The Voorhees Care and Rehabilitation Center a/k/a The Pines at Voorhees Rehabilitation & Healthcare Center, LLC a/k/a The Lakewood of Voorhees Operator, LLC *and* District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO. Case 04–CA–219938

August 25, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL AND RING

On January 28, 2021, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Acting General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] as modified herein, to amend the remedy, and to adopt the judge's recommended Order as modified and set forth in full below.[3] Specifically, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing a new health insurance plan on February 1, 2019. In this respect, we reverse the judge's decision.

Facts

The Respondent is a long-term care nursing home in Voorhees, New Jersey, currently owned by Joseph Schwartz. Since 1985, the Union has represented an approximately 20-person bargaining unit of nurses and another approximately 130-person bargaining unit of service and maintenance employees. Pursuant to the parties' most recent collective-bargaining agreement, which expired on June 30, 2018, the Respondent provided unit employees health insurance coverage through a Cigna health insurance plan administered by American Plan Administrators (the Cigna American Plan). On about November 9, 2017, without informing the Union or the employees, the Respondent terminated the employees' health insurance. From about November 9, 2017, through April 2018, even though the Respondent was still deducting premiums for employees who had elected family coverage, the employees unknowingly had no health insurance. As a result, at least three employees incurred significant healthcare costs—some of which are still unpaid.[4]

On May 1, 2018, Alliance Healthcare, Inc. (Alliance) took over management of the facility and unilaterally implemented an inferior health insurance plan administered by Tall Tree Administrators. That same day, the Union filed a grievance over the Respondent's unilateral change to employees' health insurance.[5] A week later, the Union filed the unfair labor practice charge in the instant case, alleging that the Respondent had unilaterally repudiated the parties' collective-bargaining agreement. On May 22, 2018, the Union emailed the Respondent's administrator and human resources director "call[ing] for the immediate restoration of the [Cigna American] Plan with the same terms and conditions that were available and in place prior to May 1, 2018." In late May 2018, the Union spoke to a consulting manager for Alliance who told the Union that Alliance would research other health insurance plans because the Tall Tree Administrators Plan was subpar. On September 18, 2018, the Region issued complaint.

On January 15, 2019,[6] Paramount, which at the time went by the name Platinum Health Care, executed a

[1] The then-Acting General Counsel did not except to the judge's findings that Paramount Health Care (Paramount) was not a single employer with The Pines at Voorhees Rehabilitation & Healthcare Center, LLC (The Pines), a separate entity owned by the same owner as Paramount, that neither Paramount nor The Pines was a joint employer with or a successor to the Respondent, and that neither Paramount nor The Pines is jointly and severally liable for the Respondent's unlawful conduct. In the exceptions brief, the then-Acting General Counsel stated that he did not file exceptions to those findings because, after the close of the hearing, Paramount entered into a successor collective-bargaining agreement with District 1199C of the National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (the Union), which was immediately binding on Paramount and the Respondent and will become binding on The Pines should it replace the Respondent as the owner of the facility. In the absence of exceptions, we do not pass on the judge's findings as to those issues. See *FES*, 333 NLRB 66, 66 fn. 1 (2001), enfd. 301 F.3d 83 (3d Cir. 2002).

[2] We have amended the judge's conclusions of law consistent with our findings herein and to clarify that the Respondent's unlawful midterm modifications to the health care coverage terms of the collective-bargaining agreement without the Union's consent violated Sec. 8(a)(5) and (1) within the meaning of Sec. 8(d) of the Act.

[3] We have modified the judge's recommended Order to conform to the amended remedy and the Board's standard remedial language, and in accordance with our decision in *Danbury Ambulance Service, Inc*., 369 NLRB No. 68 (2020), and *Ferguson Electric Co.*, 335 NLRB 142 (2001). We have substituted a new notice to conform to the modified Order.

[4] As the judge explained, unit employee Joseph Thibert incurred about $570,000 in medical bills for emergency surgery in December 2017, and at least one of the bills was sent to collections. We note, however, that the judge inadvertently stated that Thibert's medical bills began in January 2018 instead of at the end of 2017. Unit employee Barbara Nece also incurred about $10,700 in medical expenses that went unpaid and for which her medical provider obtained a court judgment against her. In addition, unit employee Michelle Scott incurred about $8,000 in medical bills.

[5] The Union and unit employees were unaware at this time that the health insurance had been unilaterally terminated almost 6 months earlier.

[6] All dates hereinafter are in 2019 unless otherwise indicated.

Management Service Agreement (MSA) with the Respondent to assume management over the facility from Alliance. Section 2.1 of the MSA provides that Paramount is responsible "for daily management and oversight of the operation of the Facilit[y]" and expressly grants it "discretion and decision-making control regarding the direction, management, operation and supervision of the Facilit[y]." Section 5.1 of the MSA specifies that Paramount has authority over employment policies. Paramount is also responsible for selecting the facility administrator in charge of day-to-day operations and overseeing labor relations, including employees' wages and benefits.

On January 18, Paramount Attorney David Jasinski contacted the Region and the Union to discuss a non-Board settlement of the Board charge. On January 28, in a telephone conference call, the Region and the Union understood Jasinski as having verbally agreed to a settlement if the Union agreed to withdraw the charge. The terms of the purported settlement were that the Respondent would implement a new Cigna health insurance plan also administered by American Plan Administrators (the Cigna Premier Plan),[7] commence negotiations for a successor collective-bargaining agreement, and pay employees' health care bills incurred when they had no health insurance. On January 29, the Union requested withdrawal of the charge conditioned on the Respondent's compliance with the settlement, and the Region approved the conditional withdrawal of the charge the next day.

On February 1, immediately upon assuming management of the Respondent, Paramount unilaterally changed employees' health insurance to the Cigna Premier Plan.[8] Over the next several months, despite the Region's efforts to persuade the Respondent to comply with the other terms of the purported settlement, in particular the payment of the medical bills when the unit employees had no health insurance from November 9, 2017, through April 30, 2018, the Respondent never complied. Paramount Attorney Jasinski denied ever having agreed to the purported settlement. On November 22, the Region reissued the complaint alleging breach of the settlement.[9]

Discussion

The Acting General Counsel excepts to the judge's finding that the unilateral implementation of the Cigna Premier Plan on February 1, 2019, did not violate Section 8(a)(5) and (1). We find merit in that exception. On February 1, when Paramount took over management of the facility, it was clearly an agent of the Respondent under the terms of the MSA, which explicitly grants Paramount authority over the daily management and oversight of the facility, including over employment policies.[10]

In *Litton Financial Printing Division v. NLRB*, the Supreme Court held that, in most circumstances, an employer commits an unfair labor practice if, without bargaining to impasse, it effects a unilateral change to an existing term or condition of employment, even where the parties' collective-bargaining agreement has expired. 501 U.S. 190, 198 (1991). Health insurance is one such term or condition of employment for which Paramount, acting on the Respondent's behalf, had an obligation to maintain the status quo by not implementing a unilateral change without first bargaining with the Union to an agreement or impasse. See *Intermountain Rural Electric Assn.*, 305 NLRB 783, 784 (1991) (There is no question that contractually provided health plans survive contract expiration and cannot be altered without bargaining.), enfd. 984 F.2d 1562 (10th Cir. 1993). This is true even for a unilateral change to the Respondent's earlier unilateral change of unit employees' health insurance. See *Goya Foods of Florida*, 356 NLRB 1461, 1461 (2011) (employer twice unlawfully changed employees' health insurance). Here, Paramount indisputably changed unit employees' health insurance on February 1 by implementing the Cigna Premier Plan.[11]

The record is also devoid of any evidence that the Union agreed to the implementation of the Cigna Premier Plan or waived its right to bargain over it. Paramount and the Union had discussed implementation of the Cigna Premier Plan in settlement negotiations prior to February 1, but according to the judge's unexcepted-to finding, Paramount was not an agent of the Respondent at that time. Therefore, any agreement Paramount reached with the Union

[7] The Cigna Premier Plan required employees to pay a premium of $25 per pay period for self-only coverage. In contrast, the Cigna American Plan had no premiums for self-only coverage. In addition, the Cigna Premier Plan had much higher premiums for family coverage and the breadth of coverage was more limited. Many services under the Cigna Premier Plan were also subject to higher copays or a deductible and coinsurance.

[8] The MSA stated that it was effective as of January 15. However, there is no dispute, and there are no exceptions to the judge's finding, that Paramount assumed management of the facility on February 1.

[9] The Respondent did not file an answer to the reissued complaint.

[10] The Acting General Counsel excepts to the judge's failure to find that Paramount was acting as an agent of the Respondent as of February 1 when the Cigna Premier Plan was implemented. We agree with the Acting General Counsel that the judge erred by not finding that Paramount was an agent of the Respondent as of February 1. No exceptions were filed to the judge's finding that Paramount was not an agent of the Respondent prior to February 1.

[11] The Cigna Premier Plan charged higher premiums for less generous health insurance coverage than the Cigna American Plan. Thus, the implementation of the Cigna Premier Plan constituted a material, substantial, and significant change to employees' terms and conditions of employment.

prior to February 1 did not bind the Respondent, nor can the Respondent rely on it as evidence that the Union agreed to the implementation of the Cigna Premier Plan.[12] The Respondent also failed to show that any agreement by the Union for the implementation of the Cigna Premier Plan, including the purported settlement with Paramount, was entered into on or after February 1 when Paramount was an agent of the Respondent.[13] Lastly, contrary to any suggestion by the judge, there is no evidence that the Union waived its right to bargain over changes to unit employees' health insurance by not requesting to have the old Cigna American Plan reinstituted. In fact, the Union repeatedly requested restoration of the Cigna American Plan after the Respondent terminated it, including in a May 1, 2018 grievance and in subsequent email correspondence with the Respondent.

Accordingly, by unilaterally implementing the Cigna Premier Plan on February 1, the Respondent violated Section 8(a)(5) and (1).

AMENDED CONCLUSIONS OF LAW

1. The Respondent, Voorhees Care and Rehabilitation Center a/k/a The Lakewood of Voorhees Operator, LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

2. District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. By making mid-term modifications, without the Union's consent, to the health care coverage terms of the collective-bargaining agreement that expired on June 30, 2018, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.

4. By unilaterally changing the terms and conditions of employment of its unit employees, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

5. The above violations are unfair labor practices that affect commerce within the meaning of Section 2(6) and (7) of the Act.

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully made mid-term modifications, without the Union's consent, to the health care coverage terms of the collective-bargaining agreement that expired on June 30, 2018, and unilaterally changed the terms and conditions of employment of its unit employees, we shall order the Respondent to restore the status quo ante and make the unit employees whole for any loss of earnings and benefits and for other costs attributable to its unlawful conduct. The Respondent is required to grant unit employees all interest, emoluments, rights, and privileges in the health insurance plan provided for in the collective-bargaining agreement that expired in June 2018 that would have accrued to them but for the unlawful conduct. 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.

The Acting General Counsel argues that to restore the status quo ante and fully remedy the Respondent's unlawful conduct, the Board should modify certain aspects of the judge's make-whole remedy. We agree. First, we clarify that the Respondent is required to reimburse employees for the costs they incurred as a result of the differences between the bargained-for, contractual Cigna American Plan and the unilaterally implemented Tall Tree Administrators and Cigna Premier Plans, including any increases in premiums, copays, coinsurance, deductibles, and other out-of-pocket expenses. To the extent any employees have paid in whole, or in part, medical expenses directly to medical providers, the Respondent must reimburse employees for those expenses. See *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Second, because the Respondent's unlawful conduct caused some employees to incur substantial medical bills, we shall also require the

[12] Even if Paramount was an agent of the Respondent prior to February 1, Paramount Attorney Jasinski never executed the purported settlement and has consistently asserted that no settlement was reached with the Union. As a result, Paramount and the Respondent have refused to honor the terms of the purported settlement. The record shows that the Union agreed to the implementation of the Cigna Premier Plan as one component of a larger settlement, and there is no evidence that the Union ever agreed to the implementation of the Cigna Premier Plan separate and apart from that larger settlement, which never materialized. Thus, even if Paramount was an agent of the Respondent before February 1, we find that the Union did not agree to the implementation of the Cigna Premier Plan separate and apart from the larger settlement.

[13] Even if Paramount and the Union had reached such an agreement *after* February 1 (and, again, the record evidence does not show that they did), the Respondent still acted unlawfully by unilaterally implementing the Cigna Premier Plan *on* February 1.

Respondent to pay any still-unpaid medical bills directly to the medical providers instead of as reimbursement to the affected employees. In the circumstances here, it is unreasonable to expect the affected employees to pay those bills out of pocket and then await reimbursement. Third, employees who are not seeking reimbursement for out-of-pocket medical expenses from November 9, 2017, through April 30, 2018—when they had no health insurance—shall be reimbursed for any health insurance premiums paid by them for coverage that they never had.[14]

The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Further, upon the Union's request, the Respondent will henceforth restore the terms and coverage provided under the Cigna American Plan—the health insurance plan that the Respondent terminated on about November 9, 2017, that was provided for under the collective-bargaining agreement that expired on June 30, 2018—until such time as it negotiates in good faith with the Union either to a new agreement or to impasse.[15]

[14] In Chairman McFerran's view, this case should prompt the Board to seek public input about whether to add a new, make-whole remedy to those we traditionally order: an award of consequential damages to make employees whole for economic losses (apart from the loss of pay or benefits) suffered as a direct and foreseeable result of an employer's unfair labor practice. See generally Leonard Page, *NLRB Remedies: Where Are They Going?*, 5 Rich. J.L. & Pub. Int. 1, 7–8 (2000); see also OM Memorandum 16-24 (July 28, 2016). As explained in more detail above, here the Respondent unlawfully terminated employees' health insurance in November 2017 and did so without informing them or the Union. Thus, unbeknownst to them, employees were without insurance coverage for approximately 6 months. As a result, three employees were saddled with thousands of dollars in medical bills. One employee, who had emergency surgery in December 2017, has bills totaling more than half a million dollars. Two of the employees have had bills go to collections and one of those two has suffered a court judgment as well. It is not difficult to see how the financial consequences of the Respondent's unlawful actions in this case for the affected employees may go beyond the actual cost of the medical bills.

There are a myriad of other possible examples. Following an unlawful discharge, for example, an employee may be faced with interest and late fees on credit cards, or penalties if she must make early withdrawals from her retirement account in order to cover her living expenses. She might even lose her car or her home, if she is unable to make loan or mortgage payments. As a result of an unfair labor practice, discriminatees could also face increased transportation or childcare costs.

The General Counsel did not ask for consequential damages here, presumably because the Board has never authorized such damages and has rebuffed the General Counsel before, without reaching the merits of the issue. See, e.g., *Meyer Tool, Inc.*, 366 NLRB No. 32, slip op. at 1 fn. 3 (2018), enfd. 763 Fed.Appx. 5 (2d Cir. 2019); *Laborers' International Union of North America, Local Union No. 91 (Council of Utility Contractors)*, 365 NLRB No. 28, slip op. at 1 fn. 2 (2017). Of course, the Board may award a remedy on its own initiative. See, e.g., *J. Picini Flooring*, 356 NLRB 11, 12 fn. 5 (2010); *Indian Hills Care Center*, 321 NLRB 144, 144 fn. 3 (1996).

The Board has "broad discretionary" authority under Section 10(c) of the Act to fashion remedies that will effectuate the policies of the Act. *NLRB v. J.H. Rutter-Rex Mfg.*, 396 U.S. 258, 262–263 (1969) (quoting *Fibreboard Paper Products v. NLRB*, 379 U.S. 203, 216 (1964)); see also *King Soopers, Inc.*, 364 NLRB 1153, 1155 (2016), enfd. in part 859 F.3d 23 (D.C. Cir. 2017). The aim of a Board order is "restoration of the situation, as nearly as possible, to that which would have obtained but for" the unfair labor practice or practices. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941).

Consistent with that authority and aim, the Board has revised and updated its remedies in the past in order to ensure victims of unfair labor practices are actually made whole. See, e.g., *King Soopers, Inc.*, supra, 364 NLRB 1153, 1156 (Board modified treatment of search-for-work and interim employment expenses, noting that under standard duty to mitigate, discriminatee may be subject to "additional, significant financial hardship—hardship that is traceable to the employee's activity protected by the statute that we are charged to enforce"); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101, 104 (2014) (Board affirmed requirement for respondents to compensate employees for excess income tax liability as a result of receiving lump-sum backpay, noting that purpose of the remedy is to ensure lump-sum backpay recipients are "truly made whole"); *Kentucky River Medical Center*, 356 NLRB 6, 9 (2010) (Board recomputed interest on backpay owed discriminatees from simple to compound daily interest, stating "[w]e believe that daily compounding . . . will lead to more fully compensatory awards of interest and thus come closest to achieving the make-whole purpose of the remedy"). And, on at least one recent occasion, the Board has acknowledged that making employees whole for costs beyond our standard remedies was necessary to remedy the economic harm immediately caused by the respondent's unfair labor practices. See, e.g., *Napleton 1050, Inc., d/b/a Napleton Cadillac of Libertyville*, 367 NLRB No. 6, slip op. at 4 (2018) (awarding employees reimbursement for the damage-repair expenses they incurred as a result of the respondent's unlawful removal of their toolboxes from the workplace and for the towing expenses they incurred as a result of the respondent's unlawful requirement that they remove their toolboxes, determining that expenses were "specific and easily ascertainable" and that "making the employees whole for those costs is necessary to fully remedy the Respondent's unfair labor practice and effectuate the policies of the Act"), enfd. 976 F.3d 30 (D.C. Cir. 2020).

Accordingly, in Chairman McFerran's view, it is time for the Board to consider addressing the issue of consequential damages in an appropriate case, and to consider any other appropriate ways to ensure that employees victimized by unfair labor practices are made completely whole.

Member Ring agrees with his colleague that cases like this one, where the employer's egregious violations so harm employees that they may not be fully remedied by the Board's traditional make-whole awards, necessitate consideration of consequential damages. He would be willing to invite briefing, in a future appropriate case, regarding whether the Board should award consequential damages and under what circumstances.

[15] We will allow the Respondent to litigate in compliance, if it so chooses, whether it would be impossible or unduly or unfairly burdensome to restore the Cigna American Plan provided for in the collective-bargaining agreement that expired on June 30, 2018. See *Larry Geweke Ford*, 344 NLRB 628, 629 (2005).

ORDER

The National Labor Relations Board orders that the Respondent, Voorhees Care and Rehabilitation Center a/k/a The Lakewood of Voorhees Operator, LLC, Voorhees, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with District 1199C of the National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (the Union) as the exclusive collective-bargaining representative of the bargaining unit employees by modifying the health insurance benefits provided for under the collective-bargaining agreement that expired on June 30, 2018, in particular the termination of the Cigna American Plan on about November 9, 2017.

(b) Unilaterally changing the terms and conditions of employment of its unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Upon the Union's request, rescind the modification to unit employees' terms and conditions of employment, in particular the modification to unit employees' health insurance benefits that occurred on about November 9, 2017, by restoring the terms and coverage provided under the Cigna American Plan until such time as it negotiates in good faith with the Union either to a new agreement or to impasse.

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

(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 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 [the Respondent] 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 [the Respondent] at its Voorhees, New Jersey Nursing Home, excluding supervisors as defined in the Act, and all other employees.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of the make-whole relief due under the terms of this Order.

(e) Post at its Voorhees, New Jersey facility copies of the attached notice marked "Appendix" in both English and Spanish.[16] 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 9, 2017.

[16] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

(f) Within 21 days after service by the Region, file with the Regional Director for Region 4 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.

Dated, Washington, D.C. August 25, 2021

Lauren McFerran, Chairman

William J. Emanuel, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with District 1199C of the National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (the Union) as your exclusive collective-bargaining representative by modifying your health insurance benefits provided under the collective-bargaining agreement that expired on June 30, 2018, in particular the termination of the Cigna American health insurance plan on about November 9, 2017.

WE WILL NOT unilaterally change your terms and conditions of employment.

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 the Union's request, rescind the modification to your terms and conditions of employment, in particular the modification of your health insurance benefits that occurred on about November 9, 2017, by restoring the terms and coverage provided under the Cigna American health insurance plan until such time as we negotiate in good faith with the Union either to a new agreement or to impasse.

WE WILL make you whole for any losses you suffered as a result of our unlawful conduct, including reimbursement of any increases in premiums, copays, coinsurance, and deductibles and for other out-of-pocket expenses, plus interest.

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 as the exclusive collective-bargaining representative of our 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 us at our 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 us at our Voorhees, New Jersey Nursing Home, excluding supervisors as defined in the Act, and all other employees.

VOORHEES CARE AND REHABILITATION CENTER A/K/A THE LAKEWOOD OF VOORHEES OPERATOR, LLC

The Board's decision can be found at www.nlrb.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.

Deena Kobell, Esq., for the General Counsel.
David F. Jasinski and *John C. Hegarty, Esqs.* (Jasinski, P.C.), of Newark, New Jersey, for Paramount Care Center and Respondent, The Pines at Voorhees Care and Rehabilitation Center.
Joseph D. Richardson, Esq. (Willig, Williams & Davidson), of 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 $5000 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,[1] 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

FINDINGS OF FACT[2]

Procedural History of this Case

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.

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.

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 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.

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.

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.

Relevant History of the Voorhees Center

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.

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.

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

[1] Tr. 513, line 15 should read "Judge Amchan" rather than "Ms. Kobell."

[2] 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).

State of New Jersey under the name The Lakewood of Voorhees Operator, LLC, which is owned by Schwartz.

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.

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.

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.

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.

When employees' health care insurance was reinstituted 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.

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

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, 2012. This agreement maintained employee health insurance benefits through a company called Magna Care.

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).

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 biweekly pay period. About 50 percent of unit employees had medical insurance through Cigna.

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.

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 $8000 in medical bills for which she had no insurance.

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.

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.

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.

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.

Paramount's Negotiations with the Union, Management of the Voorhees Facility and Attempt to Purchase it.

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:

> …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. 569–570 is to the contrary and very evasive:

> 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.
>
> 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.
>
> 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?
>
> 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.[3] 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.[4] Three 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.[5] 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.[6] 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 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 four 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 two 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

[3] 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.

[4] 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.

[5] Michael Czermak testified either incorrectly or knowingly falsely that Blum is paid by Joseph Schwartz.

[6] According to Michael Czermak, Kraus incorporated The Pines at Voorhees in April 2019.

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 Hundzynski, 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 Hundzynski, 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 Hundzynski.

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.

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.

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 Hundzynski 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?
> A. Yes, probably something to that effect.

Tr. 535.

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. 537–538.

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 Rehabilitation Center. No Answer was ever filed to the reissued complaint.

Analysis

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 514 (1976).[7] As a result, Voorhees Care and Rehabilitation Center and The Lakewood of 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.

The Allegations of the Complaint are not Time-barred Under Section 10(b) of the Act with Regard to the Vorhees Care and Rehabilitation Center and the Lakewood of Voorhees Operator.

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 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.[8]

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

[7] At the time Respondent ceased paying for unit employees medical insurance, its collective-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.

[8] 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.

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 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.

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.

At page 80 of its posttrial brief, the General Counsel moved to amend the complaint to allege that 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 posttrial brief, the General Counsel had not alleged that Paramount was liable for any unfair labor practices.

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. 315–316.)

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 Hundzynski (Tr. 435, 454, 506, 516, 523, 526, 556, 561). Since Hundzynski 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. 156–158, 561–562.) 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

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."

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.

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.

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.

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.[9] 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 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.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

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

1. Cease and desist from

(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.

(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.

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.

(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.

(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:

> 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.

(d) Within 14 days after service by the Region, post at its Voorhees, New Jersey facility copies of the attached notice marked "Appendix"[11] 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.

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

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

[9] 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).

[10] 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.

[11] 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."

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

The Administrative Law Judge's decision can be found at www.nlrb.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.