

Northampton Nursing Home, Inc. and Service Employees International Union, Local 285, AFL-CIO, CLC. Cases 1-CA-29946 and 1-CA-30940

May 25, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

On August 4, 1994, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

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 briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Northampton Nursing Home, Inc. Northampton, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ Member Cohen finds it unnecessary to decide here whether the Respondent's failure to pay the contractually mandated wage increase and Fund payments automatically precluded subsequent good-faith bargaining to impasse. Rather, he relies on the judge's finding that the parties did not in fact reach impasse. As of June 1, 1993, the parties had not exhausted the possibility of reaching agreement. There was no breakdown of negotiations nor any contemporaneous understanding that further negotiations would be futile. Indeed, the parties agreed to meet on June 2 to continue their discussions.

Thomas J. Morrison, Esq., for the General Counsel.
Richard D. Hayes, Esq. and *Gordon D. Quinn, Esq.* (*Sullivan & Hayes*), of Springfield, Massachusetts, for the Respondent.

David Rome, Esq. (*Angoff, Goldman, Weiger, & Hyatt*), of Boston, Massachusetts, for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. In 1992 Respondent Northampton Nursing Home, Inc. believed that it was in financial trouble. During the term of its collective-bargaining agreement with the Charging Party, Service Employees International Union, Local 285, AFL-CIO, CLC (the Union), it refused to pay a wage increase required by the contract and then refused to continue to pay contributions to the National Pension Fund for Hospital and Health Care Employees (Fund), also required by that agreement. When

the agreement expired, it continued to pay the reduced amount of the wages and continued not to pay the Fund. The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).¹ The Respondent denies that it did.

Jurisdiction is conceded. The Respondent is a corporation with an office and place of business in Northampton, Massachusetts, where it engages in providing residential nursing care to patients. During the calendar year ending December 31, 1993, it derived gross revenues in excess of \$100,000 and purchased and received products, goods, and materials valued in excess of \$5000 from points outside Massachusetts. I conclude, as the Respondent admits, that it is an employer 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. I also conclude, as the Respondent admits, that the Union, with which it has had a collective-bargaining relationship since about 1980,² is a labor organization within the meaning of Section 2(5) of the Act and is the exclusive bargaining representative of the following unit, which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including nurses aides, dietary employees, activities aides, laundry aides, physical therapy aides, recreational aides, teachers, occupational aides, teachers aides, occupational therapy assistants, physical therapy assistants and maintenance employees employed by Northampton Nursing Home, Inc., at its Northampton, Massachusetts, location, excluding all other employees including but not limited to managerial employees, confidential employees, office and clerical employees, registered nurses, licensed practical nurses, physical therapists, head teachers, social workers, guards and supervisors as defined in the Act.

The parties were bound by a collective-bargaining agreement for the period from June 1, 1990, to May 31, 1993, which provided for an across-the-board 7-percent wage increase to all employees covered by the agreement on June 1, 1992. Shortly before increase was due, Doug Lash, the Respondent's president, told Union Representative Thomas Higgins that the Respondent was not going to pay it because the Medicaid rates were not reimbursing the Respondent for its costs. He provided Higgins with statistics and graphs, showing how the current rates were inaccurately utilizing costs from several years before, when the costs were less, and thus insufficient to cover the present costs. He was concerned that, if the Respondent implemented the wage increase, it would no longer be able to operate and would have

¹The relevant docket entries are as follows: The Union filed the unfair labor practice charge in Cases 1-CA-29946 and 1-CA-30940, on November 19, 1992, and September 24, 1993, and complaints issued on December 29, 1992, and October 28, 1993, respectively. The two proceedings were consolidated for hearing by order dated November 29, 1993. The Union filed another charge and a complaint issued in Case 1-CA-31193; but the Union withdrew its charge and I, without objection, dismissed that complaint at the hearing, which was held in Northampton, Massachusetts, on May 12, 1994.

²District 1199 New England represented the Respondent's employees until late 1990, when it merged into the Union.

to close.³ Lash wanted to negotiate a modification of the contract. Higgins was not interested: Lash had the obligation and had made a contractual commitment to pay the increase and he was bound by it. The Respondent did not pay the increase. In July, the Union threatened to conduct informational picketing protesting the Respondent's failure to pay the wage increase, and Lash wrote to Higgins requesting that the dispute be resolved through midterm negotiations. Nothing, however, occurred. The agreement also provided that the Respondent contribute to the Fund. The Respondent stopped doing so in August 1992,⁴ and the Fund's trustees instituted an action under the Employees Retirement Income Security Act.

On February 1, 1993, the Union gave notice of its intention to "reopen negotiations on our existing agreement." After that, the Union served notice that it intended to strike early in March to protest the Respondent's failure to pay the wage increase, which it believed was an unfair labor practice. The Respondent began to take steps to prepare for the strike. It discharged some residents and refused to admit some new ones. It also met with the Union at the end of February and explained the Respondent's financial plight. It wanted to settle the wage issue retroactively and enter into a new contract, eliminating some of the current benefits. On the Union's request, the Respondent made certain of its financial records available for examination by the union accountant (but not the Union). Higgins did not agree that the Respondent's financial condition was as serious as it contended. The Union then proposed to modify the terms of the current agreement to enter into a new contract splitting the 7-percent wage increase over several years.⁵ That was contingent on the Respondent's reinstating seven employees whom it had recently laid off. The Respondent rejected that proposal, contending that it could not grant the increase that the contract provided for and needed to eliminate its obligations to the Fund in a new contract. It also wanted a reduction in sick time, holiday pay, and starting rate. Its attorney, Richard Hayes, advised that it was imperative that both the contributions to the Fund and the 7-percent increase stop at the end of the contract; and that the Respondent considered itself under no further obligation to pay the wage increase or pension plan after May 31. The Respondent also wanted to negotiate additional reductions and concessions. The parties met again on about March 2, and discussed further the Respondent's failure to pay the wage increase. The meetings resulted in no agreement. A week later, on March 10, Hayes served his own 8(d) notice, because he was concerned that the Union's had not called for the termination of the contract. His was aimed at that because, in his mind, once there was a termination, the Respondent could implement its proposal. As he testified:

[W]e were of the impression that we had already implemented . . . the elimination of the pension contribution and the elimination of the seven percent increase, and

³This finding, as well as others, is based on my consideration of the testimony of all the witnesses and my crediting certain ones when their testimony was clearer or the memory of others was hazy.

⁴Lash never told Higgins the Respondent intended to discontinue its contributions to the pension plan.

⁵The Union proposed that the Respondent pay 3-1/2 percent retroactively and two additional 3-percent increases in 1993-1994 and 1994-1995.

we told the Union and the assembled employees that, assuming no agreement otherwise, that would happen on the day that the contract terminated . . . [t]hat there would be no further obligation on the part of the Company to pay the seven percent, or to pay the contributions.

Negotiations commenced on May 14, two earlier sessions (one, perhaps both, in April) having been canceled by the Respondent. The parties agreed on a set of "ground rules," that they would discuss issue by issue, noneconomic issues first, then economic issues afterwards, and that each noneconomic issue would be discussed until the parties agreed to them or they considered that it would not be fruitful to continue discussions. Nonetheless, the Respondent's counsel, Gordon Quinn, stated that, as the Union was aware, the Respondent was in poor financial condition and that it needed in these negotiations to obtain significant cutbacks. It could not afford the Fund anymore; it wanted to redefine full-time employees with the intent of limiting benefits to some present employees; it wanted the employees to contribute to their health insurance. Higgins read a prepared statement requesting the Respondent to implement its 1992 wage increase and opining that the Respondent was poisoning the atmosphere for negotiations by not implementing that increase. No proposals were exchanged. The parties next met on May 18, when Higgins repeated his statement objecting to the Respondent's failure to grant the increase and offered the Union's initial proposal, which contained the following:

The Union reserves the right to add to, delete from and/or modify these proposals. The changes do not include proposals over economic issues as the Union has maintained the position that good faith negotiations over economic issues cannot occur until the Nursing Home ceases its repudiation of the current collective bargaining agreement and implements the June, 1992 scheduled wage increases. The Union fully intends to bargain over economic issues and will present proposals for changes in economic issues as soon as the Nursing Home implements the scheduled wage increases.

The parties met on May 25 and 26 and June 2, and on each of those occasions, Higgins read the following statement at least once:

We call on the Nursing Home to implement the 1992 scheduled wage increases. We believe that good faith bargaining over economic issues cannot take place until the Nursing Home ceases its repudiation of the current contract. We wish to make clear that this is not a refusal to bargain over economic issues. We fully intend to engage in good faith bargaining over economic issues as soon as possible after the Nursing Home implements the 1992 wage increases.

Generally, Higgins' statements prompted discussions about the state of the Respondent's finances. Lash and his attorney would complain that nursing homes generally and the Respondent particularly were not receiving the reimbursements from Massachusetts that they had formerly received. The par-

ties exchanged proposals;⁶ but, whenever the Respondent's proposal crossed the boundary into an economic area, Higgins would merely note that the item was "economic." The Respondent never disagreed with Higgins' right to make that objection and sometimes disagreed with his classification. But the Respondent never contradicted that an agreement had been reached to review only noneconomic issues before taking up ones that had an economic impact. Indeed, there was an agreement that, even when Higgins believed that an item was an economic item, but the Respondent thought it was not, the parties would discuss that proposal.

The Respondent amended its proposals on May 25. Higgins reviewed the new ones and, once again, objected that certain items were economic. The parties then discussed whether the proposals were economic or not. They came to an agreement on a few noneconomic items, but many of the others were still unresolved by the end of the day. The negotiations continued on May 26, again on noneconomic proposals. The only discussion of economics resulted from the Union's request that there be an extension of the contract. The Respondent asked whether, as part of the extension, the Union would agree to waive the 7-percent wage increase and the pension contributions for the duration of the extension. Higgins said that he would consider the matter (he responded later that he would not agree). By May 26, the Respondent wanted to discuss economic issues, but Higgins maintained that there had been an agreement to continue discussion of noneconomic issues first. He also repeated his statement that the Union would not discuss economics until the Respondent implemented the wage increase. By the time the negotiations ended in May, the parties had met for less than 12 hours. They had not discussed economic issues and the Respondent had not mentioned that its offer was final or that the parties were at an impasse or that the Respondent was going to implement its proposal.

By June 1, 1993, when the agreement expired, the Respondent did not recommence its contributions to the Fund. The parties met again on June 2 (I credit Higgins' recollection that the session had been set up at the previous negotiation of May 26) and on June 15 or 17 and continued to discuss the noneconomic proposals. By the next and last session, on June 30, Higgins' strategy had changed, caused by the Board's Regional Office. He had filed an unfair labor practice charge against the Respondent for failing to bargain in good faith, the theory being that the Respondent could not bargain in good faith as long as it had not granted the wage increase. The Regional Office dismissed that charge; and Higgins announced that he intended to appeal the dismissal but, in the meantime, he would bargain about economic items as soon as the parties had exhausted their discussion of the noneconomic items. By the end of June, the Respondent had withdrawn most of its noneconomic proposals so that the Union was close to the point when it would have been willing to discuss economic items in any event. As a result, Higgins asked the Respondent for certified financial statements showing its condition from 1989 to 1992. The Respondent refused to submit that information, and the Union refused to meet with it after June 30, insisting that the re-

quested financial information was necessary for it to formulate its response to the Respondent's economic proposals. That refusal resulted in the unfair labor practice charge and complaint that I dismissed at the beginning of the hearing, because the Respondent had finally, in February 1994, submitted the information.

The Respondent admits that there is no authority, either of the courts or the Board, that permits it to fail to pay a wage increase, simply because of its claimed inability to pay. It cites only one dissenting opinion of one former member of the Board, a position that has never been adopted by the Board, and indeed, even in that decision, was rejected by the Board. *Kelly & Stewart Environmental Service*, 301 NLRB 91 (1991). See also *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063 (1973); *Fairfield Nursing Home*, 228 NLRB 1208 (1977); *Sun Harbor Manor*, 228 NLRB 945 (1977). Furthermore, there is nothing in the collective-bargaining agreement that provides that increases were to be conditioned on the receipt of sufficient Medicaid reimbursements.⁷ Accordingly, I conclude that the Respondent has, as it admits, unilaterally changed a term and condition of employment that it was required to grant under its subsisting collective-bargaining agreement. That constitutes a violation of Section 8(a)(5) and (1) of the Act. *NLRB v. Katz*, 369 U.S. 736, 743 (1962).

The theory underlying the other alleged violation, the failure to contribute to the Fund, is that, at the expiration of a collective-bargaining agreement, while bargaining was still continuing and the parties had not reached an impasse, the Respondent was not permitted to change the terms of the agreement unilaterally, even though the Respondent was already in violation of that agreement by failing to contribute for almost a year to the Fund. The Respondent contends that the parties were at impasse. In *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. sub nom. *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968), the Board set forth its standards for determining the existence of an impasse, as follows:

Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

The parties had not even discussed contributions to the Fund. The Respondent contends that it had at the negotiations in February 1993. However, those negotiations resulted from the Union's threat to engage in an unfair labor practice strike and the Respondent's attempt to settle only the issues that the Union was complaining about. The fact that the Union rejected the Respondent's proposal to reduce its wages in February and March did not create an impasse in June. It was after those discussions had concluded that the Respondent served its own 8(d) notice, and negotiations for a new contract started in May. At those negotiations, the Re-

⁶The Respondent's proposal emphasized that it was its "initial list" of demands, to be supplemented with "a remaining, initial list" at the next bargaining session.

⁷The Respondent's motion to rescind my rulings and reopen the record to permit testimony relating to its defense of the "impracticability" of paying the wage increase is denied.

spondent agreed that it would not discuss economic demands until all noneconomic proposals had either been agreed to or the parties had thoroughly discussed them and no agreement could be reached. Before June 1, the parties had not finished with the discussion of the noneconomic items. Thus, without even discussing any economic issue, the parties were not at impasse. Furthermore, there was no breakdown of negotiations nor was there any contemporaneous understanding that further negotiations would be futile. The Respondent never said that it understood that to be the state of negotiations. Hayes made no claim that the parties were deadlocked. Indeed, the parties agreed to meet on June 2 to continue their discussions and met even later.

An impasse is not created merely by a party's threat months before (such as Hayes' in February) to implement certain changes at the contract's expiration or merely because the parties in negotiations have failed to agree on a contract. An impasse may be arrived at only when the parties have reached their disagreement after bargaining in good faith. *Associated Machine*, 271 NLRB 367 (1984). Even if a party has unilaterally changed a term and condition of employment and has not rescinded it, "there is no absolute rule precluding a finding that the parties have subsequently bargained in good faith over the change." *Storer Communications*, 297 NLRB 296, 297 (1989), citing *NLRB v. Cauthorne*, 691 F.2d 1023 (D.C. Cir. 1982), on which the Respondent relies. However, an employer's implementation of the change, such as the Respondent's failure to pay the Fund and the wage increase, precludes a finding that it bargained in good faith to impasse. *Columbian Chemicals Co.*, 307 NLRB 592 fn. 1 (1992), enf. mem. 993 F.2d 1536 (4th Cir. 1993).

On June 30, Higgins requested certified statements of the Respondent's financial condition. Those, he said, he needed in order to ascertain the truth of the Respondent's contention that it could not afford to continue to pay the wages agreed on in the agreement and the contributions to the Fund and needed additional cutbacks. Although the Union had the opportunity to examine the Respondent's books in February, that permission was granted only in connection with the matters at issue then, whether to grant a midterm amendment to the agreement and whether the Union should continue its plans to strike. The Respondent rejected the Union's request for certain documents, such as the certified statements. Now, the Union was faced with a demand for a new agreement, and the Respondent was asking for much more than it wanted earlier in the year. The Union was requesting relevant material and had a right to that material for it to make an informed judgment about what, if any, concessions it had to grant in order to permit the Respondent to be viable. The Respondent was guilty of bad faith in its refusal to supply that material. What the Respondent argues for is the very antithesis to bargaining in good faith, that is, that an impasse should be found even though the negotiations had not proceeded far enough for the Union to even disagree, because it had never discussed the Respondent's full proposal and it did not have the information to make an informed judgment about how to respond. *Dependable Maintenance Co.*, 274 NLRB 216, 219 (1985). There was no impasse, and the Re-

⁸In so concluding, I have considered all the rest of the Respondent's contentions and have rejected them. Specifically, I do not find that the Union purposely stalled negotiations.

spondent violated Section 8(a)(5) of the Act by refusing to contribute to the Fund.⁸

The unfair labor practices found here, occurring in connection with Respondent's business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully and unilaterally changed the terms and conditions of employment of its employees, I shall order the Respondent to restore the wage increase that it was required to pay commencing on June 1, 1992, and the contributions due to the Fund from June 1, 1993, and to continue to pay those until the parties shall reach a new agreement or shall bargain in good faith to an impasse. Backpay shall be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Interest on contributions due to the Fund shall be computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Northampton Nursing Home, Inc., Northampton, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Service Employees International Union, Local 285, AFL-CIO, CLC as the exclusive bargaining representative of its employees in the following appropriate collective-bargaining unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time employees, including nurses aides, dietary employees, activities aides, laundry aides, physical therapy aides, recreational aides, teachers, occupational aides, teachers aides, occupational therapy assistants, physical therapy assistants and maintenance employees employed by Northampton Nursing Home, Inc., at its Northampton, Massachusetts, location, excluding all other employees including but not limited to managerial employees, confidential employees, office and clerical employees, registered nurses, licensed practical nurses, physical therapists, head teachers, social workers, guards and supervisors as defined in the Act.

⁹If 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.

(b) Refusing to comply with the terms of a subsisting collective-bargaining agreement with the Union by failing to pay general wage increases on a timely basis, or by refusing to pay other negotiated terms and conditions of employment to its employees in the above appropriate bargaining unit during the effective term of the agreement covering the employees, without first reaching agreement with the Union concerning such refusals.

(c) Unilaterally changing the terms and conditions of employment of its employees without having first bargained with the Union in good faith to impasse with respect to the payment of contributions to the National Pension Fund for Hospital and Health Care Employees (the Fund) or any other term or condition of employment due under the terms and provisions of the collective-bargaining agreement with the Union.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

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

(a) Immediately put into effect the increases in wage rates called for by the collective-bargaining agreement with the Union and continue such increases, until it negotiates with the Union in good faith to a new agreement or reaches an impasse after bargaining in good faith, and make whole its unit employees for any loss of pay they may have suffered due to its unilateral change, in the manner set forth in the remedy section of this decision.

(b) Pay all contributions to the Fund in accordance with the terms of the collective-bargaining agreement with the Union, which contributions have not been paid due to its unilateral discontinuance of such contributions, and continue such contributions until it negotiates with the Union in good faith to a new agreement or reaches an impasse after bargaining in good faith.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Northampton, Massachusetts, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 1, 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.

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

¹⁰If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

WE WILL NOT fail and refuse to bargain in good faith with Service Employees International Union, Local 285, AFL-CIO, CLC as the exclusive bargaining representative of our employees in the following appropriate collective-bargaining unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time employees, including nurses aides, dietary employees, activities aides, laundry aides, physical therapy aides, recreational aides, teachers, occupational aides, teachers aides, occupational therapy assistants, physical therapy assistants and maintenance employees employed by Northampton Nursing Home, Inc., at its Northampton, Massachusetts, location, excluding all other employees including but not limited to managerial employees, confidential employees, office and clerical employees, registered nurses, licensed practical nurses, physical therapists, head teachers, social workers, guards and supervisors as defined in the Act.

WE WILL NOT refuse to comply with the terms of a subsisting collective-bargaining agreement with the Union by failing to pay general wage increases on a timely basis, or by refusing to pay other negotiated terms and conditions of employment to our employees in the above appropriate bargaining unit during the effective term of the agreement covering the employees, without first reaching agreement with the Union concerning such refusals.

WE WILL NOT unilaterally change the terms and conditions of employment of our employees without having first bargained with the Union in good faith to impasse with respect to the payment of contributions to the National Pension Fund for Hospital and Health Care Employees (the Fund) or any other term or condition of employment due under the terms and provisions of the collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL immediately put into effect the increases in wage rates called for by the collective-bargaining agreement with the Union and continue such increases, until we negotiate with the Union in good faith to a new agreement or reach an impasse after bargaining in good faith, and make whole our unit employees for any loss of pay they may have suffered due to our unilateral change, with interest.

WE WILL pay all contributions to the Fund in accordance with the terms of the collective-bargaining agreement with the Union from June 1, 1993, which contributions have not been paid due to our unilateral discontinuance of such contributions, and continue such contributions until we negotiate

with the Union in good faith to a new agreement or reach an impasse after bargaining in good faith.

NORTHAMPTON NURSING HOME, INC.