Environmental Contractors, Inc.*, 366 NLRB No. 41, slip op. at 4 fn. 6 (2018); *Guy Brewer 43 Inc. d/b/a Checkers*, 363 NLRB No. 173, slip op. at 2 fn. 2 (2016).

Yana Ishanina, and within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) 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.

(g) Post at its facility in Bothell, Washington, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, 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. 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 its employees 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. If 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 February 9, 2022.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 19 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. September 29, 2022

John F. Ring,

Member

<sup>2</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be

Gwynne A. Wilcox,

Member

David M. Prouty,

Member

(SEAL)

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 tell you that you could be discharged if you engage in protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you because you engage in protected concerted activities or to discourage other employees from engaging in these activities.

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, within 14 days from the date of the Board's Order, offer Yana Ishanina full reinstatement to her former job or, if that job no longer exists, to a substantially

physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." 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."

equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Yana Ishanina whole for any loss of earnings and other benefits resulting from her unlawful discharge, less any net interim earnings, plus interest, and WE WILL also make her whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Yana Ishanina for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 19, 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 year(s).

WE WILL file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Yana Ishanina's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our

unlawful discharge of Yana Ishanina and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

BOTHELL PEDIATRIC AND HAND THERAPY

The Board's decision can be found at [www.nlr.gov/case/19-CA-291046](http://www.nlr.gov/case/19-CA-291046) 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.

