

UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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Quality Health Services of Puerto Rico, Inc
d/b/a Hospital San Cristóbal

Respondent

vs.

National Labor Relations Board (NLRB)

CASE NO: FILED IN CLERKS OFFICE
US COURT OF APPEALS
FOR THE FIRST CIRCUIT

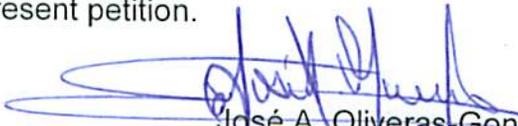
Petition for Review of Decision and
Order of the National Labor Relations
Board (Case 363 NLRB 164)

PETITION FOR REVIEW

TO THE HONORABLE COURT:

COMES NOW, Quality Health Services of Puerto Rico, Inc.. (hereinafter to be referred as "Quality Health." or "the Hospital") and hereby respectfully petitions the court for review of order entered by the National Labor Relations Board (hereinafter to be referred as the "NLRB") on case 363 NLRB 164 issued on April 28, 2016 and received by certified mail (7013-0600-0001-3395-0750) on May 1st, 2016.

In the above-captioned order the NLRB affirms the agency's ALJ rulings, findings and conclusions stated in the Decision and Order reported at 358 NLRB 769 (2012) which was petitioned for review before this Court and docketed under case 12-2113. This petition for review was eventually remanded by this Court under the United States Supreme Court decision in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014). A filing fee of \$450.00 is hereby submitted with the present petition.


José A. Oliveras-González, Esq.
Attorney for Petitioner
USDC 127609
USCA 86481

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NLRB
REGION 24
SAN JUAN, PR 00918-1720

PROOF OF SERVICE

I hereby certify that a copy of this petition for review has been filed at the National Labor Relations Board, Region 24, at La Torre de Plaza, Suite 1002, 525 F.D. Roosevelt Avenue, San Juan, P.R. 00918-1002. Another copy has been mailed to the National Labor Relations Board, Office of the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570 and to the Unidad Laboral de Enfermeras y Empleados de la Salud (ULEES, the union) at Calle Héctor Salamán Num. 354, Urb. Ext. Roosevelt, San Juan, P.R. 00918

Respectfully submitted this 10th of May, 2016.



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NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Quality Health Services of Puerto Rico, Inc. d/b/a Hospital San Cristóbal and Unidad Laboral De Enfermeras(OS) Y Empleados De La Salud. Cases 24-CA-011782 and 24-CA-011884

April 28, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

On July 25, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB 769. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the First Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Recognizing that under the Supreme Court's decision the Board panel deciding the instant case was not properly constituted, the Board, on January 30, 2015, moved the First Circuit to vacate the Board's order and promptly remand the case to the Board for consideration by a properly constituted Board panel. Thereafter, on March 27, 2015, the court entered a judgment granting the General Counsel's motion and issued mandate.

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

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB 769 (2012), which is incorporated herein by reference. The judge's recommended Order, as further modified herein, is set forth in full below.¹

¹ In accordance with our decisions in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), and *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall modify the judge's recommended Order to require the Respondent to compensate employees

ORDER

The National Labor Relations Board orders that the Respondent, Quality Health Services of Puerto Rico, Inc. d/b/a Hospital San Cristobal, Ponce, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Unidad Laboral De Enfermeras(os) y Empleados De La Salud (the Union) as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

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, Managers and Guards as defined by the Act.

(b) Making any changes in wages, hours, or other terms and conditions of employment of the employees represented by the Union without first bargaining with the Union as their exclusive collective-bargaining representative.

(c) Unilaterally changing the terms and conditions of employment of its respiratory therapy technicians by subcontracting their work to per diem employees without first notifying the Union and giving it an opportunity to bargain.

(d) Promulgating, maintaining, or enforcing a rule that unlawfully prohibits employees from having discussions related to the Respondent's plan to subcontract the work performed by its respiratory therapy technicians.

(e) Unilaterally discharging respiratory therapy technicians and subcontracting their work to Respiratory Therapy Management without first notifying the Union about its decision and affording the Union an opportunity to bargain over the decision and effects on the respiratory therapy technicians.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union

for the adverse tax consequences, if any, of receiving lump-sum back-pay awards. We shall substitute a new Notice to reflect this remedial change, and in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

as the exclusive collective-bargaining representative of the bargaining unit employees.

(b) Discontinue subcontracting the work of its respiratory therapy technicians and bargain with the Union as the exclusive collective-bargaining representative of the respiratory therapy technicians over any decision to subcontract.

(c) Rescind and give no effect to the work rule prohibiting employees from having discussions related to the Respondent's plan to subcontract the work of its respiratory therapy technicians.

(d) Rescind the change of subcontracting the work of respiratory therapy technicians to per diem employees unilaterally implemented on March 25, 2011.

(e) Make Rafael Colon, Mirna Leon, Jose Cruz, Nancy Gonzalez, Norma Rivera, Felicita Leon, Catherine Colon, Enid Ortiz, Ivette Borrero, and German Mercado whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful decision to subcontract the work of the respiratory therapy technicians to per diem employees on or about March 25, 2011, in the manner as set forth in the remedy section of the judge's decision.

(f) Rescind the discharges of the respiratory therapy technicians and the change of subcontracting the work of the respiratory therapy technicians to Respiratory Therapy Management unilaterally implemented on July 8, 2011.

(g) Within 14 days from the date of this Order, offer Rafael Colon, Mirna Leon, Jose Cruz, Nancy Gonzalez, Norma Rivera, Felicita Leon, Catherine Colon, and Enid Ortiz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(h) Make Rafael Colon, Mirna Leon, Jose Cruz, Nancy Gonzalez, Norma Rivera, Felicita Leon, Catherine Colon, and Enid Ortiz whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful decision to subcontract the work of the respiratory therapy technicians to Respiratory Therapy Management on or about July 8, 2011, in the manner set forth in the remedy section of the judge's decision.

(i) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 24, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(j) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges,

and within 3 days thereafter, notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(k) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(l) Within 14 days after service by the Region, post at its Ponce, Puerto Rico facility copies of the attached notice marked "Appendix."² Copies of the notice in English and Spanish, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 25, 2011.

(m) Within 21 days after service by the Region, file with the Regional Director for Region 24 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 28, 2016

Mark Gaston Pearce,

Chairman

² 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."

QUALITY HEALTH SERVICES OF PUERTO RICO, INC.

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Unidad Laboral De Enfermeras(os) y Empleados De La Salud (the Union) as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

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, Managers and Guards as defined by the Act.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT subcontract the work of our respiratory therapy technicians without first notifying the Union about our decision and affording the Union an opportunity to bargain over the decision and its effects on our respiratory therapy technicians.

WE WILL NOT promulgate, maintain, or enforce rules that unlawfully prohibit employees from having discus-

sions related to plans to subcontract the work performed by our respiratory therapy technicians.

WE WILL NOT unilaterally discharge and subcontract the work of our respiratory therapy technicians without first bargaining with the Union to a good-faith impasse.

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

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our bargaining unit employees.

WE WILL discontinue subcontracting the work of our respiratory therapy technicians and bargain with the Union as the exclusive collective-bargaining representative of the respiratory therapy technicians over any decision to subcontract.

WE WILL rescind and give no effect to the work rule prohibiting employees from having discussions related to our plan to subcontract the work performed by our respiratory therapy technicians.

WE WILL rescind the change of subcontracting the work of our respiratory therapy technicians to per diem employees unilaterally implemented on March 25, 2011.

WE WILL make Rafael Colon, Mirna Leon, Jose Cruz, Nancy Gonzalez, Norma Rivera, Felicita Leon, Catherine Colon, Enid Ortiz, Ivette Borrero, and German Mercado whole for any loss of earnings and other benefits resulting from our March 25, 2011 decision to subcontract unit work in the respiratory therapy department, less any net interim earnings, plus interest.

WE WILL rescind the discharges of our respiratory therapy technicians and the change of subcontracting their work to Respiratory Therapy Management unilaterally implemented on July 8, 2011.

WE WILL, within 14 days from the date of the Board's Order, offer Rafael Colon, Mirna Leon, Jose Cruz, Nancy Gonzalez, Norma Rivera, Felicita Leon, Catherine Colon, and Enid Ortiz full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Rafael Colon, Mirna Leon, Jose Cruz, Nancy Gonzalez, Norma Rivera, Felicita Leon, Catherine Colon, and Enid Ortiz whole for any loss of earnings and other benefits resulting from their discharges on July 8, 2011, less any net interim earnings, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 24, within 21 days of the date the

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