

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

ASHFORD PRESBYTERIAN COMMUNITY HOSPITAL

and

Case 12-CA-165682

FEDERACION PUERTORRIQUENA DE TRABAJADORES (FPT)

Manijee Ashrafi-Negroni and Isis Ramos-Melendez, Esqs.,
for the General Counsel.

Angel Munoz Noya and Amanda Collazo Maguire, Esqs.,
for the Respondent.

Jose Aneses Pena, Esq.,
for the Charging Party.

DECISION

GEOFFREY CARTER, Administrative Law Judge. The dispute in this case arose when Ashford Presbyterian Community Hospital (Respondent), citing financial losses sustained in the preceding fiscal year, unilaterally decided not to pay a 2015 Christmas bonus to employees in three bargaining units represented by the Federacion Puertorriquena de Trabajadores (the Union). As explained below, I have found that Respondent, within the meaning of Section 8(d) and in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act), modified the contracts for two bargaining units when it decided that it would not pay the 2015 Christmas bonus without the Union's consent and during the terms of the contracts for the two units. In addition, I have found that Respondent violated Section 8(a)(5) and (1) of the Act when it unilaterally decided not to pay the 2015 Christmas bonus to employees in all three bargaining units without first notifying the Union and providing the Union with an opportunity to bargain about the Christmas bonus decision and its effects.

STATEMENT OF THE CASE

This case was tried in San Juan, Puerto Rico on January 26-27, 2017.¹ The Union filed the unfair labor practices charge in this case on December 7, 2015, and filed an amended charge on March 29, 2016.² Subsequently, the General Counsel issued a complaint and compliance specification on April 29, 2016, and amended the complaint and compliance specification on July 12, 2016, January 20, 2017, and January 27, 2017.

¹ On October 20, 2016, the Board issued an order denying Respondent's motion for summary judgment because Respondent "failed to establish that there are no genuine issues of material fact warranting a hearing and that it is entitled to judgment as a matter of law." (GC Exh. 1(w).)

² All dates are in 2015, unless otherwise indicated.

In the complaint, as amended, the General Counsel alleges that on or about December 15, 2015, Respondent unilaterally failed and refused to pay an annual Christmas bonus to employees in three bargaining units without the Union's consent (as to Units A and B), and without first notifying the Union and affording the Union an opportunity to bargain about the decision and its effects (as to Unit C). (See Findings of Fact (FOF), Section II(A), *infra* (defining the scope of Units A, B and C).) Based on that alleged misconduct, the General Counsel asserts that Respondent failed and refused to bargain collectively and in good faith with the Union within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. Respondent filed timely answers denying the alleged violations in the complaint.

On the entire record,³ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT⁴

I. JURISDICTION

Respondent, a Puerto Rico corporation with an office and place of business in San Juan, Puerto Rico, operates a hospital providing inpatient and outpatient care. In the past 12 months before the complaint was filed, Respondent derived gross revenues in excess of \$250,000, and purchased and received goods at its San Juan, Puerto Rico facility that are valued in excess of \$50,000 and come directly from points outside the Commonwealth of Puerto Rico. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) 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.

³ The transcripts and exhibits in this case generally are accurate. However, I hereby make the following corrections to the trial transcripts: p. 27, l. 22: "benefits" should be "defenses"; p. 49, ll. 16, 20, 22: "forms" should be "forums"; p. 50, ll. 12-13: "forms" should be "forums"; p. 51, l. 1: Attorney Ramos was the speaker; p. 120, l. 25: "she" should be "he"; p. 131, l. 23: "acquired" should be "expired"; p. 141, ll. 7, 9: "Karen Occasion" should be "Karen Ocasio"; p. 145, l. 4: "his" should be "its"; p. 145, l. 5: "repay" should be "pay"; and p. 151, l. 18: "Any" should be "In the". To the extent that Respondent filed a motion to correct the transcript, I hereby deny that motion for any proposed corrections that I have not noted above, because the proposed corrections are not material and/or are cumulative since other evidence sufficiently clarifies the testimony at issue. Finally, I note that the parties submitted, and I have accepted, a replacement copy of Jt. Exh. 25(a)-(b) (24 pp. total) because the copy that was originally included in the exhibit file was incomplete.

⁴ Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Collective-Bargaining Relationship*

1. Unit A – licensed practical nurses and technicians

On December 15, 1983, the Board certified the Union as the exclusive collective-bargaining representative of employees in Unit A. (Jt. Exhs. 1 (par. 3), 2.) Since that date, the Union and Respondent have negotiated and executed successive collective-bargaining agreements, including a collective-bargaining agreement that was effective from January 1, 2014 to December 31, 2016. In that agreement, Respondent recognized the Union as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit:

[A]ll Licensed Practical Nurses, Senior Practical Nurses, Nurse Phlebotomists, Laparoscopic Technicians, Operating Room Technicians, Orthopedic Technicians, Telemetric Technicians, Physical Therapy Assistants, EKG Technicians, Radiological Technologists, Radiological Technologists specializing in Mammography CT and Orderlies employed by the Employer, Hospital el Presby d/b/a Ashford Presbyterian Community Hospital, at its Hospital in San Juan, Puerto Rico, as certified by the National Labor Relations Board in Case 24-RC-6643.

(Jt. Exh. 5(b); see also Jt. Exh. 6(b) (Unit A collective-bargaining agreement, in effect from May 1, 2010 to April 30, 2013); Tr. 102.)

2. Unit B – clerks

On August 8, 1978, the Board certified the Union as the exclusive collective-bargaining representative of employees in Unit B. (Jt. Exhs. 1 (par. 4), 3.) Since that date, the Union and Respondent have negotiated and executed successive collective-bargaining agreements, including a collective-bargaining agreement that was effective from August 1, 2010 to July 31, 2013. In that agreement, Respondent recognized the Union as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit:

[A]ll office clerks, receptionists, storeroom employees, filing clerks, discharge clerks, typing clerks, ward clerks, X-ray clerks, telephone operators, billing clerks, Record Center Clerks, Outpatient Surgery clerks, Emergency Room Clerks, Operating Room Clerks, Collections Clerks, Medical Record Clerks, Accounting Clerks, Cashiers, Data Entry Operator, Medical Transcriptionists, Medical Record Technologists, Customer Service, Presby Primary Health Care Center Clerks, Wound Care Center Clerks, Physical Therapy Clerks and Medicare Clerks, . . . as certified by the National Labor Relations Board in Cases 24-RC-8013 and 24-UC-195 as provided in Article X Occupational Groups, but excluding all other employees, guards and supervisors as defined in the Act.

(Jt. Exh. 7(b); see also Tr. 102.) On August 6, 2013, the Union and Respondent agreed that the 2010–2013 collective-bargaining agreement would continue in effect until a new agreement is executed. (Jt. Exh. 8(b) (par. 17); GC Exh. 1(j) (par. 5(g); see also Jt. Exh. 1 (par. 11) (noting

that the parties signed a successor collective-bargaining agreement for Unit B on May 26, 2016).)

3. Unit C – auxiliary employees

On August 19, 1980, the Board certified the Union as the exclusive collective-bargaining representative of employees in Unit C. (Jt. Exhs. 1 (par. 5), 4.) Since that date, the Union and Respondent have negotiated and executed successive collective-bargaining agreements, including a collective-bargaining agreement that was effective from November 1, 2011 to October 31, 2014. In that agreement, Respondent recognized the Union as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit:

[A]ll the Physical Facilities and Nutritional Services employees in the appropriate unit, said unit as certified by the National Labor Relations Board in Case 24–RC–6480, employed by the employer at its Hospital, including Messengers, Linen Room Assistant, Equipment Technicians and Nursing Assistant.

(Jt. Exh. 9(b); see also Tr. 102.) The 2011–2014 collective-bargaining agreement renewed automatically for a one-year period ending on October 31, 2015, and expired on that date. (Jt. Exh. 1 (par. 13); Tr. 131; see also Jt. Exh. 9(b) (explaining that the 2011–2014 agreement remained in effect from year to year until one of the parties notified the other party in writing and by certified mail of its desire to alter or modify the agreement, with notice no less than 90 days before the renewal date).)⁵

B. The Christmas Bonus – Background

1. Puerto Rico law (29 L.P.R.A. § 501, et seq., a.k.a. Law 148)⁶

Under Puerto Rico Law 148, employees who work for the same employer for 700 hours or more in a given fiscal year (from October 1 to September 30) are entitled to a bonus of 6 percent of their wages, up to a maximum wage of \$10,000 (for a maximum bonus of \$600). The bonus constitutes compensation in addition to any other wages or benefits to which the employee is entitled, and generally must be paid between December 1 and 15 of each year.⁷ (Jt. Exh. 24(b) (29 L.P.R.A. § 501 (noting that employers who have 15 workers or less pay a bonus of 3 percent of employees wages up to a maximum wage of \$10,000), § 502); Jt. Exh. 25(b) (Articles VI, VII).)

⁵ Although the parties' joint stipulation does not say so explicitly, I find that either Respondent or the Union (or both) provided timely notice of its intent to alter or modify the 2011–2015 collective-bargaining agreement, such that the agreement expired on October 31, 2015. (See Tr. 131 (noting that by November 25, 2015, the collective-bargaining agreement for Unit C had expired).)

⁶ The evidentiary record includes, as Jt. Exh. 25(b), a regulation issued by the Puerto Rico Department of Labor and Human Resources (PRDOL) concerning Law 148. To the extent that Respondent offered a slightly different version of that regulation as an attachment to its posttrial brief (see R. Posttrial Br. at 16 fn. 4 (citing Exh. 3 to R. Posttrial Br.)), I decline to rely on that version and note that any differences between the two versions are not material to the issues presented in this case.

⁷ An employer and its employees may agree in writing that the employer may pay the bonus on a different date than between December 1 and 15, as long as the agreed date is before December 31 of the year in question. (Jt. Exh. 25(b) (Article V(3)).)

Notably, Law 148 does not require employers to pay a full bonus to employees if the total bonus amount that the employer would pay in a given year exceeds 15 percent of the employer's net annual profit for the preceding fiscal year. In that circumstance, the employer may pay a pro-rated bonus based on 15 percent of its net profits, and may forego paying the bonus if it did not earn a net profit in the preceding fiscal year. To qualify for a partial or full bonus exemption, however, the employer must, by November 30, submit (to the Secretary of the Puerto Rico Department of Labor and Human Resources (PRDOL)) a general balance sheet and a profit-and-loss statement for the preceding fiscal year. (Jt. Exh. 24(b) (29 L.P.R.A. §§ 501, 507) (noting that if the employer receives an exemption and goes through with not paying part or all of the Christmas bonus, the employer is subject to a financial audit by the PRDOL); Jt. Exh. 25(b) (Article V(9).)

Finally, by its terms, "[t]he provisions of [Law 148] shall not apply in cases where the workers or employees receive an annual bonus by collective agreement[.]" However, if the bonus under the collective-bargaining agreement is lower than the bonus required by Law 148, then Law 148 requires the employer to make up the difference so employees receive a bonus equivalent to what would be required by Law 148. (Jt. Exh. 24(b) (29 L.P.R.A. § 506).)

2. Collective-bargaining agreement Christmas bonus provisions

Since at least 2010, the collective-bargaining agreements for Units A, B and C have included the following Christmas bonus provisions:

During the term of the Agreement, the Hospital shall grant the Christmas Bonus to every employee covered by this Agreement in accordance to the provisions in Law 148 of June 30, 1969, as amended. Likewise, the other provisions of the aforementioned Law shall also apply.

[]To those effects, the Hospital shall grant an annual Christmas Bonus to every employee covered by this Collective Bargaining Agreement:

[Year 1]	6% of the annual salary up to a maximum of \$10,000.00
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[Year 2]	6% of the annual salary up to a maximum of \$10,000.00
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[Year 3]	6% of the annual salary up to a maximum of \$10,000.00
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(Jt. Exh. 5(b) (Article 23); 7(b) (Article 30); 9(b) (Article 23); see also Jt. Exh. 6(b) (Article 24); Tr. 54-55, 57.)

In fact, since 1995, the collective-bargaining agreements for Units A, B and C have contained similar (but not identical) provisions that refer to Law 148 and state that Respondent will pay the Christmas bonus to employees covered by the agreement. (See R. Exhs. 1-3 (collective-bargaining agreements from 2006-2009 (Units A and B) and 2004-2008 (Unit C), each of which stated that Respondent will award an annual Christmas bonus to each employee covered by the collective-bargaining agreement, with all remaining conditions provided by Law 148); Tr. 41-42, 57-61).

Consistent with the Christmas bonus provisions in the collective-bargaining agreements, Respondent paid a Christmas bonus to employees in Units A, B and C every year from at least 1995 to 2014. (Tr. 40, 71-72.) Further, consistent with Law 148 and without objection by the Union, when Respondent prepared to pay Christmas bonuses in a particular year, Respondent found each employee to be eligible for the Christmas bonus if the employee worked 700 or more hours in the preceding fiscal year. (See FOF, Section II(B)(1), *supra* (outlining the provisions of Law 148, including provisions that establish the number of hours that employees must work to be eligible for the bonus, and when employers must pay the bonus); Jt. Exhs. 5(b) (Article 23), 7(b) (Article 30), 9(b) (Article 23) (Christmas bonus provisions of the collective-bargaining agreements, each of which states that the provisions of Law 148 apply to the annual Christmas bonus); Tr. 13, 115-116, 124-125, 141-142, 145.)

C. November 2015 – Respondent Applies for an Exemption from Paying the December 2015 Bonus

In or about mid-November 2015, Respondent decided to apply for an exemption from paying the December 2015 Christmas bonus. Accordingly, on November 25, Respondent submitted an exemption request to the PRDOL, along with documentation showing that Respondent operated at a financial loss in the fiscal year that ended on September 30, 2015. (Tr. 31, 51, 117-118, 121, 131, 137, 139, 145-147; Jt. Exh. 10(b); GC Exh. 1(k) (Exh. 8).)

Although Respondent was in contact with the Union in October and November 2015, because the parties were bargaining for a successor collective-bargaining agreement for Unit B (the clerks' unit), Respondent did not advise the Union of its plan to seek an exemption from paying the Christmas bonus. (Tr. 31-32, 66, 137; see also Tr. 66 (noting that Respondent and the Union met on November 13 to bargain about a successor agreement for Unit B).)

D. November/December 2015 – Respondent Notifies Employees that it Will Not be Paying the December 2015 Bonus

1. November 30: Respondent telephones the PRDOL about its exemption request

On November 30, Respondent's human resources director, Irma Carrillo, called the PRDOL to ask about the status of Respondent's bonus exemption request. In that telephone call, an unidentified PRDOL representative advised Carrillo that the PRDOL already approved Respondent's exemption request and would be sending Respondent a letter to that effect. Carrillo asked the representative if Respondent could notify employees that it would not be paying the Christmas bonus, and was told that Respondent could do so. (Tr. 53, 118.)

2. December 1: Respondent tells employees that it will not be paying a Christmas bonus

At approximately 11:30 a.m. on December 1, Carrillo met with Respondent's supervisors to advise them that Respondent would not be paying a Christmas bonus to employees in 2015. Carrillo instructed the supervisors to notify all employees about the decision (verbally and by distributing a memorandum). At the time, Respondent had not yet received a letter from the PRDOL granting Respondent's bonus exemption request. (Tr. 33-36, 52, 112-113.)

As directed, Respondent's supervisors advised all personnel (including employees in Units A, B and C) that Respondent would not be paying the 2015 Christmas bonus, and distributed the following memorandum:

5 To all Personnel

CHRISTMAS BONUS 2015

10 As you all know, during these last months, the hospital has experienced great economic challenges

With all these impacts, our Hospital has been negatively affected at a financial level. Our income has been significantly reduced. Given this situation . . . the Hospital responsibly has taken several saving measures, where we have all been affected.

15 However, and unfortunately, our operations continue to show losses. Given this situation, we have found ourselves obligated to request an exemption from the Christmas Bonus corresponding to the year 2015 from the [PRDOL].

20 This has been an extremely difficult decision that we had to take, and it has not been taken lightly. We have presented this request at the last moment possible, looking for other options. . . .

25 We know that the Christmas Bonus represents additional income, and as Puerto Ricans, we are aware that this income is particularly important during the Christmas season. However, this measure, as painful as it is, will help us safeguard our work place for the future.

30 We request your understanding, your support and cooperation as we continue to face all the challenges that await us. Feel free to communicate with us to clarify any doubt in regard to this.

(Jt. Exh. 13(b); see also Tr. 35, 52.)

35 Fairly soon after Respondent began distributing its memorandum to employees, various bargaining unit members contacted Union president Edward Ufarry by telephone to advise that Respondent would not be paying the 2015 Christmas bonus. (Tr. 63-64, 73.) In addition (and after Ufarry began receiving phone calls from employees about the bonus), at approximately 11:57 a.m., Respondent faxed Ufarry a copy of its December 1 memorandum to employees,
40 along with a letter that stated as follows:

CHRISTMAS BONUS, LPN'S AND TECHNICIANS, CLERKS AND AUXILIARY AGREEMENTS

45 Dear Mr. Ufarry:

Cordial greetings! As previously discussed before on multiple occasions [at] the negotiation table for the referenced members, the Hospital is going through a difficult and

extremely unforeseeable situation. Given this panorama, we found ourselves in the obligation of requesting an exemption from the [PRDOL] for the payment of Christmas Bonuses of 2015, pursuant to the provisions of the Law.

According to [the Christmas Bonus provisions in the collective-bargaining agreements]; all the referenced conditions for the awarding of Christmas bonus[es] will be pursuant to the provisions of Law 148[.] To this end and pursuant to the provisions established in said law, the request for exemption was presented, in compliance as well, with all the requirements established by said Law.

As the exclusive representatives for the membership of auxiliary personnel, practicing nurses and technicians, we make this notification official. Likewise, we include a copy of the letter that will be sent to all our employees.

We are available to discuss this matter with you, if you deem it necessary.

(Jt. Exh. 12(b); see also Jt. Exh. 13(b) (Respondent's December 1 memorandum to employees, sent to Ufarry along with Jt. Exh. 12(b)); R. Exh. 4 (fax cover sheet that accompanied Jt. Exh. 12(b)); Tr. 32, 35, 65-66, 111, 136.)

Upon learning of Respondent's decision to not pay the Christmas bonus, Ufarry tried to telephone Carrillo at her office, but did not reach her. Ufarry also sent a letter to the PRDOL on December 1 to note that the Union represents employees in Units A, B and C, and to request that Respondent pay the 2015 Christmas bonus as set forth in the collective-bargaining agreements. (Tr. 65-67, 80-81; GC Exh. 2(b).)

3. December 2-3: the Union sends letters addressing Respondent's bonus exemption request

On December 2, Ufarry sent a letter to Carrillo to object to Respondent's request for an exemption from paying the bonus. Ufarry stated as follows in his letter:

I hereby acknowledge receipt of your letter dated December 1, 2015 regarding the referenced case. We are very surprised with the determination of the Hospital for not complying with the Christmas Bonus. On occasions that we have had at negotiation tables, we were never informed of this intention, otherwise, we could have looked for other alternatives, without waiting for the last minute to notify this negative decision to the [Union] and the ones represented. I bring to your attention that this past November 13, 2015, we held a negotiation meeting for the [Clerk's] Agreement, and again, the Hospital did not notify us of the nonpayment of the Christmas Bonus.

We understand that [Law 148] allows employers to request exoneration for the payment of the Bonus, nevertheless the 3 agreements that the [Union] represents are valid, and if the Hospital was contemplating the possibility [of not paying] the Bonus, they had sufficient time for notifying us for reaching a satisfactory agreement.

To such effect, we understand that the Administration acted in bad faith, and we demand the payment of the Christmas Bonus, as stipulated in the Collective Bargaining Agreements of [Units A, B and C].

(Jt. Exh. 14(b).) Ufarry also, on December 3, delivered a letter to the PRDOL to ask about the status of Respondent's bonus exemption request. (GC Exh. 3(b); Tr. 69–70.)

- 5 4. December 4: the PRDOL advises the Union that Respondent's exemption from paying the 2015 Christmas bonus only applies to nonunion employees

10 On December 4, the PRDOL responded to Ufarry's December 3 letter. In the letter, the PRDOL noted that Section 506 of Law 148 states that the provisions of the law "shall not apply in cases where workers or employees receive annual bonuses through Collective Bargaining Agreements" Based on that statutory language, the PRDOL stated that the bonus exemption given to Respondent "will only apply to those employees who do not belong to the appropriate unit. . . . In cases where workers receive annual bonuses through collective bargaining agreements, the agreement will be law between the parties." (Jt. Exh. 17(b); Tr. 56, 71.)

15 Later on December 4, Ufarry sent Carrillo a copy of the PRDOL's December 4 letter. Ufarry also sent Carrillo his own letter to assert that, based on Section 506 of Law 148, the PRDOL "decided and concluded that [Respondent] must comply according to what is stipulated in the Collective Bargaining Agreements" for Units A, B and C concerning Christmas bonuses. (Jt. Exh. 16(b); see also Tr. 37–39, 71.)

25 After reviewing Ufarry's and the PRDOL's letters, Carrillo sent a letter to the PRDOL. In her letter, Carrillo agreed that Law 148 does not apply to employees covered by collective-bargaining agreements, but explained that Respondent and the Union agreed in the collective-bargaining agreements for Units A, B and C that the terms of Law 148 "would apply as to the payment of the Christmas bonus." Carrillo asserted that since Respondent met Law 148's requirements for a Christmas bonus exemption for nonunion employees, the bonus exemption also applied to employees represented by the Union. (Jt. Exh. 18(b); see also Jt. Exh. 19(b) (December 4 letter from Carrillo to Ufarry, to assert the same argument for why the bonus exemption should apply to employees in Units A, B and C, and to provide a copy of Carrillo's December 4 letter to the PRDOL); Tr. 37–38 (noting that the PRDOL's December 4 letter to the Union was the first letter that Carrillo received showing the PRDOL's position on Respondent's bonus exemption request).)

- 35 5. December 7: Respondent belatedly receives two letters from the PRDOL

40 At approximately 3:30 p.m. on December 7, Respondent (through Carrillo) received and reviewed two letters from the PRDOL, one dated November 30, and the other dated December 2. In the November 30 letter, the PRDOL confirmed that it received Respondent's application for an exemption from paying the 2015 Christmas bonus under Law 148, and indicated its preliminary conclusion that Respondent was eligible for an exemption (subject to a financial audit). However, in the December 2 "amended" letter, the PRDOL added that "[i]f the company has a collective bargain[ing] agreement this decision will not apply to said union employees, only to those employees that are not part of the appropriate unit." (Jt. Exhs. 11(b), 15(b); Tr. 39–40, 48–49, 128; see also Jt. Exhs. 11(a), 15(a) (copies of the November 30 and December 2 letters from the PRDOL, showing the date and time that Carrillo received and read the letters).)⁸

⁸ I decline Respondent's request that I take judicial notice of a printout that, according to

6. December 11: Respondent again tells employees and the Union that it will not be paying the 2015 Christmas bonus

On December 11, Respondent distributed another memorandum to its employees to explain its rationale for not paying the 2015 Christmas bonus. Respondent advised its employees as follows:

To all personnel

CHRISTMAS BONUS 2015

As you all know, on December 1, 2015, we notified you that the Hospital would not award Christmas Bonuses. This decision was made as a direct result of the Hospital's fiscal situation, pursuant to Law 148 and the prevailing collective bargaining agreements[.]

[Explanation of why Respondent did not notify employees of its decision about Christmas bonuses until December 1 (including the fact that Respondent did not hear that the PRDOL would approve Respondent's bonus exemption request until November 30).]

Applicability of Law 148

It is correct that Law 148 and its provisions regarding exemptions from the payment of Christmas Bonuses, are not applicable to employees covered by collective bargaining agreements. This is from Law 148 itself, and at no time has it been controverted by the Hospital.

In these cases, the Collective Bargaining Agreement is the law between the parties. However, the collective bargaining agreements between the Hospital and the unions provide that the payment of Christmas Bonuses will operate according to the terms of Law 148. This is to say, if Law 148 does not apply as such, the Hospital and unions agreed freely and voluntarily to the applicability of these criteria for the payment of Christmas Bonuses. This position has been notified to the [PRDOL], and it is one that [the] Hospital will defend before the corresponding forums if necessary.

We take advantage of this to clarify that the information that is presently in circulation to the effect that the bonus will be paid today, December 11, is incorrect.

Respondent, shows that the PRDOL gave final approval to Respondent's bonus exemption request. (See R. Posttrial Br. at 9 & fn. 1 (citing Exh. 1 to R. Posttrial Br.)). The printout was not offered into the evidentiary record at trial, and has not been translated or authenticated. Because of those deficiencies, I hereby grant the General Counsel's motion to strike Exhibit 1 and any references thereto from Respondent's posttrial brief. See *Electro-Tec, Inc.*, 310 NLRB 131, 131 fn. 1 (1993) (granting motion to strike exhibits attached to the respondent's posttrial brief because the exhibits were not part of the evidentiary record), enfd. 993 F.2d 1547 (6th Cir. 1993).

The only reason for requesting an exemption for this year has been the economic losses that the hospital is facing for the calculation period for said bonus. Our balance sheet and Earnings Statements certified for the period of October 1, 2014 [through] September 30, 2015, present a loss of \$993,411. . . . To pay the Christmas Bonus to more than 800 active and inactive eligible employees, at a cost of more than half a million dollars, would severely aggravate our fiscal reality, and would obligate us to take more drastic measures [to control] expenses. . . .

(Jt. Exh. 20(b); see also Jt. Exh. 21(b) (indicating that Respondent faxed the Union a copy of Respondent's December 11 letter to employees); Tr. 49, 126-127.)

Later on December 11, Respondent and the Union met for a bargaining session for a successor collective-bargaining agreement for the clerks' unit. After the bargaining session, Ufarry proposed that Respondent pay the 2015 Christmas bonus in two parts, with \$300 paid on or before December 15, and another \$300 paid in January 2016. Carrillo declined, stating that the bonus would be another expense for Respondent, and that Respondent already had decided that it would not be paying the bonus. (Tr. 109-110, 125-128.)

7. December 14: the PRDOL replies to Respondent's December 4 letter

On December 14, Carrillo received the PRDOL's reply to her December 4 letter concerning the 2015 Christmas bonus. The PRDOL stated, in pertinent part, as follows:

Dear Ms. Carrillo[:]

I hereby reference your communication of December 4, 20[15] regarding the referenced matter. . . .

. . .

In view of [Section 506 of Law 148], the exemption granted to [Respondent] will only apply to those employees that do not belong to the appropriate unit.

As to the matter of the collective bargain, the [PRDOL] has no jurisdiction therefore what was stated would be a matter for arbitration to be filed with the appropriate forum.

(Jt. Exh. 23(b); Tr. 46, 119, 128-131; see also Jt. Exh. 22(b); FOF, Section II(B)(1), supra (discussing Section 506 of Law 148).)

8. December 15: Respondent does not pay the 2015 Christmas bonus to employees in Units A, B and C

On December 15, Respondent followed through with its plans and did not pay the 2015 Christmas bonus to its employees, including all bargaining unit members in Units A, B and C. Respondent did not attempt to bargain with the Union about its decision to not pay the bonus, or the effects of that decision. (Tr. 40, 72; Jt. Exh. 1 (par. 30); see also Tr. 81, 128-130 (noting that Respondent did not ask the Union to bargain after receiving letters from the PRDOL that limited the scope of the bonus exemption to employees who were not part of the bargaining unit); but

see Tr. 120–121, 142, 144 (noting that the Union did not ask Respondent to negotiate over Respondent’s decision to not pay the 2015 Christmas bonus).)

DISCUSSION AND ANALYSIS

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A. WITNESS CREDIBILITY

10 A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 13–14 (2014); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an administrative law judge may draw an adverse inference from a party’s failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party’s agent). Credibility findings need not be all-or-nothing propositions — indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 14. To the extent that I have made them, my credibility findings are set forth above in the findings of fact for this decision.

B. What Legal Theories are at Issue Regarding the 2015 Christmas Bonus Dispute?

25 Before addressing the substantive merits of the General Counsel’s allegations in this case, I pause for a moment to establish the legal theories that are in play concerning the 2015 Christmas bonus dispute. For Units A and B, both of which had a collective-bargaining agreement in effect in December 2015, the General Counsel had the option of asserting a contract modification theory and/or a unilateral change theory to challenge Respondent’s decision not to pay the 2015 Christmas bonus.⁹ As the Board has explained, however, the “unilateral change” theory and the “contract modification” theory “are fundamentally different in terms of principle, possible defenses, and remedy.” *Bath Iron Works Corp.*, 345 NLRB 499, 501 (2005), enf’d. 475 F.3d 14 (1st Cir. 2007). Specifically:

35 In terms of principle, the “unilateral change” case does not require the General Counsel to show the existence of a contract provision; [the General Counsel] need only show that there is an employment practice concerning a mandatory bargaining subject, and that the employer has made a significant change thereto *without bargaining*. The allegation is a *failure to bargain*. In the “contract modification” case, the General Counsel must show a contractual provision, and that the employer has modified the provision. The allegation is a failure to adhere to the contract. In terms of defenses, a defense to a unilateral

⁹ Unit C’s collective-bargaining agreement expired in October 2015, and thus only a unilateral change theory was viable concerning the 2015 Christmas bonus dispute for that unit. See FOF, Section II(A)(3); see also *E.I. du Pont de Nemours*, 364 NLRB No. 113, slip op. at 4 (2016) (explaining that an employer has a duty to maintain the status quo for mandatory subjects of bargaining, which in the post-contract expiration context consists of the terms and conditions of employment existing on the expiration date of the parties’ collective-bargaining agreement).

change can be that the union has waived its right to bargain. A defense to the contract modification can be that the union has consented to the change. In terms of remedy, a remedy for a unilateral change is to bargain; the remedy for a contract modification is to honor the contract.

Id. (emphasis in original).

In its original complaint in this case (filed on April 29, 2016), the General Counsel alleged that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to pay the 2015 Christmas bonus to employees in Units A and B without the Union's consent, and by failing and refusing to pay the 2015 Christmas bonus to employees in Unit C without first notifying the Union and affording the Union an opportunity to bargain with Respondent about the bonus decision and its effects. (GC Exh. 1(e), pars. 6–7.) Subsequently, on July 12, 2016, the General Counsel amended the complaint to assert that Respondent, through its conduct concerning the 2015 Christmas bonus, failed and refused to bargain with the Union within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. (GC Exh. 1(q) (par. 7).) In short, through these pleadings, the General Counsel at a minimum presented a contract modification theory concerning Respondent's decision to not pay bonuses to employees in Units A and B, and presented a unilateral change theory concerning Respondent's decision to not pay bonuses to employees in Unit C.

To the extent that the General Counsel's amended complaint left some ambiguity about the General Counsel's legal theories, that ambiguity cleared up when the parties litigated this case. During trial, the General Counsel presented evidence relevant to both the contract modification theory (as to Units A and B) and the unilateral change theory (as to Units A, B and C), including evidence about the Christmas bonus provisions in the contracts at issue, and evidence about whether Respondent notified the Union about its decision to not pay the Christmas bonus to employees in Units A, B and C and afforded the Union an opportunity to bargain about that decision and its effects. Respondent presented its own evidence to address each of those issues. (FOF, Section II(B)(2), (D).) Similarly, in their respective posttrial briefs, the General Counsel and Respondent offered arguments related to each theory, including arguments as to whether Respondent committed a unilateral change violation when it decided not pay the Christmas bonus to employees in Units A, B and C without first notifying the Union and affording an opportunity to bargain. (See, e.g., GC Posttrial Br. at 5, 9–10, 14–15; R. Posttrial Br. at 12–14, 29–32.)

Since the parties ended up fully litigating the unilateral change theory for Units A and B, I will consider that theory for those units in addition to the legal theories that the General Counsel set forth in the complaint. “[I]t is well settled that the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated.” *UnitedHealth Group, Inc.*, 363 NLRB No. 134, slip op. at 2 (2016). That standard is certainly satisfied here, where the unilateral change theory relates to the same 2015 Christmas bonus dispute at issue in the complaint, and the parties fully litigated and briefed the question of whether Respondent unlawfully failed and refused to bargain with the Union before Respondent unilaterally decided that it would not pay the 2015 Christmas bonus to employees in Units A and B. Compare *Knollwood Country Club*, 365 NLRB No. 22, slip op. at 3 & fn. 9 (2017) (affirming the judge's finding that the employer unlawfully modified the contract, but reversing the judge's finding of a

unilateral change violation based on the same conduct because the unilateral change theory “was not alleged in the complaint, litigated at the hearing, or addressed in the General Counsel’s posthearing brief”); *San Juan Bautista Medical Center*, 356 NLRB 736, 738 fn. 10 (2011) (permitting the General Counsel to proceed on a contract modification theory in addition to the unilateral change theory that the General Counsel alleged in the complaint, noting that the General Counsel summarized its position at trial in a manner consistent with a contract modification theory, and also noting that the employer did not contend that the contract modification theory was not fully litigated).

C. Did Respondent Unlawfully Modify its Contracts for Units A and B when Respondent Decided not to Pay the 2015 Christmas Bonus?

1. Applicable legal standard

In a “contract modification” case, “the General Counsel must show a contractual provision, and that the employer has modified the provision” without the union’s consent. *Bath Iron Works Corp.*, 345 NLRB at 501. Where the issue in dispute turns on the resolution of two conflicting interpretations of the collective-bargaining agreement, the Board will not find a violation if the employer has a sound arguable basis for its interpretation of the agreement and is not motivated by union animus or acting in bad faith. *Id.* at 502; see also *American Electric Power*, 362 NLRB No. 92, slip op. at 1, 3 (2015) (noting that in the absence of evidence of bad faith, animus or an intent to undermine the union, the Board does not seek to determine, in a contract interpretation dispute, which of two equally plausible contract interpretations is correct).

In interpreting a collective-bargaining agreement to evaluate the basis of an employer’s contractual defense, the Board gives controlling weight to the parties’ actual intent underlying the contractual language in question. To determine the parties’ intent, the Board examines both the contract language itself and relevant extrinsic evidence, such as a past practice of the parties in regard to the effectuation or implementation of the contract provision in question, or the bargaining history of the provision itself. *Knollwood Country Club*, 365 NLRB No. 22, slip op. at 3; *Mining Specialists, Inc.*, 314 NLRB 268, 268–269 (1994).¹⁰

¹⁰ Although Respondent maintains that I should apply Puerto Rico contract law to interpret the collective-bargaining agreement language here (see R. Posttrial Br. at 21–22), I am bound to follow the Board’s established precedent (as set forth herein) to evaluate Respondent’s defenses to the contract modification allegation. I note that to the extent there is a distinction between Board law and Puerto Rico contract law, any such distinction is arguably moot for purposes of the issues in this case because, applying the Board’s standards, I agree with Respondent that the collective-bargaining agreements for Units A and B arguably permit Respondent to ask the PRDOL for an exemption from paying the Christmas bonus in a particular year. (See Discussion and Analysis, Section (B)(2), *infra*.)

I also decline (as moot) Respondent’s request that I follow the reasoning in *El Vocero de Puerto Rico v. Union de Periodistas de Artes Graficas y Ramas Anexas*, 2012 WL 4670000 (P.R. Ct. App. 2012). (See R. Posttrial Br. at 15–21 (citing *El Vocero*, attached to R. Posttrial Br. as Exh. 2).) Respondent cites that decision for the proposition that Respondent was entitled to apply for a bonus exemption under Law 148, but as I have noted, I agree that the collective-bargaining agreements at issue here arguably permit Respondent to do that. (See Discussion and Analysis, Section (C)(2), *infra*.)

2. Analysis

As set forth in the findings of fact, the collective-bargaining agreements for Units A and B state that Respondent shall pay the Christmas bonus to every bargaining unit employee “in accordance to the provisions in Law 148 of June 30, 1969, as amended,” and that “the other provisions of [Law 148] shall also apply.” Consistent with that contract language (and without objection from the Union), Respondent has relied on Law 148 to determine which employees worked a sufficient number of hours to qualify for the bonus, and also to set the date (customarily, December 15) on which it pays the bonus. (FOF, Section II(B).) The Christmas bonus is a term and condition of employment within the meaning of Section 8(d) of the Act, and thus was a mandatory subject of bargaining.

In November 2015, Respondent decided to ask the PRDOL to grant Respondent an exemption from paying the 2015 Christmas bonus because Respondent did not earn a profit in the preceding fiscal year. The PRDOL granted Respondent’s bonus exemption request, but (rightly or wrongly) limited the exemption to non bargaining unit employees.¹¹ Respondent then decided that it would not pay the 2015 Christmas bonus to any of its employees (including bargaining unit employees in Units A and B), even though it did not have the Union’s consent or an exemption from the PRDOL that applied to employees in Units A and B.¹² (FOF, Section II(C)–(D).)

As its defense, Respondent argues that it had a sound and arguable basis for believing that the limited bonus exemption that it obtained from the PRDOL also applied to employees in Units A and B. I do not find that argument to be persuasive. While the collective-bargaining agreement arguably allowed Respondent to request a bonus exemption from the PRDOL, there is nothing in the collective-bargaining agreement that authorized Respondent to treat the limited bonus exemption that the PRDOL granted (only for non bargaining unit employees) as an exemption for employees in Units A and B.¹³ Indeed, the Board rejected such an approach in

¹¹ I disagree with the General Counsel’s contention that the PRDOL did not grant Respondent’s exemption request. (See GC Posttrial Br. at 17.) The evidentiary record shows that the PRDOL did grant Respondent’s bonus exemption request, albeit only for employees who were not part of an appropriate bargaining unit. To be sure, the PRDOL retained the option to audit Respondent’s finances if Respondent followed through with not paying the 2015 Christmas bonus, but the fact remains that the PRDOL granted Respondent’s bonus exemption request in the limited fashion noted above. (See FOF, Section II(B)(1), (D)(1), (4)–(5).)

¹² Respondent makes much of the fact that, on December 11, the PRDOL indicated that Respondent’s and the Union’s dispute about Christmas bonuses for bargaining unit employees “would be a matter for arbitration.” (See R. Posttrial Br. at 25, 28; FOF, Section II(D)(7).) I do not find the PRDOL’s statement about the possibility of arbitration to be noteworthy. In the same letter, the PRDOL reiterated that it was only giving Respondent a bonus exemption for non bargaining unit employees – thus, Respondent never received a bonus exemption for employees in Units A and B. (See FOF, Section II(D)(7).)

¹³ Essentially, the collective-bargaining agreements leave it to the PRDOL to determine whether, and to what extent, it should grant Respondent’s request to be exempt from paying the Christmas bonus in a particular year. To the extent that Respondent maintains that the PRDOL made an incorrect decision (such as by refusing to consider whether the exemption should apply to employees in Units A and B), Respondent needs to take that problem up with the PRDOL and/or negotiate with the Union for contract language that will handle PRDOL exemption decisions differently (such as contract language explicitly

San Juan Bautista Medical Center, finding that since the bonus exemption that the PRDOL granted did not apply to employees covered by a collective-bargaining agreement, the employer did not have a sound and arguable basis to believe that it could refuse to pay the bonus to employees in the bargaining unit. 356 NLRB 736, 736, 738 (2011) (noting that the collective-bargaining agreement stated, in pertinent part, that the employer recognized “the payment of a Christmas bonus to each union member of the appropriate units, according to the established dispositions of Law 148”). Accordingly, I find that Respondent’s sound and arguable basis defense fails in this case, and I find that Respondent’s refusal to pay the 2015 Christmas bonus to employees in Units A and B without the Union’s consent was an unlawful contract modification within the meaning of Section 8(d), and in violation of Section 8(a)(5) and (1), of the Act.

D. Did Respondent Violate Section 8(a)(5) and (1) of the Act by Unilaterally Deciding not to Pay the 2015 Christmas Bonus to Employees in Units A, B and C?

1. Applicable legal standard

Under the unilateral change doctrine, an employer’s duty to bargain under the Act includes the obligation to refrain from changing its employees’ terms and conditions of employment without first bargaining to impasse with the employees’ collective-bargaining representative concerning the contemplated changes. The Act prohibits employers from taking unilateral action regarding mandatory subjects of bargaining such as rates of pay, wages, hours of employment and other conditions of employment. Notably, an employer’s regular and longstanding practices that are neither random nor intermittent become terms and conditions of employment even if those practices are not required by a collective-bargaining agreement. *Howard Industries, Inc.*, 365 NLRB No. 4, slip op. at 3–4 (2016) (noting that the party asserting the existence of a past practice bears the burden of proof on the issue, and that the evidence must show that the practice occurred with such regularity and frequency that employees could reasonably expect the practice to continue or reoccur on a regular and consistent basis).

2. Analysis

As set forth in the findings of fact, on December 1, Respondent notified all employees and the Union that, based on its financial losses and the (partial) exemption that it received from the PRDOL, Respondent would not be paying the 2015 Christmas bonus (notwithstanding the provisions in the contracts regarding Christmas bonuses, and the 24 year history of paying bonuses to employees). Although the Christmas bonus was a term and condition of employment and thus a mandatory subject of bargaining, there is no evidence that Respondent ever bargained with the Union about that decision and its effects, even when the Union requested (on December 2 and 4) that Respondent pay the bonus as set forth in the collective-bargaining agreements, and proposed (on December 11) that Respondent could pay the bonus in two parts (\$300 in December 2015, and \$300 in January 2016). Instead, Respondent consistently maintained that it was not going to pay the bonus due to its financial circumstances. (FOF, Section II(D)(2)–(4), (6), (8).)

stating that if the PRDOL grants a bonus exemption regarding non bargaining unit employees, then that exemption extends to bargaining unit employees).

The Board already has held that an employer covered by Law 148 has a duty to bargain before deciding not to pay the Christmas bonus, even if the PRDOL has granted the employer's bonus exemption request. See *Hospital Santa Rosa Inc., a/k/a Clinica Santa Rosa*, 365 NLRB No. 5, slip op. at 1 fn. 1 (2017). In *Hospital Santa Rosa*, the employer and the union were still negotiating for an initial collective-bargaining agreement when the employer, citing financial losses, submitted a Christmas bonus exemption request to the PRDOL under Law 148, and subsequently decided not to pay the bonus without affording an adequate opportunity for the union to bargain about the issue. The Board upheld the judge's finding that the employer's conduct violated Section 8(a)(5) and (1) of the Act. First, the Board noted that the evidentiary record did not show that the PRDOL ever granted the employer's bonus exemption request. Thus, the employer could not claim that its decision was permissible under Law 148. Second, and more important for this case, the Board explained that even if the PRDOL had granted the employer's bonus exemption request, the exemption would not have "relieved the [employer] of its obligation under the National Labor Relations Act to provide the [u]nion notice and an opportunity to bargain about the bonus payment, as the exemption would not have *prohibited* the [employer] from paying the [] bonus. . . . Because an exemption would not prevent the [employer] from paying the bonus under Puerto Rican law, [the employer] still has an obligation to bargain with the [u]nion over payment of the bonus." *Hospital Santa Rosa Inc., a.k.a. Clinica Santa Rosa*, 365 NLRB No. 5, slip op. at 1 fn. 1 (emphasis in original). In short, in *Hospital Santa Rosa* the Board determined that the employer would have had an obligation to bargain with the union about the Christmas bonus even if the employer had obtained a bonus exemption from the PRDOL.

The situation that the Board contemplated in *Hospital Santa Rosa* is precisely the one that is at issue in this case. That is, although Respondent obtained a (partial) bonus exemption from the PRDOL, Respondent still had an obligation to notify and bargain with the Union before deciding that it would not pay the 2015 Christmas bonus to employees in Units A, B and C.¹⁴ I do not find merit to Respondent's argument that the Board's decision in *Hospital Santa Rosa* may not apply "retroactively" to this case. (See R. Posttrial Br. at 29.) The Board did not announce a new policy or standard in *Hospital Santa Rosa* such that retroactive or prospective application of its decision might be an issue – instead, the Board merely ruled on a case that raised similar issues to those at stake here. Cf. *Total Security Management Illinois I, LLC*, 364 NLRB No. 106, slip op. at 11 (2016) (analyzing whether the Board's decision announcing a new policy and standard concerning bargaining over employee discipline should apply retroactively).

On the issue of whether Respondent fulfilled its duty to bargain, Respondent asserts that it notified the Union on December 1 that Respondent was available to discuss its decision to not

¹⁴ I do not find that the Union waived its right to bargain by agreeing in the collective-bargaining agreements that the provisions of Law 148 would apply to Christmas bonuses. Under the clear and unmistakable waiver standard, bargaining partners may unequivocally and specifically express their mutual intention to permit unilateral employer action with respect to a particular employment term, notwithstanding the statutory duty to bargain that would otherwise apply. *Howard Industries, Inc.*, 365 NLRB No. 4, slip op. at 4. The parties' agreement to follow the provisions of Law 148 falls well short of being an unequivocal, mutual agreement that Respondent could take unilateral action regarding Christmas bonuses without fulfilling its duty to bargain with the Union. Indeed, neither the collective-bargaining agreements nor Law 148 state that Respondent may make unilateral changes to its commitment to pay Christmas bonuses.

pay the 2015 Christmas bonus, and faults the Union for not requesting bargaining after receiving the December 1 letter. (R. Posttrial Br. at 29–31.) I find, however, that through its December 1 letter, Respondent essentially presented the Union with a fait accompli. When it sent its December 1 letter to the Union, Respondent had already notified its employees (including employees in Units A, B and C) earlier in the day that Respondent would not be paying the 2015 Christmas bonus. Furthermore, when the Union objected to Respondent’s decision about the bonus and proposed alternatives, Respondent consistently replied that it would not pay the bonus, and made no effort to bargain about the decision or its effects. (FOF, Section II(D)(2)–(4), (6).) See *Hospital Santa Rosa*, 365 NLRB No. 5, slip op. at 13 (finding that the employer’s August 2014 announcement to the union that the employer would not be paying the 2014 Christmas bonus was tantamount to a fait accompli and was inconsistent with the duty to bargain); *Vigor Industrial, LLC*, 363 NLRB No. 70, slip op. at 6 (2015) (explaining that when an employer gives notice that it plans to implement a unilateral change when there is not time for meaningful bargaining to take place, the notice is nothing more than an announcement of a fait accompli, and the union cannot be held to have waived its right to bargain; and observing that when the employer notifies employees of a unilateral change before notifying the union, the Board has deemed the employer’s decision to be a fait accompli). Since Respondent presented the Union with a fait accompli, the Union cannot be said to have waived its right to bargain.¹⁵

In sum, I find that Respondent violated Section 8(a)(5) and (1) of the Act by, on or about December 1, 2015, unilaterally deciding not to pay the 2015 Christmas bonus to employees in Units A, B and C, without first notifying the Union and affording the Union an opportunity to bargain with Respondent about the bonus decision and its effects.

CONCLUSIONS OF LAW

1. By, on or about December 1, 2015, failing and refusing to pay the 2015 Christmas bonus as set forth in the collective-bargaining agreements with the Union for Units A and B without the Union’s consent and during the terms of the agreements, Respondent unlawfully modified the contracts for Units A and B within the meaning of Section 8(d), and in violation of Section 8(a)(5) and (1), of the Act.

2. By, on or about December 1, 2015, unilaterally changing the terms and conditions of employment of employees in Units A, B and C by failing and refusing to pay the 2015 Christmas bonus without first notifying the Union and affording the Union an opportunity to bargain about the decision and its effects, Respondent violated Section 8(a)(5) and (1) of the Act.

3. By committing the unfair labor practices stated in Conclusions of Law 1–2 above, Respondent has engaged in unfair labor practices affecting commerce within the meaning of

¹⁵ Respondent also asserted that the parties bargained to impasse on December 11, after the Union suggested that Respondent could pay the bonus in two parts (\$300 in December 2015, and \$300 in January 2016). (See R. Posttrial Br. at 31–32.) Respondent’s impasse argument is without merit. After the Union made its proposal, Respondent merely reiterated its position that it would not be paying the bonus. That limited exchange hardly qualifies as bargaining, much less bargaining to impasse, particularly given that Respondent had already informed employees and the Union (on December 1, and again on December 11 before the Union made its proposal) that it would not pay the bonus. (FOF, Section II(D)(2), (6).)

Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that 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 must make its employees whole for any loss of earnings and other benefits that resulted from its unlawful failure and refusal to pay the 2015 Christmas bonus as set forth in the collective-bargaining agreements with the Union for Units A and B without the Union's consent and during the terms of the agreements. Similarly, Respondent must make its employees whole for any loss of earnings and other benefits that resulted from its unlawful unilateral decision, on or about December 1, 2015, to not pay the 2015 Christmas bonus to employees in Units A, B and C. Backpay for those violations 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). To the extent that employees in Units A and B were harmed by two overlapping violations of the Act concerning the 2015 Christmas bonus, they shall receive backpay only for a single bonus payment.

In accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), Respondent shall compensate bargaining unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 12 a report allocating backpay to the appropriate calendar year(s). The Regional Director will then assume responsibility for transmitting the report to the Social Security Administration at the appropriate time and in the appropriate manner.

COMPLIANCE SPECIFICATION

A. Applicable Legal Standard

It is well established that the finding of an unfair labor practice is presumptive proof that some backpay is owed. The General Counsel's burden in a backpay proceeding is limited to showing the gross backpay due to each discriminatee. The General Counsel has discretion in selecting a formula that will closely approximate backpay, and may use any formula that approximates what the discriminatee would have earned had he or she not been discriminated against, as long as the formula is not unreasonable or arbitrary under the circumstances. *Pessoa Construction Co.*, 361 NLRB No. 138, slip op. at 11 (2014), enfd. 632 Fed. Appx. 760 (4th Cir. 2015); see also *Performance Friction Corp.*, 335 NLRB 1117, 1117 (2001) (noting that where the Board is presented with conflicting backpay formulas, the Board must determine the most accurate method for determining backpay).

Once the General Counsel meets its burden of showing the gross backpay owed, the burden shifts to the respondent to establish facts that negate or mitigate its liability. Any uncertainty about how much backpay should be awarded to a discriminatee should be resolved in

the discriminatee's favor, and against the respondent whose violation caused the uncertainty. *Pessoa Construction Co.*, 361 NLRB No. 138, slip op. at 11.

B. Analysis

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1. Stipulated backpay formula

The parties have stipulated that the formula to calculate the 2015 Christmas bonus for each employee in Unit A, B and C should be 6 percent of the employee's salary for the period from October 1, 2014, to September 30, 2015, up to a maximum of \$10,000 of the earned salary (for a maximum bonus of \$600). Employees are only eligible for the bonus if they worked 700 hours or more for Respondent during the relevant time period. (Tr. 13.)

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2. Procedural background

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During trial (on January 27, 2017), the General Counsel submitted a motion to further amend the compliance specification, and attached three exhibits listing, for each individual who was in Unit A, B or C, the amount of the 2015 Christmas bonus for which the individual was eligible based on the individual's earned salary (all of the listed individuals worked 700 or more hours and thus were eligible for the bonus). I granted the General Counsel's motion and accepted the amended compliance specification into the evidentiary record. (Tr. 96-98; see also GC Exh. 12 (including the amended compliance specification as an attachment).)

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I also agreed to keep the evidentiary record open until February 17, 2017, to allow time for the General Counsel to review Respondent's personnel records and determine if the General Counsel needed to make any changes to its list of individuals who were eligible for the bonus. After completing its review and determining that it did not need to make any changes to its list, the General Counsel (on February 16, 2017), filed a motion to admit General Counsel Exhibit 12 (a copy of the motion to further amend compliance specification that the General Counsel submitted on January 27, 2017) into evidence and close the record. I hereby grant the General Counsel's motion (which Respondent did not oppose).

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3. Backpay calculations and Respondent's arguments for mitigating its liability

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Relying on Respondent's personnel records, the General Counsel compiled a list of current and former employees who the General Counsel maintains are eligible for the 2015 Christmas bonus (I refer to this group collectively as employees or individuals), and calculated the amount of the bonus for each of those individuals based on their salary during the relevant time period. (GC Exh. 12 (Exhs. A, B and C); see also GC Exhs. 5-7, 11 (payroll records showing that each individual worked at least 700 hours for Respondent in the 2014-2015 fiscal year).)

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Respondent maintains that the following 22 individuals on the General Counsel's list are not eligible for the 2015 Christmas bonus as a remedy in this case because the individuals were not part of Unit A, B or C as of December 2015, when Respondent failed to pay the bonus: Francisco Alvarez Ramos; Keishla Atilano Ocasio; Raymond Camacho Ramirez; Efrain Delgado Cinturon; Keila Diaz Mejias; Maria Encarnacion Torres; Josefina Falu Santos; Marianne Laboy Cruz; Martha Macfie Cruz; Jorge Marrero Figueroa; Joana Melendez del Valle; Rose Munoz

Cruz; Zuleika Navarro Berrios; Bethzaida Otero Garcia; Javier Palerm Rodriguez; Soramis Parra Robles; Marangeli Pizarro Cepeda; Francheska Rivera Carrion; Roberto Rondon Figueroa; Cristina Rosario Reyes; Angel Valentin Alamo; and Alexis Vega Pina. (R. Posttrial Br. at 32–33.)

In a motion filed on March 28, 2017, the General Counsel asserted that I should strike Respondent’s argument about the 22 individuals above because Respondent did not raise the argument/defense in its answers to the compliance specification, and thus waived the argument under the applicable Board Rules. I now address that issue.

Section 102.56(b) and (c) of the Board’s Rules and Regulations states as follows regarding the type of information that a respondent needs to provide when submitting an answer to a compliance specification:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent’s position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—

. . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

Consistent with these rules, the Board has deemed allegations in a compliance specification as admitted when a respondent files a deficient answer to a compliance specification (e.g., an answer that fails to deny certain allegations with the specificity required by Board Rule 102.56(b)). See, e.g., *SK USA Cleaners, Inc., a/k/a SK USA Shirts, Inc.*, 365 NLRB No. 20, slip op. at 3 (2017) (noting that a general denial is not sufficient to refute allegations relating to backpay); *SRC Painting, LLC*, 356 NLRB No. 74, slip op. at 2 (2011).

After reviewing Respondent’s answers to the compliance specification, I agree with the General Counsel that Respondent’s answers are deficient insofar as Respondent did not plead its defense (at all or with any specificity) that any individuals who stopped working for Respondent by December 2015, would not be eligible to receive the 2015 Christmas bonus as a backpay

remedy in this case. In its original and amended compliance specification, the General Counsel sought backpay for 292 individuals, including several individuals who stopped working for Respondent by December 2015, but had the requisite salary and hours to qualify for a Christmas bonus. (See GC Exh. 1(e), 1(y); GC Motion to Strike, p. 4 & fn. 2 (noting that the original compliance specification sought backpay for Raymond Camacho Ramirez, Marianne Laboy Cruz, Martha Macfie Cruz, Rose Munoz Cruz or Soramis Parra Robles, each of whom is among the 22 individuals Respondent now asserts are ineligible for backpay). In its answers to those pleadings, Respondent generally denied that it owed the 2015 Christmas Bonus, and asserted that “[n]ot all individuals listed in [the compliance specification] have the salary or hourly requirements to qualify for a Christmas Bonus under Law 148.” Respondent did not argue that any of the 292 individuals were ineligible for backpay because they stopped working for Respondent by December 2015 (when the bonus was due to be paid). (GC Exh. 1(j) (pp. 8–9, 16), 1(aa) (pp. 2, 5).) Similarly, when the General Counsel, during trial on January 27, 2017, amended its compliance specification to provide an updated list of individuals to whom Respondent would owe backpay if Respondent violated the Act, Respondent did not offer any different defenses than those it previously stated. (See Tr. 96–98 (General Counsel further amended its compliance specification); GC Exh. 12 (confirming that, based on the General Counsel’s review of Respondent’s payroll records, the amended compliance specification that the General Counsel submitted on January 27, 2017, would be the final version).

In short, Respondent waited until its posttrial brief to argue that it did not owe backpay to any individuals who stopped working for Respondent by December 2015. Since Respondent did not plead that defense in its answers to the compliance specification (let alone plead the defense with any specificity), and the information that might have supported that defense was within Respondent’s knowledge (e.g., in payroll records showing final dates of employment, such as in GC Exh. 11), I find that under Board Rule 102.56(b) and (c), Respondent waived the defense and conceded that upon a finding that Respondent violated the Act, all individuals listed in the compliance specification would be eligible for backpay to the extent that they met the salary and hourly requirements for receiving the 2015 Christmas bonus.¹⁶

Since the evidentiary record shows that each of the individuals listed in the compliance specification worked a sufficient number of hours to qualify for the 2015 Christmas bonus, I find that that the individuals that I have listed in Appendices A (for Unit A), B (Unit B) and C (Unit C) to this decision are entitled to the amount of backpay in the amounts shown by their names, less any applicable Federal or Commonwealth of Puerto Rico taxes. The total amount of backpay for each individual shall be calculated with interest, accrued to the day of payment, plus compensation to offset any adverse tax consequences, as set forth in the remedy section of this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁷

¹⁶ I deny the General Counsel’s request that I strike Section VI of Respondent’s posttrial brief. The relief that I have granted here (i.e., finding that Respondent waived any defenses that it did not plead with specificity in its answers to the compliance specification) is sufficient to address the deficiencies in Respondent’s answers to the compliance specification.

¹⁷ 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

ORDER

Respondent, Ashford Presbyterian Community Hospital in San Juan, Puerto Rico, its
 5 officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to pay the 2015 Christmas bonus as set forth in the collective-
 10 bargaining agreements with the Union for the following appropriate bargaining units without the
 Union's consent and during the terms of the agreements:

All Licensed Practical Nurses, Senior Practical Nurses, Nurse Phlebotomists,
 Laparoscopic Technicians, Operating Room Technicians, Orthopedic
 15 Technicians, Telemetric Technicians, Physical Therapy Assistants, EKG
 Technicians, Radiological Technologists, Radiological Technologists specializing
 in Mammography CT and Orderlies employed by the Employer, Hospital el
 Presby d/b/a Ashford Presbyterian Community Hospital, at its Hospital in San
 Juan, Puerto Rico, as certified by the National Labor Relations Board in Case 24-
 20 RC-6643 (Unit A); and

All office clerks, receptionists, storeroom employees, filing clerks, discharge
 clerks, typing clerks, ward clerks, X-ray clerks, telephone operators, billing
 clerks, Record Center Clerks, Outpatient Surgery clerks, Emergency Room
 25 Clerks, Operating Room Clerks, Collections Clerks, Medical Record Clerks,
 Accounting Clerks, Cashiers, Data Entry Operator, Medical Transcriptionists,
 Medical Record Technologists, Customer Service, Presby Primary Health Care
 Center Clerks, Wound Care Center Clerks, Physical Therapy Clerks and Medicare
 Clerks, . . . as certified by the National Labor Relations Board in Cases 24-RC-
 30 8013 and 24-UC-195 as provided in Article X Occupational Groups, but
 excluding all other employees, guards and supervisors as defined in the Act (Unit
 B).

(b) Unilaterally changing the terms and conditions of employment of its employees in
 35 the following appropriate bargaining units by failing and refusing to pay the 2015 Christmas
 bonus without prior notice to the Union and without affording the Union an opportunity to
 bargain about the decision and its effects:

Units A and B; and

All the Physical Facilities and Nutritional Services employees in the appropriate
 unit, said unit as certified by the National Labor Relations Board in Case 24-RC-
 6480, employed by the employer at its Hospital, including Messengers, Linen
 Room Assistant, Equipment Technicians and Nursing Assistant (Unit C).
 45

by the Board and all objections to them shall be deemed waived for all purposes.

(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) Resume paying the 2015 Christmas bonus to employees in Units A and B, as required by the collective-bargaining agreements covering employees in those units, and make whole its employees in Units A and B for its failure to pay the 2015 Christmas bonus by paying them the amounts shown next to their names in Appendices A (for Unit A) and B (Unit B) to this decision, with interest as set forth in the remedy section of this decision and minus any tax withholdings required by Federal and Commonwealth of Puerto Rico laws.

(b) Before implementing any changes to the wages, hours or other terms and conditions of employment of employees in Units A, B and C, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in those units.

(c) Rescind its unlawful, unilateral decision, made on December 1, 2015, to not pay the 2015 Christmas bonus to employees in Units A, B and C, and make whole its employees in Units A, B and C for its failure to pay the 2015 Christmas bonus by paying them the amounts shown next to their names in Appendices A (for Unit A), B (Unit B) and C (Unit C) to this decision, with interest as set forth in the remedy section of this decision and minus any tax withholdings required by Federal and Commonwealth of Puerto Rico laws.¹⁸

(d) Compensate employees in Units A, B and C for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

(e) 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 backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in San Juan, Puerto Rico, copies of the attached notice marked "Appendix D" in English and Spanish.¹⁹ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by Respondent's authorized representative, shall be posted by 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

¹⁸ The individuals listed in Appendices A and B, of course, should only receive a single payment for the 2015 Christmas bonus (even though they are listed here as being harmed by two separate violations concerning that bonus).

¹⁹ 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."

distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by 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,

5 Respondent has gone out of business or closed the facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since December 1, 2015.

10 (g) 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 Respondent has taken to comply.

Dated, Washington, D.C. April 6, 2017

15



Geoffrey Carter
Administrative Law Judge

APPENDIX A
UNIT A

	Name (Unit A)	Backpay
1	ABRIL MERCADO, LUIS D.	\$600.00
2	ACOSTA RIVERA, QUETCY	\$600.00
3	ADORNO RODRIGUEZ, JAYLEEN	\$600.00
4	AGRINSONI CABAN, EMANUEL	\$600.00
5	ALMONTE ESPINAL, ALMA M.	\$600.00
6	ALVAREZ RAMOS, FRANCISCO	\$600.00
7	ALVAREZ SANTIAGO, RAFAELA	\$600.00
8	AMEZQUITA VELAZQ., MILAGROS	\$600.00
9	APONTE HERNANDEZ, ERIKA	\$600.00
10	ARIAS RODRIGUEZ, EURIS	\$600.00
11	ARROYO GARCIA, JOSE R.	\$600.00
12	BEAUCHAMP NEGRON, MATTHEW	\$600.00
13	BELTRAN CHEVERE, YERALY	\$600.00
14	BOYRIE LEBRON, GEYSA V.	\$600.00
15	BROWN DAVILA, IVONNE	\$600.00
16	BRUNO RODRIGUEZ, JENNIE	\$600.00
17	CABRERA CANCEL, SONIA M.	\$497.00
18	CARRASQUILLO FLORES, MICHELLE	\$600.00
19	CARRASQUILLO RUIZ, ANGEL L.	\$600.00
20	CASTRO SANTANA, YVONNE	\$600.00
21	CATALA FALERO, CHESLYS	\$600.00
22	CEBALLOS MARCANOS, ROSA	\$600.00
23	CEPEDA TORRES, YANIZCA	\$600.00
24	COLLAZO JONES, ROBERTO	\$600.00
25	COLON PAGAN, CARLOS F.	\$600.00
26	CORREA HERNANDEZ, ADA D.	\$600.00
27	CORTIJO GOMEZ, SARA I.	\$600.00
28	COTTO ADORNO, GLORIA I.	\$600.00
29	CRESPO ROSARIO, VIRGEN	\$600.00
30	CRUZ CARABALLO, JESSICA	\$600.00
31	CRUZ COLON, JOSE	\$600.00
32	CRUZ MEDINA, ROSALINA	\$600.00
33	CRUZ MONGE, MIRIAM	\$600.00
34	CRUZ SOTO, MARIA	\$600.00
35	CUEBAS FRAGOSO, STACEY	\$502.10
36	DELGADO CINTRON, EFRAIN	\$600.00
37	DIAZ ACEVEDO, ELENA	\$600.00
38	DIAZ ESCOBAR, KARLA I.	\$600.00
39	DIAZ MEJIAS, KEILA D.	\$600.00
40	ENCARNACION TORRES, MARIA	\$565.44
41	ESCALERA CANALES, RUTH	\$600.00

	Name (Unit A)	Backpay
42	ESCALERA PIZARRO, JOHANNA	\$600.00
43	ESTEVEZ ESQUILIN, MADELINE	\$600.00
44	FABREGAS BERRIOS, ENID M.	\$600.00
45	FALU SANTOS, JOSEFINA	\$598.01
46	FELICIANO MELENDEZ, BRENDA	\$600.00
47	FIGUEROA RODRIGUEZ, ROSA E.	\$600.00
48	FIGUEROA TORRES, NICOLE	\$600.00
49	FUENTES FLORES, OLGA	\$600.00
50	FUENTES RODRIGUEZ, RUFINO	\$600.00
51	GARCIA CARRION, EDITH D.	\$600.00
52	GARCIA CLEMENTE, MARIBET	\$600.00
53	GARCIA DIAZ, DAISY	\$600.00
54	GARCIA GONZALEZ, ILEANA	\$600.00
55	GARCIA STERLING, JOSEFINA	\$600.00
56	GARCIA VERDEJO, MARIA	\$600.00
57	GARCIA, ALEJANDRINA	\$600.00
58	GONZALEZ DURAN, MARITZA	\$600.00
59	GONZALEZ MARRERO, WILLIAM	\$600.00
60	GONZALEZ RIVERA, LYNNETTE	\$600.00
61	GONZALEZ RODRIGUEZ, JAVIER	\$600.00
62	GONZALEZ RODRIGUEZ, MARILUZ	\$600.00
63	GUZMAN FUENTES, MARITZA	\$600.00
64	GUZMAN LOZADA, MIGUEL A.	\$600.00
65	HERNANDEZ VELAZQUEZ, WILMARY	\$600.00
66	HENRIQUEZ ARROYO, JAIME	\$600.00
67	HERNANDEZ ASECIO, JOHANELY	\$600.00
68	HERNANDEZ BURGOS, NELLY	\$600.00
69	LA SANTA MEDINA, CARMEN	\$600.00
70	LARA ARIAS, ALTAGRACIA	\$600.00
71	LOPEZ GONZALEZ, MARINELLY	\$600.00
72	LOPEZ PEREZ, RAMON	\$600.00
73	LOZADA CLEMENTE, LOURDES	\$600.00
74	LUGO CORREIA, PAMELA	\$600.00
75	MALDONADO COLON, EVELYN	\$600.00
76	MALDONADO VELEZ, MARIA	\$600.00
77	MARCANO NUNEZ, ANA	\$600.00
78	MARRERO FIGUEROA, JORGE	\$466.21
79	MARRERO VILLALBA, SONIA	\$600.00
80	MARTINEZ RIVERA, CARMEN	\$600.00
81	MARTINEZ SERRANO, MARIA	\$600.00
82	MATOS FIGUEROA, ERNESTO	\$600.00
83	MEDINA REYES, BENJAMIN	\$600.00
84	MELENDEZ DEL VALLE, JOANA M.	\$600.00
85	MELENDEZ HERNANDEZ, NILDA	\$600.00
86	MELENDEZ RIVERA, ROSA M.	\$600.00

	Name (Unit A)	Backpay
87	MOJICA FLORES, JOSE M.	\$600.00
88	MORALES SOTO, LORY ANN	\$600.00
89	NATAL RODRIGUEZ, VIRGEN	\$600.00
90	NATER ESCALERA, JENNIFER E.	\$600.00
91	NIEVES RIVERA, ROSA	\$600.00
92	OLMEDA LOPEZ, LUZ M.	\$600.00
93	ORTA SANCHEZ, JUAN	\$600.00
94	ORTIZ QUINONES, MARIA J.	\$600.00
95	OSORIO VELEZ, GRETCHEN	\$600.00
96	PAGAN OQUENDO, YARITZA	\$600.00
97	PENA PELLOT, IVONNE	\$600.00
98	PEREZ CASADO, MARTIN	\$600.00
99	PEREZ HERNANDEZ, CARMEN	\$600.00
100	PEREZ ORTIZ, PERSIDA	\$600.00
101	PEREZ RAMIREZ, RHINA	\$600.00
102	PICHARDO PAZ, KATIRIA	\$600.00
103	PIZARRO CEPEDA, MARANGELI	\$513.11
104	PIZARRO ESCALERA, MARIA	\$600.00
105	QUINONES EURASQUIN, JOSUE	\$600.00
106	QUINONES TORRES, ZENIA	\$600.00
107	RAMIREZ SANTIAGO, CARLOS	\$600.00
108	RAMOS CHAEZ, ANN	\$600.00
109	RAMOS QUINONES, IDALIA	\$600.00
110	RAMOS ROHENA, YASTNI	\$600.00
111	REYES PIZARRO, MARIA M.	\$600.00
112	REYNOSO RICHARDSON, MILEDYS	\$499.82
113	RIVERA AYALA, JOSE R.	\$600.00
114	RIVERA GALINDO, FREDERICK	\$600.00
115	RIVERA MALDONADO, ANGELICA	\$600.00
116	RIVERA WALKER, ENRIQUE J.	\$600.00
117	RODRIGUEZ SANTIAGO, YOLANDA	\$594.35
118	RODRIGUEZ VILLEGAS, JAME	\$600.00
119	ROJAS NEGRON, GLORIA E.	\$600.00
120	ROMAN MALDONADO, SAMINITH	\$600.00
121	ROSARIO AVILES, MARIAM	\$600.00
122	ROSARIO COLON, EDMARIE	\$600.00
123	ROSARIO REYES, CRISTINA	\$564.10
124	RUIZ RIVERA, DANIEL	\$600.00
125	SANABRIA REYES, KACHELL	\$600.00
126	SANCHEZ MORALES, JESUS E.	\$600.00
127	SANCHEZ PACHECO, FELIX	\$600.00
128	SANJURJO FIGUEROA, ANA G.	\$600.00
129	SANTANA DELBREY, LYDIA	\$600.00
130	SANTIAGO RIVERA, HECTOR L.	\$600.00
131	SERATE FUENTES, NANETTE S.	\$600.00

	Name (Unit A)	Backpay
132	SERRANO MENDEZ, NEYDA	\$416.05
133	SERRANO RIVERA, HECTOR	\$600.00
134	SOTO REYES, HECMARIE	\$600.00
135	SUAREZ VAZQUEZ, GILBERT	\$600.00
136	TIRADO HERNANDEZ, NEISY	\$600.00
137	TORRES ESCRIBANO, JOEL F.	\$600.00
138	TORRES LABOY, JOAQUIN	\$600.00
139	TORRES LOPEZ, CHARIN	\$600.00
140	TORRES SANCHEZ, AILEEN	\$600.00
141	TORRES TOLEDO, MARICELA	\$600.00
142	TORRES TROCHE, DOLKA M.	\$600.00
143	VALDES CLAUDIO, MARIBEL	\$600.00
144	VALENTIN ALAMO, ANGEL L.	\$600.00
145	VAZQUEZ CARABALLO, JESUS O.	\$600.00
146	VAZQUEZ ORTIZ, JESSICA	\$600.00
147	VEGA RIVERA, LUIS	\$600.00
148	VELAZQUEZ CANTRES, OLGA	\$600.00
149	VELEZ VIDAL, BARBARA	\$600.00
150	VIERA CARRASQUILLO, LUIS A.	\$600.00
151	VILLALONGO RIVERA, CONSUELO	\$600.00
152	VILLEGAS RAMOS, WALTER O.	\$600.00
153	YEDIS DE LEON, ELCILIA	\$600.00
154	ZAPATA BEATO, FRANCISCA	\$600.00
	Total	\$91,616.19

APPENDIX B
UNIT B

	Name (Unit B)	Backpay
1	ALEMAN SANTANA, NIVIA L.	\$600.00
2	APONTE TORRES, DAMARIS	\$600.00
3	ARENAS GUZMAN, PATRICIA	\$600.00
4	ATILANO OCASIO, KEISHLA L.	\$600.00
5	AYALA GOMEZ, DAVID	\$600.00
6	AYALA RIVERA, MARILYN	\$600.00
7	BAIRAN LUGO, ANGELA	\$600.00
8	BERRIOS MARTINEZ, BRENDA	\$600.00
9	CALDERON RIVERA, YOMARIE	\$584.39
10	CARRASQUILLO FELICIANO, ARLENE	\$600.00
11	CARRASQUILLO RIVERA, PABLO	\$600.00
12	CARRERA SANCHEZ, IRENE	\$600.00
13	CASTELLANO FERRER, HAZEL	\$600.00
14	COLON CRUZ, RAMON	\$600.00
15	CRUZ GONZALEZ, DIAMILDE	\$600.00
16	CRUZ MALDONADO, AWILDA	\$600.00
17	CRUZ PEREZ, MELISSA	\$600.00
18	DAVILA LLANOS, SHEYLA	\$600.00
19	DE LA CRUZ SEVERINO, ROSA	\$600.00
20	DIAZ BARRANCO, AWILDA.	\$600.00
21	DOMINGUEZ CRUZ, ANA G.	\$600.00
22	ECHEVARRIA VAZQUEZ, ELVIN	\$600.00
23	ESPARRA RAMOS, RICARDO E.	\$600.00
24	FARGAS LLANOS, BARBARA	\$600.00
25	FERMAINT ROSARIO, MARIA	\$600.00
26	FIGUEROA BAEZ, MARLENE	\$600.00
27	FLORES PAGAN, ANA R.	\$600.00
28	FONSECA MONTANEZ, TAWANNY	\$600.00
29	FORT RUIZ, DAYANA	\$600.00
30	FOURNIER LUGO, MAGALY	\$600.00
31	GARCIA ALVAREZ, XIOMARA	\$600.00
32	GARCIA TAPIA, AIDA I.	\$600.00
33	GONZALEZ AYALA, LIRIS N.	\$600.00
34	GONZALEZ DE JESUS, ALMA	\$600.00
35	GONZALEZ MARTINEZ, JUANA	\$600.00
36	GONZALEZ ORTEGA, VANESSA	\$600.00
37	GONZALEZ VALLE, ISMAEL J.	\$600.00
38	GONZALEZ VARGAS, FRANCES	\$600.00
39	HANCE RODRIGUEZ, CARMEN	\$600.00
40	HERNANDEZ CORTES, WANDA	\$600.00
41	HERNANDEZ PENA, YULY	\$600.00
42	HUERTAS NEGRON, CAROL D.	\$600.00

	Name (Unit B)	Backpay
43	LABOY CRUZ, MARIANNE	\$600.00
44	LOPEZ PIZARRO, JOMARY	\$600.00
45	LUGO MILAN, INGRID V.	\$600.00
46	MACFIE CRUZ, MARTHA E.	\$600.00
47	MALDONADO NEGRON, GRISEL	\$600.00
48	MALDONADO VARELA, MERCEDES	\$600.00
49	MARGARY SANTOS, GRISELLE	\$600.00
50	MARTINEZ MARTINEZ, NARACHY	\$600.00
51	MARTINEZ RODRIGUEZ, AIDA	\$600.00
52	MARTINEZ RODRIGUEZ, VANEXIS	\$600.00
53	MATHEWS VILLAFANE, CARLA	\$600.00
54	MATOS GARCIA, LUZ	\$600.00
55	MAXWELL SOTO, YASMIN	\$600.00
56	MEDERO FALERO, ANA	\$600.00
57	MEDINA ROSARIO, ZYRElda	\$600.00
58	MOJICA LAUREANO, NORaida	\$600.00
59	MOLINA AGOSTINI, VIVIANETTE	\$600.00
60	MUNOZ CRUZ, ROSE M.	\$600.00
61	NAVARRO BERRIOS, ZULEIKA	\$600.00
62	NIEVES MORALES, MARICARMEN	\$600.00
63	OCHOA PADRO, MARIA C.	\$600.00
64	OLIVER MIRANDA, ELIZABETH	\$600.00
65	ORTIZ LOPEZ, MARIBEL	\$600.00
66	OTERO GARCIA, BETHZAIDA	\$509.32
67	PADILLA REYES, EMANUEL	\$600.00
68	PADRO MATIAS, MARIA DEL C.	\$600.00
69	PAGAN BAEZ, YESENIA	\$600.00
70	PALERM RODRIGUEZ, JAVIER A.	\$422.67
71	PARRA ROBLES, SORAMIS	\$600.00
72	PASTOR REYES, OLGA I.	\$600.00
73	PERALES FLORES, MARIA	\$600.00
74	PERAZA NEVAREZ, SHEILA	\$600.00
75	PEREZ ESCOBAR, GLORIA E.	\$600.00
76	PEREZ MARQUEZ, EDGAR	\$600.00
77	QUILES AVILES, MYRNALIN	\$600.00
78	QUINONES ELIAS, KATIRIA	\$600.00
79	RAMIREZ DELGADO, BARBARA	\$600.00
80	RAMIREZ GOTAY, DILTA	\$600.00
81	RAMOS LLOPIZ, LILLIAM	\$600.00
82	RAMOS PABON, MIGDALIA	\$600.00
83	RAMOS PEREZ, YARITZA	\$585.18
84	RAMOS RIVERA, LUIS E.	\$600.00
85	RIJOS CRUZ, JOSE A.	\$600.00
86	RIVERA CARRION, FRANCHESKA	\$600.00
87	RIVERA LOPEZ, IRIS	\$600.00

	Name (Unit B)	Backpay
88	RIVERA NEVAREZ, CARMEN G.	\$600.00
89	RIVERA RIVERA, CARIDAD	\$600.00
90	RIVERA RODRIGUEZ, JUAN L.	\$600.00
91	RIVERA SOTO, JANIS	\$600.00
92	RODRIGUEZ AQUINO, ISABEL	\$600.00
93	RODRIGUEZ FIGUEROA, AIDA	\$600.00
94	RODRIGUEZ MONTFORT, GIANINA	\$600.00
95	RODRIGUEZ NATAL, RAMED	\$600.00
96	RODRIGUEZ RIVERA, YAMILET	\$600.00
97	RODZ. LUCIANO, ELIZABETH	\$600.00
98	ROJAS DOMINGUEZ, ANGEL	\$600.00
99	ROSA DELGADO, NAYALIE	\$600.00
100	ROSA RIVERA, FERNANDO	\$600.00
101	ROSADO PAGAN, NILDA	\$600.00
102	SANCHEZ GARCIA, SILVIA	\$600.00
103	SANCHEZ RODRIGUEZ, VIRMARY	\$600.00
104	SANTIL SALDANA, ALEXANDRA	\$600.00
105	SANTOS MOLINA, ROSA M.	\$600.00
106	SERRANO MORALES, BLANCA I.	\$600.00
107	TAVAREZ URBANO, MICHEL E.	\$600.00
108	TORRES CANCEL, ERICK	\$600.00
109	TORRES MONTEROLA, MARIA	\$600.00
110	VALDEZ ROSARIO, FRANCESKA	\$600.00
111	VAZQUEZ MERCED, NITZA	\$600.00
112	VAZQUEZ SANTIAGO, ANAWILDA	\$600.00
113	VEGA CINTRON, EVELYN	\$600.00
114	VEGA PINA, ALEXIS	\$600.00
115	VELAZQUEZ DIAZ, ALEXY	\$600.00
116	VILA MARTINEZ, BRENDA E.	\$600.00
117	ZAYAS BLANCO, SYLVIA L.	\$600.00
	Total	\$69,901.56

APPENDIX C
UNIT C

	Name (Unit C)	Backpay
1	ALVAREZ NATAL, JOHNNY	\$600.00
2	ALVAREZ VELEZ, IVAN	\$600.00
3	BENITEZ DAMIANI, PEDRO	\$600.00
4	BRACERO REYES, ALBERT	\$600.00
5	CAMACHO RAMIREZ, RAYMOND	\$600.00
6	COLL GARCIA, LUZ	\$600.00
7	ECHAVARRY FEBO, AWILDA	\$600.00
8	FELICIANO MOLINA, SIXTO	\$600.00
9	FONTANEZ ORTIZ, JOSE A.	\$600.00
10	GONZALEZ GUZMAN, RAUL	\$600.00
11	GUZMAN CASTRO, RUTH	\$600.00
12	MILLAN MARQUEZ, SANDRA	\$600.00
13	MONTERO GARCIA, PEDRO	\$600.00
14	MORALES MALDONADO, CARMEN I.	\$600.00
15	OSORIO FUENTES, JOSE	\$600.00
16	PANELL MORALES, SAMUEL	\$600.00
17	PEREZ MATOS, ELIEZER	\$600.00
18	PEREZ OYOLA, HARLEY	\$600.00
19	PEREZ PIZARRO, ELIZABETH	\$600.00
20	PEREZ RODRIGUEZ, DANIEL	\$600.00
21	QUINTANA RODRIGUEZ, FELIX	\$600.00
22	RAMOS NOA, ANGEL	\$600.00
23	RAMOS OTERO, NELSON	\$600.00
24	REYES SANTIAGO, ROBERTO	\$600.00
25	RIVERA MORALES, LUIS A.	\$600.00
26	RODRIGUEZ BAEZ, HECTOR J.	\$415.96
27	RONDON FIGUEROA, ROBERTO	\$600.00
28	ROSADO MARTINEZ, HARRY	\$600.00
29	SALAZAR ROBLES, HECTOR IVAN	\$600.00
30	SANCHEZ LOPEZ, JOSUE	\$600.00
31	SANCHEZ LUYANDO, TATIANA	\$600.00
32	SANTAELLA ORTIZ, DAVID	\$600.00
33	SOSTRE PASTOR, DAVID	\$600.00
34	SUAREZ RODRIGUEZ, JORGE	\$600.00
35	VERDEJO FIGUEROA, MARIA A.	\$600.00
	Total	\$20,815.96
	Grand Total (Units A, B and C)	\$182,333.71

APPENDIX D

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 pay the 2015 Christmas bonus as set forth in the collective-bargaining agreements with the Union for the following appropriate bargaining units without the Union's consent and during the terms of the agreements:

All Licensed Practical Nurses, Senior Practical Nurses, Nurse Phlebotomists, Laparoscopic, Technicians, Operating Room Technicians, Orthopedic Technicians, Telemetric Technicians, Physical Therapy Assistants, EKG Technicians, Radiological Technologists, Radiological Technologists specializing in Mammography CT and Orderlies employed by the Employer, Hospital el Presby d/b/a Ashford Presbyterian Community Hospital, at its Hospital in San Juan, Puerto Rico, as certified by the National Labor Relations Board in Case 24-RC-6643 (Unit A); and

All office clerks, receptionists, storeroom employees, filing clerks, discharge clerks, typing clerks, ward clerks, X-ray clerks, telephone operators, billing clerks, Record Center Clerks, Outpatient Surgery clerks, Emergency Room Clerks, Operating Room Clerks, Collections Clerks, Medical Record Clerks, Accounting Clerks, Cashiers, Data Entry Operator, Medical Transcriptionists, Medical Record Technologists, Customer Service, Presby Primary Health Care Center Clerks, Wound Care Center Clerks, Physical Therapy Clerks and Medicare Clerks, . . . as certified by the National Labor Relations Board in Cases 24-RC-8013 and 24-UC-195 as provided in Article X Occupational Groups, but excluding all other employees, guards and supervisors as defined in the Act (Unit B).

WE WILL NOT unilaterally change the terms and conditions of employment of our employees in the following appropriate bargaining units by failing and refusing to pay the 2015 Christmas bonus without prior notice to the Union and without affording the Union an opportunity to bargain about the decision and its effects:

Units A and B; and

All the Physical Facilities and Nutritional Services employees in the appropriate unit, said unit as certified by the National Labor Relations Board in Case 24-RC-6480, employed by the employer at its Hospital, including Messengers, Linen Room Assistant, Equipment Technicians and Nursing Assistant (Unit C).

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

WE WILL resume paying the 2015 Christmas bonus to employees in Units A and B, as required by the collective-bargaining agreements covering employees in those units, and WE WILL make whole our employees in Units A and B for our failure to pay the 2015 Christmas bonus, with interest and minus any tax withholdings required by Federal and Commonwealth of Puerto Rico laws.

WE WILL, before implementing any changes to the wages, hours or other terms and conditions of employment of employees in Units A, B and C, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in those units.

WE WILL rescind our unlawful, unilateral decision, made on December 1, 2015, to not pay the 2015 Christmas bonus to employees in Units A, B and C, and WE WILL make whole, our employees in Units A, B and C for our failure to pay the 2015 Christmas bonus, with interest and minus any tax withholdings required by Federal and Commonwealth of Puerto Rico laws.

WE WILL compensate bargaining unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

**ASHFORD PRESBYTERIAN COMMUNITY
HOSPITAL**

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

South Trust Plaza, 201 East Kennedy Boulevard, Ste 530, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-165682 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2345.