

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

**ALLIED MEDICAL TRANSPORT, INC.**

**and**

**CASES 12-CA-72141  
12-CA-72148  
12-CA-74078**

**TRANSPORT WORKERS UNION  
OF AMERICA, AFL-CIO**

*Marinelly Maldonado and  
Shelley Plass, Esqs.,*  
for the Acting General Counsel.  
*Lydia Cannizzo, Esq. (Cannizzo &  
Chamberlin, PA),*  
for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

**ROBERT A. RINGLER, Administrative Law Judge.** This case was heard in Miami, Florida on August 15 and 16, 2012. The underlying charges were filed by the Transport Workers Union of America, AFL-CIO (the Union). The resulting complaint alleged that Allied Medical Transport, Inc. (AMT or the Respondent) violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act (the Act) by: creating an impression of surveillance, and engaging in surveillance, of Union activities; stating that unionizing would be an exercise in futility; soliciting employees to reject the Union; promising employees benefits, if they rejected the Union; threatening to replace employees, if they unionized; interrogating employees; unilaterally changing its fare shortage disciplinary policy; and terminating Renan Fertil and Yvel Nicolas because of their Union activities.

On the entire record, including my observation of the demeanor of the witnesses, and after thoroughly considering the parties' briefs, I make the following

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## Findings of Fact

### I. Jurisdiction

At all material times, AMT, a corporation, with principal places of business located in Hollywood and Lauderdale Lakes, Florida (the Hollywood and Lauderdale Lakes facilities), has provided public transportation services under the Americans with Disabilities Act (ADA) to clients living in Broward County, Florida. Annually, it purchases and receives at its Hollywood and Lauderdale Lakes facilities goods valued in excess of \$50,000 directly from points located outside of the State of Florida.<sup>1</sup> Accordingly, it admits, and I find, that it is an employer engaged in commerce, within the meaning of Section 2(2), (6) and (7) of the Act. It also admits, and I find, that the Union is a labor organization, within the meaning of Section 2(5) of the Act.

### II. Alleged Unfair Labor Practices

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#### A. Introduction

AMT Medical is headed by: Wayne Rowe, Chief Executive Officer (W. Rowe); and Rashell Rowe, President (R. Rowe). It provides transportation under the ADA to qualified individuals with disabilities living in Broward County, who cannot use mainstream public transportation. (R. Exh. 1). It receives daily route assignments from Broward County, which describe, inter alia, client itineraries, routes, pick-up and drop off times and fares. Drivers begin their shift by picking up vehicles and assignments at the facilities; they end their workday by returning their vehicles and depositing collected fares into an automated kiosk.<sup>2</sup>

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#### B. Union's Campaign

In June 2011,<sup>3</sup> the Union began organizing AMT's drivers, dispatchers and mechanics. George Exceus, Lead Organizer, held weekly offsite meetings during the campaign.

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##### 1. October 26 Telephone Call

Allan Toby, driver and internal Union campaign leader,<sup>4</sup> credibly testified that W. Rowe telephoned him on October 26. He recounted this conversation:

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[W]e had a [Union] meeting . . . the night before and Wayne [Rowe] asked me how come he wasn't invited to the meeting. . . . I explained . . . that . . . it wasn't a union yet . . . [and] that the reason that we were meeting was to explore . . .

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<sup>1</sup> It has since closed its Hollywood and Lauderdale Lakes facilities, and opened a single Pompano, Florida facility.

<sup>2</sup> The automated fare collection kiosk is an ATM machine, which involves drivers entering a PIN code, depositing fare moneys and receiving a receipt, which is affixed to their assignment and submitted to supervision.

<sup>3</sup> All dates herein are in 2011, unless otherwise stated.

<sup>4</sup> He initiated the campaign, passed out Union literature, solicited workers and served as a Union observer.

5 having better working conditions, to which he told me that nothing was going to change. . . .  
 (Tr. 96) (grammar as in original).

10 W. Rowe cursorily admitted telephoning Toby on several occasions, but did not specifically address the above-described call. He generally denied, however, classifying unionization as futile or implying that he was watching employees' Union activities.

15 For several reasons, I credit Toby's account. Concerning demeanor, he was forthright, even-keeled, and highly cooperative. His testimony was detailed and his recall was potent. W. Rowe, conversely, failed to expressly recall the conversation and only offered a general denial. This denial was, however, procured by a highly leading interrogation by counsel, which rendered it worthy of only minimal, if any, weight. See (Tr. 410).

## 2. November Union Meeting

20 Paul Beauvais, a driver, credibly testified that, in November, he attended a Union meeting at the Comfort Inn near the Lauderdale Lakes facility. He stated that, when he arrived, he saw W. Rowe seated in a Toyota Sequoia parked 10 feet from the hotel's entrance.

25 Nicolas credibly testified that he attended the Comfort Inn meeting and saw W. Rowe parked by the entrance. He recalled W. Rowe summoning him over and recounted this exchange:

30 And he [said] . . . I hear[d] you guys [are] hav[ing] a union meeting. . . . He [said] . . . the Union [is] not going to be able to do anything for you guys. . . . And Mr. Rowe [asked] . . . what [are] they . . . going to do for you guys? And I t[old] . . . him . . . the pay is not enough; we never have a good health insurance; then we never get vacation . . . so the Union offer us this stuff. And Mr. Rowe repeat[ed] . . . I'm the owner. . . . If I don't agree with the Union, they're not going to be able to do anything. And I tell him . . . we're going to try. And he was like . . . why don't you guys organize a group of drivers because I [told] . . . him when we have something wrong over there, we don't have . . . [some]one to talk to. He [told] . . . me why don't you guys organize a group of drivers?

40 (Tr. 225) (grammar as in original). He stated that, after he left, W. Rowe continued to linger.

45 W. Rowe testified that the Lauderdale Lakes facility's parking lot is near the Comfort Inn. He stated that he errantly believed that the Union meeting was being held in his parking lot, and wanted to confirm that his fleet was secure. He recalled seeing Nicolas and having a perfunctory conversation, but, failed to provide a detailed account. He did, however, generally deny engaging in surveillance, stating that unionizing would be a futile effort, or soliciting workers to abandon the Union.

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5 For several reasons, I credit Nicolas’ account. Concerning demeanor, he was open,  
 straightforward and believable. He had a strong recall and was consistent. His testimony was  
 partially corroborated by Beauvais. W. Rowe, conversely, provided only scant detail, and solely  
 offered a generalized denial of wrongdoing. This denial was, as noted, prompted by a leading  
 10 W. Rowe were solely concerned with protecting his fleet, it is implausible that he would have  
 stationed himself at the Comfort Inn, in lieu of viewing the scene from his own facility.

### 3. November 28 Telephone Call

15 Toby credibly testified that, on November 28, he received another call from W. Rowe.  
 He recounted this exchange:

[H]e reminded me that there was a time that we were pretty much like a family. . .  
 . He also told me that the drivers . . . looked up to me . . . and suggested . . . I  
 20 should talk to them about voting against the Union. . . .

He just said . . . I was instrumental in doing this and I never denied that I was the  
 person who initiated that.

25 (Tr. 97). W. Rowe did not specifically testify about this call; he solely denied any wrongdoing.

For the many reasons previously cited, I credit Toby’s account. As stated, he was a  
 highly credible witness, who possessed a sharp recall. W. Rowe, as noted, failed to testify about  
 this specific conversation and his generalized denial was prompted by a leading interrogation.  
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### 4. December 1 Telephone Calls

Adrys Etienne, another driver, testified that, on December 1, he received a phone call  
 from W. Rowe. He described this conversation:

[H]e . . . [asked] me if [I was] . . . going to vote tomorrow. I said no. . . . He said  
 why? I said I don’t have time. . . . And he [said] . . . you have to go vote . . . if  
 you don’t vote, the Union is going to win. If you vote, you have to vote no. . . .  
 He [said] . . . [g]ive me some time to fix everything . . . he . . . has the future from  
 40 the County; is the one that can help us. I [said] . . . but we work for you for a long  
 time, you don’t do nothing for us. . . . He [said] . . . you have to go vote . . . no.

(Tr. 56–57) (grammar as in original).

45 Beauvais testified that, on December 1, he also received a phone call from W. Rowe. He  
 recalled this exchange:

It was about the meeting [he] . . . had about . . . the Union. . . . [H]e asked me  
 how . . . his meeting [was] and I said . . . there was something he said . . . that . . .  
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5 all drivers didn't like, which is . . . we [are] all just drivers, just bus drivers. And I told him I was offended. . . .

He said let's talk about our Union. . . . He [asked] . . . if I really think the Union is a good thing. . . . And I told him the Union is the only one that's there for us right  
10 now. . . . He said no, the Union is not there yet. . . . There's something you can do about the Union because the Union is not going to do anything. . . .

And he kept telling me the Union is not good . . . because if the Union is there, we're not going to be able to call him anymore, we'll be talking to the Union  
15 directly, not him anymore. . . .

[H]e . . . want[ed] us to vote no . . . and [asked] if I . . . [could] talk to the other guys . . . to vote no against . . . [the] Union because he didn't want to; if we vote  
20 no, the money he has, . . . the money he was going to use for attorneys' fee[s], he can use it on us to give us some to help us with insurance and stuff. . . .

It was about \$200,000 . . . for attorneys' fees. . . .

[H]e said that's his company. The Union will not be able to control him because  
25 that's his company and . . . he can always hire part-time drivers from the other company to be full-time drivers and let all of us that follow the Union go. . . .

He said . . . we were just bus drivers and he can . . . hire some high school kids to do the job . . . we're not professional. . . .

30 (Tr. 108–112) (grammar as in original).

W. Rowe did not specifically address these conversations. He did, however, explain that  
35 he told drivers at a meeting that they were more abundant than professionals, whose positions entailed significant education and training. He denied, however, engaging in any wrongdoing.

For the several reasons previously cited, I credit Etienne's and Beauvais' accounts. They were credible witnesses, with strong recollections. Their demeanors were open and believable.  
40 W. Rowe, as stated, failed to specifically testify about these encounters, and his generalized denials were produced via a leading interrogation.

## 5. Election and Certification

On December 2, the following employees (the unit) at the Hollywood and Lauderdale  
45 Lakes facilities selected the Union as their exclusive collective-bargaining representative:<sup>5</sup>

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<sup>5</sup> On December 12, Region 12 certified the Union as the unit's exclusive representative. (GC Exh. 9).

5 All full-time and regular part-time drivers, mechanics and dispatchers . . . ,  
 excluding: all other employees, including security guards, confidential employees,  
 and supervisors as defined in the Act.<sup>6</sup>

10 (GC Exh. 8).

**C. Fare Audits and Disciplinary Actions**

15 In June, Broward County changed the way that AMT was paid. At that time, it began  
 deducting the fares<sup>7</sup> that drivers collected from the trip fees<sup>8</sup> that AMT received for transporting  
 passengers.<sup>9</sup> This change resulted in a substantial decrease in revenues.<sup>10</sup> W. Rowe testified that  
 this change prompted him to perform an audit, in order to verify that all fares were being  
 20 submitted. He added that he previously neglected to adequately monitor fare submissions, and  
 that the change required him to exercise greater vigilance. He noted that he had long suspected  
 some irregularities in drivers’ fare submissions. Two audits were, consequently, performed; the  
 first covered a few drivers and spanned March to October, while the second covered all drivers  
 and spanned March to December.<sup>11</sup>

**1. Audits**

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**a. Phase 1–March to October Audit**

The results of the March through October audit are summarized below:

Category	Number
Total drivers delinquent in remitting fares	6
Drivers admitting delinquency, who were warned and agreed to repay <sup>12</sup>	3
Drivers denying delinquency, who resigned or were fired	3

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(GC Exh. 4–5).

**b. Phase 2–March to December Audit**

35 The results of the March through December are summarized below:

Category	Number
Total drivers delinquent in remitting fares	64
Drivers admitting delinquency, who were warned and agreed to repay	7
Drivers denying delinquency, who resigned or were fired	4

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<sup>6</sup> There are approximately 142 employees in the unit.  
<sup>7</sup> Fares equaled \$3.50 per ride, unless the fare was waived. (R. Exh. 2).  
<sup>8</sup> Trip fees ranged from \$33.50 to \$18.10 per trip. (Id.).  
<sup>9</sup> AMT previously retained fares, in addition to receiving a trip fee for shuttling clients.  
<sup>10</sup> This resulted in a monthly decrease in AMT’s revenues of approximately \$60,000. (R. Exh. 2).  
<sup>11</sup> An outside auditor, Ronan Defranc, was hired in November to perform this phase of the audit.  
<sup>12</sup> Toby, a key internal Union organizer, was in this group. Following the phase 1 audit, he was again found delinquent during the phase 2 audit, which resulted in another repayment agreement and warning. (GC Exh. 4).

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Category	Number
Drivers found delinquent, whose disciplines have been withheld pending bargaining with the Union	49
Other <sup>13</sup>	4

(GC Exhs. 4–5).

15 Fertil and Nicolas were found delinquent during phase 2 of the audit. Their delinquency prompted their suspensions and discharges. W. Rowe acknowledged that he did not bargain with the Union or otherwise place it on notice before undertaking phase 2 of the audit, or taking any  
 10 connected disciplinary actions. He admitted that phase 2 of the audit was unique, in the sense that AMT had never previously audited all drivers. He agreed that past audits were vastly more limited in scope and duration.

## 2. Fare Collection Rules

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All employees receive an employee handbook, which discusses fare remission rules. Section 17.4, *Fare Collection*, states that:

AMT drivers will collect from clients, any required fares. . . .

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- Drivers will maintain a record of fare collection . . . and . . . submit deposit receipts for the fares collected.
- Fares must be deposited in the fare validating machine. . . . If a driver does not deposit fares collected . . . , the driver will be charged double . . . on the first offense. The driver will be terminated on the second offense. .

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(R. Exh. 7 at 31). Section 9.3, *Infractions*, provides a nonexhaustive list of terminable offenses, which includes theft-related violations (i.e. fare submission violations). (Id. at 16–17.) R. Rowe testified that drivers were advised that fare submissions were subject to audit. (R. Exh. 17.) AMT maintained a bulletin board, which advised drivers that fare theft was a terminable offense. (R. Exh. 5.)

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## 3. Fertil’s Suspension and Discharge

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On December 21, Fertil received the following letter:

[A]n audit was done for fare monies collected from March . . . to December . . . and it was found that some days you . . . did not [fully] drop the fare monies collected.

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Our audit showed that you owe a balance of \$476.30. . . . We pulled manifest for December 14, 2011 and it shows where you were short \$7.00 for that day and you

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<sup>13</sup> The record failed to reveal what disciplinary measures, if any, these drivers received.

5 accept that you are short on that day. You state that you drop your monies at all times and you wish to see all documentation to proof that you are short.

10 You will be placed on suspension while we further our investigation. . . . If it is proven that you do owe these monies you will be responsible for paying it back or criminal charges will be bought against you and at that time we will make a determination whether or not we wish to continue your employment. . . .

(GC Exh. 2) (grammar as in original).

#### 15 **a. Fertil's Account**

Fertil testified that, on December 21, he was summoned to a meeting with D. Rowe and Human Resources Manager Alicia Burnette-Brown. He indicated that W. Rowe was not physically present, but, participated telephonically. He stated that he was informed about the fare delinquency, and asked to sign an admission and repayment agreement. He steadfastly denied liability. He averred that he was shown incomplete proof; he noted, however, that he would have repaid the entire delinquency, if he had been shown sufficient proof. He reported that he was suspended, while the matter was investigated. He indicated that he was never offered a staggered repayment plan. He related that, on December 26, he returned to the Lauderdale Lakes facility and signed a document, which denied culpability. (GC Exh. 2).

Fertil stated that he collected four Union authorization cards, including his own. He added that he distributed Union flyers to coworkers in the Lauderdale Lakes parking lot, and averred that Latoya White, Route Supervisor,<sup>14</sup> observed his activities.<sup>15</sup> He indicated that he attended 5 Union meetings, and encouraged employees to support the Union at these meetings.

#### 30 **b. AMT's Position**

W. Rowe testified that Fertil was told that, if he admitted his transgression and agreed to repay the missing funds, he would remain employed. He added that the audit conclusively demonstrated that Fertil, along with roughly half of the drivers, failed to remit all fares. He noted that he would have offered Fertil a repayment plan, if he accepted accountability. He denied knowing that Fertil supported the Union.<sup>16</sup>

40 Diandre Hernandez, Manager, testified that she met with Fertil concerning the fare shortage twice. She stated that he agreed to repay the December 14 shortfall, but, refused to repay other moneys. She stated that, although he asked her to assemble his fare records, he never followed up to set up an appointment to review these records. She averred that she told him that,

<sup>14</sup> The complaint alleged White as a Sec. 2(11) supervisor and Sec. 2(13) agent. (GC Exh. 1(ee)). In its amended answer, AMT admitted her status. I find, accordingly, that she was a supervisor and agent.

<sup>15</sup> Because AMT, without explanation, failed to call White to rebut this testimony, I credit Fertil's account, which was forthright and believable. See *Douglas Aircraft Co.*, 308 NLRB 1217 (1992) (failure to call a witness "who may reasonably be assumed to be favorably disposed to the party, [supports] an adverse inference . . . regarding any factual question on which the witness is likely to have knowledge.").

<sup>16</sup> Based upon the reasons previously cited, I do not credit his claim that he was unaware of Fertil's Union activity.

5 if he repaid the moneys, he would be retained. She conceded that AMT never advised the Union of its decision to suspend him, or regarding its implementation of discipline following the audit.

#### 4. Nicolas' Discharge

10 On December 27, Nicolas received this letter:

[A]n audit was done for fare monies collected from March . . . to December . . . and it was found that some days you . . . did not drop the fare monies collected.

15 You state that you have always dropped all the fare monies so you will be placed on suspension while we further our investigation. . . . If it is proven that you do owe these monies you will be responsible for paying it back or criminal charges will be bought against you and at that time we will make a determination whether  
20 . . . we wish to continue your employment. . . .

(GC Exh. 3) (grammar as in original). Nicolas' missing fare moneys only totaled \$249.15, including interest. (GC Exh. 4).

#### 25 a. Nicolas' Account

Nicolas recalled W. Rowe telephoning him in December about the delinquency; he recounted denying any wrongdoing. He explained that the fare collection machine often failed to work properly. He stated that he was later summoned to a meeting with D. Rowe, where W.  
30 Rowe participated via speakerphone. He recalled proclaiming his innocence and imploring them to check their records. He averred that he was not allowed to repay the missing fares, and was subsequently not placed on the schedule.

Nicolas testified that he served as a Union observer at the election, handed out Union  
35 flyers to employees on 7 occasions, and collected approximately 30 Union authorization cards. He stated that, when his shift ended, he consistently removed his uniform shirt and exposed his Union T-shirt. He added that he spoke on behalf of the Union at various meetings.

#### 40 b. AMT's Position

W. Rowe testified that he reported Nicolas' shortage to the Hollywood Police  
45 department. He stated that Nicolas said that he would repay the moneys on the Friday after the meeting, but, never appeared, which resulted in his removal from the schedule. He contended that, if the moneys had been repaid, Nicolas would have been retained. He acknowledged that AMT never advised the Union of its decision to suspend, and later fire, Nicolas.

Hernandez testified that she spoke to Nicolas about his delinquency twice. She added that, although he denied the transgression, his denial was implausible, given that the fare collection machine accurately counted submitted moneys. She stated that Nicolas initially  
50 committed to repaying the deficient moneys. She added that, although he never came in to repay the moneys, he eventually returned to pick up his last paycheck. She related that he was never

5 offered a payment plan because he initially committed to repay the entire amount. She averred that she told Nicolas that, if he repaid the missing moneys, he would be placed back on the schedule.

10 **5. Past Fare-Related Disciplines**

The following chart describes past fare-related disciplines that were not associated with the audits at issue herein:

Date	Employee	Amount of Missing Fares	Discharge Threatened	Employee Conceded Guilt, Retained and Offered Repayment Plan
May 24	T. Wilson	\$5097.40	Yes	Yes; agreed to repay \$150 per paycheck <sup>17</sup>
July 21	G. Charles	\$454.30	Yes	Yes; agreed to repay \$75 per paycheck
Oct. 21	J. Desir	\$84.15	Yes	Yes; agreed to repay monies <sup>18</sup>
Nov. 17	J. Teal	Not provided	Not provided	Employee retained <sup>19</sup>

15 (GC Exhs. 4, 5, 13).

Wilson credibly testified that he was consistently aware that his fare submissions might be audited. He stated that he was allowed to keep his job and enter into a payment plan, after he admitted liability. He added that he knew that he could have been arrested for withholding fares.

20 **D. Collective Bargaining**

25 Karen Caputo, AMT’s chief spokesperson in bargaining, testified that she began negotiations with the Union in February. She stated that Carl Martin represents the Union. She added that, in March, the parties had the following discussion about fare shortages and discipline:

30 It was not resolved, but, I told Mr. Martin that I would go back to Mr. Rowe and . . . advise him to discontinue taking the deductions until there was . . . [a] resolution because Mr. Martin was very adamant about believing that it was an unfair labor procedure. And . . . I spoke to Mr. Rowe . . . and he took my advice.

35 (Tr. 344–345). Hernandez explained that, consequently, AMT ceased disciplining drivers, until the parties reached a resolution about the fare shortage issue.

**III. Analysis**

**A. Section 8(a)(1)**

<sup>17</sup> Wilson said that he spent the stolen fares on gambling. He was, thereafter, found arrear in submitting fares equaling \$290.50 from May to November and, again, made restitution in order to keep his job. (GC Exh. 4).

<sup>18</sup> Desir was later found delinquent in submitting additional fare moneys of \$2,249.50, and presently remains employed. (GC Exh. 4). His discipline, if any, has been held in abeyance, pending negotiations with the Union.

<sup>19</sup> Teal was later found arrear in submitting additional fare moneys in November and December. (GC Exh. 4). His discipline, if any, has been held in abeyance, pending negotiations with the Union.

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### 1. Impression of Surveillance<sup>20</sup>

AMT created an unlawful impression of surveillance. An employer creates an unlawful impression of surveillance, if reasonable employees would assume that their union activities are being monitored. *Stevens Creek Chrysler*, 353 NLRB 1294, 1295–1296 (2009). Where an employer tells employees that it knows about their union activities but fails to cite its source, such comments are unlawful because reasonable employees will suspect surveillance. *Id.* at 1296. However, if an employer tells employees that it learned of their union activities from a specific employee, such comments are generally lawful and do not lead to a rational presumption of surveillance. *Park 'N Fly, Inc.*, 349 NLRB 132, 133 (2007). On October 26, W. Rowe told Toby that he was aware that he had attended a Union meeting. On November 28, he told Toby that he knew that he had started the Union’s organizing drive. These comments, which omitted a source, left Toby to reasonably assume that management was monitoring his Union activities.

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### 2. Surveillance<sup>21</sup>

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### 3. Futility of Bargaining and Unionizing<sup>22</sup>

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<sup>20</sup> These allegations are listed under pars. 6(a), 8(a), and 14 of the complaint.

<sup>21</sup> These allegations are listed under pars. 7(a) and 14 of the complaint.

<sup>22</sup> These allegations are listed under pars. 6(b), 7(b), 9(a), and 14 of the complaint.

5 December 1, W. Rowe told Beauvais that, “the Union is not going to do anything,” and “will not be able to control him.” These statements, which were accompanied by threats, surveillance, and interrogation, collectively communicated that unionization would be a futile act.

#### 10 **4. Interrogation**<sup>23</sup>

AMT unlawfully interrogated employees. In *Westwood Healthcare Center*, 330 NLRB 935 (2000), the Board held that these factors control whether an interrogation is unlawful:

- 15 (1) The background, i.e., is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identity of the questioner, i.e., how high was he in the company hierarchy?
- (4) Place and method of interrogation, e.g., was employee called from work to the boss’s office? Was there an atmosphere of unnatural formality?
- 20 (5) Truthfulness of the reply.

Id. at 939. In applying these factors, however, the Board concluded that:

25 In the final analysis, our task is to determine whether under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act.

Id. at 940.

30 On December 1, W. Rowe asked Etienne whether he was voting in the upcoming Union election. On the same date, he asked Beauvais what he thought about management’s pre-election meeting and the Union generally, and whether he was willing to campaign against the Union. These queries, which were accompanied by other unlawful comments and made by AMT’s leader, sought to expose Etienne’s and Beauvais’ respective commitments to the Union, and were, accordingly, highly coercive.

#### 35 **5. Soliciting Grievances**<sup>24</sup>

40 AMT unlawfully solicited employees’ grievances. In *Reliance Electric.*, 191 NLRB 44, 46 (1971), the Board held as follows:

45 Where . . . an employer, who has not previously had a practice of soliciting employee grievances or complaints, adopts such a course when unions engage in organizational campaigns seeking to represent employees, . . . there is a

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<sup>23</sup> These allegations are listed under pars. 9(e) and 14 of the complaint.

<sup>24</sup> These allegations are listed under pars. 7(c) and 14 of the complaint.



5 I'll deliver" is unlawful); *Sunset Coffee & Macadamia Nut Co-O of Kona*, 225 NLRB 1021,  
 1021 (1976) (announcement that there would be "good news," after election is unlawful). On  
 December 1, W. Rowe asked Etienne to "[g]ive [him] . . . some time to fix everything" and said  
 that only he "is the one that can help." This statement, as noted, was accompanied by an express  
 10 pledge to spend \$200,000 on benefits, if the Union lost. Under these circumstances, W. Rowe's  
 plea to "[g]ive [him] . . . some time to fix everything" was unlawful.

## 9. Replacement Threats<sup>28</sup>

15 AMT unlawfully threatened to replace employees, if they unionized. A statement is an  
 unlawful threat, when it coerces employees in the exercise of their Section 7 rights. 29 U.S.C.  
 § 158(a). In evaluating such statements, the Board:

20 [D]oes not consider subjective reactions, but rather whether, under all the circumstances,  
 a respondent's remarks reasonably tended to restrain, coerce, or interfere with  
 employees' rights guaranteed under the Act.

25 *Sage Dining Service*, 312 NLRB 845, 846 (1993); *Double D Construction Group*, 339 NLRB  
 303 (2003) ("test of whether a statement is unlawful is whether the words could reasonably be  
 construed as coercive, whether or not that is the only reasonable construction."). On December  
 1, W. Rowe threatened Beauvais that, "he [could] . . . always hire part-time drivers from the  
 other company to be full-time drivers and let all [employees, who] . . . follow the Union go."  
 This statement constituted an unlawful threat of retaliation.

### B. Section 8(a)(3); Fertil's and Nicolas' Suspensions and Firings<sup>29</sup>

30 AMT did not violate Section 8(a)(3), when it suspended and terminated Fertil and  
 Nicolas. Although the Agency made a prima facie showing of discrimination, AMT established  
 that it would have taken the same personnel actions for permissible reasons.

#### 1. Legal Framework

35 The framework described in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899  
 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), sets forth the appropriate standard:

40 Under that test, the General Counsel must prove by a preponderance of the evidence that  
 union animus was a substantial or motivating factor in the adverse employment action.  
 The elements commonly required to support such a showing are union or protected  
 concerted activity by the employee, employer knowledge of that activity, and union  
 animus on the part of the employer.

45 If the General Counsel makes the required initial showing, 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 union activity. To establish this affirmative

<sup>28</sup> These allegations are listed under pars. 9(c) and 14 of the complaint.

<sup>29</sup> These allegations are listed under pars. 11, 12, and 15 of the complaint.

5 defense, “[a]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity.”

*Consolidated Bus Transit*, 350 NLRB 1064, 1065–1066 (2007) (citations omitted).

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If the employer’s proffered defenses are found to be a pretext, i.e., the reasons given for its actions are either false or not relied upon, it fails by definition to show that it would have taken the same action for those reasons, and there is no need to perform the second part of the *Wright Line* analysis. However, further analysis is required if the defense is one of “dual motivation,” that is, the employer defends that, even if an invalid reason might have played some part in its motivation, it would have taken the same action against the employee for permissible reasons. *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

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## 2. Prima Facie Case

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Counsel for the Acting General Counsel made a prima facie *Wright Line* showing that Fertil’s and Nicolas’ suspensions and discharges violated Section 8(a)(3). Concerning Fertil’s Union activity, he obtained 4 authorization cards, distributed literature, attended meetings and encouraged coworkers to support the Union. Regarding knowledge, supervisor White observed him distributing Union literature in the parking lot, which established institutional knowledge.<sup>30</sup> Concerning Nicolas’ Union activities, he served as an election observer, collected 30 authorization cards, distributed literature to coworkers, attended meetings, advocated for the Union, and wore a Union T-shirt. Regarding knowledge, W. Rowe observed him attending the Union’s Comfort Inn meeting and engaged in a related discussion.<sup>31</sup> Lastly, as noted, there is extensive evidence of Union animus, which can be imputed to both personnel actions; such animus includes numerous unlawful threats, statements and actions.<sup>32</sup>

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## 3. Affirmative Defense

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AMT has shown that, even if an invidious motivation might have played some role in Fertil’s and Nicolas’ personnel actions, it would have nevertheless taken the same actions against them for permissible reasons. First, the audit that triggered their firings was wholly disassociated from the Union’s organizing drive. The audit was prompted by Broward County disallowing AMT’s retention of fare moneys. In the absence of this discrete event, AMT would not have undergone the massive and costly audit that ensnared Fertil and Nicolas.<sup>33</sup> Second, if AMT truly wanted to use the audit as a serendipitous way to remove Union supporters, it would not have

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<sup>30</sup> See *State Plaza, Inc.*, 347 NLRB 755, 756–757 (2006) (supervisor’s knowledge of union activities is imputed to the employer, unless credited testimony establishes otherwise).

<sup>31</sup> AMT was also aware that he was a Union election observer.

<sup>32</sup> Animus can also be adduced from the close timing between Nicolas’ service as an election observer and his firing (i.e., a month). See *La Gloria Oil & Gas Co.*, 337 NLRB 1120 (2002), *enfd.* 71 Fed. Appx. 441 (5th Cir. 2003).

<sup>33</sup> This demonstrates that the audit and connected discipline was not engineered to eradicate Union supporters, but, instead designed to address serious *non-Union* issues: decreased revenues; and driver dishonesty. Moreover, there is no evidence that AMT knew in advance that either Fertil or Nicolas were delinquent, and would, consequently, be ensnared by the audit.

5 conducted the expensive and far-reaching audit that was performed. It would have, instead,  
 undergone a precise audit focused primarily on known Union adherents. Third, if AMT wanted  
 to use the audit as mechanism to fire Union supporters, its findings would not have broadly  
 implicated 64 drivers, and would have narrowly indicted Fertil and Nicolas.<sup>34</sup> Fourth, AMT has  
 10 historically treated all of its drivers, who were delinquent in submitting fare moneys,  
 consistently. Specifically, drivers, who admitted liability and repaid their delinquency, remained  
 employed; while drivers, who denied liability, were fired (i.e., Fertil and Nicolas).<sup>35</sup> This  
 consistency shows that AMT would have taken the same actions against them, absent their  
 Union activities. Fifth, if AMT wanted to use the audit as a ploy to remove Union adherents; it  
 would have first aggressively zeroed in on Toby, the lead Union organizer,<sup>36</sup> before turning its  
 15 attention to lesser players, such as Fertil and Nicolas. Toby, who was twice caught delinquent in  
 his fare submissions, was permitted to repay all moneys and retained. Given that Toby, the key  
 Union adherent, was permitted to remain employed after presenting AMT with 2 firing  
 opportunities, one would be hard pressed to argue that Fertil and Nicolas, 2 lesser internal union  
 organizers,<sup>37</sup> would not have also been retained, if they solely conceded liability.<sup>38</sup> Lastly,  
 20 AMT's records demonstrated that Fertil and Nicolas were guilty of the underlying fare  
 transgressions. In sum, I find that, where a company audits all of its drivers for business reasons  
 disconnected from the Union's organizing drive, where any drivers found delinquent under this  
 audit were retained if they agree to repay their debts (including the lead Union organizer), and  
 where 2 Union adherents who refused to repay their debts under this audit are consequently fired,  
 25 the company has abundantly shown that it would have consistently fired the 2 Union adherents,  
 even in the absence of their protected activities. I find, accordingly, that AMT would have  
 suspended and discharged Fertil and Nicolas, in the absence of their Union activities.

### 30 C. Section 8(a)(5)<sup>39</sup>

AMT violated Section 8(a)(5), when it unilaterally changed its disciplinary policies and  
 procedures concerning driver fare shortages, and disciplined drivers under this modified policy,  
 without notifying the Union. In *San Miguel Hospital Corp.*, 357 NLRB No. 36, slip op. at 2

<sup>34</sup> Or put another way, it's improbable that AMT would have potentially sacrificed so many others, in order to solely eliminate Fertil and Nicolas.

<sup>35</sup> Counsel for the Acting General Counsel's contention that AMT's failure to offer Fertil and Nicolas a staggered repayment plan demonstrates invidious treatment is unreasonable, given that these employees have consistently failed to acknowledge accountability or willingness to make restitution. It is logical that, as a prerequisite to offering a staggered payment schedule, an employee must first be willing to repay, which was not done. AMT cannot, as a result, be held accountable for failing to offer staggered payment schedules.

<sup>36</sup> On November 28, W. Rowe brazenly acknowledged to Toby that he knew that he was "instrumental" in the Union's organizing efforts.

<sup>37</sup> Fertil's Union activities were somewhat minor, inasmuch as he solely collected 4 authorization cards and leafleted once. Although Nicolas performed more Union activity, he played a vastly lesser role than Toby, who started the drive and was considered to be the Union's ringleader.

<sup>38</sup> I do not credit their claims that W. Rowe rejected their repayment offers. First, their claimed willingness to make restitution is inconsistent with their ongoing denials of liability and insistence that they be shown sufficient proof as a prerequisite to repayment. Second, their claimed willingness to repay is implausible, given that W. Rowe has consistently allowed *anyone* to repay stolen fares in order to keep their jobs, including the lead Union organizer who was caught twice, a driver who admitted spending stolen fares on gambling and was later caught again, and drivers that were caught stealing thousands of dollars.

<sup>39</sup> These allegations are listed under pars. 10, 11, 13 and 16 of the complaint.

5 (2011), the Board described an employer’s obligation to bargain with a newly established union  
as follows:

10 Sections 8(a)(5) and (d) of the Act obligate an employer to bargain with the  
representative of its employees in good faith with respect to “wages, hours and  
other terms and conditions of employment.” . . . Section 8(a)(5) also obligates an  
employer to notify and consult with a union concerning changes in terms and  
conditions of employment before imposing such changes. . . . When a majority of  
15 the unit employees have selected the union as their representative in a Board-  
conducted election, the obligation to bargain, at least with respect to changes in  
terms and conditions of employment, commences . . . [on] the date of the election.

(Id.) (citations omitted).

20 In order to trigger a bargaining obligation, a unilateral change must be material,  
substantial, and significant. *Crittenton Hospital*, 342 NLRB 686 (2004). A change will not,  
however, constitute an unlawful unilateral change, when it narrowly addresses a newly arising  
condition encompassed by a preexisting rule. See *Goren Printing Co.*, 280 NLRB 1120 (1986)  
(very limited fine tuning of preexisting rules). A bargaining obligation arises, however, when an  
employer enforces an unchanged rule in a more rigorous manner. See, e.g., *Vanguard Fire &*  
*Supply Co.*, 345 NLRB 1016 (2005) (changing from lax to stringent enforcement).<sup>40</sup>

25 AMT, by significantly tightening its enforcement of its pre-existing fare shortage policies  
and procedures, enacted a material, substantial and significant change in the unit’s terms and  
conditions of employment. Specifically, it abruptly went from a loose system, where drivers’  
fare submissions were generally not policed, audits were infrequent and limited in scope, and  
30 few drivers were subjected to discipline; to one where all fare submissions for a 10-month period  
were scrutinized under a comprehensive audit. This modification resulted in every driver being  
audited and roughly half of them being subjected to disciplinary actions and repayment  
obligations. The scope of this audit was so significant that W. Rowe needed to hire an outside  
contractor to perform it because his in-house staff was incapable. Such heightened scrutiny  
35 caused substantial driver anxiety, increased their disciplinary risk, elevated their financial  
liabilities, and decreased their job security. This change, as a result, constituted a material,  
substantial, and significant modification of the unit’s terms and conditions of employment.<sup>41</sup>

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<sup>40</sup> See also *Garney Morris, Inc.*, 313 NLRB 101, 119–120 (1993), enfd. mem. 47 F.3d 1161 (3d Cir. 1995)  
(unilaterally implementing a new, more detailed disciplinary warning form); *Migali Industries*, 285 NLRB 820,  
821 (1987) (unilaterally changing from oral to written warnings for absenteeism and tardiness, even though no  
discipline issued pursuant to changed procedure).

<sup>41</sup> It is noteworthy that these issues are well-suited for bargaining. For example, bargaining might encompass,  
inter alia: the level of liability requiring full and immediate lump sum restitution; the level of liability permitting  
a staggered payment schedule, and how the schedule would be calculated; payroll deduction issues; how  
recidivism could be addressed; the time period covered by fare audits; the frequency of fare audits; disciplinary  
levels for violators; and the propriety of “random” audits versus “probable cause” audits.

5 Given that it is undisputed that AMT unilaterally took these actions without notice or bargaining, this change violated Section 8(a)(5).<sup>42</sup>

### Conclusions of Law

10 1. AMT is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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

15 3. The Union is, and at all material times was, the exclusive bargaining representative for the following appropriate unit:

20 All full-time and regular part-time drivers, mechanics and dispatchers employed at the AMT's Pompano, Florida facility, excluding all other employees, security guards, confidential employees and supervisors as defined in the Act.<sup>43</sup>

4. AMT violated Section 8(a)(1) of the Act by:

25 a. Creating the impression amongst employees that it was engaging in surveillance of their Union or other protected concerted activities.

b. Engaging in surveillance of employees' Union or other protected concerted activities.

30 c. Telling employees that it would be futile for them to select the Union as their collective-bargaining representative.

d. Interrogating employees about their Union or other protected concerted activities.

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e. Soliciting and impliedly promising to remedy employees' grievances, in order to discourage them from selecting the Union as their collective-bargaining representative.

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f. Soliciting employees to campaign against the Union.

g. Expressly promising employees benefits, in order to discourage them from

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<sup>42</sup> In *Alan Ritchey, Inc.*, 359 NLRB No. 40 (2012), the Board modified extant law, and held that employers must bargain with the collective-bargaining representative of their employees *prior to* the implementation of *all* discharges, demotions and suspensions. The Board held, however, that this decision, which was dated December 14, 2012, was not retroactive. Therefore, although this precedent is inapplicable herein, it should be used as guidance for AMT's future handling of discharges, demotions and suspensions, until such time as the parties finalize a collective-bargaining agreement, which addresses these issues in a grievance-arbitration procedure.

<sup>43</sup> As noted, following the Union's certification, AMT closed its Lauderdale Lakes and Hollywood facilities and opened the Pompano facility.

5 selecting the Union as their collective-bargaining representative.

h. Impliedly promising employees unspecified benefits, in order to discourage them from selecting the Union as their collective-bargaining representative.

10 i. Threatening to replace employees with part-time drivers, if they selected the Union as their collective-bargaining representative.

5. AMT violated Section 8(a)(1) and (5) of the Act by unilaterally changing its disciplinary policies and procedures concerning driver fair shortages.

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

### 20 Remedy

Having found that AMT committed unfair labor practices, it is ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

25 AMT is required to, upon request by the Union, rescind the modified disciplinary policies and procedures concerning driver fare shortages connected to the March to December audit, restore the status quo ante, and engage in bargaining over these matters. Restoration of the status quo ante includes: expunging all reports, memoranda, disciplinary actions and termination notices, including the suspensions and terminations of Fertil, Nicolas, Gilbert Common, Inadil Forestal, and similarly-situated employees disciplined under the March to December audit;<sup>44</sup> providing them written notice of such expunction; and notifying them that these disciplines will not be used against them in any manner. AMT shall offer Fertil, Nicolas, Common, Forestal and similarly-situated employees reinstatement, and make them whole for any loss of earnings and benefits. Backpay shall be computed on a quarterly basis from the date of their discharges to the date of their proper offers of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily under *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. 2010). AMT shall file a report with the Social Security Administration, which allocates backpay to the appropriate calendar quarters. *Latino Express, Inc.*, 359 NLRB No. 44 (2012). It shall further compensate affected employees for the adverse tax consequences, if any, associated with receiving one or more lump-sum backpay awards covering periods longer than 1 year. Id.

45 AMT must have a responsible official read the Notice to Employees to unit employees during working hours at a meeting or meetings, in the presence of a Board agent. A notice reading will likely counteract the coercive impact of the numerous instant unfair labor practices,

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<sup>44</sup> Although the unilateral firings of Common, Forestal and similarly-situated employees were not expressly alleged under par. 11 of the complaint, these matters were covered by the underlying charges, fully litigated at the hearing, and addressed by pars. 10 and 16 of the complaint. Moreover, absent the inclusion of these employees, restoration of the status quo ante cannot be achieved.

5 which were committed by a high-ranking management official. See *Consec Security*, 325 NLRB 453, 454-455 (1998), *enfd.* 185 F.3d 862 (3d Cir. 1999) (participation of high-ranking management in ULPs magnifies the coercive effect); *Mcallister Towing & Transportation Co.*, 341 NLRB 394, 400 (2004) (“[T]he public reading of the notice is an ‘effective but moderate way to let in a warming wind of information and . . . reassurance. [citations omitted].’”)

10 AMT will distribute remedial notices electronically via email, intranet, internet, or other appropriate electronic means to its employees, in addition to the traditional physical posting of paper notices, if it customarily communicates with its workers in this manner. See *J Picini Flooring*, 356 NLRB No. 9 (2010).

15 On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>45</sup>

## 20 ORDER

Allied Medical Transportation, Inc., Pompano, Florida, its officers, agents, successors, and assigns, shall

- 25 1. Cease and desist from
- a. Creating the impression amongst employees that it was engaging in surveillance of their Union or other protected concerted activities.
  - 30 b. Engaging in surveillance of employees’ Union or other protected concerted activities.
  - c. Telling employees that it would be futile for them to select the Union as their collective-bargaining representative.
  - 35 d. Interrogating employees about their Union or other protected concerted activities.
  - e. Soliciting and impliedly promising to remedy employees’ grievances, in order to discourage them from selecting the Union as their collective-bargaining representative.
  - 40 f. Soliciting employees to campaign against the Union.
  - 45 g. Expressly promising employees benefits, in order to discourage them from selecting the Union as their collective-bargaining representative.
  - h. Impliedly promising employees unspecified benefits, in order to discourage them

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<sup>45</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

5 from selecting the Union as their collective-bargaining representative.

i. Threatening to replace employees with part-time drivers, if they selected the Union as their collective-bargaining representative.

10 j. Implementing new disciplinary policies and procedures concerning driver fare shortages, without bargaining with the Union. The appropriate bargaining unit is:

15 All full-time and regular part-time drivers, mechanics and dispatchers employed at the AMT's Pompano, Florida facility, excluding all other employees, security guards, confidential employees and supervisors as defined in the Act.

20 k. Failing and refusing to recognize and bargain with the Union regarding disciplinary policies and procedures concerning driver fare shortages, and by unilaterally discharging, suspending, and disciplining drivers under these new policies and procedures, without first notifying the Union and affording it an opportunity to bargain.

25 l. In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.<sup>46</sup>

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

30 a. Within 14 days from the date of the Board's Order, offer Fertil, Nicolas, Common, Forestal and similarly-situated employees, who were fired, suspended, or disciplined as a result of the unlawful unilateral change in its disciplinary policies and procedures concerning driver fare shortages, their former jobs or, if such jobs no longer exist, offer substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

35 b. Within 14 days from the date of the Board's Order, make Fertil, Nicolas, Common, Forestal and similarly-situated employees whole for any loss of earnings and benefits suffered as a result of the unlawful unilateral change in its disciplinary policies and procedures concerning driver fare shortages, in the manner set forth in the remedy section of this Decision.

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45 c. Within 14 days from the date of the Board's Order, remove from its files any reference to any discharges, suspensions, warnings or other discipline connected to the unlawful unilateral change in its disciplinary policies and procedures concerning driver fare shortages, and within 3 days thereafter notify affected employees in writing that this has been done and that their disciplinary actions will not be used against them in any way.

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<sup>46</sup> A broad cease-and-desist order is appropriate herein. See *Regency Grande Nursing & Rehabilitation Center*, 354 NLRN 530, 531 fn. 10 (2009).

5           d.       Within 14 days from the date of the Board's Order, file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters for Fertil, Nicolas, Common, Forestal and any similarly-situated employees.

10           e.       Within 14 days from the date of the Board's Order, compensate Fertil, Nicolas, Common, Forestal and any similarly-situated employees for the adverse tax consequences, if any, associated with receiving one or more lump-sum backpay awards covering periods longer than 1 year.

15           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 backpay amounts due under the terms of this Order.

20           g.       Upon request by the Union, rescind disciplinary policies and procedures concerning driver fare shortages, as well as rescind the disciplinary actions meted out under this modified policy, and restore the status quo ante.

25           h.       Upon request by the Union, bargain in good faith regarding the disciplinary policies and procedures concerning driver fare shortages applicable to the unit, and, if any agreement is reached, embody it in a signed writing.

30           i.       Within 14 days after service by the Region, physically post at its Pompano, Florida facility, and electronically distribute via email, intranet, internet, or other electronic means to its drivers, mechanics, and dispatchers, if it customarily communicates with these workers in this manner, who were employed by the Respondent at its Lauderdale Lakes, Hollywood, or Pompano, Florida facilities at any time since October 26, 2011, copies of the attached notice marked "Appendix."<sup>47</sup> Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be physically posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has 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 October 26, 2011.

45           j.       Within 14 days after service by the Region, hold a meeting or meetings during working hours, which will be scheduled to ensure the widest possible attendance of drivers, mechanics and dispatchers, at which time the attached notice marked

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<sup>47</sup> 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."

5 “Appendix” is to be read to employees by a responsible official of Respondent in the presence of a Board agent.

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

Dated Washington, D.C., January 16, 2013.

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**Robert A. Ringler**  
**Administrative Law Judge**

## **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. Specifically:

**WE WILL NOT** tell you that it would be pointless or useless to select the Transport Workers Union of America, AFL-CIO (the Union) as your representative.

**WE WILL NOT** create the impression that we are watching your Union activities.

**WE WILL NOT** watch your Union activities.

**WE WILL NOT** interrogate you about your Union activities.

**WE WILL NOT** ask you to tell us your problems at work, or promise to fix your problems at work, in order to persuade you to vote against the Union.

**WE WILL NOT** ask you to campaign against the Union.

**WE WILL NOT** promise to spend moneys budgeted for attorneys' fees on you after the election, in order to persuade you to vote against the Union.

**WE WILL NOT** imply that we will give you unspecified benefits after the election, in order to persuade you to vote against the Union.

**WE WILL NOT** threaten to replace you with part-time drivers, if you vote for the Union.

**WE WILL NOT** fail to bargain in good faith with the Union and as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers, mechanics and dispatchers employed at our Pompano, Florida facility, excluding all other employees, security guards, confidential employees and supervisors as defined in the Act.

**WE WILL NOT** fail and refuse to recognize and bargain with the Union by unilaterally changing policies and procedures concerning driver fare shortages, and consequently fire, suspend, and discipline employees under these amended policies, without first notifying the Union and giving it an opportunity to bargain.

**WE WILL NOT** in any other manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above.

**WE WILL**, within 14 days from the date of the Board's Order, offer Renan Fertil, Yvel Nicolas, Gilbert Common, Inadil Forestal and any other similarly-situated employees, who were fired, suspended or disciplined as a consequence of us unilaterally changing policies and procedures concerning driver fare shortages, their former jobs or, if such jobs no longer exist, offer them substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

**WE WILL**, within 14 days from the date of the Board's Order, make Renan Fertil, Yvel Nicolas, Gilbert Common, Inadil Forestal and any other similarly-situated employees whole for any loss of earnings and benefits suffered as a result of the unlawful unilateral change in our disciplinary policies and procedures concerning driver fare shortages, in the manner set forth in the remedy section of this Decision.

**WE WILL**, within 14 days from the date of the Board's Order, remove from our files any reference to any discharges, suspensions or other discipline connected to the unlawful unilateral change in our disciplinary policies and procedures concerning driver fare shortages, and within 3 days thereafter notify affected employees in writing that this has been done and that this discipline will not be used against them in any way.

**WE WILL**, within 14 days from the date of the Board's Order, file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters for Renan Fertil, Yvel Nicolas, Gilbert Common, Inadil Forestal and any other similarly-situated employees.

**WE WILL**, within 14 days from the date of the Board's Order, compensate Renan Fertil, Yvel Nicolas, Gilbert Common, Inadil Forestal, and any other affected employees for the adverse tax consequences, if any, associated with receiving one or more lump-sum backpay awards covering periods longer than 1 year.

**WE WILL**, upon request by the Union, rescind disciplinary policies and procedures concerning driver fare shortages, as well as rescind the disciplinary actions meted out under this modified policy, and restore the former policy that was in existence immediately before we unilaterally changed these policies and procedures.

**WE WILL**, upon request by the Union, bargain in good faith regarding the disciplinary policies and procedures concerning driver fare shortages applicable to the unit, and, if any agreement is reached, embody it in a signed agreement.

**WE WILL** hold a meeting or meetings during working hours and have this notice read to you and your fellow workers by a responsible official of our company in the presence of an agent of the National Labor Relations Board.

**ALLIED 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](http://www.nlr.gov).

South Trust Plaza, 201 East Kennedy Boulevard, Suite 530, Tampa, FL 33602-5824  
(813) 228-2641, Hours: 8 a.m. to 4:30 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, (813) 228-2643.**