JD-14-26
Fayetteville, N.C.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

VALLEY RADIOLOGY, P.A.
(Respondent)

and Case 10-CA-324512

LEENA MAMMEN, an Individual
(Charging Party)

Heather B. Howard, Esq.,
for the General Counsel.
Louis J. Cannon, Esq. and Cassandra L. Horton, Esq.,
for the Respondent

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was submitted on a stipulated record, pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations. It was assigned to me by order dated February 14, 2026. The complaint alleges that Respondent violated Section 8(a)(1) of the Act by proffering a Separation and Release Agreement (hereafter referred to as the separation agreement) to the Charging Party, Dr. Leena Mammen, that contained non-disparagement and confidentiality clauses which broadly interfered with, restrained, and coerced employees in the exercise of their rights under

Section 7 of the Act. The Respondent filed an answer denying the essential allegations in the complaint.[1]

The General Counsel and Respondent filed briefs, which I have read and considered. Based on those briefs, the stipulations, and the entire record in this case, I make the following:[2]

FINDINGS OF FACT

I. Jurisdiction

Respondent is a North Carolina professional corporation that operates a radiology practice providing medical care. It has offices and places of business in Leland, Fayetteville, and Whiteville, North Carolina. During a representative one-year period, it derived gross revenues in excess of $250,000, and purchased and received at its North Carolina facilities products, goods and materials valued in excess of $5,000 directly from points outside North Carolina. I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a health institution within the meaning of Section 2(14) of the Act.

II. Alleged Unfair Labor Practices

The Facts

Background

[1] The record herein consists of the stipulation and 5 exhibits, including the formal papers.

[2] In its brief Respondent did not mention or discuss certain affirmative defenses alleged in its answer. In these circumstances, I consider them to have been waived.

Respondent has 53 employees who work at its three radiology facilities. Dr. Mammen, the Charging Party, signed an employment agreement with Respondent on August 31, 2022, with a 6-month term commencing on February 1, 2023. The employment agreement provided that Dr. Mammen would receive a signing bonus in advance of starting her employment of $50,000, which was treated as a loan subject to repayment and forgiveness terms. On September 8, 2022, Respondent provided the loan to Dr. Mammen, and she started work on the agreed commencement date.

The employment agreement also provided that Respondent would forgive the signing bonus loan in an amount of $4,1667.67 per month for each completed month of work. If she ended her employment for any reason before the first anniversary of her commencement date, Dr. Mammen was to repay Respondent within 10 days of her termination any unrepaid portion of the signing bonus loan.

Dr. Mammen ended her employment with Respondent on July 16, 2023. At that time, 50% of the signing bonus loan had been forgiven according to the employment agreement. On July 25, 2023, Respondent sent Dr. Mammen a letter notifying her that she still owed $25,000 of the signing bonus loan and was extending the time of repayment to ten days after the date of the letter. Exh. 3. In the letter Respondent also alternatively offered a separation agreement which would have forgiven the balance of the signing bonus loan and contained the following provisions (Exh. 4):

> 8. **Non-disparagement**. Employee will not say, write, or do anything (to include causing others to say, write, or do anything) to disparage or defame Company or, to the extent any of the same is known by Employee to be an Affiliate of Company, any Affiliate of Company. The term "Affiliate"

means any or all of Company's members, managers, owners, officers, contractors, directors, employees, affiliated entities, investment funds, limited partners, clients, or vendors. Further, Employee will not knowingly say, write, or do anything (to include causing others to say, write, or do anything) that is likely to injure or harm Company or its relationships with current or prospective employees, limited partners, investment funds, current or targeted portfolio companies, clients, vendors, or the public; except that Employee may respond truthfully to enforce this Agreement or when called upon by subpoena or court order to testify or provide information in a legal or administrative proceeding.

9. **Confidentiality of Agreement**. Employee agrees that the terms of this Agreement are strictly confidential. Employee agrees that Employee will not disclose the fact or contents of this Agreement, including the amount of monetary payment, to anyone other than Employee's attorneys, financial advisers, government taxing authority, or Employee's spouse or partner, or as part of Employee's application for unemployment benefits, pursuant to an appropriate order from a court or other entity with competent jurisdiction, or as otherwise allowed under applicable law.

The severance agreement also contained provisions that the remaining balance would be forgiven if Dr. Mammen waived a series of other employment rights she might have against Respondent. Exh. 4.

Dr. Mammen did not reply to the Respondent's July 25 letter and did not sign the severance agreement or pay back the remainder of the signing bonus loan.

Discussion and Analysis

Alleged Violations in the Language of the Separation Agreement

The test for evaluating an employer's conduct or statements with respect to violations of Section 8(a)(1) of the Act is "whether they have a reasonable tendency to interfere with, restrain, or coerce employees who may engage in activities protected by Section 7." *American Freightways Co*., 124 NLRB 145, 147 (1959).

In *McLaren Macomb*, 372 NLRB No. 58 (2023), the Board found that the mere proffer of a separation agreement whose language was broad enough to limit the Section 7 rights of employees violated Section 8(a)(1). In that case, the Board overruled *Baylor University Medical Center*, 369 NLRB No. 43 (2020) and *IGT d/b/a International Game Technology*, 370 NLRB No. 50 (2020), cases in which severance agreements were deemed different from work rules because they dealt only with post-employment matters and not existing working conditions. The Board rejected the rationale of those decisions and returned to the pre-existing law in recognition that inclusion of unlawful provisions in a severance agreement offered to employees has a reasonable tendency to interfere with, restrain or coerce the exercise of employee rights under Section 7 of the Act. As the Board stated at slip op. 5-6:

> Agreements between employers and employees that restrict employees from engaging in activity protected by the Act, or from filing charges with the Board, assisting other employees in doing so, or assisting the Board's investigative process, have been consistently deemed unlawful. The "future rights of employees as well as the rights of the public may not be traded away" in a manner which requires "forbearance from future charges and

concerted activities." (footnotes omitted)

The separation agreement in *McLaren Macomb* contained a requirement that the signatories abide by a non-disparagement clause and a confidentiality clause that the Board found violative of Section 8(a)(1) of the Act. Because the agreement required acceptance of those unlawful provisions, the Board found that the proffer of the severance agreement was itself violative of Section 8(a)(1). Slip op. pp. 7-8.

The Specific Provisions Alleged to be Unlawful

The Respondent concedes that, because the non-disparagement clause and the confidentially clause in the separation agreement offered to, and declined by, the Charging Party are part of the separation agreement, proffering the separation agreement is governed by *McLaren Macomb* and thus unlawful. The Respondent also stated its intention to seek a reversal of *McLaren-Macomb* by the Board. R. Br. at p. 8. However, I am required to apply it as extant Board law.

The non-disparagement provision in this case bans the employees, including the Charging Party, from doing anything to "disparage," "injure," or "harm" the Respondent. That puts the provision in the same category as the one considered in *McLaren,* which banned employees from making statements that "would disparage or harm the image of [the] Employer." The Board in *McLaren* found that that language broadly encompassed Section 7 rights because it would include banning statements asserting that the Employer had violated the Act, filing charges or participating in Board investigations; and the ban would also "encompass conduct regarding any labor issue, dispute or term and condition of employment." 372 NLRB at slip op. 6-8. Since the *McLaren* language was found to have violated Section 8(a)(1),

I must also find a violation with respect to the language in the Respondent's non-disparagement provision.

The same result governs Respondent's confidentiality provision, which broadly bans employees, including the Charging Party, from "disclosing the facts or contents of the Agreement . . to anyone [excluding parties not applicable here]." Such broad language would include in the ban the filing of Board charges in this very case, as well as engaging in other protected activity. This mirrors the language found unlawful in *McLaren* where the clause at issue banned employees from disclosing the terms of the agreement to "any third person." In *McLaren*, the Board found that that language precluded employees from even disclosing an unlawful provision of the agreement by filing an unfair labor practice charge or assisting the Board in its investigation of the legality of the non-disparagement clause in that case. Accordingly, the Board found the confidentiality clause violative of Section 8(a)(1). 372 NLRB at slip op. 8. I make the same finding as to the confidentiality clause in this case.

I therefore find that the confidentiality and non-disparagement clauses that are part of the separation agreement are violative of Section 8(a)(1) of the Act. Thus, proffering the separation agreement is itself unlawful and violative of Section 8(a)(1).

Conclusions of Law

1. By proffering a severance agreement to Dr. Mammen that contained unlawful non-disparagement and confidentiality clauses, Respondent has violated Section 8(a)(1) of the Act.

2. The above violation constitutes an unfair labor practice within the meaning of the Act.

Remedy

Having found that Respondent has engaged an unfair labor practice, I shall recommend that it be ordered to cease and desist from its unlawful conduct and take certain affirmative action designed to effectuate the policies of the Act, including the posting of an appropriate notice.

Respondent objects to the remedy set forth in the complaint and repeated in the proposed notice and order in the General Counsel's brief (G.C. Br. at 23-24) because, in addition to reoffering a severance agreement without the two unlawful clauses, it is required to offer other terms previously offered to the Charging Party. R. Br. at 9-10. It particularly objects to the requirement to forgive the remainder of the signing bonus loan still owed to Respondent, which was another part of the severance agreement. According to Respondent, that would mean the remedy would be punitive rather than remedial since "statutes of limitation have expired for all claims that the Charging Party would 'waive' if she were to sign the Severance Agreement now." R. Br. at 9-10.

I agree with the Respondent that the remedy suggested by the General Counsel is unwarranted. The gravamen of the violation here is the inclusion in the severance agreement of the unlawful non-disparagement and confidentiality clauses. The unfair labor practice did not deal with the signing bonus loan or its forgiveness. Indeed the General Counsel's proposed conclusion of law defines the violation as simply proffering a severance agreement that "contained unlawful non-disparagement and confidentiality of agreement provisions." G.C. Br. at 23. Moreover the General Counsel's suggested remedy would alter the terms agreed upon between the Respondent and Charging Party when they entered into the original agreement in order to entice Charging Party to join Respondent. It would also put the

Government in the position of impinging on the freedom of contract without a well-defined public interest for doing so. Finally, there is nothing in the *McLaren Macomb* remedy for the unlawful severance agreement in that case beyond offering a new severance agreement without the unlawful clauses.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[3]

ORDER

Respondent, Valley Radiology, P.A., its officers, agents, successors and assigns, shall:

Cease and desist from:

1. Proffering a severance agreement that contains unlawful non-disparagement and confidentiality clauses
2. 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.

Take the following affirmative action necessary to effectuate the policies of the Act:

1. Immediately rescind or revise the unlawful non-disparagement and confidentiality of agreement provisions in the Separation and Release Agreement offered to the Charging Party, Dr. Mammen, and offer a lawful severance agreement

[3] If no exceptions are filed, as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

without the unlawful provisions and notify Dr. Mammen that this has been done within 14 days.

2. Within 14 days after appropriate notification by the Region, post, at its Fayetteville, North Carolina facility, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 10, 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, the notices shall be distributed electronically, such as email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with 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, 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 its Fayetteville, North Carolina facility at any time since August 25, 2023.

[4] 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."

3. 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 Region attesting to the steps the Respondent has taken to comply.

Dated at Washington, D.C., March 3, 2026.

Robert A. Giannasi
Administrative Law Judge

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 or 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, place any non-disparagement or confidentiality provisions that broadly infringe on the Section 7 rights of employees in any of our Severance and Release Agreements that are proffered to employees.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights listed above.

WE WILL offer Dr. Mammen a severance agreement without unlawful non-disparagement or confidentiality clauses.

VALLEY RADIOLOGY, P.A.
(Employer)

Dated _____by_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

401 W. Peachtree Street, N.W., Suite 2201,
Atlanta, GA 30308
(404) 331-2896, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/10-CA-324512 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (470) 343-7498.