

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

**THE VOORHEES CARE AND  
REHABILITATION CENTER a/k/a  
THE PINES AT THE VOORHEES CARE AND  
REHABILITATION CENTER a/k/a THE LAKEWOOD  
OF VOORHEES OPERATOR, LLC**

**and**

**Case 04-CA-219938**

**DISTRICT 1199C, NATIONAL UNION OF  
HOSPITAL AND HEALTH CARE EMPLOYEES,  
AFSCME, AFL-CIO**

*Deena Kobell, Esq.*, for the General Counsel.  
*David F. Jasinski and John C. Hegarty, Esqs. (Jasinski, P.C., Newark, New Jersey.)* for  
Paramount Care Center and Respondent The Pines at Voorhees Care and Rehabilitation Center.  
*Joseph D. Richardson, Esq., Willig, Williams & Davidson, Philadelphia, Pennsylvania)* for the  
Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

Arthur J. Amchan, Administrative Law Judge. This case was tried via Zoom video technology on November 16-18 and November 30, 2020.

**I. Jurisdiction**

The Voorhees Rehabilitation and Health Care Center has operated for at least 35 years at 1302 Laurel Oak Road in Voorhees, New Jersey, across the Delaware River from Philadelphia and adjacent to Camden, New Jersey. It is a 240-bed long-term care nursing home which derives gross revenue in excess of \$100,000 a year and purchases and receives goods valued in excess of \$5,000 a year directly from points outside of New Jersey. I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, District 1199C of the National Union of Hospital and Health Care Employees, is a labor organization within the meaning of Section 2(5) of the Act.

On the entire record,<sup>1</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and David Jasinski on behalf of his clients, including The Pines, I make the following

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### Findings of Fact<sup>2</sup>

#### *Procedural history of this case*

10 The National Union of Hospital and Health Care Employees, by counsel, filed the initial charge in this case on May 9, 2018. The charge names Voorhees Care and Rehabilitation Center as the employer. The General Counsel issued the initial complaint on September 28, 2018, naming Voorhees Care and Rehabilitation Center as the Respondent.

15 On October 8, 2018 Attorney Aaron Schlesinger filed an Answer on behalf of Voorhees Care and Rehabilitation Center. The Answer admitted jurisdiction and that human resources director Linda Blum and then administrator Josh Rosenberg were statutory supervisors and agents of Voorhees. No other Answer has been filed in this matter. Attorney Schlesinger apparently later withdrew his representation of Voorhees.

20 In January 2019, the Charging Party withdrew the charge and the Region dismissed the complaint conditioned on compliance with a private agreement between the Charging Party Union and Attorney David F. Jasinski. That month Attorney Jasinski began representing Platinum/Paramount Care which was taking over management of the Voorhees Care and Rehabilitation Center on February 1, 2019 pursuant to a Management Services Agreement  
25 signed on January 15, 2019. At some point, the company managing the Voorhees Center began calling itself Paramount rather than Platinum. The management services agreement it entered into with Joseph Schwartz and Lakewood of Voorhees Operators, LLC, in January 2019, identifies the company as Paramount Care Center.

30 At least since April 2019, Jasinski has also represented The Pines, a prospective buyer of the facility. Both Platinum and Paramount (which are the same company) and The Pines are owned by Abraham Kraus.

35 On November 22, 2019, the General Counsel re-issued the complaint alleging that Respondent had breached the private agreement it had with the Charging Party Union. The Respondent according to the caption of that complaint is Skyline Health Care, LLC, d/b/a The Pines at Voorhees Rehabilitation & Health Care Center, a/k/a Voorhees Care and Rehabilitation Center. No Answer was ever filed to the reissued complaint.

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<sup>1</sup> Tr. 513, line 15 should read “Judge Amchan” rather than “Ms. Kobell.”

<sup>2</sup> While I have considered witness demeanor, I have not relied upon it in making any credibility determinations. Instead, I have credited conflicting testimony based upon the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Panelrama Centers*, 296 NLRB 711, fn. 1 (1989).

*Relevant history of the Voorhees Center*

5 From 1985 until August 2011, the Voorhees Center was owned by Seniors Health Care. In August 2011 Seniors sold the facility to Joseph Schwartz who owned similar facilities through a company called Skyline Health Care. Skyline never owned the Voorhees facility. Schwartz also owns The Lakewood of Voorhees Operator, LLC, which is the licensee of the Voorhees facility with the State of New Jersey.

10 The Union, District 1199C of the National Union of Hospital and Health Care Employees, represents an approximately 20-person bargaining unit of nurses (RNs and LPNs) and an approximately 130-person bargaining unit of service and maintenance employees (housekeepers, dietary aides, laundry workers, certified nursing assistants, etc.). It has represented these units since 1985.

15 Since 2011, the Voorhees Care Center has been owned by Joseph Schwartz. Schwartz owns many other nursing homes, at least some under the corporate umbrella of Skyline Health Care. The Voorhees Center is not part of Skyline but is licensed by the State of New Jersey under the name The Lakewood of Voorhees Operator, LLC, which is owned by Schwartz.

20 From about May 1, 2018 to February 1, 2019, the Voorhees Center was managed by Alliance Health Care. Since February 1, 2019, as stated previously, Paramount Health Care, which is owned by Abraham Kraus, has managed the Voorhees Center.

25 On April 5, 2019, Kraus, as The Pines, entered into an Operations Transfer Agreement with Schwartz as The Lakewood of Voorhees Operator, LLC, to purchase the Voorhees Center. The sale was never completed. Schwartz is suing The Pines and the Pines has filed counterclaims against Schwartz and his companies.

30 **II. Alleged Unfair Labor Practices**

The substantive allegation in this case is that Respondent violated Section 8(a)(5) and (1) by unilaterally terminating bargaining unit employees' health insurance plan without notice or providing the Charging Party Union an opportunity to bargain, on about November 9, 2017. That plan, a Cigna plan administered by American Plan Administrators, was a term of a collective bargaining agreement between the Union and Voorhees that expired on June 30, 2018, but whose terms are still in effect.

40 As to this issue, it is uncontroverted that in late 2017, without notice to the Union or bargaining unit employees, employees' health insurance was terminated and that unit employees, were, unbeknownst to them, without any health insurance between November 2017 and May 1, 2018. Several unit employees owe a considerable amount of money to health care providers as a result.

45 When employees' health care insurance was reinstated in May 2018 by Alliance Health Care, it was pursuant to a much less generous plan than previously, both in terms of employee

contributions and coverage. Paramount implemented another medical insurance plan in February 2019.

5 The principal question in this case is who is responsible for the unilateral changes, the lapse in health insurance coverage and the consequences of that lapse to unit employees.

*Health insurance benefits for bargaining unit employees*

10 The Union had a collective bargaining agreement with Lakewood of Voorhees Associates d/b/a Lakewood of Voorhees covering both units that ran from 2008 to 2012. Under these agreements unit employees were covered by an Aetna Health Insurance plan that provided self-only coverage at no cost to bargaining unit members. When Joseph Schwartz acquired Voorhees he entered into an interim agreement with the Union that ran from August 1, 2011 to January 17, 15 2012. This agreement maintained employee health insurance benefits through a company called Magna Care.

20 The Union and Voorhees reached agreement to extend many of the terms of the contract through June 30, 2018. This agreement essentially continued the medical insurance benefit from the interim agreement. (G.C. Exh. 9, Article 21).

25 In November 2016, the Union exercised its right to reopen its agreement with Voorhees. As a result, the Union and Voorhees orally agreed that unit employees would be covered by a Cigna Health Care Plan administered by American Plan Administrators. Under the Cigna plan, employees were entitled to self-only coverage at no cost and family coverage for \$166.15 per bi-weekly pay period. About 50% of unit employees had medical insurance through Cigna.

30 On about November 1, 2017, employee coverage under the Cigna plan ended for reasons not apparent on this record. Neither the Union nor unit employees were informed that unit employees no longer had health insurance. Insurance Premiums were deducted from employees' paychecks and were never refunded.

35 During this period several employees incurred substantial medical expenses. LPN Joseph Thibert had emergency surgery in January 2018 resulting in about \$570,000 in bills for which he found out he had no insurance. CNA Barbara Nece incurred about \$10,700 in medical expenses for which she discovered she had no insurance. One provider, Rancocas Anesthesiology, took Nece to court and obtained a judgment against her. Due to the lapse in her medical insurance, Nece avoided medical treatment. Unit employee Michelle Scott also incurred about \$8,000 in medical bills for which she had no insurance.

40 On April 26, 2018, Michelle Hepp, a unit employee, called union administrative organizer Paul Grubb and informed him that Voorhees had a new owner that was implementing a new medical insurance plan. Grubb called Linda Blum, who has been Voorhees' human resources director since 2014 or 2015.

45 Blum told Grubb that new owners, Alliance Health Care, would take over the Voorhees facility on July 1, 2018 and that they were implementing a new medical insurance plan administered by Tall Tree Administrators. The Union filed a grievance over this change on May

1, 2018. The Tall Tree Plan was more expensive than the Cigna Plan and had much less generous coverage.

5 In May 2018, Grubb spoke to Mutty Scheinbaum, who identified himself as a consultant to Alliance Health Care. Scheinbaum told Grubb that Alliance intended to purchase the Voorhees facility by July 1, 2018. He agreed that the Tall Trees Plan was sub-par and said he would research other plans. He also told Grubb that the Cigna Plan was about to shut down and had to be replaced. The record does not reflect whether or not this was accurate. Alliance did not end up purchasing the Voorhees facility.

10 In February 2019, Paramount almost immediately, if not immediately, implemented a Cigna Premier medical insurance plan for unit employees. This plan differed from the Cigna plan in place prior to 2017 in that employees were required to pay a \$25 per pay period premium for self-only coverage.

15 *Paramount's negotiations with the Union, management of the Voorhees facility and attempt to purchase it.*

20 In January 2019, David Jasinski called Grubb and told him that he represented Platinum Health Care which was about to start managing the Voorhees facility and intended to buy it. Jasinski was evasive in responding to the General Counsel's questions as to who authorized him to contact the Union, At Tr. 562, he testified:

25 ...you initiated negotiations prior to the purchase. Would that be accurate?

A. We were given -- yes, we were given permission from the prior owner to meet with the Union and we subsequently did start the process.

Jasinski's testimony at Tr. 569-70 is to the contrary and very evasive:

30 JUDGE AMCHAN: Well, I thought her question was who you said that you got permission from somebody to negotiate with 1199C. I think her question was who did you get permission from?

THE WITNESS: I did not get permission. I personally did not get permission. The prospective buy (sic) got permission and that's reflected in the May 22, 2019 letter.

35 JUDGE AMCHAN: Well, who told you it was okay for you to negotiate with the Union? Mr. Kraus.

THE WITNESS: Mr. Kraus and Mr. Czermak.

40 Q. BY MS. KOBELL: Okay. So they told you it was okay to negotiate with the Union on or about May 22nd, and that was what prompted the series of meetings and bargaining sessions that followed. Is that what you're saying?

A. Yes. Yes, I'm sorry, yes. That's correct.

Q. Okay. But you weren't suggesting that you didn't have permission to speak with the Union earlier than that about the health insurance issue, were you?

45 A. The health insurance issue was a critical issue that dealt with the day-to-day administration and the day-to-day operation at the facility. That's something that had to be done right away. So from the management services agreement, we felt that we had the right to talk with the Union concerning it because it dealt with that critical issue.

As stated earlier, Platinum later changed its name to Paramount Health Care. Paramount began managing the facility on February 1, 2019.<sup>3</sup> It operated the facility with the same employees and supervisors that worked at Voorhees prior to February 1, 2019. The transition from Alliance to Paramount was “seamless.” The terms of the collective bargaining agreement that expired in 2018 were still in effect and for the most part honored.

The facility administrator, Joshua Rosenberg, may have stayed on for some time after February 1, but that is not clear. The current administrator, Michael Levy, started at Voorhees in January 2020. Paramount selects the administrator for the facility.<sup>4</sup> 3 other individuals acted as the Voorhees administrator between Rosenberg and Levy. Department heads at the Voorhees, such as the director of nursing, report to the Paramount administrator. The administrator reports to Michael Czermak, who reports directly to Abraham Kraus.

Upon taking over the facility, Paramount set up a bank account in the name of the Voorhees Center and a payroll system called BSD at Voorhees. The funds for employees’ wages comes from a Voorhees operating account

Human Resources Director Linda Blum continued in her position as she had under Alliance and Joseph Schwartz. Since February 2019, Blum’s paycheck stub and that of all other facility employees reads BSD Care at Voorhees Rehabilitation Center under the management of Paramount Care Centers.<sup>5</sup> She has 2 email addresses: LBlum@Voorhees.org and LBlum@ThePines@Voorhees.org.

In April 2019, Jasinski’s client entered into an agreement to purchase the Voorhees Center. This agreement, called an Operations Transfer Agreement, is between The Lakewood of Voorhees Operator, LLC as landlord (owned by Joseph Schwartz) and Jasinski’s client, identified as The Pines at Voorhees Rehabilitation and Health Care Center, LLC (“new operator”). Platinum Health Care, Paramount Health Care and The Pines are owned by Abraham Kraus.<sup>6</sup> The company has solicited job applications under the name of The Pines at Voorhees Rehabilitation Center. Further, it maintains a Facebook page under this name.

To date, the sale of the Voorhees Center has not occurred. Several entities owned by Joseph Schwartz, including Lakewood of Voorhees Operator, LLC are suing Paramount Care

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<sup>3</sup> It is not entirely clear when the company changed its name. Michael Czermak, Paramount’s Chief Operating Officer testified that the change occurred in August 2019. However, since Czermak’s testimony was generally evasive and sometimes false, I do not rely on his testimony about anything controversial.

Nothing about the company changed other than its name. Abraham Kraus is and was the sole owner of the company under both names. I will refer to it as Paramount.

<sup>4</sup> Michael Czermak’s testimony that he consults with HR Director Blum about changing administrators is clearly false. Blum’s testimony establishes that her duties regarding any hiring are merely ministerial. She was not even consulted in gathering the documents for subpoena production.

<sup>5</sup> Michael Czermak testified either incorrectly or knowingly falsely that Blum is paid by Joseph Schwartz.

<sup>6</sup> According to Michael Czermak, Kraus incorporated The Pines at Voorhees in April 2019.

Centers in the courts of New Jersey. Paramount has filed counterclaims against the Schwartz companies, G.C. Exh. 50.

Platinum/Paramount recognized the Union in May 2019 but stated it would not be bound by the prior collective bargaining agreement. Paramount engaged in collective bargaining negotiations with the Union in 4 sessions in 2019; one each in July, September, November and December. Paul Grubb was the chief negotiator for the Union. Attorney Jasinski acted as chief negotiator for the operator of the facility. He was accompanied by Michael Czermak, Chief Operating Officer of Paramount and Charles Grossman, the payroll director of Paramount. Czermak and Grossman identified Paramount Health Care as the company operating the Voorhees Center. Some tentative agreements were reached at the September session. There have been no negotiating sessions since December 2019, although another session may have been scheduled for January 6, 2020.

On December 3, 2019, the Union made 2 information requests to Jasinski. It asked for the following which are part of this record:

1. A copy of the management agreement between Paramount and Voorhees Care and Rehabilitation and/or The Pines at Voorhees Rehabilitation Healthcare Center.
2. A copy of the asset purchase agreement between Paramount and Voorhees Care and Rehabilitation and/or The Pines at Voorhees Rehabilitation Healthcare Center.

*Paramount's role in the instant litigation*

The initial charge in this matter was filed on May 9, 2018. On September 28, 2018, the Region issued a complaint setting a trial date of February 6, 2019. Paramount retained Attorney David Jasinski to represent it with regard to the Voorhees facility no later than mid-January 2019. Jasinski had discussions about this case with Union Vice-President John Hundzyski, organizer Paul Grubb, Lance Geren, then representing the Union and Trial Attorney Edward Bonett, in the General Counsel's Office in Region 4.

On February 14, 2019, Geren sent Jasinski a proposed settlement agreement, G.C. Exh. 19. The terms of that proposed settlement were that: Voorhees would provide Cigna Health Insurance at a cost of \$25 per pay period for self-only coverage; the employer and Union would commence collective bargaining negotiations; the employer would pay unpaid invoices for health care expenses presented to the Employer by the Union before March 31, 2019 and lastly that the Union would withdraw the instant unfair labor practice charge conditioned on the Employer's performance of the settlement agreement.

As a result, the NLRB Regional Office conditionally dismissed the complaint it issued in September 2018. A written draft of the settlement agreement, G.C. Exh. 19 was never signed. Jasinski and Grubb disagree as to what was agreed upon-particularly with regard to employees' unpaid medical bills. Jasinski testified that he replied orally regarding the proposed settlement to Hundzyski, who did not testify in this proceeding.

On March 5, 2019, organizer Paul Grubb sent Jasinski copies of the unpaid medical bills for CNA Barbara Nece and LPN Joseph Thibert. Jasinski did not respond to this email, although again he testified that he responded orally to Hundzyski.

5 On May 15, 2019, Board Attorney Bonett informed Jasinski that the Region was considering reopening this case but wanted to give the employer an additional week to comply with the agreement with the Union to reimburse employees' claims. Jasinski did not reply to this letter either.

10 Bonett sent Jasinski another email on May 22, stating the Region would hold off on the Union's request to reopen the case. Bonett also stated that the Region would require evidence of compliance with payment of outstanding medical bills. Jasinski did not reply to this letter or one dated October 25, 2019 asking for his position on the Union's request to re-issue the complaint.

15 On October 28, 2019, Jasinski told Bonett he would be submitting these bills to the insurance company. The relevant testimony in this regard is as follows:

...So on October 28th, you finally do speak with Ed Bonett from our office, and isn't it true that you told Mr. Bonett on October 28th, that you were working out the insurance issue with John Hundzyski from the Union, and you were planning on submitting the bills to an insurance or to the insurance company. Is that what you told Mr. Bonett?  
 20 A. Yes, probably something to that effect.

Tr. 535.

25 Jasinski's subsequent testimony is that he never submitted any bills to an insurance company. He testified that he heard from somebody at Paramount, either Michael Czermak or Payroll Director Charles Grossman, that **an** insurance carrier would not pay bills from 2017-2018, Tr. 537-38.

30 As stated earlier, on November 22, 2019, the General Counsel re-issued the complaint alleging that Respondent had breached the private agreement it had with the Charging Party Union. The Respondent according to the caption of that complaint is Skyline Health Care, LLC, d/b/a The Pines at Voorhees Rehabilitation & Health Care Center, a/k/a Voorhees Care and  
 35 Rehabilitation Center. No Answer was ever filed to the reissued complaint.

#### *Analysis*

40 *The Voorhees Care and Rehabilitation Center and The Lakewood of Voorhees Operator, LLC violated Section 8(a)(5) and (1) of the Act.*

It is a clear violation of Section 8(a)(5) and (1) for an employer to cease paying for bargaining unit employees' medical insurance when the terms of a collective bargaining agreement require it to do so. *Impressions, Inc.*, 221 NLRB 389 (1975); *C.M.E., Inc.*, 225 NLRB  
 45 514 (1976).<sup>7</sup> As a result, Voorhees Care and Rehabilitation Center and The Lakewood of

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<sup>7</sup> At the time Respondent ceased paying for unit employees medical insurance, its collective

Voorhees Operator, LLC are liable for all the consequences suffered by unit employees for this lapse, such as payment of their outstanding medical bills, *Ibid*.

5 *The allegations of the complaint are not time-barred under Section 10(b) of the Act with regard to The Voorhees Care and Rehabilitation Center and The Lakewood of Voorhees Operator.*

10 On the first day of the hearing in this matter, David Jasinski asserted that the allegations of the complaint alleging a violation for allowing employees' health insurance to lapse in November 2017 are time-barred under Section 10(b) of the Act. Mr. Jasinski does not represent either the Voorhees Care and Rehabilitation Center, G.C. Exh. 62, or The Lakewood of Voorhees Operator. Neither of these entities asserts a Section 10(b) defense. Such a defense must be pled or raised at hearing, *Paul Mueller Co.*, 337 NLRB 764 (2002). Thus, there is no Section 10(b) issue with regard to these Respondents. Finally, since neither entity filed an Answer in response to the  
15 Second Amended Complaint, the allegation that these entities violated Section 8(a) (5) and (1) about November 9, 2017, by failing to continue in effect all the terms and conditions of the collective bargaining agreement by terminating the existing healthcare plan for the employees in both units, is admitted.<sup>8</sup>

20 As to The Pines, the allegation in the second amended complaint is sufficiently similar, or closely related to that in the initial charge to defeat any Section 10(b) claim, *Redd-I Inc.* 290 NLRB 1115, 1116-1118 (1988); *Nickles Bakery of Indiana, Inc.*, 296 NLRB 927 (1989). The initial charge filed on May 9, 2018 alleged that Voorhees Care and Rehabilitation Center unilaterally and unlawfully repudiated the parties' collective bargaining agreement by implementing a new health insurance plan. The second amended complaint involves the same legal theory, failure to abide  
25 by the terms of the collective bargaining agreement, and arises from the same factual situation or sequence of events as the initial charge; i.e., the failure of Voorhees Care and Rehabilitation Center to provide the health insurance benefits required by its contract with the Union.

30 *The General Counsel has not established that Paramount Health Care and/or The Pines is liable for the alleged unfair labor practices committed prior to February 2019.*

35 At page 80 of its post-trial brief, the General Counsel moved to amend the complaint to allege that the The Pines and Paramount are a single employer and that they are a joint employer with Voorhees Rehabilitation Center and Lakewood Operator. Prior to filing its post-trial brief, the General Counsel had not alleged that Paramount was liable for any unfair labor practices.

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bargaining agreement with the Union had not expired. However, it would have violated the Act in ceasing such payments after the agreement expired given the facts of this case.

<sup>8</sup> There is hearsay evidence in this regard regarding the status of Joseph Schwartz, the owner of Voorhees Rehabilitation and Care Center and Lakewood at Voorhees, and his Skyline Company. However, it appears that Schwartz and/or Lakewood has sufficient assets to sue Paramount and the Pines and pay attorneys to do so, R. Exh. 5.

The August 20, 2020 verification of complaint filed by Lakewood against Paramount is signed by Michael Schwarz, as Vice President of The Lakewood of Voorhees Operator, LLC and 2 related companies. His last name, unlike that of Joseph Schwartz, does not contain a "t." Thus, the two men may not be related.

Pursuant to Rule 102.17 of the Board's Rules of Procedure, a complaint may be amended upon such terms as may be deemed just, prior to the hearing...at the hearing and until the case has been transferred to the Board pursuant to §102.45, upon motion, by the Administrative Law Judge designated to conduct the hearing; and after the case has been transferred to the Board pursuant to §102.45, at any time prior to the issuance of an order based thereon, upon motion, by the Board.

Putting aside the issue of whether this motion to amend has been made on terms deemed to be just, the General Counsel has not provided any basis for finding that either The Pines or Paramount was a joint employer with Voorhees and/or Lakewood of Voorhees prior to taking over management of the Voorhees facility and entering into an agreement to purchase the facility. As to the period after February 2019, the General Counsel has not established that either violated the Act in implementing the New Cigna Plan or failing to reinstitute the pre-2019 Cigna Plan.

Respondent in its brief at page 13 states, "there has been no document and/or testimony to establish the fact that The Pines is "also known" as another entity. This statement is inaccurate. Respondent advertises for employees on a site name Apploi as "The Pines at Voorhees Rehabilitation and Healthcare Center," Tr. 315-16.

Nevertheless, the General Counsel has not set forth a sufficient basis to hold The Pines or Paramount liable for any unfair labor practices. The General Counsel asserts The Pines is liable under several theories:

*Single Employer/Joint Employer/Agent*

*The Pines and/or Paramount was not an agent of the Voorhees Rehabilitation Center and Lakewood Operator prior to February 2019, or a joint employer prior to that date.*

*The General Counsel has not established that Paramount or The Pines violated the Act by implementing the new Cigna Plan in 2019*

The Pines and Paramount were not acting as agents of the Voorhees Center or Lakewood prior to February 1, 2019. While implementation of the new Cigna plan by The Pines and Paramount might otherwise be a violation of Section 8(d) and 8(a)(5) and (1), this has not been established on this record. Attorney Jasinski and Paramount CEO Michael Czermak testified that they discussed the current health insurance situation with Union Vice President John Hundzyski, Tr. 435, 454, 506, 516, 523, 526, 556, 561. Since Hundzyski did not testify, the record does not establish that the Union requested re-implementation of the pre-2018 Cigna plan or whether that is even possible. Thus, there remains the possibility that the Union agreed to the implementation of the new Cigna plan. Tr. 156-58, 561-62. It certainly did so as part of an overall settlement, G.C. Exh. 19.

This record may not establish that the Union waived its right to bargain over medical insurance with Paramount, but it also does not clearly establish that Paramount violated the Act by implementing the new Cigna plan. The contractually required insurance had been terminated by Voorhees Lakewood in 2017 and replaced by coverage far inferior to the new Cigna plan by

Alliance. Due to this, in the absence of a request by the Union to reinstitute the old Cigna plan, I decline to find a violation of the Act with regard to the implementation of the new Cigna plan.

*Neither the Pines nor Paramount is a successor to Voorhees Rehab Center or Lakewood*

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In *Golden State Bottling* 414 U.S. 168 (1973), the Supreme Court held that a successor employer that acquired its predecessor's operations with the knowledge that the predecessor had discriminatorily discharged an employee was jointly and severally liable with the predecessor to remedy that unfair labor practice. In so holding, the Court pointed out that the Act contemplated that the Board would exercise its remedial authority by "striking a balance between the conflicting legitimate interests of the bona fide successor, the public, and the affected employee."

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In regard to striking a balance between conflicting legitimate interests, the Court noted that, since the successor must have notice before liability can be imposed, 'his potential liability for remedying the unfair labor practices is a matter which can be reflected in the price he pays for the business, or he may secure an indemnity clause in the sales contract which will indemnify him for liability arising from the seller's unfair labor practices.

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The General Counsel has not cited any authority nor am I aware of any that deems as a successor employer, a company which merely has a contract to purchase another, or a company that has a management contract to operate another's facility.

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#### *Conclusion of Law*

Respondent Voorhees Care and Rehabilitation Center and The Lakewood of Voorhees Operator, LLC violated Section 8(a)(5) and (1) by failing to abide by the terms of its collective bargaining agreement with the Union that expired in June 2018, One aspect of the violation was allowing employees' medical insurance coverage to lapse and then unilaterally adopting medical insurance that was less generous than that set forth in the collective bargaining agreement.

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#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent is required to make whole the employees in the appropriate units who were adversely affected by its failure to pay for their health and welfare contributions, as provided in the collective-bargaining agreement that expired in June 2018, by granting them all interest, emoluments, rights, and privileges in such plan which would have accrued to them but for the unlawful conduct.<sup>9</sup> This includes payment of all outstanding medical costs incurred by unit employees as a result of Respondent's failure to pay for employees' medical insurance and any court judgments rendered against unit employees due to their failure to pay their medical bills. Respondent is also required to make employees whole for the adverse financial consequences of any unilateral changes it has made to unit employees' medical insurance, *Kraft*

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<sup>9</sup> The Respondent must make unit employees whole for any loss of earnings and other benefits suffered by its failure to abide by the collective bargaining agreement, calculated in the manner set forth in *Ogle Protection Services*, 183 NLRB 682 (1970).

*Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Further, Respondent will henceforth make such health and welfare payments until such time as it negotiates in good faith with the Union either for a new agreement or to an impasse.

5 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>10</sup>

#### ORDER

10 The Respondent, Voorhees Care and Rehabilitation Center and The Lakewood of Voorhees Operator, LLC, Voorhees, New Jersey, its officers, agents, successors, and assigns, shall

15 1. Cease and desist from

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(a) Failing and refusing to bargain with the Union, District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining units by unilaterally ceasing to make contributions for unit employees' medical insurance as required by the collective bargaining agreement that expired in June 2018 and unilaterally implementing a new health insurance plan for unit employees.

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(b) 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.

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

(a) Upon request of the Union, District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, rescind the unilaterally implemented changes to unit employees' terms and conditions of employment.

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(b) Make whole all bargaining unit employees to the extent they have suffered any losses as a result of the Respondent's unlawful conduct in the manner set forth in the remedy section of this decision.

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(c) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union, District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO as the exclusive collective-bargaining representative of employees in the following bargaining units:

40 Service and Maintenance Unit

All full-time and regular part-time laundry employees, nursing aides, housekeeping employees, dietary employees, restorative aides, and maintenance workers employed by Voorhees Care and

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<sup>10</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.

Rehab Center at its Voorhees, New Jersey Nursing Home, excluding registered nurses, licensed practical nurses, technical and professional employees, supervisory cooks, instructors, administrative and executive employees and confidential employees, guards, and supervisors as defined by the Act.

Professional Unit:

All registered nurses, graduate nurses, licensed practical nurses and graduate practical nurses employed by Voorhees Care and Rehab Center at its Voorhees, New Jersey Nursing Home, excluding supervisors as defined in the Act, and all other employees.

(d) Within 14 days after service by the Region, post at its Voorhees, New Jersey facility copies of the attached notice marked "Appendix"<sup>11</sup> in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 4 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2017.

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

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<sup>11</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."

Dated, Washington, D.C. January 28, 2021.

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Handwritten signature of Arthur J. Amchan in cursive script.

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Arthur J. Amchan  
Administrative Law Judge

**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 WILL NOT fail and refuse to bargain with the Union, District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO as the exclusive collective-bargaining representative of the employees in the bargaining units by unilaterally ceasing to make contributions for unit employees' health insurance and unilaterally implementing a new health insurance plan for unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, upon request of the Union, rescind any unilaterally implemented changes to unit employees' terms and conditions of employment.

WE WILL make whole all bargaining unit employees to the extent they have suffered any losses as a result of our unlawful conduct, with interest, including payment of outstanding medical bills or other financial obligations, including court judgments, that resulted by our allowing unit employees' medical insurance to lapse or by substituting new health insurance that was less generous to employees than that set forth in the collective bargaining agreement that expired in June 2018.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union, District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO as the exclusive collective-bargaining representative of employees in the following bargaining units:

Service and Maintenance Unit

All full-time and regular part-time laundry employees, nursing aides, housekeeping employees, dietary employees. restorative

aides, and maintenance workers employed by Voorhees Care and Rehab Center at its Voorhees, New Jersey Nursing Home, excluding registered nurses, licensed practical nurses, technical and professional employees, supervisory cooks, instructors, administrative and executive employees and confidential employees, guards, and supervisors as defined by the Act.

Professional Unit:

All registered nurses, graduate nurses, licensed practical nurses and graduate practical nurses employed by Voorhees Care and Rehab Center at its Voorhees, New Jersey Nursing Home, excluding supervisors as defined in the Act, and all other employees.

THE VOORHEES CARE AND  
REHABILITATION CENTER a/k/a  
THE PINES AT THE VOORHEES CARE AND  
REHABILITATION CENTER a/k/a THE LAKEWOOD  
OF VOORHEES OPERATOR, LLC

(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).  
615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404  
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/04-CA-219938](http://www.nlr.gov/case/04-CA-219938) 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, (215) 597-5354.