

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

BANNUM PLACE OF SAGINAW, LLC

Respondent

and

**Cases 07-CA-207685
 07-CA-215356**

**LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS (IBT)**

Charging Party Local 406

and

Case 07-CA-211090

ERNIE AHMAD, an Individual

Charging Party Ahmad

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

Counsel for the General Counsel Donna M. Nixon respectfully submits this brief to Administrative Law Judge Ira Sandron, who heard this matter on February 24-26, 2020 in Detroit, Michigan; and on March 4, 2020 by telephone.

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I. ISSUES¹

The issues presented are²:

- (1) Whether the Board has Jurisdiction over Respondent?
- (2) Whether Respondent's Director Ken Schram³:
 - a. On August 21, 2017, interrogated employees
 - b. On August 21, 2017, threatened to shut-down the facility
 - c. In August 2017, told employees that it would be futile to select Charging Party Local 406 as their bargaining representative
 - d. About September 20, 2017, told employees that they are supposed to communicate with him about what is going on with the Union organizing drive
 - e. On or around October or November 2017, threatened employees that he would act like a boss and strictly enforce its policies if employees selected Charging Party Local 406 as their bargaining representative
 - f. On or around October or November 2017, threatened employees that Respondent would shut-down the facility if employees selected Charging Party Local 406 as their bargaining representative
 - g. On or around October or November 2017, interfered with employees exercise of their section 7 rights by informing employee Sharda Nash that Charging Party Ahmad was strongly opinionated and he did not want Ahmad to fill her head with union propaganda
- (3) Whether Respondent allowed its employees to attend organizing union meetings while they were working, and paid them for that time?
- (4) Whether Respondent discharged employee Gregory Price in September because he attended a representation hearing.
- (5) Whether Respondent discharged employee Gregory Price in retaliation for his union and/or concerted activities.
- (6) Whether Respondent had a long-standing practice of scheduling Charging Party Ahmad for third shift to avoid conflict with his other job.

¹ Throughout this brief the following references will be used:

Transcript: Tr (followed by page number), General Counsel Exhibit: GC (followed by exhibit number)
Respondent Exhibit: R (followed by exhibit number), Complaint Paragraph: C (followed by paragraph number)

² At trial, Counsel for the General Counsel withdrew the complaint allegations in paragraphs 17,18 and 20 of the Consolidated Complaint related to discriminatee Melonie Turner as a result of a partial settlement. We also withdrew allegations 10(d) and (l).

³ Counsel for the General Counsel moves to withdraw allegations 10(e), (j) and (k) of the Consolidated Complaint.

(7) Whether Respondent changed that practice of scheduling Charging Party Ahmad for the third shift, without bargaining with Charging Party Local 406.

(8) Whether Respondent changed the practice of scheduling Charging Party Ahmad for third shift, because employees voted for Charging Party Local 406 to be their bargaining representative or because of Charging Party Ahmad's Union and/or concerted activities?

(9) Whether Respondent changed its vacation request policy by requiring charging Party Ahmad to use a vacation request form without notifying or bargaining with Charging Party Local 406.

(10) Whether Respondent denied Charging Party Ahmad's vacation request for November 11, 12 and 18 because of his Union and/or concerted activities or because employees voted to be represented by Charging Party Local 406?

(11) Whether Respondent changed its sick leave policy by requiring Charging Party Ahmad to obtain a doctor's note after one day of sick leave without notifying or bargaining with Charging Party Local 406.

(12) Whether Respondent discharged Charging Party Ahmad because of his Union and/or concerted activities, or because employees voted to be represented by Charging Party Local 406

(13) Whether Respondent's unilateral change of its vacation policy caused the discharged of Charging Party Ahmad.

II. STATEMENT OF FACTS⁴

A. Background⁵

Respondent is a halfway house for federal inmates. Bannum, Inc., the parent company operates four such facilities, one of which is Respondent. (T 324) On September 5, Charging Party Local 406 filed a petition in case 07-RC-205632 seeking to represent the social service coordinators, case managers and counselor aides of Respondent. (GC 4; Tr 33) The NLRB scheduled a hearing in the matter to resolve

⁴ These are facts which the Counsel for the General Counsel urges should be credited. Credibility will be addressed in the next section.

⁵ Dates are in 2017 unless otherwise specified.

certain issues. That hearing was rescheduled from September 14, to September 21, to September 27. (GC 5; Tr 33) On October 31, the Regional Director issued a Decision and Direction of Election (DDE) in case 07-RC-205632. The decision addressed Respondent's contentions that 1) the BOP was a joint employer, 2) that the counselor aides were guards, and 3) that the social service coordinators and case managers were exempt as supervisors and/or professionals. (GC 6) Among other holdings, the Regional Director found that the BOP was not a joint employer with Respondent.

As a result of the DDE, an election was held on November 7, which Charging Party Local 406 won. (Tr 37) On November 15, Charging Party Local 406 was certified as the exclusive collective-bargaining representative of the petitioned- for employees. (GC 7; Tr 38)

B. Conversations between Employee Greg Price and Director Ken

Greg Price was employed as a case manager by Respondent from January 27, 2017 until September 28. (Tr 81) In June 2017, unhappy with his working conditions and wage, he met with Schram, the only supervisor at the facility, to discuss a wage increase for employees. (Tr 89) He was complaining because the inmates made more than the employees did when they were able to get jobs. (Tr 89) Schram told him that Respondent would not give a pay raise. (Tr 89) Price asked Schram about forming a union. Schram's response was to do what you have got to do. (Tr 89)

Price talked to other employees to gauge their interest in a union, and then contacted Charging Party Local 406 to begin the organizing drive. They arranged the first organizing meeting for June 19, 2017 at 3 p.m. (Tr 90) Price then told Schram about

the meeting and that he and employee Melonie Turner were going to leave from work at 2:30 p.m.. Schram stated that he was for the meeting because if the employees got a raise, then he in turn could ask for a raise. (Tr 91)

On June 19, the day of the meeting, Price reminded Schram about the meeting. Schram told Price that they could attend the meeting, but afterwards, they had to get their butts back to work. (Tr 93) Schram told him that they could just call it their lunch. (Tr 94) However, Price only had an hour lunch period. (Tr 94) Price and Turner attended the meeting at the Charging Party Local 406's facility which was about 15 minutes away from Respondent. (Tr 95) They left Respondent's facility at 2:30 p.m. and returned at 4:15 p.m. Upon return, Price went into Schram's office to let him know that they returned from the meeting. (Tr 95) Schram asked him how it went and asked what they talked about. (Tr 95) Price responded that the employees were looking for better wages, better insurance, some personal time, vacation time, and cameras around the facility and better lighting for safety reasons. (Tr 95) Price testified that he was paid by Respondent for the time he attended this meeting. (Tr 96)

Price testified that there was another organizing meeting scheduled for August 7, 2017 and he informed Schram that he and Turner had to leave the facility at 1:45 p.m. (Tr 99) Price testified that they returned to the facility at 4 p.m. from the meeting.

Price testified that there was another organizing meeting scheduled for August 21, 2017 and he informed Schram about this meeting prior to the meeting (Tr 101) and that he and Turner were going to attend. Price also testified that prior to August 21, he also had another conversation with Schram about the organizing meetings. He states that

Melanie Turner and new employee Tracey Douglas were present. (Tr 104) Price testified that Schram informed him and Turner that he hired another pro-union employee, and that she wants to be a part of the union committee. (Tr 104) Price responded that there was a meeting scheduled for August 21, and they had to leave at 1:45 p.m. to attend the union meeting. Schram responded that they could go, and when it is done to come right back. Price testified that they returned from the meeting at 4 p.m., (Tr 105) and were paid for their time attending this meeting.

Price testified that after this meeting, he talked to Schram in his office. He said that Schram asked him again what was discussed in the meeting. (Tr 105) Price responded that they discussed wages, better lighting, cameras around the facility, cost of living, shift premiums, and retirement benefits. Price testified that Schram said that the employees were asking for way too much and Mr. Rich, (President and Corporate Counsel of Respondent) was not going to approve of any of it. (Tr 105) Schram said that Mr. Rich would just shut the place down, which is what he would do if he were in that position. (Tr 105) Price also testified that Schram discussed employee Maria Torres (Tr 106-107) and his concern about her tardiness, leaving Respondent without permission, leaving Respondent on the clock to go to Saginaw County Court to file paperwork, and leaving to go get her kids from school when they were sick. Price testified that he told Schram that she is a single mother and has nobody. He asked, what is she supposed to do and what are you going to do about it? Schram's reply was nothing. (Tr 106) Price testified that it was not unusual for Schram to share this type of information with him

because they had a great relationship at that time and he believed that Schram was bouncing the issue off him and looking for advice.

Price testified that there was another union meeting on August 31, but he did not discuss the meeting with Schram before the meeting.

Price testified that he had a conversation with Schram in August in Schram's office. He said that Schram wanted Price to work with him if Charging Party Local 406 was voted in as the representative of the employees, so that Price would not file any grievances against him. (Tr 109) Price responded that if that is the case, Schram needed to stop working to cover the shifts when a counselor aide calls off work, and instead find someone else to work the overtime. Schram stated that he believed that he had the right to run the day-to-day operations as best fit. (Tr 109)

Price testified that on September 5, he had a conversation with Schram about the petition for representation. Schram asked him if the petition was going to be filed that day and Price answered that he thought it would be. (Tr 110) Later, after his hour lunch, Price asked Schram if he received the petition and Schram said that he had, and he forwarded it to his supervisor, Compliance Manager Katrina Teel. Price testified that on September 13, Schram was livid that union busters were calling him and he called Price a "fucking asshole." He said that Price put his personal cell phone number on the petition as the Employer, instead of Respondent's telephone number. (Tr 110-112, GC 4)

Price also testified that on September 13, Schram informed him that he received an e-mail that NLRB hearing scheduled for September 14 was postponed. Price responded

that he was already aware of that. Schram then got upset and said that he thought they were supposed to communicate what is going on. (Tr 128)

Price testified that on September 20, he asked Schram for a copy of the contract between Respondent and the BOP. He stated that at the time, Matt Call was present at the facility doing an audit. Schram went into the conference room and returned with a copy of the contract and asked, "how much do you love me." (Tr 117-118)

C. Discharge of Price

Price testified that prior to September 26, he had a discussion with Schram and informed him that he was going to Detroit to attend the NLRB representation hearing on September 27 because he was a potential witness. They discussed that there was something to do at the Bay County Sheriff's office, but Price stated that he had to attend the hearing in Detroit. (Tr 126) On September 26, Price saw Schram copying some materials on the copy machine. (Tr 123) Schram said that Teel called and she wanted job descriptions for all employees sent to her. Price stated that she must want them for the NLRB hearing the next day. Price told Schram again that he would be attending the hearing the next day too. (Tr 123-125)

Price testified that he was scheduled to work from 12 p.m. until 9 p.m. However, due to the hearing in Detroit, he arrived at work at 5:30 a.m. (Tr 129) He states that he then went to the NLRB representation hearing with Charging Party Local 406 representative Grant Hemenway. (Tr 129) Price testified that he came in early because Schram allowed him to attend Union organizing meetings on the clock, so he thought that he was supposed to attend the NLRB hearing on the clock since he was a potential

witness. (Tr 129) Price testified that he attended the NLRB hearing. He testified that Teel, the compliance manager, was present at the hearing. He testified that the NLRB hearing ended early and afterwards, Hemenway drove back to Charging Party Local 406's facility so that Price could get his vehicle, and then Price drove himself back to Respondent's facility, where he arrived back at 2:30 p.m. and clocked out of work. (Tr 129) Price testified that he clocked out because he had 9 hours on the clock, which is all they are allowed to have due to restrictions on overtime. (Tr 130) Price testified that when he punched out he made eye contact with Schram, who did not say anything to him. (Tr 130)

Schram testified that he received several calls from his supervisor Teel. In one of those conversations, she asked if Price was at work. (Tr 480) Schram responded that he was not there, that he punched in around 5 in the morning and that the logbook said, "court against Bannum." Price stated that he came back, signed out and left and that the logbook said that he worked his hours. (Tr 481) Schram testified that Teel called back later and said that Price was suspended pending investigation and for him to inform Price. (Tr 481)

Price testified that Schram called him later that night and left a message. Price then called Schram and recorded the conversation. (GC 10; Tr 135) In the conversation, Schram informed Price that Teel terminated his employment for abandoning his job. (G 10, p. 4; Tr 476) Price asked why he did not call him because he knew he was going to the NLRB hearing. (GC 10 p, 4)

Rich, who is located in Florida, testified that he made the decision to terminate Price based on information from Teel. (Tr 229-330) Teel, who is located in South Carolina, did not testify.⁶ Rich testified that Teel informed him that Price attended the NLRB hearing in Detroit, and then failed to show up for his shift. He then came in to work at approximately 2:30 p.m. in the afternoon and clocked out. (Tr 330-331) Rich stated that later he also learned that Price clocked in at 5:30 in the morning. (Tr 331) Rich testified that he did not discuss the issue with Schram, the person who would have direct knowledge about the issue and other similar situations at the facility. (Tr 383) Rich testified that he did not interview Price, (Tr 397) obtain his discipline or attendance records, (Tr384) or compare his actions to any other employee. Yet Rich stated that he had never seen another situation like this, which increased the severity of the issue. (Tr 335) Rich stated that he could not remember the discharge of Maria Torres (GC 11), who was discharged in 2017 for a myriad of incidents, including insubordination, lateness, repeatedly failing to report to work and repeated excessive absenteeism. (GC 3, P. 2, 3, 8, 10, 11, 12, 15, 16). He also was not familiar with Johnta Menge who received 4 warnings for several incidents of not showing up for work (GC 3, p. 20, 21, 22, 24) or Stacey Moore who failed to show up for work for several days in February and April 2017, and only received warnings. (GC 3, p. 6, 7) However, all of these disciplines were copied to Teel.

⁶ Respondent did not call Compliance Manager Teel as a witness. Although Respondent initially sought to postpone the trial because she assertedly had other obligations, it did not make other efforts to have her testify such as the General Counsel did with its witness Matthew Call. Such failure should lead to an adverse inference that Teel would have testified adversely to Respondent if she had been called to testify. *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (Mar. 11, 2016), *Hialeah Hospital*, 343 NLRB 341, 393 fn. 20 (2004); *Gerig's Dump Trucking*, 320 NLRB 1017, 1024 (1996); *International Automated Machines*, 285 NLRB 1122, 123 (1987), *enfd.* 851 F.2d 720 (6th Cir. 1988).

D. Conversations between Director Schram and other employees

Former employee Sharda Nash testified that during her third shift on the weekends, she had conversations with Schram about Charging Party Local 406. She testified about one such conversation with Schram that occurred in November, before the NLRB election and that Charging Party Ahmad was present for the conversation. (Tr 53; 70) She testified that Schram called them into his office and asked them how they were going to vote. He told them that they should vote against Charging Party Local 406 because if they were to get a union, then the facility would close and their wages would probably drop because they would have to pay union dues and he would have to be stricter on them as a boss, and he would not be as lenient as he was. (Tr 52-54) Charging Party Ahmad corroborated this conversation. He testified that Schram said that he did not want them to form a union. Schram said that he would rather fight for them, than have them stuck with the union or something they did not want. Schram stated that if they organized the union, that the facility would shut down. Schram said that they would not be a team anymore, and he would have to act like a boss and be strict. (Tr 255-256)

Nash also testified that she received a voicemail message from Schram, two days before the NLRB election. (GC 8; Tr 58) In this voicemail message, Schram stated that he wanted to meet with her and other employees because he did not want them to vote for the Union. He told her that he knows she has to deal with Charging Party Ahmad and he did not want Ahmad to fill her with propaganda, so he wanted to help them as a boss. (GC 8)

Charging Party Ahmad testified that in September or October, an exact date unknown⁷, he met with Schram, Price and Turner after a staff meeting⁸. He said that conversation turned to the organizing meetings amongst the three employees, and Schram joined the conversation and said that it was okay for Turner and Price to attend those union meetings on the clock, but they could not have meetings at Respondent's facility.⁹ (Tr 252-253)

Charging Party Ahmad testified about another conversation he had with Schram in his office in early November. They were alone and Schram said that if they formed a union, they would shut down. (Tr 258-260)

E. Discharge of Charging Party Ahmad

Charging Party Ernie Ahmad began working at Respondent in October 2016 as a part-time counselor aide. (Tr 240) At his hire interview, he arranged, in conjunction with the Acting Director, to only work third shift on the weekends at Respondent because he worked full-time on the first shift at Saginaw County Mental Health. (240-243) In order to obtain this approval, he had to submit a form from Saginaw County Mental Health verifying his employment and hours (Tr 243-244) and the Acting Director also called the facility to verify this information. (Tr 244) Charging Party Ahmad made it clear that he could only work third shift (12 a.m. to 8 a.m.) for Respondent because he worked first shift (8 a.m. to 5 p.m.) at Saginaw County Mental Health. (Tr 244)

⁷ Price was discharged on September 28, 2017, so this conversation had to have occurred in September 2017, not October.

⁸ Ahmad testified that although he worked for Saginaw County Mental Health Services during the day, and only worked at Respondent on third shift, he attended monthly staff meetings at Respondent during the day. (Tr 267)

⁹ Ahmad testified that he didn't leave Respondent to attend the organizing meetings because he worked somewhere else during the day.

In April, shortly after Ken Schram was hired as Director of Respondent's facility, Charging Party Ahmad had another conversation about his employment at Saginaw County Mental Health. (Tr 245) At that time, Schram asked him if he had another job. Ahmad responded that he worked full-time at Saginaw County Mental Health. Schram asked Ahmad if there was a union at the facility, and Ahmad answered that there was. Schram asked if he was involved with the union. Ahmad answered that he was the Local President of the union. Schram asked him what he did as the Local President. Ahmad explained that he handled grievances, disciplines, terminations, collective bargaining and negotiating contracts. (Tr 245-246)

Charging Party Ahmad testified that in November, prior to his discharge on November 21, management posted a new staff schedule stating, "starting 12/3/2017 all CA's (Counselor Aides) will have at least 2 consecutive days off!" (Tr 270) Ahmad testified that beginning on December 3, 2017, his schedule was changed from third shift to second shift working from 4 p.m. to 12 a.m. on Thursday of that week. (Tr 271-272; GC 15) Ahmad testified that he spoke to Schram immediately after seeing the post about the change in schedule and noted that he had been moved from third shift to second shift. (Tr 276-278) Ahmad asked him why his schedule had been changed and stated that he could not work second shift due to his other job. He also pointed out that another employee, Ramesse Amegah, who was scheduled for third shift could work second shift. Schram's response was, "oh well."

In October, Ahmad verbally requested three days off, November 11, 12 and 18. Schram informed Ahmad that he had to use a vacation request form. (GC 16, Tr 280)

Ahmad had never used this form or ever heard of it (Tr 283) so he asked Schram where to find the form. Schram told him that it was in the conference room cabinet in a book. (Tr 293) Prior to this time, according to Ahmad, he just verbally told Schram that he wanted to take a day off and had never been told to use a form. (Tr 293) According to Nash, prior to the union election, she also would verbally request time off. (Tr 64) However, after the election, she began to put her requests for vacation in writing because of the incident with Ahmad. (Tr 65) Nash testified, that although she had heard of a vacation request form, she had never used one or been disciplined for not doing so.

As instructed, on November 3, Ahmad submitted two vacation request forms, one requesting November 11 and 12, and the other requesting November 18. (GC 16; GC 12(000706); Tr 283) Schram approved Ahmad to take off November 11, after he switched his shift with another employee, but denied his request for November 12 and 18. (Tr 286; GC 16)

Charging Party Ahmad testified that he was sick on November 11, so he called in sick on November 11 for his November 12 shift and spoke to Schram, who said ok. (Tr 147) However, later on the day of November 12, Schram called Ahmad and told him he needed to bring in a doctor's note. (Tr 289) On November 15, Ahmad brought in a doctor's note to work and Schram, refused to accept it. However, he did initial that he saw it. (Tr 290; GC 17)

Ahmad testified that he worked his next scheduled day on November 17, but then called in to take off on November 18 due to a family emergency with his son. (Tr 293) He testified that he spoke to Schram before his shift, who responded ok. Then, on

November 21, Schram called him and left a message. Ahmad returned his call and Schram informed him that he was terminated effective immediately. (Tr 294) Ahmad did not receive a termination letter and had no prior discipline or attendance points.

Rich testified that he made the decision to terminate Charging Party Ahmad. (Tr 368) He testified that he discharged Ahmad based on conversations with Compliance Manager Teel and Vice President Sandy Allen¹⁰. He said that they relayed to him that Ahmad had been denied two vacation days and then called in sick on both of those days, which he found as grounds for termination.(Tr 369) Rich testified that he did not discuss the matter with Schram, or Charging Party Ahmad before making his decision. (Tr 405) Rich also did not review Ahmad's discipline or attendance records before making his decision. (Tr 405) Rich testified that it is Respondent's policy that employees are required to bring in a doctor's note whenever they call in sick, (Tr 406 -409) even for one day. (Tr 415)

III. CREDIBILITY

Marian Novak was a credible witness. Her testimony was corroborated by documents and other witnesses. She testified about organizing efforts begun by discriminatee Greg Price, and corroborated later testimony by Charging Party Ahmad and Price that they were told that Price and Turner could attend organizing meetings on the clock. (Tr 30) Although her memory about a specific date may have been inaccurate, (Tr 39) she testified credibly that organizing meetings did occur and that employees of

¹⁰ Respondent did not call Compliance Manager Teel or Vice President Sandy Allen to testify as witnesses. Such failure should lead to an adverse inference that Teel would have testified adversely to Respondent if they had been called to testify. *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (Mar. 11, 2016), *Hialeah Hospital*, 343 NLRB 341, 393 fn. 20 (2004); *Gerig's Dump Trucking*, 320 NLRB 1017, 1024 (1996); *International Automated Machines*, 285 NLRB 1122, 123 (1987), *enfd.* 851 F.2d 720 (6th Cir. 1988).

Respondent attended. She testified that after a petition was filed, Price attended the NLRB hearing for the representation case on September 27, as a potential witness for Charging Party Local 406. She testified about the Decision and Direction of Election that issued by the Regional Office, the election on November 7, and the certification of Charging Party Local 406 as the exclusive representative of Respondent's employees. She also testified that no representative of Respondent came to Charging Party Local 406 seeking to change any policies. (Tr 37) Overall, Novak's testimony and demeanor was very credible and she should be credited.

Sharda Nash was a very credible witness who had no reason to lie about the facts of this case given that she had nothing to gain or lose from its outcome. She testified about unlawful conversations that she had with Director Ken Schram, where he interrogated her about how she was going to vote in the union election, threatened to "pull the contract and close the facility" if they voted for the Union, threatened to be stricter as a boss. (Tr 53-54) She testified about a recorded voicemail message that he left for her warning her of Union propaganda she might receive from Charging Party Ahmad. (GC 8; Tr 54-59)

Greg Price also deserves to be credited. He testified credibly that he had many conversations with Director Schram about the Union. He testified that Schram was initially in support of the Union, which Schram corroborated when he testified on cross examination that he stopped supporting the Union when Price said that he only cared about himself.(Tr 494) Price testified that he obtained permission from Schram to attend organizing meetings on the clock. Schram denied this on direct, but on cross examination

admitted that he knew that the employees were going to the meetings, but told them not to tell him what was going on. (512-513) Price credibly testified that before the petition was filed, Schram wanted to know what was discussed at the meetings, and even stated that the employees were asking for too much when Price informed him of their discussion. Price testified that after the petition was filed, Schram began to express statements of futility, that the Union would not be successful because Respondent has a contract with the Federal Bureau of Prisons (BOP). Price also credibly testified without rebut that on September 27, he clocked in at 5:30 a.m. to attend the representation meeting, and he clocked out at 2:30 p.m. He states that Schram saw him clocking out and did not say anything to him. He credibly testified that he did not stay longer because employees were told not to work over 9 hours. He also testified that he was discharged on September 28 by telephone for not working on September 27. He testified without rebuttal that he had no prior attendance record and only one unrelated discipline.

Charging Party Ahmad was also a credible witness. He testified that he had several conversations with Schram about the Union, one of which was corroborated by Sharda Nash. Around the time of the Union election, his schedule was changed. He testified that he had the same schedule for his entire time at Respondent on third shift, so as not to conflict with his other job that Respondent was well aware of. He testified that he requested three days off, November 11, 12 and 18. He testified that Schram told him that he had to submit his request on a vacation request form. Ahmad testified that he never had any difficulty taking time off before, and he never used the vacation request form in the past. This was corroborated by evidence that the vacation request form was

only used once by an employee in 2017. Ahmad testified that his November 12 and 18 requests were denied. Ahmad testified that he was sick on November 12, and Schram told him to get a doctor's note, which he did. Ahmad testified that Schram would not accept his doctor's note, but initialed it. This is corroborated by the evidence. Ahmad testified that he worked on Friday November 17, but called off on November 18 due to a family emergency with his son. He testified that he was discharged on November 21.

John Rich, President and corporate counsel of Bannum, Inc, which is Respondent's "parent company" was not a credible witness. He testified that he made the decision to discharge Price, without investigation, because Respondent's compliance officer Katrina Teel, who did not testify¹¹, informed him that Price did not work on September 27. Without knowing why Price did not work, where he was, or anything about the practice at the facility, Rich testified that he made the decision to discharge Price. Rich testified that he also made the decision to discharge Ahmad, again without investigation. When asked if it was normal to require a doctor's note from an employee for one sick day, he answered incredibly that this was its practice. He produced no documents to support this alleged practice¹², and even the sick leave policy does not contemplate such an unworkable and unrealistic practice. Rich also testified that the Department of Labor wage determination document is a requirement and that Respondent could not vary from those wages or vacation determinations. However, this was directly

¹¹ Such failure should lead to an adverse inference. *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (Mar. 11, 2016), *Hialeah Hospital*, 343 NLRB 341, 393 fn. 20 (2004); *Gerig's Dump Trucking*, 320 NLRB 1017, 1024 (1996); *International Automated Machines*, 285 NLRB 1122, 123 (1987), enfd. 851 F.2d 720 (6th Cir. 1988).

¹² Likewise, failing to produce evidence in its custody that would prove a contention made by its witness, should lead to an adverse inference that such documents do not exist. *Pioneer Hotel & Gambling Hall*, 324 NLRB 918, 927 (1997) citing *Auto Workers v. NLRB*, 459 F.2d 1329, 1338-1340 (D.C. Cir. 1972)

contradicted by BOP's witness Matthew Call, who was the former contract compliance officer overseeing Respondent. He testified that the wage determination is a "floor" and contractors such as Respondent can give higher wages and more vacation to its employees. Call's testimony is corroborated by the document itself.

Ken Schram, the former Director of the facility, testified inconsistently on many matters. He testified that he did not threaten employees that the facility would close if they voted for the Union. Yet he admitted that he discussed the end of the contract and the possible closure of the facility with employees, and admitted that these comments might have occurred in his many conversations with employees about the Union. He testified that he never told anyone that the facility would close or that it would be futile to have a union at the facility because of the contract with the BOP, yet BOP's witness Matthew Call, who was the former contract compliance officer overseeing Respondent testified that this is exactly what Schram said to him. He testified that he did not know that employees were going to the organizing meetings during work time, then contradicted himself when he said that he knew but told them not to tell him about it. (Tr 511-513) He testified that Supervisor Teel did not tell him that Price was at the NLRB hearing, but then contradicted himself and said that she did tell him. (Tr 522-523) Schram testified that he spoke to Teel around 10:30 a.m., who was already at the airport. However, Novak and Price's testimony is that the NLRB hearing did not end until 11 a.m. Schram testified that on September 27, Respondent had to cancel a DHO hearing, which was very important because Price was not at work. However, he then stated that when he saw Price at 2:30 p.m. on that day, he did not tell Price anything about going to

the DHO hearing, he also did not know if the important DHO hearing was rescheduled or held. Schram also testified that he never told any employee that Charging Party Ahmad was filling their head with propaganda. (Tr 531) Yet we heard a recording where Schram said just that to Sharda Nash. As stated, Schram's testimony was filled with inconsistent testimony and he should not be believed.

Matthew Call, from the BOP testified that in 2017, he was the contract oversight specialist for Respondent from 2014 until October 2019. He credibly testified about comments made by Schram to him about the Union. He said that Schram told him that if the Union wins the election, Respondent would not negotiate with the Union and would not bid on the next contract and would cease doing business in the area. (Tr 589) He also testified, as stated above that the Department of Labor's wage determination document is the lowest wage and vacation amounts that a contractor such as Respondent can pay its employees, not the highest.(Tr 593-594) Mr. Call was a third-party witness and had no invested stake in the outcome of this trial. Thus, his testimony was above reproach.

IV. ARGUMENT

A. Respondent is not a Joint Employer with the Federal Bureau of Prisons

Respondent states that the NLRB lacks subject matter jurisdiction in this matter. Respondent's argument focuses entirely on its relationship with the Federal Bureau of Prisons (BOP) and asserts that whether they are a joint or single employer, that relationship prevents the NLRB from asserting jurisdiction since they are not an employer under the Act.

This matter was already litigated¹³ and decided in the Decision and Direction of Election issued on October 31, 2017 9. (GC 6) In that Decision, which resulted after a two-day hearing in which the BOP was served with notice, the Regional Director for Region Seven relying on *BFI Newby Island Recyclery*, 362 NLRB 1599 (2015) held that Respondent, an Employer within the meaning of the Act, was not a joint Employer with the BOP. The Regional Director found that the BOP “did not exercise significant control over the day-to-day activities of the employees, and that the BOP merely oversees that Respondent complies with the contract (between them).” Thus, the relationship between the BOP and Respondent was fully litigated with both Respondent and BOP having an opportunity to present evidence and witnesses and cross examine witnesses on the issue of jurisdiction.¹⁴

Respondent was notified of its right pursuant to Section 102.67 of the Board’s Rules and Regulations to file a request for review. However, Respondent did not file a request for review of this decision. In fact, an election was held on November 7, 2017, and subsequently, Charging Party Local 406 was certified as the exclusive bargaining representative of the petitioned for unit of employees.

Pursuant to Section 102.67 (g) of the Board’s Rules and Regulations,

The Regional Director’s actions are final unless a request for review is granted. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the Regional Director’s action which shall also preclude

¹³ Prior to trial, on January 27, 2020, Respondent filed a Motion to dismiss on Jurisdiction grounds alleging that the Federal Bureau of Prisons was a joint Employer. The Board denied that motion on February 20, 2020.

¹⁴ Other issues related to the supervisory and guard status of certain employees was also litigated, and those classifications were deemed non-supervisory and not excluded as guards.

relitigating any such issues in any related subsequent unfair labor practice proceeding.

Despite its failure to seek review, Respondent is now contesting the validity of the Certification of Representative.

As the Supreme Court and the Board have held, “in the absence of newly discovered and previously unavailable evidence or special circumstances, the respondent may not relitigate in an unfair labor practice case issues that were or could have been litigated in the prior representation proceeding.” *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921 (1997) citing *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); See also, *Salem Hospital Corp.*, 357 NLRB No. 119 (2011), enfd. 808 F.3d 59, 72–74 (D.C. Cir. 2015); and *Nursing Center at Vineland*, 318 NLRB 901, 903 (1995), enfd. mem. 151 LRRM 2736 (3d Cir. 1996); and *Western Temporary Services*, 278 NLRB 469 n. 1 (1986), enfd. 821 F.2d 1258 (7th Cir. 1987). See also *FedEx Freight, Inc.*, 362 NLRB No. 74, slip op. at 1 n. 1 (2015) (treating respondent’s request to admit additional evidence in the refusal-to-bargain proceeding as a motion to reopen the representation proceeding and denying the request because the respondent failed to establish that the evidence existed but was unavailable at the time of the representation hearing or could not have been discovered with reasonable diligence, that the evidence would change the result, and that respondent moved promptly to present the evidence), enfd. 816 F.3d 515 (8th Cir. 2016); and *Kawah Manor*, 367 NLRB No. 22 (2018) (rejecting the respondent’s argument that there were special circumstances warranting reconsideration of the appropriate bargaining unit in the 8(a)(5) refusal-to-bargain proceeding because respondent, as a successor, was not a party to the prior representation

proceeding and the predecessor failed to request Board review of the regional director's unit determination in that proceeding).

Respondent's arguments do not offer any newly discovered or previously unavailable evidence, nor does it allege any special circumstances that would require the Board to review the decision made in the representation proceeding. Instead, it relies on the transcript from the representation proceeding, and an unsupported description of Respondent's business in its previously submitted motion to dismiss to urge the Board to dismiss this Consolidated Complaint based on already litigated and decided information. This argument, like the motion, should be denied.

B. Respondent Coercively Interrogated, Unlawfully Threatened, Interfered with employees exercising their Section 7 rights and informed its employees it would be futile to select Charging Party Local 406 as their bargaining representative.

1. Coercive Interrogation

To establish a violation of coercive interrogation, the General Counsel must show that, under all the circumstances, the questioning reasonably tended to restrain, coerce, or interfere with employees in the exercise of their Section 7 rights. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), *affd. sub nom. Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Circumstantial factors relevant to the analysis include the employer's background (i.e., whether there is a history of union hostility or discrimination), the nature of the information sought (i.e., whether the interrogator appeared to be seeking information on which to base taking action against individual employees), the identity of the questioner (i.e., whether he or she held a high position in the company hierarchy), the place and method of interrogation (i.e., whether the

employee was called from work to the interrogator's office, and whether there was an atmosphere of unnatural formality), and the truthfulness of the employee's reply. *Trinity Services Group, Inc.*, 368 NLRB No. 115, slip op. 6 (2019) citing *Rossmore House*, supra fn. 20 (1984); *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964); see also *Temp Masters, Inc.*, 344 NLRB 1188, 1188 (2005), affd. 160 F.3d 684 (6th Cir. 2006).

Price testified that after the Union organizing meeting on August 21, he talked to Schram in his office. Price testified that Schram asked him what was discussed in the meeting. Price responded that they discussed wages, better lighting, cameras around the facility, cost of living, shift premiums, and retirement benefits. Price testified that Schram responded that the employees were asking for way too much and Rich, was not going to approve of any of it. Schram said that Rich would just shut the place down, which is what he would do if he were in that position. (Tr 105) Schram did not deny having this conversation. (Tr 494) Instead he felt that Price was looking out for himself and being selfish. (Tr 494) This questioning is unlawful interrogation because Schram asked Price what he and other employees were discussing at a union meeting. *Time Warner Cable New York City, LLC*, 366 NLRB No. 116, slip op. at 5 (2018) (finding unlawfully coercive questions that “intruded into Section 7 communications between employees”) See also, *SAIA Motor Freight, Inc.*, 334 NLRB 979, 980 (2001) (questions that constitute “a pointed attempt to ascertain the extent of the employees' union activities” are unlawful); and *Horton Automatics*, 289 NLRB 405, 412 (1988) (finding unlawful interrogation where “[t]he question asked [by the highest-ranking official] was not rhetorical but rather was calculated to invoke a response from the employees that

would reveal their union sympathies. In this case, Schram is not only the highest ranking official at the facility, he is the only supervisor present on a regular basis.

Although Price was an open union supporter, conversations about union activity between employers and employees are only considered lawful when they are unaccompanied by coercive statements. See *Colonial Parking & Unite Here Local 23*, 363 NLRB No. 90 (Jan. 5, 2016). Here, we have threats, interrogations, statements of futility and interference in section 7 activities.

In its defense, Respondent presented documents indicating that Schram left the facility on August 21 at 4 p.m., and while Turner and Price returned to the facility around this time, they soon after left to do field work. (R 5) However, Schram testified that during this time period, employees did not punch in and out when they left, they just left. (Tr 472) He said that records were poorly kept. Further, the date when this conversation occurred is less material to the fact that Price testified credibly about the statement and Schram did not deny that he made the statement.

2. Threats

In deciding whether a remark is threatening, in violation of Section 8(a)(1) of the Act, the Board applies the objective standard of whether the remark would reasonably tend to interfere with the free exercise of employee rights, and does not look at the motivation behind the remark, or rely on the success or failure of such coercion. *Air Management Services, Inc.*, 352 NLRB 1280, 1286 (2008); *Emery Worldwide*, 309 NLRB 185, 186 (1992); *Rossmore House*, 269 NLRB 1176, 1177 (1984); *Medcare Associates, Inc.*, 330 NLRB 935, 940 (2000).

As stated above under unlawful interrogation, Price testified that after the Union organizing meeting on August 21, Schram asked him what was discussed in the meeting. After Price responded, Schram responded that the employees were asking for way too much and Mr. Rich, was not going to approve of any of it. Schram said that Rich would just shut the place down, which is what he would do if he were in that position. (Tr 105) Schram did not deny having this conversation.

Similarly, in October or November, Schram called employee Sharda Nash and Charging Party Ahmad into his office. Schram then asked them how they were going to vote. He told them that they should vote against the Union because if they were to get a union, then the facility would close and their wages would probably drop because they would have to pay union dues and he would have to be stricter on them as a boss, and he would not be as lenient as he was. (Tr 52-54) Charging Party Ahmad corroborated this conversation. Ahmed testified that Schram said that he didn't want them to form a union. Schram said that he would rather fight for them, than have them stuck with the union or something they did not want. Schram stated that if they organized the union, that the facility would shut down. Schram said that they would not be a team anymore, and he would have to act like a boss and be strict. (Tr 255-256)

These statements contain multiple threats, such as hallmark threats to close the facility, and a threat to strictly enforce rules. All of these threats are violations of the Act. *Atlantic Veal & Lamb, Inc.*, 342 NLRB 418 (2004) (statement that if union was elected the employer would “close the business and move to Indiana” violated the Act); *DLbak Corp.*, 307 NLRB 1138 (1992), the Board held that statements about a plant closure and

loss of jobs made without any rational basis are unlawful; *Shearer's Foods, Inc.*, 340 NLRB 1093, 173 LRRM 1459 (2003) (employer violated 8(a)(1) when manager told employee(s) that if company president “had his say, the plant would shut down if the Union came in.”) 267 NLRB 682, 114 NLRB 1120 (1983); *Hyatt Regency Memphis*, 296 NLRB 259, 271 (1989)(Employer’s indication that employees would not “ get away with things” 8(a)(1) threat of benefit and change of working conditions); *United Artists Theatre Circuit, Inc.*, 277 NLRB 115, 121 (1985)(Explicit threats to diminish the quality of employee working conditions should the employees select the Union “cannot but effect employee sentiment regarding the decision to support or oppose the Union.”)

Further, it is important to note that in fact Schram changed schedules suddenly directly after the NLRB election and denied Ahmad’s request for days off, when in the past he would have “called everyone” or covered the day himself. (Tr 489) *Foley Material Handling Co.*, 317 NLRB 424 (1995) (threats to discontinue breaks and to stop driving workers to and from work site constituted unlawful reprisal). As Schram testified, he informed employees that if the Charging Party Local 406 was voted in, he could no longer do union work so he couldn’t cover for anybody anymore.” (Tr 562)

3. Statements of Futility and Interference

An employer violates the Section 8(a)(1) of the Act if it conveys to employees the futility of union representation. *E.I. DuPont de Nemours*, 263 NLRB 159, (1982); *Kona 60 Minute Photo*, 277 NLRB 867 (1985); *Overnite Transportation Corp.*, 296 NLRB 669 (1989); *Hi Tech Cable Corp.*, 318 NLRB 280 (1995). The Board has held that, barring outright threats to refuse to bargain in good faith with an incoming union, the

legality of any particular statement depends upon its context. See, *Somerset Welding & Steel, Inc.*, 314 NLRB 829, 832 (1994).

Schram made several statements to convey futility and to interfere in employees Section 7 rights. Price testified that he had a conversation with Schram in August in Schram's office. He said that Schram wanted Price to work with him if Charging Party Local 406 was voted in as the representative of the employees, so that Price would not file any grievances against him. (Tr 109) Price responded that if that is the case, Schram needed to stop working to cover the shifts when a counselor aide calls off work, and instead find someone else to work the overtime. Schram stated that he believed that he had the right to run the day-to-day operations as best fit. (Tr 109)

This statement conveys the message that Charging Party Local 406 would have no input into the terms and conditions of employees, and conveys a sense of futility in voting for the Union. In *Smithfield Foods, Inc.*, 347 NLRB 1225, 1229 (2006) an HR manager told employee(s) in a video that “[T]he Union cannot get anybody anything. The only thing the employees can get is what the company is willing to give.” The Board considered this statement to be a statement of futility because it conveyed to employees that the “[employer] was in complete control over the outcome of negotiations.” *Id.* at 1229-1230.

Price testified that on September 13, Schram informed him that he got an e-mail that NLRB hearing scheduled for September 14 was postponed. Price responded that he was already aware of that. Schram then got upset and said that he thought they were supposed to communicate what is going on. (Tr 128)

Nash testified that she received a voicemail message from Schram, two days before the NLRB election. (GC 8; Tr 58) In this voicemail message, Schram stated that he wanted to meet with her and other employees because he did not want them to vote for the Union. He told her that he knows she has to deal with Ernie Ahmad and he did not want Ahmad to fill her with propaganda, so he wanted to help them as a boss. (GC 8)

Both of these statement evidence interference by Schram into employees' Section 7 activities. *Corliss Resources, Inc.*, 362 NLRB 195, 196 n. 6 (2015) (particularly in light of supervisor's parting unlawful threat to "get all you guys out," his calling employees "backstabbers" in response to a union-supporter employee's invitation to socialize would reasonably have been understood to characterize all supporters of the union as disloyal and to threaten them with retaliation) (citing *George L. Mee Memorial Hospital*, 348 NLRB 327, 349 (2006) (following tied union vote, supervisor yelling that the employees were a bunch of back-stabbers and liars and she did not want to see any of them, tended to restrain and coerce employees as a thinly veiled threat and admonition that support for the Union was an act of disloyalty) and *Wometco Coca-Cola Bottling Co.*, 255 NLRB 431, 443 (1981) (company president called employee a backstabber, low-down, and a troublemaker; further said that he had a bad attitude and that nobody "around here" liked him; and asked whether he was ready to resign that morning).

Schram did not deny making any specific statement. He testified that he had many conversations with employees about the Charging Party Local 406, and may have raised the closing of the facility during those conversations. He said that he definitely conveyed his opposition to the Union, but that was only after Price indicated his selfish motives.

He denied telling anyone, including BOP's representative Matt Call that the facility would close if Charging Party Local 406 was voted in. However, Call testified that Schram told him that if the Union were voted in, Respondent would not negotiate with the Union and they were not going to bid on the upcoming contract with the BOP, and then cease doing business. (Tr 589-590) Schram's testimony about these statements was inconsistent, at best and while he generally stated that he did not threaten anyone, this self-defensive, generalized denial should not be credited.

Thus, the evidence reflects that Respondent violated Section 8(a)(1) of the Act by threatening, interrogating and interfering with employees, as well as expressing that it would be futile to select Charging Party Local 406 as their bargaining representative, all serious unfair labor practices, in violation of Section 8(a)(1) of the Act.

C. Respondent Paid employees to attend Charging Party Local 406 organizing meetings during work times¹⁵.

The undisputed fact is that Director Schram allowed Price, Turner and Douglas to attend Charging Party Local 406 organizing meetings during work time. Price testified that before every meeting that he attended, he notified Schram that they were going to attend, that they had attended and that they had returned from the meeting. Charging Party Ahmad testified that Schram raised the issue of their attendance at the end of a staff meeting and told them that they could attend but could not have any organizing meetings

¹⁵ This allegation was pled in the complaint as an 8(a)(3) with a derivative 8(a)(1) and it should have been pled just as an 8(a)(1). Nevertheless, the matter was fully litigated. Thus, we amend the complaint to plead paragraph 11 of the Consolidated Complaint as 8(a)(1) and not 8(a)(3). *see NLRB v. Exchange Parts Co.*, 375 U.S. 405, 406-08 (1964)

at the facility. Union Organizer Novak testified that both Price and Turner informed her that they were attending the meetings with Respondent's permission. (Tr)

Schram denied that he approved the employees to attend the organizing meetings. He stated that he may have heard that they were going to the organizing meetings, but he told them that he did not really want to know where they were going. (Tr 471) He also testified that he thought they were at lunch, while admitting that their lunch period was only an hour. Price testified that the organizing meetings were approximately 2 hours long, with fifteen minutes of travel time to and from the location of the meeting. Schram admitted that employees received their regular pay while attending these meetings.

By allowing employees to attend union organizing meetings during work time, Respondent violated the Act. *Shamrock Foods Co. & Bakery*, 369 NLRB No. 5, slip op. at 8 (2020) (employees paid for more than usual 30 minutes to attend annual banquet during organizing campaign) (citing *Southgate Village Inc.*, 319 NLRB 916 (1995))

D. Respondent Discharged its employee Gregory Price Because He Engaged in Protected Concerted and Union Activities and because he attended an NLRB Hearing in anticipation of being a witness for the Union

1. The Legal Standard for Section 8(a)(1) and 8(a)(3) Discipline Violations

Section 7 of the Act guarantees employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. Section 8(a)(1) of the Act implements the guarantees of Section 7 by prohibiting adverse actions against employees for engaging in concerted activity that is protected by Section 7 of the Act. *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962); *SKD Jonesville Division L.P.*, 340 NLRB 101, 103 (2003).

The Supreme Court has indicated that the statutory phrase "mutual aid or protection" should be liberally construed to protect concerted activities directed at a broad range of employee concerns. *Eastex, Inc. v. NLRB*, 437 U.S. 556, 563-568 and 567 n.17 (1978). Thus, concerted actions of employees are protected under Section 7 if they might reasonably be expected to affect terms or conditions of employment. *Meyers Industries*, 268 NLRB 493, 497 (1984) ("*Meyers I*"), remanded sub. nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), reaffirmed on remand, (1986) ("*Meyers II*"), affirmed sub. nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987). Accord *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 835 (1984).

In order to establish that an employee was terminated in retaliation for his protected concerted and/or union activities, the General Counsel must present enough evidence to support an inference that the employee's protected concerted or union activities were a motivating factor in Respondent's decision to terminate his employment. *Wright Line*, 251 NLRB 1083, 1089 (1980). In order to establish a prima facie case, the General Counsel must demonstrate the following: (1) the employee was engaged in protected concerted and/or union activity; (2) the employer had knowledge of that activity and (3) the employer had anti-union animus. *Integrated Electrical Services Inc.*, 345 NLRB 1187, 1199 (2005); *Wal-Mart Stores*, 340 NLRB 220, 221 (2003). The burden then shifts to the employer to show that it would have taken the same action even if the employee had not been engaged in union activity. *Wright Line*, supra, at 1089; *Integrated Electrical Services Inc.*, supra, at 1187, fn 5; *KFMB Stations*, 343 NLRB 748, 751 (2004). The General Counsel's prima facie case is not rebutted when a

respondent's reason for its actions is shown to be false or non-existent. *Limestone Apparel Corp.*, 255 NLRB 722, 722 (1981). An employer's motive may be inferred from the total circumstances provided and from the record as a whole. *Coastal Insulation Corp.*, 354 NLRB 495, 514(2009); *Fluor Daniel, Inc.*, 304 NLRB 970 (1991). Evidence of suspicious timing, failure to adequately investigate alleged misconduct, departures from past practices, past tolerance of behavior for which the discriminatees suffered adverse action, disparate treatment of the discriminatees, and false reasons given in defense, all support inferences of discriminatory motivation. *Coastal Insulation Corporation*, supra; *Adco Electric Incorporated*, 301 NLRB 1113, 1123 (1992); *Electronic Data Systems Corp.*, 305 NLRB 219 (1991); *Banta Catalog Group*, 342 NLRB 1311 (2004).

2. Respondent was aware of Price's Union activity

It is undisputed that Price was the lead organizer for Charging Party Local 406. He informed Schram that he was going to contact the Union due to wages and other working conditions, and then informed Schram after he did. In fact, Schram admitted that he had many conversations with employees about the Union, including with Price.

3. Respondent discharged Price for his Union Activity

Respondent assertedly discharged Price because he did not work on September 27. According to Rich, who assertedly made the decision to terminate, no investigation occurred into his absence. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991)(failure to adequately investigate alleged misconduct can infer an unlawful motive). Rich did not review Price's discipline or attendance records. Rich did not discuss the decision to

terminate with Schram or Price. No effort was made to determine why Price did not work. According to Rich, he received information from Teel that Price did not work on September 27, and decided to terminate him. Later, he learned that Price clocked in at 5:30 am and clocked out at 2:30 pm. (Tr)

This begs the question, why Price? According to Respondent's records, many employees fail to show up for work. Maria Torres, Johnta Menge and Stacey Moore are but a few who received multiple warnings for failing to show up for a scheduled shift, leaving in the middle of a shift, repeated absences and tardies. Torres continued in employment for months after her first instance of no call-no show, as did Moore. Price, on the other hand, had no record of prior disciplines or attendance issues.

It is undisputed that Teel called Schram on September 27, and specifically asked if Price came to work. Why? She did not ask about other employees, only Price who happened to be at the NLRB hearing in Detroit as a potential witness for Charging Party Local 406. Teel, who was also at the NLRB hearing, was well aware of Price's whereabouts. Schram who had been informed by Price that he was going to attend the NLRB hearing, was well aware of Price's whereabouts. Schram knew that he had allowed Price to attend organizing meetings "on the clock," and that Price was at the NLRB hearing related to the petition for representation as a result of that organizing. In fact, according to Schram, Price noted in Respondent's logbook that he was at "court against Bannum." Teel then called Rich, and what can only be described as a rubber stamp, Rich approved the discharge of Price with no further information.

It is probative that Respondent did not call Compliance Manager Teel¹⁶ as a witness. Such failure should lead to an adverse inference that Teel would have testified adversely to Respondent if she had been called to testify. *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (Mar. 11, 2016), *Hialeah Hospital*, 343 NLRB 341, 393 fn. 20 (2004); *Gerig's Dump Trucking*, 320 NLRB 1017, 1024 (1996); *International Automated Machines*, 285 NLRB 1122, 123 (1987), enfd. 851 F.2d 720 (6th Cir. 1988).

The “**cat's paw**” rule provides that an employer cannot shield itself from liability for unlawful termination by using a purportedly independent person or committee as the decisionmaker where the decisionmaker merely serves as the conduit, vehicle, or rubber stamp by which another achieves his or her unlawful design. *Staub v. Proctor Hospital*, 562 U.S. 411(2011); *Bozzutos, Inc.*, 365 NLRB No. 146 (2017); *JM2*, 363 NLRB No. 149 (2016)

An inference of animus and discriminatory motive may be derived from examining all the circumstances of a case, including suspicious timing, a false justification given for a discipline, and the failure to adequately investigate alleged misconduct. *Integrated Electrical Services*, supra at 1199; *Washington Nursing Home*, 321 NLRB 366, 375 (1996).

Viewing the totality of the circumstance, it is evident that Price’s discharge was pretextual. The investigation was a sham, as neither Price nor Schram were interviewed. Key evidence such as Price’s discipline file and attendance records were ignored.

¹⁶ Although Respondent initially sought a postponement citing Teel’s conflicting work assignments, this conflict should not have prevented Teel from testifying at some point during this three-and-a-half-day trial. Respondent had ample opportunity to prepare for Teel’s appearance given that this trial was scheduled four months in advance.

Respondent has a history of disciplining absences and failure to report to work with verbal or written warnings, and even repeated incidents often do not result in discharge. Further, the timing of the discharge with the NLRB hearing cannot be ignored. Price was, after all, a potential witness for Charging Party Local 406, in the “court case against Bannum.”

4. Price was also discharged because he attended an NLRB hearing in support of Charging Party Local 406 in violation of 8(a)(4) of the Act.

The purpose of Section 8(a)(4) is to ensure effective administration of the Act by providing immunity to individuals who initiate unfair labor practice charges or assist the Board in proceedings under the Act. *General Services*, 229 NLRB 940 (1977). The Supreme Court has determined that Section 8(a)(4) of the Act applies not only to the filing of charges and testifying at a formal hearing, but also includes giving affidavits during an investigation; appearing, but not testifying, at a Board hearing; and being subpoenaed. *NLRB v. Robert Scrivener d/b/a AA Electric Co.*, 405 U.S. 117 (1972). The Board uses a *Wright Line* analysis in 8(a) (4) cases. *Wright Line supra; Freightway Corp.*, 299 NLRB 531, fn.4 (1990).

The evidence is clear and undisputed. Both Teel and Price attended the NLRB hearing on September 27. On the same day, Teel called Schram and asked specifically about Price’s attendance at work. She did not ask about anyone else. Her question was derived from Price’s attendance at the NLRB hearing in support of Charging Party Local 406. She then called Rich with information that Price did not report to work. Teel informed Rich that Price attended the NLRB hearing. Rich made the decision to terminate Price based on Teel’s bias. His discharge was directly related to his attendance

at the NLRB hearing in support of Charging Party Local 406. Anything else is pretextual. *Avante at Boca Raton*, 332 NLRB 1648, 1651 (2001) (discharge for being outside the building pretextual where investigation focused on subpoenaed employee's attendance at Board hearing the day before).

E. Respondent Discharged its employee Charging Party Ernie Ahmad Because He Engaged in Protected Concerted and Union Activities and for allegedly violating unilaterally implemented policies

1. Respondent was aware of Charging Party Ahmad's Union activity

Shortly after Schram became the Director of Respondent, he questioned Ahmad about his other job and whether the employees there were represented by a union. Schram then asked Ahmad if he was involved in the union, and Ahmad responded that he was the President of the Local. Schram then asked him what he did as the President and Ahmad explained that he negotiated contracts, handled grievances, etc.

Once the Union organizing drive began at Respondent, Schram knew that Ahmad was involved. Charging Party Ahmad testified that in September, Ahmad met with Price and Turner after a staff meeting to discuss the organizing drive and meetings. Schram joined the conversation and said that it was okay for Turner and Price to attend those union meetings on the clock, but they could not have meetings at Respondent's facility.¹⁷

Nash testified that she received a voicemail message from Schram, two days before the NLRB election where Schram stated that he wanted to meet with her and other employees because he did not want them to vote for Charging Party Local 406. (Tr) He

¹⁷ Ahmad testified that he did not leave Respondent to attend the organizing meetings because he worked somewhere else during the day.

told her that he knows she has to deal with Ernie Ahmad and he did not want Ahmad to fill her with propaganda, so he wanted to help them as a boss.

Charging Party Ahmad testified about another conversation he had with Schram in his office in early November. They were alone and Schram said that if they formed a union, Respondent would shut down. (Tr 258-260)

2. Respondent changed Charging Party Ahmad's schedule

When Charging Party Ahmad was hired, he made it clear to the Acting Director that he worked first shift at a full-time job and thus would only be able to work part-time for Respondent on third shift. He obtained clearance to do so by submitting his schedule from Saginaw County Mental Health, and by providing contact information so that Respondent could verify his other employment. He remained with that schedule until after the NLRB election, when a new schedule was posted for December.

In April, shortly after Schram was hired as Director of Respondent's facility, Schram asked him if he had another job. Ahmad responded that he worked full-time at Saginaw County Mental Health.

Charging Party Ahmad testified that in November, shortly before the November 7, NLRB representation election, management posted a new staff schedule stating, "starting 12/3/2017 all CA's (Counselor Aides) will have at least 2 consecutive days off!" (Tr 270) Ahmad testified that beginning on December 3, 2017, his schedule was changed from third shift to second shift working from 4 p.m. to 12 a.m. on Thursday of that week. (Tr 271-272; GC 15) Ahmad testified that he spoke to Schram immediately after seeing the post about the change and noted that he had been moved from third shift to second shift.

(Tr 276-278) Ahmad asked Schram why his schedule had been changed and stated that he could not work second shift. He also pointed out that another employee Ramesse Amegah, who was scheduled for third shift could work second shift. Schram's response was to say, "oh well."

The evidence is clear that Schram changed Ahmad's schedule from third to second shift in retaliation for his support of Charging Party Local 406. *Willamette Indus., Inc.*, 341 NLRB 560, 562 (2004) (discharge of open union supporter for absences, numerous 8(a)(1) statements, and change in shift schedules) Up until the NLRB election, Respondent had an agreement to allow Ahmad to work third shift, then without any reason, and with an alternative in Ramesse Amegah, Schram changed the schedule to punish the one who was filling other employee's heads with union propaganda.

However, not only did Respondent change Ahmad's schedule to known unworkable alternative, it changed all of the counselor aide's schedules. Nash testified that she had a fixed schedule prior to the change. (Tr 72) Other employees had the same schedule, month after month. (G 2) Novak testified that neither she nor anyone else from the newly certified Charging Party Local 406 was notified about this change or provided with an opportunity to bargain. (Tr 37)

It is well established that an employer commits an unfair labor practice when it makes a unilateral change in a mandatory subject of bargaining such as wages, hours or benefits and fails to bargain with the bargaining representative. *NLRB v. Katz*, 369 U.S. 736, 743 (1962) As recently explained by the Board,

A unilateral change not only violates the plain requirement that the parties bargain over wages, hours and other terms and conditions, but also injures the

process of collective bargaining itself. (citation omitted) It is well settled that the real harm in an employer's unilateral implementation of terms and conditions of employment is to the Union's status as bargaining representative, in effect undermining the Union in the eyes of the employees. (citation omitted) This is so because unilateral action by an employer detracts from the legitimacy of the collective bargaining process by impairing the union's ability to function effectively, and by giving the impression to members that a union is powerless. (citations omitted)

Priority One Service, Inc., 331 NLRB 1527, 1527 (2000).

Here, the change in schedules was made after the November 7 election, and Schram admitted that he did not provide prior notice of the change and bargain about the change with anyone from the Union. (Tr 551)

3. Respondent changed its vacation request policy by requiring the use of a vacation request form.

Charging Party Ahmad testified that in October, he submitted a request for time off for November 11, 12 and 18. However, Schram told him that he was required to submit his request on a vacation request form. Ahmad had never heard of or used this form, so he asked Schram where he could find the form. Schram told him where to find it and Ahmad later submitted his request on that form.

Nash testified that while she had heard of a vacation request form, she never used one and merely informed Schram verbally or in writing that she wanted certain days off.

Respondent defends this change in policy by arguing that it has used the vacation request form in the past, so it was not a newly created form. However, a review of the vacation request forms in Respondent's records provided in response to a subpoena request shows that in 2017, other than Ahmad, only one employee, Diane Berg, ever submitted a vacation request form, and that was for a requested week off in April.

Schram admitted that if an employee wanted to take time off, they told him verbally or in

writing. (540-542) Schram then made a distinction between requesting days off and requesting vacation, and could not recall if Ahmad had submitted an earlier request for days off. (Tr 551) However, Ahmad credibly testified that Schram required him to submit his request for days off on a vacation request form. There was no reason for this requirement other than to harass Charging Party Ahmad.

4. Respondent denied Charging Party Ahmad vacation requests for November 12 and 18, and changed its sick leave policy to require notes from a doctor after the first day of absence because Ahmad engaged in Protected Concerted and Union Activities, and without bargaining with Charging Party Local 406

Charging Party Ahmad testified that he submitted a request for time off for November 11, 12 and 18 for personal reasons. Schram then required that the request be made on a special form. On November 3, Ahmad submitted two requests, one for November 11 and 12, and the second for November 18. On November 7, 2017, the date when Charging Party Local 406 won the representation election, Schram denied Ahmad's request for November 12 and 18. Schram stated that he would allow Ahmad to switch with another employee so that Ahmad could have off on November 11.

This denial for leave was unusual, as both Nash and Ahmad testified that it was unusual for a day off request to be denied. Schram testified that he would ask everyone if they were available to cover or frequently worked himself when coverage was not available. However, in this instance, Schram asked only two employees if they were available to switch. One switched for November 11, and the other was unable to switch. No other effort was made to allow Ahmad to take his requested days off.

Coincidentally, Schram threatened a week prior that he would have to be a boss and strictly enforce policies. He threatened that he would not be lenient anymore and they would no longer be a team.

Schram denied Ahmad's request because employees voted for Charging Party Local 406 and because Ahmad supported the Union. No other explanation for this sudden and complete turnaround in practice makes sense. *Willamette Indus., Inc., Supra.*

On November 11, Ahmad fell ill and called in sick for his November 12 midnight shift. Later, Schram called Ahmad and informed him that he was required to bring in a doctor's note before returning to work. On November 15, Ahmad brought in a doctor's note, which Schram refused to accept. He did initial the note indicating that he saw it. (G17)

When asked if it is normal procedure for an employee to be required to bring in a doctor's note after one day of absence, Mr. Rich incredibly answered yes. He vacillated somewhat when asked to clarify his answer, but remained firm that it is policy to require a doctor's note after one absence. (Tr 406-415) When asked if that policy is in the employee handbook. Rich responded that there was not a policy because hourly employees, such as Ahmad had no sick leave days given. Yet, he admitted that sick leave is taken by employees. (Tr 416)

Thus, requiring a doctor's note after one day of illness is a change in policy. Again, Novak testified that no one came to her or anyone else in Charging Party Local 406, seeking to change policies. This is a unilateral change.

As the Board has held, “An employer must at least inform the union of its proposed actions under circumstances which afford a reasonable opportunity for counter arguments or proposals.” *Intersystems Design and Technology Corp.*, 278 NLRB 759, 759 (1986) citing *Gulf States Mfg. V. NLRB*, 704 F.2d 1390, 1397 (5th Cir. 1983). Further, the Board has held that a change from lax enforcement of a policy to more stringent enforcement is a matter that must be bargained over. *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, slip op. at 8 (2018) (discriminatory intent found in unilateral change in enforcement of rules prohibiting employees from leaving their assigned warehouse during working time without permission from a supervisor) (citing *Vanguard Fire & Security Systems*, 345 NLRB 1016, 1017 (2005) (The Board has held that a change from lax enforcement of a policy to more stringent enforcement is a matter that must be bargained over) (citing *Hyatt Regency Memphis*, 296 NLRB 259, 263–264 (1989), *enfd. sub nom. in relevant part Hyatt Corp. v. NLRB*, 939 F.2d 361 (6th Cir. 1991)). *Neises Construction Corp.*, 365 NLRB No. 129, slip op. at 1, n. 5 and 2, n. 6 (2017) (discharges due to stricter enforcement of CDL and attendance policies). *Industria Lechera De Puerto Rico, Inc. (Indulac, Inc.)*, 344 NLRB 1075 (2005) (unilateral transfer of employee from second shift to first shift unlawful); *Flambeau Airmold Corporation*, 334 NLRB 165 (2001) (unilateral change to notice requirements for sick leave policy) (citing *Kendall College of Art & Design*, 288 NLRB 1205, 1213 (1988) (unilateral changes in “sick leave and sick leave reporting procedures” violate Section 8(a)(5) of the Act); *Flambeau Airmold Corporation*, 334 NLRB 165 (2001) (unilateral change to notice requirements for sick leave policy) (citing *Kendall College of*

Art & Design, 288 NLRB 1205, 1213 (1988) (unilateral changes in “sick leave and sick leave reporting procedures” violate Section 8(a)(5) of the Act)

5. **Respondent discharged Charging Party Ahmad in violation of 8(a)(1), (3) and (5) of the Act**

The record evidence shows that Charging Party Ahmad was engaged in protected concerted and union activity and that Schram was well aware of his activity. (Tr 126) The evidence also shows that Schram was initially favorable to the Union, but then became increasingly hostile to the possible election of Charging Party Local 406. As a result, Schram made unlawful statements to Ahmad and expressed hostility towards Ahmad in particular because Schram knew that he supported Charging Party Local 406. *Integrated Electrical Services Inc.*, 345 NLRB 1187, 1199 (2005); *Wal-Mart Stores*, 340 NLRB 220, 221 (2003).

According to Rich, he made the decision to discharge Charging Party Ahmad. (Tr 368) He testified that Ms. Teel and Vice President Sandy Allen relayed to him that Charging Party Ahmad had requested three days off, and was denied two of those days. He then called in sick for those two days. Based on that information, Rich stated that Charging Party Ahmad was terminated. (Tr 368) Rich did not speak to Charging Party Ahmad before making his decision. (Tr 405). Rich also did not speak to Schram before making the decision to terminate. (Tr 405) Similar to Price, he did not review Charging Party Ahmad’s discipline or attendance records. (Tr 405)

As stated above, Charging Party Ahmad was required to bring in a doctor’s note for his illness on November 12, which was a unilateral change in policy. Rich stated that he reviewed Ahmad’s doctor’s note, but stated that it was three or four days after he

called in sick. (Tr 406) Rich stated that Respondent's policy required Charging Party Ahmad to get a doctor's note immediately on the day he called in. (Tr 406-415) In actuality, there is no sick leave policy (Tr 416) and Charging Party Local 406 did not receive any notice from Respondent as to this subject matter nor did Respondent offer to engage in bargaining for a new policy.

Rich also discussed the wage determination document (R 12) that is published by the Department of Labor, and which applies to Respondent. He stated that it shows the required wages and benefits for the types of positions listed. (Tr 366-367) He then testified that Respondent was unable to give Ahmad more benefits than are listed on that form. However, Mr. Call, who was the contract oversight specialist at the BOP in 2017, stated that the wage determination document is the minimum level of wages and benefits that a contractor such as Respondent can pay its employees, not the required wage and benefits.

In essence, Charging Party Ahmad was discharged because he called in for two days when he was denied leave. As stated earlier, according to Respondent's records, many employees failed to show up for work. Maria Torres, Johnta Menge and Stacey Moore are but a few who received multiple warnings for failing to show up for a scheduled shift, leaving in the middle of a shift, repeated absences and tardies. Torres continued in employment for months after her first instance of no call-no show, as did Moore. Ahmad, on the other hand, had no record of prior disciplines or attendance issues. Respondent offered no explanation for this disparate treatment of its employees.

To summarize, Respondent changed Charging Party Ahmad's schedule so that he would not be able to work for Respondent, then Respondent required him to use a special form to submit his request for time off, then denied his request for time off, which was a change in practice. Then Respondent required Charging Party Ahmad to submit a doctor's note for one day of illness and then refused to accept the doctor's note when he attempted to submit it. Then it discharged him because he had a family emergency on a day when he had attempted to take leave. All of this occurred days after the election when Charging Party Local 406 was voted in as the exclusive representative of the employees. As stated earlier, an inference of animus and discriminatory motive may be derived from examining all the circumstances of a case, including suspicious timing, a false justification given for a discipline, and the failure to adequately investigate alleged misconduct. *Integrated Electrical Services*, supra at 1199; *Washington Nursing Home*, 321 NLRB 366, 375 (1996). All of these factors exist here with respect to the discharge of Charging Party Ahmad.

V. REPORTS OF BACKPAY

Counsel for the General Counsel respectfully requests that the final Board order in this matter specifically require Respondent to produce appropriate W-2 forms to the Regional Director. In *Tortillas Don Chavas*, 361 NLRB 101 (2014) the Board explained that allocating backpay to the appropriate earnings periods for Social Security Administration (SSA) purposes is consistent with the Board's make-whole remedial

power and established SSA allocation as a standard remedy.¹⁸ In *AdvoServ of New Jersey*, 363 NLRB No. 143 (2016), for the purposes of effective administration of the remedy the Board modified the remedy to require respondents to file reports allocating backpay (“reports”) with the Regional Director, rather than directly with the Social Security Administration (“SSA”). *Id.* at 1. The reports are transmitted to SSA annually in April/May. However, the Board also observed that SSA would not accept such reports prior to its receipt of the affected employees’ W-2 forms. *Id.*

The General Counsel herein requests that, in support of effective administration of the SSA-allocation remedy specified in *Tortillas Don Chavas*, that the Board order require Respondent to submit appropriate W-2 forms to the Regional Director, in addition to the SSA reports. This will allow the Region, in effectuating compliance, to compare the information on the W-2 forms and the SSA reports to ensure accuracy and consistency between the two. Experience has demonstrated that SSA will not credit earnings or otherwise process SSA reports Regional Directors forward before engaging in this process themselves, and problems associated with information inconsistent due to error or incorrect documentation has led to lower SSA benefits than those to which some discriminatees would be otherwise entitled. See General Counsel Memorandum 20-02 Requiring Respondent to produce the appropriate W-2 forms to the Regional Director will enable Regional personnel to ensure the reports are correct prior to submission to

¹⁸ The Board has observed followed this practice since the decision in *Latino Express*, 359 NLRB 518 (2012), a decision rendered at a time when the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm, as the Supreme Court held those appointments to be in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). Accordingly, the Board’s decision in *Tortillas Don Chavas* was to “continue” the remedy of requiring SSA reports, and for the reasons stated therein .

SSA, and thus avoid the problems and inconsistencies in those documents that may lead to difficulties with correct SSA allocation.

The Board ordinarily orders respondents to preserve and, where good cause is shown, provide information to the Regional Director, including payroll records, SSA payment records, timecards, and other personnel records necessary to analyze backpay due under the terms of its orders. See *Ferguson Electric Co.*, 335 NLRB 142 (2001). Ordering respondents to provide W-2 forms in cases involving backpay requires a minimal effort on their part, especially given that they are providing them to SSA already, yet doing so will significantly aid the Regions' administrative effectuation of the Board's remedy in the compliance stage.

In sum, ordering Respondent to provide the Regional Director with appropriate W-2 forms serves the goal of ensuring accuracy in the reports and allows Regional personnel to identify any inaccuracies or inconsistencies before problems arise in this connection at SSA.

VI. CONCLUSION

Based on the above and the record as a whole, Counsel for the General Counsel respectfully requests that the Administrative Law Judge find that Respondent violated Sections 8(a)(1), (3) (4) and (5) of the Act as alleged in the Consolidated Complaint and recommend the appropriate order to remedy the violations, as noted in the attached addendum.

Respectfully submitted this 13th day of May, 2020.

A handwritten signature in cursive script that reads "Donna Nixon".

Donna M. Nixon
Counsel for the General Counsel
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Region 7
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**ADDENDUM TO COUNSEL FOR THE GENERAL
COUNSEL'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

THE NATIONAL LABOR RELATIONS ACT, A 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 interfere with, restrain or coerce you in the exercise of the above rights.

WE WILL NOT, upon request, refuse to bargain in good faith with Local 406, International Brotherhood Of Teamsters (IBT)(Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit (Unit):

All full-time and regular part-time social service coordinators, case managers and counselor aides employed by us at our facility located at 2209 Norman Street, Saginaw, Michigan; but excluding all office clerical employees, managerial employees, administrative employees, guards and supervisors as defined in the Act.

WE WILL NOT unlawfully interrogate you about your or other employees' Union or protected concerted activities.

WE WILL NOT threaten to shut down operations and open a facility in a different geographical location because you choose to be represented by the Union.

WE WILL NOT tell you that it would be futile to select the Union as your representative because we will run operations as we see fit.

WE WILL NOT interfere in your above rights by telling you that you must tell us what is happening with the Union.

WE WILL NOT threaten you with closure of the facility, discipline, discharge, layoff, loss of benefits, and unspecified reprisals if you choose to be represented by or support the Union, or any other labor organization.

WE WILL NOT threaten that we will act like a boss and strictly enforce policies and/or rules if you select the Union as your bargaining representative.

WE WILL NOT interfere in your above rights by telling you that certain employees are opinionated and we do not want these employees to fill your head with propaganda about the Union.

WE WILL NOT provide employees with an unlawful benefit by paying them to attend Union organizing meetings during work times.

WE WILL NOT change your work schedules because of your sympathies, membership in, or support for the Union.

WE WILL NOT deny your vacation requests because of your sympathies, membership in, or support for the Union.

WE WILL NOT require you to submit a completed vacation request when requesting vacation days because of your membership in or support for the Union.

WE WILL NOT require you to submit a doctor's note for an absence because of your membership in or support for the Union.

WE WILL NOT discipline or terminate you because of your sympathies, membership in or support for the Union.

WE WILL NOT discipline or terminate you because you provide testimony or participate in any NLRB proceeding.

WE WILL NOT change policies and procedures related to schedules or sick leave without notifying the Union and bargaining in good faith.

WE WILL NOT in any like or related manner discriminate against employees in regard to hire or tenure, or any terms or conditions of employment to discourage membership in or activities on behalf of the Union or any labor organization.

WE WILL NOT in any like or related manner discriminate against employees for their participation in NLRB proceedings or for giving testimony under the Act.

WE WILL NOT in any like or related manner refuse to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

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

WE WILL schedule Charging Party Ernie Ahmad in the manner which we scheduled him prior to changing his schedule in around November 2017.

WE WILL, upon request, rescind the policy requiring you to submit a doctor's note for an absence.

WE WILL pay Charging Party Ernie Ahmad for the wages and other benefits he lost because we changed his work schedule in around November 2017.

WE WILL offer employee Gregory Price and Ernie Ahmad immediate and full reinstatement to their former positions, or if those jobs no longer exist, to substantially equivalent jobs without prejudice to their seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay Gregory Price and Ernie Ahmad for the wages and other benefits they lost and expenses incurred along with interest in accordance with Board policy because we discharged them.

WE WILL compensate Gregory Price and Ernie Ahmad for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL remove from our files and records all references to the discharge of Gregory Price and Ernie Ahmad and **WE WILL** notify them individually in writing that this has been done and that the discharge will not be used against them in any way.

WE WILL, upon request, bargain collectively and in good faith with the Union as the exclusive collective-bargain representative of our Unit employees.

Bannum Place of Saginaw, LLC

(Employer)

Dated: _____

By: _____
(Representative) (Title)