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United States Court of Appeals
District of Columbia Circuit



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

June 17, 2013

Mark J. Langer, Esquire
Clerk, United States Court of
Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW, Room 5423
Washington, D.C. 20001-2866

Re: *Flagstaff Medical Center, Inc. v. NLRB*,
D.C. Cir. Nos. 11-1326, 11-1398

Dear Mr. Langer:

On May 3, 2013, we submitted a proposed judgment pursuant to Rule 19 of the Federal Rules of Appellate Procedure reflecting the Court's opinion granting Flagstaff Medical Center Inc.'s petition in part and granting in part the Board's cross-application for enforcement. The submitted judgment had an inadvertent error with the subsection lettering in section 2 of the order. Enclosed is a corrected order with the proper subsection lettering for the second part of the order.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570
(202) 273-2960

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FLAGSTAFF MEDICAL CENTER, INC.)	
)	
Petitioner)	Nos. 11-1326, 11-1398
)	
)	
v.)	Board Case No.
)	28-CA-21509
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent)	

JUDGMENT

Before: Henderson, Brown and Griffith, Circuit Judges

THIS CAUSE came to be heard upon a petition filed by the Flagstaff Medical Center, Inc. to review an order of the National Labor Relations Board dated August 26, 2011, in Case No. 28-CA-21509, and upon a cross-application filed by the National Labor Relations Board to enforce said Order. The Court heard argument of the parties and has considered the briefs and agency record filed in this cause. On April 26, 2013, the Court being fully advised in the premises, handed down its opinion granting Flagstaff's petition in part and granting in part the Board's cross-application for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Flagstaff Medical Center, Inc., Flagstaff, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Coercively interrogating employees about their union membership, activities, sympathies, and/or support.
 - (b) Placing employees under surveillance while they engage in union or other protected concerted activities.

- (c) Warning employees that they should be careful about associating with union advocates.
 - (d) Directing employees not to discuss their wages with other employees.
 - (e) Threatening employees that if the Union negotiates a raise for employees, budgetary considerations would cause the layoff of recently hired employees.
 - (f) Threatening to eliminate employees' scheduling flexibility if employees select a union representative.
 - (g) Prohibiting employees from engaging in union activity in the emergency department break room.
 - (h) Changing the work shift, or otherwise discriminating against employees for supporting the Union or any other labor organization.
 - (i) 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) Rescind the unlawful change to Laverne Gorney's work schedule.
 - (b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful schedule change and, within 3 days thereafter, notify Gorney in writing that this has been done and that the shift change will not be used against her in any way.
 - (c) Within 14 days after service by the Region, post at its Flagstaff, Arizona facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 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 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities 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 in since March 31, 2007.

- (d) Within 21 days after service by the Regional Office, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that FMC has taken to comply.

KLH

Judge, United States Court of Appeals
For the District of Columbia Circuit

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Judge, United States Court of Appeals
For the District of Columbia Circuit

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Judge, United States Court of Appeals
For the District of Columbia Circuit

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN 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 coercively interrogate you about your own or other employees' union membership, activities, sympathies, or support.

WE WILL NOT engage in surveillance of your union or other protected concerted activities.

WE WILL NOT warn you that you should be careful about associating with union advocates.

WE WILL NOT direct you not to discuss your wages with other employees.

WE WILL NOT threaten you that if the Union negotiates a raise for employees, budgetary considerations would cause the layoff of recently hired employees.

WE WILL NOT threaten to eliminate your scheduling flexibility if you select a union representative.

WE WILL NOT prohibit you from engaging in union activity in the emergency department break room.

WE WILL NOT change your work schedule or otherwise discriminate against you for supporting the Union or any other labor organization.

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 rescind the change to Laverne Gorney's work schedule.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to Gorney's schedule change, and **WE WILL**, within 3 days

thereafter, notify her in writing that this has been done and that the discharge and schedule change will not be used against them in any way.

FLAGSTAFF MEDICAL CENTER, INC.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FLAGSTAFF MEDICAL CENTER, INC.)	
)	
Petitioner)	Nos. 11-1326, 11-1398
v.)	
)	Board Case No.
NATIONAL LABOR RELATIONS BOARD)	28-CA-21509
)	
Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

I certify the foregoing document was served on all those parties or their counsel of record through the CM/ECF system if they are a registered user or, if they are not by serving a true and correct copy at the address listed below:

Steven Dean Wheelless
Steptoe & Johnson, LLP
201 East Washington Street
Collier Center, Suite 1600
Phoenix, AZ 85004-2382

s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570
(202) 273-2960

Dated at Washington, D.C.
this 17th day of June, 2013