

**Lakeview Convalescent Center and Hospital Professionals and Allied Employees of New Jersey, AFT/AFL-CIO. Case 22-CA-17799**

May 15, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

Upon a charge filed by the Union June 21, 1991,<sup>1</sup> the General Counsel of the National Labor Relations Board issued a complaint against Lakeview, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act by changing the health insurance program applicable to unit employees without notifying the Union or obtaining its consent. The Respondent filed an answer, admitting in part and denying in part the allegations of the complaint.

On January 27, 1992, the General Counsel filed a Motion for Summary Judgment with supporting memorandum and exhibits. On January 30, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the Union filed an opposition to the response.

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

Ruling on Motion for Summary Judgment

The Respondent has admitted most of the allegations in the complaint. Thus, it is undisputed that the Union is the exclusive collective-bargaining representative of the Respondent's registered nurses and licensed practical nurses. The Respondent and the Union were parties to a collective-bargaining agreement covering the unit employees, which was effective from January 1, 1990, to January 1, 1992. The agreement contains a provision for a Blue Cross/Blue Shield Medallion health insurance plan. About June 13, 1991, the Respondent changed the health insurance plan by discontinuing the Blue Cross/Blue Shield Medallion coverage and substituting a self-insured plan administered by Medway Insurance Corp. The Medway plan provides improved child care coverage in comparison to the Blue Cross/Blue Shield Medallion plan.

The complaint also alleges that the Respondent altered the health insurance plan without notice to the Union and without having obtained the Union's consent to the changes, as required by the collective-bar-

gaining agreement<sup>2</sup> In its answer, the Respondent denies those allegations.

In his memorandum in support of the Motion for Summary Judgment, the General Counsel acknowledges that the Respondent denies having acted unilaterally. The General Counsel argues, however, that the Respondent has effectively admitted that it acted without the Union's consent. Thus, according to the undisputed allegations in the General Counsel's memorandum, the Respondent's administrator, Richard F. Grosso Jr.,<sup>3</sup> informed employees on May 23 that the Respondent would change the health coverage from Blue Cross to grievance dated May 24, and insisting that no changes be made in health coverage. The parties then agreed to submit the issue to the unit employees. The Union informed the Respondent, by letter dated June 13, that the employees had unanimously rejected the proposed new coverage on June 12. In a letter dated June 14, Grosso informed the Union that "In anticipation of the nurses acceptance of this new [Medway] coverage we have already cancelled the Medallion coverage effective July 1, 1991."<sup>4</sup> In light of this purported admission, the General Counsel urges that there is no genuine issue of fact regarding the unilateral nature of the Respondent's actions.

In its response to the Notice to Show Cause, the Respondent argues that the complaint should be dismissed because the Respondent and the Union have agreed to settle the unilateral change issue. The Respondent also argues that, since the complaint issued, the Union has agreed in collective-bargaining negotiations to accept the Medway plan, and therefore that the complaint allegations should be considered moot. Accordingly, the Respondent requests that the complaint be dismissed, or that the proceeding be delayed until the Respondent and the Union are able to effect a withdrawal of the charge. In the alternative, the Respondent requests (without further elaboration) that the Motion for Summary Judgment be denied "based on the facts and applicable law."

In its opposition to the response, the Union concedes that the parties bargained for and achieved a collective-bargaining agreement, but asserts that the Respondent has refused to sign the agreement and has reneged on the article concerning health insurance. The Union therefore opposes denial of the Motion for Summary

<sup>2</sup>Sec. 9.01 of the agreement ("Health Insurance") stated that:

The Employer will provide and pay for, at its own expense, Blue Cross/Blue Shield Medallion Program coverage for all employees and dependents during any period that the employee is employed.

...  
The Employer may not change or modify such coverage provided herein without the mutual consent of the Union.

<sup>3</sup>Grosso is an admitted supervisor and agent of the Respondent.

<sup>4</sup>In the letter, Grosso also offered to arbitrate the issue and to reinstate the Blue Cross plan if ordered to do so by the arbitrator.

<sup>1</sup>Unless otherwise stated, all dates refer to 1991.

Judgment and the dismissal or delay in processing of the complaint.

Summary judgment may be rendered if the pleadings and supporting materials establish that there is no genuine issue requiring a hearing and, therefore, that the moving party is entitled to judgment as a matter of law. In the instant case, we find that no genuine issue remains concerning the unilateral nature of the Respondent's change in the health insurance coverage.<sup>5</sup> As we have noted, the General Counsel in his memorandum in support of the Motion for Summary Judgment alleges that the Respondent and the Union had agreed to submit the issue to a vote of the unit employees, and that, despite that agreement, Grosso informed the Union on June 14, without waiting for the results of the vote, that the Respondent had already cancelled the contractually mandated Blue Cross plan. The General Counsel also notes that Grosso's letter makes clear that the Respondent was aware that the employees had rejected its proposed switch to Medway coverage. The Respondent, in its response to the Notice to Show Cause, does not controvert, or even mention, these allegations of the memorandum. Thus, although the Respondent in its answer to the complaint denies that it acted unilaterally and without the Union's consent, we find that it has subsequently abandoned that position.<sup>6</sup>

We also find that the Respondent's claims that the Union has agreed to accept the Medway plan and that the parties have voluntarily agreed to settle the case do not raise genuine issues precluding summary judgment<sup>7</sup> To begin render this case moot. The Respondent's unilateral change in the health insurance plan was unlawful whether or not the Union agreed, months later, to accept the new plan. That agreement would affect only the remedy imposed, not the underlying violation.

The Respondent's "settlement" argument is similarly devoid of force. Even should we assume (again without deciding) that the parties have, in fact, agreed to settle the case, there is no evidence of the terms of the agreement. Nor does the Respondent contend that it ever submitted the agreement to the Board or to the

<sup>5</sup>Health insurance plans constitute terms and conditions of employment, and therefore are mandatory subjects for collective bargaining. Therefore, any change in the contractual health program, including a change in the plan's carrier, during the life of the contract, without the Union's consent, violates Sec. 8(a)(5). See, e.g., *Aztec Bus Lines*, 289 NLRB 1021, 1037 (1988). The Respondent admits that it changed the material terms of the health plan, as well as the carrier.

<sup>6</sup>See *Lorenz Schneider Co.*, 209 NLRB 190 fn. 3 (1974), enf. denied on other grounds 517 F.2d 445 (2d Cir. 1975); *Farah Mfg. Co.*, 203 NLRB 543, 544 fn. 9 (1973), enf. denied on other grounds 491 F.2d 595 (5th Cir. 1974).

<sup>7</sup>For the purpose of ruling on the Motion for Summary Judgment, we construe all controverted factual allegations in the light most favorable to the Respondent.

Regional Director for approval, or that it was deprived of the opportunity to do so.<sup>8</sup> The Respondent has alleged, in the end, nothing more than an agreement to settle the case (on unspecified terms), not a settlement agreement. That sort of understanding does not preclude the Board from addressing and deciding the merits of the case.<sup>9</sup>

In summary, we find that there is no genuine issue of fact requiring resolution at a hearing, because the Respondent has admitted, or no longer denies, that it unilaterally, and without the Union's consent, changed the health insurance plan applicable to unit employees, in violation of the express terms of the collective-bargaining agreement. Even if, as the Respondent asserts, the Union has since accepted the Medway plan in place of the Blue Cross plan, and the parties have agreed to settle the case, neither of those circumstances would preclude a grant of summary judgment. We therefore grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a corporation, has an office and place of business in Wayne, New Jersey, where it operates a nursing home. During the 12 months preceding the issuance of the complaint, the Respondent in the course and conduct of its business operations just described, derived gross revenues in excess of \$100,000 and purchased and received at its Wayne, New Jersey facility products, goods, and materials valued in excess of \$5000 directly from points outside of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Registered Nurses and Licensed Practical Nurses, including Charge Nurses employed by the Respondent its [sic] its Wayne, New Jersey location, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.

On September 12, 1977, the Union was certified as the exclusive collective-bargaining representative of

<sup>8</sup>See Sec. 101.9 of the Board's Statements of Procedure.

<sup>9</sup>See *Iron Workers Local 455 (Simpson Metal Industries)*, 237 NLRB 147, 152-153 (1978).

employees in the unit. At all times since September 12, 1977, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The Respondent and the Union were parties to a collective-bargaining agreement covering employees in the unit, which was effective from January 1, employment, including a Blue Cross/Blue Shield Medallion health insurance plan, which is a mandatory subject for collective bargaining. About June 13, 1991, the Respondent changed health insurance plans from Blue Cross/Blue Shield Medallion coverage to a self-insured plan administered by Medway Insurance Corp. The Medway plan changed the existing health coverage for unit employees by, inter alia, improving child care coverage. The Respondent effected the change in health insurance coverage without prior notice to the Union and without having obtained the Union's consent as required by the collective-bargaining agreement.

By unilaterally, and without the Union's consent, changing the contractual health insurance coverage applicable to employees in the unit, the Respondent has failed and refused to bargain in good faith with the certified representative of its employees, and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing to bargain in good faith with the Union by unilaterally changing unit employees' health insurance, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent, at the Union's request, to reinstate the Blue Cross/Blue Shield Medallion health insurance plan for unit regarding the unit employees' health insurance coverage, the Respondent need not reinstate the Blue Cross/Blue Shield Medallion plan.<sup>10</sup> We shall also order the Respondent to

<sup>10</sup> Our assumption, above, that the Union had agreed to substitute the Medway plan for the Blue Cross plan was only for the purpose of ruling on the Motion for Summary Judgment. We did not find as a fact that such an agreement had been reached, let alone that it had been reached as a result of good-faith bargaining. Whether or

make the unit employees whole, with interest, for any expenses they may have incurred as a result of the Respondent's unlawful change in health insurance plans, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd. mem.* 661 F.2d 940 (9th Cir. 1981), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Lakeview Convalescent Center, Wayne, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally, without notice to Hospital Professionals and Allied Employees of New Jersey, AFT/AFL-CIO (the Union), and without obtaining the Union's consent, changing the health insurance coverage provided for in any collective-bargaining agreement applicable to employees in the following appropriate unit:

All full-time and regular part-time Registered Nurses and Licensed Practical Nurses, including Charge Nurses employed by the Respondent its [sic] its Wayne, New Jersey location, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other 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) At the Union's request, reinstate the Blue Cross/Blue Shield Medallion health insurance coverage provided for in the collective-bargaining agreement that expired January 1, 1992; provided, however, that nothing in this Order shall require the Respondent to reinstate the Blue Cross/Blue Shield Medallion coverage if the Respondent and the Union have reached an agreement that is outstanding and enforceable regarding health insurance coverage for the unit employees.

(b) Reimburse the unit employees, with interest, for any expenses they may have incurred as a result of the Respondent's unlawful change in their health insurance coverage, as prescribed in the remedy portion of this decision.

(c) Post at its facility in Wayne, New Jersey, copies of the attached notice marked "Appendix."<sup>11</sup> Copies

not the Respondent will be required to reinstate the Blue Cross plan is a question that can be litigated in compliance proceedings.

<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

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of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

#### APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally, without notice to Hospital Professionals and Allied Employees of New Jer-

sey, AFT/AFL-CIO (the Union), and without obtaining the Union's consent, change the contractually mandated health insurance coverage of employees in the following appropriate bargaining unit:

All full-time and regular part-time Registered Nurses and Licensed Practical Nurses, including Charge Nurses employed by us at our Wayne, New Jersey location, but excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees.

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

WE WILL, at the Union's request, reinstate the Blue Cross/Blue Shield Medallion health insurance coverage for unit employees set forth in the collective-bargaining agreement that expired January 1, 1992, unless we have reached an agreement with the Union that is outstanding and enforceable regarding your health insurance coverage.

WE WILL reimburse the unit employees, with interest, for any expenses they may have incurred as the result of our unlawful change of their health insurance coverage.

LAKEVIEW CONVALESCENT CENTER