Walden Security, Inc. *and* United Government Security Officers of America, International Union jointly with its Member Locals 85, 86, 109, 111, 173, 175, 220. Cases 14–CA–170110, 15–CA–176496, 16–CA–170337, and 18–CA–170129

March 23, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE AND EMANUEL

On July 7, 2017, Administrative Law Judge Melissa M. Olivero issued the attached decision.[1] The Respondent filed exceptions and a supporting brief, and it also filed a motion to reopen and supplement the record.[2] The General Counsel filed an opposition to the Respondent's motion to reopen and a motion to strike the Respondent's brief in support of exceptions. The Respondent filed a brief in opposition to the General Counsel's motion to strike and in further support of its motion to reopen, the General Counsel filed a motion to strike the Respondent's opposition brief and a response, and the Respondent filed an opposition to the motion to strike.[3]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[4] and conclusions and to adopt the recommended Order as modified and set forth in full below.[5]

ORDER

The National Labor Relations Board orders that the Respondent, Walden Security, Inc., a Tennessee corporation with facilities in Austin, Del Rio, San Antonio, Alpine, Waco, Beaumont, Lufkin, Marshall, Plano, Tyler, Sherman, Texarkana, Abilene, Amarillo, Dallas, Fort Worth, Lubbock, San Angelo and Wichita Falls, Texas; Alexandria, Shreveport, Monroe, Lake Charles, Lafayette and New Orleans, Louisiana; Sioux City, Iowa; and Kansas City, Springfield and Jefferson City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Changing the terms and conditions of employment of its unit employees without first notifying United Government Security Officers of America, International Union and its Member Locals 85, 86, 109, 111, 173, 175, and 220 (the Union) and giving the Union an opportunity to bargain.

(b) 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.

[1] We have amended the case caption to remove the United Security Guards of America Locals 110, 152, 161, and 167. On September 19, 2017, the Board severed and remanded those portions of the consolidated proceeding involving Locals 110, 152, 161, and 167. The next day, the Acting Regional Director for Region 14 approved the withdrawal of all allegations pertaining to these four locals based on a settlement reached with the Respondent.

[2] The Respondent's motion to reopen and supplement the record is denied because the Respondent has not demonstrated that the evidence it seeks to add to the stipulated record is newly discovered or was previously unavailable. See Board's Rules & Regulations Sec. 102.48(c)(1). Rather, it appears that the material the Respondent seeks to introduce was in its possession at the time it agreed to submit these cases to the judge on a stipulated record. Even under Sec. 102.48(b)(1) of the Board's Rules and Regulations, which the Respondent argues is the applicable rule for determining the propriety of its motion, the Board has discretion to refuse to accept motions that seek to introduce evidence that is not newly discovered and was available for introduction during the hearing. As the Board has previously explained, Sec. 102.48(b)(1) (formerly Sec. 102.48(b)) is not carte blanche for remedying errors or omissions in a party's presentation of evidence during the hearing. See *Phelps Dodge Mining Co.*, 308 NLRB 985, 985 fn. 4 (1992), enf. denied on other grounds 22 F.3d 1493 (10th Cir. 1994).

[3] The General Counsel's motions to strike are granted to the extent that the Respondent's briefs refer to, and argue from, evidence not contained in the stipulated record. Such references and arguments have been disregarded.

[4] We adopt the judge's finding that, under extant precedent, the Respondent was a "perfectly clear" successor because it expressed an intent to retain the predecessor's employees without making it clear that employment would be conditioned on the acceptance of new terms and conditions of employment. Chairman Kaplan notes that the judge's analysis relied on the interpretation of *Spruce Up Corp*., 209 NLRB 194 (1974), enfd. 529 F.2d 516 (4th Cir. 1975), in *Creative Vision Resources, LLC*, 364 NLRB No. 91 (2016), enfd. 882 F.3d 510 (5th Cir. 2018), *Nexeo Solutions, LLC*, 364 NLRB No. 44 (2016), and *Canteen Co.*, 317 NLRB 1052 (1995), enfd. 103 F.3d 1355 (7th Cir. 1997). As previously stated, he disagrees with that interpretation. See *First Student Inc., A Division of First Group America*, 366 NLRB No. 13, slip op. at 7 (2018) (Chairman Kaplan, dissenting in part). However, he recognizes that these decisions are extant precedent, which applies here in the absence of three votes to overrule them. Moreover, he would find that the Respondent here was a "perfectly clear" successor even under a narrower interpretation of *Spruce Up* because it unequivocally offered to employ any interested employee of the predecessor employer without indicating prior to or simultaneously with that offer that there would be new terms and conditions of employment.

Member Emanuel agrees that the Respondent was a "perfectly clear" successor under the facts of this case. However, he is open to reexamining the Board's "expresses an intent to hire" standard in an appropriate future case.

[5] We shall modify the judge's recommended Order to reflect the settlement referred to above in fn. 1, to conform to the Board's standard remedial language for the violations found, and in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall also substitute a limited bargaining order for the judge's recommended affirmative bargaining order in accordance with *Mimbres Memorial Hospital*, 337 NLRB 998, 998 fn. 2 (2002), and we shall substitute a new notice to conform to the Order as modified.

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

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining units:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 85, in the Western District of the State of Texas in the cities of Austin, Del Rio, San Antonio, Alpine, and Waco, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
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> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 86, in the Eastern District of the State of Texas in the cities of Beaumont, Lufkin, Marshall, Plano, Tyler, Sherman, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
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> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 109, in the Western District of the State of Louisiana in the cities of Alexandria, Shreveport, Monroe, Lake Charles, and Lafayette, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
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> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 111, in the Eastern District of the State of Louisiana in the city of New Orleans, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
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> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 173, in the Northern District of the State of Texas in the cities of Abilene, Amarillo, Dallas, Fort Worth, Lubbock, San Angelo and Wichita Falls, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
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> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 175, in the Northern District of the State of Iowa in the city of Sioux City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
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> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 220, in the Western District of the State of Missouri in the following cities of Kansas City, Springfield, and Jefferson City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

(b) Rescind the changes in terms and conditions of employment for its unit employees that were unilaterally implemented on or about December 1, 2015, including temporarily suspending the 401(k) program, ceasing to pay the costs of obtaining follow-up medical examinations, ceasing to pay employees for time spent obtaining follow-up medical examinations, refusing to process grievances, ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties, and ceasing to offer major medical insurance coverage.

(c) Make employees whole for any loss of earnings and other benefits suffered as a result of the changes unilaterally implemented on or about December 1, 2015, in

the manner set forth in the remedy section of the judge's decision.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities referenced above copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 14, 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, 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. If the Respondent has gone out of business or lost the contract for providing court security officer services at any of the facilities 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 December 1, 2015.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 23, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 change your terms and conditions of employment without first notifying United Government Security Officers of America, International Union and its Member Locals 85, 86, 109, 111, 173, 175, and 220 (the Union) and giving it an opportunity to bargain.

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

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of our unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following bargaining units:

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consist-

[6] 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."

ing of UGSOA Local 85, in the Western District of the State of Texas in the cities of Austin, Del Rio, San Antonio, Alpine, and Waco, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 86, in the Eastern District of the State of Texas in the cities of Beaumont, Lufkin, Marshall, Plano, Tyler, Sherman, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 109, in the Western District of the State of Louisiana in the cities of Alexandria, Shreveport, Monroe, Lake Charles, and Lafayette, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 111, in the Eastern District of the State of Louisiana in the city of New Orleans, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 173, in the Northern District of the State of Texas in the cities of Abilene, Amarillo, Dallas, Fort Worth, Lubbock, San Angelo and Wichita Falls, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 175, in the Northern District of the State of Iowa in the city of Sioux City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 220, in the Western District of the State of Missouri in the following cities of Kansas City, Springfield, and Jefferson City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

WE WILL rescind the changes in terms and conditions of employment for our unit employees that were unilaterally implemented on or about December 1, 2015, including temporarily suspending the 401(k) program, ceasing to pay the costs of obtaining follow-up medical examinations, ceasing to pay employees for time spent obtaining follow-up medical examinations, refusing to process grievances, ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties, and ceasing to offer major medical insurance coverage.

WE WILL make affected employees whole for any loss of earnings and other benefits resulting from the changes to their terms and conditions of employment that we made on or about December 1, 2015, without first notifying and, on request, bargaining with the Union, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WALDEN SECURITY, INC.

The Board's decision can be found at www.nlrb.gov/case/14-CA-170110 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Bradley A. Fink, Esq., for the General Counsel.
Fred B. Grubb, Esq., for the Respondent.
Jeffery Miller, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. The parties herein waived a hearing and submitted the case for a decision by way of a Joint Motion and Stipulation of Facts (SOF) on September 26, 2016. The United Government Security Officers of America, International Union jointly with its Member Locals 85, 86, 109, 110, 111, 152, 161, 167, 173, 175, 220 (UGSOA or Union) filed unfair labor practice charges on February 22, 2016, in Cases 14–CA–170110, 16–CA–170337, and 18–CA–170129, and on May 18, 2016, in Case 15–CA–176496. The cases from NLRB Regions 15, 16, and 18 were transferred to Region 14 on May 19, 2016. (GC Exh. 1(i)-(n).) The General Counsel issued an order consolidating cases, consolidated complaint and notice of hearing on July 26, 2016. (GC Exh. 1(o).) The consolidated complaint alleges that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act) by implementing changes to employees' terms and conditions of employment without prior notice to the Union or affording the Union an opportunity to bargain. Respondent has timely answered the complaint and denied the allegations. (GC Exh. 1(q).)

The parties agree that the issues to be decided are:

1. Whether Respondent was a "perfectly clear" successor under *NLRB v. Burns Security Services*, 406 U.S. 272, 294–295 (1972), and *Spruce Up Corp.*, 209 NLRB 194, 195 (1974), with an obligation to bargain with the UGSOA and its locals prior to setting initial terms and conditions of employment that differed from those under the predecessor, Akal, as alleged in complaint paragraph 17.[1]

2. Whether Respondent's conduct with respect to the termination standard, as alleged in complaint paragraph 17(A)(ii), constitutes a change in terms and conditions of employment that would obligate Respondent to notify and bargain with the UGSOA and its locals.[2]
(SOF, para. 6.)

On the entire stipulated record, including the briefs filed by the parties,[3] I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, has been engaged providing security services at various locations throughout the United States, including federal courthouses in the Fifth and Eighth Judicial Circuits in the States of Missouri, Iowa, Arkansas, Louisiana, and Texas, from its headquarters in Chattanooga, Tennessee. Respondent performs services valued in excess of $50,000 in states other than the State of Tennessee. 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 and that the Union and its locals are labor organizations within the meaning of Section 2(5) of the Act. (GC Exh. 1(o) and (q).)

II. ALLEGED UNFAIR LABOR PRACTICES

A. Akal's Employee Bargaining Units

Prior to December 1, 2015, Akal Security, Inc. (Akal), provided court security officer services for federal courthouses in the Fifth and Eighth Judicial Circuits pursuant to a contract with the United States Marshals Services (USMS). (GC Exh. 1(q), para. 3(a).) On December 1, Respondent commenced providing court security services for federal courthouses in the Fifth and Eight Judicial Circuits, and since then has continued providing the same court security officer services as had been provided by Akal in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of Akal. (SOF, para. 5H.)

Respondent employs the following unit of employees working in the Western District of the State of Texas (West Texas Unit):[4]

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 85, in the

[1] The General Counsel has withdrawn paragraphs 17(A)(viii) and 17(A)(x) of the complaint. (SOF, para. 5S.)

[2] Respondent denies complaint paragraph 17(C) with respect to complaint paragraph 17(A)(ii), asserting that Respondent's actions did not constitute a change to terms and conditions of employment. (SOF, para. 5T.) Respondent admits that it did not provide prior notice of this alleged change to the collective-bargaining representatives of its employees or afford the representatives an opportunity to bargain with respect to the conduct and the effects of the conduct. Id.

[3] On November 4, 2016, Respondent filed a Motion to Strike Section II(B) of the Charging Party's Brief. The referenced section contains an argument that Executive Order 13495 created perfectly clear successor status on the part of Respondent. The Joint Motion and Stipulation of Facts contain no mention of whether, or how, this Executive Order might apply to Respondent. It would be improper for me to consider facts outside of the record and, therefore, I have not considered Section II(B) of the Charging Party's brief.

[4] The General Counsel alleges that this unit, and all of the other units listed herein, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> Western District of the State of Texas in the cities of Austin, Del Rio, San Antonio, Alpine, and Waco, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Eastern District of the State of Texas (East Texas Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 86, in the Eastern District of the State of Texas in the cities of Beaumont, Lufkin, Marshall, Plano, Tyler, Sherman, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Western District of the State of Louisiana (West Louisiana Unit):

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 109, in the Western District of the State of Louisiana in the cities of Alexandria, Shreveport, Monroe, Lake Charles, and Lafayette, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Middle District of the State of Louisiana (Middle Louisiana Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 110, in the Middle District of the State of Louisiana in the city of Baton Rouge, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Eastern District of the State of Louisiana (East Louisiana Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 111, in the Eastern District of the State of Louisiana in the city of New Orleans, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Southern District of the State of Iowa (Southern Iowa Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 152, in the Southern District of the State of Iowa, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Southern District of the State of Iowa in Des Moines and Council Bluffs (Des Moines Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit[5] (sic) consisting of UGSOA Local 161, in the Southern District of the State of Iowa in the cities of Des Moines and Council Bluffs, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Western District of the State of Arkansas (West Arkansas Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 167, in the Western District of the State of Arkansas in the following cities of Fort Smith, Fayetteville, El Dorado, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Northern District of the State of Texas (North Texas Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 173, in the Northern District of the State of Texas in the cities of Abilene, Amarillo, Dallas, Fort Worth, Lubbock, San Angelo and Wichita Falls, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Northern District of the State of Iowa (North Iowa

[5] I take notice of the fact that the United States District Court, Southern District of Iowa, is part of the Eighth Judicial Circuit. See http://www.ca8.uscourts.gov/iowa-courts.

Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 175, in the Northern District of the State of Iowa in the city of Sioux City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

Respondent employs the following unit of employees working in the Western District of the State of Missouri (West Missouri Unit):

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 220, in the Western District of the State of Missouri in the following cities of Kansas City, Springfield, and Jefferson City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

From at least October 1, 2015 to about December 1, 2015, the UGSOA and Locals 85, 86, 109, 110, 111, 152, 161, 167, 173, 175, and 220 had been the exclusive collective-bargaining representatives of the West Texas, East Texas, West Louisiana, Middle Louisiana, East Louisiana, Southern Iowa, Des Moines, West Arkansas, North Texas, North Iowa, and West Missouri Units employed by Akal and, during that time, UGSOA and its locals had been recognized as such by Akal. (GC Exh. 1(o), para. 6–16.) This recognition had been embodied in at least one collective-bargaining agreement per unit, which was effective October 1, 2015 to about December 1, 2015. During this time period, based on Section 9(a) of the Act, UGSOA and its locals had been the exclusive collective-bargaining representatives of the units listed above when they were employed by Akal.[6] (SOF, para 5K, GC Exh. 1(o), paras. 6–16.)

In its answer, Respondent denies complaint paragraphs 6(A), 7(A), 8(A), 9(A), 10(A), 11(A), 12(A), 13(A), 14(A), 15(A), and 16(A) solely because each bargaining unit description includes the job classifications of Federal Special Security Officers (SSOs) and Lead Federal Special Security Officers (LSSOs). (SOF, para. 5L). Respondent does not employ SSOs or LSSOs at any of the federal courthouses at issue in these cases. Id.

Respondent learned in the process of bidding the contract to provide court security services for the federal courthouses in the Fifth and Eighth Judicial Circuits that the SSO and LSSO classifications were not utilized at any of the courthouses at issue. Id. In fact, the SSO and LSSO classifications are not used by the USMS at any of its locations. Id. These classifications are used by other federal agencies who desire to have security services provided by a vendor to a particular location. Id. Respondent admits that no other federal agency entered into an agreement with Akal that would necessitate the use of SSOs and LSSOs for the previous 3 years, but does not, and would not, know if there are any such plans for the future in the Fifth and Eighth Judicial Circuits. Id.

B. Provision of Court Security Services and Labor Relations Prior to December 1, 2015

As noted above, prior to December 1, 2015[7], Akal Security, Inc. (Akal), provided court security officer services for federal courthouses in the Fifth and Eighth Judicial Circuits pursuant to a contract with the United States Marshals Services (USMS). (GC Exh. 1(o) and (q), para. 3(A).)

Jeff Miller, Director, UGSOA International Union, is the chief bargaining representative for the UGSOA International Union, as well as its member locals representing bargaining units which provide CSO and LCSO services in other federal judicial circuits. (SOF, para. 5M.) Within the 2 years prior to September 15, with the most recent occasion being August 18, Miller had negotiated collective-bargaining agreements with Respondent covering bargaining units in the Sixth Judicial Circuit. Id. Miller was aware that Respondent and the UGSOA tentatively agreed to remove the SSO and LSSO classifications from unit descriptions in the Sixth Circuit because these classifications were not utilized in any of the federal courthouses where those units were located. Id.

Miller learned that Respondent had been awarded the contract to provide court security officer services in the Fifth and Eighth Judicial Circuits prior to September 15. (SOF, para. 5N.) At the time Miller learned this, he assumed that Respondent would propose removing the SSO and LSSO classifications from the unit descriptions in the Fifth and Eighth Circuits because those classifications were not utilized at the federal courthouses in those circuits. Id.

Prior to December 1, employees employed by Akal in the bargaining units described in Complaint paragraphs 6 through 16, and as set forth above, could defer a portion of their wages into a 401(k) account. (SOF, para. 5O.) Prior to December 1, bargaining unit employees employed by Akal had a contractual "just cause" standard for termination. (SOF, para. 5P.)

C. Transition from Akal to Respondent as Employer

Michael Walden serves as Respondent's President, Amy Walden serves as Respondent's Chairman and Chief Executive Officer, Abi Browning serves as Respondent's Director of Human Resources, and Dana Smith serves as Respondent's Human Resources Administrator. Respondent admits, and I find,

[6] The unit descriptions, as set forth above and in paragraphs 6(A), 7(A), 8(A), 9(A), 10(A), 11(A), 12(A), 13(A), 14(A), 15(A), and 16(A) of the consolidated complaint, are the unit descriptions contained in each of Akal's corresponding collective-bargaining agreements described paragraphs 6(B), 7(B), 8(B), 9(B), 10(B), 11(B), 12(B), 13(B), 14(B), 15(B), and 16(B) of the complaint. (GC Exh. 1(o); SOF, para. 5K.)

[7] All dates infra are in 2015, unless otherwise noted. I note that the General Counsel inadvertently used dates in 2016 in at least two places in the Stipulation of Facts. (See SOF, paras. 5A and 5D.) From reading the record, it is clear that the events at issue took place in 2015 and, therefore, I correct those paragraphs to indicate that all events took place in 2015.

that M. Walden, A. Walden, Brown, and Smith are agents of Respondent within the meaning of Section 2(13) of the Act.

Between September 15 and October 8, Respondent distributed a transition letter to Akal's employees stating:

> Greetings from Walden Security!
>
> It is our honor and privilege to inform you that Walden Security has been chosen by the United States Marshals Service (USMS) to administer the court security officer services contract for your judicial circuit beginning December 1, 2015. We are extremely pleased and humbled by this opportunity to support the United States Judiciary and look forward to a long and productive relationship.
>
> We understand that successful support of the USMS begins and ends with you, the court security officer (CSO) workforce. To that end, we pledge our support to each of our new security officers.
>
> It is our belief that you will come to realize very quickly that you have joined the premier security services provider in the industry and that we are committed to providing exceptional service to our clients. Everything we do is based on our philosophy of "Setting the Standard by Setting the Example."
>
> As we progress through the transition of the court security officer contract in your circuit, we ask for your patience and assistance in meeting all of the associated administrative requirements. It is our intent for the administrative management and support of the CSO workforce to be seamless and remain constant.
>
> We will be providing you much more information about Walden Security in the weeks ahead, to include orientation materials, benefit package details, information, policies, etc. We look to a long and lasting professional relationship.
>
> On behalf of everyone at Walden Security, we would like to welcome you to our company.

(J. Exh. 1; SOF paras. 5A–C.) This letter was signed by M. Walden and A. Walden.

Respondent further distributed a series of notices for town hall meetings (town hall notices) to Akal employees in the Fifth and Eighth Circuits between September 15 and October 8, 2015. (J. Exh., 2(a)–(aa).) Other than the locations and dates of the various town hall meetings, these notices were nearly identical, and stated:

> Join Our Team!
>
> CSO TOWN HALL MEETING
>
Attention	All CSOs in the [name of city] area
Date/Time	[Dates and times]
Location	[Location]

> In the town hall session, you will meet the Walden Security team, learn about our company, training, and benefits, complete an employment application, ask questions, and more.
>
> WHAT TO BRING:
>
☑Valid Driver's License *or* Passport and a copy	☑Copy of your DD214/Copy 4 (if applicable)
☑Social Security Card *or* Birth Certificate and a copy	☑Copy of your POST certification from the Law Enforcement Academy
☑Copy of your High School Diploma or College Certificate	☑Copy of primary group health insurance card (front and back)

> For more information, please contact your LCSO or District Supervisor.

(J. Exh. 2(a)–(aa); SOF para. 5D.) More than half of the town hall notices also instructed employees to bring a copy of a voided check for direct deposit. (J. Exh. 2(k), 2(l), 2(m), 2(n), 2(o), 2(p), 2(q), 2(r), 2(s), 2(t), 2(u), 2(v), 2(w), 2(x), 2(y), 2(z), 2(aa).) The town hall meetings were scheduled over a month-long period, starting in El Paso, Texas, on September 19 and ending on October 18 in Austin, Texas. (J. Exh. 2(a)–(aa).)

The transition letter was distributed to employees in both the Des Moines Unit and West Arkansas Unit before the town hall notices were distributed to those employees. (SOF, para. 5E.) The record does not state whether employees in the remaining bargaining units received the transition letters or town hall notices first. Apart from the transition letter and town hall notices, Respondent did not communicate with any of Akal's employees in the Fifth and Eighth Judicial Circuits about terms and conditions of employment until after distributing these documents. (SOF, para. 5F.)

D. Events Occurring on or after December 1, 2015

On December 1, Respondent commenced providing court security services for federal courthouses in the Fifth and Eight Judicial Circuits, and since then has continued providing the same court security officer services as had been provided by Akal in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of Akal. (SOF, para. 5H.) Respondent hired 381 of Akal's 406 employees in the Fifth and Eighth Judicial Circuits. (SOF, para. 5G.) Furthermore, Respondent, in its answer, admitted that it has continued the employing entity and is a successor to Akal. (SOF, para. 5I.)

Upon commencing operations on December 1, Respondent admits it changed various terms and conditions of employment without first notifying or bargaining with the Union. (SOF, paras. 5T and 5U.) These changes included: ceasing to pay employees the costs of obtaining follow-up medical examinations; ceasing to pay employees for time spent obtaining follow-up medical examinations; refusing to process grievances; ceasing to pay lead court security officers at the lead court security officer rate when they are not performing lead court security officer duties; and ceasing to offer major medical insurance coverage. (GC Exhs. 1(o) and 1(q).)

Bargaining unit employees were enrolled in Respondent's 401k program on December 1, the date Respondent began operations. (SOF, para. 5O.) However, this new program had a 90-day administrative waiting period before bargaining unit employees could defer any portion of their wages into their 401k accounts. Id.

Respondent's Policies and Procedures for Court Security Of-

ficers in the Fifth and Eighth Judicial Circuits (policy manual) are contained in the record as Joint Exhibit 3. (SOF, para. 5Q.) The policy manual was implemented on December 1. Id. The policy manual contains the following provisions, pertinent here:

> **Section 1.3 STATUS OF AT-WILL EMPLOYMENT**
>
> a. This Policies and Procedures document is intended to provide you with general information regarding Walden Security's policies and benefits to assist you during your employment and should not be construed as a contract. Unless you are covered by a collective bargaining agreement, you are an at-will employee of Walden Security, meaning that you are not guaranteed employment with Walden Security of any specific duration and that you or Walden Security can terminate your employment at any time, for any reason, with or without cause or notice.
>
> . . .
>
> b. A collective bargaining agreement or the provisions of a government contract take precedence over any conflicting [] applicable provisions of this Policies and Procedures document and this policy of at-will employment contained herein. No provision in this Policies and Procedures document or in any document or statement and nothing implied from any course of conduct shall limit the Company's or an at-will employee's right to terminate employment at-will or restrict any employee's Section 7 rights under the National Labor Relations Act.

(Emphasis in original) (J. Exh. 3, p. 8.)

E. Positions of the Parties

The General Counsel and Charging Party take the position that Respondent made clear statements in the transition letter manifesting an intent to retain all the incumbent employees and, therefore, became a perfectly clear successor when the transition letter was distributed. Accordingly, Respondent violated Section 8(a)(5) and (1) when it unilaterally changed the terms and conditions of employment upon its commencement of operations on December 1. The General Counsel and Charging Party further take the position that the change of the termination standard from "just cause" to "at-will" was a mandatory subject of bargaining and constituted an unlawful unilateral change, violative of Section 8(a)(5) and (1) of the Act. (SOF, para. 7.)

Respondent maintains that it was not a perfectly clear successor and was, therefore, free to establish its own terms and conditions of employment without notifying the Charging Party or affording it the opportunity to bargain. Respondent further takes the position that the transition letter in no way manifested an intent to retain all of the predecessor's employees. Even if the transition letter should be found to manifest such an intent, and consistent with *Spruce Up* and its progeny, Respondent maintains it has avoided perfectly clear successor status by communicating an intent to change important terms and conditions of employment both simultaneously with and prior to distribution of the transition letter. Respondent also asserts that the termination standard for bargaining unit employees remained as "just cause" upon its commencement of operations on December 1. (SOF, para. 8.)

DISCUSSION AND ANALYSIS

A. Legal Standards Regarding Successorship

In *NLRB v. Burns Security Services*, 406 U.S. 272, 281–295 (1972), the Supreme Court held that a successor employer is not bound by the substantive terms of a collective-bargaining agreement negotiated by the predecessor and is generally free to unilaterally set initial terms and conditions of employment. *Creative Vision Resources, LLC,* 364 NLRB No. 91, slip op. at 2 (2016). The Court explained that the duty to bargain will not normally arise before the successor sets initial terms because it is not usually evident whether the union will retain majority status in the new work force until after the successor has hired a full complement of employees. Id. The Court recognized, however, that "there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before it fixes terms." Id.

In *Spruce Up Corp*., 209 NLRB 194, 195 (1974), enfd. per curiam 529 F.2d 516 (4th Cir. 1975), the Board addressed the "perfectly clear" exception, and found it was "restricted to circumstances in which the new employer has either actively or, by tacit inference, misled employees into believing they would all be retained without change in their wages, hours, or conditions of employment, or at least to circumstances where the new employer . . . has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment." *Creative Vision Resources, LLC,* 364 NLRB No. 91, slip op. at 3. Acknowledging that "the precise meaning and application of the Court's caveat is not easy to discern," the Board reasoned that "[w]hen an employer who has not yet commenced operations announces new terms prior to or simultaneously with his invitation to the previous work force to accept employment under those terms, we do not think it can fairly be said that the new employer 'plans to retain all of the employees in the unit,' as that phrase was intended by the Supreme Court," because of the possibility that many of the employees will reject employment under the new terms, and therefore the union's majority status will not continue in the new work force. Id.

In cases subsequent to *Spruce Up*, the Board clarified that the perfectly clear exception is not limited to situations where the successor fails to announce initial employment terms before it formally invites the predecessor's employees to accept employment. Rather, a new employer has an obligation to bargain over initial terms when it displays an intent to employ the predecessor's employees without making it clear that their employment will be on different terms from those in place with the predecessor. *Creative Vision Resources, LLC,* supra, citing *Canteen Co*., 317 NLRB 1052, 1053–1054 (1995), enfd. 103 F.3d 1355 (7th Cir. 1997). Thus, in applying the "perfectly clear" exception of *Burns*, the Board scrutinizes not only the successor's plans regarding the retention of the predecessor's employees, but also the timing and clarity of the successor's expressed intentions concerning existing terms and conditions of employment. *Creative Vision Resources, LLC,* at 7. Stated another way, to avoid "perfectly clear" successor status, a new

employer must clearly announce its intent to establish a new set of conditions prior to, or simultaneous with, its expression of intent to retain the predecessor's employees. *Nexeo Solutions, LLC,* 364 NLRB No. 44, slip op at 6 (2016). Thus, a new employer that expresses a desire to retail the predecessor's work force without concurrently revealing to a majority of the incumbent employees that different terms will be instituted, improperly benefits from the likelihood that those employees, lacking knowledge that terms and conditions will change, will choose to stay in the positions they held with the predecessor, rather than seek employment elsewhere. *Creative Vision Resources, LLC,* at 6.

B. Respondent is a Perfectly Clear Successor to Akal

In this case, the evidence establishes that Respondent is a perfectly clear successor to Akal. Respondent's transition letter to Akal's employees referred to them as "our new security officers." The letter went on to state that "you have joined the premier security services provider in the industry." The letter further stated, "As we progress through the transition of the court security officer contract in your circuit, we ask for your patience and assistance in meeting all of the associated administrative requirements." The letter references Respondent's desire that administrative management of the work force remain seamless and constant. Respondent indicated it would be providing Akal employees with information about Respondent and its policies and benefits. Finally, the transition letter indicated, "we would like to welcome you to our company." In summary, I find that Respondent's transition letter overwhelmingly indicated that Respondent would be retaining Akal's work force.

Moreover, the town hall meeting notices did not dispel Respondent's stated intent to retain Akal's employees. These notices stated that at the town hall meetings, employees would meet Respondent's team, learn about the company, training and benefits, complete an employment application, and ask questions. Nothing in the notice indicates that completing an application is more than a mere formality. No reference is made to job interviews or that all employees would not be accepted. Instead, the town hall notices invites Akal's employees to "Join Our Team." Thus, I find that Respondent's town hall notices also manifested its intent to retain Akal's employees.

I find this case analogous to *Creative Vision Resources, LLC,* 364 NLRB No. 91 (2016). In that case, the new employer distributed applications to the predecessor's employees and told them that those who wished to retain their jobs after the transition were required to complete an application and tax form; the employer did not interview the employees. Id. at 2. The Board noted that allowing a new employer to mollify a majority of the predecessor's employer into not seeking other work by avoiding telling them about changes in their terms of employment would be at odds with the Supreme Court's decision in *Burns* and the Board's decision in *Spruce Up.* Id. at 6, citing *S & F Market Street Health Care,* 570 F.3d 354, 359 (D.C. Cir. 2009) (holding that the perfectly clear exception is intended to prevent an employer from inducing possibly adverse reliance upon the part of employees lulled into not looking for other work). Thus, the Board found that a new employer that expresses an intent to retain the predecessor's work force without concurrently revealing that different terms will be instituted, improperly benefits from the likelihood that those employees, lacking knowledge that terms and conditions will change, will choose to stay in the positions they held with the predecessor, rather than seek employment elsewhere. Id. at 6. In this case, no reference was made by Respondent to making specific changes to Akal's terms and conditions of employment. Instead, Respondent referred to seamless management, administrative requirements, and continued employment. Therefore, I find, as in *Creative Vision Resources, LLC,* that Respondent is a perfectly clear successor to Akal.

I further find this case analogous to *Nexeo Solutions, LLC*, 364 NLRB No. 44 (2016). In that case, the employees of the predecessor were referred to as "founding employees" of the new company and were told that the employer was excited they would be moving on with them. Id. at 3. The employees of the predecessor were not interviewed or tested. Id. at 4. Employees were informed that they would, after the employer stated a desire to hire them, later receive letters containing details of the new employer's pay and benefit plans. Id. The Board stated that when a successor expresses a willingness to hire its predecessor's employees without mentioning changes in terms and conditions of employment, the employees place significant reliance on that statement and may forego other employment opportunities. Id. at 8, citing *Machinists v. NLRB,* 595 F.2d 664, 674–675 (D.C. Cir. 1978). The Board found that by not specifically mentioning it intended to make changes to employees' terms and conditions of employment when it manifested an intent to retain the employees, the employer was a perfectly clear successor and was obligated to bargain with the employees' representative before setting initial terms and conditions of employment. Id. at 9. Similarly, in the instant case, Respondent demonstrated a desire to hire Akal's employees first in its transition letter and later in its town hall notices. However, Respondent did not mention any specific changes to employee terms and conditions of employment in these documents. By failing to do so, Respondent became obligated to bargain with the Union before setting initial terms and conditions of employment.

The case of *Adams & Associates, Inc.,* 363 NLRB No. 193 (2016), cited by the General Counsel, is also instructive. In an initial meeting with employees, the employer advised them that it looked forward to a smooth transition, told them they were doing a good job, told them it didn't want to rock the boat, and invited employees to apply for jobs. Id. at 2. The Board noted that the relevant inquiry regarding perfectly clear successor status is whether the successor planned to retain a sufficient number of the predecessor employees to make it evident that the Union's majority status would continue in the new work force. Id. At 4. The Board further stated that the bargaining obligation attaches when a successor expresses an intent to retain the predecessor's employees without making it clear that employment will be conditioned on acceptance of new terms. Id. at 4, citing *Canteen Co.,* 317 NLRB 1052, 1053–1054 (1995) enfd. 103 F.3d 1355 (7th Cir. 1997). Ultimately, the Board concluded that the employer became a perfectly clear successor at the time of the meeting with employees when it did

not announce an intent to change employees' terms and conditions of employment. Id. at 5. Similarly, in the instant case, Respondent's transition letter indicated its intent to retain Akal's employees. Respondent did, in fact, retain a majority of those employees. Respondent's transition letter welcomed employees to the company, asked for their patience in completing administrative requirements, stated that administrative management would remain seamless and constant, and indicated it would tell employees more in the future. The town hall meeting notices did nothing to dispel the indication that employees would be retained. Neither document mentioned any specific changes to the terms and conditions of employment enjoyed by employees under Akal. Thus, Respondent became a perfectly clear successor at the time it distributed the transition letters.

I find the cases cited by Respondent in its brief distinguishable from the instant case. For example, Respondent cites *Data Monitor Systems, Inc.,* 364 NLRB No. 4 (2016), where the Board found that the new employer was not a perfectly clear successor. In that case, the employer distributed employment applications to the predecessor's employees. Id. at 4. However, unlike the instant case, the employer in *Data Monitor* required employees to complete a job interview, which the Board found created a situation that was not the equivalent of an invitation to accept employment. Id. Here, however, Respondent made no reference to job interviews and indicated that employees were joining the company and that it looked forward to seamless and constant management. Therefore, I find this case distinguishable from *Data Monitor.*

I further find *Paragon Systems,* 364 NLRB No. 75 (2016) distinguishable from the instant case. In that case, the Board found that a new employer was not a successor because it did not display an intent to retain the prior employer's employees. Id. at 4. The Board noted that a memo provided by the new employer stating that it was "currently accepting applications" and that all candidates must complete all parts of the application process in order to be considered for employment, did not demonstrate an intent to hire the prior employer's employees. Id. The new employer also required candidates to provide documentation such as driver's licenses, birth certificates, and transcripts. Id. at 1. Although Respondent here asked employees to provide documents in its town hall notices, it did not mention that completing all parts of an application process was necessary for continued employment. Instead the notices invite employees to "Join Our Team" and learn more about the company. This language does not make clear that employees would be competing for jobs or might not be hired. As such, I find the circumstances of this case distinguishable from those in *Paragon Systems.*

Moreover, I reject Respondent's argument that, because Miller assumed Respondent would propose removing the SSO and LSSO classifications from the bargaining unit, the Union was aware that Respondent intended to alter the terms and conditions of employment for Akal's employees. This argument fails because Respondent never announced such an intent to either the unit employees or the Union. Miller's assumptions do not equate to an announcement that Respondent sought to somehow change the description of the bargaining units at issue here. Avoiding perfectly clear successor status requires an employer to clearly announce its intent to alter terms and conditions before offering employment to the predecessor's employees. *Starco Farmers Market,* 237 NLRB 373, 373 (1978). Respondent made no such announcement and, as found above, cloaked itself with perfectly clear successor status at the time it sent the transition letters to unit employees. Thus, I reject Respondent's argument that, because the Union assumed Respondent would seek to remove the SSO and LSSO classifications from the bargaining unit descriptions at issue, Respondent could avoid perfectly clear successor status.

In sum, Respondent's transition letter demonstrated a clear desire to retain all or a majority of Akal's employees by referring to them as "our new security officers," and stating "you have joined the premier security services provider in the industry," asking for patience during the administrative process, and announcing a desire for seamless and constant management during the transition. Respondent did nothing in the town hall notices to dissipate the notion that the predecessor employees were being retained. The record establishes that Respondent did, in fact, retain a majority of Akal's employees. Respondent never announced that continued employment was dependent upon acceptance of new terms and conditions of employment. Moreover, Respondent did not announce any specific changes to employees' terms and conditions of employment concurrently with distribution of the transition letters or town hall notices. As such, I find that Respondent became a perfectly clear successor to Akal when it distributed the transition letter to Akal's employees.

C. The Bargaining Units are Appropriate

In its answer, denied the complaint paragraphs containing the bargaining units at paragraphs 6(A), 7(A), 8(A), 9(A), 10(A), 11(A), 12(A), 13(A), 14(A), 15(A), and 16(A). (GC Exh. 1(q).) Respondent did so because the descried units contain references to SSO and LSSO positions and these positions are not used in any of the courthouses at issue. (SOF, para. 5L.) In fact, SSOs and LSSOs are not used by the USMS at any of its locations. Id. Respondent was aware, at the time that it bid the contracts for court security services in the Fifth and Eighth Circuits, that the SSO and LSSO classifications were not used at any of the courthouses at issue. Id.

Critical to a successorship finding is whether the bargaining unit of the predecessor employer remains appropriate for the successor employer. *Paramus Ford, Inc.,* 351 NLRB 1019, 1023 (2007). In *Paramus Ford,* the employer challenged the appropriateness of a historical unit of service and parts department employees. Id. As in *Paramus Ford,* the Union here has represented the units of Akal's employees as set forth in the complaint. Under extant Board law, the unit sought by the Union and alleged in the complaint need not be the only or even the most appropriate unit; all that is required is that the unit be *an* appropriate unit. (Emphasis in original.) Id. citing *Bartlett Collins Co*., 334 NLRB 484 (2001); *Gregory Chevrolet, Inc.,* 258 NLRB 233, 238 (1981).

Regarding the appropriateness of historical units, the Board's longstanding policy is that a "mere change in ownership should not uproot bargaining units that have enjoyed a history of col-

lective bargaining unless the units no longer conform reasonably well to other standards of appropriateness." 351 NLRB at 1024. The party challenging a historical unit bears the burden of showing that the unit is no longer appropriate. Id. The evidentiary burden for such a showing is heavy. Id. "Compelling circumstances" are required to overcome the significance of bargaining history. Id. citing *Cadillac Asphalt Paving Co.*, 349 NLRB 6, 9 (2007).

In this case, Respondent has not shown any compelling circumstances to overcome the appropriateness of the historical bargaining unit set forth in the collective-bargaining agreements between Akal and the Union. Merely stating that no employees occupy the SSO and LSSO positions at this time does not overcome Respondent's heavy burden. Without any evidence to the contrary, I find that the historical unit set forth in the collective-bargaining agreement remains appropriate. As such, I find that all of the bargaining units as set forth above constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

D. Respondent Violated the Act with Respect by Implementing New Terms and Conditions of Employment on December 1 (Complaint Paragraphs 17(A)(i), (iii), (iv), (v), (vi), (vii), and (ix))

Upon beginning operations on December 1, Respondent admits it changed various terms and conditions of employment for unit employees without first notifying or bargaining with the Union. (SOF, paras. 5T and 5U.) These changes included: ceasing to pay employees the costs of obtaining follow-up medical examinations; ceasing to pay employees for time spent obtaining follow-up medical examinations; refusing to process grievances; ceasing to pay lead court security officers at the lead court security officer rate when they are not performing lead court security officer duties; and ceasing to offer major medical insurance coverage. (GC Exhs. 1(o) and 1(q).) Furthermore, bargaining unit employees were enrolled in Respondent's new 401(k) program, into which employees were enrolled on December 1, had a 90-day administrative waiting period. (SOF, para. 5O.)

An employer violates Section 8(a)(5) and (1) of the Act when, as a perfectly clear successor to a predecessor, fails to bargain with the Union to agreement or impasse prior to changing existing terms and conditions of employment for unit employees. *Nexeo Solutions, LLC,* 364 NLRB No. 44 slip op. at 17. All of the above-listed changes were implemented by Respondent after October 8, the latest date on which it distributed transition letters and became a perfectly clear successor to Akal. As Respondent admits that it implemented these changes without first notifying the Union or affording it an opportunity to bargain, I find that Respondent violated Section 8(a)(5) and (1) of the Act.

E. Respondent did not Violate the Act with Respect to the Termination Standard (Complaint Paragraph 17(A)(ii))

Respondent's policy manual was implemented on December 1. (SOF, para. 5Q.) The policy manual contains the following provision:

> **Section 1.3 STATUS OF AT-WILL EMPLOYMENT**
>
> a. This Policies and Procedures document is intended to provide you with general information regarding Walden Security's policies and benefits to assist you during your employment and should not be construed as a contract. **Unless you are covered by a collective bargaining agreement, you are an at-will employee of Walden Security**, meaning that you are not guaranteed employment with Walden Security of any specific duration and that you or Walden Security can terminate your employment at any time, for any reason, with or without cause or notice.
>
> . . .
>
> b. A collective bargaining agreement or the provisions of a government contract take precedence over any conflicting [] applicable provisions of this Policies and Procedures document and this policy of at-will employment contained herein. No provision in this Policies and Procedures document or in any document or statement and nothing implied from any course of conduct shall limit the Company's or an at-will employee's right to terminate employment at-will or restrict any employee's Section 7 rights under the National Labor Relations Act.

(Emphasis in original in heading; emphasis supplied in subparagraph a) (J. Exh. 3, p. 8.) Thus, Respondent specifically announced that its at-will employment policy did not apply to employees covered by a collective-bargaining agreement.

Respondent's policy, by its own terms, did not apply to employees covered by a collective-bargaining agreement. I have already found that Respondent was a perfectly clear successor to Akal and was, therefore, obligated to bargain with the Union before unilaterally changing unit employees' terms and conditions of employment. Generally, an employer is not required to bargain with a union regarding terms and conditions of employment of non-unit employees, even if those terms and conditions tangentially affect unit employees. *Torrington Co.,* 305 NLRB 938, 941 (1991). See also *KIRO, Inc.,* 317 NLRB 1325, 1337 (1995) citing *Allied Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 171–178, 92 S.Ct. 383, 393–397, 30 L.Ed.2d 341 (1971) (collective-bargaining obligation under Section 8(d) extends only to "terms and conditions of employment" of employees in appropriate bargaining unit). I am mindful of the fact that these cases did not arise in a successorship setting. However, the General Counsel and Charging Party fail to advance a persuasive reason, or case law in support of their argument, as to why Respondent's policy that applies to only non-bargaining unit employees constituted a change in terms and conditions of employment for bargaining unit employees. As such, I recommend dismissal of Complaint paragraph 17(A)(ii).

CONCLUSIONS OF LAW

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

2. United Government Security Officers of America, International Union jointly with its Member Local 85, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of

Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 85, in the Western District of the State of Texas in the cities of Austin, Del Rio, San Antonio, Alpine, and Waco, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

3. United Government Security Officers of America, International Union jointly with its Member Local 86, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 86, in the Eastern District of the State of Texas in the cities of Beaumont, Lufkin, Marshall, Plano, Tyler, Sherman, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

4. United Government Security Officers of America, International Union jointly with its Member Local 109, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 109, in the Western District of the State of Louisiana in the cities of Alexandria, Shreveport, Monroe, Lake Charles, and Lafayette, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

5. United Government Security Officers of America, International Union jointly with its Member Local 110, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 110, in the Middle District of the State of Louisiana in the city of Baton Rouge, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

6. United Government Security Officers of America, International Union jointly with its Member Local 111, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 111, in the Eastern District of the State of Louisiana in the city of New Orleans, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

7. United Government Security Officers of America, International Union jointly with its Member Local 152, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 152, in the Southern District of the State of Iowa, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

8. United Government Security Officers of America, International Union jointly with its Member Local 161, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 161, in the Southern District of the State of Iowa in the cities of Des Moines and Council Bluffs, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

9. United Government Security Officers of America, International Union jointly with its Member Local 167, is a labor

organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 167, in the Western District of the State of Arkansas in the following cities of Fort Smith, Fayetteville, El Dorado, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

10. United Government Security Officers of America, International Union jointly with its Member Local 173, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 173, in the Northern District of the State of Texas in the cities of Abilene, Amarillo, Dallas, Fort Worth, Lubbock, San Angelo and Wichita Falls, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

11. United Government Security Officers of America, International Union jointly with its Member Local 175, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 175, in the Northern District of the State of Iowa in the city of Sioux City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

12. United Government Security Officers of America, International Union jointly with its Member Local 220, is a labor organization within the meaning of Section 2(5) of the Act and the exclusive representative, within the meaning of Section 9(a) of the Act, of the following employees who constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 220, in the Western District of the State of Missouri in the following cities of Kansas City, Springfield, and Jefferson City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

13. Between September 5 and October 8, 2015, and continuing to date, Respondent has failed and refused to recognize United Government Security Officers of America, International Union, jointly with its Member Locals 85, 86, 109, 110, 111, 152, 161, 167, 173, 175, 220 (Union), as the exclusive representative of its employees in the appropriate units described in paragraphs 2 through 12, above, and thereby has violated and is violating Section 8(a)(5) and (1) of the Act.

14. On about December 1, 2015, Respondent violated Section 8(a)(5) and (1) of the Act by implementing the following changes to its employees' terms and conditions of employment without first notifying the Union or providing the Union an opportunity to bargain: temporarily suspending the 401(k) program; ceasing to pay the costs of obtaining follow-up medical examinations; ceasing to pay employees for time spent obtaining follow-up medical examinations; refusing to process grievances; ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties; and ceasing to offer major medical insurance coverage.

15. The Respondent did not violate the Act in any other manner alleged in the complaint.

16. Respondent's above-described unlawful conduct affects commerce within the meaning of Section 2(6) and (7) of the Act.

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. I recommend that the Board order the Respondent to recognize and bargain with the Union without further delay and, additionally, to post the Notice to Employees attached to this decision as an Appendix.

Having found that Respondent is a perfectly clear successor to Akal, it shall, on request of the Union, to retroactively restore the terms and conditions of employment established by its predecessor and rescind the unilateral changes it has made. Respondent shall also make employees whole for any loss of wages or other benefits they suffered as a result of Respondent's unilateral changes in the manner set forth in *Ogle Protective Service, Inc.,*183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010).

In addition, Respondent shall remit any payments it owes to employee benefit funds, including any additional amounts due the funds on behalf of the unit employees in accordance with

Merryweather Optical Co., 240 NLRB 1213 (1979). Further, Respondent shall reimburse unit employees for any expenses ensuing from its failure to make any required contributions, as set forth in *Kraft Plumbing & Heating, Inc.,* 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be compounded in the manner set forth in *Ogle Protection Service,* supra, with interest as prescribed in *New Horizons,* supra, compounded daily as prescribed in *Kentucky River Medical Center,* supra.

Finally, Respondent shall compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.,* 363 NLRB No. 143 (2016).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

Respondent, Walden Security, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Government Security Officers of America, International Union jointly with its Member Locals 85, 86, 109, 110, 111, 152, 161, 167, 173, 175, 220 (Union), as the exclusive representative of its employees in the appropriate units described in paragraphs 2 through 12 of the Conclusions of Law, above.

(b) Implementing the changes to its employees' terms and conditions of employment without first notifying the Union or providing the Union an opportunity to bargain, including by: temporarily suspending the 401(k) program; ceasing to pay the costs of obtaining follow-up medical examinations; ceasing to pay employees for time spent obtaining follow-up medical examinations; refusing to process grievances; ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties; and ceasing to offer major medical insurance coverage.

(c) In any like or related manner interfering with, restraining, or coercing employees 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) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate units concerning terms and conditions of employment including suspending the 401(k) program, ceasing to pay the costs of obtaining follow-up medical examinations, ceasing to pay employees for time spent obtaining follow-up medical examinations, refusing to process grievances, ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties, and ceasing to offer major medical insurance coverage, and, if an understanding is reached, embody the understanding in a signed agreement or signed agreements:

> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 85, in the Western District of the State of Texas in the cities of Austin, Del Rio, San Antonio, Alpine, and Waco, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
>
> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 86, in the Eastern District of the State of Texas in the cities of Beaumont, Lufkin, Marshall, Plano, Tyler, Sherman, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
>
> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 109, in the Western District of the State of Louisiana in the cities of Alexandria, Shreveport, Monroe, Lake Charles, and Lafayette, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
>
> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 110, in the Middle District of the State of Louisiana in the city of Baton Rouge, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
>
> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 111, in the Eastern District of the State of Louisiana in the city of New Orleans, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.
>
> All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal

[8] 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.

Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 152, in the Southern District of the State of Iowa, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 161, in the Southern District of the State of Iowa in the cities of Des Moines and Council Bluffs, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 167, in the Western District of the State of Arkansas in the following cities of Fort Smith, Fayetteville, El Dorado, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 173, in the Northern District of the State of Texas in the cities of Abilene, Amarillo, Dallas, Fort Worth, Lubbock, San Angelo and Wichita Falls, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 175, in the Northern District of the State of Iowa in the city of Sioux City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 220, in the Western District of the State of Missouri in the following cities of Kansas City, Springfield, and Jefferson City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

(b) On request of the Union, rescind the changes in terms and conditions of employment for the unit employees that were unilaterally implemented on about December 1, 2015, including temporarily suspending the 401(k) program; ceasing to pay the costs of obtaining follow-up medical examinations; ceasing to pay employees for time spent obtaining follow-up medical examinations; refusing to process grievances; ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties; and ceasing to offer major medical insurance coverage.

(c) Make employees whole for any loss of earnings and other benefits suffered as a result of the unlawful conduct in the manner set forth in the remedy section of this decision.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Within 14 days after service by the Region, post at all of its facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 14, 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, 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. If 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 September 15, 2015.

(f) Within 21 days after service by the Region, file with the Regional Director of Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 7, 2017

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 fail to recognize and bargain with United Government Security Officers of America, International Union jointly with its Member Locals 85, 86, 109, 110, 111, 152, 161, 167, 173, 175, 220 (Union), as your exclusive collective-bargaining representative in the appropriate units described below.

WE WILL NOT implement changes to your terms and conditions of employment without first notifying the Union and providing the Union an opportunity to bargain, such as by: temporarily suspending the 401(k) program; ceasing to pay the costs of obtaining follow-up medical examinations; ceasing to pay employees for time spent obtaining follow-up medical examinations; refusing to process grievances; ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties; and ceasing to offer major medical insurance coverage.

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

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate units concerning terms and conditions of employment, including suspending the 401(k) program, ceasing to pay the costs of obtaining follow-up medical examinations, ceasing to pay employees for time spent obtaining follow-up medical examinations, refusing to process grievances, ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties, and ceasing to offer major medical insurance coverage, and, if an understanding is reached, embody the understanding in a signed agreement or signed agreements:

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 85, in the Western District of the State of Texas in the cities of Austin, Del Rio, San Antonio, Alpine, and Waco, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 86, in the Eastern District of the State of Texas in the cities of Beaumont, Lufkin, Marshall, Plano, Tyler, Sherman, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 109, in the Western District of the State of Louisiana in the cities of Alexandria, Shreveport, Monroe, Lake Charles, and Lafayette, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 110, in the Middle District of the State of Louisiana in the city of Baton Rouge, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 5th Circuit consisting of UGSOA Local 111, in the Eastern District of the State of Louisiana in the city of New Orleans, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 152, in the Southern District of the State of Iowa, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 161, in the Southern District of the State of Iowa in the cities of Des Moines and Council Bluffs, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 167, in the Western District of the State of Arkansas in the following cities of Fort Smith, Fayetteville, El Dorado, and Texarkana, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respond-

ent in the 5th Circuit consisting of UGSOA Local 173, in the Northern District of the State of Texas in the cities of Abilene, Amarillo, Dallas, Fort Worth, Lubbock, San Angelo and Wichita Falls, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 175, in the Northern District of the State of Iowa in the city of Sioux City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

All full-time and shared position Federal Court Security Officers (CSOs), Federal Special Security Officers (SSOs), Lead Federal Court Security Officers (LCSOs) and Lead Federal Special Security Officers (LSSOs) employed by the Respondent in the 8th Circuit consisting of UGSOA Local 220, in the Western District of the State of Missouri in the following cities of Kansas City, Springfield, and Jefferson City, excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

WE WILL, on request of the Union, rescind the changes in terms and conditions of employment for the unit employees that were unilaterally implemented on about December 1, 2015, including: temporarily suspending the 401(k) program; ceasing to pay the costs of obtaining follow-up medical examinations; ceasing to pay employees for time spent obtaining follow-up medical examinations; refusing to process grievances; ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties; and ceasing to offer major medical insurance coverage.

WE WILL pay employees for the wages and other benefits lost because of the unilateral changes to their terms and conditions of employment that we made without first notifying and bargaining with the Union, plus interest compounded daily.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 14, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WALDEN SECURITY, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/14-CA-170110 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.