

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

HOSPITAL MENONITA DE GUAYAMA, INC.

and

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

CASES 12-CA-214830  
12-CA-214908  
12-CA-215039  
12-CA-215040  
12-CA-215665  
12-CA-217862  
12-CA-218260  
12-CA-221108

*Celeste M. Hilerio Echevarria and Isis M. Ramos Melendez, Esqs.,*  
for the General Counsel.

*Angel Munoz Noya and Adrian Sanchez-Pagan, Esqs. (Sanchez*  
*Betances, Sifre & Munoz Noya),* for the Respondent.

*Harry Hopkins, Esq.,* for the Charging Party.

**DECISION**

**Statement of the Case**

IRA SANDRON, Administrative Law Judge. This matter is before me on a consolidated complaint and notice of hearing (the complaint) issued on July 31, 2018, arising from unfair labor practice charges that Unidad Laboral de Enfermeras (OS) y Empleados de la Salud (the Union) filed against Hospital Menonita de Guayama, Inc. (the Respondent or the Hospital). The charges allege that the Respondent, an admitted successor employer, committed various violations of the Act relating to five separate bargaining units after it began operating the Hospital on September 13, 2017.<sup>1</sup>

Pursuant to notice, I conducted a trial in San Juan, Puerto Rico, on December 4, 6, and 7, 2018, and by telephone on March 14, 2019, at which I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

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<sup>1</sup> All dates hereinafter occurred in 2017 unless otherwise indicated or clear from context.

## Issues

- 5 (1) Did the Respondent, a successor employer to Hospital San Lucas Guayama (San Lucas), implement initial terms and conditions of employment that were different from those of San Lucas without giving the Union notice or an opportunity to bargain?
- 10 (2) Did the Respondent unlawfully withdraw recognition of the Union for the five separate bargaining units between February 5 and April 24, 2018?
- (3) Did the Respondent, since on about February 7, 2018, fail and refuse to meet and bargain with the Union for all five units?
- 15 (4) Did the Respondent engage in the following conduct without giving the Union notice or an opportunity to bargain:
- 20 a. On about September 19 and until about October 21, and since on about June 17, 2018, changed the work schedules of RNs by assigning them 12-hour shifts?
- b. On November 22, paid a bonus or incentive to employees in the five units who worked over night on September 19-20 during Hurricane Maria?
- 25 c. On February 11, 2018, granted a wage increase to technicians, after withdrawing recognition from the Union for that unit?
- d. After withdrawing recognition from the Union, eliminated the requirement that employees in the five units pay a portion of their health insurance premium on dates from on about April 1 to June 1, 2018?
- 30 e. On May 18, 2018, granted a \$200 uniforms bonus for the first time to RNs and LPNs?
- 35 f. In late June or early July 2018, distributed and put into effect an employee manual and general rules of conduct, applying to employees in all five units, which made changes in disciplinary rules and benefits?
- 40 (5) Since on about March 14, 2018, has the Respondent failed and refused to provide the Union with necessary and relevant information that it requested concerning a March 4, 2018 meeting with unit employees regarding changes in medical insurance?

## Witnesses and Credibility

- 45 The sole witness was the Hospital's human resources (HR) director, Waleska Rodriguez (Rodriguez), whom the General Counsel called as an adverse witness under Section 611 (c) and the Respondent called in its case in chief.

The Respondent sought to present evidence in the way of witness testimony and documents (rejected R. Exhs. 1–11) concerning the Union’s alleged loss of majority status. However, I disallowed such evidence based on my reading of the Board’s governing precedent in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), which I will discuss in the analysis and conclusions section.

The parties stipulated to most salient facts, and Rodriguez’ credibility is not determinative of the issues. I note that most of the exhibits were in the Spanish language; their English translations were later submitted with the designation of “(a)” after the respective exhibit number. Additionally, many of the pivotal events overlapped, and I generally will follow chronological order.

### Facts

I find the following, based on the entire record, including testimony, documents, written and oral stipulations, and the thoughtful posttrial briefs that the General Counsel, the Respondent, and the Charging Party filed.

#### *Events in 2017*

San Lucas owned and operated the hospital prior to September 12, when the Respondent purchased its assets (see Jt. Exhs. 70 and 71). San Lucas had five units of employees represented by the Union, identified by letter designation for ease of reference:

- (1) Medical Technologists (Unit A), since March 22, 2005 (see Jt. Exh. 2). The most recent collective-bargaining agreement was effective from September 1, 2008, until August 11, 2011 (Jt. Exh. 3).
- (2) Registered Nurses (RNs) (Unit B), since August 25, 1998 (see Jt. Exh. 4). The most recent collective-bargaining agreement was effective from June 15, 2010, until June 16, 2013 (Jt. Exh. 5).
- (3) Practical Nurses (LPNs) (Unit C), since August 25, 1998 (Jt. Exh. 6). The most recent collective-bargaining agreement was effective from June 15, 2010, until June 16, 2013 (Jt. Exh. 7).
- (4) Technicians (Unit D), since April 12, 2012 (Jt. Exh.8). No collective-bargaining agreement was ever negotiated for this unit.
- (5) Clerical Workers (clericals) (Unit E), since May 21, 2012 (Jt. Exh. 9). No collective-bargaining agreement was ever negotiated for this unit.

At the time that San Lucas sold its assets to the Respondent, San Lucas was in the process of bargaining successor collective-bargaining agreements for units A, B, and C; and initial contracts for units D and E. Negotiations for all five units were conducted at the same times.

The Respondent is solely owned by Menonite General Hospital, Inc. (Menonite Health System or MHS), its parent company. MHS, a nonprofit corporation based in Airbonito, Puerto Rico, operates the Respondent and several other healthcare facilities throughout Puerto Rico, including four other hospitals (see Jt. Exh. 75, an organizational chart).

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The Respondent assumed operation of the hospital on September 13. It continued to operate the hospital in basically unchanged form and to employ a majority of San Lucas' employees. The parties stipulated that the Respondent became a successor employer to San Lucas. Rodriguez, who was HR director for San Lucas, continued as HR director for the Respondent and to perform the same functions. She reports to Rogelio Diaz (Diaz), the Hospital's administrator, who in turn reports to Pedro Melendez (Melendez), the executive director of MHS.

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From September 8-12, the Respondent distributed identical letters offering employment to all of San Lucas' employees, including those in the above five units (Jt. Exh. 10 is a sample). The letter set out terms and conditions of employment, including different medical plan coverage, and gave the employees until September 12 to accept or reject the offer. All San Lucas employees accepted, no new hires were considered for employment, and the work force remained unchanged. The terms and conditions of employment described in the letter went into effect on September 13. Rodriguez testified that the process of verifying that all of the accepted offers were complete lasted into late September or October.

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On September 8, Melendez informed the Union for the first time that all of the San Lucas employees represented by the Union had received an offer of employment to work for Respondent, subject to new terms and conditions of employment (Jt. Exh. 11). He advised the Union that in the event that a majority of San Lucas employees accepted, the Hospital would recognize the Union as the collective-bargaining representative of all units. Finally, he informed the Union, that the Respondent did not accept the terms and conditions established in the expired collective-bargaining agreements between the Union and San Lucas, or any agreements reached between the Union and San Lucas during bargaining for successor agreements. Rather, everything would be bargained anew.

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On September 13, Union Representative Ariel Echevarria (Echevarria) requested that the Hospital recognize the Union as the representative of all units, and he further requested lists of employees by classification and the offer of employment that they had received (Jt. Exh. 12). On October 27, Union Representative Ingrid Vega (Vega) reiterated to Rodriguez the request for information (Jt. Exh. 16).

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On September 18 and 19, Rodriguez, attempted unsuccessfully to respond to the Union by fax (Jt. Exh. 13). On October 4, the Respondent sent the letter to the Union by certified mail, and on October 13, delivered it to Ruth Perez, the Union's administrative assistant. Therein, Rodriguez advised Echeverria that prior to the hospital determining whether to recognize the Union, it needed to determine whether a majority of the unit employees had accepted its employment offer. She informed the Union that in the event the Union was recognized as bargaining representative, it would produce the requested information.

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On September 19 and 20, Puerto Rico was struck by Hurricane Maria, a category 5 hurricane which had devastating effects to the island's power structure and telecommunications (stipulation at Jt. Exh. 1 at 8). The hospital remained operating through the emergency.

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On about September 19, the Respondent temporarily assigned RNs in clinical areas of the hospital to work 12-hour schedules, instead of their regular schedule of 8-hour shifts, in reaction to a curfew established by the local government, among other reasons. This temporary schedule change lasted until on about October 21, after which the RNs reverted to 8-hour shifts.

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Rodriguez testified that this was consistent with the Hospital's contingency plan, which was never bargained with the Union. The Union was never notified of the temporary 12-hour shifts or the return to 8-hour shifts. Rodriguez testified that during Hurricane Irma, San Luis temporarily instituted 12-hour shifts for RNs, pursuant to its contingency plan, but San Luis did not so notify the Union.

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Rodriguez, Vega, and two shop stewards met at the hospital on October 20. During the meeting, Rodriguez asked what the Union's position was regarding a proposed change in the work shifts of RNs from 8-hour to 12-hour shifts. Vega stated that the Union would agree to such change if done on a voluntary basis. The parties reached no agreements.

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The Union filed a charge on October 26, alleging that "the employer failed and refused to bargain in good faith . . ." (Jt. Exh. 15), which charge was later dismissed (Jt. Exh. 22). The record does not reveal the specific bases of the charge or the underlying facts that the Regional Director considered.

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On October 27, Echevarria and Rodriguez met at the hospital. They discussed the Respondent's proposed implementation of 12-hour work shifts for RNs but were unable to reach an agreement. Echevarria requested that the Respondent reinstate the terms and conditions of employment of unit employees as they were under San Lucas. Rodriguez asked that he put this in writing.

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On November 6, Rodriguez advised Echeverria that all of the employees who worked for San Lucas had accepted the Respondent's employment offer, and that the Respondent was recognizing the Union as the exclusive representative of employees in all units (Jt. Exh. 17). She replied to the Union's September 13 request for information (RFI) and attached a sample of the September 8 offers of employment (Jt. Exh. 18). Further, she referred to the October 27 meeting and her request that the Union submit a proposal.

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On November 7, Rodriguez wrote to Echeverria, attaching additional information that Echeverria had requested on September 13 (Jt. Exhs. 19 and 20).

On November 22, the Hospital held Thanksgiving luncheons for the entire staff, in three shifts. At the luncheons, Diaz and Rodriguez distributed certificates and \$150 checks to union, nonunion, and contracted employees who had worked overnight during Hurricane Maria, from the evening of September 19 into the morning of September 20 (see Jt. Exh. 21, payroll records; Jt. Exh. 73, a sample of the certificate). The certificates were signed by

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Melendez of MHS and Diaz; the checks were signed by Melendez and Jose Solivan, chief financial officer of MHS. Nonunion employees at all four other MHS hospitals who had worked overnight also received such payments. The parties stipulated that MHS paid the incentives. The Respondent did not notify the Union prior to the issuance of the checks or afford it an opportunity to bargain.

*Events in 2018*

On February 5, Diaz notified Echeverria that the Respondent was immediately withdrawing recognition of the Union as the bargaining representative of the technicians (Unit D) because the Hospital had “objective demonstrative evidence that a significant majority” of employees in that unit did not wish representation (Jt. Exh. 25).<sup>2</sup> At the time, 17 employees were in the unit (see Jt. Exh. 26).

On February 6, Echeverria requested from Diaz evidence that the Respondent had to support its allegation of loss support for the Union (Jt. Exh. 27). The same day, Diaz responded that the Hospital did not have to provide the Union with such information (Jt. Exh. 28).

On February 7, Echeverria requested that Rodriguez provide dates to meet and bargain over the collective-bargaining agreements for the units it represented (Jt. Exh. 29). She responded the same day (Jt. Exh. 30), asking that the Union submit its proposals for the four remaining units; once the Hospital received and analyzed the proposals, it would be available to coordinate the respective bargaining meetings. She did not offer any dates to meet.

On February 11, Respondent granted a salary adjustment to technicians, which had the effect of increasing their hourly rate (see Jt. Exh. 31, a chart prepared by Respondent that summarizes the salary adjustment per employee). The Respondent did not notify the Union of this salary increase or bargain with it over the change.

Along with a February 12 letter to Diaz, Echeverria submitted separate bargaining proposals for each of the five units (Jt. Exhs. 32–37).

On February 12, Echevarria advised Rodriguez that the Union had just learned of the Hurricane Maria bonuses and that the Respondent had not notified or bargained with the Union. (Jt. Exh. 38). He demanded to bargain thereover and requested certain information pertaining to its conferral. Finally, he referenced the bargaining proposals that he had sent earlier that day and requested that the Hospital provide dates to commence bargaining.

On March 7, Rodriguez responded (Jt. Exh. 51), explaining that the bonuses were in appreciation for the commitment to patients that the employees had demonstrated. She pointed out that the Hospital had provided other benefits to employees after the hurricanes. As to the information requests, she stated that the Respondent would provide work schedules, attendance records, and payroll records.

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<sup>2</sup> Diaz used identical language in all four subsequent letters notifying the Union that the Respondent was withdrawing recognition for units A, B, C, and E.

On February 14, Diaz informed Echevarria that the Respondent was withdrawing recognition from the Union as the collective-bargaining representative of the clerical workers (Unit E) (Jt. Exh. 40). Along with this letter, Diaz returned the Union's proposals for the technicians' and clerical workers' units. At the time, 42 employees were in the clerical workers' unit (see Jt. Exh. 41).

By separate letter of February 14 to Echevarria (Jt. Exh. 42), Diaz confirmed having received the Union's bargaining proposals and said that the Hospital would begin the revision and analysis process of the proposals for the LPN, RN, and medical technologist units. He stated that the Respondent would submit its counterproposals by the third week of April and that the parties would then begin the bargaining process. Echevarria responded to Rodriguez on February 19 (Jt. Exh. 48), contending that Diaz was requesting approximately 2 months before beginning negotiations and that this constituted an intention to stall the negotiations process. He requested that the Hospital provide as soon as possible available dates to begin bargaining.

On March 6, Diaz replied to the Union's February 19 letter (Jt. Exh. 49), asserting that any delays in negotiations was solely attributable to the Union. He pointed out that the Respondent had asked the Union to submit proposals as far back as October 27, 2017, but none had been submitted until February 12.

On February 14, Echevarria sent Rodriguez a summary of what they had discussed at the October 27, 2017 meeting (Jt. Exh. 44). On substantive matters, he stated that the Union had expressed no objection if the 12-hour work shifts were voluntary. Rodriguez responded the following day (Jt. Exh. 45), stating that the Union was told at that meeting that the 12-hour shifts for nurses could not be granted in a voluntary manner because it prevented preparation of the work schedule.

On March 7, Rodriguez responded to Echevarria's February 14 letter (Jt. Exh. 50). She disputed his account of the October 27 meeting, stating that she had asked for proposals at that meeting, but the Union had not provided any until February. She also repeated what she and Echevarria had said about 12-hour shifts for RNs.

On February 16, Diaz notified Echevarria that the Respondent was withdrawing recognition of the Union as the representative of the medical technologists (Unit A) (Jt. Exh. 46). At the time, nine employees were in that unit (see Jt. Exh. 47).

On March 7, Echevarria wrote to Rodriguez, saying that the Union had just learned that unit employees would be receiving an orientation about the Menonita Health Plan on March 14 (Jt. Exh. 53). He stated that the Respondent had not notified or bargained with the Union, and he requested that they meet and bargain. Rodriguez responded that day (Jt. Exh. 53), contending that the Hospital had not made any changes to the medical insurance benefits provided to employees in the two units that the Union represented (RNs and LPNs).

On March 12, Echevarria sent Rodriguez a letter that covered a variety of topics (Jt. Exh. 54). Inter alia:

- 5 (1) He disputed the Respondent's contention (in its March 6 and 7 letters) that the Union was responsible for the delay in negotiations. He further pointed out that the Hospital had been aware at all times that the Union's proposals mirrored the expired San Lucas collective-bargaining agreements. Finally, he further disagreed with the Respondent's stance that it wanted the Union's proposals and an opportunity to make counter-proposals prior to beginning negotiations.
- (2) He again contended that implementation of the new health plan and conferral of the bonuses were unlawful unilateral changes.

10 On March 14, the Echeverria wrote to Rodriguez regarding employees' medical insurance (Jt. Exh. 55). He stated that the Union had learned that Respondent had met with unit employees that same day to renew their health insurance coverage, and he requested: (a) copies of all documents signed by the employees at the meeting concerning employees' medical plan "renovation," including the document they signed to renew their medical insurance; and (b) copies of the attendance sheet for that meeting.

15 On March 19, Rodriguez responded (Jt. Exh. 56), reiterating the Respondent's earlier-stated position about the change. She attached: (a) copy of a sheet distributed to employees in the RN and LPN units, which summarized their health insurance benefits; and (b) a copy of the attendance sheet to the March 14, signed by employees in those units.

20 On March 19, by separate letter, Rodriguez replied to Echeverria's March 12 letter regarding the Hurricane Maria bonuses (Jt. Exh. 57). She stated that the Respondent had not recognized the collective-bargaining agreements between the Union and San Lucas and that the incentive payments were an expression of gratitude and not illegal.

25 On April 1, the Respondent reduced the cost of health care insurance for employees in the three units (technicians, clerical workers, and medical technologist) for which it had previously withdrawn recognition. Thus, before April 1, employees in those units had to cover 50 percent of their health care premiums; after April 1, the Respondent absorbed the totality of their health care premiums, effectively eliminating the 50 percent employee contribution. The Respondent did not notify or bargain with the Union over this change.

30 On April 4, Echeverria wrote to Rodriguez and renewed his request for copies of the document that workers signed concerning the change in medical plan (Jt. Exh. 58). The Respondent never replied.

35 On April 6, Diaz notified Echeverria that the Respondent was withdrawing recognition from the Union as the collective-bargaining representative of RNs (Unit C) (Jt. Exh. 59). Along with this letter, Diaz returned the Union's proposal for the RN unit. At the time, 109 employees were in the unit (see Jt. Exh. 60).

40 On April 18, Rodriguez sent Echeverria the Hospital's collective-bargaining proposal for employees in the LPN unit (Jt. Exh. 61).

45 On April 24, Diaz notified Echeverria that the Respondent was withdrawing recognition from the Union as the collective-bargaining representative of LPNs (Unit B) (Jt. Exh. 62). Diaz stated that the collective-bargaining counter proposal the Hospital had

submitted on April 18 was therefore withdrawn. At the time, 16 employees were in the unit (see Jt. Exh. 63).

5 On May 1 and June 1, respectively, the Respondent reduced the cost of health care insurance for employees in the RN and LPN units, by eliminating their previous 50 percent health insurance premium contribution. The Respondent did not notify or bargain this change with the Union.

10 On May 18, the Respondent granted a bonus of \$200 for uniforms to employees in the RN and LPN units (see Jt. Exh. 64). This was the first time that the Respondent granted such a bonus. The Respondent did not notify or bargain with the Union over the its payment.

15 Towards the beginning of June, the Hospital reexamined the subject of assigning employees in the RN unit to work 12-hour shifts, as opposed to the 8-hour work shifts they had been working since at least October 1, 2017. On about June 17, after soliciting input from RNs, the Respondent implemented 12-hour work schedules for RNs in a number of departments (see Jt. Exhs. 66 and 67). The Respondent did not notify or bargain this change with the Union.

20 Towards the end of June or the beginning of July, the Respondent distributed and implemented an employee handbook, employee manual, and general rules of conduct, applicable to all its employees (Jt. Exhs. 68 and 69). Before this, the Hospital had no employee manual or rules of conduct in effect. These promulgations made changes to disciplinary procedures and employee benefits.

## 25 Analysis and Conclusions

### *Setting Initial Terms and Conditions of Employment*

30 A new employer is a successor to the old employer—and thus required to recognize and bargain with the incumbent labor union—when there is “substantial continuity between the two business operations and when a majority of the new company’s employees had been employed by the predecessor. *UGL-UNICCO Service Co.*, 357 NLRB 801, 803 (2011), citing *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 42–44, 46–47 (1987); see also *NLRB v. Burns International Security Services*, 406 U.S. 272, 281 (1972). The successor is not required to adopt the existing collective-bargaining agreement but may set initial terms and conditions of employment unilaterally, unless it is “perfectly clear that the new employer plans to retain all of the employees in the bargaining unit,” *UGL-UNICCO* at 803, citing *NLRB v. Burns* at 294–295, in which event the successor employer should consult with the union before fixing such terms and conditions of employment. This depends on whether the successor employer has hired its full complement of employees and can determine that the union represents a majority of employees in the recognized unit. 406 U.S. at 295.

45 In *Spruce Up Corp.*, 209 NLRB 194, 195 (1974), enfd. per curiam 529 F.2d 516 (4th Cir. 1975), the Board held that this “perfectly clear” exception to the general rule “should be restricted to circumstances in which the new employer has either actively or, by tacit inference, misled employees into believing that they would be retained without change in their wages, hours, or conditions of employment, or at least to circumstances where the new

employer . . . has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment.” This is because of the possibility that many employees will reject employment under the new terms, potentially causing the Union to lose majority status in the new work force.

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In subsequent cases, the Board clarified that the perfectly-clear exception applies when a new employer “displays an intent to employ the predecessor’s employees without making it clear that their employment will be on different terms from those in place with the predecessor.” *Creative Vision Resources, LLC*, 364 NLRB No. 91, slip op. at 3 (2016), citing *Canteen Co.*, 317 NLRB 1052, 1053–1054 (1995), *enfd.* 103 F.3d 1355 (7th Cir. 1997) (new terms and conditions not announced until after the employer displayed an intent to employ the predecessor’s employees). Put another way, to preserve its authority to unilaterally set initial terms and conditions of employment, a new employer must clearly announce its intent to establish a new set of conditions prior to, or simultaneously with, its expression of intent to retain its predecessor’s employees. *Nexeco Solutions, LLC*, 364 NLRB No. 44, slip op. at 6 (2016). See also *Walden Security, Inc.*, 366 NLRB No. 44 (2018).

Here, when the Respondent offered employment to San Lucas employees represented by the Union, it simultaneously set out the new benefits that it would be offering them. Therefore, employees were aware of those changes when they accepted the Respondent’s offer of employment. Accordingly, I conclude that the Respondent did not violate the Act by setting initial and terms and conditions of employment for unit employees.

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#### *Withdrawal of Recognition*

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Most of the alleged violations hinge on the lawfulness of the Respondent’s withdrawal of recognition from the Union for the five bargaining units.

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In *UGL-UNICCO*, above at 808–809, the Board held that where the successor has not adopted the predecessor’s collective-bargaining agreement, a union is entitled to a reasonable period of bargaining, during which an employer may not unilaterally withdraw recognition from the union based on a claimed loss of majority support, whether arising before or during the period (the “successor bar” doctrine).

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In situations such as here, where the successor employer recognizes the union but unilaterally announces and establishes initial terms and condition of employment before proceeding to bargain, the “reasonable period of bargaining” is a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. *Id.* at 809.

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Not until November 6, 2017, did the Respondent notify the Union that the Respondent was recognizing it as the exclusive representative of employees in all five units. Thus, both Melendez’ September 8 letter and Rodriguez’ October 4 letter stated that the Hospital had to determine if the Union represented a majority of employees before it recognized the Union. Accordingly, the October 20 and 27 meetings, which primarily concerned the 12-hour shifts for RNs, cannot be considered negotiations for collective-bargaining agreements at a time when the Union was not yet recognized.

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The Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the technicians (Unit D) on February 5, 2018, the clerical workers (Unit E) on February 14, and the medical technologists (Unit A) on February 16—prior to the time that the Respondent submitted any counterproposals to the Union’s proposals of February 12. On April 6, the Respondent withdrew recognition of the Union for the RNs (Unit B) and returned the Union’s proposal without making any counterproposal. Finally, the Respondent withdrew recognition for the LPNs (Unit C) on April 24, only 6 days after making its one and only counterproposal. The Respondent and the Union never had face-to-face negotiations.

Accordingly, I conclude that the Respondent’s withdrawal of recognition of the Union for all five units ran afoul of the successor bar rule and that the Respondent unlawfully failed and refused to bargain with the Union thereafter. In light of this conclusion, I need not address the General Counsel’s alternative argument that the withdrawals of recognition were unlawful because they occurred at times when significant unremedied unfair labor practices existed.

The Respondent, both at trial and in its brief, has argued that the successor bar rule articulated in *UGL-UNICCO* should be overruled, but such a decision is outside of the scope of my authority and vests with the Board.

#### *Failure to Meet and Bargain in Good Faith*

The Union submitted its contract proposals on February 12, 2018. On February 14, the same day that the Respondent announced that it was withdrawing recognition of the Union for clerical unit, Diaz responded that the Respondent would submit counterproposals for the remaining four units by the last week in April. The Respondent never offered reasons why review of the Union’s proposals would have taken over 2 months. By April 18, the Respondent had withdrawn recognition for the three other units, so that it recognized the Union only for the LPNs. On April 18, the Respondent made a counterproposal for the LPNs but only 6 days later withdrew recognition for that unit as well. As mentioned, the parties never had face-to-face negotiations.

The above circumstances, in conjunction with the Respondent’s unlawful withdrawals of recognition, give rise to a strong suspicion that the Respondent had no intention of engaging in meaningful bargaining with the Union. I further note that two of the alleged unilateral changes occurred when the Respondent still recognized the Union for the units involved.

#### *Unilateral Changes before Withdrawal of Recognition*

##### *A. 12-hour Shifts for RNs*

The Respondent admittedly changed the work schedules of RNs from about September 19 until about October 21, 2017, from 8-hour to 12-hour shifts without affording the Union notice or an opportunity to bargain. At the time, the Respondent recognized the Union as the collective-bargaining representative of the RNs. Although Rodriguez testified that this was in accordance with the Respondent’s contingency plan, she conceded that the

Union was never notified of such plan or afforded an opportunity to bargain.

Prior to the trial, the complaint limited this allegation to the period since on about June 17, 2018; at trial, the General Counsel moved to amend the paragraph to add the 2017 dates. The Respondent opposed the amendment. Section 102.17 of the Board’s Rules authorizes the judge to grant complaint amendments “upon such terms as may be deemed just” during or after the hearing until the case has been transferred to the Board. See *Folsom Ready Mix, Inc.*, 338 NLRB 1172, 1172 fn. 1 (2003).

Section 10(b) of the Act requires that unfair labor practice charges be filed and served within 6 months of or after the allegedly unlawful conduct. However, a complaint may be amended to allege conduct occurring outside the 10(b) period if the conduct occurred within 6 months of a timely filed charge and is “closely related” to the allegations of the charge. *Fry’s Food Stores*, 361 NLRB 1216, 1216 (2014), citing *Redd-I, Inc.*, 290 NLRB 1115 (1988). Under *Redd-I*, the Board considers whether (1) the otherwise untimely allegations involve the same legal theory as the allegations in the timely charge; (2) the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the timely charge (i.e., the allegations involve similar conduct, usually during the same time period, and with a similar object); and (3) a respondent would raise the same or similar defenses to both the otherwise untimely and timely allegations. *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014).

Two of the charges were filed within 6 months of October 21, 2017, and alleged unilateral changes: (1) the charge in Case 12-CA-215039 was filed on February 28, 2018, and included the allegation that the Respondent unilaterally issued the Hurricane Maria bonuses; and (2) the charge in Case 12-CA-217862, filed on April 4, 2018, included the allegation that the Respondent unilaterally changed employees’ health care coverage and premiums.

However, the shift change at the time of Hurricane Maria was unrelated to either of those actions, and the Respondent at trial offered a defense that was different and distinct from its justifications for the bonuses and the changes in health care coverage and premiums. This was made clear in Rodriguez’ testimony, as described in the facts section. Accordingly, I conclude that the shift change in September—October 2017 cannot form the basis for finding an unfair labor practice. Nevertheless, it may be used to as evidence shedding light “on the true character of matters occurring within the limitations period. . . .” *Machinists Local 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411, 416 (1960); *Grimmway Farms*, 314 NLRB 73, 74 (1994), enf. granted in part and denied in part 85 F.3d 637 (9th Cir. 1996).

I need not address the General Counsel’s argument that the Respondent’s delay in recognizing the Union—also not alleged in the complaint—should similarly be considered as reflecting on the Respondent’s pattern of conduct.

#### B. Hurricane Maria Bonuses

Initially, I reject out of hand the Respondent’s contention that conferral of the bonuses was not imputable to the Respondent because MHS, the Respondent’s parent company, was the responsible party. Both the normal nature of a parent’s corporation to its subsidiary, and the underlying facts, render such a bifurcation of responsibility untenable.

On November 22, when the Respondent issued \$150 bonus or incentive checks to employees in the five units who had worked over night on September 19–20 during Hurricane Maria, the Respondent still recognized the Union as the collective-bargaining representative for all of the units. The Hospital did not notify the Union in advance or give it an opportunity to bargain.

Gifts or bonuses tied to the remuneration that employees receive for their work constitute compensation for services and are in reality wages falling within the Statute. *NLRB v. Niles-Bement-Pond Co.*, 199 F.3d 713, 714 (2d Cir. 1952). Thus, unilateral implementation of a \$100 bonus based on productivity was found unlawful in *SMI/Division of DCX-CHOL Enterprises, Inc.*, 365 NLRB No. 152 (2017). See also *Cypress Lawn Cemetery Assn.*, 300 NLRB (1990) (unilaterally establishing individual performance bonus a violation).

Therefore, the Respondent violated Section 8(a)(5) and (1) by unilaterally giving unit employees the \$150 bonuses.

#### *Unilateral Changes after Withdrawal of Recognition*

Because I have found that the Respondent unlawfully withdrew recognition, it thereafter committed further violations of Section 8(a)(5) and (1) by unilaterally:

- A. Reinstating 12-hour shifts for RNs since on about June 17, 2018.
- B. Granting a wage increase to technicians on February 11, 2018.
- C. Eliminating the requirement that unit employees pay a portion of their health insurance premium on dates from April 1 to June 1, 2018.
- D. Granting a \$200 uniforms bonus for the first time to RNs and LPNs on May 18, 2018.

The Respondent has contended that the uniforms bonus was granted pursuant to the past practice between the Union and San Lucas (Jt. Exh. 1 at 18) but offered no evidence to substantiate this assertion. The Respondent has further contended that the payment of the \$200 uniforms bonus was a requirement of Article 7 of Puerto Rico Law 180 of 1998 (Jt. Exh. 65). However, in the absence of evidence that the uniform bonus was ever offered prior to May 18, 2018, the Respondent offered no explanation for the timing of the benefit when the law was enacted over 2 decades earlier.

- E. Instituting 12-hour shifts for RNs since on about June 12, 2018.
- F. Distributing and putting into effect, in late June or early July 2018, an employee manual and general rules of conduct, which made changes in disciplinary rules and benefits for employees in all five units.

#### *Failure to Furnish Information*

The complaint alleges that since on about March 14, 2018, the Respondent failed and refused to provide the Union with necessary and relevant information that it requested concerning the March 4, 2018 meeting with unit employees over changes in their medical insurance, specifically (1) copies of all documents signed by the employees during the

meeting and (2) copies of the attendance sheet for that meeting. Although the Respondent did provide the latter, it never provided copies of documents signed by employees.

5 An employer is obliged to supply information requested by a collective-bargaining representative that is relevant and necessary to the latter's performance of its responsibilities to the employees it represents. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). To trigger this obligation, the requested information need only be potentially relevant to the issues for which it is sought. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991); *Conrock Co.*, 263 NLRB 1293, 1294 (1982).

10 Requests for information concerning the terms and conditions of bargaining unit employees are presumptively relevant. *Postal Service*, 359 NLRB 56, 56 (2012); *LBT, Inc.*, 339 NLRB 504, 505 (2003); *Uniontown County Market*, 326 NLRB 1069, 1071 (1998). An employer must furnish presumptively relevant information on request unless it establishes  
15 legitimate affirmative defenses to production. *Detroit Newspaper Agency*, 317 NLRB 1071, 1071 (1995). Here, the Respondent never offered any reasons why the documents signed by employees could not have been or should not have been furnished.

I therefore conclude that the Respondent violated Section 8(a)(5) and (1) by not  
20 providing the Union with such documents.

#### CONCLUSIONS OF LAW

25 1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

30 3. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act:

(a) Unlawfully withdrew recognition of the Union as the collective-bargaining representative of five separate units of employees.

35 (b) Failed and refused to meet and bargain in good faith with the Union on the terms of initial collective-bargaining agreements.

(c) Without affording the Union notice or an opportunity to bargain:

1. Changed the shifts of RNs.

2. Granted technicians a wage increase.

3. Awarded unit employees a Hurricane Maria bonus.

40 4. Eliminated the requirement that unit employees pay a portion of their health insurance premiums.

5. Granted RNs and LPNs a uniforms bonus.

45 6. Distributed and put into effect an employee manual and general rules of conduct, which made changes in unit employees' terms and conditions of employment.

(d) Failed and refused to provide the Union with documents it requested on March 14, 2018, that unit employees signed at a March 4, 2018, meeting on health insurance

benefits, which information was relevant and necessary to the Union's performance of its duties as collective-bargaining representative.

#### REMEDY

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Because I have 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.

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The General Counsel requests as part of the remedy that I order the Respondent to recognize and bargain with the Union for a reasonable period of bargaining of a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the parties, as per *UGL-UNICCO*, above. The General Counsel further requests special remedies: that I order the Respondent to (1) bargain for a minimum of 15 hours a week until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining; and (2) prepare a written bargaining progress reports every 15 days and submit them to the Regional Director and also serve copies of the reports on the Union to provide the Union with an opportunity to reply.

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The Board has long held that, in appropriate circumstances, unusual or special remedies are required to rectify an employer's unfair labor practices. See, e.g., *Leavenworth Times*, 234 NLRB 649, 649 fn. 2 (1978); *Crystal Springs Shirt Corp.*, 229 NLRB 4, 4 fn. 1 (1977).

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These may include the special remedies that the General Counsel has requested. See *Professional Transportation, Inc.*, 362 NLRB 534, 536 (2019) (Board imposed such remedies when the respondent had "engaged in a series of dilatory tactics in contravention of its duty to bargain in good faith"); see also *All Seasons Climate Control, Inc.*, 357 NLRB 718, 718 fn. 2 (2011), enf. 540 Fed.Appx. 484 (2013) (unpublished decision); *Gimrock Construction, Inc.*, 356 NLRB 529, 529 (2011), enf. denied in part 694 F.3d 1188 (11th Cir. 2012).

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35

I conclude that such special remedies are appropriate here. The Respondent's unlawful withdrawal of recognition of the Union from all five units, its pattern of conduct that showed no serious interest in engaging in collective bargaining, and its imposition of unilateral changes when it still recognized the Union demonstrated a desire to shirk its obligations as a successor employer.

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As to the submitting of progress reports to the Regional Director, I find that they should be submitted every 30 days rather than every 15 days. See *All Seasons Climate Control*, *ibid*; see also *Professional Transportation, Inc.*, *ibid*.

45

The General Counsel has not contended that any of the Respondent's unilateral changes had a negative financial impact on any unit employees and has not requested a make-whole remedy.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

### ORDER

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The Respondent, Hospital Menonita de Guayama, Inc., Guayama, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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(a) Withdrawing recognition of Unidad Laboral de Enfermeras (OS) y Empleados de la Salud (the Union) as the exclusive collective-bargaining representative of employees in five separate units, in contravention of its obligations as a successor employer.

(b) Failing and refusing to meet and negotiate in good faith initial collective-bargaining agreements with the Union for those five units.

(c) Making changes in unit employees' terms and conditions of employment without affording the Union notice or an opportunity to bargain.

(d) Failing and refusing to provide the Union with information that it requests that is relevant and necessary for the Union's performance of its duties as collective-bargaining representative.

(e) 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) Recognize and bargain with the Union for a reasonable period of bargaining of a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the Respondent and the Union, without challenge to the Union's representative status.

(b) Within 15 days of the Union's request, bargain with the Union at reasonable times in good faith until full agreement or a bona fide impasse is reached, and if an understanding is reached, incorporate such understanding in a written agreement. Unless the Union agrees otherwise, such bargaining sessions shall be held for a minimum of 15 hours a week, and Respondent shall submit written bargaining progress reports every 30 days to the compliance officer of Region 12, serving copies thereof on the Union.

(c) At the Union's request, rescind any changes in unit employees' terms and conditions of employment that were made without affording the Union notice or an opportunity to bargain.

(d) Provide the Union with information that it requested concerning the March 4, 2018 meeting on health insurance benefits.

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<sup>3</sup> 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 facility in Guayama, Puerto Rico, copies of the attached notice marked "Appendix,"<sup>4</sup> in English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by 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. Reasonable steps shall be taken by Respondent 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, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since November 22, 2017.

The complaint is dismissed insofar as it alleges violations of the Act that I have not specifically found.

Dated, Washington, D.C. May 30, 2019



IRA SANDRON  
Administrative Law Judge

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<sup>4</sup> 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 benefit and protection
- Choose not to engage in any of these protected activities

We recognize Unidad Laboral de Enfermeras (OS) y Empleados de la Salud (the Union) as the bargaining representative of our full-time clerical workers, medical technologists, practical nurses, registered nurses, and technicians.

WE WILL NOT withdraw recognition of the Union as the collective-bargaining representative of the above employees and refuse to bargain with it, on the basis of loss of majority status during a period when we cannot lawfully withdraw recognition.

WE WILL NOT fail and refuse to meet and negotiate in good faith initial collective-bargaining agreements with the Union for the above employees.

WE WILL NOT make changes to your benefits and working conditions without affording the Union notice and an opportunity to bargain over those changes.

WE WILL NOT fail and refuse to provide the Union with all of information it requests that is necessary and relevant for the performance of its duties as the bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the National Labor Relations Act, as set forth at the top of this notice.

WE WILL, within 15 days of the Union's request, bargain with the Union at reasonable times in good faith at least 15 hours a week, unless the Union agrees otherwise, until full agreement or a bona fide impasse is reached, and if an understanding is reached, incorporate such understanding in a written agreement.

WE WILL provide the Union with the information it has requested since on about March 14, 2018, for documents that employees signed at a March 4, 2018 meeting concerning health insurance benefits.

WE WILL, at the Union's request, rescind the following changes that we made without affording the Union notice and an opportunity to bargain: in the shifts of registered nurses; in the wages of technicians; granting employees a Hurricane Maria bonus or incentive; eliminating the requirement that employees pay a portion of their health insurance premiums; granting a uniforms bonus to registered nurses and practical nurses; and distributing and implementing an employee manual and general rules of conduct that made changes in employees' terms and conditions of employment.

HOSPITAL MENONITA DE GUAYAMA, INC.

(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.nlr.gov](http://www.nlr.gov)

South Trust Plaza, 201 East Kennedy Boulevard, Suite 300, Tampa, FL 33602-5824  
(813) 228-2641, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/12-CA-214830> 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 (813) 228-2641.