Health Care Investors, Inc. d/b/a Alexandria Manor *and* New England Health Care Employees Union, District 1199, AFL–CIO. Case 34–CA–6502

April 25, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On October 24, 1994, Administrative Law Judge Richard J. Linton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Union filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Health Care Investors, Inc. d/b/a Alexandria Manor, Bloomfield, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) Sign and give effect to the collective-bargaining agreement reached by the parties on December 16, 1992.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order to correct an inadvertent error in par. 2(a). We shall also substitute a new notice so that it conforms to the Order as modified.

We modify the remedy section of the judge's decision to provide that to the extent an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to sign the collective-bargaining agreement which we reached on December 16, 1992 (effective November 8, 1992, through November 7, 1995), with the Union (New England Health Care Employees Union, District 1199, AFL–CIO), the exclusive collective-bargaining representative for the employees in the following appropriate bargaining unit:

> All full-time and part-time service and maintenance employees employed by Alexandria Manor at its proprietary nursing home located at 55 Tunxis Avenue, Bloomfield, Connecticut, but excluding all other employees, registered nurses, licensed practical nurses, office clerical employees, professional employees, casual employees, Program Director, guards, watchman, Administrator, Director of Nurses, Assistant Director of Nurses, the Chef, and all other supervisors as defined in the National Labor Relations Act, as amended, confidential, executive and managerial employees, physicians, dentists, students whose performance of work at the Home is part of the educational course of study such students are pursuing, part-time employees who work less than eight (8) hours per week for the job classifications in which they work, and temporary employees.

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 sign and give effect to the collective-bargaining agreement which we reached with the Union on December 16, 1992, which agreement you ratified.

WE WILL make you whole, with interest, for any losses which you may have sustained by reason of our failure to sign and give effect to the agreement which we reached with the Union on December 16, 1992.

WE WILL make all payments, with interest, to the benefits funds required by the collective-bargaining agreement reached with the Union on December 16, 1992.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees listed above

in the appropriate bargaining unit concerning terms and conditions of employment.

HEALTH CARE INVESTORS, INC. D/B/A ALEXANDRIA MANOR

Darryl Hale, Esq., for the General Counsel.
Carmelo Grimaldi, Esq. (Kaufman, Naness, Schneider & Rosenweig), of Melville, New York, for the Respondent.
John M. Creane, Esq. (Law Firm of John M. Creane), of Milford, Connecticut, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This is a refusal-to-bargain case (Alexandria Manor refused to sign a document allegedly embodying the agreement reached). Crediting the Government's witnesses and disbelieving Alexandria Manor's president, its sole witness, I order Alexandria Manor, by its designated representative, to sign the document incorporating the understanding reached on December 16, 1992, to give effect to its terms retroactive to November 8, 1992, to make whole, with interest, the employees for any losses they may have suffered as a result of Respondent's refusal to sign the document, and to make whole, with interest, all benefit funds.

I presided at this 2-day trial in Hartford, Connecticut, on August 15 and 16, 1994, pursuant to the April 26, 1994 complaint and notice of hearing (complaint) issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 34 of the Board. The complaint is based on a charge filed February 22, 1994, by New England Health Care Employees Union, District 1199, AFL–CIO (the Union or District 1199), against Health Care Investors, Inc. d/b/a Alexandria Manor (the Company, Alexandria, or Respondent).

In the Government's complaint the General Counsel alleges that Respondent Alexandria violated Section 8(a)(5) of the Act, 29 U.S.C. § 158(a)(5), by failing, since February 17, 1994, to execute a complete collective-bargaining agreement the terms of which were reached about December 16, 1992. By its answer, Alexandria admits certain factual allegations, denies violating the Act, and affirmatively pleads limitations and that the alleged agreement does not represent the understanding of the parties. The pleadings establish, and I find, that the Board has both statutory and discretionary jurisdiction.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, by District 1199, and by Company,[1] I make the following

FINDINGS OF FACT

I. CREDIBILITY RESOLVED

The General Counsel called four witnesses and rested. (2:380.)[2] The Union also rested at that point. Jerome Brown was the first witness called by the General Counsel. Brown has been the Union's president since 1979. Following Brown were Benjamin Fischman, Maryann Allen, Betty Cleveland, and Barbara Stoltman. As president of Alexandria Manor, Fischman (a New York-licensed attorney, 2:429) was called to testify briefly about items to be produced in response to a subpena duces tecum. In effect, Fischman was called as an adverse witness. Allen serves as the Union's vice president, Cleveland was the Union's organizer for most of the relevant events, and Stoltman succeeded Cleveland as the organizer servicing the employees at Alexandria Manor. The Company called only one witness, Alexandria's president, Benjamin Fischman. When the Company rested (2:465), the General Counsel recalled Jerome Brown to testify in the rebuttal stage. There was no surrebuttal.

Having observed each of the witnesses as he or she testified, and after considering the record evidence and briefs of the parties, I find the Government's witnesses (not counting President Fischman) as being more believable than Alexandria's sole witness, President Fischman. The findings which follow reflect that credibility resolution. As the critical issue in the case is whether, at a meeting of the Union and Alexandria on December 9, 1992, Fischman told Brown that the Union would have to waive the Company's current benefit payments until certain conditions prevailed (including a resident census of 90 percent at the 120-bed facility), the credibility resolution is crucial. As counsel states in Respondent's opening statement, if Fischman is credited, then there was no meeting of the minds, no agreement, and no violation. (1:26–27.) Disbelieving Fischman, and crediting the Government's contrary evidence, I find there was a meeting of the minds, an agreement, and a violation.

In resolving credibility, I have considered the fact that Maryann Allen, the Union's vice president, was present and heard Betty Cleveland testify. Although sequestration of the witnesses was in effect, Allen was the designated assistant of both the General Counsel and of the Union. (1:13–14.) Allen therefore was exempted from sequestration in order to assist at trial. Designated assistants frequently testify last, or near last, for parties. Allen's situation became an issue in the following manner. Allen testified as the Government's third witness (second, if Fischman's brief testimony about a subpoena is not counted). At the conclusion of Allen's direct examination, the General Counsel, on request, furnished Respondent a copy of Allen's pretrial affidavit. (1:193–194.) Supplying a copy of the affidavit for use during the hearing accords with the General Counsel's voluntary procedure as reflected in 1 NLRB Casehandling Manual, sec. 10394.11 (June 1989). That section merely supplements the Board's

[1] As Alexandria does not argue its limitations defense on brief, I find that Company has abandoned that affirmative defense. In any event, there is no evidence supporting such a defense.

[2] References to the two-volume transcript of testimony are by volume and page. Exhibits are designated GCX for the General Counsel's and RX for Respondent Alexandria's. The Union offered no exhibits.

rule, 29 CFR § 102.118(b), which clearly contemplates that the original shall be produced. Indeed, the cited manual section, 10394.11, itself provides that a copy will be produced at the same time the ''original'' is produced.

In the case of handwritten statements (as was Allen's), the need to produce the original is obvious. First, that is what the law requires. Second, photocopies are notorious for generally not revealing (a) any differences in ink colors, (b) whether different colors of paper were used, (c) whether some pages appear worn and others new, (d) whether any of the ink appears recent as compared to the remainder, or (e) whether, in some instances, a strikeover or other slight, but important, correction was made. Such factors, when they exist, give a cross-examiner a strong basis to inquire into the reason for any such differences.

Overnight Respondent's counsel marked on the copy furnished and did not want to show the marked copy to the witness. Offering to furnish a clean copy of Allen's affidavit, the General Counsel declined to furnish the original on the basis the Government is not obligated to do so. (2:201.) Given one last chance to deliver the original affidavit, the General Counsel requested time to consult with his superiors at the Region. In light of the 10 minutes the General Counsel had just taken off the record to obtain the original (and apparently to make a clean copy), I denied the request and (2:202) struck Allen's testimony. 29 CFR § 102.118(b)(2). A moment later I granted counsel's repeated request for time to consult with his superiors. On his return, the General Counsel advised that the Government would file a special appeal. (2:200–203). We then proceeded to the Government's next witness, Betty Cleveland, with Allen remaining in attendance. Just before the end of Cleveland's direct examination, and after another consultation by the General Counsel with his office, the General Counsel announced that a special appeal would not have to be filed and that the Government would produce the original of Allen's affidavit, for cross-examination purposes, if I reinstated Allen's testimony. (2:247, 258.)

Respondent objected to any reinstatement of Allen's testimony on the basis that it now would be prejudiced because, as Allen had heard Cleveland's direct examination, the Company would be unable to cross-examine Allen effectively. (2:248, 262–263.) Observing that Allen, as the Government's designated assistant, would have been in the hearing room in any event, the General Counsel countered Respondent's taint argument. (2:262–263.) Agreeing with the General Counsel, I overruled Alexandria's objection and reinstated Allen's testimony. (2:264.) At the same time, I said I would weigh the fact that Allen had heard Cleveland's direct testimony. (A strong argument can be made that I should not weigh the fact of Allen's presence because, as a designated assistant, she was entitled to be present, and for me to weigh the fact of her presence (that is, counting her presence as a negative on the credibility balance scales) would be contrary to the right granted by Rule 615, FRE. Nevertheless, in crediting the Government's witnesses, I have weighed the fact that Allen was present during Cleveland's direct examination.)

Alexandria thereafter declined to cross-examine Allen on the basis that (1) it was prejudiced beyond repair and (2) for fear that, by cross-examining Allen, the Company would waive its objection to my reinstating Allen's testimony. (2:268–271.) Respondent then proceeded to cross-examine Betty Cleveland. Respondent's first ground has no merit for the reason stated in my ruling. Moreover, the Company has shown no prejudice by my ruling. As for the matter of waiver, at trial I informally suggested that Respondent Alexandria was protected by 29 CFR § 102.41. (2:265–270.) I am satisfied that section 102.41 would have permitted Respondent to cross-examine Allen without waiving its objection of prejudice. Section 102.41 of the Board's Rules provides: ''Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.''[3]

II. OVERVIEW

At issue here is a contract covering the service and maintenance employees at Respondent's nursing home, Alexandria Manor, in Bloomfield, Connecticut. For many years, since about 1970, the Union has represented the service and maintenance employees of the facility. During those years the facility has had several owners. Before Respondent purchased the facility about November 8, 1992, the latest owner, Mayer Lauffer, operated the facility as Oak Ridge Convalescent Center. As the new owner, Respondent renamed the facility Alexandria Manor. The Union's collective-bargaining agreement with Oak Ridge expired, by its terms, on October 31, 1992. (GCX 4.) After purchasing the facility, Respondent hired the former employees, but set new terms, with wages and benefits being reduced.

During October the parties conferred in a ''get acquainted meeting.'' Although this conference is referred to as the first meeting, Respondent was not yet the owner, and the meeting in no way can be considered a collective-bargaining session. The Union's purpose was to express its desire that all the employees be hired and that the new principals be aware that the owner of Oak Ridge owed a substantial debt to the benefits trust funds. On December 9, 1992, the parties met again. By the time of this ''second'' meeting, Alexandria had hired all the employees (and cut their pay and reduced their benefits) and recognized the Union as the exclusive bargaining representative. Union President Brown was the Union's spokesperson. Assisting Brown were Allen and Cleveland. Speaking principally for Alexandria Manor was Attorney Peter A. Schneider. Attending with Schneider were President Fischman (who contends that he was the Company's primary spokesperson) and Vice President Samuel Strasser.

Although Brown describes the December 9 session as a ''background'' meeting rather than a bargaining meeting (he apparently reserves the ''bargaining'' description for formal bargaining meetings when the bargaining unit's elected bargaining committee is present to negotiate), the ''second'' meeting of December 9, 1992, clearly was a collective-bar-

[3] Distinguish the election required when a motion to dismiss the complaint is denied. If a respondent there proceeds, it waives its motion. *Kidd Electric Co.*, 313 NLRB 1178, 1187 (1994); *Peter Vitalie Co.*, 313 NLRB 971, 972–973 (1994). But that rule pertains to questions about the allocation of the burden of proof and ripeness for a decision on the merits. 29 CFR § 102.41 simply protects a party's right to participate further, without fear of waiver, even though its objection to evidence, for example, has been overruled.

gaining session. At this meeting the parties agreed on fundamental issues and left it for their respective bargaining committees to wrap up the contract.

The ''third'' and final meeting was held December 16, 1992, as a formal bargaining session. Maryann Allen was the Union's principal spokesperson, with Cleveland assisting. The bargaining unit's negotiating committee also was present. Alexandria Manor was represented by Attorney Schneider and the facility's administrator, Doris Leitgeb Gordon. The parties bargained all night, concluding about 4 a.m. the following morning. The record is unclear whether the meeting began or ended on December 16. As the parties dated their memorandum of agreement December 16, it would appear that they actually began on December 15 and concluded on December 16. The difference is immaterial, however, and as the parties and witnesses have referred to this meeting as occurring on December 16, that is the date I shall use. In any event, by 4 a.m. the parties had reached an agreement as evidenced by a document (GCX 6) consisting of nine pages, with most of the text being handwritten. The memorandum agreement has no provision that Alexandria Manor could postpone payments to the benefit plans until the facility reached and maintained a census of 90 percent and until its financial position was stable.

Communications thereafter were by telephone or letter in an effort by the Union to obtain an executed contract. After incorporating some minor corrections in response to Attorney Schneider's letter (GCX 2) of November 11, 1993, the Union submitted, for execution, the corrected pages by letter (GCX 7) dated December 14, 1993. Schneider's letter of November 11 expresses, for the first time, Respondent's contention of waiver by the Union. I address that in a moment. After further communications, including the Union's threat to file unfair labor practice charges, Attorney Schneider, by letter (GCX 14) of February 17, 1994, states that Alexandria Manor will not sign unless the waiver proviso is included. (Schneider also asserts that a date needs correcting.) The Union filed the instant charge on February 22, 1994.

III. THE DISPUTED ISSUE OF WAIVER OR DELAYED PAYMENTS

At the December 9, 1992 meeting, the Union proposed an economic package which matched the industry standard. This was referred to as the ''pattern'' contract. Attorney Schneider said that the Union's proposal was too rich for Alexandria Manor, that the Company needed financial relief. After discussing the matter, the Union agreed to assist Alexandria by allowing the current lower pay rates and benefits payments during the first year of the contract, but by the third year, wage rates and benefit levels would conform to the industry standard. This is what the parties agreed to at the December 9 meeting.

According to Fischman, during the December 9 meeting he explained to Brown, at the bargaining table and in the presence of the attendees (2:390, 429), that Alexandria was in a poor financial condition. Part of the reason for this, Fischman stated, was the fact that, of the facility's 120 beds, the occupancy, or census, was only 97. Fischman said that, while Alexandria could increase the wages to meet the pattern contract, the Company could not make the actual benefit payments until (1) the resident census reached ''and maintained'' 90 percent (108 residents) and (2) until such time as Alexandria Manor's ''financial situation had improved.'' According to Fischman, this ''waiver'' of payment when due was agreed to by the parties. Brown denies that any such conversation occurred, and Allen and Cleveland support Brown. As earlier noted, I do not believe Fischman. Under Fischman's description (which was not really clear until later in his testimony), liability for the benefit payment would accrue, along with interest, but actual payment could be postponed until his two conditions were met, whenever that might be. (2:390, 392, 403, 433–434, 445, 453, 463–464.)

When Schneider wrote to Allen by letter of November 11, 1993, he recites seven numbered differences between what the parties agreed to and the Union's draft. The first one reads (GCX 2):

> 1. You have omitted a Stipulation regarding the Union's waiver of customary time frames for receipt of Fund contributions in the event that the Facility's patient census is under 90% or if its financial condition continues to be precarious.

Allen, with Cleveland present, called Schneider on a conference call and told him that his letter was the first she had ever heard of any waiver. Schneider said there was nothing in writing because it had been an oral agreement made with Brown. At trial Fischman testified that his agreement with Brown was at the bargaining table in the presence of the others. (2:390, 429–430.) (Neither Schneider nor Strasser testified. Strasser served as Respondent's designated assistant at counsel table.) I draw an adverse inference from the failure of Schneider and Strasser to testify.

Respecting Schneider's item 1 of November 11, Allen, in her responding letter of December 14 (GCX 7) wrote, ''After review of all documents, no such waiver exists.'' Although that answer smacks of begging the question since Schneider conceded that such part of the parties' agreement had not been incorporated into the handwritten agreement, Allen essentially was denying the existence of any such agreement on the basis that the handwritten agreement reflects all the agreements made. In any event, Brown credibly denies that any such conversation occurred.

IV. AGREEMENT ON ALL ESSENTIAL TERMS

A. *Side Letters and Stipulations*

To reach a binding collective-bargaining agreement which either party may be required to execute, it is necessary that the agreement reached by the parties cover all the essential or substantive terms. As this prerequisite is frequently phrased, there must be a ''meeting of the minds'' as to all substantive terms. *Century Papers*, 284 NLRB 1151, 1156 (1987). Although correctable discrepancies appearing in the typing or integration process do not relieve a party from the duty to assist in assembling a document which reflects the agreement reached by the parties,[4] terms or conditions missing as a result of the parties' failure to agree about substantive terms cannot be supplied by the Board or an administrative law judge. *Century Papers*, supra at 1156.

[4] *Grocery Warehouse*, 312 NLRB 394, 397 (1993); *New Orleans Stevedoring Co.*, 308 NLRB 1076, 1081 (1992), enfd. mem. 997 F.2d 881 (5th Cir. 1993).

In our case the language which gives rise to a question appears in the preamble to the December 16, 1992 memorandum (GCX 6). Providing that, pending ratification by the Union's membership, the agreement would extend the old contract (which expired the preceding October 31) ''except as modified below, including all side letters and stipulations.'' Aside from Respondent's rejected argument that one of the ''stipulations'' was an oral agreement at the December 9 meeting that the Company could postpone actual benefit payments, the remaining question is whether the Union's drafted agreement (GCX 8) contains all the side letters and stipulations and, if not, whether the absence of any is an integration matter (agreed to be included but omitted by oversight) or a substantive matter (not agreed to be included and, if an essential term, its absence and nonagreement a fatal deficiency).

The expired contract (GCX 4), which, as modified by the December 16, 1992 memorandum of agreement (GCX 6), became the new collective-bargaining agreement (GCX 8), contains eight attachments. These attachments consist of three (side) letters, a copy of a blank application for union membership plus a checkoff authorization (apparently intended, per p. 5, to be designated as Exh. A), ''Exhibit B'' (a form authorizing deductions for the Union's political action fund for Federal elections), ''Exhibit C'' (providing for employer contributions to a health and welfare benefit fund), ''Stipulation I'' (description of the bargaining unit's inclusions), and ''Stipulation II'' (classifications and minimum wage rates). Of these items, Exhibits B and C and Stipulations I and II (the last item updated) are contained in the new contract (GCX 8), but Exhibit A and the three side letters are not.

Although the three side letters were not attached to the new collective-bargaining agreement, it is clear that the parties intended for them to be so transferred. Indeed, the table of contents to General Counsel's Exhibit 8 lists them (side letters I, II, and III) as being part of the document. Side letter I, dated August 6, 1987 (taking the side letters in sequence), is an interpretation about the article for holidays. Side letter II (August 11, 1987) pertains to quarterly safety meetings between management and a committee of employees. Side letter III (undated) covers three different items pertaining to weekend makeup, patient care, and patients who become assaultive or aggressive. As the parties intended the side letters to be transferred, their integration at this point is merely a ministerial action necessary to implement the agreement of the parties. Accordingly, I shall order Alexandria Manor to sign a General Counsel's Exhibit 8 which conforms to the parties' agreement by including side letters I, II, and III.

In the text of both the old and new contracts, Exhibit A is identified as the checkoff authorization. Apparently the only reason an application for membership is part of the checkoff attachment to the old contract (GCX 4 at 50) is that it was the top half of a form which included the checkoff authorization. As it is the checkoff authorization which is provided for in both the old and new contract, I find that the deletion of the application for membership from the new contract was intended by the parties, and that the parties intended for a checkoff authorization form to be attached to the new contract as Exhibit A. I shall order Respondent to sign the new collective-bargaining agreement (GCX 8) which contains such form as Exhibit A.

B. *Posttrial Stipulation Corrects General Counsel's Exhibit 8*

As earlier mentioned, in his letter of November 11, 1993 (GCX 2), to Union Vice President Maryann Allen, Attorney Schneider listed seven numbered differences between the agreement and the drafter document submitted by the Union. Item 1 was the alleged waiver of due dates and the 90-percent census. Item 2, pertaining to the calculation of dues deductions, was answered and resolved by Allen in her letter of December 14, 1993 (GCX 7), to Schneider. Item 3 identifies a mistyping in General Counsel's Exhibit 8 at page 11 pertaining to loss of seniority. Schneider observes that the entry should be 7 days (to conform to GCX 6 at 6) rather than the 10 days shown. Allen testified that this change was made, as were the others, and the corrected pages sent to Schneider, and that General Counsel's Exhibit 8 incorporated the changes. (1:189–190.) In fact, General Counsel's Exhibit 8 does not incorporate the changes, and it is clear the document offered and received as the corrected version in fact is not. As evidenced by the General Counsel's letter of September 29, 1994, to me, however, copies to the parties, and by confirming letters from the parties, the parties have made a posthearing stipulation that corrected pages 11, 26, 41, and 43 be substituted for the corresponding pages of General Counsel's Exhibit 8. These pages incorporate the corrections agreed to by Allen in her letter to Attorney Schneider. I have inserted the letters of the parties, with corrected pages 11, 26, 41, and 43, in the official exhibits folder with General Counsel's Exhibit 8.

The execution date, appearing on General Counsel's Exhibit 8 at page 38 as December 6, 1992, apparently should be December 16, 1992, to conform to the handwritten version on the memorandum of agreement (GCX 6 at 9). (The parties may desire to substitute the actual date of execution, for the effective term is the same whichever execution date is used.)

I note that Attorney Schneider, in his letter of February 17, 1994 (GCX 14), to Allen, concludes by stating that if the Union will include the waiver language (his earlier item 1) in the draft, ''the Facility will then execute the document.'' At trial President Fischman agreed with that statement. (2:397-398.) As GCX 8, with the stipulated corrections for pages 11, 26, 41, and 43, and when side letters I, II, and III are attached, reflects, I find, the agreement reached by the parties on December 16, 1992, I shall order Alexandria Manor, by its designated representative, to sign the corrected version of General Counsel's Exhibit 8 and to give effect to its terms retroactive to its effective beginning date of November 8, 1992.

CONCLUSIONS OF LAW

1. By failing and refusing since February 17, 1994, to sign the collective-bargaining agreement reached with the Union on December 16, 1992, Respondent Alexandria Manor has committed an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. The Company's affirmative defense of limitations is without merit.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Once the Union has attached side letters I, II, and III to General Counsel's Exhibit 8, to complete the corrected version of General Counsel's Exhibit 8, and has signed and submitted the corrected General Counsel's Exhibit 8 to Alexandria Manor for execution, Respondent Alexandria, by its designated official or agent, must forthwith sign the agreement and give effect to its terms retroactive to November 8, 1992. Alexandria shall make whole its employees for losses, if any, which they may have suffered as a result of Respondent's failure to sign and honor the agreement in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest thereon as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent Alexandria also shall make unit employees whole for losses resulting from Alexandria Manor's failure to make required payments to the benefits trust funds in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). *Our Lady of Lourdes Health Center*, 306 NLRB 337 fn. 2 (1992). The method for determining the additional amounts owed to the benefits funds is specified in *Merryweather Optical Co*., 240 NLRB 1213 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Health Care Investors, Inc. d/b/a Alexandria Manor, Bloomfield, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union (New England Health Care Employees Union, District 1199, AFL–CIO) by refusing to sign and give effect to the agreement reached by the parties on December 16, 1992, for a collective-bargaining agreement effective November 8, 1992, through November 7, 1995.

(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) Refusing to sign the collective-bargaining agreement reached by the parties on December 16, 1992.

(b) Make whole bargaining unit employees for all losses incurred, if any, by reason of Alexandria Manor's conduct found herein to be unlawful, with interest computed in the manner set forth above in the remedy section of this decision.

(c) Make all payments, with interest, to the benefits funds required by the collective-bargaining agreement reached with the Union on December 16, 1992, in the manner set forth above in the remedy section.

(d) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment:

> All full-time and part-time service and maintenance employees employed by Alexandria Manor at its proprietary nursing home located at 55 Tunxis Avenue, Bloomfield, Connecticut, but excluding all other employees, registered nurses, licensed practical nurses, office clerical employees, professional employees, casual employees, Program Director, guards, watchman, Administrator, Director of Nurses, Assistant Director of Nurses, the Chef, and all other supervisors as defined in the National Labor Relations Act, as amended, confidential, executive, and managerial employees, physicians, dentists, students whose performance of work at the Home is a part of the educational course of study such students are pursuing, part-time employees who work less than eight (8) hours per week for the job classifications in which they work, and temporary employees.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Bloomfield, Connecticut, copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] 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 deemed waived for all purposes.

[6] If this Order is enforced by a Judgment of the 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.''