

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	DCO-117
	:	
Petitioner	:	No. 22-2380
v.	:	
	:	
RIVERSIDE NURSING AND REHABILITATION CENTER;	:	
BARNEGAT REHABILITATION AND NURSING CENTER;	:	Board Case Nos.:
AND GALLOWAY NURSING AND REHABILITATION,	:	22-CA-269463
LLC, D/B/A THE HEALTH CENTER AT GALLOWAY	:	22-CA-269469
	:	22-CA-269471
Respondents	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before: JORDAN, PORTER and MATEY, Circuit Judges

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondents, Riverside Nursing and Rehabilitation Center; Barnegat Rehabilitation and Nursing Center; and Galloway Nursing and Rehabilitation, LLC, d/b/a The Health Center at Galloway, their officers, agents, successors, and assigns, enforcing its order dated June 6, 2022, in Case Nos. 22-CA-269463, 22-CA-269469 and 22-CA-269471, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondents, Riverside Nursing and Rehabilitation Center; Barnegat Rehabilitation and Nursing Center; and Galloway Nursing and Rehabilitation, LLC, d/b/a The Health Center at Galloway, their officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT

s/ Paul B. Matey

Circuit Judge

DATED: October 25, 2022

NATIONAL LABOR RELATIONS BOARD

v.

RIVERSIDE NURSING AND REHABILITATION CENTER;
BARNEGAT REHABILITATION AND NURSING CENTER; AND
GALLOWAY NURSING AND REHABILITATION, LLC, D/B/A THE
HEALTH CENTER AT GALLOWAY

ORDER

Respondent Riverside Nursing and Rehabilitation Center, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Unilaterally changing the unit employees' terms and conditions by rescinding the perfect attendance bonus program based on 100 percent attendance without first notifying or bargaining with the Union.
 - (b) Unilaterally changing the unit employees' terms and conditions by rescinding the premium pay incentive for working with COVID patients without first notifying and bargaining with the Union.
 - (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) Restore the performance-based bonus program and the pay incentive. Maintain it in effect until either the Union requests its rescission or the Respondent and Union negotiate an agreement on modifications to the bonus program and pay incentive.
 - (b) Make whole Respondent's employees and former employees for any and all loss of wages and other benefits incurred as a result of Respondent's unlawful unilateral decisions to: rescind the perfect attendance bonus program and the premium pay incentive, with interest, as provided for in the remedy section of the June 6, 2022 Decision of Administrative Law Judge Kenneth W. Chu.
 - (c) Compensate bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards covering

periods longer than 1 year, and to file with the Regional Director for Region 22 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each of the unit employees.

- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay.
- (e) 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.
- (f) Within 14 days after service by the Region, post at the Respondent Riverside facility located in Trenton, New Jersey, copies of the attached notice marked "Appendix" for the Riverside facility. Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent had gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 15, 2020.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 22, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent have taken to comply.

Respondent Barnegat Rehabilitation and Nursing Center, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Unilaterally changing the unit employees' terms and conditions by rescinding the perfect attendance bonus program based on 100 percent attendance without first notifying or bargaining with the Union.
 - (b) Unilaterally changing the unit employees' terms and conditions by rescinding the premium pay incentive for working with COVID patients without first notifying and bargaining with the Union.¹
 - (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) Restore the performance-based bonus program and the pay incentive. Maintain it in effect until either the Union requests its rescission or the Respondent and Union negotiate an agreement on modifications to the bonus program and pay incentive.
 - (b) Make whole Respondent's employees and former employees for any and all loss of wages and other benefits incurred as a result of Respondent's unlawful unilateral decisions to: rescind the perfect attendance bonus program and the premium pay incentive, with interest, as provided for in the remedy section of the June 6, 2022 Decision of Administrative Law Judge Kenneth W. Chu.
 - (c) Compensate bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards covering periods longer than 1 year, and to file with the Regional Director for

¹ As noted in the June 6, 2022 Decision of Administrative Law Judge Kenneth W. Chu, the complaint against Barnegat did not allege it had implemented and rescinded a premium pay incentive. It is appropriate to order Barnegat to reimburse unit employees of any premium pay incentive as a backpay award unless shown at a compliance proceeding that Respondent Barnegat did not have a premium pay incentive.

Region 22 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each of the unit employees.

- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay.
- (e) 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.
- (f) Within 14 days after service by the Region, post at the Respondent Barnegat facility located in Barnegat, New Jersey, copies of the attached notice marked "Appendix" for the Barnegat facility. Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent had gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 22, 2020.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 22, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent have taken to comply.

Respondent Galloway Nursing and Rehabilitation, LLC d/b/a The Health Center at Galloway, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Unilaterally changing the unit employees' terms and conditions by rescinding the perfect attendance bonus program based on 100 percent attendance without first notifying or bargaining with the Union.
 - (b) Unilaterally changing the unit employees' terms and conditions by rescinding the premium pay incentive for working with COVID patients without first notifying and bargaining with the Union.
 - (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) Restore the performance-based bonus program and the pay incentive. Maintain it in effect until either the Union requests its rescission or the Respondent and Union negotiate an agreement on modifications to the bonus program and pay incentive.
 - (b) Make whole Respondent's employees and former employees for any and all loss of wages and other benefits incurred as a result of Respondent's unlawful unilateral decisions to: rescind the perfect attendance bonus program and the premium pay incentive, with interest, as provided for in the remedy section of the June 6, 2022 Decision of Administrative Law Judge Kenneth W. Chu.
 - (c) Compensate bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards covering periods longer than 1 year, and to file with the Regional Director for Region 22 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each of the unit employees.
 - (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such

records if stored in electronic form, necessary to analyze the amount of backpay.

- (e) 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.
- (f) Within 14 days after service by the Region, post at the Respondent Galloway facility located in Galloway, New Jersey, copies of the attached notice marked "Appendix" for the Galloway facility. Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent had gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 22, 2020.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 22, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent have taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT fail to pay you a perfect attendance bonus in the manner such bonus was paid.

WE WILL NOT fail to pay you a premium pay incentive in the manner such incentive was paid.

WE WILL NOT initiate or terminate bonus or incentive payments to unit employees without first notifying 1199 SEIU United Healthcare Workers East and offering an opportunity to bargain about such bonuses and incentives.

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

WE WILL restore our performance-based attendance bonus program and premium pay incentive and maintain them in effect until either the Union requests its rescission or we negotiate with the Union, an agreement to modify the programs, as the exclusive collective-bargaining representative of the following bargaining unit:

All full-time and regular part-time employees who work as nursing assistants, dietary employees, activities assistants, housekeeping employees, and laundry employees, excluding all other employees, clerical employees, registered nurses, licensed practical nurses, technical and professional employees, cooks, instructors, central supply employees, ward clerks, physical therapy aides, maintenance employees, administrators, executive employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL make unit employees whole for any loss of earnings less any net interim earnings and other benefits resulting from our unilateral failure to pay a perfect attendance bonus and premium pay incentive in summer 2020 with interest compounded daily.

WE WILL file a report with the Social Security Administration allocating these employees' backpay to the appropriate calendar quarters.

WE WILL compensate these employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1-year.

**RIVERSIDE NURSING AND
REHABILITATION CENTER**

(Employer)

Dated: _____ By: _____
(Representative)

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 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.nlr.gov.

National Labor Relations Board Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
Hours of Operation: 8:30 a.m. to 5 p.m.
973-645-2100

The Administrative Law Judge's decision can be found at www.nlr.gov/case/22-CA-269463 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, 973-645-2100.

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All full-time and regular part-time employees who work as nursing assistants, dietary employees, activities assistants, housekeeping employees, and laundry employees, excluding all other employees, clerical employees, registered nurses, licensed practical nurses, technical and professional employees, cooks, instructors, central supply employees, ward clerks, physical therapy aides, maintenance employees, administrators, executive employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL make unit employees whole for any loss of earnings less any net interim earnings and other benefits resulting from our unilateral failure to pay a perfect attendance bonus and premium pay incentive in summer 2020 with interest compounded daily.

WE WILL file a report with the Social Security Administration allocating these employees' backpay to the appropriate calendar quarters.

WE WILL compensate these employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1-year.

**BARNEGAT REHABILITATION
AND NURSING CENTER**

(Employer)

Dated: _____ By: _____
(Representative)

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**GALLOWAY NURSING and REHABILITATION,
LLC D/B/A THE HEALTH CENTER at GALLOWAY**

(Employer)

Dated: _____ By: _____
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