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

MOUNTAIN VIEW CARE AND
REHABILITATION CENTER, LLC

Respondent

and

Cases 4–CA–235894 and
4–CA–238216

RETAIL, WHOLESALE, AND
DEPARTMENT STORE UNION

Charging Party

David Rodriguez, Esq., and
Samuel E. Schwartz, Esq.
for the General Counsel.
Brandon Williams, Esq., and
Glenn A. Parno, Esq.
for Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on July 8, 2019. The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by interrogating an employee about her union activities and those of other employees, and Section 8(a)(3) and (1) of the Act by first suspending that same employee, Yolanda Ramos, and later discharging her because of her activities on behalf of the Charging Party Union (hereafter, the Union). The complaint, as amended at the hearing, also alleges that Respondent violated Section 8(a)(5) and (1) of the Act by changing its paid time off policy to a new policy and eliminating employees' accrued leave balances under the old policy without notifying the Union that represents its employees or giving it an opportunity to bargain over the changes. Respondent denied the essential allegations in the complaint. After the trial, the General Counsel and the Respondent filed briefs, which I have read and considered.

Based on the filed briefs and the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Pennsylvania limited liability company, provides rehabilitation services and nursing home care in a nursing home located in Scranton, Pennsylvania. In conducting its business operations during a representative 12-month period, Respondent received gross revenues in excess of $100,000 and purchased and received at its location goods valued in excess of $5,000 directly from points outside the Commonwealth of Pennsylvania. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. I also find, as Respondent admits, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Background and Ramos's Union Activity

Respondent took over operation of the nursing home from the previous owner in March of 2018. There are some 180 people employed by Respondent at the nursing home. On June 14, 2018, the Union was certified by the Board as the exclusive bargaining representative of the following employees of Respondent:

> Included: All full-time and regular part-time Certified Nursing Assistants (CNAs) and Restorative Aides employed by the [Respondent] at its 2309 Stafford Avenue, Scranton, PA facility.
>
> Excluded: All other employees, guards, and supervisors as defined in the Act.

The parties started negotiations in the fall of 2018 and have been bargaining ever since. As of the date of this trial, the parties had not reached a completed collective bargaining agreement.

The Respondent also employs a number of dietary aides who are not part of the bargaining unit described above and are not represented. Those employees, who prepare food and serve it to residents, work in the Respondent's kitchen and dining room. Among those dietary aides is Yolanda Ramos, who worked for Respondent and its predecessor from September 2016 to March 5, 2019, when she was fired by Respondent.

In late February 2019, Ramos became interested in the Union after speaking with a CNA who was represented by the Union. As a result, she signed a petition authorizing the Union to represent the signers for collective bargaining. Over the course of two days, February 28 and March 1, she talked to fellow dietary aides in support of the Union, asking them to sign the petition as well. On Friday, March 1, 2019, in the kitchen, she spoke to fellow dietary aide, Levi Kania, about signing the petition. Levi said he was not sure about signing it and that he wanted to talk first to his father. Levi's father is Eric Kania, a supervisor, at the time, of the dietary employees. Eric was no longer employed by Respondent at the time of the trial.

Respondent's Reaction to Ramos's Union Activity

Respondent became aware of the union solicitation between Ramos and Levi Kania. Human Resources Director Linda Yaros talked to Levi and took a written statement from him the same day. Levi's statement, which is dated March 1, states that Ramos asked him to sign a union petition and mentioned several benefits for going with the Union. The statement also notes that both employees were "clocked in" at the time. GC Exh. 12. Later, Yaros asked Levi to clarify his first statement and she obtained another written statement from him, which is undated and is written on a separate piece of paper; it sets forth the time of the union solicitation, that it took place in the kitchen, and that neither employee was on break at the time. Tr. 142, 145-146, GC Exh. 13. Respondent's highest ranking official on site, Administrator Donna Molinaro, never spoke with Levi about the matter, although she read both statements and apparently directed that the second one be taken. Tr. 166, 173,176, 158.

Yaros testified that Levi came to her "visibly upset" because he did not want to sign anything having to do with a union. Tr. 136. I do not fully credit Yaros's testimony on this point. She was, as I describe later, not generally a reliable witness. Moreover, Levi did not testify in this proceeding and neither of his written statements reflect the concern attributed to him by Yaros. Indeed, his first one explains in some detail Ramos's remarks about the value of union representation, which suggests there was not an immediate rejection of the matter by Levi. Even if it could be found, however, that some kind of complaint was made, it is not clear what exactly the complaint was or whether it was encouraged in whole or in part by Yaros. It is well settled that the Act allows employees, like Ramos, to "engage in persistent union solicitation even when it annoys or disturbs the employees who are being solicited." And an employer's invitation to employees to report instances of "harassment" by employees engaged in union activity is itself a violation of Section 8(a)(1) of the Act. *Ryder Truck Rental*, 341 NLRB 761, 761 (2004), enf'd 401 F.3d. 815 (7th Cir. 2005).

The following work day, Monday, March 4, Ramos was asked to come in to work 30 minutes before the beginning of her normal shift and report to Yaros's office. When she arrived, she was met by Yaros and Administrator Donna Molinaro. Molinaro asked whether Ramos had talked to fellow employees about a union petition. Ramos at first denied that she had. Molinaro then said she would investigate the matter and check the work-place cameras. Molinaro also asked Ramos to submit a written statement about

the matter. Ramos did so, but then, within minutes, she admitted that her previous statement was untrue and that she had indeed asked someone to sign a union petition. At that point, Molinaro asked why Ramos would lie about the matter. Ramos replied that she was told, if anyone from management asked her about her union activity, she should deny her involvement. Tr. 44. Yaros confirmed that Ramos said during this meeting that "she was told not to say anything because she would get in trouble if she said she was doing it for union purposes." Tr. 138; see also Tr. 148. Molinaro then asked who told Ramos to lie about her union activity and Ramos refused to answer the question.[1]

A one-page document dated March 4, 2019 and in Ramos's handwriting is in evidence as GC Exh. 5. It states in its first paragraph, "I have asked a coworker if they would like to join a union on Friday, March 1st," followed by Ramos's signature. In the second paragraph, further down the same page, it states, "I recently told Director and Human Resources that I didn't because someone told me if I was asked to completely deny it," also followed by Ramos's signature.

At the March 4 meeting, Ramos was suspended. She was issued a form notice of disciplinary action memorializing her suspension that stated she was "suspended per Administrator pending the investigation of the 'union' petition." No other reason was given on the notice. Nor was any other reason given orally for the suspension during the meeting by either of the management representatives. Tr. 46, 159-160. Ramos signed the notice as did both Yaros and Molinaro. GC Exh. 6.

The next day, March 5, Ramos was asked to come into the facility for a meeting. At the March 5 meeting, which again included Molinaro and Yaros, Ramos was told by Molinaro that she was being terminated for violating Respondent's no-solicitation policy. She was presented with the same form notice of disciplinary action she was presented the day before. This time, the notice set forth her termination. In the section titled "nature of violation," a handwritten notation, "solicitation policy" appeared next to the circled word "other" on the form. The violation was described as follows in a handwritten notation:

[1] The above is based on the credible testimony of Ramos, much of which is corroborated by the other witnesses in the meeting, Yaros and Molinaro. To the extent that there were differences, Ramos's testimony was the most credible, as I point out later in the credibility section of this decision. Her testimony also made the most sense considering the context of the meeting and the documentary evidence associated with it. As shown below in the credibility section, I did not find Molinaro to be a reliable witness. She did, however, admit that she asked a question to initiate the meeting although she was somewhat evasive in describing it. There is some confusion as to who asked the last questions about why Ramos would lie about engaging in union activity and who asked Ramos to lie about it, but Molinaro admitted that it was she who asked these questions. Molinaro's testimony in this respect was also evasive because she seemed to go out of her way to avoid any reference to the union, but it is obvious from the context that these inquiries were, like the first question, about Ramos's union solicitation. See Tr. 159, 168-169. Significantly, in her testimony about these questions and answers, Molinaro did not mention, as Yaros testified, that Ramos explained, in the meeting, that she lied about her union activity, because otherwise she would get in "trouble."

> On 3/1/19, after clocking in, you solicited a fellow employee who was also on the clock in a work area. In a statement you provided on 3/4/19, you admitted this violation. Per Mt. View's Progressive Discipline Policy, a violation of mt. View's Solicitation Policy is a Group IV violation, which alone results in termination for a first offense. Additionally, you have a prior discipline from August of 2018 which also applies, placing you well over the threshold for termination. GC Exh. 7.[2]

At the termination meeting, Ramos asked to see the no-solicitation policy. Even though Molinaro had a copy of the handbook containing the policy in her hands, she would not show the applicable no-solicitation policy to Ramos. At first Molinaro could not find the no-solicitation policy in the handbook, which is 70 pages in length and contains many other rules and policies. Then, Molinaro said she would have to ask Respondent's attorney if Ramos could see the no-solicitation policy. Ramos never was shown the no-solicitation policy at this meeting. Nor has she ever been shown the no-solicitation policy and did not even know that Respondent had such a policy. Tr. 47-48.[3]

Respondent's No-Solicitation Policy in Writing and in Practice

At the end of July or the beginning of August 2018, all of Respondent's employees were presented with Respondent's 70-page handbook, which contained, among many other rules, the two-page no-solicitation policy at pages 42 and 43. The effective date of the handbook was August 1, 2018. Tr. 55, 131-133. R. Exhs. 1-3.[4] But there is no evidence that the two-page no-solicitation policy was highlighted or separately brought to the attention of employees, contrary to a specific acknowledgement that the employees understood Respondent's non-discrimination policy (see R. Exh. 3). There is uncontradicted testimony that, despite management having held many meetings with employees about work-related rules, it never had meetings about the no-solicitation policy, including any exceptions or any required permission. Nor is there evidence that Respondent sent memos to employees notifying them specifically about or emphasizing the no-solicitation policy. Tr. 48-49, 61, 96-97. It is also conceded that Ramos's discharge was the only discipline that Respondent ever issued for violation of the no-solicitation policy. There were no documents

[2] The no-solicitation policy set forth at pages 42-43 of the Respondent's handbook bans, among other things, "[s]olicitation by employees in non-resident care areas while on working time." The policy also states that "[c]ollections for charitable purposes shall be considered solicitations for the purposes of this policy, unless approved by the Administrator." The policy further states that employees who participate or assist in solicitation that violates the policy are subject to disciplinary action up to and including termination. The Respondent's handbook states in another section, at pages 63-65, that violation of the no-solicitation policy permits, but does not require, a discharge for a first offense.

[3] The above is based on the credible uncontradicted testimony of Ramos. Neither Yaros nor Molinaro denied that Ramos asked to see the no-solicitation policy or the rest of Ramos's testimony about not being shown the policy.

[4] The handbook may have been distributed to different employees at different times. The record mentions several dates, including one reference to August 8 (Tr. 178). For reasons of clarity, however, I will accept as its distribution date its effective date, August 1, 2018.

submitted by Respondent in response to a General Counsel subpoena for documents that showed such discipline. Tr. 126-127, GC Exh. 11.

The evidence shows that Respondent permitted much open work-time solicitation to sell and actual sales by employees without any sort of discipline. Four employees, including Ramos, testified in detail that such solicitations and sales were done openly by employees with the knowledge of, and sometimes the participation by, supervisors on work time and in work areas after the Respondent took over the facility in March 2018, including after the distribution of the handbook in August of 2018. No permission was sought or given for these solicitations, some of which were advertised by posted notices. Cash was exchanged, transactions documented, and, in one case, tables set up for the sale of items. No one was disciplined for this activity and the employees testified that they were unaware of any rule against this activity or solicitation in general. The items sold and solicited included candy for the school projects and trips of children of employees, girl scout cookies, raffle tickets, and the sale and purchase of purses, scarves and jewelry items from a business entity called Sophisticated Lady, which remained at the facility for "[a] few hours" (Tr. 99). See Tr. 49-53, 66-73, 91-92, 95-105, 109-112,115-118.[5]

I reject testimony from Molinaro, and to a lesser extent from Yaros, that all the work-time solicitations tolerated by Respondent were treated as charitable contributions and that Molinaro approved them all, as permitted by an exception to the Respondent's no-solicitation policy. As indicated below, I found both generally unreliable witnesses. Their testimony on this point is contrary the more credible and mutually corroborated testimony of employee witnesses on the issue. Molinaro's testimony also amounted to a conclusory and general catch-all answer without any supporting detail. There was no documentary support for what constituted a charitable contribution or for Molinaro's asserted approvals. Moreover, in view of the extensive examples of tolerated work-time solicitations and sales described above, one of which lasted a few hours, it is hard to square Molinaro's testimony in this respect with her other testimony that she was concerned only with work-time solicitations and even conversations that were "deterring [employees] from their job duties." Tr. 171.[6]

In any event, as I point out in the analysis section of this decision, well settled Board law does not permit employers to discriminate in their treatment of the

[5] Yaros confirmed that, during her entire 25-year tenure in the human relations department at the facility, including under the former owner, such solicitations took place without any discipline. Tr. 28.

[6] Respondent's position that the tolerated work-time solicitations described in this record were considered approved charitable contributions fails even apart from the testimonial evidence. Its no-solicitation policy makes clear that "collections for charitable contributions" are considered solicitations unless they are approved by the Administrator. But, in the absence of documentary evidence defining the term, the examples of tolerated work-time solicitations described in this record were not collections for charitable contributions as those words are ordinarily understood. The solicitations and sales involved transactions where cash was either promised or exchanged for items passing from seller to buyer. These were commercial transactions. Even if part of the proceeds went to a charity that does not bring them into the realm of collections for charitable contributions.

solicitations, as described above, and to discipline only union solicitation. This is true whether the employer considers them charitable contributions or not or whether they are approved by management or not.

Credibility

I found Ramos to be an entirely credible witness, whose testimony was consistent with the context of the entire story of her activity and Respondent's treatment of that activity. She exhibited complete candor and a lack of guile. Her testimony was direct and detailed and survived strong cross-examination. Her testimony about the meetings with Yaros and Molinaro was often consistent with their testimony, and, in one particular case—that involving her request for a copy of the no-solicitation policy at the termination meeting, was uncontradicted. Moreover, her testimony about other work-time solicitations tolerated by Respondent was corroborated by other employee witnesses.

In contrast, I found Yaros and Molinaro to be unreliable witnesses. Yarros in particular reflected a lack of candor in her demeanor. I have earlier rejected her testimony about the alleged concern Levi reported to her about the union solicitation. She often could not remember dates and times, the locations of meetings, or what happened in what meeting. For example, she testified that the suspension meeting was in Molinaro's office, but both Ramos and Molinaro testified that the meeting was in her office. She also seemed to suggest that Ramos wrote some of her statement in the second meeting, which is contrary to the testimony of both Ramos and Molinaro and contrary to uncontested fact and common sense. Most importantly, Yaros suggested that violation of the no-solicitation policy was mentioned in the suspension meeting. Tr. 138, 151-152. On this point, she seemed to have been prodded by a leading question on the subject earlier put to her by Respondent's counsel, which resulted in an objection that was sustained. Tr. 136. But it is clear from Yaros's pre-trial affidavit that that policy was not mentioned at all in the suspension meeting. Tr. 153-155, G.C. Exh. 14. Indeed, Molinaro conceded that "there was no mention of the solicitation policy" at that meeting. Tr. 159.

Molinaro was also not a reliable witness. I have earlier rejected her testimony about the tolerated work-time solicitations. Significantly, Molinaro's testimony about her first question to Ramos in the suspension meeting was somewhat of a circumlocution to avoid mentioning the word "union." Here is her testimony: "I just said that an employee had some concerns that you had approached them while they were working and asked you to sign a petition. I didn't talk about what the petition was or what he claimed it was. That's all I had asked her." Tr. 159. But Molinaro signed the suspension notice, which specifically stated that Ramos was being suspended pending an investigation about the "union" petition. In addition, Molinaro was aware prior to the meeting of Levi's first written statement, which clearly stated that the solicitation by Ramos was a union solicitation. Moreover, Ramos's two statements were clearly framed in the context of union solicitation. In these circumstances, Ramos's testimony that union solicitation was a specific part of Molinaro's admitted first question is far more credible than what I

considered Molinaro's evasive testimony on the point. In addition, as indicated above at footnote 1, I also viewed Molinaro's testimony about her last questions to Ramos—why she lied about not engaging in union solicitation and who told her to lie—as evasive.

Not only was Molinaro evasive in some of her testimony, but she also embellished her testimony beyond what would be expected from a credible witness. She seemed to be intent on supporting Respondent's litigation theory. For example, she went out of her way to add an additional element to Ramos's alleged dereliction—the harm Ramos's brief union solicitation in the kitchen caused Respondent, particularly threats to "resident safety" or "patient safety." Tr. 166-167, 170. Molinaro's testimony about resident safety concerns was unconvincing and she ultimately admitted that there were no connections to patient safety in Ramos's union solicitation. Tr. 171-173. Molinaro also conceded that all kinds of conversations go on during work time, which do not concern her unless they interfere with work. Tr. 171. But she never mentioned work-time interference with work in the suspension meeting. And she never spoke to Levi or anyone else in the kitchen about whether the union solicitation interfered with work even after the suspension meeting when she was supposedly engaged in an investigation of the Ramos union solicitation. Moreover, Molinaro initially testified that she was concerned about Ramos's alleged lying (Tr. 160), but she later admitted that, in her view, that was not important because Ramos corrected the matter within minutes. Tr. 161. I also found unconvincing Molinaro's attempt to blame Yaros for adding a 6-month old verbal unsatisfactory work warning to Ramos as a reason for the termination in the termination notice, even though past disciplines were not necessary to support the discharge. Tr. 167-168. Yaros denied that she added that language. Tr. 150. Molinaro was, after all, the top Respondent official involved in the discharge. She presumably made the termination decision and is ultimately responsible for the decision, as well as the termination notice and what it contains. Molinaro's unreliability as a witness leads me to conclude that I cannot rely on her testimony on any significant issue in this case, particularly with respect to the alleged reason for the termination of Ramos.

The Change in Respondent's Paid Time-Off Policy

Part of the case deals with a change in paid time-off (PTO) policy that applied to unit employees represented by the Union. The predecessor employer had a PTO policy that was continued under Respondent after it took over the nursing home in March 2018. That policy included 4 different types of paid time off: vacations, personal time, paid holidays, and personal illness. They were combined to permit employees to bank unused time off for future use. Employees were also permitted to purchase back 40 hours at a time of accrued time-off totals on a quarterly basis. They were also permitted to cash out their totals at 100%. Running totals were provided to employees for each type of time off periodically by email. Tr. 73-79, Jt. Exh. 1.

On or about August 1, 2018, Respondent distributed its handbook of applicable rules to all employees. The handbook included a two-page description of it paid time-off policy; it was contained at pages 26 to 29 of the 70-page handbook. Jt. Exh. 2. That

policy was different than the existing policy described above. But there is no evidence that employees or the Union were specifically notified that the policy had changed.

Some of the changes in the PTO policy included an inability to carry over accrued time off, thereby losing it if it was not used, and a difference in the cash-out feature to 50% instead of 100%. These changes were described in detail by unit employee Cynthia Young. Tr. 77, 78. Young described the changes in her own situation at Tr. 79-82, 84-88 and 92-93, and submitted supporting documents in the form of payroll information that were received in evidence as GC Exhs. 9 and 10.

Since the changes were to her detriment, Young went to Human Resources Director Yaros to complain about the changes in the early part of 2019. Yaros told her that there was a "glitch" in the payroll system and that the matter would be "straightened out." Tr. 89. Later, Young had occasion to again complain about a change the PTO policy to her detriment. On that occasion, Yaros made a correction to give Young credit for her deficiency in time-off hours. Tr. 89-90.

Unit employee Danielle Albano described a similar change and deficiency in her time-off hours. She also brought her complaints about the changes to the attention of Yaros, who told Albano, as she had told Young, that there was a glitch in the payroll system and that "everything would be taken care of." Tr. 105-106. But, according to Albano, nothing was taken care of, despite repeated complaints to Yaros, who never told Albano that she was not "getting her hours back." Tr. 106-107.

The unit employees were never told that the PTO policy had changed even in bargaining after negotiations began in October of 2018. Tr. 108. Nor was the Union notified of such a change. According to the Union's chief negotiator, Danie Tarrow, she first learned from unit employees, in January of 2019, that the PTO balances of employees had disappeared from their pay stubs and that they were told by Respondent that they did not have any. Tr. 121-122. Before the Union found out about the changes from the employees, Respondent never notified it of the changes in the PTO policy, even though, in bargaining, Respondent submitted a PTO policy proposal of its own, supposedly the one in the handbook, although that is not clear on this record. Tr. 123. Tarrow also testified that, about a month before the start of negotiations, she received a copy of the 70-page handbook from Respondent in response to a Union request for information. Tr. 124.

The above is based on uncontradicted testimony and supporting documentary evidence that Respondent does not dispute. Although the extent and exact dimensions of the changes in the PTO policy are not altogether clear on this record, it is clear that there were significant changes in the policy, all to the detriment of unit employees. Respondent also stipulated that the payroll documents supporting the changes for all unit employees would show the same changes as reflected in the payroll documents of employee Young that were received in evidence. Tr. 128-129.

B. Discussion and Analysis

The Questioning of Employee Ramos

Questioning employees about their union activities or those of others has long been found to be unlawful "because of its natural tendency to instill in the minds of employees fear of discrimination on the basis of the information the employer has obtained." *NLRB v. West Coast Casket Co*., 205 F.2d 902, 904 (9th Cir. 1953). In determining whether an employer's questioning of employees about union activity violates Section 8(a)(1) of the Act, the Board considers whether, in all the circumstances, the questioning would reasonably tend to restrain, coerce or interfere with the Section 7 rights of employees. *Hard Hat Services, LLC*, 366 NLRB No. 106, slip op. 6-7 (2018), and cases there cited, including *Bourne v. NLRB*, 332 F.2d 47, 48 (2nd Cir. 1964), which lists the following relevant factors to be considered in determining whether such questioning is coercive:

(1) The background, i.e., is there a history of employer hostility and discrimination?
(2) The nature of the information sought, e.g. did the interrogation appear to be seeking information on which to base taking action against individual employees?
(3) The identity of the questioner, i.e. how high was he in the company hierarchy?
(4) Place and method of interrogation, e.g. was employee called from work to the boss's office? Was there an atmosphere of "unnatural formality?"
(5) Truthfulness of the reply.

While the *Bourne* factors are not to be mechanically applied, the last factor mentioned above—the questioned employee's understandable attempt to conceal union activity—has been cited repeatedly in support of a finding of coercive interrogation. See *Hard Hat Services*, cited above; *Bristol Industrial Corp*., 366 NLRB No. 101, slip op. 2 (2018); *Gunderson Rail Services, LLC*, 364 NLRB No. 30, slip op. 36 (2016); *Portola Packaging, Inc.,* 361 NLRB 1316, 1337-1338 (2014); *Camaco Lorain Mfg. Plant,* 356 NLRB 1182, 1182-1183 (2011); and *Sproule Construction Co.,* 350 NLRB 774, 774 fn. 2 (2007). An employee's refusal to answer a question about the subject is likewise an indicator of coercion. See *Grill Concepts Services, Inc.*, 364 NLRB No 36, slip op. 16 (2016); and *Chipotle Services LLC*, 363 NLRB No. 37, slip op. 11-12 (2015).

Applying the above principles to the facts set forth in my credited findings, I find that three aspects of the questioning of employee Ramos in the suspension meeting were coercive. Respondent was certainly entitled to get Ramos's side of the story in a meeting that focused only on whether Ramos misused work time or violated the facially valid no-solicitation policy, although the inquiry had to be done carefully to avoid suggestions or implications of discriminatory reprisals. But neither the subject of the no-solicitation policy nor the notion that employees should not be engaged in non-work conversations or activity on work time was ever raised during the suspension meeting.

Instead, Molinaro opened the meeting by asking Ramos whether she had asked an employee to sign a union petition. Understandably, Ramos answered the question untruthfully fearing that Respondent would not like a truthful answer, which, of course, when eventually given, resulted in her termination. Indeed, Ramos testified that she was "afraid of retaliation and getting fired." Tr. 60. When Ramos recanted and admitted she had indeed engaged in union solicitation, Molinaro asked why she would lie about the matter. Ramos replied that she was told, if she was asked about union activity, she should not say anything about it. Yaros's version of Ramos's reply is more realistically ominous—Ramos was told she would get in "trouble" if she replied truthfully. Then Molinaro asked Ramos who told her to conceal her union activity. Because that answer might have implicated another employee, Ramos understandably refused to answer that question. The questions whether Ramos engaged in union solicitation, why she would lie about the union solicitation and who asked her to lie about her union solicitation all went beyond the legitimate bounds of a proper inquiry about non-work work-time activity. Those questions were thus coercive.[7]

Other circumstances confirm the coercive nature of the questions. The setting of the questioning was a meeting in the offices of the Human Resources Director and the questioning was done by Respondent's highest ranking official, the Administrator. The purpose of the meeting was to inquire into what was described by Respondent, in writing, as an incident of "union" solicitation. Moreover, as shown above, Ramos gave one untruthful response and declined to answer another question. The case law cited above recognizes that such responses are not only normal because of employee fears that a truthful response might reveal information useful for subsequent retaliation, but also recognizes that an untruthful response or a non-response is itself an indication of coercion. Nor was the questioning limited or isolated; there were 3 different probing questions in the meeting. Indeed, the meeting resulted in the discriminatory suspension of Ramos, as shown below, an independent unfair labor practice. Accordingly, I find that, in all the circumstances, the questioning of Ramos about her union activities and those of others was coercive and violative of Section 8(a)(1) of the Act.

The Suspension and Discharge of Employee Ramos

It is unlawful for an employer to punish an employee for engaging in union activity. Section 8(a)(3) of the Act specifically prohibits such discrimination that tends to discourage union activity. *Radio Officers v. NLRB*, 347 U.S. 17, 42-43 (1954). Although a discriminatory motive is usually part of the proof of a violation in these cases, there is some conduct that carries with it "unavoidable consequences which the

[7] Respondent turns the coercive questioning on its head by calling Ramos's initial response—an attempt to conceal her union activity—a lie. But calling her response a lie does not diminish the coercive effect of questioning that results in an understandable concealment of activity that might well result in retaliation. As Judge Posner has observed, "a lie related solely to one's union affiliation or unionizing intentions" is not a subject that warrants employer probing where, as here, that subject is not a proper inquiry in the circumstances. *Hartman Brothers v. NLRB*, 280 F.3d 1110, 1113 (7th Cir. 2002) (lying about union affiliation in an employment interview not germane to a legitimate inquiry into qualifications for employment).

employer not only foresaw but which he must have intended" and thus bears "its own indicia of intent." In those cases, the employer is required to prove that the conduct is something different than what it appears on its face. *NLRB v. Great Dane Trailers*, 388 U.S. 26, 33-34 (1967), citing and discussing *NLRB v. Erie Resistor Corp.,* 373 U.S. 221 (1963), where the Court found unlawful the grant of super-seniority for non-strikers. A document that on its face admittedly penalizes employees for engaging in union activity surely falls within this category of violations.

Where a lawful reason is offered in support of an employer's adverse employment action alleged to be unlawful, an inquiry into motive is necessary and the Board applies the mixed motive analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enf'd on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983). Under *Wright Line,* the General Counsel must satisfy an initial burden of showing by a preponderance of the evidence that the employee's protected or union activity was a motivating factor in a respondent's adverse action. If the General Counsel meets that initial burden, the burden shifts to the respondent to show that it would have taken the same action even absent the employee's protected activity. The respondent does not meet its burden merely by showing that it had a legitimate reason for its action; it must persuasively demonstrate that it would have taken the same action in the absence of the protected conduct. And if the respondent's proffered reasons are pretextual—either false or not actually relied on—the respondent fails by definition to meet its burden of showing it would have taken the action for those reasons absent the protected activity. See *Pro-Spec Painting, Inc.,* 339 NLRB 946, 949 (2003); and *BHC Northwest Psychiatric Hospital*, 365 NLRB No. 79, slip op. 6 (2017).

A showing of pretext also supports the initial showing of animus and discrimination. See *Wright Line*, supra, 251 NLRB at 1088 n.12, citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (where a respondent's reasons are false, it can be inferred "that the [real] motive is one that the [respondent] desires to conceal—an unlawful motive—at least where . . . the surrounding facts tend to reinforce that inference."). Moreover, a trier of fact may not only reject a witness's testimony about his or her reasons for an adverse action, but also find that the truth is the opposite of that testimony. *Pratt (Corrugated Logistics), LLC*, 360 NLRB 304, 314 (2014), citing *NLRB v. Walton Mfg. Co.,* 369 U.S. 404, 408 (1962).

Applying the above principles, I find that Respondent discriminatorily suspended employee Ramos for union solicitation and thereafter discharged her for the same reason.

It is clear that the suspension of Ramos on March 4, 2019, which was accompanied by the unlawful interrogation described above, was itself discriminatory. The Respondent's own notice stated that Ramos was being suspended for her "union" solicitation. No other reason was given for her suspension on the notice, even though there was an option for giving other reasons on the form notice. And no other reason was offered orally by either of the management representatives at the meeting they

conducted during which Ramos was suspended. Significantly, the alleged violation of Respondent's no-solicitation rule that was mentioned for the first time in the subsequent termination meeting was not an issue raised or discussed in the suspension meeting. Since the admitted unlawful reason was the only reason for the action taken, there is no mixed motive associated with the suspension and no occasion to engage in a *Wright Line* analysis. Accordingly, I find that Respondent's suspension of Ramos constituted a violation of Section 8(a)(3) and (1) of the Act.[8]

Moreover, the discriminatory suspension colored Respondent's decision made the next work day—to discharge Respondent for the same act of union solicitation that resulted in her suspension. But, here, after a so-called investigation, Respondent added other reasons for her discharge, most notably a violation of Respondent's no-solicitation rule. Thus, consideration of the discharge case calls for a *Wright Line* analysis. Because of the discriminatory suspension in the context of an unlawful interrogation, the General Counsel has easily established the initial burden of proving improper motivation for the discharge. And, as shown below, the Respondent has not rebutted that initial showing by showing that it would have discharged Ramos in the absence of her union activity.

With respect to Respondent's assertion that it discharged Ramos for violating its no-solicitation policy, it is settled law that rules prohibiting solicitation on working time are presumptively lawful, but that presumption may be rebutted by a showing that the employer permitted something more than isolated non-union solicitations during work time and enforced its rule only against union solicitation. Thus, imposing discipline only against an employee for union solicitation where there has been disparate application of a valid rule is a violation of Section 8(a)(3) and (1) of the Act. *Verizon Wireless*, 349 NLRB 640, 642 (2007). See also *Hammary Mfg. Corp*., 265 NLRB 57 (1982); *W.D Mechanical Manor Contractors*, 357 NLRB 1526, 1526 n. 1 (2011); and *Wal-Mart Stores*, 350 NLRB 879, 881 (2007). The disparate treatment in *Verizon Wireless* was punishing union solicitation while tolerating the work-time solicitation and sale of items such as candy, meals and Girl Scout cookies. 349 NLRB at 641. With respect to tolerating similar sales and solicitations while punishing union solicitation, see also *SNE Enterprises, Inc*., 347 NLRB 472, 473-474 (2006); and *Our Way*, *Inc.*, 268 NLRB 394, 394-395, 402, 411 (1983).

Turning to the asserted violation of the no-solicitation policy for the discharge of Ramos, it is noteworthy, as I have mentioned, that the suspension that immediately preceded her discharge did not mention violation of the no-solicitation policy. It appears that that reason was dredged up during the post-suspension investigation, which consisted only of an internal deliberation about facts already known and considered in the unlawful suspension. The investigation did not address any non-discriminatory concern for misuse of work-time, which would be a legitimate reason for the no-

[8] Respondent's contention (R. Br. 9) that the General Counsel has failed to demonstrate union animus is absurd. Even apart from the unlawful interrogation of Ramos, which Respondent did not even address in its brief, the suspension notice itself not only admits the anti-union animus but also admits the causation for Respondent's adverse action.

solicitation policy's ban on work time solicitation. Molinaro did not inquire of Levi or any other dietary aide or even a supervisor about whether Ramos's union solicitation caused problems in "resident safety", a concern she specifically expressed about the union solicitation. Nor did she investigate how much time away from work the union solicitation consumed, even though she conceded that employees could engage in whatever conversations on work time they wanted, so long as they are "not deterring from their job duties." Tr. 171. The investigation apparently was addressed to finding some reason to terminate Ramos that did not sound discriminatory, as did the suspension notice.

I find that the asserted violation of the no-solicitation policy was not the real reason for the discharge not only because it was an afterthought—not mentioned in the earlier suspension, but because the policy was discriminatorily applied to Ramos. Significantly, the suspension and discharge of Ramos constituted the only discipline of any employee for the violation of its no-solicitation policy. And it was applied only to discipline someone for union solicitation. Moreover, the evidence shows a disparate enforcement of the policy because employees repeatedly and openly engaged in other non-union solicitation on work time, including solicitation for the sale and the actual sale of candy, other items, including jewelry, scarves and purses, and Girl Scout cookies—all without discipline. Thus, the asserted violation of the no-solicitation policy was a pretext and cannot overcome the initial showing of discrimination in the termination of Ramos. Rather use of this pretext strengthens the finding of discrimination. See *St. Margaret Mercy Healthcare Centers,* 350 NLRB 203, 203-204 (2007).

Accordingly, I find that the discharge of Ramos for engaging in union solicitation violated Section 8(a)(3) and (1) of the Act.

The Unilateral Changes

It is well settled that an employer who makes substantial and material changes to existing terms and conditions of employment of represented employees without first notifying the union that represents them and giving it an opportunity to bargain over the changes violates Section 8(a)(5) and (1) of the Act. *NLRB v. Katz*, 369 U.S. 736 (1962). The changes in the computation of paid time off for the employees in the unit represented by the Union are set forth in the factual statement. The changes obviously involved terms and conditions of employment and Respondent does not deny that changes were made in the existing PTO policy and that the Union was not notified or given an opportunity to bargain about the changes. Respondent's only defense to this part of the case is that the relevant complaint allegation should be dismissed because a charge was not filed within 6 months of the alleged change in violation of Section 10(b) of the Act. Tr. 7-9. As shown below, Respondent's defense is without merit. Accordingly, Respondent's unilateral change violated Section 8(a)(5) and (1) of the Act.[9]

[9] Respondent did not raise a Section 10(b) defense in its answer, but I am permitting it to, in effect, amend its answer to make that assertion because it was done at the beginning of the hearing and there is no prejudice to the General Counsel.

Respondent's Section 10(b) defense is based on its contention that the Union should have filed its unilateral change charge within 6 months of the distribution to unit employees of the handbook that set forth Respondent's new policy on paid off time. Tr 82-83. The handbook was distributed to unit employees on August 1, 2018, but there is no evidence that the employees were alerted to the PTO policy that appears over the course of two pages in the middle of the handbook or that the employees were told that that policy was an actual change to existing PTO policy. The handbook was not provided to the Union at that time; it was provided to the Union shortly before bargaining began in October of 2018. But there was no specific notification to the Union at that time of any change in the PTO policy. Nor is there any other evidence that the Union had actual knowledge of the change until January of 2019 when it learned from unit employees that they had found changes in their paid time off in their payroll information. The charge was filed shortly thereafter, on February 13, 2019, well within 6 months of the Union's actual notification and knowledge of the alleged violation. Respondent apparently contends that, since the handbook containing the PTO policy was distributed to the employees on August 1, 2018, that distribution constituted constructive knowledge of a change in policy attributed to the Union. According to Respondent, the Union should have filed its charge within 6 months of August 1, which would have been February 1, 2019, 12 days before the charge was actually filed. See Tr. 123-124.

It is settled law that the Section 10(b) period begins only after a party has "clear and unequivocal notice of a violation." *Leach Corp.,* 312 NLRB 990, 991-992 (1993), enfd. 54 F.3d 802 (D.C. Cir. 1995). It is also settled that a respondent urging a Section 10(b) defense bears the burden of establishing that the charging party had such notice more than 6 months before filing the charge. *Nursing Center of Vineland*, 318 NLRB 337, 339 (1995). In that case, the Board also stated that a union bargaining representative is not presumed to have constructive knowledge of all changes in the wages and benefits of unit employees whether or not employees expressly notified the union of those changes. It further stated:

> The concept of constructive knowledge incorporates the notion of "due diligence," i.e., a party is on notice not only of the facts actually known to it but also facts that with "reasonable diligence" it would necessarily discovered. Ibid.

The Board continued by stating that there is no strict rule that imputes employee knowledge to a union bargaining agent. Rather, "whether unit employees' knowledge is imputed to their bargaining representative for purposes of determining when the 10(b) limitations period commences depends of the factual circumstances." Ibid.

The Respondent has not met its burden of proving that the Union had actual or constructive notice of the unilateral change more than 6 months prior to its filing of the relevant charge. There is no evidence that Respondent ever notified the Union of the unilateral change and certainly none until well within the Section 10(b) period. Nor did the employees notify the Union of the changes until January of 2019, again well within the Section 10(b) period. The notion that distribution of the handbook to the employees

on August 1, 2018, without more, was constructive notice to the Union is without merit. The employees themselves did not realize that the handbook even contained a change in the PTO policy, and they were not specifically notified of such a change by Respondent. Indeed, there is evidence that, when employees noticed the change in their paycheck stubs—and that was well within the 6-month period, they brought the matter to the attention of Human Resources Director Yaros, who told them that the change was a technical "glitch" that would be resolved. It never was, but the employees were led to believe that the problem was not a substantive one and that there was no change in policy. Thus, Respondent actually concealed the actual changes, which would have tolled the limitations period in any event. See *Burgess Construction*, 227 NLRB 765, 766 (1977), enfd. 596 F.2d. 378 (9th Cir. 1979), cert. denied 444 U.S. 940 (1979).

Respondent's position would require a finding that the Union had clear and unequivocal notice of the violation on August 1, when the handbook was distributed to employees, notwithstanding that its own director of human resources was telling employees, well after that date, not to be concerned because their loss of hours was only a payroll glitch that would be resolved. That does not make sense. In any event there certainly was no way for the Union—or even the employees—to know, from what Yaros was telling employees, that there had been a change of benefits. The Union did not know for sure that there was a change until it learned from employees what was happened to their paid time off hours in their payroll data. That occurred in January 2019. The Union then rather quickly filed the applicable charge, well within the Section 10(b) period. Accordingly, the charge in this case was timely filed and Respondent's Section 10(b) defense is rejected.

Conclusions of Law

1. By coercively interrogating an employee about union activities, Respondent violated Section 8(a)(1) of the Act.

2. By discriminatorily suspending and thereafter discharging employee Yolanda Ramos because of her union activities, Respondent violated Section 8(a)(3) and (1) of the Act.

3. By unilaterally changing its paid time-off (PTO) policy without first notifying the Union and giving it the opportunity to bargain over the change, Respondent violated Section 8(a)(5) and (1) of the Act.

4. The above violations constitute unfair labor practices within the meaning of the Act.

Remedy

Since Respondent has engaged in certain unfair labor practices, it must be ordered to cease and desist from its unlawful conduct and take certain affirmative

action designed to effectuate the policies of the Act, including the posting of an appropriate notice.[10]

Having unlawfully suspended and discharged Yolanda Ramos, Respondent must offer her reinstatement to her former job or, if that job no longer exits, to a substantially equivalent position without prejudice to her seniority of any other rights or privileges previously enjoyed. The Respondent shall also make Ramos whole for any loss of earnings and other benefits she may have suffered as a result of the unlawful discrimination against her. The make whole remedy shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In accordance with *King Soopers, Inc*., 364 NLRB No. 93 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), Respondent shall compensate Ramos for search-for-work and interim employment expenses regardless of whether those expenses exceed her interim earnings. Respondent shall also compensate Ramos for the adverse tax consequences, if any, of receiving a lump sum back pay award and file a report allocating backpay to appropriate years in accordance with *AdvoServ of New Jersey*, *Inc.*, 363 NLRB No. 143 (2016).

Respondent, having unilaterally and unlawfully changed the terms and conditions of employment of unit employees in the bargaining unit represented by the Union, shall rescind the changes it made in its existing PTO policies and make the affected employees whole for any losses they have suffered as a result as a result of the unilateral changes. The make whole remedy shall be computed in accordance with *Ogle Protection Service, Inc.,* 183 NLRB 682 (1970), enfd 444 F.2d 502 (6th Cir. 1971), with interest as prescribed above. Adverse tax consequences or proper allocation of backpay, if any, are to be handled as set forth above.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[11]

ORDER

Respondent, Mountain View Care and Rehabilitation Center, LLC, its officers, agents, successors and assigns, shall

1. Cease and desist from

[10] The General Counsel requests that the cease and desist order include specific language prohibiting Respondent from discriminatorily applying its no-solicitation rule. G.C. Br. 31. But, although the matter was litigated as part of the Ramos discrimination matter, discriminatory application of the rule was not specifically alleged as a separate unfair labor practice. Thus, I will not include that specific language in the cease and desist order. General Counsel also suggests (G.C. Br. 34-35) that the notice be read to assembled employees. I do not believe that the unfair labor practices in this case, although serious, warrant this additional remedy.

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

(a) Coercively interrogating employees about their union activities or those of other employees.

(b) Suspending, discharging or otherwise disciplining employees because of their union activity.

(c) Unilaterally changing existing wages, hours or terms and conditions of employment, including the existing paid time-off policy, of employees represented by Retail, Wholesale, and Department Store Union in the appropriate bargaining unit without first notifying the Union and offering it an opportunity to bargain over the changes.

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

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

(a) Within 14 days from the date of this order, offer Yolanda Ramos reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed.

(b) Make Yolanda Ramos whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(c) Compensate Yolanda Ramos for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(d) Within 14 days from the date of this order, remove from its files any reference to the unlawful suspension and discharge of Yolanda Ramos, and, within 3 days thereafter, notify her in writing that is has been done and that neither of the unlawful actions will be used against her in any way.

(e) Restore the PTO policy as it existed before the unlawful unilateral change and make whole any unit employees adversely affected by or who suffered losses due to the unlawful unilateral changes to the PTO policy, including restoration of accrued leave balances, made by Respondent in accordance with the remedy section of this decision.

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

(g) Within 14 days after service by the Region, post, at its Scranton, Pennsylvania facility, copies of the attached notice marked "Appendix."[12] Copies of

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice

the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 4, 2019.

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

Dated at Washington, D.C., August 23, 2019.

Robert A. Giannasi
Administrative Law Judge

reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain with us or 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 interrogate or question employees about their union activities.

WE WILL NOT suspend, discharge or otherwise discipline employees because of their union activities.

WE WILL NOT unilaterally change existing wages, hours or terms and conditions of employment of employees in the bargaining unit represented by the Retail, Wholesale, and Department Store Union without giving it prior notice and an opportunity to bargain over the change.

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

WE WILL offer Yolanda Ramos immediate and full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed.

WE WILL make Yolanda Ramos whole, with interest, for any loss of earnings and other benefits suffered as a result of our discrimination against her, less net interim earnings, plus reasonable search-for-work and interim employment expenses.

WE WILL remove from our files any references to the unlawful actions taken against Yolanda Ramos, notify her that this has been done, and those unlawful actions will not be used against her in any way.

WE WILL compensate Yolanda Ramos for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL restore the paid time-off policy as it existed before we unlawfully changed it and make whole, with interest, any employees who may have suffered losses by our unlawful changes to that policy, including restoration of accrued leave balances.

MOUNTAIN VIEW CARE AND REHABILITATION 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. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

Wanamaker Building, 100 Penn Square, East, Suite 400, Philadelphia, PA 19007
(215) 597-7601 Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-235894 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

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 NOTIE OF COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.