United Hospital Medical Center *and* New York State Nurses Association. Case 2–CA–27099

July 26, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

On April 12, 1995, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The General Counsel filed an answering 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 briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Hospital Medical Center, Port Chester, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Assuming arguendo that the Respondent's announcement of the changes in December 1993, and their subsequent implementation on January 1, 1994, were lawful, we would still find that the Respondent was obligated to bargain, during successor contract negotiations, about changes concerning the unit employees' health plan.

Christene Mann and *Donald Zavelo, Esqs.*, for the General Counsel.

Richard Silber, Esq. (Harder, Silber & Bergan), of Albany, New York, for New York State Nurses Association.

Gerard Fishberg, Esq. (Cullen & Dykman), of Garden City, New York, and *Eugene D'Ablemont, Esq. (Kelley, Drye & Warren)*, of New York, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based upon a charge, a first amended charge, and a second amended charge filed on January 10 and 12 and March 15, 1994, respectively, by New York State Nurses Association (Union), a complaint was issued against United Hospital Medical Center (Respondent) on May 27, 1994.

The complaint alleges that following the expiration of the parties' collective-bargaining agreement, and during negotiations for a successor agreement, Respondent notified its unit employees that it had decided to change certain aspects of the health benefit plan enjoyed by those employees. The complaint alleges that Respondent unlawfully made this notification without prior notice to the Union and without giving it an opportunity to bargain with Respondent concerning its decision to make the change, and the effects of such decision.

The complaint further alleges that Respondent refused the Union's request, made on January 3, 1994, that it bargain about its decision to change the unit employees' health benefit plan.

Respondent's answer denied the material allegations of the complaint, and on February 6, 1995, a hearing was held before me in New York City.

Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by General Counsel and Respondent, I make the following[1]

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation, having an office and place of business at 406 Boston Post Road, Port Chester, New York, has been engaged in the operation of a hospital providing inpatient and outpatient medical care. Annually, Respondent derives gross revenues in excess of $250,000 from its operations, and purchases and receives at its facility goods valued in excess of $50,000 directly from points located outside New York State.

Respondent admits and I find that it 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.

Respondent also admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

Respondent operates a 300-bed hospital, employing 1000 employees, 300 of whom are registered nurses represented by the Union. Of the 1000 employees, only the registered nurses are represented by a union.

In 1977, the Board certified the Union as the exclusive collective-bargaining representative for a unit of registered nurses. Thereafter, Respondent and the Union have been parties to successive collective-bargaining agreements. The Union is the exclusive collective-bargaining representative in the following appropriate bargaining unit:

> All regular full-time, regular part-time and per diem registered nurses employed by the Employer, including the titles of Staff Nurse, Utilization Review Nurse,

[1] Certain errors in the transcript have been noted and corrected.

> Home Care Nurse, Discharge Planning Nurse, Client Services Nurse and Graduate Nurse authorized by State permit to practice as a registered nurse and employed as such, *but excluding* all other employees, including but not limited to, all confidential employees, Licensed Practical Nurses, Nursing Technicians, Nurses Aides and Orderlies, nursing clericals, guards, managerial employees, and all supervisors as defined in the Act, including but not limited to all of the following supervisory and managerial employees: Vice President of Nursing, Acting Director of Nursing, Assistant Director of Nursing, Associate Director of Nursing, Director of Medical/Surgical Nursing Services, Director of Specialty Nursing Services & Nursing Education, Managers of Nursing Services, Managers of Nursing Service Education, Assistants to the Manager of Nursing Services, Assistants to the Manager of Nursing Service Education, Nurse Recruiter, Nursing Supervisors, Home Care Administrator, Nursing Care Coordinators, Assistant Nursing Care Coordinators, Clinical Specialists, Clinicians, and Nurse Counselors. [Emphasis in original.]

The last contract was effective from 1991 to 1993, and expired on March 31, 1993. It has been the parties' practice to (a) begin bargaining for a successor agreement following the expiration of the current contract and (b) maintain in force and effect all terms of the expired contract until a new agreement is reached or until impasse has been declared.

Bargaining for the renewal agreement began in April 1993, following the March 31 expiration of the old contract. Agreement on the terms of a new contract was reached in February 1994.

2. The alleged change

In December 1993, during negotiations for the renewal agreement, Patricia Lecce, a registered nurse in the employ of Respondent, and the grievance chairperson of the Union, received a ''Summary of Health Benefits for 1994'' issued by Respondent.[2] Changes in the health plan included a reduction in the number of options of health plans offered, from three offered in 1993, to one, and an increase in employee contributions.

Ilene Sussman, a union representative, received notification of the change from Lecce. Prior to receiving such notification, she received no notification of the proposed changes from Respondent. Andrea Thomsen, Respondent's human resources official, testified that the final decision to make the change was made on about December 1, 1993, following 2 to 3 months of deliberations which did not involve the Union. Prior to December 2, neither employees nor the Union were made aware that there would be any changes in their health care benefits for 1994.

The 1993 health benefits plan provided for three options. They provided for the same coverage of medical services and supplies, but differed in their deductibles, out-of-pocket limits and payment structure. There was also a dental plan with two options. Total numbers of Respondent's employees in the three plans were: 10 percent in Option A, 85 percent in Option B, and only five employees, two of whom were unit members, in Option C.

The plan which was announced in December 1993, to be effective January 1, 1994, consisted of one plan, which was similar to the 1993 Option B plan. The 1994 plan also included a dental plan.

Testimony differed regarding the increase in cost of the 1994 plan. Lecce testified that her rate of contribution to the plan was increased $20 per pay period. Andrea Thomsen, employed in Respondent's human resources department, stated that the amount of increase was only $1 to $3, depending upon the type of family coverage chosen. Lecce explained the large increase upon the fact that in 1993 she opted to have no dental coverage, and thus did not pay for that benefit. However, in 1994, she was required to maintain dental coverage in order to receive medical coverage. However, Barry Manus, Respondent's vice president of human resources, testified that employees retained the right in 1994 to elect not to maintain dental coverage, but that fact was not publicized.

Union Representative Sussman stated that she received notification of the change following the December 2 bargaining session, and the matter was first raised at the 24th session, which took place on January 3, 1994.

Respondent argues that since the memo outlining the change was distributed on December 2, the date of the 23d session, the Union was obligated to raise any issue concerning the change on that date. I reject that argument. As conceded by Thomsen, she did not notify the Union of the change prior to, or even on December 2.

3. Bargaining concerning the change

On January 1, 1994, the 1994 health benefits package was implemented. The next bargaining session was on January 3.

Lee Levin, a union representative, testified that at the January 3 session, she expressed her displeasure with the change in the health benefit package, and told Respondent's representatives that the Union was upset that it had not been consulted prior to its implementation. Levin informed management that the Union wanted to discuss the changes, which she said should have been discussed prior to their being put into effect.

Sussman testified that the union representatives expressed a desire to negotiate the changes in health benefits.

Levin and Sussman stated that Respondent's chief negotiator Manus refused to discuss the matter, stating that he did not have to do so because of the Aegus arbitration award. The union agents replied that the changes were a mandatory subject of bargaining and must be discussed. They then proposed that there be no changes in health care benefits for the nurses for the life of the agreement. Manus then called for a caucus, and when he returned stated that Respondent would not discuss the issue further. The union agents then said that they would file a charge with the Board.

Manus testified that Levin began the session by saying that Respondent had changed the terms and conditions of employment of the nurses. Manus replied that there were no changes, and that Respondent was complying with its contract. Manus conceded that Levin wanted to discuss the new benefits that had been announced. Manus responded that Respondent was providing the same benefits to the nurses that it provides to its other employees, pursuant to the expired

[2] Respondent claims that the document was distributed to its employees on December 2, pursuant to a memo from its manager of compensation.

contract, and the arbitration award. He stated that Levin said that the Union wanted the health benefits to remain as they were in 1993 for the nurses.

Respondent's notes of the bargaining session state: ''Ms. Levin . . . was insistent that health care benefits are negotiable items and UHMC has no right to change them unless NYSNA is notified and the appropriate steps are taken. There was mention of filing—an unfair labor practice. We want you to offer the nurses the same insurance they had before.''

Manus testified that he said that he did not want to discuss the issue of the Union filing a charge. Manus denied saying that he did not want to discuss the health benefits issue. Respondent's notes of the bargaining session are instructive. The notes state that, following Respondent's caucus:

> MR. MANUS—I would like to comment on your remarks about changing health care benefits. First of all we have not changed ''terms and conditions of employment.'' This is not an unfair labor practice. There is no need to discuss this further. The terms and conditions of employment are not changing. We are continuing to offer the same benefits as the rest of the employees.
>
> MS. LEVIN—We feel that health care benefits are a mandatory subject of the bargaining unit. We will consider filing an unfair labor practice.
>
> MR. MANUS—As we have mentioned previously, if I don't mention it—then the proposal remains the same. This will be our last and final offer.
>
> MS. LEVIN—We are not prepared to listen to a last and final offer. We have a lot of room to move if you make an honest effort to negotiate a fair contract.

At the end of that session, Respondent made additional proposals, and announced that an impasse had been reached. The Union presented the proposals to its members who rejected them and voted to strike. Respondent announced that it would implement its last offer. At the next bargaining session, held on January 31, the parties reached agreement on the terms of a successor collective-bargaining agreement.

4. Bargaining history

In July 1988, Respondent changed its health care coverage for all its employees from Empire Blue Cross, which was a fully insured program, to Aetna, a self-insured plan. The cost to employees did not rise as a result of this change. No request to bargain was made by the Union concerning this change.

In April 1989, as part of its demands for a new agreement, the Union demanded that section 9.01 be changed, and that the ''present practices and rates for employees and retirees [be] locked into the contract.'' Respondent rejected this demand, but ultimately, a side-letter was executed, pursuant to which Respondent stated its intention to use its ''good faith best efforts'' not to increase employee contributions during the life of the contract.

In December 1990, Respondent changed the administration of its health insurance claims from Aetna to Health Plan Administrators. Insurance coverage did not change, only the method of determining and paying claims. There was no notice to the Union concerning the change, and no grievance was filed concerning the change. However, Thomsen stated that discussions may have been had with the Union concerning the effects of the change.

During the bargaining over the 1991–1993 contract, according to an arbitration award, the Union initially sought to improve benefit coverage, then offered to withdraw that proposal if Respondent agreed not to increase employee contribution levels. That proposal was rejected.

In November 1992, the Union filed a grievance, as set forth infra, which resulted in an arbitration award.

During the extensive bargaining for the 1993–1995 contract, the Union did not make any demands concerning, and there was no discussion of section 9.01 or health care during the course of the 22 bargaining sessions, up to the time that the change in medical plans was announced on December 2, 1993.

B. *General Counsel's Arguments*

Based upon the above facts, General Counsel argues that it has established a violation of the Act. Specifically, the health benefit plan and changes thereof are mandatory subjects of bargaining; that Respondent unilaterally changed the health benefit plan of its unit employees without prior notice to the Union and without giving it an opportunity to bargain with it regarding the change and the effects of the change; and that Respondent refused to bargain about the change in health benefit plans.

C. *Respondent's Arguments*

In its brief, Respondent concedes that it announced a unilateral change in its health benefit plan for all employees, and argues that it was justified in doing so for various reasons. Respondent asserts that (a) section 9.01 of the parties' collective-bargaining agreement, and an arbitration award gave it the right to make the change as long as the change applied to all its employees, not only those in the unit; (b) by its past conduct, the Union waived any right to bargain about the change; (c) the Union never made a demand that Respondent discuss the proposed change and (d) even assuming a unilateral change was made, it was de minimus, not warranting a remedial order.

I reject all these arguments.

Analysis and Discussion

Health benefit plans are a mandatory subject of collective bargaining. They may not be altered or eliminated without bargaining to mutual agreement or to a good-faith impasse on such action. *NLRB v. Katz*, 369 U.S. 736 (1962); *Coastal Derby Refining Co*., 312 NLRB 495, 497 (1993).

The evidence is clear that the Union was not notified of the change in health benefit options from three to one, or the change in contribution rates for the unit employees. Rather, the decision to make these changes had been made prior to the Union's learning thereof. In fact, the Union was never formally notified of the changes. It became aware of them only when employees learned of the changes and notified the Union.

In addition, I credit the testimony of Levin and Sussman, that when the Union requested bargaining concerning the changes at the January 3 session, Manus refused to discuss the matter further. I reject his testimony that he only refused to discuss the Union's intent to file a charge. Rather, it is

clear from Respondent's notes, that Manus did not believe that any changes were made, and therefore this issue did not require discussion. I, accordingly, find and conclude that Respondent refused to bargain with the Union concerning the changes in the health plan. *Coastal Derby*, supra; *Josten Concrete Products Co*., 303 NLRB 74, 76 (1991).

Respondent further argues that the Union waived its right to object to the decision to change medical plans, and its right to bargain about the change. National labor policy disfavors waivers of statutory rights by unions and . . . a union's intention to waive a right must be clear before a claim of waiver can succeed. *Chesapeake & Potomac Telephone Co. v. NLRB*, 687 F.2d 633, 636 (2d Cir. 1982).

A clear and unmistakable waiver may be found in the express language of the collective-bargaining agreement; or it may even be implied from the structure of the agreement and the parties' course of conduct. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). However, no waiver will be implied ''unless it is clear that the parties were aware of their rights and made the conscious choice, for whatever reason, to waive them. We will not thrust a waiver upon an unwitting party.'' *NLRB v. New York Telephone*, 930 F.2d 1009, 1011 (2d Cir. 1991).

Respondent contends that the Union waived its right to object to the changes, by the express language of section 9.01 of the collective-bargaining agreement, and the facts surrounding an arbitration award.

Section 9.01 of the 1991–1993 collective-bargaining agreement states:[3]

> Health Benefits. Eligible unit employees shall receive the same medical and life insurance benefits available to employees in comparable classifications within the Hospital work force.

Respondent argues that it was permitted to unilaterally change the unit employees' health benefits because it followed the requirements of section 9.01 in continuing to offer the unit employees the same benefits as the rest of the workers. It contends that it could unilaterally make such changes as long as the same changes in the same plan are made at the same time to all of its employees in comparable classifications as the nurses.

I agree with General Counsel's argument that that clause does not constitute a waiver, and does not relieve Respondent of its obligation to bargain over a mandatory subject of bargaining during negotiations for a successor contract.

In *Rockford Manor Intermediate Care Facility*, 279 NLRB 1170 (1986), the Board rejected the employer's argument that a contract clause, similar to the one in the instant case, permitted it to supplant an existing health plan with another one. The contract clause stated: ''Full time employees will participate in the Company's health and life insurance programs on the same basis as other employee members of the group.'' The Board, affirming the decision of the administrative law judge, stated that the contract clause ''though implying assent to the principle of a single unified, companywide program, would not convey an intent on the part of the Union to waive its right to participate in deliberations about which option was the more appropriate for all.'' Supra at 1173.[4]

In January 1993, the Union filed a demand for arbitration, identifying the dispute as a violation of the collective-bargaining agreement by Respondent's unilateral change of health benefits and co-pay, and a violation of the agreement, including section 9.01, and the letter of understanding. The relief sought included a return to the pre-1993 health benefits and contribution rate, and a refund and make-whole remedy.

At the arbitration hearing which was held on November 12, 1993, the Union withdrew that part of its grievance which alleged a violation of section 9.01. The sole issue, therefore, as stipulated at the arbitration hearing, was whether Respondent violated the side-letter of September 28, 1989, to its collective-bargaining agreement by increasing the level of employee contributions for health benefits. The side-letter expressed the Respondent's ''stated intention to exercise its good-faith best efforts . . . [to] strive not to increase employee contributions for health insurance coverage during the life of the current labor agreement.''

The arbitrator denied the grievance, finding, inter alia, that the side letter was not a guarantee by Respondent that employee contributions would not rise, and that the side-letter did not prevent Respondent from raising the level of employee contributions for health benefits.

Respondent argues here that the arbitration award established its right to unilaterally increase its employees' contributions for health benefits. However, the arbitration award did not relate to Respondent's ability to unilaterally change its health plan in 1993.

Respondent further argues that the Union, by withdrawing that part of its grievance relating to a violation of section 9.01, admitted that that clause permitted Respondent to make unilateral changes in its health plan as long as the same changes affected all of Respondent's employees. First, the original grievance as set forth in the demand for arbitration, alleged Respondent's unilateral change of health benefits as a violation of the contract. This related to Respondent's conduct in October 1992 whereby it changed its health benefit plan from one plan to a choice of three plans. The Union filed a grievance in November 1992, which led to the January 1993 demand for arbitration. The Union's withdrawal of that part of its grievance which alleged a contract violation in Respondent's change of health benefits does not establish that Respondent was thereby permitted to unilaterally change its health benefit plans.

Respondent next asserts that the parties' bargaining history establishes a waiver through the Union's past conduct in not objecting to other, more drastic changes in the medical plan, and its failed attempt in the 1989 and 1991 negotiations to change section 9.01 to lock in benefits and rates. ''Bargaining history and past practices—if taken alone—may establish waiver of a mandatory bargaining subject when the matter was thoroughly aired in past negotiations and the union 'consciously yielded' its rights in the matter.'' *NLRB v. New York Telephone*, supra at 1013.

[3] Prior agreements have contained this identical language.

[4] The Board dismissed the complaint because a highly detailed zipper clause and management-rights clause, not present here, permitted a finding that the union waived its right to bargain concerning this subject.

The bargaining history set forth above fails to establish that the Union ''consciously yielded'' its right to object to unilateral changes in the medical plan. Thus, in the 1989 bargaining, the Union unsuccessfully demanded that section 9.01 be changed to lock into the contract present practices and rates. In the 1991 negotiations, the Union demanded that medical benefits be improved, but then withdrew that demand in favor of one that Respondent not increase employee contribution levels for medical benefits. In 1992, the Union filed a grievance pursuant to section 9.01, concerning the change to 3 plans from 1, and increased employee contributions. That part of the grievance relating to a unilateral change in health benefits was withdrawn, but the grievance concerning the increase of employee contributions was ultimately decided by the arbitrator.

Thus, the parties' bargaining history does not support a finding that the Union acquiesced in each change of medical plan by Respondent. Rather, the evidence establishes that the Union made proposals concerning section 9.01, and filed a grievance concerning a change. Even if the Union's past actions may be perceived as consent, ''a union's acquiescence in previous unilateral conduct does not necessarily operate in futuro as a waiver of its statutory rights under Section 8(a)(5). *E. R. Steubner, Inc*., 313 NLRB 459 (1993); *Owens-Brockway Plastic Products*, 311 NLRB 519, 526 (1993).

I accordingly find that the bargaining history of the parties does not support a finding that the Union has waived its statutory right to object to the change in medical plans.

Respondent also asserts that the Union made no demand to bargain about the change in health plans. First, even assuming that the Union made no demand, the evidence is clear that Respondent did not provide the Union with notice of the change, and that the change had been finally decided upon by Respondent on about December 1, following months of deliberations not involving the Union. ''In the absence of clear notice of the intended change, there is no basis on which to find that the Union waived its right to bargain.'' *Mercy Hospital of Buffalo*, 311 NLRB 869, 873 (1993). ''Since the Respondent did not provide the Union with notice of the changes and an opportunity to bargain prior to implementation, the Respondent cannot now rely on the Union's purported failure to request bargaining.'' *Walker Construction Co*., 297 NLRB 746 fn. 1 (1990). Where a decision has already been made, and changes presented to a union as a fait accompli, any request for bargaining in these circumstances would have been futile. *Keystone Consolidated Industries*, 309 NLRB 294, 297 (1992).

In any event, the record is clear that, at the first bargaining session following the Union's becoming aware of the change, Union Agent Levin demanded that ''we want you to offer the nurses the same insurance they had before.'' This demand was rebuffed by Respondent.

Respondent finally argues that the changes were too de minimus to warrant any remedy. It notes that the change from a three option choice in 1993 to a single option plan were minor, resulting in no changes in benefits or co-pay. However, the change in plan did cause a change in the amount of deductibles and premium costs to the employees.

According to Respondent, specifically, for the 85 percent of employees enrolled in the most popular option in 1993, the change resulted in no change in deductibles, but an increase in employee contributions of about $1 to $3 every 2-week period; for less than 10 percent of Respondent's employees, the change resulted in a reduction of employee contributions and an increase in deductibles; for five employees, two of whom were unit employees, the change caused a substantial reduction in deductibles, and a substantial increase in employee contributions.

Based upon the above, I cannot find that the changes in the plan, which affected the 300 unit employees, were de minimus. Changes affecting deductibles and contribution rates are substantial, important matters, and are of great concern to employees.

I accordingly find and conclude that Respondent violated Section 8(a)(5) of the Act by failing and refusing to notify the Union of changes in health benefits, and failing and refusing to bargain with the Union concerning changes in its unit employees' health benefit plan.

Conclusions of Law

1. The Respondent, United Hospital Medical Center, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. New York State Nurses Association is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All regular full-time, regular part-time and per diem registered nurses employed by the Employer, including the titles of Staff Nurse, Utilization Review Nurse, Home Care Nurse, Discharge Planning Nurse, Client Services Nurse and Graduate Nurse authorized by State permit to practice as a registered nurse and employed as such, *but excluding* all other employees, including but not limited to, all confidential employees, Licensed Practical Nurses, Nursing Technicians, Nurses Aides and Orderlies, nursing clericals, guards, managerial employees, and all supervisors as defined in the Act, including but not limited to all of the following supervisory and managerial employees: Vice President of Nursing, Acting Director of Nursing, Assistant Director of Nursing, Associate Director of Nursing, Director of Medical/Surgical Nursing Services, Director of Specialty Nursing Services & Nursing Education, Managers of Nursing Services, Managers of Nursing Service Education, Assistants to the Manager of Nursing Services, Assistants to the Manager of Nursing Service Education, Nurse Recruiter, Nursing Supervisors, Home Care Administrator, Nursing Care Coordinators, Assistant Nursing Care Coordinators, Clinical Specialists, Clinicians, and Nurse Counselors.

4. At all material times, based on Section 9(a) of the Act, the Union is now and has been the exclusive collective-bargaining representative of the employees set forth in the appropriate collective-bargaining unit, above.

5. Respondent violated Section 8(a)(5) of the Act by failing and refusing to notify the Union of changes in health benefits, and failing and refusing to bargain with the Union concerning changes in its unit employees' health benefit plan.

6. The unfair labor practices found above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall recommend that Respondent be ordered to bargain with the Union before making unilateral changes. The complaint does not allege, and counsel for the General Counsel asserted at the hearing and in the brief that the General Counsel is not seeking, a remedy concerning a unilateral change in the medical benefits, since the parties reached agreement on the terms of a new contract shortly after the Respondent's refusal to bargain with the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, United Hospital Medical Center, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with New York State Nurses Association as the exclusive collective-bargaining representative of the employees in the following appropriate collective-bargaining unit:

> All regular full-time, regular part-time and per diem registered nurses employed by the Employer, including the titles of Staff Nurse, Utilization Review Nurse, Home Care Nurse, Discharge Planning Nurse, Client Services Nurse and Graduate Nurse authorized by State permit to practice as a registered nurse and employed as such, *but excluding* all other employees, including but not limited to, all confidential employees, Licensed Practical Nurses, Nursing Technicians, Nurses Aides and Orderlies, nursing clericals, guards, managerial employees, and all supervisors as defined in the Act, including but not limited to all of the following supervisory and managerial employees: Vice President of Nursing, Acting Director of Nursing, Assistant Director of Nursing, Associate Director of Nursing, Director of Medical/Surgical Nursing Services, Director of Specialty Nursing Services & Nursing Education, Managers of Nursing Services, Managers of Nursing Service Education, Assistants to the Manager of Nursing Services, Assistants to the Manager of Nursing Service Education, Nurse Recruiter, Nursing Supervisors, Home Care Administrator, Nursing Care Coordinators, Assistant Nursing Care Coordinators, Clinical Specialists, Clinicians, and Nurse Counselors.

(b) Failing and refusing to notify the Union of changes in health benefits, and failing and refusing to bargain with the Union concerning changes in its unit employees' health benefit plan.

(c) In any like or related manner 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, bargain with the Union as the exclusive representative of the employees in the appropriate unit set forth above concerning changes in its unit employees' health benefit plan.

(b) Post at its Port Chester, New York facility, copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 2, 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.

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

[5] 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.

[6] 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.''

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.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with New York State Nurses Association as the exclusive collective-bargaining representative of the employees described below:

> All regular full-time, regular part-time and per diem registered nurses employed by the Employer, including the titles of Staff Nurse, Utilization Review Nurse, Home Care Nurse, Discharge Planning Nurse, Client Services Nurse and Graduate Nurse authorized by State permit to practice as a registered nurse and employed as such, *but excluding* all other employees, including but not limited to, all confidential employees, Licensed

Practical Nurses, Nursing Technicians, Nurses Aides and Orderlies, nursing clericals, guards, managerial employees, and all supervisors as defined in the Act, including but not limited to all of the following supervisory and managerial employees: Vice President of Nursing, Acting Director of Nursing, Assistant Director of Nursing, Associate Director of Nursing, Director of Medical/Surgical Nursing Services, Director of Specialty Nursing Services & Nursing Education, Managers of Nursing Services, Managers of Nursing Service Education, Assistants to the Manager of Nursing Services, Assistants to the Manager of Nursing Service Education, Nurse Recruiter, Nursing Supervisors, Home Care Administrator, Nursing Care Coordinators, Assistant Nursing Care Coordinators, Clinical Specialists, Clinicians, and Nurse Counselors.

WE WILL NOT fail or refuse to notify the Union of changes in health benefits, or fail and refuse to bargain with the Union concerning changes in our unit employees' health benefit plan.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL on request, bargain with the Union as the exclusive representative of our employees in the appropriate unit set forth above concerning changes in our unit employees' health benefit plan.

UNITED HOSPITAL MEDICAL CENTER