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

PRUDENTIAL PROTECTIVE SERVICES,
LLC

Respondent

and Case 07–CA–095000

SERVICE EMPLOYEES INTERNATIONAL
UNION (SEIU), LOCAL 1

Charging Union

Ronald Buzaitis, Esq.,
for the Acting General Counsel.
Dominic Hamden, Esq.,
for the Respondent.
Steven Stewart, Esq.,
for the Charging Party.

DECISION

Statement of the Case

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried in Detroit, Michigan, on July 9, 2013. Charging Party Service Employees International Union (SIEU), Local 1 (Union), filed the charge on December 17, 2012, a first amended charge on March 26, 2013, and a second amended charge on April 1, 2013. The Acting General Counsel[1] issued the complaint on April 26, 2013. The complaint alleges that Prudential Protective Services, LLC[2] (Respondent) violated Section 8(a)(1) of the Act by: (1) administering a questionnaire to employees indicating that they will be terminated for discussing negative company business or pay rate issues; (2) encouraging employees to sign a waiver indicating that they do not have any rights to which a client's employees may be entitled, including union protection; and (3)

[1] For purposes of brevity, the Acting General Counsel is referenced herein as General Counsel.
[2] In order to correct the name of Respondent, the complaint was verbally amended at hearing by agreement of the parties. (Tr. 7–8.)

impliedly threatening employees with discharge if they engaged in activities in support of the Union. (GC Exh. 1(g).) The complaint further alleges that Respondent violated Section 8(a)(3) and (1) of the Act by suspending and discharging an employee. (Id.) Respondent timely filed an answer denying the allegations contained in the complaint.[3] (GC Exh. 1(i).)

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including my own observation of the demeanor of the witnesses,[4] and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a limited liability corporation, provides security services from its facility in Taylor, Michigan, where it annually derives gross revenues in excess of $500,000, and performs services valued in excess of $50,000 in states other than the State of Michigan. Respondent 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.

Respondent denied knowledge or information concerning the statutory labor organization status of Service Employees International Union (SEIU) Local 1 (Union). The Board has found the Union is a labor organization within the meaning of the Act. *Apollo Detective, Inc.,* 358 NLRB No. 1, slip op. at 2 (2012). Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview of Respondent's Operations and Management Structure

Respondent provides security services in many states, including the State of Michigan. (Tr. 102.) Relevant here, Respondent has a contract with the Farbman Group to provide security services to a group of buildings and parking garages in downtown Detroit, Michigan. (R. Exh. 1; Tr. 120.) These buildings include the Albert Kahn building, the Fisher building, Lathrop Landing, New Center One, and adjacent parking decks. (Id.) A diagram of this area is in the record as General Counsel's Exhibit 2.

On their shifts, Respondent's security officer employees perform a number of duties, including inside rounds, outside rounds, locking and unlocking buildings, and assisting clients

[3] The General Counsel verbally amended the complaint at hearing and Respondent filed a written response to the amended complaint. (R. Exh. 4.)

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

and visitors. (Tr. 31.) During inside rounds the guards ensure that doors are locked, look for broken glass or other evidence of vandalism, and inspect for transients or unauthorized persons inside the building. (Tr. 31.) During outside rounds, guards check the outside area of the building by walking around it. (Id.)

Trish Guzik is Respondent's president and co-owner. Terry Miller II is Respondent's quality assurance manager. In that capacity, Miller checks clients' properties, visits clients, and ensures that Respondent's employees are properly performing their jobs. (Tr. 102.) Miller does so by verifying that the guards are at their posts, that they are in uniform, and that their reports are filled out properly. (Tr. 102.) Lamont Lively is Respondent's operations manager. Respondent admits, and I find, that Guzik, Miller, and Lively are supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act. (R. Exh. 4.)

The General Counsel has alleged that Shift Supervisors Cardal Tobar and Adam Easton are supervisors of Respondent within the meaning of Section 2(11) of the Act or agents of Respondent within the meaning of Section 2(13) of the Act. This is significant because the General Counsel attempts to attribute statements of Tobar and Easton to Respondent, and further attempts to impute knowledge of Jenkins' union or other protected, concerted activity to Respondent through the actions of Tobar and Easton. The Respondent has denied that Tobar and Easton are supervisors and/or agents. (R. Exh. 4.)

1. Respondent's employee questionnaire and waiver

Respondent's employees undergo an orientation when they are hired. (R. Exh. 3; Tr. 131, 134.) During that orientation, the employees are required to complete a new hire examination (questionnaire). One of the questions is as follows:

> 11. If you discuss any negative company business or pay rate issues with other officers, clients, or site employees you will be terminated.

(J. Exh. 2; Tr. 131.) This question may be answered either true or false. According to Respondent, the correct answer to question 11 is true. (J. Exh. 3.)

Respondent's newly hired employees must also sign a document entitled, "NOTICE REGARDING EXCLUSIVITY OF EMPLOYMENT" (waiver). (J. Exh. 1.) In pertinent part, the waiver states as follows:

> This letter is to advise you of your legal rights surrounding your employment with [Respondent].
>
> While employed for [Respondent], you will service one or more particular client(s) of [Respondent] (hereinafter 'client'). Be advised that you remain the sole employee of [Respondent]. At no time will you be considered an employee of [the] client, despite whether you receive directives from [Respondent] or the client.

> By signing below, you acknowledge that you DO NOT have any rights that client's employees may be entitled, including but not limited to the following:
>
> . . . .
>
> 5. Union Protection

(J. Exh. 1.) This waiver lists several other "rights" that employees waive, including the rights to wage increases, to insurance, to the withholding of taxes, and to claim discrimination, unemployment, or workers' compensation. (Id.)

2. Respondent's policies regarding employee uniforms, work performance, and discipline

Respondent maintains several policies regarding employee uniforms and work performance. Respondent classifies violations of its rules as class A violations or class B violations. (R. Exh. 2, 3.)[5] Class A violations include sleeping on the job, no-call/no-show, and leaving the jobsite unattended without proper authorization. Class A violations result in employee termination. (R. Exh. 3; Tr. 115.) Class B violations include failure to wear full uniform while on duty and personal reading while on post. Class B violations may be punished by disciplinary measures short of termination, including suspension. (R. Exh. 3.) Employees are required to review and sign a list of Respondent's class A and B violations during their new employee orientation. (R. Exh. 3.)

Respondent issues uniforms to its employees. (R. Exh. 1; Tr. 36.) Respondent's contract with the Farbman Group specifies that security officers' uniforms consist of black slacks, a white shirt, a blazer, a tie, a black dress belt, and a name tag. (R. Exh. 1.) The contract contains no mention of cold-weather coats, however, Respondent issues such coats to its employees. (Tr. 36, 85.) The contract specifies that Respondent's employees must be prepared for adverse weather conditions. (R. Exh. 1.)

Jenkins testified that she was never issued a uniform coat and instead wore a personal coat when it was cold. (Tr. 38.) Jenkins testified Lively, Tobar, and Easton had seen her wearing this personal coat in the past. (Tr. 38.) Pamela Burris, another employee of Respondent, testified that she was not initially issued a uniform coat, but later received a coat when she told Miller that she did not have one. (Tr. 85.)

B. Laronda Jenkins' Employment with Respondent

Charging Party Laronda Jenkins was employed as a security officer by Respondent from April 8, 2011, through October 10, 2012, when she was discharged for what Respondent alleges were violations of its policies. As an employee of Respondent, Jenkins completed an orientation

[5] Although R. Exhs. 2 and 3 may at first appear to be the same document, they are not. The list of violations differs between the two exhibits. All references herein will be to R. Exh. 3, the version signed by Jenkins.

during which she completed and signed Respondent's questionnaire and waiver. (GC Exhs. 3 and 4.) Jenkins also signed a copy of Respondent's list of class A and B violations. (R. Exh. 3.)

The evidence at trial demonstrated that Jenkins engaged in a single act of union and protected, concerted activity prior to her discharge. According to Jenkins, she signed a union card in July 2012; an act she claimed was witnessed by Easton. (Tr. 39.) Jenkins claimed Tobar mentioned the Union to her in August by stating, "That he heard we were trying to get a union, and he don't mind us get a union as long as Farbman Buildings because they trying to fire your ass."[6] (Id.)

C. Events Preceding the Suspension and Discharge of Laronda Jenkins

On October 9, Jenkins was on duty as a security officer at the Albert Kahn building in downtown Detroit. She was the only guard assigned to the building on her shift. (Tr. 59.) She was not wearing a uniform coat issued by Respondent, but instead wore a personal coat. (Tr. 106.)

During her shift, Jenkins went to meet a new guard at a nearby parking deck.[7] At that time, unbeknownst to Jenkins, Miller was engaged in surveillance of the New Center area because Respondent had learned that employees were improperly removing one of its vehicles from the worksite for personal reasons. (Tr. 103.) Thus, Miller observed Jenkins leave the Albert Kahn building and meet with the new guard. "Mary," a person affiliated with the Union, was also present for Jenkins' meeting with the new guard.[8] (Tr. 44.)

According to Jenkins, she spent only a few minutes talking to the new guard and Mary when Miller approached the group. (Tr. 44.) Jenkins testified that Miller addressed Mary, although Jenkins said she could not hear what was said. Jenkins stated that she then returned to the Albert Khan building to continue her rounds. She testified that Tobar called her at about 7:15 p.m. and told her that Miller wanted her to come to the main office to be written up for being out of uniform and offsite. (Tr. 44.) She said that Tobar told her, "It's some shit in the game."[9] (Tr. 45.) Jenkins testified that she went to the command center, where she overheard Tobar tell Lively that Miller wanted her off-site. (Tr. 46–47.) Tobar also said that Jenkins was going to be written up because she had been out of uniform for over 2 years. (Tr. 47.)

According to Miller, he observed Jenkins talking to three other individuals for over 15 minutes before he approached the group. (Tr. 105.) Miller testified that he noticed Jenkins was

[6] It is not clear from Jenkins' testimony whether Tobar was indicating that Respondent or the Farbman Group was trying to fire Jenkins and no effort was made to clarify this testimony.

[7] Jenkins did not testify that she was going to meet anyone from the Union. Her testimony was, "I went to meet the new guard." (Tr. 43.) Furthermore, Jenkins did not testify that she was going to this meeting to engage in any protected, concerted activity (e.g., to discuss wages, working conditions, or organizing).

[8] Mary was not called as a witness by the General Counsel, Union, or Respondent.

[9] Although Jenkins testified that she believed this phrase referred to her union activity, I cannot find this to be so. At best this phrase is ambiguous and makes no direct reference whatsoever to union or protected, concerted activity.

out of uniform, wearing a personal coat and athletic shoes. (Tr. 106.) Miller was concerned that Jenkins had left the Albert Khan building unsecured. (Tr. 107.) Miller testified that he then took Jenkins aside and told her to report to the office. (Tr. 106.) According to Miller, one of the individuals talking to Jenkins was interested in getting a job and provided him with her phone number and name.[10] (Tr. 106.)

Although Jenkins could see the Albert Kahn building from the place where she met the new guard and Mary, she could not see the front entrance, rear entrance, or inside of the building. (Tr. 72.) Jenkins admitted that it was not part of her job duties to leave the premises to meet a new guard. (Tr. 57.) She further candidly admitted that by attending the meeting with the new guard, she left the Albert Kahn building open to security risks and potential vandalism. (Tr. 59–60.)

On October 10, Jenkins went to Respondent's office and met with Missy Szmanski, a member of Respondent's human resources department. (Tr. 47.) Miller was not present for this meeting. (Id.) Szmanski advised Jenkins that she was terminated based upon what Miller had reported. (Id.) Jenkins then wrote a statement regarding the events leading up to her discharge. (GC Exh. 5.) In her statement, Jenkins did not mention any union or other protected, concerted activity, instead stating that the discharge was unfair because it came out of the blue and without warning. (Id.) She further did not mention receiving a call from Tobar or any comments by Tobar. Jenkins' termination papers indicate that she was discharged for being off-site, thus jeopardizing client safety and property, and out of uniform. (GC Exh. 6.)

Pamela Burris, a current employee of Respondent, testified that she had a conversation with Miller the day after Jenkins' discharge. (Tr. 84–85.) Burris did not realize at the time that it was Jenkins who had been fired. According to Burris, Miller approached her and asked if she heard what happened. Burris replied that she heard someone got fired. Miller asked if she heard anything else, to which Burris replied that she did not. Burris then testified that, "He just said about the Union lady, and that was it." Miller mentioned the "union lady" only once and did not mention that it was Jenkins who had been fired or any connection between the "union lady" and the discharge.

Discussion and Analysis

A. Credibility Analysis

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or

[10] Although others were present for this conversation, the only witnesses who testified were Jenkins and Miller. No one, including Jenkins, testified regarding the substance of the conversation between Jenkins and the other individuals. In the absence of any such evidence, I cannot find that this conversation amounted to protected, concerted activity. Furthermore, I credit the testimony of Miller regarding what he observed over that of Jenkins. Miller's testimony was more certain and plausible. For example, it makes more sense that Miller told Jenkins to report to the office for discipline when he approached the group, rather than allowing her to leave the area and then having another employee call her to tell her to report to the office.

admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group,* 339 NLRB 303, 305 (2003); *Daikichi Sushi,* 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group,* 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi,* 335 NLRB at 622. My credibility findings are generally incorporated into the findings of fact set forth above.

I found Jenkins' testimony to be generally credible. However, on direct examination her testimony was not particularly strong and sometimes less than clear.[11] The written statement relating to her discharge does not corroborate her testimony that she was discharged as a result of her union activity. In fact, her statement does not mention any union activity at all. Jenkins' testimony was not corroborated by other witnesses, as Mary (the "union lady") and the other guard were not called as witnesses. Also, despite having met Mary at least twice, Jenkins could not recall her last name. Nevertheless, Jenkins did not appear to be untruthful and as such, I have generally credited her testimony.

Guzik's testimony was not especially useful in deciding the matters at issue here. She did not have personal knowledge regarding the events leading up to the discharge of Jenkins. However, she was able to provide background information on Respondent's disciplinary policies and its contract with the Farbman Group. She appeared credible and forthright in her testimony.

I note that at the time of the trial, Pamela Burris was an employee of Respondent. Current employees are likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests. *Advocate South Suburban Hospital,* 346 NLRB 209 fn. 1 (2006), citing *Flexsteel Industries,* 316 NLRB 745 (1995), affd mem. *NLRB v. Flexsteel Industries,* 83 F.3d 419 (5th Cir. 1996); see also *American Wire Products,* 313 NLRB 989, 993 (1994) (Current employee providing testimony adverse to his employer is at risk of reprisal and thus likely to be testifying truthfully). Burris' testimony is almost completely unrebutted and she did not waver in her testimony upon cross-examination by counsel for Respondent. Thus, I credit the testimony of Burris above that of other witnesses.

I found Miller to be a more credible witness than Jenkins. His testimony was not rebutted by other witnesses. He appeared certain in his responses to cross-examination. He did not appear to embellish his testimony. Furthermore, his testimony was inherently plausible. His testimony regarding Respondent's responses to employee misconduct stands unrebutted. Miller was near the Albert Kahn building on the date of Jenkins' suspension investigating potential employee misconduct. He recalled key details regarding what he observed, including the length of time he observed Jenkins offsite, where he observed Jenkins, and what was said during his conversation with Jenkins and the others. By way of contrast, Jenkins' testimony was sometimes imprecise and difficult to understand. As such, I credit the testimony of Miller over that of Jenkins when their testimony is in conflict.

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[11] For example, her testimony on direct-examination that, "[Tobar] heard we were trying to get a union, and he don't mind us get a union as long as Farbman Buildings because they trying to fire your ass" was incomprehensible and the General Counsel made no effort to clarify this testimony.

B. Supervisory and/or Agency Status of Cardal Tobar and Adam Easton

As stated above, Respondent denies that Cardal Tobar and Adam Easton are supervisors of Respondent within the meaning of Section 2(11) of the Act or agents of Respondent within the meaning of Section 2(13) of the Act. (R. Exh. 4.) Based upon the evidence presented at trial, I find that the General Counsel has not established that Tobar and Easton are supervisors or agents of Respondent within the meaning of the Act.

Section 2(11) of the Act provides that a supervisor is one who possesses, "authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Under Board and Supreme Court precedent, in order to be a statutory supervisor, an individual must have the authority to effectuate or effectively recommend at least one of the supervisory indicia enumerated in Section 2(11) of the Act, using independent judgment in the interest of the employer. *Oakwood Healthcare, Inc.,* 348 NLRB 686, 687 (2006) (citing *NLRB v. Kentucky River Community Care,* 532 U.S. 706 (2001)).

The Board construes a lack of evidence on any of the elements necessary to establish supervisory status against the party asserting that status. *Brusco Tug & Barge,* 359 NLRB No. 43, slip op. at 6 (2012), citing *Dean & Deluca New York,* 338 NLRB 1046, 1048 (2003). Supervisory status is not proven where the record evidence "is in conflict or otherwise inconclusive." *Phelps Community Medical Center,* 295 NLRB 486, 490 (1989). "[M]ere inferences or conclusionary statements, without detailed, specific evidence, are insufficient to establish supervisory authority." *Alternate Concepts, Inc.,* 358 NLRB No. 38, slip op. at 3 (2012); see also *Avante at Wilson, Inc.,* 348 NLRB 1056, 1057 (2006) ("[g]eneral testimony asserting that employees have supervisory responsibilities is not sufficient to satisfy the burden of proof when there is no specific evidence supporting the testimony" (citations omitted)); *Golden Crest Healthcare Center,* 348 NLRB 727, 731 (2006).

It is well-settled that the party asserting supervisory status bears the burden of proof on the issue by a preponderance of the evidence. *Oakwood Healthcare, Inc.,* 348 NLRB at 694 (citing *Kentucky River Community Care,* 532 U.S. 711–712 (2001)). To that end the General Counsel did not call Tobar or Easton as witnesses, instead relying upon the testimony of Jenkins, Burris, and Miller to meet his burden.

The General Counsel contends that Tobar and Easton are shift supervisors of Respondent and, as such, are directly responsible for the onsite supervision of guards. (GC Br. p. 2.) The General Counsel further contends that Tobar and Easton are supervisors and/or agents of Respondent because they ensure guards get breaks, communicate with the client if something goes wrong, counsel guards, and recommend discipline to the operations manager. (Tr. 110, 116–117.) They are the highest ranking official of Respondent in the absence of the account manager.[12] (Id.) Tobar has told employees he could write them up for being late. (Tr. 41.) Easton has told employees he has written people up for being late. (Tr. 42.)

[12] I note that being the highest ranking individual on a shift is not one of the supervisory criteria in

No evidence other than testimony was produced at hearing demonstrating that Tobar or Easton has ever disciplined an employee. Burris, who I have found to be the most credible witness for reasons explained above, testified that Easton does not discipline other employees and that Tobar has only issued written discipline for tardiness. (Tr. 86.) Moreover, there is no evidence as to how often Tobar and Easton may have engaged in such activities.[13]

Furthermore, there is no evidence that any of the alleged supervisory activities of Tobar and Easton require the use of independent judgment. See *G4S Regulated Security Solutions*, 358 NLRB No. 160, slip op. at 2 (disciplinary notices insufficient to establish supervisory status where the employer failed to call the individuals who signed the notices to testify concerning the circumstances surrounding their issuance; without such testimony, the employer failed to show that the individuals exercised independent judgment). Indeed, the Board has recently found that the authority issue a warning, in and of itself, does not confer supervisory status. *Sanctuary at McAuley,* 360 NLRB No. 4, slip op. at 5 (2013). There is nothing about writing up an employee for being tardy that would require the use of independent judgment. There was no evidence presented as to whether Tobar or Easton has any discretion in preparing such discipline, or what the effect of such discipline might be on the tardy employee.

Furthermore, there is nothing about ensuring that other guards receive breaks that would necessarily require the use of independent judgment. No evidence was presented as to how often Tobar or Easton might act as a supervisor in the absence of Lively, although Burris testified Easton did so "not often." In sum, the evidence presented at trial lacks specific examples of supervisory authority as allegedly exercised by Tobar and Easton. Therefore, the General Counsel has failed to establish by a preponderance of the evidence that either Tobar or Easton is a supervisor within the meaning of Section 2(11) of the Act.

The more difficult issue is that the General Counsel has further alleged that Tobar and Easton are agents of Respondent within the meaning of Section 2(13) of the Act. The Respondent has denied that they are its agents. As with claims of supervisory status, the burden of establishing that an individual is an agent rests with the party asserting it. *Oakwood Healthcare, Inc.,* 348 NLRB at 687. The party who has the burden to prove agency must establish an agency relationship with regard to the specific conduct alleged to be unlawful. *Pan-Oston Co.,* 336 NLRB 305 (2001).

Agency may involve express or apparent authority. The Board applies common law principles of agency in determining whether an employee is acting with apparent authority on behalf of the employer when that employee makes a particular statement or takes a particular action. *Pan-Oston Co.,* supra, citing *Cooper Industries,* 328 NLRB 145 (1999). Apparent authority results from a manifestation by the principal to a third party that creates a reasonable

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Sec. 2(11) of the Act, but rather falls within the category of secondary indicia of supervisory status and does not by itself confer supervisory status. See *Loyalhanna Care Center*, 352 NLRB 863, 864–865 (2008); *Golden Crest Healthcare Center*, 348 NLRB 727, 730 fn. 10 (2006).

[13] Accepting Miller's testimony that Tobar can recommend discipline, no evidence was adduced that such recommendations require the use of independent judgment or that Respondent implemented any such recommendations.

belief that the principal has authorized the alleged agent to perform the act in question. *Pan-Oston Co.,* 336 NLRB at 306, citing *Southern Bag Corp.,* 315 NLRB 725 (1994). Either the principal must cause the third person to believe the agent is authorized to act for him, or the principal should realize that its conduct is likely to create such a belief. *Service Employees Local 87 (West Bay Maintenance),* 291 NLRB 82, 83 (1988) (citing Restatement 2d, Agency, §27 (1958, Comment (a)). Just as mere inferences or conclusionary statements, without detailed, specific evidence, are insufficient to establish supervisory authority, they should also be insufficient to establish agency status. See *Alternate Concepts, Inc.,* 358 NLRB No. 38, slip op. at 3 (2012).

The Board's test for determining whether an employee is an agent of the employer is whether, under all of the circumstances, employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management. 336 NLRB at 306. The Board considers the position and duties of the employee in addition to the context in which the behavior occurred. Id. No evidence was adduced at trial that Tobar or Easton relayed the positions of management to employees. In fact, Jenkins specifically testified that Tobar never delivered messages from Respondent or told her about company policy. (Tr. 77.)

Furthermore, the General Counsel produced no evidence as to how Tobar and Easton might have been held out by Respondent as its agents. Aside from their title (shift supervisor), their alleged ability to write people up for being tardy, and their ability to drive a mobile unit (Tr. 42), there was no indication as to how their duties are different from those of the other officers. For example, Jenkins testified that Tobar did "supervisor jobs" like escorting bums out of buildings, but then stated that all officers perform such functions. (Tr. 40–41.) The General Counsel did not elicit any testimony as to how often Tobar and Easton may engage in the acts that allegedly make them agents of Respondent.

The Board may find agency where the type of conduct alleged to be unlawful is related to the duties of the employee. *Pan-Oston Co.,* 336 NLRB at 306. In *Hausner Hard-Chrome of KY,* 326 NLRB 426 (1998), the Board found that the heads of various departments who regularly communicated management's production priorities to employees acted as agents of the employer when they told employees that the employer would likely shut down the plant if employees voted in favor of a union. Id.

In contrast, the Board may decline to find agency where an employee acts outside the scope of his usual duties. Id. Thus, in *Waterbed World,* 286 NLRB 425 (1987), enfd. 974 F.32d 1329 (1st Cir. 1992), the Board found that an employee who interrogated other employees and threatened them with discharge did not act as an agent of the employer because the employer had never held out that employee as being privy to management decisions or as speaking on its behalf. Id.

Applying these principles here I find that the General Counsel, who bears the burden of proof, has not established that either Tobar or Easton is an agent of Respondent within the meaning of the Act with regard to the actions they are alleged to have taken in this case. Although Jenkins testified that Tobar and Easton had accompanied her on past forays to the nearby parking deck (Tr. 75), no evidence was presented that they did so cloaked with the

authority of Respondent. In fact, it would appear that any such trip to an adjacent parking deck, while leaving one's post unmanned, would be a direct violation of Respondent's policies.[14]

Similarly there is no evidence in the record that Easton was authorized by Respondent's management to witness Jenkins' signing of a union card in July or that he subsequently advised Respondent's management of this act. There is no evidence that any of Tobar's statements to Jenkins were ratified or endorsed by Respondent's management. In fact, none of Respondent's admitted supervisors and/or agents are alleged to have made any statements which could be construed as antiunion.

In sum, there is no evidence to suggest that any actions alleged to be unlawful were within the scope of or related to Tobar's and Easton's duties as shift supervisors. As such, I do not find that the General Counsel has met his burden to establish that Tobar and Easton are agents of Respondent within the meaning of Section 2(13) of the Act.

C. Respondent's Employee Questionnaire Violates the Act

An employer violates Section 8(a)(1) of the Act by maintaining work rules that tend to chill employees in the exercise of their Section 7 rights. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). Rules explicitly restricting the exercise of Section 7 rights violate Section 8(a)(1). *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004). However, where a workplace rule does not explicitly restrict Section 7 activity, the General Counsel must establish by a preponderance of the evidence that: (1) employees would reasonably construe the rule to prohibit Section 7 activity; (2) the employer adopted the rule in response to union activity; or (3) the employer applied a rule to restrict employee Section 7 activity. 343 NLRB at 647. If a rule explicitly infringes on the Section 7 rights of employees, the mere maintenance of the rule violates the Act whether or not the employer ever applied the rule for that purpose. *Guardsmark, LLC v. NLRB,* 475 F.3d 369, 375–376 (D.C. Cir. 2007).

Respondent's questionnaire is a part of the orientation process for new guards. One of the true/false questions states, "If you discuss any negative company business or pay rate issues with other officers, clients, or site employees you will be terminated." The parties have stipulated that, according to Respondent, the answer to this question is "true." Thus, Respondent has advised its employees that they are prohibited, under threat of discharge, from discussing their wages or any negative company business with other employees, Respondent's clients, or site employees not employed by Respondent.

By stating that its employees are prohibited from discussing their wages, Respondent has violated the Act. The Board has held that an employer violated the Act by maintaining a rule prohibiting employees from discussing their wages. *Automatic Screw Products Co.,* 306 NLRB 1072 (1992); *Triana Industries,* 245 NLRB 1258 (1979). Indeed, the Board has found that wage discussions are inherently protected and concerted. *Hoodview Vending Co.,* 359 NLRB No. 36,

[14] There was no testimony adduced as to the frequency or circumstances of any such trips to adjacent parking decks with Tobar and/or Easton and, as such, I give very little weight to Jenkins' testimony in this regard.

slip op. at 4 (2012). Therefore, to the extent that Respondent's rule prohibits discussion of wages, it explicitly restricts Section 7 activity and violates the Act.

Furthermore, I agree with the General Counsel that the remainder of the rule is unlawful because employees would reasonably construe it to prohibit Section 7 activity. Respondent's prohibition on discussion of "negative company business" implicitly includes protected activities because it prohibits negative comments about managers. In *Claremont Resort & Spa,* 344 NLRB 832, 832 (2005), the Board found that a rule prohibiting negative conversations about managers would reasonably be construed by employees to bar them from discussing with their coworkers complaints about their managers that affect working conditions, thereby causing employees to refrain from engaging in protected, concerted activity. The rule at issue here expressly prohibits *discussion* of negative company business, much like the rule in *Claremont Resort & Spa* prohibited negative conversations. 344 NLRB at 832 fn. 4. Although managers are not mentioned in the rule at issue here, a reasonable reading of the rule would indicate that it prohibits negative conversations about company business, which might include discussions about managers or working conditions. As such, this rule prohibits concerted activity. Therefore, I find that Respondent's employees would reasonably read this rule as prohibiting Section 7 activity.

As Respondent has told its employees that they are prohibited from discussing their wages or negative company business, it has violated the Act as alleged in paragraph 7(a) of the complaint.

D. Respondent's Employee Waiver Violates the Act

The language in Respondent's employee waiver appears to explicitly restrict employees from engaging in union activity. Indeed, the waiver states, "By signing below, you acknowledge that you DO NOT have any rights that client's employees may be entitled, including . . . Union Protection." This appears to be an express prohibition against engaging in union activity. As discussed above, rules explicitly restricting the exercise of Section 7 rights violate Section 8(a)(1). *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004).

In the paragraphs of the waiver above the paragraph alleged as violative by the General Counsel, Respondent advises its employees that the purpose of the form is to advise them of the legal rights surrounding their employment with Respondent. This language does not ameliorate the apparent prohibition on Section 7 activity. Nowhere does the waiver state that Respondent's employees are waiving certain rights only as they relate to Respondent's clients because they are not employees of Respondent's clients. Instead the form plainly states that the employees are waiving their right to union protection. As such, I find that Respondent's waiver violates the Act.

In addition, the Board must give the rule under construction a reasonable reading and ambiguities in the rule must be construed against its promulgator. *Lafayette Park Hotel,* 326 NLRB at 828. At trial, Respondent has attempted to explain its rationale for the waiver. Under the parol evidence rule, a trier of fact is confined to the four corners of the document in determining the intent of the parties unless the agreement is ambiguous. In the case of an ambiguity, outside evidence may be considered if it sheds light on the parties' intent at the time

the agreement was executed. See *CJC Holdings, Inc*., 315 NLRB 813 fn. 1 (1994); *Kal Kan Foods, Inc.*, 288 NLRB 590, 592–593 (1988). I do not find the terms of Respondent's waiver ambiguous. Even if I were to find such an ambiguity, the testimony of Jenkins establishes that she did not understand that the purpose of the waiver was to signify the lack of an employment relationship with Respondent's clients. (Tr. 68.) Respondent's testimony does not shed light on the meaning of the form as this meaning was not clearly conveyed to its employees. Thus, I would construe this ambiguity against Respondent and find that the waiver violates the Act.

As Respondent has advised its employees that they do not have the right to union protection, it has violated the Act as alleged in paragraph 7(b) of the complaint.

E. Respondent Did Not Violate the Act by Impliedly Threatening Burris With Discharge

Under Section 7 of the Act, employees have the right to engage in concerted activities for their mutual aid or protection. Section 8(a)(1) of the Act makes it unlawful for an employer, via statements or conduct, to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7. See *Station Casinos, LLC,* 358 NLRB No. 153, slip op. at 18 (2012). The test for evaluating whether an employer's conduct or statements violate Section 8(a)(1) of the Act is whether the statements or conduct have a reasonable tendency to interfere with, restrain, or coerce union or protected activities. *KenMor Electric Co.*, 355 NLRB No. 173, slip op. at 4 (2010) (noting that the employer's subjective motive for its actions is irrelevant); *Yoshi's Japanese Restaurant, Inc.*, 330 NLRB 1339, 1339 fn. 3 (2000) (same); see also *Park N' Fly, Inc.*, 349 NLRB 132, 140 (2007).

Importantly, Burris did not testify that she had knowledge of any union or other protected, concerted activity by Jenkins. In fact, Burris did not even know at the time of her conversation with Miller that it was Jenkins who had been fired. According to Burris' own credited testimony she knew someone had been fired and Miller stated, "about the union lady." Burris could not elucidate what Miller said about the "union lady." Burris did not testify that Miller made any statement connecting the presence of the "union lady" to the discharge. The mere mention of the presence of a "union lady" at the time of an employee discharge does not somehow transform this statement into an implied threat of discharge. As such, I recommend that paragraph 8 of the complaint be dismissed.

Furthermore, the case cited by the General Counsel in support of its argument that Miller's statement to Burris was coercive is inapposite to the case at bar. In *Jerry Ryce Builders, Inc.,* 352 NLRB 1262 (2008), an employer held a meeting with employees at which a manager indicated that two former employees were union members and had been fired. 352 NLRB at 1268. Thus, the judge found that the manager had connected the discharge of the two employees to their union membership. Id. The instant case clearly distinguishable. Miller never told Burris that Jenkins had been the employee who was fired. In fact, Miller merely asked Burris if she had heard anything and when she replied that someone had been fired, Miller asked if she had heard about the "union lady." Unlike the manager in *Jerry Ryce Builders,* Miller did not state that he had fired Jenkins or that Jenkins was a union member or supporter. Therefore, the General Counsel's reliance on *Jerry Ryce Builders* is misplaced.

F. Respondent Did Not Violate the Act in Suspending and Discharging Laronda Jenkins

The legal standard for evaluating whether an adverse employment action violates Section 8(a)(3) of the Act is set forth in *Wright Line,* 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). See *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 395 (1983) (approving *Wright Line* analysis). In *Wright Line,* the Board determined that the General Counsel carries the initial burden of persuading by a preponderance of the evidence that an employee's protected conduct was a motivating factor (in whole or in part) for the employer's adverse employment action.

Under *Wright Line,* the elements required for the General Counsel to meet his initial burden are protected concerted activity by the employee, employer knowledge of that activity, and animus on the part of the employer. *Consolidated Bus Transit, Inc.,* 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009); see also *Relco Locomotives, Inc.,* 358 NLRB No. 37. slip op. at 14 (2012) (observing that "[e]vidence of suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employee all support inferences of animus and discriminatory motivation").

If the General Counsel meets that burden, then the burden shifts to Respondent to prove that it would have taken the same action absent the employee's protected conduct. *Wright Line,* 251 NLRB at 1089; *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399–403 (1983).

The General Counsel has established union activity in the part of Jenkins only inasmuch as she signed a union card in July. Jenkins testified that Easton, who the General Counsel asserts is a supervisor or agent of Respondent, witnessed her signing of the card. This would be the basis for Respondent's knowledge of Jenkins' union activity. However, I have not found Easton to be a supervisor or agent of Respondent within the meaning of the Act. Therefore, there is insufficient evidence of Respondent's knowledge of Jenkins' union activity for the General Counsel to meet his initial burden in this case. However, in case the Board disagrees with this conclusion, I will continue on to the third element of the General Counsel's burden.

The General Counsel has set forth very limited evidence regarding antiunion animus on the part of Respondent. This evidence consists of Tobar's comments that, "it's some shit in the game" and that "they trying to fire your ass," and Miller's knowledge that a "union lady" was present for Jenkins' conversation on October 9. The evidence proffered by the General Counsel is not convincing. As indicated above, I do not find Tobar to be a supervisor or agent of Respondent within the meaning of the Act. Therefore, his comments cannot be attributed to Respondent. However, in the event that the Board should disagree with me on this point, I will analyze Jenkins' discharge as if the statements attributed to Tobar were made by a supervisor or agent of Respondent.

I do not find that Tobar's statements create sufficient evidence of antiunion animus on the part of Respondent for the General Counsel to meet his initial burden in this case. Jenkins testified that she believed that Tobar's comment, "It's some shit in the game" referred to her union activity. Despite her testimony on this point being uncontroverted, I do not have to credit

it. I do not credit Jenkins' testimony on this point because it is outside of her personal knowledge. She cannot have known what Tobar was thinking when he made this statement and Tobar was not called as a witness to explain it. This statement is vague at best and I cannot find that Tobar was referring to Jenkins' union activity when he made it. In any event, there is no indication in the record that Tobar was sufficiently involved in management's personnel decision making process to knowingly comment about a purported decision to fire Jenkins.

In addition, Tobar's alleged statement that "they" were trying to fire Jenkins does not establish antiunion animus on the part of Respondent. It is not apparent from the statement to whom Tobar was referring. Tobar could have been referring to the Farbman Group or to Respondent. In addition, it is difficult to discern from this single sentence what Tobar might have meant. Tobar may have had other reasons for believing that Jenkins was going to be fired (e.g., her forays off-site or her wearing of a non-uniform coat). Without Tobar to explain what he may have meant by this comment, and whether he made it at all, I cannot find that Tobar's statement is sufficient evidence of antiunion animus by Respondent to carry the General Counsel's initial burden.

As for Miller, I do not find that his actions or comment about the union lady are sufficient evidence for the General Counsel to carry his burden. Even if Miller knew that the woman in the group with Jenkins on October 9 was a union representative, there is no evidence that Jenkins was engaging in union or protected, concerted activity at that time. Additionally, there is no evidence that Miller knew who the union lady was before approaching the group. He may have learned of the identity of the union lady later, as evidenced by his comment to Burris the next day, but that, without more, does not establish that Miller knew the union lady's identity at the time he decided to discipline Jenkins. Instead, Miller credibly testified that he observed Jenkins off post and out of uniform, both serious violations of Respondent's disciplinary policies.

Although the timing of a discharge may sometimes suggest an unlawful motive, in this case the timing fails to establish a relationship between Jenkins' union activity (signing a card) and the decision to discharge her. Respondent's list of class A and B violations specifies that being off post is a class A violation and grounds for immediate discharge. Miller's uncontroverted testimony was that Respondent frequently discharges people for being off post. Jenkins admitted that she was away from her post and not engaged in company business while meeting with Mary and the new guard. In fact, Jenkins admitted that she had left the Albert Kahn building open to potential security threats and vandalism while she was away from her post. Jenkins signed a union card in July, 3 months prior to her discharge. Tobar's alleged statement that "they" were trying to fire Jenkins was made in August, 2 months prior to her discharge. Even considering Miller's statement to Burris about the "union lady" to be evidence of animus, I find it insufficient to infer a connection between the discharge and the union activity. Accordingly, I find that the General Counsel has not met his burden of establishing that Jenkins' union activity was a motivating factor in her discharge.

Even if the General Counsel had met his burden of proving that Jenkins' discharge was motivated by her union or protected, concerted activity, I find that Respondent had legitimate reasons for discharging her. Although timing is a factor in determining motivation, it is not conclusive because here Jenkins' purported union activity coincided with her being off post, a

serious violation of Respondent's policies and one which would ordinarily warrant discharge. I find it was this violation on her part which led to her termination, not the minimal union activity in which she engaged.[15]

Although the General Counsel points to Miller's lack of investigation prior to Jenkins' discharge as evidence of pretext, I do find this to be the case. Miller did indeed suspend Jenkins and then decide to terminate her without further investigation. It is unclear what such an investigation would have revealed, as it was Miller himself who observed Jenkins off post and out of uniform. The fact that she may have been speaking with a union representative does not diminish the severity of Jenkins' violations of Respondent's rules. There is no evidence that Jenkins stated to Miller or to any other representative of Respondent that she was engaging in union or other protected, concerted activity at the time she was approached by Miller. Jenkins had an opportunity to write a statement regarding her discharge and she did so; nowhere therein does she mention union or other protected, concerted activity. Instead, she states that her discharge was unfair because it came without warning.

It is well settled that the Board does not substitute its own judgment for the employers as to what discipline would be appropriate. *George Mee Memorial Hospital,* 348 NLRB 327, 322 (2006); *Fresno Bee,* 337 NLRB 1161, 1162, 1181 (2002). Jenkins acknowledged signing Respondent's list of class A and B violations, a list which indicates that being away from one's post without authorization is grounds for termination. It is not appropriate for me to use my subjective judgment to second guess Miller's disciplinary decision and his interpretation of Respondent's disciplinary procedures. See *Consolidated Biscuits Co.,* 346 NLRB 1175, 1180 (2006).

Despite the General Counsel's argument to the contrary, Respondent has established that it would have discharged Jenkins in the absence of any union activity on her part. In so finding, I have relied upon the uncontroverted testimony of Miller that Respondent has discharged other employees for being away from their posts. I have given no weight to Respondent's Exhibit 5 in this regard. Although Respondent has established its difficulty in complying with the General Counsel's subpoena request, Respondent has admitted that its Exhibit 5 is incomplete. (R. Exh. 6.) Furthermore, most of the discharges for being off post occurred after the incident at issue in this case. (R. Exh. 5.) I have found evidence of only three such discharges occurring before Jenkins' discharge and all are distinguishable based upon their circumstances (i.e., the employees walked off the job, were frequently absent, etc.). (R. Exh. 5.) Therefore, I have found that Respondent's Exhibit 5 is entitled to no weight.[16]

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[15] Even if Respondent knew of Jenkins' union activities, there is no evidence from which I can infer a discriminatory motive for Respondent's discharge of an employee who left her post to engage in an unauthorized meeting. If Jenkins had left her post to engage in a union meeting, this conduct would be unprotected. See *Specialized Distribution Management, Inc.,* 318 NLRB 158, 159–160 (1995) (Conduct found unprotected where employees left their building without permission to attend a union meeting while on the clock.)

[16] Following the hearing I left the record open in order to allow Respondent's counsel additional time to comply with the General Counsel's trial subpoena. Respondent provided a response, albeit an admittedly incomplete response to the subpoena. (R. Exh. 5.) On a conference call after the trial, counsel for the General Counsel indicated that he did not wish to submit any of the documents produced by

Furthermore, the General Counsel did not produce evidence that Respondent tolerated unauthorized absences from the work station. In fact, Miller's very reason for being present at Jenkins' jobsite on the day in question was to investigate employee misconduct in leaving the jobsite. This fact detracts from the credibility of Jenkins' testimony that Respondent tacitly allowed employees to engage in meetings away from their posts.

The record does not establish that Respondent had knowledge of Jenkins' union activity. Even if it did, Respondent has established that it would have discharged her in the absence of that activity. I do not find that Respondent's suspension and subsequent discharge of Jenkins violated Section 8(a)(3) and (1) of the Act. Accordingly, I recommend that paragraphs 9 and 10 of the complaint be dismissed.

CONCLUSIONS OF LAW

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. By administering a questionnaire to employees which indicates that employees will be terminated for discussing negative company business or pay rate issues with other officers, clients, or site employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. By maintaining or requiring its employees to sign a waiver stating that they do not have any of the rights afforded to a client's employees, including union protection, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

5. The Respondent did not further violate the Act as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent into the record. Respondent moved to admit the documents. I allowed admission of these documents as R. Exh. 5 and admission of an affidavit prepared by Respondent's counsel regarding Respondent's efforts to comply with the General Counsel's subpoena included in R. Exh. 6. Although I found the documents admissible, I have assigned them no weight for the reasons set forth above.

Regarding the Respondent's unlawful administration and maintenance of its unlawful questionnaire and waiver, it shall rescind or revise both documents. It shall rescind or revise its questionnaire to remove question 11, which improperly states that employees may be terminated for discussing wages or other negative company business. It shall further rescind or revise its employee waiver to remove any reference to a waiver of union protection. The Respondent shall further notify employees of the rescinded or revised questionnaire and waiver to include providing them a copy of the revised documents or specific notification that the documents have been rescinded.

Respondent shall be required to post a notice to employees at all facilities at which employees were subject to its unlawful questionnaire and waiver. See, e.g., *U-Haul Co. of California,* 347 NLRB 375 fn. 2 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2007); *D. R. Horton, Inc.*, 357 NLRB No. 184, slip op. at 13 (2012).

The General Counsel asks that I order Respondent to make whole any employee who suffered an adverse employment action as a result of Respondent's enforcement of its questionnaire or waiver. I decline to do so. My recommended order requires Respondent to cease administering and maintaining its questionnaire and waiver in their current formats. My recommended Order further requires Respondent to notify all employees of the revision or rescission of these documents. The General Counsel has not alleged or proven that any current or former employee of Respondent suffered an adverse employment action as a result of Respondent's administration and maintenance of these documents. Such a remedy was not alleged in the complaint. The General Counsel cites no case law in support of its recommendation of this remedy. In these circumstances I decline to order the relief sought by the General Counsel. See *Merchant's Building Maintenance ,LLC,* 358 NLRB No. 67, slip op. at 3 (2012) (finding the General Counsel is not entitled to add discriminatee after the close of the hearing because, inter alia, the General Counsel did not seek to amend complaint and the complaint did not include a remedy seeking to grant relief to "others unknown" or similar catch-all language.)

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The Respondent, Prudential Protective Services, Taylor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Administering a questionnaire indicating that employees will be terminated for discussing negative company business or pay rate issues with other officers, clients, or site employees.

(b) Maintaining or requiring its employees to sign a waiver stating that they do not have any of the rights afforded to a client's employees, including union protection.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days after service by the Region, post at its facilities nationwide which used the unlawful questionnaire and/or waiver, including its facility in Taylor, Michigan, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent 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 June 17, 2012.

(b) Respondent shall rescind or revise both its unlawful questionnaire and waiver. It shall rescind or revise its questionnaire to remove question 11, which improperly states that employees may be terminated for discussing wages or other negative company business. It shall further rescind or revise its employee waiver to remove any reference to a waiver of union protection. The Respondent shall further notify employees of the rescinded or revised questionnaire and waiver to include providing them a copy of the revised documents or specific notification that the documents have been rescinded.

[18] 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."

(c) 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.

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

Dated, Washington, D.C. October 17, 2013

Melissa M. Olivero
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 administer a questionnaire to employees which indicates that they will be terminated for discussing negative company business or pay rate issues with other officers, clients, or site employees.

WE WILL NOT maintain or require our employees to sign a waiver stating that they do not have any of the rights afforded to a client's employees, including the right to union protection.

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

WE WILL remove from our employee files any completed questionnaires indicating that employees will be terminated for discussing negative company business or pay rate issues with other officers, clients, or site employees; WE WILL expunge any reference to this questionnaire from our employee records; and we will advise each individual employee in writing that we have done so and that we will not rely upon this questionnaire in the future.

WE WILL remove from our employee files any waiver stating that they do not have any of the rights afforded to a client's employees, including union protection; WE WILL expunge any reference to this waiver from our employee records; and we will advise each individual employee in writing that we have done so and that we will not rely upon this waiver in the future.

PRUDENTIAL PROTECTIVE SERVICES, LLC
(Employer)

Dated _____ By _____
(Representative) (Title)

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

477 Michigan Avenue, Room 300, Detroit, MI 48226-2569

(313) 226-3200, 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, (313) 226-3244.