

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

TROPICAL WELLNESS CENTER, LLC

and

Cases 12-CA-167884
12-CA-171371

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO

**COUNSEL FOR THE GENERAL COUNSEL'S BRIEF
TO THE ADMINISTRATIVE LAW JUDGE**

I. Statement of the Case

Tropical Wellness Center, LLC (Respondent) provides drug and alcohol addiction treatment and rehabilitation services in Palm Bay, Florida. On or about August 9, 2013, Respondent recognized International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) as the exclusive collective-bargaining representative of its employees. After the parties executed a collective-bargaining agreement, Respondent began deducting and remitting Union dues, pursuant to the terms of the agreement. Then, sometime around July 2015, Respondent stopped deducting and remitting Union dues. At that time, the Union also learned that Respondent had failed and refused to make monthly pension fund contributions to the Union's Pension Fund, as required by the parties' collective-bargaining agreement.

On or about October 20, 2015, after unsuccessful informal attempts to address these issues, the Union submitted grievances to Respondent over Respondent's failure and refusal to deduct and remit union dues and make monthly pension fund contributions. On or about November 4, 2015, to aid in the processing of these grievances, the Union requested that Respondent furnish it with a list of

all current and former bargaining unit employees covered by the collective bargaining agreement from January 9, 2014 to the present, the hire date, wage, termination date, job classification, date of birth, and address of each such employee; a list of Respondent's contributions to the Pension Fund from January 9, 2014 to the present; and contact information for the new partner/owner of Respondent. Respondent failed and refused to provide the Union with the requested information. Respondent failed and refused to meet and bargain with the Union with respect to the grievances. Respondent's failure and refusal to deduct and remit Union dues; make monthly pension fund contributions; process grievances; and provide requested information violate Section 8(a)(1), (5) of the Act.

On January 19, 2016, as a result of Respondent's failure and refusal to deduct and remit union dues, make monthly pension fund contributions, meet and discuss the Union's grievances, and provide requested information, the Union filed the unfair labor practice charge in Case 12-CA-167884. Thereafter, on or about March 4, 2016, Respondent laid off the bargaining unit employees, in violation of Section 8(a)(1), (3), and (4) of the Act.

This case also presents two additional issues: whether Respondent is engaged in commerce therefore giving the Board jurisdiction over it and whether the Union is a labor organization, within the meaning of the Act. Although Respondent in its Answer admitted that it purchased and received at its facility services valued in excess of \$5,000 directly from points outside the State of Florida and to being an employer within the meaning of the Act, it denied it had derived gross revenues in excess of \$250,000 during the relevant time period. Documentary evidence will show that Respondent did in fact derive gross revenues as alleged in the Complaint.¹ Witness testimony will establish that the

¹ Even if Respondent did not derive gross revenues in excess of \$250,000, for the reasons discussed below, the General Counsel has established that the Board has statutory jurisdiction over Respondent.

Union exists to deal with employers with respect to the terms and conditions of employment of its employees and is therefore a labor organization within the meaning of the Act.

The credible record evidence in this case proves that Respondent is an employer within the meaning of the Act and that the Board has jurisdiction over Respondent; that the Union is a labor organization within the meaning of the Act; that Respondent unlawfully failed and refused to deduct and remit Union dues, make monthly pension fund contributions, process grievances, provide the Union with requested information, and laid off the bargaining unit employees, without giving the Union notice and an opportunity to bargain.

II. Statement of Facts

A. Respondent's business

At all material times, Respondent, a drug and alcohol addiction treatment and rehabilitation services center, has been a Florida limited liability company with an office and place of business in Palm Bay, Florida (Respondent's facility). [GCX 1(m), par. 2(a); 1(r), par. 2(a); 1(o), par. 2(a); 1(ff), par. 2(a)]² At all material times, Respondent purchased and received at its Palm Bay, Florida facility services valued in excess of \$5,000 directly from points outside the State of Florida, and from other enterprises located within the State of Florida, each of which other enterprises had received the goods from points outside the State of Florida. [GCX 1(m), par. 2(c); 1(r), par. 2(c); 1(o), par. 2(c); and 1(ff), par. 2(c)]. Respondent admits to being an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, but denies that it derived gross revenues in excess of \$250,000 during the relevant time period. [GCX 1(m), pars. 2(b) and 2(d); 1(r) pars. 2(b) and 2(d); 1(o) pars. 2(b) and 2(d); and 1(ff), pars. 2(b) and 2(d)].

² General Counsel's Exhibits are referenced herein as GCX (number). Administrative Law Judge's Exhibits are reference herein as ALJX (number). The hearing transcript is referenced as Tr. (page number).

Former managing assistant Twannette Jeffress testified that Respondent billed Blue Cross Blue Shield (BCBS), United Healthcare, and Cigna for services rendered or people paid out of pocket. [Tr. 108:6-9, 13]. In 2014, Respondent received \$259,532.03 in payments from BCBS and \$154,248.08 in payments from Cigna. [GCX 19 and GCX 20, pg. 7].³ In 2015, Respondent received \$187,957.40 in payments from BCBS and \$134,201.36 from Cigna. [GCX 19 and GCX 20, pg. 12]. In 2016, Respondent received \$101,126.46 in payments from BCBS and \$12,907.84 from Cigna. [GCX 19 and GCX 20, pg. 14].

In 2014, Respondent's deposits totaled in excess of \$900,000.00. [GCX 21-2 to 21-13].⁴ In 2015, Respondent's deposits totaled in excess of \$800,000.00. [GCX 21-14 to 21-25]. In 2016, Respondent's deposits totaled in excess of \$300,000.00. [GCX 21-26 to 21-37].

In June 2015, Respondent's management changed. [Tr. 92:3-11]. A meeting was held to inform the employees and introduce the new partners/owners: David Mahler and Lee Stein. [Tr. 58:1-25; 71:15-18; 72:1-2]. Mahler led the meeting. He gave his history with respect to his treatment center in Delray Beach, Comprehensive Addiction Recovery (CARE) and how he was going to make changes to Respondent's program. Employees were informed that they would continue to report to Clinical Director Luis Delgado. They were also informed that they would be trained on putting their files into a computer-based system; there would be remodeling; and CARE staff members would be coming up to train Respondent's employees in the ways of their treatment programs. [Tr. 59:10-25; 72:16-20].

As of June 2015, Respondent's management included Clinical Director Luis Delgado, Marketing Director Rick Bertel, Owner David Mahler, Owner Lee Stein, HR Director Pami

³ BCBS did not provide itemized totals for each year. Therefore, Counsel for the General Counsel calculated the payments made by BCBS by adding together, on a yearly basis, the payments made to Respondent.

⁴ The Chase bank records show that in addition to payments from BCBS and Cigna, Respondent received payments from United Healthcare and from individuals.

Maughan, Clinical Director Celia Carmack, and Manager Jill Scott. [Tr. 21:23-24; 30:18; 56:8-11; 57:21-25; 58:22-23; 62:23-24; 69:22-70:5; Tr. 91:6-10, 20-25; 92:1-2; 107:15-20; GCX 1(m); par. 4; 1(o), par. 4; 1(r), par. 4; 1(ff), par. 4; GCX 1(u), par. 4; GCX 4, pg. 40].

HR Director Pami Maughan testified that she worked for CARE from December 2015 through December 2016. Maughan explained that CARE is an alcohol and drug rehabilitation facility. She was hired by Lee Stein, President of Professional Training Association (PTA), which was contracted to run the day-to-day operations of CARE. PTA is co-owned by David Mahler. Maughan was responsible for maintaining employee files and managing employees' issues as they came up. Stein was her immediate supervisor. When Maughan started working for CARE, Stein informed her that Mahler and he owned Tropical Wellness Center. Because Respondent did not have an HR person dedicated to its facility, Maughan was also tasked with helping to maintain employee files and with any issues that arose. When Maughan started working at CARE, Stein also told her that Respondent's employees were represented by a union and that he wanted to get rid of it. Maughan told Stein that the Union was for the employees benefits. [Tr. 46:12-49:5].

The clinical director is responsible for overseeing the treatment plans, overseeing the therapists providing treatment under the plans, and ensuring that proper care is being given. The clinical director is also responsible for signing off on charts. [Tr. 50:10-19]. Respondent does not conduct regular employee evaluations. [Tr. 64:20-21].

B. Union's labor organization status

International Association of Machinists and Aerospace Workers is affiliated with the AFL-CIO. Its structure consists of a grand lodge, which is broken down geographically by territories: Eastern, Midwest, Western, and Southern. The territories have district lodges, which in turn have local lodges under them. The local lodges have two types of systems—independent and

amalgamated. An independent lodge consists of only members from one particular company. An amalgamated lodge consists of employees from different smaller companies. The local lodges have their own bylaws and their members vote on their individual shop stewards and for their collective-bargaining agreements. Members attend monthly lodge meetings; nominate officers for the local; nominate members to their negotiating committee; and ratify collective-bargaining agreements by secret ballot vote. The district lodges have business representatives and organizers who are responsible for negotiating and servicing contracts, investigating and processing grievances, and assisting in arbitration. [Tr. 17:7-11, 17-21; 18:10-25; 19:14-20; 20:2-6].

The Union's Southern territory consists of most southeastern states, including Florida. Florida has three districts: District 75 in the Panhandle; District 112 in the northern part of the state; and District 166 from Daytona to the south of the state. District 166 currently has seven local lodges throughout its geographical area. Local 971 is within District Lodge 166's geographical area. [Tr. 17:17-21; 19:3-8].

C. Respondent and the Union enter into a collective-bargaining agreement

In mid-July 2013, Respondent and the Union executed a neutrality agreement. [Tr. 21:12-14; GCX 2]. Thereafter, Grand Lodge Representative for the Southern Territory Javier Almazan secured authorization cards from a majority of Respondent's employees and sought a recognition agreement from Respondent. [Tr. 22:18-23:10]. The recognition agreement was signed by Respondent and the Union on August 9, 2013. [Tr. 23:13-18; GCX 3]. Respondent agreed to recognize the Union as the sole and exclusive bargaining representative for the janitorial, maintenance, instructors, house keepers, and all non-confidential clerical employees, excluding guards and supervisory employees as defined in the Act. [GCX 3]. After several bargaining sessions, the parties negotiated a collective-bargaining agreement, which was put to the membership and ratified on January 9, 2014. [Tr. 24:15-

24]. The collective bargaining agreement is effective from January 9, 2014 through January 8, 2017. [Tr.25:9-11; GCX 4]. As described in the collective bargaining agreement, the bargaining unit represented by Local Lodge 971 consists of technicians I, technicians II, lead technicians, counselors, therapists, nutritionist/spiritual advisors, and front desk/receptionists (the Unit). [GCX 1(m), par. 2(a); 1(o), par. 2(a); 1(r), par. 2(a); 1(ff), par. 2(a); 4; GCX 4 pgs. 1 and 13]. The collective-bargaining agreement contains a pension fund provision requiring that Respondent make pension contributions to the IAM Labor Management Pension Fund (the Pension Fund). [GCX 4 pgs. 8-9]. Respondent and the Union also executed a separate agreement with respect to the pension fund contributions. It sets forth Standard Contract Language with respect to Respondent's hourly contributions for 2014, 2015, and 2016. The agreement was signed on January 9, 2014. [Tr. 26:2-19; GCX 5]. The collective-bargaining agreement also contains a dues check-off provision. [Tr. 31:9-12; GCX 4, pg. 2].

After the collective-bargaining agreement went into effect, Almazan was responsible for representing the Unit. He handled the few issues that arose and was able to work them out with Respondent. [Tr. 27:17-28:7]. Sometime in January 2015, Union Organizer Kevin DiMeco took over the representation of the Unit. [Tr. 30:3-4]. DiMeco is responsible for handling grievances and negotiating agreements. In May 2015, DiMeco worked on an amendment to the discipline provision of the collective-bargaining agreement, which Respondent's Clinical Director Luis Delgado signed off on. [Tr. 30:5-22; GCX 6].

D. Respondent stops deducting and remitting union dues

Behavioral Health Tech Alice Kwolek, who started working for Respondent in September 2013, joined the Union after talking about it with DiMeco, and authorized union dues be deducted from her check. The dues were deducted. [Tr. 69:1-10; 21-24; 70:24-71:14]. Certified Addiction

Professional Theresa Lee started working for Respondent in April 2015. After 90 days of employment, Lee joined the Union and signed up to have union dues deducted. [Tr. 55:19-23; 56:2-3; 57:7-18]. Managing assistant Twannette Jeffress also authorized that dues be deducted from her check and they were. [Tr. 93:7-11].

Sometime after June 2015, Kwolek noticed that dues were no longer being deducted from her check. She brought this to DiMeco's attention. [Tr. 72:21-73:11]. Jeffress, who was responsible for processing payroll, testified that about a month after Mahler and Stein took over at Respondent's facility, Rick Bertel and David Mahler instructed her to stop remitting the union dues. [Tr. 90:9-12; 93:17-25; 94:1-2]. Manager Jill Scott from CARE also spoke to Jeffress about the union dues. [Tr. 94:3-14]. Every two weeks prior to paying the bills, Jeffress would send Scott a list of expenses. [Tr. 94:24-25]. Scott and Mahler reviewed the list sent by Jeffress and Mahler would approve the payments to be made and Scott would tell Jeffress who to pay, who not to pay, and who to delay. Jeffress continued to include the union dues in the list of expenses and Scott and Mahler consistently instructed her not to remit the dues. [Tr. 95:2-16]. When someone from the Union called Jeffress about the failure to remit dues, she said that she informed the caller that she had been told not to pay them. [Tr. 96:19-97:1]. Every time that Jeffress was told to remove the union dues from the expense list, she informed Scott that Respondent signed a contract, and they had to pay them. [Tr. 97:5-6].

Sometime in 2015, Jill Scott from CARE demanded that Jeffress provide her with a copy of the collective bargaining agreement. Jeffress informed Scott that she had sent Scott the contract a few times and that she had also sent copies of it to Mahler a few times. Scott asked for a hard copy. Jeffress gave Scott a hard copy. [Tr. 97:15-19]. Scott asked if Jeffress had read the contract. Jeffress said no. [Tr. 22-25]. Scott then met with Bertel outside Jeffress' door. Jeffress heard them having a discussion about the contract. [Tr. 98:1-6]. While Bertel and Scott spoke, Clinical Director for

CARE, Pepper (full name unknown), was in Jeffress office. Jeffress told Pepper that Respondent's employees were represented by a union. Pepper asked why they would do that and that treatment centers are not part of unions. Pepper wanted to know what they were getting out of it. Jeffress explained that Bertel and Delgado had made the decision to recognize the Union. [Tr. 98:15-99:13]. Jeffress continued to submit the expense for the union dues, and Scott said that they were not "fucking paying them." [Tr. 100:5-9]. Scott said that they were not going to be part of the Union. [Tr. 102:25].

According to DiMeco, in or around late September/early October 2015, he was asked to go down to Respondent's facility. There he learned that Respondent's new partner had instructed the employee responsible for deducting Union dues for Respondent to stop remitting the dues. DiMeco then called the International in order to ascertain whether Respondent had stopped remitting the Union dues. DiMeco was informed that Respondent had last remitted dues for July 2015, which were received in August 2015. [Tr. 31:17-32:13; GCX 7].

E. Respondent not making monthly pension contributions

After Respondent stopped remitting the Union dues, DiMeco became concerned about the pension. So, he decided to investigate whether the payments were being made, since the collective-bargaining agreement includes a pension provision. DiMeco reached out to Bertel and asked if the pension payments were being remitted. Bertel did not know. DiMeco then called the Union's pension office to inquire if they were receiving pension monies from Respondent. DiMeco was told that they were not receiving them. [Tr. 33:18-25].

Jeffress recalled that around the same time the union dues issue arose, she learned about the pension. Jeffress had not submitted any pension payments. [Tr. 103:15-20]. DiMeco mentioned the pension and then Bertel asked her about it. [Tr. 104:1-10]. Jeffress told Bertel that no one had told

her about the pension. He asked if she had read the contract and she replied it had nothing to do with her. [Tr. 104:12-14].

F. Union files grievances

Sometime in early October 2015, DiMeco met with Bertel at Respondent's facility and gave him an oral grievance over Respondent's failure and refusal to deduct and remit Union dues and make monthly pension fund contributions. DiMeco also gave Bertel the grievance in writing. Bertel said that he would take care of the issue and get the monies to the International. Bertel also told DiMeco that he would look into the pension and find out why the payments were not being remitted. [34:4-35:4; GCX 8].

After not hearing back from Bertel, on or about October 12, 2015, DiMeco called Bertel to find out about the dues. Bertel informed DiMeco that he was taking care of it and sent him a text message with a picture of a check for the back dues owed. DiMeco also asked Bertel about the pension. Bertel said that he was still looking into the pension. [Tr. 35:20-36:10]. DiMeco waited a few days after his conversation with Bertel before calling the International to find out about the dues. He asked if they had received a check, and he was informed that they had not. [Tr.36:14-19]. DiMeco called, e-mailed, and visited Respondent's facility in order to reach Bertel. In his e-mail, DiMeco requested that Bertel pay the dues and asked Bertel to set up a meeting with his new partners. [Tr. 36:20-37:12; GCX 9]. Bertel did not respond to DiMeco's email. [Tr. 37:17-19]. Jeffress confirmed that DiMeco attempted to talk to Bertel about the dues. [Tr. 103:2-14].

In early November 2015, DiMeco filed a grievance over Respondent's failure to make the monthly pension fund contributions. DiMeco went to Respondent's facility and had employee Twannette Jeffress sign for it. [Tr. 38:10; 105:12-16]. At first, she refused, but after speaking with Bertel, she agreed to do so in order to acknowledge receipt of the document by Respondent. [Tr.

105:5-16]. Jeffress gave the grievances to Bertel and Delgado. [Tr. 105:19-20]. Respondent did not respond to the grievance. [Tr. 39:5-7].

G. Union submits information requests

On or about November 4, 2015, DiMeco sent, by e-mail and certified mail, an information request to Bertel. The information request was mailed to Respondent's facility. DiMeco requested a list of all current and former bargaining unit employees covered by the collective bargaining agreement from January 9, 2014 to present, including their hire date, wage, termination date (if applicable), job classification, date of birth and address; a list of the employer contribution to the IAM National Pension Fund beginning January 9, 2014 to present; and contact information of the new partner/owner of Respondent. Bertel immediately called DiMeco and complained that DiMeco was requesting an awful lot of information. [Tr. 39:10-25; 40:20-22; 41:1-2; GCX 11]. DiMeco explained that he was doing his due diligence for the membership in order to get things straightened out. Bertel said that he would work on getting the information for DiMeco. Bertel and DiMeco also discussed the pension and the dues. Bertel told DiMeco that [the dues] had been resolved with the check that had been sent. DiMeco informed Bertel that the International had never received it. DiMeco also requested a meeting with the new partners—David Mahler and Lee Stein. Bertel said that he would work on that. The meeting was not set up. [Tr. 41:3-25]. Respondent did not provide the requested information. [Tr. 42:1-2].

On or about November 12, 2015, the information request sent by certified mail was returned to the Union. That same day, DiMeco drove down to Respondent's facility in order to hand deliver it to the front desk. When he arrived at the facility, DiMeco informed the front desk employee that the certified letter had been returned. The front desk employee then told DiMeco that she had been instructed by management not to sign for any certified mail at the facility. [Tr. 42:3-43:1]. DiMeco

left the information request with the front desk employee. Respondent did not provide any information or respond in any manner to the request. [Tr.43:6-10].

H. Union files unfair labor practice charge

DiMeco continued trying to contact Bertel in an effort to settle the grievances. Shortly before Christmas 2015, DiMeco finally reached Bertel and they agreed to meet in Cocoa, on road 520. Bertel was to meet DiMeco in order to handle the dues and pension issues and sign the grievance. But, Bertel did not show up. [Tr. 43:14-44:1]. DiMeco tried calling Bertel again, to no avail. [Tr. 44:14-16].

Respondent never met with the Union in order to address the grievances. The grievances were never resolved. [Tr.44:2-13]. Therefore, on January 19, 2016, the Union filed the unfair labor practice charge in Case 12-CA-167884. [Tr. 44:17-20; GCX 1(a)].

I. Respondent lays off bargaining unit

Theresa Lee testified that on March 3, 2016, she was notified by e-mail of a mandatory meeting for Respondent's employees to be held on March 4, 2016. Lee asked what was going on and she was assured by General Manager Sonya (last name unknown) that her job was secure because she was a certified addiction professional. Lee checked online and found that Respondent had posted two therapist positions on Indeed.com. She also found that Respondent had posted behavioral health tech jobs online as well. [Tr. 60:1-62:11; GCX 12; GCX 13]. On March 4, 2016, before the scheduled meeting, Lee asked Sonya about the job postings, but Sonya did not know what was going on. [Tr. 62:13-20].

Lee recalled that Alice Kwolek, Travis Beaver, Joanne James, Clinical Director Celia Carmack, and Pami Maughan attended the March 4, 2016 meeting. According to Lee, Maughan informed employees that Respondent was closing down the program and letting them go. Maughan

also claimed that the files were in a mess. Lee asked about their jobs. Maughan informed them that they could reapply for their jobs. Lee pointed out that she had seen them posted online the night before. Lee also asked if they could meet with the clients to let them know that they were leaving the premises. Maughan said no, that they would talk to the clients. The employees were instructed to clean out their offices and leave the property. Lee then cleaned out her office and left the property. [Tr. 62:21-64:6].

Kwolek testified that lead tech Joanne James called her on March 3, 2016 to let her know that a mandatory meeting was going to take place the next day, March 4, 2016. James informed Kwolek that two ladies from CARE would be coming up to meet with the employees. [Tr. 73:12-22]. Kwolek recalled that all of the techs—Joanne, Greg, Travis, the therapists—Heather and Theresa, Pami Maughan, and a lady from HR attended the meeting. Kwolek recalled that the lady from HR informed them that they were being laid off because they were closing Tropical Wellness due to the fact that they had no clients. Kwolek testified that Joanne James asked about Respondent already looking for help to replace them and they were informed that they could reapply if they wanted to. [Tr. 16-25]. Kwolek corroborated that employees were asked to gather their personal belongings, turn in their keys and leave the premises. [Tr. 75:3-6].

Prior to March 4, 2016, Lee had not been told that there were any issues or deficiencies with her charts. [Tr. 64:6-10]. However, sometime around July or August 2015, Lee learned that some of the files were not up to code and they were missing documents. [Tr. 66:9-10; 22-24]. John Didaglio, the Clinical Director for CARE, sent an email to Lee complaining about two files from two different therapists. [Tr. 64:22-65:8]. Lee then asked Pepper (Inu) from CARE about her own files and Pepper told Lee that her files were fine. [Tr. 66:24-25]. Pepper also informed Lee that Lee's files

were used as an example for the other therapists. At the time, Respondent had brought in new therapists and there had been some confusion regarding the files. [Tr. 67:1-3].

Kwolek also testified that she had not been told that there were any issues with the documentation she was entering in Kipu, the electronic medical recordkeeping, nor that it was deficient in any way. [Tr. 70:19-23; 75:7-13].

According to HR Director Maughan, on or about March 4, 2016 Respondent laid off the bargaining unit employees because they were shutting down the facility. About a week before the layoffs, CARE and Respondent's Clinical Director Celia Carmack informed Maughan that Respondent's charts were out of compliance and that required treatment was not being provided. Maughan did not review the charts. Carmack and Maughan met with Stein to explain the situation with the charts and Stein decided to lay off the employees. [Tr. 49:6-19]. Maughan asked Stein about the Union and he told her not to worry about it. Stein did not explain what he meant. Maughan does not know if anything was done with respect to the Union, but a few days after the meeting with Stein, Mahler called Maughan to tell her that he took care of the union issue. Mahler did not explain what he meant. Maughan admitted that she did not notify the Union of the impending layoffs and there is no evidence that anyone else did either. [Tr. 51:5-21].

After the decision to layoff the bargaining unit employees was made, Maughan asked Respondent's office manager, Margie Kinder, to send an email requesting a mandatory meeting of all the rehabilitation side employees. The meeting was held on March 4, 2016 in one of the group rooms. Maughan, Carmack, and most of the affected employees attended the meeting. Maughan explained the situation with the charts and that the care being given was so below state-required levels that if they were audited they would be shut down. Maughan informed the employees that Respondent decided to voluntarily shut down and that their positions were no longer necessary.

Maughan continued and told the employees that since Respondent was going to be revamping they would be able to reapply. [Tr. 51:22-52:25]. Maughan instructed the employees to clean out their offices, and turn in any badges, keys, and any other company property. [Tr. 53:1-7]. The laid off employees were not recalled. [Tr. 53:10-11].

On March 4, 2016, DiMeco was on his way to Respondent's facility when he received a call from a bargaining unit employee who told him that all of the employees had been terminated. [Tr. 44: 21-45:1]. The Union was not notified of Respondent's decision to discharge the employees and it did not provide the Union with an opportunity to bargain over the discharges. Furthermore, Respondent did not provide the Union with an opportunity to bargain over the effect of the discharges. [Tr. 45:2-14; GCX 1(d)].

III. ARGUMENT

Respondent did not appear at the hearing and did not comply with the subpoenas issued to it by Counsel for the General Counsel. Accordingly, the testimony offered by Almazan, DiMeco, Lee, Kwolek, Maughan, and Jeffress is un rebutted and should be credited. [Tr.78:20-25; GCX 16, 17, 18]. The Board has long held that a party's failure to present evidence within its possession that may reasonably be assumed to be favorable to it raises an adverse inference regarding the factual issue that the evidence could have addressed. *RCC Fabricators, Inc.*, 352 NLRB 701, 711 (2008).

A. The Board has Jurisdiction Over Respondent

Respondent provides drug and alcohol addiction treatment and rehabilitation services in Palm Bay, Florida. In conducting its operations, Respondent purchased and received at its Palm Bay, Florida facility services valued in excess of \$5,000 directly from points outside the State of Florida, and from other enterprises within the State of Florida, each of which other enterprises had received the goods directly from points outside the State of Florida. Contrary to the denial in its Answer,

Respondent derived gross revenues in excess of \$250,000 during the relevant time period. The Cigna and BCBS insurance documents and the Chase and Wells Fargo bank statements show that Respondent was paid in excess of \$250,000 in 2015 and in 2016. In *East Oakland Health Alliance, Inc.*, 218 NLRB 1270, 1271 (1975), the Board set the discretionary standard for hospitals and *other institutions* (emphasis added) at \$250,000. In *St. John's Hosp.*, 281 NLRB 1163, 1164 (1986), jurisdiction was asserted over a facility for rehabilitation and treatment of alcohol and drug addicts that derived gross revenues in excess of \$250,000. Therefore, as Respondent admits, the ALJ should find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Furthermore, even if the evidence is insufficient to establish that Respondent meets the Board's discretionary jurisdiction standard, the Board has statutory jurisdiction over Respondent. Pursuant to the Board's *Tropicana* doctrine, the Board will assert jurisdiction over an employer who refuses to provide information relevant to jurisdiction, irrespective of whether the employer meets the Board's discretionary jurisdictional standards, as long the record establishes that the employer meets the statutory jurisdictional standard. To establish statutory jurisdiction, it must be shown that Respondent engaged in more than *de minimis* interstate commerce, which is \$1,500. See *Valentine Painting and Wallcovering, Inc.* 331 NLRB 883 (2000). Here, Respondent did not appear at the hearing and refused to provide any information relevant to jurisdiction. However, it admitted in its Answer that it purchased and received services in excess of \$5,000 from points directly located outside the State of Florida, or from other entities who in turn received services in excess of \$5,000 directly from points located outside the State of Florida. [GCX 1(o), par. 2(c); 1(ff), par. 2(c)]. Accordingly, the record evidence establishes that the Board has statutory jurisdiction over Respondent.

B. The Union is a labor organization within the meaning of the Act.

Section 2(5) defines “labor organization” as follows:

The term “labor organization” means any organization of any kind, of any agency, or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). The Board has also expressed this policy as a three-part test: (1) employees must participate; (2) the organization must exist, at least in part, for the purposes of “dealing with” the employer, and (3) these dealings must concern “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” *Vencare Ancillary Services*, 334 NLRB 965, 969 (2001); *Electromation, Inc.*, 309 NLRB 990, 994 (1992). Cf. *Coinmach Laundry Corp.*, 337 NLRB 1286, 1287 (2003).

Almazan testified that the Union exists, at least in part, to deal with employers concerning conditions of work, grievances, labor disputes, wages, rates of pay, and hours of work. Its members vote on their individual shop stewards and their collective bargaining agreements. Employees attend monthly meetings and they nominate and elect local officers. The Union has representatives and organizers who negotiate first contracts, administer and service contracts, investigate and process grievances, and assist with arbitrations.

Based on the foregoing, it is clear that the Union satisfies the three-part test set forth by the Board. Employees participate in the Union. The Union deals with employers. Those dealings involve grievances, labor disputes, wages, and working conditions. Accordingly, the ALJ should find

that the Union is a labor organization within the meaning of Section 2(5) of the Act. As such, the Union entered into a collective bargaining agreement Respondent, which is effective by its terms from January 9, 2014 through January 8, 2017.

C. Respondent failed to continue in effect all of the terms of the parties' collective bargaining agreement

Sections 8(a)(5) and 8(d) establish an employer's obligation to bargain in good faith with respect to "wages, hours, and other terms and conditions of employment." Section 8(d) of the Act imposes an additional requirement when a collective bargaining agreement is in effect and an employer seeks to "modify" terms and conditions of employment "contained in" the agreement. In that instance, the employer must obtain the union's consent before implementing the change. *Oak Cliff-Golman Baking, Co.*, 207 NLRB 1063 (1973), *enfd.* 505 F.2d 1302 (5th Cir. 1974), *cert. denied* 423 U.S. 826 (1975).

i. Respondent violated Section 8(a)(5) by failing and refusing to make monthly deductions of union dues from the wages of employees in the bargaining unit who have signed dues check-off authorizations and failing and refusing to remit union dues to the Union, as required by Article 3 of the collective bargaining agreement

After the parties executed the collective bargaining agreement, the Unit employees authorized that dues be deducted from their paychecks. From January 2015 through July 2015, Respondent deducted and remitted union dues, as required by the parties' collective bargaining agreement and pursuant to dues authorization checkoff cards completed by employees. As established by the un rebutted testimony of Jeffress and DiMeco, Respondent stopped deducting and remitting dues in about July 2015.

It is well established that an employer violates Section 8(a)(5) of the Act by ceasing to deduct and remit dues in derogation of an existing contract. *Shen-Mar Food Products*, 221 NLRB 1329 (1976); *MBC Headwear, Inc.*, 315 NLRB 424, 428 (1994). By failing and refusing to deduct and

remit union dues, Respondent has been failing and refusing to bargain collectively and in good faith with the Union, in violation of Section 8(a)(1) and (5) of the Act.

ii. Respondent violated Section 8(a)(5) by failing and refusing to make monthly pension fund contributions to the IAM Labor Management Pension Fund, IAM National Pension Plan, as required by Article 15 of the collective bargaining agreement

Article 15 of the parties' collective bargaining agreement sets forth Respondent's obligation to make pension contributions to the IAM Labor Management Pension Fund. The parties also negotiated and executed separate Standard Contract Language that sets forth Respondent's hourly contribution to the Pension Fund for 2014, 2015, and 2016. However, Respondent never made those monthly contributions.

An employer violates Section 8(a)(5) of the Act when it fails and refuses to make contractual pension fund contributions. See e.g., *Alvin Greeson d/b/a Greeson Masonry*, 298 NLRB No. 163 (1990); *Island Transportation Company, Inc.*, 307 NLRB No. 187 (1992). Therefore, Respondent violated Section 8(a)(5) of the Act when it failed and refused to make monthly pension fund contributions to the Pension Fund.

iii. Respondent violated Section 8(a)(5) when it failed and refused to process grievances

After the Union learned that Respondent stopped deducting and remitting union dues and that it had failed to make monthly pension fund contributions, DiMeco tried to address the matter informally with Respondent, to no avail. DiMeco then filed grievances over Respondent's failure to deduct and remit union dues and Respondent's failure to make monthly pension fund contributions. First, DiMeco orally presented the grievances to Bertel, who said he would look into it. Bertel went so far as to text DiMeco the picture of a check that he claimed was being sent to cover dues. The Union never received that check. DiMeco subsequently submitted written grievances to Respondent.

Despite acknowledging receipt of the grievances, Respondent did not meet and bargain with the Union about those grievances. Furthermore, Respondent did not even reply to the Union, despite DiMeco's many attempts to contact Respondent regarding the grievances. The Board has found that in the context of grievance-arbitration proceedings pursuant to a provision in the collective-bargaining agreement, a refusal to attend and conduct grievance meetings to be unlawful. *Trailmobile Trailer, LLC*, 443 NLRB 95, 96-97 (2004). Article 14 of the parties' collective-bargaining agreement sets forth the parties' grievance procedure. DiMeco filed the grievances pursuant to that procedure. However, Respondent failed to meet and discuss those grievances. Therefore, Respondent violated Section 8(a)(5) of the Act when it failed and refused to meet and bargain regarding grievances over Respondent's failure and refusal to remit union dues and make pension contributions.

iv. Respondent violated Section 8(a)(5) when it failed and refused to provide the Union with requested information

Under the Act, an employer is obligated upon request to furnish the union with information that is potentially relevant and that would be useful to the union in discharging its statutory responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). These responsibilities include: (1) monitoring compliance and effectively policing the collective-bargaining agreement; (2) enforcing provisions of a collective-bargaining agreement; and (3) processing grievances. *American Signature, Inc.*, 334 NLRB 880, 885 (2001). The test for relevance is a liberal "discovery-type standard." *Acme, supra* at 437. Information that aids the grievance-arbitration process is considered relevant, including that needed to decide whether to proceed with a grievance to arbitration. *Acme, supra* at 438; *U.S. Postal Service*, 337 NLRB 820 (2002); *U.S. Postal Service*, 332 NLRB 635 (2000).

On or about November 4, 2015, the Union requested that Respondent furnish it with a list of all current and former bargaining unit employees covered by the collective-bargaining agreement from January 9, 2014 to the present, and the hire date, wage, termination date (if applicable), job classification, date of birth, and address of such employee; a list of the employer contributions to the Pension Fund from January 9, 2014 to the present; and contact information for the new partner/owner of Respondent. DiMeco testified that the Union sought this information in order to process the grievances over Respondent's failure and refusal to deduct and remit union dues and make pension contributions. At no time did Respondent challenge the relevance of the requested information. The Board has long held that information pertaining to the bargaining unit is presumptively relevant and no showing of relevance is required. *Ohio Power Co.*, 216 NLRB987, 991 (1975), *enfd.*, 531 F.2d 1381 (6th Cir. 1976). Presumptively relevant information includes the names of unit employees and their addresses; seniority dates; rates of pay; a list of job classifications and other pay-related data; a copy of insurance plans in effect and rates paid by the employer and employees; the number of paid holidays in effect; pension or severance plans; requirements for and amounts of vacations; incentive plans; night shift premiums; and "any other benefit or fringe benefit or privilege that employees receive." *Dyncorp/Dynair Services, Inc.*, 332 NLRB 602 (1996), *enfd.* 121 F.3d 698 (4th Cir. 1997); *International Protective Services, Inc.*, 339 NLRB 701 (2003); *Deadline Express*, 313 NLRB 1244 (1994). As to presumptively relevant requests, the employer has the burden of proving the lack of relevance, and a union does not need to make a specific showing of relevance unless the presumption is rebutted. *Contract Carriers Corp.*, 339 NLRB 851, 858 (2003). With respect to the contact information for the new partner/owner of Respondent, having learned about the change in management, DiMeco sought an opportunity to meet the new partners/owners. Article 14 of the collective-bargaining agreement states that disputes are to be resolved with the "Employer

representative.” To that end, the Union sought to learn the identity of Respondent’s new management. It is well settled that an employer is obligated to provide information which is relevant to a union’s decision to file or process grievances. See, e.g., *Bell Telephone Laboratories*, 317 NLRB 802, 803 (1995), *enfd. mem.* 107 F.3d 862 (3d Cir. 1997); *Barnard Engineering Co.*, 282 NLRB 617, 619-620 (1987). Here, like the employer in *Beth Abraham Health Services*, 332 NLRB 1234 (2000), Respondent was on notice regarding the relevance of the information sought. Respondent ignored the Union’s request and did not seek clarification. The information sought by the Union is relevant to its statutory responsibility to process grievances. Respondent has not presented evidence to establish lack of relevance. Therefore, Respondent violated Section 8(a)(5) when it failed and refused to furnish the Union with the information it requested on or about November 4, 2015.

D. Respondent unlawfully laid off its bargaining unit employees

i. Respondent violated Section 8(a)(3) of the Act when it laid off its bargaining unit employees because they joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

In order to establish unlawful discrimination under Section 8(a)(3) and (1) of the Act, the General Counsel must demonstrate by a preponderance of the evidence that the employees were engaged in protected activity, that the employer had knowledge of that activity, and that the employer’s hostility to that activity “contributed to” its decision to take an adverse action against the employees. *Director, Office of Workers’ Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994), *clarifying NLRB v. Transportation Management*, 462 U.S. 393, 395, 403 n. 7 (1983); *Wright Line*, 251 NLRB 1083, 089 (1980), *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).⁵

⁵ The *Wright Line* standard upheld in *Transportation Management* and clarified in *Greenwich Collieries* proceeds in a different manner than the “prima facie case” standard utilized in other statutory contexts. See *Reeves v. Sanderson*

Evidence that may establish a discriminatory motive – i.e., that the employer’s hostility to protected activity “contributed to” its decision to take adverse action against the employee – includes: (1) statements of animus directed to the employees or about the employees’ union or other protected activities (*see, e.g. Austal USA, LLC*, 356 NLRB No. 65, slip op. at 1 (2010)); (2) statements by the employer that are specific as to the consequences of union or protected activities and are consistent with the actions taken against the employees; (3) close timing between discovery of the employees’ union or protected activities and the discipline (*see, e.g., Traction Wholesale Center Co., Inc. v. NLRB*, 216 F.3d 92, 99 (D.C. Cir. 2000)); (4) the existence of other unfair labor practices that demonstrate that the employer’s animus has led to unlawful actions (*see e.g. Mid-Mountain Foods*, 332 NLRB 251, 251 n. 2, passim (2000), *enfd. mem.* 11 Fed. Appx. 372 (4th Cir. 2001); or (5) evidence that the employer’s asserted reasons for the employee’s discipline was pretextual, e.g., disparate treatment of the employee, shifting explanations provided for the adverse action, failure to investigate whether the employee engaged in the alleged misconduct, or providing a non-discriminatory explanation that defies logic or is clearly baseless (*see e.g., Lucky Cab Company*, 360 NLRB No. 43 (2014); *ManorCare Health Services – Easton*, 356 No. 39, slip op. at 3 (2010); *Greco & Haines, Inc.*, 306 NLRB 634, 634 (1992); *Wright Line*, 251 NLRB at 1088, n. 12, citing *Shattuck Denn Mining Co. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Cincinnati Truck Center*, 315 NLRB 554, 556-557 (1994), *enfd. sub nom. NLRB v. Transmart, Inc.*, 117 F.3d 1421 (6th Cir. 1997)).

Plumbing Products, Inc., 530 U.S. 133, 142-143 (2000) (applying title VII framework to ADEA case). In those other contexts, “prima facie case” refers to the initial burden of production (not persuasion) within a framework of shifting evidentiary burdens. In the NLRA context, by contrast, the General Counsel proves a violation at the outset by making a persuasive showing that the employer’s hostility toward protected activities was a motivating factor in the employee’s discipline. At that point, the burden of persuasion shifts to the employer to provide its affirmative defense. Because *Wright Line* allocates the burden of proving a violation and proving a defense in this distinct manner, reference to the General Counsel’s “prima facie case” or “initial burden” are not quite accurate, and can lead to confusion, as General Counsel’s proof of a violation is complete at the point where the General Counsel establishes by a preponderance of the evidence that employer’s hostility toward protected activities was a motivating factor in the discipline.

Once the General Counsel has established that the employees' protected activity was a motivating factor in the employer's decision, the employer may defeat a finding of a violation by establishing, as an affirmative defense, that it would have taken the same adverse action even in the absence of protected activity. *See NLRB v. Transportation Management*, 462 U.S. at 401 ("the Board's construction of the statute permits an employer to avoid being adjudged a violator by showing what his actions would have been regardless of his forbidden motivation"). The employer has the burden of establishing that affirmative defense. *Id.*

The General Counsel has established a prima face case here. The laid off employees are represented by the Union. That representation is embodied in the collective-bargaining agreement. When Respondent's new owners took over, they immediately sought a way to get rid of the Union. To that end, Respondent stopped deducting and remitting union dues, as set forth in the collective-bargaining agreement. Manager Scott told Jeffress that Respondent was not going to be part of the Union. Although HR Director Maughan stated that Clinical Director Carmack told her that the charts were out of compliance, Maughan did not review those charts. There is no evidence that Respondent sought to interview the employees responsible for those charts. There is no evidence that Respondent conducted any investigation regarding those charts. Instead, Lee and Kwolek credibly testified that nothing had been said about their record keeping and, in Lee's case, her charts were used as an example for other therapists. Additionally, the evidence presented shows that the clinical director is ultimately responsible for signing off on the charts as treatment is administered.

Respondent does not deny that it laid off the bargaining unit employees. Respondent had the opportunity to appear at the hearing and present an affirmative defense for laying off the bargaining unit employees, but did not. An adverse inference should be drawn based upon Respondent's failure to appear at the hearing and produce subpoenaed documents and present witness testimony to support

its denials. The adverse inference rule consists of the principle that “when a party has relevant evidence within its control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.” *Auto Workers v. NLRB*, 459 F.2d 1329, 1335-1336 (D.C. Cir. 1972) (describing the adverse inference rule as “more product of common sense than of the common law”); see also *Metro-West Ambulance Service, Inc.*, 360 NLRB No. 124 at p. 2-3 and at fn. 13 (2014); *SKC Electric*, 350 NLRB 857, 872 (2007). An adverse inference may be drawn based upon a party’s failure to call a witness within its control having particular knowledge of the facts pertinent to an aspect of the case. See *Chipotle Services, LLC*, 363 NLRB No. 37, p.1, fn. 1, p. 13 (2015) (adverse inference is particularly warranted where uncalled witness is an agent of the party in question); *SKC Electric, Inc.*, 350 NLRB at 872-873. An adverse inference may also be drawn based upon a party’s failure to introduce into evidence documents containing information directly bearing on a material issue. See *Metro-West Ambulance Service, Inc.*, 360 NLRB No. 124 at p. 2-3 (failure to produce subpoenaed accident reports pertinent to the “treatment of similarly situated employees” warrants adverse inference that records would have established that such employees were treated more leniently than discriminatee); *Massey Energy Co.*, 358 NLRB 1643, 1692, fn. 63 (2012); see also *Zapex Corp.*, 235 NLRB 1237, 1239 (1978). Therefore, Respondent violated Section 8(a)(3) when it laid off the bargaining unit employees.

ii. Respondent violated Section 8(a)(4) when it laid off the bargaining unit employees because the Union filed the unfair labor practice charge in Case 12-CA-167884 on behalf of the bargaining unit employees

Section 8(a)(4) of the Act states that it shall be an unfair labor practice for an employer ... to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act... Alleged violations are assessed using the *Wright Line* methodology. *McKesson Drug Co.*, 337 NLRB 935, 936 (2002). The Union filed the charge in Case 12-CA-

167884 on January 19, 2016. Then, on March 4, 2016, Respondent laid off the bargaining unit employees, less than two months after the unfair labor practice was filed and served on Respondent. For the reasons set forth above, Respondent failed to meet its *Wright Line* burden. Respondent does not deny that it laid off the bargaining unit employees and, as stated above, it did not appear at the hearing and presented no affirmative defenses. Therefore, the evidence establishes that Respondent violated Section 8(a)(4) when it laid off the bargaining unit employees as alleged in the Complaint.

iii. Respondent violated Section 8(a)(5) when it failed and refused to provide the Union with notice and an opportunity to bargain over the layoffs.

It is settled that an employer violates Section 8(a)(5) of the Act by unilaterally changing employee wages, hours, and other terms and conditions of employment—mandatory subjects of bargaining—without first providing their bargaining representative prior notice and opportunity to bargain over those changes. *NLRB v. Katz*, 369 U.S. 736 (1962). Termination of employment has long been considered a mandatory subject of bargaining. *Ryder Distribution Resources*, 302 NLRB 76, 90 (1991). Article 7 of the parties’ collective-bargaining agreement states that Respondent has “the power to discharge” “for just cause.” It also states that Respondent “will give the Union notice of all discharges and layoffs within seven (7) working days after the employee’s discharge or layoff.” When Stein made the decision to layoff the bargaining unit employees, Maughan asked about the Union and Stein told her not to worry about it. Later on, Mahler told Maughan that he took care of the union. Maughan did not notify the Union of the layoffs. DiMeco testified that Respondent did not provide any notice or an opportunity to bargain over the layoffs. DiMeco learned about them when the employees informed him that they had been laid off. Based on the foregoing, Respondent violated Section 8(a)(5) when it failed and refused to provide the Union with notice and an opportunity to bargain over the decision to lay off employees and the effects of the layoffs.

IV. Conclusion

The credible and un rebutted evidence establishes that Respondent is an employer within the meaning of the Act, and that the Union is a labor organization within the meaning of the Act. The evidence furthermore shows that Respondent stopped deducting and remitting union dues; failed to make pension contributions; failed and refused to process the Union's grievances; failed and refused to provide requested information; laid off the bargaining unit employees because of their support for the Union and because the Union filed charges with the Board; and laid off the employees without giving the Union notice and an opportunity to bargain over the decision and its effects. For the reasons set forth above, Counsel for the General Counsel therefore respectfully asks that the ALJ find that Respondent has violated Sections 8(a)(1), (3), (4), and (5) of the Act through all of its conduct described above. Counsel for the General Counsel seeks a Board Order requiring Respondent to immediately:

1. Cease and desist its unlawful conduct in all respects.
2. Recognize and bargain with International Association of Machinists and Aerospace Workers, Local Lodge 971, District 166, AFL-CIO (the Union) as the exclusive collective-bargaining representative with respect to wages, hours of work, and other terms and conditions of employment, of our employees in the following appropriate unit:

All technicians I, technicians II, lead technicians, therapists, nutritionist/spiritual advisors, and front desk/receptionists employed by Tropical Wellness Center, LLC.

3. Reimburse the Union from its own funds, without recouping the amount from its employees, with interest at the rate prescribed in *New Horizons for the Retarded, Inc.*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), all dues that Respondent failed to deduct and remit to the Union. See *Alamo Rent-A-Car*, 362 NLRB No. 135 (2015).
4. Reimburse the Union from its own funds, without recouping the amount from its employees, with interest at the rate prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra., all pension payments that Respondent was required to remit pursuant to the terms of the parties' collective-bargaining agreement.

5. Process grievances.
6. Provide the Union with the information it has requested since November 4, 2015.
7. Offer to immediately reinstate all laid off bargaining unit employees including, but not limited to Travis Beaver, Greg Dombel, Joanne James, Jamie Kollock Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobel to their former jobs and without prejudice to their seniority or any other rights and privileges previously enjoyed.
8. Make the laid off bargaining unit employees including, but not limited to Travis Beaver, Greg Dombel, Joanne James, Jamie Kollock Alice Kwolek, Teresa Lee, Trinity Phillips, and Heather Moore Strobel whole by paying them for the wages and other benefits they lost because of their unlawful discharges, with interest.
9. Require that Respondent duplicate and mail at its own expense a copy of the Notice attached hereto to all employees employed by Respondent at any time since July 1, 2015.

Counsel for the General Counsel also requests that the Administrative Law Judge order any other relief deemed just and proper to effectuate the purposes of the Act.

DATED at Miami, Florida, this 11th day of January 2019.

Respectfully submitted,

/s/ Marinelly Maldonado

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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 a representative 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 International Association of Machinists and Aerospace Workers, Local Lodge 971, District 166, AFL-CIO (the Union) as the exclusive collective-bargaining representative with respect to wages, hours of work, and other terms and conditions of employment, of our employees in the following appropriate unit:

All technicians I, technicians II, lead technicians, counselors, therapists, nutritionist/spiritual advisors, and front desk/receptionists employed by Tropical Wellness Center, LLC.

WE WILL NOT lay off or discharge employees because of their membership in or activities on behalf of the Union, or because the Union filed charges against us with the National Labor Relations Board on behalf of our employees.

WE WILL NOT lay off employees in the above unit without giving the Union prior notice and a meaningful opportunity to bargain with us about the decision to make such changes and the effects of the decision to make such changes.

WE WILL NOT fail or refuse to make required monthly pension fund contributions as required by our collective-bargaining agreement with the Union, while that agreement is in effect, without the Union's consent, or thereafter without giving the Union notice and an opportunity to bargain.

WE WILL NOT fail or refuse to deduct monthly union dues from the wages of our employees who have signed dues check-off authorizations, or remit checked-off dues to the Union, as required by our collective-bargaining agreement with the Union, while that agreement is in effect, without the Union's consent.

WE WILL NOT fail or refuse to provide the Union with information it request that is relevant and necessary to its role as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with your above stated rights under Section 7 of the National Labor Relations Act.

WE WILL recognize the Union and meet and bargain in good faith with the Union as the exclusive collective bargaining representative of our employees in the above unit with respect to wages, hours, and other terms and conditions of employment until a collective-bargaining agreement or a bona fide impasse in bargaining for a collective-bargaining agreement is reached, and if an understanding is reached, **WE WILL** embody it in a signed agreement.

WE WILL offer employees Travis Beaver, Joanne James, Heather Moore Strobel, Alice Kwolek, Greg Dombal, Trinity Phillips, Theresa Lee, and Jamie Kollock, and any other laid off bargaining unit employees, immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay employees Travis Beaver, Joanne James, Heather Moore Strobel, Alice Kwolek, Greg Dombal, Trinity Phillips, Therese Lee, and Jamie Kollock, and any other laid off bargaining unit employees, for the wages and other benefits they lost because we fired them on March 4, 2016.

WE WILL compensate employees Travis Beaver, Joanne James, Heather Moore Strobel, Alice Kwolek, Greg Dombal, Trinity Phillips, Therese Lee, and Jamie Kollock, and any other laid off bargaining unit employees, for the adverse tax consequences, if any, of receiving a lump-sum backpay award covering a period longer than one calendar year, and **WE WILL** file a report with the Regional Director allocating the employees' backpay awards to the appropriate calendar years.

WE WILL remove from our files all references to the layoffs of employees Travis Beaver, Joanne James, Heather Moore Strobel, Alice Kwolek, Greg Dombal, Trinity Phillips, Theresa Lee, and Jamie Kollock, and any other bargaining unit employees, and **WE WILL** notify each of them in writing that this has been done and that the layoffs will not be used against them in any way.

WE WILL remit union dues to the Union on behalf of Respondent's employees in the above unit who have executed dues check-off authorizations, for the period since July 19, 2015, with interest, and make timely monthly union dues deductions and remittances thereafter as required by the terms of the collective-bargaining agreement.

WE WILL reimburse IAM National Pension Fund, National Pension Plan for monthly pension contributions on behalf of all employees in the above unit pursuant to the collective-bargaining agreement with the Union, for the period since July 19, 2015, with interest.

WE WILL provide the Union with the information it requested on November 4, 2015.

TROPICAL WELLNESS CENTER, LLC

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824

Telephone: (813)228-2641
Hours of Operation: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

CERTIFICATE OF SERVICE

I hereby certify that the Motion to Introduce Documentary Evidence in Cases 12-CA-167884 and 12-CA-171371 was served as follows on January 11, 2019.

By electronic filing:

Hon. Elizabeth Tafe
Administrative Law Judge
National Labor Relations Board
Division of Judges
1015 Half Street SE
Washington, DC 20570-0001

By regular and certified mail:

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