

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

**SOUTHERN OCEAN MEDICAL CENTER,  
JERSEY SHORE UNIVERSITY MEDICAL CENTER,  
PALISADES MEDICAL CENTER,  
AND THE HARBORAGE,  
A DIVISION OF HMH HOSPITALS CORP.**

**And**

**Cases 22-CA-223734  
22-CA-223942**

**HEALTH PROFESSIONALS AND ALLIED  
EMPLOYEES**

*Michael Silverstein, Esq.,*  
for the General Counsel.

*Christopher J. Murphy, Esq. and Michael K. Taylor, Esq.* (Morgan, Lewis & Bockius, LLP),  
for the Respondent.

*Annmarie Pinarski, Esq. and Charlette Matts-Brown* (Weissman & Mintz, LLC),  
for the Charging Party Union.

**DECISION**

**STATEMENT OF THE CASE**

BENJAMIN W. GREEN, Administrative Law Judge. This case was tried before me in Newark, New Jersey, on January 14 and 15, 2020. The General Counsel alleges that the Respondent<sup>1</sup> dealt directly with bargaining unit employees in violation of Section 8(a)(5) and (1) of the Act by announcing its desire to change their terms and conditions of employment without providing advance notice and contract proposals to the bargaining representative of those employees, Health Professionals and Allied Employees (Union or HPAE).<sup>2</sup> For reasons discussed below, I agree and find that the Respondent violated the Act as alleged.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs that were filed by the General Counsel and the Respondent, I make these

**FINDINGS OF FACT**

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<sup>1</sup> The complaint identifies Southern Ocean Medical Center (Southern Ocean), Jersey Shore University Medical Center (Jersey Shore), Palisades Medical Center (Palisades), and The Harborage (The Harborage) as separate respondents, but they are, in the facts and analysis sections of this decision, referred to collectively as “the Respondent.”

<sup>2</sup> The complaint also included certain allegations that the Respondent violated Section 8(a)(1) of the Act by refusing the Union access to the Southern Ocean cafeteria and conference room. (Comp. ¶¶ 11-15, 17.) These allegations were settled prior to the opening of the record and withdrawn by the General Counsel. (Tr. 6-7)

### JURISDICTION AND UNION STATUS

5 Respondents Southern Ocean, Palisades, Jersey Shore, and The Harborage admit, and I find, that that they have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that this dispute affects commerce and the Board has jurisdiction over this case pursuant to Section 10(a) of the Act.

### 10 ALLEGED UNFAIR LABOR PRACTICE

Hackensack University Medical Center and Meridian Health merged on July 1, 2016. The newly created entity was called Hackensack Meridian Health (HMH) and had a total workforce of about 33,000 employees at numerous health care facilities. Most of those employees are not unionized, but HMH does have bargaining relationships with unions, including HPAE. After the merger, HMH's health care facilities included the four facilities involved in the instant case. Palisades and The Harborage (the northern facilities) are adjoining facilities located in North Bergen, New Jersey. Southern Ocean and Jersey Shore are located in Manahawkin and Neptune, New Jersey, respectively (the southern facilities). The Harborage is a long-term nursing home and rehabilitation center. The other three facilities are acute care hospitals. (Tr. 98, 105, 164, 176, 178)

The Union represents the following bargaining units of employees at the four facilities (Tr. 19, 97-98):<sup>3</sup>

Facility	Union Local	Approx. # of Employees	Classifications
Jersey Shore	Local 5058	1,300	Registered Nurses (RNs)
Southern Ocean	Local 5138	250	RNs
The Harborage	Local 5097	140	Service and Maintenance
Palisades	Local 5030	900	RNs
Palisades	Local 5030	230	LPN/Techs
Palisades	Local 5030	200	Service and Maintenance

35 Prior to 2017, the Respondent and Union were party to a series of 3-year contracts. (Tr. 220) In 2017, however, the parties negotiated 1-year contracts covering the units at Southern Ocean, Jersey Shore, and Palisades. The Jersey Shore and Southern Ocean contracts were effective from July 31, 2017 to July 31, 2018 and the three Palisades contracts were effective from June 1, 2017 to May 31, 2018.<sup>4</sup> The Harborage contract was effective from May 18, 2015 to May 17, 2018, and did not have to be renegotiated in 2017. The Respondent sought 1-year contracts because HMH wanted to standardize or "harmonize" its operation and employee

45 <sup>3</sup> Paragraph 10 of the complaint, which was admitted by the Respondent in its answer, identified the Union as the bargaining representative of an appropriate bargaining unit at all four facilities. However, the complaint only defined the Palisades RN unit and did not define the Palisades LPN/Techs and Service/Maintenance units. Nevertheless, all three Palisades units are defined in the collective-bargaining agreements entered into evidence as General Counsel exhibits 13, 14, and 15. The Respondent has not, during this proceeding, asserted a defense upon the grounds that any or all of the Palisades units are not appropriate. Accordingly, my decision and order shall apply to all three Palisades bargaining units.

<sup>4</sup> All dates refer to 2018 unless stated otherwise.

benefits throughout its various facilities, but had not yet developed a comprehensive plan or proposals for doing so. The Respondent expected to be prepared with such a harmonization plan by the time the 1-year contracts expired. (Tr. 45-46, 163-165, 179-180, 220-221)

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HMH referred to its campaign to harmonize its benefits, policies, systems, and operations as "Growing Together" and "One Mission, One Vision, One Culture." HMH Vice President of Human Resource Operations Barbara Powderly testified that the development of this harmonization plan was a lengthy process that took about 18 months and involved both internal teams and outside consultants. According to Powderly, certain content was approved over the course of this time period, but not disclosed to the Union. Rather, the Growing Together plan was kept confidential until it was completed in May. The harmonization plan included the development of a public website which employees would be able to access once the plan was complete. Before the website went public on May 22, it was password protected and only certain individuals had access to it. The Union and unit employees did not have access to the website as the harmonization plan was being developed. As noted in the Respondent's posthearing brief, the Union and the Respondent had entered into, or were preparing to enter into, negotiations at a time that was "contemporaneous with the rollout of the harmonization initiative." (R. Brief p. 5) (Tr. 178, 190, 212, 214)

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HMH expected the vast majority of its harmonization plan to go into effect on January 1, 2019. Employees were expected to make their elections for 2019 benefit programs during an open enrollment period beginning in October. Powderly characterized this election as an "active enrollment" (as opposed to a passive enrollment) because members had to affirmatively choose benefit plans and did not have the option of allowing plans to roll over from the previous year. According to Powderly, "to hit that October date we needed to start all the communications and socializing all these changes so that team members were able to make informed decisions about their plans . . . ." (Tr. 214-215)

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The Respondent's lead negotiator for all four facilities was attorney Joe Ragaglia of the law firm Morgan, Lewis & Bockius, LLP. The Union's lead negotiators were HPAE Staff Representative III Richard Halfacre for the northern facilities and HPAE Staff Representative Djar Horn for the southern facilities. Halfacre and Horn reported to HPAE Director of Member Representation Fred DeLuca. DeLuca attended a number of bargaining sessions and corresponded with Ragaglia about certain matters. (Tr. 21-22, 41, 103, 152, 221-222, 226-228)

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On March 29, the Respondent and Union held an initial joint bargaining session for all four facilities. The Union understood that the purpose of this joint session was to discuss ground rules for negotiations and the Respondent's desire to standardize certain benefits throughout its facilities. The Union generally opposed the idea of standardization to the extent it would require the acceptance of less favorable terms than in the 2017 contracts. The parties discussed topics including health insurance, staffing, contract expiration date, and a fair election process. However, the parties did not exchange specific proposals and the Respondent did not specifically mention its Growing Together harmonization plan. (Tr. 24-26, 103-105)

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In early April, Horn emailed Ragaglia with offers of bargaining dates, including April 18, 30 (joint bargaining for all units), April 17, 19 (for The Harborage), April 30 (for Palisades), and April 27, 30 (for Southern Ocean). However, Ragaglia did not respond and the parties did not meet again until May.

In May, the parties held bargaining sessions for The Harborage unit on May 9, 17, and 21 and the Palisades units on May 10, 15, and 22.<sup>5</sup> The Union was prepared at the start of bargaining to offer full contract proposals on all economic and noneconomic terms. However, Ragaglia indicated that the Respondent was still preparing its economic proposals and requested that the parties begin with noneconomic subjects. Ragaglia also requested that the Respondent, ultimately, be allowed to present its economic proposals first. Halfacre agreed to the Respondent's requests. The parties exchanged noneconomic proposals in May. The Respondent did not make any economic proposals for any of the units until late-July or August. (Tr. 33, 107-113, 153)

On May 19, at 1:14 p.m., Ragaglia sent DeLuca the following email (GC Exh. 26):

Missed you at negotiations this week and wanted to catch up. As you know HMH officially launched the "One Mission, One Vision, One Culture" harmonization program last month by highlighting work already completed in this area and foreshadowing the harmonization program over the next few months. As part of the next step in this program HMH will be sharing updated information on the harmonization with all of its 35,000 team members starting Tuesday May 22nd. This information will include a number of topics some of which include the harmonization of a number of areas that touch on terms and conditions of employment. Let me be clear, and it will be made clear to Team Members, these changes will not go into effect until January 1, 2019 or later. It is impossible, and counter to the HMH ONE culture, to segregate out your members from receiving this information, some of which concerns mandatory subjects of bargaining. Consequently we will have the appropriate disclaimers and acknowledgement that for all union represented team members "HMH is legally required to bargain with the union regarding mandatory subjects and it will continue to do so." To that end we would like to share this information with HPAE before Tuesday.

We are in negotiations with the Harborage and HPAE on Monday May 21st. Given the lack of negotiation dates for the Harborage we do not want to disrupt the day of negotiations but we are in the process of arranging a preview of the information regarding harmonization for you and your team for Monday afternoon sometime after 4 pm. We believe that it is important that HPAE has a chance to review the information before it is accessible by your members and be prepared for any questions your members may have. Once this process and negotiations are complete, HMH hopes that all team members will enjoy the same benefits, but obviously the negotiations process may result in variations in certain areas compared to the benefits enjoyed by other team members. I will call you so we may coordinate

On May 19 at 1:18 p.m., DeLuca replied to Ragaglia by email as follows (GC Exh. 26):

Joe thanks for the update

All the topics are mandatory subjects of bargaining the employers managers have been dealing directly with our members telling them what proposals will be out there before any presentation to the bargaining team-

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<sup>5</sup> The parties bargained over the three Palisades units together. (Tr. 121)

On May 19 at 1:27 p.m., Ragaglia responded to DeLuca's replay as follows (GC Exh. 26):

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We will certainly investigate if you give us details, and remedy if necessary, but two initial thoughts: 1. Managers have not been briefed on any proposals or terms and conditions that could apply to HPAE members; and 2. The information that will be presented by HMH to team members on Tuesday has not been

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finalized. In fact it is my understanding that it was made clear to leaders what was subject to negotiations.

On May 20, Respondent consultant Megan Mitchell circulated an internal email which stated, in part, as follows (R Exh. 5):

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Apologies for the (very) late Sunday email, but as you know, we're on a bit of a tight timeline with the launch of Growing Together happening on Tuesday, and wanted you to have this to review first thing tomorrow morning. Below is a link to the dev site for the new TeamHMH.com. Please do not forward this email /link to anyone. . . .

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In order to be ready for the launch on Tuesday, we need to have all edits to the site made by 3PM tomorrow so we can begin the testing and QA process. Please let us know if you have any edits /questions /concerns by 12PM tomorrow so we have time to address them before we finalize and move to migration. Again, I know it's a very tight turnaround and I'm sorry about that. Due to several last minute changes, this was the absolute earliest we were able to get everything drafted and uploaded.

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On May 21, the parties held a bargaining session for The Harborage. Halfacre was the Union's lead negotiator, but DeLuca was present as well. In the afternoon, Ragaglia invited Halfacre to a sidebar and said he wanted to make a presentation on harmonization because the program was about to be finalized. Ragaglia indicated that the program would be made available to all HMH employees through a public website which was expected to go live on the morning the following day (May 22). Halfacre refused to "negotiate over a website" and demanded that the Respondent present proposals instead. However, Ragaglia insisted and Halfacre did not press his objection. Halfacre requested a printed hard copy of the presentation, but Ragaglia refused. Since the website was not yet available, Ragaglia used his computer to project a slide show on the wall, which had been prepared by someone and given to him that morning. This slide show included screen shots of certain website pages, but did not reflect the entirety of the Growing Together website. According to Ragaglia, he wanted to present the material at 4 p.m., but could not do so because Halfacre said the Union had to leave at that time. Ragaglia testified that, as a result, he had to "kind of scramble to do the presentation at 3 p.m. instead." (Tr. 113-115, 120, 138, 142, 146-150, 226-228)

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Ragaglia's May 21 harmonization presentation included the following language in large bolded black font (GC Exh. 8 p. 4):

We are required by law to deal with the unions on behalf of unionized team members, and we will continue to do so. We will only negotiate with the unions, not with individual unionized team members.

According to Ragaglia, this is standard disclaimer language he uses whenever a client wants to communicate directly with unionized employees. Ragaglia testified that the disclaimer is “shorthand” for saying that the Respondent is not direct dealing. The Respondent admits that the Growing Together website, once launched, did not contain the disclaimer in such large and bolded font. However, according to Ragaglia, each page of the website included a footer with the same language in much smaller font (also reflected on p. 4 of the slide show). Ragaglia testified that it was important to include such disclaimer language on the website for two reasons: First, the law requires an employer to communicate with a union before communicating with employees. Second, the Respondent wanted to be transparent so the Union would feel comfortable that the Respondent intended to negotiate a contract and was not trying to do an “end run” around the bargaining process. (Tr. 225-235)

Ragaglia testified that, in addition to the small disclaimer on each page of the website, the website contained a different footnote disclaimer on one page of the website in the section titled “Tomorrow” (Tr. 233-239) (R Exh. 9):<sup>6</sup>

We have designed a Total Rewards compensation program that we hope Hackensack Meridian Health team members will appreciate and value. Our offerings are intended to help Hackensack Meridian Health recruit and retain team members committed to providing safe, quality patient care and our culture of caring.\*

[footnote]\*We are required by law to negotiate about mandatory subjects of bargaining with the unions that represent a small number of Hackensack Meridian *Health* team members. Some of the labor contracts between Hackensack Meridian *Health* allow respective represented team members to automatically receive the benefits non-union team members receive; Others do not. We currently are in negotiations with some unions that represent team members, and are negotiating about of the [sic] benefits referenced on this website. We are committed to negotiating in good faith as required by law, and we will not engage in any direct dealing with union-represented team members.

<sup>6</sup> Ragaglia testified that this language is currently on the Respondent's website, but in a different section (as the “Tomorrow” section no longer exists). The General Counsel objected to the introduction of Respondent exhibit 9 on the grounds that it was not previously produced in response to paragraphs 8 and 10 of a government subpoena issued to HMH. (GC Exh. 27) I admitted the exhibit into evidence subject to additional argument over the same in posthearing briefs. Subpoena paragraph 8 sought “[d]ocuments showing all information maintained on the TeamHMH.com website on May 22, 2018, including . . . information included in the ‘today’ and ‘tomorrow’ tabs . . .” Subpoena paragraph 10 sought “[d]ocuments maintained by Respondent HMH referencing or including any content published on TeamHMH.com in April or May 2018. . .” At trial, Respondent’s counsel indicated that he did not believe Respondent exhibit 9 was responsive to the subpoena because it was not printed from the original website. Presumably, the hardcopy entered into evidence is a printout of the current website. However, given that the Respondent intended to use the document to prove what was on the original website, it is hard to argue that the exhibit was not responsive as “content published on TeamHMH.com website.” Nevertheless, rather than simply exclude the document as an evidentiary sanction, I consider the Respondent’s failure to produce Respondent exhibit 9 before attempting to enter it into evidence an aggravating factor in precluding the document under the best evidence rule (see fn. 7 below). In any event, as noted below, the Respondent did not rely, in its posthearing brief, on this disclaimer language as a defense.

Union-represented team members should contact their respective union about any questions they have.<sup>7</sup>

5 Ragaglia testified that he drafted this language on the morning of May 21 because “he wanted to be crystal clear” and “didn’t want confusion.” (Tr. 235-236) This language did not appear in the slide show Ragaglia presented to the Union on May 21. (GC Exh. 8)

10 Halfacre testified that Ragaglia’s May 21 presentation did not include the large bolded disclaimer as reflected on page 4 of General Counsel exhibit 8. In fact, although Halfacre could not rule out the possibility that the presentation included the smaller disclaimer on the same page, he did not recall Ragaglia talking about any disclaimer at all. Rather, according to Halfacre, following the presentation, he told Ragaglia that the website needed to include a disclaimer indicating that the Respondent would negotiate with the Union over mandatory  
15 subjects of bargaining which were covered by the harmonization program. Halfacre recalled that Ragaglia agreed to add such a disclaimer. Ragaglia denied that such a conversation occurred. Rather, according to Ragaglia, the Union requested that the font of the disclaimer footnote be enlarged, and he agreed to do so. The Union does not deny that the website, once launched, contained the small font disclaimer language in a footer at the bottom of each page.  
20 (Tr. 158, 161-162, 236)

Other than disclaimer language, Ragaglia’s May 21 presentation included sections on Health & Wellbeing, Pay Practice, Professional Growth, and Retirement. The Health and Wellbeing section included information regarding medical insurance options, the method for  
25 calculating employee monthly medical premiums, dental insurance options, a vision insurance option, a life insurance plan, prescription & pharmacy options, and certain medical incentives and discounts. This section contained charts with specific dollar figures for employee out-of-pocket expenses under different plans and circumstances. For example, under the question, “What are my options in 2019?” a chart of the medical plan options describes “Tier 1: Inner  
30 circle, Domestic” with a network of “Physicians Within Our Hackensack Meridian *Health* Partners, Employed by HMM”) and a deductible of \$0 for “Premium Plus,” \$0 for “Premium,” \$1,500 for single “Basic/High Deductible,” and \$3,000 for family “Basic/High Deductible.” The same chart included the option of one of four tiers and three plans within each tier. For each tier and plan, the chart reflected the deductibles, service costs above the deductible, co-payments  
35 for medical visits, and the maximum annual cost. The presentation included similar charts for dental insurance options, a vision insurance option, life insurance, and pharmacy options.

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40 <sup>7</sup> The best evidence rule requires that in proving the contents of a writing, the original writing must be produced unless it is shown to be unavailable for some reason other than the serious fault of the proponent. *Harrington v. United States*, 504 F.2d 1306, 1313 (1st Cir. 1974). I allowed Ragaglia’s testimony over the General Counsel’s objection because the website was no longer available in its original form. However, in retrospect, the original webpage was no longer available because the Respondent modified it and failed to keep a hard copy (or electronic  
45 equivalent) of the disclaimer language. The Respondent’s failure to keep a hard copy is particularly surprising because, according to Ragaglia, the language was added for the specific purpose of defeating a legal challenge of direct dealing. Compounding the problem, the Respondent failed to produce Respondent exhibit 9 in response to the General Counsel’s subpoena before attempting to enter it into evidence. (See fn. 6 above.) Under these circumstances, the unavailability of the disclaimer was the fault of the proponent and testimony regarding the disclaimer should not have been admitted. However, even if it were admitted, I would not find this particular disclaimer to be significantly exculpatory for reasons discussed below in my analysis.

Further, under the new medical plan, a \$15 surcharge was to be added per paycheck for tobacco users. (GC Exh. 8 pp. 7-14)

5 The Pay Practice section of the presentation included information regarding pay periods, pay dates, and paperless pay. Thus, the presentation indicated that employees would be paid every other Friday beginning January 4, 2019. The presentation further reflected that the Respondent would no longer issue paper checks and, instead, employees would be paid by direct deposit or pay card. (GC Exh. 8 pp. 15-18)

10 The Personal Time Off (PTO) section of the presentation included information about accruing and carrying over PTO, earned sick leave (ESL), and short-term disability. Starting January 1, 2019, employees would be entitled to use PTO before it was accrued and could carry over 80 hours of PTO into a new year; earn 5 days (40 hours) of ESL each year with a maximum of 400 hours; and have short-term disability coverage for up to two-thirds of an employee's pay during a period up of 26 weeks. (GC Exh. pp. 19-22)

15 The Retirement section of the presentation described the new defined plan as follows (GC Exh. 8 p. 26):

20 The New Defined Contribution Plan: By the Numbers\*  
 1.5% Automatic HMH Core Contribution  
 Next 2% 100% HMH match of the first 2% you contribute  
 Next 3% 50% HMH match of the next 3% you contribute  
 25 One more number to remember...  
 3% Year 1 Auto Enrollment Contribution  
 \*Percentages relate to a team member's gross annual salary. Applies to eligible team members only.

30 The Policies and FAQ section of the presentation indicated that the website would contain a number of drop-down menus with additional information, but that information was not included in Ragaglia's May 21 presentation. (GC Exh. 8)

35 The Respondent has not denied that the Growing Together harmonization plan it presented to the Union on May 21, if applied to unit employees, would modify certain contractual provisions on mandatory subjects of bargaining. Sick leave is an example. The Harborage contract provided for the crediting of 4 sick days each 6 months. The South Ocean and Jersey Shore contracts provided for the accrual of sick leave at 0.026923 hours for each hour paid up to 56 hours annually. The Palisades contracts provided for sick leave accrual of 1 or 0.75 sick days per month depending upon date of hire. Meanwhile, the harmonization plan provided for 5 days (40 hours) of sick leave. In addition to differences in paid time off, the harmonization package differed from certain contracts in their respective retirement, medical, dental, and prescription plans. (GC Exh. 8, 2-3, 12-15) (R Exh. 7)

45 On May 22 at 9:15 a.m., the Union posted the following notice on its Facebook page (R Exh. 1):

In Harborage Negotiations yesterday, management gave us a preview of changes that they intend on making across the health system to standardize their benefits. They will be announcing this plan today in many of their facilities and possible ours These areas included:

-Health insurance plan design changes

- PTO system Changes
- Extended sick and short term disability changes
- Defined contribution plan changes

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Management can NOT simply implement these changes in HPAE locals without announced not affect our members at all. Our bargaining team will be examining all proposed changes and determine whether they are in all of our interest or whether there are better alternatives. The final outcome will be voted on by all the HPAE members.

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Be prepared to communicate with your colleagues from your floor to spread the above message. Management wants to make this seem to our members like a done deal to strip the fight out of them so let's make sure not to let them do that!

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We can answer questions about this in our meeting tonight at 5.30 pm and 7.45 pm for Local 5058, or by phone any time at (732) 774 -9440 ext. 215. We will work on a flyer to explain all of this for members and ask that you be prepared to help distribute them on your floor.

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On May 22 at 9:41 a.m., HMH human resources representative Victoria Riveracruz sent the following email to Horn, Local 5138 Union President Barbara Bosch, and Local 5058 Union President Kendra McCann (GC Exh. 6):

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As you may know, HMH officially launched the "One Mission, One Vision, One Culture" harmonization program last month by highlighting work already completed in this area and foreshadowing the harmonization program over the next few months. As part of the next step in this program, HMH will be sharing updated information on the harmonization with all of its 35,000 team members starting sometime later today. This information will include a number of topics, some of which include the proposed harmonization of a number of areas that touch on terms and conditions of employment. Let me be clear, and it will be made clear to Team Members, it is anticipated these changes will not go into effect until January 1, 2019 or later. It is logistically impossible, and counter to the HMH ONE culture, to segregate out your members from receiving this information, some of which concerns mandatory subjects of bargaining. Consequently we will have the appropriate disclaimers and acknowledgement for all union represented team members. To that end I would like to share the link to this information with you before it goes out to all team members.

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I understand that you were unable to attend the meeting with HPAE leadership yesterday but we presented a preview of this information to HPAE representatives Fred DeLuca, Rich Halfacre and Phil Denniston as well as the Local 5097 bargaining committee. We will be discussing it with the bargaining committee for Local 5030 today. The website is now live and you can view the information first hand at [www.TeamHMH.com](http://www.TeamHMH.com). A letter will go out electronically later today that will outline the harmonization areas. Again, we believe that it was important that HPAE has a chance to review the information before it is accessible by your members and

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On May 22 at 9:47 a.m., Mitchell circulated an internal email indicating that the website password had been lifted and it was largely visible to the public. Attached to the email was the

website FAQs section. (R Exh. 7) According to Mitchell, these FAQs were to be posted in a password-protected "Leaders Only" section and not available to the broader employee population. The FAQs indicated that most changes would go into effect January 1, 2019 and the "earliest you will need to take any action [on enrollment] will be in October." The FAQs also indicated that employees would receive 6 paid holidays. The 2017-2018 Palisades and The Harborage contracts provided for 8 holidays. (GC Exh. 12-15) (R Exh. 7)

On May 22 at 11:06 a.m., the Respondent emailed all employees the following flyer regarding the harmonization program, which included a link to the website (GC Exh. 10).

**Growing Together: Aligning & Enhancing Our Total Rewards, Policies & Systems**

Two years ago, we embarked on a journey to become One Hackensack Meridian Health. We recognized that our communities were stronger together than apart, and so we joined forces in pursuit of one mission: To become a leader of positive change by implementing innovative models of care, advancing education and research, and re-imagining health care to meet the rapidly evolving needs of our communities.

Today, we're starting to see that vision come to life across the network, thanks in part to our shared culture and beliefs: Creativity, Courage, Compassion and Collaboration. These beliefs inform everything we do and are driven by a mindset that maximizes innovation and sets excellence as the standard.

But this Culture of Transformation is not limited to our patients. It applies to you, your families and your loved ones: The backbone of Hackensack Meridian Health. We are committed to creating the very best environment and experience for you, as well as our patients.

As part of that commitment, we are previewing a series of policy and benefit changes. While most of these changes will not go into effect until January 1, 2019, we felt it was important to share the information as soon as we were able. Please keep in mind that many of the details are still in progress, and subject to regulatory and operational considerations, which may result in some modifications - we'll continue to provide updates throughout the year.

Some of you might be asking: Why do we need to change our policies and benefits at all?

Because we know we can do better. Today, we have overlapping programs, policies and systems. For the past two years, we have taken inventory and pulled together many of the strongest components of each entity to align and enhance our offerings.

These changes will bring us closer to operating as one team, while also presenting new benefits and opportunities for growth across the network. They will affect all of us, and there is some give-and-take from everyone. This was a collaborative process, with hundreds of your colleagues from across the network working hard to make sure each and every team member was represented fairly.

While this is a major milestone, it is not the last. Our journey to One Hackensack Meridian Health continues, and there are additional enhancements in phases to

come. We promise to communicate as many details about these and future changes as early and often as we are able.

5 In the meantime, please visit the new and improved [www.TeamHMH.com](http://www.TeamHMH.com), where you'll find additional details about these enhancements and have the opportunity to submit questions. Of course, your leaders and HR representatives are always available to help, as well. Please remember, most of these changes don't take effect for more than six months, on January 1, 2019.

10 I am consistently in awe of - but never surprised by - your continued dedication and pursuit of excellence. It's what makes us One Hackensack Meridian Health, today and for generations to come. Thank you for being a part of this amazing journey.

15 Page 6 of the flyer included, in extremely small font, the disclaimer language, "We are required by law to deal with unions on behalf of unionized employees, and we will continue to do so. We will only negotiate with the unions, not with individual unionized employees[.]" The font of this disclaimer was even smaller than the disclaimer footnote language in General Counsel exhibit 8, notwithstanding Ragaglia's agreement, at the Union's request, to enlarge it. The Respondent subsequently handed out a similar flyer to employees at its various facilities with the same disclaimer language. (Tr. 87, 191-192) (GC Exh. 7, 10)

25 In addition to the flyer, the May 22, 11:06 a.m. email attached a video conversation in which HMH Co-CEO Bob Garrett, HMH Co-CEO John Lloyd, and Chief Experience and Human Resources Officer Nancy Cocoran-Davidoff discussed, among other things, anticipated changes to employees benefits. (GC Exh. 11) In this video, Cocoran-Davidoff stated, in part, as follows:

30 [M]any things that are going to change. One example would be our health plan. We are going to be giving 3 options in our health plan- and multiple tiers within our health plan. So people will have greater flexibility and choice in the health plan. Our dental, our vision- there will be changes in all of those things. In addition, we'll be changing our PTO plans. We want to harmonize PTO across the organization so that everyone is operating under the same PTO

35 policies and procedures.

On May 22 at 1:30 p.m., Horn replied as follows to the email sent by Riveracruz earlier that morning:

40 Neither I nor the Local Union Presidents from 5138 and 5058, Barbara Bosch and Kendra McCann, were invited to the presentation you gave yesterday. If you intended to present important Information about bargaining proposals, we would have appreciated dates well in advance. To that point we have not received firm dates for joint bargaining for 5058 and 5138. We sent you the initial dates for

45 bargaining on April 10, 2018.

We expect the harmonization program to be rolled out to the JSUMC and SOMC leadership as soon as possible so that we can accurately represent the employer's position to our members and fully consider the proposals for bargaining.

Ragaglia testified that, at a May 22 bargaining session for the Palisades units, he gave a presentation on harmonization similar to the one the previous day, but this time using the actual

website which had gone public earlier that morning. According to Ragaglia, attendees used their individual computers to access the website. (Tr. 233-239)

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### ANALYSIS

The General Counsel contends that the Respondent dealt directly with unit employees in violation of Section 8(a)(5) and (1) of the Act by announcing its desire to change their terms and conditions of employment without providing the Union advance notice and contract proposals.

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An employer may be held to have violated the Act by revealing to unit employees its intention to alter their wages, hours, and other terms and conditions of employment without giving the union adequate advance notice to discuss the prospective changes with employees or engage in meaningful bargaining. *Detroit Edison Co.*, 310 NLRB 564, 564-565, 575-576 (1993). See also *Aggregate Industries*, 359 NLRB 1419, 1424 (2013) adopted by three-member Board in 361 NLRB 879 (2014) enf. denied on other grounds in *Aggregate Industries v. NLRB*, 824 F.3d 1095 (D.C. Cir. 2016).

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In *Detroit Edison*, 310 NLRB 564 (1993), the union was aware that the employer had a long desire to phase out a certain classification, but the issue was tabled during “main table” negotiations and reserved for bargaining at the unit/facility level. Ultimately, in late-August 1991, the employer gave the union representative of its Marysville facility a draft memorandum to employees regarding its phase-out plan for that facility with new sweetened job-security provisions. This memorandum was similar to one which the union representative had already received regarding the employer’s phase-out plan at a different facility. The union did not consent to the distribution of the Marysville memorandum to Marysville employees, but the employer issued it anyway on September 3, 1991. The Board held that the employer violated Section 8(a)(5) and (1) of the Act by failing to give the union “any meaningful opportunity to consider the ‘sweetened proposal’ before it was communicated directly to employees . . .” *Id.*

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In *Overnite Transportation Co.*, 329 NLRB 990 (1999), the judge, as affirmed by the Board, cited *Detroit Edison* in describing the employer’s unlawful conduct as follows:

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What Overnite did here was to send by overnight mail its productivity agreement to the Union, wait 1 day, and then make its presentation to the employees directly, 2 days before negotiations were to or did resume. That bypasses the Union in the same way as if Respondent never made any proposal at all to the Union, and Respondent certainly gave the Union no adequate opportunity to digest the proposal or to respond or to begin discussion. *Detroit Edison Co.*, 310 NLRB 564 (1993).

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In *Roll & Hold Warehouse and Distribution Corp.*, 325 NLRB 41, 42 (1997), the Board cited *Detroit Edison* in stating:

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One of the purposes of initial notice to a bargaining representative of a proposed change in terms and conditions of employment is to allow the representative to consult with unit employees to decide whether to acquiesce in the change, oppose it, or propose modifications.

In *American Pine Lodge Nursing*, 325 NLRB 98 (1997), enf. denied in relevant part 164 F.3d 867 (4th Cir. 1999), the Board found that an employer unlawfully sent employees and their union bargaining representative a letter offering a wage increase since the employer did not first afford the union an opportunity to consider the proposal before setting it before the employees.

According to the Board, such conduct is unlawful because it “erodes or undermines the bargaining representatives role in the bargaining process.” *American Pine Lodge Nursing*, 325 NLRB 98, 104 (1997)

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In *American Pine Lodge Nursing Rehabilitation Center v. NLRB*, 164 F.3d 867 (4th Cir. 1999), the circuit court denied enforcement of 325 NLRB 98 (1997) on the grounds that nothing in the letters to employees could be construed as an invitation for direct bargaining. The court found “no support for a rule requiring employers to delay informing employees of a proposal until the union has had some period of time to consider it.”<sup>8</sup> 164 F.3d at 876. Rather, the court found that employer’s communication was protected by Section 8(c) of the Act.

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The Board’s decision in *American Pine Lodge Nursing*, 325 NLRB 98 (1997), remains good law as the Board has not adopted the circuit court decision.<sup>9</sup> However, the Board did, in *Armored Transport, Inc.*, 339 NLRB 374, 376 (2003), distinguish the circuit court decision in *American Pine Lodge Nursing*. In *Armored Transport*, the Board found that the employer dealt directly with employees by sending “Don’t Blame Us” letters setting forth new bargaining proposals without affording the union “either an opportunity to consider the proposal or to bargain.” These letters were sent on the same day the employer communicated these proposals to the union. In distinguishing *American Pine Lodge Nursing & Rehabilitation Center v. NLRB*, 164 F.3d 867 (4th Cir. 1999), the Board noted that the employer communicated its new proposals to employees and the union simultaneously and, in the “Don’t Blame Us” letters, disparaged the union and encouraged employees to reject the union. 339 NLRB at 377. The Board noted that Section 8(c) of the Act only protects speech that is free of coercion and does not constitute direct bargaining. *Id.* at 376-377.

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In *United Technologies Corp.*, 274 NLRB 609, 610 (1985), the Board found no violation where an employer distributed leaflets to employees which explained the final contract offer it made to the union earlier that day. The employer offered a 2-year reopener package or a new 30 3-year contract. In the leaflet, the employer expressed its preference for the 3-year contract. However, the Board found that the employer did not violate the Act when it publicized its bargaining position to employees in a noncoercive manner that “fully acknowledged the Union’s rightful role as the employees’ statutory bargaining representative.” *Id.*

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In *KEZI, Inc.*, 300 NLRB 594 (1990), the Board found that an employer did not violate the Act by announcing a new 401(k) plan with the following eligibility language:

Some questions have arisen as to the eligibility requirements for the 401K plan. The plan will exclude the following: . . . Employees who are members of a collective bargaining unit with whom retirement benefits were the subject of good-faith bargaining.

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In so holding, the Board noted that it has “not hesitated to find eligibility language lawful

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<sup>8</sup> In so finding, the court purported to distinguish *Detroit Edison* on the ground that the proposal at issue in *Detroit Edison* was distributed to employees before presenting it to the union. However, in *Detroit Edison*, the Board specifically found that the Marysville memorandum was unlawfully distributed to employees on September 3, 1991, even though it was given to a union representative in late-August 1991. 310 NLRB 564 at 565.

<sup>9</sup> The Board recently cited *American Pine Lodge Nursing*, 325 NLRB 98 (1997) with approval in *Professional Medical Transport, Inc.*, 362 NLRB 144, 146 (2015).

when, as here, it indicates that pension benefits for unionized employees are subject to negotiation but does not suggest that employees are automatically and irrevocably foreclosed from inclusion in a particular plan simply because they have a union bargaining on their behalf.”  
5 Id. at 595.

The events in *Detroit Edison Co.*, 310 NLRB 564 (1993), which I find controlling, are significantly analogous to the facts of the instant case. Here, the Respondent did not disclose its Growing Together harmonization plan to the Union during the March 29 bargaining session even though it was a joint session arranged, in part, for just such a purpose. On May 19, after Ragaglia notified Deluca that Respondent to present information on the harmonization with all employees on May 22, Deluca specifically warned Ragaglia against direct dealing with unit employees on mandatory subjects of bargaining. During the bargaining session on May 21, at about 3 p.m., the Respondent gave a presentation to the Union regarding a new harmonized benefits package it desired to implement throughout its facilities. The harmonization plan included a specific statement of benefits which were different than certain contractual benefits enjoyed by unit employees. Ragaglia testified that this May 21 presentation was somewhat rushed because the Union bargaining team had to leave at 4 p.m. In addition, the Respondent refused to give the Union a hardcopy of the presentation as Halfacre requested. The Respondent made its Growing Together website public less than 24 hours later and, on May 22 at 11:06 a.m., emailed all employees - union and nonunion alike - a flyer with links to that website. Usage of the Growing Together website spiked on May 22 between 11 and 12 a.m.<sup>10</sup> Making matters worse, the Respondent did not prepare and present its economic contract proposals to the Union for another 2 months. Accordingly, unit employees were made aware of the Respondent’s anticipated changes long before the Union had an opportunity to review actual proposals, discuss them with employees, and engage in bargaining. This could only serve to undermine the Union as the bargaining representative of unit employees. As in *Detroit Edison*, “the foregoing is sufficient to establish a prima facie case of unlawful direct dealing.”<sup>11</sup>  
30 310 NLRB at 565.

The Respondent has emphasized that its harmonization presentation on May 21 and 22 did not constitute bargaining proposals, which were not made until months later. However, I do not find this fact to be exculpatory. Except for certain disclaimers addressed below, the Respondent’s Growing Together harmonization rollout affirmatively advised employees, including unit employees, in largely unqualified language, that their benefits would change. These communications were more likely (not less) to undermine the union than if they were accompanied by actual proposals and included a clear statement that such proposals might not be implemented or might be modified as a result of collective bargaining. Accordingly, it is not surprising that Halfacre objected to bargaining over a website and demanded actual bargaining proposals instead.

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<sup>10</sup> As in *Detroit Edison*, the Union was long aware of the Respondent’s general bargaining position. The Respondent told the Union it wanted to harmonize employee benefits during the 2017 contract negotiations. Further, in a May 19 email to Deluca, Ragaglia stated that he wanted to give the Union advance notice of the harmonization plan before it was published to employees so the Union would “be prepared for any questions your members may have.” However, the Respondent presented the Union with the details of the plan less than 24 hours before the Growing Together website went public to all employees. This was even less advanced notice than the union had in *Detroit Edison*.

<sup>11</sup> Since the Respondent’s rollout of its harmonization plan would tend to undermine the Union and the bargaining process, it is it is not protected by Section 8(c) of the Act.

Indeed, I find the Respondent's failure to present bargaining proposals before rolling out its harmonization plan to be a critical factor in distinguishing the instant case from *United Technologies Corp.*, 274 NLRB 609, 610 (1985). In *United Technologies*, an employer lawfully communicated to employees its desire that the union accept one of two final proposals it presented to the union earlier the same day. Although the employer effectively preempted and sought to impact the union's ratification meeting, the union was in possession of the employer's proposals and in a position to discuss them with unit employees if it chose to do so. Here, however, the Respondent presented the harmonization plan directly to employees at least 2 months before it made economic proposals to the Union. Thus, the Union was not in a position to address those proposals with unit employees or negotiate over harmonization at the bargaining table.

The Respondent contends that it did not, in its initial harmonization presentation to employees, disparage the Union or induce unit employees to abandon their bargaining representative. I agree, but do not find this fact to constitute a valid defense under current law. In *Armored Transport, Inc.*, 339 NLRB 374, 376 (2003), the Board distinguished *American Pine Lodge Nursing & Rehabilitation Center v. NLRB*, 164 F.3d 867 (4th Cir. 1999), by noting that the "Don't Blame us" letters at issue disparaged the union and encouraged employees to reject the union. However, the Board has found direct dealing in the absence of such disparagement or encouragement, and has not adopted the circuit court decision in *American Pine Lodge Nursing & Rehabilitation Center v. NLRB*, 164 F.3d 867 (4th Cir. 1999). Meanwhile, *Detroit Edison* is the case most closely on point and still good law.

The Respondent relies to a great extent on disclaimers in the Growing Together website and flyers as a defense to the General Counsel's case. In my opinion, such a defense would have merit if the Respondent made clear to unionized employees that any anticipated change in benefits would not apply to them.<sup>12</sup> An employer with a large unrepresented workforce must be allowed to communicate with those employees regarding changes to their terms of employment while effectively advising represented employees that such changes will not apply to them. Indeed, a disclaimer would probably provide a valid defense if it clearly communicated to unit employees that changes to their terms of employment would not be implemented unless and until the parties engaged in good-faith negotiations.<sup>13</sup> *KEZI, Inc.*, 300 NLRB 594 (1990). However, the Respondent failed to prove that it effectively communicated such a disclaimer to unit employees.

The Respondent relies on the following language that appeared in extremely small font at the bottom of each page of the website and in the flyers the Respondent emailed and handed out to employees:

We are required by law to deal with the unions on behalf of unionized team members,

<sup>12</sup> The record contains some factual discrepancies as to whether the Respondent included disclaimer language in its presentations to the Union on May 21 and 22. I do not consider these discrepancies significant. In my opinion, the disclaimers are only relevant to the extent they were likely to be viewed by unit employees and how unit employees would be likely to interpret them.

<sup>13</sup> I do note, however, that such an assurance of good-faith negotiations does not necessarily address the rationale behind the *Detroit Edison* line of cases – i.e., a union should be afforded the opportunity to bargain and present employer proposals to employees at its own time and in its own way.

and we will continue to do so. We will only negotiate with the unions, not with individual unionized team members.<sup>14</sup>

5 This language provides a brief and broad statement of legal principle that would not necessarily convey to a layperson employee the Respondent's intent to withhold the implementation of benefit changes unless and until it negotiated with the Union in good-faith to agreement or impasse. In fact, the language seems to read more as a notice to individual unit employees that the Respondent would not deal with them about any concerns they might have regarding changes in their benefits. Further, the small font of the disclaimer did not present the language in a prominent manner. In my opinion, the Respondent failed to establish that this disclaimer effectively rebuts the General Counsel's prima facie case.

15 Interestingly, the Respondent's May 22 flyer announced to employees, in part, "Please keep in mind that many of the details are still in progress, and subject to regulatory and operational considerations, which may result in some modifications - we'll continue to provide updates throughout the year." This would have been a natural place to include a reminder that the anticipated changes might not apply, in whole or in part, to unionized employees after bargaining. Although the Respondent indicated that it might decide to modify its benefits plan as a result of regulatory and operational considerations, the Respondent made no specific reference to its bargaining obligation.

25 In its posthearing brief, the Respondent did *not* refer to or rely upon the following language that, according to Ragaglia, was included as a footnote in the "Tomorrow" section of the Growing Together website when it was made public on May 22:

30 We are required by law to negotiate about mandatory subjects of bargaining with the unions that represent a small number of Hackensack Meridian *Health* team members. Some of the labor contracts between Hackensack Meridian *Health* allow respective represented team members to automatically receive the benefits non-union team members receive; Others do not. We currently are in negotiations with some unions that represent team members, and are negotiating about of the benefits referenced on this website. We are committed to negotiating in good faith as required by law, and we will not engage in any direct dealing with union-represented team members. Union-represented team members should contact their respective union about any questions they have.

40 In hindsight, as discussed above (fn. 7), the Respondent's evidence of this alleged language should not have been admitted into evidence under the best evidence rule. Further, in my opinion, although this alleged language is more detailed and effective as a disclaimer than the shorter one actually relied upon the Respondent, it offers more of an explanation why unionized employees might not share in improved benefits under the harmonization plan than an indication that unfavorable changes might not be implemented following good-faith negotiations. Regardless, even if evidence of this language were admissible and the language constituted a legally sufficient disclaimer, the Respondent failed to establish that any or all of the unionized employees actually saw it. The language allegedly appeared on only a single footnote on a single webpage. Accordingly, this disclaimer does not defeat the General

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<sup>14</sup> The flyers that were emailed and handed out to employees included the same disclaimer language, but referred to "employees" instead of "team members." (GC Exh. 7, 8, 10)

Counsel's prima facie case.

5 The Respondent also failed to establish that its near simultaneous presentation of the Growing Together harmonization plan to employees was the result of some exigent need. Although this is not a case that involves a unilateral change, it is useful to consider Board authority regarding exigencies that allow an employer to expedite bargaining and make certain unilateral changes in advance of overall contractual impasse. *RBE Electronics*, 320 NLRB 80, 81-82 (1995). The Board has held that this "exception is limited only to those exigencies in 10 which time is of the essence and which demand prompt action." *Id.* at 82. Further, "the employer must additionally demonstrate that the exigency was caused by external events, was beyond the employer's control, or was not reasonably foreseeable." *Id.* While *RBE Electronics* does not specifically apply to direct dealing allegations, it provides helpful guidance as to when an employer's standard bargaining obligation might be altered as a result of an exigency.

15 Here, the Respondent failed to establish that it was unable to present harmonization proposals to the Union earlier than it did. Powderly admitted that preparation of the harmonization plan took 18 months and that certain aspects of the plan were finalized along the way. Although the Respondent may have had some reason to keep its plan confidential, the 20 record does not contain any evidence of the same. Thus, the Respondent presented no evidence why, for example, it could not have notified, consulted, and made proposals to the Union on a rolling basis, perhaps with some agreement as to confidentiality. The timing of events at issue here was not caused by unforeseeable external events beyond the employer's control. Rather, the Respondent made a choice to present the plan to the Union and unit 25 employees at about the same time and in a manner that runs afoul of current Board law.

30 Even if the Respondent did have some reason or need to keep the union in the dark until May 21, the Respondent failed to establish that it could not withhold a broader rollout of the plan until the Union was given an opportunity to digest the information and act upon it accordingly. After the harmonization plan was finalized in May, the Respondent still had several months to discuss the plan with the Union before employees would need to begin making benefit elections in October. Thus, the Respondent did not establish that time was of the essence to such an extent that it had to publicize the harmonization plan to employees on May 21. Once again, the Respondent made a choice to present its plan at a time and in a manner that was likely to 35 undermine the union as the bargaining representative of unit employees.

40 Based upon the foregoing, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by dealing directly with unit employees. More specifically, the Respondent unlawfully failed to provide the Union with adequate advance notice and bargaining proposals before publicizing to unit employees its desire to change their terms of employment.

#### CONCLUSIONS OF LAW

45 1. The Respondents, Southern Ocean Medical Center, Jersey Shore University Medical Center, Palisades medical Center, and The Harborage, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Health Professionals and Allied Employees, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union represents employees of the Respondents in appropriate units as defined in paragraph 10 of the complaint and the collective-bargaining agreements entered into evidence as General Counsel exhibits 13 and 15.

4. The Respondents dealt directly with bargaining unit employees in violation of Section 8(a)(5) and (1) of the Act by announcing its desire to changes their terms and conditions of employment without providing the Union adequate advanced notice and bargaining proposals.

5. The unfair labor practices committed by the Respondents affect commerce within the meaning of Section 2(6) and (7) of the Act.

**The Remedy**

Having found that Respondents Southern Ocean Medical Center, Jersey Shore University Medical Center, Palisades Medical Center, and The Harborage have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents will be ordered to post appropriate notices, as described in the attached appendixes. These notices shall be posted in the Respondents' facilities or wherever notices to employees are regularly posted for 60 days without anything obscuring or defacing their contents. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondents customarily communicate with their employees in such a manner. In the event that, during the pendency of these proceedings, one or more of the Respondents have gone out of business or closed a facility involved herein, the Respondent(s) shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by them at any time since May 21, 2018.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>15</sup>

**ORDER**

The Respondents, Southern Ocean Medical Center of Manahawkin, New Jersey, Jersey Shore University Medical Center of Neptune, New Jersey, Palisades Medical Center of North Bergen, New Jersey, and The Harborage of North Bergen, New Jersey, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bypassing the Union, Health Professionals and Allied Employees, and dealing directly with bargaining unit employees regarding mandatory subjects of bargaining without providing the Union adequate advanced notice and bargaining proposals. The appropriate bargaining units are the Southern Ocean RN unit, Jersey Shore RN unit, Palisades RN unit, and The Harborage service/maintenance unit as defined in paragraph 10 of the complaint, as well as the Palisades LPN/Techs and Service/Maintenance units as defined in the collective-bargaining agreements entered into evidence as General Counsel exhibits 13 and 15.

(b) In any like or related manner interfering, restraining, or coercing employees in the

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<sup>15</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.

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.

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(a) Within 14 days after service by the Region, post in Respondent Southern Ocean's facility located at 1140 Route 72 West, Manahawkin, New Jersey, Respondent Jersey Shore's facility located at 1945 Route 33, Neptune, New Jersey, Respondent Palisades' facility located at 7600 River Road, North Bergen, New Jersey, and Respondent The Harborage's facility located at 7600 River Road, North Bergen, New Jersey, copies of the attached notices marked "Appendix A," "Appendix B," Appendix C," and "Appendix D," respectively.<sup>16</sup> Copies of the notices, on forms provided by the Regional Director for Region 22, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents 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 Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If one or more of the Respondents have gone out of business or closed a facility involved in these proceedings, the Respondent(s) shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondent(s) at any time since May 21, 2018.

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(b) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated: Washington, D.C., April 24, 2020

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Benjamin W. Green  
Administrative Law Judge

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<sup>16</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notices 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 A**

**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 UNDER SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT 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** bypass your Union, Health Professionals and Allied Employees, and deal directly with you regarding changes we would like to make to your wages, hours, and other terms and conditions of employment without giving the Union adequate advanced notice and bargaining proposals.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**SOUTHERN OCEAN MEDICAL CENTER**  
(Employer)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

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

26 Federal Plaza, Room 3614, New York, NY 10278-0104  
(212) 264-0300, Hours: 8:45 a.m. to 5:15 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/22-CA-223734](http://www.nlr.gov/case/22-CA-223734) 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 (212) 264-0300.

**APPENDIX B**

**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 UNDER SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT 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** bypass your Union, Health Professionals and Allied Employees, and deal directly with you regarding changes we would like to make to your wages, hours, and other terms and conditions of employment without giving the Union adequate advanced notice and bargaining proposals.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**JERSEY SHORE UNIVERSITY MEDICAL CENTER**  
(Employer)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

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

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**APPENDIX C**

**NOTICE TO EMPLOYEES**

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NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

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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** bypass your Union, Health Professionals and Allied Employees, and deal directly with you regarding changes we would like to make to your wages, hours, and other terms and conditions of employment without giving the Union adequate advanced notice and bargaining proposals.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**PALISADES MEDICAL CENTER**  
(Employer)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

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

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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 (212) 264-0300.

**APPENDIX D**

**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 UNDER SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO

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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** bypass your Union, Health Professionals and Allied Employees, and deal directly with you regarding changes we would like to make to your wages, hours, and other terms and conditions of employment without giving the Union adequate advanced notice and bargaining proposals.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**THE HARBORAGE**  
(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)

26 Federal Plaza, Room 3614, New York, NY 10278-0104  
(212) 264-0300, Hours: 8:45 a.m. to 5:15 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/22-CA-223734](http://www.nlr.gov/case/22-CA-223734) 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 (212) 264-0300.