

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

GOOD SHEPHERD MANOR, INC.

and

Cases 25-CA-191404
25-CA-194176
25-CA-198163

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES (AFSCME),
COUNCIL 31, AFL-CIO

GENERAL COUNSEL'S BRIEF
TO THE ADMINISTRATIVE LAW JUDGE

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Comes now Counsel for the General Counsel and respectfully submits this General Counsel's Brief to the Administrative Law Judge in support of the General Counsel's position in the cause herein. For the reasons stated below, the General Counsel asserts that Good Shepherd Manor, Inc. ("Respondent") has violated Section 8(a)(1) and (5) of the Act by unilaterally changing employees' terms and conditions without first notifying the American Federation of State, County, and Municipal Employees (AFSCME), Council 31, AFL-CIO (the "Union") of the intended changes or bargaining to a good faith impasse and by failing to bargain in good faith by cancelling a scheduled bargaining session.

I. INTRODUCTION

The Union was certified to represent the employees at Respondent in November 2015 and the parties began negotiations for their first collective-bargaining agreement in the spring of 2016. While those negotiations were ongoing, effective July 1, 2016, Respondent ceased its long-established practice of providing employees with at least a 1% raise in conjunction with

their annual performance evaluations. In November 2016, Respondent created a new “mentor” position and modified the job duties of the six bargaining unit employees who accepted the position by requiring them to train new employees and provide feedback on the new employees’ advancement; those six employees were also provided with a 25 cent per hour raise. Respondent made both of those changes without providing any advance notice to the Union or reaching a good faith impasse in the negotiations (which were still ongoing as of the date of the hearing). Then at the end of February 2017, in an effort to put pressure on the Union to force an expedited Board representation election, Respondent cancelled the bargaining session scheduled for the following day. The bargaining session that was cancelled by Respondent was the only one scheduled at the time and resulted in a nearly three month hiatus in negotiations.

II. STATEMENT OF FACTS

Respondent operates a residential and developmental training program in Momence, Illinois, for adult men with developmental disabilities. (TR 16) Respondent’s operation consists of 14 group homes, 10 of which are on a single campus and 4 that are in the immediate local community of Momence. (TR 16, 41) Respondent has approximately 145 employees, of which about 120 are in the bargaining unit. (TR 17, 151) At all relevant times, Bruce Fitzpatrick has served as the President of Respondent, Kristen Stockle has been the Residential Director, and John Combs served as the Director of Human Resources. For purposes of bargaining, attorney Richard Wessels represented Respondent as its chief spokesperson and Staff Representative David Dorn served as the spokesperson for the Union. (TR 47) After an initial, introductory meeting, the parties began negotiations for their first collective-bargaining agreement on April 26, 2016. (TR 49, 189)

A. Respondent's Practice of Providing Annual Wage Increases

Employees who work at Respondent are provided with a written annual performance evaluation which takes place around the time of the employee's anniversary of employment date. Employees who receive a positive performance evaluation are then eligible to receive a wage increase. The amount of the raise is determined on a fiscal year basis and is set by Respondent's Board of Directors in consultation with Bruce Fitzpatrick (who also serves on the Board).

(TR 19-20) Since fiscal year 2004,¹ Respondent has issued its employees at least a 1% annual wage increase. (TR 109-110; Resp. ex. 9) That practice continued through fiscal year 2016.

The only exception in that 13 year period was in fiscal year 2015, when the Board initially decided not to give employees a raise but later decided to give all employees a 1.5% raise.

Shortly after the Union was certified, on February 12, 2016, Fitzpatrick confirmed this practice in an e-mail to David Dorn and said that the practice would continue through fiscal year 2016.

(G.C. ex. 2)

However, with the start of fiscal year 2017, Respondent stopped giving its bargaining unit employees a 1% merit increase (TR 23); it did, however, continue to give a 1% raise to all non-bargaining unit employees (TR 144-46). Respondent's Board decided not to give the raise to its bargaining unit employees at its June 2, 2016, meeting, noting that the normal wage increase "will be deferred to the collective bargaining process." (Resp. ex. 12) This decision to not give a wage increase was made even before Respondent's fiscal year 2017 budget had been finalized. (TR 24) As employees received their annual performance appraisals for fiscal year 2017, in the section dedicated to raises, supervisors wrote things like:

¹ Respondent's fiscal year runs from July 1 until June 30. The current fiscal year, which runs from July 1, 2017, until June 30, 2018, would be referred to as fiscal year 2018. (TR 20, 132-33)

- “Not applicable, to be determined by collective bargaining”
- “0% due to contract negotiations”
- “Increases deferred to collective bargaining process”
- “Not at this time due to collective bargaining”
- “Not applicable at this time, union negotiated”

(G.C. ex. 4) Fitzpatrick himself either wrote or reviewed several of those evaluations. (TR 118, 133-34)

Fitzpatrick did not notify David Dorn that the Board of Directors had made the decision to not give bargaining unit employees raises during fiscal year 2017. (TR 25) In fact, it was not even confirmed to the Union until January 9, 2017, when Dorn sent a letter to John Combs asking about the status of the wage increases and requesting that the status quo be maintained.

(G.C. ex. 9) Combs responded that Respondent’s Board had decided to leave the fiscal year 2017 wage increases up to the collective-bargaining process. (G.C. ex. 10) Respondent has continued to not pay any wage increases to bargaining unit employees in fiscal year 2018, although they are doing so for non-bargaining unit employees. (TR 26, 146-47)

B. The Creation of the “Care Worker, Mentor” Position

Respondent has approximately 80 employees working in the bargaining unit position of care worker. (TR 96) The care workers are responsible for providing services to Respondent’s clients, including insuring that their hygiene needs are met, their meals are provided in compliance with their diet, and that they are receiving the proper medications. (TR 79-80; G.C. ex. 5) There are variations among some of the duties of the care workers, each of which is reflected in a different job description. (TR 80) In November 2016, Respondent created a new variation on the care worker position, this time referred to as “Care Worker, Mentor.” Because additional tasks were added to the regular care worker duties, a new job description was created. (TR 27; G.C. ex. 6) Specifically, the new mentors are expected to maintain their regular care

worker duties as well as train new employees in the care worker function and provide feedback to the new employees and supervision regarding the performance of the new employees.

(TR 85-86; G.C. ex. 6) Six employees were selected for the new mentor position and each was given a 25 cent per hour raise. (TR 29) That raise reflected the additional responsibilities and duties that the mentors were expected to perform. (TR 100) Bruce Fitzpatrick did not inform David Dorn of the creation of this new mentor program, that a new job description had been created to reflect those additional duties, that six employees were selected to be mentors, or that the selected employees would be receiving the 25 cent per hour raise. (TR 30-31) In fact, Dorn did not learn about the mentor program until May 2017 when he heard about it from one of the Union's organizers; he had not even seen the new job description until the day of the hearing. (TR 63-64) Although Respondent asserts that the mentor program is temporary, it was still being utilized at the time of the hearing more than nine months later. (TR 31, 39)

C. The Cancellation of the February 28, 2017, Bargaining Session

The parties began negotiations for their first contract on April 26, 2016, and by early 2017 had held approximately ten bargaining sessions. (TR 49, 189; Resp. ex. 16) The parties held a bargaining session on February 6, 2017, after which the only other bargaining session that had been scheduled was for February 28. However, that bargaining session did not occur. On February 27, Respondent filed an RM petition seeking to have a representation election. (Resp. ex. 18) Richard Wessels then sent David Dorn an e-mail indicating that Respondent was cancelling the February 28 bargaining session and that it hoped to get an NLRB election scheduled as soon as possible. Although Dorn protested that the Union saw no reason to cancel the bargaining session and expected to meet at the time that the parties had previously agreed to on February 28, Wessels indicated that Respondent's position had not changed and he hoped the

Union would help to expedite an election. (G.C. ex. 11) Wessels even testified at the hearing that one of the reasons he cancelled the meeting was to push the Union hard, to put pressure on them, to force them to agree to an election. (TR 178, 181) The other reason for cancelling the meeting was to allow Wessels some time to research Respondent's obligations in light of its purported good faith doubt about the Union's majority status. (TR 178-79) Although Wessels completed his research on February 27 or maybe the following day and determined it was not proper to withdraw recognition, Respondent never communicated with the Union that it was available to resume bargaining. (TR 183-84) The Union showed up for the bargaining session on February 28, but of course Respondent was not present. (TR 61) The hiatus in bargaining was not resolved until the end of April when, in response to an inquiry from Bruce Fitzpatrick about shift premiums, Dorn suggested the best approach was for Respondent to return to the bargaining table. (G.C. ex. 12) The next bargaining session was eventually scheduled for May 25. (TR 61-62)

III. ARGUMENT

The evidence establishes that Respondent unlawfully changed its bargaining unit employees' terms and conditions of employment by denying them the at least 1% annual merit wage increase issued in conjunction with their performance evaluations and by creating the mentor position and providing the employees awarded that position with an additional 25 cents per hour. Respondent also unlawfully refused to bargain with the Union when it cancelled the bargaining session scheduled for February 28, 2017, with the goal of putting pressure on the Union to force it to schedule an election.

A. Respondent Unilaterally Eliminated its Longstanding Practice of Providing Employees with an at Least 1% Raise in Conjunction with Their Annual Performance Appraisals

The Board and courts have long held that an employer must maintain the status quo for mandatory subjects of bargaining when a union is newly certified; failure to do so constitutes a unilateral change that violates Section 8(a)(1) and (5) of the Act. See, e.g., NLRB v. Katz, 369 U.S. 736, 742-44 (1962); Pleasantview Nursing Home, 335 NLRB 961, 962 (2001), enfd. in relevant part, 351 F.3d 747 (6th Cir. 2003). The Act itself spells out that mandatory subjects of bargaining include “wages, hours, and other terms and conditions of employment” (Section 8(d)) and “rates of pay, wages, hours of employment, or other conditions of employment” (Section 9(a)). The logic of Katz and the prohibition on unilateral changes applies even to situations where an employer has an established practice of giving discretionary raises in conjunction with annual employee performance evaluations. See, e.g., Daily News of Los Angeles, 315 NLRB 1236 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996); WAPA-TV, 317 NLRB 1159 (1995), enfd. 82 F.3d 511 (1st Cir. 1996).

In the present case, Respondent had a well-established practice over the thirteen years prior to fiscal year 2017 of issuing employees at least a 1% annual wage increase. These raises were almost always issued in conjunction with an employee’s annual performance evaluation, with the only exception being fiscal year 2015 when the raise was delayed a few months due to funding issues. (TR 21, 140-41) The Union was certified on November 30, 2015, and Respondent properly maintained the status quo throughout the remainder of fiscal year 2016 by continuing to provide employees who received an acceptable performance evaluation with a 1% raise. However, effective July 1, 2016, with the turn of a new fiscal year, Respondent stopped this practice. Instead, Respondent started informing employees that the raises had to be determined through collective bargaining instead. However, non-bargaining unit employees

continued to receive their 1% annual raise as expected for both fiscal years 2017 and 2018.

(TR 144-47)

There is no evidence that the Union was ever notified of Respondent's decision to change its established practice of paying annual raises. Respondent's Board made its decision on June 2, 2016, yet the Union was not notified of this change even though the parties held bargaining sessions on June 7 and June 21 (Resp. ex. 16) shortly after the decision was made and before it was implemented on July 1. Bruce Fitzpatrick even held a voluntary meeting with employees on June 16 to inform them that there would not be a wage increase until the collective bargaining was settled (TR 115, 121), but the Union was not informed of or invited to attend the meeting (TR 134).² By the time of the September 14 bargaining session, David Dorn had heard rumors that Respondent had been telling employees that they were not getting a raise because of the Union. However, when Dorn confronted John Combs about these rumors, Combs stated he had no idea what Dorn was talking about.³ (TR 53-54) It was not until January 9, 2017, more than half way through the fiscal year, that the Union was actually notified by Respondent that it had ceased its practice of paying employees a 1% wage increase in conjunction with their annual performance evaluation for fiscal year 2017. (G.C. ex. 10) Nor has there has been any claim of a bargaining impasse in the present case; in fact, bargaining was still ongoing as of the date of the hearing and no agreement had been reached between the parties concerning wages or annual increases. (TR 59)

² Regardless of whether or not it would constitute actual notice that would justify proceeding with an otherwise unlawful unilateral change, there was no evidence presented to show that any employees who served on the Union's bargaining committee attended this meeting.

³ Richard Wessels was also present during this conversation (TR 53) and, although he did testify at the hearing, he provided no testimony about this exchange. Thus, Dorn's account of what happened on September 14 is uncontroverted.

Respondent would apparently attempt to defend its unlawful unilateral change by indicating that it merely deferred the issue of the annual merit raises to the collective-bargaining process. Certainly employee raises are an appropriate subject for bargaining, but that does not alleviate Respondent's obligation to maintain the status quo and pay the annual increases instead of placing the Union in a negative bargaining position from the outset while the parties bargain towards an agreement. Respondent may argue that it provided notice to the Union as early as February 12, 2016, that it was planning to deviate from its longstanding practice of providing employees with a 1% merit increase annually. (G.C. ex. 2) Respondent may also apparently try to argue that the present charge is untimely, presumably based on that same February 12 letter. However, a plain reading of the February 12 letter from Fitzpatrick to Dorn in no way puts the Union on notice that Respondent intends to make changes to its established practice. In his letter, Fitzpatrick confirms Respondent's established practice of paying employees a 1% merit increase, indicates that Respondent's Board approved this allocation for fiscal year 2016, and that Respondent would continue this practice through 2016. At no point does Fitzpatrick indicate that a change in practice is contemplated, much less that Respondent will actually cease its practice of providing annual merit increases with the start of fiscal year 2017. In fact, the Board of Directors did not even make its decision until four months later and there is no evidence that Respondent was contemplating making a change in the meantime.

As discussed above, Respondent had ample opportunity to notify the Union of its intention to eliminate the practice of paying annual raises, whether during bargaining sessions or otherwise, and as late as September 2016 Combs indicated that he had no idea what rumors Dorn

was talking about when asked about raises not being paid.⁴ To the extent that Respondent is arguing as an affirmative defense that the Union's present charge was untimely, the burden is on Respondent to present proof that the Union had "clear and unequivocal notice" of the change; no evidence was presented in this case to justify such a conclusion. See, e.g., Chinese Am. Planning Council, 307 NLRB 410, 410 (1992), review denied mem. 990 F.2d 624 (2nd Cir. 1993). Finally, Respondent may argue that fiscal year 2018 somehow creates a changed circumstance since the State of Illinois has passed a budget that provides an increase in funding that would support a 75 cent per hour wage increase to many of Respondent's employees. (TR 124) Other than a single time more than 15 years ago, Respondent presented no evidence to show that the raises it pays its employees are somehow tied to the state budget. In fact, Fitzpatrick admitted that Respondent was free to give employees a wage increase irrespective of the funding it receives from the state. (TR 135) Therefore, any reliance by Respondent on the fiscal year 2018 state budget as a basis to perpetuate its unlawful unilateral change that started more than a year earlier should be rejected.

The facts in this case are directly on point with the Board's holdings in Daily News and WAPA-TV. Here, Respondent had a long-established practice of providing employees with an at least 1% wage increase in conjunction with the employees' annual evaluations. Once the Union was certified, Respondent ended that practice with the start of a new fiscal year. Respondent did not make its decision based upon budgetary considerations; its decision to end this practice was made before the fiscal year 2017 budget was even finalized. And Respondent continued to award its non-bargaining unit personnel with the standard 1% raise. Rather,

⁴ Of course, even if Respondent had proven that it had provided notice to the Union of its proposed change, it would still have had an obligation to bargain to impasse over that change, which certainly did not happen here.

Respondent stopped the raises to bargaining unit employees solely because the Union had been certified and the parties had started bargaining. That unilateral change, the elimination of the at least 1% annual raise that employees had reasonably come to expect, constitutes a violation of Section 8(a)(1) and (5) of the Act.

B. Respondent's Unilateral Creation of a "Care Worker, Mentor" Position with Additional Job Duties and a Raise Violated Section 8(a)(5) of the Act

There is no dispute that in November 2016 Respondent modified the job duties of six employees, converting them from their existing "Care Worker" positions (G.C. ex. 5) and making them "Care Worker, Mentors" (G.C. ex. 6). These employees are now required to help train new hires, which includes having the hires shadow the mentors and showing and explaining to the new hire what the mentor is doing. The mentors are also now expected to provide feedback to both the new hire and their supervisor about how the new hires are progressing. (TR 85-86) In recognition of these additional duties and responsibilities, the six mentors were given a 25 cent per hour raise. (TR 100)

Certainly the changes Respondent made by implementing the mentor position were material and substantial—not only were the mentors given additional duties beyond the other care workers, they were provided with an approximately 2.5% raise to compensate for the additional responsibility they had been asked to undertake.⁵ (G.C. ex. 8) Not only was the mentor position a substantial change for the affected employees, it was also intended to create a substantial benefit to Respondent in the way of improved new employee retention and competence. (TR 35, 81) As the Board has previously stated: "Wages are, of course, a

⁵ Certainly employees who are used to getting a 1% annual raise would find a 2.5% raise to be substantial, particularly when Respondent had otherwise (unlawfully) stopped providing the 1% annual increase.

mandatory subject of bargaining.” Mid-Wilshire Health Care Ctr., 337 NLRB 72, 73 (2001), citing NLRB v. Borg-Warner Corp., 356 U.S. 342, 248 (1958). The Board has also found that employee job assignments are a mandatory subject of bargaining and making a material change to such assignments constitutes an unlawful unilateral change. See Flambeau Airmold Corp., 334 NLRB 165, 171-72 (2001). And increasing employee job duties can also constitute an unlawful unilateral change. See Bundy Corp., 292 NLRB 671, 678 (1989). Even modifications to job descriptions have been found to be a unilateral change. See ABB, Inc., 14-CA-29219, JD(ATL)-17-09 (Sep. 4, 2009).⁶ There is no question that the Union was not informed of Respondent’s changes to the new mentors’ job duties and wage rates. (TR 30-31) Nor has the creation of the mentor position or the accompanying wage increase been raised by Respondent at the bargaining table (TR 64), even though the parties held four bargaining sessions around the time that the mentor position was created (two in October, one in November, and one in December 2016) (Resp. ex. 16).

Respondent may argue that once it created the mentor position and spoke to the six potential “applicants,” it was voluntary whether or not the employees accepted the position (all six who were asked accepted the position). However, the fact that it was voluntary for the employees to accept the position and corresponding raise does not mean that Respondent did not still have an obligation to notify and bargain with the Union over the change to employees’ terms and conditions of employment. If the legal standard was whether or not employees voluntarily accepted the employer’s change, then likely any otherwise unlawful unilateral change that resulted in a positive outcome for employees (such as a raise) would never be found to be a violation, which is an approach that the Board has never adopted. Nor is the fact that the

⁶ The judge’s decision was adopted by the Board in ABB, Inc., 355 NLRB 13 (2010), which decision was likely invalidated by New Process Steel v. NLRB, 560 U.S. 674 (2010).

creation of the mentor position was only “temporary” a valid defense to this unilateral change. This “temporary” position has now been in place for more than nine months as of the date of the hearing with apparently no plans to end the program, and Respondent has presented no evidence that might otherwise justify the implementation of this mentor program. Finally, Respondent would apparently point to its history of making changes to the general Care Worker job description as justification for unilaterally creating the new mentor position and giving those employees a raise. However, of the five previous modifications to the Care Worker position, one was developed in 1971, two were in 1999, one was in 2003, and one was in 2009.

(Resp. ex. 3-7) Besides the obvious fact that the Union was not the certified representative when any of those other job descriptions were created, developing five job descriptions over a 40 year period (or even four over a fifteen year period) hardly constitutes an established past practice that would justify Respondent implementing the creation of the new mentor position and providing those employees a raise without first notifying and bargaining with the Union to impasse.

There is no dispute that Respondent created a new mentor position and placed six employees into that position. As shown at the hearing, the new mentor position included additional duties beyond what the six selected care workers had originally performed and provided a 25 cent raise to compensate the employees for the additional duties and responsibilities. Respondent has presented no viable justification for making this change without first providing the Union with notice and an opportunity to bargain to impasse. An unlawful unilateral change in violation of Section 8(a)(1) and (5) of the Act has therefore occurred and must be remedied.

C. Respondent's Cancellation of a Scheduled Bargaining Session and Causing a Three Month Hiatus in Bargaining in Order to Put Pressure on the Union to Hold an Election Constitutes Bad Faith Bargaining

The parties had a bargaining session scheduled for February 28, 2017. But the day before that meeting, Respondent filed an RM election petition and then cancelled the February 28 meeting because it wanted to (1) put pressure on the Union to hold an expedited election and (2) conduct research in light of filing the RM petition. No evidence was presented at hearing to demonstrate when Respondent's purported good faith doubt about the Union's majority status arose, why Respondent had to file its RM petition on the day before a scheduled bargaining session, or why Respondent had to conduct legal research on February 27 and 28 instead of bargaining with the Union. Despite being the one to cancel the meeting, Respondent took no steps until the end of April to resume bargaining (and then only did so at the request of the Union), which resulted in a nearly three month hiatus in these first contract negotiations.

Under Board law, the preference is for an employer to file an RM petition rather than withdrawing recognition when a question exists about the Union's ongoing majority status. See Levitz Furniture Co., 333 NLRB 717, 723 (2001). But the Board was also clear that "the union remains the bargaining representative, and the employer's bargaining obligation continues, while the RM (or RD) election proceedings are underway." Id. at 726-27. Here, despite its clear ongoing bargaining obligation, Respondent cancelled the February 28 bargaining session merely to put pressure on the Union to force a speedy election. Respondent's chief negotiator Richard Wessels admitted as much, testifying when asked why he sent his e-mail on February 27 cancelling the February 28 bargaining session that "I wanted -- my objective was to get an election." (TR 127) Certainly bargaining sessions may be cancelled for any number of lawful reasons, but to cancel a bargaining session for no other reason than to attempt to force a union into a Board election amounts to bad faith bargaining. And once Wessels had completed his

research and it became clear that an expedited election was not going to happen, Respondent remained silent and let the weeks continue to pass rather than contacting the Union and taking steps to return to the bargaining table to fulfill its obligation to bargain in good faith. (TR 183)

Respondent may try to defend its actions by arguing that the Union cancelled earlier bargaining sessions as well, so Respondent should not be held accountable for cancelling the February 28 meeting. However, the evidence does not support such a conclusion. David Dorn's credible and uncontradicted testimony establishes that bargaining sessions in August and December 2016 had to be cancelled by mutual agreement when the parties were unable to find a suitable location to bargain, not because the Union unilaterally cancelled the meetings to put pressure on Respondent. (TR 76) Respondent may also argue that it informed the Union on February 27 that it was not withdrawing recognition. But that fact alone does not justify Respondent's refusal to meet and bargain with the Union; if anything, it confirms that Respondent was aware of its ongoing bargaining obligation with the Union and it should have sat down at the bargaining table with the Union on February 28 instead of singlehandedly creating a three month hiatus in the bargaining.

The evidence is clear that Respondent had an ongoing bargaining obligation with the Union. But instead of sitting down with the Union at the bargaining table on February 28 as scheduled, Respondent cancelled the session to put pressure on the Union to agree to an expedited Board election. Respondent's actions demonstrate that it was not bargaining in good faith with the Union and a Section 8(a)(1) and (5) violation has been established.

IV. CONCLUSION AND REMEDY REQUESTED

For the reasons stated above, and based on the record as a whole, the General Counsel respectfully submits that Respondent has violated Section 8(a)(1) and (5) of the Act as alleged in the Consolidated Complaint and requests that the Administrative Law Judge make the following Conclusions of Law and adopt the proposed Order and Notice to Employees.

A. Proposed Conclusions of Law

1. The Respondent, Good Shepherd Manor, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Union, the American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally and without first bargaining with the Union to impasse when it:
 - (a) Changed the terms and conditions of employment of bargaining unit employees by ending its practice of providing employees with an at least 1% annual merit wage increase.
 - (b) Changed the terms and conditions of employment of bargaining unit employees by implementing a new care worker mentor program and paying affected employees a 25 cent wage increase for assuming those duties.
4. The Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to bargain in good faith with the Union.
5. The aforementioned unfair labor practices by the Respondent affected commerce within the meaning of Section 2(6) and (7) of the Act.

B. Proposed Order

The Respondent, Good Shepherd Manor, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Unilaterally and without bargaining with the Union to impasse eliminating the practice of providing employees with an at least 1% annual merit wage increase, or otherwise changing employees' terms and conditions of employment without first giving the Union notice and an opportunity to bargain.

(b) Unilaterally and without bargaining with the Union to impasse implementing a new care worker mentor program and paying affected employees a wage increase, or otherwise changing employees' terms and conditions of employment without first giving the Union notice and an opportunity to bargain.

(c) Refusing to bargain in good faith with the Union.

(d) 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) On request, bargain with the American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO, as the exclusive collective-bargaining representative of employees in the following unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time non-professional employees including careworkers, instructors, trainers, infirmity technicians, receptionists, custodial service workers, maintenance employees, administrative support staff, assistant program directors, assistant supervisors, food service workers, secretaries, licensed practical nurses and transport staff employed by the Employer at its facility located at 4129 N. Rt. 1-17, Momence, IL 60954

Excluded: All professional employees, managerial employees, and guards and supervisors as defined by the Act.

(b) 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.

(c) At the request of the Union, rescind the change in the terms and conditions of employment for its unit employees that was unilaterally implemented on about July 1, 2016, concerning providing employees with an at least 1% annual merit wage increase.

(d) At the request of the Union, rescind the change in the terms and conditions of employment for its unit employees that was unilaterally implemented on about November 18, 2016, concerning the new care worker mentor program and corresponding wage increase.

(e) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the unilateral changes, in the manner set forth in the remedy section of this decision.

(f) Compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each employee.

(g) 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.

(h) Within 14 days after service by the Region, post at its Momence, Illinois, facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 25, 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 July 1, 2016.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 25 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.

C. Proposed Notice to Employees

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 do anything to prevent you from exercising the above rights.

American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO (the "Union") is the representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit:

All full-time and regular part-time non-professional employees including careworkers, instructors, trainers, infirmity technicians, receptionists, custodial service workers, maintenance employees, administrative support staff, assistant

program directors, assistant supervisors, food service workers, secretaries, licensed practical nurses and transport staff employed by the Employer at its facility located at 4129 N. Rt. 1-17, Momence, IL 60954: BUT EXCLUDING all professional employees, managerial employees, and guards and supervisors as defined by the Act.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit concerning any proposed changes in wages, hours and working conditions before putting such changes into effect, including wage increases you may have been entitled to as a result of your annual evaluations and the creation of new positions such as mentors and the wage rates for those positions.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL, upon request, bargain in good faith with the Union as the exclusive collective-bargain representative of our unit employees concerning wages, hours, and working conditions. If an agreement is reached with the Union, we will sign a document containing that agreement.

WE WILL, if requested by the Union, rescind any or all changes we made without bargaining with the Union, including not paying wage increases you may have been entitled to as a result of your annual evaluations and creating a new position such as mentors and the wage rates for those positions.

WE WILL pay you for the wages lost because of not paying wage increases you may have been entitled to as a result of your annual evaluations.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file a report with the Regional Director allocating the payments to the appropriate calendar year.

GOOD SHEPHERD MANOR, INC.

SIGNED at Indianapolis, Indiana, this 10th day of October 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Derek A. Johnson", with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing General Counsel's Brief to the Administrative Law Judge has been filed electronically with the Division of Judges through the Board's E-Filing System this 10th day of October 2017. Copies of said filing are being served upon the following persons by electronic mail:

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