Dumbo 301 LLC d/b/a Magic Tavern *and* Actors' Equity Association. Case 19–CA–322582

March 21, 2025

DECISION AND ORDER[1]

BY CHAIRMAN KAPLAN AND MEMBERS PROUTY AND WILCOX

The General Counsel seeks a default judgment in this case on the ground that Dumbo 301 LLC d/b/a Magic Tavern (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by the Actors' Equity Association (the Union) on July 27, 2023, as amended on August 25, 2023, and July 26, 2024, the General Counsel issued a complaint and notice of hearing against the Respondent on August 6, 2024, alleging that it violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer.

On November 20, 2024, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On November 21, 2024, 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.

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 August 20, 2024, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. 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 limited liability company with an office and place of business in Portland, Oregon (the facility) where it has been engaged in the operation of an adult entertainment club.

As set forth in the Board's decision in *Dumbo 301 LLC d/b/a Magic Tavern*, 373 NLRB No. 72 (2024), at all material times, the Respondent has been an employer engaged in commerce within the meaning of the Act.

Accordingly, 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, the following individuals held the position set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Benjamin Donahue—Majority Owner

Matthew King—Minority Owner

Unnamed Individuals—Agents

(a) The following employees of the Respondent 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 dancers employed by the Employer at its Portland, Oregon facility; excluding all managerial employees, and guards and supervisors as defined by the Act.[2]

(b) On September 7, 2023, a representation election was conducted among the Respondent's unit employees.

(c) On September 15, 2023, the Regional Director issued a Certification of Representative certifying the Union as the exclusive collective-bargaining representative of the unit.

(d) At all times since about September 15, 2023, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

[1] Chairman Kaplan notes that, on January 27, 2025, President Trump removed Member Wilcox from her position. On March 6, 2025, the District Court for the District of Columbia held that Member Wilcox's removal violated Sec. 3(a) of the Act, declared her removal "null and void," and enjoined Chairman Kaplan from, inter alia, "in any way treating plaintiff as having been removed from office." *Wilcox v. Trump*, Case 1:25-cv-00334-BAH (Mar. 6, 2025) (Dkt #34). On March 7, 2025, the Department of Justice appealed the district court's order to the United States Court of Appeals for the D.C. Circuit and, thereafter, filed a request for an immediate stay. See *Emergency Motion for Stay Pending Appeal, Wilcox v. Trump,* No. 25-5057 (D.C. Cir. filed Mar. 10, 2025). That request is pending as of the issuance of this decision.

[2] The complaint does not track the exact language of the unit description used in the Certification of Representative issued by the Region on September 15, 2023. In our findings and Order, we have used the unit description contained in the Certification of Representative.

2. On various dates in or about March 2024, which are better known to the Respondent, its employee known by the stage name "Peach" engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection by raising concerns about safety and workflow to the Respondent.

(a) On or about March 26, 2024, the Respondent terminated the employment of its employee Peach.

(b) The Respondent engaged in the conduct described above because Peach engaged in union and/or protected concerted activities, and to discourage employees from engaging in these or other union and/or protected concerted activities.

3. On about March 26, 2024, the Respondent prohibited its employees from making statements critical of the Respondent and/or its employees either to or around customers.

(a) On about March 26, 2024, the Respondent threatened its employees with discipline and/or discharge if they made statements critical of the Respondent and/or its employees either to or around customers.

(b) The Respondent promulgated and maintained the prohibition described above to discourage its employees from forming, joining, or assisting the Union and/or engaging in these or other protected, concerted activities.

4. Beginning about April 2023, certain unit employees from the Respondent's facility concertedly ceased work and engaged in a strike to protest unsafe working conditions.

(a) On about July 21, 2024, the Respondent, by Benjamin Donahue and an unnamed employee in front of the Respondent's facility, threw picket signs towards the picketers, pushed picketers, and set off fireworks in the direction of the picketers.

(b) On about July 21, 2024, the Respondent, by Benjamin Donahue at the Respondent's facility, surveilled the protected concerted activities of its employees engaged in a picket.

CONCLUSIONS OF LAW

By the conduct described above in paragraphs 2 through 4 above, 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.

By the conduct described above in paragraphs 2 and 3 above, 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)(3) and (1) of the Act.

The Respondent's unfair labor practices 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)(3) and (1) of the Act by discharging its employee Peach for engaging in protected concerted activity, we shall order the Respondent to offer her full reinstatement to her former position 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 shall also order the Respondent to make Peach 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 *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondent shall also compensate Peach for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.[3] Compensation for these harms 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.

[3] For the reasons set forth in *Tri-State Rigging LLC*, 374 NLRB No. 21, slip op. at 2 fn. 3 (2025), and *Airgas USA, LLC*, 373 NLRB No. 102, slip op. at 1 fn. 2 (2024), the Board's decision in *Thryv* remains valid precedent.

Unlike his colleagues, Chairman Kaplan would not order the extraordinary make-whole remedy ordered by the Board in *Thryv*. To begin, for the reasons set forth in his partial dissent in *Thryv*, he does not believe that remedy is either appropriate or within the Board's remedial authority. He notes that the Third Circuit recently reached the same conclusion, finding that the *Thryv* remedy is beyond the scope of the Board's statutory remedial authority. *NLRB. v. Starbucks Corp.*, 125 F.4th 78, 94–97 (3d Cir. 2024). But see *International Union of Operating Engineers, Stationary Engineers, Local 39 v. NLRB*, 127 F.4th 58, 80–87 (9th Cir. 2025) (enforcing *Thryv* remedy). Chairman Kaplan further notes that his colleagues err in relying on the *Thryv* decision as support for the remedy being ordered in this matter because the provision in the Board's Order in *Thryv* containing that remedy was vacated by the Fifth Circuit. *Thryv, Inc. v. NLRB*, 102 F.4th 727, 748 (5th Cir. 2024). Accordingly, the novel make-whole remedy ordered in *Thryv* is not extant precedent. See *Airgas USA*, 373 NLRB No. 102, slip op. at 19–20 (then-Member Kaplan, dissenting).

Further, we shall order the Respondent to compensate Peach 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 Peach'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).

The Respondent shall also be required to remove from its files any reference to the unlawful discharge of/refusal to reinstate Peach and to notify her in writing that this has been done and that the adverse actions will not be used against her in any way.[4]

ORDER

The National Labor Relations Board orders that the Respondent, Dumbo 301 LLC d/b/a Magic Tavern, Portland, Oregon, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Discharging employees for engaging in protected concerted activities, including by raising workplace safety and workflow concerns to the Respondent.

(b) Threatening employees with discipline or discharge for making statements critical of the Respondent and/or its employees to or around customers.

(c) Promulgating and maintaining prohibitions against making statements critical of the Respondent and/or its employees to or around customers.

(d) Responding with physical violence when employees engage in concerted work stoppages, including picketing.

(e) Surveilling the protected concerted activities of employees engaging in concerted work stoppages, including picketing.

(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) Within 14 days from the date of this Order, offer employee Peach 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 Peach whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of her unlawful discharge, in the manner set forth in the remedy section of this decision.

(c) Compensate Peach 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 Peach'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 Peach, 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,

[4] The General Counsel, in her complaint and her motion for default judgment, additionally requests that we order the Respondent to electronically distribute an Explanation of Rights to employees, including via text messaging, email, and posting on social media websites and internal applications; conduct a meeting(s) during work time to have the Respondent's majority owner read aloud the Notice to Employees in the presence of a Board agent or, alternatively, have a Board agent read it in the presence of the Respondent; mail copies of the Notice to unit employees and the Union; and issue a letter of apology to all employees. We deny the General Counsel's requests because she has not shown that the additional measures are needed to remedy the effects of the Respondent's unfair labor practices. See, e.g., *Titan Health, LLC d/b/a Tweedleaf*, 372 NLRB No. 96, slip op. at 3 fn. 2 (2023); *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) (not reported in bound volume).

Member Prouty would grant the General Counsel's request for a notice reading for the reasons stated in his concurrence in *CP Anchorage Hotel 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151, slip op. at 9–15 (2022) (Member Prouty, concurring) (urging the Board to adopt a reading of the notice aloud and distribution to employees at a group meeting as a standard remedy for unfair labor practices because "[h]aving the notice to employees read aloud to them in a group meeting, with a copy in hand to follow along if they choose, is a superior means of disseminating and amplifying the Board's message to maximize the extent to which employees hear and comprehend it"), enfd. 98 F.4th 314 (D.C. Cir. 2024).

necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Portland, Oregon copies of the attached notice marked "Appendix."[5] 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 March 26, 2024.

(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.

(i) 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. March 21, 2025

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Marvin E. Kaplan, Chairman

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David M. Prouty, Member

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Gwynne A. Wilcox, 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 discharge our employees for engaging in protected concerted activities, including by raising workplace safety and workflow concerns.

WE WILL NOT threaten our employees with discipline or discharge for making statements to or around customers that criticize us or other employees.

WE WILL NOT promulgate and maintain prohibitions against making statements that criticize us or other employees to or around customers.

WE WILL NOT respond with physical violence when our employees engage in concerted work stoppages, including picketing.

WE WILL NOT surveil the protected concerted activities of our employees when they are engaged in work stoppages, including picketing.

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 employee Peach full reinstatement to her

[5] 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 has 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."

former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges she previously enjoyed.

WE WILL make Peach 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 any other direct or foreseeable pecuniary harms suffered as a result of her unlawful discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Peach 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 Peach'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 Peach 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.

DUMBO 301 LLC D/B/A MAGIC TAVERN

The Board's decision can be found at www.nlrb.gov/19-CA-322582 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.