Quality Health Services of P.R., Inc. d/b/a Hospital San Cristobal *and* Unidad Laboral De Enfermeras Y Empleados De La Salud. Cases 24–CA–11438, 24–CA–11507, and 24–CA–11537.

February 17, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND HAYES

On November 9, 2010, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

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[2] and to adopt the recommended Order.[3]

[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] In affirming the judge's conclusion that Respondent violated Sec. 8(a)(5) and (1) by unilaterally altering the holiday pay policy, sick leave policy, and holiday schedule, we also conclude from the record that the changes at issue were "material, substantial, and significant," and thus constituted unfair labor practices under Board law. See, e.g., *Fresno Bee*, 339 NLRB 1214, 1216 (2003), citing *Peerless Food Products*, 236 NLRB 161 (1978).

[3] We agree with the judge that the Respondent violated Sec. 8(a)(5) by, among other things, unilaterally reducing employees' paid holidays and ceasing to provide holiday pay to employees not scheduled to work on the holiday. The record shows that both of those benefits were terms and conditions of employment, whether under art of the collective-bargaining agreement or, as found by the judge, as established "past practices." Consequently, the Respondent's unilateral action was unlawful.

Contrary to the Respondent, we also agree with the judge that deferral to arbitration was not warranted on the holiday pay allegation, described above, and the allegation that the Respondent unilaterally altered its past practice of providing paid sick leave to employees receiving workers' compensation. Initially, deferral was inappropriate because the Respondent failed to put in evidence the contractual arbitration clause it claims covers those issues. Further, the holiday pay issue was interrelated with an allegation that the Respondent failed to provide relevant information, and the Board's established policy is not to bifurcate related contractual and statutory questions. See *Avery Dennison*, 330 NLRB 389, 390–391 (1999). Similarly, the holiday pay allegation was related to its postcontract expiration reduction of paid holidays, a wholly statutory issue. See id. at 391. Although the information-request allegation settled at the conclusion of the hearing, the holiday issue remained. But because the holiday pay allegation (as well as the sick leave allegation) had been fully litigated by that time, deferral was not warranted in the interest of judicial economy.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Quality Health Services of P.R., Inc., d/b/a Hospital San Cristobal, Ponto, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Jose Luis Ortiz, Esq., for the Government.[1]
Jose A. Oliveras, Esq., for the Hospital.[2]

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES**,** Administrative Law Judge. I heard this case in trial in San Juan, Puerto Rico, on September 15 and 16, 2010.[3] The case originates from multiple charges filed by the Union against the Hospital.[4] The prosecution of this case followed the issuance of a consolidated amended complaint issued by the Regional Director for Region 24 of the National Labor Relations Board (Board), acting in the name of the Board's General Counsel, on August 20, 2010.

Following the presentation of the evidence, but prior to the close of the hearing, the parties agreed to settlement of the allegations contained in subparagraphs 8(d) and (g), subparagraphs 9(a) and (b), and paragraph 10 of the complaint.[5] The foregoing settled allegations include all conduct alleged in the charge in Case 24–CA–11549 and significant portions of the conduct alleged in the charges in the remaining cases. Consistent with the settlement, I dismiss the settled allegations from the com-

The Board has traditionally refused to defer to arbitration charges involving information requests, and as noted above, the Board also disfavors bifurcation of proceedings that entail related questions. In light of the parties settling the information request charge relating to holiday pay, Member Hayes would not decline to defer the holiday pay issue because it was no longer intertwined with the nondeferrable information request. He agrees, however, that deferral was inappropriate because the Respondent failed to offer into evidence the parties' contractual arbitration clause on which the Respondent's request for deferral was allegedly based.

In addition, Member Hayes notes that the judge characterized the Respondent's grants of specific holidays and holiday pay as "past practices." These benefits were negotiated and memorialized in art. XIX of the collective-bargaining agreement. In contrast, a past practice is generally noncontractual and becomes a term or condition of employment through continued adherence over time. In Member Hayes' view, therefore, the term "past practice" was inappropriately applied to holidays and holiday pay, which were contractual benefits.

[1] I shall refer to counsel for the General Counsel as Government Counsel or the Government.

[2] I will refer to the Respondent as the Hospital.

[3] All dates are in 2010, unless otherwise indicated.

[4] The charge in Case 24–CA–11438 was filed on January 22 and was amended on March 7 and June 9. The charge in Case 24–CA–11507 was filed on April 12 and was amended on June 23. The charge in Case 24–CA–11537 was filed on June 2 and amended on July 12 and August 19.

[5] The transcript at page 254 line 8 is hereby corrected to reflect that the settled allegation related to subparagraph 8(d), not 8(b).

plaint, and I have deleted Case 24–CA–11549 from the caption.

The unsettled portions of the complaint relate to five changes that the Hospital allegedly made without notice to or bargaining with the Union. The complaint alleges that the Hospital, by its actions, failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

The Hospital, in a timely manner filed an answer to the complaint, denied having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I have studied the whole record, the post trial briefs, and the authorities cited therein. Based on the analysis below, I conclude and find the Hospital violated the Act substantially as alleged in the complaint with the exception of the assignment of consecutive shifts.

FINDINGS OF FACT

I. JURISDICTION

Quality Health Services of P.R., Inc., d/b/a Hospital San Cristobal, the Hospital, a Puerto Rico corporation with an office and place of business in Cotto Laurel, Ponce, Puerto Rico, is engaged in the operation of a hospital providing acute health care services. The Hospital, in conducting its business operations, annually derives gross revenues in excess of $250,000 and purchases and receives goods valued in excess of $50,000 directly from points outside the Commonwealth of Puerto Rico. The Hospital admits, and I find and conclude, that it 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.

The Hospital admits, and I find and conclude, that Unidad Laboral De Enfermeras y Empleados de la Salud, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

The Hospital has recognized the Union as the exclusive collective-bargaining representative of the employees in the following appropriate units:

> Unit B – 24–RC–7308: All Licensed Practical Nurses and Respiratory Therapy Technicians, Operating Room and Radiology Technicians employed by the Respondent, at the Hospital located in Cotto Laurel Ward, Ponce, Puerto Rico; excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers and Guards as defined by the Act.
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> Unit – 24–RC–7315: All employees of service and maintenance including skilled workers ("Handyman"), air conditioning refrigeration technicians, general aides, physical plant employees, cooks and employees of food services, located in Cotto Laurel Ward, Ponce, Puerto Rico; excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers and Guards as defined by the Act.
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> Unit – 24–RC–8124 B: All registered nurses employed by Respondent; excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers and Guards as defined by the Act.
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> Unit – 24–RC–8124 A: All office clerical employees employed by Respondent in Cotto Laurel Ward, Ponce, including those employees of different departments and/or areas; telephone operators, medical records, laboratory, cash register, X-ray department, E.D.P department, preadmissions employees, accounting department employees, control and admissions department employees, credit and collections department, respiratory therapy department, pharmacy, operating room, warehouse, maintenance, physical therapy, nuclear medicine and escorts; excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees, Managers and Guards as defined by the Act.
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> Unit 24–RC–8035 A: All employees of Physical Therapy (physical therapy assistant) employed by Respondent at its facility located in Cotto Laurel Ward, Ponce, Puerto Rico; excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees, Managers and Guards as defined by the Act.
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> Unit 24–RC–8035 B: All medical technicians employees of Respondent at its facility located in Cotto Laurel Ward, Ponce, Puerto Rico; excluding all other hospital employees, including Executives, Administrators, Supervisors, Administrative Employees, Managers and Guards as defined by the Act.

The Union and Hospital have been parties to collective-bargaining agreements, the most recent of which, as extended by the parties, expired on February 28, 2010. Union Representative Ariel Echevarria Martinez (Echevarria) has responsibility for administration of the contract with the Hospital. Director of Human Resources Candie Rodriguez Ruiz (Rodriguez) is responsible for labor relations on behalf of the Hospital. It is undisputed that, as a result of a decrease in the number of patients in 2009, the Hospital began instituting cost cutting measures. The issues herein relate to whether certain of those measures were unlawfully taken without notice to or bargaining with the Union.

The Hospital, at the hearing and in its brief, argues that the allegations set forth in subparagraphs 8(a), (b), and (c) should be deferred to the grievance-arbitration procedure in the expired contract, noting that the failure of the Union to file grievances relating to the alleged unilateral changes should not render deferral inappropriate. The Hospital does not dispute that the allegations in subparagraphs 8(e) and (f) cannot be deferred because those alleged unilateral changes occurred after expiration of the contract. The Government points out that deferral was inappropriate at the time the complaint issued insofar as several allegations related to the failure of the Hospital to provide requested relevant information pertaining to the alleged

changes. The Government further notes that there are no contractual provisions relating to the restriction upon use of sick leave alleged in subparagraph 8(c).

At the time the complaint issued, this case involved interrelated issues of unilateral changes, refusals to provide information, and refusals to meet and bargain. "Board policy . . . disfavors bifurcation of proceedings that entail related contractual and statutory questions." *Avery Dennison*, 330 NLRB 389, 390 (1999). The settlement into which the parties entered at the hearing related to provision of information and a schedule for bargaining sessions. Deferral prior to the settlement of those issues would not have been appropriate. Subparagraphs 8(e) and (f) cannot be deferred. The settlement, which occurred immediately before the conclusion of the hearing, does not retroactively make deferral appropriate. All of the issues herein had been fully litigated. I deny the request for deferral.

B. Allegations

1. Subparagraph 8(a)

The complaint alleges that, in or about November 2009, the Hospital "unilaterally and contrary to its past practice, discontinued granting holiday pay to its employees when a holiday fell on their day off."

Article XIX of the collective-bargaining agreement relates to holidays and provides that "[e]ach employee covered by this collective bargaining agreement will have the right to enjoy the following holidays with pay." The agreement then lists 12 full day holidays and 9 half day holidays. Article XIX further provides that "any employee required to work on a holiday or the holiday coincides with their day off" will be paid for the time they work as well as the holiday, 8 hours for full holidays and 4 hours for half day holidays. Director of Human Resources Rodriguez acknowledged that, prior to October 2009, employees had been paid for holidays when the holiday fell on their day off.

Rodriguez explained that the Hospital changed that policy when the former financial director of the Hospital, Maria Rivera, "informed us that the practice was wrongly interpreted in the collective agreement." Rodriguez did not state the basis for the claimed erroneous interpretation of the contract and Rivera, who is no longer employed, did not testify. Rodriguez and Rivera met with Rodriguez' superior and the three of them concluded that the provision had "been wrongly interpreted."

On October 1, 2009, Rodriguez issued an internal memorandum that addresses both vacation days and holidays. The memorandum does not specifically state that employees will not be paid for holidays on their day off. It states that "if that Holiday falls on a day scheduled to be off, it is added to vacations, and in other cases, it is added as compensatory."

The Union was not notified of the change. Union Representative Echevarria learned of the internal memorandum from employees more than 5 days after it had issued on October 1, 2009. Employees whose day off fell on the day of the discovery of Puerto Rico, November 19, were not paid. They complained to Echevarria who contacted Rodriguez. Rodriguez informed him that "any employee with a complaint about not being paid should make a claim with their supervisor . . . [and] submit this claim to the payroll department." After reviewing her pretrial affidavit, Rodriguez did not deny that she also told Echevarria "that the Hospital would no longer pay holiday pay to employees when their day off coincides with their holiday." She testified: "I don't recall exactly the words that I told him, but I recall that we talked about some employees that were arguing because that holiday wasn't paid."

The Union did not file a grievance. Union Representative Echevarria testified that employees must file a grievance within 5 days of an alleged violation of the contract and that the Union did not learn of the foregoing change until after the fifth day. The Hospital did not contradict that testimony and did not offer the portion of the collective-bargaining agreement relating to grievances as an exhibit.

Rodriguez admitted that she "did not send any written communication" to the Union that the Hospital was "implementing this change." The Union was presented with a fait accompli, a decision by the Hospital, contrary to past practice, to cease paying employees for holidays that occurred upon their scheduled days off. "[A] union does not waive its right to bargain over unilateral changes by failing to engage in the futile act of trying to turn back the clock and bargain over an action the employer has already taken." *Tri-Tech Services*, 340 NLRB 894, 903 (2003). Holiday pay constitutes compensation similar to wages and is a mandatory subject of bargaining. The Hospital, by altering its past practice and ceasing to pay holiday pay to employees whose day off fell on a holiday without notice to and bargaining with the Union, violated Section 8(a)(5) of the Act.

2. Subparagraph 8(b)

The complaint, as amended at the hearing, alleges that, in or about November 2009, the Hospital "unilaterally and contrary to its past practice, implemented a new policy requiring its registered nurses and licensed practical nurses to work consecutive night shifts."

Rodriguez admitted that in December 2009 the Hospital began requiring nurses and licensed practical nurse to work what she referred to as twin shifts, i.e., consecutive night shifts. She explained that "in one week that you have to make five shifts, two are going to be one day and the other day again, consecutively. Not two shifts in the same day, but one shift one day and the other day you're going to do the same shift."

Registered nurse Carmen Soto was informed by her supervisor that nurses would be required to work consecutive night shifts. She acknowledged that she had previously been assigned night shifts twice a month, but not consecutive night shifts. She explained that the problem with night shifts is that "[y]ou lose the night, and it's tough." The contract, article XVI, restricts the Hospital from assigning more than four night shifts a month except in an emergency. There is no evidence that the Hospital violated that provision of the contract. Soto acknowledged that she now works three or four night shifts a month including the consecutive shift.

Rodriguez informed Echevarria that the Hospital "assigned the shift as we need in order to comply with the service of the patients." She told him that the Hospital did not have to "negotiate that decision" because it was "agreed in the covenant [the collective-bargaining agreement]."

The management-rights clause in the contract, article VII, provides, in pertinent part:

> Therefore, the Hospital, will have the exclusive right to manage all its business and direct its employees and any other right necessary to the best management of the Hospital like, the right to plan, program, direct and to continue or not operation and or services, to establish over time work, supervise its employees, hire, transfer, *assign employees to different shifts* and/or departments . . . [Emphasis added.]

Changes in employee shift assignments are a mandatory subject of bargaining unless a union has waived that right. Any waiver must be clear and unmistakable. In *Baptist Hospital of East Tennessee*, 351 NLRB 71, 72 (2007), the Board held that language in the management-rights clause giving the employer the right to schedule work encompassed shift assignments. The language herein is even clearer. The management-rights clause enumerates various rights of the hospital including specifically the right to "assign employees to different shifts." I find that requiring nurses and licensed practical nurses to work twin shifts, i.e., consecutive night shifts, is encompassed by the foregoing language. I shall recommend that this allegation be dismissed.

3. Subparagraph 8(c)

The complaint alleges that, on or about January 7, 2010, the Hospital "unilaterally eliminated its past practice of allowing employees to use sick leave and/or annual leave for their absences while reported to the Worker's Insurance Compensation Fund."

On January 7, the Hospital sent a memorandum to all employees explaining that the Hospital's premiums for workers compensation had "increased due to the excessive amount of cases sent." It informed employees that the Hospital was "implementing changes" that included evaluating where and why accidents occurred and whether employee negligence, such as attempting to lift patients weighing more than "x pounds," was involved. The memorandum then states:

> Lastly, the Sick Leave will not be paid while the employee is reported to the [State Insurance Fund]. The same [State Insurance Fund] will pay an allowance which makes it impossible that the employee receive two payments for being out of work.

The Hospital gave no explanation for why it was "impossible" for employees to receive two payments as they had under the past practice which permitted employees to use leave when receiving workers compensation. The Hospital presented no evidence that continuation of the past practice was impossible.

Union Representative Echevarria recalled that he learned of the memorandum from employees. He was uncertain whether he discussed this matter with Rodriguez in person or on the telephone, but he did specifically recall that he asked why the memorandum had been distributed to employees "without being notified or negotiated with the Union beforehand knowing that this was a past practice at the Hospital." Rodriguez replied that the Hospital took that action "based on the administrative [management] rights . . . nothing else was going to be negotiated to that effect."

Rodriguez claims that she sent the memorandum that had been given to employees to Echevarria by facsimile copy on January 7. She acknowledged taking the position that the refusal to pay sick leave when an employee was receiving workers compensation was "not a matter to be negotiated with the Union."

Regardless of how the Union learned of the memorandum, it is undisputed that the restriction upon the use of sick leave constituted a change from past practice and that the Union was not given notice of, or an opportunity to bargain about, the change. Neither the Union nor Hospital placed into evidence the contractual provisions relating to sick leave. I am satisfied that if the contract included the right to restrict the use of sick leave, the Hospital would have presented that contractual provision as an exhibit. The management-rights clause does not grant the Hospital the right to unilaterally change employees' entitlement to sick leave.

Consistent with the memorandum of the Hospital announcing that it was "implementing changes" and the testimony of Echevarria that he protested the unilateral deviation from past practice, I find that, prior to January 7, employees were entitled to take sick leave while receiving workers compensation. The prohibition of taking sick leave while receiving workers compensation announced by the Hospital on January 7 was made without notice to or bargaining with the Union. The Union was presented with a fait accompli. The inability of employees to receive sick leave benefits while receiving workers compensation directly affected their compensation. The Hospital, by unilaterally eliminating its past practice of allowing employees to use sick leave when receiving workers compensation violated Section 8(a)(5) of the Act.

4. Subparagraph 8(e)

The complaint alleges that, on or about May 24, 2010, the Hospital "unilaterally eliminated all permanent shifts in its respiratory care department, thereby implementing rotation shifts for all its employees."

On May 5, by a letter misdated April 5, Director of Human Resources Rodriguez wrote Union Representative Echevarria advising that the Hospital had found it "necessary to cancel the permanent shifts [in the department of respiratory care] so that these employees enter the rotation program." The letter states that, to avoid incurring overtime, the change was to be effective on Sunday, May 16. The letter states that the affected employees can "discuss any inconvenience" with Area Supervisor Carlos Diaz, from whom Rodriguez states she had requested "alternatives" prior to deciding to institute the rotating shifts. In a second letter dated May 5, Rodriguez advised that she was available to meet "regarding the effect of these changes" prior to May 16.

By letter dated May 7, Representative Echevarria protested the action of the Hospital and requested that it "leave without effect this new change," provide the Union with the alternatives offered by Supervisor Diaz so that the Union could "evaluate them . . . and study what recommendations we can offer," and then "sit down to discuss the matter."

More than a week later, on May 18, Rodriguez wrote Echevarria listing three alternatives that Diaz had suggested. In the

letter she explains that she rejected the first alternative, which involved overtime, because of the cost and overwork of the employees. The second alternative, assignment of more night shifts, she rejected because the employees would be "overworked." The third, hiring more personnel, was rejected because of "finances." Rodriguez states in the letter that she did not "have any other alternative than to start rotating," presumably on May 16, and that the decision was "not the Labor Union's decision," it was the Hospital's decision and that only "the effects of this decision are negotiable, not the decision."

The Hospital, in discussions with the Union on December 1, 2009, among various other matters, had mentioned the possibility of eliminating permanent shifts in respiratory care and the laboratory, but no date was proposed. An "'inchoate and imprecise' announcement of future plans" is insufficient to trigger an obligation to request bargaining or risk waiving the right to bargain." *Sierra International Trucks,* 319 NLRB 948, 950 (1995). In late December, Rodriguez refused to provide the Union with requested information relating to the employees potentially affected and explained that "we are not going to proceed with that change." Rodriguez recalled no further communication with the Union regarding elimination of permanent shifts until she wrote Echevarria on May 5 stating that the decision had been made and would be implemented on May 16.

As already discussed, the management-rights clause in the contract gave the Hospital the right to assign shifts. That contact, however, expired on February 28. It is well settled that, absent evidence of the parties' intentions to the contrary, management-rights clauses and "any waivers contained therein do not survive the expiration of the contract." *Clear Channel Outdoor, Inc.*, 346 NLRB 696, 703 (2006).

Shift assignments are mandatory subjects of bargaining insofar as they directly affect the hours and working conditions of employees. *Baptist Hospital of East Tennessee*, supra. The first May 5 letter and the May 18 letter from Rodriguez confirm that labor costs were a factor in the Hospital's decision.

In this instance the Union was given advance notice of the Hospital's intention. Echevarria, on May 7, requested bargaining, asking the Hospital to "leave without effect this new change" and "sit down and discuss this matter" after providing the Union with the alternatives offered by Supervisor Diaz so that the Union could study them and determine "what recommendations we can offer." On May 18, the Hospital denied any obligation to bargain with the Union regarding its decision. Contrary to the assertion in its letter of May 18, the Hospital was, in the absence of any waiver by the Union, obligated to give notice to and bargain with the Union regarding its decision to make this substantial and significant change in work schedules. By failing to do so, the Hospital violated Section 8(a)(5) of the Act.

5. Subparagraph 8(f)

The complaint alleges that, on or about May 27, 2010, the Hospital unilaterally "changed and reduced the amount of holidays."

The expired collective-bargaining agreement provided for 12 full day holidays and 9 half day holidays. On May 27, the Hospital sent a memorandum to all employees explaining that it was changing their holiday schedule by eliminating all half day holidays, three of which were converted to full days, and changing several of the full day holidays. By way of example, Martin Luther King Day was eliminated and Washington's Birthday, formerly a half day holiday, was converted to a full day. The net result gave employees a total of 13 full day holidays and no half day holidays. The foregoing change deprived employees of 3-1/2 days of paid holidays.

There was no notice to or bargaining with the Union. Rodriguez informed the Union of the Hospital's action by letter dated May 27, which states that "today we informed the employees" of the changed holiday schedule. By letter dated June 14, Union Representative Echevarria protested the Hospital's action.

Although the collective-bargaining agreement had expired, the holidays provided therein constituted the past practice of the Hospital, a practice that had been followed since at least 2002 when the collective-bargaining agreement went into effect. The Union was again presented with a fait accompli. The foregoing change in the Hospital's past practice that had been embodied in the collective-bargaining agreement deprived employees not only of their half day holidays but also resulted a net loss of 3-1/2 days of paid holidays. The foregoing changes were substantial and had a direct effect upon the employees' working conditions and pay. By unilaterally changing and reducing the number of employees' holidays, the Hospital violated Section 8(a)(5) of the Act.

CONCLUSION OF LAW

The Hospital, by altering its past practice and ceasing to pay holiday pay to employees whose day off fell on a holiday, by eliminating its past practice of allowing employees to use sick leave when receiving workers compensation, by eliminating permanent shifts in its respiratory care department thereby implementing rotation shifts for those employees, and by changing and reducing the number of employees' holidays, all without notice to and bargaining with the Union, the Hospital has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Hospital 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.

The Hospital, having unilaterally altered its past practice and ceased paying holiday pay to employees whose day off fell on a holiday, must rescind that change, restore the past practice, and make whole all employees who were denied holiday pay on their day off.

The Hospital, having unilaterally eliminated its past practice of allowing employees to use sick leave when receiving workers compensation, must rescind that change, restore the past practice, and make whole all employees who were denied sick leave.

The Hospital, having unilaterally eliminated permanent shifts in its respiratory care department thereby implementing rotation

shifts for all its employees, must rescind that change and restore permanent shifts.

The Hospital, having unilaterally changed and reduced the number of employees' holidays, must rescind those changes, restore the former holidays, and make whole all employees by paying to them the holiday pay to which they would have been entitled pursuant to the former holiday schedule, less all amounts paid pursuant to the unlawfully changed holiday schedule.

Backpay will be computed as outlined in *F. W. Woolworth Co*., 90 NLRB 289 (1950) (backpay computed on quarterly basis). Determining the applicable rate of interest will be as outlined in *New Horizons for the Retarded*, 283 NLRB 1173 (1987) (adopting Internal Revenue Service rate for underpayment of Federal taxes). Interest on all amounts due to employees shall be compounded on a daily basis as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

The Hospital must also post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

Quality Health Services of P.R., Inc., d/b/a Hospital San Cristobal, Ponto, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Unidad Laboral De Enfermeras y Empleados de la Salud as the exclusive representative of all employees in the units by failing to give notice to and bargain with the Union before making changes in the wages, hours, and working conditions of unit employees.

(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) Rescind the alteration of the past practice of paying holiday pay to employees whose day off falls on a holiday, restore the past practice, and make whole all employees who were denied holiday pay on their day off, with interest, as set forth in the remedy section of the decision.

(b) Rescind the elimination of the past practice of allowing employees to use sick leave when receiving workers compensation, restore the past practice, and make whole all employees who were denied sick leave, with interest, as set forth in the remedy section of the decision.

(c) Rescind the elimination of permanent shifts in its respiratory care department thereby implementing rotation shifts for all its employees and restore permanent shifts.

(d) Rescind the changed holiday schedule, restore the former holidays, and make whole all employees for the holiday pay to which they would have been entitled pursuant to the former holiday schedule, with interest, as set forth in the remedy section of the decision.

(e) Within 14 days after service by the Region, post at its facility in Ponto, Puerto Rico, copies of the attached notice in English and Spanish marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Hospital's authorized representative, shall be posted by the Hospital 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, or other electronic means, if the Hospital customarily communicates with its employees by such means. Reasonable steps shall be taken by the Hospital 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 Hospital has gone out of business or closed the facility involved in these proceedings, the Hospital shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Hospital at any time since October 1, 2009.

(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 Hospital has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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 had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Unidad Laboral De Enfermeras y Empleados de la Salud as your exclusive representative in the appropriate units by failing to give notice to and bargain with the Union before making changes in your wages, hours, and working conditions.

[6] 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.

[7] 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."

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 rescind the alteration of the past practice of paying holiday pay to those of you whose day off falls on a holiday, restore the past practice, and make whole all of you who were denied holiday pay on your day off, with interest.

WE WILL rescind the elimination of the past practice of allowing you to use sick leave when receiving workers compensation, restore the past practice, and make whole all of you who were denied sick leave, with interest.

WE WILL rescind the elimination of permanent shifts in our respiratory care department thereby implementing rotation shifts and restore permanent shifts.

WE WILL rescind the changed holiday schedule, restore the former holidays, and make whole all of you for the holiday pay to which you would have been entitled pursuant to the former holiday schedule, with interest.

QUALITY HEALTH SERVICES OF P.R., INC., D/B/A HOSPITAL SAN CRISTOBAL