

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

**UNITED GOVERNMENT SECURITY OFFICERS
OF AMERICA INTERNATIONAL AND ITS
LOCAL 217**

and

Case 04-CB-202803

ALBERT FRAZIER, an Individual

**COUNSEL FOR THE GENERAL COUNSEL'S
ANSWERING BRIEF TO RESPONDENTS' EXCEPTIONS**

Dated: March 5, 2019

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I. Introduction

On January 22, 2019, Administrative Law Judge (ALJ) Michael A. Rosas issued a Decision finding that United Government Security Officers of America International and its Local 217 (Respondents) violated Section 8(b)(1)(A) of the Act by threatening a member to dissuade him from vigorously engaging in protected activity, and then by disaffiliating from approximately 80 members in a 225-member unit in bad faith retaliation for members' protected activity. Counsel for the General Counsel submits this Answering Brief to Respondent's exceptions pursuant to Section 102.46 of the Board's Rules and Regulations. As explained below, the ALJ's decision is fully supported by the record evidence and is consistent with well-established Board precedent, while Respondents' exceptions are contrary to both. Counsel for the General Counsel therefore respectfully requests the Board to affirm the ALJ's rulings, findings, and conclusions.

II. Facts

A. Background

1. The Employer's Operations

Federal Protective Services (FPS) contracts with private security companies to provide security guard services to federal government sites located in Philadelphia, Pennsylvania and the surrounding counties.¹ (T. 15:18-22; 18:8-12; 52:16-25). Allied Universal Security Services (the Employer)² held the Philadelphia FPS contract until October 1, 2017. (J Ex. 7 at 2; T. 18:22-24; 103:21-22; 105:13-17). After October 1, Triple Canopy took over operation of the Philadelphia

¹ References to General Counsel's Exhibits will be designated as (GC Ex. __); references to the transcript will be designated as (T. Page: Line(s)); references to Joint Exhibits will be designated as (J Ex. __); references to the ALJ's Decision will be designated as (ALJD__); and references to Respondents' Brief in Support of Exceptions will be designated as (Respondents' Brief__).

² The Employer was previously named C&D Security and AlliedBarton. (T. 103:24-25, 104:1-2).

FPS contract from the Employer.³ (T. 104:14-20). The Philadelphia FPS contract covers approximately 30 buildings housing federal agencies, including Veterans Affairs (VA), Internal Revenue Service (IRS), and Social Security Administration (SSA).⁴ (T.18:13-16; 103:16-19). The Employer subcontracted with other security companies to manage operations of the VA and SSA. (T. 17:3-7; 19:4-19; 22:3-6). Three different subcontractors operated those two sites from 2012 through 2016. (T. 19:18-25; 20:1). The most recent subcontractor was Greenlee Security (Greenlee), which was in place for approximately one year in 2015-2016. (T. 19:24-25). The Employer assumed operation of the two sites after Greenlee ceased managing them in 2016. (T. 19:24-25; 20:1).

Approximately 225 Protective Security Officers (Officers or PSOs) worked for the Employer, and later Triple Canopy, to secure the Philadelphia FPS sites. (T. 103:20).⁵ Officers are generally assigned to a specific building, where the Officer is responsible for securing building entry points, screening visitors, patrolling, and filing security reports. (T. 52:21-23; 79:14-25; 80:1-4). An Officer may work overtime at any building, not just their assigned building, if they understand how to operate the post. (T. 86:4-6; 95:8-25; 96:1). Officers Albert Frazier, Rashid Goins, and Andrea Markert guard the VA building. (T. 15:24-25; 53:1-2; 79:14-15). Frazier has worked under the Philadelphia FPS contract for thirteen years; he has been stationed at the VA since 2013, and previously worked at other buildings including the SSA. (T. 53:1-18). Markert has

³ Triple Canopy continued to employ the guards and signed an assumption agreement when it took over the Philadelphia FPS contract. (J Ex. 5; T. 104:7-21).

⁴ The VA is located at 5000 Wissahickon Avenue, Philadelphia; the SSA is located at 701 East Cheltenham Avenue, Philadelphia, and the IRS is located at 2970 Market Street, Philadelphia. (J Ex. 13).

⁵ According to a list created by Respondent in May of 2017, approximately 18 Officers were stationed at the VA, approximately 2 Officers were stationed at the SSA, and approximately 59 Officers were stationed at the IRS. (J Ex. 55).

been stationed primarily at the VA since 2012, and briefly worked at the IRS building.⁶ (T17:2-17). Goins began working for the Employer on November 11, 2011, and was stationed at the IRS, the SSA, and the Curtis Center prior to transferring to the VA in July of 2015. (T. 78:23-25; 79:1-11; 80:5-17). In April 2018, he reduced his hours to part-time status. (T. 79:5-8).

2. Respondents' Operations

The International represents security personnel working at government installations. (J Ex. 9 at 4). The Local represents security personnel assigned to the Philadelphia FPS contract. (J Ex. 10). A nine-member Executive Board oversees the International. (T. 108:23-24). The Executive Board includes International President Desiree Sullivan, current East Coast Regional Director James Natale, and former East Coast Regional Director Jeff Miller. (GC Ex. 1(j) (Respondents' Answer); T. 102:15-16; 107:1-5). During the relevant time period, the Local was governed by Michael Coston, who served as President until April 1, 2017 and as Treasurer thereafter, and Vice President Beryl Taylor. (GC Ex. 1(j) (Respondents' Answer); T. 23:21-22). Pursuant to the International's Constitution, the Executive Board can disaffiliate or separate an existing local union, but these actions first require consent of the Local or a hearing upon reasonable notice before the International Executive Board. (J Ex. 9 at 14 (Article VII, Section 5-6)).

3. The Collective Bargaining Agreement

On September 28, 2010, the International was certified as the exclusive bargaining representative for a unit of guards at FPS sites in Philadelphia, Pennsylvania and the surrounding counties.⁷ (J Ex. 6). The most recent Collective Bargaining Agreement (CBA) between

⁶ During relevant times, Markert also used the last names Lewis and Cross. (T. 15:11-12).

⁷ The certification describes the sites as GSA sites; however, at a separate representation hearing in Case 04-RC-207888, all parties agreed that GSA sites are the same as FPS sites. (J Ex. 7 at 3).

Respondents and the Employer was effective from April 1, 2014 until April 30, 2017. (J Ex. 1). The Employer and the Local agreed to extend the CBA three times, through October 1, 2017 (J Ex. 2-4).⁸ On September 25, 2017, Triple Canopy assumed the CBA by agreement with Respondents. (J Ex. 5). Pursuant to the Assumption Agreement, only three changes were made to the CBA: the employer's name changed to Triple Canopy, a wage reopener agreement was added, and the expiration date was extended until April 30, 2018. (Ibid.).

The CBA recognized Respondents as the exclusive bargaining representative for the following unit (the Unit)(J Ex. 1 at 4):

[A]ll security officers employed by the Employer at FPS sites in Philadelphia and surrounding counties, but excluding all other employees, including office clericals, sergeants, lieutenants, captains and any other supervisors as defined in the National Labor Relations Act.

The Unit set forth in the recognition clause included Officers stationed at the VA, SSA, and IRS buildings.⁹ (GC Ex. 1(j) (Respondents' Answer); T. 104:18-24). The CBA document itself was never updated to exclude the three sites from which Respondents disaffiliated. (T. 105:22-24).

The CBA requires Officers to maintain Union membership as a condition of employment. (J Ex. 1 at 4 (CBA Section 3.1- Union Security). It also addresses Union dues. Section 3.2 of the CBA requires the Employer to automatically deduct dues from an Officer's pay after the Officer signs an authorization card. (Id. at 6 (CBA Section 3.2- Dues Check-Off)). However, the CBA indemnifies the Employer against claims arising out of compliance with dues check-off. (Id. at 7).

⁸ The first extension was from May 1, 2017 through May 30, 2017 (J Ex. 2); the next extension was from May 31, 2017 through July 31, 2017 (J Ex. 3); and the final extension was from July 31, 2017 through October 1, 2017 (J Ex. 4).

⁹ Director Natale testified that a remote Federal Aviation Administration (FAA) site, operated by a different employer, was not covered under the CBA. (T. 104: 20-21).

The CBA also requires Respondents to manage a health and welfare plan for Officers. (Id. at 30). The Employer contributes a fixed hourly rate¹⁰ to Respondents' Health and Welfare Plan, but is otherwise indemnified from liability arising from the Health and Welfare Plan's administration. (Id. at 27). Respondents' Health and Welfare Plan provides health insurance through third party administrator Boon Group/BSI, and a 401(k) plan through Pentegra. (T. 106:1-25). The Health and Welfare contribution pays the employee premium for each Officer's health insurance, if any, with any remaining contribution rolling over into the Officer's 401(k) account. (T. 20:2-24).

B. Officers Oppose and Criticize Respondents' Leadership and Respondents Express Hostility, Threaten Disaffiliation, and Unilaterally Segregate the VA, SSA, and IRS into Local 217B.

1. Officers Raise Issues of Subcontractor Mismanagement to the Union.

Officers assigned to the VA and SSA were subjected to mismanagement by the various subcontractors operating their sites from 2012 through 2016. (T. 19:18; 21:12-18). Issues included failure to receive paychecks for work performed, refusal to pay uniform allowances, denial of 401(k) and health insurance payments, and vacation pay denials. (T. 21:12-23; J Ex. 38 at 4; J Ex. 40 at 1). Greenlee, the most recent subcontractor for the sites, failed to properly fund the Officers' Health and Welfare Fund entitlements which resulted in lost 401(k) contributions, denial of health insurance coverage, and unpaid medical bills. (J Ex. 38 at 2; T. 117:4-10; 56:2-9). Officer Markert made countless contacts to plan administrators and providers and filed multiple grievances in an attempt to unravel and rectify the Health and Welfare Fund issues. (J Ex. 29; T. 22:10-16). Once Officer Frazier realized that he and others had lost health insurance coverage, he notified Local leadership. (T. 56:2-7, 14-25; 51:1). Dissatisfied with Local leadership's response, Frazier, Goins

¹⁰ As of April 30, 2016, the rate was \$4.20 per hour worked, not to exceed 40 hours weekly. (Ibid.).

and Markert escalated their concerns to the International. (T. 57:8-12). Director Natale testified that the owed but unpaid Health and Welfare funds were not ultimately recovered from Greenlee until July or August of 2017, and that the recovery process itself involved confusion and required correction. (T. 118: 6-22).

2. Officers at the VA Realize Their Dues are in Arrears, They are Unable to Run for Election and Could Face Removal from the Contract.

On March 28, 2017, Markert, Goins and Frazier were notified by Local President Coston that they were not in good standing with Respondents because their dues were in arrears and had not been paid for 10 months. (T. 28:4-8; J Ex. 51, J Ex. 49 at 5). Although the three of them thought their dues were being automatically deducted from their paychecks because they had signed dues authorization cards, they discovered that the Employer failed to properly deduct their dues. (T. 28:9-25; 68:12-13; J Ex. 51). The Employer's failure to deduct dues affected approximately 16 Officers from the VA, all of whom ultimately agreed to pay back dues to Respondents. (J Ex. 32 at 2, J Ex. 34 at 5-6; T. 29:7-11).

Pursuant to Respondents' bylaws, Officers with unpaid dues were considered not to be in good standing with Respondents and faced consequences. First, they were not able to run or vote in the Local election. (J Ex. 10 at 2, 4; T. 120:10-11). Further, Officers not in good standing risked job loss, as Union membership is a condition of employment under the CBA. (J Ex. 1 at 4 (CBA Section 3.1- Union Security)). The inability to run for Local election was an immediate concern for Frazier, Goins, and Markert, as they had been poised to run as an opposition slate in the Local leadership election scheduled for April 1. (T. 26:12-19). Because of the dues issue, the three were barred from running for election and voting in the April 1st election, along with other members

who had unpaid dues.¹¹ (T. 27:21-22; 29:15-21; 58:19-20; 83:2-3). If an ineligible member approached the election site, he or she was blocked from entering by an armed, plain-clothed individual. (T. 29:16-21; 40:10-13).

3. *On March 28 and 31, Goins Criticized Respondents' Failure to Police the CBA Regarding Dues Deductions and Respondents' Failure to Represent Officers Stationed at the VA.*

In an email chain beginning on March 28, 2017¹² and ending on March 30 between Goins and Directors Natale and Miller, Goins expressed his frustration with Respondents regarding the dues issues. (J Ex. 49). Goins took issue with the International for failing to make Officers aware of their dues nonpayment and for failing to ensure dues were automatically deducted pursuant to Article 3.2 of the CBA. (Ibid.). Goins became heated in the email exchange and stated his intention to file charges against Respondents over their failure to enforce Section 3.2 of the CBA. (Ibid.).

On March 31, Goins sent an email on behalf of himself and Officers Frazier and Markert to Respondents' leadership, including International President Sullivan, Directors Natale and Miller, Local President Coston, and Local Vice President Taylor. (J Ex. 57). Goins accused Respondents of providing only minimal support to membership stationed at the VA over their multiple subcontractor transitions within three years which resulted in lost wages, unpaid medical expenses, unpaid vacation, denied uniform requests, and delayed payroll. (J Ex. 57). He also argued that the three Officers were in good standing and were victims of failed compliance from the Local and the Employer. (Ibid.). In a follow-up email, Goins advised Respondents that he was

¹¹ Although Natale testified that other individuals not assigned to the VA, SSA or IRS buildings were also barred from voting, he could not identify the individuals, where they worked, or the circumstances of their inability to vote, and therefore this testimony fails to establish that individuals outside those three sites were similarly impacted. (T. 127: 6-25; 133: 1-8, 21-25).

¹² Herein, all dates are in the year 2017 unless otherwise noted.

seeking legal counsel for Respondents' violations of the CBA, unfair labor practices, and gross negligence. (Ibid.).

4. President Sullivan Threatens Goins and the VA with Immediate Disaffiliation if Goins is Unhappy with Respondents, but Goins Objects to Disaffiliation.

On March 31, after receiving Goins' emails, President Sullivan sent an email to Goins that threatened to disaffiliate from Goins and the VA membership if Goins was unhappy with Respondents. She stated (J Ex. 54):

UGSOA doesn't keep members hostage. If you're unhappy with us or local 217, we can disaffiliate with your site and free you up to go with Steve Maritas' union. If so, I'll put the documentation together Monday. Let me know asap.

Goins quickly responded that he did not accept the notion of disaffiliation unless Officers' prior issues were resolved. He stated, "We may be able to consider your offer once we receive the H&W and 401k monies missing from each PSO[.]" (J Ex. 30). Despite Goins' clear indication that he was not yet interested in disaffiliation, Sullivan emailed Beau Darling, a representative from BSI, to tell him that Respondents planned to disaffiliate with a portion of the unit and asked him to advise about missing funds. (J Ex. 30). Sullivan stated, "Beau, We're disaffiliating from a portion of local 217. See below. They said they are missing money. Want to look into this and advise? Once that's completed I finalize things on my end." (Ibid). Goins clarified that there were over \$150,000 in funds missing from VA and SSA Officers, and thousands of dollars in unpaid medical expenses. (J Ex. 54). BSI admitted that funds were outstanding at the time, albeit less than the amount estimated by Goins. (J Ex. 54).

5. Frazier Questions Respondents Over Failure to Police the CBA Regarding Dues Deductions, and Natale Reacts with Hostility Toward the Officers.

On April 5, Officer Frazier contacted Director Natale via email; he questioned the International's lack of representation for members whose dues were delinquent and asked why neither the International nor the Local filed a grievance over the issue against the Employer. (J Ex. 31). Natale responded and explained Respondents' position that the indemnification clause barred the Union from taking action against the Employer. (Ibid). One of the PSOs on the email chain responded to Natale's email by outlining the members' understanding of the CBA at Article 3.2; the final line of the email demanded to know when Respondents would take responsibility.¹³ (Ibid.). Later, on April 6, Goins replied, "We are still awaiting your response...Is the silence an indication that you actually understand what it is we are saying?" (Ibid.).

Natale responded on April 6, referring to the members as the "crew" of trouble causers, and addressed Respondents' position regarding dues, the election, and the Health and Welfare fund. He stated, in part (Ibid.):

I am tired of repeating myself and talking in circles with your "crew" who are looking to do nothing but cause trouble and taking away valuable resources from those that have been wronged or seeking to help and assist others in a unified goal. I do not intent [sic] to debate these topics further after this.

6. Goins Files Charges Against the Local with the Department of Labor.

On April 19, Goins notified Local President Coston, Local Vice President Taylor, and International President Sullivan¹⁴ that he filed a complaint against the Respondents with the

¹³ The email's sender is not included in the Exhibit; however, the sender is likely Goins or Frazier as they are included in the chain.

¹⁴ Although Natale testified that he was unaware of the DOL complaint prior to the disaffiliation vote, the email included Sullivan, who is an admitted agent of Respondents. Moreover, it is

Department of Labor (DOL). (T. 82:6-15; J Ex. 33). Goins' Complaint took issue with the Local election process, the failure to provide an expenditure report for 2013-2017, the refusal to extend the CBA deadline for negotiations, the failure to respond to allegations of unauthorized spending of Local funds, the failure to select America Choice Accounts to perform a forensic audit, and the failure to confirm retention of an attorney to assist in CBA negotiation. (J Ex. 33).

7. The International Splits the Local by Creating 217B and Fails to Notify Members of this Action for Nearly a Month.

On April 26, Respondent International's Executive Board voted to split the Unit by placing the VA, SSA, and IRS buildings into a newly created unit titled "Local 217B." (J Ex. 18). Natale prompted the email vote, and characterized the reasoning for the proposed split as follows:

[T]hey have been growing increasingly frustrated with the rapid changes of employers over the last few years and the situation has gotten to the point that the two groups are not communicating well and they feel that they would be better served operating on their own.

Respondent did not notify the affected Officers of the split until May 22. (T. 109:3-5; J Ex. 11). The notification letter announced the reason for the split as employee dissatisfaction with Local 217 and the administration running it. (J Ex. 11). In his testimony, Natale agreed that the employees of Local 217B did not directly request to be joined together into 217B, and that the employees did not vote regarding the split. (T. 109:3-15). Frazier testified that he did not want the Unit to be split and never expressed to Respondent otherwise. (T. 60:2-4). Markert called the split disheartening. (T. 33:2-3).

On May 31, Respondent notified the Employer that it had separated the Unit and stated that all terms would remain the same except for modification of the CBA recognition clause. (J Ex. 12).

implausible that Natale would not have learned about the DOL complaint in the three months between the time of filing and the June disaffiliation. (T. 120: 12-25; 126: 11-14).

The record is devoid of evidence that the Employer agreed to modify the CBA recognition clause. Instead, the evidence establishes that the Employer and the Local agreed to extend the CBA by agreement signed on June 3 (by the Local), and June 7 (by the Employer). (J Ex. 3).

8. Goins and Frazier Challenge Respondents' Dues Repayment Plan.

On April 27, Goins notified Respondents that he and thirteen members from the VA agreed to a repayment plan to rectify their owed back-dues. (J Ex. 34 at 5-6). A disagreement ensued between Natale and Goins over the method of repayment. (Ibid.). Goins took the position that Officers should not have to send paper checks, while Natale stated that the Employer would not consent to direct deductions of the dues. (Ibid.). Natale threatened that failure to finalize the arrangement by close of business that day would result in enforcement of the CBA security clause – Respondents would ask the Employer to discharge the employees. (Ibid.). Goins offered to speak with the “crew” about deductions. (Ibid.). On May 1, in a separate email chain, Frazier confronted Director Natale about the injustice of the dues repayment method, and demanded the funds owed to the VA and SSA Officers from Greenlee Security. (J Ex. 35).

Later, on May 1, Natale responded to Goins directly and stated that the Union intended to begin the disaffiliation process by sending ballots to each of the three sites: SSA, IRS, and VA. (J Ex. 34). He wrote:

It has become apparent throughout our communications over the last few weeks that there is a disconnect between some of the membership of Local 217 and that of UGSOA International. We understand that you are unhappy and have lost interest in maintaining your membership in UGSOA. We are never ones to hold members hostage if they are dissatisfied with our services, so we have decided to assist you in beginning the disaffiliation process. Ballots will be mailed to each officer working at the Veteran Affairs Office (located at 5000 Wissahickon Ave), the IRS building (located at 2970 Market St) and the Social Security Office (located at 701 E Chelton Ave) over the next week. Details on the process will be included with the ballots.

Inexplicably, Respondents never held a membership meeting or vote to determine if the Officers wanted to be disaffiliated. (T. 114:8-11). Goins responded to Natale that he was opposed to disaffiliation until certain criteria were met, specifically: 1) recovery of Officers' health and welfare funds, 401(k) accounts, and unpaid medical bills; 2) Respondents' completion of the election investigation and notification of the results; 3) conclusion of the investigations by the DOL and NLRB relating to the Officers' unfair union practices complaints; and 4) Respondents grant of permission for any other Officer who wished to disaffiliate from Respondents to do so without retaliation. (J Ex. 34).

9. Officers Markert and Frazier Challenge Respondents in Response to a Newsletter Respondents Sent to Membership Regarding Dues.

On May 2, Markert sent an email to Officers and Respondents' leadership in response to a newsletter sent to Local members regarding dues. (J Ex. 38). In her response, she accused the Union of failing to abide by Section 3.2 of the CBA, and stated that the group received no assistance, guidance, or support from the Local. (Ibid). On May 3, Frazier responded to Director Natale via email and criticized Respondent for multiple issues, including failure to obtain the missing funds from Greenlee, failure to deduct dues properly, violation of Department of Labor election rules, and violation of the CBA and bylaws by wrongly designating Officers as not in good standing. (J Ex. 40). He also accused Natale's prior email of being full of "lies, deceit, indirect threats, and contradictions." (Ibid).

C. Respondents Unilaterally Disaffiliate from the Aggrieved Unit Members Employed at the VA, SSA, and IRS, and Refuse to Further Represent these Unit Members.

1. Officer Goins Challenges Respondents' Unilateral Decision to Segregate the Three Sites into Local 217B, and That Challenge Prompts Respondents' Disaffiliation Vote.

On June 6, Goins challenged International President Sullivan's decision to split the Unit by creating 217B and argued that the Local membership refused to split. (J Ex. 45). He told her that the entire Unit, not just the three sites, sought to vote to remove Respondent. (Ibid.). He criticized Respondents as being corrupt and misrepresenting and mismanaging the Unit. (Ibid.).

Sullivan responded to Goins and defended the Executive Board's decision to split the Local, stating (Ibid.):

You've been saying your group is unhappy, you're not being represented, you're treated differently from the rest of the Local, etc... Based on all of the emails, it was determined that you would be better served running your own Local.

She also stated that the new local would have its own officials, accounts and contract negotiations. (Ibid.).

Goins then asked if they would be their own international, and if they would have their own board, meetings, legal team, CBA and the ability to collect dues. (Ibid.). Sullivan responded, "You would be your own Local. Your own Board, Your money, etc..." (Ibid.). At 1:12 pm, Goins replied, "If this means we will be legally disaffiliated from the UGSOA and your willing to put it in writing, than let's talk. [sic]" (Ibid.). At 1:42 pm, Sullivan responded, "UGSOA is still your International but you would be your own local." At 2:20 pm, Goins replied (Ibid.):

Desiree, we both know this will not work. We don't get along well now, it would be catastrophic if we were a separate local trying to work with an international that refuses to properly represent us. You forget that! It is total disaffiliation that we need. You even said that in previous emails. Why are you changing now???

We will only consider a split if you are willing to allow us to disaffiliate from the UGSOA and allow every PSO who is dissatisfied with the UGSOA disaffiliate as well. We will need this in writing [sic].

2. The International's Executive Board Votes to Disaffiliate from the Three Sites.

On June 6, Respondent International voted to disaffiliate from and cease representing membership stationed at the VA, SSA, and IRS sites altogether. (J Ex. 19). On June 6, at 1:47pm, Natale held an email vote among Respondent International's Executive Board Members to determine whether to disaffiliate from Local 217B. (Ibid). The email stated:

We recently voted to split Local 217, and now the separated portion, Local 217B, has now said they do not want to be affiliated with UGSOA at all. After speaking with Desi, we feel the best option is to disaffiliate with the new Local 217B only at this time. Please respond with your vote if you agree to disaffiliate with the new Local 217B.

The Executive unanimously voted to disaffiliate. (Ibid).

On June 7, Respondents notified the Employer of the disaffiliation and stated that it was done "at the request of the Members working at these specific locations." (J Ex. 13). Respondent did not negotiate or seek to negotiate with the Employer prior to the Executive Board disaffiliation vote. (T. 109:20-22). That same day, the Employer signed the CBA extension agreement which continued the exact terms of the CBA from May 31 through July 31. (J Ex. 3). On June 12, the Employer responded that it was in the process of evaluating the disaffiliation but maintained the right to take the position that Respondents no longer hold majority support. (J Ex. 16). According to Natale's testimony, Respondents and the Employer discussed the effect of the disaffiliation after the disaffiliation was executed. (T. 110:7-18). On June 26, the Employer sent a letter to supervisors barring them from filling job openings with employees working at the VA, SSA, and IRS buildings due to the disaffiliation. (J Ex. 25). Natale noted in an August 21 email that "the Company has yet to officially acknowledge the disaffiliation technically." (J Ex. 22).

3. Respondents' Stated Reason for the Disaffiliation.

Natale testified that the sites were chosen to be disaffiliated because the membership expressed dissatisfaction with the Union. (T. 113:13-15). According to Natale, Respondents' actions never satisfied the members, and their additional complaints and accusations "further strained" the relationship between Local 217B and Respondents. (T. 119:14-18). Natale listed the additional complaints and accusations as: health and welfare issues; grievances that were not being pursued by the Local; and election issues, specifically, Respondent Local not informing Unit members who were about to be nominated for Local positions of dues delinquency, and the actual Local voting process. (T. 119:18-25, 120:1-7). In an email to a National Labor Relations Board (NLRB) Agent on August 16, regarding a representation petition involving the Unit, Natale explained, "[W]e recently disaffiliated with this group of officers due to an outcry of displeasure with our union, but since doing so, we have had numerous employees express interest in returning." (J Ex. 20). In an email on August 21, he noted to the NLRB Agent that "the separation didn't solve their issues which is why we disaffiliated with them in June." (J Ex. 22). In its position statement to the NLRB during the investigation of this matter, Respondents stated that the reason for the disaffiliation was "because of the continuing issues and their request to break away from UGSOA all together." (J Ex. 24 at 5). Respondent relies solely on Goins' June 6 email as the putative "request to break away." (Ibid.). Natale also testified about the period of time between the split as follows (T. 125: 20-25):

I mean, the complaints still continued, even when it was explained to them that, you know, they would be their own entity, still under UGSOA, but they would have their own board, their own CBA, bank accounts, et cetera. It seemed to spark interest, but it never truly fulfilled anything, I think, for them.

4. Officers from the Three Sites Were Never Consulted Prior to the Disaffiliation.

The Officers stationed at the VA, SSA, and IRS never asked Respondents to remove them from the Unit, they did not vote to disaffiliate, and they never filed a decertification petition to remove themselves from the Unit. (T. 114:8-16, 23-25). Respondents admittedly did not receive emails from each of the members complaining about the union, but only from a few vocal members. (T. 129:18-22). Respondents deemed Goins and Frazier the leaders of the 80 members segregated into Local 217B but undertook no action to confirm with the membership that Frazier and Goins represented them. (T. 134:1-3; 135:4-7). These members were not even copied on the emails that Goins sent to leadership. (T. 135:8-11). In fact, after the body of the membership learned about the disaffiliation, less vocal members told Respondents that they disagreed with Frazier and Goins and stated that they were not happy with the disaffiliation. (T. 134:2-13; J Ex. 46).

5. The Disaffiliation Negatively Impacted Members from the VA, SSA, and IRS.

After the disaffiliation, members assigned to the VA, SSA, and IRS buildings became at-will employees and were concerned about voicing complaints to the Employer and about retaliation based on prior Union involvement. (T. 34:2, 22-15; 60:17-25; 61:1-10; 84:14-15). Officers were no longer able to file grievances to challenge write-ups. (T. 76:20-23). Natale testified that after June, the disaffiliated sites could no longer participate in Respondents' insurance and pension plans. (T. 116:4-6). On June 27, weeks after the disaffiliation, Desiree Sullivan asked the Employer what would happen to the disaffiliated members' Health and Welfare funds. (J Ex. 15). Goins noted that after the disaffiliation, there was no money going into his 401(k) and members lost their health insurance. (T. 84:16-17).

After the disaffiliation, officers from the VA, SSA, and IRS buildings were barred from performing overtime at any of the Union sites. (T. 116:11-20). Prior to the disaffiliation, they were able to work overtime at any site where they were familiar with the site's orders. (T. 85:25; 86:1-9; 95:8-25; 96:1). These Officers were also unable to bid for postings outside of their own three sites following the disaffiliation. (T. 116:21-23). On June 26, the Employer sent a letter to all supervisors titled "Irs 30th street, VA, and SSA Germantown". (J Ex. 25). The letter stated that Officers may no longer be "borrowed," or temporarily reassigned, from these sites. (Ibid.)

D. The Entire Bargaining Unit, Including the VA, SSA, and IRS Buildings, Elect Philadelphia Security Officers Union as Their New Bargaining Representative.

On October 13, 2017,¹⁵ Philadelphia Security Officers Union (PSOU) filed a Petition in Case 04-RC-207888 to represent the Unit of Officers working under the Philadelphia FPS Contract, including Officers working at the VA, SSA, and IRS buildings. (J Ex. 7 at 2). Three other unions intervened, including Respondents as the incumbent union. (Ibid.). According to Natale's email correspondence with the NLRB Agent assigned to the representation case during that time, Respondents intervened because they wanted to clarify whether the majority of employees truly wanted to leave the Union, since they received notification from members that they were unhappy about the disaffiliation. (J Ex. 20). During the proceedings, Respondents contended that the petitioned-for unit was not appropriate because the three disaffiliated locations, VA, SSA and IRS, no longer shared a community of interest with the remaining sites. (J Ex. 7. at 10). The Regional Director determined that the petitioned-for unit, which included the VA, SSA and IRS, was appropriate, and a mail ballot election was ordered. (Id. at 11). On December 22, 2017, a Certification of Representative issued declaring that a majority of ballots had been cast for PSOU

¹⁵ PSOU filed initial petitions on August 14 and 22, but ultimately withdrew them and re-filed. (J Ex. 7 at 3-4).

and certifying PSOU as the exclusive representative for the following unit: All full-time and regular part-time security officers employed by the Employer at the Federal Protective Services (FPS) sites in Philadelphia, Pennsylvania and the surrounding counties. (J Ex. 8).

III. Legal Argument and Analysis

The ALJ correctly held that Respondents violated Section 8(b)(1)(A) of the Act by coercively threatening to disaffiliate from PSOs working at the VA, SSA and IRS buildings, and then by unilaterally disaffiliating from the group in bad faith retaliation for their protected concerted complaints against Respondents' leadership. (ALJD 26: 24-26; 28:12-13). Respondents except to the ALJ's conclusions¹⁶ and multiple findings relied upon in support of those conclusions.¹⁷ Respondents also attack multiple factual findings which have no bearing on the ALJ's conclusions in this case.¹⁸ The record evidence and caselaw relied upon by the ALJ support his conclusions that Respondents' conduct violated 8(b)(1)(A) of the Act and the Decision should be upheld.

A. The ALJ Properly Concluded that Respondents Violated Section 8(b)(1)(A) of the Act by Unilaterally Disaffiliating from PSOs Working at the VA, SSA, and IRS Buildings in Retaliation for Their Protected Opposition to Respondents' Leadership. (Respondents' Exception 8).

The ALJ properly analyzed the evidence and caselaw to determine that Respondents' unilateral disaffiliation of PSOs working at the VA, SSA, and IRS buildings violated Section 8(b)(1)(A) of the Act because it was undertaken in bad faith and discriminated against those PSOs because of the protected concerted activities of several vocal members. (ALJD 28: 12-16). See *In Re Joint Council of Teamsters Numbers 3, 28, 37, 42 (Lanier Brugh Corp.)*, 339 NLRB 131, 132

¹⁶ Respondents' Exceptions 2 and 8.

¹⁷ Respondents' Exceptions 1,3-6, and 7.

¹⁸ Respondents' Exceptions 9-14. Respondents' exceptions regarding the factual findings, even if substantiated, do not impact the ALJ's conclusions and do not warrant overturning the Decision.

(2003) (finding an exclusive bargaining agent breaches its duty of fair representation when it disclaims interest for an improper purpose or not in good faith).

Respondents except to this conclusion (Respondents Exception 8), along with multiple supportive findings, including: that on April 26, 2017, the International's Executive Board began to retaliate for the protected activities of the dissidents by voting to isolate unit employees working at the VA, IRS, and SSA sites by removing them from Local 217 and placing them into a new Local 217B (Respondents' Exception 4; ALJD 27: 28-30); that the International did nothing to alleviate the problems encountered by the newly formed Local 217B membership and did nothing to help Local 217B membership get Local 217B up and running (Respondents' Exception 5; ALJD 27:42-45); that Goins' sharp criticism on June 6, 2017 led Sullivan to declare that UGSOA would disaffiliate from Local 217B after its third-party administrator looked into and advised her about Goins' latest charges (Respondents' Exception 6; ALJD 28: 1-2); and that the evidence failed to establish that Goins, Frazier, and/or Markert spoke on behalf of the bargaining unit employees at the VA, SSA, and IRS sites (Respondents' Exception 7; ALJD 28: 12-16). As discussed below, the ALJs determination is fully supported and should be credited over Respondents' exceptions.

1. *The ALJ Properly Found that on April 26, 2017, the International's Executive Board Began to Retaliate for the Protected Activities of the Dissidents by Voting Remove PSOs Working at the VA, SSA, and IRS from Local 217 and Putting Them into Local 217B. (ALJD 27: 28-30) (Respondents Exceptions 4 & 5).*

The ALJ soundly reasoned that Respondents' retaliation against the dissenting PSOs began on April 26, 2017, when Respondents voted to extricate them from the Unit and designated them as Local 217B. (ALJD 27: 28-30). The ALJ properly supported his conclusion with the following unexcepted findings: (1) that the PSOs' complaints to Respondents' leadership constituted protected activity under Section 7 of the Act (ALJD 27:16-26); (2) the PSOs were part of a historic unit represented by Respondents (ALJD 27:32); (3) that Respondents' violated their Constitution

by segmenting the group without approval by the Local or a hearing notice (ALJD 27:31-33); (4) that Respondent did not bargain with the Employer prior to changing the scope of the bargaining unit (ALJD 27:38-39); and (5) that Respondents waited one month before even informing the affected employees that they had been moved to a new local (ALJD 27:45-46). These unexcepted points are supported by record evidence and provided a sound basis for the ALJ to draw his conclusion.

Respondents except to the ALJ's finding that the International did nothing to alleviate the problems encountered by the newly formed Local 217B membership and did nothing to help Local 217B membership get the new local up and running. (Respondents' Exception 5; ALJD 27:42-45). However, record evidence plainly establishes that the ALJ's finding is sound. Importantly, Respondents waited one month to inform PSOs of their relegation to Local 217B, and then promptly disaffiliated from that group within two weeks. (T. 109:3-5; J Ex. 11, 19). During this short two-week timeframe, the only action Respondents took to help further the fledgling unit was to send them a letter outlining future action with no timeline or plans. (J Ex. 11). None of that future action was fulfilled and no meetings were held even to answer PSOs' questions or concerns. Natale's claim that he explained benefits of the Local split *only* to Goins, even if credited, shows that Respondents had no care as to whether this critical information was disseminated to its affected members. Respondents misguidedly argue that they were supporting the PSOs of 217B by allowing these members to continue to participate in Union meetings and contract negotiations, and to volunteer as stewards. (Respondents' Brief 35). First, temporally, there is no evidence that union meetings or contract negotiations were held during the critical two weeks when the PSOs were knowing members of Local 217B. Further, Respondents' points do nothing more than to show that the disaffiliated PSOs were engaged members who wanted to remain part of the Unit

and help their fellow members. Respondent International's inaction left the newly formed Local 217B members in the dark and did not alleviate their issues or help them get up and running.

Contrary to Respondents' arguments in their Brief, segmenting certain PSOs into Local 217B was Respondents' retaliatory first step in completing their ultimate goal of disaffiliation and removal of the dissenting membership. As Respondents make clear in their Brief, the PSOs' assertive complaints about significant monetary issues vexed and irritated Respondents' leadership. Respondents' separation vote on April 26 was done to mark PSOs from the VA, SSA, and IRS for deletion by first isolating them and then expelling them from the Unit entirely. As the ALJ properly found, on April 26 Respondents began to retaliate against PSOs stationed at the VA, SSA, and IRS by splitting them away from their unit and into Local 217B.

2. The ALJ Correctly Found that the Evidence Failed to Establish that Goins Frazier, or Markert Spoke on Behalf of Most of the Bargaining Unit Stationed at the VA, SSA, and IRS. (Respondents' Exception 7).

The ALJ correctly determined that the evidence never established that Goins, Frazier, or Markert spoke on behalf of most of the bargaining unit stationed at the VA, SSA, and IRS buildings. (ALJD 28: 7-9). Respondents attempt to mask their contempt-driven decision to remove 80 PSOs from the bargaining unit by falsely blaming Goins for requesting the action. Respondents' assertion is erroneous on two fronts: first, Goins never made this request, and second, Respondents did not establish that Goins was speaking on behalf of most of the 80-person affected group. Respondents admittedly took no action to determine if Goins was speaking on behalf of all affected members. (T. 134:1-3; 135: 4-7). As the ALJ aptly noted, the fact that those three were not speaking for all of the employees was evidenced by less vocal PSOs expressing unhappiness with the disaffiliation to Natale after they learned it was enacted. (ALJD 28: 9-10; T. 134:2-13; J Ex

45). Respondents refusal to even consider the desires of its approximately 80-person membership speaks to the animus harbored against the three outspoken PSOs.

In Respondents' Brief, post hoc, they both enthrone and vilify Goins because he spoke out on behalf of several PSOs, stood in as a de facto shop steward in the wake of chaos, and held Respondents accountable with the DOL. Respondents contention that Goins was a de facto leader because no PSOs complained about the disaffiliation until *after* it occurred proves that the PSOs were not acting as a unified front led by Goins. (Respondents' Brief at 25). Notably, not one email included in record evidence lists all affected PSOs as recipients. And there is no record evidence that these PSOs were ever made aware of what was transpiring, let alone that they had elected Goins as their spokesperson or acquiesced to his doing so. Respondents' reliance upon the use of "CREW" in emails is misplaced to the point of absurdity. On April 5, Natale expressed his open hostility towards the PSOs' concerted complaints by replying via email, "I am tired of repeating myself and talking in circles with your "crew" who are looking to do nothing but cause trouble. . . ." (J Ex. 31). In later emails, PSOs merely threw Natale's scornful designation back at him by incorporating the word "crew." Moreover, the specific issues Respondents cite were in response to a question concerning dues deduction, which impacted specific members, and not to general matters.

3. *The Evidence Establishes that Respondents' Motivation was Discriminatory, and Respondents' Argument in its Brief that it Disclaimed Interest for Legitimate, Non-discriminatory Purposes Fails.*

The ALJ appropriately applied Board precedent to the facts of this case: a Union violates its duty of fair representation when its disclaimer is enacted for an improper purpose or in bad faith. (ALJD 28:12-14); see *Vaca v. Sipes*, 386 U.S. 171 (1967) (finding a union breaches its duty of fair representation when its conduct is "arbitrary, discriminatory, or in bad faith"); *Teamsters*

Locals, 3, 28, 37, 42 (*Lanier Brugh*), 339 NLRB 131, 132 (2003) (finding a union's disclaimer in response to members' protected conduct is an improper purpose).

Respondents' brief raises several baseless arguments in its attempt to distract from its bad faith discrimination against the PSOs stationed at the VA, SSA, and IRS buildings. First, Respondents incorrectly attempt to justify their discriminatory disaffiliation by analogizing to cases where unions had legitimate reasons for disaffiliating from members. See *Joint Council of Teamsters No. 42 (Grinnell Fire Protection Systems)*, 235 NLRB 1168 (1978), *enfd. sub nom, Dycus v. NLRB*, 615 F.2d 820 (9th Cir. 1980) (the Board expressly found that there was no discriminatory motive in a union's transfer of a unit to a different union); *American Sunroof*, 243 NLRB 1128 (1979) (finding there was no evidence of a collusive disclaimer in the face of deauthorization petition); *Chicago Truck Drivers Local 101 (Bake-Line Products)*, 329 NLRB 247, 248 (1999) (disaffiliation is acceptable when a union decisively loses a deauthorization election); *United Steel Workers of America, Local 14693 (Skibeck)*, 345 NLRB 754, 755 (2005) (finding it unnecessary to pass on the duty of fair representation allegation because doing so would not change the remedy); *Bonita Ribbon Mills & Brewton Weaving Co.*, 88 NLRB 241(1950) (dismissing a decertification petition where a union already properly disclaimed interest in the bargaining unit at issue). Every one of those cases is distinguishable because discrimination was not the driving force behind the disaffiliations, as it is clearly is here.

Respondents appear to agree that Board precedent dictates that a union violates Section 8(b)(1)(A) where it disaffiliates from a group of employees in retaliation for those members engaging in protected, concerted activities. (Respondents' Brief at 41, citing *Lanier Brugh*, *supra*. The evidence here requires just such a finding. First, Natale expressly testified that the VA, SSA, and IRS sites were chosen for disaffiliation because membership expressed dissatisfaction with

the Union. (T. 113:12-15). He listed the offending topics of their complaints as health and welfare issues, grievances that were not being followed through by the Local, election issues, delinquent dues, members' inability to be nominated for Local positions, and the actual voting process. (T. 119:18-25, 120:1-7). These are many of very same issues that the ALJ found to be protected concerted activity. (ALJD 27:16-26). Moreover, statements made by International leadership prior to the disaffiliation demonstrate their hostility toward the group. On April 6, in response to issues raised by Frazier and Goins, Director Natale stated that he was tired of repeating himself to their "crew" of trouble causers. (J Ex. 31). On March 31, President Sullivan was quick to threaten Goins and his site, the VA, with disaffiliation if they were unhappy with Respondents. (J Ex. 54).

Respondents' hostility is evident based upon their pretextual claims that the PSOs from the VA, SSA, and IRS *requested* disaffiliation, and that they were removed only after the creation of 217B did not help them. Respondents' contention that the group requested disaffiliation is implausible for two reasons. First, Goins was quite clear throughout his emails that disaffiliation would be acceptable only if it included all sites in the Unit and was undertaken after certain issues were resolved.¹⁹ As the ALJ properly found, one of Goins' requirements was reimbursement to members for unpaid Health and Welfare funds, which Natale testified was not completed until July or August of 2017, well after the disaffiliation. (T. 128: 20-22). Next, Respondents appear to have twisted Goins' June 6 email into a request for disaffiliation. At 1:12pm, he wrote, "[I]f this means we will be legally disaffiliated from UGSOA and your willing to put it in writing, than lets' talk [sic]." Just 35 minutes later, at 1:47pm, Natale called for an email vote of the Executive Board to disaffiliate for the purported reason that Local 217B no longer wanted to be affiliated with

¹⁹ Respondents admit in their Brief, "Goins had indicated that a resolution of the health and welfare issue was a necessary condition to obtain his agreement on the proposed disaffiliation." (Respondents' Brief 29-30).

UGSOA. As discussed above, Respondent took no action to confirm Goins' position prior to launching into disaffiliation, premised on an untrue statement. Moreover, just 38 minutes after the vote was launched, Goins clarified to Sullivan that "[w]e will only consider a split if you are willing to allow us to disaffiliate from the UGSOA and allow every PSO who is dissatisfied with the UGSOA to disaffiliate as well. We need this in writing." (J Ex. 19). The ALJ correctly noted that it was Goins' sharp criticism on June 6, which was the final straw precipitating Respondents' unlawful disaffiliation. (ALJD 28: 1-2; Respondents' Exception 6). Even if Respondents thought Goins was requesting disaffiliation on behalf of 217B members, they took no action to confirm that even one other member agreed with Goins or gave him license to speak as the group's leader. That Respondents would be willing to ignore the intentions of a group of 80 members based on one member's statement shows that they were willing to seize upon any premise to exclude the group. Respondents' statement that the members requested disaffiliation is a misrepresentation lacking any evidentiary support and showing strong animus toward the members' protected activities.²⁰ Moreover, Respondents' claim that its decision to relegate members of the VA, SSA, and IRS into Local 217B failed to help the group, which led to the disaffiliation, is pretextual as the PSOs were given a mere two weeks to improve, and at no time during that two weeks did Respondents offer assistance.

As the ALJ properly found, Respondents violated their own Constitution in their hasty attempt to rid themselves of the three sites through disaffiliation. (ALJD 27:30-36). The Constitution requires either approval by the Local or a hearing; there is no evidence that either of these events occurred prior to disaffiliation. The events leading up to Respondents' June 6 refusal

²⁰ Respondents' Brief even goes so far as to falsely claim that PSOs made "repeated requests" to end their association with UGSOA. (Respondents' Brief at 42).

to represent members illustrate their hostility toward Goins, Markert and Frazier, and by association, all PSOs assigned to the VA, SSA, and IRS, amply demonstrating that the disaffiliation had an illicit motivation.

Respondents argue in their Brief that they could no longer represent the PSOs based upon their ‘criminal complaints’ and baseless complaints. Respondents’ claim is both incorrect factually and unsupported by the law they cite. Respondents presented no evidence to show that they were unable to further represent the PSOs stationed at the VA, SSA, and IRS while continuing to represent the remainder of their historic unit. Critically, this excuse was first mentioned by Respondents’ attorneys in their brief; it was never mentioned by Respondents in their communications to PSOs, their communications with Board agents or in their position statement to the Board. In emails to the Board Agent during the subsequent representation case involving these PSOs, Natale stated that they “recently disaffiliated with this group of officers due to an outcry of displeasure with our Union” (J Ex 20). On August 21, he told the Agent “the separation didn’t solve their issues which is why we disaffiliated with them in June.” (J Ex 22). In its position statement to the Board in this case, Respondents stated that they disaffiliated “because of the continuing issues and their request to break away from UGSOA all together.” (J Ex 24 at 5). Not once did Respondents claim that they could no longer represent the affected employees and therefore was entitled to cease representing them. Moreover, there is no evidence that the vocal PSOs filed meritless criminal charges against Respondents, or that they made public accusations of unsubstantiated criminal conduct which caused Respondents to have to respond publicly.

Respondents use faulty logic to compare this case to cases involving deauthorization petitions. While it is an economic reality that a union needs the assured payment of dues from at least some employees in order to afford continuing to represent them,” *Chicago Truck Drivers*

Local 101 (Bake-Line Products), 329 NLRB 247, 248 (1999) citing *Automotive & Allied Industries Local 618 (Sears, Roebuck & Co.)*, 324 NLRB 865, 866 fn. 12 (1997), there is no evidence here that a deauthorization petition was ever circulated, let alone filed, so the comparison to those cases is groundless. Respondents have never argued, or even alluded to an economic motivation behind the disaffiliation. Additionally, a decertification petition signals to a representative that a large portion of its unit no longer wishes to be represented. No decertification petition was ever circulated or filed in this case. There is absolutely no evidence that Respondents could no longer represent the three sites; they simply did not want to because of their animus towards vocal members' concerted complaints.

Respondents' argument that they were privileged in removing a severable portion of the unit also fails. First, Respondent *created* the so-called severable portion of the unit on April 26, when it relegated the PSOs from the VA, SSA and IRS into Local 217B. As the ALJ correctly found, this was the first discriminatory step taken toward the group, possibly in anticipation of the next action—disaffiliation. Further, Respondents' claim in their Brief that the three sites were severable because they were all subcontracted is false, as only the operations of the VA and SSA were subcontracted. (T. 17:3-7; 19:4-19; 22:3-6).

Here, the evidence establishes, as the ALJ found, that Respondents were motivated by animus when they disaffiliated from PSOs working at the VA, SSA, and IRS sites, and Respondents failed to demonstrate that they had a legitimate, non-discriminatory reason for the disaffiliation.

B. The ALJ Correctly Held that Respondents Violated Section 8(b)(1)(A) by President Sullivan's Email to the Third-party Administrator Because it Threatened Disaffiliation and Therefore Tended to Coerce Goins from Pursuing a Resolution to the 401k Issue. (Respondents Exception 2).

The ALJ properly held that President Sullivan's statement to the third-party administrator, with Goins copied, violated Section 8(b)(1)(A) because it was not based on the truthful consequence of Goins' statement, but rather, sought to coerce him from vigorously pursuing a resolution to the members' 401k issues. (ALJD 26: 24-27; Respondents' Exceptions 1-3). In response to protected complaints raised by Goins, President Sullivan stated (J Ex. 54):

UGSOA doesn't keep members hostage. If you're unhappy with us or local 217, we can disaffiliate with your site and free you up to go with Steve Maritas' union. If so, I'll put the documentation together Monday. Let me know asap.

After Goins replied that the offer would be considered once health and welfare funding issues were resolved, Sullivan sent an email to a BSI representative, with Goins copied, stating: "We're disaffiliating from a portion of local 217. See below. They said they are missing money. Want to look into this and advise? Once that's completed I finalize things on my end." (J Ex. 30) (ALJD 25:42-45).

The test to establish whether a statement violates Section 8(b)(1)(A) of the Act is an objective one which asks whether the statement can reasonably be interpreted by employees as a threat premised on engaging in protected concerted activity. *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1066 (2007), *enfd.* 577 F.3d 467 (2nd Cir. 2009) (objective standard used to analyze an 8(b)(1)(A) threat). The speaker's subjective intent and the subjective state of mind of the listener is not determinative. *United Steel Workers of America Local 1397, AFL-CIO (United Steel Corp.)*, 240 NLRB 848, 849 (1979). The statement's context must also be examined. *American Postal Workers Union, AFL-CIO*, 328 NLRB 281, 282 (1999).

The ALJ properly reasoned Sullivan’s statement to the BSI representative was an imminent threat that UGSOA would disaffiliate from certain employees if Goins continued his concerted complaints. (ALJD 26:16-19). Further, examining the context of the threat, the ALJ determined that Sullivan’s email implied that the disaffiliation would occur merely after BSI looked into the issue and advised, but without resolving the PSOs dilemma. (ALJD 26: 20-23).

Respondents’ Brief wrongly argues that if the threat is ineffective to stop members from engaging in protected activity, then the threat does not rise to the level of a violation. (Respondents’ Brief at 29). In contrast, the law is clear that the listener’s subjective state of mind does not bear upon whether the statement is coercive. *United Steel Corp.*, supra. Here, Sullivan’s statement suggests that Respondents intended to disaffiliate with the group based on the concerted complaints of Goins, which is unlawful. *Teamsters Locals, 3, 28, 37, 42 (Lanier Brugh)*, 339 NLRB 131, 132 (2003). Moreover, it shows that they would do so without resolving the members’ issues but based only on an investigation from BSI, with no necessary action. As such, this statement is coercive and a violation of Section 8(b)(1)(A), as properly found by the ALJ.

IV. CONCLUSION

For the foregoing reasons, counsel for the General Counsel requests that the Board affirm the ALJ’s findings, rulings, and conclusions.

Respectfully submitted,

/s/ Christy E. Bergstresser

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Dated this 5th day of March, 2019.