

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

| | | |
|------------------------------------|---|-----------------------|
| CAMELOT TERRACE, INC. AND |) | |
| GALESBURG TERRACE, INC. |) | |
| |) | |
| Petitioners/Cross-Respondents |) | Nos. 12-1071, 12-1218 |
| |) | |
| v. |) | |
| |) | |
| NATIONAL LABOR RELATIONS BOARD |) | |
| |) | Board Case No. |
| Respondent/Cross-Petitioner |) | 33-CA-15584 |
| |) | |
| SERVICE EMPLOYEES INTERNATIONAL |) | |
| UNION, HEALTHCARE ILLINOIS INDIANA |) | |
| |) | |
| Intervenor |) | |

JUDGMENT

Before: HENDERSON and ROGERS*, Circuit Judges, and WILLIAMS, Senior Circuit Judge

THIS CAUSE came to be heard upon a petition filed by Camelot Terrace, Inc. and Galesburg Terrace, Inc. to review an Order of the National Labor Relations Board dated December 30, 2011, in Case Nos. 33-CA-015584, 33-CA-015669, 33-CA-015781, 33-CA-015587, 33-CA-015670, and 33-CA-015780, reported at 357 NLRB No. 161, and upon a cross-application for enforcement 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 June 10, 2016, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of Camelot Terrace, Inc. and Galesburg Terrace, Inc. and granting in part the Board's cross-petition for enforcement. In conformity therewith, it is hereby

*Circuit Judge Rogers would have approved the Board's proposed judgment of June 21, 2016.

ORDERED AND ADJUDGED by the Court that Camelot Terrace, Inc. and Galesburg Terrace, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendices).

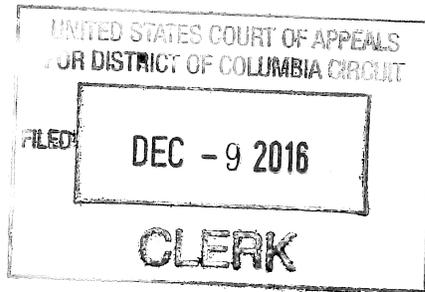


Judge, United States Court of Appeals
for the District of Columbia Circuit



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

ENTERED:



NATIONAL LABOR RELATIONS BOARD

v.

CAMELOT TERRACE, INC. AND GALESBURG TERRACE, INC

ORDER

A. Camelot Terrace, Streator, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union over terms and conditions of employment for bargaining unit employees by: restricting the dates for bargaining sessions; restricting the lengths of bargaining sessions; repeatedly canceling and shortening scheduled bargaining sessions beyond its unreasonable stated intention not to bargain for more than 4 hours per session; reneging on or withdrawing from tentative agreements without good cause; refusing to bargain over economic subjects; and refusing to make economic proposals. The appropriate bargaining unit is:

All full-time and regular part-time certified nurses assistants (CNAs), dietary employees, cooks, housekeeping employees, laundry employees, unit aides (assistants), activity aides, medical records, and rehab aides employed by the Employer at its facility currently located at 516 W. Frech St., Streator, Illinois; but excluding all other employees, department heads, casual employees, LPN's, RN's, managers, maintenance workers, office clerical employees and guards, professional employees and supervisors as defined in the National Labor Relations Act.

(b) Failing and refusing to furnish the Union with requested census information regarding its patient population and the personnel file of employee Kathy Rhodes without Rhodes' written authorization.

(c) Without providing the Union prior notice and the opportunity to bargain with respect to the change of a mandatory subject of bargaining and its effects, unilaterally: changing the employee health insurance carrier; giving incentive raises to certain bargaining unit employees;

- implementing a new attendance policy; more strictly enforcing the attendance policy; and restricting the length of bargaining sessions.
- (d) Discharging Kathy Rhodes pursuant to the new more strictly enforced attendance policy, without providing the Union prior notice and the opportunity to bargain with respect to the change of a mandatory subject of bargaining and its effects.
 - (e) Bypassing the Union and dealing directly with employees by polling them regarding a change in insurance carrier.
 - (f) 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) Bargain in good faith with the Union, on request, as the recognized bargaining representative of the employees in the above appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.
 - (b) Bargain in good faith with the Union not less than twenty-four (24) hours per month, at least six (6) hours per session for this facility or, in the alternative, twenty-four (24) hours per month, at least six (6) hours per session for the same contract(s) for both the Camelot Terrace and the Galesburg Terrace facilities, or another schedule mutually agreed upon by the parties, until a complete collective-bargaining agreement or a bona fide impasse is reached.
 - (c) Reimburse the Union for all costs and expenses incurred in collective-bargaining negotiations from January 2008 to the last bargaining session in connection with Cases 33-CA-015781, 33-CA-015584, and 33-CA-015669. The judgment is without prejudice to Camelot Terrace, at the compliance stage, raising the argument that the Board may award bargaining costs only to the extent that Camelot Terrace's bad-faith conduct caused the Union to incur such costs unnecessarily.
 - (d) Furnish to the Union in a timely manner the information that the Union requested: census information regarding its patient population and Rhodes' personnel file without requiring her written authorization.

- (e) On request by the Union, and to the extent sought by the Union, rescind the changes in terms and conditions of employment described above, and restore the status quo ante.
- (f) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unilateral changes, in the manner set forth in the remedy section of the decision, as amended.
- (g) Within 14 days from the date of this Order, offer Kathy Rhodes 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.
- (h) Make Kathy Rhodes whole for any loss of earnings and other benefits suffered as a result of her discharge, in the manner set forth in the remedy section of the decision, as amended.
- (i) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against her in any way.
- (j) 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.
- (k) Within 14 days after service by the Region, post at its facility in Streator, Illinois, copies of the attached notice marked "Appendix A." 18 Copies of the notice, on forms provided by the Regional Director for Subregion 33, 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. In the event that, during the pendency of these proceedings, 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 January 2008.

- (l) 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 Subregion attesting to the steps that the Respondent has taken to comply.

B. Galesburg Terrace, Galesburg, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to bargain in good faith with the Union over terms and conditions of employment for bargaining unit employees by: restricting the dates for bargaining sessions; restricting the lengths of bargaining sessions; repeatedly canceling and shortening scheduled bargaining sessions beyond its unreasonable stated intention not to bargain for more than 4 hours per session; renegeing on or withdrawing from tentative agreements without good cause; refusing to bargain over economic subjects; and refusing to make economic proposals. The appropriate bargaining unit is:

All full-time and regular part-time certified nurses assistants, dietary aides and cooks, laundry aides, activity aides, housekeeping, and social service aides, employed by the Employer at its Galesburg, Illinois facility; EXCLUDING office clerical employees, professional employees, guards, supervisors as defined in the Act, registered nurses, licensed practical nurses, confidential employees, casual employees, and all other employees.

- (b) Failing and refusing to furnish the Union with information that the Union requested: proof that background checks had been performed for its certified nursing assistants, attendance information, and census information regarding its patient population.
- (c) Without providing the Union prior notice and the opportunity to bargain with respect to the change of a mandatory subject of bargaining and its effects, unilaterally: reducing the hours of its housekeeping and laundry employees; increasing the length of the probationary period for certain returning employees; changing the employee health insurance carrier; and restricting the length of bargaining sessions.

- (d) 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) Bargain in good faith with the Union, on request, as the recognized bargaining representative of the employees in the above appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.
 - (b) Bargain in good faith with the Union not less than twenty-four (24) hours per month, at least six (6) hours per session for this facility or, in the alternative, twenty-four (24) hours per month, at least six (6) hours per session for the same contract(s) for both the Galesburg Terrace and the Camelot Terrace facilities, or another schedule mutually agreed upon by the parties, until a complete collective-bargaining agreement or a bona fide impasse is reached.
 - (c) Reimburse the Union for all costs and expenses incurred in collective-bargaining negotiations from January 2008 to the last bargaining session in connection with Cases 33-CA-015780, 33-CA-015587, and 33-CA-015670. The judgment is without prejudice to Galesburg Terrace, at the compliance stage, raising the argument that the Board may award bargaining costs only to the extent that Galesburg Terrace's bad-faith conduct caused the Union to incur such costs unnecessarily.
 - (d) Furnish to the Union in a timely manner the information that the Union requested: proof that background checks had been performed for its certified nursing assistants, attendance information, and census information regarding its patient population.
 - (e) On request by the Union, and to the extent sought by the Union, rescind the changes in terms and conditions of employment described above, and restore the status quo ante.
 - (f) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unilateral changes, in the manner set forth in the remedy section of the decision, as amended.
 - (g) 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.

- (h) Within 14 days after service by the Region, post at its facility in Galesburg, Illinois, copies of the attached notice marked "Appendix B." 19 Copies of the notice, on forms provided by the Regional Director for Subregion 33, 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. In the event that, during the pendency of these proceedings, 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 January 2008.
- (i) 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 Subregion attesting to the steps that the Respondent has taken to comply.

APPENDIX A
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 fail and refuse to bargain in good faith with Service Employees International Union Healthcare Illinois and Indiana (the Union) over your terms and conditions of employment by restricting the dates for bargaining sessions; restricting the lengths of bargaining sessions; repeatedly canceling and shortening scheduled bargaining sessions beyond our unreasonable stated intention not to bargain for more than 4 hours per session; renegeing on or withdrawing from tentative agreements without good cause; refusing to bargain over economic subjects; and refusing to make economic proposals. The appropriate bargaining unit is:

All full-time and regular part-time certified nurses assistants (CNAs), dietary employees, cooks, housekeeping employees, laundry employees, unit aides (assistants), activity aides, medical records, and rehab aides employed by the Employer at its facility currently located at 516 W. Frech St., Streator, Illinois; but excluding all other employees, department heads, casual employees, LPN's, RN's, managers, maintenance workers, office clerical employees and guards, professional employees and supervisors as defined in the National Labor Relations Act.

WE WILL NOT fail and refuse to timely furnish the Union with census information regarding our patient population or the personnel file of employee Kathy Rhodes without her written authorization.

WE WILL NOT, without providing the Union prior notice and the opportunity to bargain with respect to the change of a mandatory subject of bargaining and its effects, unilaterally change your health insurance carrier; give incentive raises to

certain bargaining unit employees; implement a new attendance policy; more strictly enforce the attendance policy; or restrict the length of bargaining sessions.

WE WILL NOT discharge you pursuant to a unilateral change in the terms and conditions of your employment.

WE WILL NOT bypass the Union and deal directly with you by polling you regarding a change in a term and condition of employment.

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 with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the above bargaining unit.

WE WILL bargain in good faith with the Union not less than twenty-four (24) hours per month, at least six (6) hours per session for this facility or, in the alternative, twenty-four (24) hours per month, at least six (6) hours per session for the same contract(s) for both this and the Galesburg Terrace facility, or another schedule mutually agreed upon, until a complete collective-bargaining agreement or a bona fide impasse is reached.

WE WILL reimburse the Union for all costs and expenses incurred in collective-bargaining negotiations from January 2008 to the last bargaining session in connection with Cases 33-CA-015781, 33-CA-015584, and 33-CA-015669, as determined in a compliance proceeding consistent with this Order.

WE WILL furnish the Union in a timely manner the information it requested: census information regarding our patient population and Rhodes' personnel file without requiring her written authorization.

WE WILL, on request by the Union, and to the extent sought by the Union, rescind the unilateral changes in terms and conditions of employment we unlawfully made, and restore the status quo ante.

WE WILL make you whole for any loss of earnings and other benefits you suffered as a result of our unlawful unilateral changes to your terms and conditions of employment.

WE WILL, within 14 days from the date of the Board's Order, offer Kathy Rhodes full reinstatement to her former job, or if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Kathy Rhodes whole for any loss of earnings and other benefits resulting from her discharge, less any interim earnings, plus interest.

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

CAMELOT TERRACE

APPENDIX B
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 fail and refuse to bargain in good faith with Service Employees International Union Healthcare Illinois and Indiana (the Union) over your terms and conditions of employment by restricting the dates for bargaining sessions; restricting the lengths of bargaining sessions; repeatedly canceling and shortening scheduled bargaining sessions beyond our unreasonable stated intention not to bargain for more than 4 hours per session; renegeing on or withdrawing from tentative agreements without good cause; refusing to bargain over economic subjects; and refusing to make economic proposals. The appropriate bargaining unit is:

All full-time and regular part-time certified nurses assistants, dietary aides and cooks, laundry aides, activity aides, housekeeping, and social service aides, employed by the Employer at its Galesburg, Illinois facility; EXCLUDING office clerical employees, professional employees, guards, supervisors as defined in the Act, registered nurses, licensed practical nurses, confidential employees, casual employees, and all other employees.

WE WILL NOT fail and refuse to furnish the Union with the information it requested: proof that background checks had been performed for our certified nursing assistants, attendance information, and census information regarding our patient population.

WE WILL NOT, without providing the Union prior notice and the opportunity to bargain with respect to the change of a mandatory subject of bargaining and its effects, unilaterally reduce the hours of our housekeeping and laundry employees;

increase the length of the probationary period for certain returning employees; change your health insurance carrier; or restrict the length of bargaining sessions.

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 with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the above bargaining unit.

WE WILL bargain in good faith with the Union not less than twenty-four (24) hours per month, at least six (6) hours per session for the Galesburg Terrace facility or, in the alternative, twenty-four (24) hours per month, at least six (6) hours per session for the same contract(s) for the Camelot Terrace and Galesburg Terrace facilities, or on another schedule mutually agreed upon, until a complete collective-bargaining agreement or a bona fide impasse is reached.

WE WILL reimburse the Union for all costs and expenses incurred in collective-bargaining negotiations from January 2008 to the last bargaining session in connection with Cases 33-CA-015780, 33-CA-015587, and 33-CA-015670, as determined in a compliance proceeding consistent with this Order.

WE WILL furnish to the Union in a timely manner the information it requested: proof that background checks had been performed for our certified nursing assistants, attendance information, and census information regarding our patient population.

WE WILL, on request by the Union, and to the extent sought by the Union, rescind the changes in terms and conditions of employment we unlawfully made, and restore the status quo ante.

WE WILL make you whole for any loss of earnings and other benefits you suffered as a result of our unlawful unilateral changes to your terms and conditions of employment.

GALESBURG TERRACE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

| | | |
|------------------------------------|---|-----------------------|
| CAMELOT TERRACE, INC. AND |) | |
| GALESBURG TERRACE, INC. |) | |
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| Petitioners/Cross-Respondents |) | Nos. 12-1071, 12-1218 |
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| NATIONAL LABOR RELATIONS BOARD |) | |
| |) | Board Case No. |
| Respondent/Cross-Petitioner |) | 33-CA-15584 |
| |) | |
| SERVICE EMPLOYEES INTERNATIOAL |) | |
| UNION, HEALTHCARE ILLINOIS INDIANA |) | |
| |) | |
| Intervenor |) | |

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2016, I electronically filed the foregoing document with the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I further certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, D.C.
this 23rd day of September, 2016