

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

MIDWEST DIVISION–MMC, LLC D/B/A)
MENORAH MEDICAL CENTER)
)
Petitioner/Cross-Respondent)
)
v.)
)
NATIONAL LABOR RELATIONS BOARD)
)
Respondent/Cross-Petitioner)
)
NATIONAL NURSES ORGANIZING COMMITTEE-)
KANSAS/NATIONAL NURSES UNITED)
)
Intervenor)

ORIGINAL

Nos. 15-1312
15-1359

JUDGMENT

Before: GARLAND, *Chief Judge*, and KAVANAUGH and SRINIVASAN, *Circuit Judges*.

THIS CAUSE came to be heard upon a petition filed by Midwest Division–MMC, LLC d/b/a Menorah Medical Center to review an Order of the National Labor Relations Board dated August 27, 2015, in Case Nos. 17-CA-088213 and 17-CA-091912, reported at 362 NLRB No. 193, and upon a cross-application for enforcement filed by the National Labor Relations Board to enforce said Order. The Court heard argument of all parties and has considered the briefs and agency record filed in this cause. On August 18, 2017, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of Midwest Division–MMC, LLC d/b/a Menorah Medical Center and granting in part the Board’s cross-petition for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that Midwest Division–MMC, LLC d/b/a Menorah Medical Center, Overland Park, Kansas, its

officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).



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



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: September 28, 2017

NATIONAL LABOR RELATIONS BOARD

v.

MIDWEST DIVISION—MMC, LLC D/B/A
MENORAH MEDICAL CENTER

ORDER

Midwest Division—MMC, LLC d/b/a Menorah Medical Center, Overland Park, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Promulgating, maintaining, and enforcing a confidentiality rule prohibiting employees from discussing with other employees discipline or ongoing investigations.
- (b) Refusing to bargain collectively with the National Nurses Organizing Committee—Kansas/National Nurses United, affiliated with National Nurses Organizing Committee/National Nurses United (the Union) by failing and refusing to furnish it with requested information that is necessary and relevant to the Union’s performance of its functions as the exclusive collective-bargaining representative of the employees in following unit:

All full-time, part-time and PRN registered nurses employed by Menorah Medical Center, excluding nurse educators, regularly assigned charge nurses, Vascular Lab Techs, infection control/employee health nurses, risk management/performance improvement coordinators, administrative employees, confidential employees, managerial employees, guards and supervisors, as defined in the Act, and all other employees.

- (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to 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 of the Board’s Order, revise or rescind the confidentiality rule prohibiting employees from disclosing information concerning reportable incidents.

- (b) Furnish employees with an insert for the current risk management plan that (1) advises that the unlawful provision has been rescinded, or (2) provides a lawfully worded provision on adhesive backing that will cover the unlawful provision; or publish and distribute to employees revised risk management plans that (1) do not contain the unlawful provision, or (2) provide a lawfully worded provision.
- (c) Furnish to the Union in a timely manner the information requested by the Union on June 1 and 5, 2012.
- (d) Within 14 days after service by the Region, post at its Overland Park, Kansas facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 17, 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 May 1, 2012.
- (e) Within 21 days after service by the Region, file with the Regional Director for Region 17 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 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 prohibit you from discussing with other employees discipline or matters under investigation by us or our peer review committees.

WE WILL NOT refuse to bargain collectively with the National Nurses Organizing Committee—Kansas/National Nurses United, affiliated with National Nurses Organizing Committee/National Nurses United (the Union) by failing and refusing to furnish it with requested information that is necessary and relevant to the Union's performance of its functions as the collective-bargaining representative of the employees in following unit:

All full-time, part-time and PRN registered nurses employed by Menorah Medical Center, excluding nurse educators, regularly assigned charge nurses, Vascular Lab Techs, infection control/employee health nurses, risk management/performance improvement coordinators, administrative employees, confidential employees, managerial employees, guards and supervisors, as defined in the Act, and all other employees.

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 revise or rescind the confidentiality rule prohibiting you from disclosing information concerning reportable incidents.

WE WILL furnish you with an insert for the current risk management plan that (1) advises that the unlawful provision has been rescinded, or (2) provides a lawfully

worded provision on adhesive backing that will cover the unlawful provision; or WE WILL publish and distribute revised risk management plans that (1) do not contain the unlawful provision, or (2) provide a lawfully worded provision.

WE WILL furnish to the Union in a timely manner the information requested by the Union on June 1 and 5, 2012.

MIDWEST DIVISION—MMC, LLC D/B/A MENORAH MEDICAL CENTER

The Board's decision can be found at www.nlr.gov/case/17-CA-088213 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.



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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2017, 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 22nd day of August, 2017