Paragon Systems, Inc. *and* Committee for Fair and Equal Representation (CFER). Case 13–CA–274000

June 2, 2022

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN, RING, WILCOX, AND PROUTY

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge filed by the Committee for Fair and Equal Representation (the Union) against Paragon Systems, Inc. (the Respondent),[1] the General Counsel issued a complaint on June 17, 2021.[2] The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information requested by the Union that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. The Respondent filed a timely answer to the complaint on September 2, admitting the allegations in part, and pleading certain affirmative defenses.

Subsequently, the Respondent executed a bilateral informal settlement agreement (the Agreement) with the Union, which was approved by the Acting Regional Director for Region 13 on September 15. The Agreement required the Respondent to (1) provide the information requested by the Union from January 22 to February 22; (2) post a Notice to Employees (notice) in prominent places, including all places where notices to employees are customarily posted, at its two main facilities in Chicago, Illinois,[3] for a period of 60 days; (3) email the notice to all employees in the bargaining unit; and (4) certify its completion of the above.

The Region issued its compliance packet to the Respondent on September 16, detailing the compliance certification process.

The Agreement contains a provision entitled "Performance," addressing the possibility of the Respondent's non-compliance with the terms of the Agreement:

> Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director. The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on June 17, 2021 in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations.

By letter dated September 16, the compliance assistant for Region 13 sent the Respondent's counsel a copy of the approved Agreement and a cover letter summarizing the terms of the Agreement. By emails dated October 5 and 26, the compliance assistant notified the Respondent's counsel that the Respondent had failed to provide the information noted in the Agreement and requested compliance within 3 days of each email. By letter dated November 9, the compliance assistant notified the Respondent that it must provide evidence of its compliance within 14 days, or the Regional Director would revoke the Agreement and reissue the complaint against the Respondent. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the Agreement, on January 26, 2022, the Acting Regional Director reissued the complaint.[4] On February 1, 2022, the General Counsel filed a Motion to

[1] The initial charge in Case 13–CA–274000 was filed on March 10, 2021. The first amended charge was filed on June 16, 2021.

[2] All dates hereafter refer to 2021 unless otherwise indicated.

[3] The Agreement provided for notice posting at two facilities: 401 S. LaSalle Street, Chicago, Illinois, and 536 S. Clark Street, Chicago, Illinois.

[4] By the terms of the Agreement, the Respondent's answer to the complaint was withdrawn and the Respondent was deemed to have admitted the complaint's allegation.

Transfer and Continue Matter before the Board and for Default Judgment (motion for default judgment). On February 3, 2022, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why the motion should not be granted.[5] The Respondent did not file a response. The allegations in the motion for default judgment are therefore undisputed.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the Agreement. Consequently, pursuant to the noncompliance provisions of the Agreement set forth above, we find that all of the allegations of the reissued complaint are true.[6] Accordingly, 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 place of business in Herndon, Virginia, as well as Chicago, Illinois, has been a provider of specialized security, fire, investigations, inspections, cybersecurity, risk management, and mission support services to the U.S. Federal Government and other critical infrastructure clients. During the calendar year ending December 31, 2020, in conducting its business operations, the Respondent performed services valued in excess of $50,000 outside the State of Illinois.

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 that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, Pete Moran held the position of the Respondent's Contract Manager and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

2. 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 full time and regular part-time security guards assigned by the Employer to the federal buildings in the state of Illinois pursuant to the Employer's Contract No. 70RFP418DE5000001 (the "DHS/FPS Contract") with the U.S. Department of Homeland Security/Federal Protective Service, and its successor(s), for the provision of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, and all other employees of the Employer.

3. At all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit (described above in paragraph 2), and has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is dated February 1, 2021, through January 31, 2024.

4. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

5. Since about January 22, 2021, the Union has requested in writing that Respondent furnish the Union with the following information regarding Officer Bryan Davis:

(a) Q&A conducted by Captain Suski on Jan. 22;

(b) Copies of emails between FPS and Paragon management regarding Davis' alleged misconduct which led to his suspension;

(c) Records and documentation from FPO Taylor's post inspection of Davis on Jan. 6;

(d) All witness statements.

6. Since about January 26, 2021, the Union has requested in writing that the Respondent furnish the Union with the following additional information regarding Officer Bryan Davis: Copies of cell phone records for post phone (773) 502-7633 for the past 4 months of 2020 from August 2020 to December 2020.

7. The Union has requested in writing that the Respondent furnish the Union with the following information regarding complex relief schedules:

(a) Since about February 18, 2021: Complex relief schedules and sheets for 230 South Dearborn, 101 Ida B. Wells and 536 S. Clark, 610 Canal, 844 N Rush and 600 W, N Madison from Jan 1 to Feb 18 for all 3 shifts including weekends;

(b) Since about March 3, 2021: Who was the complex relief scheduled at 77 W Jackson on March 3 at 1400-2400;

(c) Since about March 11, 2021: How many complex are on duty today at 230 South Dearborn, 101 Ida B. Wells and 536 S. Clark.

8. Since about February 20, 2021, the Union has requested in writing that Respondent furnish the Union with the following information regarding Call Logs:

[5] The General Counsel's motion specifically requested that the Board issue a Decision and Order containing such findings of facts, conclusions of law, and order in accordance with the allegations of the reissued complaint.

[6] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

(a) Form 139's for 101O,101A and 101N from Jan 20;
(b) Form 1103 for 101A from Jan 20.

9. Since about February 22, 2021, the Union has requested in writing that the Respondent furnish the Union with the following information regarding a breaks violation grievance: Copies of breaker sheets for shifts/posts 101c for the morning, evening and overnight shifts of 02/21/2021 and 02/22/2021.

10. The information requested by the Union described above in paragraphs 5–9 is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

11. Since about January 2021, the Respondent has failed and refused to furnish the Union with the requested information described in paragraphs 5–9, above.

CONCLUSIONS OF LAW

1. By the conduct described in paragraph 11 above, the Respondent has been failing and refusing 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.

2. 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 take certain affirmative action designed to effectuate the policies of the Act, as requested by the General Counsel.

Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with the information requested from January 22 until February 22, 2021, we will order the Respondent to cease and desist from such conduct. We will order the Respondent to provide such requested information, as relevant and necessary to the Union's role as the exclusive collective- bargaining representative of employees in the unit.

We recognize that the Respondent's facilities may be closed due to the Coronavirus Disease 2019 (COVID-19) pandemic or that the facilities may be open but a substantial complement of employees may not be physically present on site. Nevertheless, the Respondent may be communicating with its employees by electronic means. In such circumstances, we find that prompt posting of the notice by electronic means will best effectuate the purposes of the Act by providing employees with timely notice of the unfair labor practices and the steps the Respondent will take to remedy them. We have accordingly modified the Board's standard remedial language to provide that in such cases, the notice must be posted by such electronic means within 14 days after service by the Region, and to further provide that the paper notices must be physically posted within 14 days of the reopening and staffing by a substantial complement of employees. Compare *Danbury Ambulance Service*, 369 NLRB No. 68 (2020).[7]

ORDER

The National Labor Relations Board orders that the Respondent, Paragon Systems, Inc., of Chicago, Illinois and Herndon, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's employees in the following appropriate unit:

> All full time and regular part-time security guards assigned by the Employer to the federal buildings in the state of Illinois pursuant to the Employer's Contract No. 70RFP418DE5000001 (the "DHS/FPS Contract") with

[7] We find that the remedial benefit of promptly notifying employees of unfair labor practices committed against them, and the steps that will be taken to remedy those violations, outweighs our colleagues' concern that the combined notice-posting period will extend beyond 60 days in the subset of cases affected by today's decision. Moreover, contrary to our colleagues, we do not consider this remedy extraordinary. Electronic posting, when applicable, helps ensure that the remedial notice is adequately communicated to employees. See *J. Picini Flooring*, 356 NLRB 11, 13 (2010). Our decision today simply removes an unnecessary delay in such communication.

Members Kaplan and Ring would not modify the temporary *Danbury Ambulance* notice-posting language, which the Board adopted to address workplace closures resulting from the COVID-19 pandemic. That language relevantly provides that if physical posting of paper notices must be delayed due to the effects of the pandemic, electronic distribution of the notice is delayed as well, so that both types of posting occur simultaneously. The Board so provided because the standard notice-posting period is 60 days. For employers that communicate with their employees electronically via an intranet or internet site, requiring electronic distribution and physical posting sequentially rather than simultaneously would extend the notice-posting period beyond 60 days and up to as many as 120 days. The Board has ordered notice posting for more than 60 days, but only as an extraordinary remedy. See *UPMC*, 366 NLRB No. 185, slip op. at 7–8 (2018) (ordering 120-day notice-posting period "based on the number and serious nature of the [r]espondent's violations"), petitions for review dismissed upon joint motion of the parties No. 18-1237, 2021 WL 1439791 (D.C. Cir. 2021); see also *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, slip op. at 13 (2018), enfd. mem. in relevant part 803 Fed. Appx. 876 (6th Cir. 2020); *HTH Corp.*, 361 NLRB 709, 714 (2014), enfd. in part, enf. denied in part 823 F.3d 668 (D.C. Cir. 2016). By modifying the *Danbury Ambulance* language, the majority makes notice posting for more than 60 days a standard remedy for a subset of employers, at least until the Board returns to its pre-pandemic notice-posting remedy. Members Kaplan and Ring would continue to reserve extended notice-posting periods for egregious violations of the Act.

the U.S. Department of Homeland Security/Federal Protective Service, and its successor(s), for the provision of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, and all other employees of the Employer.

(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) Provide to the Union in a timely manner the information requested by the Union from January 22, 2021, until and including February 22, 2021.

(b) Post at its two main Chicago, Illinois facilities at 401 S. LaSalle Street and 536 S. Main Street copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Acting Regional Director for Region 13, 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. The Respondent shall take reasonable steps 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 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 at any time since January 22, 2021.[8]

(c) Within 21 days after service by the Region, file with the Acting Regional Director for Region 13 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. June 2, 2022

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

John F. Ring, Member

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 refuse to bargain collectively with the Committee for Fair and Equal Representation (CFER) (the Union) by failing and refusing to furnish it with requested

[8] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are 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 facilities reopen 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 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."

information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our employees in the following appropriate unit:

> All full time and regular part-time security guards assigned by the Employer to the federal buildings in the state of Illinois pursuant to the Employer's Contract No. 70RFP418DE5000001 (the "DHS/FPS Contract") with the U.S. Department of Homeland Security/Federal Protective Service, and its successor(s), for the provision of security services at said facilities, but excluding all managers, supervisors, assistant supervisors, sergeants, lieutenants, captains, office and/or clerical employees, and all other employees of the Employer.

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 provide to the Union in a timely manner the information requested by the Union from January 22, 2021, until and including February 22, 2021.

PARAGON SYSTEMS, INC.

The Board's decision can be found at www.nlrb.gov/case/13-CA-274000 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.