

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01**

NSL COUNTRY GARDENS, LLC

And

**NEW ENGLAND HEALTHCARE EMPLOYEES UNION
1199**

And

**Cases 01-CA-223025
01-CA-223397
01-CA-223565
01-CA-224038
01-CA-229386
01-CA-230066
01-CA-231797
01-CA-231850**

KATHERINE MINYO, an Individual

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

BEFORE: GEOFFREY CARTER, ADMINISTRATIVE LAW JUDGE

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I. OVERVIEW

NSL Country Gardens, LLC (Respondent), operates an 86-bed residential healthcare facility located at 2045 Grand Army of the Republic Highway in Swansea, Massachusetts, where it provides post-acute and skilled nursing services; rehabilitation programming; and long-term, respite, and palliative care. The facility has two identical wings, East and West, each with 43 resident rooms. The wings are separated from one another by a long hallway with various offices, a lobby, and a reception area.

For approximately 35 years, New England Healthcare Employees Union 1199 (the Union) has represented a bargaining unit of Respondent's full-time and regular part-time licensed practical nurses, [certified] nurses' aides, orderlies, technical employees, kitchen employees, housekeeping employees, maintenance employees, and laundry employees (Unit A).¹ On July 7, 2015, in Case 01-RC-153228, the Board certified the Union as the exclusive collective-bargaining representative of a separate bargaining unit of Respondent's full-time and regular part-time registered nurses (Unit B). On July 3, 2016, Respondent recognized the Union as the exclusive collective-bargaining representative of the employees in Unit A and Unit B (collectively referred to as the Units) and embodied its recognition in separate collective-bargaining agreements

¹ Although housekeeping employees and laundry employees are included in Unit A, Respondent did not employ employees in either classification at the time of the events in issue. Rather, those services were performed by employees of a subcontractor, Healthcare Services Group (HSG), which executed a separate "me-too" agreement with the Union, obligating HSG to apply the terms of Unit A's CBA to its employees. JT. 1, p.22.

for the Units, each of which was effective from November 1, 2016 through October 31, 2018² (the Unit A CBA and the Unit B CBA, respectively, and collectively, the CBAs).³

Between June 22 and June 26, LPN April Birch⁴ solicited employee signatures on an anti-Union petition she was circulating within Respondent's facility. On July 6, while the CBAs remained in effect, Respondent withdrew recognition from the Union as

² All dates hereafter are 2018 unless otherwise noted.

³ The Union filed the charge in Case 01-CA-223025 on June 27, and filed a first amended charge in Case 01-CA-223025 on August 27. The Union filed the charge in Case 01-CA-223397 on July 9, and filed a first amended charge in Case 01-CA-223397 on July 26. The Union filed the charge in Case 01-CA-223565 on July 12, and filed a first amended charge in Case 01-CA-223565 on October 30. The Union filed the charge in Case 01-CA-224038 on July 19, and filed a first amended charge in Case 01-CA-224038 on October 30. The Union filed the charge in Case 01-CA-224658 on August 1, and filed an amended charge in Case 01-CA-224658 on October 30. The Union filed the charge in Case 01-CA-229386 on October 17. The Union filed the charge in Case 01-CA-230066 on October 29, and filed a first amended charge in Case 01-CA-230066 on November 19. Katherine Minyo, an individual, filed the charge in Case 01-CA-231797 on November 29. The Union filed the charge in Case 01-CA-231850 on November 28.

Based upon the charges, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 01-CA-223025 and 01-CA-223397 issued on September 25; a Second Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 01-CA-223025, 01-CA-223397, 01-CA-223565, 01-CA-224038, 01-CA-224658, 01-CA-229386, and 01-CA-230066 issued on November 21; a Notice of Intent to Amend Second Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing and to Further Consolidate Cases issued on January 31, 2019 (the substance of which the Administrative Law Judge granted on February 4, 2019); a Third Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 01-CA-223025, 01-CA-223397, 01-CA-223565, 01-CA-224038, 01-CA-224658, 01-CA-229386, 01-CA-230066, and 01-CA-231797 issued on February 4, 2019; and a Complaint and Notice of Hearing in Case 01-CA-231850 issued on January 31, 2019 (collectively, the Complaint). The Complaint alleges that Respondent has engaged in, and continues to engage in, unfair labor practices in violation of §§8(a)(1), (3), and (5) of the Act. Respondent filed an Answer to the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on October 8; an Answer to the Second Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing on December 4; an Answer to the Third Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing on February 19, 2019; and an Answer to the Complaint and Notice of Hearing on February 14, 2019 (collectively, the Answer).

Administrative Law Judge Geoffrey Carter conducted the hearing, which took place over the course of 14 days between December 11 and April 26, 2019.

On July 10, 2019, the Union, Respondent, and named discriminatee Kelly Sherman entered into a non-Board settlement agreement resolving Case 01-CA-224658, which the Administrative Law Judge approved on July 11, 2019. Accordingly, that case has been severed from this proceeding.

⁴ Given the large number of actors involved in this matter, an alphabetized list of their names and job titles is attached hereto as "Appendix 1: Cast of Characters."

the exclusive collective-bargaining representative of both Units, relying upon Birch's petition, which was signed by 29 of 46 employees in Unit A and three of six employees in Unit B. In addition to Respondent's withdrawal of recognition being unlawful as a matter of law because it was untimely, the evidence establishes that Respondent unlawfully encouraged, enabled, and assisted Birch in her effort to obtain employee signatures on the anti-Union petition she circulated, including by promising higher wages once the Union was removed from the facility.

Shortly after unlawfully withdrawing recognition from the Union, Respondent unlawfully suspended and then discharged two long-time employees and active Union delegates, CNA Stephanie Sullivan and LPN Karen Hirst, and unlawfully suspended and then discharged a statutory supervisor, Assistant Director of Nursing (ADON) Katherine Minyo, for refusing to commit an unfair labor practice. Respondent suspended Sullivan on July 9 and discharged her on July 11 for allegedly leaving her assigned work area on July 9 while on work time and to distribute a Union pin to a coworker. Respondent suspended Hirst and Minyo on July 16 and July 17, respectively, and discharged them on July 19 and July 18, respectively, for allegedly failing to report an instance of resident-to-resident abuse which had occurred on July 15.⁵ However, the record evidence demonstrates that Respondent's stated reasons for suspending and discharging Sullivan and Hirst were pretextual, and that Respondent suspended and discharged Minyo for failing to commit an unfair labor practice – lying about the resident-to-resident incident so Respondent could justify Hirst's discharge. On

⁵ On July 19, Respondent informed Minyo that she had been discharged for failing to attend a meeting scheduled for that day.

November 14, Respondent issued a final written warning to another long-time employee and Union delegate, RN Dawn Nunes, and involuntarily transferred her from the East Wing to the West Wing, baselessly claiming that she had created a hostile work environment.

Respondent also unlawfully promised to pay employees time-and-one-half or double time to cover open shifts and call-outs in order to influence employees to reject the Union; told per diem employees that if they took regular positions with Respondent they would continue to be paid at the higher wage rate per diem employees received; instructed employees to ignore what Union delegates said about wage rates; disparaged the Union, both generally in conversations and interactions with employees and in a June 29 letter Respondent posted at the facility claiming that the Union had demanded Respondent reduce new hires' wages and rescind recently implemented raises for incumbent employees; instructed employees not to discuss wages; promised employees raises if the Union was removed from the facility; threatened employees with unspecified reprisals because they had signed both the anti-Union petition and a document in support of the Union; solicited employees to sign the anti-Union petition; provided more than ministerial assistance to employees in connection with the anti-Union petition; created the impression of surveillance of employees' Union activity; and actually surveilled employees' Union activity.

In addition, Respondent unlawfully hired new employees in Unit A at wage rates higher than those set forth in the Unit A CBA, and without paying incumbent employees with the same or greater experience a wage rate at least equal to the wage rate paid to the new hires in Unit A; changed the manner in which it offered employees in the Units

the opportunity to work open shifts and/or call-outs; and changed the manner in which it paid employees who worked open shifts and/or call-outs by paying them time-and-one-half or double time. Respondent engaged in this conduct without first providing the Union with notice and an opportunity to bargain over these changes. Respondent also unlawfully bypassed the Union and dealt directly with employees in the Units by paying them time-and-one-half or double time for working open shifts and/or call-outs; bypassed the Union and dealt directly with employees by soliciting employees to resign from both Respondent and from the Union, encouraging them to sign the anti-Union petition and to enter into individual employment contracts with an agency which would be affiliated with Respondent; and failed and refused to provide the Union with information which is relevant and necessary to performing its representational function.

II. STATEMENT OF FACTS

A. Since at Least February 2018, Respondent Had Been Hiring Full-Time Employees at Rates Above Those Set Forth in the Unit A CBA.

Article 5.1 of the Unit A CBA, Wage Rates, provides for a starting wage rate of \$11.50 an hour for CNAs with less than five years' experience, and \$12.50 an hour for CNAs with more than five years' experience; it also provides for a starting wage rate of \$20.50 per hour for LPNs with less than five years' experience, and \$22 per hour for LPNs with more than five years' experience. JT 1, p.4.⁶

Article 5.1 of the Unit A CBA also provides that,

⁶ Transcript references will be cited as "T. (Page Number)," and references to Joint Exhibits, General Counsel's Exhibits, and Respondent's Exhibits will be cited as "JT (Number)," "GC (Number)," and "R (Number)," respectively.

“[Respondent] may hire above the minimum start rate. If [Respondent] hires an employee above the minimum start rate, based on their qualifications and years of experience, *current employees* in the classification with the same or greater experience with [Respondent] *shall be paid no less than the new employee.* [Respondent] will notify the Union prior to giving any mid-term wage increases.”

JT 1, p.4. (Emphasis supplied.)

While it is true Respondent may hire per diem employees at any hourly rate, the CBA explicitly limits the number of hours a per diem employee may work before that employee converts to full-time status. Article 1.2 of the Unit A CBA, Recognition, provides, in relevant part,

Per diem employees shall be excluded from the (sic) *unless they worked more than 184 hours* during the previous three months and continue to be normally scheduled, at which time they shall be classified as either part time or full time based on their work schedule.

JT 1, p.2. (Emphasis supplied.)

Union Organizer Linda Teoli testified that per diem employees were included in the bargaining unit in prior Unit A CBAs with Respondent’s predecessors, but the Union agreed to exclude per diem employees who did not work a threshold number of hours in the Unit A CBA executed by the Union and Respondent on a trial basis, because the Unit A CBA only had a two-year term. T. 504. Teoli testified that, in practice, the trial did not work as envisioned because Respondent did not monitor per diem employees’ hours or convert per diem employees to bargaining unit positions when those employees met the minimum hours requirement. T. 504. The Union regularly submitted information requests to ensure that such conversions were properly occurring, even though Section 22.9(B) of the Unit A CBA required Respondent to provide this information to the Union on a monthly basis. JT 1, p.18. Teoli referred to the per diem

information requests as “look backs,” because the parties were looking back at the previous three months to determine whether any per diems worked a sufficient number of hours to convert to bargaining unit positions. GC 59. The Union complained to Respondent’s then-Administrator, Jaime Belezarian, both at labor-management meetings and in emails, that Respondent was not properly converting per diem employees to bargaining unit positions and that what information Respondent did provide was neither timely produced nor accurate. T. 503-507; GC 59.

Teoli testified that during negotiations and labor-management meetings, the Union repeatedly proposed a \$15 an hour wage rate for CNAs to help alleviate the staffing issues, but that Respondent was never receptive to raising wages. T. 508.

Since at least February 2018, Respondent had been hiring CNAs above the \$11.50 contractual hourly start rate, and has continued to pay newly hired CNAs who were previously per diem employees \$14 per hour, despite the fact that when those employees converted to full-time status they should have been paid at the contractual rate. T. 176-177, 305-306, 311, 345, 361, 363, 1671, 1784; JT 1, p.4. Since at least April 2018, Respondent had been hiring LPNs above the \$20.50 contractual hourly start rate. T. 306; JT 1, p.4. Respondent did not provide the Union with notice prior to implementing these wage increases. GC 3. Belezarian did not have authorization from her superiors to allow per diems who converted to full-time status to retain their \$14 hourly wage. T. 2266, GC 3.

In April, Respondent hired per diem CNA Nicole Talbot as a full-time CNA and allowed her to keep her \$14 per hour pay rate. T. 312, 1885, 1888. Minyo also hired

CNA Rachel Swanson, who had just received her certification, at \$14 per hour. T. 305, 312. However, some senior employees, including CNA Hyacinth Campbell, who had been working at the facility for several years, continued to earn less than \$14 per hour. T. 308, 484, 1549, 2061-2062. Minyo testified that she hired LPNs April Birch and Celina Caseiro, both of whom had just completed school, at \$25 per hour, and also that she hired LPN Gina Picard, who had two years' experience, at \$25 per hour. T.306, 1840.⁷ Belezarian expressly authorized Minyo to offer these starting wage rates, which Minyo knew were above those set forth in the Unit A CBA. T. 304-305, 312.

Minyo testified that Belezarian instructed managers to tell employees generally that they were not to discuss wages, and specifically told employees converting from per diem to full-time status and employees hired above the contractual starting rate not to discuss their wages with the pro-union employees. T. 312, 340-343. Belezarian believed the facility would be better off without the Union and they were a "thorn in her side." Belezarian made these statements to both managers and unit employees. T. 316, 330.

B. Since at Least April 2018, Respondent Had Been Offering Certain Employees Bonuses, Including Paying Time-and-one-half or Double Time, to Work Open Shifts.

⁷ In fact, they received even higher starting wage rates than Minyo recalled: Birch testified that she was hired at \$26.10 per hour, and Caseiro and Picard each testified that they were hired at \$26 per hour. T. 1454, 1855, 1866.

In mid-April, Teoli began a planned medical leave from work. T. 509. In advance of her medical leave, she told Belezarian that “if there [were] any issues [she] would be available by text or email or phone.” T. 509.

Open shifts and shifts that needed to be filled because the scheduled employee called out were largely filled based upon seniority, and were to be filled so as to minimize overtime. T. 399-400, 432, 465, 739-740.

Employees willing to pick up shifts in the past had been eligible for bonuses. JT 1, 2 Specifically, Side Letter #1 in the Unit A CBA provides, in relevant part:

The Voluntary Temporary Shift Pick Up Bonus shall be adjusted to \$30.00 for CNAs...effective until January 7, 2017....The Employer and Union will meet and discuss, as needed, after January 7, 2017, issues of mutual concern related to staffing.

JT 1, p.20.⁸

Beginning in March or April, management began to privately offer certain employees double time to work open shifts which had been posted but gone unfilled. T. 178, 230-231, 281, 320-321, 1917; GC 43. CNA Victoria Palmer recalled then-Director of Nursing (DON) Heather Perry, Minimum Data Set (MDS) Coordinator Mallory O’Kane, and then-Staff Development Coordinator (SDC) Cassandra Sousa specifically offered time-and-one-half or double time bonuses for picking up open shifts. T. 178. CNA Nickole Gaeta also asked for and received bonuses in exchange for covering open shifts. T. 69-70. Gaeta testified that management told employees “keep quiet” if they received bonuses. T. 70-71. CNA Stacy Hayes testified that she was offered bonuses

⁸ There is no evidence that the parties met after January 7, 2017 as provided for in Side Letter # 1.

for covering open shifts. T. 1557. Talbot was also offered double time for covering open shifts. T. 1916. Meanwhile, Union delegates were unaware that these incentives were being offered, and they were not themselves offered these incentives. T. 467, 496. In this regard, CNA Tiffani Cabral testified that when she told Sullivan that she was thinking of converting from per diem to full time, Sullivan responded, “[Y]ou know that if you go and you do that, your pay’s going to get cut.” T. 1928.

Management paid these incentives surreptitiously using so-called “missed punch forms” to pay the employee who worked the open shift, when in fact the employee had not worked the day for which the missed punch form was submitted. Minyo testified that this scheme was employed so “it didn’t look like [management was] paying double time.” T. 69-70, 276, 321. Belezarian told CNAs Amanda Giglio, Tenisha Miller, Melissa Ayotte, and Kelly Sherman (who also worked as Respondent’s scheduler) that she “didn’t get approval to pay double time,” but that she would “put on paper that they worked a different day...in order to get paid double time.” T. 232, 276-277; GC 43.⁹

C. In Mid-May, Belezarian Held a Meeting with Union Delegates and Sherman in Order to Help Sherman Understand How to Properly Schedule Employees.

Respondent did not train Sherman about how to properly follow scheduling procedures. T 237-238; GC 43. Belezarian told Sherman the scheduler was a “weird position” because it was a “Union position but it was also in with management.” T. 238.

⁹ Belezarian continued to authorize bonuses for certain CNAs even after the parties’ June 12 meeting. For example, in response to a text message from Sherman, Belezarian instructed Sherman to offer Barbara Costa double time to work the 3 p.m. top 11 p.m. shift on June 24, texting, “double time. her only. call her don’t put in writing.” GC 44.

Belezarian also told Sherman that Sullivan wanted Sherman fired. T. 250. Within a month of starting her job, Sherman asked Belezarian why Sullivan and LPN Phyllis Gomes, both Union delegates, were looking at the schedule before it was complete. Belezarian responded that it was “none of their business,” that the Union thinks it runs the facility, and that “the reason why we couldn’t keep staff in here was because of the Union.” T. 240-243. Sherman, whose work station was close to Belezarian’s office, said that Belezarian spoke “quite often” and “very openly” in the hallways of the facility where anyone could hear that she believed their staffing issues originated with the Union. T. 243-246. Sherman testified that Belezarian “would always talk about how she wanted the Union out of the building.” T. 297.

Under Belezarian’s direct supervision, Sherman was still “calling anybody” to fill open shifts and Sherman felt that she was not quite understanding the scheduling procedure. T. 228, 248. In May, Sherman requested training and Belezarian arranged for several delegates to meet with her and Sherman to discuss how to arrange coverage for open shifts and call-outs. T. 248, 279-280. Prior to this May 15 meeting, when Gomes explained that open shifts were to be offered to employees based on their seniority, as long as it didn’t make them eligible for overtime (in which case the next most senior employee would be contacted), Sherman had been unaware of that practice. T. 228, 248, 1208-1210.

Before this meeting, Gaeta showed delegates a picture of a note near the Human Resources office indicating that Birch was entitled to a \$500 bonus for working an 11 p.m. to 7 a.m. shift. T. 78, 322, 743-744; GC 33. The delegates raised this issue with Belezarian at the May 15 meeting because, “[i]f there were bonuses given out they

should be given out fairly and equitably to everyone, not just to one person.” T. 743-744. Belezarian responded that Birch was crazy and confused about her sign-on bonus, and stated that it was not true that Birch would receive a \$500 bonus for working an 11 p.m. to 7 a.m. shift. T. 479, 743-744.

Belezarian then broached the topic of raising CNAs starting wages in order to get more staff in the building. T. 742. When Belezarian told the delegates that she wanted to raise CNAs’ starting rates to \$14 an hour, one delegate responded multiple times that Belezarian should “put it in writing” T. 249, 285, 294, 742. Sullivan recalled that Belezarian stated that she “would like to raise the starting wages for CNAs to \$14 an hour and that she was going to work on it.” Nunes told Belezarian that the delegates would have to let the Union know and “discuss it and have a written agreement,” because the delegates lacked authority to make an agreement regarding wage rates. T. 437, 742. Teoli confirmed this, testifying that delegates “can’t change the terms and conditions of the contract.” T. 506.

D. In Late May or Early June, Belezarian Held Meetings with Various CNAs Who Had Either Converted from Per Diem Status to Full-Time Status and Retained Their \$14 Per Diem Wage Rate or Were Hired at \$14 Per Hour.

In late May or early June, there were “tons of rumors about employees not being paid enough” and “tons of rumors that the employees wanted more, and a lot of them wanted to” convert from full-time back to per diem “so they could make the [\$]14 an hour.” T. 131. In this regard, Gaeta testified that management made “multiple comments” to the effect of “we just need to get rid of the Union,” or “the Union’s stopping us,” or “we have to wait for negotiations.” T. 131. Management also said things

like, "Well, I'd get you guys more money, but, you know, the Union [is] tying my hands." T. 134. Management always made these comments in a derogatory or rude fashion. T. 134. Gaeta also testified that Belezarian told CNAs at the nurses' station that "if we get rid of the Union, it would open up the doors and free her hands to get...more pay...for the CNAs...compared to...all the money going to the delegates," and that "[t]he delegates make too much money." T. 84.

During this same time period, Gaeta, who was working as a per diem without a set schedule, was receiving fewer hours and began to look for a better paying job. T. 68, 73-74. Belezarian called Gaeta to talk about why she was leaving and told her that she appreciated her working there and didn't want to lose her. T. 74, 114-115. During this conversation, Gaeta told Belezarian she had found several jobs near her house, one of which paid \$16.25 an hour. T. 74. Belezarian replied that with shift differential, Gaeta should be able to earn close to that working for Respondent. T. 74-75. As a per diem, however, Gaeta was not supposed to be eligible to receive shift differential or holiday pay. T. 68, 72; JT 1, p.2. Nevertheless, Belezarian told Gaeta she "should get shift differential" and would "look back and speak to HR and get me retro of what [Gaeta] had previously worked...." T. 74, 76, 120-121. Belezarian further testified that Gaeta "didn't know if there was anything we could do, to bring her pay rate higher [and] I mean obviously, I reminded her that we were a union facility, and we can't do that, but there are other building[s] that can do that, that are not union." T. 2182.

During her call with Belezarian, Gaeta agreed to work full-time, but she was permitted not to have to work a set schedule. T. 76, 122-124. Gaeta continued to earn \$14 per hour as a full-time employee and even received a \$.10 raise shortly after

becoming full-time. T. 127. Belezarian said that “she wanted to bring all the CNAs up, not just those making \$28 or \$32 an hour,” and she specifically referred to Sullivan as a delegate making \$28 an hour. T. 115. Gaeta understood Belezarian to mean that Sullivan and her fellow delegates made more money because they were delegates. T. 113-114.

E. On June 12, Union Organizer Linda Teoli and Union Delegates Attended a Labor-Management Meeting with Belezarian and Respondent’s Vice President of Operations, Joe Veno.

When Teoli returned to work on June 5, delegates informed her that Belezarian wanted to meet and negotiate raising the starting wages for CNAs. T. 510. In advance of the June 12 meeting, Teoli met with the delegates and they decided to go into the negotiations with a \$15 an hour proposal for CNA starting wages. T. 510. Teoli scheduled a meeting with Belezarian and Veno for June 12 in order to present this proposal. T. 510.

At the June 12 meeting, Belezarian announced that she had already raised CNAs’ starting wages. T. 511, 745. This marked the first time the Union or any of the delegates had been notified that Respondent had already been hiring CNAs at a higher rate than provided for in the Unit A CBA. T. 249, 349, 361, 511-512, 745, 1769-1770. Teoli was shocked that the wage increase had already occurred and pointed out that there were senior employees who were paid much less per hour than CNAs hired right out of school.

At the meeting, Belezarian provided Teoli with a printout for Teoli’s review. T. 511; GC 2. Teoli could see that “wages were all over the place” and contained

information for per diem employees not included in the bargaining unit. T. 512-513; GC

2. The printout included the following CNA hire dates and wage rates:

Cheryl Cabral	06/28/1999	\$14.25
Hyacinth Campbell	11/24/2015	\$12.85 ¹⁰
Sharon Lukusa	02/1/2017	\$14.00
Tiffani Cabral	11/06/2017	\$14.10 ¹¹
Sherry Martin	11/06/2017	\$12.60
Nicole Talbot	04/21/2018	\$14.00
Jillian Toomey	03/26/2018	\$14.00

In the meeting, Teoli raised the fact that senior CNAs were earning no more than, and in some cases far less than, CNAs hired right out of school and that “everyone needed to be brought up.” T. 512-513. Teoli told Belezarian that the printout didn’t make any sense and she requested hourly rates “for all the Union members.” T. 514. Belezarian responded that she would provide the information and told Teoli that “whatever needs to be fixed, we’ll fix it.” T. 514-515. Teoli questioned Veno regarding his involvement in the wage increases and he told Teoli that he did not know that Belezarian had already implemented them. T. 514.

After the June 12 meeting, Belezarian told Minyo and others that the Union was not “concerned with the staff and making money, [but was] more concerned with filling

¹⁰ As noted above, Campbell had worked at the facility and had several years of experience, yet she was only earning \$12.85 per hour. Talbot, on the other hand, had only been a CNA for two years and had only worked for Respondent since April, yet she was hired at \$14 per hour. T. 312, 1185; GC 2.

¹¹ Tiffani Cabral was a per diem, apparently working fewer than the 184 hour contractual threshold when Respondent withdrew recognition, though Respondent counted her as a unit member for purposes of withdrawing recognition. T. 1925; JT 9.

their own Union pockets instead of keeping employees.” T. 315. Minyo said that Belezarian then said she “hoped that [Birch] would hurry up and get the petition to [Belezarian].” T. 315. Minyo did not know at the time what petition Belezarian was referring to. T. 315.

Also after the June 12 meeting, Belezarian texted Teoli, asking her to

pls give me the 2 weeks before you file board charges! i will make this right by then and if i have to go to [Respondent’s owner] jonathan [Bleier] myself i will. i am afraid if u file the charges it will go in the other direction and not be good for anyone. i do apologize for catching you off guard and how i executed the whole thing. we have established a good relationship and i certainly dont want to destroy that. i did what i did with only the employees in mind and was only [being] sneaky to my own boss. i didnt mean for u to perceive me that way.

GC 3.

Teoli replied that she needed to talk with the delegates that she would “let [Belezarian] know” and Belezarian then texted “i can guarantee i will fix this shit fairly” and would send Teoli a proposal by the end of the week for the 3 employees who need to be raised up.” T. 515-516; GC 3.

When Teoli texted Belezarian about the status of the pay raises a few days after the June 12 meeting, Belezarian responded that “we r doing it now. Im writing the agreement and having joe review for me this am.” T. 518; GC 4. At that point, Teoli believed the parties had reached an agreement regarding raising CNAs’ starting wage rates. T. 519. However, Respondent did not produce a single document indicating such an agreement had been drafted at that time.

On June 18, Teoli emailed Veno, requesting to raise rates at its’ sister location, Crawford Health & Rehabilitation Center (Crawford), located in Fall River,

Massachusetts, whose employees the Union also represented. Veno replied that, “Rates were not raised as was explained – [Respondent] accessed the contract stipulation involving ability to do so without touching base hire rates.”¹² T. 520-522; GC 5. That afternoon, Teoli sent Belezarian a draft Memorandum of Agreement (MOA) and then a follow-up email asking for clarification regarding when the increases went into effect. T. 522-523; GC 6, GC 7. Belezarian responded that the increases had taken effect on June 5. T. 522-523; GC 7. In light of this, Teoli still believed the parties had come to an agreement raising wages. T. 523. Teoli, who had become increasingly upset by the lack of signed agreement, emailed Belezarian on June 19, again asking that the MOA be signed by June 22. T. 524-525; GC 8.

F. Beginning on June 20, Teoli Requested Information Concerning Employees’ Hourly Wage Rates, and on June 25 and 28, Teoli Renewed Her June 20 Written Information Request.

Not having received a response from Belezarian, Teoli texted Respondent’s then-attorney and lead negotiator, Karl Fritton, on June 20, requesting a phone call. T. 525; GC 9. That evening, Fritton called Teoli and she told him that Belezarian had raised the starting wages unilaterally, and Teoli requested the hourly rates. T. 526. Teoli told Fritton that she hadn’t received a signed MOA or the hourly wage rate information and was becoming frustrated. T. 526. Fritton said he would get back to her. T. 526. Teoli followed up with Fritton by email the next day. GC 18.

¹² Veno was apparently claiming that, contrary to what had been discussed at the June 12 labor-management meeting, current employees’ wages would not be raised because, according to Veno, the Unit A CBA permitted Respondent to hire CNAs above the \$11.50 contractual hourly start rate without having to increase wages for current CNAs making less money than those new hires.

In the meantime, Teoli planned to hold a membership meeting to discuss the various issues at hand with employees. T. 528. Typically, after notifying Respondent's administrator, Teoli would hold meetings in the facility's breakroom or conference room, where employees could speak with her either on break, or when they were coming to or leaving work. T. 528-529. Teoli testified that in the past she had "no trouble whatsoever" with management scheduling member meetings at the facility and "never got any pushback." T. 528, 541. Teoli said she had even come to the facility unannounced at times and had met with members on the units. T. 541.

On June 21, Belezarian emailed Teoli, writing that, "Clearly, as you are aware I am not authorized to speak about anything concerning wages," and asking if she "still want[ed] to meet on Tuesday" because at their last meeting "the only thing we were regrouping about was wages." T. 526; GC 10. Belezarian also wrote that she had heard Teoli was organizing a staff meeting that at same day, and that obviously not all of Belezarian's staff could be off the floor at once. GC 10. Teoli replied that Belezarian had "made promises on wages and also raised wages," so her claim that she lacked authorization to speak on wages made no sense. Teoli then confirmed she would like to hold a membership meeting the following week. GC 10.

On June 22, Teoli texted Fritton that she "would like to resolve this issue today" and had been "waiting over a week for a signed [MOA]." T. 527; GC 11. That afternoon, Venno emailed Teoli requesting – for the first time in the parties' relationship – a list of employees who would be attending the June 26 membership meeting and asking for an "agenda/outline of topics" which would be discussed. GC 12.

That same day, Fritton replied to Teoli's June 21 email, informing her that two CNAs – one with four years' experience and one with 10 years' experience – had been hired on June 5 at \$14 per hour, and that the three current employees with the same level of experience who were earning less had been "brought up to those rates effective the same date." GC 18.

Also on June 22, Human Resources Specialist Kevin Ortiz emailed Union Administrative Assistant Jeanza Rivera a spreadsheet of employees, but did not include those employees' wage rates or the number of hours they worked.¹³ GC 13. On June 25, Rivera emailed Ortiz to clarify that the Union was requesting "the hourly rates and how many hours they work." GC 14. Ortiz forwarded Rivera's email to Belezarian, who responded later that morning that Respondent was "not authorized to give wage rates on everyone on the list, especially since you have some listed that are part time and there is no column for wages. We have never given that before. I have wage list for the aids which [Teoli] also has that has their wages and their date of hire. They work varying hours. Please tell me exactly what you want." GC 14. Rivera, in turn, forwarded Belezarian's email to Teoli less than an hour later. GC 14. Meanwhile, Veno had emailed Belezarian that he was "flying blind" until he could see the list being discussed.

¹³ The attachment lists employees' regularly scheduled hours, but not hours worked. For example, Sullivan is listed as working 40 hours per week, though she typically worked closer to 80 hours per week. GC 13.

On July 10, Rivera also requested addresses for nine unit employees. Belezarian responded saying that was "private information" and she was "unable to provide it." GC 28. Although not pled as a separate unfair labor practice, Belezarian's response further demonstrates Respondent's complete disregard for its legal obligations.

Belezarian then forwarded Venno's email to Teoli and referenced a flyer the Union had circulated. GC 15. Later that afternoon, Teoli replied, asking, "Where are we with the hourly rates for Union members?" Six minutes later, Belezarian responded that she was "[j]ust waiting for 'corporate' to put it together for me." GC 15. Teoli emailed Fritton that evening, writing that she had "requested a report for all Union members that includes hourly rates" and that "the report from the facility did not include hourly rates." GC 18.

Teoli texted Fritton the following morning, explaining that she had "requested the hourly rates for all union members" and that Belezarian's response that "corporate" needed to be involved made Teoli think Respondent was "hiding something." GC 16. Respondent did not provide the Union with the requested information.

On June 26, Teoli held a meeting with members outside on the lawn behind the facility from 2 p.m. to 4 p.m. She distributed a flyer and spoke to about 25 members regarding "why some people got their wages raised and some people didn't." T. 534-538; GC 48. Teoli told employees the Union was "trying to get the hourly wages for everyone so we could rectify the situation and bring everyone up to where they needed to be." T. 537. Teoli testified that employees had reported to her that management had asked them "to sign a petition because the union wanted to lower their wages" T. 537. When Teoli denied that the Union wanted their wages reduced, members told her they felt misled and "asked if they could take their name off the petition they signed." T. 538. After this meeting, Teoli prepared a petition in support of the Union. T. 528-539; GC 42.

Fritton emailed Teoli late on the evening of June 27, criticizing delegates for allegedly directing employees to go talk with Teoli during work time and "threaten[ing]

that [employees'] wage rates would be reduced if [employees] didn't attend the meeting." GC 17. Fritton claimed that "some employees quit or were reduced to tears." GC 17. Fritton went on to explain rules for the Union to meet at the facility going forward. GC 17. Teoli responded to Fritton the following morning, denying the Union's involvement in any threats and writing that she had verified that employees were on non-work time when they met with her. GC 17. Teoli asked Fritton to identify which employees were upset and which employees quit, but Fritton did not respond.¹⁴ GC 17. Teoli reminded Fritton, as well Belezarian and Veno, who were copied on her email, that she would be at the facility later that day. GC 17. Belezarian replied that the meeting location had been changed to the breakroom and that she would let the delegates know. GC 17.

G. Between June 22 and June 26, Employee April Birch Freely Solicited Signatures on an Anti-Union Petition She Circulated Among Employees in Unit A and Unit B.

Birch had previously complained about the delegates to Belezarian and Minyo. Belezarian told Birch that "there was really nothing that she could do, that they were union, and unfortunately, she just had to get along with the employees or whatever because we were stuck with the union unless we could get the union out." T. 313. Minyo heard Belezarian tell Birch that "there were ways that we could get rid of the Union." T. 313.

¹⁴ Respondent did not present any evidence that employees were upset by, or had quit in response to, the Union's June 26 meeting.

Between June 22 and June 26, Birch freely solicited employee signatures for an anti-Union petition she was circulating. JT 29. Birch gathered a number of signatures from employees while they were in work areas performing work: CNA Sharon Lukusa was performing patient care when Birch approached her about signing the petition. T. 38, 45, 46, 47-48, 51; JT 29, p.4.¹⁵ CNA Nickole Gaeta was completing her log books when Birch approached her about signing the petition. T. 91-94, 139-141; JT 29, p.2.¹⁶ CNA Victoria Palmer was either entering or exiting a resident's room when Birch approached her about signing the petition, which Palmer believed was the same petition Belezarian had referred to the day before when she drafted her resignation letter. T. 184-190, 221, JT 29, p.3. CNA Stacy Hayes, who works on the West Wing, was staffing a resident cookout on the West Wing when Birch, who works on the East Wing, approached her about signing the petition. T. 1385, 1542; JT 29, p.1.¹⁷ In at least one instance, Birch approached an employee about signing her petition while both she and the employee were in a work area performing work: Scheduler and CNA Kelly Sherman was putting away supplies and Birch was working at her medication cart when Birch

¹⁵ Birch told Lukusa the Union was "trying to take money away from" her, and that "if the Union is out, you guys are going to get more pay...more benefit." T. 38, 45.

¹⁶ Birch told Gaeta the petition would "open the doors for...Belezarian to help with increase (sic) of the CNA pay" and was an "opportunity for [Belezarian] to get rid of the Union so she could get these CNAs more money." T. 91, 94, 140. When Birch presented the petition to her, Gaeta "assumed we weren't going with the resignation personally and signed [the petition]" because it was "one of the options" that Belezarian had previously identified when Gaeta was in Belezarian's office. T. 96, Jt. 29. Gaeta characterized Birch soliciting signatures for the petition as an "open discussion," but was told not to mention it to the delegates because Birch "didn't want the Union getting...wind of...the petition." T. 95. Gaeta recalled that management participated in one such conversation, but she didn't remember specifics because they had "quite a few conversations." T. 95.

¹⁷ Birch admitted going to the West Wing but claims she did so only to "hand [the petition] off" and not to solicit signatures. T. 1486.

approached Sherman about signing the petition, in full view of Belezarian. T. 253-255, 268, 287-288, 297; JT 29, p.3. Sherman signed because Belezarian told her Sullivan wanted her fired. T. 256.¹⁸ Birch gave all of the employees she approached ample time to read the anti-Union petition before they signed, printed their names, and dated the document. T. 1460.¹⁹

On June 25, Nunes and CNA and fellow delegate Donna Brown confronted Belezarian about Birch collecting signatures for the decertification petition while at work and about employees being asked to sign individual contracts. T. 437-440, 887-888. Nunes testified that Belezarian got defensive and denied knowing about the petition or the individual contracts, adding that it would be illegal to do so. T. 439. Nunes also told Belezarian that employees were reporting that Belezarian and Birch were telling them that the Union wants to reduce their wages and that they needed to “get the Union out of the building;” Belezarian responded that what Nunes and Brown were describing was “crazy” and denied any knowledge of this. T. 439-440. When Brown and Nunes confronted Birch about her petition and asked to see it, Birch also got defensive, threatening the delegates who were present with legal action if they didn’t stop asking her about it. T. 440.

¹⁸ When Sherman informed Sousa, Minyo, Perry, and Belezarian that she had signed Birch’s petition, Sousa and Minyo told Sherman that they were not supposed to talk about it. T. 257-258, 289.

¹⁹ Sherman exchanged a series of text messages with Birch, warning Birch to “be careful” because she “cannot even use the copy machine to copy the petition.” GC 45. Birch responded that she knew that because she had called “a labor rep” and that she didn’t “like collecting signs (sic) at work but [didn’t know] how else [to gather them].” T. 260-261; GC 45.

H. Respondent Assisted the Decertification Effort in Furtherance of Its Mission to Rid the Facility of the Union.

In addition to permitting Birch to collect signatures for her anti-Union petition on work time and in work areas, Belezarian assisted Birch in her effort to decertify the Union and encouraged employees to remove the Union from the facility by, inter alia, promising them raises. Belezarian also enlisted other managers in her effort to aid Birch, including Sousa, Perry, O'Kane, Minyo, and Nurse Supervisor Samantha Logan. T. 83, 84-86, 155, 746-747, 810-813, 1490. Belezarian regularly complained to employees and managers alike that the Union was an impediment to retaining staff and managing the facility, that she wanted the Union out because it was "a thorn in her side," and that there were ways to accomplish that goal. T. 241-246, 297, 303-304, 313, 330, 356.

In this regard, on June 26, Lukusa went to see Minyo, who was speaking with Belezarian by phone at the time. Minyo handed the phone to Lukusa to speak with Belezarian, who told her the Union wanted even more money for itself, that she (Belezarian) was trying to get employees a raise, and that if the Union was no longer at the facility employees could get better pay and benefits.²⁰ Based on her conversations with Belezarian and Birch, Lukusa signed the anti-Union petition, which she did at the nurses' station. T. 37-40, 48-54.

Belezarian and Sousa told employees, including Gaeta, that they were working on ways to get rid of the Union. T. 83-84. Belezarian explained that without the Union,

²⁰ Like Birch, Belezarian told Lukusa that the Union was just trying to make more money, even though the Union receives enough money already, that she was trying to get CNAs a raise, and that if the Union was out of the building she would be able to give them a raise. T. 39.

Respondent would be free to pay employees higher wages. According to Gaeta, Belezarian said this more than once, usually at the nurses' station. T. 85. Gaeta also described an instance in late May or early June when Minyo brought her and Tiffani Cabral to Belezarian's office, where Hayes was present.²¹ Belezarian started the meeting by saying that she wanted to "clear the air" and was "trying to get all the CNAs at the same base rate, and she wanted to have that happen soon." T. 86. Belezarian said, "This is what we're going to do," and then described three options for getting rid of the Union: Either wait for contract negotiations, sign the anti-Union petition,²² or resign and go to work for an agency which would offer them the same wages and benefits Respondent did. T. 86-87, 112-113, 153-154. This meeting was the first time Gaeta had ever heard about the decertification petition. T. 154. Gaeta testified that Belezarian offered these options as ways for her to improve CNAs' pay. T. 112. Based on this conversation with Belezarian, Gaeta believed that "the CNAs would eventually get an increase in pay" for resigning from Country Gardens. T. 111-112, 136. Regarding the third option, Belezarian showed Gaeta a stack of resignation letters, stating, "Look. We're all on board. Everybody's in agreement. This is who I have so far." Gaeta could read CNA Tenisha Miller's resignation letter and modeled hers on Miller's, writing that

²¹ Hayes and Belezarian have a family relationship: Hayes' sister is married to Belezarian's brother. T. 1551-1552. In addition, on November 26, Belezarian hired Hayes as a scheduler at Crawford. Hayes earns 50 percent more as a scheduler at Crawford than she earns as a CNA at Country Gardens – \$21 an hour versus \$14 an hour. T. 830, 1552, 1556-1557. By comparison, at Country Gardens, Respondent only paid Sherman, who regularly worked on the floor as a CNA, and was also responsible for scheduling and stocking supplies, \$16.50 an hour. T. 229.

²² Gaeta recalled that Belezarian gave specific details of the decertification process, including that they "had to have a majority...to withdraw from the Union" and that "being without a union was an option." T. 90.

she was resigning from both the Union and Respondent. T. 87-88, 153-154, 156-157.²³

Gaeta also testified that Belezarian repeated her comments about the three options which would allow her to increase wages, and that on multiple occasions Belezarian and other supervisors discussed how removing the Union would allow Respondent to increase wages. T. 108-113, 134-135.

At a meeting in mid-June in Belezarian's office, Belezarian again discussed how to remove the Union from the facility and described how employees could draft resignation letters and go to work for an affiliated staffing agency, which would allow Respondent to bypass the Union. T. 180-182, 204-207, 2075-2080.²⁴ Palmer, who was present and drafted a resignation letter, believed Belezarian brought up this tactic because "we were trying to keep our raises and get another one." T. 181, 205. Palmer recalled that Belezarian told her that "the Union wanted [some CNAs] to make less money" and it was trying to reduce her \$14 hourly wage. T. 183, 202. Palmer did not believe that Belezarian was presenting her resignation idea as optional, but rather, was directing employees to do what they "need[ed] to do to get the Union out." T. 196. Palmer left the meeting feeling "happy" because "we were actually trying to do something so we could get a raise." T. 197.

²³ Gaeta felt "intimated" and was "afraid [she] was going to lose her hours" if she did not resign. T. 88, 135-136. Gaeta subsequently requested a copy of her resignation letter, but Belezarian said it was "in her home office" and Gaeta "never heard about [the resignation letter] again." T. 89.

²⁴ On June 30, Teoli emailed Belezarian regarding Belezarian pulling employees into her office and asking them to work for an agency. GC 20. Belezarian replied that it was "simply not true" and that "like many other things being thrown around that is blatantly untrue." T. 543; GC 20.

The next day, Belezarian told Palmer that she (Belezarian) couldn't be involved with the effort to remove the Union and that the resignation letters employees had written were no good and were unnecessary. T. 183-184, 206. Belezarian then said, "she couldn't be the one to handle the petition of getting the Union out so someone else was going to have to be the one to do it because she couldn't get – she (Belezarian) didn't want to get in trouble because it wasn't her responsibility to do that." T. 184. Palmer expected someone else would circulate the petition. T. 206.

Belezarian also told Palmer that the Union had succeeded in getting Miller reinstated, and yet even Miller had signed the anti-Union petition, causing Palmer to question the value of union representation and think that "maybe something isn't on the up and up with the Union if [Miller] wanted them out." T. 185-188, 196. Palmer signed the anti-Union petition based solely on what Belezarian told her about the Union wanting to reduce her wages. T. 201-202.

Minyo testified that Talbot came to her because Sullivan had told her that her pay should be reduced to \$11.50 per hour, since Talbot had accepted a full-time position and was no longer a per diem. T. 311. Minyo then brought Talbot to Belezarian, who reassured Talbot that she would keep her \$14 hourly wage rate and said that Talbot should "just keep her mouth shut [because the Union delegates] didn't need to know anything about their salaries." T. 311-312. Talbot admitted that Belezarian told her to ignore what Sullivan and other delegates were telling her regarding pay raises. T. 1918.

After the parties June 12 labor-management meeting, Belezarian complained to Minyo about Teoli and commented that the Union was more concerned with filling its own pockets than retaining employees. T. 315. She added that she hoped Birch would

hurry up and get the anti-Union petition to her, and said that if 30 percent of the employees signed the anti-Union petition an election could be held, if 50 percent of the employees signed the anti-Union petition Respondent could withdraw recognition from the Union, and that the facility would be better off without the Union. T. 315-316, 346. Minyo also heard Belezarian ask Birch for a copy of the petition because she needed to give it to “corporate” to withdraw recognition from the Union. T. 316. At Belezarian’s direction, Minyo asked Birch multiple times if she had the petition so she could give it to Belezarian. T. 316. About a week and a half after Belezarian’s statement that she hoped Birch would hurry up and get her a copy of the petition, Birch drove to Boston to pick it up (since the Board’s Regional Office would not email Birch a copy), so Respondent could provide it to “corporate” and withdraw recognition from the Union. T. 316, 364-365.²⁵

I. On June 29, Respondent Posted a Letter Disparaging the Union and Falsely Claiming that the Union Wanted Employees’ Wages Reduced.

On June 29, Respondent posted a letter, signed by Veno and Respondent’s President and CEO, Lisa Sofia, which disparaged the Union and falsely claimed the Union wanted to lower employees’ wages. JT 3. In relevant part, Respondent wrote,

Most recently, we hired [CNAs] above our required hiring wage, and subsequent to that we also increases the rates of existing employees who were below that wage. We notified the Union of this change and were shocked and dismayed with their angry reaction and their demand that we reverse the new employees and the employees who we increased wages back down to the lower rate of pay, because the Union could not take credit for this increase. WE EMPHATICALLY REFUSED to do so, as it would be the wrong thing to do. Now the Union, in an effort to take credit, has reversed their position from lowering these wages and has now taken

²⁵ Birch denied that Belezarian or Minyo asked her for a copy of the petition and also denied that Belezarian instructed her to drive to Boston to obtain a copy of the signatures she had gathered on her anti-Union petition. T. 1503.

on a campaign of unwarranted attacks and spreading blatant false information. This increase was not about taking credit. It was about doing the right and responsible thing for the good of all at Country Gardens.

* * *

We implore you to not allow the recent activities of a handful of employees to distract you from providing the best possible care for our residents.

JT 3 (emphasis original).

In this regard, Lukusa testified that Respondent had “papers all over the walls saying that we’re going to get a raise.” T. 54. Contrary to what Respondent represented in its June 29 letter, at no time did the Union desire or seek to have employees’ wage rates reduced. T. 442-443. Teoli made known to employees that, contrary to Respondent’s claims, the Union was working to ensure that all employees were paid correctly and to “bring everybody up to where they should be.” 537-538. Teoli explained to employees that the Union was “about raising wages. T. 538.

J. After the Decertification Petition had been Circulated, Management’s Presence on the Floor Increased Dramatically.

Sullivan testified that, after the decertification petition was circulated, “there was (sic) constantly managers walking up and down the hallways...opening resident’s doors to see who was in the rooms” while the CNAs were performing patient care. T. 746. Sullivan testified this was a marked increase of supervision. T. 746-747, 780. Sullivan, on break between her double shifts, had Belezarian follow her to the parking lot and instructed her to get back in the building. T. 747.

Before the decertification petition was circulated, management might come down to the units “use the computer or say hello” but not to sit at the nurses’ station. T. 459-460. Nunes testified that the increased management presence on the unit left “no doubt

[about] what was taking place...they were watching us.” T. 461. For example, when Sullivan was taking a break between her double shift and walking out with Nunes, Minyo followed them and said, “You people can’t be talking, now that the Union is out of the building,” and told Sullivan to get back in the facility. T. 441. Also, on the weekend of June 30, Hirst, who worked on the West Wing, was dropping off paperwork on the East Wing when Belezarian came “storming out after her” and told her she had to get back to her unit “right now.” T. 445.

K. After the Decertification Petition had been Circulated, Management also Monitored Employees’ Interactions with the Union.

On July 2, Teoli arrived at the facility around 6:15 a.m. with another Union organizer. T. 544-545. Teoli had not checked her email from the night before. T. 549 When Teoli arrived, Belezarian and Minyo, who had come to the facility much earlier than normal, were stationed at the West Wing door, an entrance they almost never used. T. 391, 443-447, 546; GC 22. As Teoli drove into the parking lot, Belezarian screamed that Teoli couldn’t be on the property and that she was going to have to call the police on Teoli. T. 546. Belezarian asked Teoli if she had received an email from the lawyer; when Teoli replied that she had not received an email from Fritton, Belezarian clarified that she was referring to “the other lawyer,” which prompted Teoli to ask who Belezarian was talking about. T. 546. Teoli asked why Belezarian hadn’t just called her if it was so important, and Belezarian repeated that Teoli couldn’t be on the property and that she was going to call the police. T. 546. Teoli persisted and met with the 11 p.m. to 7 a.m. shift employees as they were leaving work. T. 545-547. Teoli again stood

on the lawn behind the facility where she had met with other members on June 26. T. 545.

After meeting with overnight shift employees, Teoli read the email from Respondent's then-attorney Aaron Schlesinger ("the other lawyer" to whom Belezarian had referred), which he had sent the evening before. T. 549, GC 23. Schlesinger wrote that Respondent would "not permit [Teoli] to meet with employees in its parking lot" because "Article 3.2 of the parties' [CBA] does not require it to provide the Union with a meeting place on facility property for such purposes." GC 23. Schlesinger also wrote that "more importantly...employees have advised and complained to [Respondent] that Union representatives have been attempting to coerce and intimidate them into attending such meetings against their wishes in violation of the National Labor Relations Act."²⁶

Later that morning, Schlesinger sent another email to Teoli reiterating that she was not permitted to meet with employees on Respondent's property and that, if she met with members again that day, it would be her "5th general group meeting in less than one week." GC 24. Schlesinger also wrote that Respondent "remain[s] confused as to what prompted this uncalled for attack on management after numerous times being told by you and other Union employees that they are very happy with all we have achieved at the facility." GC 24.

²⁶ Respondent never filed an unfair labor practice charge alleging this or any other conduct by the Union to be unlawful.

During the 40 minutes Teoli was outside the facility on July 2, Belezarian stood near where Teoli was meeting with members – sometimes as few as 10 feet away. T. 547-549, 624-625. At times, Belezarian spoke with the employees attempting to meet with Teoli. T. 625. One such employee, RN Carrie Taber, testified that she found management's presence while she was speaking with Teoli to be "confrontational." T. 392, 547, GC 22. It was not typical for management to watch employees interacting with Teoli. T. 549.

Teoli planned to meet with members again on July 6 from 2 p.m. to 4 p.m. T. 557. This time, Teoli set up her table about 20 feet from the four-lane highway which runs past the front of Respondent's property. T. 555, GC 25. Again, Teoli's fellow organizer was present, as were Belezarian, Perry, and Minyo. T. 552-554, 2191, GC 25. When Teoli arrived, Belezarian told Teoli that she was "calling the cops...you can't be here." T. 552. Perry testified that management went to the lawn near where the Union was set up to meet the police "because we didn't have the Union in the building, so we didn't know why they were on the lawn." T. 1701. Belezarian did call the police, who ultimately, permitted Teoli to meet with members on the lawn next to the highway. T. 554-559, 2192; GC 26. Belezarian continued to monitor the meeting from about 10 feet away from where Teoli had been standing. T. 558; GC 25. Teoli was able to speak to approximately 20 employees that day. T. 559.

L. In Order to Discourage Union Activity, Respondent Installed Fake Cameras at the Facility in Early July.

In early July, around the time Teoli was holding the membership meetings described above, Respondent installed cameras in each of the facility's two wings, facing toward the kitchenettes, down the hallways, and towards the breakroom at the back of the facility. T. 99-100, 326-329, 456-457; GC 38, GC 39, GC 40. These cameras, which Belezarian and Veno admitted were fake, had been positioned very oddly because they didn't face any of the doorways. T. 100, 456-458, 2285-2287, 2327-2328, 2519; GC 38, GC 39, GC 40, GC 97. Subsequently, on August 16, Respondent hired Home & Commercial Security, Inc., to install functioning cameras, which captured video but not audio, at the facility. T. 2287, 2523; GC 98. Although Veno testified that Respondent installed both the fake cameras and functioning cameras because management decided doing so was the best way to address Respondent's "extreme concern" about resident care, Minyo testified that Belezarian told managers (including herself) that the cameras had been installed in order to deter any Union business from taking place in the building. T. 324, 2519.²⁷

M. Respondent Unilaterally Withdrew Recognition from the Union on July 6, and Ceased Deducting Dues from Employees' Paychecks on July 12, While Both CBAs Remained in Full Force and Effect.

²⁷ In this regard, Veno could not explain why Respondent chose to install cameras, rather than issue a memo or hold a meeting, to reinforce to employees that resident care was their primary responsibility:

Q. "[W]hy not hold a meeting with employees...to reinforce that resident care is the primary focus in the workplace...if you had such an extreme concern...[o]r why not issue a memo reminding employees that ...resident care was the primary focus?"

A. "We didn't."

T. 2519.

On July 6, Schlesinger emailed Teoli and Union counsel Kevin Creane that, based on employee signatures contained on a “Disaffection Petition,” Respondent had determined that the Union no longer enjoyed majority employee support in either Unit A or Unit B and that effective that day, Respondent was withdrawing recognition from the Union in both Units. JT 4, JT 5, JT 6. Schlesinger’s emails to Teoli also stated that her request for a meeting the following week was denied, and his email to Creane stated that he had had advised Teoli not to appear at or contact the facility. JT 4, JT 5, JT 6. Also on July 6, at Belezarian’s direction, Minyo signed Veno’s name on a letter to employees (which Veno testified was a common practice) announcing that Respondent had withdrawn recognition from the Union, and Minyo posted copies of the letter throughout the facility. T. 317-318, 346-347, 2473; JT 7.²⁸ On July 12, Veno wrote to employees, stating that Respondent would no longer deduct Union dues from their paychecks (which was contrary to the provisions of the parties’ CBAs), and that employees “will see **an increase** in...[their] paychecks...,” in some cases between \$850 and \$1,000 annually. JT 8²⁹ (emphasis original), JT 1 at p.17, JT 2 at p.16.

The CBAs were each effective from November 1, 2016 through October 31, 2018. JT 1, Article 24.1, JT 2, Article 24.1. Thus, when Respondent withdrew

²⁸ The letter states that, “At no time ever will we implement any reduction of your wages and benefits which are currently provided. Moreover, the Union may utilize tactics to change your mind involving misinformation, intimidation and coercion. If you are subjected to such conduct, please feel free to advise us of same and we will assist you in implementing an appropriate response such as the filing of an Unfair Labor Practice Charge with the NLRB.” (Emphasis original.)

²⁹ The letter states that “at no time ever will we implement any reduction of your wages and benefits which are currently provided.” (Emphasis original.) It also states that, “Open communication will help alleviate rumors and unnecessary anxiety. We encourage you to bring any and all concerns or questions you may have to management.”

recognition from the Union on July 6 and ceased deducting Union dues on July 12, the CBAs remained in full force and effect.

After Respondent withdrew recognition, management removed any “Union paraphernalia, any signs, any mention of anything to do with the Union” and increased rounds to “make sure there was no congregating and that the Union wasn’t pushing their paraphernalia on the employees or discussing any Union.” T. 808-813.

Respondent also informed employees that the Union was no longer in the building. T. 262, 888.³⁰

N. Between June 28 and Late July, Union Delegates Gathered Signatures on a Pro-Union Petition. On July 26, a Group of Delegates and Employees Presented Respondent with this Counter Evidence Demonstrating that the Union Continued to Enjoy Majority Employee Support.³¹

Between June 28 and late July, Union delegates, including Brown, Viola Rego, Sullivan, Gomes, Hirst, and Nunes, circulated copies of a pro-Union petition that Teoli had prepared. T. 450-453, 538-540, 561, 747-748; GC 30, GC 42. Delegates signed and circulated multiple copies of the pro-Union petition so that employees would feel more comfortable signing knowing the delegates had done so themselves. T. 450-453,

³⁰ Gaeta was alarmed when changes started to occur after the Union was out of the building: Employees did not receive promised raises, Respondent installed cameras, employees were getting terminated “kind of out of the blue,” and employees started getting “bounced from wing to wing” because “someone threw a fit they didn’t want to be on another wing.” T. 100-101. Gaeta described the facility as a “toxic work environment” once Respondent withdrew recognition from the Union. T. 102.

³¹ In *Johnson Controls, Inc.*, 368 NLRB No. 20, slip op. at 1-2 (July 3, 2019), the Board invalidated the longstanding “last in time” rule, which permits an incumbent union to defeat an employer’s withdrawal of recognition in an unfair labor practice proceeding with evidence that it had reacquired majority status in the interim between the employer’s announcement of anticipatory withdrawal of recognition and its actual withdrawal of recognition. However, the employee conduct set forth below remains relevant as evidence of employees – including discriminatees Sullivan, Hirst, and Nunes – engaging in protected union activity.

539, 561-562, 747-748, 895. Of the 29 employees in Unit A who had signed Birch's decertification petition, nine also signed the pro-Union petition.³² T. 37-38, 40, 63, 65, 91, 98-99, 185, 192-193, 253-254, 263, 748-749; JT 29, pp.1-4; GC 30, pp.1-3, 5-6. Of the three employees in Unit B who signed Birch's decertification petition, one, RN Barbara Ganda, also signed the pro-Union petition.³³ JT 29, p.2; GC 30, p.3.

Unlike Birch, who approached employees in work areas on work time, employees who signed the pro-Union petition did so in non-work areas and on non-work time: Lukusa signed in the parking lot at the facility before coming on to her shift (T. 58-59); Gaeta signed on a break in the breakroom (T. 98-99, 149-150); Palmer signed after work as she was leaving the facility (T. 192-193); Sherman met Nunes on non-work time on the evening of July 15 in a Stop & Shop supermarket parking lot in Somerset, Massachusetts (T. 263-264); and Sullivan obtained signatures from Ayotte and Miller outside the breakroom when neither she, Ayotte, nor Miller was on work time. T. 748-749. In fact, there is no evidence that any of the employees who signed the pro-Union petition did so while they were on work time or in a work area.

³² Melissa Ayotte, Allison Cardinal, Nickole Gaeta, Amanda Giglio, Sharon Lukusa, Sherry Martin, Tenisha Miller, Victoria Palmer, and Kelly Sherman.

After Palmer signed the petition in support of the Union, she met with Belezarian in her office to discuss her concerns. Specifically, Palmer told Belezarian she had signed the pro-Union petition and asked Belezarian if there was a new owner or if Belezarian was to leave, "what's is going to happen to us, like as far as lowering out payment, our wages?" T. 194; GC 30. Belezarian told Palmer that she "could get in trouble" and she "shouldn't have [her] name on two different documents," which worried Palmer. T. 195, 212.

³³ Although the record does not contain testimony from Cardinal, Martin, or Ganda about signing both petitions, their signatures are clearly legible and readily identifiable on each document (JT 29 p. 3, GC 30 p.6; JT 29 p.4, GC 30 p.1; JT 29 p.2, GC 30 p.3), and GC 30, the pro-Union petition, was admitted into evidence without objection from Respondent. T. 455. Therefore, there is no doubt as to the authenticity of their signatures – or the authenticity of any other signatures – on the pro-Union petition.

On July 26, a group of approximately 10 delegates and employees, including Gomes, Nunes, Brown, Rego, Taber, and Cheryl Cabral, presented the pro-Union petition to Belezarian.³⁴ T. 396-397, 454-456, 561-562, 896-897, 2122-2123. Belezarian told the group that she would forward the petition to the proper individual (as it happened, Schlesinger) to verify the signatures. T. 396-397, 455-456, 897, 2123-2124.

O. Respondent Suspended and then Discharged Long-Time Employee and Union Delegate Stephanie Sullivan on July 9 and July 11, Respectively, Relying on a Demonstrably False Reason.

Sullivan worked as a CNA for Respondent and its predecessors at the Swansea facility for 35 years. T. 701. Sullivan was well-known among the employees and management, albeit informally, as the principal Union delegate, a position she had held for 15 years. T. 239, 703, 843, 906, 939-940, 1196-1197, 1224, 2236, 2244. She represented employees in grievance proceedings and was quite often able to resolve workplace issues brought to her attention without having to file a formal grievance. T.704. Sullivan “was a great educator [and] would be the first to tell [those] in administration...if [they] were doing something wrong.” T. 843. Sullivan was also very knowledgeable about the Union. T.843. During the period in which Birch circulated the decertification petition and in the days immediately after Respondent withdrew recognition, Sullivan provided employees with information regarding the merits of Union

³⁴ As noted above, delegates signed multiple copies of the pro-Union petition to demonstrate to employees that they weren't being asked to sign a document the delegates themselves weren't willing to sign. T. 452, 748, 895-896. Before presenting the pro-Union petition to Belezarian, Teoli and the delegates crossed out all but one of the delegates' respective signatures so they weren't counted multiple times. T. 453, 748, 895.

representation, distributed Union buttons, and helped circulate the pro-Union petition. T. 673, 724, 748-749; GC 30.

On July 9, Sullivan gave activities assistant Laurie Silvia a small Union button when they passed each other at the East Wing nurses' station. T. 673, 724; GC 46.³⁵ Later that day, Belezarian and Minyo went to the dining room to speak with Silvia regarding the Union button. T. 675, 815. Silvia immediately told Belezarian "exactly what had happened on the unit:" Silvia stated that Sullivan had given her the button and that she didn't want to get into trouble.³⁶ T. 674-675, 815. Belezarian explained that while Silvia had been on vacation, Respondent had withdrawn recognition from the Union and there was to be no more Union business, "no one was allowed to talk Union," and "no [Union] paraphernalia" would be allowed at the facility. T. 815. Belezarian also invited Silvia to come see her if she wanted to sign the anti-Union petition. T. 815.

Later that day, Belezarian and Veno called Sullivan into Belezarian's office. T. 705-706. Brown was also present on Sullivan's behalf. T. 889. Veno stated that he had received a verbal complaint that Sullivan had left her work area around 10:30 a.m. and that he was suspending her pending investigation. T. 707-708, 889. Veno issued Sullivan a Disciplinary Action Report which states, "Solicitation & Distribution: Leaving work area on unassigned break to solicit another employee while the other employee also was not on an assigned break in a resident area (Dining Room);" the form did not

³⁵ In addition to being coworkers, Silvia and Sullivan previously had a family relationship: they were once sisters-in-law. T. 687-688, 723-724.

³⁶ Silvia testified that the only place she saw Sullivan on July 9 was at the nurses' station. T. 675-676. Nevertheless, Belezarian informed Veno that Food Services Director Joe Little told her he had witnessed Sullivan speaking to Silvia in the dining room. T. 2401.

list any prior discipline issued to Sullivan in the preceding 18 months. T. 707, 2485, 2488-2489; GC-SS 1. However, as set forth above, Respondent's version of events on the Disciplinary Action Report is false. T. 675. In the meeting, Sullivan immediately denied leaving her work area, stating that she had not been in the dining room that day and that she was performing patient care in her work area at 10:30 a.m. T. 708-709.³⁷ Belezarian told Sullivan that there were a lot of investigations going on and "people were going tit for tat, because of the decert[ification] of the Union," but that they would bring her back and pay her for the shifts she missed while she was suspended. T. 710.

On July 10, Brown grieved Sullivan's suspension, but Respondent has refused to process it.³⁸ T. 882-883; GC DB-1. Belezarian also called Sullivan that day to tell her about a meeting scheduled for the following day and to ask her to bring in a written statement concerning the incident. T. 712-713. Belezarian reiterated that Sullivan didn't need to worry because she was being brought back and could, in fact, be in uniform, ready to work, for a shift following the meeting. T. 714-717.

On July 11, Sullivan returned to the facility for the scheduled meeting with Veno, and Belezarian; Brown again served as her representative. T. 720-723. Sullivan provided Respondent with a written statement regarding the allegations against her. T. 719; GC SS-4. Veno stated that two employees had by then come forward regarding

³⁷ In this regard, Veno testified that in the three years he that he had known Sullivan, he had no reason to believe she was untruthful. T. 2444-2445.

³⁸ The Union has continued to file grievances despite Respondent's withdrawal of recognition, but Respondent has not processed them and has also refused to proceed with grievances awaiting arbitration. T. 400-402, 421-422, 432-433, 563-564, 882-883, 1226-1227; GC PG-1.

the allegations against Sullivan, one who reported the incident orally and one who submitted an anonymous statement, and that he was discharging Sullivan. T. 720-722. Neither Sullivan nor the Union received a copy of the anonymous statement, despite requesting it, and no such statement is in evidence. T. 689, 697, 720, 892-893, 889.³⁹ Sullivan again denied leaving her work area and said she believed she was being targeted because she was a Union delegate. T. 721. Veno then left the office for a short time. While Veno was away, Belezarian told Sullivan and Brown that she “didn’t care one way or the other, if the Union was in the building or not.” T. 722. When Veno returned, he said Respondent’s lawyer had tied his hands and that Sullivan’s discharge would stand. T. 722. Veno told Sullivan that her last paycheck had already been overnighted, so it should be in her mailbox. T. 723.

³⁹ Veno testified that whenever management investigates an incident that could lead to employee discipline, he ensures that the investigation is thorough, fair, and impartial, whether or not he personally conducts the investigation, “because it’s important to get to the truth,” and that witness statements are important in any type of investigation, whether or not it could lead to employee discipline. T. 2479-2481, 2528-2529. However, Veno did not obtain any written statements regarding the allegations leveled against Sullivan because Little refused to provide one, and neither he nor Belezarian asked Silvia to provide one. T. 2405, 2482-2483. In this regard, Veno stepped out of the July 11 meeting to consult with his attorney because he had not obtained any written statements to support his decision to discharge Sullivan. T. 2407, 2492. Nevertheless, he did not postpone the meeting until after he had spoken with his attorney. T. 2492-2493. He denied that he could have required Little to provide a statement and claimed that he would not require a witness to provide a statement if the witness was uncomfortable doing so. He also decided statements were not necessary in this instance because the incident did not relate to a resident. T. 2482-2483. Veno based his decision to terminate Sullivan solely on Belezarian’s version of her conversations with Little and Silvia, and he chose not to speak with Little. T. 2549-2550. Veno further testified that, had he spoken to Silvia and learned that she hadn’t spoken to Sullivan off the unit at any time that day, he would not have discharged her. T. 2552.

Belezarian relied on Silvia’s “testimony to me of exactly what happened,” and testified that it is typical to discharge an employee in a situation where a witness refuses to provide a written statement about the incident. T. 2247-2248. She claimed to have done so a few times in the past, but could not identify another such instance. T. 2248.

That same day, Gomes grieved Sullivan's discharge. T. 1226-1227; GC PG-1. At an informal meeting between Gomes and Veno, Veno told her that Sullivan's discharge was "beyond his control" and that "it was the lawyer." T. 1227-1228.

Respondent permits many forms of solicitation at its facility. T. 725-730, 844-847; GC 35, GC 46. Before Respondent withdrew recognition from the Union, employees were permitted to wear Union buttons, lanyards, badge clips, and scrub tops while performing their work duties without fear of discipline. GC 46; T. 725, 727-728, 900, 979, 981. Additionally, employees were permitted to wear promotional items from companies doing business with Respondent, like Beacon Hospice, and to help themselves to those items while on work time. T. 725-728, 901, 2330-2332. Employees and managers solicited their coworkers on work time for fundraisers for their children's activities and for their side gigs. T. 461-463, 728-730, 845-847, 898; GC 35. For example, Gaeta sold pasta and raffle tickets for her son's cheer team and regularly left a brochure at the nurses' station on each wing. T. 102-104, 386. Second shift nurse supervisor Laurie Powers sold pies and regularly left order forms at the nurses' stations. T. 728-730. And, in addition to her job as Respondent's MDS Coordinator, O'Kane, an admitted statutory supervisor, is a consultant for a direct sales company called Scentsy, and she regularly left brochures and samples of her products at the nurses' station on each wing; employees freely perused them, signed up for purchases, and received delivery of their purchases, all while they were on work time. T. 844-845, 899-900, 1661, 2329.

Though CNAs and nurses are typically assigned to a particular wing, there are a number of reasons, both work- and nonwork-related, when Respondent has permitted employees to be away from their assigned work areas. For example, Brown may leave her assigned wing in order to take a resident to an appointment, to go to the kitchen for an item for a resident, or to talk to someone in the front office regarding a resident complaint. T. 906-907. Brown also leaves her wing at least once a shift to get chocolate from the candy dish in the Human Resources Office and talk about her dating life with another employee in the Business Office. T. 907-909. Both the Human Resources Office and the Business Office are near the managers' office suite. T. 907-909. Brown does not inform her charge nurse when she leaves the unit – whether for a work- or nonwork-related reason – and has never been disciplined in this regard. T. 907-910. Nunes may leave her wing for work-related reasons, such as getting supplies or going to one of Respondent's offices, but also for nonwork-related reasons such as getting food or visiting employees who work in one of Respondent's offices to say hello. T. 467. Nunes does not seek permission prior to leaving the floor for nonwork-related reasons and has never been counseled or disciplined in this regard either. T. 467-468.

P. Respondent Suspended and then Discharged Long-Time Employee and Union Delegate Karen Hirst on July 16 and 19, Respectively, for a Dubious Reason after Conducting a Deliberately Perfunctory Investigation of Her Alleged Failure to Report a Resident-to-Resident Incident that Occurred on July 15. Respondent also Suspended Katherine Minyo on July 17 and Discharged her on July 18, after Minyo Refused to Lie about Hirst Allegedly Failing to Report the Resident-to-Resident Incident, which Respondent Cited as the Basis for Hirst's Discharge.

Like Sullivan, LPN Karen Hirst worked for Respondent or its' predecessors for more than 35 years. T. 942. Also like Sullivan, she was a long-time delegate whose activities on behalf of and support for the Union were well known to Respondent. T. 945-946, 1734. Hirst was known as the delegate who would "fight for the underdog." T. 904, 1229-1230. Management was well aware of Hirst's distinctly strong advocacy. For example, just weeks before the withdrawal of recognition, Hirst filed a grievance – which her fellow delegates thought was unwinnable – on behalf of Miller, who had been discharged for poor attendance. T. 904, 950-952, 1130-1131, 1229-1230. In an email to Teoli, Belezarian noted Hirst's willingness to represent Miller, in contrast to her fellow delegates, who felt Miller's discharge was justified. GC 55. At the parties' June 12 labor-management meeting, Miller's grievance was the first agenda item, and management agreed to reinstate her on a 60-day last chance agreement. T. 2154, 2374-2375.

Upon learning about the decertification petition, and despite being on vacation, Hirst messaged a number of her coworkers to inform them that she was aware of the situation, would be returning soon, and could answer any questions they may have. T. 960-965; GC KH-1. Within minutes of sending the message, Teoli called Hirst and told her to avoid sending messages to employees. T. 965. When Hirst asked Teoli how she found out about the messages, Teoli told her Belezarian had called her. T. 966. Hirst concluded that of the employees she had messaged, only Hayes was scheduled to be working at that time, and Hayes must have shared her message with Belezarian. T. 966. Hirst then messaged a rat emoji to Hayes. T. 966. Hayes testified that "within a minute" of receiving the emoji, she complained to Belezarian that she "didn't want to receive any texts from any Union member." T. 1546, 1560-1563. That same day, June

25, Perry completed a Disciplinary Action Form, citing “Personal and Professional Conduct” for Hirst sending Hayes the rat emoji; Veno presented the discipline to Hirst when she returned from her vacation on June 28. T. 971-974; GC KH-3. The Disciplinary Action Form states that, “Any form of perceived retaliation will not be allowed.” GC KH-3.⁴⁰

Despite her discipline and Respondent’s increased monitoring of Union activity, Hirst continued to advocate for the Union by attending membership meetings, speaking to employees about the benefits of Union representation, and obtaining witness statements from employees documenting that Respondent had been assisting the decertification effort. T. 810, 812, 967-970; GC 32. On July 10, one day after Sullivan’s discharge, Hirst wore a Union scrub top to work and posted a picture on Facebook declaring her support for the Union. T. 979-981; GC KH-4.

All of Respondent’s staff are required to report certain conduct, like abuse and neglect allegations or injuries of unknown origin, to the nursing staff and to provide a written statement of any such incident. T. 817-818, 983-985; GC KH-3.⁴¹ Staff receive extensive training regarding these so called “reportable incidents.” T. 818, 985. Any employee who witnesses or learns of a reportable incident is responsible for immediately reporting it. T. 1773. Nursing staff, including LPNs, RNs, and Nurse

⁴⁰ Veno understood that a rat has meaning in the labor context: “When you drive by any strike you can see a large blown-up rat. And so it’s not exactly a term of endearment.” T. 2391.

⁴¹ Respondent’s Abuse Reporting Policy states, in pertinent part, “The Facility requires that every employee immediately make an oral report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property to his or her supervisor whenever he or she has reasonable cause to believe that any patient or resident has been abused, neglected or mistreated or had property misappropriated.” GC KH-5, p.4.

Managers, have between two and 24 hours, depending on the type of event, to report the incidents through the Massachusetts Department of Public Health's electronic filing system. T. 819, 986-987. Employees have at times been disciplined for failing to timely report incidents. T. 1773, 1776.

Hirst works on the facility's dementia unit, located on the West Wing, and files reportable incidents almost daily. T. 943, 986. For example, around March of 2018, a resident told Hirst his nighttime CNAs, Christopher Beauregard and Stacy Hayes, were neglecting him and were not providing proper evening pericare. T. 990-996. The resident told Hirst he did not want to report the incident because he feared retaliation, since Beauregard is Belezarian's son. T.988. Hirst told the resident she had "no choice" but to report the incident because it was a neglect allegation. T. 991. She and the resident's daytime CNA each wrote a statement regarding the incident and Hirst submitted them to Perry for further investigation. T. 996; GC KH-6(a) and (b). When Hirst submitted the statements, Perry stated, "Oh, I better wait until [Belezarian] gets here." T. 994. Though Respondent's administrator is not typically involved in patient care, Belezarian accompanied Perry to conduct the patient interview. T. 851, 1731. While employees are routinely suspended pending investigation when there is any allegation of abuse, Beauregard and Hayes were allowed to work their normal shift the following evening. T. 850, 997-998.⁴²

⁴² Respondent has not always followed its reporting policy. For example, in the spring of 2018, Hayes failed for over two months to report that one CNA had accused another of patient abuse. T. 1552-1555; GC 94. Hayes testified that she did not remember ever being disciplined for failing to timely notify the nursing team of this allegation. T. 1555.

Hirst worked the weekend of July 14 and 15 and documented a reportable incident on each of those days. T. 999-1001. On July 14, Hirst witnessed an “iffy situation” regarding a CNA possibly intimidating a resident when the resident would not sit down. T. 1000. Nevertheless, Hirst notified the nurse manager on duty and prepared a statement. T. 1000. On July 15, a CNA reported a small bruise of unknown origin to Hirst. T. 1000-1001. Hirst collected statements, notified the resident’s family and doctor, and reported the bruise to Minyo, who was working as a floor nurse that day. T. 823-826, 1000-1002; GC KM-1, GC KM-2, GC KM-3.

On the morning of July 16, Hirst’s day off, Perry left her a voicemail message that she needed to talk with Hirst regarding a reportable incident. T. 1004. Hirst assumed this concerned the July 14 “iffy situation” involving patient intimidation. T. 1004. When Hirst returned Perry’s call, Perry stated that there had been a resident-to-resident altercation on July 15 and that because Hirst had not reported it, she was being suspended pending investigation. T. 1004. Hirst did not know that Perry had her on speaker phone in the nurses’ office, where Minyo and Belezarian were also present. T. 820, 827. Hirst immediately denied seeing the altercation and said no one had reported it to her. T. 820-821, 1004. Perry then told Hirst that a resident allegedly struck another resident with a doll at 10:30 a.m., and that they had obtained two statements, including one from Hayes, stating that Hayes reported the incident to Hirst. T. 1004-1005. Hirst said there are always several dolls on the unit for her dementia patients to hold and asked Perry why she would have fully investigated the bruise of unknown origin that same day, yet failed to investigate the more serious allegation of a resident-to-resident

incident. T. 1005-1006. Perry told Hirst to write a statement and bring it to the facility that day. T. 1006.

Hirst then spoke with Gomes regarding her phone call with Perry. T. 1007-1008. When Hirst told Gomes that Perry said the incident occurred at 10:30 a.m., Gomes reminded Hirst that the two of them had been on break together at that time in the breakroom. T. 1007, 1234-1235. Hirst then wrote her statement and delivered it to Perry at the facility, specifically stating that she had been on break during the time of the incident and had a witness to corroborate that fact. T. 1011, 1026-1027; GC 61(e).

Meanwhile, immediately after the phone call between Perry and Hirst on July 15 ended, Minyo told Perry that she was not aware of any resident-to-resident incident and that she (Minyo) “was sitting there all day and it was the first [Minyo] had heard of it.” T. 822. Minyo recalls seeing the patients in question the entire morning and was never made aware of the situation. T. 822. Minyo asked why the incident was not reported to her and Perry told her that Hayes hadn’t done so because they were not Minyo’s patients. T. 822. Minyo said that made no sense because, as the managing nurse, she would have completed the reporting for the state and helped Hirst with the investigation. T. 823; GC KM-3. Minyo told Perry and Belezarian she had seen a doll at the nurses’ station that day and that Hayes told her not to give it to one of the residents because she would throw it, but that she was not told about the resident throwing the doll and hitting another resident. T. 827; GC 61(f). Management did not ask Minyo any questions regarding the incident. T.854-856. Instead, Belezarian told Minyo to “stop talking” or risk being suspended herself. T. 827.

On July 17, Minyo's off day, Perry called Minyo and asked her to write a statement regarding the resident-to-resident incident. T. 828; GC KM-4. Perry later asked Minyo to write another statement because her initial statement did not include enough detail regarding the doll she had seen on the unit. T. 828-829; GC 61(f). After Minyo submitted her second statement, Perry called Minyo and suspended her pending investigation. T. 829-830. Belezarian called Minyo the following day, July 18, and told her Hirst was going to be terminated and that Minyo "needed to say that the incident had occurred, so it was [Minyo's] fault that [Minyo] failed to file the report and that [Minyo] would receive a written warning and life would carry on and [Minyo would] be back at work." T. 831. Minyo told Belezarian that she would not lie about something that had never happened. T. 831. Belezarian then told Minyo that there was a "conflict of interest 'cause we were friends and that's what they needed to do and that it was part of the job." T. 831-832. Belezarian also told Minyo that Veno was going to discharge her at the meeting scheduled for the following day, and that she wanted to let her know this so Minyo wouldn't feel bad or embarrassed when she came in for the meeting. T. 858-859, 2119-2120. Despite Belezarian making clear during this phone call that, if Minyo didn't go along with Respondent's plan to discharge Hirst for failing to report the alleged resident-to-resident incident, she would also be discharged, the letter Minyo received from the Massachusetts Department of Unemployment Assistance (DUA) awarding her unemployment benefits indicates that Respondent "failed to provide sufficient separation information regarding [Minyo's] attendance at a meeting." GC KM-8.⁴³

⁴³ In this regard, and consistent with Belezarian's account, Veno testified that the night prior to the scheduled meeting, Belezarian called him to explain that she had already informed Minyo that Veno had

In all, the investigatory file contained statements from seven employees regarding the incident. GC 61(a)-(g). As explained above, Minyo and Hirst both denied seeing or receiving a report of the incident. GC 61(e)-(f). Ayotte, Miller, and Giglio wrote statements that supported Hirst's and Minyo's account. GC 61(b)-(d). The other two statements were written by Hayes, who allegedly reported the incident, and Activities Assistant Ariana Federici-McCarthy, who was unsure if Hirst was at the nurses' station when Hayes allegedly reported the incident. T. 799, 801-802, GC 61(g), GC 61(h). The investigatory file also contains a report from Belezarian which states that in a phone interview Hayes was asked "why she didn't report the incident to [Minyo] when [Hirst] didn't react to her statement of the [resident-to-resident]" and that Hayes "stated that she didn't know why she didn't bring it to [Minyo's] attention again prior to the shift being over but that [Minyo] was present when she initially reported it to [Hirst]." GC 61(a). Hayes did not testify to such a phone conversation with Belezarian and Perry did not remember any conversations with Ayotte, Miller, or Giglio related to the resident-to-resident incident. T. 1535-1536, 1685-1686, 1748-1749.

Hayes recalled seeing a resident hit another resident with a doll and that she "ended up saying that [the resident] got hit" and "looked forward to the nurses' station," claiming both Hirst and Minyo were at the station. T. 1527-1528. Although Hayes admits she did not speak with either Hirst or Minyo regarding the incident during her first shift, nor did she do anything related to the incident during that shift, she reported it to Sousa

decided to discharge her. T. 2418. Nevertheless, Veno went to the facility the following day in the event Minyo came in for the meeting. T. 2418. He admitted that it made no sense to discharge Minyo on the evening of Wednesday July 18, but to report to the DUA that she was discharged for failing to attend a meeting scheduled for the following day, Thursday July 19. T. 2505-2506.

during her second shift. T. 1530-1531. Sousa then instructed Hayes to write a statement. T. 1533.⁴⁴ The next day, Hayes was called to Belezarian's office and directed to revise her statement. T. 1535, 2299. Hayes wrote the words, "told [Hirst] was nurse of both residents" between her original narrative and her signature. T. 1535-1536, 1601, 2299. This modified statement was included in the final investigatory file. GC 61(g).

Federici-McCarthy, who was standing about 10 feet away from the two patients, "saw the doll go across the table" and contact one resident's arm and chest area. T. 792-793. Federici-McCarthy said she saw Hayes with the residents and that Hayes "just said out loud that it was a reportable incident and we have to write a witness statement," but that Hayes did not use Hirst's name. T. 792, 799. Federici-McCarthy was turned away from the nurses' station when she heard Hayes say there had been a reportable incident, and Federici-McCarthy remembered last seeing Hirst using her laptop at the nurses' station about five minutes before the incident occurred. T. 796-797. Because Federici-McCarthy had been trained to automatically write a statement when she witnessed an incident, she did so and put it on top of the counter at the nurses' station. T. 796, 800.⁴⁵ Federici-McCarthy did not tell anyone she had written a statement. T. 797.

⁴⁴ In this regard, Hayes testified that "the nurse usually gives us witness statements." T. 1532.

⁴⁵ Unlike Federici-McCarthy, Hayes admitted she neither wrote a statement or took any other action regarding the incident for the rest of her shift, and testified that after she told Sousa about it at the start of the next shift, Sousa "gave [her] a witness statement to fill out," which was in fact nothing more than a blank piece of paper. T. 1526-1533. Thus, like Federici-McCarthy, Hayes knew what the reporting protocol involved, yet did nothing during her entire shift, and didn't need to wait for a nurse to give her a witness statement form" of any kind to report what she'd seen.

About a day later, Federici-McCarthy was called into a meeting with Belezarian and Perry. T. 799. Hayes was also present for this meeting. T. 1538-1539. Belezarian asked her “what had happened in the incident and if [Federici-McCarthy] had heard [Hayes] say to [Hirst] that she reported it.” T. 799. Federici-McCarthy responded that Hayes “direct[ed] her statement towards the nurses’ station” but that Hayes “didn’t specifically say ‘Karen, you need to make this a reportable.’” T. 799. Belezarian then asked Federici-McCarthy to revise her statement to add that Hayes told Hirst about the incident. T. 799. Although Federici-McCarthy was actually “not sure if [Hirst] was still sitting there” because her “back was turned,” she just assumed Hirst was still present and wrote a post-script to her original statement, as instructed by Belezarian. T. 799, 801-802; GC 61(h).⁴⁶

If Federici-McCarthy personally witnesses an incident, she gets the nurse’s attention by name and “always make[s] sure that [the nurse] has [her] witness statement in their hand...so [she doesn’t] get into trouble.” T. 799-800. In this regard, Federici-McCarthy recognizes that the nurses can be very busy and have tight deadlines to report incidents. T. 799-800.

In Belezarian’s July 16 summary of the resident-to-resident investigation included in the investigatory file, she wrote that “Hayes’s statement said that [Hayes] reported it to [Hirst] but when she wasn’t asked to write a statement pertaining to the investigation

⁴⁶ While Belezarian testified that it was important that the nurse involved be named in Hayes’ and Federici’s statements, she did not require that the same level of detail be included in statements related to her investigation of an incident involving her son. T. 2306; GC 95(b), GC 95(e).

she reported it to the charge nurse on the upcoming shift.” T. 1531; GC 61(a). The summary states that during Hayes’ phone interview she was asked “why she didn’t report the incident to [Minyo] when [Hirst] didn’t react to her statement of the resident-to-resident” and Hayes responded that “she didn’t know why she didn’t bring it to [Minyo’s] attention.” GC 61(a). The summary makes no mention of Giglio’s, Miller’s, or Ayotte’s statements. GC 61(a)-(d).⁴⁷ The summary notes that both Hirst and Minyo were suspended and terminated for the incident. GC 61(a). Neither the summary, nor any witness testimony, indicates that Hayes was disciplined for the manner in which she reported this incident. GC 61(a). Perry, as the DON at the time, directly supervised all of the nursing staff, including Hirst and Minyo, but did not recommend discharging either of them. T. 1727, 1753-1755.

On July 19, Perry called Hirst to come to the facility for a meeting. T. 1028, 1695. Veno conducted the meeting, at which Ortiz and CNA Maureen Vasconcellos were also present. T. 1029. Veno told Hirst the investigation was complete and that she was being discharged for failing to report the resident-to-resident altercation; Veno also gave Hirst a Disciplinary Action Report signed by Belezarian which referenced three prior disciplinary actions. T. 1030; GC KH-10.⁴⁸

⁴⁷ In this regard, Veno, who made the final decision to terminate Hirst and Minyo, credited Hayes’ and Federici-McCarthy’s statements over the other five statements because they indicated they had seen the incident. T. 2497-2498.

⁴⁸ The first prior discipline cited was Hirst’s June 28 warning for sending Hayes the rat emoji on June 25. T. 1033; GC KH-10. Ordinarily, Disciplinary Action Forms cite only similar types of infractions, e.g., absenteeism, for purposes of documenting progressive discipline. T. 1035. The second prior discipline listed was for failure to timely report an incident in July 2017. GC KH-10; R 22. Hirst admits that in July 2017, she waited to report an incident until the following morning because it had occurred over a holiday weekend and because she was unaware that state regulations had recently changed to require that type of incident be reported within two hours. T. 1035-1036. The third prior discipline listed pertained to a

During the meeting, Hirst asked Venó if he had reviewed the available video footage and Venó replied that “the video was irrelevant.” T. 1031. Hirst also asked if Venó had spoken to Gomes, because they were together on break in the breakroom when the incident had occurred. T. 1031. Venó said he had neither spoken to Gomes nor obtained a statement from her. T. 1031. Gomes confirmed she was never questioned by management regarding the incident. T. 1234. Venó admitted that he did not ask either Hayes or Federici-McCarthy specifically how they reported the incident to Hirst because he did not feel it was necessary. T. 2544. In fact, Venó testified that he credited Hayes and Federici-McCarthy because of the “detail” their statements contained; Venó explained that he considered their statements to be detailed because “they had seen the incident.” T. 2498.

Q. On November 14, Respondent Issued Long-Time Employee and Union Delegate Dawn Nunes a Final Written Warning and Involuntarily Transferred Her from the East Wing to the West Wing, Falsely Claiming that She had Created a Hostile Work Environment.

Nunes is an RN who has worked for Respondent and its predecessors for more than 13 years. T. 430-431. She had worked on the East Wing for over 10 years, until

December 2017 instance in which a CNA had reported an incident to several people, including two managers and Hirst. T. 1037-1038. The CNA reported the incident to Hirst after Hirst returned from her lunch break, but said that Sousa had already responded to it, and so Hirst took no action. T. 1038. Later, Belezarian held a meeting with all the employees involved and announced that the meeting should be considered a final warning for everyone implicated in the incident. T. 1040, 1050. However, because Hirst never received a written final warning, she was unsure if Belezarian had actually gone through with her threat to discipline the group. T. 1040-1041, 1051-1052. Hirst would have grieved this final warning had she received it in writing. T. 1041, 1051-1052. The Disciplinary Action Form is not signed by Hirst or by a delegate, and this is the only instance where a previously unissued written warning has been cited as progressive discipline justifying an employee’s subsequent discharge. T. 1054, 1082-1084; GC 34. Nevertheless, after this December meeting where multiple managers were told their reporting needed to improve, Hirst became “hyper diligent” about reporting incidents. T. 1041-1042.

mid-November, when she was involuntarily transferred to the West Wing. T. 1092; GC DN-1. On the East Wing, she worked Mondays, Tuesdays, Wednesdays, and every other weekend from 7 a.m. to 3 p.m. T. 1091. She continued to work those same days and hours on the West Wing. T. 1092.

Nunes has also served as a Union delegate for more than three years. T. 432, 1126. After Sullivan, Nunes was the next most active delegate. T. 939-940. Since Sullivan's and Hirst's discharges, the bulk of the delegate work fell to Nunes, particularly since she was then the only delegate who worked on Mondays. T. 1126, 1236-1237. As a delegate, Nunes has assisted employees with workplace issues that arise, including representing employees in grievance proceedings. T. 432. Nunes has continued filing grievances since Respondent withdrew recognition from the Union, including one on her own behalf in late November, which Respondent has not processed, to her knowledge. T. 432. In late 2018 or early 2019, Nunes filed a grievance on Palmer's behalf regarding her shift being changed after she came back to work from a medical leave. T. 1128-1129. Nunes also tries as best she can to inform employees about their rights under the CBAs. T.1128. At least one employee was unwilling to allow Nunes to file a grievance over her sick time accrual, for fear of retaliation by management. T. 1126-1127, 1172-1177.

Like other RN's and LPN's, Nunes receives report from the nurse coming off the previous shift and gives report to the nurse coming on for the next shift. T. 1099, 1104. When Nunes begins her shift, she uses the laptop at the nurses' station to check the 24-hour report, which is a synopsis of what has happened on the unit in the previous 24 hours, and to check the UDA (which indicates which types of assessments will need to

be performed on her patients, e.g., include skin, nursing, and elopement assessments). T. 1096-1098. Next, she will receive report, which is an oral summary from the nurse she is relieving about each patient's status. T. 1096, 1099-1100, 1102. Likewise, when she is coming off her shift, she gives report to the nurse relieving her. T. 1096. After receiving or giving report, she and the other nurse count the narcotics, which are kept on a locked cart, to ensure that all of the various patient medications are accounted for, and then each signs a book confirming that the count is accurate. T. 1100. When Nunes receives report, she sits at the B Team side of the nurses' station, facing forward toward the front of the unit; the nurse giving report is seated behind Nunes, off to the side. Nunes makes notes, and she and the other nurse may turn towards each other at times, but typically they have their backs to one another because of how the nurses' station is configured and the fact that the two computers are located at right angles to each other. T. 1102-1103, 1168. When Nunes gives report at the end of her shift, she and the oncoming nurse sit side by side, looking at one another when they are not looking at or making their notes. T. 1104-1105. Cassidy Lima, who replaced Nunes on the East Wing, gives and takes report in exactly the same manner as Nunes. T. 1258.

Nunes described her relationship with her co-workers as cordial, but added that she socializes with them "minimally at work." T. 1108. She described herself as efficient, professional, and businesslike at work, and stated that she prefers not to gossip. T. 1108-1109, 1155.⁴⁹ She socializes with coworkers outside of work, but again described

⁴⁹ Veno described Nunes as a "quieter person" who is "not that talkative [and] just, you know, really kind of does keep her head down." T. 2440. Gomes described her as "always there to work," characterized Nunes' clinical skills as "probably the best in the facility," and stated that she is compassionate, efficient, fair, good to her residents, and beloved by her residents' families. T. 1237.

the doing so “minimally.” T. 1109. Nunes confirmed that she has not changed the way she conducts herself at work, either before or after Respondent withdrew recognition from the Union, whether assigned to the East Wing or the West Wing. T. 1155, 1192. Veno testified that after speaking with Sousa, then-administrator Lisa Cappolla, and nurse supervisor Jimmy Durrett, “all of the folks that are there day in and day out felt as if there was no...issue with Nunes’ professional conduct.” T. 2441.

Nunes worked with Birch one day a week on the same shift, but they were not on the same team and had minimal interaction. T. 1110, 1158. They did not discuss their respective patients unless, e.g., something happened to one of them while she or Birch was on her lunch break. T. 1110. If Nunes needed to contact a patient’s doctor, she would not typically ask if Birch needed to speak with him or her before hanging up with the doctor. T. 1111. Likewise, Nunes’ replacement, Lima, does not notify Gomes when she is calling a doctor. T. 1258.

In mid-November, Birch, LPN Celina Caseiro, LPN Gina Picard, and RN Kerry Nault⁵⁰ submitted statements to Sousa and Veno, variously claiming that Nunes created a hostile work environment, was rude, unprofessional, disrespectful, had a bad attitude, and made one of them (Caseiro) feel uncomfortable. T. 1558; R 30, R 31, R 32, R 33. Nunes is well aware that Birch is anti-union, and Birch told Nunes that she had passed the decertification petition around to get the Union out. T.1112-1113. Nunes, however, has never been rude or unprofessional towards Birch and Nunes never spoke with Birch about her own pro-union views. T. 1113, 1159, 1165-1166. Nunes, who works on the B

⁵⁰ Like Birch, Caseiro, Picard, and Nault are all known to be anti-union. T. 1253, 1257, 1355-1356, 1384-1385.

Team, could not recall ever having a conversation with Caseiro, who worked 3 p.m. to 11 p.m., and was on the A Team, other than maybe one or two times during report.⁵¹ T. 1113-1114, 1158-1159, 1166. Her work relationship with LPN Gina Picard, who relieved Nunes most shifts, was very cordial and professional. T. 1115, 1121, 1158. Nunes took report from Nault, who worked 11 p.m. to 7 a.m., and described their interactions as short (“She just mainly gave me report, we did count, she went home...and I started my job.”), but they did not have disagreements or arguments. T.1122, 1158, 1167-1168. Nault, did however, complain about nurses on other shifts being lazy, particularly Birch and Picard. T. 1122-1123.

On November 14, Sousa called and told her that Venó and Belezarian (who by then had been promoted to Vice President of Quality Initiatives, a newly created position) were coming to the facility to meet with Nunes to talk about a couple of things. T.1132-1133, 2037, 2238. Nunes was immediately concerned that she was going to be discharged, since it was well known that two of her fellow delegates had been discharged. T. 1133. When Nunes voiced her concern, Sousa repeated that Venó and Belezarian just wanted to speak with her about a couple of things. T. 1133. The meeting took place in the administrator’s office; Venó, Belezarian, Sousa, Nunes, and Gomes were present. T. 1133-1134, 1589-1590. Shortly after the meeting started, Gomes began to speak and Venó immediately and loudly stated that she was there as a courtesy and didn’t have the right to say anything, and told her that she needed to shut up and sit down. T. 1135, 1179, 1243, 1267-1268, 2435. When Nunes asked why she had been asked to meet, Venó said that he had received multiple complaints against

⁵¹ There are two teams, A and B, on each wing. T. 1093, 1099.

her from various nurses that she was creating a hostile work environment, was short with other nurses, and intimidated them. T.1135. Nunes asked for examples, and Veno repeated himself, adding that she didn't face the other nurses when she gave report and didn't tell them when she was going to call a doctor. T. 1136-1137, 1244. Veno stated that the allegations were serious, and told her that just like the Union could file Board charges, these nurses could file Board charges or complaints. T. 1137, 1251. Nunes replied that she felt the claims were unfounded and that no one had ever spoken to her about her behavior. T. 1137-1138.⁵² When Veno referred to Hirst sending the rat emoji coming back to "bite him in the ass," Nunes asked why he would even bring her up, and Veno apologized. T. 1139, 1251. Gomes made clear that she believed Nunes was the latest delegate to be targeted and that she believed Nunes' discipline was related to Birch. T. 1139, 2436.⁵³ Veno then denied – falsely – that Birch had anything to do with the complaints leveled against Nunes. T. 1140-1141, 1245, 2439, R 30.⁵⁴

It was evident to Nunes at that point that Respondent had already decided to discipline her. T. 1150.⁵⁵ In her capacity as a delegate, Nunes had been involved in

⁵² In fact, Respondent had never disciplined Nunes for any reason. T. 1153, 1613, 2516, 2517. In addition, Respondent's practice is to first issue a non-disciplinary "educational opportunity" if an employee violates a policy. T. 2143, 2370. Moreover, issuing Nunes a final written warning for a first alleged offense was contrary to Respondent's progressive discipline policy. T. 2369. In this regard, the progressive discipline steps are First Notice, Second Notice, Final Notice, Discharge Warning, and Discharge. GC DN-1. Veno had checked Final Notice on Nunes' Disciplinary Action Report. GC DN-1.

⁵³ Birch also announced on multiple occasions at the nurses' station that she had an "in" with Veno and Belezarian, and that employees who stuck with her wouldn't need to worry about write-ups or anything else. T. 1246. CNAs Nicole Talbot and Leah Silvia also made comments about how being on April's side protected them at work. T. 1246-1247.

⁵⁴ At the time of this meeting, Birch had not submitted her statement, but Veno knew she was preparing one. T. 2512; R 30. Veno did not wait for Birch to do so before disciplining Nunes. T. 2512.

⁵⁵ Nunes was correct: Veno had already decided to discipline her before speaking to her, taking the statements he had received from Caseiro, Picard, and Nault at face value, never having spoken with any

disciplinary matters regarding coworkers, and in her experience management's investigation includes obtaining written statements from all involved parties, including the accused, before deciding how to proceed. T. 1150-1151. Nunes is unaware of any instance where an employee was issued discipline before being given an opportunity to submit a written response to allegations brought against her or him. T. 1150-1151. Sousa confirmed that witness statements are a key part of any investigation and that management would always talk to an employee accused of misconduct, but she admitted that management did not obtain a statement from Nunes prior to the November 14 meeting. T. 1618-1619.

Veno next told Nunes that, effective on her next scheduled work day, he was transferring her to the West Wing where her behavior would be monitored, and that after 90 days he would evaluate whether she could return to the East Wing. T. 1141. Veno read the write-up he had already prepared and told her what disciplinary action he was taking. T. 2437; GC DN-1. Veno added that he wanted her to provide a written response and then he would provide her with a copy of her final written warning. T. 1141-1142. Nunes questioned how she could be issued a final written warning for alleged behavior no one had ever brought to her attention. T. 1142. Veno repeated that it was a serious allegation and that she would be transferred for 90 days, at which time her behavior would be reevaluated. T. 1142. Nunes hadn't worked on the West Wing in years and had never been oriented on that unit. T. 1142. At that point, Belezarian prodded Sousa

of them, and without waiting for Birch to submit her statement, despite the fact that he knew Nunes to be a quiet, head-down, good worker. T. 2163, 2516, 2518, 2557. In this regard, Veno testified that he could conduct a "fair and impartial investigation" resulting in discipline without first interviewing the accused. T. 2532-2533.

to tell Nunes how she made her feel; after looking down for a moment and after Nunes asked her what was the matter, Sousa said she felt Nunes was short with her at times. T. 1143, 1252, 2165. Nunes then questioned why Sousa hadn't brought this up with her and specifically mentioned the fact that the two of them had just spoken at length about a patient without any hint of Sousa being uncomfortable. T. 1143.⁵⁶ Sousa repeated herself and admitted that she should have brought her concern to Nunes. T. 1143. Not until early December did Respondent provide Nunes with a copy of her final written warning, and she received it only after asking Veno about it. T. 1145. Veno acted like he didn't understand what Nunes was talking about and asked Cappolla to check Nunes' file. T. 1145. About 30 minutes later Veno provided Nunes with a copy of her discipline. T.1145-1146; GC DN-1. Nunes had prepared a statement, but never turned it in because she was out of work due to her mother's recent death; she was never asked to provide a copy to management other than at the November 14 meeting. T. 1147.

III. WITNESS CREDIBILITY

A. General Counsel's Witnesses Should be Credited.

Counsels for the General Counsel presented 15 witnesses, each of whom testified in a forthright manner, thoughtfully answered questions from all parties in a similarly straightforward fashion and without hesitation, and provided testimony that was entirely consistent with the undisputed facts and the documentary evidence introduced

⁵⁶ Prior to November 14, neither Sousa nor any other supervisor or manager told Nunes that employees took issue with her behavior. T. 1147-1148.

into the record. Respondent's witnesses, on the other hand, were evasive, equivocal, and vague, and provided self-serving testimony which simply cannot be credited.

B. Respondent's Primary Witnesses, April Birch, Jamie Belezarian, and Joe Venio, Should Be Discredited in Large Part, for the Reasons Set Forth Below.

i. April Birch

LPN April Birch had a strong financial incentive to stop the Union from enforcing the CBA. Like some other newly-hired CNAs and LPNs, Birch began working for Respondent well above the contractual wage rate. Specifically, Birch, who was right out of school, made \$26.10 per hour, well above the contractual starting wage rate of \$20.50 per hour for a new nurse. T. 1454. Upon hire, Birch received a copy of the CBA from Nunes and "read the book...and anything that pertained to myself, my position" and had no questions for Nunes. T. 1346. Birch did not tell the Union she was making more than the contractual rate and testified she "wouldn't work for less." T. 1464-1466.

Not only was Birch not asked to "work for less," but she received a variety of bonuses from Respondent, including a \$500 payment on April 25 and a \$1000 payment on May 11. T. 1470-1473, GC 90, 91. There was also record evidence of a note alerting Human Resources (HR) that Birch was to receive a "sign on bonus after 90 days" (despite being employed for 10 months at the time her coworkers saw the note) in addition to a "\$500 bonus for working 11-7." GC 33.⁵⁷ Like the newly-hired CNAs, Birch

⁵⁷ Though Birch denied writing this note, she did not specifically disavow its contents. T. 1468. Instead, Birch admitted that Gomes confronted her about Gaeta seeing a note on HR's door that Birch was owed a bonus for working 11 p.m. to 7 a.m., and that she told Gomes that was "ridiculous" and also that she

admitted to receiving additional bonuses for working open shifts, but it is unclear how many times she received such a bonus. Birch was evasive, sometimes within the same paragraph of her testimony, whether it was that “at one point” she was paid double time, or that it was “once or twice,” or that she “definitely took that [bonus] on a few occasions.” T. 1441. In fact, as noted above, there is no way to tell how much Birch was paid for time she did not work, because management changed time records to make it appear as if people were working when they were not.

Because Birch was earning so much more than the starting contractual wage rate directly from Respondent, she had little reason to support the Union’s efforts to negotiate higher wages. As Birch testified, “the last contract we received a ten-cent raise, tent cent, so the negotiations were obviously terrible, everybody got ten cents”⁵⁸ and that if Respondent had to go through the Union no one would pick up shifts nothing would get done. T. 1372, 1481.

Birch testified that, unlike her, CNA Talbot told her coworkers in around early June that she was being paid above the contractual rate, and that “it got around and became an issue.” T. 1360-136.1 Birch denied that she ever talked with management regarding the contractual wage rates being too low to retain staff, or about the Union’s desire to reduce the CNAs’ wage rates, or about a decertification petition. T. 1402, 1473, 1482, 1492. Though employees such as Gaeta, Sherman, and Palmer and former

told her “please [don’t] start rumors like that,” but Birch never asked anyone to see the note. T. 1442, 1513.

⁵⁸ Despite knowing these very specific details of the Unit B CBA, Birch maintained that she had not looked at the contractual wage structure. T. 1464.

supervisor Minyo characterized Belezarian's opinions regarding these issues as well-known, Birch refused to acknowledge that she had any idea that Belezarian disliked the Union.⁵⁹ In fact, Birch testified that she "didn't know how management felt about the Union" because at the "last negotiations they only had to give everyone ten cents as a raise" so management "probably liked the Union." T. 1384. This response is unbelievable, over-the-top, and only bolsters Birch's willingness to lie for Respondent.

Although Birch did not adequately explain how she knew that "the Union was upset" about the CNAs' starting wages being raised, she nevertheless confronted Sullivan and Rego⁶⁰ concerning the Union's issues with the pay increase. T. 1361-1362. In the affidavit she provided during the investigation,⁶¹ Birch said Sullivan, in response to a question about whether the Union wanted to reverse the CNAs' wage increase, "didn't say yes or no, but [Sullivan] explained that it was different, if the employer had done this during negotiations." T. 1512. Yet, at the hearing, Birch testified that Sullivan told her that "the rate needed to be brought back down until there [were] contract negotiations." T. 1363. Sullivan denied that she had such a conversation with Birch. T.

⁵⁹ Other employees' detailed accounts of these events are inherently more credible than Birch's flat denial. See *Automated Waste Disposal, Inc.*, 288 NLRB 914, 922 (1988); see also *Weiss Mkt., Inc.*, 325 NLRB 871, 888 (1998) (finding General Counsel's witnesses' accounts of a meeting "more spontaneous and detailed" than accounts provided by employer witnesses, and therefore more credible).

⁶⁰ In yet another example of Birch's willingness to lie, Birch testified that she spoke to Sullivan and Rego because she "wasn't even aware in the beginning who else were the delegates" despite knowing that Nunes was a delegate from their first interaction. T. 1345, 1370. Additionally, Birch testified that they were "all in the Union but didn't really realize it," even though she admittedly received and read the CBA upon being hired in July 2017. T. 1353.

⁶¹ Birch provided a copy of her affidavit to Respondent's counsel during the investigation, despite understanding that it was a confidential document. T. 1482-1483. Her willingness to do speaks to her lack of credibility.

773. Birch testified that it was only after these conversations that she had had enough and decided to look into how to rid herself of the Union.⁶²

On direct examination, Birch confidently testified that she consulted the internet for her guidance on how to decertify the Union, and that Respondent's Exhibit 25(a) "is the website that [she] used to decertify the Union and the sample of the decertification petition" that she used. T. 1374-1375, 1378. But when further probed on *voir dire* and confronted with the language differences in the sample decertification petition that appears in R 25(a) and the petition she utilized, Birch's confidence evaporated, and she stated that she had "used several websites" and that "it might have been a [different] website." T. 1377, 1379.

When asked about how she gauged employee support for her petition, Birch testified in very general terms, stating that "everybody felt the same way [she] did" about the Union and she just "put the word out" to about 10 or 15 employees. T. 1360, 1373-1374. Birch testified that she spoke to these particular employees because they were "safe" and there were many conversations concerning the Union. T. 1384-1386. Birch

⁶² Respondent attempted to manufacture a false narrative that Birch had many reasons for starting the decertification petition. This was wholly unconvincing. For example, Birch got "a little aggravated" when Sullivan told her around November 2017 that Sullivan would share Union-related issues with Birch as Birch needed to know. T. 1350-1359. Also, Birch testified that when she and CNA Melissa Benoit requested that the Union assist Benoit to have a particular patient of hers reassigned, Sullivan said "there was nothing she could do about it." T. 1557-1558. Birch then elaborated, saying Sullivan told her there was "nothing she can do *at this time*" (emphasis supplied) and that "she would speak with the other delegates and go from there." T. 1357-1359. Benoit did not testify and Sullivan credibly denied that she never had any conversations with Birch. T. 772-774. Finally, Birch testified that she became further dissatisfied with the Union when she heard "rumors" regarding the delegates paying union dues, and that "nobody could verify whether or not these delegates were actually paying union dues." T. 1430-1431. Despite speaking with Sullivan and Rego regarding Union dues expenditures, she failed to ask either of them directly if they paid dues in order to clear up this "rumor." T. 1505.

selected the weekend of June 22 and 23 to obtain signatures specifically because she was going to be working double shifts all weekend, so she could “hit all shifts” and because “no delegates” were working that weekend. T. 1383-1384. Birch did not explain how she came to be scheduled for 48.5 hours in three days or how she knew the schedules of all her coworkers on those days. GC 92.

Additionally, Birch testified that, before she circulated the decertification petition, she knew management could not be involved. T. 1483-1484. She testified that she had learned this from Sherman, who had told her in the hallway of the facility prior to the petition being circulated that Birch had “to be very careful not to use any company paper, time, don’t even not use the copy machine, nothing at work,” and that the petition “[c]ouldn’t be associated with work. Management couldn’t know about it.” T. 1386-1387,1432. However, Sherman credibly testified that she did not know about the petition until Birch presented it to her on June 22, that Sherman told multiple managers she had signed the petition, and that it was only *after* Sherman left work that she began researching the issue and texted Birch a screen shot containing information regarding restrictions that apply when seeking to decertify a union. T. 253-260, GC 45. It defies logic that Sherman would tell managers directly that she had signed the decertification petition if she knew management could not be involved in the process, and told Birch as much, yet at 6:17 p.m. – after Sherman’s shift had ended – Sherman texted Birch that she was “trying to read up...on the rules” governing a decertification petition if Sherman had already given Birch a full explanation in this regard. GC 45.

Birch's testimony became even more unbelievable when she attempted to explain how she was able to obtain signatures for the decertification petition without management's knowledge. Her responses in this regard were, at best, inconsistent with the testimony of every other witness (including Respondent's) and, at worst, simply impossible to believe.

Of the 32 signatures on the decertification petition, 23 were dated June 22, a Friday. JT. 29. Despite the raft of contrary evidence, including testimony from Sherman, Gaeta, Palmer, Lukusa, and Hayes set forth in Section II.G, above, Birch testified that she "made sure that any time [she] had somebody sign [the decertification petition, she] was on [her] break" T. 1386-138.7 Birch also denied obtaining signatures while the various signatories were on work time and that, instead, she simply "let people know when she was on break" and they came to her. T. 1387. However, Birch was only off the clock for *nine minutes* during the more than 16 hours she worked at the facility on June 22. GC 92, JT. 29. When confronted at the hearing about the inconsistencies between the record evidence and her supposed recollection of events, Birch concocted the excuse that she "probably filled out a missed lunch form" in a feeble attempt to explain away the impossibility of her claims. T. 1488-1489. Notably, Respondent failed to produce any such "missed lunch form" to corroborate Birch's testimony.

Even more incredibly, Birch testified that she chose that particular weekend because, along with the delegates, management would not be present. However, managers work on Fridays and, as Birch herself testified, Belezarian was "always available and on the floor" when she was present at the facility. T. 1458. Therefore, it is

preposterous to believe that Birch, along with 23 other employees – from both wings of the facility – could surreptitiously sign the same document, while Belezarian’s was present and without Belezarian’s knowledge.

The substance of what Birch claims she told employees concerning the petition is also inconsistent. For example, Birch contradicted herself, first testifying that, while she solicited signatures for the decertification petition, she never told anyone that the Union wanted to lower their wages, only to admit later that she and at least two signers other, Caseiro and Picard, talked about the Union taking away CNAs’ wages increases. T. 1478, 1508.

Birch testified that on Saturday June 23, she gave the petition to Holly Coutinho so Coutinho could “get some signatures because [Birch] can’t go to the West Wing,”⁶³ but Birch admittedly traveled to the West Wing “to hand [the petition] off.” T. 1385, 1389, 1486. Moreover, Birch had already obtained signatures from employees who were working on the West Wing the day before. T. 1542, JT. 29. Conveniently, Birch was then able to walk back her confident assertion that signatures had only been obtained during breaktimes, by testifying that she could not be “one hundred percent positive that every single person was punched out on their break when they signed” because, as she then claimed, she did not have the petition in her possession for the entire weekend. T. 1390.

⁶³ Birch testified that she told Coutinho that getting signatures “couldn’t be on company time,” but Coutinho did not testify. T. 1387.

Unsurprisingly, Birch could not keep the details of her fabrication straight: On direct examination, Birch first testified that prior to the end of her shift on Saturday June 23, either RN Jessica Belezair (incorrectly identified in the transcript as Jessica Beledarian) or Hayes brought the petition back to her on the East Wing. T. 1390. However, on cross examination, Birch testified that neither Belezair nor Hayes ever had possession of the petition. T. 1490. Moreover, when confronted with the fact that the signatures on the petition were not dated chronologically, Birch was unable to explain why that was so, testifying that she “[didn’t] really know why the dates are that way.” T. 1491-1492, JT. 29. Birch’s cavalier attitude about where the petition was and who possessed it demonstrate that Birch was entirely unconcerned with concealing it from management.

The wide gaps in Birch’s memory regarding how she filed the petition with the Regional office also indicate that she did not control the decertification effort. On direct examination, Birch testified that she hand-delivered the petition to Belezarian on the “same day that [she] mailed it to the Union and the Labor Relations Board,” which she thought was July 2, the same day the record evidence shows the Region received it. T. 1401, R. 27. However, on cross examination, Birch admitted that other events occurred between the time she mailed the petition and the time the Regional Office received it. Specifically, Birch admitted that on the day she had obtained the final signatures on the petition, June 26, she had overnight mailed the petition and a hard copy of the showing of interest to the wrong address and then hand-delivered these documents to Belezarian that same day. T. 1495-1497, 1503.

Birch also admitted on cross examination that, a day after she mailed the petition, June 27, she called the Regional Office asking for a copy of the showing of interest and was informed that the Regional Office had not received it. T. 1496. Birch further admitted that she called the Regional Office the following day, June 28, in order to obtain an electronic copy of the showing of interest, and that Board Agent Laura Pawle told her it still had not arrived, and that she would check again the next day. T. 1497. The Regional Office did not receive the documents until July 2 and, at 11:53 a.m., Pawle emailed Birch a copy of her petition. R 27. It defies logic that Birch would have requested a copy of the showing of interest from the Regional Office if she had already provided a copy of it to Respondent. Birch's calls requesting a copy of the showing of interest were conveniently omitted from Birch's testimony on direct examination, as they substantiate testimony from General Counsel's witnesses, including Minyo, that Birch was urgently seeking a copy of the showing of interest at Belezarian's behest so she [Belezarian] could withdraw recognition from the Union. T. 315-316. Regardless of the date, Birch testified that she did in fact provide Respondent a copy of the showing of interest, contrary to the explicit instructions on the website she had purportedly visited.⁶⁴ T. 1400-1401, R. 25.

Birch testified that before Pawle sent her the first email contained in R. 27, the two had spoken by phone. Pawle informed Birch that she was outside the window period during which her petition could be filed and asked Birch whether she would

⁶⁴ Implausibly, Birch testified that a Board Agent had instructed her to serve the showing of interest on Respondent, and she denied that Respondent had ever requested a copy of this document. T. 1398-1402.

prefer to refile it once she was within the window period or have the Regional Office hold the petition. T. 1406, R. 27. A few hours later, Birch emailed Pawle that she had “sent [the Regional Office] all the signatures and we would like to file on July 3.” R. 27. However, the window period for a healthcare industry contract such which expired by its terms on October 31 would not begin until July 5; because of this, a Board Agent contacted Birch, yet again, asking whether she would like the Region to hold the petition. On July 3, Pawle informed Birch she had not included a certificate of service confirming that she had served the Union and Respondent with the requisite forms that needed to accompany the petition. R. 27. After receiving a completed certificate of service, the Regional Office docketed Birch’s decertification petition on July 5. R. 26, R. 29.

While Birch was apparently unable to follow the website’s instructions concerning providing a showing of interest to an employer, when the window period for filing a petition is open, or which forms she needed to file with the decertification petition, Respondent contends that Birch was able to single-handedly calculate how many employees (and from which job classifications) constituted a majority. Birch testified that she “had enough signatures to prove we didn’t want to be in the Union any longer” and that *she* informed Belezarian that Respondent should withdraw recognition after *she* had determined how many employees were in the unit. T. 1402, 1418, 1435. Birch testified that when she first gave Belezarian the petition and showing of interest, there “wasn’t a lot of conversation at that time,” and that Belezarian simply took the documents and “didn’t really say a lot.” T. 1402. Similarly, after Birch allegedly suggested that the petition contained a sufficient number of signatures to permit

Respondent to withdraw recognition, Birch testified that she “didn’t have a lot of conversations with [Belezarian].” T. 1436. Birch’s characterization of Belezarian as quiet and reserved directly contradicts the way every other witness described Belezarian, as well as Belezarian’s demeanor while she herself testified; put simply, Birch’s account of this interaction is entirely fabricated and should be discredited.

Confoundingly, Birch testified that she contacted Pawle concerning whether Respondent could simply withdraw recognition without having to conduct an election, based on the number of signatures she had obtained, and that Pawle informed Birch that “in most cases the union would file a lawsuit.” Nevertheless, Birch insisted that her objective in requesting that Respondent withdraw recognition from the Union was to avoid a hearing because she “wanted it to end as quickly as possible.” T. 1434. This inconsistency further highlights that Birch was not driving the withdrawal of recognition effort – Respondent was.

Tellingly, Birch admitted that she complained to management directly when the Union posted a flyer, or anytime the “Union people were making [her] uncomfortable.” T. 1438. Minyo showed Birch “the paper they were going to post” that day, July 6, announcing the withdrawal of recognition and Minyo also suggested that Birch “should probably leave” because “it probably wasn’t going to be the best environment.” T. 1437. Thus, management sought to protect Birch and gave her advance notice of its planned withdrawal of recognition *precisely because* she had faithfully followed their directives.

In all these circumstances, Birch cannot be considered a credible witness.

ii. Jaime Belezarian

Belezarian, the master puppeteer who orchestrated virtually all of Respondent's unlawful conduct, spread lies like a malevolent Johnny Appleseed during her time on the witness stand.

Though the documentary evidence and credible witness testimony squarely contradicted her, Belezarian attempted to craft a narrative in which she was simply an innocent bystander to the decertification effort. However, Belezarian's account is just not believable; her testimony is littered with lies, falsehoods, and fabrications on virtually every subject she testified to. Accordingly, her testimony should be generally discredited.

Belezarian briefly appeared to be genuinely interested in addressing the facilities' staffing issues. In fact, however, she was able to do so only by paying bonuses which she recorded in a manner designed to deceive her own HR department,⁶⁵ and by deliberately ignoring the contractual provisions governing per diem employees' hours.

⁶⁵ In this regard, Belezarian actually sent Teoli a text message admitting she was being "sneaky to her own boss." GC 3. Moreover, Belezarian used her testimony not only to cover previous lies, but she willingly manufactured new lies while on the witness stand. For example, Belezarian testified that she stopped offering bonuses when the first unfair labor practice charge was filed (on June 27). T. 2053-2054. On cross examination, however, Belezarian was confronted a text message she had sent to managers and employees on August 9, nearly a month and a half later, stating that there could be "no more double time shifts without her approval first." T. 2333-2334, GC 101. Belezarian then spontaneously changed her testimony: The bonuses hadn't ended when the first unfair labor practice charge was filed, but rather, had ended the weekend after her August 9 text message. T. 2334.

When Teoli questioned Respondent's reporting of per diem employees' hours, Belezarian sidestepped the issue and blamed Human Resources Specialist Pamela Benoit. It quickly became apparent that blaming others was one of Belezarian's go-to tactics. Belezarian's lies began to snowball when Respondent hired additional CNAs and LPNs at rates well above those provided for in the CBAs, without notice to the Union. Instead of coming clean about Belezarian's duplicity and negotiating with the Union for wage rates which would better allow it to retain staff, Respondent opted to take a hard line – refusing to provide the Union with wage information to which it was plainly entitled and permitting Belezarian – a serial liar – to remain at the facility. What's more, in October, Respondent actually *promoted* Belezarian to a newly-created position, Vice President of Quality Initiatives. T. 2037.

Belezarian's true self also came to light in testimony that revealed that she prayed on the fears of her financially insecure workers, while simultaneously leading Teoli to believe she was acting in good faith. To be clear, Belezarian's actions were not merely double-talk; rather, she intentionally misled Teoli in order to buy time to recruit employees for her anti-union team, intimidated vulnerable employees, and enlisted Birch, who was just as devious as Belezarian, to aid her efforts to oust the Union. For example, when Gaeta called Belezarian because her hours had been reduced and explained that she was looking for an additional job to make ends meet, including one near her house that paid \$16.25 per hour, Belezarian replied that with shift differential (which Gaeta was ineligible for as a per diem), Gaeta should be able to earn close to that amount working for Respondent. T. 73-77. She then exploited Gaeta's tenuous financial situation, reminding her that "we were a union facility, and we can't [raise her

pay], but there are other building[s] that can do that, that are not union,” in order to drive a wedge between Gaeta and the Union. T. 2182. Belezarian succeeded: Gaeta subsequently wrote a letter resigning from Respondent and from the Union, and also signed Birch’s decertification petition. JT 29.

Belezarian testified that when she learned about the petition from Nunes and Brown, allegedly for the first time, she called Teoli and told her that she “thought [the reason for the petition] was [obvious] with all the back and forth with the wages, up and down conversations that were going all over the building,” but that Teoli “should have a members meeting, to talk about what was what, and what benefits the Union offers” T. 2089. Thus, Belezarian directly linked the unilateral change to employee’s wages and the Union’s demand to negotiate over them with the motive for the petition. Moreover, it is entirely disingenuous that Belezarian – whose anti-union animus could not have been more obvious to those at the facility – would *helpfully suggest* that the Union hold a meeting to clear up the controversy that she herself created.⁶⁶

While Belezarian testified that Birch at first only gave her the petition without the showing of interest, Birch testified that “she was informed, that if [Birch] had more than 50% of the employees’ signatures in this petition, that we could, as a facility, not recognize the Union, just based on that alone.” T. 2095.⁶⁷

⁶⁶ Belezarian also sent Gomes a text message on July 4, at time when she well knew Respondent would be withdrawing recognition from the Union imminently, disingenuously stating that she “saw the flyer u guys have with what the union does for u. I suppor[t] that flyer” and that she “like[d] the flyer of what the union does for u. GC 100.

⁶⁷ Thus, Belezarian contradicted Birch, who had testified before her *while Belezarian was in the room*.

Belezarian admitted that she asked Birch for a copy of the showing of interest because Respondent “had to verify that the signatures were actually valid, and that the people that signed the petition were part of the union.” T. 2096. But she also testified that when Birch gave Belezarian a copy of the showing of interest on July 5 or 6, she “just took [it] and scanned... to [her] employer.” T. 2098.⁶⁸ Thus, she first testified that she needed to look closely at the employee signatures, but then testified that she merely forwarded it along. This inconsistency further speaks to her lack of credibility.

Belezarian claimed that sometime after the June 12 labor-management meeting, Talbot came to management concerned about her wages. In response, according to Belezarian, she called Talbot and Gaeta into her office a few days later. Tiffani Cabral and Palmer were also present, as was O’Kane. Belezarian testified that Gaeta wanted a pay raise, asked if there was any validity to “all these rumors,” and “wanted to know what they could do, and what were their options.” T. 2075. Belezarian first told the employees that “negotiations for the Union contract were in the end of October” and “that is usually when wages are discussed.” T. 2075. However, she admitted that she “told them they – you know, that they – that there was a way, you know, a petition could be passed around, if they wanted to go that route. Or they could work for an agency.” T. 2075. Belezarian testified that Talbot then asked, “[W]ell, how do we get rid of the Union?” and that Belezarian “laughed, and said ‘you’re not going to be able to do that.’” T. 2076. According to Belezarian, Gaeta then said they should work for an agency and

⁶⁸ In this regard, Respondent did not produce the email which would have shown when she did this, despite Belezarian admitting that she could have retrieved it. T. 2284.

that the employees “started writing out their resignation letters.” T. 2076.⁶⁹ The takeaway from this meeting is that, far from being an innocent bystander, Belezarian quite purposefully made these comments to help ensure that the decertification effort Respondent was sponsoring gained traction among its employees.

Moreover, Belezarian testified that Birch told her that she would rather come straight to management with her concerns than turn to the Union.⁷⁰ T. 2275. It makes no sense that Belezarian would suggest to a group of employees concerned about the Union causing their wages to go down that circulating a decertification petition was one option to prevent that from happening, and yet she never mentioned that option to Birch, who brought her concerns directly to management and was actively seeking to remove the Union.

In addition to her acts of commission, Belezarian’s acts of omission are telling: Although Belezarian admitted that she presented the three options to employees who were concerned their wages would be reduced – wait for negotiations, resign and go to work for an agency, or circulate a decertification petition – in her meeting, she conveniently withheld from this group the fact that the Union had *already agreed to*

⁶⁹ Belezarian then claimed that after the group left the meeting, she and O’Kane realized that having “four full-time CNAs” go work for an agency “was a bad idea,” and so Belezarian “just ripped [the resignation letters] up and threw them in the trash.” T. 2079.

⁷⁰ Despite admitting that Birch came to her complaining about the Union and that she could remember their conversations in vivid detail, Belezarian was unable to pinpoint even a general time frame when Birch brought these complaints to her; Belezarian then recanted, saying that she did not remember the conversations in detail. T. 2279-2280.

maintain employees' wage rates and was waiting – in vain as it turned out – for Respondent to return the MOA to Teoli.⁷¹

Belezarian's conniving ways also presented themselves in other situations. For example, Belezarian testified at length regarding two incidents involving her son that arose in the spring of 2018. T. 2167-2178. On direct examination, Belezarian claimed that she had recused herself because she "wouldn't want to be involved, investigating [her] own son." T. 2171. However, Belezarian did no such thing; to the contrary, Belezarian made the decision to dismiss one allegation lodged against her son and cleared him of the second allegation, personally authoring the final investigative report. T. 2300, 2316; GC 95(a). Additionally, Belezarian claimed that Perry approved the decision to discharge Hirst and Minyo. T. 2312-2313. However, Perry credibly testified that she did not recommend discharging either of them. T. 1752-1753.

The record also reveals that Belezarian did not hesitate to use her position of authority to intimidate employees. For example, even though Belezarian was Hirst's manager and Hirst was obligated to report any allegation of abuse, Belezarian went on a tirade, excoriating Hirst after her son was implicated in one such incident. T. 2316-2318; GC 99.

Sullivan's suspension and discharge serve as a particularly stark example of Belezarian's disregard for the truth, particularly when doing so was a means to her

⁷¹ Belezarian testified that she didn't agree to Teoli's proposed MOA because she already knew she was entitled to raise wages pursuant to Article 5.1 of the Unit A CBA. This, however, is entirely inconsistent with the text messages and emails she exchanged with Teoli, and is also entirely inconsistent with her testimony stating that she would send a proposal by the end of the week of June 12. T. 2258, 2276; GC 3, GC 4, GC 5, GC 6, GC 7, GC 8.

desired end. In this regard, Belezarian testified that Little told her, “Silvia was really upset in the dining room, about something that happened over a pin.” T. 2102. Belezarian claimed that Silvia told her Sullivan was “by the closet” in the dining room when she gave Silvia a Union pin. T. 2103. Although Silvia made clear to Belezarian that the incident took place *on the unit*, but “didn’t feel comfortable writing a statement,” Belezarian simply chose to lie about Silvia’s account and ignore Sullivan’s consistent denials that she had left her work area to give Silvia a union pin. T. 674-675, 2103-2104. Respondent then suspended Sullivan based on information Belezarian knew for a fact was false, and two days later the Union’s most active delegate was no longer working at the facility. T. 2106-2107. Belezarian also testified that she and the “director of nursing” jointly decided to terminate Sullivan, but she couldn’t remember who that person was. T. 2245.⁷²

Karen Hirst’s and Katherine Minyo’s suspensions and discharges further reveal Belezarian to be utterly without conscience when it furthers her goal. Because neither Hayes’ nor Federici-McCarthy’s witness statements identified Hirst as the nurse on the floor when Hayes allegedly reported the resident-to-resident incident with the doll, Perry, in Belezarian’s presence, instructed Hayes to revise her statement, and Belezarian herself instructed Federici-McCarthy to revise her statement, in both cases altering them to implicate Hirst. T. 798-799, 2114-2115. Belezarian testified that she and Perry suspended Minyo because “she obviously admitted that she saw, or had some

⁷² Heather Perry was the DON at that time, but there is no evidence that Perry had any involvement whatsoever regarding Sullivan’s discharge. T. 1671.

type of knowledge of the incident,”⁷³ and that she and Perry made the decision to terminate Minyo and Hirst together. T. 2117. However, Perry, who as the DON at the time directly supervised all of the nursing staff, including Hirst and Minyo, did not recommend discharging either of them. T. 1727, 1753-1755. Against this backdrop, Belezarian plainly cannot be credited: She ensured that two employees doctored their statements to implicate Hirst; unsuccessfully pressured Minyo to lie about her and Hirst’s involvement in the incident; and Perry, one of Respondent’s own witnesses, flatly contradicted Belezarian’s claim that the two of them decided Hirst and Minyo should together be discharged.

Next, Belezarian readily admitted that she ramped up employee surveillance beginning the weekend after the withdrawal of recognition for “at least 30 days” because “the facility had been a union facility...since the late 70s and then now all the sudden you’re withdrawing recognition on a Friday afternoon, there were a lot of deeply entrenched employees in the building” and she “wanted to make sure that we were keeping the peace and that everybody was just doing their job” so they “increased [their] presence.” T. 2099-2100, 2137. Belezarian also testified that, “Right after [Birch] had formally turned in her petition to...management,” she decided that she “definitely needed to put cameras up...as a deterrent, to be able to hopefully stop people from engaging in...behavior...like arguing with each other and going in linen rooms and

⁷³ In this regard, Belezarian called Minyo the following day, July 18, and told her Hirst was going to be terminated and that Minyo “needed to say that the incident had occurred, so it was [Minyo’s] fault that [Minyo] failed to file the report and that [Minyo] would receive a written warning and life would carry on and [Minyo would] be back at work.” T. 831. Minyo told Belezarian that she would not lie about something that had never happened. T. 831. Belezarian then told Minyo that there was a “conflict of interest ‘cause we were friends and that’s what they needed to do and that it [lying] was part of the job.” T. 831-832.

kitchenettes.” T. 2139.⁷⁴ Belezarian further testified that employees were congregating and “probably gossiping,” so without regard for their feelings about the Union, she broke up the groups. T. 2101. By then, the Respondent had already withdrawn recognition and union supporters were circulating a pro-union petition; thus, the increased surveillance was squarely aimed at the union-supporters’ counter-efforts. In addition, Belezarian’s testimony was completely undercut by Minyo, who convincingly testified that Belezarian expressly instructed her managers, including Minyo, Sousa, O’Kane, and Nurse Supervisor Samantha Costello, to increase their rounds in order to specifically ensure there was no union activity or union literature at the facility. T. 808-813, GC KM-1. Once again, Belezarian’s lack of credibility is evident.

Belezarian’s untruthfulness is further highlighted by the woefully inadequate search for, inter alia, text messages and Facebook Messenger messages which were responsive to the trial subpoena duces tecum Counsels for the General Counsel issued to her. Belezarian testified that she searched her personal cell phone⁷⁵ for over a dozen terms specified in the subpoena including, “meetings,” “manager,” “supervisor,” “reportables,” “discipline,” and “attendance,” as well as terms that would relate to employee and management sentiment regarding the Union, in message threads with 35 managers, supervisors, and employees with whom she may have communicated, and

⁷⁴ Belezarian then bought “dummy cameras” because she felt the management team was “there 24 hours a day” and were “running ourselves ragged” and when management was not there, employees were calling her “complaining...someone’s on the lawn...[t]he police are coming.” T. 2140. In fact, the record evidence demonstrates that the only person calling the police was Belezarian. T. 2192-2193; GC 26.

⁷⁵ Respondent did not issue Belezarian a company cell phone, and she regularly uses her personal cell phone for work-related communications with her managers, supervisors, and employees. T. 2208-2209.

found no responsive messages, but admittedly spent only 20 minutes doing so while at a Verizon store upgrading her cell phone. T. 2208-2227, 2138-2342. It strains credulity to believe that Belezarian exercised even a modicum of due diligence or good faith in this regard: Searching for messages to and from 35 people which might contain one or more of over a dozen distinct terms in 20 minutes amounts to spending, on average, slightly more than 30 seconds per person.

In sum, Belezarian's lack of veracity permeated virtually every aspect of her testimony and she simply cannot be credited.

iii. Joe Veno

Veno presented on the witness stand as self-important yet lazy, a boss straight out of Central Casting. Veno's lack of credibility was laid bare by the lengths to which he was ultimately willing to go in order to rid the facility of the Union: Despite discharging Sullivan, Hirst, and Minyo, and issuing Nunes a facially unwarranted final written warning accompanied by an involuntary transfer to reward Birch, Veno disingenuously testified that he "[does] not label [employees] union/non-union" in any of the buildings he manages. T. 2448.

Before Birch circulated her petition, Veno was essentially absent, allowing Belezarian to run the facility in whatever unlawful way she saw fit; he simply rubber stamped Belezarian's actions with little or no oversight. In this regard, despite testifying that his responsibilities entail "anything and everything related to the operations of the nursing facility," and admitting that wage increases are an important decision, he

claimed that “there have been entire classes” of employees who had received wage increases “without [his] permission in the past.” T. 2368, 2469. He also testified that he regularly allowed his management team to post memos under his name with little or no input from him, and claimed that before a memo is issued under his name he doesn’t “have to read it word for word but [he likes] to understand what the thought process is and some of the key bullet points.” T.2397, 2409, 2473. In fact, Veno did not even review the July 6 memo withdrawing recognition from the Union. T. 2474. Thus, far from being responsible for “anything and everything related to the operations of the nursing facility,” Veno was perfectly content not to take responsibility for anything. However, in short order, Veno became an active and opportunistic lawbreaker. And, like Birch and Belezarian, his testimony revealed that he has very limited credibility.

Among the many examples that demonstrate his questionable veracity, Veno first testified on direct examination that Belezarian said nothing about raising wages at the June 12 labor-management meeting, and then immediately contradicted himself, testifying that the Union was advised at this meeting that Respondent had raised employee raises. T. 2377.

Another example of Veno’s lack of credibility concerns Sullivan’s suspension and discharge: At the July 11 meeting where Sullivan learned she had been discharged, Veno falsely stated that two employees had come forward regarding the allegations against her, one who reported the incident orally and one who submitted an anonymous statement, and that based on that evidence, he was discharging Sullivan. T. 720-722. Neither Sullivan nor the Union received a copy of the anonymous statement, despite

requesting it, and no such statement is in evidence because, as his testimony made clear, no such statement exists. During this meeting, Veno stepped out to call Respondent's attorney, and upon returning, announced that the attorney had "tied his hands" and that Sullivan's discharge would stand. T. 722.⁷⁶ Veno also told Sullivan that her last paycheck had already been overnighted and that it should be in her mailbox. T. 723. This account does not withstand even the slightest scrutiny: If Respondent's attorney – whom Veno testified he had been unable to reach until the July 11 meeting had already begun – made the decision to discharge her in real time while that meeting was taking place, it makes no sense that Respondent had already overnighted her paycheck. Moreover, after being confronted on cross examination with the suspension notice he drafted, Veno conceded that he had suspended Sullivan even though all he knew was that Little had told Belezarian that Silvia was crying in the dining room. T. 2485.

In yet another instance demonstrating Veno's lack of credibility, he admitted that he did not ask either Hayes or Federici-McCarthy specifically how they had reported the resident-to-resident incident to Hirst, because he did not feel it was necessary. T. 2544. This plainly speaks to the fact that he was purely outcome driven – he wanted the Union and its delegates gone. It also makes clear that he couldn't be bothered with facts, despite his professed concern that investigations of any kind be conducted thoroughly,

⁷⁶ In fact, contrary to what he told Sullivan and Brown, Veno testified that he was concerned about terminating Sullivan "based on two verbal statements and nothing written." T. 2407.

fairly, and impartially in order to arrive at the truth.⁷⁷ Again, this conduct casts significant doubt about his veracity as a witness.

Veno blatantly lied to Gomes and Nunes, telling them at the November 14 meeting when Nunes receives her final written warning that Birch had nothing to do with the complaints leveled against her. T. 1140-1141, 1245, 2439, R 30.⁷⁸ In addition to Birch (whose statement he clearly credited without the benefit of having actually *seen* it), he also immediately and completely credited Caseiro, Picard, and Nault, all known anti-union employees, implausibly testifying that he could conduct a fair and impartial investigation – even one that could result in discipline – without ever interviewing the accused. T. 2163, 2516, 2518, 2532-2533, 2557.⁷⁹ In this regard, when Nunes questioned how he could issue her a final written warning for alleged behavior no one had ever brought to her attention, Veno completely ducked her question and repeated that it was a “serious allegation” T. 1142. Once again, Veno’s lack of character and credibility were on full display.

⁷⁷ Interestingly, Veno’s testimony and the other record evidence demonstrates quite vividly that he regularly has difficulty “arriving at the truth,” no matter how easy the journey. As set forth fully in the Argument, below, the four investigations at issue in this case, which Veno either spearheaded or signed off on, are remarkably similar in that he and his management team weren't conducting “investigations” at all: They spent little, if any, time probing for the truth; they ignored the inconvenient truths they *did* uncover; and they shamelessly lied to each of the accused in one way or another.

⁷⁸ At the time of this meeting, Birch had not submitted her statement, but Veno knew she was preparing one. T. 2434, 2512; R 30. It is telling that Veno did not wait for Birch to do so before he disciplined and transferred Nunes. T. 2512. Ironically, at the start of the meeting with Nunes and Gomes regarding Nunes’ supposed lack of “professionalism,” Veno admitted that he “lost [his] cool,” proceeding to tell Gomes to “shut up” and that it was “still a courtesy” that she was permitted to be there. T. 2435.

⁷⁹ Veno incredibly testified that these statements – none longer than a single page – took him “approximately an hour” to review. T. 2434; R 31, R 32, R33.

Veno testified that Belezarian notified him on July 16 that a resident-to-resident incident had occurred and that “she needed to suspend” Hirst and Minyo. T. 2410. After Belezarian cited her “conflict of interest,” Veno decided he would “come in...to review all the statements” and would “make the final decision on both of these suspensions.” T. 2412. Veno further testified that, a couple of days later, he “personally reviewed a large number of statements that were collected by staff,” which turned out to be six very short statements and a detailed statement from Hirst, which the record makes clear he hadn’t read.⁸⁰ (GC 61(a)-(g)). Veno claimed that “two of the statements stuck out to [him] because they in detail described the incident,” whereas the others “simply said we didn’t see anything, we weren’t present, we weren’t in the area.” T. 2413. Veno further stated that, “based on those two statements,⁸¹ [he] had determined that both Hirst and Minyo “had been notified of the incident and had not acted appropriately.” T. 2413. Yet again, Veno’s supposed interest in conducting a thorough, fair, and impartial investigation was exposed as a lie.

Veno testified that fake cameras went up “to remind all of the staff that this is not a 7-Eleven” so the employees should not be engaging in “sidebars” of any topics and that the fake cameras were installed at the facility because “we had to immediate[ly] change behavior” and there would be a “delay in the setup and delivery” of operational cameras. T. 2420-2422. Veno couldn’t explain why he didn’t simply hold a meeting or

⁸⁰ To that point, Veno testified that, at the meeting, after he had told Hirst she was discharged, he asked Hirst to write a statement and she said she “had a statement written but she did not want to turn it in.” T. 2413. However, Hirst had already written a detailed statement and submitted it on July 16. T. 2417; GC 61(e).

⁸¹ As noted above in the section assessing Belezarian’s credibility, both statements had been revised after-the-fact at management’s direction to implicate Hirst.

issue a memo rather than installing fake cameras, responding simply, “We didn’t.” T. 2519. Of course, engaging in lawful union activity was the sole behavior that had to be immediately changed.

Veno unconvincingly testified that he moved Nunes to the West Wing instead of only issuing her a discipline because the involuntary transfer “protected her” and “protect[ed] the building,” and because “she would be fine on [the] west unit as a nurse.” T. 2439. As the evidence demonstrates, however, Nunes had been “fine” on the East Wing all along, which, entirely unsurprisingly, was also the case while she worked on the West Wing. Thus, Veno testified that after speaking with managers Sousa, Cappolla, and Durrett, “all of the folks that are there day in and day out felt as if there was no...issue with Nunes’ professional conduct.” T. 2441. It is therefore easy to see that Veno’s stated rationale was a complete fabrication.

In addition, despite acknowledging that the Regional Office’s docket letter, dated July 2 and addressed to him, explicitly instructed that all potentially relevant evidence must be preserved, Veno did not do so. GC 103. For example, he claimed, incredibly, that he deletes every text message on his phone every night before going to bed. T. 2454-2455. He claimed he began doing this in 2008 because of concerns about HIPAA, but continued it ever since as a regular practice, though he acknowledged there is no HIPPA-related reason to delete texts with his coworkers. T. 2455. In this regard, he ridiculously testified that he deletes every text message from his coworkers, his wife, his children, and his friends on a nightly basis, claiming that, while he was on the witness

stand being cross examined that morning, there were no text messages on his phone sent or received prior to the night before. T. 2455.⁸²

Veno yet again displayed a complete lack of credibility when he testified about the efforts he undertook to comply with the trial subpoena duces tecum Counsels for the General Counsel issued to him. While he claimed to have searched for the words “hostile,” “union,” “discipline,” “petition,” and attendance,” he admitted that he had failed to search for a great number of other clearly relevant terms, including “withdrawal of recognition,” decertification,” “fire,” “resign,” discharge,” “termination,” “suspension,” “camera,” “Country Gardens,” “wages,” “CNAs,” and “meetings.” T. 2452-2453. His failure to make any meaningful effort in this regard strongly suggests that Veno is a man who just can’t be believed. Relatedly, Veno claimed that he does not conduct any business via text message, but then admitted that he “absolutely” texts with Teoli. T. 2466. He then implausibly testified that none of the text messages he has exchanged with Teoli could have any potential relevance to this case, even if he had not deleted them. T. 2446. It is hard to put any faith in a witness like Veno, considering that *any* communication with Teoli during the relevant time period of the events in issue would obviously be relevant.

⁸² Q. “And so if we looked at your phone now, we wouldn’t see any text messages from earlier than...the moment you went to bed last night; is that correct?”

A. 11:15 p.m. last night.

T. 2455.

He also testified that he will “wipe [his] texts clean” every night “before he goes to bed,” regardless of whether a message is of a business or personal nature. T. 2445.

In light of the foregoing, it is abundantly clear that Veno's testimony should be resoundingly discredited.

IV. ARGUMENT

A. Respondent Violated §8(a)(5) of the Act as a Matter of Law by Withdrawing Recognition from the Union While the Parties' CBAs Were in Full Force and Effect.

Under settled Board precedent, a union is entitled to a conclusive presumption of majority status during the term of any collective bargaining agreement, up to three years.⁸³ This presumption is irrebuttable during the first 3 years of a collective bargaining agreement.⁸⁴ Here, Respondent withdrew recognition from the Union on July 6, while the parties' two-year CBAs remained in effect; as such, Respondent violated §8(a)(5) of the Act as a matter of law.

B. Respondent Violated §8(a)(1) of the Act Because it Unlawfully Assisted April Birch in its Fervor to Remove the Union from the Facility. Respondent's Blatant and Pervasive Unlawful Assistance Fatally Tainted Birch's Petition, and Independently Establishes that Respondent's Withdrawal of Recognition Violated §8(a)(5) of the Act.

It is well-settled that an employer violates §8(a)(1) of the Act by actively soliciting, encouraging, promoting, or providing assistance in initiating, signing, or filing a decertification petition.⁸⁵ An employer may not permit or assist solicitation of a

⁸³ See *Young Women's Christian Association of Western Massachusetts*, 349 NLRB 762, 763 (2007).

⁸⁴ See *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 720 n.17 (2001). See also, *Auciello Iron Works v. NLRB*, 517 U.S. 781, 786 (1996).

⁸⁵ See, e.g., *Central Washington Hospital*, 279 NLRB 60, 64 (1986) supplemented by 286 NLRB No. 43 (1987) (unpublished summary judgment decision), *enfd.* 815 F.2d 1493 (DC Cir. 1987).

decertification petition during working time.⁸⁶ Likewise, an employer cannot promise economic benefits in order to induce employees to sign a decertification petition,⁸⁷ nor can it disparage a union in order to foment anti-union sentiment among its employees.⁸⁸ It is, of course, axiomatic that an employer cannot pressure employees to sign a decertification petition.⁸⁹ It is equally well-settled that an employer which withdraws recognition from a union based upon an anti-union petition tainted by its own unlawful conduct violates §§8(a)(1) and (5) of the Act.⁹⁰ Applying the foregoing principles, it is clear that Respondent unlawfully assisted and interfered with Birch's decertification effort and, in turn, that Respondent unlawfully withdrew recognition from the Union based on a tainted petition.

First, Respondent improperly permitted Birch to solicit signatures from coworkers while she and/or her coworkers were on work time and in work areas: Despite Birch's denial, Lukusa, Gaeta, Palmer, Hayes, and Sherman all testified to this.⁹¹

⁸⁶ See *Davies Medical Center*, 303 NLRB 195, 195 (1991), *enfd.* 991 F.2d 803 (9th Cir. 1993).

⁸⁷ See *Caterair International*, 309 NLRB 869, 879 (1992), *enfd.* in relevant part and remanded, 22 F.3d 1114 (DC Cir. 1994), *cert. denied*, 513 U.S. 1015 (1994).

⁸⁸ See *Armored Transport, Inc.*, 339 NLRB 374, 378 (2003) (employer disparaged union and influenced employees to reject it as their bargaining representative, effectively soliciting decertification in violation of §8(a)(1) of the Act).

⁸⁹ See *Ernst Home Centers, Inc.*, 308 NLRB 848, 857-858 (1992) (manager who asked employee if he was going to sign decertification petition, stated that "buddies...in the store" had signed, and then walked him to the posted petition and prodded him once more, stating he would only be "asking for an election" if he signed, violated §8(a)(1) of the Act).

⁹⁰ See *Hearst Corp.*, 281 NLRB 764, 764-765 (1986), *enfd.* 837 F.2d 1088 (5th Cir. 1988), *rehg. denied* 840 F.2d 15 (5th Cir. 1988).

⁹¹ Lukusa, Gaeta, and Palmer are all neutral witnesses, while Hayes testified in Respondent's case-in-chief.

Next, Respondent unlawfully promised employees improved wages and disparaged the Union to induce them to support the decertification effort. Significantly, in this regard, on June 26, Lukusa went to see Minyo, who was speaking by phone with Belezarian at the time; Minyo passed Lukusa the phone and Belezarian told her the Union wanted even more money for itself, that she (Belezarian) was trying to get employees a raise, and that without the Union employees could get better pay and benefits. Based on her conversations with Belezarian and Birch, Lukusa signed the anti-Union petition. Similarly, Gaeta testified that Belezarian and Sousa told employees that they were working on ways to get rid of the Union. Gaeta also testified that on multiple occasions, usually at the nurses' station, Belezarian explained that without the Union, Respondent would be free to pay employees higher wages. In addition, Respondent also posted a June 29 letter, signed by Veno and Sofia, which inartfully and falsely claimed that, after learning that Respondent had hired CNAs at wage rates above those provided for in the Unit A CBA and unilaterally increased wage for some current CNAs, the Union "angr[ily]...demand[ed] that we reverse the new employees and the employees who we increased wages back down to the lower rate of pay, because the Union could not take credit for this increase."

Furthermore, Respondent unlawfully directly pressured employees to support the decertification effort. For example, Gaeta described an instance when Minyo brought her and Tiffani Cabral to Belezarian's office, where Belezarian proceeded to describe three options to remove the Union: Either wait for contract negotiations, sign Birch's anti-Union petition, or resign and go to work for an agency which would offer the same wages and benefits they currently enjoyed working for Respondent. Belezarian, in a

brazen instance of coercion, then showed Gaeta and Tiffani Cabral a stack of resignation letters and told them, “Look. We’re all on board. Everybody’s in agreement. This is who I have so far.”⁹² Using Miller’s resignation letter as a sample, Gaeta wrote that she was resigning from both the Union and Respondent. Gaeta testified that Belezarian repeated her comments about these “options,” which she told staff would allow her to raise wages, and that managers also made multiple comments to that effect. Likewise, Palmer recounted a mid-June meeting in Belezarian’s office where she described how employees could draft resignation letters and go to work for an affiliated agency “just for us,” permitting Respondent to bypass the Union. Belezarian also told Palmer that the Union had succeeded in getting Miller reinstated, and yet even *she* had signed Birch’s anti-Union petition.⁹³ Belezarian’s insistence that the Union wanted to reduce wages drove Palmer to sign Birch’s petition.

There is additional record evidence of Respondent’s direct unlawful involvement in the decertification effort: Minyo testified that Belezarian hoped Birch would hurry up and get the anti-Union petition to her, stated that if 30 percent of the employees signed there could be an election, stated that if 50 percent of the employees signed Respondent could withdraw recognition from the Union, and stated that the facility would be better off without the Union. Minyo also heard Belezarian ask Birch for a copy of the petition because she needed to give it to “corporate” in order to withdraw recognition from the Union. In this regard, at Belezarian’s direction, Minyo asked Birch

⁹² Thus, Belezarian’s own words directly implicate her as a leader of the decertification effort.

⁹³ Therefore, it is beyond doubt that in the weeks prior to Respondent’s withdrawal of recognition, Belezarian knew exactly who had signed Birch’s petition.

multiple times if she had the petition so she could give it to Belezarian. Minyo also testified that about a week and a half after Belezarian stated that she hoped Birch would hurry up, Birch drove to Boston to retrieve the petition, which she did in order for Respondent to withdraw recognition from the Union.

All of Respondent's foregoing conduct establishes that it violated §8(a)(1) of the Act, fatally tainting Birch's anti-Union petition.⁹⁴ It necessarily follows that Respondent's withdrawal of recognition based on Birch's tainted petition violated §8(a)(5) of the Act.

C. Respondent Violated §8(a)(3) of the Act when It Suspended and then Discharged Stephanie Sullivan and Karen Hirst, Each within a Matter of Days after Respondent's Unlawful Withdrawal of Recognition, and Violated §8(a)(1) when it Suspended and then Discharged Katherine Minyo for Refusing to Lie about Hirst's Alleged Failure to Report the July 15 Resident-to-Resident Incident.

- i. Respondent unlawfully suspended and discharged Stephanie Sullivan based on a fabricated reason and a deliberately deficient investigation because it harbored such acute animus about Sullivan's union activism.**

In order to establish a violation of §8(a)(3) of the Act, the Board requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a "motivating factor" in the employer's

⁹⁴ See *Davies Medical Center*, 303 NLRB at 195; *Caterair International*, 309 NLRB at 879; *Armored Transport, Inc.*, 339 NLRB at 378; *Ernst Home Centers, Inc.*, 308 NLRB at 857-858. The Board's recent decision in *Sears, Roebuck and Co.*, 368 NLRB No. 30 (July 30, 2019) is distinguishable. In *Sears*, the Board found no unlawful assistance where the employer provided a decertification petition in response to an employee's unsolicited inquiry about whether certain employees "could just be eliminated from anything to do with the union." 368 NLRB No. 30, slip op. at 1, n.1. The Board noted that there was no allegation that the employer coerced any employees to sign the petition. *Ibid.* Here, by contrast, the record contains ample evidence that Respondent coerced employees to sign Birch's decertification petition. Moreover, Respondent's unilateral changes to wage rates and to its open shift and call-out bidding and compensation procedures all impermissibly contributed to employee disaffection from the Union.

decision.⁹⁵ In order to do so, the General Counsel must initially establish: (1) that the employee was engaged in protected activity; (2) that the employer was aware of the activity; and (3) that animus towards the protected activity was a substantial or motivating reason for the employer's action.⁹⁶ Unlawful motivation and anti-union animus are often established by indirect or circumstantial evidence.⁹⁷

The burden then shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct.⁹⁸ However, where an employer cites a false reason for discharging an employee, the employer fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis.⁹⁹

Applying these principles, it is plain to see that Respondent discharged Sullivan in violation of §8(a)(3) of the Act. First, Sullivan had unquestionably engaged in protected activity, both generally in her role as a delegate for 15 years, and specifically

⁹⁵ See *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002). See also *East End Bus Lines*, 366 NLRB No. 180, slip op. at 1 (2018).

⁹⁶ See *East End Bus Lines*, 366 NLRB No. 180, slip op. at 1

⁹⁷ See *Affinity Medical Center*, 362 NLRB 654, 669 (2015) recon. denied, 2015 WL 5047740 (2015).

⁹⁸ *Wright Line*, 251 NLRB at 1089.

⁹⁹ See *Golden State Food Corp.*, 340 NLRB 382, 385 (2003) (citing *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982) (“[I]f the evidence establishes that the reasons given for the [r]espondent's actions are pretextual – that is, either false or not in fact relied upon – the [r]espondent fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis.”) See also *Suburban Electrical Engineers/Contractors*, 351 NLRB 1, 7 (2007).

in her efforts during late June and early July to educate employees about the benefits of Union representation, to gather signatures on the pro-Union petition, and to distribute Union buttons to employees. It is also undisputed that Respondent was fully aware of Sullivan's sustained union activity. Sullivan was effectively the face of the Union at the facility: She attended labor-management meetings, quite often resolved workplace issues without having to resort to the grievance process, represented employees in grievance proceedings, and did not hesitate to tell management when she felt they were in the wrong. In addition, the record is replete with evidence of anti-union animus Respondent's managers – particularly Belezarian – displayed. Respondent's contempt for the Union is demonstrated not only by its unlawful withdrawal of recognition, but also by the laundry list of Respondent's other illegal conduct. Belezarian regularly and openly complained to both employees and managers alike that the Union was an obstacle to retaining staff and managing the facility as she saw fit, stated that she wanted the Union out because it was "a thorn in her side," and told staff that there were means to achieve that end. Belezarian also actively and unlawfully took part in the anti-union effort, going to far as to tell Gaeta, "Look. We're all on board. Everybody's in agreement. This is who I have so far." Sousa, Perry, Minyo, Perry, O'Kane, Minyo, Logan, and Veno were also actors in Respondent's unlawful plan to remove the Union from the facility. In light of the foregoing evidence, the General Counsel has made an initial showing sufficient to support an inference that Sullivan's protected conduct was a motivating factor in Respondent's decision to discharge her.

However, because Respondent cited a palpably false reason for discharging Sullivan, it has failed by definition to show that it would have discharged her even

absent her protected conduct: Belezarian knew from the moment she approached Silvia on July 9 that Sullivan hadn't given Silvia a pin in the dining room, because Silvia immediately told Belezarian "exactly what had happened *on the unit*."¹⁰⁰ (Emphasis supplied.) Despite this, and despite Sullivan's unwavering denials that she had left her unit on work time for any reason, much less to give Silvia a pin, Respondent discharged her for a demonstrably false reason. Thus, there is no need to perform the second part of the *Wright Line* analysis.¹⁰¹

The Board's recent decision in *Electrolux Home Products*, 368 NLRB No. 34 (August 2, 2019), which discusses the longstanding *Wright Line* doctrine, also supports a finding that Sullivan's suspension and discharge violated §8(a)(3) of the Act. In *Electrolux*, the Board found that the employer's proffered reason for discharging the subject employee was pretextual, but concluded that the record as a whole failed to establish that the employee's union activity was a motivating factor in her discharge.¹⁰² In this regard, the Board noted that while there is precedent for the proposition that pretext, standing alone, cannot satisfy the General Counsel's initial *Wright Line* burden, as well as precedent for the proposition that pretext alone may satisfy the General Counsel's burden of proof, it did not need to resolve this inconsistency on the facts before it.¹⁰³ However, in finding the discharge at issue in *Electrolux* lawful, the Board

¹⁰⁰ Silvia further testified that the only place she had seen Sullivan that day was on the unit.

¹⁰¹ *Golden State Food Corp.*, 340 NLRB at 385; *Suburban Electrical Engineers/Contractors*, 351 NLRB at 7.

¹⁰² 368 NLRB No. 34, slip op. at 3.

¹⁰³ *Id.*, slip op. at 3, n.10 (internal citations omitted).

further explained that there was no evidence the employer had committed any “contemporaneous unfair labor practices,” and that there was “nothing suspicious in the [employer’s] investigation of [the employee’s] insubordinate[ion].”¹⁰⁴ The Board also concluded that, even assuming for argument’s sake that the employer had demonstrated anti-union animus in a verbal exchange it had with the employee during a captive audience meeting held more than seven months earlier, that meeting was too remote in time to infer that her discharge was unlawfully motivated.¹⁰⁵ Finally, the Board found that, “[n]ot only is there no other evidence to support an inference that the [employer] was motivated by [the employee’s] union activities, but the record contains countervailing evidence that the [employer] bore no animus against collective bargaining or toward members of the [u]nion’s bargaining team,” which included the employee.¹⁰⁶ In this regard, the Board noted, *inter alia*, that after the union was certified, the parties quickly reached an interim agreement on employee discipline, and that the parties had been meeting and bargaining in good faith three days each month by the time of the employee’s discharge.¹⁰⁷ Here, by contrast, there is extensive evidence that Respondent had committed unfair labor practices contemporaneous with Sullivan’s suspension and discharge, and virtually *everything* about Respondent’s investigation of Sullivan’s supposed misconduct is suspicious (see below). Moreover, Respondent’s anti-union animus, described above, was on daily display – both in the months and

¹⁰⁴ *Id.*, slip op. at 4.

¹⁰⁵ *Ibid* (internal citations omitted).

¹⁰⁶ *Id.*, slip op. at 2, 4.

¹⁰⁷ *Id.*, slip op. at 4.

weeks leading up to Sullivan’s suspension and discharge and in the weeks and months that followed – which clearly refutes any argument that Respondent’s anti-union animus lacked a temporal nexus to Sullivan’s suspension and discharge. And, unlike *Electrolux*, the evidence uniformly points to the fact that Respondent has the utmost disdain for both collective bargaining and those of its employees who support it.

As the Board alluded to in *Electrolux*, it has long held that an employer’s cursory investigation supports a finding of discriminatory motive.¹⁰⁸ Significantly, Veno testified that whenever he or his management team investigates an incident that could lead to employee discipline, he ensures that the investigation is thorough, fair, and impartial because it is critical that the truth come out, and that witness statements are important in any type of investigation, whether or not it could lead to employee discipline. However, contrary to this testimony and contrary to what he represented to Sullivan and Brown – that he had one “anonymous” witness statement – Veno admitted that Respondent did not obtain any written statements regarding the allegations leveled against Sullivan because Little refused to provide one, and neither he nor Belezarian asked Silvia to provide one. In this regard, Veno stepped out of the July 11 meeting to consult with his attorney *precisely because* he had not obtained any written statements to support his preordained decision to discharge Sullivan. He also admitted that, despite this concern, and despite being unable to reach his attorney, Schlesinger, before the meeting, he did not postpone it until after he had spoken with him. He further denied

¹⁰⁸ See *Hewlett Packard Co.*, 341 NLRB 492, 492 n.2 (2004); *Astyle Apparel*, 351 NLRB 1287, 1288 (2007); *Midnight Rose Hotel & Casino*, 343 NLRB 1003, 1005 (2004), *enfd.* 198 Fed Appx. 752 (10th Cir. 2006).

that he could have required Little – a subordinate – to provide a statement, but also claimed that he did not require Little to provide a statement because the incident did not involve a resident. Veno further testified that he based his decision to terminate Sullivan solely on Belezarian's version of her conversations with Little and Silvia, and that he chose not to speak with Little. Veno additionally testified that, had he spoken to Silvia (i.e., had he conducted a proper investigation) and learned – as was the case – that she hadn't spoken to Sullivan off the unit at any time that day, he would not have discharged Sullivan. Belezarian, for her part, testified that she relied on Silvia's "testimony to me of exactly what happened" (which, as set forth above, was that Sullivan gave her a pin *on the unit* that day) and claimed that it is typical to discharge an employee in a situation where a witness refuses to provide a written statement. She also maintained that she has done so in the past, but could not identify even one such instance. This evidence independently demonstrates that Respondent acted with a discriminatory motive when it suspended and then discharged Sullivan based on a purposefully inadequate investigation.

Moreover, even assuming, *arguendo*, that Sullivan *had* left her unit on work time to give Silvia a Union pin while Silvia was working, her suspension and subsequent discharge are stark examples of disparate treatment. Significantly, Respondent allowed Birch unfettered access to the facility to solicit signatures on the decertification petition. Furthermore, employees regularly left their work areas on work time without notifying their superiors and without the slightest consequence. Thus, Respondent permitted all manner of solicitation by employees and managers alike, whether it was selling items to support their children's activities or profiting from direct sales. Such strong evidence of

disparate treatment further supports a finding that Sullivan's suspension and discharge were unlawful.¹⁰⁹

Against this backdrop, it is clear that Respondent violated §8(a)(3) of the Act when it suspended and then discharged Sullivan.

- ii. **Respondent unlawfully suspended and discharged Karen Hirst by discriminatorily applying its abuse reporting policy after conducting yet another perfunctory investigation: It ignored all exculpatory evidence it gathered, failed to obtain a statement from Hirst's alibi witness, and instead relied on two employee statements doctored to implicate Hirst.**

Hirst's suspension and discharge are also properly evaluated under the Board's *Wright Line* test, which establishes that Respondent violated §8(a)(3) of the Act when it suspended and then discharged her.

First, Hirst was a long-time Union delegate and a particularly strong advocate for her coworkers when she believed in a cause, a trait management was unquestionably aware of. A fellow delegate, Brown, described Hirst as always willing to "fight for the underdog." A case in point is her successfully grieving Miller's attendance-related discharge. While her fellow delegates – Sullivan, Gomes, and Nunes – believed Miller's discharge was justified, Hirst went to the mat and won Miller's job back, which Belezarian specifically highlighted in a June 6 email to Teoli. Hirst also represented the Union at the parties' monthly labor-management meetings. Despite being on vacation when she learned of the decertification petition, Hirst immediately messaged her

¹⁰⁹ See *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, slip op. at 6-7 (2018), motion for reconsideration denied, 2018 WL 6334471; *East End Bus Lines*, 366 NLRB No. 180, slip op. at 8, 12-14.

coworkers that she was aware of the situation and made it known that she was available to answer any questions employees might have. Moreover, despite Respondent's increased surveillance of employees' union activity, Hirst spoke to employees about the benefits of union representation, gathered statements from employees memorializing Respondent's unlawful assistance to Birch in her decertification efforts, and helped circulate the pro-Union petition. She even posted a selfie of her wearing a Union scrub top on Facebook on July 10, only one day after Sullivan's unlawful discharge. Next, as set forth in Section IV(C)(i), above, Respondent's copious anti-union animus was on full display on a every day of the week.¹¹⁰ Accordingly, the evidence clearly supports an inference that Hirst's protected conduct was a motivating factor in Respondent's decision to suspend and then discharge her.

Having established a prima facie case that Hirst was suspended and discharged in violation of §8(a)(3) of the Act, the burden shifts to Respondent to demonstrate that it would have taken the same action even in the absence of the protected activity.¹¹¹ As set forth below, Respondent simply cannot meet its burden.

First, there is ample evidence that Hirst was the victim of disparate treatment, because Respondent does not always treat allegations of resident abuse or neglect in the same fashion.¹¹² Notably, Hayes received *no discipline of any kind* when she waited

¹¹⁰ The write-up Belezarian issued to her for "perceived retaliation" because she messaged Hayes a rat emoji demonstrates anti-union animus directed specifically at Hirst.

¹¹¹ *Wright Line*, 251 NLRB at 1089.

¹¹² See *Ozburn-Hessey Logistics, LLC*, slip op. at 6-7, and *East End Bus Lines*, slip op at 8, 12-14, supra.

more than two months to report an abuse allegation. And, shortly before Hirst's discharge, Hayes and Beauregard were both accused of patient neglect, yet, contrary to Respondent's policy of suspending involved employees pending investigation, they were allowed to work their evening shifts on the same day the allegations were lodged against them. Remarkably, Hayes skirted discipline *yet again*, despite failing to promptly report the alleged resident-to-resident incident for which Hirst and Minyo were unlawfully suspended and then discharged.¹¹³

By contrast, Hirst faithfully documented reportable incidents almost every day, including one she believed was "iffy" and another she reported despite the resident's request that she not do so. In fact, on the day in question, Hirst and Minyo reported discovering a resident with a bruise of unknown origin, further demonstrating that Hirst was highly conscientious – "hyper diligent" as she put it – about reporting incidents. As such, it strains credulity to believe that, had Hayes properly notified Hirst of the resident-to-resident incident, she would have failed to report it.

In addition, as noted above, the Board has long held that an employer's cursory investigation supports a finding of discriminatory motive.¹¹⁴ Here, Respondent failed to even speak with, much less obtain a statement from Hirst's alibi witness, Gomes, who

¹¹³ The analysis of Minyo's unlawful suspension and discharge is set forth in Section IV(C)(iii), below.

¹¹⁴ See *Hewlett Packard Co.*, 341 NLRB at 492 n.2; *Alstyle Apparel*, 351 NLRB at 1288; *Midnight Rose Hotel & Casino*, 343 NLRB at 1005. As with Sullivan's suspension and discharge, the Board's recent *Electrolux* decision also supports a finding that Hirst's suspension and discharge violated §8(a)(3) of the Act: Respondent had committed innumerable contemporaneous unfair labor practices, conducted an entirely deficient investigation of her supposed failure to report the resident-to-resident incident, Hirst's protected activity and her suspension and discharge occurred in close proximity, and there is overwhelming evidence of Respondent's anti-union animus.

was on break with her in the breakroom when the incident allegedly occurred. Respondent also discounted witness statements from Ayotte, Giglio, and Miller – each of which corroborated Hirst’s and Minyo’s account – relying instead on the statements from Hayes and Federici-McCarthy, which Belezarian admittedly directed them to alter after-the-fact to implicate Hirst.¹¹⁵ Notably, Veno testified that he credited Hayes and Federici-McCarthy because of the level of “detail” their statements contained,¹¹⁶ by which he meant “they had seen the incident.” However, *seeing* an incident is entirely different than *reporting* an incident, a significant distinction Veno simply chose to disregard in his zeal to discharge Hirst. And, remarkably, when Hirst asked Veno at her discharge meeting if he had reviewed the video footage which would have exonerated her, Veno replied that the video footage was “irrelevant.” In all these circumstances, describing Respondent’s investigation of the allegations leveled against Hirst as perfunctory would be charitable.

For all of the foregoing reasons, it is evident that Respondent violated §8(a)(3) of the Act when it suspended and then discharged Hirst.

- iii. Respondent unlawfully suspended and discharged Katherine Minyo because she refused to take part in Respondent’s scheme to discharge Karen Hirst for Hirst’s alleged failure to report an instance of resident-to-resident abuse.**

¹¹⁵ Moreover, in its fervor to discharge Hirst, Respondent set in motion a clumsy cover-up that also cost Minyo her job.

¹¹⁶ To be sure, Hirst far and away submitted the most “detailed” statement.

It is well-settled that discharging a neutral employee in order to facilitate or cover up unlawful conduct against a known union supporter violates §8(a)(3) of the Act.¹¹⁷ It is equally well-settled that an employer who discharges a supervisor for refusing to commit an unfair labor practice violates §8(a)(1) of the Act.¹¹⁸ Applying *Parker-Robb's* holding to the facts of the instant case, it is evident that Respondent did exactly that. Thus, upon learning that Minyo's account of the alleged resident-to-resident incident corroborated Hirst, but ran counter to Respondent's self-serving narrative, Belezarian told Minyo that she could keep her job if she would simply implicate Hirst as a bad actor for allegedly failing to report the July 15 resident-to-resident incident. When Minyo adamantly refused to do so, Respondent discharged her as well. In this regard, Belezarian and Veno both testified that Belezarian had informed Minyo on the evening of July 18 that she had been terminated. Nevertheless, the letter Minyo received from the Massachusetts DUA granting her unemployment benefits states that Respondent discharged her for failing to attend the July 19 meeting. When confronted with this evidence on the witness stand, Veno readily admitted that it made no sense to discharge Minyo on July 18 for failing to attend a meeting scheduled for the following day, which only underscores the fact that Respondent sought to cover up the true reason for both Hirst's *and* Minyo's unlawful discharge.

¹¹⁷ See *Bay Corrugated Container*, 310 NLRB 450, 451 (1993), *enfd.* 12 F.3d 214 (6th Cir. 1993), citing *Dawson Carbide Industries*, 273 NLRB 382, 389 (1984), *enfd.* 782 F.2d 64 (6th Cir. 1986).

¹¹⁸ See *Parker-Robb Chevrolet*, 262 NLRB 402, 402-403, 404 (1982), *rev. denied* 711 F.2d 383 (DC Cir. 1983)(discharging a supervisor for refusing to commit an unfair labor practice violates §8(a)(1) because it interferes with the employees' §7 rights).

In sum, although Minyo was a statutory supervisor generally excluded from the Act's protections, the record evidence convincingly demonstrates that Respondent suspended and discharged her for refusing to commit an unfair labor practice – lying about Hirst's alleged failure to report the resident-to-resident incident in order to justify Hirst's discharge – in violation of §8(a)(1) of the Act.

- iv. Respondent unlawfully issued Dawn Nunes a final written warning and involuntarily transferred her from the East Wing to the West Wing, purportedly for creating a “hostile work environment.” As with Sullivan and Hirst, Respondent's stated basis for her discipline simply does not withstand scrutiny.**

Like Sullivan's and Hirst's discipline, Nunes' November 14 final written warning and involuntary transfer are properly evaluated under the Board's *Wright Line* test, which establishes that Respondent violated §8(a)(3) of the Act when it took this action against her.

Nunes is a long-time employee who has served as a Union delegate for three years, since Unit B was certified. In the wake of Sullivan's and Hirst's unlawful discharges, the bulk of the delegates' work fell to Nunes, particularly because as of that time she was the only delegate scheduled to work on Mondays. Prior to Respondent's unlawful withdrawal of recognition, Nunes represented employees in grievance proceedings; since Respondent's unlawful withdrawal of recognition, she has continued to file grievances on behalf of unit employees, both before and after her November 14 discipline.¹¹⁹ Nunes also makes it a point to inform employees about their rights under

¹¹⁹ Nunes also grieved her final written warning and involuntary transfer, though Respondent has refused to process it.

the Unit B CBA, despite Respondent's unlawful refusal to recognize the Union. Thus, Respondent clearly knew about Nunes' union activity. As set forth above, Respondent has ceaselessly displayed its open hostility toward the Union. Respondent also demonstrated anti-union animus in connection with Nunes' discipline. First, at the outset of the November 14 disciplinary meeting, Veno immediately and caustically told fellow delegate Gomes, who had accompanied Nunes, to shut up and sit down, pointedly advising her that she was there solely as a courtesy and had no right to participate in the meeting.¹²⁰ Next, when Nunes pressed Veno for examples of the alleged hostile work environment she had created, he made it abundantly clear that she had been singled out for retribution, telling her that just like the Union could file unfair labor practice charges, her fellow nurses could file complaints against her.¹²¹ Veno did not, however, identify a single instance of her being "hostile," "short," or "intimidating;" instead, he simply repeated that she didn't face nurses during report and didn't tell other nurses when she called a resident's doctor, which he disingenuously characterized as a "serious" allegation. Despite asking Nunes to provide a statement, Veno clearly didn't care whether or not Nunes submitted one, because he never asked about it after the

¹²⁰ See *Relco Locomotives, Inc.*, 358 NLRB 229, 229 (2012), *enfd.* 734 F.3d 764 (8th Cir. 2013) (finding anti-union animus based in part on the fact that, at the end of a captive audience meeting, a manager invited questions but immediately told an employee to "shut up and sit down" when he asked whether the manager would agree to discuss unionization of the employer's employees).

¹²¹ Notably, Veno raised Hirst's sending the rat emoji to Hayes "bit[ing] him in the ass," another indication of his anti-union animus. In this regard, Veno testified that he is aware that a rat is a lawful, albeit not endearing, form of symbolic labor speech. See, e.g., *Laborers' Local 872 (Westgate Las Vegas Resort & Casino)*, 368 NLRB No. 168 (2016).

November 14 meeting.¹²² Against this backdrop, it is beyond doubt that Nunes' protected activity was a motivating factor in her suspension and involuntary transfer.¹²³

Having made a prima facie showing that Nunes was unlawfully suspended and transferred, the burden shifts to Respondent to demonstrate that it would have taken the same action against her without regard to her protected activity.¹²⁴ Respondent simply cannot do so.

Notably, the only specifics cited in support of the supposed hostile work environment Nunes fostered were: (1) that she keeps her back turned to other nurses during report; and (2) that she fails to notify other nurses when she contacts a resident's doctor. However, the record clearly shows these are pretextual reasons which also evince disparate treatment:¹²⁵ There is unrebutted testimony that LPN Cassidy Lima, who replaced Nunes on the East Wing, gives report in exactly the same manner as Nunes and, like Nunes, does not notify other nurses when she contacts a resident's doctor, and yet, remarkably, none of Nunes' accusers ever complained that Lima fostered a hostile work environment. Moreover, both prior to and since her transfer, Nunes has conducted herself at work in the same manner she always has, and not a single coworker has complained about her. In fact, Veno acknowledged that Nunes is a

¹²² Veno's disinterest in Nunes' statement is plainly at odds with his implausible claim that he has rescinded already-issued discipline after reviewing statements from employees accused of misconduct or other infractions, and serves as further evidence that Nunes' discipline was an unlawfully motivated fait accompli.

¹²³ In this regard, by disciplining and transferring Nunes, Respondent could simultaneously punish her and reward four strident anti-union employees, especially Respondent's "partner in crime," decertification petitioner Birch, who had made known to her coworkers that she had an "in" with management.

¹²⁴ *Wright Line*, supra at 1089.

¹²⁵ See *Ozburn-Hessey Logistics, LLC*, slip op. at 6-7, and *East End Bus Lines*, slip op at 8, 12-14, supra.

quiet, hard worker, and he testified that, after speaking with managers Sousa, Cappolla, and Durrett, “all of the folks that are there day in and day out felt as if there was no...issue with Nunes’ professional conduct.” Thus, while *literally no one* besides Birch and three other well-known anti-union employees has ever taken issue with Nunes’ workplace demeanor or conduct, Respondent did not hesitate to issue her a final written warning and involuntarily transfer her for supposedly creating a hostile work environment.

Further undermining the legitimacy of Nunes’ discipline is the fact that, as with Sullivan and Hirst, Respondent conducted a sham investigation of her accusers’ claims, and also blatantly disregarded its own corrective action and disciplinary policies. As set forth above, an employer’s cursory investigation supports a finding of discriminatory motive.¹²⁶ Here, Veno issued Nunes a final written warning and transferred her to the West Wing based solely on statements from Caseiro, Picard, and Nault (none of whom he had spoken to), and a yet-to-be-received statement from Birch, despite plainly holding Nunes in very high regard as a nurse. Moreover, Veno decided to discipline and involuntarily transfer Nunes without offering her an opportunity to respond to the allegations leveled against her, *other than at the meeting he called to inform Nunes of the discipline he had already decided to issue to her*. Again, and as with Sullivan and

¹²⁶ *Hewlett Packard Co.*, 341 NLRB at 492 n.2; *Alstyle Apparel*, 351 NLRB at 1288; *Midnight Rose Hotel & Casino*, 343 NLRB at 1005. Moreover, just like Sullivan’s and Hirst’s suspensions and discharges, Nunes’ final written warning and involuntary transfer bore all of the hallmarks the Board identified in *Electrolux* for finding her pretextual discipline unlawful: Respondent had committed a raft of contemporaneous unfair labor practices, conducted an investigation in name only regarding the supposedly “serious allegations” leveled against her, disciplined her at a time when she continued to engage in protected activity as the most active delegate still working at the facility, and occurred in an environment teeming with anti-union animus.

Hirst, this course of action utterly belies Veno's professed need to ensure that investigations are thorough, fair, and impartial, in order to "get to the truth." Significantly, it also stands as a marked departure from Respondent's practice of first issuing an employee a non-disciplinary "education" in the event an employee violates a workplace policy, after which Respondent follows a progressive discipline policy. This is especially the case where, as here, Nunes had never been disciplined for any reason at all while working for Respondent.¹²⁷

In all these circumstances, it is clear that Respondent violated §8(a)(3) of the Act when it issued Nunes a final written warning and involuntarily transferred her from the East Wing to the West Wing.

D. Respondent Committed Numerous Other Violations of §8(a)(1) of the Act, in Addition to Those Set Forth in Section IV(B), Above.

- i. Respondent unlawfully paid employees time-and-one half and double time in order to dissuade them from supporting the Union, and thereby violated §8(a)(1) of the Act.**

As noted in Section IV(B), above, an employer which promises its employees improved terms and conditions of employment to discourage them from supporting a union violates §8(a)(1) of the Act.¹²⁸ It logically follows that an employer which actually *grants* its employees improved terms and conditions of employment in order to dissuade

¹²⁷ In this regard, Respondent did not introduce evidence of even one instance where it issued such severe discipline to an employee with no prior disciplinary history.

¹²⁸ See *Caterair International*, 309 NLRB at 879.

them from supporting a union also violates §8(a)(1) of the Act.¹²⁹ Here, there is substantial record evidence that Respondent did just that: Since at least April, it began to privately offer certain employees time-and-one-half or double time to work open shifts which had been posted but gone unfilled. Palmer recalled that Perry, O’Kane, and Sousa specifically offered time-and-one-half or double time bonuses for picking up open shifts; Gaeta also asked for and received bonuses in exchange for covering open shifts, and she testified that management told employees “keep quiet” if they received bonuses; Hayes testified that she was offered bonuses for covering open shifts; and Talbot also received double time for covering open shifts. Meanwhile, Union delegates were unaware that these incentives were being offered, and they were not themselves offered them. By this conduct, Respondent sought to deter employees from supporting the Union, in violation of §8(a)(1) of the Act.

Belezarian hid the fact that she was paying these incentives by using so-called “missed punch forms,” which were to be used when an employee legitimately worked a shift but had failed to punch in. Thus, it would appear that employees had worked the days for which the missed punch forms were submitted, when in fact they had not done so. Belezarian told CNAs Amanda Giglio, Tenisha Miller, Melissa Ayotte, and Kelly Sherman (who also worked as Respondent’s scheduler) that she “didn’t get approval to pay double time,” but that she would “put on paper that they worked a different day...in

¹²⁹ See, e.g., *Register Guard*, 344 NLRB 1142, 1142 (2005) (employer violated §8(a)(1) by, *inter alia*, granting employees a wage increase during an organizing campaign). This principle is equally applicable in the decertification context as it is during an organizing campaign, as was the case in *Register Guard*.

order to get paid double time.”¹³⁰ Minyo confirmed that this scheme was designed to conceal the fact management was paying certain employees double time.

- ii. **Respondent unlawfully instructed employees not to discuss wages with coworkers, told employees to ignore the Union, and promised employees that they could keep their higher wage rates, all in violation of §8(a)(1) of the Act.**

Instructing employees not to discuss wages with one another violates §8(a)(1) of the Act.¹³¹ Applying this fundamental proposition here, it is clear that Respondent unlawfully instructed Talbot to “just keep her mouth shut [because the Union delegates] didn’t need to know anything about their salaries.” Likewise, Minyo testified that Belezarian instructed managers to tell employees generally that they were not to discuss wages, and specifically told employees converting from per diem to full-time status and employees hired above the contractual starting rate not to discuss their wages with the pro-union employees; these directives were also plainly unlawful.

¹³⁰ Belezarian continued to authorize bonuses for certain CNAs even after the parties’ June 12 labor-management meeting. For example, in response to a text message from Sherman, Belezarian instructed Sherman to offer Barbara Costa double time to work the 3 p.m. to 11 p.m. shift on June 24, texting, “double time. her only. call her don’t put in writing.”

¹³¹ See *Radisson Plaza Minneapolis*, 307 NLRB 94, 94 (1992), *enfd.* 987 F.2d 1376 (8th Cir. 1993), quoting *Heck’s, Inc.*, 293 NLRB 1111, 1119 (1989) (“[Employer’s prohibition [against employees discussing wages] constitutes a clear restraint on the employees’ §7 right to engage in concerted activities for mutual aid and protection concerning an undeniably significant term of employment.” See also *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 204 (2007), *enfd.* 519 F.3d 373 (7th Cir. 2008), quoting *NLRB v. Main Street Terrace Care Center*, 218 F.3d 531, 537 (6th Cir. 2000) (“[P]rohibiting employees from communicating with one another regarding wages...undoubtedly tends to interfere with the employees’ right to engage in protected concerted activity.”).

Instructing employees to ignore a union independently violates §8(a)(1) of the Act.¹³² Here, Belezarian did exactly that: She told Talbot in no uncertain terms to ignore what Sullivan and her fellow delegates told her about wages.

Finally, Belezarian reassured employees, including Talbot, that they could keep their higher hourly wage, notwithstanding the lower wage rates provided for in the CBAs. By these statements, Respondent yet again violated §8(a)(1) of the Act. In this regard, it is equally as coercive to promise employees that they can *retain their higher wage rates* in order to discourage them from supporting a union, as it is to promise employees a *future wage increase* to discourage them from supporting a union: Each is a promise of an economic benefit which violates §8(a)(1) of the Act.¹³³

iii. Respondent violated §8(a)(1) of the Act when Belezarian threatened Palmer with unspecified reprisals after learning Palmer had signed the pro-Union petition.

It is well settled that an employer's threat of unspecified reprisals because of its employees' union or other protected activity violates §8(a)(1) of the Act.¹³⁴ Here, after Palmer signed the petition in support of the Union, she met with Belezarian in her office and told Belezarian that she had signed the pro-Union petition. Belezarian then told Palmer that she "could get in trouble" and she "shouldn't have [her] name on two

¹³² See *Metal Industries, Inc.*, 251 NLRB 1523, 1523 n.2 (1980) (Member Penello noted that, had the General Counsel established that the employer's plant manager instructed employees to ignore union leafletters and not to take leaflets, those statements "would have constituted a serious violation of §8(a)(1), one which would warrant an appropriate Board remedy.").

¹³³ See generally *Caterair International*, 309 NLRB at 879.

¹³⁴ *Id.* at 972-973 (supervisor who told employee that if "home office" found out he supported the union, "it could be made rough" on him, found to have made an unlawful threat of unspecified reprisal).

different documents,” which worried Palmer. Like the supervisor in *Brown Transport Corp.*, Belezarian threatened Palmer with unspecified reprisals after she learned that Palmer had engaged in protected activity – signing the pro-Union petition – in violation of §8(a)(1) of the Act.

iv. Respondent unlawfully created the impression of surveillance and also unlawfully surveilled employees’ Union and protected concerted activities in violation of §8(a)(1) of the Act.

An employer’s mere observation of open public union activity on or near the Employer’s premises does not constitute unlawful surveillance.¹³⁵ However, it is well settled that observation which is “out of the ordinary” violates §8(a)(1) of the Act because it creates the impression that the employer is it is surveilling employees’ protected activities.¹³⁶ Indicia of coerciveness include the “duration of the observation, the employer’s distance from its employees while observing them, and whether the employer engaged in other coercive behavior during its observation.”¹³⁷ In this regard, the mere act of monitoring employees’ union activity can contribute to an “atmosphere

¹³⁵ See *Smithfield Foods, Inc.*, 347 NLRB 1225, 1228 (2006), petition for review denied, 506 F.3d 1078 (DC Cir. 2007) (no illegal surveillance when employer, which had reasonable concern about employee trespassing on its property, moved a security camera to an area where employee handbilling and trespassing had occurred); *Eddyleon Chocolate Co., Inc.*, 301 NLRB 887, 888 (1991) (Board has long held that management officials may observe public union activity without violating the Act as long as officials do not do something out of the ordinary).

¹³⁶ See *Sprain Brook Manor Nursing Home*, 351 NLRB 1190, 1191 (2007) (finding unlawful surveillance where supervisor admitted working outside her normal schedule because she believed union activity may be occurring); *PartyLite Worldwide Inc.*, 344 NLRB 1342, 1343 (2005) (supervisors observed employee's receiving union literature for 15 minutes); *Loudon Steel Inc.*, 340 NLRB 307, 313 (2003).

¹³⁷ See *Aladdin Gaming LLC*, 345 NLRB 585, 586 (2005), petition for review denied, 515 F.3d 942 (9th Cir. 2008).

of fear and intimidation.”¹³⁸ Ultimately, the determination as to whether an employer has engaged in unlawful surveillance is an objective one based on the totality of the circumstances.¹³⁹ Applying these principles, it is evident that Respondent crossed the line from “mere observation” to “out of the ordinary” observation.

When Teoli arrived at the facility around 6:15 a.m. on July 2 with another Union organizer, Belezarian and Minyo were stationed at the West Wing door, an entrance they almost never used; they were also at the facility much earlier than normal, neither of which was typical. However, during the 40 minutes Teoli was outside the facility that morning, Belezarian stood as few as 10 feet away from her while Teoli met with members. At times, Belezarian spoke with the employees attempting to meet with Teoli. One unit member, Carrie Taber, testified that she found management’s presence while speaking with Teoli to be “confrontational.”

Teoli planned to meet with members again on July 6 from 2 p.m. to 4 p.m. This time, Teoli set up her table about 20 feet from the four-lane highway which runs past the front of Respondent’s property. When Teoli arrived at the facility on July 6, Belezarian told Teoli that she was calling the police. Meanwhile, as Perry testified, management went to the lawn near where the Union was set up to meet the police; ultimately the police permitted Teoli to meet with members on the lawn next to the highway, but Belezarian continued to monitor the meeting from about 10 feet away from where Teoli had been standing.

¹³⁸ See *The Smithfield Packing Co.*, 344 NLRB 1, 163 (2004), enf. 447 F.3d 821 (DC Cir. 2006).

¹³⁹ See *Brown Transport Corp.*, 294 NLRB 969, 971-972 (1989).

Also around this time, Respondent installed cameras in each of the facility's two wings, facing toward the kitchenettes, down the hallways, and towards the breakroom at the back of the facility. These cameras, which Belezarian and Veno admitted were fake, had been positioned very oddly, because they didn't face any of the doorways, which one would expect to be the case in order to prevent resident elopements. Subsequently, on August 16, Respondent hired Home & Commercial Security, Inc., to install functioning cameras, which captured video but not audio, at the facility. Although Veno testified that Respondent installed both the fake cameras and functioning cameras because management decided doing so was the best way to address Respondent's "extreme concern" about resident care, Minyo testified that Belezarian told managers (including herself) that the cameras had been installed in order to deter any Union business from taking place in the building. In this regard, Veno could not explain why Respondent chose to install cameras, rather than simply issue a memo or hold a meeting, if he was so concerned about ensuring that employees understood that resident care was their primary responsibility: When asked that very question, he simply responded, "We didn't."

Significantly, all of Respondent's surveillance-related conduct took place in an atmosphere rife with serious and contemporaneous unfair labor practices, including unlawfully assisting the decertification effort (including by allowing Birch to freely circulate her petition on work time and in work areas); unlawfully withdrawing recognition from the Union; unlawfully suspending and discharging the Union's most active and visible delegates, Sullivan and Hirst; unlawfully issuing Union delegate Nunes a final written warning and involuntarily transferring her; unlawfully pressuring

employees to resign from Respondent and from the Union and coercing employees to sign the decertification petition; threatening Palmer with unspecified reprisals because she had signed both petitions; unilaterally changing employees' wages; paying select employees bonuses for working open shifts and call-outs; promising employees improved wages once the Union was ousted; disparaging the Union; instructing employees not to discuss the Union or wages; and failing and refusing to provide the Union with relevant and necessary information. In all these circumstances, the evidence compels a finding that Respondent unlawfully both created the impression of surveillance and in fact surveilled its employees in an effort to intimidate employees and prevent them from engaging in protected activity.

E. Respondent Committed Numerous Other Violations of §8(a)(5) of the Act, in Addition to Those Set Forth in Section IV(A), Above.

- i. Respondent failed and refused to bargain collectively and in good faith within the meaning of §8(d) of the Act, and in violation of §8(a)(5) of the Act, when it hired CNAs and LPNs at rates higher than those provided for in the Unit A CBA.**

An employer which unilaterally increases unit employees' wage rates above those provided for in its collective bargaining agreement has likewise failed to bargain in good faith with the Union within the meaning of §8(d) of the Act and in violation of §8(a)(5) of the Act.¹⁴⁰ Here, Respondent did precisely that:

Since at least February 2018, Respondent had been hiring CNAs above the \$11.50 contractual hourly start rate (and above the \$12.50 per hour rate a CNA would

¹⁴⁰ See *Grane Healthcare*, 337 NLRB 432, 435-437 (2002).

receive after five years), and has continued to pay newly hired CNAs who were previously per diem employees \$14 per hour, despite the fact that when those employees converted to full-time status they should have been paid at the contractual rate. For example, Minyo hired Talbot as a full-time CNA and allowed her to keep her \$14 per hour per diem pay rate, and Minyo also hired Swanson, who had just received her CNA certification, at \$14 per hour. (By contrast, Campbell, who had been working at the facility as a CNA for more than 12 years, continued to make less than \$14 per hour.)

In addition, since at least April 2018, Respondent had been hiring LPNs above the \$20.50 contractual hourly start rate (and above the \$22 per hour rate an LPN would receive after five years). In this regard, Birch and Caseiro, who had just received their LPN degrees, received starting wage rates of \$26.10 and \$26 per hour, respectively, and she hired LPN Gina Picard, who had two years' experience, received a starting wage rate of \$26 per hour.

Belezarian – who expressly authorized Minyo to offer these starting wage rates, which Minyo knew were above those set forth in the Unit A CBA – did not provide the Union with notice or an opportunity to bargain prior to implementing these wage increases. What's more, Belezarian *knew* she had acted unlawfully by doing so. Thus, after the June 12 labor-management meeting, Belezarian texted Teoli, begging her to wait two weeks before filing an unfair labor practice charge, asserting that she would “make this right by then,” even if she needed to go to Respondent's owner, Bleier, herself. She also apologized for “catching [Teoli] off guard about “how [Belezarian] executed the whole thing.”

In all these circumstances, Respondent failed to bargain in good faith with the Union within the meaning of §8(d) of the Act, and in violation of §8(a)(5) of the Act, by hiring CNAs and LPNs at wage rates above those provided for in the Unit A CBA.

- ii. **Respondent failed and refused to bargain collectively and in good faith within the meaning of §8(d) of the Act, and in violation of §8(a)(5) of the Act, when it unilaterally changed the manner in which open shifts and call-outs were offered and when it unilaterally changed the manner in which it paid employees for working open shifts and call-outs.**

Section 8(d) of the Act, which defines the duty to bargain collectively that §8(a)(5) imposes, requires an employer to “meet...and confer in good faith [with its employees’ majority representative] with respect to wages, hours[,] and other terms and conditions of employment...”¹⁴¹ The matters §8(d) encompasses are mandatory subjects of bargaining.”¹⁴² Accordingly, the Act prohibits an employer from changing matters relating to wages, hours, or terms and conditions of employment without first affording the employees’ bargaining representative a reasonable and meaningful opportunity to discuss the proposed changes.¹⁴³

Open shifts and shifts that needed to be filled because the scheduled employee called out were largely filled based upon seniority, and were to be filled so as to

¹⁴¹ See *NLRB v. Katz*, 369 U.S. 736, 742-743 (1962).

¹⁴² See *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). See also *Ford Motor Co. v. NLRB*, 441 U.S. 488, 498 (1979), quoting *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 222-223 (1964) (Stewart, J. concurring) (mandatory bargaining subjects are those which are “plainly germane to the working environment). It is difficult to conceive a subject more “plainly germane to the working environment” than wages or opportunities to work additional shifts that become available.

¹⁴³ *NLRB v. Katz*, 369 U.S. at 743.

minimize overtime. Although employees willing to pick up shifts in the past had been eligible for bonuses pursuant to Side Letter #1 in the Unit A CBA (providing, in relevant part, that the Voluntary Temporary Shift Pick Up Bonus would be adjusted to \$30 for CNAs effective until January 7, 2017, and that the parties would meet and discuss, as needed, after January 7, 2017, issues of mutual concern related to staffing), the parties never met to discuss this matter after January 7, 2017.

The evidence shows that since at least April, management had been privately offering certain employees double time to work open shifts which had been posted but gone unfilled. For example, Palmer recalled Perry, O’Kane, and Sousa specifically offered time-and-one-half or double time bonuses for picking up open shifts; Gaeta asked for and received bonuses in exchange for covering open shifts and testified that management told employees who received bonuses that they should “keep quiet;” Hayes was offered bonuses for covering open shifts; and Talbot was also offered double time for covering open shifts. Meanwhile, neither Teoli (who specifically told Belezarian that if any issues arose while she was on her planned medical leave in the Spring of 2018, she would be available by text or email or phone) nor Union delegates were aware that these incentives were being offered, and the delegates themselves were not offered these incentives. As noted above, management used missed punch forms to pay the employee who worked the open shift in order to conceal the fact that management was paying double time, which Belezarian was not authorized to offer.

Applying the foregoing precedent, it is clear that Respondent failed and refused to bargain collectively and in good faith with the Union within the meaning of §8(d) of the

Act, and in violation of §8(a)(5) of the Act. Thus, Respondent unilaterally changed the manner in which open shifts and call-outs were filled because it was offering select employees the opportunity to work such shifts, rather than adhering to the parties' seniority-based practice.¹⁴⁴ Respondent also unilaterally changed how employees who work open shifts or call-outs were paid, because it offered extra-contractual incentives – i.e., bonuses – in the form of time-and-one-half or double time.¹⁴⁵ Since both of these matters are plainly mandatory subjects of bargaining, Respondent was legally obligated to provide the Union with notice and an opportunity to bargain before unilaterally implementing these changes to employees terms and conditions of employment.¹⁴⁶ Not having done so, Respondent thereby failed to bargain in good faith with the Union within the meaning of §8(d) of the Act and in violation of §8(a)(5) of the Act.

- iii. **Respondent dealt directly with unit employees regarding their terms and conditions of employment, including by offering certain employees time-and-one-half and double time to work open shifts and call-outs, proposing that employees to resign from both Respondent and from the Union, and urging employees to sign Birch's decertification petition, all of which violated §8(a)(5) of the Act.**

¹⁴⁴ *Fibreboard Corp. v. NLRB*, 379 U.S. at 222-223. See also, *Duke University*, 315 NLRB 1291, 1291, 1298 (1995) (employer violated Section 8(a)(5) by unilaterally implementing changes in method of offering overtime).

¹⁴⁵ See *Lenawee Stamping Corporation d/b/a Kirchhoff Van-Rob*, 365 NLRB No. 97, slip op. at 8-9 (2017) (bonuses constitute wages and are thus a mandatory subject of bargaining; employer's failure to provide Union prior notice and an opportunity to bargain before unilaterally granting bonuses to unit employees violated §8(a)(5) of the Act).

¹⁴⁶ *NLRB v. Katz*, 369 U.S. at 743.

An employer which to bypasses its employees' union and bargains directly with employees violates §8(a)(5) of the Act.¹⁴⁷ Respondent did just that in the instant case.

First, since at least April, Respondent had circumvented the Union and directly offered certain employees time-and-one-half and double time incentives to work open shifts and call-outs. As noted above, Palmer, Gaeta, Hayes, and Talbot all testified that they were offered time-and-one-half or double time for covering open shifts, and the evidence reveals that the Union was unaware that this was occurring.

Second, Respondent dealt directly with employees when Belezarian and Minyo spoke with them in connection with the decertification effort. Gaeta described an instance in late May when Minyo brought her and Tiffani Cabral to Belezarian's office, at which point Belezarian described three options to remove the Union, which included signing Birch's decertification petition, as well as resigning from their positions at Respondent's facility and from the Union, at which point they could go to work for an agency which would offer them the same wages and benefits they currently received. Belezarian then showed Gaeta and Cabral a stack of resignation letters employees had penned and told them, "Look. We're all on board. Everybody's in agreement. This is who I have so far." Using Miller's resignation letter as a sample, Gaeta wrote that she was resigning from both the Union and Respondent. Likewise, Palmer recounted a mid-June meeting in Belezarian's office where she described how employees could draft

¹⁴⁷ See *United Cerebral Palsy of New York City*, 347 NLRB 603, 608 (2006). See also *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 684-685 (1944) (circumventing employees' designated representative and dealing directly with employees undermines the fundamental representation and collective bargaining scheme the Act established).

resignation letters and go to work for an affiliated agency “just for us.” Thus, the evidence shows that Respondent bypassed the Union and dealt directly with its employees in violation of §8(a)(5) of the Act.¹⁴⁸

By offering employees incentives to work open shifts and call-outs, urging employees to sign the decertification petition, and pushing employees to resign from both Respondent and the Union were all instances of Respondent bypassing the Union and dealing directly with its employees concerning their terms and conditions of employment in violation of §8(a)(5) of the Act.

iv. Respondent violated §8(a)(5) of the Act by failing and refusing to provide the Union with requested information which is both relevant and necessary for the Union to carry out its representational functions.

It is well settled that an employer must provide a union which represents its employees with requested information that is relevant and necessary for the union to carry out its representational function. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). In this regard, the Board employs a liberal “discovery-type standard.” *West Penn Power Co.*, 339 NLRB 585, 597 (2003). Further, information concerning terms and conditions of employment is presumptively relevant. *Ibid.* Applying the foregoing principles to the facts of the instant case, it is clear that Respondent violated §8(a)(5) of the Act by failing and refusing to provide the Union with requested information which is both relevant and necessary for the Union to carry out its representational function.

¹⁴⁸ See, e.g., *Royal Motor Sales*, 329 NLRB 760, 761 (1999) (finding supervisor unlawfully engaged in direct dealing when he told employee that he would earn more money under employer’s proposed flat-rate system if the union was not there.)

At the parties' June 12 labor-management meeting, Teoli orally requested that Belezarian furnish hourly wage rates "for all Union members." Having received no response to her information request, Teoli texted Fritton on June 20 requesting a phone call; when they spoke, Teoli renewed her request for employees' hourly wage rates and Fritton said he would get back to her. On June 22, Ortiz emailed Rivera a spreadsheet listing Respondent's employees, but did not include their wage rates or the number of hours they actually worked. Rivera emailed Ortiz on June 25 to clarify that the Union was requesting "the hourly rates and how many hours they work." Ortiz forwarded Rivera's email to Belezarian, who responded later that morning that Respondent was "not authorized to give wage rates on everyone on the list, especially since you have some listed that are part time and there is no column for wages. We have never given that before. I have wage list for the aids which [Teoli] also has that has their wages and their date of hire. They work varying hours. Please tell me exactly what you want." Rivera, in turn, forwarded Belezarian's email to Teoli less than an hour later. Later that afternoon, Teoli replied, asking, "Where are we with the hourly rates for Union members?" Six minutes later, Belezarian responded that she was "[j]ust waiting for 'corporate' to put it together for me." Teoli emailed Fritton that evening, writing that she had "requested a report for all Union members that includes hourly rates" and that "the report from the facility did not include hourly rates." Teoli texted Fritton the following morning, explaining that she had "requested the hourly rates for all union members" and that Belezarian's response that "corporate" needed to be involved made Teoli think Respondent was "hiding something." Respondent never fulfilled the Union's information request

It is self-evident that wage rates and hours worked for unit employees is relevant and necessary information to which the Union is presumptively entitled.¹⁴⁹ Thus, Respondent's failure and refusal to provide the Union with this information violated §8(a)(5) of the Act.

V. CONCLUSION

For the reasons discussed above, Counsels for the General Counsel respectfully request that the Administrative Law Judge find as follows:

Respondent violated §8(a)(5) of the Act when it withdrew recognition from the Union during the term of the parties' collective bargaining agreements; and violated §8(a)(1) of the Act by assisting April Birch in order to influence employees to reject the Union, including by promising to pay employees time-and-one-half or double time to cover open shifts and call-outs; promising employees higher wages and telling per diem employees that if they took regular positions with Respondent they would continue to be paid at the higher wage rate per diem employees received; soliciting employees to sign the anti-Union petition; and providing more than ministerial assistance to employees in connection with the anti-Union petition. Respondent violated §8(a)(3) of the Act when it suspended and discharged Stephanie Sullivan; suspended and discharged Karen Hirst; and issued a final written warning and involuntarily transferred Dawn Nunes.

Respondent violated §8(a)(1) of the Act when it suspended and discharged Katherine Minyo.

¹⁴⁹ See *Metta Electric*, 349 NLRB 1088, 1091-1092 (2007) (union entitled to information including employees' wages and hours worked).

Respondent further violated §8(a)(1) of the Act by instructing employees to ignore what Union delegates said about wage rates; disparaging the Union; instructing employees not to discuss wages, hours, working conditions, and unions; threatening employees with unspecified reprisals because they had signed both the anti-Union petition and a document in support of the Union; creating the impression of surveillance of employees' Union activity; and actually surveilling employees' Union activity.

Respondent additionally violated §8(a)(5) of the Act by hiring CNAs and LPNs at wage rates higher than those set forth in the Unit A CBA, and without paying incumbent employees with the same or greater experience a wage rate at least equal to the wage rate paid to the new hires in Unit A; changing the manner in which it offered employees in the Units the opportunity to work open shifts and/or call-outs; and changing the manner in which it paid employees who worked open shifts and/or call-outs by paying them time-and-one-half or double time, all without first providing the Union with notice and an opportunity to bargain over these changes. Respondent also violated §8(a)(5) of the Act by: bypassing the Union and dealing directly with employees in the Units by paying them time-and-one-half or double time for working open shifts and/or call-outs; bypassing the Union and dealing directly with employees by soliciting employees to resign from both Respondent and from the Union; encouraging them to sign the anti-Union petition; encouraging them to enter into individual employment contracts with an agency which would be affiliated with Respondent; and failing and refusing to provide the Union with information which is relevant and necessary to performing its function as the exclusive collective bargaining representative of the employees in the Units.

Therefore, Respondent must be ordered to cease and desist its unlawful conduct, including promising employees better wages and benefits in order to discourage employees from supporting the Union; disparaging the Union; instructing employees to ignore the Union and not to discuss wages, hours, working conditions, and unions; assisting employee efforts to remove the Union; creating the impression that it is surveilling, and actually surveilling, employees' Union activity; disciplining or discharging employees because of their union activity or support; involuntarily transferring employees because of their union activity or support; disciplining or discharging supervisors because they refuse to commit unfair labor practices; withdrawing recognition from and refusing to recognize and bargain in good faith with the Union as the exclusive collective bargaining representative of employees in the Units regarding employees' terms and conditions of employment; dealing directly with employees regarding changes to their terms and conditions of employment; and failing and refusing to provide the Union with information that is relevant and necessary to its role as the exclusive collective bargaining representative of the employees in the Units.

Respondent must also be ordered to take the following affirmative action:
Rescind the June 29 letter Respondent posted, which stated that the Union demanded Respondent rescind wage increases it implemented; offer Stephanie Sullivan, Karen Hirst, and Katherine Minyo immediate and full reinstatement to their former jobs, or if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed; pay Stephanie Sullivan, Karen Hirst, and Katherine Minyo for the wages and other benefits they lost as a result of their suspensions and discharges; remove from its files all references to

Stephanie Sullivan's, Karen Hirst's, and Katherine Minyo's suspensions and discharges and notify each of them in writing that this has been done and that their suspensions and discharges will not be used against them in any way; remove from its files all references to the November 14, 2018 final written warning issued to Dawn Nunes and notify her in writing that this has been done and that this final written warning will not be used against her in any way; return Dawn Nunes to the position and schedule she previously worked on Respondent's East Wing; on request by the Union, rescind any or all material or substantial changes to employees' terms and conditions of employment made at any time since January 26, 2018 which were implemented without bargaining with the Union; waive any procedural time limits for filing or resuming the processing of any grievance that arose, or was in any stage of the grievance-arbitration process, at any time since January 26, 2018;¹⁵⁰ pay employees for the wages and other benefits they lost at any time since January 26, 2018 because of the changes to their terms and conditions of employment which were made without bargaining with the Union; provide the Union with the information it requested on or about June 12, 20, 25, 28, and 29, 2018, concerning employees' starting and hourly rates of pay; recognize the Union as the exclusive collective bargaining representative of Respondent's employees in the Units; and, on request, bargain in good faith with the Union as the exclusive collective bargaining representative of Respondent's employees in the Units concerning wages, hours, and working conditions and, if an agreement is reached with the Union, execute a document setting forth that agreement.

¹⁵⁰ The Board recently ordered this remedy in *Cascades Containerboard Packaging-Lancaster*, 367 NLRB No. 115 (April 22, 2019).

A proposed Notice to Employees is attached.

Dated this 23rd of August, 2019, at Boston, Massachusetts.

Respectfully submitted,

/s/ Daniel F. Fein

/s/ Catherine A. Terrell

Daniel F. Fein

Catherine A. Terrell

Counsels for the General Counsel

National Labor Relations Board

Region 01

10 Causeway Street, 6th Floor

Boston, Massachusetts 02222

PROPOSED NOTICE TO EMPLOYEES¹⁵¹

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

New England Healthcare Employees Union 1199 is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following two units:

A. All full time and regular part time Registered Nurses; excluding all other Employees, Director of Nursing, Supervisor of Nursing, Assistant Supervisors of Nursing, Food Service Supervisor, First Cook, Maintenance Supervisor, Housekeeping/Laundry Working Supervisor, Social Worker, other Professional Employees, Managerial Employees, Temporary Employees, Guards and Supervisors as defined in the Act.

B. All full time and regular part time Licensed Practical Nurses, Nurses' Aides, Orderlies, Technical Employees, Kitchen Employees, Housekeeping Employees, Maintenance Employees, and Laundry Employees; excluding all other Employees, Registered Nurses, Director of Nursing, Supervisor of Nursing, Assistant Supervisors of Nursing, Food Service Supervisor, First Cook, Maintenance Supervisor, Housekeeping/Laundry Working Supervisor, Social Worker, Professional Employees, Managerial Employees, Temporary Employees, Guards and Supervisors as defined in the Act.

¹⁵¹ Given both the serious nature and the sheer number of unfair labor practices Respondent committed, it is appropriate to order that a responsible management official read the Notice to Employees at a meeting or meetings convened for that purpose. See *United States Service Industries*, 319 NLRB 231, 232 (1995), *enfd.* 107 F.3d 923 (DC Cir. 1997) (ordering a notice reading in light of employer's pervasive illegal conduct which was likely to have a continuing coercive effect on employees long after the violations had occurred).

In addition, because Respondent's workforce experiences high turnover and Respondent regularly depends on per diem employees (many of whom likely should have been converted to full-time status but for Respondent's poor record keeping about whether they had reached the 184-hour contractual threshold), ordering Respondent to duplicate and mail copies of the Notice to Employees at its own expense to each of Respondent's current and former employees, including per diems, who were employed at any time during the course of Respondent's unlawful conduct, is likewise warranted. See *Chino Valley Medical Center*, 359 NLRB 992 (2013), adopted, 362 NLRB 283, 285 (notice mailing to all per diem employees and former employees appropriate).

WE WILL NOT raise or promise to raise your wages in order to discourage you from supporting a union.

WE WILL NOT promise you better benefits or give you new or better benefits to discourage you from supporting a union.

WE WILL NOT instruct you to ignore your Union.

You have the right to talk about wages, hours, working conditions, and unions, and **WE WILL NOT** stop you from talking about your wages, hours, working conditions and unions.

WE WILL NOT ask you to get other employees to sign anything to remove your Union as your exclusive collective bargaining representative.

WE WILL NOT offer more than ministerial assistance to an employee who seeks to remove a union as their exclusive collective bargaining representative.

WE WILL NOT create the impression that we are watching you, or actually watch you, in order to find out about your union activities.

WE WILL NOT bypass your Union and deal directly with you concerning changes in your wages, hours and working conditions.

WE WILL NOT discipline or discharge you because of your union membership or support.

WE WILL NOT involuntarily transfer you away from your job duties in retaliation for your union membership or support.

WE WILL NOT discipline or discharge supervisors because they refuse to commit unfair labor practices.

WE WILL NOT refuse to meet and bargain in good faith with your Union as your exclusive collective bargaining representative regarding any proposed changes in your wages, hours, and working conditions before putting such changes into effect.

WE WILL NOT refuse to provide your Union with information that is relevant and necessary to its role as your exclusive collective bargaining representative.

WE WILL NOT withdraw recognition from the Union or refuse to recognize and bargain with your Union as your exclusive collective bargaining representative.

WE WILL NOT fail or refuse to recognize and bargain in good faith with your Union for a collective-bargaining agreement covering employees in the units described above.

WE WILL NOT in any other manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the July 29, 2018 letter we posted, which stated that the Union demanded that we take away your wage increases.

WE WILL offer Stephanie Sullivan, Karen Hirst, and Katherine Minyo immediate and full reinstatement to their former jobs, or if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges they previously enjoyed.

WE WILL pay Stephanie Sullivan, Karen Hirst, and Katherine Minyo for the wages and other benefits they lost as a result of their suspensions and discharges.

WE WILL remove from our files all references to the suspensions and discharges of Stephanie Sullivan, Karen Hirst, and Katherine Minyo and **WE WILL** notify them in writing that this has been done and that their suspensions and discharges will not be used against them in any way.

WE WILL remove from our files all references to the November 14, 2018 final written warning issued to Dawn Nunes and **WE WILL** notify her in writing that this has been done and that the November 14, 2018 final written warning will not be used against her in any way.

WE WILL, if requested by your Union, rescind any or all material or substantial changes to your terms and conditions of employment that we made since January 26, 2018 without bargaining with the Union.

WE WILL waive any procedural time limits for filing or resuming the processing of any grievance that arose, or was in any stage of the grievance-arbitration process, at any time since January 26, 2018.

WE WILL pay you for the wages and other benefits you lost because of the changes to your terms and conditions of employment that we made since January 26, 2018 without bargaining with your Union.

WE WILL provide the Union with the information it requested on or about June 12, 20, 25, 28, and 29, 2018, concerning employees' starting and hourly rates of pay.

WE WILL recognize your Union as your exclusive collective bargaining representative and, on request, **WE WILL** bargain in good faith with your Union as your exclusive collective bargaining representative concerning wages, hours and working conditions. If

an agreement is reached with your Union, we will sign a document setting forth that agreement.

Appendix 1: Cast of Characters

Melissa Ayotte	Certified Nursing Assistant (CNA)
Christopher Beauregard	CNA
Jaime Belezarian	Facility Administrator and later Vice President of Quality Initiatives
Jessica Belizaire	Registered Nurse (RN)
Melissa Benoit	CNA
Pamela Benoit	Human Resources Specialist
April Birch	Licensed Practical Nurse (LPN) and Decertification Petitioner
Jonathan Bleier	Owner of NSL Country Gardens, LLC
Donna Brown	CNA and Union Delegate
Cheryl Cabral	CNA
Tiffani Cabral	CNA
Hyacinth Campbell	CNA
Lisa Cappolla	Facility Administrator
Allison Cardinal	Dietary Aide
Celina Caseiro	LPN
Barbara Costa	CNA
Samantha Costello	Nurse Supervisor
Holly Coutinho	CNA
Kevin Creane	Union's Counsel
Jimmy Durrett	Nurse Supervisor
Ariana Federici-McCarthy	Activities Assistant
Karl Fritton	Respondent's Counsel
Nickole Gaeta	CNA
Barbara Ganda	RN

Amanda Giglio	CNA
Phyllis Gomes	LPN and Union Delegate
Stacy Hayes	CNA
Karen Hirst	LPN and Union Delegate
Cassidy Lima	LPN
Joe Little	Food Services Director
Samantha Logan	Nurse Supervisor
Sharon Lukusa	CNA
Sherry Martin	CNA
Tenisha Miller	CNA
Katherine Minyo	Assistant Director of Nursing (ADON)
Kerry Nault	RN
Dawn Nunes	RN and Union Delegate
Mallory O'Kane	Minimum Data Set (MDS) Coordinator
Kevin Ortiz	Human Resources Specialist
Victoria Palmer	CNA
Laura Pawle	Board Agent, Region 01
Heather Perry	Director of Nursing (DON) and later ADON
Gina Picard	LPN
Laurie Powers	Nurse Supervisor
Viola Rego	CNA and Union Delegate
Jeanza Rivera	Union Administrative Assistant
Aaron Schlesinger	Respondent's Counsel
Kelly Sherman	Scheduler and CNA
Laurie Silvia	Activities Aide
Leah Silvia	CNA
Lisa Sofia	President and CEO

Cassandra Sousa	Staff Development Coordinator (SDC) and later DON
Stephanie Sullivan	CNA and Union Delegate
Rachel Swanson	CNA
Carrie Taber	RN
Nicole Talbot	CNA
Linda Teoli	Union Organizer
Jillian Toomey	CNA
Maureen Vasconcellos	CNA
Joe Veno	Regional VP of Operations