

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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

**and**

**Case 12-CA-158222**

**UNIDAD LABORAL DE ENFERMERAS (OS)  
Y EMPLEADOS DE LA SALUD**

**DECISION AND ORDER**

Statement of the Case

On June 10, 2016, Quality Health Services of P.R., Inc. d/b/a Hospital San Cristóbal (the Respondent), Unidad Laboral de Enfermeras(os) y Empleados de la Salud (the Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

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

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

**Findings of Fact**

1. The Respondent's business

The Respondent is a Puerto Rico corporation with its principal office and place of business in Coto Laurel Ward, Ponce, Puerto Rico, where it operates a hospital providing acute health care services (Hospital San Cristóbal).

During the past 12-month period, the Respondent, in conducting its business operations at Hospital San Cristóbal, derived gross revenues in excess of \$250,000.

During the past 12-month period, the Respondent, in conducting its business operations at Hospital San Cristóbal, purchased and received goods valued in excess of \$50,000 directly from points outside the Commonwealth of Puerto Rico.

The Respondent is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization involved

The Union is now, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

### **ORDER**

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent, Quality Health Services of P.R., Inc., d/b/a Hospital San Cristóbal, Coto Laurel Ward, Ponce, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively with Unidad Laboral de Enfermeras(os) y Empleados de la Salud (the Union) as the exclusive collective-bargaining representative of its employees in the below-described appropriate bargaining units concerning rates of pay, wages, hours of work, and other terms and conditions of employment:

Unit A: 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.

Unit B: All service and maintenance employees 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.

Unit C: All office clerical employees employed by the Respondent in Cotto Laurel Ward, Ponce, Puerto Rico, 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.

Unit D: All Physical Therapy employees (physical therapy assistant) employed by the Respondent at its facility located in Coto Laurel Ward, Ponce, Puerto Rico; excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees, Managers and Guards as defined by the Act.

Unit E: All medical technicians employees of the Respondent at its facility located in Coto 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) Laying off employees, reducing the work hours of employees, or making other changes to the wages, hours of work, and other terms and conditions of employment of employees in the above units, without first giving the Union notice and an opportunity to bargain with the Respondent with respect to these matters.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

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

(a) On or before April 29, 2016, rescind the reduction of the work hours of the employees in the above-described bargaining units that was implemented on or about June 26, 2015, and restore the work hours that were in effect immediately before that reduction.

(b) On or before May 16, 2016, offer employees Ariel Mendez Irizarry and Carlos Santos Melendez immediate and 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. Employees Jose Febus, Jannette Rosario Hernandez, Guillermo Martinez, and Antonio Santana have waived their rights to reinstatement to their former job or to a substantially equivalent job.

(c) Within 14 days of the Board Order, remove from its records all references to the layoffs of Jose Febus Rivera, Guillermo Martinez Soto, Ariel Mendez Irizarry, Jannette Rosario Hernandez, Antonio Santana Alvarado and Carlos Santos Melendez, and within three days thereafter, notify them in writing that this has been done and that their layoffs will not be used against them in anyway.

(d) In accordance with the terms of the attached Backpay Installment Agreement marked Appendix A, made a part hereof, make whole the employees named therein by payment of them to the amounts set forth opposite their names.<sup>1</sup>

(e) Within 14 days from the date of the Board's Order, make whole the above-named employees by payment to them of any additional backpay caused by the Respondent's failure, if any, to timely restore the employees' hours of work by the date required above in paragraph 2(a), by payment of the additional respective amounts they would have earned if the Respondent had timely complied with paragraph 2(a) of this Order, plus the payment of interest on any additional backpay amount to the date of payment.<sup>2</sup>

(f) Within 14 days from the date of the Board's Order, make whole employees Ariel Mendez Irizarry and Carlos Santos Melendez by payment to them of any additional backpay caused by the Respondent's failure, if any, to timely reinstate them by May 16, 2016, by payment of the additional respective amounts they would have earned if the Respondent had timely complied with paragraph 2(b) of this Order, plus the payment of interest on any additional backpay amount to the date of payment.<sup>3</sup>

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<sup>1</sup> The Respondent shall be responsible for determining and making the proper tax withholdings from the backpay amounts for each of the named employees, for paying its matching FICA tax contribution on the backpay amounts, for submitting proper tax payments and reports to tax authorities, and for providing tax reports to the employees to use in filing income tax returns. Interest shall be computed at the rate prescribed in *New Horizons*, 283 NLRB 1173(1987), compounded daily as prescribed in *Kentucky River Medical Center* 356 NLRB 6 (2010). No taxes shall be deducted from the interest amounts.

<sup>2</sup> Any additional backpay owed pursuant to paragraph 2(e) shall be computed in accordance with *Ogle Protection Service, Inc.*, 183 NLRB 682(1970), enfd. 444 F.2d 502 (6th Cir. 1971), and will not be reduced by any interim earnings the employees may have had during the additional backpay period, pursuant to *Community Health Services, Inc. d/b/a Mimbres Memorial Hospital & Nursing Home*, 361 NLRB No. 25 (2014), enfd. 812 F .3d 768 (10th Cir. 2016). The Respondent shall be responsible for determining and making the proper tax withholdings from the additional backpay amounts for each of the named employees, for paying its matching FICA tax contribution on the additional backpay amounts, if any, for submitting proper tax payments and reports to tax authorities, and for providing tax reports to the employees to use in filing income tax returns. Interest on any additional backpay owed pursuant to paragraph 2(e) shall be computed at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). No taxes shall be deducted from the interest amounts.

<sup>3</sup> Any additional backpay owed pursuant to paragraph 2(f) shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950). The Respondent shall be responsible for determining and making the proper tax withholdings from the additional backpay amounts for each of the named employees, if any, for paying its matching FICA tax contribution on the additional backpay amounts, for submitting proper tax payments and reports to tax authorities, and for providing tax reports to the employees to use in filing income tax returns. Interest on any additional backpay owed pursuant to paragraph 2(f) shall be computed at the rate prescribed in *New Horizons*, 283 NLRB

(g) Compensate the employees named in the above schedule set forth in paragraph 2(d) for any adverse tax consequences of receiving one or more lump-sum backpay awards as set forth in paragraphs 2(d), 2(e), and 2(f), and file with the Regional Director for Region 12, within 21 days from the date of the Board's Order, a report allocating the backpay awards to the appropriate calendar year(s).<sup>4</sup>

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause, 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.

(i) Within 14 days of service by the Region, post at the Respondent's Hospital San Cristóbal copies of the attached notice marked "Appendix B" in both English and Spanish. Copies of the notice, on forms provided by the Region after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondent shall distribute notices electronically, by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent will take reasonable steps 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 and former employees employed by the Respondent in the above-described bargaining units at any time since June 26, 2015.

(j) 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.

Dated, Washington, D.C., August 10, 2016.

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Mark Gaston Pearce, Chairman

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Kent Y. Hirozawa, Member

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Lauren McFerran, Member

**(SEAL)**

**NATIONAL LABOR RELATIONS BOARD**

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1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). No taxes shall be deducted from the interest amounts.

<sup>4</sup> *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014); *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

**APPENDIX A**

**BACKPAY INSTALLMENT PAYMENT AGREEMENT**

**Quality Health Services of P.R., Inc. d/b/a Hospital San Cristóbal**  
Case 12.CA-158222

In full satisfaction of all monetary obligations owed in Case No. 12-CA-158222, **Quality Health Services of P.R., Inc. d/b/a Hospital San Cristóbal** shall pay backpay in the total amount of \$138,000.00 (including: applicable interest and excess tax), in 12 monthly installment payments, until fully paid. The first installment payment shall be in the total amount of \$50,000.00, and the second to twelfth installment payments shall be made in equal amounts of \$8,000.00 each. The payments shall be made on or before the following due dates:

<b>Payment No.</b>	<b>Due Date</b>
1	May 9, 2016
2	June 9, 2016
3	July 11, 2016
4	August 9, 2016
5	September 9, 2016
6	October 11, 2016
7	November 9, 2016
8	December 9, 2016
9	January 9, 2017
10	February 9, 2017
11	March 9, 2017
12	April 10, 2017

**Quality Health Services of P.R., Inc. d/b/a Hospital San Cristóbal** shall make the installment payments in the amounts set forth opposite their respective names on the below chart:

**[CHART OMITTED FROM PUBLICATION]**

In consideration of the Board granting this installment payment schedule, **Quality Health Services of P.R. Inc. d/b/a Hospital San Cristóbal**, further agrees that in the event of any failure to make a scheduled payment, or to cure any such failure within fourteen (14) days, the total amount of backpay, interest, and excess tax liability shall become immediately due and payable.

**Quality Health Services of P.R. Inc. d/b/a Hospital San Cristóbal**

## APPENDIX B

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

#### PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

#### FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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 or refuse to bargain in good faith with Unidad Laboral de Enfermeras(os) y Empleados de la Salud (the Union) as the exclusive collective-bargaining representative of our employees in the below-described appropriate units concerning rates of pay, wages, hours of work, and other terms and conditions of employment:

Unit A: 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.

Unit B: All service and maintenance employees 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.

Unit C: All office clerical employees employed by the Respondent in Cotto Laurel Ward, Ponce, Puerto Rico, 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.

Unit D: All Physical Therapy employees (physical therapy assistant) employed by the Respondent at its facility located in Coto Laurel Ward, Ponce, Puerto Rico; excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees, Managers and Guards as defined by the Act.

Unit E: All medical technicians employees of the Respondent at its facility located in Coto 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** lay off employees, reduce the hours of work of employees, or make other changes to the wages, hours of work, and other terms and conditions of employment of employees in the above-described bargaining units, without first giving the Union notice and an opportunity to bargain with us with respect to these matters.

**WE WILL NOT** in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

**WE WILL** rescind the reduction of the work hours of our employees in the above-described bargaining units that was implemented on or about June 26, 2015, and restore the work hours that were in effect immediately before that reduction.

**WE WILL** offer our employees Ariel Mendez Irizarry and Carlos Santos Melendez, immediate and 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. Jose Febus Rivera, Guillermo Martinez Soto, Antonio Santana Alvarado, and Janette Rosario Hernandez have waived their rights to reinstatement to their former jobs or to substantially equivalent jobs.

**WE WILL** remove from our records all references to the layoffs of our employees Jose Febus Rivera, Guillermo Martinez Soto, Ariel Mendez Irizarry, Janette Rosario Hernandez, Antonio Santana Alvarado, and Carlos Santos Melendez, and within three days thereafter **WE WILL** notify them in writing that this has been done and that their layoffs will not be used against them in any way.

**WE WILL** make whole our employees in the above-described bargaining units for any loss of earnings and other benefits resulting from the reduction of their hours of work that was implemented on or about June 26, 2015, and, with respect to employees Jose Febus Rivera, Guillermo Martinez Soto, Ariel Mendez Irizarry, Janette Rosario Hernandez, Antonio Santana Alvarado, and Carlos Santos Melendez, also resulting from their layoffs on or about August 14, 2015, with interest.

**WE WILL** compensate our employees in the above-described bargaining units for the adverse tax consequences of receiving lump sum backpay awards, and **WE WILL** file with the Regional Director for Region 12, within 21 days of the date the amount of

backpay is fixed, by Board Order, a report allocating the backpay awards to the appropriate calendar years(s).

**WE WILL** bargain collectively with the Union as the exclusive collective-bargaining representative of our employees in the above-described bargaining units concerning wages, hours of work, and other terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement.

**QUALITY HEALTH SERVICES OF P.R. INC.  
d/b/a HOSPITAL SAN CRISTÓBAL**

The Board's decision can be found at [www.nlr.gov/case/12-CA-158222](http://www.nlr.gov/case/12-CA-158222) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

