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**To:** Schechter, Eric R.; Kaufman, Julie; Santiago, Saulo; Pagones Ross, Joanna
**Cc:** Compton, Kayce R.; Lussier, Richard; Dodds, Amy L.; Walters, Kimberly; Belin, Jeremy S.; Shorter, LaDonna
**Subject:** Pinebrook Nursing Home, 22-CA-270599 (case-closing email)
**Date:** Monday, June 15, 2026 9:46:44 AM

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Good moring,

The Region submitted this case for advice as to whether a nursing home was entitled to unilaterally grant and rescind temporary hazard pay to unit employees during the first few months of the COVID-19 pandemic. We conclude the nursing home's grant and subsequent rescission of COVID-19 hazard pay was one decision privileged by pandemic-related exigent circumstances, rather than separate decisions subject to their own bargaining requirements. To the extent the Employer arguably had an effects-bargaining obligation related to the hazard pay's recission, we conclude that continuing to litigate the complaint on this issue alone would not effectuate the purposes and policies of the Act. Accordingly, the Region should withdraw the complaint and dismiss the charge, absent withdrawal.

GeriCare, Inc. (the Employer) owned and operated Pinebrook Nursing Home, located in Englishtown, New Jersey, for many years. 1199 SEIU Healthcare Workers East (the Union) has represented the Employer's employees for decades; the parties' most recent collective-bargaining agreement expired in 2005.

At the outset of the COVID-19 pandemic in March 2020, the Employer's operations were impacted by pandemic-related employee absences, with several departments at Pinebrook experiencing near 50-100% absentee rates. On March 31, 2020, the Health Commissioner for the State of New Jersey ordered nursing homes to accept COVID-19-positive residents back from hospitals in the event the patient-residents had no additional ongoing health issues. In response to its severe staffing issues and the state-mandated requirement to begin treating COVID-19-positive residents at its facilities, the Employer began implementing hazard pay ranging between $3.00 and $9.00 per hour at Pinebrook's sister facilities without notice to or bargaining with the Union.[1]

On April 9, 2020, after the Union learned that the Employer had unilaterally implemented hazard pay at Pinebrook's sister facilities, the Union urged the Employer to provide hazard pay at all the Employer's facilities and stated it wanted notice and an opportunity to bargain "before any future modifications are made" to employees' terms and conditions of employment, including the new hazard pay. By April 12, 2020, the Employer had implemented hazard pay to all but one department of bargaining-unit employees at Pinebrook.[2]

By June 2020, employee attendance at Pinebrook had nearly returned to the pre-pandemic levels of early March 2020. At some point during the pay period spanning July 5 through July 18, 2020, the Employer unilaterally ceased providing hazard pay to all unit employees at Pinebrook.

On October 21, 2021, the Region issued complaint in the instant case, alleging that the Employer's unilateral rescission of the COVID-19 hazard pay violated Section 8(a)(5). On January 5, 2022, the ALJ trial was postponed indefinitely due to the imminent sale of the Pinebrook facility to new owners. Since January 2022, the Pinebrook facility has been sold three times to successive owners.

We conclude that exigent circumstances excused the Employer from providing notice to the Union and an opportunity to bargain over its implementation and rescission of the COVID-19 hazard pay, which constituted a single decision under the circumstances. An employer may be excused from its obligation to bargain in good faith with its employees' bargaining representative where a major economic threat requires immediate employer action that does not permit sufficient time for bargaining to impasse. *See Bottom Line Enterprises,* 302 NLRB 373, 374 (1991), *enforced mem. sub nom. Master Window Cleaning, Inc. v. NLRB,* 15 F.3d 1087 (9th Cir. 1994); *RBE Enterprises of S.D., Inc.*, 320 NLRB 80, 81–82 (1995). The Board has recognized that events at the outset of the COVID-19 pandemic in early 2020 were such "economic exigencies." *See Metro Man IV, LLC d/b/a Fountain Bleu Health,* 372 NLRB No. 37, slip op. at 3 & n.12 (2022), *enforced in rel. part*, 113 F.4th 692 (6th Cir. 2024).

Here, the Employer experienced abrupt and massive staffing shortages at the outset of the COVID-19 pandemic while also being ordered by the State of New Jersey to care for COVID-19-positive residents rather than transferring them to a hospital. This unprecedented exigency warranted the Employer's prompt implementation of COVID-19 hazard pay to ensure it had adequate staffing numbers to continue providing care for its residents. Such a dramatic, sudden increase in wages would be financially difficult for any company to sustain indefinitely.[3] Thus, from the outset, both the grant and rescission of COVID-19 hazard pay was intrinsically and solely linked to addressing staffing shortages related to the COVID-19 outbreak in New Jersey. Indeed, the Employer ceased providing hazard pay when the COVID-19 staffing crisis at its facility had abated: by late June 2020, shortly before the rescission, the Employer's payroll records reveal that its staffing numbers had nearly returned to pre-pandemic levels while, at the same time, the number of new COVID-19 cases had begun to decrease rapidly in New Jersey and the state had begun to alleviate COVID-19-related restrictions.[4] Moreover, there is no evidence that the Employer ever reserved the right, in its sole discretion, to terminate or amend the hazard pay for any reason other than the COVID-19-related staffing crisis. Accordingly, under the circumstances, the grant and rescission of hazard pay were one act, and the rescission was not subject to its own bargaining requirement. *See Metro Man IV*, 113 F.4th at 698 (unilateral grant and rescission of hazard pay was one decision privileged by COVID-19 exigency, where hazard pay was tied to facility COVID levels).

The Employer's rescission of its COVID-19 hazard pay was materially different than the unilateral changes to COVID-19-related benefits at issue in *Alaris*

*Health at Boulevard East v. NLRB*, 123 F.4th 107 (3d Cir. 2024). In *Alaris*, the Third Circuit rejected a nursing-home employer's claim that exigent circumstances existed to support its "announcing, repeatedly altering, and ultimately terminating bonuses without any reference to previous announcements or 'terms.'" *Id.* at 122–23. Significantly, and unlike here, the unilateral actions in *Alaris* were not supported by evidence of staffing shortages or other exigencies caused by the pandemic. *Id.* at 122.

Even if the Employer arguably had an effects-bargaining obligation regarding the rescission of hazard pay, under the unique facts of this case, it would not effectuate the purposes and policies of the Act to litigate the complaint. Effects bargaining would be limited to whether the COVID-19 emergency continued to require hazard pay, which has long been moot. *Cf. First Nat. Maint. Corp. v. NLRB*, 452 U.S.666, 681–82 (1981) (observing that bargaining must "be conducted in a meaningful manner and at a meaningful time"). Moreover, the Employer's Pinebrook facility has been sold to three successive owners. Ordering the current owner of the Pinebrook facility to engage in effects bargaining over a moot issue regarding an emergency that existed under its predecessor's predecessor almost six years ago would not be an effective use of Agency resources.

Accordingly, the Region should withdraw the complaint and dismiss the charge, absent withdrawal.

Please contact us with any questions.

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[1] The COVID-19 hazard pay was denoted on employees' payroll records as "Temp. Bonus" and calculated as an hourly rate for each employee that matched the number of regular and overtime hours the employee worked during the preceding pay period.

[2] It is unclear why one six-employee department was excluded from receiving hazard pay. To date, the Union has not objected to the exclusion of these six employees.

[3] We note that, in June 2020, during the last full pay period in which the Employer offered COVID-19 hazard pay, twenty-five percent of the wages paid to bargaining-unit employees constituted hazard pay.

[4] See, e.g., Nick Devlin, *N.J. is only state in the U.S. to see COVID-19 cases drop for two weeks running*, NJ.com (Jul. 23, 2020, 8:31 AM), https://www.nj.com/coronavirus/2020/07/only-one-state-in-the-us-has-seen-covid-19-cases-drop-for-two-weeks-running.html; *An Order Lifting the Limits of Indoor and Outdoor Gatherings*, Exec. Order No. 152, 52 N.J. REG. 1301(a) (Jun. 9, 2020).

Regards,

[redacted]