JD(NY)-10-17
Newark, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES

NEW VISTA NURSING AND
REHABILITATION CENTER

and Case 22–CA–179497

1199 SEIU UNITED HEALTHCARE
WORKERS EAST

Sharon C. Chau, Esq., of Newark, New Jersey,
for the General Counsel.
David F. Jasinski, Esq., of Newark, New Jersey,
for the Respondent.
Patrick J. Walsh, Esq. and
William S. Massey, Esq. of New York, New York,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

KENNETH W. CHU, Administrative Law Judge. This case was tried in Newark, New Jersey, on January 17, 2017, pursuant to a complaint issued by Region 22 of the National Labor Relations Board (NLRB) on October 28, 2016.[1]

The complaint states that at all times since March 13, 2008, the 1199 SEIU United Healthcare Workers East (Union) has been the exclusive collective-bargaining representative of the following employees of New Vista Nursing and Rehabilitation Center (Respondent) constituting a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees excluding Registered Nurses, Licensed Practical Nurses, first cook, dietician, telephone operator, professional employees, office clerical employees, supervisors, watchmen and guards.

The complaint alleges that (1) since about May 26, 2016, the Union has requested, in writing, that Respondent furnish the Union with the following information: all documentation regarding new insurance, lists of all employees with their corresponding date of hire, status, medical coverage, and rate of pay; (2) since about July 25, 2016, the Union has requested, in writing, that Respondent furnish the Union with the following information regarding employee Dwayne Mollet: his personnel file, the entire file of the Respondent's investigation concerning Mollet's discharge, witness statements, time clock record for the past 6 months, and schedules

[1] All dates are in 2016 unless otherwise noted.

and job assignments for the past 3 months; (3) since about July 25, 2016, the Union has requested, in writing, that Respondent furnish the Union with the following information regarding employee Marie Gresseau: her personnel file, the entire file of the Respondent's investigation concerning Gresseau's suspension and discharge, witness statements, evaluation papers for a year, schedules, and job assignments for the past 3 months. The complaint alleges that the information requested is necessary for the Union to perform its duties as the exclusive collective-bargaining representative of the unit.

The complaint further states that about June 1, 2016, the Respondent changed the plan, pricing, and provider of health insurance for the bargaining unit employees. The complaint alleges these are items relating 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 timely filed an answer denying the material allegations in the complaint (GC Exh. 1).[2]

On the entire record, including my assessment of the witnesses' credibility[3] and my observation of their demeanor at the hearing and corroborating the same with the adduced evidence of record, and after considering the brief filed by the General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION AND UNION STATUS

The Respondent, a corporation with an office and place of business in Newark, New Jersey, operates a nursing facility and rehabilitation center, where it derived gross revenues valued in excess of $100,000 and purchased and received at its Newark, New Jersey facility, goods valued in excess of $5000 directly from points outside the State of New Jersey. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. The change in the health insurance plan

The counsel for the General Counsel argues that the Respondent unilaterally changed the bargaining unit health insurance and medical benefits plan, effective June 1, without first notifying the Union and offer to bargain over the changes. It is maintained that the Union became aware of the changes only after being informed by its members.

The counsel for the Respondent does not dispute that the Respondent has a long established relationship with the Union. It asserts that after a change in ownership of the facility

[2] The exhibits for the General Counsel are identified as "GC Exh." and the Respondent's exhibits are identified as "R. Exh." Only the General Counsel submitted a posthearing brief, which is identified as "GC Br." The hearing transcript is referenced as "Tr."

[3] Witnesses testifying at the hearing included Marie Ty, William Massey, Clauvice Saint Hilaire, and Steve Kleiman.

on March 1, the new owners shortly realized that the medical insurance plan (plan) provided in the collective-bargaining agreement was not being properly administrated. The Respondent realized that an emergent situation was apparent when medical invoices were not been paid under the health plan and lawsuits were being filed against some employees for nonpayment of their medical bills. The Respondent asserts that it took appropriate steps to safeguard the welfare of the unit employees by changing the health insurance provider, effective on June 1.

Marie Ty (Ty) testified that she has been employed by the Union since 2010 as serves as an administrative organizer. She is responsible for representing union members, help guide their contracts and provide various services. Ty has previously served as the organizer for the unit employees at the Respondent's Newark, New Jersey facility from October 2010 to August 19, 2016. Ty is presently with the Union's New York division. Ty stated that the healthcare provider during the time she was the organizer in New Jersey was the United Health Plus (Tr. 16–20; GC Exh. 2: Benefit Summary of the health plan).[4]

Ty testified that she learned of the change in the health insurance provider and benefits plan in May 2016 after she was informed by the unit employees and a union delegate. Ty said that a union delegate provided her with a leaflet that was given to the employees notifying them of a change in the health insurance plan, effective June 1. The leaflet stated that a representative will be present on May 18 and 19 to conduct employee benefit enrollment (GC Exh. 5; Tr. 23, 24).

2. The union's information request on the new medical plan

Ty asserted that Respondent never informed the Union that the health coverage had changed prior to her receiving the flyer. Ty filed a grievance on May 26 over the change. The grievance stated that there were "arbitrary changes of medical insurance-the Union was not notify (sic) regarding the change" (GC Exh. 3). Pursuant to the grievance, Ty also made an information request on the same day. The information request was for "All documentation regarding the new insurance" and "List of all employees with their corresponding date of hire, status, medical coverage, and rate of pay" (GC Exh. 4; Tr. 19–22).

Ty stated that the information request was necessary for an investigation into the changes under the new health plan and for identifying the employees affected by the changes in the plan. Ty said that her information request was made to Lowell Fein (Fein), who is the present administrator of the nursing facility. A meeting on the grievance was scheduled for June 29 with Fein. Ty said the meeting never occurred because Fein cancelled the meeting by email to her on June 28 (GC Exh. 6). Fein suggested and Ty agreed to a rescheduled date of July 8 for their meeting. Ty reminded Fein on July 1 of their meeting and the information she requested for the grievance meeting. According to Ty, Fein agreed and said he was getting the documents together for the Union (Tr. 22, 24-26).

When Ty arrived at Fein's office on July 8, the business manager informed her that Fein had left the building. Ty attempted to reschedule their meeting and emailed Fein on July 14 with a copy of the email to the business manager. Ty expressed disappointment of the cancelled meeting after stating that it was Fein who had suggested the two previous dates and then failed to meet. Ty suggested July 19 for their meeting. Ty ended her email by stating that "This will be the last opportunity to discuss this matter" (Tr. 26, 27; GC Exh. 6).

[4] The United Health Plus insurance plan is administrated by the Garden State Administrators.

Ty repined that Fein never met with her after she had sent the email to her. The record shows that the new health insurance plan was implemented on June 1. Ty testified that a copy of the plan was given to her by one of the delegates (GC Exh. 7).

53. The Respondent's reasons for changing the health insurance plan

Steve Kleiman (Kleiman) is a part owner of the Respondent's facility since 1999, but took a more active role in the management of the facility beginning at the late February/March 2016 timeframe.[5] Kleiman testified that one of the first problems that came to his attention was the administration of the Respondent's health insurance plan. Kleiman stated that all workers are covered under this plan, including nonunion and management employees. Kleiman realized a problem with the plan when several employees approached him in March and told him that their medical bills were not being paid by the insurance provider. Kleiman stated that he was not aware of the problems until after he became an operating partner (Tr. 71).

Kleiman testified that he contacted the Garden State administrators to discuss the problem. Kleiman testified that he met at least three times with an administrator by the name of David Rubenstein. Kleiman maintained that Rubenstein told him various stories, such as the medical bills were not appropriate; that they already been paid; that there were issues with an administrator's children, which did not make sense to him. Kleiman recalled at least 15-20 medical bills that had not been paid and the situation was getting worse because retired employees were now complaining about the nonpayment of their medical bills. Kleiman also testified to a lawsuit that was recently filed by a worker covered under the health plan against the Respondent and the insurance provider for nonpayment of the worker's medical bill. Kleiman also noted outstanding medical invoices incurred by a worker covered under the health plan and a demand for payment of over $7000.00 dollars by the hospital for medical services that were provided in July and August 2015. Kleiman stated that the demand for payment of the medical services rendered in the previous year was still outstanding as of August 2016 (Tr. 58-67, 72-75; R. Exhs. 1 and 2).

Ty testified that she was aware that some medical bills were not being paid by the insurance provider as early as May 2016. Ty said that she visited Fein on several occasions about the unpaid medical bills in May and was informed by Fein that the Respondent was aware of the problem and is taking steps to "do something about it" (Tr. 35-36).

Kleiman testified that he finally realized that the insurance administrator was not performing his duties and he was not getting any credible answers from Garden State. Kleiman decided to seek advice from consultants and colleagues working in nursing facilities about his problem and the types of health plan coverage that was available. According to Kleiman, he was told that his current benefits package under the plan was a joke. Based upon his assessment and the information provided by others, Kleiman contacted Total Plan Concepts, which manages the Magnacare health insurance plan in April or early May (GC Exh. 7). Kleiman decided to go with Total Plan as the new health insurance provider after a benefits package was put together for him in May and it was rolled out on May 18.

Kleiman stated that he has not received one complaint about the new insurance plan

[5] The Respondent has two owners. Kleiman testified that he is part owner with his brother, Brian Kleiman. Kleiman replaced the former operating partner by the name of George Weinberger (Tr. 70).

since it became effective on June 1. Kleiman did not inform the Union of the change because he believed that the new plan was better for everyone, including the union members, nonmembers and management employees. He also felt that since the collective-bargaining agreement was due to expire on June 30, the parties would be negotiating a new agreement, which would have included the negotiation of a health insurance and benefits package at that time (Tr. 67-69; 78-84).

William F. Massey (Massey) testified that he was and is counsel to the Union and had engaged in four bargaining sessions with the Respondent over a new contract. He stated that David Jasinski (Jasinski), counsel for the Respondent, was also at the four bargaining sessions. Massey testified that he was aware from his client that the bargaining unit's medical insurance plan had changed on or about June 1. Massey was not aware of the change prior to June 1, but raised the issue with Jasinski at the first bargaining session on September 8. Massey told Jasinski at the bargaining session that it was an illegal unilateral change and demand that the Respondent reinstate the former plan and the employer could propose a different plan and the parties would negotiate over the proposal at a bargaining session. According to Massey, Jasinski replied that he was not counsel to the Respondent at the time of the change and was not willing to negotiate the matter at this time. Massey was made aware of some legal issues involving the Garden State administrator and the prior operator of Respondent's facility in phone conversations with Jasinski. Massey asserted Jasinski never mentioned that the change was necessary due to an emergent situation at any bargaining sessions (Tr. 38-44).

Clauvice Saint Hilaire (Hilaire) testified that she is the vice president of the Union and has been involved in the four bargaining sessions between the Union and the Respondent. Hilaire stated that the issue with the unilateral change in the health insurance plan was raised at each session and the Union wanted a return to the former plan and the parties would then bargain from that point. Hilaire said that Jasinski's response was that he was not legal counsel to the Respondent at that time and cannot "say anything" (Tr. 44-47).

Hilaire testified that she was aware in April/May 2016 that medical bills of the unit employees were not been paid under the former insurance plan. She was aware of only one employee with a large unpaid medical bill. She does not recall any discussions with Ty over the unpaid medical bills but agreed that unpaid medical bills would have been an issue of concern for the Union (Tr. 49-51).

4. The Union's information request on the grievances

On July 25, the Union filed a grievance on the discharge of Dwayne Mollet (Mollet) (GC Exh. 8). Ty made a request for information regarding the grievance on the same day. Ty sought information on (1) grievant's personnel file; (2) the entire file of the employer's investigation into the matter; (3) witnesses statements; (4) schedules for the past 3 months and job assignments; and (5) time clock record for the past 6 months (GC Exh. 9). Ty testified that the request for information was sent to Fein (Tr-29-31).

On July 25, the Union also filed a grievance on behalf of Marie Gresseau on her suspension and subsequent termination (GC Exh. 10). On the same day, Ty made a request for information to Fein regarding information needed for the grievance, to include (1) grievant's personal file; (2) the entire file of the employer's investigation into the matter; (3) witnesses statements; (4) schedules for the past 3 months and job assignments; and (5) evaluation papers for a year (GC Exh.11).

Ty testified that the information for Mollet was needed to determine his work shifts, work schedule, and any documents relating to the charge against him. Ty said the information for Gresseau related to a charge of patient abuse and the Union needed to know her assignment, work schedule, and any documents relating to the charge of abuse (Tr. 32-33).

Ty left the Union's New Jersey Division in August and testified she has no knowledge as to the status of the information request or the two grievances after she left (Tr. 34).

Hilaire also confirmed Ty's testimony that the Union never received any response from the Union's information request on the Respondent's disciplinary actions against Mollet and Gresseau (GC Exh. 9 and 11; Tr. 47-49).

Hilaire testified that the grievance on Mollet was resolved by the parties and the Union signed the settlement agreement towards the end of October. Hilaire also stated Gresseau's grievance was resolved during the first week of October. Hilaire stated that there were no communications regarding the two grievances between the Union and the Respondent from the time Ty departed on August 19 until the grievances were resolved in October. Hilaire recalled one phone conversation during the first week in September wherein she renewed her information request on the two grievances but received no response from Fein (Tr. 52-56).

DISCUSSION AND ANALYSIS

1. The Respondent violated Section 8(a)(5) and (1) of the Act when it refused and failed to provide the relevant information requested

The General Counsel contends that the Respondent unlawfully failed and refused to provide the Union with information that was relevant and necessary to the Union in connection with processing grievances filed with regard to the discipline of two unit employees and when the Union made an information request in regard to the new health insurance plan and for a list of unit employees with their date of hire, status, medical coverage, and rate of pay in violation of 8(a) (5) and (1) of the Act (GC Br. at 10).

The Respondent argues that the outstanding information request on the two grievances is moot because the grievances were amicably and quickly resolved by the Respondent and the Union. The Respondent also maintains that the information request regarding the new insurance plan, list of unit employees with their date of hire, status, medical coverage, and rate of pay were provided to the General Counsel pursuant to a subpoena request (Tr. 7-9).

It is well settled that an employer is obligated to furnish information requested by its employees' collective-bargaining agent that is relevant and necessary to the Union's bargaining responsibilities and contract negotiations. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). The Respondent has a statutory obligation to provide the Union with requested information that is relevant and necessary to the Union's performance of its duties as collective-bargaining representative—including deciding whether to process grievances. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967); *Centura Health St. Mary-Corwin Medical Ctr.*, 360 NLRB No. 82, slip op. at 1 (2014).

The burden is on the employer, once relevance is established, to provide an adequate explanation or valid defense to its failure to provide the information in a timely manner. *Woodland Clinic*, supra, *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993).

There is no dispute that the Respondent simply ignored the Union's information request

on the two grievances. At the hearing, the Respondent maintains that the information request is moot because the two grievances were subsequently resolved by the parties. The request for information on both grievances was made on July 25 and one grievance was resolved in the first week in October and the second one resolved in late October. The two unit employees were reinstated without backpay and other employee emoluments.

In my opinion, the information sought on the grievances is relevant. Had the information been provided to the Union at the start of the grievance process, the Union would have been in a better position to perform its duties as the collective-bargaining representative, including negotiating better settlement agreements for its employees. Without the information requested, the Union was at a disadvantage in not knowing if a less severe discipline would have been appropriate under similar situations with other employees or that the information may shed some light for the Union to demand back wages for the discharged employees in addition to reinstatement. In *U.S. Postal Service*, 332 NLRB 635, 636 (2000), the Board adopted the judge's recommendation finding that while the underlying grievance was settled, this does not render the issue (of the request for information) moot.

The Respondent did not provide a defense as to its failure and refusal to provide the Union's request for information on the new insurance health plan and a list of unit employees affected under the plan at the time the request was made. As to information regarding the unit employees, there is a presumption that the information is relevant to the Union's bargaining obligation. The information request on the new health and benefits package plan is obviously relevant and necessary for contract negotiations and, therefore, a mandatory subject of bargaining. *Hen House Market No. 3*, 175 NLRB 596 (1969). It is a violation of 8(a)(5) and (1) of the Act when an employer fails or refuses to provide information requested for contract negotiations. *NLRB v. Truitt Mfg., Co.,* 351 U.S. 149 (1956).

Further, the failure to timely provide the information requested is a separate 8(a)(5) violation of the Act. An employer must timely respond to a union's request seeking relevant information even when the employer believes it has grounds for not providing the information. *Regency Service Carts*, 345 NLRB 671, 673 (2005) ("When a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or to adequately explain why the information will not be furnished"); *Kroger Co.*, 226 NLRB 512, 513–514 (1976).[6] Absent evidence justifying an employer's delay in furnishing such information, such a delay is violative of the Act.

I find that the union was entitled to information about the two grievances and the terms and benefits of the new medical insurance plan at the time it made its initial request, and it is the employer's duty to furnish it as promptly as possible. *Monmouth Care Center*, 354 NLRB 11, 41 (2009); *Woodland Clinic*, 331 NLRB 735, 737 (2000). Here, the Union never received the information on the grievances and the new medical insurance plan until the time of the hearing. As such, an unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all. *Monmouth Care*, supra; *Woodland Clinic*, supra; *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989).

Accordingly, I find that the Respondent failed to timely provide and refused to provide the Union's request for information regarding the health insurance plan and information on the two grievances that was necessary for the Union to perform its duties as the collective-

[6] The Respondent did not argue that the information was not available. The information requested by the Union on both grievances was eventually turned over to the General Counsel pursuant to subpoena (Tr. 7, 8).

bargaining representative of the unit employees.

2. The Respondent violated Section 8(a)(5) and (1)of the Act when it Unilaterally Changed the Medical Insurance Plan

The General Counsel also contends that Respondent violated 8(a) (5) and (1) of the Act when it unilaterally implemented a new health insurance plan without notice and an offer to bargain over the changes with the Union (GC Br. at 7). With regard to the unilateral change in the health insurance plan, the Respondent contends that it was acting under an emergent situation because employees were not being paid for their medical expenses in a timely fashion under the former plan and decisive actions had to be taken to resolve the problem.[7]

The Respondent does not dispute that there was a change in the medical insurance plan. The Respondent counters that the change in the plans was necessary due to an emergent situation created by the third-party administrator of the previous health plan; that the collective-bargaining agreement was about to expire and the parties would have the opportunity to negotiate a new health plan; and the new plan was better than the existing plan (Tr. 12-15).

Health insurance benefits for active employees are a mandatory subject of bargaining. *Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chemical Div.*, 404 U.S. 157, 159 (1971). The duty to bargain in good faith includes a duty to abstain from unilaterally changing terms and conditions of employment without first bargaining to impasse with the designated representative regarding the changes. *NLRB v. Katz,* 369 U.S. 736, 743 (1962). At the time of impasse, the employer may unilaterally implement its offer. *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991).

Generally, overall impasse is required before an employer can implement changes in conditions of employment during negotiations. However, the Board in *Bottom Line Enterprises* crafted two exceptions for (1) when a union engages in bargaining delay tactics and (2) "where economic exigencies compel prompt action." 302 NLRB 373, 374 (1991). The Respondent contends the latter.

The "economic exigency" exception is recognized only in "circumstances which require implementation at the time the action is taken or an economic emergency that requires prompt action." *RBE Electronics of S.D., Inc.,* 320 NLRB 80, 81 (1995). The Board has limited the economic considerations which would trigger the *Bottom Line* exception to "extraordinary events which are an unforeseen occurrence, having a major economic effect [requiring] the company to take immediate action." *Hankins Lumber Co.*, 316 NLRB 837, 838 (1995). In *RBE Electronics*, the Board made clear that "[a]bsent a dire financial emergency, economic events such as . . . operation at a competitive disadvantage. . . do not justify unilateral action." Id. at 81, citing *Triple A Fire Protection*, 315 NLRB 409, 414 (1994).

This is not the situation here. The Respondent has not shown that it was operating under a competitive disadvantage under the former insurance plan or that there was a major

[7] The Respondent again asserted by letter dated March 27, 2017, that the complaint is moot because the Union and the Respondent negotiated a collective-bargaining agreement resolving the allegations in the complaint. The General Counsel disagreed, contending that there were outstanding issues on the unresolved remedies, in particular, any differences in the health insurance premiums paid by the unit employees between the plan in the expired contract and the health plan that was unilaterally implemented by the Respondent.

economic impact with the unpaid medical invoices. On this point, I note that Kleiman testified to numerous unpaid medical invoices and lawsuits, but the Respondent only proffered three unpaid invoices from the same patient and one pending lawsuit (R. Exhs. 1 and 2) in its attempt to establish a major economic effect requiring it to take immediate action.

In *RBE Electronics*, the Board also found that there may be other economic exigencies that, although not sufficiently compelling to excuse bargaining altogether, should be encompassed within the exigency exception. The Board in *RBE Electronics*, above at 82, noted "other economic exigencies … that should be encompassed within the *Bottom* Line exception"

> [W]here we find an employer is confronted with an economic exigency compelling prompt action short of the type relieving the employer of its obligation to bargain entirely, we will hold under the *Bottom Line Enterprises* exigency exception … that the employer will satisfy its statutory obligation by providing the union with adequate notice and an opportunity to bargain. In that event, consistent with established Board law in situations where negotiations are not in progress, the employer can act unilaterally if either the union waives its right to bargain or the parties reach impasse on the matter proposed for change.

In defining the less compelling type of economic exigency, the Board in *RBE Electronics* made clear that the exception will be limited only to those exigencies in which time is of the essence and which demand prompt action. In those cases, the employer will "satisfy its statutory obligation by providing [the union] with adequate notice and an opportunity to bargain over the changes it proposes to respond to the exigency and by bargaining to impasse over the particular matter. In such time sensitive circumstances, however, bargaining, to be in good faith, need not be protected." Id. at 82; see generally *Naperville Ready Mix, Inc.*, 329 NLRB 174, 182–184 (1999).

However, "there is a 'heavy burden' upon an employer trying to establish application of the exception." *Cibao Meat Products v. NLRB,* 547 F.3d 336, 340 (2d Cir. 2008). The Board clarified that not all employers' proposals would meet this exception as "the exception is limited only to those exigencies in which time is of the essence and which demand prompt action." Id at 82. The employer must "show a need that the particular action proposed be implemented promptly," that its "proposed changes were 'compelled,'" and "that the exigency was caused by external events … beyond the employer's control, or was not foreseeable." Id.

The Respondent has not shown that the unilateral implementation of the medical insurance plan was due to exigent circumstances. Here, the Respondent has not satisfied its obligation under *RBE Electronics*, above, to provide notice and an opportunity to bargain over the change in the medical insurance plan. The Respondent admittedly had decided in late April to change the plan. The decision in late April to change the medical plan was based upon an assessment made by Kleiman of the current medical plan in March when a "number of employees" complained to him about unpaid medical invoices. Kleiman testified he looked into the problem, discussed the matter with the plan's administrator and essentially got the "run around" before he looked into other plans and consulted with other individuals in the nursing care industry on different medical plans. However, I find that the Respondent could have timely informed the Union and begin bargaining over the need to change before the plan was implemented at any time from March until the unilateral implementation of a different insurance plan on May 18 but did not do so. The Respondent had plenty of time to assess and explore various healthcare plans during this time frame and could informed the Union of the problems it faced and begin bargaining on proposals available to replace the previous medical plan.

Accordingly, I find that there were no exigent circumstances and time was not an essence for failing to inform the Union and begin bargaining over any proposed new plan.

CONCLUSIONS OF LAW

1. The Respondent, New Vista Nursing and Rehabilitation Center, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, 1199 SEIU United Healthcare Workers East, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees employed at its facility in Newark, New Jersey, in the following appropriate unit:

> All employees excluding Registered Nurses, Licensed Practical Nurses, first cook, dietician, telephone operator, professional employees, office clerical employees, supervisors, watchmen and guards.

4. By failing to supply relevant information to the Union in a timely and complete fashion, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. By unilaterally implementing health insurance changes on June 1, 2016, without notice and bargaining with the Union to a lawful overall impasse in negotiations, the Respondent has violated Section 8(a)(5) and (1) of the Act.

6. The unfair labor practices, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent shall be required to make whole its employees for any losses they suffered or expenses they incurred, including increased premium costs that resulted from Respondent's unlawful changes in healthcare insurance. Such amounts shall be computed in accordance with *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Further, upon request of the Union, rescind the unilaterally implemented changes in employees' healthcare coverage and restore the coverage, copays, and premiums available to employees prior to June 1, 2016, and to provide, upon request, the information on the two grievances and on the medical insurance plan.[8]

[8] The counsel for the General Counsel request that I order a responsible management official read the notice to the assembled employees or to have a Board agent read the notice in the presence of a responsible management official (GC Br. at 13). I note that the Board has held that in determining whether additional remedies

Continued

ORDER

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended[9]

The Respondent, New Vista Nursing and Rehabilitation Center, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally implementing changes in its medical health insurance plan of its unit employees.

(b) Refusing and failing to timely provide information requested by the Union that is relevant and necessary to the Union's bargaining responsibilities and contract negotiations of its unit employees.

(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) Upon request of the Union, rescind the unilaterally implemented changes in employees' healthcare coverage, copays, and premiums and restore the coverage, copays, and premiums available to employees prior to June 1, 2016.

(b) Make all affected employees whole, with interest, in the manner set forth in the remedy section of this decision for any losses they suffered or expenses they incurred as a result of the unlawful action by Respondent.

(c) Upon request of the Union, immediately provide the Union with the information requested.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination, 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 reimbursement of costs incurred as a result of the change in the employees' healthcare insurance under the terms of this Order.

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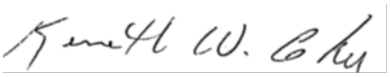
are necessary to fully dissipate the coercive effect of unfair labor practices, it has broad discretion to fashion a remedy to fit the circumstances of each case. *Casino San Pablo*, 361 NLRB No. 148, slip op. at 6–7 (2014); *Excel Case Ready,* 334 NLRB 4, 4–5 (2001). In the instant case, I find that the unfair labor practice of the Respondent New Vista Nursing and Rehabilitation Center does not justify the additional remedy of a notice reading. The General Counsel provided no reasons, and I cannot find any, that would justify a public reading of the notice. I find that New Vista Nursing is not a recidivist Respondent nor has General Counsel argued there are outstanding unfair labor practice charges against the Respondent. I note that the Respondent negotiated and entered into a collective-bargaining agreement with the Union since the time of this hearing. For these reasons, a public reading of the notice is not appropriate.

[9] If no exceptions are filed as provided by Sec. 102.46 and 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.

(e) Within 14 days after service by the Region, post at its Newark, New Jersey facility, where unit employees work, copies of the attached notice in English and Spanish marked "Appendix A."[10] Copies of the notice, on forms provided by the Regional Director for Region 22, 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 June 1, 2016.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 22 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.



Kenneth W. Chu
Administrative Law Judge

Dated, Washington, D.C. May 4, 2017

[10] 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."

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 benefits and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain collectively with the Union (1199 SEIU United Healthcare Workers East) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the employees in the following unit:

> All employees excluding Registered Nurses, Licensed Practical Nurses, first cook, dietician, telephone operator, professional employees, office clerical employees, supervisors, watchmen and guards.

WE WILL NOT fail to bargain collectively with the Union by unilaterally implementing changes in terms and conditions of employment of our employees employed in the above described unit, in the absence of an overall lawful bargaining impasse

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, upon request of the Union, rescind the unilaterally implemented changes in unit employees' healthcare coverage, copays, and premiums and restore the coverage, copays, and premiums available to employees prior to June 1, 2016.

WE WILL make you whole for any losses that you suffered or expenses you incurred as a result of the unlawful action taken against you, with interest.

WE WILL, upon request of the Union, provide the information requested by the Union.

NEW VISTA NURSING AND REHABILITATION CENTER
(Employer)

Dated:_____ By:_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

National Labor Relations Board Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
Hours of Operation: 8:30 a.m. to 5 p.m.
973-645-2100

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-179497 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784.