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2 **UNITED STATES OF AMERICA**  
3 **BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
4 **REGION 28**

5 **PAE APPLIED TECHNOLOGIES, INC.,**

6 and

Case No. 28-CA-170331

7 **SECURITY POLICE ASSOCIATION OF**  
8 **NEVADA**

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11 **ANSWERING BRIEF OF SECURITY POLICE ASSOCIATION OF NEVADA TO**  
12 **EXCEPTIONS FILED BY PAE**

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16 **Respectfully submitted,**

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1 The Security Police Association of Nevada (hereinafter “SPAN”) hereby submits its Answering  
2 Brief to the Exceptions and Brief in Support of Exceptions filed by PAE Applied Technologies, LLC  
3 (hereinafter “PAE”).

#### 4 **INTRODUCTION AND SUMMARY OF ARGUMENT**

5 Complaining Party, Security Police Association of Nevada (“SPAN”) submits this Brief in  
6 Support of the Decision of Administrative Law Judge Amita Baman Tracy’s December 5, 2016 Order  
7 and submits this brief to answer the arguments made by PAE Applied Technologies, LLC (“PAE”) in its  
8 Brief in Support of Exceptions to the ALJ’s decision. The ALJ correctly found PAE violated the Act in  
9 six distinct and separate ways.

10 PAE violated the *Weingarten* rights of its employee and SPAN Union President John Poulos on  
11 February 18, 19, 22 and 24 by refusing to allow Mr. Poulos the representative appointed by SPAN to  
12 represent him in his investigatory interview. SPAN appointed its counsel, Nathan R. Ring, Esq.  
13 (“Ring”), to act as Mr. Poulos’ representative in the investigatory interview on February 19, 2016.  
14 Despite Ring and Poulos timely arriving for Poulos’ investigatory interview, PAE’s management  
15 officials refused to allow Ring to take part in the interview. Through later email correspondence, PAE’s  
16 management officials continued to refuse permission for Ring to attend the investigatory interview. The  
17 ALJ also correctly found PAE committed a further violation of Mr. Poulos’ *Weingarten* rights on  
18 February 24, 2016 when PAE refused to permit Mr. Poulos’ union representatives the ability to provide  
19 advice and counsel to him during significant portions of his investigatory interview.

20 PAE violated the Act because it issued discipline to Poulos because he engaged in action as  
21 Union President and on behalf of unions members. This is true regardless of whether the discipline is  
22 viewed under *Burnup & Sims, Atlantic Steel*, or *Wright Line*. PAE disciplined Poulos based on a  
23 conversation with a management official on February 16, 2016 in which a customer representative  
24 interjected himself into labor and management matters. Poulos was protected by the Act and did not lose  
25 the Act’s protections.

26 On the same day that it unlawfully disciplined Poulos, PAE also issued a new work rule that  
27 infringed upon employees’ exercise of their Section 7 rights. The rule can be reasonably construed to  
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1 infringe on Section 7 rights and was issued in response to Poulos’ activity on behalf of the union. This  
2 new rule violated the Board precedent set out in *Lutheran Heritage Village-Livonia*.

3 On several occasions, SPAN requested the complaint filed by Ray Allen and allegations  
4 contained therein. On each occasion, PAE refused to produce the information SPAN requested. PAE  
5 claimed the information was classified and refused to permit SPAN access to the information. Instead of  
6 bargaining over an accommodation, PAE unilaterally decided to provide a different and unclassified  
7 version of the Allen complaint. These actions by PAE violated the Act.

### 8 **STANDARD OF REVIEW**

9 The Board applies a deferential standard of review to the credibility and factual findings made by  
10 an ALJ. The Board’s established policy is not to overrule an administrative law judge’s credibility  
11 resolutions unless it is clear that all the relevant evidence convinces the Board the ALJ’s credibility  
12 determinations are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d  
13 Cir. 1951). In reviewing an ALJ’s decision and any exceptions filed, the Board may limit its review to  
14 portions of the record specified in the exceptions, supporting brief, and answering brief. NLRB Rules &  
15 Regs. § 102.48(c).

### 16 **STATEMENT OF FACTS**

17 SPAN is a labor organization that represents a unit of security officers employed by PAE  
18 Applied Technologies, Inc. (“PAE”). *ALJ Decision*, at 3. John Poulos is a member of that bargaining  
19 unit and is the elected President of SPAN. Tr. 102:18-103:6.<sup>1</sup> He has been SPAN’s President since  
20 February, 2015. Tr. 103:13-14. On February 9, 2016, Mr. Poulos had a discussion with PAE  
21 management representative Tom Fisco regarding the forthcoming suspension of two SPAN members,  
22 Romo and Quintana. Tr. 127:19-128:2. The employees would be suspended as a result of the Air Force  
23 removing their ability to carry a firearm on Air Force property. Tr. 128:15-19. The Air Force issued a  
24 “simple do not arm” order for Romo and Quintana. Tr. 162:3-4. Fisco stated that he did not know too  
25 much about the issue and asked Poulos to contact the customer—the Air Force—to get more  
26 information. Tr. 129:14-22.

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<sup>1</sup> Citation to Tr. is to the transcript of the hearing held on July 12<sup>th</sup> and 13<sup>th</sup>, 2016.

1           Following the Air Force’s issuance of the “do not arm” orders for Romo and Quintana, PAE  
2 issued suspension letters to the two employees. Tr.162:10-20. The suspension letters issued by PAE  
3 included additional allegations and claimed violations that had nothing to do with the Air Force’s “do  
4 not arm” orders for Romo and Quintana. *Id.* Mr. Poulos felt he needed to challenge this issue with the  
5 Company to prevent from having a poor precedent set by PAE’s actions. *Id.*

6           On February 16, 2016, Mr. Poulos was scheduled for a training session that was to begin at noon.  
7 Tr. 132:15-18. He arrived to the training location, which is also in the same location as Mr. Fisco’s  
8 office, about ten minutes before the beginning of the training session because he wanted to speak with  
9 Mr. Fisco regarding the PAE suspension letters for Romo and Quintana. Tr.161:23-162:24. Mr. Poulos  
10 knocked on Mr. Fisco’s door and excused himself because Fisco was having a conversation with Ray  
11 Allen, an Air Force representative, in Mr. Fisco’s office with the door open. Tr. 133:6-16. Mr. Poulos  
12 began to speak with Mr. Fisco about the suspension letter issue, but Mr. Allen interrupted that  
13 discussion. Tr. 135:13-16. Once Allen interjected in the conversation between Fisco and Poulos, the  
14 conversation became heated and voice were raised. *ALJ Decision*, at 6. PAE management representative  
15 Jack Costello’s testimony confirmed that Mr. Poulos had a conversation with Mr. Fisco on February 16,  
16 2016. Tr. 31:19-24.

17           On February 17, 2016 or February 18, 2016, several PAE management officials conducted a  
18 conference call in which they agreed that and pre-determined without completing an investigation that  
19 Poulos would be disciplined for the meeting on February 16, 2016. Tr. 32.

20           On February 18, 2016, PAE management representative Jack Costello spoke with Mr. Poulos via  
21 telephone and told him that he needed to come to PAE’s offices for an investigatory interview. Tr.  
22 34:15-17. Mr. Poulos informed Mr. Costello that he would attend the interview and was going to bring  
23 Ring, union counsel, as his union representative. Tr. 34:23-25. During the phone call, Mr. Costello told  
24 Mr. Poulos he could not bring Mr. Ring as his representative. Tr. 35:19-21. PAE management  
25 representatives knew Ring was the union’s counsel. Tr. 38-39. Several days later in email  
26 correspondence, Williams confirmed that Ring was not permitted in any investigatory interview. GC  
27 Exh. 7.<sup>2</sup>

28 <sup>2</sup> References to GC Exh. are to the exhibits presented by the General Counsel during the hearing in this matter.

1 On February 19, 2016, Mr. Poulos, as had been agreed, appeared at PAE's offices for the  
2 interview. Tr. 38:11-13. Upon entering PAE's office with Mr. Ring, Mr. Poulos was told by Mr.  
3 Costello that he could not attend the meeting with Mr. Ring. Tr. 38:18-25. PAE Labor Relations  
4 Manager Rob Williams also informed Mr. Poulos that he could not have Mr. Ring as his representative  
5 in the investigatory interview. Tr. 39:14-16; Tr. 58:25-59:2. There was no doubt that discipline could  
6 result from this meeting because as Mr. Costello stated anyone brought in for an interview could be  
7 subject to discipline. Tr. 35:22-36:5. The investigatory interview did not occur on February 19, 2016. Tr.  
8 59:12-14.

9 On February 22, 2016, Poulos requested a copy of the Allen Complaint and any allegations in the  
10 Complaint from PAE. GC Exh. 6c. Approximately one half hour later, Poulos again requested this  
11 information from Williams in an email. GC Exh. 7. Poulos informed Williams that refusal to provide the  
12 requested information was a violation of the Act. GC Exhs. 8 & 9.

13 A new interview of Mr. Poulos was set for February 24, 2016. Tr. 72:13-15. The interview of  
14 Mr. Poulos was called pursuant to the classified complaint made by Ray Allen. Tr. 62:24-63:1. The  
15 Allen Complaint was classified as a top secret document. Tr. 64:10-65:17. Only persons with top secret  
16 security clearance could view that document. Tr. 64:14-17. Mr. Poulos holds a top secret security  
17 clearance. Tr.64:21-24. Union Vice Presidents, Josh Lujan and Tim Campbell, also hold top secret  
18 security clearances. Tr.64:25-65:15. Prior to the interview, Mr. Poulos requested a copy of the Allen  
19 Complaint from Mr. Williams. Tr. 61:4-8. Mr. Williams refused to provide the Allen Complaint to Mr.  
20 Poulos. Tr. 62:17-20. Mr. Williams did not provide the Allen Complaint to Mr. Poulos simply because  
21 PAE did not want him to have the Allen Complaint. Tr. 70:12-15. The classified complaint could have  
22 been viewed in a secure location within the same building in which the investigatory interview took  
23 place, but PAE still refused to permit Poulos or his representatives to view the complaint. Tr. 126.

24 During the interview, Mr. Rutledge informed the union representatives present, Mr. Lujan and  
25 Mr. Campbell, that they could not speak while Mr. Poulos was writing his statement. Tr. 85:18-25; Tr.  
26 166:23-167:1. This instruction was reiterated by Mr. Rutledge when Mr. Lujan attempted to speak  
27 during the interview. Tr. 167:21-168:2. Prior to providing his statement, Mr. Poulos asked to clarify  
28 whether he was providing the statement as Union President or a security officer. Tr. 86:22-25. Prior to



1                   **I. PAE VIOLATED MR. POULOS' WEINGARTEN RIGHTS**

2                   PAE violated Mr. Poulos' *Weingarten* rights in two distinct ways. First, PAE refused to permit  
3 Mr. Poulos to have his chosen union representative present in the investigatory interview, even though  
4 that representative was ready and able to serve as Mr. Poulos' representative and was appointed by  
5 SPAN for that specific purpose. Second, PAE refused to permit the union representatives it actually  
6 allowed in the investigatory interview to provide advice and counsel to Poulos as required under the Act.

7                   **A. PAE violated Poulos' Weingarten Rights when it refused to permit Ring to act as**  
8                   **Poulos' union representative.**

9                   Employees are entitled to have a union representative present in any meeting wherein the  
10 employee reasonably fears he may be subject to discipline. *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251,  
11 256-57 (1975). An employee is entitled to have the union representative of his own choosing and the  
12 employer is not permitted to choose a union representative more to its own liking. *Consolidation Coal*  
13 *Co.*, 307 NLRB 976 (1992) "The selection of an employee's representative belongs to an employee and  
14 the union, in the absence of extenuating circumstances." *Barnard College*, 340 NLRB 934, 935 (2003).

15                   PAE has erroneously argued that Ring was not permitted to act as Mr. Poulos' *Weingarten*  
16 representative based on two cases, which are both inapposite to the issue in this case. In *Montgomery*  
17 *Ward & Co.*, 269 NLRB 904 (1984) and *Consolidated Casinos Corp.*, 266 NLRB 988 (1983), the Board  
18 held an employee was not permitted to have his personal attorney attend an investigatory interview. As  
19 the Board stated in *Consolidated Casinos Corp.*, the personal attorney could not be the employee's  
20 *Weingarten* representative because the employee was enlisting the attorney for "personal assistance for  
21 his own cause and no other." *Id.* at 1008. "Such activity is not for mutual aid or protection." *Id.* Though  
22 not binding upon this matter but quite persuasive to the issue presented here, in a case under  
23 Massachusetts' state employee version of the NLRA, the Massachusetts Court of Appeals noted this is  
24 not the case when the union's attorney is designated as an employee's *Weingarten* representative. A  
25 union attorney's role is to protect the rights of the employee, the union, and its members. *Town of*  
26 *Hudson v. Labor Relations Comm.*, 69 Mass. App. Ct. 549, 556-57 (2007).<sup>3</sup> The Massachusetts  
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28 <sup>3</sup> The same conclusion was reached by the Commonwealth Court of Pennsylvania interpreting its state employee version of the NLRA in *Cheltenham Township v. Penn. Labor Relations Bd.*, 846 A.2d 173, 179 (Pa. Commw. 2004).

1 Appellate Court held the employer violated the employee's *Weingarten* rights because it refused to  
2 permit the union's counsel to be the employee's representative in the investigatory interview. *Id.*

3 Mr. Poulos' *Weingarten* rights were violated from the outset in this matter because PAE refused  
4 to permit Mr. Poulos to have the representative of his choosing and SPAN's choosing present in his  
5 investigatory interview. Mr. Poulos wanted SPAN's counsel, Ring, to be his representative in the  
6 investigatory interview and SPAN appointed Ring for that purpose. It is undisputed by PAE and clearly  
7 stated in admitted email correspondence that the company refused to permit Mr. Ring to act as Mr.  
8 Poulos' representative. There is also no dispute that Ring is SPAN's counsel and PAE's management  
9 representatives recognize Ring as such. Mr. Poulos is permitted the representative of his choice in an  
10 investigatory interview and PAE denied him this right.

11 SPAN designated Mr. Ring as the *Weingarten* representative for Mr. Poulos to defend the  
12 member, but also the union itself because Poulos' actions as Union President were being questioned by  
13 PAE. The union specifically selected Ring because Poulos' authority as Union President was being  
14 questioned. Tr. 118:23-229:6. The union paid for this representation because the Union President, Mr.  
15 Poulos, was protecting its members. *Id.* PAE violated *Weingarten* by refusing to permit Ring to serve as  
16 Poulos' representative in the investigatory interview.

17 PAE's Brief attempts to argue that any attorney in private practice can never be an employee's  
18 *Weingarten* representative but they do not cite a single case to support that statement. PAE misconstrues  
19 what the Board held in *Consolidated Casinos Corp.* and the Board's reasoning in that decision. In that  
20 case, the Board made clear that an employee is not entitled to have his personal attorney serve as his  
21 *Weingarten* representative because the employee requested the attorney for his personal benefit and not  
22 for mutual aid and protection. Here, SPAN appointed Ring to serve as Poulos' representative for mutual  
23 aid and protection of the union itself and its members. This raised the mutual aid and protection  
24 guaranteed by the Act and the rights guaranteed under *Weingarten*.

25 PAE further attempts to argue hypothetical situations not presented in the record of this case  
26 regarding outer limits of when a union's counsel can serve as a *Weingarten* representative and what  
27 potential far-fetched consequences may develop therefrom. There simply is no support in the record to  
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1 make such arguments and more importantly, when and if such facts are presented in a case before the  
2 Board or an ALJ, those facts must be handled then.

3 What is not hypothetical or far-fetched is the admitted fact that PAE refused to permit Ring to  
4 serve as Poulos' *Weingarten* representative when Ring was appointed by SPAN for that specific  
5 purpose, Poulos desired to have Ring serve in that capacity, and Ring was available to serve at the time  
6 of the investigatory interview. PAE's refusal to permit Ring to serve as Poulos' *Weingarten*  
7 representative violated the Act.

8  
9 **B. PAE violated Poulos' *Weingarten* Rights when its refused to permit Lujan and  
Campbell to provide advice and counsel to Poulos.**

10 A union representative must be permitted to provide assistance and counsel to an employee in an  
11 investigatory interview when that interview may lead to discipline for that employee. *Southwestern Bell*  
12 *Telephone Co.*, 251 NLRB 612, 613 (1980); *see also Talsol Corp.*, 317 NLRB 290 (1995). An employer  
13 violates the Act if it tells a union representative he is only an observer in an investigatory interview. *Id.*;  
14 *see also Washoe Medical Center*, 348 NLRB 361 (2006) (holding an employer violated the Act when it  
15 required a representative to sit silently in an investigatory interview). The union representative must be  
16 allowed to speak and defend the member in the meeting. *United States Postal Service*, 351 NLRB 1228  
17 (2007). While it is true the representative must be permitted to speak, the employer has no duty to  
18 bargain discipline with the union representative that is present at the interview. *NLRB v. J. Weingarten,*  
19 *Inc.*, 420 U.S. 251, 259-60 (1975). An employer also cannot tell a union representative to stay silent in  
20 investigatory interviews. *Barnard College*, 340 NLRB 934, 935 (2003). It is also a violation of the Act  
21 for the employer to require a representative to remain silent during some portions of the interview and  
22 only permit the representative to speak when the employer permits him to speak. *See Lockheed Martin*  
23 *Astronautics*, 330 NLRB 422 (2000).

24 The ALJ correctly found PAE violated Mr. Poulos' *Weingarten* rights when it would not allow  
25 the union representatives actually permitted in his investigatory interview, Lujan and Campbell, to speak  
26 or provide assistance to Mr. Poulos while he wrote his initial statement during the investigatory  
27 interview. Mr. Rutledge informed everyone in the meeting that they could not speak or ask any  
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1 questions without the communication going through him. This did not permit Mr. Poulos' union  
2 representatives the ability to adequately provide advice and counsel to him during the investigatory  
3 interview. Moreover, during the interview, Rutledge would only allow questions to come through him.  
4 The union representatives were not permitted to interject at opportune times to receive clarification of  
5 questions or to assist Poulos. This type of limitation on the *Weingarten* representatives violates the Act  
6 under *Lockheed Martin Astronautics*. Denying Mr. Campbell and Mr. Lujan the ability to speak and  
7 provide counsel in the meeting violated Mr. Poulos' *Weingarten* rights.

8 PAE violated *Weingarten* in two ways. First, it refused to permit Mr. Poulos to have union  
9 counsel attend as his representative. Second, PAE refused to permit the union representatives in the  
10 meeting from speaking and providing advice and counsel to Mr. Poulos. Both of these actions are  
11 violations of the Act by PAE.

## 12 **II. PAE DISCIPLINED UNION PRESIDENT POULOS FOR ENGAGING IN** 13 **CONCERTED PROTECTED ACTIVITY**

14 An employer violates Section 8(a)(3) of the Act when it disciplines an employee for engaging in  
15 activity on behalf of a labor organization. *Ogle Protection Serv.*, 149 NLRB 545 (1964). To prove a  
16 violation of Section 8(a)(3), the General Counsel can show an employer was motivated by and that the  
17 employer knew the employee was acting on behalf of a labor organization. *Clark & Wilkins Indus.*, 290  
18 NLRB 106 (1988); *NLRB v. Brookshire Grocery Co.*, 837 F.2d 1336 (5th Cir. 1988). Under *Burnup &*  
19 *Sims*, an employer violates the Act by disciplining an employee for an action taken that is itself  
20 protected by the Act. *Burnup & Sims, Inc.*, 256 NLRB 965, 976 (1981). A similar analysis of employer  
21 actions can be made under the *Wright Line* and *Atlantic Steel* cases. The *Atlantic Steel* factors require  
22 examination of (1) the place of discussion, (2) the subject matter of the discussion, (3) the nature of the  
23 employee's misconduct, and (4) whether the misconduct was in any way provoked by the employer's  
24 misconduct or unfair labor practices. *Atlantic Steel*, 245 NLRB 814, 816-17 (1979). The Board has  
25 previously held an employee's communication with customers about working conditions is also  
26 protected activity. *Greenwood Trucking, Inc.*, 283 NLRB 789 (1987).

1                   **A. Under *Burnup & Sims*, PAE violated the Act.**

2                   In this case, PAE's decision to discipline Mr. Poulos for his activity on behalf of the union can  
3 be proven with direct evidence. As shown in Respondent's Exhibit 1, the company's HR Manager, Rob  
4 Williams, provided a memo to the company's disciplinary review board that listed all of Mr. Poulos'  
5 actions on behalf of the union. The memo prepared by Mr. Williams also showed the disdain with which  
6 he viewed Mr. Poulos' union activities. Mr. Williams indicated that ever since Mr. Poulos became union  
7 president, they had nothing but problems with him. Tr. 215:1-23. Mr. Williams' memo went on to state  
8 that Mr. Poulos had filed so many Board charges that it was ridiculous. *Id.* Mr. Williams' memo is direct  
9 evidence of the company's anti-union animus and its animus being the motivating factor in its discipline  
10 of Mr. Poulos.

11                  In addition to Mr. Williams' memo, PAE's decision to discipline Mr. Poulos for engaging in  
12 activities on behalf of SPAN is also directly demonstrated by the company's decision to discipline Mr.  
13 Poulos for representing two suspended SPAN members on February 16, 2016. Mr. Poulos entered Mr.  
14 Fisco's office with the intention of discussing with Mr. Fisco the vast differences between the Air  
15 Force's "do not arm" orders for Romo and Quintana and PAE's suspension letters that added numerous  
16 additional charges. Tr. 161:23-162:24. Mr. Poulos was not acting as a PAE security officer at the time of  
17 the conversation, he was not on the clock and could have only been acting as a union officer. More  
18 importantly, he did not challenge the Air Force's ability to issue the "do not arm" letters, he only  
19 challenged the ability of the Air Force to intervene in the CBA between SPAN and PAE. Tr. 161:17-22.  
20 Poulos' intention to only have a conversation with Fisco is further demonstrated by Allen's unclassified  
21 statement wherein he stated Poulos turned to him, which shows Poulos was first engaging with Fisco.  
22 GC Exh. 3.

23                  The fact that Mr. Poulos was acting on behalf of the labor union could not be any more clear in  
24 this case. He was, after all, SPAN's President and addressing a member of management, Fisco,  
25 concerning the suspension of union members from employment. It is not often that a case presents such  
26 a clear set of facts containing direct evidence of a union official being disciplined for engaging in  
27 concerted protected activity on behalf of a labor union's members. There is no doubt that PAE knew Mr.  
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1 Poulos was engaged in union activity and that it intended to chill his activity as Union President by  
2 disciplining him for that activity.

3 **B. Under the *Atlantic Steel* factors, Poulos did not lose protections of the Act.**

4 An employee is permitted to engage in concerted, protected activity and can engage in some  
5 impulsive behavior in doing so. *Piper Realty Co.*, 313 NLRB 1289, 1290 (1994). An employer is also  
6 permitted to maintain order in its workplace. *Id.* To balance these competing interests, the Board directs  
7 ALJ's to consider (1) the place of discussion, (2) the subject matter of the discussion, (3) the nature of  
8 the employee's misconduct, and (4) whether the misconduct was in any way provoked by the  
9 employer's misconduct or unfair labor practices. *Atlantic Steel*, 245 NLRB at 816-17.

10 *1. Place of the discussion*

11 The interaction at issue in this case occurred in the office of PAE management official Tom  
12 Fisco. Poulos entered Fisco's office to discuss the suspension of two SPAN members. Poulos came to  
13 Fisco's office ten minutes prior to a training that Poulos was scheduled to attend in the same building.  
14 Allen happened to be in Fisco's office when Poulos arrived. Poulos excused himself to speak with Fisco.  
15 As Poulos began to speak with Fisco, Allen interjected in the conversation between Fisco and Poulos.<sup>4</sup>

16 In its brief, PAE attempted to argue that Allen was somehow offended by Poulos, therefore  
17 Poulos' actions were inappropriate, but this is not the standard that applies. Poulos attempted to have a  
18 conversation with a management official when Allen interjected. Poulos chose an appropriate place for  
19 his discussion with Fisco and it was Allen who changed the complexion of the conversation when he  
20 interjected himself into the discussion between Fisco and Poulos. The place of the discussion was  
21 appropriate and Poulos does not lose protection of the Act because the place of the discussion was  
22 appropriate.

23 *2. Subject matter of the discussion*

24 On February 16, 2016, Poulos and Fisco were discussing the suspension of two SPAN members  
25 in Fisco's office. Contrary to the position taken by PAE in its brief, whether the issues concerning the  
26 two members' suspensions had been resolved is not relevant to this inquiry. More importantly, PAE has  
27 not cited to any portion of the record herein it is stated the issues with Romo and Quintana's suspensions

28 <sup>4</sup> The ALJ credited Poulos' testimony on this fact. *ALJ Decision*, at 13-14.

1 had been resolved before February 16, 2016.<sup>5</sup> See PAE's Brief in Support of Exceptions, at 8. PAE bases  
2 its argument on this factor solely on its own belief that Poulos challenged Allen or Allen's "authority."  
3 As much as it would like this to be a fact, the ALJ credited Poulos' testimony on the conduct of the  
4 February 16, 2016 meeting in Fisco's office and PAE is not entitled to argue based on facts not found by  
5 the ALJ. See ALJ Decision, at 13. The subject matter of the discussion in Fisco's office was the  
6 suspension letters for Romo and Quintana and this demonstrates the discussion was appropriate, which  
7 means Poulos was protected by the Act.

8 *3. Nature of misconduct*

9 The ALJ found Poulos' statements in the meeting with Fisco concerned the suspension letters  
10 issued to Romo and Quintana, and that Poulos may have told Allen he did not have authority to interfere  
11 in the CBA between PAE and SPAN. There were no allegations of physical contact or verbal abuse by  
12 Poulos. See *Beverly Health & Rehab. Services*, 346 NLRB 1319, 1323 (2006). Poulos, as Union  
13 President, was discussing the suspension of union members, and it is this action that PAE seems to  
14 believe is insubordination. Thus, Poulos' actions during the February 16, 2016 meeting were well within  
15 those permitted by the Act and he did not lose the Act's protections.

16 *4. Employer provocation*

17 There was no employer provocation in this case, so this factor is irrelevant in determining  
18 whether or not Poulos' actions were still protected by the Act.

19 **C. Under the *Wright Line* analysis, PAE violated the Act.**

20 If the General Counsel demonstrates by a preponderance of the evidence that an employee was  
21 engaged in protected activity, that the employer knew of that activity, and the employer's hostility  
22 toward that activity was a contributing factor in the employer's decision to take an adverse action  
23 against the employee, a violation of the Act will be found. *Wright Line*, 251 NLRB 1083, 1089 (1980),  
24 *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). Once the General  
25 Counsel shows these facts, the burden shifts to the respondent to show a non-discriminatory reason for  
26 the discipline. *Id.* When an employer takes an adverse action against an employee soon after that

27 \_\_\_\_\_  
28 <sup>5</sup> It may be true that the officers' right to carry firearms was reinstated, see *ALJ Decision*, at 5:5, but that does not mean any  
lost time of the officers had been resolved or that the company actions in adding charges to the suspension letters had been  
resolved.

1 employee engaged in protected activity, the Board has long found support for a finding of a violation.  
2 *Real Foods Co.*, 350 NLRB 309, 312 (2007).

3 Evidence in the record demonstrated PAE's Labor Relations Manager Rob Williams was  
4 remarkably hostile towards Poulos' protected activity. So much so that Williams wrote a memo to the  
5 disciplinary review board that was determining discipline for Poulos. Williams' memo stated Poulos had  
6 been nothing but an issue for the company since he was installed as Union President. Furthermore,  
7 Williams' memo explicitly mentioned and complained of the unfair labor practice charges that Poulos  
8 filed on behalf of SPAN. This memo was included in the packet of documents reviewed by members of  
9 the disciplinary review board.

10 It also cannot be overlooked that Poulos was disciplined in this matter for attempting to speak  
11 with a management representative regarding employee discipline. This action itself goes to the heart of  
12 the Act's protections. There is no doubt that Poulos engaged in protected activity, Poulos' protected  
13 activity was a contributing factor in the discipline meted out by PAE, and PAE took an adverse action  
14 against Poulos by giving him a final written warning.

15 PAE incorrectly argues that the timing of its discipline of Poulos only shows that the discipline  
16 was based on Poulos' statements to Allen. PAE refuses to acknowledge that the timing of its discipline  
17 of Poulos makes its just as—if not more—likely that the discipline was a result of Poulos' protected  
18 activity. The ALJ made the factual determination that the discipline was a result of Poulos' protected  
19 activity and there is ample evidence in the record to support the ALJ's decision. The ALJ's credibility  
20 and factual determination on this topic is entitled to deference

21 PAE violated Section 8(a)(3) of the Act by disciplining Mr. Poulos for his actions on behalf of  
22 SPAN and its membership. His actions on behalf of SPAN were protected under the Act and he did not  
23 lose protection of the Act simply because the conversation may have become heated. The Company  
24 issued a final written warning to Poulos based on his activity on behalf of SPAN. This ALJ correctly  
25 found this discipline must be set aside and the ALJ's decision on this allegation should be upheld.

1                   **III. PAE PROMULGATED AND MAINTAINED AN UNLAWFUL WORK RULE**  
2                   **THAT VIOLATES THE ACT.**

3                   In determining whether a work rule violates the Act, the first question is whether or not the rule  
4 explicitly restricts activities protected by Section 7. *Lutheran Heritage Village-Livonia*, 343 NLRB 646  
5 (2004). If the rule explicitly restricts Section 7 rights, it is per se unlawful. *Id.* If it does not explicitly  
6 restrict rights protected under Section 7, the Board examines whether one of three factors is present. *Id.*  
7 at 647. If “(1) employees would reasonabl[y] construe the language to prohibit Section 7 activity; (2) the  
8 rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the  
9 exercise of Section 7 rights,” the rule violates the Act. *Id.*

10                  The rule promulgated by PAE on March 24, 2016, which it required SPAN officers to sign, both  
11 can be reasonably construed to restrict Section 7 rights and was promulgated in response to union  
12 activity. It is quite easy to picture a scenario in which banning SPAN officers from speaking to any  
13 customer representative would inhibit Section 7 rights. In fact, the issue presented here concerning the  
14 “do not arm” letters for Romo and Quintana provides an example of when the union must speak with a  
15 customer representative. The ability to investigate the veracity of the employer’s claim that the “do not  
16 arm” letters even existed would require a SPAN officer to speak with a customer representative.  
17 Moreover, if the union were investigating a grievance to support its members under these circumstances,  
18 it would also need to speak with customer representatives to provide a proper defense to its members. To  
19 bar SPAN from doing so, reasonably chills and prohibits the Section 7 rights of employees.

20                  The March 24 rule was also promulgated in response to the union activity undertaken by Poulos  
21 when he was representing Romo and Quintana. Poulos was representing the members during the  
22 conversation in Fisco’s office on February 16, 2016. PAE promulgated its rule in response to this and on  
23 the same topic. There is no doubt this rule violates the Act and that the ALJ properly found accordingly.

1                   **IV. PAE REFUSED TO FURNISH INFORMATION PROPERLY REQUESTED BY**  
2                   **SPAN AND REFUSED TO BARGAIN OVER AN ACCOMMODATION TO**  
3                   **PROVIDE SUCH INFORMATION.**

4                   An employer's duty to furnish information is triggered when the union makes a request for  
5 information to assist in administration of the collective bargaining agreement. *NLRB v. Boston Herald-*  
6 *Traveler Corp.*, 210 F.2d 134 (1st Cir. 1954) *enforcing* 102 NLRB 627 (1953). Information requested by  
7 a union only needs to be relevant to its duties as bargaining representative and is "reasonably necessary"  
8 for its performance of such duties. *Otis Elevator Co.*, 170 NLRB 395 (1968); *Country Ford Trucks, Inc.*  
9 *v. NLRB*, 229 F.3d 1184, 1191 (D.C. Cir. 2000). If information requested is necessary and relevant, the  
10 employer must provide the information in a timely manner if it has the information. *Metta Elec.* 349  
11 NLRB 1088 (2007). An employer may claim that certain information requested is confidential, but it is  
12 the employer's burden to prove the information requested is, in fact, confidential. *United States Postal*  
13 *Serv. (Main Office)*, 289 NLRB 942 (1988). If an employer asserts confidentiality, it must bargain and  
14 attempt to reach an accommodation with the union for providing such information. *GTE California*, 324  
15 NLRB 424, 427 (1997).

16                   In *GTE California*, the employer refused to provide the names and phone numbers of customers  
17 making complaints about employees because those customers had unlisted phone numbers. The union  
18 requested the information for the purpose of grievance processing. The employer refused to provide the  
19 information to the union but offered an accommodation of dialing the number for a union representative  
20 to allow the union representative to discuss the matter with the customer anonymously. The union  
21 rejected this accommodation. The Board held the employer met its duty because the accommodation it  
22 offered was reasonable. The Board held the accommodation was reasonable because it would permit the  
23 union to process its grievances and allow the employer to maintain customer confidentiality.

24                   *GTE California* is an excellent example of how an employer should make an accommodation  
25 when a union requests information deemed confidential. PAE was in a similar position in this case.  
26 However, unlike the employer in *GTE California*, PAE did not offer any accommodations to SPAN.

27                   In this case, SPAN requested the classified complaint made by Mr. Allen against Mr. Poulos.  
28 The information requested was obviously necessary and relevant to SPAN's defense of its member and

1 President, Mr. Poulos. PAE refused to provide the complaint. While it is true that the information could  
2 not be disseminated to SPAN over email or viewed in an unsecure area, there was a simple  
3 accommodation available to PAE that was suggested by SPAN and denied outright by all of PAE's  
4 management officials.

5 All of SPAN's officers in attendance at the investigatory interview of Mr. Poulos had top secret  
6 security clearances, which was the level of classification at which the Allen Complaint was allegedly  
7 classified. SPAN officer Josh Lujan asked to move to a secure area in which they could lawfully view  
8 the Allen Complaint. His request was denied by all of the PAE management officials in attendance that  
9 day. PAE could have accommodated SPAN's request by moving to a secure area that would have  
10 allowed SPAN officers and Poulos to view the Allen Complaint. This would have permitted SPAN to  
11 represent Mr. Poulos and still allowed PAE to protect the confidential and classified nature of the Allen  
12 Complaint.

13 While PAE will surely argue that it made an accommodation by having Ray Allen write a non-  
14 classified version of his complaint and provided that complaint to SPAN, this accommodation was not  
15 an accommodation at all. Without a doubt, PAE relied upon the classified version of Mr. Allen's  
16 complaint in making its discipline determination upon Mr. Poulos, yet it refused—even with a viable  
17 accommodation available—to allow SPAN and Poulos to view the Allen Complaint. Creating a new  
18 version of the Allen Complaint and allowing SPAN to review that version when PAE still relied upon  
19 the classified Allen Complaint did not comply with PAE's duty to furnish information to SPAN.  
20 Therefore, PAE violated the Act when it refused to allow SPAN to view the Allen Complaint and  
21 refused to bargain for a proper accommodation with SPAN. The ALJ correctly found PAE's actions  
22 violated the Act.

### 23 **CONCLUSION**

24 Based upon the arguments made herein, the complaining party, Security Police Association of  
25 Nevada, respectfully requests the Board uphold and confirm the ALJ's decision in all respects. PAE  
26 violated the National Labor Relations Act based on its punishment of a union officer engaged in  
27 concerted protected activity, it violated that person's *Weingarten* rights, it refused to furnish information  
28

1 necessary and relevant to the defense of the union officer, and promulgated a work rule that infringed  
2 upon employees' Section 7 rights.

3

4 Dated this 27<sup>th</sup> day of January, 2017.

**THE URBAN LAW FIRM**

5

*/s/ Nathan R. Ring*  
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Nathan R. Ring, Esq.  
*Counsel for SPAN*

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1 **CERTIFICATE OF SERVICE**

2

3 I CERTIFY THAT on the 27<sup>th</sup> day of January, 2017, I filed a true and correct copy of the above

4 and foregoing, **ANSWERING BRIEF OF SECURITY POLICE ASSOCIATION OF NEVADA TO**

5 **EXCEPTIONS FILED BY PAE**, through the NLRB’s Electronic Filing System and served the

6 following parties via the following methods:

7 ***Via Email, U.S. Mail, and E-Service:***

8 Jeff Toppel, Esq.  
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14 Nathan Higley, Esq.  
15 Field Attorney  
16 National Labor Relations Board  
17 Las Vegas Resident Office  
18 Foley Federal Building  
19 300 Las Vegas Blvd. S., Suite 2-901  
20 Las Vegas, NV 89101

21 ***Via Email, U.S. Mail (8 copies), and E-***

22 ***Service:***  
23 Gary Shinnors, Executive Secretary  
24 Office of the Executive Secretary  
25 National Labor Relations Board  
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28

By: /s/ Krista Taylor-Openbrier  
An employee of **The Urban Law Firm**