

**Pontiac General Hospital and Medical Center, Inc.
d/b/a North Oakland Medical Center and
American Federation of State, County and Municipal
Employees, AFL-CIO and its affiliated
Local 100.** Case 7-CA-51444

March 19, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge filed on August 14, 2008, by the American Federation of State, County, and Municipal Employees, AFL-CIO and its affiliated Local 100 (the Union), the General Counsel issued the complaint on October 31, 2008, against Pontiac General Hospital and Medical Center, Inc. d/b/a North Oakland Medical Center (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act. On November 24, 2008, the Respondent filed an answer to the complaint. By letter dated December 23, 2008, the Respondent, by counsel, withdrew its answer.

On January 21, 2009, the General Counsel filed a Motion for Default Judgment with the Board. On January 23, 2009, 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 Judgment¹

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 stated that, unless an answer was filed by November 14, 2008, all the allegations in the complaint could be considered admitted. Although the Respondent filed an answer to the complaint, it subsequently withdrew that answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.² Accordingly, we

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

² See *Maislin Transport*, 274 NLRB 529 (1985).

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 facility in Pontiac, Michigan (the hospital), has been engaged in the operation of an acute care hospital providing inpatient and outpatient medical care. During the 12-month period ending December 31, 2007, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$250,000 and purchased and received at the hospital goods and supplies valued in excess of \$50,000 directly from points outside the State of Michigan.

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 is a health care institution within the meaning of Section 2(14) of the Act and that American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 100, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all materials times, the following individuals held the positions 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:

John R. Graham	President and Chief Executive Officer
Michael L. DeRubeis	Vice President and Chief Financial Officer
James Magnuson	Labor Relations Manager

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 regular full-time and regular part-time employees, as described in Section 4.3 of the 2007-2009 Working Agreement between the Union and Respondent, and any new or revised classifications that have a demonstrated community of interest with those classifications presently included in the bargaining unit; but excluding guards and supervisors as defined in the Act, and all other employees.

Since about 1993, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective January 1, 2007, through December 31, 2009 (the 2007–2009 Working Agreement).

At all times since about 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About June 19, 2008, the Respondent, by its agent, Michael L. DeRubeis, terminated the unit's retirement benefit, known as the North Oakland Medical Center Thrift Plan, described in and required by section 31.1 of the 2007–2009 Working Agreement.

Since about July 31, 2008, the Respondent, by its agent, James Magnuson, failed to pay the unit's accrued sick leave benefit, known as the Frozen Sick Bank, described in and required by section 27.3 of the 2007–2009 Working Agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit, and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent, without prior notice to the Union, and without affording the Union a meaningful opportunity to bargain with the Respondent with respect to this conduct and its effects on the unit.

The Union requested the following information from the Respondent:

1. About June 13 and August 26, 2008, in writing, and about June 26, 2008, orally, the Union requested the Respondent to produce documents regarding a potential or impending sale or transfer of assets between the Respondent and Oakland Physicians Medical Center (OPMC), including but not limited to documents reflecting discussions between the Respondent and OPMC regarding the unit and Working Agreement.

2. About June 13, 2008, in writing, and about June 26 and September 3, 2008, orally, the Union requested the Respondent to produce documents: (i) confirming a 2008 "stub payment" to the unit's Thrift Plan referred to above; (ii) showing each unit employee's contributions to the Thrift Plan and the Respondent's matching contributions for each unit employee as of June 19, 2008; and (iii) reflecting communications between the Respondent and Putnam, a financial institution, regarding the June 19, 2008 termination of the Thrift Plan.

3. About June 13 and August 26, 2008, in writing, the Union requested the Respondent to produce financial

records of the last 3 years including expenditures, revenue, budgets, and audits.

4. About September 3, 2008, the Union orally requested the Respondent to provide the amount of cash on reserve to pay unit employees' health care claims.

The above information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about June 13, 2008, the Respondent has failed and refused to furnish the Union with the information described in paragraphs 1, 2, and 4, above.

From about June 13 until about September 3, 2008, the Respondent failed and refused to furnish the Union with the information described in paragraph 3, above.

CONCLUSION OF LAW

By the conduct described above, the Respondent failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 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)(5) and (1) by, on June 19, 2008, unilaterally terminating the unit employees' retirement benefit, known as the North Oakland Medical Center Thrift Plan, described in and required by section 31.1 of the 2007–2009 Working Agreement, we shall order the Respondent to reinstate the North Oakland Medical Center Thrift Plan and to make all contractually required contributions to the Thrift Plan on behalf of the unit employees that have not been made since that date, including any additional amounts due the plan, in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).³ Further, the Respondent shall make the unit employees whole for any loss of interest they may have suffered as a result of the Respondent's unlawful conduct. The Respondent shall reimburse unit employees, with interest, for any expenses ensuing from its unlawful failure to make the required

³ To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions to the funds during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to any amount that the Respondent otherwise owes the funds.

contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in *Ogle Protective Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁴

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by, since July 31, 2008, failing to pay the unit employees' accrued sick leave benefit, known as the Frozen Sick Bank, described in and required by section 27.3 of the 2007–2009 Working Agreement, we shall order the Respondent to pay the accrued sick leave benefit, and to make unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that since June 13, 2008, the Respondent failed to furnish the Union with relevant and necessary information, we shall order the Respondent to timely furnish the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Pontiac General Hospital and Medical Center d/b/a North Oakland Medical Center, Pontiac, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating the unit employees' retirement benefit known as the North Oakland Medical Center Thrift Plan, described in and required by section 31.1 of the 2007–2009 Working Agreement, and failing to pay the unit employees' accrued sick leave benefit known as the Frozen Sick Bank, described in and required by section 27.3 of the 2007–2009 Working Agreement. The appropriate unit is:

⁴ In the complaint, the General Counsel seeks compound interest computed on a quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham*, 352 NLRB 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

Further, the General Counsel requests in the complaint that in addition to the conventional notice-posting requirement, the Board order that the Respondent mail a copy of the Board's notice to all unit employees. The General Counsel has not indicated in the complaint or in the motion for default judgment why this special mailing remedy is necessary. Therefore, we shall order only the standard notice-posting remedy, which provides that if the Respondent has gone out of business, it shall duplicate and mail, at its own expense, a copy of the notice to current and former employees.

All regular full-time and regular part-time employees, as described in Section 4.3 of the 2007–2009 Working Agreement between the Union and Respondent, and any new or revised classifications that have a demonstrated community of interest with those classifications presently included in the bargaining unit; but excluding guards and supervisors as defined in the Act, and all other employees.

(b) Failing and refusing to furnish the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

(c) 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) Reinstate the North Oakland Medical Center Thrift Plan, described in and required by section 31.1 of the 2007–2009 Working Agreement, and make all delinquent retirement benefit contributions to the Thrift Plan on behalf of unit employees that have not been made since June 19, 2008, including any additional amounts due the plan, with interest, as set forth in the remedy section of this Decision.

(b) Make unit employees whole for any expenses ensuing from the Respondent's unlawful failure to make the required retirement benefit contributions, with interest, as set forth in the remedy section of this Decision.

(c) Pay the accrued sick leave benefit known as the Frozen Sick Bank, described in and required by section 27.3 of the 2007–2009 Working Agreement, that has not been paid since July 31, 2008, and make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful failure to pay accrued sick leave benefit, with interest, as set forth in the remedy section of this Decision.

(d) Furnish to the Union in a timely manner the information requested by the Union from June 13 through September 3, 2008.

(e) Within 14 days after service by the Region, post at its facility in Pontiac, Michigan, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized repre-

⁵ 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."

sentative, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, 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 any time since June 13, 2008.

(f) 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 that the Respondent has taken to comply.

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 terminate the unit employees' retirement benefit known as the North Oakland Medical Center Thrift Plan, described in and required by section 31.1 of the 2007–2009 Working Agreement, and WE WILL NOT fail to pay the unit employees' accrued sick leave benefit known as the Frozen Sick Bank, described in and required by section 27.3 of the 2007–2009 Working Agreement. The appropriate unit is:

All regular full-time and regular part-time employees, as described in Section 4.3 of the 2007–2009 Working Agreement between the Union and North Oakland Medical Center, and any new or revised classifications that have a demonstrated community of interest with those classifications presently included in the bargaining unit; but excluding guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT fail and refuse to furnish American Federation of State, County and Municipal Employees, AFL–CIO and its affiliated Local 100 (the Union), with information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

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 reinstate the North Oakland Medical Center Thrift Plan, described in and required by section 31.1 of the 2007–2009 Working Agreement, and WE WILL make all delinquent retirement benefit contributions to the Thrift Plan on behalf of unit employees that have not been made since June 19, 2008, with interest.

WE WILL make unit employees whole for any expenses ensuing from our unlawful failure to make the required retirement benefit contributions, with interest.

WE WILL pay the accrued sick leave benefit known as the Frozen Sick Bank, described in and required by section 27.3 of the 2007–2009 Working Agreement, that has not been paid since July 31, 2008, with interest.

WE WILL make unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful failure to pay the unit's accrued sick leave benefit.

WE WILL furnish to the Union in a timely manner the information it requested from June 13 through September 3, 2008.

PONTIAC GENERAL HOSPITAL AND MEDICAL
CENTER D/B/A NORTH OAKLAND MEDICAL
CENTER