

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

**PROFESSIONAL MEDICAL
TRANSPORT, INC.**

and

**Cases 28-CA-023399
28-CA-060435
28-CA-061218
28-CA-062824**

**INDEPENDENT CERTIFIED EMERGENCY
PROFESSIONALS OF ARIZONA, LOCAL #1**

Sandra Lyons, Atty., for the General Counsel.
Thomas J. Kennedy and Michael Grubbs, Attys., of Scottsdale,
Arizona, for the Respondent.
Joshua Barkely, President, Independent Certified Emergency
Professionals of Arizona, Local #1, of Mesa, Arizona,
for the Charging Party.

DECISION

I. Statement of the Case

LANA PARKE, Administrative Law Judge. Pursuant to charges filed by Independent Certified Emergency Professionals of Arizona, Local #1 (the Union), the Regional Director for Region 28 of the National Labor Relations Board (the Board) issued Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing (the complaint) on September 13, 2011.¹ The complaint alleges that Professional Medical Transport, Inc. (the Respondent or PMT) violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (the Act).² This matter was tried in Phoenix, Arizona, on October 11-14.

II. Issues

- A. Did the Respondent violate Section 8(a)(1) of the Act by the following conduct:
1. Threatening employees with the following:
 - a. discharge for engaging in union and concerted protected activities;
 - b. suspension for filing charges under the Act;
 - c. demotion for filing charges under the Act;
 - d. removal from assigned shifts for filing charges under the Act;

¹ All dates herein are 2011, unless otherwise specified.

² At the hearing, the General Counsel amended the complaint to reflect, at subpar. 8(o), the date of April 11 as an additional instance of the 8(a)(5) violations alleged therein.

- e. unspecified reprisals for filing charges under the Act;
 - f. denial of requested union representation for investigatory interviews unless contemplated discipline was greater than a verbal warning.
- 5 2. Creating an impression among its employees that their union and concerted protected activities were under surveillance.
3. Orally promulgating an overly-broad and discriminatory rule prohibiting employees from presenting concerted complaints to its human resources department.
- 10 B. Did the Respondent violate Section 8(a)(1)and (3) of the Act by the following conduct:
- 1. On June 28, issuing a written warning to employee Travis Yates.
 - 2. On June 28, issuing a written warning to its employee Joshua Barkley.
 - 3. On July 7, placing Joshua Barkley on administrative leave.
- 15 C. Did the Respondent violate Section 8(a)(1)and (4) of the Act by the following conduct:
- 1. On August 16, issuing a written warning and remedial training to Travis Yates.
 - 2. On August 16, suspending Joshua Barkley.
 - 3. On August 16, demoting Joshua Barkley from field training officer to regular paramedic.
 - 4. On August 16, removing Joshua Barkley from his regular shift.
- 20 D. Did the Respondent violate Section 8(a)(1)and (5) of the Act by failing and refusing to furnish to the Union information relevant and necessary to the Union’s performance of its duties as the collective-bargaining representative of the unit, upon the Union’s requests of January 10, June 29, and August 16.
- 25 E. Did the Respondent violate Section 8(a)(1)and (5) of the Act by engaging in the following conduct without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the conduct and the effects of the conduct:
- 1. In October 2010, shutting down unit 603.
 - 2. In mid-December 2010, changing its policy regarding time allotted for “move-ups”.
 - 3. On March 17, changing the terms of a December 1, 2010 agreement by not allowing the union president’s designee to attend collective-bargaining meetings during his normal shift without the designee either making a shift trade or using personal time off and restricting the terms of the agreement to the union president only.
 - 4. Since January, issuing discipline to employees under the changed policy regarding time allotted for “move-ups.”
 - 5. On July 1, requiring the Union to pay \$12 per hour for administrative costs connected with compiling the information requested by the Union on June 29.
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III. Jurisdiction

At all material times, the Respondent, an Arizona corporation, with an office and place of business in Tempe, Arizona (the Respondent’s facility), has been engaged in providing emergency transportation and medical care to various municipalities and businesses. During the 12-month period ending March 11, the Respondent, in conducting its business operations, purchased and received at the Respondent’s facility goods valued in excess of \$50,000 directly from points outside the State of Arizona. The Respondent admits, and I find, that at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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IV. Findings of Fact

Unless otherwise explained, the findings of fact are based on party admissions, stipulations, and uncontroverted testimony regarding events occurring during the period of time relevant to these proceedings. 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 the Respondent, I find the following events occurred in the circumstances described below during the period relevant to these proceedings.

A. The Respondent's Business Operations

At all material times, the following individuals held the positions set forth opposite their respective names⁴ and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ted Beam (Beam)	--	Director of Operations
Jim Roeder (Roeder)	--	Vice President Clinical Services
Pat Cantelme (Cantelme)	--	CEO 911 Operations
Joy Carpenter (Carpenter)	--	Human Resources Director
Beverly Lemoine (Lemoine)	--	911 Regional Manager
Wayne Clonts (Clonts)	--	Operations Manager/General Transport
Susanne Kuhlman (Kuhlman)	--	Human Resources Assistant
John Wilson (Wilson)	--	Chief of Ambulance Services
Barbie Marr (Marr)	--	911 Regional Manager

At all relevant times, PMT contracted with the municipalities of Tempe, Scottsdale, Peoria, and Chandler, Arizona, in the Phoenix area (service areas) to provide emergency ambulance services (911 services) and nonemergency general transit services (GT services) for designated individuals traveling to home, urgent care centers, insurance facilities, and hospitals.⁵ PMT employed registered nurses (RNs), emergency medical technicians (EMTs), and paramedics. Each 911 ambulance was attended by a crew of one paramedic and an EMT. The crews worked 12-hour shifts.

PMT maintained stations in each municipal service area where vehicles and employees awaited ambulance calls. A station typically provided a parking area for ambulances and consisted of a building containing a small living area, limited kitchen facilities, and a sleeping area. Each station was assigned a number, and each crew was designated by its respective station number followed by "A" or "B," signifying which 12-hour shift was worked. The stations were located, in pertinent part, as follows:

- Scottsdale: Stations 601 - 602, 604 - 608, 610
- Peoria: Stations 191 - 196
- Tempe: Stations M271, M276, P272-P275
- Chandler: Stations 282, 284, 286, 289

³ The Respondent's unopposed posthearing motion to correct the transcript is granted. The motion and corrections are received as ALJ Exh. 1.

⁴ The names and positions appear as corrected at the hearing.

⁵ 911 services encompass life-threatening emergencies requiring an immediate response. An example of nonlife threatening GT services is a request to check on the well being of an individual.

Scottsdale station 604 contained a desk in the living area available for general use and a locked closet in the bedroom area in which field training officer (FTO) materials were kept.

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Barkley was employed by PMT as a paramedic since 2005. From 2006 until August, Barkley worked out of station 604, crewing with EMT Travis Yates (the Barkley/Yates crew). Barkley also served as a field training officer, a position with work responsibilities that provided additional pay.

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As to the Scottsdale service area, PMT's contracts with that municipality required each 911 response to be effected within 8 minutes 59 seconds (8:59) from time of dispatch to arrival at dispatch destination. Company policy required each crew to be in the vehicle and moving (10-8 time)⁶ within 1 minute 30 seconds (1:30) of dispatch notification. When a crew did not meet the in route policy time, the crew was considered to be "out of compliance," and the Respondent required the crew to file a report explaining why the crew was out of compliance with the in route time (out of compliance report).

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As dictated by the press of emergency calls, the Respondent required 911 ambulances to "move-up" to a geographical location different from its assigned station. The Respondent considered a move-up a nonemergency response. As to nonemergency responses, a PMT written policy effective October 2001 stated: Crews shall respond as quickly as possible but no longer than 2 minutes 90 percent of the time.

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For each 911 call, the responding crew completed a patient care report documenting all procedures and treatment afforded the patient. At the end of shift, each crew put its reports in an envelope along with any associated documents and placed the envelope in an outbox at each station from which the reports were daily collected by PMT courier.⁷ Although PMT was bound by the confidentiality rules of HPPA,⁸ and all crews were trained on confidentiality requirements, PMT adopted no particular security measures at the stations for patient reports. Patient reports were left on the counter of station 604 until end of shift. Sometimes the Barkley/Yates crew found patient reports of the 604A crew left on the counter, which Barkley/Yates then assembled for the courier. During at least June 2010, the unlocked outbox for station 607 was located outside the station's front door from which the PMT courier picked up station 607 crews' patient care reports. Beginning shortly after June 2, 2010, paramedic Christopher Mills (Mills) frequently advised Lemoine by email and once in December 2010 advised Roeder personally that the station 607 outbox location posed confidentiality problems. Although Roeder agreed the outbox location was a concern, nothing was done about its location until sometime in July when the outbox was placed inside the station along with a handwritten

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⁶ The postdispatch commencement of vehicle movement was referred to variously as "10-8" (a term stemming from a formerly used code signifying "ready to go"), "out of chute," or "in route time." There was an ongoing dispute between the Union and PMT as to whether the in route time was closed when a crew pushed the vehicle computer (MTC) button in the ambulance, which had to be done upon entering the vehicle, or when the vehicle actually moved. The Union's position was that occasional computer sluggishness or malfunction unfairly resulted in extended start times if calculated from MTC button push and that in route commencement time ought to be sealed only when the vehicle moved.

⁷ Couriers were either PMT employees or employees of contracted courier service companies.

⁸ HIPAA or the Health Insurance Portability and Accountability Act is a Federal law, which, in pertinent part, requires companies that transmit patient health care information to comply with its privacy regulations.

note from Lemoine instructing that the outbox needed to remain inside the station and all patient care reports placed in an envelope.

5 During a period prior to 2007, ambulance unit 603 also worked out of station 604 from which it provided 911 services to Scottsdale 24 hours a day. Unit 603 ceased to function sometime in 2007 but was briefly reinstated in spring 2010 for Monday through Friday 8-hour shifts until PMT removed it from station 604 in October 2010.

10 PMT had a progressive discipline plan, the following steps of which managers were directed to follow:

- 15 Memo to employee file
- Documented verbal warning
- Written warning
- Suspension
- Termination

20 The progressive steps could be disregarded in the case of severe misconduct. With regard to response time problems, the Respondent's practice was to discuss with the offending crew the problem before issuing any discipline.⁹

B. The Respondent and the Union's Collective-Bargaining History

25 On July 7, 2006, PMT recognized the Union as the designated exclusive collective-bargaining representative of the following unit of PMT's employees (the unit). Since July 7, 2006, the Union has been the exclusive collective-bargaining representative of the unit:

30 All full-time field paramedics, EMTs, IEMT's, and registered nurses, but excluding administrative staff individuals, support services, personnel not directly operating in the field as an EMS provider, guards, office clerical, and supervisors as defined under the Act.¹⁰

35 Since its inception in 2006, Joshua Barkley (Barkley), paramedic employee of the Respondent, served as president of the Union. The Respondent and the Union have been engaged in collective-bargaining negotiations since 2006 without having reached a contract.

C. Past Unfair Labor Practice Proceedings

40 Beginning July 2008, Barkley filed a number of unfair labor practice (ULP) charges against PMT. On February 11, 2009, PMT withdrew recognition from the Union. In response to that action and other conduct alleged to violate Section 8(a)(5), the Board issued a complaint

⁹ Cantelme testified that the Respondent only disciplined a crew if a pattern of noncompliance developed, after which the crew's regional manager would discuss the matter with the crew before issuing the first discipline of a file memo. I infer from the record that the discussion was a form of employee counseling.

¹⁰ At the hearing, the Respondent agreed that this unit description, although not strictly tracking that contained in the recognition agreement, appropriately describes the unit involved herein, of which the Respondent has been the collective-bargaining representative at all times since July 7, 2006.

against PMT (the first complaint). In the resulting hearing, held in July 2009 and presided over by Administrative Law Judge William G. Kocol (the Kocol hearing), Barkley testified.

5 On November 9, 2009, Judge Kocol found PMT guilty of having engaged in certain unlawful conduct: unlawfully withdrawing recognition from the Union, refusing to provide relevant information to the Union, unilaterally changing terms and conditions of employment, direct dealing with employees, and threatening to remove an employee from active duty because he engaged in union activities (the Kocol decision).¹¹

10 In 2010, PMT filed a lawsuit against Barkley personally and the Union for defamation of character. Also in 2010, based on additional ULP charges filed by the Union, the Board issued a second complaint against the Respondent (the second complaint). On December 1, 2010, Judge Kocol approved a settlement agreement resolving the allegations of the second
15 complaint (the settlement agreement). In the settlement agreement, the Respondent agreed to certain terms, including allowing the union president or his designee to attend bargaining, grievance, scheduling, operations and safety meetings, and receive their normal wages, if meetings were scheduled during an assigned shift. As part of the settlement agreement, PMT withdrew its defamation lawsuit against Barkley and the Union.

20 On December 13, 2010, the Board adopted the findings, conclusions, and order of the Kocol decision, the terms of which were thereafter enforced by the United States Court of Appeals, Ninth Circuit by summary judgment issued June 27.¹²

25 *D. The 8(a)(1) Allegations*

1. Informing employees they could not take concerted complaints to the human resources office

30 In December 2010, paramedic Mills and his partner Heidi Spickler (Spickler), both of whom worked out of station 607, discussed joint concerns about the perceived inappropriate work conduct of another employee at station 607, Dave Medley (Medley), which Mills and Spickler believed could involve them in disciplinary fallout.¹³ When Medley told Spickler he was going to come into station 607 and “handle” Mills because Mills was a “snitch,” Mills and
35 Spickler discussed their shared apprehension of a confrontation with Medley. Thereafter, Mills reported to Lemoine that Medley had threatened him. Mills told Lemoine that he would not tolerate threats, that Spickler did not want to be involved in any confrontation, and that he wanted to file a hostile work environment complaint with human resources. Lemoine told Mills he could not file such a complaint because there was no hostile work environment. She said
40 Mills had not been assaulted and so could not go to human resources but needed to follow the chain of command.

2. Threatening employees with surveillance and termination

45 On March 21, Clonts and Marr met with paramedic Gregory Empey (Empey) and his crew partner to discuss a delayed move-up time, in which meeting Yates provided union representative. During the course of the meeting, Empey said he believed he was being discriminated against because of his age, his high-end pay rate, and his union affiliation. Neither

¹¹ *Professional Medical Transport, Inc.*, JD(SF)–38–09.

¹² *NLRB v. Professional Medical Transport, Inc.*, No. 11-71785 (9th Cir. 2011).

¹³ The perceived conduct related to Medley’s romantic involvement at station 607 with a student intern.

Clonts nor Marr responded directly to Empey's accusation. At the conclusion of the meeting, after Empey was issued a disciplinary memo to file, Marr told Empey, "Greg, I want you to know as to the concerns you brought up earlier in the meeting, you are being watched, and you are subject to termination in the future."¹⁴

3. Violations stemming from written statements in disciplinary suspension of Barkley

On August 16, Roeder and Beam issued Barkley a disciplinary suspension, the circumstances and details of which are set forth below. In pertinent part, the disciplinary suspension read:

PMT is well aware of Mr. Barkley's propensity for filing unsubstantiated [ULP] complaints with no basis in fact, and of the NLRB's tendency to give unjustified credence to those complaints. Mr. Barkley has relied upon these tactics to provide the impression of an umbrella of protection for his behaviors. Despite this, PMT cannot ignore Mr. Barkley's actions...Mr. Barkley will be removed from his FTO [field training officer] position and will be suspended for 24 hours without pay. Mr. Barkley can choose reassignment to any open non-FTO paramedic position.

The General Counsel alleges this statement to constitute five separate violations of 8(a)(1): accusing employee of filing unsubstantiated unfair labor practice charges with the Board, threatening suspension for filing charges under the Act, threatening demotion for filing charges under the Act, threatening removal from assigned shifts for filing charges under the Act, and threatening unspecified reprisals for filing charges under the Act.

4. Limiting employee's entitlement to union representation in disciplinary interviews

On August 19, 2011, Clonts met with PMT employee Craig Clifford (Clifford) to discuss two complaints filed against Clifford by other employees. When Clonts told Clifford the purpose of the meeting, Clifford requested union representation. Clonts told Clifford to shut up and sent him home, saying a followup meeting for disciplinary action would be scheduled.

Later that week, Clonts telephoned Clifford during his shift. He told Clifford the Company had reached a decision as to his discipline, saying Clifford did not need a union representative because the discipline was only a verbal warning. Thereafter, Clonts met with Clifford in a "conclusionary" meeting at which Clifford had union representation.¹⁵

E. The 8(a)(3) and (4) Allegations

On June 21, 2011, the Respondent notified Barkley and Yates they were under investigation for company policy violations. On June 28, Barkley and Yates met with Beam and Lemoine at the Respondent's facility. Beam and/or Lemoine told Barkley and Yates that unit

¹⁴ Marr did not testify at the hearing, and Clonts initially had no specific memory of the meeting. When later questioned by the Respondent's counsel, Clonts denied that Marr made any threats at the meeting. Given Marr's failure to rebut Empey's testimony and Clonts' tergiversation, I credit Empey's account.

¹⁵ From Clifford's word "conclusionary," I infer the final meeting was for the sole purpose of delivering the verbal warning.

604 had two out of compliance 911 calls, providing supporting data showing a response delay of 13 seconds on a June 1 call and a delay of 4 seconds on a June 9 call.¹⁶ Berkley and Yates protested that the equipment used in registering in route times regularly malfunctioned and was inaccurate, as the Union had pointed out many times before.¹⁷ Lemoine and Beam asserted their confidence in the equipment's accuracy. Lemoine issued each employee a written verbal warning. Neither Berkley nor Yates had ever before received counseling or discipline from PMT.¹⁸ No evidence was adduced that other employees had received comparable discipline in comparable circumstances.

On July 7, pursuant to another notice of disciplinary investigation, Barkley and Yates met with Roeder and Beam at the Respondent's facility.¹⁹ Roeder addressed Barkley's discipline first, handing Barkley three documents. Two of the documents were a Phoenix fire report documenting patient care on a specific call and a corresponding patient care report completed by Barkley. The third was a PMT patient care report completed by Barkley approximately 15 months earlier. As to the PMT patient care report, Roeder said the report had been found in the station 604 desk (an improper location) on June 23. As to the Phoenix fire report, Roeder said a discrepancy existed as to who performed the work on the call referenced in the report, suggesting that Barkley had falsified his document.

Barkley asked for an official police investigation if he was being accused of fraudulently completing patient care reports. Roeder laughed, saying police investigation was not necessary, as he was not accusing Barkley of anything. Yates said he was the one who, at the end of shift, gathered the patient care reports from the station counter, put them in chronological order, and prepared them for the courier. Roeder did not respond but told Barkley he would be placed on administrative leave with pay.

Immediately after informing Barkley he would be placed on administrative leave, Roeder turned to Yates' disciplinary hearing, in which Barkley served as Yates' union representative. The charges of misconduct were the same for Yates as for Barkley. At the conclusion of the Yates' discussion, Roeder informed Yates he was placed on administrative leave. Barkley objected, saying the Union wanted him put back to work, as the charges were unprecedented and no safety issues were involved. Roeder said, "Okay, he's back to work tomorrow; he's not on administrative leave."

Barkley said, "I want to go back to work, too, the same reason, I shouldn't be on administrative leave."

Roeder refused to change Barkley's discipline, saying, "That's too bad, you should have asked me five minutes ago." Yates was not placed on administrative leave; Barkley was.

¹⁶ Barkley does not dispute PMT's time records.

¹⁷ In January or February, Berkley had told Lemoine that since January he had been keeping charts showing the discrepancies between his stopwatch readings and the MTC. He told her his studies showed a consistent 10-second delay between actual activation of the equipment and electronic confirmation of the activation.

¹⁸ Lemoine initially agreed that she had never counseled the two employees about out of compliance calls. In later testimony, she said she had talked to Barkley and Yates about their 10-8 times on a few occasions although she provided no specifics or documentation. Given her shifting testimony, I cannot accept her claim of prior counseling.

¹⁹ The following account is a reasonable amalgamation of the testimony of Barkley and Yates. I found both witnesses to demonstrate good recall and to be sincere, clear, and candid; I credit their testimonies.

5 While Barkley was on administrative leave, the Respondent's managers searched the locked FTO closet at station 604. According to the Respondent, the managers found one improperly placed patient care report signed by employee Mills. The Respondent did not discipline Mills.

10 On August 16, after Barkley's period of administrative leave ended, he met with Roeder and Beam with Yates serving as union representative. Roeder handed Barkley a document entitled "Affidavit," which listed 13 documents assertedly found in a desk drawer in station 604 on June 23, 2011²⁰ (station 604 desk drawer documents). The affidavit contained several averments, including the statements that Barkley was aware of his obligations regarding security of documents under HIPAA and company policy and that he had never given documents containing information protected under HIPAA to any unauthorized person outside of 15 PMT. Barkley refused to sign the affidavit, saying that signing would be an acknowledgement the investigation had validity. Roeder said he would draw an inference that Barkley had released the documents outside the Company because he wouldn't sign the affidavit.

20 Roeder then provided Barkley with a 4-page document dated August 3 and entitled "Disciplinary Suspension," which Barkley also refused to sign. The Disciplinary Suspension recited the findings of PMT's investigation: (1) Barkley's insubordinate failure to complete addendums as instructed; (2) Lemoine's June 23, 2011 discovery of confidential patient documents in an unlocked desk drawer at station 604, constituting a HIPAA violation;²¹ (3) 25 discrepancies in a patient care record of April 25, 2010, when compared with a Phoenix fire department incident report of the same call, resulted in questions as to who provided the patient interventions and a refund by PMT of payments received for the care attributed to PMT.²² The disciplinary report concluded:

30 PMT is well aware of Mr. Barkley's propensity for filing unsubstantiated Unfair Labor Practice (ULP) complaints with no basis in fact, and of the NLRB's tendency to give unjustified credence to those complaints. Mr. Barkley has relied upon these tactics to provide the impression of an umbrella of protection for his behaviors. Despite this, PMT cannot ignore Mr. Barkley's actions . . . Mr. Barkley will be removed from his FTO position²³ and will be suspended for 24 hours without pay. Mr. Barkley can choose 35 reassignment to any open non-FTO paramedic position.

Roeder asked Barkley to let him know within 24 hours to which of the three available 24-hour, non-FTO paramedic positions listed on the form Barkley chose to be transferred.

40 The management group then turned to Yates' discipline while Barkley served as his union representative. Roeder's presentation of the Company's position was similar to that given Barkley. Noting that nothing was listed about the closet search, Yates asked what the search

²⁰ A discrepancy exists between the documents' discovery date stated in the affidavit, i.e., June 23, and the documents' discovery date declared in a July 7 report completed by Lemoine, in which she stated she found the documents "on the desk at station 604" on July 7.

²¹ As the patient care documents never left PMT property, the Respondent did not consider that a HIPAA "breach" occurred. The Respondent considers a breach to more serious than a violation.

²² It is unclear from the record specifically what discrepancies the Respondent found objectionable. With regard to the fire department EMS incident report, the Respondent's disciplinary suspension criticized Barkley's incomplete, inaccurate, and sloppy record.

²³ The removal constituted a demotion with a loss of \$1.50 per hour in pay.

had revealed. Roeder said the document they had found in the closet belonged to an employee that no longer worked for the Company and was irrelevant. At the close of Yates' meeting, Roeder presented Yates with a written disciplinary action form, the facts of which tracked Barkley's disciplinary report as to unsecured patient care reports. Unlike Barkley's disciplinary report, Yates' disciplinary action form did not mention his union activities or utilization of Board processes. The Respondent issued Yates a written warning and referred him to remedial training, which Yates had not, at the time of the hearing, received.

F. The 8(a)(5) Allegations

1. Requests for information

a. January 10 information request

In January, the Union was contemplating filing a grievance regarding an investigation at station 607. On January 10, Beam informed Barkley by email of three items on the agenda for an upcoming labor-management meeting: (1) the evaluation and benchmarking of the crews' 10-8 performances; (2) evaluating a possible solution and tracking for extended hospital times; and (3) expiring station leases. On the same day, Barkley emailed Carpenter a request for information that, in pertinent part, included the following items (the Union's January 10 information request):

1. The total number of discipline proceedings for September 2010 through January 2011, for all unit members.
2. The number of 10-8 times exceptions from all stations to include Tempe Fire Department/PMT rides, Chandler Fire Department/PMT rides and Scottsdale 615.
3. The number of discipline proceedings for similar incidents for Fire/PMT rides.
4. The number of move-ups missed by Fire PMT rides and action taken by the Respondent to rectify that situation.
5. The number of total discipline proceedings for the same months mentioned above for all Fire/PMT rides.
6. The complete investigation and all documents relating to complaints at Station 607, including documents that show FTO and manager involvement, regarding unit employees Chris Mills, Dwayne Looney and David Medley.

Although the Respondent provided some requested information to the Union, it did not provide the above information. The Respondent replied on January 14 that there was "no indication of relevancy for the information sought," asked for relevancy clarification, and asserted the request was "very general, ambiguous, vague, and unduly burdensome."

b. June 29 information request

On June 29, Barkley emailed Carpenter a request for information that included the following items (the Union's June 29 information request):

1. List of all people disciplined for 10-8 times under two minutes in the last six months, to include their paperwork.
2. Compliance reports that Supervisor Ted Beam indicated were completed, broken down by unit, since December of 2010.
3. The policy used in discipline indicates that it is a policy mandated by the city contracts. Request the language in the city contracts that mandates 100% out of chute time compliance.

5 The Respondent provided some of the information requested on June 29, including some of the compliance reports, but did not provide item one, all of item two, or item three. The Respondent informed the Union it expected reimbursement at \$12 per hour for someone to assemble the documents requested in items one and two.

c. August 16 information request

10 On August 16, the Union requested, inter alia, the following information (the Union's August 16 information request):

- 15 1. A copy of the tape and/or video used in the company confiscation of EPCR's from Station 604's bedroom closet by Jim Roeder, Ted Beam and Ralph Vassallo, the day after Barkley was placed on administrative leave.
2. A copy of the work order, or any documentation and/or description of notification to the individual and/or company that replaced the lock on that bedroom closet door several weeks prior to your surprise investigation and confiscation.
- 20 3. A complete list of individuals interviewed or reported [in] any part of the investigation against Barkley.
4. A list of unit personnel that have been, previously or currently, placed on administrative leave for five weeks or longer.
5. A list of unit members that have been placed on administrative leave for two weeks or longer.
- 25 6. All documentation concerning Barkley's investigation and discipline.

The Union also renewed its request for item one of its June 29 information request. The Respondent did not provide the information listed above or item one of the June 29 information request.

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2. Unilateral changes

a. Cessation of unit 603 service

35 As noted above, unit 603 was briefly reinstated to provide 40-hour weekly service out of station 604 from spring of 2010 until October 2010. PMT did not notify or bargain with the Union before ending unit 603 service in October 2010, an action that increased the workload at unit 604.

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b. Move-up policy change

45 The written agenda for the employee refresher meetings of December 14 and 15, 2010, included the statement, "En-route time for a move up is 1 minute." On March 21, Clonts met with the crew of Empey and Phillip Maskell (Maskell), accompanied by Yates as their union representative, to discuss delayed response to a move-up call. In the course of the meeting, Yates asked for a copy of the move-up policy. Clonts gave Yates a document that stated in pertinent part, "Move-up requests . . . En-route time for a move up is 1 minute."

50 In the course of meeting separately with Empey, Clonts said the expected response time for move-ups would henceforth be 2 minutes rather than 3. Clonts showed Empey a memo to file regarding an extended 10-8 time on a February 16 move-up assignment for the Empey/Maskell crew of 3 minutes 19 seconds. A handwritten notation on the memo, initialed by Clonts, stated, "Move-up wheels rolling 2 minutes or less."

No evidence was presented that any employee was counseled or disciplined for move-up times greater than 2 minutes.

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c. Abrogation of the Board's settlement agreement

The settlement agreement provided, in pertinent part:

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WE WILL provide the Union President or his designee 60 hours of official time per year at a rate of \$20.00 per hour, prorated for 2010, to participate in bargaining and grievance meetings, including scheduling, operations and safety meetings. In addition, WE WILL allow the Union President or his designee to attend these meetings and receive their normal wages, if those meetings are scheduled during an assigned shift of the Union President or his designee.

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Barkley, as union president, scheduled bargaining sessions during his days off but at times designated another employee on the union bargaining team to come to the bargaining sessions while on duty, intending the above-settlement term to apply to the designee. On March 17, the Respondent notified Barkley as follows:

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Due to the confusion, for [the March 18] meeting only, [Respondent has] authorized the replacement of [designated employees] Tony and Dwayne from 8am-2pm. We will not be paying Tony and Dwayne during this time, however, you are free to authorize their pay out of the 60 hour allotment. For all future meetings, you will need to provide us with your availability. We will replace you, and only you on the schedule . . . so as not to incur unnecessary overtime to the company. We will facilitate shift trades or authorize [personal time off] following the existing rules for other members of your team. Obviously, scheduling meeting on your off days and using the 60 hour bank is the best option.

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d. Charge for information searches

As described above, in response to several of the Union's requests for information, the Respondent told the Union the requested information would necessitate an administrative person to search files and documents, a cost the Respondent asked the Union to reimburse at \$12 an hour. The Respondent required the Union to "acknowledge [its] willingness to [do so] if [the Union] wanted [the company] to proceed with compiling documents responsive to [the Union's information] request."

35

40

The Respondent had not previously notified or discussed with the Union information collection reimbursements. In its August 17 reiteration of its reimbursement requirement, Carpenter, added, "If the [Union] is unwilling to pay for this administrative time, or if you propose a different arrangement, please let us know as well."

45

V. DISCUSSION

A. Legal Principles

Section 7 of the Act provides that employees have the right to engage in union activities. Section 8(a)(1) of the Act provides: "It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

50

In considering the lawfulness of communications from an employer to employees, the Board applies the “objective standard of whether the remark tends to interfere with the free exercise of employee rights.” The Board does not consider either the motivation behind the remark or its actual effect. *Miller Electric Pump & Plumbing*, 334 NLRB 824 (2001).

Communications from an employer to employees that threaten reprisal for supporting a labor organization interfere with, restrain, or coerce employees as contemplated by Section 8(a)(1). *Empire State Weeklies, Inc.*, 354 NLRB No. 91, at slip op. 3 (2009); *Regal Health & Rehab Center, Inc.*, 354 NLRB No. 51, at slip op. 1 (2009); *Grouse Mountain Lodge*, 333 NLRB 1322 fn. 2 (2001); *Tres Estrellas de Oro*, 329 NLRB 50, 51 (1999).

Section 8(a)(3) of the Act provides that it shall be an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

Section 8(a)(4) of the Act provides that it is an unfair labor practice for an employer “to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.” Conduct violating either or both of these provisions discourages employees’ Section 7 rights and derivatively violates Section 8(a)(1) of the Act.

In discipline cases turning on employer motivation under either 8(a)(3) or (4), the Board applies an analytical framework that assigns the General Counsel the initial burden of showing that union activity (in the case of 8(a)(3)) or utilizing the Board’s processes (in the case of 8(a)(4)) was a motivating or substantial factor in an adverse employment action.²⁴ The elements required to support such a showing are (1) the employee having engaged in the respective protected activity; (2) employer knowledge of that activity; and (3) employer animus toward the activity. If the General Counsel meets the initial burden, the burden then shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee’s protected activity. *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *Alton H. Piester, LLC*, 353 NLRB 369 (2008).

Under the provisions of 8(a)(5), an employer has a duty to furnish to a union, on request, information that is relevant and necessary to perform its role as exclusive bargaining representative of unit employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). The relevance of the information request is evaluated by a liberal, discovery-type standard. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Information that is potentially relevant and will be of use to the union in fulfilling its duties as bargaining representative must be provided. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991). The requested information need not be dispositive of the issue for which it is sought, but need only have some bearing on it. *Id.* at 1105. An employer must furnish information of even probable or potential relevance to the union’s duties. *Conrock Co.*, 263 NLRB 1293, 1294 (1982). The employer’s obligation extends to information involving labor-management relations during the term of an existing contract and in preparation for negotiations for a future contract. *Southern California Gas. Co.*, 346 NLRB 449, 452 (2006). The employer’s obligation also extends to information that would allow the union to decide whether to process a grievance. *NLRB v. Acme Industrial*, 385 U.S. at 436; *Bickerstaff Clay Products*, 266 NLRB 983, 985 (1983). The union is not required to establish in advance exactly how the information sought would be helpful in pursuing the grievance. *Blue Diamond Co.*, 295 NLRB 1007 (1989). Information pertaining to bargaining unit employees is presumptively relevant and necessary and must be provided. *Sheraton Hartford Hotel*, 289 NLRB 463 (1988).

²⁴ A *Wright Line* approach is used for analyzing alleged violations of Sec. 8(a)(4) of the Act, and the remedy is the same. *Newcor Bay City Division*, 351 NLRB 1034 fn. 4 (2007).

5 An employer also violates Section 8(a)(5) if it makes material unilateral changes during
 the course of a collective-bargaining relationship on matters that are mandatory subjects of
 bargaining, “for . . . a circumvention of the duty to negotiate . . . frustrates the objectives of
 Section 8(a)(5) much as does a flat refusal.” *NLRB v. Katz*, 369 U.S. 736, 743, 747 (1962);
United Cerebral Palsy of New York City, 347 NLRB 603, 606 (2006). Board law “presumes that
 10 a matter which affects the terms and conditions of employment will be a subject of mandatory
 bargaining.” *Virginia Mason Hospital*, 357 NLRB No. 53, at slip op. 4–5 (2011). Employee work
 schedules and workloads are vital aspects of working conditions and are mandatory subjects of
 bargaining.²⁵ While “narrowly tailored” and “appropriately limited” factors may protect core
 entrepreneurial decisions from bargaining,²⁶ even in those unusual circumstances, employers
 have an “obligation to engage in effects bargaining over a managerial decision that has an
 15 impact on terms and conditions of employment.”²⁷

B. Independent Violations of 8(a)(1)

1. Informing employees they could not take concerted complaints to the human resources
 20 office

When, in December 2010, Mills expressed to Lemoine a desire to file a hostile work
 environment complaint with the Respondent’s human resources, he was engaged in activity
 previously discussed with a coworker that related to working conditions. The activity was both
 concerted and protected. When Lemoine told Mills he could not file a hostile work environment
 25 complaint with human resources, she interfered with his right to engage in protected activity,
 and thereby violated Section 8(a)(1).

The Respondent’s no-harm-no-foul argument that the allegation should be dismissed
 because Mills, in fact, contacted human resources, thereby rectifying any possible harm, is
 30 without merit. In evaluating the lawfulness of a communication, the Board does not consider
 either the motivation behind the remark or its actual effect. *Miller Electric Pump & Plumbing*,
 supra.

2. Threatening employees with surveillance and termination

35 On March 21, Marr, in the presence of Clonts, told Empey that because of the concerns
 he had brought up in the meeting, he was being watched and was subject to termination in the
 future. It is clear the “concerns” Marr referred to was Empey’s accusations of age and union
 affiliation discrimination. The Respondent correctly notes that the standard for determining
 40 whether a statement violates Section 8(a)(1) focuses objectively on whether the statement has
 a reasonable tendency to coerce the employee or interfere with Section 7 rights, but the
 Respondent incorrectly maintains the statement had nothing to do with protected and concerted
 activity. While Empey’s claim of age discrimination may not have been concerted, his assertion
 of discrimination based on his union affiliation is intrinsic to Section 7’s protection of union
 45 activities. Marr’s unqualified threat of prospective surveillance and possible discharge
 necessarily included Empey’s protected union activity and therefore tended to interfere with his
 Section 7 rights. Accordingly, Marr’s statement violated Section 8(a)(1).

²⁵ See *Meat Cutters Local 189 v. Jewel Tea Co.*, 381 U.S. 676, 691 (1965); *Bloomfield Health Care Center*, 352 NLRB 252, 256 (2008).

²⁶ *Peerless Publications*, 283 NLRB 334 (1987).

²⁷ *Ibid.*

3. Accusing an employee of filing unsubstantiated unfair labor practice charges with the Board

5 On August 16, Roeder and Beam issued Barkley a disciplinary suspension that in pertinent part read:

10 PMT is well aware of Mr. Barkley's propensity for filing unsubstantiated Unfair Labor Practice (ULP) complaints with no basis in fact, and of the NLRB's tendency to give unjustified credence to those complaints. Mr. Barkley has relied upon these tactics to provide the impression of an umbrella of protection for his behaviors.

15 Not only do the statements evidence animus, as detailed below, they also, as the complaint alleges, constitute separate violations of 8(a)(1) by impliedly threatening reprisals for filing charges under the Act.

4. Limiting employee's entitlement to union representation in disciplinary interviews

20 When, in August, Clonts told Clifford he did not need union representative because prospective discipline was only a verbal warning, he misstated the law. A bargaining unit employee has a right to union representation, on request, during an investigatory interview that an employee reasonably believes may result in disciplinary action. *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975). Employees' representational rights in such interviews are not qualified by the severity of the anticipated discipline. However, an employee has no such Section 7 right to the presence of a union representative at a disciplinary meeting held solely for the purpose of informing the employee of, and acting upon, a previously made disciplinary decision. *Baton Rouge Water Works Co.*, 246 NLRB 995, 997 (1979).

30 Here, the record shows that Clonts initially met with Clifford on August 19 for discussion of employee complaints against Clifford. Such a purpose must have created in Clifford a reasonable belief that the meeting was investigatory in nature with a potential for discipline. Clonts cut short the meeting when Clifford requested representation, and did not reschedule a meeting until later that week, at which time he made the allegedly unlawful statement to Clifford. It may be, as the Respondent argues, that the later meeting had no purpose other than imposing on Clifford a verbal warning that had been previously decided. In those circumstances, Clifford would have had no right to representation, which in the event he did have. However, denial of representation is not the issue here but rather the coercive effect of Clonts' misstatement of *Weingarten* rights. Given the circumstances of the statement, i.e., curtailment of the initial investigatory meeting immediately after representation was requested coupled with the later statement, I conclude Clonts' statement was coercive and violated Section 8(a)(1).

C. Discipline of Barkley and Yates

45 With regard to the discipline of Barkley and Yates, the Acting General Counsel has established all three elements required for a prima face case under *Wright Line* in 8(a)(3) and (4) cases. Both Barkley and Yates were union officers and regularly interacted with PMT management in that capacity. As union officers, both were involved in filing unfair labor practice charges against PMT, and Barkley testified in the Kocol hearing. Yates had primary responsibility for representing employees at disciplinary meetings. The first two *Wright Line* elements, i.e., protected activity under 8(a)(3) and (4) and company knowledge of it, have been indisputably established for both employees.

As to the third element, animus, it is unnecessary to address the considerable circumstantial evidence supporting an animus finding, as PMT expressly declared its hostility toward Barkley's protected activities in the written disciplinary suspension notice given to Barkley. In that notice, PMT stated its recognition of Barkley's "propensity for filing unsubstantiated [ULP charges]," to which the Board assertedly gave unjustified credence but which PMT would not permit to provide a protective umbrella. PMT attempted to defend the statement as merely demonstrating its awareness that Barkley would likely file a charge over the discipline as well as showing its "extra tolerance and leniency" toward Barkley and Yates' misconduct, which would otherwise merit termination. The Respondent's spin on the statement fails; no contextual reading of the "propensity" statement can result in anything other than a conclusion that the Respondent harbored considerable, ongoing animus toward Barkley's activities as a union officer, and, by extension to the activities of other union officers.

It is clear that the Respondent bore Barkley greater animus than it did Yates. Yates' disciplinary action form did not contain the "propensity" language of Barkley's disciplinary report or any words to that effect, and the Respondent's arbitrary and capricious refusal to rescind Barkley's administrative leave while alleviating Yates' shows a higher hostility toward Barkley. The differing levels of animus are inconsequential in these circumstances. The animus articulated by the "propensity" statement covers union representational activities generally, in which Yates shared by virtue of his official position. Further, Yates was Barkley's crew partner; his name was on the unsecured patient documents along with Barkley's. PMT could not reasonably charge Barkley with ignoring HIPAA regulations without also charging Yates. PMT's animus toward Barkley is, therefore, logically extended to Yates even assuming Yates was an unfortunate casualty rather than a specific target of Respondent's desire to retaliate against Barkley for activities protected under Section 8(a)(3) and (4).

The General Counsel having met the initial *Wright Line* burden, the burden shifts to the Respondent to establish persuasively by a preponderance of the evidence that it would have disciplined Barkley and Yates even in the absence of their union activities and their utilization of Board processes. The Respondent has not met its shifted burden.

The Respondent has failed to explain why it deviated from past disciplinary practice, bypassing the initial steps of prediscipline discussion/counseling and memo to employee file, in its dealings with Barkley and Yates. While those steps could be disregarded in the case of severe misconduct, there is no evidence, beyond the Respondent's self-serving claim, that the Respondent regarded any of the asserted infractions as momentous. In that regard, the Respondent failed to provide evidence of comparative discipline for similar violations. While the Respondent's HIPAA concerns are unquestionably legitimate, the Respondent presented no evidence that it viewed the asserted HIPAA violations herein as significant: The Respondent did not vigilantly address other instances of record mishandling; the Respondent did not institute employee training or heightened patient-record security following the discipline of Barkley and Yates, and it never followed through with any remedial training for Yates. Its failure to do so leaves uncountered reasonable inferences that the alleged offenses were not the primary focus of Barkley and Yates' discipline. In these circumstances, I find the Respondent violated Section 8(a)(4), (3), and (1) of the Act by issuing verbal written warnings, written warnings, and suspensions to Barkley and Yates, and demotion and transfer to Barkley.

D. Unilateral Changes and Failure to Furnish Information

Failure to Furnish Information Requested on January 10, June 29, and August 16

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The Union's information requests of January 10, June 29, and August 16 all relate to collective bargaining or grievance issues. Extending the liberal, discovery-type standard required in such cases,²⁸ it is clear that each request is relevant to, or at least has some bearing on, the Union's fulfillment of its duties as the unit bargaining representative. The information sought is therefore presumptively relevant.

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1. January 10 request

As to the Union's January 10 requests for information, while the Respondent provided some of the requested information, it did not provide the following six items:

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1. The total number of discipline proceedings for September 2010 through January 2011, for all unit members.
2. The number of 10-8 times exceptions from all stations to include Tempe Fire Department/PMT rides, Chandler Fire Department/PMT rides and Scottsdale 615.
3. The number of discipline proceedings for similar incidents for Fire/PMT rides.
4. The number of move-ups missed by Fire PMT rides and action taken by the Respondent to rectify that situation.
5. The number of total discipline proceedings for the same months mentioned above for all Fire/PMT rides.
6. The complete investigation and all documents relating to complaints at Station 607, including documents that show FTO and manager involvement, regarding unit employees Chris Mills, Dwayne Looney and David Medley.

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The Respondent asserted then, and asserts now, that it had no duty to provide this information, as the Union had not shown the relevance of the information. The Respondent complained that the request was "very general, ambiguous, vague, and unduly burdensome" but provided no specifics as to which requests were defective or what clarification was needed.

35

As noted, the requested information clearly relates to bargaining unit disciplinary issues and is presumptively relevant.²⁹ The Respondent having failed to show that the requested information is irrelevant or that the description of the information sought is ambiguous, vague, or unduly burdensome, the Respondent's failure to furnish to the Union the information requested on January 10 violated Section 8(a)(5).

40

2. June 29 request

The Union's June 29 request for information also related to collective bargaining or grievance issues and the information was presumptively relevant. As to items one and two of the Union's June 29 request, i.e., (1) a list of all people disciplined for 10-8 times under 2 minutes in the last 6 months, to include their paperwork and (2) certain compliance reports, broken down by unit, since December 2010, the Respondent refused to furnish the information without the Union's commitment to pay \$12 per hour for an individual to collect the information.

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²⁸ *NLRB v. Acme Industrial Co.*, supra at 437.

²⁹ As to item six, insofar as that request may be read to include witness statements, such statements need not be furnished. See *Anheuser-Busch, Inc.*, 237 NLRB 982, 984 (1978) (union not entitled to receive witness statements obtained in an internal disciplinary investigation).

5 The Respondent's obligation to bargain requires it to exert reasonable efforts to provide requested information, but the Respondent may request defrayment of unusual, associated administrative costs. While the Respondent has made no specific showing as to what extraordinary efforts were required to compile items one and two of the June 29 information request, the Respondent does not, apparently, keep in its regular course of business either the list of disciplined employees referred to in item one or the compliance reports broken down by unit. It may be reasonably inferred that production of that particular information would require substantial administrative efforts, and the suggested per hour cost is not unreasonable. The Respondent's reimbursement request does not, therefore, of itself, evidence bad faith. See *Pacific Telephone & Telegraph Co.*, 246 NLRB 327 (1979); *Greensboro News & Record, Inc.*, 290 NLRB 219 (1988). Under these circumstances, I find insufficient evidence to establish that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with items one and two of the Union's June 29 request for information without cost reimbursement. As to item three, the language in the city contracts that mandates 100 percent out of chute time compliance, the Respondent's failure to furnish to the Union that information violated Section 8(a)(5).

20 3. August 16 request

25 As the Respondent points out, the Union's August 16 request for information related to issues encompassed by the Union's essentially contemporaneous unfair labor practice charges with the Board. The Respondent argues that the August 16 request, coming as it did after the Union filed unfair labor practice charges with the Board was an attempt to engage in pretrial discovery, which is not permitted by the Board. Given the content and timing of the August 16 information request, the Respondent could reasonably have believed that the discipline accorded Barkley and Yates might become the subject of a Board complaint, as indeed it did, and that the information was intended to bolster the Union's charges against the Respondent. An employer need not produce requested information where the employer reasonably believes the information requested relates to an unfair labor practice charge. *Pepsi-Cola Bottling Co.*, 315 NLRB 882 (1994); *Saginaw Control & Engineering, Inc.*, 339 NLRB 541, 544 (2003). Accordingly, the Respondent had a valid motive for refusing to provide the information requested on August 16 and did not thereby violate the Act.

35 E. Unilateral Changes

1. Cessation of unit 603 service

40 As to the Respondent's October 2010 unilateral cessation of unit 603 service, the Respondent argues the action was a core entrepreneurial decision that was not subject to bargaining and which had only a minimal impact on employees. It is not clear from the record that the 603 unit cessation had no material effect on workload, and even its potential impact on a mandatory subject of bargaining, i.e., workload, subjects the decision to the bargaining obligation. Accordingly, the Respondent's October 2010 unilateral cessation of unit 603 service violated Section 8(a)(5) and (1).

2. Move-up policy change

50 Regarding the alleged change in the Respondent's move up policy, the Respondent contends that no policy change occurred, that any written reference to a 1-minute move-up time was erroneous, and that its longstanding policy of a 2-minute limit on move-up times was never

altered. It is unclear from the evidence that the Respondent did, in fact, deviate from a 2-minute move-up time policy. Accordingly, I shall dismiss this allegation of the complaint.

5 3. Abrogation of the Board settlement agreement

10 As to the alleged unilateral abrogation of the Board settlement agreement, the Respondent argues it has not improperly refused to abide by the provisions of the settlement agreement. The Respondent acknowledges the agreement's terms provided that PMT would "allow the Union President [Barkley], or his designee, to attend [collective bargaining meetings] and receive their normal wages, if those meetings are scheduled during an assigned shift of the Union President or his designee." The Respondent concedes that it has not extended the provision to any of Barkley's designees because, by Barkley's assertion, they "have NO authority to act on behalf of the Union." In the Respondent's view, individuals who were 15 "nothing more than powerless messengers with no decision-making authority" could not constitute a "designee" under the terms of the settlement agreement. The Respondent contends the resulting disagreement over the definition of a designee is a reasonable contract interpretation dispute.

20 I cannot accept the Respondent's argument. The settlement agreement clearly required the Respondent to extend the settlement commitments to Barkley's designees. The Respondent's refusal to do so abrogated the terms of the agreement.

25 The Respondent also contends that the General Counsel may not seek remedy for settlement agreement abrogation through the vehicle of an ULP complaint but is restricted to setting aside the settlement agreement. The Respondent has cited no authority for such a proposition, and this type of allegation is not unknown to the Board. See *Vincent/Metro Trucking*, 355 NLRB No. 50 fn. 1 (2010) (no exceptions filed to judge's finding that the respondent violated Sec. 8(a)(5) by violating the parties' Board-approved settlement agreement); *At Systems West, Inc.*, 341 NLRB 57 (2004) (employer violated Sec. 8(a)(5) of the Act by withdrawing recognition from the union at a time when it was obligated to bargain under the terms of a settlement agreement). Accordingly, the Respondent's abrogation of the settlement agreement as alleged in the complaint violated Section 8(a)(5) and (1).

35 4. Charge for information searches

40 The complaint alleges that the Respondent's \$12 an hour reimbursement charge for collection of information requested in items one and two of the Union's June 29 request was an unlawful unilateral change. The Respondent argues that its claim for reimbursement was propositional only, i.e., "we *would* ask that the [Union] reimburse [italics added]." The Respondent points out that in an August 17 email, it essentially offered to bargain over the issue: "If the [Union] is unwilling to pay for this administrative time, or if you propose a different arrangement, please let us know as well." The Union never requested bargaining over the proposed costs.

45 I have earlier found that the Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with items one and two of the Union's June 29 request for information without cost reimbursement. Consistent with that finding, and in light of the Union's failure to seek bargaining over the reimbursement issue, I find the Respondent did not unilaterally change any term or condition of employment by seeking defrayment of information 50 gathering costs or thereby violate Section 8(a)(5) and (1).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Since July 7, 2006, the Union has been the exclusive collective bargaining representative of the Respondent’s employees in the following appropriate unit:

10 All full-time field paramedics, EMTs, IEMT’s, and registered nurses, but excluding administrative staff individuals, support services, personnel not directly operating in the field as an EMS provider, guards, office clerical, and supervisors as defined under the Act.

15 4. The Respondent violated Section 8(a)(5), (4), (3), and (1) of the Act as set forth herein.

5. The unfair labor practices set forth above affect commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

20 Having found the Respondent has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Further, the Respondent having unlawfully disciplined Joshua Barkley and Travis Yates, it must offer Joshua Barkley reinstatement to his field training officer position and to his former shift. The Respondent must also make Joshua Barkley and Travis Yates whole for
 25 any loss of earnings and other benefits. Backpay shall be computed on a quarterly basis from date of unlawful discipline to date of proper offer of reparation, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest compounded on a daily basis, as prescribed by *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011). The
 30 Respondent will be ordered to make appropriate emendations to Joshua Barkley and Travis Yates’ personnel files. The Respondent will be ordered to post appropriate notices.

35 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁰

ORDER

The Respondent, Professional Medical Transport, Inc., Tempe, Arizona, its officers, agents, successors, and assigns, shall

40 1. Cease and desist from

(a) Failing and refusing to provide Independent Certified Emergency Professionals of Arizona, Local #1 (the Union) with the following information: items one through six of the Union’s

³⁰ 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. 102.49 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

January 10, 2011 request for information and item three in the Union's June 29, 2011 request for information.

5 (b) Making the following unilateral changes in the employment terms and conditions of employees represented by the Union: cessation of unit 603 service and abrogation of the Board settlement agreement as set forth herein.

10 (c) Disciplining employees for engaging in union activities and/or for utilizing the processes of the National Labor Relations Board.

15 (d) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act by the following (1) threatening discharge for engaging in union and concerted protected activities; (2) suspension for filing charges under the Act; (3) demotion for filing charges under the Act; (4) removal from assigned shifts for filing charges under the Act; (5) unspecified reprisals for filing charges under the Act; (6) Informing employees they may not take concerted complaints to the human resources office; (7) permitting requested union representation for investigatory interviews only where contemplated discipline is greater than a verbal warning; (8) accusing employees of filing unsubstantiated unfair labor practice charges with the Board; and (9) giving the impression of surveillance of employees' union and/or other concerted activities.

20 (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.

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

30 (a) Within 21 days after receipt of this decision furnish Independent Certified Emergency Professionals of Arizona, Local #1 with the information requested by as noted in paragraph 1(a) above.

(b) Upon request by the Union, meet and bargain with the Union regarding the changes to employment terms and conditions found herein to have been made unilaterally.

35 (c) Within 14 days from the date of this Order, offer Joshua Barkley full reinstatement to his former shift at station 604 and his former field training officer position or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to his seniority or any other rights or privileges previously enjoyed.

40 (d) Make Joshua Barkley and Travis Yates whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

45 (e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline of Joshua Barkley and Travis Yates, and within 3 days thereafter notify them in writing that this has been done and that the discipline will not be used against them in any way.

50 (f) 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

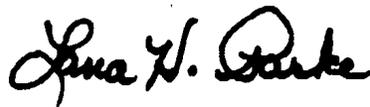
in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

5 (g) Within 14 days after service by the Region, post at its facility copies of the attached
 notice marked "Appendix."³¹ Copies of the notice, on forms provided by the Regional Director
 for Region 28, after being duly signed by the Respondent's representative, shall be posted
 immediately upon receipt thereof, and shall remain posted by the Respondent for 60
 10 consecutive days thereafter, in conspicuous places, including all places where notices to
 employees are customarily posted. Reasonable steps shall be taken by the Respondent to
 ensure the notices are not altered, defaced, or covered by any other material. In addition to
 physical posting of paper notices, the notices shall be distributed electronically, such as by
 15 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.³² In the event that,
 during the pendency of these proceedings, the Respondent has gone out of business or left the
 jobsite 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
 Respondent at any time since December 2010.

20 (h) Within 21 days after service by the Regional Office, file with the Regional Director a
 sworn certification of a responsible official on a form provided by the Region attesting to the
 steps that the Respondent has taken to comply.

25 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges
 violations of the Act not specifically found.

Dated: Washington, D.C. December 20, 2011



Lana H. Parke
 Administrative Law Judge

³¹ 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."

³² The question of whether the Respondent electronically communicates with employees is left to the compliance stage of these proceedings.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated 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 do anything that interferes with these rights. More particularly, **WE WILL NOT** fail or refuse to bargain with Independent Certified Emergency Professionals of Arizona, Local #1 (the Union), as the exclusive collective-bargaining representative of our employees in the following unit:

All full-time field paramedics, EMTs, IEMT's, and registered nurses, but excluding administrative staff individuals, support services, personnel not directly operating in the field as an EMS provider, guards, office clerical, and supervisors as defined in the Act.

WE WILL NOT fail or refuse to provide the Union with information requested by the Union that is relevant to its performing its duty to represent employees.

WE WILL NOT make changes in the employment terms and conditions of unit employees without first notifying and bargaining with the Union.

WE WILL NOT discipline employees for engaging in union activities and/or for utilizing the processes of the Board by such actions as filing unfair labor practice charges and giving testimony.

WE WILL NOT do any of the following (1) threaten employees with discharge for engaging in union and concerted protected activities; (2) place on administrative leave or suspend employees for filing charges under the Act; (3) demote employees for filing charges under the Act; (4) issue written warnings or other discipline because you engage in union and/or other concerted activities or because you file charges or give testimony under the Act; (5) remove employees from assigned shifts for filing charges under the Act; (6) threaten unspecified reprisals for filing charges under the Act; (7) inform employees they may not take concerted complaints to the human resources office; (8) permit requested union representation for investigatory interviews only where contemplated discipline is greater than a verbal warning; (9) accuse employees of filing unsubstantiated unfair labor practice charges with the Board; and (10) make it appear that we are watching your union and/or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights stated above.

- WE WILL** promptly furnish the information requested by the Union and found relevant herein.
- WE WILL** rescind the shut down of unit 603; restore that work to unit employees in the manner that existed prior to our October 2010 cessation of that service.
- WE WILL** rescind our changes to the December 1, 2010 agreement by allowing the union president's designee to attend collective-bargaining meetings during his or her normal shift without the designee either making a shift trade or using personal time off.
- WE WILL** upon request by the Union, meet and bargain with the Union regarding changes made to employment terms and conditions.
- WE WILL** rescind the verbal written warnings issued to Travis Yates and Joshua Barkley on June 28, 2011, and August 16, 2011.
- WE WILL** rescind the suspension, demotion and removal from assigned shift/station issued to Joshua Barkley on August 16, 2011.
- WE WILL, within 14 days of this Order,** offer Joshua Barkley full reinstatement to his former assigned shift/station and to his field training officer position or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- WE WILL** make Joshua Barkley and Travis Yates whole for any loss of earnings and other benefits suffered as a result of our unlawful discipline of them.
- WE WILL** remove from our files any reference to the unlawful discipline of Joshua Barkley and Travis Yates and notify them in writing that this has been done and that the discipline will not be used against them in any way.

PROFESSIONAL MEDICAL TRANSPORT, INC.

(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.nlr.gov. 2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099 (602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

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, (602) 640-2146.