

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 87
(METRO SERVICES GROUP)**

and

Case 20-CB-206863

ALEJANDRO VARELA, AN INDIVIDUAL

Min-Kuk Song, Esq.,
for the General Counsel.
Jane Brunner and Emilyrose N. Johns (Siegel, Yee, Brunner & Mehta),
for the Respondent.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, ADMINISTRATIVE LAW JUDGE. This case was tried in San Francisco, California, on September 16 and 17, 2019. The complaint, based on timely filed charge by Alejandro Varela (Charging Party or Varela), alleges that Service Employees International Union, Local 87 (Union or Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended (the Act)¹ on June 27, 2017,² when the Union instructed the Charging Party to stay at home and not return to his employment until his June 27 workload issue was resolved with the Charging Party's employer Metro Services Group (Metro or Employer).³

The Respondent denies these allegations and argues that it quickly resolved the Charging Party's June 27 workload issue on June 27 and did not willfully misinform or act unreasonably toward the Charging Party in violation of the Act as to be irrational, arbitrary, discriminatory, deficient, or in bad faith.

¹ 29 U.S.C. §§ 151–169.

² All dates are in 2017 unless otherwise specified.

³ The complaint was amended at hearing to expand the scope of this alleged instruction to the Charging Party from one Union front desk business agent to also include the Union's vice-president and a second business agent. In addition, the General Counsel admits that this case only involves Varela's initial charge concerning whether the Union properly processed Varela's June 27 workload issue and this case is not challenging the Union's processing of Varela's July 20 grievance related to Employer's July 7 termination of Varela's employment. Tr. 21–22.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent on November 5, 2019, I make the following

FINDINGS OF FACT

I. JURISDICTION

The parties stipulate, and I find, that the Employer is a California corporation that provides maintenance and janitorial services to property owners and property managers in San Francisco, California, and that during the years ending on December 31, 2017, and 2018, the Employer derived gross revenues in excess of \$50,000 for all goods, materials, and services sold by Employer directly to persons located outside the State of California, and that at all material times, the Employer has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. (GC Exh. 1(d); GC Exh. 1(f); and GC Exh. 10 at 2, 4–21.)⁴ The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act and that Union Vice-President Ahmed Abozayd (Abozayd), Union Business Agent Abdo Hadwan (Hadwan), and front desk receptionist and Business Agent Sergio Estrella (Estrella) are agents of the Respondent within the meaning of Section 2(13) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

This case turns on the disputed testimony by various witnesses about events taking place primarily from June 26, 2017, through August 2017 that resulted in the Charging Party Varela’s decision to stop working at workstation #10 as a janitor at a building located at 100 Montgomery Street, San Francisco, California, after June 26, 2017.

A. General Background

Varela joined as a member of the Union in 1974 and started working for Metro⁵ in 2009 and he worked for many years as a custodian/janitor at different office buildings in downtown San Francisco until June 26. (Tr. 24–25; GC Exhs. 3 and 4.) His primary language is Spanish and occasionally needs an interpreter, but he speaks and understands some English and there have

⁴ Abbreviations are used in this decision are as follows: “Tr.” for the transcript; “GC Exh.” for the General Counsel’s Exhibit; “GC Br.” for the General Counsel’s brief; “R. Exh.” for the Respondent’s exhibit; and “R. Br.” for the Respondent’s brief. The transcript in this case is generally accurate, but I correct the transcript (Tr.) as follows: Tr. 38; l. 22: “fourth” should be “sixth”; Tr. 38, l. 23: “seventh” should be “seventeenth”; Tr. 57, l. 20: “officers” should be “offices”; Tr. 80, l. 13: “7th” should be “6th”; Tr. 237, l. 12: “... or his work was from seven-and-a-half to four hours” should be “... or his work was cut from seven-and-a-half to four hours”; Tr. 249, l. 4: “... why he’s been working” should be “... why he’s not been working”; Tr. 249, l. 7: “... the workload issue would be mentioned” should be “... the workload issue would not be mentioned”; Tr. 252, l. 25: “June” should be “July”; and Tr. 256, l. 17: “dispatch him from Metro to Able.” should be “dispatch him from Metro.” Although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

⁵ Metro is a company that supplies janitor or custodian services to various buildings in San Francisco and elsewhere and uses union members to perform this custodial work at the various buildings.

been times when Varela would speak to Hadwan without an interpreter. (Tr. 24, 268–269.)
Hadwan has known Varela since 2015. (Tr. 229.)

On March 3, after previously arguing with a coworker, Varela was transferred away from
5 the location of the argument at another Metro-serviced building at 870 Market Street where
Varela had worked since 2009, to a building located at 100 Montgomery Street, also in San
Francisco.⁶ (Tr. 26, 90, 256; GC Exh. 16.) Varela’s new shift involved cleaning offices and
restrooms on the 1st floor lobby gym, the 6th floor, and the 17th floor at workstation #10 and
10 began each night from 5 p.m. to 1 a.m. (Tr. 222; GC Exh. 16.)

B. Workstation #10 Before Varela and During Varela’s Tenure

On March 3, fellow union member and 100 Montgomery Building Foreman Jose Calero⁷
15 (Foreman Calero) walked Varela through his duties at workstation #10. (Tr. 162–163, 220, 256.)
From the March 3 start of Varela’s new work assignment through his last day on June 26,
Varela’s work station #10 duties were unchanged and explicitly included Varela being
responsible for cleaning the building’s 1st floor lobby gym with restrooms and shower, and the
offices and restrooms on floors 6 and 17 at the 100 Montgomery Street Building, whether fully
20 occupied or vacant⁸—these being the exact same workstation #10 duties as the prior custodian
who had recently retired according to Metro Director of Operations Larios and Metro Foreman
Calero.⁹ (Tr. 26, 220–221, 225.)

When Varela started work at workstation #10, there were at least two unoccupied offices
25 on the 6th and 17th floors. (Tr. 26.) Varela did not mention to Foreman Calero any concerns he
had about workstation #10 duties when Varela first took over the workstation. (Tr. 221.)

When Varela started at workstation #10, Foreman Calero told him that there was an
empty office on the 17th floor which Varela was required to clean as part of the regular
workstation #10 work duties even if it became occupied in the future. (Tr. 225.) Varela
30 responded saying to Foreman Calero: “Ok, that’s fine.” Id.

⁶ There was no evidence presented showing that Varela was placed on probation or supervised for his behavior by Metro once he was transferred to the 100 Montgomery Building as a result of his argument with a coworker.

⁷ Foreman Calero was a third-party witness at the time of hearing as he previously worked for Metro for 10 years before leaving Metro and starting work with the City and County of San Francisco as a janitor in October 2018. Tr. 218.

⁸ Varela alleges that he was given the 1st floor lobby gym to clean because there were two empty offices on floors 6 and 17 during his almost 4-month tenure at workstation #10. Tr. 26. Varela further alleges that Foreman Calero told him that if the 2 empty office became occupied, he would no longer be required to clean the 1st floor gym. Tr. 26–28. As discussed later in this decision, I reject Varela’s description of his alleged changing work duties at workstation #10 and find that they never changed from those of Varela’s predecessor and that these work duties have continually included the 1st floor lobby gym with restrooms and shower, the 6th floor and restrooms, and the 17th floor and restrooms, whether occupied or not. See Tr. 171–172, 245; GC Exh. 9.

⁹ Metro Director Larios had been director of operations with Metro for 18 years at the time of hearing. Tr. 166. Before then, Larios had worked as a senior project manager for a competitor to Metro for 18 years. Id. Director Larios also has known the Charging Party Varela for 10 years prior to the hearing when Varela worked at the 870 Market Street Building. Tr. 167.

In fact, in April, Foreman Calero instructed Varela to continue cleaning a previously vacant 6th Floor office and Varela cleaned it without objection. (Tr. 27.)

5 Foreman Calero strongly denied that he ever told Varela that Varela could stop cleaning the 1st floor lobby gym once the offices on the 6th floor and 17th floor were fully occupied as Foreman Calero was not authorized to take work away from Varela's workstation #10. (Tr. 222.)

C. Varela's June 26 Outburst with Foreman Calero.

10 On June 26, 2017, at the start of their shifts at 5 p.m., Foreman Calero informed Varela that a new tenant had just moved into space on the 6th floor of the building and reminded Varela that being assigned workstation #10, Varela was responsible for cleaning the first floor lobby gym and floors 6 and 17 whether or not they were fully occupied by tenants. (Tr. 26, 171–172, 176–177, 220–223; GC Exh. 9.)

15 In response, Varela started yelling using broad profanities with Foreman Calero and became upset about Varela's workload at workstation #10 and having to clean the 1st floor gym and floors 6 and 17 at the 100 Montgomery Street Building. (Tr. 183, 223; GC Exh. 13 at 1.) Varela told Foreman Calero that he was going to go to the Union and complain about what
20 Varela perceived to be his newly increased workload. Varela understood that if tenants moved into the empty offices on the 6th and 17th floors at the 100 Montgomery Building, he would no longer be responsible for cleaning the 1st floor lobby gym. (Tr. 26–28, 87, 90; GC Exh. 3.)

25 In response, Foreman Calero acknowledged to Varela that he could go to the Union and complain as Foreman Calero opined that he was also a union member at that time who understood the rights of union members to complain about workloads and other terms and conditions of employment. (Tr. 224, 279.) In addition, when Varela started refusing to do the work at his workstation #10 on June 26 and told Foreman Calero that Varela was going to go to the Union, Foreman Calero specifically responded:

30 It's fine. I'm a Union member. You have that right. It's not a problem. You can go talk to them [the Union].
(Tr. 28, 183.)

35 Foreman Calero reported this incident to Metro Director Larios describing it as Varela "got out of control" on June 26 when they were discussing Varela's workstation #10 duties and that Varela got very upset at Calero and Varela started yelling at Foreman Calero. (Tr. 183, 223; GC Exh. 13 at 1.)

40 After having this discussion with Foreman Calero at the beginning of his shift on June 26, Varela decided he would not work his shift later on June 26 and he, instead, returned home. (Tr. 224.) Varela did not indicate that he was sick or otherwise incapable of working on June 26 other than being upset. Consequently, Foreman Calero cleaned workstation #10 on June 26 in place of Varela. Id.

45

At no time on June 26, did Foreman Calero discuss, instruct, or offer to Varela as an option, that Varela stay home and not return to work at his workstation #10 at the 100 Montgomery Street Building while Varela worked out his workload issue. (Tr. 223–224.)

5 In fact, Varela had knowledge that the regular custom and practice for all union members who file grievances involving their workload conditions is that they are instructed by the union to return to work. (Tr. 66–67, 202–203, 224, 234–235, 258–259, 264–265 and 279.) Once again, if the union member files a grievance not challenging a suspension or termination of
10 employment, they are expected to continue working at their job uninterrupted while their grievance runs its course and gets worked out, settles, or is eventually arbitrated or litigated. Id.

D. The June 27 Teleconference Between the Union, Varela, and Metro Regarding Varela's Grievance.

15 On June 27, Varela went to the Union headquarters' office and brought his workstation #10 workload issue to the Union's attention claiming his foreman was giving him more work (the June 27 workload issue). (Tr. 30; GC Exh. 3 at 2.) Specifically, the June 27 workload issue provides:

20 To whom it may concern, when I [Varela] arrived, the Foreman Jose Calero from 100 Montgomery [St. Building] explained my station to me, that I had to do the 17th Floor and the 6th Floor, an empty office on the 17th Floor and another empty one on the 6th. So, I [Varela] was going to do [clean] the gym instead of empty
25 offices... told that if the offices on the 6th and 17th Floors were filled, I [Varela] wasn't going to have the gym anymore, and now it's not the case, he [Calero] didn't say anything about that, and he [Calero] wants me [Varela] to do all the work and I refused and he [Calero] told me to go to the Union.

(Tr. 238; GC Exh. 3 at 2.)

30 Also, on June 27, Varela met at the union office with the Union's vice-president, Abozayd,¹⁰ its Business Agent Hadwan,¹¹ and the Union's front desk receptionist and Business Agent Estrella¹² who received the June 27 workload issue from Varela, delivered it to Hadwan, and functioned primarily as an interpreter or translator for Varela during their June 27 meeting
35 discussing the June 27 workload issue with Metro. (Tr. 230, 276–288; GC Exh. 3.)

At the beginning of their meeting, Abozayd called Metro Director Larios and put the conversation on speakerphone in the presence of Varela, Abozayd, Hadwan, and Estrella. (Tr.

¹⁰ Abozayd began working with the Union in 1998 and has been its vice-president since 2002. Tr. 143–144.

¹¹ Hadwan began working with the Union in 2008 and became a business agent for SEIU Local 87 in 2009. Tr. 228–229.

¹² Estrella began working for the Union in 2015 and left in September 2017. Tr. 274. In June and July 2017, Estrella worked as the Union's front desk receptionist and answered and transferred telephone calls. Tr. 275. Estrella worked as an organizer, dispatcher, and finally as a business agent where he would sometimes resolve grievances for the Union while working the front desk. Id. At the time of hearing, Estrella was a third party witness who was employed as a manager/supervisor at IS, a company that also provides cleaning, security and catering services in San Francisco, with no business relationship to the Union or Metro. Tr. 274.

37–38, 160.) In this June 27 teleconference conversation, Abozayd asks Larios if he knows about workstation #10 at the 100 Montgomery Building which Abozayd points out to Larios that Varela’s workstation #10 covers the 6th Floor, the 17th Floor, and the 1st Floor lobby gymnasium. (Tr. 200–202; GC Exh. 4 at 2.) Abozayd asks Director Larios why Metro added the gym to Varela’s workstation #10. (Tr. 202, 232.)

Next, Abozayd mentioned Varela’s June 27 workload issue that alleged that he was working at workstation #10 at the 100 Montgomery Building that had added work duties that were too heavy for Varela since Varela took over the position. (Tr. 167, 171, 231, 277–278.) The group also asked Director Larios whether workstation #10 had changed since Varela took over.

Director Larios answered the group’s questions saying he thought that Varela’s workstation #10 had remained unchanged as the retired janitor who worked that same workstation before Varela took over also had full responsibility for cleaning floors 6 and 17 along with the gymnasium in the 1st floor lobby. (Tr. 171–172, 202, 231.) Moreover, Director Larios added that the Union group calling him were welcome to check with union member and Metro Foreman Calero to verify the unchanged duties of workstation #10 as Calero had been at the 100 Montgomery St. Building “forever” to confirm that the workload duties at workstation #10 remained unchanged as they have been for many years when it was transferred from the retired janitor to Varela. (Tr. 172.) Director Larios reiterated to the group that Foreman Calero can verify that there were no changes and that Metro was not adding more work for Varela on the 3 floors involved with workstation #10. Id.

Director Larios further confirmed that the various workstations at the 100 Montgomery St. Building have remained unchanged for years and years and normally they do not change at all. (Tr. 172, 231, 233.) Director Larios further opined that whenever there is some workload dispute involving a workstation, the Union usually goes to its member and points this out as the Union is very familiar that these unchanged workstations exist at Metro. Id.

Next, Abozayd asks Larios how Metro breaks out payment to the janitor working at workstation #10 and Larios responds saying Metro pays 6 hours (3 hours each) for floors 6 and 17, and 1.5 hours for cleaning the first floor lobby gym. (Tr. 38, 278; GC Exh. 4 at 2.)

Later in the teleconference, Director Larios responded to Abozayd’s question and Larios convincingly explained that he thought that Varela’s job duties at his workstation #10 had not increased or changed in any way from those of the retired employee who worked the same position before Varela took over in early March as the workstation #10 has always been responsible for cleaning the first floor gymnasium and all of the 6th and 17th floors at the 100 Montgomery Building. (Tr. 171–172, 231, 233; GC Exh. 9.) The conference call with Larios concluded with Larios saying he would also check with Foreman Calero about workstation #10 and let the Union know if what Larios had stated to be the unchanged work duties for workstation #10 had, in fact, changed from when Varela’s predecessor had workstation #10 at the 100 Montgomery Building. (Tr. 233, 278.)

Hadwan opined that Director Larios' response fully resolved Varela's June 27 workload issue unless Hadwan received something to the contrary after Larios consulted with Foreman Calero to change Larios' belief that workstation #10 remained unchanged from before Varela took over the position in March 2017 to the current date—the position was responsible for cleaning the full 17th floor with restrooms; the full 6th floor with restrooms; and the 1st floor lobby gym with restrooms and showers whether fully occupied or not over a 7.5 hour period.¹³ (Tr. 231, 233, 258–259, 264)

In addition, Estrella also recalled that during this teleconference soon thereafter at the June 27 meeting, both Abozayd and Hadwan directly “asked him [Varela] to go back to work” at his workstation #10 at the 100 Montgomery St. Building while Director Larios looked into Varela's complaint of an increased workload.¹⁴ (Tr. 269, 279.)

Hadwan confirms Estrella's recollection of what he heard and observed and adds that Hadwan, Abozayd, and Estrella simply told Varela to go back to work and “that's it” as Varela's June 27 workload issue was resolved given Director Larios' stated belief that nothing had changed or been added to Varela's workstation #10. (Tr. 234, 237, 269.)

Hadwan further explains that Varela came in on June 27 and filled out an intake form for his workload issue and the Union quickly solved Varela's workload issue when they discussed it with Metro Director Larios at the teleconference and he stated his belief that workstation #10 remained unchanged for many years from Varela's predecessor janitor to the present position held by Varela. (Tr. 237, 258–259.) Hadwan further explains that if there was some argument or disagreement with Metro on June 27 about Varela's workload issue, the Union would have

¹³ Hadwan and Abozayd further explain that a union member's workload complaint can be written up in an intake form and the Union will contact an employer quickly and the Union will inform the company what workload issue is being raised by a union member and the union member will go back to work while the company resolves the workload issue if the company, like Employer in this case, says it will resolve the workload issue. Tr. 202–203, 234–235. Hadwan adds that in complicated cases, the Union will actually go to the building where the workload issue resides and walk the workstation to verify the workload. Tr. 234–235. Hadwan concludes saying that these complicated cases usually only arise when hours are being cut which is not the case here. *Id.* I reject Varela's contrary statements as being inconsistent and untrue when compared to the preponderance of evidence in the record including his unproven statements that he was told or misled by the Union to stay home or that he definitely informed Estrella that he would stay home after the June 27 teleconference with Metro. I also reject Varela's statement that the usual custom and practice for a union member who raises a workload question is for the member to stay home until the matter is fully resolved as this is contrary to the more reliable opinions and work experience voiced by Hadwan, Abozayd, and Estrella. Tr. 38–40, 62–63, 66–67, 202–203, 264–265, 269, 279–280, and 282.

¹⁴ As referenced above in fn. 12 above, third party witness and former union member Estrella recalled specifically that Varela told him that Foreman Calero told Varela to go to the Union with his workload complaint. Tr. 279. *Estrella also remembered that Varela also told him that Foreman Calero, rather than Estrella, Union vice-president Abozayd or Business Agent Hadwan, instructed Varela not to go back to work.* *Id.* To the contrary and without hesitation, third party witness Estrella confidently confirmed that Abozayd and Hadwan both asked Varela to “go back to work” at the end of the June 27 meeting. *Id.* Moreover, Foreman Calero also confidently testified without pause that he did not instruct Varela, nor was he authorized to instruct Varela, to stay at home and not return to work after June 26, 2017. Tr. 224. At hearing, Varela denied being told by Foreman Calero to stay at home. Tr. 74–75. As a result, I reject Varela's statements that he was instructed by anyone, including Foreman Calero, Abozayd, Hadwan, or Estrella, to stay home and not return to work after June 26, 2017, until his workload issue was resolved.

definitely filed a grievance the same as they would if Varela was suspended or terminated from employment at the building, or his workstation hours were cut from 7.5 to 4 hours.¹⁵ Id.

5 Abozayd specifically recalls that he told Varela to go to work and to do the best he can and if he cannot finish the job, Varela should inform Foreman Calero that he cannot finish the job due to the June 27 workload issue and if there is still a problem, Abozayd can meet with Varela on June 28 or after his next work day.¹⁶ (Tr. 202, 269.)

10 Estrella also recalled that Varela responded by muttering under his breath in Spanish on his way out of the Union office building that: “It’s not fair, it’s not fair. I shouldn’t go back to work.” (Tr. 279–280.) Estrella specifically recalled that after he heard these mutterings from Varela on June 27, he did not respond or have any more conversations with Varela about his workload issue or his subsequent grievance. (Tr. 282.)

15 Also on June 27, after the group meeting and while he was walking downstairs with Varela, Estrella believably denied that Varela told him that he was to wait for an answer from the Union about his June 27 workload issue concerning his alleged excess workload before returning to work. (Tr. 282.) Estrella specifically denies that Varela told him on June 27 that he was not going to go to work. Id. Instead, as stated above, Varela only muttered under his breath that it was unfair, and that Varela should not have to go back to work. (Tr. 279–280.)

25 I reject as unsupported by a preponderance of evidence Varela’s contradicting version of the facts from the June 27 conference call with Director Larios at Metro. Varela’s rejected version of facts includes that after the group teleconference call ended, either vice-president Abozayd or Business Agent Hadwan sent Varela home and told him “to wait for a phone call from the union once the issue at hand was resolved.” (Tr. 282; GC Exh. 4 at 2.) Even if Varela’s version of what occurred at the end of the teleconference call is true, this is not evidence that either Abozayd or Hadwan ever told Varela or reasonably led him to believe that he should stay home and not return to work after June 26. In addition, Varela’s October 31, affidavit does not say that anyone from the Union told Varela to stay home from work after June 26.¹⁷ (Tr. 95–96.)

¹⁵ Hadwan opined that Varela’s June 27 workload issue was not a grievance. Tr. 264.

¹⁶ Similarly, Hadwan opined that in his 10 years of experience as a business agent, most times a union member will come into the Union headquarters the very next day if the member’s workload problem is not resolved. Tr. 236. Here, Varela did not come into the Union office to meet Abozayd or Hadwan until July 20 after he was terminated by Metro for not calling or showing up to work. Tr. 161, 240, and 282.

¹⁷ Based upon the entire record and my observations of the witnesses, I simply cannot find that Charging Party Varela was a credible witness overall. The evidence establishes that Varela left out of his October 2017 affidavit any reference to his allegation that Abozayd and/or Hadwan told him to stay home from work until his June 27 workload issue was worked out. (Tr. 95–96.) In addition, as stated below in Sec. F. of this decision, I further find that Varela was not telling the truth when he said that he did not know that he had been terminated by Metro until late July or early August after he returned from his Mexico vacation and Metro resent the July 7 termination letter and the reissued final paycheck. The address where Metro sent the July 7 termination letter and final paycheck was accurate and there was no evidence put forth proving that Varela had any problems receiving mail at his home. In addition, Hadwan and Employer Director Larios were more believable when they recalled that Varela was aware that he had been terminated when Hadwan met with Varela and his daughter on July 20 and Director Larios also opined that Varela received the July 7 termination letter by July 17 as it was mailed to his regular mailing address. Tr. 175, 181, 245–248, 262.

In response, Varela admits that he did not tell Abozayd or Hadwan that he was not going to go to work on June 27. (Tr. 40.) Varela alleges that, instead, he told Estrella, outside the presence of Abozayd and Hadwan, that he was not going to go work on June 27. Id. Once again, I reject Varela's statement that he specifically told Estrella that he was not going to go to work until he had an answer about his workload issue from the Union as this fully contradicts the consistent recollection of Abozayd, Hadwan and Estrella that Varela was specifically instructed to go back to work at his workstation #10 on June 27 and that Varela only whispered to himself that he should not be required to return to work before he heard more from Metro or the Union. (Tr. 202, 234, 238, and 279–280.) As stated above, staying at home after being instructed to return to work while a workload issue was resolved is also contrary to the Union's normal custom and practice known to Varela.

E. Varela's Continued Absences from Metro Workstation #10 from June 27 through July 7.

On June 28, Director Larios sends an email to Business Agent Hadwan and copies Union Vice-President Abozayd which confirmed what he told the group the day before on June 27 that Varela's workstation #10 remained unchanged from Varela's predecessor to Varela taking over in March to June 28. (Tr. 176–177, 245; GC Exh. 9.) Specifically, the email provides:

This is to confirm that the job station of Alejandro Varela is 7.5 hours and includes the following floors/areas:

Full 17th floor with restrooms
 Full 6th floor with restrooms
 1st floor fitness center with restrooms/showers.

Note: Suite 1700 became vacant and we did not cut time and when became occupied we did not add time.

Id.

Estrella recalled Varela calling in to the intake desk on a frequent basis even before he raised his June 27 workload issue as Varela would call the front desk and he liked to chat about general union matters usually for 5–10 minutes. (Tr. 291–297.) Estrella also recalled that on June 28, Varela once again called Estrella at the reception desk and asked broad questions about union picketing and other general union matters unrelated to his June 27 workload issue. (Tr. 281–283, 288.) In addition, after June 28, Estrella recalled that Varela called the Union's front intake reception desk quite a few times during the next week or two asking various questions that were never specific to his resolved June 27 workload issue. (Tr. 293.) Estrella also confidently recalled that Varela's calls into the Union were not about waiting for some answer or Metro's response to his June 27 workload issue, or Varela's not working at Metro. Id. Once again, on average, Varela's calls into the Union's front desk would last 5–10 minutes. Id.

Estrella appeared confident when he directly denied talking to Varela about his June 27 workload issue on or after June 28 and also denies that: (1) Varela called him asking for answers

to his June 27 workload issue; (2) Estrella spoke to Hadwan about the status of the June 27 workload issue; and/or (3) Varela called and told Estrella to let Hadwan know that Varela was not working and that it had been 3 days since Varela last worked. (Tr. 282–289.)¹⁸

5 Varela continued to miss work from June 26 through July 7, 2017, without informing the Union, calling into Metro, or showing up to work at his regular workstation #10 at the 100 Montgomery St. Building. (Tr. 174.)

10 Abozayd opined that the normal custom and practice of a union member is for them to continue to work when they have a workload issue (anything short of suspension or termination) and Varela never told Abozayd or Hadwan that he was not going to go back to work after the June 27 teleconference with Director Larios.¹⁹ (Tr. 202–203, 234–235.) Here, Abozayd and Hadwan specifically instructed Varela to return to work on June 27. Varela did mutter under his breath to Estrella that his workload was unfair and that he should not have to go back to work,
15 but Varela never told Estrella or anyone at the Union or Metro that he was not returning to work on or after June 27. (Tr. 279–280.) Estrella specifically recalled that after he heard these mutterings from Varela on June 27, he did not respond or have any more conversations with Varela about his workload issue or any other complaints. (Tr. 282.)

20 Varela first showed up at the 100 Montgomery St. Building on July 6 or 7, 2017, to collect his paycheck from Foreman Calero but neither Calero nor Varela discussed Varela’s June 27 workload issue or the circumstances behind Varela’s decision to stop working for 11 days on and after June 26 and not call Metro.²⁰ (Tr. 48, 174.)

25 Director Larios heard from Foreman Calero that Varela had picked up his paycheck on July 6 or 7 and in discussion with Metro’s HR manager Marv Florence (Manager Florence), they decided to terminate Varela’s employment. (Tr. 173–174, 176; GC Exh 7.) Because Varela was a no show since June 26 and did not call to Metro to explain his absences, Metro terminated Varela
30 11 days later on July 7, 2017, and mailed the termination letter and final paycheck to him at his usual house address in the net amount of \$1384.54 for Varela’s unused vacation pay. (Tr. 174; GC Exh. 7.)

¹⁸ I find former union member and third party witness Estrella very believable in this line of questioning as having left the Union 2 years earlier, he was no longer professionally aligned with either union members or union management at the time of hearing. Moreover, Estrella convincingly stated that when union members like Varela called in with any complaints, his usual custom and practice in his former position at the union reception intake desk, was to routinely transfer calls, grievances, or documents, to Business Agent Hadwan and not get personally involved with a complaint or act as a go-between. Tr. 284, 287–289. Here, Estrella was not asked by Varela, nor did Estrella transfer to or talk to Hadwan, about Varela’s resolved June 27 workload issue. Tr. 282-289.

¹⁹ Hadwan also opined that Director Larios’ teleconference response resolved Varela’s June 27 workload issue as his workstation #10 work duties were Varela’s main concern and Varela was not being transferred or suspended or asked to go home or otherwise which would be a completely different situation. Tr. 234.

²⁰ Director Larios identified when Metro pays its employees each month and I find Director Larios’ explanation of the July 6 or July 7 pay date more believable than Varela stating that he went to pick up his paycheck on July 10. In addition, Director Larios heard from Foreman Calero that Varela had picked up his paycheck on July 6 or 7 and this was considered by Director Larios and Manager Florence when they decided to terminate Varela who did not mention his workload issue to Foreman Calero or his decision to stop working at Metro when he retrieved his paycheck. Tr. 173–174, 176, 184–185; GC Exh 7.

Director Larios opined that Metro trains all of its employees about the protocol and he thought Varela should know the protocol for what to do when you are off of work and Director Larios knew Varela worked for at least 12 years at Metro: (Tr. 184.)

5 [E]verybody knows that they need to call the day that they go out and the day that
they come back, and that's the protocol for the standard practice. They need to
call before 2 p.m. If they're missing from work today, they need to call before 2
p.m. at the current time and say I'm going to be out. My name is Alejandro
10 [Varela], for example. I work at 870 Market. I'm out sick today... or I'm on
vacation, or starting my vacation. That's the standard protocol.

Id.

15 Director Larios further opined that he believed that Varela has complied with this
standard protocol many times in the past over the years when he was going to be out of work and
in this case, Varela no-called and no-showed and Metro terminated Varela on July 7 for this. (Tr.
184, 211.) (See also GC Exh. 8 at 19–20 for the Leave of Absence policy in the controlling CBA
between Respondent and Metro.)

20 Director Larios further explained that Metro waited at first when Varela did not call after
June 26 and then Director Larios and Manager Florence met to discuss and decide to terminate
Varela when they had heard that Varela continued to miss work without calling and being a no-
show yet he showed up at the 100 Montgomery St. Building on July 6 or 7 to pick up his
25 paycheck from Foreman Calero. (Tr. 184–185.)

Consequently, Director Larios and Manager Florence did not terminate Varela for being a
no-call/no-show from June 26 to June 28. (Tr. 188–189.) Instead, the decision by Metro to
terminate Varela was based on Varela's decision to stop working and missing almost 2 weeks of
work and Varela not calling and not showing up for work. Id.

30

***F. After Metro's July 7 Termination of Varela, His July 20 Grievance Became the
Primary Focus of Varela, the Union and Metro.***

35 Before July 20, 3017, none of the union officials had any knowledge that Varela
continued to miss work at Metro workstation #10 after June 26 and after the group met on June
27 to resolve Varela's June 27 workload issue at workstation #10 at the 100 Montgomery Street
Building.²¹ (Tr. 161, 262–263, 282–289.) Moreover, Hadwan reports that Varela never called
him after June 27 about his June 27 workload issue. (Tr. 236–237, 262–263.) In addition,
40 Hadwan recalled that he did not hear from Varela's daughter until after Varela had been
terminated by Metro and the Union had filed the July 20 grievance for Varela. (Tr. 240.)

²¹ As a result, I reject Varela's statement that he went to the Union office on July 5, 13, or 14 and spoke to Estrella, Hadwan, and Abozayd about the status of his June 27 workload issue as it is unsupported by a preponderance of evidence. Tr. 50. Moreover, by July 7, Varela's workload issue had evolved to become Metro's termination of Varela for being a no-show/no-call rather than Varela's June 27 workload issue. As stated above in footnote 3, the Union's processing of Varela's July 20 grievance is not being challenged here. Tr. 21–22.

On July 20, Varela filed a grievance with the Union regarding his termination of employment by Metro which contains a 2-page typewritten letter dated July 17, 2017, that Varela's daughter Jacqueline prepared on his behalf to form Varela's termination grievance (the July 20 grievance). (Tr. 280; GC Exh. 4.) The July 20 grievance contains a summary of events as
 5 Varela alleges from June 26 and June 27 and ends with his complaint that he has been "without work for 18 days" and claims that Varela "has called the union on several occasions in those 18 days and was told that the issue was not solved yet" . . . and that Varela "even went into the union office to check on the status of my [his] workstation [#10] and was told that the issue was that I [Varela] never reported to my [his] company [Metro]." Id. The letter goes on with Varela
 10 maintaining that he "was not supposed to report to the company [his workstation #10 at the Metro 100 Montgomery Street Building] because the union was going to resolve the [workload] issue with the workstation." Id.

I reject Varela's version of alleged facts for events from June 27 through July 17 as
 15 unsupported by the preponderance of evidence and I find that both Union officials Abozayd and Hadwan directly instructed Varela to go back to work at his workstation #10 at the 100 Montgomery St. Building after their June 27 teleconference call while Director Larios resolved Varela's complaint of an increased workload to determine if Director Larios' recollection of the work duties tied to workstation #10 was confirmed by Larios consulting Foreman Calero and
 20 determining once again that workstation #10 at the 100 Montgomery St. Building had not changed for Varela from the workstation of his predecessor. (Tr. 176–177, 279; GC Exh. 9.)

Varela's July 20 grievance contains the July 17 letter that was drafted by his daughter Jacqueline who accompanied him to the Union office to meet with Hadwan to assist him in the
 25 grievance. (Tr. 113–118, 243, 247–248; GC Exh. 4.) The July 20 grievance states that Varela had gone to the Union about missing work for 18 days and he was seeking a paycheck for his missed work and also provides that Varela had been told that a new work issue involved Varela missing work at Metro workstation #10 since June 26.²² (Tr. 243, 247–248; GC Exh. 4 at 3.)

Estrella further opined that by July 20, his only role with respect to Varela's union
 30 grievances was to act as his translator and that Business Agent Hadwan was responsible for resolving Varela's July 20 grievance. (Tr. 280, 282–289.) After the June 27 office meeting which the Union believed fully resolved Varela's workload issue, Abozayd also delegated to Hadwan the handling of Varela's July 20 grievance and did not speak with Varela or his daughter about it.
 35 (Tr. 161.)

On July 20, at 11:17 a.m. Business Agent Hadwan tries to correct the miscommunication between Varela and Metro that results in the July 20 grievance and sends an email to Director Larios saying that: ". . . Mr. Varela never quit. He was just confused since his foreman told him

²² I further find that Varela's statement that he did not receive Metro's July 7 termination letter and final paycheck at his home until August 2017 is not true. Hadwan forcefully stated that Varela brought the July 7 termination letter to him when Varela came in to file the July 20 grievance and Director Larios also opined that Varela received the July 7 termination letter by July 17 as it was mailed to his regular mailing address. Tr. 175, 181, 245–248, 262. As a result, I find that Varela and his daughter received the July 7 termination letter and paycheck before July 17 which caused them to write the July 17 letter leading to the July 20 grievance which now seeks a new paycheck from Metro for the entire period that Varela decided to miss work through the July 20 grievance.

to go back to the Union, and he's willing to go back to his station. Please confirm." (Tr. 18--182; GC Exh. 13 at 2.)

5 On July 20, at 11:24 a.m. Business Agent Hadwan sends another email to Director Larios with Varela's July 20 grievance and written statement of events and Hadwan tells Director Larios, trying to assist Varela to get his former job at Metro back, that Varela apparently
10 misunderstood what was going on at the June 27 meeting and conference call and the Union suggests that Metro do a two way transfer between Varela and another janitor with a grievance who also worked at a Metro building, Mr. Arturo Aviles, and that they close both (Varela and Aviles) grievance cases. (Tr. 178; GC Exh. 11.)

15 Director Larios opines that as of July 20, his decision to terminate Varela was final since he and Manager Florence had already discussed terminating Varela and had sent him the July 7 termination letter which communicated to Varela that he was terminated by Metro as a no-show/no-call, and Director Larios spoke to Foreman Calero about Calero's encounter with Varela on June 26 and Foreman Calero recalled to say to Director Larios that Varela "got out of control, very upset at him [Foreman Calero] and yelled at him." (Tr. 182-183, 251; GC Exh. 13 at 1.)

20 Estrella opined that Varela "disappeared" for a little bit after he filed his July 20 grievance. (Tr. 281-282.)

25 On July 24, Hadwan writes again to Director Larios saying that he was confirming that Arturo Aviles will stay at 100 Montgomery St. Building at workstation #10 until the Union settles Varela's July 20 grievance. (Tr. 178, 249; GC Exh. 11.)

30 Later on July 24, Director Larios responds to Hadwan's July 20 email and writes that Director Larios is confirming that "Arturo [Aviles] will be cleaning Alejandro Varela job station [#10] starting today. Note: Arturo was cleaning Jorge Franco's job station because he was on vacations. [sic.] Jorge came back to work today." (Tr. 178; GC Exh. 11.) Director Larios opined that Arturo Aviles was taking over Varela's workstation #10 because Varela was terminated as a no show/no call and Arturo Aviles was replacing Varela. (Tr. 178, 180, 250.)

35 On July 25, Hadwan calls Varela's daughter Jacqueline to report that he had gotten busy and that he was waiting for Metro's response to Hadwan's proposal to get Varela back to work. (Tr. 120-121, 241, 243.)

40 On July 26, Hadwan sends Director Larios a letter informing Metro that the Union has filed a grievance against Metro on behalf of union member Varela alleging that Varela was told by his foreman to go back to the Union, and now Metro refused to let Varela go back to work at workstation #10 at the 100 Montgomery St. Building. (Tr. 180, 252-254; GC Exh. 14.) Hadwan opines that as a business agent, he is fighting for Varela trying to get him his former job back. (Tr. 252.) The grievance demands that Varela must go back to his site immediately and that Metro pays for all days lost. Id.
45

Also on July 26, Director Larios responds to Hadwan saying:

Alejandro [Varela] was off from work several weeks and Metro was not notified from the Union or Alejandro [Varela] that he will be off from work. Alejandro [Varela] knows very well the communication protocols that he needs to follow when he is off from work. For no[t] [sic.] calling or showing up to work for several weeks, Metro considered this a voluntary quit. (GC. Exh. 13 at 1.)

On July 27, Metro resends Varela’s final paycheck for unpaid vacation to him as Varela went to the Union and claimed he did not receive Metro’s July 7 termination letter, or the final paycheck and the Union approached Director Larios soon thereafter. (Tr. 175, 181; GC Exh. 7.) Director Larios responds saying to the Union and Varela that “we [Metro] terminated you [Varela]. We mailed you [the July 7 termination letter and unpaid vacation check].” Id. Varela responds saying: “No, I didn’t receive them [the July 7 letter and check]” and Director Larios responds: “And then we resent it.” Id.

Finally, Director Larios tells the Union and Varela that the check cleared the bank having been cashed by Varela as Metro verified this with its bank. (Tr. 175, 181; GC Exh. 7.) By that time, Varela had filed his July 20 grievance and Director Larios opines that Varela must have received the July 7 termination letter from Metro that Varela claimed he did not receive though Varela filed his July 20 grievance based on Varela not reporting to work for 18 days. (Tr. 175, 181, 245–248, 262; GC Exh. 4.)

During the first 2 weeks of August 2017, Varela traveled to Mexico on vacation. (Tr. 85.)

On September 22, Varela filed his charge in this case alleging that the Union refused to process Varela’s June 27 grievance regarding work assignments for arbitrary or discriminatory reasons or in bad faith. (GC Exh. 1(a).)

At hearing, the witnesses testified about events that had occurred more than 2 years beforehand. As a result, I find it reasonable to expect that some recollections of facts have diminished by the time of the hearing. Despite this, however, after clearly observing the testimony of former union member and Metro Foreman Calero, Employer Director Larios, and former union employee Estrella were consistent with documentary evidence and testimony from union representatives Abozayd and Hadwan particularly with respect to the specific events on June 27 and Varela’s unexplained absence from his workstation #10 from June 27 through his termination on July 7. No credible evidence was presented that any union official or business agent or Metro official, director, manager, supervisor, or foreman ever instructed, or offered to Varela as an option, that Varela stay home and not return to his workstation #10 at the 100 Montgomery Street Building while Varela’s June 27 workload issue was pending.²³ The decision

²³ I further find that Foreman Calero’s testimony that he did not instruct Varela to stay home from work in connection with his June 27 workload issue is more believable than Varela’s contrary testimony which I rejected above as untrue as Foreman Calero did not hesitate when presenting his testimony, he acted confidently when answering at hearing, and Calero was convincing when he explained that he was not authorized to issue Varela such

to not call Metro and not show up to work on and after June 26, 2017, by Varela was his own decision and contrary to what Varela knew or should have known was the Union's regular custom and practice of *returning to work* after being instructed by the Union to return to work while his June 27 workload issue was pending unless the grievance involves a suspension or termination. (Tr. 66–67, 184, 202–203, 234–235, 264–265.) Not returning to work was also
 5 contrary to Metro's communication protocol that Varela knew or should have known as discussed by Director Larios who opined that Metro trains all of its employees about the protocol and he thought Varela should know the protocol for what to do when you stay home from work and Director Larios knew Varela easily worked for 12 years at Metro. (Tr. 184, 211.) (See also
 10 GC Exh. 8 at 19–20 for the Leave of Absence policy in the controlling CBA between Respondent and Metro.)

LEGAL ANALYSIS

15 I. *The Union did not breach its duty of fair representation because it fully resolved Varela's June 27 workload issue on June 27 and Varela's June 27 workstation #10 workload had not changed, and the Union told Varela to go back to work, and never told him to stay home.*

20 The General Counsel alleges that the Union violated Section 8(b)(1)(A) of the Act during a span of several weeks by way of its agents, Abozayd, Hadwan, and/or Estrella, in connection with its representative status and has failed to represent the Charging Party Varela for reasons that are unfair, arbitrary, invidious, or in bad faith, and has breached the fiduciary duty it owed to
 25 the Charging Party by failing to process and resolve Varela's June 27 workload issue or by misinforming and keeping Varela uninformed that the Employer had responded to Varela's June 27 workload issue.²⁴ (Tr. 22; GC Exhs. 1(a); 1(d); 1(k); and 1(l).)

30 The Respondent denies these allegations and avers that Varela's June 27 workload issue was fully processed and quickly resolved as Varela's workstation #10 had not changed as communicated to Varela and determined as part of the June 27 teleconference conversation with Employer's Director Larios and that the Union's conduct in June and July toward Varela does not constitute a violation of Section 8(b)(1)(A) because Varela alone decided to ignore the Union's order to return to work after the June 27 meeting and the Union was unaware that Varela
 35 was not working before Employer Metro terminated Varela on July 7 for being a no-call/no-show employee.

an instruction to stay home while the June 27 workload issue was pending. Moreover, I find that the preponderance of the evidence shows that Varela had knowledge that the Union's regular custom and practice is for its members to return to work while a grievance is pending which Varela, after years of union membership and experience as a custodian in San Francisco, knew or should have known. Tr. 66–67, 202–203, 224, 234–235, 258–259, 264–265, 279. In addition, I further find that Varela was or should have been familiar with Metro's protocol for communicating absences and the ramifications if an employee is a no show/no call. Tr. 184, 211; GC Exh. 8 at 19–20.

²⁴ The General Counsel admits that this case does not seek adjudication of legal issues concerning any alleged union failure to fulfill its duty in dispensing with Varela's July 20 grievance for Employer's termination of Varela's employment. Tr. 21.

Section 8(b)(1)(A) states that “it shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . employees in the exercise of their rights guaranteed” in Section 7 of the Act. 29 U.S.C. § 158(b)(1)(A). A union’s duty of fair representation applies to all union activity. A union may not treat a unit employee in a manner that is arbitrary, discriminatory, or in bad faith. The review of a union’s performance must be allowed a wide range of reasonableness in serving the unit employees, and any subsequent examination of a union's performance must be “highly deferential” to the union’s performance and mere negligence is not a breach of the duty. See *Letter Carriers Branch 529*, 319 NLRB 879, 881 (1995)(citing *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *Airline Pilots Assn. v. O’Neil*, 499 U.S. 65, 78 (1991)). And a union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational. Id.

In addition, the union has a duty of fair representation on behalf of all those for whom it acts, without hostile discrimination. A union's power must be exercised fairly, impartially, and in good faith, which gives an employee the right to be free from unfair or irrelevant or invidious treatment by his exclusive bargaining agent. *Vaca v. Sipes*, 386 U.S. 171; *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962.) A union's obligation in this regard is breached when its conduct toward a member of the collective-bargaining unit is arbitrary, discriminating, or in bad faith. On the other hand, while the union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner, an individual employee does not have an absolute right to have his grievance taken to arbitration. Id. In short, the union has an area of discretion in acting reasonably and fairly.

Here, the General Counsel relies on the case, *Teamsters Local 282*, 267 NLRB 1130, 1131 (1983), where the Board found that the union was obligated to notify laid-off drivers of the terms of the arbitration award which directly affected their employment and by failing to notify these laid-off drivers, the Board held that the union acted arbitrarily and without lawful and legitimate reason and breached its duty of fair representation. (GC Br. 21–22, 24–25.) The *Teamsters Local 282* case is distinguishable, however, as here, the Union set up a teleconference to look into and resolve Varela’s June 27 workload issue determining that Varela’s workstation #10 had not changed subject only to Foreman Calero telling the Employer Director Larios that Larios’ understanding of the work duties at workstation #10 (the June 27 workload issue) was incorrect. Instead, Foreman Calero agreed with Larios’ understanding that Varela’s workstation #10 remained unchanged from Varela’s predecessor and included the 1st Floor lobby gym, the 6th Floor the 17th Floor and all restrooms whether fully occupied or not. Thus, Varela’s June 27 workload issue was fully resolved through Metro Director Larios’ response on June 27 in Varela’s presence and the Union was not obligated to communicate any further with Varela after ordering Varela to return to work and not to stay home.

The General Counsel also cites the case, *Local 417, UAW*, 245 NLRB 527, 534–535 (1980), in support of its argument that the Union breached its duty of fair representation. (GC Br. 21-23.) In *Local 417, UAW*, unlike in the instant matter, the union completely failed to dispose of a member’s grievance and the Board held that by doing this the union willfully misinformed the member of its unresolved status for more than 2 months. Id. In the current matter, however, I find that the Union did not fail to process Varela’s June 27 workload issue as it was fully

resolved at the June 27 teleconference where Employer Director Larios stated his understanding to the Union and Varela that Varela's workstation #10 had not changed and remained the same as his predecessor at that workstation—clean the 1st Floor lobby gym and Floors 6 and 17 including restrooms and showers, whether fully occupied or not. The Union in this case did not willfully misinform Varela about the status of his June 27 workload issue as it was fully resolved on June 27 and the Union ordered Varela back to work and not to stay home and Varela himself decided not to return to work leading to his termination by Metro.

In addition, I further find that the Union quickly disposed of Varela's June 27 workload issue on June 27 and its resolution of Varela's workload issue was not perfunctory or motivated by ill will or other invidious considerations.

Finally, the General Counsel also cites to *King Soopers, Inc.*, 222 NLRB 1011, 1017–1018 (1976), a case where the Board affirmed an administrative law judge's finding that two union representatives were hostile toward a union member and their hostility toward the union member led to the judge's determination that the union representatives failed to adequately inform the union member of his seniority rights and correct the union member's erroneous understanding of seniority leading to the union member's loss of employment. (GC Br. 21, 25–26.) Here, there is no similar hostility or lack of credibility on the part of the Union agents Abozayd, Hadwan and Estrella and any lack of credibility comes from Varela who did not return to work after his June 27 workload issue was resolved when on June 27 Metro Director Larios expressed his belief to Varela and the Union agents that workstation #10 was unchanged despite specific instructions from Hadwan and Abozayd that Varela return to work.

In conclusion, I find that Respondent Union did not breach of its duty of fair representation owed to Charging Party Varela and also did not violate Section 8(b)(1)(A) of the Act when it fully resolved Varela's June 27 workload issue quickly and ordered him to return to work and never told him to stay home from work. In addition, the Union reasonably lacked knowledge of Varela's own decision to miss work and not call his employer prior to Employer Metro's termination of Varela. If any party is a wrongdoer here, it is Varela who willfully decided to stay home from work contrary to the usual custom and practice of other union members who question their work duties and in total disregard of Abozayd's and Hadwan's specific orders that Varela return to work on June 27. Any mistake by the Union regarding whether it should have known that Varela was not returning to work was mere negligence, but not more. I am convinced that what occurred from June 27 through July 20 between the Union and Varela was an unfortunate failure of communication. I further find that the Union did not refuse to process Varela's June 27 workload issue for arbitrary, discriminatory reasons or in bad faith as it was resolved on June 27. I further find that there was no hostility, animus, or willful misinformation on the part of the Union toward Varela and that the Union's conduct here was not so far outside the range of reasonableness as to be irrational.

Accordingly, I find that the Union did not violate Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

- 5 1. Metro Services Group, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent, Service Employees International Union, Local 87, is a labor organization within the meaning of Section 2(5) of the Act.
3. Ahmed Abozayd, Abdo Hadwan, and Sergio Estrella are agents of the Respondent within the meaning of Section 2(13) of the Act.
- 10 4. Respondent did not violate Section 8(b)(1)(A) of the Act in any manner alleged in the amended complaint.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I issue the following recommended²⁵

15

ORDER

The complaint is dismissed.

Dated: Washington, D.C., May 14, 2020

20



Gerald Michael Etchingham
Administrative Law Judge

²⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.