

ORAL ARGUMENT NOT YET SCHEDULED

No. 20-1014

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TRINITY SERVICES GROUP, INC.
Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD
Respondent/Cross-Petitioner

**ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR
ENFORCEMENT OF A DECISION AND ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

JOINT APPENDIX

S. Libby Henninger
Littler Mendelson, P.C.
815 Connecticut Ave, NW, Suite 400
Washington, D.C. 20006
Telephone: 202.842.3400
Facsimile: 202.842.0011
lhenninger@littler.com

Frederick Miner
Littler Mendelson, P.C.
2425 E. Camelback Rd., Ste. 900
Phoenix, AZ 85016
Telephone: 602.474.3653
Facsimile: 602.391.2836
fminer@littler.com

Attorneys for Petitioner/Cross-Respondent
Trinity Services Group, Inc.

TABLE OF CONTENTS

Certified List of the National Labor Relations Board	JA1
Board's Decision and Order, Nov. 20. 2019.....	JA5
Transcript of Hearing, Excerpts.....	JA24
General Counsel Exhibit 1(e).....	JA55
General Counsel Exhibit 1(g)	JA61
General Counsel Exhibit 3	JA64
General Counsel Exhibit 4	JA74
General Counsel Exhibit 6	JA81
General Counsel Exhibit 7	JA83
General Counsel Exhibit 8	JA84
General Counsel Exhibit 9	JA86
General Counsel Exhibit 13	JA89
Respondent Exhibit 1	JA90



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

March 9, 2020

Mark J. Langer, Esquire
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman US Courthouse
333 Constitution Avenue, NW, Room 5423
Washington, DC 20001-2866

Re: *Trinity Services Group, Inc. v. NLRB*
D.C. Cir. No. 20-1014 & 20-1055
Board Case No. 28-CA-212163

Dear Mr. Langer:

I am transmitting a Certified List of the contents of the Agency
Record in the above-captioned case.

Very truly yours,

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

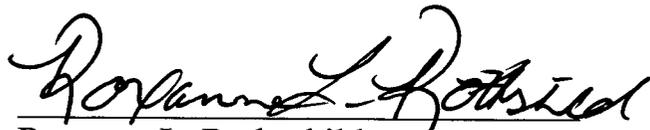
Encls.

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TRINITY SERVICES GROUP, INC.)
) No. 20-1014 & 20-1055
Petitioner)
) Board Case No.
v.) 28-CA-212163
)
NATIONAL LABOR RELATIONS BOARD)
)
Respondent)

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board’s Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all papers and documents which constitute the record before the Board in Trinity Services Group, Inc., Case No. 28-CA-212163.



Roxanne L. Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

March 9, 2020

DOCUMENT INDEX

<u>VOLUME I</u> - Transcript of Hearing	<u>Pages</u>
Volume 1 – July 17, 2018	001 – 174

<u>VOLUME II</u> - Exhibits
General Counsel's Exhibits
1(a-j)
2 – 11 ¹
13 – 16
Respondent's Exhibits
1

VOLUME III – Pleadings

<u>Date</u>	<u>Documents</u>	<u>Pages</u>
04/13/18	Respondent's (Trinity) Request to Change Location of Hearing	1-2
11/07/18	Administrative Law Judge's (ALJ) Decision	1-19
11/07/18	Order Transferring Proceeding to the National Labor Relations Board	1
12/05/18	Respondent's (Trinity) Exceptions	1-3
12/19/18	General Counsel's Answering Brief to Respondent's (Trinity) Exceptions	1-10
11/20/19	Decision and Order (368 NLRB No. 115)	1-19

¹ GC Exhibit 12 was rejected.

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TRINITY SERVICES GROUP, INC.)
) No. 20-1014 & 20-1055
Petitioner)
) Board Case No.
v.) 28-CA-212163
)
NATIONAL LABOR RELATIONS BOARD)
)
Respondent)

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ David Habenstreit
 David Habenstreit
 Assistant General Counsel
 NATIONAL LABOR RELATIONS BOARD
 1015 Half Street, SE
 Washington, DC 20570
 (202) 273-2960

Dated at Washington, DC
this 9th day of March 2020

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Trinity Services Group, Inc. and United Food and Commercial Workers Union, Local 99. Case 28-CA-212163

November 20, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

On November 7, 2018, Administrative Law Judge John T. Giannopoulos issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.¹

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions only to the extent consistent with this Decision and Order.³

The Respondent is a food service company that contracts to prepare and serve meals to prison inmates. One such contract is with the State of Arizona to provide food services to prisoners at the state prison in Douglas, Arizona. For approximately 20 years, the Union has represented the Respondent's employees employed at this prison, and the Respondent and the Union have been parties to successive collective-bargaining agreements, the most recent of which was effective from July 2013 to June 30, 2017.⁴ In June, the Respondent and the Union began negotiations for a successor agreement. Employee Marisol Victoria attended some of the bargaining sessions. The Respondent's proposals included changing the collectively-bargained personal time off or "PTO" plan applicable to employees at the Douglas facility to align it with the PTO plan in place at its unrepresented facilities. According to the Respondent, it was administratively challenging to administer different PTO plans.

1. *The Respondent did not coercively interrogate Marisol Victoria.*⁵ The judge found that the Respondent

coercively interrogated Victoria on August 14 when Food Service Director Jesus Puentes asked her if union members were paying fees to the Union. In context, we find that Puentes' comment was a rhetorical question that merely expressed his personal opinion of the Union's value to employees. Accordingly, we shall dismiss this complaint allegation.

Before her shift began on August 14, Victoria went to the Respondent's office to print her paystub. Food Service Director Puentes and Assistant Food Service Director Luna were smoking on a porch outside of the office, and Victoria joined them at Puentes' invitation. After a short discussion about Victoria's family, Luna brought up the subject of the Union and negotiations. He asked what the Union was doing for employees and stated that the Union was not really presenting anything on their behalf at the bargaining table. Victoria responded that the bargaining was what it was. Luna commented that the money employees were paying the Union was not being used to present anything at bargaining. Puentes then asked Victoria if the union members were paying fees to the Union and said that the money they were paying to the Union was being thrown away, and Luna said that employees were paying \$20 per week. Victoria did not respond. Puentes then said that if Victoria would like to throw her money away, she should give it to him. In response, Victoria made a gesture of giving away her paystub and said to Puentes, "You can have it for me." She then left the porch.

The Act does not make it illegal per se for employers to question employees about union activity. Rather, to establish a violation, 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

would be futile and by coercively interrogating employee Marisol Victoria through Assistant Food Service Director Gustavo Luna.

³ We shall amend the judge's Conclusions of Law and modify his recommended Order to conform to the violation found and in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall substitute a new notice to conform to the Order as modified.

⁴ All dates hereafter are in 2017 unless otherwise indicated.

⁵ Chairman Ring and Member Kaplan join in this finding. For the reasons given in her partial dissent, Member McFerran would affirm the judge's finding that Puentes unlawfully interrogated Victoria.

¹ Member Emanuel took no part in the consideration of this case.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

No exceptions were filed to the judge's dismissal of the complaint allegations that the Respondent violated Sec. 8(a)(1) of the Act by threatening that collective bargaining between the Respondent and the Union

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. *Id.*; *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).

Consistent with these principles, we find that the single question Puentes asked Victoria—whether union members were paying fees to the Union—was not unlawful. To begin with, there is no history of antiunion hostility or discrimination. To the contrary, the Respondent and the Union have a 20-year bargaining relationship. The question was posed in the course of an informal conversation that took place on the porch outside the Respondent's office, and a reasonable employee would have understood it as part of Puentes' expression of his low opinion of the Union's value to employees. Although Victoria did not reply, Puentes apparently did not seek a response, either. Significantly, Puentes merely asked a general question about whether union members were paying fees to the Union, not about whether any specific union member was paying or not paying fees. Thus, Puentes' comment did not "appear[] to be seeking information upon which to take action against individual employees." *John W. Hancock Jr., Inc.*, 337 NLRB 1223, 1224 (2002) (citing *Bourne*, 332 F.2d at 48), *enfd.* 73 Fed.Appx. 617 (4th Cir. 2003). Instead, Puentes' remark, in context, was a

⁶ *Abex Corp.*, 162 NLRB 328, 329 (1966), quoted by our colleague. Cases cited by the dissent in support of this proposition are readily distinguishable. In *Norton Audubon Hospital*, 338 NLRB 320, 321 (2002), for example, the employer asked an employee during a performance evaluation meeting if she knew about the level of union support among other employees and whether the union had enough votes to win an election, after also pointedly noting that the employee wore a union button, questioning whether she liked her job, and suggesting that the union could not help employees "if there's nobody to put in the job." Likewise, in *Cumberland Farms*, 307 NLRB 1479 (1992), *enfd.* 984 F.2d 556 (1st Cir. 1993), the Board found an 8(a)(1) violation where two supervisors, one of whom was highly placed, engaged in repeated, probing questioning of two employees over the course of several days, including asking how many employees in specific departments had signed authorization cards. In *Horton Automatics*, 289 NLRB 405, 412 (1988), *enfd. mem.* 884 F.2d 574 (5th Cir. 1989), *cert. denied* 494 U.S. 1079 (1990), the employer assembled its employees and asked who among them had been giving information to the union that formed the basis for the union's charges against the employer. In *Time Warner Cable New York City, LLC*, 366 NLRB No. 116, slip op. at 4–5 (2018), the employer asked employees how they learned about a planned union demonstration that violated a contractual no-strike provision and was therefore unprotected, for the purpose of determining whether the employees had participated and were therefore subject to discipline. Finally, in *Abex Corp.*, above, the employer's plant superintendent asked employees if they knew who was trying to start a union and who was the union leader. The wide gap between the coercive conduct in these cases and the facts presented here

retorical question posed as part of a lawful expression of his opinion that paying money to the Union was not a good investment. The only fact that tends to favor a finding of coercion is that Puentes is a high-level manager. This is far from sufficient to make out a violation of the Act.

Our dissenting colleague contends that Puentes' off-hand exchange with Victoria was, in reality, a sinister effort to determine whether other employees were paying dues, which she views as "a key barometer of support" for the Union in a right-to-work state. In addition, she finds the comment coercive because it was accompanied by "negative comments about the Union." We disagree.

As the Board recognized in *Rossmore House*, above, 269 NLRB at 1177, "[t]o hold that any instance of casual questioning concerning union sympathies violates the Act ignores the realities of the workplace" (quoting *Graham Architectural Products v. NLRB*, 697 F.2d 534, 541 (3d Cir. 1983)). This observation is apropos here. No reasonable employee in Victoria's place would have taken Puentes' isolated and casual question as an effort to enlist her as "an informer regarding the union activity" of fellow employees.⁶ As to the negative comments about the Union cited by the dissent, those were lawful expressions of opinion protected by Section 8(c) of the Act, as the judge found (and no party excepted).⁷ Such protected free speech does not support a finding that Puentes' question was coercive. See *John W. Hancock Jr., Inc.*, above, 337 NLRB at 1224 (finding employer's prior statements that it would do everything in its power to keep the union out and

further supports our finding that Puentes' isolated and casual question did not violate the Act.

⁷ Sec. 8(c) provides that "[t]he expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit" (emphasis added).

TKC, a Joint Venture, 340 NLRB 923 (2003), *enfd.* 123 Fed.Appx. 554 (4th Cir. 2005), and *Farmer Bros. Co.*, 303 NLRB 638 (1991), *enfd.* 998 F.2d 120 (9th Cir. 1993), cited by the dissent, are not to the contrary. In both cases, the Board found the disputed questioning unlawful on the basis of all the surrounding circumstances, as *Rossmore House* and its progeny require, including coercive factors not remotely present here. Specifically, in *TKC*, a manager, who appeared "agitated," approached an employee shortly after the employee had distributed union literature, asked the employee if he was in the union, and when the employee responded that he was not but was trying to join, responded, "Why would you want to do that? Why the fuck would you want to pay somebody to let you work?" 340 NLRB at 924. In *Farmer Bros.*, during an employment interview, the employer's vice president asked an applicant whether he had been an officer or a steward for the Teamsters and whether he was "a strong union man"; and during a subsequent interview, the company president asked the applicant how he felt about the union himself and, once again, whether he was "a strong union man." 303 NLRB at 641. The facts of these cases are a far cry from the lawful comments made by Puentes and Luna in this case.

referring to employees who solicit authorization cards as “the enemy within” to be protected free speech under Section 8(c) and therefore did not lend any significant support to allegation that isolated question about how many employees had attended union meeting was coercive).

Considering all the circumstances, we find that the General Counsel failed to establish that Puentes’ question reasonably tended to restrain, coerce, or interfere with employees’ exercise of their Section 7 rights.⁸ Accordingly, we shall dismiss this allegation.

2. *The Respondent unlawfully blamed the Union for creating problems with computation of time off credit.* We adopt the judge’s finding that the Respondent violated Section 8(a)(1) of the Act when Unit Manager Sergio Rivera blamed the Union for a PTO problem experienced by Victoria.⁹ Victoria requested 3 days’ PTO in December. Victoria’s timecard showed that she had enough accrued PTO to cover her request, but the Respondent’s office manager, Frank Romero, told Victoria that she had no PTO. Victoria questioned this, and Romero said there was a problem because the Respondent’s system showed that Victoria had no remaining PTO but her company-generated timecard showed that she had 3 days remaining. At this point, Rivera chimed in, saying, “[T]hat is a problem that the Union created regarding PTO. You need to fix that with the Union.” Victoria said that everything was okay but that the Respondent should ensure employees received the correct PTO. Rivera agreed but repeated, “[T]hat’s the problem with the Union.” Ultimately, Victoria was granted 1 day of leave.

At the time of this conversation, the Respondent and Union were still negotiating a successor bargaining

agreement and the Respondent’s proposal to eliminate the current contractual PTO credit system for unit employees in the next contract was only tentatively agreed upon in bargaining. Grievances had been filed by the Union about the Respondent’s determination of PTO credits under the current contract.¹⁰ It is undisputed that the Union had no responsibility for the Respondent’s PTO bookkeeping and that the discrepancy at issue was likely attributable to the failure of the Respondent’s current software program to accurately account for the computation of PTO credit under the contractual terms applicable for employees represented by the Union at the Douglas facility, as opposed to the different terms applicable to all unrepresented employees at the Respondent’s non-union facilities.

As the judge stated, it is well established that “[w]ords of disparagement alone concerning a union or its officials are insufficient for finding a violation of Section 8(a)(1).” *Sears, Roebuck & Co.*, 305 NLRB 193, 193 (1991). Nevertheless, the judge correctly found that in the context of this conversation Rivera’s statement had a reasonable tendency to interfere with employees’ Section 7 rights by placing the blame for problems in computing Victoria’s PTO credits on the Union. See *Novelis Corp.*, 364 NLRB No. 101, slip op. at 2 fn. 9 (2016) (finding that Respondent’s false representations to employees disparaging the Union “violated Sec. 8(a)(1) as it constitutes interference, restraint, and coercion that unlawfully tended to undermine the Union”), *enfd.* in relevant part 885 F.3d 100 (2d Cir. 2018).¹¹

Relying on principles from *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969), our dissenting colleague would find that the statement was an expression of opinion

⁸ In support of his finding that Puentes’ questioning violated Sec. 8(a)(1), the judge cited *Creutz Plating Corp.*, 172 NLRB 1 (1968). However, there were no exceptions to the judge’s 8(a)(1) interrogation finding in that case, and therefore *Creutz Plating* is not relevantly precedential. See *Watsonville Register-Pajaronian*, 327 NLRB 957, 959 fn. 4 (1999). The judge also cited *Ridgewood Management Corp.*, 171 NLRB 148 (1968), a case decided before *Rossmore House*, above. In *Ridgewood Management*, the Board adopted the trial examiner’s finding that the respondent coercively interrogated employees where, in the context of a recent union organizing campaign, the company president asked employees generally and individually whether they had signed union cards or paid initiation fees or whether they would join the union. *Id.* at 149–150. For the reasons discussed above, Puentes’ comment is distinguishable from the questions posed in *Ridgewood Management*.

Citing *RHCG Safety Corp.*, 365 NLRB No. 88, slip op. at 1–2 (2017), the judge also found that Puentes’ question was unlawful because he did not convey a legitimate purpose for asking the question or provide assurances against reprisals, and the dissent finds likewise. *RHCG* is easily distinguished. There, the employer responded by text message to an employee’s request to return to work with the question, “U working for [the employer] or u working in the union?” The employee was not an open union supporter, and the question not only sought to determine his union sympathies but also strongly suggested that working for the employer and “working in the union” were incompatible. No such facts are present

here: Puentes’ rhetorical question neither sought to uncover employees’ union sympathies nor implicitly threatened reprisal. In these circumstances, Chairman Ring and Member Kaplan find it unnecessary to decide whether an employer’s failure to convey a legitimate purpose for a question or give assurances against reprisals—factors not mentioned in *Rossmore House* or *Bourne*—are properly considered in determining whether questioning constitutes an unlawful interrogation. See *RHCG*, 365 NLRB No. 88, slip op. at 9 fn. 8 (Chairman Miscimarra, concurring); *Evenflow Transportation, Inc.*, 358 NLRB 695, 696 fn. 4 (2012) (Member Hayes, concurring), adopted by reference 361 NLRB 1482 (2014).

⁹ Members McFerran and Kaplan join in this finding. For the reasons given in his partial dissent, Chairman Ring would find Rivera’s comments lawful.

¹⁰ Like the judge, we find no need to determine whether Victoria herself filed a grievance after the December 15 discussion. The Respondent does not except to the judge’s statement that grievances previously filed by the Union about PTO were still “outstanding” on that date.

¹¹ See also *Westminster Community Hospital Inc.*, 221 NLRB 185, 193 (1975) (“[b]y placing responsibility for the absence of greater benefits . . . exclusively on the Union, which had had no role in the matter, [the Respondent] was attempting to disparage the Union ‘in the eyes of the employees so as to discourage membership in the Union.’”) (citation omitted), *enfd.* mem. in relevant part 566 F.2d 1186 (9th Cir. 1977).

protected by Section 8(c) of the Act because it did not convey a coercive threat. However, as recently explained by the United States Court of Appeals for the District of Columbia Circuit, the Supreme Court distinguished statements of opinion protected under Section 8(c) from “coercive . . . overstatements’ that an employer ‘has reason to believe will mislead his employees.’” *NLRB v. Ingedion, Inc.*, 930 F.3d 509, 516 (D.C. Cir. 2019), quoting from *Gissel Packing*, supra at 620. In affirming the Board’s finding of an 8(a)(1) violation in *Ingedion*,¹² the court noted with approval that “[t]he Board has held that an employer violates Section 8(a)(1) by ‘misrepresent[ing] the [u]nion’s bargaining positions’ in a way that ‘tends to undermine’ employee support for the union. Id. citing *RTP Co.*, 334 NLRB 466, 467–468, (2001), enf. sub nom. *NLRB v. Miller Waste Mills*, 315 F.3d 951 (8th Cir. 2003), cert. denied 540 U.S. 811 (2003); *Faro Screen Process, Inc.*, 362 NLRB 718, 718–719 (2015). Further, the court explained, “Ingedion’s contention that the manager’s statements were non-threatening . . . misunderstands the nature of its violation. The Board did not find that the statements were threatening, but rather that they were misleading.” Id. Accordingly, the court concluded that the record supported “the Board’s finding that Ingedion violated Section 8(a)(1) by misrepresenting the Union’s position in a way that tended to cause employees to lose faith in the Union.” Id.

Contrary to our dissenting colleague, we find the facts here are not meaningfully distinguishable from those at issue in *Ingedion*. Rivera’s statements were patently false as to administration of the extant contract. There was no objective basis for blaming the Union, rather than the Respondent, for the claimed discrepancy between the company-generated timecards and its computer system.¹³ Moreover, whether or not intended,¹⁴ Rivera’s misrepresentation, made during ongoing contract negotiations and grievance proceedings about the PTO computation issue, would undermine the Union’s status as bargaining representative and reasonably tend to cause an employee to lose faith in the Union’s representation on the PTO issue. On this basis, we affirm the judge’s finding that the Respondent violated Section 8(a)(1).

¹² *Ingedion, Inc.*, 366 NLRB No. 74 (2018).

¹³ Contrary to our dissenting colleague, it is irrelevant to our 8(a)(1) interference analysis whether the timecard computation was correct or whether Victoria actually should have received credit for 3 PTO days.

¹⁴ The Respondent argues that Rivera may have intended only to urge Victoria to contact a Union representative for assistance regarding her PTO complaint. However, the standard for determining whether a statement violated Sec. 8(a)(1) is an objective one, and the speaker’s intent is

AMENDED CONCLUSIONS OF LAW

Delete Conclusion of Law 3 and renumber the subsequent paragraphs accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Trinity Services Group, Inc., Douglas, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(a) and reletter the subsequent paragraphs accordingly.

2. Substitute the following for paragraph 2(a).

“(a) Within 14 days after service by the Region, post (in both English and Spanish) at its Douglas, Arizona facility copies of the attached notice marked “Appendix.”¹⁵ Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 28, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 15, 2017.”

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. November 20, 2019

John F. Ring,

Chairman

irrelevant. See *Flying Foods*, 345 NLRB 101, 105 (2005), enf. 471 F.3d 178 (D.C. Cir. 2006).

¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Lauren McFerran Member

Marvin E. Kaplan Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN RING, dissenting in part.

I agree that the Respondent did not violate Section 8(a)(1) of the National Labor Relations Act by interrogating employee Marisol Victoria, and I join that part of the Board's decision. However, I disagree that the Respondent violated the Act when it blamed the Union for an administrative mixup regarding paid leave for Victoria under its personal time off (PTO) policy.

The Respondent provides food services at prisons across the United States. Its employees at the state prison in Douglas, Arizona, are represented by the Union; all its other employees are unrepresented. Under the most recent collective-bargaining agreement between the Union and the Respondent, the Douglas employees received a fixed number of PTO days at the beginning of each year, the number of which varied depending on years of service. They also accrued additional PTO time monthly, at rates that also varied depending on years of service, in accordance with a 3-tier schedule (1-7 years, 8-14 years, 15 years or more). All other employees received PTO based solely on accrual, per pay period (not per month), at rates that differed from the accrual rates in effect at Douglas, also varying depending on years of service but in accordance with a 5-tier schedule (less than 2 years, 2-5 years, 5-10 years, 10-15 years, more than 15 years) instead of a 3-tier schedule. In other words, as between employees at Douglas and employees everywhere else, calculating PTO differed in just about every conceivable way. Unsurprisingly, these differences were an administrative headache, and one consequence was that sometimes discrepancies would show up in the Respondent's PTO recordkeeping for particular employees.¹ The Union filed grievances regarding these discrepancies, and when the parties began

¹ Worse still, in early 2017 the parties began to dispute the proper interpretation of the contract language concerning PTO days. The Union believed that the Douglas employees were entitled to 5-10 PTO days at the beginning of the year and continued to accrue additional hours of PTO each month (Tr. 34). The Respondent believed that the employees stopped accruing additional hours monthly once the start-of-the-year PTO days plus monthly accruals reached a certain maximum (GC Exh. 9). The Union grieved, and in June 2017 it requested arbitration, which, according to Puentes, involved the issue of PTO balances related to the

negotiating for a successor agreement in June 2017, the Respondent proposed that the Douglas facility switch to the same PTO policy in force at its other facilities.² In early December, the Union agreed to the Respondent's PTO proposal subject to certain conditions, including rolling over the current year's unused PTO to the next year. However, the parties did not reach overall agreement on a new contract.

On December 15, Victoria received a text message from Unit Manager Sergio Rivera, asking her to report to the office to make a change on her timecard regarding PTO. When she arrived at the office, Office Manager Frank Romero told her to sign for a change that was made on her timecard because she no longer had any PTO left. Victoria responded, "[O]kay, but I was under the understanding that I still had 3 days of PTO." Romero said, "[T]hat is the problem we are having. In my system it reflects that you no longer have PTO, even though [on] your time card it is reflected as you still have [PTO]." Rivera then said, "[T]hat is a problem that the Union created regarding PTO. You need to fix that with the Union." Victoria replied, "[E]verything is okay. I don't have any problems towards you. I know you are not the ones that take care of the system. [B]ut if you are working in the same company as we are, you should be taking care of giving us the correct PTO." Rivera said, "[Y]es, I know, but that's the problem with the Union." Victoria was ultimately granted 1 day of leave. The judge noted that she "claimed" to have filed a grievance concerning her PTO request.

Contrary to the judge and my colleagues, I find that Rivera's offhand remarks did not violate the Act. An employer's statements violate Section 8(a)(1) if they have a reasonable tendency to "interfere with, restrain, or coerce" employees in the exercise of their Section 7 rights. But criticism or disparagement of a union does not violate the Act. An employer "may criticize, disparage, or denigrate a union without running afoul of Section 8(a)(1), provided that its expression of opinion does not threaten employees or otherwise interfere with the Section 7 rights of employees." *Children's Center for Behavioral Development*, 347 NLRB 35, 35 (2006).

In my view, Rivera's remarks were a lawful expression of his personal opinion, protected by Section 8(c), that the Union was responsible for the recordkeeping problems

lump-sum hours received at the beginning of each year. The record does not clearly show whether that grievance was resolved in any way, but it abundantly shows that PTO computation for the Douglas employees was fraught with uncertainty.

² The Respondent's October 20, 2017 Negotiation News distributed to employees specifically cited the administrative challenges with the existing PTO policy at the Douglas facility as a reason for the proposal (GC Exh. 14).

All dates hereafter are in 2017.

regarding Victoria's PTO. It was certainly true that such problems cropped up from time to time and that the PTO system provided for in the collective-bargaining agreement meant that the Respondent had to administer two entirely dissimilar PTO systems, one for its Douglas employees and another for everyone else. As noted above, the Respondent had previously communicated to employees its position that the different systems made the contractual PTO system difficult to administer. In this broad sense, it was not unreasonable of Rivera to express an opinion linking the recordkeeping problems with the Union. Of course, it was unfair to lay the blame entirely at the Union's feet. After all, the Respondent agreed to the separate PTO system at Douglas in collective bargaining. But criticism need not be fair to be lawful. See, e.g., *North Kingstown Nursing Care Center*, 244 NLRB 54, 65 (1979) (finding that the employer's statements about the union, "however false or unsubstantiated," were "privileged expressions of opinion" that "did not rise to the level of interference, restraint, or coercion prohibited by Section 8(a)(1) of the Act"); *Camvac International*, 288 NLRB 816, 820 (1988) (finding that employer did not unlawfully imply that union was preventing it from granting benefits by stating that every time it granted benefits, union filed charges; holding that statement "did not . . . contain any express or implied threat of loss of benefits but was merely an expression of views or arguments protected under Section 8(c)").³

I recognize that an employer violates the Act when it takes an adverse action against one or more employees and falsely blames the union for its action. See, e.g., *Faro Screen Process, Inc.*, 362 NLRB 718 (2015) (employer rescinded a just-implemented wage increase and blamed the union); *Webco Industries*, 327 NLRB 172 (1998) (employer unlawfully discharged four employees and blamed the union), *enfd.* 217 F.3d 1306 (10th Cir. 2000). But here, it has not been established that the Respondent took an adverse action against Victoria. That is, it has not been shown that Victoria was denied accrued PTO to which she was entitled. The record shows that Victoria *believed*, based on her timecard, that she had 3 days of accrued PTO, and that the Respondent, based on other records,

³ *Ingredient, Inc.*, 366 NLRB No. 74, slip op. at 1 fn. 1 (2018), *enfd.* 930 F.3d 509 (D.C. Cir. 2019), cited by the majority, is readily distinguishable. There, the employer falsely stated to employees that the employer was willing to offer employees a more generous contract but the union was unwilling to bargain. No facts of this character are present here: Rivera did not misrepresent the Union's bargaining position or accuse it of refusing to bargain, much less falsely blame the Union for employees not receiving more favorable benefits—a charge that plainly would cause them to lose faith in the Union. *Novelis Corp.*, 364 NLRB No. 101, slip op. at 2 fn. 9 (2016), *enfd.* in relevant part 885 F.3d 100 (2d Cir. 2018), also cited by the majority, is also readily distinguishable.

determined that she had only one. We do not know that Victoria's timecard was correct and the Respondent's other records were not. Indeed, the judge did not decide this issue, finding only that "[f]or whatever reason Victoria was denied two days of PTO in December" (emphasis added).⁴ Thus, the General Counsel has failed to establish an adverse action.

Finally, some remarks are "of such obviously limited impact and significance that we ought not to find that [they] rise[] to the level of constituting a violation of the Act." *Musicians, Local 76 (Jimmy Wakely Show)*, 202 NLRB 620, 621 (1973). Even if Rivera's remarks would otherwise constitute a de minimis, technical violation of the Act, I would place them in the *Jimmy Wakely Show* category and decline to find a violation.

I would dismiss the complaint in its entirety.

Dated, Washington, D.C. November 20, 2019

John F. Ring,

Chairman

NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting in part.

Contrary to my colleagues, the judge properly found that the Respondent's highest-ranking manager interrogated an employee about her and her coworkers' support for the Union. In the midst of contract negotiations, the manager, accompanied by another high-ranking supervisor, questioned the employee whether employees were paying dues to the Union, a key barometer of support given that this case arises in a "right-to-work" state where employees cannot be compelled to pay even core dues. An employee in those circumstances would have reasonably felt coerced because a meaningful response would have required the employee to reveal not only her and her coworkers' union sympathies, but also that she had been discussing this subject with her coworkers.

There, the employer falsely represented to employees that the union had filed charges seeking the rescission of their Sunday premium pay and unscheduled overtime, and that the employer would have to rescind these benefits as a result. Rivera's statement to Victoria did not assert that employees would lose any existing benefits, much less blame the Union for such losses.

⁴ The judge found that "Victoria *claims* to have filed a grievance over the matter, but it is unclear from the record the outcome of the grievance" (emphasis added). Assuming the claim is true, the filing of a grievance does not establish that Victoria was denied 2 days' PTO to which she was entitled.

I.

The facts here are not in dispute. The Respondent's two highest-ranking officials at the facility are Food Service Director Jesus Puentes and Assistant Food Service Director Gustavo Luna. The United Food and Commercial Workers Union, Local 99 (Union) has represented the Respondent's employees at the facility for approximately 20 years. The present case arose shortly after the parties commenced negotiations in June 2017 for a successor collective-bargaining agreement.

On August 14, 2017, employee Marisol Victoria stopped by the Respondent's office to print her paycheck stub because she had been experiencing issues related to the accuracy of her personal time off (PTO) accrual.¹ Upon exiting the office, Victoria was invited by Puentes to join his conversation with Luna on the porch. The conversation initially focused on Victoria's family, but then the managers abruptly turned the discussion toward the Union.

Luna raised the topic of the Union and the parties' ongoing contract negotiations, criticizing the Union's representation of employees and its ability to present anything on behalf of employees at the negotiating table. Specifically, Luna questioned the Union's effectiveness and whether the Union was making good use of employees' dues in presenting their interests in bargaining. Puentes then directly asked Victoria "whether the members were paying fees to the Union." When Victoria did not answer, Luna did, telling Puentes "that what employees were paying was \$20 per week." Puentes then equated Victoria's monetary support for the Union to throwing money away and suggested that she should give it to him instead.

II.

On those facts, the judge properly found that Puentes unlawfully interrogated Victoria about whether employees were financially supporting the Union during successor bargaining negotiations. When considering whether the questioning of an employee constitutes an unlawful interrogation, the Board's "task is to determine whether

under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act." *Westwood Health Care Center*, 330 NLRB 935, 940 (2000).² In analyzing the totality of the circumstances, the Board considers the following factors: the position of the questioner in the company hierarchy; the nature of the information sought; the truthfulness of the reply; whether the employer had, or conveyed, a legitimate purpose for the question; whether assurances against reprisals were made; whether the employer has a history of antiunion hostility or discrimination; whether the employee is an open and active union supporter; and the place and method of interrogation. See *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), *enfd. sub nom. Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985); *RHCG Safety Corp.*, 365 NLRB No. 88, slip op. at 1-2 (2017); *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964).³

Applying those well-established principles, Puentes' question was unlawful because an employee in Victoria's position would have reasonably felt coerced by a high-level manager inquiring into her and her coworkers' financial support for the Union.⁴ See *SALA 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). Here, the conversation was initiated and dominated by the Respondent's two highest-ranking managers at the facility,⁵ and a reasonable employee would have understood Puentes' question as seeking information about the employees' financial support for the Union—an important indicator of the Union's strength at the bargaining table during successor contract negotiations.⁶ See *Norton Audubon Hospital*, 338 NLRB 320, 321 (2002) (questions that addressed other employees' support for the union added to the coercive nature of the interrogation) citing *Cumberland Farms*, 307 NLRB 1479 (1992) ("the fact that the interrogators sought information about other employees and the organizing effort in general" supports a finding that the interrogation was

¹ As the judge noted, the Respondent's proposed changes to and administration of PTO was one of the major issues during bargaining. The Union also filed grievances to ensure that employees could use their accrued PTO benefits.

² The Board's test is objective and "does not take into account either the motive of the employer or the actual impact on the employee." *Id.* at fn. 17.

³ The factors are "useful indicia that serve as a starting point for assessing the 'totality of the circumstances'" and are not meant to be applied mechanically. *Westwood Health Care Center*, above at 939, citing *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830, 835 (D.C. Cir. 1998).

⁴ Unlike my colleagues, whose analysis is dependent upon their conclusion that Puentes' question was meant to be rhetorical, I have not

ascribed any motive—"sinister" or otherwise—to Puentes because any motive that he may have possessed is not relevant. See fn. 2, above.

⁵ Although Puentes, the highest-ranking official at the facility, asked the question concerning whether members were paying fees to the Union, Luna, the day-to-day manager and second highest-ranking official, was an active participant in the conversation—criticizing the Union and its ability to bargain on behalf of employees twice before Puentes inquired about the status of members paying fees. See *Naomi Knitting Plant*, 328 NLRB 1279, 1280 (1999) (explaining that the "double-teaming" of the colloquy amplified the questioning's impact).

⁶ As noted above, because Arizona is a right-to-work state where employees cannot be compelled to pay dues, knowing whether employees actually were paying dues to the Union would have provided the Respondent with valuable insight into the Union's support.

unlawful), enfd. 984 F.2d 556 (1st Cir. 1993); *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[.]”), enfd. mem. 884 F.2d 574 (5th Cir. 1989), cert. denied 494 U.S. 1079 (1990).

Moreover, in order to answer Puentes’ question, Victoria would also have had to reveal that she had engaged in conversations with her coworkers regarding their financial support for the Union—classic protected concerted activity. See *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 *Abex Corp.*, 162 NLRB 328, 329 (1966) (“The Board holds . . . that interrogation which seeks to place an employee in the position of acting as an informer regarding the union activity of his fellow-employees is coercive.”).⁷ Not surprisingly, Victoria did not respond to Puentes’ question, prompting Luna to answer instead.⁸ See *Chipotle Services, LLC*, 363 NLRB No. 37, slip op. at 11–12 (2015) (finding that an employee’s decision not to answer a high-ranking supervisor’s question was evidence of a coercive interrogation).

From Victoria’s perspective, the coercive nature of Puentes’ question is also supported by the fact that Puentes did not have or communicate any legitimate purpose for asking her about employees’ payment of dues to the Union; nor did he provide Victoria with any assurances against reprisals. See *RHCG Safety Corp.*, above, 365

⁷ The majority’s attempt to distinguish these cases is unpersuasive. Although the specific facts of each case may differ, they all involve—like the present case—instances where employers sought information about other employees’ union sympathies and protected activities, which the Board found unlawful.

⁸ Contrary to my colleagues, then, Luna did not appear to think that Puentes’ question was “rhetorical.”

⁹ The majority attempts to distinguish *RHCG Safety Corp.* by claiming that Puentes’ question did not seek to uncover employees’ union sympathies. However, it is hard to ascertain how asking an employee “whether the members were paying fees to the Union” is anything other than an attempt to gain information about the employees’ level of financial support for the Union.

Further, the majority, mistakenly in my view, discounts the significance of Puentes’ failure to offer Victoria a legitimate purpose for the question and assurances against reprisals. But even absent those factors, the remaining probative factors still support affirming the judge’s finding of an unlawful interrogation.

¹⁰ Although the record does not contain any evidence of the Respondent having a history of antiunion hostility or discrimination, the majority errs in turning a blind eye toward the negativity expressed by Puentes’ and Luna’s comments. And where, as here, such comments are coupled with a direct question to an employee about her and her coworkers’ union support, those comments are relevant evidence supporting a finding of an unlawful interrogation under the Board’s totality of the circumstances

NLRB No. 88, slip op. at 1–2 (no legitimate purpose for the question and no assurances against reprisals given were relevant factors, among others, considered by the Board in finding interrogation unlawful).⁹ To the contrary, most of Puentes and Luna’s conversation with Victoria—including Puentes’ comment immediately following his question that “money they [members] were paying to the Union was being thrown away”—was replete with negative comments about the Union and served as a platform for them to express their hostility toward the Union. See *TKC, A Joint Venture*, 340 NLRB 923, 924 (2003), enfd. 123 Fed.Appx. 554 (4th Cir. 2005) (finding rhetorical question about union support coercive in the context of other comments where only apparent reason for the question was to convey hostility and disapproval of the union); *Farmer Bros. Co.*, 303 NLRB 638, 653 (1991), enfd. mem. 998 F.2d 120 (9th Cir. 1993) (finding unlawful interrogation where questions were accompanied by statements indicating hostility to the union).¹⁰

Additionally, “[t]he Board has recognized that a subsequent unfair labor practice can increase the coerciveness of a preceding interrogation or threat, depending on the relationship between the two events and the totality of circumstances.” *Santa Fe Tortilla Co.*, 360 NLRB 1139, 1140 fn. 8 (2014).¹¹ In the present case, the judge found—and a Board majority affirms—that the Respondent subsequently violated Section 8(a)(1) by blaming the Union for Victoria’s problems regarding the accuracy of her PTO accrual, even though the Union was not involved in the administration of the Respondent’s PTO system. This

test. See *TKC, A Joint Venture*, above, 340 NLRB at 924; and *Farmer Bros.*, above, 303 NLRB at 653.

Relatedly, there is no merit to the majority’s attempt to dismiss Puentes’ and Luna’s negative comments about the Union as protected speech under Sec. 8(c) of the Act. On this point, *John W. Hancock Jr., Inc.*, 337 NLRB 1223 (2002), enfd. 73 Fed.Appx. 617 (4th Cir. 2003), cited by the majority, is unavailing. There, the Board refused to take into account the employer’s statements opposing unionization in considering the lawfulness of a low-level supervisor’s question to an employee about how many employees had attended a union meeting. But in that case, the statements predated the relevant questioning whereas here Puentes’ and Luna’s negative comments about the Union were made simultaneously with their questioning of Victoria. Moreover, the Board found that no other circumstances surrounding the questioning suggested an element of coercion that might color the prior statements. Thus, in addition to the questioner being a low-level supervisor, the Board noted, among other things, that the question posed would not have revealed any particular employee’s support for the union, that the supervisor did not express any hostility toward the union, and that although the employer later committed unfair labor practices, none was related to the questioning. Those mitigating factors are absent from the present case.

¹¹ See also *Westwood Health Care Center*, above, 330 NLRB at 940 fn. 17 (“An employee may reasonably come to realize only after the fact, in light of subsequent statements or events, that seemingly benign questions were actually efforts to ferret out his union sentiments by an employer hostile to union activity.”).

subsequent unfair labor practice involving Victoria would reasonably have further colored Puentes' questioning of her, as it also included disparaging comments that undermined the Union's status as bargaining representative.

Furthermore, the record evidence does not establish that Victoria was an open and active union supporter at the time of the interrogation. She was not a union steward or a member of the Union's bargaining committee,¹² and the judge explained that although Victoria did attend some bargaining sessions, "there is no evidence whatsoever that she did so as an 'observer for the Union' or that Puentes knew she attended sessions or 'that she supported the Union in any way whatsoever.'" See *Gardner Engineering, Inc.*, 313 NLRB 755, 755 (1994), enfd. as modified on other grounds, 115 F.3d 636 (9th Cir. 1997) (finding employer questions coercive in part because there is "no evidence in the record that [the employee] was an open and active union supporter at the time of the interrogation, although he was a union member").

Considering all the circumstances, six of the relevant factors militate in favor of finding that Puentes' questioning of Victoria was coercive. The remaining two factors—the Respondent's background and history and the fact that the conversation took place outside the office on the porch—may support the Respondent's position that Puentes' question was lawful, but even so, those factors are clearly outweighed in all the circumstances.

III.

Although my colleagues refer to the particular *Rossmore House* factors, they fail to fully appreciate the broader, more relevant point that the Board must consider all the circumstances as a whole to determine whether an employer's "words themselves or the context in which they are used . . . suggest an element of coercion or interference." 269 NLRB at 1177.

Here, the record as a whole is clear that Puentes' and Luna's conversation with Victoria—and the context in which it took place—was objectively coercive and interfered with Victoria's Section 7 rights. My colleagues' characterization of the conversation as "casual" and

"isolated" betrays their failure to come to grips with that reality: again, the questioning took place during contract negotiations, two high-level supervisors affirmatively brought up the negotiations, and they criticized the Union before and after Puentes directly asked Victoria about her and her coworkers' financial support of the Union.

Moreover, the majority errs in emphasizing that Puentes only asked a single question and that the conversation took place in an informal location outside the office. The Board has previously found unlawful interrogations consisting of a single question¹³ and explained that even if an "interrogation is made in a casual manner during a friendly conversation[, that] does not lessen its unlawful effect." *Abex Corp.*, above, 162 NLRB at 329.¹⁴

Further, there is no merit to the majority's dismissal of Puentes' question as a "rhetorical" one that merely expressed his negative views of the Union. First, as noted, the supposed "rhetorical" nature of the question is belied by the fact that Luna responded when Victoria did not. Second, even assuming that Puentes did not intend for Victoria to answer, the Board's test is an objective one; thus, whether Puentes intended for the question to be rhetorical is irrelevant. See *Smithfield Packing Co.*, 344 NLRB 1, 1 (2004), enfd. sub nom. *Food & Commercial Workers Local 204 v. NLRB*, 447 F.3d 821 (D.C. Cir. 2006) ("the standard for determining whether a statement violates Section 8(a)(1) is an objective one that considers whether the statement has a reasonable tendency to coerce the employee or interfere with Section 7 rights, rather than the intent of the speaker.").¹⁵ The Board has found that even "rhetorical" questions may be unlawful when they tend "to impede employees in the exercise of their Section 7 rights under conditions violative of Section 8(a)(1) of the Act." *Kidde, Inc.*, 284 NLRB 78, 84 (1987).¹⁶ Last, the Board has also explained that when an employer coercively questions an employee it "is not expressing views, argument, or opinion" that is protected by the Act. See *Struksnes Construction Co.*, 165 NLRB 1062, 1062 fn. 8 (1967).

¹² The judge noted that the Union may not even have had a bargaining committee.

¹³ See, e.g., *Naomi Knitting Plant*, 328 NLRB at 1280 (finding under the circumstances, labor consultant's question "whether anyone had heard anything about the Union" would reasonably tend to interfere with questioned employees' rights); *MDI Commercial Services*, 325 NLRB 53, 69–70 (1997), enfd. in relevant part 175 F.3d 621 (8th Cir. 1999) (unlawful interrogation found where low-level supervisor asked employee to "Tell me about this union."); *Medical Center of Ocean County*, 315 NLRB 1150, 1154 (1994) (finding coercive interrogation where supervisor asked an employee "[w]hat's going on . . . what's happening?" to inquire about not only the employee's union activities, but the union activities of other employees in the shop).

¹⁴ See also *Hanes Hosiery, Inc.*, 219 NLRB 338, 338 (1975) ("We long have recognized that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on Respondent's motive, courtesy, or gentleness, or on whether the coercion succeeded or failed.")

¹⁵ See also *Burns Electronic Security Services*, 245 NLRB 742, 742 fn. 2 (1979), enf. denied 624 F.2d 403 (2d Cir. 1980) (rejecting characterization of statement as "not intended to elicit any answer" as speculative and irrelevant to the issue of whether the statement tended to coerce employees).

¹⁶ See also *TKC, A Joint Venture*, above, 340 NLRB at 924; *Mauka, Inc.*, 327 NLRB 803, 809 (1999) (finding comments were coercive irrespective of whether they were an interrogation or rhetorical).

v.

For these reasons, I agree with the General Counsel and the judge that Puentes' question to Victoria was unlawful in all the circumstances. An employee in Victoria's position would have reasonably felt coerced—accordingly, the Board should adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act.

Dated, Washington, D.C. November 20, 2019

Lauren McFerran Member

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us 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 disparage the United Food and Commercial Workers Union, Local 99 (Union), by telling employees that the Union was responsible for creating problems with PTO and employees needed to fix that with the Union.

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

TRINITY SERVICES GROUP, INC

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-212163> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor

¹ Testimony contrary to my findings has been discredited. Unless otherwise noted, witness demeanor was the primary consideration used in making credibility resolutions.

Relations Board, 1015 Half St. S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Judith Dávila, Esq., for the General Counsel.
Frederick C. Miner, Esq. (Little Mendelson, P.C.), for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. GIANNOPOULOS, Administrative Law Judge. This case was tried before me in Bisbee, Arizona, on July 17, 2018, based upon charges filed by the United Food and Commercial Workers Union, Local 99 (Union), and a complaint and notice of hearing dated March 30, 2018 (complaint). The complaint, as amended at trial, alleges that Trinity Services Group, Inc., (Respondent or Trinity) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by: informing employees that collective bargaining between Trinity and the Union would be futile; interrogating employees; and disparaging the Union. Respondent denies the allegations.

Based upon the entire record, including my observation of witness demeanor, and after considering the briefs filed by the General Counsel and Respondent, I make the following findings of fact and conclusions of law.¹

I. JURISDICTION AND LABOR ORGANIZATION

Trinity admits that it is a corporation with an office and place of business in Douglas, Arizona, where it provides institutional food services to correctional facilities. It further admits that, in conducting its business operations, the company purchases and receives goods valued in excess of \$50,000 directly from points outside the State of Arizona. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Trinity also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

A. Background

Trinity is a food service company that contracts with prisons across the country to prepare and serve meals to inmates. In Arizona, Trinity is contracted by the State of Arizona to provide food preparation and delivery services to the prisoners housed at

the state prison in Douglas, Arizona. Approximately 1,800 inmates are housed at the Douglas prison. Respondent employs about 18 people at the facility, including statutory supervisors; twelve of Respondent's Douglas employees are represented by the Union.² (Tr. 18–21, 114.)

In Douglas, Respondent's employees oversee the inmates, who actually cook and serve the food to the prison population, ensuring the food is prepared properly, using the correct recipes. Respondent's employees who perform this work are referred to as "food supervisors." (Tr. 156–57.)

The Union has represented Respondent's food service workers, warehouse aides, and drivers working at the Douglas prison for about 20 years. The parties were signatories to a collective-bargaining agreement whose terms ran from July 2013 through June 30, 2017 (2013 CBA). Trinity's Douglas work force is the Company's only unionized facility. (Tr. 21, 36; GC Exhs. 3, 13.)

Jesus Puentes (Puentes) serves as Trinity's food service director at Douglas. Puentes testified that, although he lives and has an office in Douglas, he only visits the Douglas prison every 4 or 6 months; he spends most of his time at the Company's office near Phoenix.³ Gustavo Luna (Luna) is the assistant food service director and is the day-to-day supervisor of Respondent's Douglas employees and managers. Sergio Rivera (Rivera) is the Unit Manager and supervises the Douglas kitchen employees, including the food supervisors. This case concerns statements that Puentes, Luna, and Rivera allegedly made to employee Marisol Victoria (Victoria), who works as a food supervisor, at a time when Respondent and the Union were in the middle of negotiations for a successor agreement. (Tr. 15–18, 25, 76, 113, 133–134.)

B. Negotiations for a successor agreement

Respondent and the Union began negotiations for a successor agreement in June 2017. The parties held a total of four negotiating sessions in 2017 (one in June, August, October, and December) before employees ratified a successor agreement in April 2018. Autumn Mitchell, who works for the Union, was its lead negotiator. It is unclear who served as the Company's lead negotiator. However, Luna attended both the August and December negotiating sessions and Puentes also attended the December meeting. Victoria, along with other employees, also attended some of the negotiations. (Tr. 21–22, 41–42, 49, 54, 74–75, 92, 113.)

At the initial June 2017 meeting, Respondent presented the Union with information regarding the benefits and policies the company offers workers at its nonunion facilities similar in size to Douglas. It also presented an initial contract proposal, including a new proposal on Personal Time Off (PTO), which mirrored the benefits Respondent offers workers at its non-union facilities. (Tr. 12–13; GC Exh. 4, 13.)

The parties met again on August 9, 2017 where they discussed

² Transcript citations are denoted by "Tr." with the appropriate page number. Citations to the General Counsel and Respondent exhibits are denoted by "GC" and "R." Exh. respectively. Transcript and exhibit citations are intended as an aid, as factual findings are based upon the entire record as a whole.

³ Douglas, Arizona is about 230 miles Southeast of Phoenix; the Douglas prison is about 10 miles from the border with Mexico. I take

topics including PTO and insurance. Respondent had proposed moving employees from their existing Union sponsored health plan to one the company was offering its non-unionized employees. Victoria testified that, by mid-August the Union had presented proposals to Respondent on wages and PTO. However, other than this brief testimony, there is no evidence in the record about the Union's initial bargaining proposals. (Tr. 45–46, 97–98, 113–114, 120.)

The next meeting was in October 2017, and the parties reached agreements on various subjects. Respondent was still advocating a move to its own health plan and promoting the benefits of moving to the PTO plan used at its non-union facilities. The company explained it was very challenging to administer the existing PTO plan which applied only to Douglas employees. (Tr. 41–42, 46; GC Exhs. 8, 14.)

The next meeting was scheduled for December 6, 2017. On December 1 the Union presented a proposal regarding wages, health insurance, and PTO. The Union offered to agree to Respondent's PTO proposal subject to certain conditions, including rolling over unused PTO to the next year, and the understanding that PTO hours rolled over from 2017 would not expire. (Tr. 62–63; GC Exhs. 7, 8.)

When the parties met on December 6, at the Union's request, Trinity presented its last, best, and final contract offer. Under the proposal, employees would maintain their existing Union medical plan, and the company would increase its contributions to the cost of the plan. The last, best, and final offer was rejected by the Union. Ultimately some changes were made to the proposals, and a new agreement was ratified in April 2018. (Tr. 47–48, 55–56; GC Exh. 7.)

C. Negotiation News

After each negotiating session, Luna would distribute to employees a newsletter titled "Negotiation News," which was drafted by Respondent's attorney and detailed what was occurring during negotiations. The newsletter would be emailed to Luna, and he generally distributed it the next day.⁴ (Tr. 13–14, 115–19, 128–29; GC Exh. 7, 11, 13, 14.)

D. Personal Time Off

The 2013 CBA provided for only one type of paid leave—Personal Time Off. Douglas employees use PTO for both vacation and sick leave. (Tr. 101) Under the 2013 CBA employees received a fixed number of PTO days at the beginning of each year, depending upon their seniority, and would also accrue additional PTO days, per month of employment, as follows:

judicial notice of this geographical information. Fed.R. Evid. 201; *United States v. Johnson*, 726 F.2d 1018, 1021 (4th Cir. 1984) ("geographical information is especially appropriate for judicial notice.")

⁴ The newsletters contain a date in the upper right hand corner. Luna testified that the date signifies the day the newsletter was created and issued. He also testified that the newsletter dated December 8, 2017 was actually distributed on January 7, 2018. (Tr. 117–118, 130.)

Completed Years of Service	Accrual per Month	Not to exceed
1-7 years	.92 days	11 days
8-14 years	1.33 days	16 days
15 plus years	1.75 days	21 days

Based on the contract language, workers with between one and three years of service would be entitled to five days of PTO at the beginning of each year and could earn up to an additional 11 days of PTO, for a total of 16 days. Employees with three or more years of service received 10 days of PTO at the start of each year, and could also earn anywhere from 11 to 21 additional days of PTO, depending upon their total years of service. The contract required PTO to be used in the year accrued, and it could not be rolled over to the next year. The 2013 CBA also contained a provision stating that unused PTO would not be cashed out at termination. (GC Exh. 3.)

Under the company's 2017 bargaining proposal, which had been implemented at nonunion facilities similar to Douglas, employees would not receive a lump-sum number of PTO hours at the beginning of each year. Instead, workers would accrue PTO hours per pay period, as set forth below, based upon years of service.

Months of Service	Accrual per Pay Period	Max. Allowed Balance
up to 24	4 hours	13 days
25-60	4.62 hours	17 days
61-120	5.54 hours	21 days
121-180	6.46 hours	25 days
181 or more	7.69 hours	28 days

The company also proposed eliminating the prohibition on PTO rolling over to the next year, up to the maximum allowance, and provided for payment of PTO upon termination. (GC Exh. 4.)

The subject of PTO ultimately became one of the major issues during bargaining. There were problems with how PTO was being used and accrued, and how the existing contract language was being interpreted. The Union contended that Respondent had changed its interpretation of the contract regarding PTO and was no longer properly crediting employees for all the additional PTO time they earned. Trinity had implemented a new software system where accrued PTO would appear on employee paychecks/time cards, and it became increasingly more challenging for the company to administer a PTO benefits system that applied only to the Douglas employees. Starting in about December 2016 and continuing throughout 2017 the Union filed various grievances to ensure employees were being allowed to use their accrued PTO benefits. In June 2017 the Union requested arbitration over one of the PTO grievances. Puentes testified that he could not remember the specifics of the dispute, but that it involved the issue of employee PTO balances related to

⁵ Luna testified that it is a custom in the Douglas area Hispanic culture is to greet someone with a hug and kiss on the cheek and "see how they are doing." (Tr. 122.)

the lump sum hours received at the beginning of each year. (Tr. 22, 32-36, 56-61, 67-68; GC Exhs. 6, 14.)

As the Union was filing grievances, various management officials were corresponding with one another regarding Douglas employee PTO accrual. In a February 2017 email exchange one person argued that, pursuant to the 2013 CBA, Douglas employees could not accrue more 11, 16, or 21 days of PTO, depending on their years of service, for the entire year. On February 17, in response to an email from human resources regarding "the PTO plan for your union team members," Puentes wrote asking why Douglas employees were loaded with 40 hours on the system, and whether this was correct. In a series of March 2017 emails, Respondent discussed a spreadsheet with corrected PTO balances for Douglas employees, and the need to communicate with Douglas workers individually to advise them of their correct PTO balances. (GC Exhs. 9, 10.)

E. August 14 conversation

1. Marisol Victoria's testimony

Victoria has worked for Respondent in Douglas for over six years, overseeing inmates as they prepare and distribute food to their fellow prisoners. Victoria testified that, in 2017 she experienced issues related to her PTO accrual balance and the balance reflected on her check stub did not correspond with the actual PTO time she had accrued. (Tr. 73-76.)

On August 14, 2017, just before noon, Victoria went to the Douglas office to print her paycheck stub; she was getting ready to start her shift. The Douglas office building is located within the prison grounds, but outside of the prison units. The building is actually a trailer, with various offices and cubicles inside, including one that employees use to print their pay stubs. There is also a bathroom and kitchen area in the trailer. Outside the trailer is a porch with some benches. (Tr. 76-77, 94, 160-62.)

Victoria testified that, as she entered the office, Puentes and Luna were coming out of the office onto the porch. They exchanged greetings, with a kiss on the cheek and a hug, which was a normal greeting in their community.⁵ Victoria printed her check stubs, and then exited the office walking out onto the porch. Luna and Puentes were sitting on a bench; Luna was smoking a cigarette. Puentes invited Victoria to join them and he asked how she and her kids were doing; the two discussed her family. A little bit into the conversation, Luna brought up the subject of the Union, asking what the Union was doing for workers and saying that it was not really presenting anything on their behalf at the negotiating table. Victoria replied saying "[w]hat was going on was what it was." (Tr. 78) Luna said that the money they were paying the Union was not being used to present anything at the bargaining table for negotiations and that the Union was not doing anything for employees. Then Puentes asked whether the members were paying fees to the Union and said the money they were paying to the Union was being thrown away. Luna said that what employees were paying was \$20 per week.⁶ Victoria did not respond, and then Puentes told Victoria that if she would like to throw her money away, to throw it away and

⁶ Victoria testified that, at one point, workers were paying \$20 every other week in dues, but are now paying \$20 per week. However, it is not clear when the change occurred.

give it to him. Both Luna and Puentes started laughing. According to Victoria, she “also laughed in a way” but was actually mad about the circumstances as they were talking about her money. (Tr. 79.) Victoria said that “money comes and goes,” handed her paycheck stubs to Puentes and said, “you can have it for me.” (Tr. 80.) Then, Victoria saw Union steward Jose Pedrego (Pedrego) walking towards the office. She said goodbye and walked towards Pedrego. When she joined up with Pedrego, she told him that she was glad he was there “because these mother f***ers made me mad.” (Tr. 80–81.) Pedrego asked her what happened, and she said that Puentes and Luna were talking about the Union. Pedrego told her to wait for him, and that he would talk to her in a bit. (Tr. 77–81, 94–98.)

On cross-examination Victoria initially attributed the statement that the Union was not doing anything on behalf of workers at bargaining to Puentes. However, when asked by Respondent’s counsel if she asked, “him what he meant by that,” Victoria appeared to correct herself by asking “[t]o Luna?” and said she did not. On redirect she again affirmed that it was Luna who said that the Union had not put anything on the table at bargaining. When asked on cross examination how the topic of Union dues came up during the meeting, Victoria replied that it was because Luna said the Union was not using the money workers were paying to present anything at the table for negotiations. (Tr. 97–98, 102.)

2. Jose Pedrego’s testimony

Pedrego works in the warehouse as a truckdriver, has worked for Respondent for 21 years, and is the Union shop steward. He testified that, on August 14, as he was coming out of the warehouse next to the office, Victoria stopped him saying that she could not believe what was just said. She told him that Luna said the Union was not putting anything on the negotiating table and that Puentes told her employees were giving their money away, extended his hand, and said to give him the money because they were just giving it away.⁷ She also told Pedrego that they said the Union was not doing anything for the workers. Pedrego asked her what she wanted to do, and Victoria told him that he could call the Union if he wanted. According to Pedrego, Victoria raised the issue at a Union meeting a few months later. (Tr. 103, 105–110)

3. Jesus Puentes’s testimony

According to Puentes, he was sitting on the porch with Luna at about 11:45 a.m. when Victoria approached the office, giving both he and Luna a hug and a kiss. Victoria went into the office and came out about five minutes later. Puentes testified that, when Victoria came out of the office onto the porch she approached Luna and started making comments about how she was a single mom and did not know what to do—referencing the ongoing Union negotiations. He testified that Luna told Victoria to

get a piece of paper, draw a line, put her pros and cons about negotiations on the paper and make the best decision for herself. According to Puentes, Luna did not initiate the discussion about negotiations, and Victoria simply brought up the matter by starting to ask him question on the subject. (Tr. 135–37.)

When asked if he recalled Luna and Victoria discussing any particular issues, Puentes replied “[n]ot at all. I didn’t pay attention, to be honest, to the conversation.” Puentes agreed with the statement from Respondent’s counsel that Luna made a line on a piece of paper, saying that “[y]es, about pros and cons.” However, when asked whether Luna had any papers with him or in his hand, Puentes testified “[n]o, sir.” (Tr. 138.)

Puentes testified that he did not hear anything else regarding the conversation between Victoria and Luna, and then Victoria said that she had to leave and get to work. When Victoria left, she gave Puentes a hug and kiss, and told him to have a good day. Puentes said that Victoria was not upset when she left, and that the subject of Union dues never came up during the discussion. According to Puentes he did not hear Luna say anything about the Union not doing anything for Victoria, or that the Union was not worth the money workers were paying in dues. He denied saying anything himself about union dues, denied telling Victoria that she was throwing her money away on dues, or that it was a bad idea to pay union dues. Puentes could not recall whether Victoria had any papers in her hand when she came out of the office, but denied that Victoria offered him any papers, or asked him or Luna to look at anything. (Tr. 139–141.)

4. Gustavo Luna’s testimony

Luna testified that on August 14 he was on the office porch with Puentes, smoking a cigarette and having a cup of coffee. Victoria approached and they greeted each other with a hug and kiss on the cheek. Victoria then went inside to conduct some business, and when she exited Luna asked her if she had seen the Negotiation News and the proposal that Trinity was offering.⁸ Victoria replied that she was a single mom and was concerned about the money. According to Luna, he suggested that she look at the proposal, especially the insurance, and compare what she currently received to what Trinity was offering. Luna testified that he had a piece of paper with him, and pen in his pocket, and that he demonstrated by holding up a piece of paper and motioned the drawing of a “T” on the paper and told her to put the pros on one side and the cons on another. (Tr. 120–23, 131.)

Luna recalled them discussing insurance, saying that Victoria had a lot of concern about the cost of insurance going up. Then, according to Luna, Victoria spoke with Puentes, exchanging pleasantries, and said she was leaving as it was getting close to the start of her shift. He gave her a hug and kiss and told her to have a good shift. (Tr. 123–24) According to Luna, the conversation was very pleasant and Victoria did not appear to be upset. He denied telling Victoria that the Union was not doing anything

⁷ Respondent made a hearsay objection to Pedrego’s testimony. However, I find that his testimony is admissible as a present sense impression. Fed.R. Evid. 803(1); *United States v. Peacock*, 654 F.2d 339, 350 (5th Cir.1981) (statement that was otherwise hearsay was properly admitted because it was immediately repeated to a third party and “[t]here was no time for [the declarant] to consciously manipulate the truth.”)

⁸ Luna was referring to the August 4 Negotiation News. (Tr. 127, GC Exh. 13.) This newsletter states that Trinity was proposing the same medical coverage it offers to its non-union workers at other similar facilities. There is no discussion in the newsletter about the cost of this proposal to employees. (GC Exh. 13.)

for her, and denied the topic of union dues was ever discussed. He also denied that Puentes said anything about union dues, or that employees were throwing away their money by paying dues to the Union. (Tr. 124–26)

F. December 15 discussion

1. Marisol Victoria's testimony

Victoria testified that, the morning of December 15 she received a text message from Rivera, her supervisor, telling her to report to the office to make a change on her time card. When she arrived, office manager Frank Romero (Romero) was present. Victoria explained the text message to Romero and said she was there to make a change on her time card. Romero replied saying that she needed to sign for a change that was made because she no longer had any PTO. As he gave Victoria her time card, Rivera arrived. Victoria agreed to make the change but said that she believed she still had three days of PTO remaining. Romero said there was a problem as the system reflected that she no longer had any PTO, even though her time card reflected she still had PTO days remaining. According to Victoria, Rivera then said "that is a problem that the Union created regarding PTO. You need to fix that with the Union." (Tr. 85) Victoria said that everything was okay, she knew they were not the people in charge of the system and did not have any problems towards them. However, she said that they should be taking care of giving employees the correct PTO. Victoria testified that Rivera replied "yes, I know, but that's the problem with the Union." (Tr. 85.) She then said that there was not a problem, signed her time card, and went to work. According to Victoria, she had requested three days of PTO in December because she was sick but was only granted one day of leave. Victoria claims to have filed a grievance over the matter, but it is unclear from the record the outcome of the grievance. (Tr. 25, 74, 83–87, 100–01)

2. Francisco "Frank" Romero's Testimony

Romero is the office manager at Trinity. According to Romero his duties include handling accounts, paying bills, and answering the phones. Romero testified that he is not involved with the administration of PTO and denied ever speaking with Victoria about her PTO. Romero said that he was likely working on December 15, because it was a Friday. However, he could not remember whether he saw Victoria in his office that day, could not remember whether he spoke with her, or whether he had a discussion with both Victoria and Rivera. He testified that Rivera was "probably" working at the Trinity office that day and would have either been working out of Romero's office or the kitchen. (Tr. 159–161.)

3. Sergio Rivera's testimony

Rivera denied that he spoke with Victoria in December 2017 about PTO, and further denied that he spoke with her about disallowing a PTO request. He also denied that he requested that she come to the office to revise/adjust her PTO. However, he admitted hearing that there had been issues regarding employee PTO generally. (Tr. 26, 144–47, 153.)

According to Rivera, he spoke with Victoria in the office on December 15; however, it was nothing more than just saying hello and goodbye. He testified that he was working in the manager's office that day, in the area that employees use to copy their paycheck stubs and view their PTO hours; Romero was working in his office finalizing the inventories. He remembered Victoria walking by and saying hello/good morning, but nothing more. Rivera denied telling Victoria that the Union was to blame for the problems with PTO. He also denied knowing that employees had issues with how their PTO was being tracked or that there were discrepancies between the employee PTO balance in the computer system and the balance listed on their paychecks. (Tr. 147–156.)

III. ANALYSIS

A. The August 14 conversation

1. Witness credibility

There is a divergence in the testimony as to what occurred and what was said during the August 14 discussion between Victoria, Puentes and Luna. After assessing the demeanor of the different witnesses, I credit Victoria. I found Victoria to be forthright in her testimony, trying to remember events that occurred nearly a year earlier. Along with demeanor, I also note that Victoria was a current employee of Respondent at the time of the hearing and was therefore testifying against her pecuniary interest, which also supports her credibility. *Flexsteel Industries*, 316 NLRB 745, 745 (1995). Although Respondent points to some inconsistencies in her direct and cross-examination testimony, those inconsistencies are minor and do not diminish my determination as to her credibility. *Doral Building Services*, 273 NLRB 454, 454 fn. 3 (1984), *enfd. mem.* 786 F.2d 1175 (9th Cir. 1986) (minor inconsistencies do not diminish employees' credibility established in part by their demeanor, nor do they render credible the rejected testimony offered by respondent's witnesses).

Moreover, the testimony of Puentes and Luna as to how the conversation started, and what transpired, are inconsistent and do not ring true. Puentes testified that, when Victoria walked out of the office, she approached Luna and, without prompting, started talking about being a single mother and not knowing what to do in reference to negotiations with the Union. Puentes did not, and could not, explain why Victoria would just start speaking about negotiations and being a single mother when nobody had previously breached the topics; I do not believe his testimony.⁹

Luna's testimony conflicted with that of Puentes as to how the topic of the Union arose. According to Luna, when Victoria exited the office and walked onto the porch, he asked her if she had seen the August 4 edition of the Negotiations News and the proposal Trinity was offering. It is then, Luna testified, that Victoria said she was a single mother and concerned about money. In response, Luna told her to look at the proposal, particularly the insurance, and make comparisons. He then testified that he took a pen from his pocket and a piece of paper and demonstrated that she should make a "T" with the pros on one side and cons on the

⁹ Also detracting from Puentes's credibility is his testimony that he could not remember the specifics about the issues the company and the Union were having regarding PTO, despite previously agreeing that PTO

was one of the major issues between the Union and Respondent. (Tr. 22–23.) Also, Puentes was copied on several company emails regarding the PTO issues, and initiated at least one of those emails. (GC Exh. 9)

other and make her decision. However, Puentes specifically testified that Luna did not have any paper with him, which contradicts Luna's testimony. Moreover, the August 4 Negotiation News simply states that the company was proposing the same medical coverage that it was offering to its non-unionized employees at other facilities. There is no discussion in the newsletter, or anywhere in the record, whether the company's proposed medical coverage would cost employees more, less, or the same as they were currently paying. There is no explanation why Victoria would somehow start discussing purported concerns about money based upon the evidence in the record as to what was occurring during negotiations at the time. I do not credit Luna's testimony.

Accordingly, the credited evidence shows that, on August 14 when Victoria exited the office, Puentes and Luna were on the porch and Puentes asked her to join them. After a short discussion about Victoria's family, Luna brought up the subject of the Union and negotiations, asking what the Union was doing for employees and saying that the Union was not really presenting anything on their behalf at the bargaining table. Victoria replied saying that what was occurring at bargaining was what it was. Luna then said that the money they were paying the Union was not being used to present anything at bargaining and the Union was not doing anything for employees. Puentes asked if the members were paying fees to the Union and that the money they were paying to the Union was being thrown away. Luna then said employees were paying \$20 per week. Victoria did not respond and Puentes said that if she wanted to throw her money away, to throw it away and give it to him. Both Luna and Puentes then started laughing. Although Victoria chuckled, she was mad and said that money comes and goes, handed her check stubs to Puentes and, alluding to her money, said "you can have it for me." She then saw Pedrego approaching, walked over to him and told him about her conversation with Luna and Puentes.

2. Threat of futility

Paragraph 5(a) of the Complaint alleges that the comments made by Luna and Puentes, asserting the Union was not bringing anything to the bargaining table, and that Victoria was throwing her money away and should give it to Puentes instead, amounted to unlawful statements that collective bargaining between Respondent and the Union would be futile. An employer violates Section 8(a)(1) by threatening employees with the futility of unionization. *NLRB v. E.I. DuPont De Nemours*, 750 F.2d 524, 527–28 (6th Cir. 1984). In determining whether a statement is a threat, the Board considers the "total context" of the situation and "is justified in determining the question from the standpoint of employees over whom the employer has a measure of economic power." *Id.* (internal quotations omitted)

In support of this allegation, the General Counsel cites to *Wellstream Corp.*, 313 NLRB 698 (1994) and argues that the statements made to Victoria, coming during contract negotiations, would cause employees to believe that continuing to support the Union would be futile and their efforts would be purposeless. GC Br., at 13–14. In *Wellstream Corp.*, the Board

found a violation where the company president told employees that no "son of a bitch" would bring a union into the company and he would see to it that the company was never unionized, as the statements were intended to, and did, convey to employees the futility of supporting the union. 313 NLRB at 706.

Respondent, citing *Trailmobile Trailer, LLC.*, 343 NLRB 95 (2004), and *W&F Building Maintenance*, 268 NLRB 849, 858 (1984), argues that the comments by Luna and Puentes were protected by Section 8(c) of the Act, and that nothing in the words themselves conveyed that collective-bargaining would be futile. Resp't Br., at 13–15. In *Trailmobile Trailer, LLC.*, the Board found no violation where a manager told employees who were engaged in protected activity that: he could teach monkeys to weld; could replace all the painters within 10 minutes; the people in the union were stupid; the union steward was being used by a union official who was "worthless and no good;" and the union official was a "fat ass . . . living up at the Holiday Inn on the employees' dues." 343 NLRB at 95–96. The Board observed that the "Act countenances a significant degree of vituperative speech in the heat of labor relations." *Id.* at 95. And, while the comments were disparaging, they did not suggest that the employees' union activities were futile, did not reasonably convey any threats, and did not constitute harassment that would tend to interfere with employee Section 7 rights. *Id.* In *W&F Building Maintenance Co.*, 268 NLRB 849, 849 fn. 1 (1984), a supervisor told employees that "it was a waste of money to join the union and that their job security was not with the union but in doing good work." The Board found no violation finding the comments were mere expressions of opinion privileged under Section 8(c) of the Act.

Here, I find that the statements made by Luna and Puentes are more similar to those found lawful by the Board in *Trailmobile Trailer* and *W&F Maintenance Co.*, than the those found unlawful in *Wellstream Corp.* While the statements were disparaging and distasteful, they were not accompanied by any threats, nor did they otherwise suggest that employee union activity was futile. Moreover, as of August 14, 2017, it is unclear from the evidence what, if any, bargaining proposals the Union had actually presented to Respondent; the record contains only one written bargaining proposal from the Union dated almost three months later.¹⁰ (GC Exh. 8.) Compare *United Technologies Corp.*, 274 NLRB 1069, 1074 (1985), *enfd. sub nom NLRB v. Pratt & Whitney*, 789 F.2d 121 (2d Cir. 1986) (finding employer's communications "criticizing the Union's demands and tactics" were protected by Section 8(c) because "employees ought to be fully informed as to all issues relevant to collective-bargaining negotiations and the parties' positions as to those issues") with *Miller Electric Pump and Plumbing*, 334 NLRB 824, 825 (2001) (owner's comment to employee that he was "wasting his time" because the company would shut its doors and would not go union was an unlawful expression of futility as the statement that the employee was "wasting his time" was made in conjunction with the owner's unlawful threat of plant closure and indicated to employees that seeking union representation would be futile because it would result in the business closing) and *Weis*

¹⁰ While Victoria testified on cross-examination that, by August the Union had presented proposals on PTO and wages, Victoria is not a

union official and, other than this brief testimony, there is no evidence of these proposals, what they entailed, or when/how they were presented.

Markets, Inc., 325 NLRB 871, 872 (1998), enfd. in pertinent part 265 F.3d 239 (7th Cir. 2001) (manager's statements to employees that the union "could do nothing for them" unlawfully conveyed the futility of selecting the union as their bargaining representative as it was made contemporaneously with, and linked to, the manager's unlawful threats to close the store and put employees out of work if they voted to unionize).

Here, the comments made by Luna and Puentes appear to be their personal assessment of the Union's value at the bargaining table at the time. And, because the comments were not made contemporaneously with, or linked to, any explicit or implicit threats, while obnoxious, they do not constitute a threat of futility. Accordingly, I recommend this allegation be dismissed.

3. Interrogation

Complaint paragraphs 5(b) and (c) allege that the statements made by Luna and Puentes about dues payments to the Union constitute an unlawful interrogation. In determining whether an unlawful interrogation occurred, the Board looks at a number of factors based on the totality of the circumstances. *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). See also *Bourne v. NLRB*, 332 F.2d 47 (2d Cir. 1964). These factors include: the background, i.e. whether there is a history of employer hostility and/or discrimination against employee protected conduct; the nature of the information sought, e.g. whether the interrogator was seeking information about protected activity, or on which to base taking action against an employee; the identity of the questioner and their place in the management hierarchy; the place and method of the interrogation, e.g. whether there was an atmosphere of unnatural formality, or if the employee was called from work into the bosses' office; the truthfulness of the reply; whether the employer had, or conveyed, a legitimate purpose for the question; and whether assurances against reprisals were provided. *Westwood Health Care Center*, 330 NLRB 935, 939 (2000) (citing *Bourne v. NLRB*, 332 F.2d at 48); *RHCG Safety Corp.*, 365 NLRB No. 88 slip op. at 1-2 (2017). These and other factors are not applied mechanically. Instead, they are "useful indicia that serve as a starting point for assessing the 'totality of the circumstances.'" *Westwood Health Care Center*, 330 NLRB at 939 (2000) (citing *Perdue Farms, Inc. v. NLRB*, 144 F.3d 830, 835 (D.C. Cir. 1998)). In the end, the "task is to determine whether under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act." *Westwood Health Care Ctr.*, 330 NLRB at 940. Applying these factors here, I find that the questions from Puentes inquiring as to whether employees were paying fees to the Union

constituted an unlawful interrogation.¹¹

While there is no history of employer hostility and/or discrimination, the information sought by Puentes related directly to whether employees were continuing to support the Union financially by paying fees. Thus, Puentes was seeking to determine whether Victoria and her coworkers were still financial supporters of the Union, at a time when the Union was bargaining a successor agreement. While the setting was informal, Puentes is a high level management official, and Luna is Respondent's highest day-to-day official at the jobsite. Puentes is the one who initiated the questioning as to whether members were paying Union fees and neither Puentes nor Luna conveyed a legitimate purpose for their questions. Nor did they provide Victoria with assurances against reprisals. *RHCG Safety Corp.*, 365 NLRB No. 88 slip op. at 1-2 (2017) (that employer did not have or communicate any legitimate purpose for the question and did not provide assurances against reprisals supports a finding of an unlawful interrogation). Accordingly, assessing all the factors, I find that Respondent violated Section 8(a)(1) of the Act by interrogating Victoria as to whether employees were paying fees/dues to the Union. *Creutz Plating Corp.*, 171 NLRB 1, 13 (1968) (general manager's asking employee whether he was going to continue to pay dues to the Union was for no legitimate purpose and constituted an unlawful interrogation); *Ridgewood Management Co.*, 172 NLRB 148, 150 (1968) (employer had no legitimate reason for interrogating employees about various matters, including whether they paid a fee to the Union, and did not provide assurances against reprisals).

In its brief, Respondent argues that no violation should be found, inferring that Victoria was an open and active union supporter, and referring to her as "an observer for the Union" at various bargaining sessions.¹² (R. Br., at 10, 13.) While it is undisputed that Victoria attended some of the bargaining sessions, there is no evidence whatsoever that she did so as an "observer for the Union," as argued by Respondent. Indeed, the record shows that up to five different employees attended some of the bargaining sessions. (Tr. 41, 92.) Victoria was not a Union steward, and there is no evidence that she was a member of the Union's bargaining committee, or that the Union even had a bargaining committee.

Also, there is no evidence that, before the August 14 discussion, Puentes knew Victoria had attended any of the bargaining sessions, or that she supported the Union in any way whatsoever. According to Puentes, at the time he was not involved in the negotiations in Douglas; the only bargaining session he attended was in December 2017. (Tr. 22, 137-38.) Moreover, Puentes's inquiry was not limited to only Victoria, but he asked whether members in general were paying fees to support the Union. In these circumstances, while relevant, whether Victoria was or was

¹¹ Whether or not Victoria was intimidated by the questioning, or actually considered discontinuing her union dues, does not preclude the finding of a violation as "the Board does not consider the subjective reaction of the individual involved but rather whether, under all the circumstances, the conduct reasonably tends to restrain, coerce, or interfere with employees' rights guaranteed under the Act." *Con-Way Central Express*, 333 NLRB 1073 (2001).

¹² Respondent also refers to Puentes's statement that Victoria could throw her money away by giving it to him as a "joke" which Victoria

"went along with," and asserts that she added to the "levity" by saying money comes and goes. (R. Br., at 6.) However, I credit Victoria's testimony that she was mad about what was occurring; for Victoria this was no joke. And her testimony that she also "laughed in a way," does not change this finding. Two high level officials were bad mouthing the Union in her presence and mocking employees who paid dues to the Union—that Victoria would try to humor her bosses is understandable under the circumstances. Victoria, who has worked for Trinity for over six years, is economically dependent upon Respondent for her livelihood.

not an open Union supporter is not determinative. *Abramson, LLC*, 345 NLRB 171, 171 fn. 1 (2005) (fact employee was open union supporter and wearing union t-shirt at time of questioning was relevant, but not determinative and considering all the circumstances supervisor's questions to employee constituted an unlawful interrogation); Cf. *Premier Rubber Co.*, 272 NLRB 466, 466 (1984) (no violation where vice president asked if employee's husband "worked for a union" and "how much the dues were" as the inquiry was not intended to elicit information about employee union activities or sympathies, and the questions did not involve respondent's employee "nor necessarily a member of the union.")

Finally, Complaint paragraph 5(b) alleges that Luna also interrogated Victoria during this August 14 discussion. The credited evidence shows that, after Puentes said members were throwing their money away by paying it to the Union, Luna stated that employees were paying \$20 per week to the Union. It appears that this statement was more or less accurate.¹³ Thus, it does not appear that Luna was trying to elicit information from Victoria about the amount of Union dues, or who was or was not paying. Cf. *Belcher Towing Co.*, 238 NLRB 446, 459 (1978) (provocative statements to employees about union activity, while declarative in nature, were "designed to bring forth employee sentiments about union representation."); *Eddyleon Chocolate Co.*, 301 NLRB 887, 898 (1991) ("Although . . . statement was declarative in form rather than interrogative, it was clearly intended to elicit" information regarding employee's participation in union activities.) Instead, Luna was stating his understanding of the weekly dues that Union members were paying. In her brief, the General Counsel does not address this allegation. (GC Br., at 15–16.) Considering all the circumstances, I find that the General Counsel has failed to meet her burden of proof and I recommend that Complaint paragraph 5(b) be dismissed.

B. The December 15 discussion

1. Witness credibility

As with the August 14 discussion, based upon the demeanor of the witnesses, I credit Victoria's testimony as to what occurred over that of Rivera and Romero. I did not find Rivera to be a credible witness. Along with assessing his demeanor, I note that his testimony kept changing regarding the issue of PTO. When asked initially, Rivera testified that he had heard about the issues employees were having regarding PTO. (Tr. 26.) However, he later backtracked—saying he was not sure, and then saying he did not know. (Tr. 28.) At one point, Rivera testified that does not deal with PTO but with vacation requests instead, testifying that employees "ask me for a vacation. I give them vacation." (Tr. 26.) However, he later testified that PTO is used for vacations, a personal day, or for sick leave.¹⁴ (Tr. 27.) When asked by Respondent's counsel if he received any PTO requests from employees in December 2107, Rivera initially testified "no." (Tr. 143.) However, he then changed his testimony to say that, not only did he receive PTO requests, but December 2017 was a busy month and it caused him some stress because there were so

many requests. (Tr. 147–49.) In sum, I found his entire testimony regarding the PTO issue, PTO requests and their approval/denial, and the December 15 conversation with Victoria as not credible.

As for Romero, he struck me as someone who tried to be honest, but also wanted to avoid saying anything that would disrupt Respondent's case. Thus, when generally asked by Respondent's counsel whether he had ever spoken to Victoria about her PTO, he answered "no." (Tr. 159.) However, he then testified that, while it was likely both he and Rivera were working in the office on December 15, he did not remember whether he saw Victoria in the office, did not remember whether he spoke with her individually, or whether both he and Rivera had a discussion with her. (Tr. 159–160.) Accordingly, I do not credit that part of his testimony where he denied ever speaking with Victoria about PTO; it was clear he simply could not remember his interaction with Victoria on December 15, or what was said that day.

Accordingly, the credited evidence shows that, on December 15, when Victoria was in the office, Romero told her that she needed to sign for a change on her timecard because she no longer had any PTO. As he gave Victoria her time card, Rivera arrived. After agreeing to make the change, Victoria expressed her belief that she still had three days of PTO left. Romero replied saying there was a problem as the system reflected that she no longer had any PTO, even though her time card reflected she still had PTO days remaining. Rivera then said that is a problem that the Union created regarding PTO, and Victoria needed to fix that with the Union. After Victoria said everything was okay but they should ensure employees received the correct PTO, Rivera agreed but said that is the problem with the Union. Victoria, who had requested three days of PTO in December because she was sick, was only granted one day of leave.

2. Analysis

The General Counsel asserts that Rivera's comments, blaming the Union for the PTO issues, unlawfully disparaged the Union in violation of Section 8(a)(1). (GC Br., at 17.) Respondent argues there can be no violation as the comments were neither disparaging nor critical of the Union, and whatever Rivera said was simply an expression of personal opinion protected by Section 8(c). (R. Br., at 18.)

"Words of disparagement alone concerning a union or its officials," even if they are flip and intemperate, are "insufficient for finding a violation of Section 8(a)(1)." *Sears, Roebuck & Co.*, 305 NLRB 193, 193, 198 (1991) (no violation where regional manager told employees that the union might send someone out to break their legs in order to collect fees.) Such statements are unlawful however when they threaten reprisals or promise benefits, *Children's Center for Behavioral Development*, 347 NLRB 35, 36 (2006), or when, in context, they have a reasonable tendency to interfere, restrain, or coerce employees in the exercise of their Section 7 rights. See, e.g., *Turtle Bay Resorts*, 353 NLRB 1242, 1278 (2009), incorporated by reference 355 NLRB 706 (2010), enf. 452 Fed.Appx. 433 (5th Cir. 2011).

The balancing of the rights of employer expression guaranteed

¹³ It is unclear from Victoria's testimony exactly when employees went from paying \$20 every 2 weeks in Union fees to \$20 per week. (Tr. 79.)

¹⁴ Indeed, under the expired CBA there is no distinction between vacation days, PTO, and sick leave. Employees only earn and use PTO days. (GC Exh. 3.)

by section 8(c), with the rights of employees to be free from threats prohibited by section 8(a)(1), must take into account the economic dependence employees have on their employer and, because of this relationship, “the necessary tendency” of employees to pick up on the employer’s intended implications “that might be more readily dismissed by a more disinterested ear.” *Mesker Door, Inc.*, 357 NLRB 591, 595 (2011) (quoting *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969)). Thus, the Board views “employer statements ‘from the standpoint of employees over whom the employer has a measure of economic power.’” *Id.* (quoting *Henry I. Siegel Co. v. NLRB*, 417 F.2d 1206, 1214 (6th Cir. 1969)).

Here, I find that Rivera’s statements have a tendency to interfere, restrain, and coerce employees in the exercise of their Section 7 rights, and constitute a violation. The record evidence shows that there was a dispute regarding how PTO was being earned and calculated, along with a problem relating to how PTO was displayed on employee paychecks/time cards versus Respondent’s computer system. Rivera admitted he had heard there were issues regarding employee PTO. For whatever reason Victoria was denied two days of PTO in December, one thing is certain—there is no evidence that the PTO problems were created by the Union or that her denial of PTO was because of the Union. Accordingly, considering Rivera’s statements in context, and from the standpoint of employees, I find his comments blaming the Union for creating the PTO problem and telling Victoria to fix the problem with the Union violated Section 8(a)(1) of the Act. Cf. *Webco Industries, Inc.*, 327 NLRB 172, 173 (1998), *enfd.* 217 F.3d 1306 (10th Cir. 2000) (employer “violates Section 8(a)(1) of the Act when it takes adverse action against employees and falsely blames its action on the union.”); *Faro Screen Process, Inc.*, 362 NLRB No. 84 slip. op. at 1–2 (2015) (citing *RTP Co.*, 334 NLRB 466, 468, 470–71 (2001) (blaming the union for preventing a wage increase was a violation)); *Westminster Community Hospital, Inc.*, 221 NLRB 185, 193 (1975), *enfd. mem.* in relevant part 566 F.2d 1186 (9th Cir. 1977) (“by placing responsibility for the absence of greater benefits, which Respondent assertedly desired to confer, exclusively on the Union, which had no role in the matter, [Respondent] was attempting to disparage the Union in the eyes of employees so as to discourage membership in the Union.”) Rivera’s statements occurred while the parties were still bargaining for a successor contract, and while the Union’s grievances about PTO were still outstanding. Thus, I believe Rivera’s statements to Victoria, who was denied two days of time off, coercively suggested to employees that support for the Union “results in damage to their terms of employment,” and constitute a violation. *Webco Industries, Inc.*, 327 NLRB at 173.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is a labor organization within the meaning of

¹⁵ 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.

Section 2(5) of the Act.

2. The Respondent violated Section 8(a)(1) of the Act by interrogating employees about their financial support of the Union.

3. The Respondent violated Section 8(a)(1) of the Act by informing employees who were denied personal time off that the Union was responsible for creating problems regarding PTO and they needed to fix that with the Union.

4. The Respondent did not violate the Act as further alleged in the complaint.

REMEDY

Having found Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act. The Respondent shall be required to post the attached notice, in both English and Spanish, in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁵

ORDER

Respondent Trinity Services Group, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their union membership, activities, or support.

(b) Disparaging the Union by telling employees who were denied personal time off that the Union was responsible for creating problems regarding PTO and to fix that with the Union.

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

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

(a) Within 14 days after service by the Region, post (in both English and Spanish) at its Douglas, Arizona facility, copies of the attached notice marked “Appendix.”¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facilities any time since August 14, 2017.

¹⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

(b) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with this order.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. November 7, 2018

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose 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 interrogate our employees about their union membership, activities, or support.

WE WILL NOT disparage the United Food and Commercial Workers Union, Local 99, including by telling employees that the Union was responsible for creating problems with PTO and employees needed to fix that with the Union.

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

TRINITY SERVICES GROUP, INC.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-212163 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Page 25 of 93

Filed: 08/17/2020

Document #1856848

USCA Case #20-1014

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

TRINITY SERVICES GROUP, INC.,

Respondent,

and

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 99,**

Charging Party.

Case No. **28-CA-212163**

The above-entitled matter came on for hearing pursuant to notice, before **JOHN T. GIANNOPOULOS**, Administrative Law Judge, at the **Bisbee Justice Court, 207 North Judd Drive, Bisbee, Arizona**, on **Tuesday, July 17, 2018**, at **9:00 a.m.**

Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, MD 21409
(410) 974-0947

JA24

1 JUDGE GIANNOPOULOS: -- go off the record to do that?

2 MS. DAVILA: Yeah.

3 JUDGE GIANNOPOULOS: So let's do that before we go with
4 the sequestration and the opening statements.

5 **So let's go off the record.**

6 **(Off the record from 9:04 a.m. to 9:16 a.m.)**

7 **JUDGE GIANNOPOULOS: We are back on the record.**

8 Ms. Davila, were you about to take care of what you
9 needed?

10 MS. DAVILA: Yes. Thank you, Your Honor.

11 JUDGE GIANNOPOULOS: Okay. And you had asked about a
12 sequestration order before we went off the record. Do you
13 want to make a motion for sequestration of witnesses?

14 MS. DAVILA: Yes, Your Honor. I move to sequester any
15 witnesses from the room for the remainder of the hearing
16 pursuant to Rule 615.

17 JUDGE GIANNOPOULOS: Okay. Is there any objection,
18 Mr. Miner?

19 MR. MINER: No objection.

20 JUDGE GIANNOPOULOS: Very well. So a sequestration
21 order is being issued in this proceeding. This means that
22 all persons who expect to be called as witnesses in this
23 matter other than a person designated as essential to the
24 party's presentation of the case will be required to remain
25 outside the courtroom whenever testimony or other proceedings

1 article of the PTO in the proposal as the copy was furnished
2 by Respondent.

3 JUDGE GIANNOPOULOS: Okay. Mr. Miner, any objections to
4 this?

5 MR. MINER: No objection to General Counsel 4 in terms
6 of accuracy of the document.

7 JUDGE GIANNOPOULOS: And so is the stipulation that this
8 was presented during bargaining on June 27, 2017?

9 MS. DAVILA: Yes, Your Honor.

10 MR. MINER: Yes. Thank you, Your Honor.

11 JUDGE GIANNOPOULOS: Okay, so General Counsel's 4 is
12 admitted, and the stipulation is received.

13 **(General Counsel's Exhibit 4 received in evidence.)**

14 MS. DAVILA: I have no further documents, Your Honor.

15 JUDGE GIANNOPOULOS: Okay. Are there any other
16 preliminary matters before we start with testimony?

17 MS. DAVILA: No, Your Honor.

18 JUDGE GIANNOPOULOS: So go ahead, Ms. Davila. Your
19 first witness?

20 MS. DAVILA: Counsel for the General Counsel calls
21 Gustavo Luna.

22 JUDGE GIANNOPOULOS: Sir, I think that's you. Mr. Luna?

23 MR. MINER: Mr. Luna?

24 MR. LUNA: Yes, sir.

25 MR. MINER: You take our hot seat, please.

1 JUDGE GIANNOPOULOS: Have a seat, sir.

2 THE WITNESS: Thank you.

3 JUDGE GIANNOPOULOS: Please keep your voice up.

4 THE WITNESS: Okay.

5 JUDGE GIANNOPOULOS: The microphone just records. It
6 doesn't amplify. All right.

7 THE WITNESS: Okay, thank you.

8 JUDGE GIANNOPOULOS: Go ahead, Ms. Davila.

9 **DIRECT EXAMINATION**

10 Q. BY MS. DAVILA: Good morning, Mr. Puentes.

11 A. Yeah, good morning.

12 Q. My name is Judith Davila. I'm the Government's attorney
13 in this matter.

14 A. Ah-huh.

15 Q. Who is your current employer?

16 A. Trinity Services Group.

17 Q. What position do you have there?

18 A. Food service director.

19 Q. What kind of company is the Trinity Services Group?

20 A. We provide the meals to the inmates.

21 Q. About how many employees does Trinity have? How many
22 employees?

23 A. That I have at Douglas?

24 Q. Uh-huh.

25 A. Eighteen.

Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, MD 21409
(410) 974-0947

JA27

1 JUDGE GIANNOPOULOS: Yeah.

2 THE WITNESS: 1,800.

3 JUDGE GIANNOPOULOS: Okay, all right. Go ahead,

4 Ms. Davila.

5 Q. BY MS. DAVILA: Okay. And the employees of the Company,
6 they just serve food?

7 A. Yes.

8 Q. Is there a union there at that facility?

9 A. Yes.

10 Q. What union is that?

11 A. Something, I don't know.

12 Q. Okay. Are all of the Employer's employees unionized?

13 A. Yes.

14 MS. DAVILA: If I may have permission to proceed under
15 611(c)?

16 JUDGE GIANNOPOULOS: Yes, granted.

17 Q. BY MS. DAVILA: Okay. And so the Employer and the Union
18 have been negotiating a new contract; is that correct?

19 A. Yes.

20 Q. And this has been going on since last year?

21 A. I believe so.

22 Q. And so the previous contract expired last June; is that
23 correct?

24 A. Yes.

25 Q. That's when the negotiations began, to your knowledge?

1 JUDGE GIANNOPOULOS: Personal -- PTO is personal time
2 off?

3 THE WITNESS: Yes.

4 JUDGE GIANNOPOULOS: What is your understanding of
5 what -- what does PTO mean?

6 THE WITNESS: First --

7 JUDGE GIANNOPOULOS: Like if I'm an employee, what is --
8 how -- what do I do for PTO? What do I use it for?

9 THE WITNESS: Take a vacation, a personal day, sick day.

10 JUDGE GIANNOPOULOS: Okay.

11 Q. BY MS. DAVILA: And so who of the Employer deals with
12 the PTO, granting employees PTO?

13 A. Well, they ask me. And I ask them do you have hours,
14 and they'll let me know, yes, I have hours. Okay, then I'll
15 put them down for PTO.

16 JUDGE GIANNOPOULOS: You mean hours saved up?

17 THE WITNESS: Yeah, hours saved up.

18 Q. BY MS. DAVILA: And so there's been an issue about
19 employees accruing hours; is that correct?

20 A. Yeah, I guess.

21 Q. You guess or no?

22 JUDGE GIANNOPOULOS: Well, what do you mean by -- why
23 don't you -- why don't you kind of get him as far as issues,
24 like what do you mean, Ms. Davila.

25 MS. DAVILA: Okay, so -- well, there's one issue about

1 there's a difference between the Union's interpretation of
2 how many hours an employee should have and the Employer.

3 THE WITNESS: Um-hum.

4 MR. MINER: I'm going to object to lack of foundation,
5 Your Honor.

6 JUDGE GIANNOPOULOS: Okay. Ask is it, is it. There is
7 a lack of foundation. But is there an issue, is there -- is
8 there some contention between the Union and the Company about
9 PTO or disagreement as to --

10 THE WITNESS: That I'm not sure. I don't know. Because
11 all I do is they ask me for a PTO. I ask them do you have
12 time. They'll tell me yes or no. And that's where we go
13 from there.

14 JUDGE GIANNOPOULOS: Okay, so that's the answer. That's
15 his answer.

16 Q. BY MS. DAVILA: Okay. And there was an issue with PTO
17 being given in excess to employees, right? There was an
18 administrative issue last year with the PTO.

19 A. That they gave them too many or too little bit or --

20 Q. Yes, too many, yes, that's the question.

21 A. Like I say, all I do is do you have time? They say yes.
22 I'll give them their time. And if they have no, well, I
23 can't give them time, you know what I mean.

24 Q. You corrected no issues of PTO last year?

25 A. No.

1 Q. You didn't have to have an employee come in and sign
2 something --

3 A. No.

4 Q. -- to change a PTO?

5 A. No.

6 Q. You never have employees come in and sign things to
7 change their PTO --

8 A. No.

9 Q. -- because it's incorrect.

10 A. Yeah, no.

11 Q. Okay.

12 A. Like I said, all I do, they ask me for PTO. I ask them
13 do you have time. They say yes, I'll give them their time.
14 I have never denied them a PTO.

15 Q. Okay. And you've never had them come back and because
16 they didn't actually have PTO?

17 A. No.

18 Q. Never?

19 A. No.

20 Q. Okay.

21 JUDGE GIANNOPOULOS: Nope. So the answer is --

22 THE WITNESS: No.

23 JUDGE GIANNOPOULOS: -- no?

24 THE WITNESS: No.

25 JUDGE GIANNOPOULOS: Okay.

1 the contract was interpreted and the language with PTO.

2 Q. What was the PTO disagreement?

3 A. Well, in the past, before the Company -- it depends on
4 the years of service. Between 1 to 3 years, the Company
5 would give them 5 to 10 days. And then with the years of
6 service, additional time of PTO, of working there. The
7 Company always had paid it in the past, but in the beginning
8 of '17, they all of a sudden stopped paying or saying that
9 the workers didn't have the PTO time to take off. Therefore,
10 there was a big discrepancy on that and how we deal with that
11 and how the language reads.

12 Q. How long had this issue been going on?

13 A. The issue had been going at the beginning of 2017, when
14 the -- when the Company said the workers didn't have enough
15 time to take.

16 Q. Were there grievances filed about this?

17 A. Yes. I personally filed the grievances because folks
18 had it and showed it on their paychecks that they had time.
19 Then all of a sudden it wasn't there.

20 Q. Okay. Who is Marisol Victoria?

21 A. She is an employee at Trinity.

22 Q. What's her position?

23 A. She is a lead supervisor.

24 Q. Who is Jose Pedrego?

25 A. Jose is also a worker that works at Trinity. He's been

1 bargaining meeting between the bargaining committees of the
2 parties, correct?

3 A. Yes.

4 Q. And at this meeting, Trinity presented its last, best
5 offer for a contract upon request of the Union, correct?

6 A. Um-hum.

7 Q. Is that --

8 JUDGE GIANNOPOULOS: Is that a yes?

9 THE WITNESS: Yes.

10 JUDGE GIANNOPOULOS: So did the Union ask Trinity for
11 their last, best, and final offer?

12 THE WITNESS: Yes.

13 JUDGE GIANNOPOULOS: Okay.

14 Q. BY MR. MINER: Did the Union present any written
15 proposals on October 19th?

16 A. I want to say yes, but I don't --

17 Q. Do you know what -- I'm sorry.

18 A. But I'm not -- I don't have those documents or anything.
19 That would be --

20 Q. Do you know what subjects they were pertaining to?

21 A. Like I said, I know what was hot and pressing was the
22 wages and the PTO because the members would tell me those
23 things. Those are the main concerns that they had, so that's
24 what I'm going to be worried about the most is what they're
25 worried about.

1 Q. Was there a written proposal presented by the Union on
2 October 19th regarding PTO?

3 A. As far as that, I'm not sure because I wasn't seeing
4 that interaction between you and the negotiator so --

5 Q. Okay. How about in December? At the December meeting
6 did the Union present a written proposal regarding PTO?

7 A. Again, I -- if anybody would have those documents, it
8 would be Autumn. She's our lead negotiator.

9 Q. Okay. To your knowledge, did the Union present a
10 written proposal on PTO?

11 A. Like, sir, I mean --

12 JUDGE GIANNOPOULOS: Do you know? If the answer is I
13 don't know, then the answer is I don't know.

14 THE WITNESS: I would say no, because I -- I mean I
15 can't say yes because I don't remember --

16 Q. BY MR. MINER: You don't know.

17 A. I don't know.

18 Q. Okay, all right. How long has the Union been
19 representing the team members in Douglas?

20 A. It's been through a lot of represent -- different
21 orders, but it's been a good 20 years.

22 Q. Have you reviewed General Counsel Exhibit 7?

23 A. Thank you. Yes, I've reviewed that. I've seen it, I
24 mean.

25 Q. There are some bullet points on General Counsel

1 Exhibit 7. Do you see those?

2 A. Um-hum.

3 Q. Do these accurately reflect the proposal Trinity
4 presented on December the 6th?

5 A. Let's see here. Basically, the PTO obviously is on the
6 paper, which it really highlights what the issues were at the
7 time. I'm glad that this is an exhibit because it goes over
8 a lot of things that -- the concerns of the people.

9 Q. Okay.

10 A. So as far as your question, sir, is --

11 JUDGE GIANNOPOULOS: Is this accurate?

12 THE WITNESS: Yes.

13 JUDGE GIANNOPOULOS: Is this accurate as to --

14 THE WITNESS: Yeah.

15 JUDGE GIANNOPOULOS: I'm assuming they actually
16 presented an agreement, an actual CBA, proposed CBA --

17 THE WITNESS: Yes.

18 JUDGE GIANNOPOULOS: -- collective bargaining agreement,
19 right?

20 THE WITNESS: Um-hum.

21 JUDGE GIANNOPOULOS: All right, go ahead, Mr. Miner.

22 Q. BY MR. MINER: Was there some discussion about team
23 member medical benefits on December 6th?

24 A. Yes.

25 Q. And what was Trinity's proposal on that subject on

1 discussions regarding the grievance?

2 A. I'm hoping that there is and that we can come to a --

3 Q. But you don't know?

4 A. No.

5 JUDGE GIANNOPOULOS: And what is this grievance? What
6 is the, what is the grievance?

7 THE WITNESS: The grievance is, sir, is that the
8 interpretation of the language that we have -- it's pretty
9 much a pretty ongoing thing where the Company has stated that
10 they had new software and they implemented new software. And
11 their time of PTO shows on their paychecks, how much time
12 they have accrued.

13 JUDGE GIANNOPOULOS: Okay.

14 THE WITNESS: So when they are trying to take time off,
15 the Company would say that they don't have the time to take
16 because they never accrued. And so trying to find out how
17 much time they have or whatnot, we need to file a grievance
18 to make sure that if the worker had time to take off, that
19 they were able to take the time off.

20 JUDGE GIANNOPOULOS: Okay.

21 THE WITNESS: Then we've come back, and the Company
22 says, okay, they have -- they can take time off. So it's
23 just been this ongoing they don't have the time/you can take
24 it off, back and forth. So we just want to know what's right
25 and just with the workers to make sure that the time that

1 make a correction on their PTO, who do they go to?

2 A. They can go through me, but I've been, I've been at in
3 the facility so long so --

4 Q. Okay. They can go to you. Who else can they go to?

5 A. They can go to Gus.

6 Q. So they go to Mr. Rivera?

7 A. Not for corrections to PTO, no.

8 Q. Not for corrections.

9 A. No.

10 Q. Okay.

11 MS. DAVILA: No further questions -- oh, sorry, I move
12 to admit GC-10.

13 JUDGE GIANNOPOULOS: All right, any objections?

14 MR. MINER: No objection to the authenticity, Your
15 Honor, but the same relevance objection.

16 JUDGE GIANNOPOULOS: Same relevance objection, okay,
17 understood. But I will overrule the relevance objection and
18 admit it.

19 **(General Counsel's Exhibit 10 received in evidence.)**

20 JUDGE GIANNOPOULOS: All right, sir, you can step down
21 again.

22 THE WITNESS: Thank you.

23 JUDGE GIANNOPOULOS: Don't discuss your testimony.

24 THE WITNESS: Absolutely not. Thank you.

25 JUDGE GIANNOPOULOS: Very well. And you can leave

1 A. My obligations are to prepare and take out products to
2 all the inmates in the jail.

3 Q. Okay. And who is currently your supervisor?

4 A. At this moment, it's Hector Rivera -- let me correct,
5 Duran.

6 Q. Who was your supervisor last year?

7 A. It was Sergio Rivera.

8 Q. Okay. And is there a union at your facility?

9 A. Yes.

10 Q. What is the name of that union?

11 A. United Food Commercial Workers 99.

12 Q. Are you a member of that union?

13 A. Yes.

14 Q. How long have you been a member?

15 A. I'm estimating 5½ years.

16 Q. Are you active in the Union?

17 A. Yes.

18 Q. In what way?

19 A. Well, when there are meetings, I participate at the
20 meetings.

21 Q. Do you participate in meetings where the Employer's
22 representative or representatives are present?

23 A. Yes.

24 Q. Did you attend any of the negotiations last year between
25 the Company and the Union?

1 A. Yes.

2 Q. When?

3 A. I participated in three of them.

4 Q. Do you remember when they were?

5 A. Not so much.

6 Q. Do you remember what year?

7 A. It was last year.

8 Q. Do you remember if it was at the beginning of the year
9 or the end of the year?

10 A. It was between May '17 and December 2017.

11 Q. What were the negotiations about?

12 A. Basically, it was for a new contract for us.

13 Q. Anything else?

14 A. And obviously we were asking for modifications to be
15 done to the contract. We were asking for better benefits.

16 Q. Did you have any problems with the calculation of your
17 PTO last year?

18 A. Yes.

19 Q. What were they?

20 A. Basically, there was an amount what was reflected on the
21 check stub. It was an amount of hours or days, but they were
22 not the correct amounts.

23 Q. Anything else?

24 A. Basically, they were not based correctly on the time we
25 were there, we had accrued.

1 Q. What happened when you got there?

2 JUDGE GIANNOPOULOS: Had you sent Mr. Rivera a text
3 message, or had he sent you one?

4 THE WITNESS: He sent me the text message.

5 JUDGE GIANNOPOULOS: About making a change to your time
6 card?

7 THE WITNESS: Yes.

8 JUDGE GIANNOPOULOS: Okay. All right, go ahead, General
9 Counsel.

10 Q. BY MS. DAVILA: Had he sent you a text message before
11 about a time card change?

12 A. Usually that's how he communicates with us, for example
13 to let us know to come early into the office or to do
14 something.

15 JUDGE GIANNOPOULOS: Okay, go ahead.

16 Q. BY MS. DAVILA: What happened when you got there?

17 A. There was Frank Romero there at the main office, and he
18 said good morning, good morning, Ms. Vicky.

19 Q. And then what happened?

20 A. He told me that I had to sign for a change that was made
21 on my time card because I had -- I no longer had any PTO.

22 Q. Then what happened?

23 A. He gave me the time card, and at that time that's when
24 Rivera arrived at the office.

25 Q. Then what happened?

1 A. I said okay, but I was under the understanding that I
2 still had 3 days of PTO.

3 Q. And then what happened?

4 A. Yes, Ms. Vicky, said Frank -- Frank Romero referred to
5 me as Vicky and said, yes, Ms. Vicky, but let me explain,
6 that is the problem we are having. In my system it reflects
7 that you no longer have PTO, even though your time card it is
8 reflected as you still have.

9 Q. Then what happened?

10 A. Then Rivera said that is a problem that the Union
11 created regarding PTO. You need to fix that with the Union.

12 Q. And then what happened?

13 A. I replied everything is okay. I don't have any problems
14 towards you. I know you are not the ones that take care of
15 the system.

16 Q. And then what happened?

17 A. Then I told both of them but if you are working in the
18 same company as we are, you should be taking care of giving
19 us the correct PTO.

20 Q. And then what happened?

21 A. Then Rivera replied again, yes, I know, but that's the
22 problem with the Union.

23 Q. And then what happened?

24 A. That's the time where I exit the office. I told them
25 there was not a problem. I signed my time card and the

1 papers, and I went back to work.

2 Q. Okay. I'm going to show you what's been marked as
3 GC-12.

4 MS. DAVILA: I'm handing Respondent's counsel GC-12.
5 **(General Counsel's Exhibit 12 marked for identification.)**

6 Q. BY MS. DAVILA: Let me know if you recognize the first
7 page. The second is a translation by the Region.

8 A. Yes.

9 Q. Is that your signature at the bottom?

10 A. Yes.

11 Q. Did you write this on December 15th?

12 A. Yes.

13 Q. Why did you write this?

14 A. The reason being and the total truth is at this time I
15 was tired that all the information regarding PTO was being
16 tossed back and forth like a -- was being played with.

17 Q. Tossed back and forth between who?

18 A. Between our company, Trinity.

19 Q. What did you do with this statement?

20 A. This statement, I was -- I gave it to Lilly.

21 Q. Who is Lilly?

22 A. The union representative.

23 Q. Why did you give it to Lilly?

24 A. It's for the same reason. I wanted to come to an
25 agreement about our PTO. I wanted it to be set right because

1 Q. Do you recall the date of the August meeting?

2 A. I don't.

3 Q. Were some proposals presented at the meeting?

4 A. By Trinity, yes.

5 Q. Did the UFCW present any written proposals in August?

6 A. Not that I can remember.

7 Q. Was there some discussion about some bargaining
8 subjects?

9 A. Yes, there was.

10 Q. Do you recall if PTO was one of the subjects being
11 discussed?

12 A. I believe so, with the addition of insurance.

13 Q. What was the subject regarding insurance?

14 A. Insurance was the proposal that Trinity was offering,
15 the Trinity insurance versus the one that was being offered
16 by the Union.

17 Q. Did the Union offer the participation in the Union's
18 medical plan in a written proposal in August?

19 A. No, sir.

20 Q. How many team members are there working at Douglas who
21 are represented by the Union?

22 A. About approximately 12.

23 Q. Do you recall some team members being at the August
24 bargaining meeting?

25 A. Yes, sir.

1 Q. And when did you do so?

2 A. This came the 6th. If I could see a calendar, I know
3 the day that it came in, and then the very next day I made
4 copies so everyone had the same information that I did. I
5 wanted everybody to have information.

6 Q. Okay. You were at the meeting on December 6th, correct?

7 A. Yes, sir.

8 Q. Do you remember about how long after the meeting it was
9 that you distributed copies?

10 A. I believe December the 8th, if I'm not mistaken, that's
11 when we received it. And I either distributed it that
12 afternoon or the following morning.

13 Q. General Counsel Exhibit 7 in the upper right-hand corner
14 has a date on it. Do you see that?

15 A. Yes, sir.

16 Q. What is the significance of that date?

17 A. That's the date that this document was created and
18 issued.

19 Q. Thank you.

20 A. Yes, sir.

21 MR. MINER: If I could have the witness shown General
22 Counsel 11, please.

23 MS. DAVILA: Is there a pile of --

24 MR. MINER: Or, Your Honor, if I may approach?

25 JUDGE GIANNOPOULOS: Yes, go ahead.

1 Q. From any team members in December 2017?

2 A. Yes. Yes, I did.

3 Q. Did you approve any PTO requests?

4 A. Yes.

5 Q. Did you have any team members get their PTO denied?

6 A. No.

7 Q. Did you deny any PTO --

8 A. No.

9 Q. -- in December? Did you speak with Marisol Victoria
10 about denying a PTO request?

11 A. No.

12 Q. How are changes made to PTO requests or PTO accruals at
13 Douglas?

14 A. How are they done?

15 Q. Yeah.

16 A. Well, they'll -- we put it on the calendar, and then
17 they'll let me know I'm going to ask for these days off. And
18 I'll tell them, okay, make sure you have PTO time and we'll
19 get those approved right away. Then they go in the computer
20 and they submit their PTO. Then it goes to Puentes, Jesus,
21 and then it goes to Luna, and then Luna lets me know as to
22 these days off, do you approve them. And either say yes or
23 no. But they've all been yes to date.

24 JUDGE GIANNOPOULOS: Is this all done by computer, or is
25 it when you say it goes to -- so the employee goes and puts

1 JUDGE GIANNOPOULOS: Okay.

2 Q. BY MR. MINER: But there is nobody in Douglas whose job
3 it is to prepare the payroll for team members, correct?

4 A. No.

5 Q. And there's nobody who tracks accrued PTO in the Douglas
6 office, correct?

7 A. No.

8 Q. And you're not responsible for adjusting PTO accruals
9 for team members, correct?

10 A. No.

11 Q. Okay, great. Now, did you talk with Ms. Victoria about
12 PTO at all in December of last year?

13 A. No.

14 Q. My understanding is that under the prior collective
15 bargaining agreement, team members' PTO expired December
16 31st. Is that correct?

17 A. Yes.

18 Q. So December I would imagine is a busy month for PTO
19 requests.

20 A. Yes.

21 Q. Is that correct?

22 A. Yes.

23 Q. Do you receive more requests in December so that team
24 members can utilize their PTO before it expires?

25 A. Yes.

1 MS. DAVILA: Objection, leading.

2 JUDGE GIANNOPOULOS: No, no. Well, it's preliminary. I
3 don't think so.

4 Q. BY MR. MINER: Did you receive more requests than usual
5 in December 2017?

6 A. Yes.

7 Q. Including some from Marisol Victoria?

8 A. Yes.

9 Q. And again did you deny any of those requests?

10 A. No. No, everybody got -- everybody received the PTOs
11 that they asked for. I gave it to them all.

12 Q. Did you have any trouble covering the shifts --

13 A. No.

14 Q. -- as a result -- I'm sorry, let me just finish the
15 question.

16 A. Okay.

17 Q. I'm trying to formulate it in my mind and talk at the
18 same time. Did you have any trouble covering all the shifts
19 because of the PTO requests that were being made?

20 A. No. Because usually if I need a person, I'll step in
21 and I'll do -- I'll work for them so that they can take their
22 PTO.

23 Q. Is that common for you to step in and take a shift for a
24 team member who is on PTO?

25 A. Not really because we have like a real good I think

1 system going, and we get people covered so often, but if I
2 need to do it, I'll do it.

3 Q. Was there any stress on you caused by PTO in December
4 2017?

5 A. Yes, a little bit because there was so many. Everybody
6 wanted it, and I had to block everything out, just
7 concentrate so I could get everybody their PTOs.

8 Q. Were you able to do that?

9 A. Yes.

10 Q. Did you have a discussion with Ms. Victoria in which you
11 expressed some frustration about getting all the PTO covered?

12 A. No.

13 Q. Did you tell Ms. Victoria that the Union was to blame
14 because of some problem with PTO?

15 A. No.

16 Q. Are you aware of a problem with PTO?

17 A. No. Well, when -- recently when everybody started, you
18 know, I guess started talking about it, that there's
19 problems, and like I don't remember having a problem.
20 Everybody asked me for PTO, and I gave it to them.

21 Q. Do you mean by recently, just prior to this hearing
22 today?

23 A. Well, yeah, recently.

24 Q. With respect to -- strike that.

25 Were you working on December 15th?

1 changed.

2 Q. Did you have it in December 2017?

3 A. Yes.

4 Q. And would you ever text her about having to come into
5 the office?

6 A. No.

7 Q. You never texted her --

8 A. No.

9 Q. -- about having to come into the office?

10 A. I don't --

11 Q. Did you text any other employees about when they had to
12 come into the office?

13 A. No. I usually call them and let them know by phone that
14 we need to talk to you or something, but we usually take --
15 if we have something to do, we just do it in the unit.

16 Q. Just to clarify, it wasn't -- when you say you saw her
17 that day on December 15th, it was just a hi and bye, not a
18 discussion?

19 A. No, just a hi and bye.

20 Q. Okay.

21 A. That's usually what it is, hi and bye.

22 Q. Did you prepare for your testimony today?

23 A. Did I prepare as in questions you're going to ask me?

24 Q. Sure, yes.

25 A. Not really.

1 MR. MINER: I'm sorry. May I ask the witness a
2 question, Your Honor?

3 JUDGE GIANNOPOULOS: Yes.

4 MR. MINER: Are you referring to the subpoena that you
5 received?

6 THE WITNESS: Yes.

7 MR. MINER: Thank you.

8 Q. BY MS. DAVILA: Okay. Did you review any other
9 documents aside from that subpoena?

10 A. No.

11 MS. DAVILA: Okay. No further questions, Your Honor.

12 JUDGE GIANNOPOULOS: I've got a couple of questions.
13 Mr. Rivera, at any time in 2017 were you aware that the
14 employees who were under you had issues with respect to how
15 their PTO was being tracked? For example, their paycheck
16 would say -- let's say they had 5 hours of PTO or 8 hours PTO
17 but the computer system said they only had 2. Were you aware
18 of anything like that in 2017?

19 THE WITNESS: No, because I would just ask them be sure
20 you have -- you know, do you have time to take off. And they
21 either tell me yes or no.

22 JUDGE GIANNOPOULOS: All right. But no one brought to
23 your attention that there is some discrepancies --

24 THE WITNESS: No.

25 JUDGE GIANNOPOULOS: -- in what their paycheck is

1 A. Trinity Services Group.

2 Q. How long -- how long have you been working for Trinity?

3 A. Approximately 2 years and 10 months.

4 Q. What is your current position?

5 A. Manager, office manager.

6 Q. What sort of work do you do as office manager for

7 Trinity?

8 A. Accounts, answering the phone, paying bills.

9 Q. Do you have any involvement in administration of paid
10 time off for the Douglas team members?

11 A. No.

12 Q. Do you know who Marisol Victoria is?

13 A. Yes.

14 Q. Who is she?

15 A. She works at the group.

16 Q. Have you ever spoken with Ms. Victoria about her PTO?

17 A. No.

18 Q. Were you working at the -- in the office on December
19 15th of last year?

20 A. If it was a day during the week, yes.

21 Q. You work every day during the week?

22 A. Monday through Friday.

23 Q. This was a Friday, December 15th.

24 A. Probably I was there.

25 Q. Do you recall seeing Ms. Victoria at your office?

1 A. It's a long time. I don't remember really.

2 Q. Do you remember speaking with Ms. Victoria on
3 December 15th?

4 A. No.

5 Q. Do you remember having a discussion with Ms. Victoria
6 and Mr. Rivera?

7 A. No.

8 Q. Who is Mr. Rivera?

9 A. He manages Mohave.

10 Q. Was he working in your office in December?

11 A. If it was a Friday, yes, probably he was there.

12 Q. There in what part of the office?

13 A. In my office or the kitchen. He's always there.

14 Q. Do you have a cubicle in the office trailer at the
15 Douglas facility?

16 A. I don't understand.

17 Q. Can you describe the layout of Trinity's office at the
18 Douglas facility?

19 A. Yes. So when you walk in, the first office you'll see
20 is my office. Then when you walk by, there is the kitchen
21 and a cubicle, where there is a trailer. After that cubicle
22 in front of my office, there is a cubicle where you print.
23 Then you go down on the hallway, and the door to the right is
24 the kitchen. To the left is Jesus's office, then Gustavo's.
25 And then you go down there is the bathroom, and then there is

1 another room for where the food is made. And then at the
2 right we have all the tools.

3 Q. The cubicle you described outside your office where
4 employees can print, is that where there is a computer and a
5 printer for printing pay statements and things of that
6 nature?

7 A. Yes, that is available for them.

8 Q. So on Friday, December 15th, where was Mr. Rivera
9 working?

10 A. Probably he was most likely at the kitchen. If there is
11 any paperwork that they have to turn in to me, they would
12 walk from the kitchen into my office.

13 Q. Okay. Do they prepare paperwork in your office or in
14 the kitchen?

15 A. No, they work in the kitchen.

16 Q. I see, okay. Are you here pursuant to a subpoena that
17 you received?

18 A. Yes.

19 Q. Who subpoenaed you to be here today?

20 A. The envelope I received?

21 Q. Yes. Who sent you the envelope?

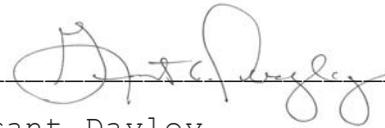
22 A. I do not know who sent it, but it was given to me by
23 Gustavo Luna.

24 MR. MINER: Okay, thank you. I don't think I have any
25 other questions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 28, in the matter of **TRINITY SERVICES GROUP, INC.**, Case No. **28-CA-212163**, at Bisbee, AZ, on July 17, 2018, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.



Grant Dayley

Official Reporter

Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, MD 21409
(410) 974-0947

JA54

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

TRINITY SERVICES GROUP, INC.

and

Case 28-CA-212163

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 99**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by United Food and Commercial Workers Union, Local 99 (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Trinity Service Group, Inc. (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Union on December 22, 2017, and a copy was served on Respondent by U.S. mail December 26, 2017.

(b) The first amended charge in this proceeding was filed by the Union on March 30, 2018, and a copy was served on Respondent by U.S. mail on that same day.

2. (a) At all material times, Respondent has been a corporation with an office and place of business in Douglas, Arizona (Respondent's facility), and has been providing institutional food services at correctional facilities.

(b) During this 12-month period ending December 22, 2017, Respondent in conducting its operations described above in paragraph 2(a) purchased and

received at Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Arizona.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Jesus Puentes	-	Food Service Director
Gustavo (Gus) Luna	-	Assistant Food Director
Sergio Rivera	-	Unit Manager
Frank Romero	-	Office Manager

5. (a) About August 14, 2017, Respondent, at Respondent's facility, informed its employees that collective-bargaining by and between Respondent and the Union would be futile by:

(1) Gustavo (Gus) Luna (Luna), asking its employees what the Union was attempting to negotiate if it did not have anything to bring to the table; and

(2) Jesus Puentes (Puentes), telling its employees that if they liked to give money away to the Union, they should pay Puentes instead.

(b) About August 14, 2017, Respondent, by Luna, at Respondent's facility, interrogated its employees about their union membership, activities, and sympathies.

(c) About August 14, 2017, Respondent, by Puentes, at Respondent's facility, interrogated its employees about their union membership, activities, and sympathies.

(d) About August 14, 2017, Respondent, by Sergio Rivera, at Respondent's facility, disparaged the Union as the bargaining representative of its employees by:

(1) blaming the Union for errors in the paid time off (PTO) records of its employees; and

(2) blaming the Union for employees losing their PTO.

6. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

7. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before April 13, 2018, or postmarked on or before April 12, 2018.** Respondent should file an original copy of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability

of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on July 17, 2018, at 9:00 a.m. (local time at the Hearing Room of the National Labor Relations Board located at 2600 North Central Avenue, Suite 1400, Phoenix, Arizona, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to

appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 30th day of March 2018.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director

Attachments

**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE**

Case 28-CA-212163

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Trinity Services Group, Inc.
ASPC Douglas
P.O. Box Drawer 3867
Douglas, AZ 85608

Frederick C. Miner, Attorney at Law
Littler Mendelson, PC
2425 East Camelback Road, Suite 900
Phoenix, AZ 85016-4242

United Food and Commercial Workers
Union, Local 99
2401 North Central Avenue
Phoenix, AZ 85004

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

TRINITY SERVICES GROUP, INC.

and

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 99

Case 28-CA-212163

ANSWER TO COMPLAINT

COMES NOW TRINITY SERVICES GROUP, INC. ("Trinity"), and for its Answer to the Complaint dated March 30, 2018 ("Complaint"), states as follows:

1. Trinity admits that it received a copy of a charge assigned case number 28-CA-212163, via U.S. mail, but lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 1(a) of the Complaint, and therefore denies same.

2. Trinity admits that it received a copy of an amended charge in case number 28-CA-212163, via U.S. mail, but lacks knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 1(b) of the Complaint, and therefore denies same.

3. Trinity admits the allegations in paragraphs 2(a), 2(b), 2(c), and 3 of the Complaint.

4. Answering paragraph 4 of the Complaint, Trinity admits that during the times alleged in paragraphs 5(a), 5(b), 5(c) and 5(d) of the Complaint, the following individuals held the positions set forth opposite their respective names and were supervisors of Trinity within the meaning of Section 2(11) of the National Labor Relations Act, and agents of Trinity within the meaning of Section 2(13) of that Act:

Jesus Puentes	-	Food Service Director
Gustavo Luna	-	Assistant Food Service Director
Sergio Rivera	-	Unit Manager

Frank Romero - Office Manager

Trinity denies the remaining allegations of paragraph 4 of the Complaint.

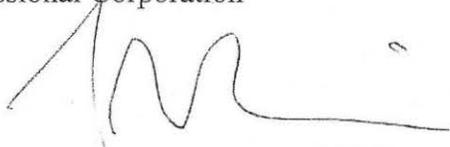
5. Trinity denies the allegations in paragraphs 5(a)(1), 5(a)(2), 5(b), 5(c), 5(d)(1), 5(d)(2), 6 and 7 of the Complaint.

6. Trinity denies all allegations in the Complaint not specifically admitted above.

WHEREFORE, the Complaint should be dismissed in its entirety.

Dated: April 13, 2018

LITTLER MENDELSON
A Professional Corporation

By: 

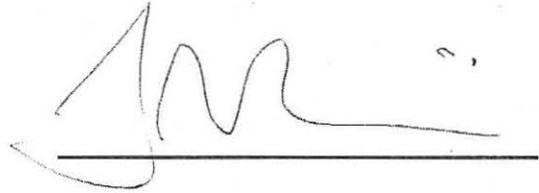
Frederick C. Miner
2425 E. Camelback Rd., Ste. 900
Phoenix, AZ 85016-4242
(602) 474-3600
Attorneys for Respondent
TRINITY SERVICES GROUP, INC.

CERTIFICATE OF SERVICE

I certify that I have this 13th day of April, 2018, caused an electronic copy of the foregoing **Answer** containing the signature of counsel for TRINITY SERVICES GROUP, INC. in .pdf format, to be filed electronically using the National Labor Relation Board's E-Filing system.

I also certify that I have caused a copy of the foregoing document to be served via Federal Express on the following:

United Food and Commercial Workers Union, Local 99
2401 N. Central Ave.
Phoenix, AZ 85004

A handwritten signature in black ink, appearing to be 'J.M.', is written above a solid horizontal line.



LABOR AGREEMENT
between
TRINITY SERVICES GROUP, INC.
at the Douglas, Arizona Correctional Facility
and
UNITED FOOD and COMMERCIAL WORKERS
UNION, LOCAL 99

GC 3

TERM OF AGREEMENT

July 22, 2013 through June 30, 2017

LABOR AGREEMENT

Between

Trinity Services Group, Inc.

at the Douglas, Arizona Correctional Facility

and

United Food and Commercial Workers International Union, Local No. 99

July 22, 2013 through June 30, 2017

TABLE OF CONTENTS

	<u>Page No.</u>		
ARTICLE 1 – RECOGNITION	1	ARTICLE 22 – SAFETY	11
ARTICLE 2 - PROBATIONARY EMPLOYEES	1	ARTICLE 23 – MEDICAL AND SAVINGS	11
ARTICLE 3 - UNION DUES DEDUCTION	1	ARTICLE 24 – SCOPE OF AGREEMENT	13
ARTICLE 4 - UNION STEWARDS AND REPRESENTATION	2	ARTICLE 25 - TERM OF AGREEMENT	13
ARTICLE 5 - NO DISCRIMINATION	3		
ARTICLE 6 - MANAGEMENT RIGHTS	3		
ARTICLE 7 – BAN ON STRIKES AND LOCKOUTS	4		
ARTICLE 8 – SENIORITY	5		
ARTICLE 9 – POSTING OF VACANCIES	5		
ARTICLE 10 – LAYOFF AND RECALL	5		
ARTICLE 11 - GRIEVANCES AND ARBITRATION	6		
ARTICLE 12 - DISCIPLINE AND DISCHARGE	7		
ARTICLE 13 – PERFORMANCE OF WORK	7		
ARTICLE 14 - MINIMUM WAGES	8		
ARTICLE 15 – HOURS OF WORK	8		
ARTICLE 16 – OVERTIME WORK	9		
ARTICLE 17 – PAID TIME OFF (PTO)	9		
ARTICLE 18 - FUNERAL LEAVE	10		
ARTICLE 19 - JURY DUTY	10		
ARTICLE 20 - LEAVES OF ABSENCE	10		
ARTICLE 21 – UNIFORMS	11		

AGREEMENT

This Agreement is between Trinity Services Group, Inc. (the "Company") and United Food and Commercial Workers Union Local No. 99 (the "Union").

ARTICLE 1 - RECOGNITION

The Company recognizes the Union as the sole and exclusive collective bargaining agent for all full time and regular part time Foodservice Aides, Warehouse Aides and Drivers employed by the Company at the Douglas, Arizona Correctional Facility; but excluding office clerical employees, guards and supervisors as defined in the National Labor Relations Act and as agreed to in the FMCS supervised card check on March 28, 1995, in Phoenix, Arizona.

ARTICLE 2 - PROBATIONARY EMPLOYEES

Employees hired or transferred into the bargaining unit shall be on probation during their first ninety (90) calendar days of work. An employee's probation period may be extended in the Company's discretion for up to an additional 30 days of work. The Company will notify the employee of the extension. During the probation period, employees will be introduced to key aspects of their jobs. Probationary employees may be transferred, laid off, disciplined, or discharged in the Company's sole discretion, without recourse to the grievance and arbitration procedure.

ARTICLE 3 - UNION DUES DEDUCTION

Section 1. The right of employees to work shall not be denied or abridged on account of membership or non-membership in the Union, or in any labor organization, labor union or any other type of association. Further, employees shall not be required to become members, or otherwise maintain membership in the Union, or any labor organization, labor union or any other type of association, as a condition of employment or continuation of employment with the Company.

Section 2. Neither the Company nor the Union will restrain or coerce any employee with respect to his or her decision to join or refrain from joining the Union, and no agent, officer, employee or member of the Union will compel or force, or attempt to compel or force, any employee to join or refrain from joining the Union, or any other labor organization, labor union or any other type of association.

Section 3. The Company will deduct an amount equivalent to dues, initiation fees and assessments biweekly from the wages of the employees who voluntarily authorize such deductions in writing, and will forward same to the Union monthly during the term of this Agreement unless the authorization is canceled in writing by the employee to the Union and the Union notifies the Company. No deduction will be made on any employee until receipt by the Company of a signed copy of a voluntary deduction authorization.

The Union will submit to the Company a list of the employees' names and deduction amounts for the current month no later than the first day of each month.

Section 4. The Union indemnifies the Company and holds it harmless against any and all claims, demands, losses, suits, judgments, or any other liability, including attorney's fees and costs, arising out of any actions taken or not taken by the Company pursuant to this Article.

Section 5. There will be no solicitation of employees to sign an Authorization for Deduction of Union Dues or Fees during working hours or in any working areas.

Section 6. The Employer will make a deduction for the Union's Active Ballot Club from the wages of the employees who voluntarily authorize such deduction in writing, based on authorizations received two weeks prior to the deduction date, and will forward the Active Ballot Club deductions to the Union. Such Active Ballot Club deductions will be done weekly or biweekly, during each calendar year during the term of this Agreement, unless the authorization is cancelled with the Union, in writing, by the employee.

ARTICLE 4 - UNION STEWARDS AND REPRESENTATION

Section 1. The Union may designate a Steward from among the employees. The Steward shall not be recognized by the Company until the Union has notified it in writing of the selection of the Steward. Management will approve a request to use paid time off for the Steward to attend an annual Union seminar provided at least 21 days advance notice is given. The Steward shall not conduct Union business or activities while on duty and will not disrupt other employees who are on duty.

Section 2. Accredited representatives of the Union, giving at least 24 hours notice, and having received authorization from the Company, will be permitted to enter the facility when necessary to determine compliance with this Agreement. Union representatives will not disrupt employees who are working or interfere with the performance of any work or function. While on the facility property, any Union representative must follow all Company and DOC rules and regulations. All generally applicable entry and exit requirements must be strictly followed. The Company may preclude or impose restrictions on access to secure areas to which inmates have access. There is to be no contact whatsoever with inmates.

Section 3. The Company will provide the Union with a copy of a new rule or regulation in advance of general publication when feasible. The Union, under the grievance and arbitration procedures of this Agreement, may grieve any newly established work rule or policy within five working days from its receipt. Should the Union not grieve any such rule or policy in a timely fashion, the rule or policy shall be deemed to conform with this Agreement.

Section 4. The Company will provide a bulletin board for use by the Union. The Union may post on the bulletin board items pertaining to the following subjects: Union elections; results of Union elections; Union meetings; Union recreational events; updates of negotiations; and medical plan reminders. Before any item is posted on the Union bulletin board, the Union will give a copy of the item to the Regional Human Resources Director. Each item must be signed by an authorized Union representative before it is posted. Any item that does not comply with this Section will be removed.

ARTICLE 5 - NO DISCRIMINATION

Section 1. The Company and the Union recognize their responsibilities under applicable federal, state and local laws relating to fair employment practices. There shall be no discrimination in the application of the provisions of this Agreement based on race, color, national origin, sex, sexual orientation, age (over 40), disability, religion, citizenship status, marital or parental status, status as a disabled veteran or veteran of the Vietnam era, or any other legally protected classification.

Section 2. References in this Agreement to one gender include individuals of both genders.

ARTICLE 6 - MANAGEMENT RIGHTS

The success of the Company requires clear management ability and freedom to make decisions and to operate its business in an efficient manner. Therefore, all matters related to the Company, its operations, and terms and conditions of employment are exclusively within the jurisdiction and control of the Company, except those matters relating to wages, hours of work, and other employment conditions that are specifically set forth elsewhere in this Agreement. Without limiting the foregoing, the Company's rights and functions of management include, but are not limited to: the right to determine the number, location, and relocation of its operations or any part thereof; to extend, alter, suspend, discontinue, limit, curtail, merge, sell, terminate, or transfer all or any part of its business; to close the operations or any part thereof; to determine the products and services to be offered, performed, or produced; to determine the customers to be served and the character and nature of the services to be performed; to alter, combine, change, establish, cease or discontinue any job, department, operation, function, facility or service; to move and interchange equipment, functions and operations between facilities; to acquire and dispose of facilities, machinery, equipment, tools, components, supplies and materials, including the right to change existing, or introduce new facilities, machinery, equipment, tools, components, supplies, and materials; to decide the need for, layout of, location of, and use of equipment or materials; to design, engineer, and procure the materials, products and services that may be incorporated in the operations; to determine the processes, methods and techniques to be used, including the introduction of new or changed preparation, maintenance or service methods; to effect technological changes; to determine the work to be subcontracted, contracted out or purchased, including products, services or any aspect of its services; to install, use, remove, relocate, or modify security or monitoring cameras; to maintain order in all work areas; to institute security measures, security checks or searches designed to deter or detect theft, loss, or other misuse of Company property or assets as well as to assure a drug-free workplace and workforce; to determine the schedules, shifts, and hours of work, including the alteration, reduction, or elimination thereof; to require, schedule, and assign overtime work; to establish or change the method of pay distribution; to install, relocate, use, and remove time clocks or other time keeping devices; to select, direct, and determine the size and composition of the workforce, including the right to hire, lay off, recall, demote, promote, assign, reassign, or transfer employees; to determine the duties, tasks, and functions to be performed and modify the duties, tasks and functions to be performed; to hire and retain part-time, temporary, seasonal, or contract employees to perform any work; to determine an employee's ability to perform assigned work in a satisfactory manner; to assign, reassign, or transfer employees, and relieve employees from

duties and assignments; to set the required quality and quantity of work; to establish job requirements and job qualifications, job content, and the extent and nature of the work to be performed; to determine employees' qualifications, proficiency, and abilities; to issue, administer, change, or terminate training and retraining programs and requirements; to establish, distribute, alter or discontinue bonus payments, benefit programs, and incentives; to issue, enforce, change, or terminate rules, regulations, policies, procedures, and work, appearance, and attendance standards and policies, and determine penalties for violations thereof; to establish financial policies including accounting procedures, prices of goods and services supplied, customer relations, and the amount of supervision necessary; to issue, enforce, change, or terminate health and safety rules, policies and procedures, including, but not limited to, policies pertaining to protective measures, devices or equipment, apparel, and tobacco; and to issue, enforce, change or terminate drug and alcohol testing policies and procedures. The rights, functions and responsibilities of the Company mentioned or referred to in this Article shall not be deemed to exclude other rights, functions, and responsibilities not specifically mentioned. Furthermore, the Company shall retain all management rights, powers, authority and functions, whether heretofore or hereafter exercised. All such rights and functions shall remain vested exclusively with the Company, except insofar as specifically surrendered by an express provision of this Agreement.

ARTICLE 7 - BAN ON STRIKES AND LOCKOUTS

Section 1. During this Agreement, the Union, its officers, representatives, agents and members shall not, directly or indirectly call, cause, authorize, approve, instigate, encourage, aid, support, sanction, condone, or ratify any concerted activity, strike, sympathy strike, sit down, work stoppage, slowdown, work-to-rule, walkout, picketing, boycott, concerted failure to report to work, refusal to cross a picket line, withholding of services, curtailment of work, reduction of production or services, handbilling, boycott, or any other interference with the work or the Company's operations, interference of any kind with the customers or potential customers of the Company, or any other concerted activity which curtails, interferes with, interrupts or threatens such curtailment, interference or interruption of the Company's operations, the servicing of the Company's customers, or the Company obtaining new customers.

Section 2. During this Agreement, no employee shall, directly or indirectly instigate, cause, encourage, aid, support, or participate in any strike, sympathy strike, sit down, work stoppage, slowdown, work-to-rule, walkout, picketing, boycott, concerted failure to report to work, refusal to cross a picket line, withholding of services, curtailment of work, reduction of production or services, handbilling, boycott, or any other interference with the work or the Company's operations, interference of any kind with the customers or potential customers of the Company, or any other concerted activity which curtails, interferes with, interrupts or threatens such curtailment, interference or interruption of the Company's operations, the servicing of the Company's customers, or the Company obtaining new customers.

Section 3. In the event of a violation of this Article, the Union shall immediately and in good faith publicly disavow the violation as an illegal strike, insist that the employees involved cease such violation, and use all means within its power to end such violation as soon as possible.

Section 4. The Company has the right to discipline, including discharge, any employee who violates this Article and such discipline, including discharge, shall be deemed to be for just cause. A grievance arising out of such discipline, including discharge, will be limited to whether the grievant violated this Article as alleged.

Section 5. The Company will not lock out the employees during this Agreement.

ARTICLE 8 – SENIORITY

Section 1. An employee who successfully completes his probation period will obtain seniority as of the date he most recently began to work for the Company at the Douglas facility. In the event two or more employees begin to work on the same date, their relative seniority will be based upon the alphabetical order of their last names, with the employee whose name appears first having the greater seniority.

Section 2. An employee's seniority will end when any of the following occurs:

- (a) he voluntarily quits, resigns or retires;
- (b) he is discharged for just cause;
- (c) he is absent from work two (2) consecutive working days without first notifying the Company in violation of Article 15 Section 6;
- (d) he is laid off for more than six (6) consecutive months;
- (e) he fails to return at the conclusion of an approved leave of absence;
- (f) the DOC removes the employee from the facility;
- (h) he transfers out of the bargaining unit for a period in excess of three (3) months;
- (i) he fails to report within seventy-two (72) hours after delivery, or attempted delivery, of the Company's written notice of recall from layoff.

When an employee's seniority ends, his employment terminates.

Section 3. Within thirty (30) days of the execution of this Agreement, the Company will provide necessary information to the Union for the preparation and maintenance of a seniority roster. Upon request, the Company will provide updated information to the Union.

ARTICLE 9 – POSTING OF VACANCIES

When the Company determines that a vacancy exists at the Douglas facility, the vacancy will be posted until it is filled or the Company decides to cancel the vacancy. Employees desiring to be considered for a vacancy should notify the Food Service Manager.

ARTICLE 10 – LAYOFF AND RECALL

Section 1. When the Company determines a layoff is necessary, the Company will determine who is to be laid off based upon the needs and circumstances of its operations at that time, and based upon factors such as an employee's disciplinary record, attendance, performance and length of service.

Section 2. The Company will select employees to be recalled from layoff based upon the needs and circumstances of its operations at that time, and based upon factors such as an employee's disciplinary record, attendance, performance and length of service.

Section 3. Employees who have completed their probation period and who have been laid off for six months or less will be eligible to be considered for recall. An employee being recalled from layoff shall report within seventy-two (72) hours after delivery, or attempted delivery, of notice by certified mail to the employee's last known address on file with the Company.

Section 4. Employees must provide the Company with their correct, current telephone numbers and mailing addresses and must promptly update their telephone numbers and mailing addresses whenever a change occurs.

ARTICLE 11 - GRIEVANCES AND ARBITRATION

Section 1. A grievance is an alleged violation by the Company of a specific provision of this Agreement in connection with a specific act or event.

Section 2. All grievances must be submitted in writing, no later than seven (7) calendar days from the date the grievant knew or should have known of the facts giving rise to the grievance. The written grievance must specify the date of the event giving rise to the grievance, the specific facts upon which the grievance is based, the section(s) of this Agreement alleged to be violated, and the specific remedy requested. The grievance must be signed and dated by the aggrieved employee or Union representative. Failure to submit a grievance within the time and in the manner described, or to appeal a grievance through any step of this procedure or to arbitration in a timely fashion, shall constitute a waiver of the grievance.

Section 3. A first step meeting will be held between the grievant and his direct manager or available Company representative within seven (7) calendar days from the date the grievance is submitted. An employee may be assisted by the Union in that discussion. Grievance discussions shall be held at mutually agreeable times. Nothing in this Agreement shall interfere with the right of an employee under Section 9(a) of the National Labor Relations Act to present a grievance to the Company without the intervention of the Union. The manager will reply in writing to the grievance within seven (7) calendar days after the meeting.

Section 4. If the manager's reply does not resolve the grievance, or if a reply is not given in a timely manner, the grievant may appeal the decision to step 2. The appeal must be in writing and it must be submitted to the Regional Human Resources Director within seven (7) calendar days after the manager's response is given. A meeting will be held between the Regional Human Resources Director, the grievant and, if requested an appropriate Union representative, within (5) working days of the date the appeal is submitted. The Regional Human Resources Director will respond in writing to the grievance within seven (7) calendar days of the meeting.

Section 5. If the Regional Human Resources Director's response does not resolve the grievance, the Union may appeal it to arbitration. The appeal must be in writing and it must be submitted to the Regional Human Resources Director within seven (7) calendar days after the step 2 response is given. The Regional Human Resources Director and the Union's representative will meet to select an arbitrator within seven (7) calendar days after the appeal to arbitration. If the parties are unable to agree upon an arbitrator, they shall request a panel of seven (7) names from the Federal Mediation and Conciliation Service ("FMCS"). Panel members will be limited to members of the National Academy of Arbitrators. Either party may request one replacement panel from the FMCS. The parties shall alternately strike names from the panel, with the Union as the moving party selecting first. The decision of the arbitrator shall be final and binding.

Section 6. The arbitrator shall have no authority to add to, delete from, supplement, or alter or amend any provision of this Agreement. The parties will share equally the arbitrator's fees and costs of the arbitration.

Section 7. During this Agreement, the provisions of this Article shall be the exclusive method for resolving any grievance.

Section 8. A grievance challenging the termination of an employee may be taken up at Step 2 of the grievance procedure.

Section 9. A grievance claiming alleged errors in computing an employee's pay shall be limited to 60 calendar days immediately preceding the date of the filing of the grievance.

ARTICLE 12 - DISCIPLINE AND DISCHARGE

Section 1. No employee will be disciplined or discharged without just cause.

Section 2. Employees will be informed of the reasons for the imposition of disciplinary action at the time of the discipline. Disciplinary action may be escalated based upon prior progressive discipline the most recent application of which occurred in the last 18 months. A copy of any written discipline will be furnished to the employee upon request.

ARTICLE 13 - PERFORMANCE OF WORK

Section 1. Employees will perform any tasks assigned to them that they are capable of performing safely.

Section 2. In addition to their supervisory, managerial, administrative and other responsibilities, nonbargaining unit personnel may perform the tasks normally performed by employees covered by this Agreement to assure safe, efficient, and continuous operations. The Company will not utilize nonunit personnel solely to replace bargaining unit employees.

Section 3. Written performance evaluations for employees normally will be prepared annually. Evaluations will be reviewed with the employee and placed in the employee's

personnel file.

ARTICLE 14 - MINIMUM WAGES

Section 1. During this Agreement, the minimum wage rate for employees will be \$8.00 per compensable hour of work, or the minimum rate prescribed by the Arizona Minimum Wage Act, whichever is greater. The minimum wage rate for Mohave employees will be \$10.00 per compensable hour of work.

Section 2. Employees will accurately report all hours of work. Wages will be paid bi-weekly on the same day. Employees may be paid by direct deposit or pay card. A hard copy of an employee's electronic payroll report will be furnished to the employee upon request.

Section 3. Employees will receive general wage rate increases of \$0.15 per hour effective on August 16, 2013, \$0.15 per hour effective on August 16, 2014, \$0.15 per hour effective on August 16, 2015, and \$0.15 per hour on August 16, 2016. No current employee will have his or her pay rate reduced as a result of the signing of this Agreement.

Section 4. The Company may determine, in its sole discretion, to pay an employee more than the minimum rate provided in Section 1. Trinity reviews employee pay on a regular basis, approximately annually, and may make positive adjustments based on considerations including the results of written performance reviews. The granting or denial of a discretionary pay increase is not subject to review under the Grievances and Arbitration procedure.

ARTICLE 15 - HOURS OF WORK

Section 1. The regular work day will be seven hours of work. The Company will schedule, reschedule, assign and staff work in a manner that promotes safe and efficient operations.

Section 2. During a regular work day, an employee may be provided up to two 10 minute paid break periods, and a 30 minute unpaid meal period. Breaks and meal periods will be scheduled by the employee's supervisor. Employees may be required to work through break or meal periods due to operational considerations.

Section 3. During an approved meal period, an employee may consume a single portion of the current inmate meal without charge.

Section 4. The Company may implement alternative schedules. Illustrations include, but are not limited to, four day work schedules of not less than ten and one-half (10-1/2) hours per day; and 4-3-3-4 work schedules of not less than eleven and one-half (11-1/2) hours per work day.

Section 5. Nothing in this Agreement will be construed as a guarantee of a number of hours of work per day or per week or of a number of days of work per week.

Section 6. Employees will report punctually for work at their scheduled starting times.

Employees will not remain on facility premises after their scheduled quitting time unless authorized by management.

Section 7. Employees must give notice of their absence or tardiness at least two hours before their scheduled reporting time unless they are physically unable to do so.

Section 8. The Company will make a good faith effort to schedule consecutive days off.

Section 9. An employee who reports for work as scheduled, who finds no work is available, shall receive two hours of pay at his regular, straight-time rate as report-in pay.

Section 10. An employee who is called in to work during a scheduled day off shall be assigned to work the balance of the available shift, but no less than 1/2 of a regular shift.

ARTICLE 16 – OVERTIME WORK

Section 1. In all overtime work situations, the primary consideration must be to promote the safe and efficient conduct of the operations by having qualified employees do the necessary work.

Section 2. The Company will attempt to give employees reasonable notice of the need to perform overtime work.

Section 3. Employees will receive one and one-half times their regular rate for hours worked in excess of 40 in a workweek in accordance with the Fair Labor Standards Act. There shall be no duplication or pyramiding in the computation of overtime pay.

ARTICLE 17 – PAID TIME OFF (PTO)

Section 1. During this Agreement, employees will accrue Paid Time Off (PTO). Employees with at least one completed year of service will accrue five days of PTO on January 1. Employees with at least three completed years of service will accrue ten, not five, days of PTO on January 1. Additional PTO will accrue as follows:

Completed Years of Service	Accrual	Not to Exceed
1-7 Years	0.92 Days / Month	11 Days / Year
8-14 Years	1.33 Days / Month	16 Days / Year
15+ Years	1.75 Days / Month	21 Days / Year

Section 2. A day of PTO will be paid at the employee’s regular, straight time rate in effect at the time he takes the time off for the regularly scheduled hours of work that are necessarily missed. PTO will not be treated as hours worked for purposes of calculating overtime pay.

Section 3. PTO must be taken in the year it accrues and may not be carried over from year to year. Accrued, unused PTO will be paid out upon termination of employment.

Section 4. An employee must request to use PTO at least fourteen calendar days in advance unless the need for PTO is due to the employee’s illness or injury that renders him unable to perform the essential functions of his position. Medical certification will be required for requests to use PTO due to illness or injury starting with the third consecutive absence. When certification is required, the certification and release to return to work must be furnished before the employee will be permitted to return to work.

Section 5. All use of PTO is subject to approval by management. PTO will be scheduled so as not to interfere with orderly, continuous, and efficient operations. When possible management will approve PTO requests for observed holidays subject to operational needs. An employee’s PTO may be rescheduled when the Company determines that the safe and efficient conduct of the operations requires such rescheduling. PTO rescheduled in December will be rescheduled no later than January. An employee who provides satisfactory evidence that nonrefundable airline tickets have been purchased will not have his PTO rescheduled.

Section 6. A new employee will accrue two days of PTO at the conclusion of his probation period. Starting the first full month following his first anniversary date, the employee will accrue 0.92 days of PTO per month through December, and will then accrue PTO pursuant to Section 1 above.

ARTICLE 18 - FUNERAL LEAVE

An employee who has completed his or her probation period may be granted up to three consecutive calendar days off in order to attend the funeral of the employee’s immediate family member within the State of Arizona, or up to five consecutive days off to attend the funeral outside the State. Immediate family member means the employee’s father, mother, current spouse, child, current father-in-law, current mother-in-law, brother, sister, grandparent, current step-parent, or current step-child. One of the days off must be the day of the funeral. Pay for funeral leave will be an employee’s regular, straight time rate for the hours of regularly scheduled work he misses. To be eligible for paid funeral leave, an employee must furnish the Company with satisfactory evidence of attendance at the funeral and relationship to the deceased.

ARTICLE 19 - JURY DUTY

Section 1. An employee who is required to serve jury duty will be excused from work for the days on which he is required to serve. An employee who has completed one year of service will receive pay for regularly scheduled work hours necessarily missed due to jury service, less the fee or other compensation provided by the court. Paid jury duty leave is limited to up to ten days in a 12 month period.

Section 2. To receive jury duty pay, an eligible employee must notify his manager of receipt of written notice to report for jury service within twenty-four (24) hours of receipt, and must submit evidence of jury duty service that is satisfactory to the Company.

ARTICLE 20 –LEAVES OF ABSENCE

Section 1. Leaves of absence for family and medical reasons will be granted in

accordance with the Company's Family and Medical Leave Act Policy. The Company provides reasonable accommodations for the known disabilities of its employees consistent with its obligations under the Americans with Disabilities Act. The Company gives consideration to the rehire of a former employee whose employment ended as a result of exhaustion of approved leave of absence.

Section 2. Military leaves and re-employment rights shall be in accordance with then applicable federal law.

Section 3. Leave for voting and for victims of crimes will be provided consistent with the Company's applicable policies.

Section 4. Upon written request, and for compelling personal reasons, the Company may, in its discretion, grant an employee an unpaid leave of absence of up to 14 calendar days during this Agreement.

Section 5. Employees taking an unpaid leave of absence from work must use accrued, unused vacation, sick days and deferred holiday time off before unpaid leave begins. Employees taking a leave of absence from work under this Article will not accrue vacation or sick leave during their leave period.

ARTICLE 21 - UNIFORMS

The Company will provide four wash and wear uniform tops to the employees. It shall be the responsibility of the employee to keep their uniforms clean, pressed and neatly maintained at all times. The Company will replace uniforms due to customary wear and tear. Non-slip soled shoes are required and they are to be maintained and polished.

ARTICLE 22 - SAFETY

Section 1. Safety is of the utmost concern to the Company and to employees. Employees will cooperate fully with the Company in maintaining a safe workplace. Employees will comply with safety rules and guidelines, they will properly use the available safety equipment, and they will diligently follow safe and efficient practices in the performance of their work. Employees will promptly notify the Company of any safety hazard that comes to their attention.

Section 2. A Safety Committee will be established to discuss safety and first aid issues at the facility. The Company and the Union each may designate two employees to participate on the Company. Meetings will be held at mutually convenient times.

ARTICLE 23 - MEDICAL AND SAVINGS

Section 1. During the Agreement, eligible employees will continue to participate in the United Food and Commercial Workers and Employers Health and Welfare Trust Fund, Plan D. To be eligible to participate in the medical plan, an employee must have at least six months of service for the Company at the Douglas facility, and must have performed at least

100 credited hours of work in the preceding month. Effective with the 2014 plan year, an employee must have at least 90 days of service at the facility, and must have performed at least 100 credited hours of work in the preceding month. Credited hours include hours of compensable work; approved vacation hours; approved sick days; approved paid jury duty leave; approved paid funeral leave; and hours on a qualifying leave of absence under the Family Medical Leave Act.

Section 2. The Company will contribute on behalf of each eligible employee \$296.10 per month to the fund. Starting November 1, 2013, the Company will contribute on behalf of each eligible employee \$310.90 per month. The Company's monthly contributions starting October 1, 2014 will increase no more than 10% in any plan year. The Company's contribution to the fund will not exceed \$373.08 per month.

Section 3. Eligible employees to maintain benefits will make contributions to their medical benefits in amounts determined by the fund. Contributions will begin as soon as they reasonably can be implemented following ratification of this Agreement. Employees initially will pay the following weekly amounts based on their coverage elections: employee only (\$5 / week); employee plus children (\$10 / week); employee plus spouse (\$15 / week); and family (employee, spouse and children) (\$20 / week). Employees' contributions will be deducted from their pay on a pretax basis and remitted to the fund.

Section 4. In the event the Company's contribution rate is insufficient to maintain benefits, the Trustees of the fund are instructed and required to reduce the level of such benefits to a level that can be funded on an actuarially sound basis by the Company's current contribution rate plus employee contributions. In the event benefits become insufficient or deficient pursuant to any federal, state or local health care legislation or any other regulation then in effect requiring a modification of the benefits or coverage, the Company shall have the option to do any of the following: (1) increase the monthly contribution for eligible employees to provide compliant coverage offered by the fund; (2) cease coverage under the fund and elect to pay any legislated or regulated penalties in lieu of adopting compliant coverage; and/or (3) reopen the subject of medical benefits under this Article. The parties shall honor the Ban on Strikes and Lockouts for the full term of this Agreement, including during any re-opener pursuant to this paragraph.

Section 5. Eligible employees who have completed six months of continuous service with the Company may continue to participate in the same 401(k) benefits as such providers, plans, programs, terms, conditions, contribution rates, or benefit levels exist at the time of ratification or as they may be changed during the life of the Agreement.

Section 6. The specific terms of the benefits described in this Article are set forth in plan documents. The plan documents are controlling. Any disputes concerning eligibility, type, amount or duration of benefits will be resolved by the claim procedures in the plans and not under the Grievances and Arbitration procedure in this Agreement.

ARTICLE 24 – SCOPE OF AGREEMENT

Section 1. During the negotiations that resulted in this Agreement, both parties had every right to and did discuss all collective bargaining demands and proposals. As a result, this Agreement is complete and resolves all collective bargaining issues between the parties for its duration. Both parties waive any right to compel or force any further negotiations on any matters, whether or not within the knowledge or contemplation of the parties at the time they executed the Agreement.

Section 2. The terms of this Agreement encompass all rights, limitations, and obligations of the parties and supersedes any and all contracts, agreements, or promises, whether implied or actual and whether written or oral, and including, but not limited to, any past practices, established or in effect between the parties or between the Company and bargaining unit employees before the execution of this Agreement. The continuance or discontinuance of any past practices, wage or benefit not enumerated in this Agreement is vested solely in the discretion of the Company.

Section 3. Should any part of this Agreement be rendered or declared invalid by any court of competent jurisdiction or by reason of an existing or subsequently enacted legislation or National Labor Relations Board decision or by any term or condition of a customer contract or regulation governing the operation of the Douglas facility, such shall not invalidate the remaining portions hereof.

ARTICLE 25 - TERM OF AGREEMENT

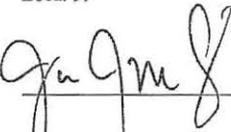
This Agreement will be in effect from July 22, 2013, through June 30, 2017, and will be automatically renewed from year to year thereafter, unless either party serves written notice on the other no later than April 30, 2017, or any April 30 thereafter, that it desires to modify or terminate the Agreement.

Trinity Services Group, Inc.

United Food and Commercial Workers Union,
Local 99



Date: July 25th 2013



Date: August 18, 2013

INITIAL PROPOSAL FOR A LABOR AGREEMENT

Between

Trinity Services Group, Inc.

at the Douglas, Arizona Correctional Facility

and

United Food and Commercial Workers International Union, Local No. 99

TRINITY SERVICES GROUP'S PROPOSAL

Presented June 27, 2017

At Douglas, Arizona

ENC 4

LABOR AGREEMENT

Between

Trinity Services Group, Inc.

at the Douglas, Arizona Correctional Facility

and

United Food and Commercial Workers International Union, Local No. 99

| ~~July 22, 2013~~[Date of Ratification] through June 30, 2021~~17~~

TABLE OF CONTENTS

	<u>Page No.</u>
ARTICLE 1 – RECOGNITION	1
ARTICLE 2 - PROBATIONARY EMPLOYEES	1
ARTICLE 3 - UNION DUES DEDUCTION.....	1
ARTICLE 4 - UNION STEWARDS AND REPRESENTATION	2
ARTICLE 5 - NO DISCRIMINATION	3
ARTICLE 6 - MANAGEMENT RIGHTS	3
ARTICLE 7 – BAN ON STRIKES AND LOCKOUTS	4
ARTICLE 8 – SENIORITY.....	5
ARTICLE 9 – POSTING OF VACANCIES.....	5
ARTICLE 10 – LAYOFF AND RECALL	5
ARTICLE 11 - GRIEVANCES AND ARBITRATION	6
ARTICLE 12 - DISCIPLINE AND DISCHARGE.....	7
ARTICLE 13 – PERFORMANCE OF WORK.....	7
ARTICLE 14 - MINIMUM WAGES	8
ARTICLE 15 – HOURS OF WORK.....	8
ARTICLE 16 – OVERTIME WORK.....	9
ARTICLE 17 – PAID TIME OFF (PTO).....	9
ARTICLE 18 - FUNERAL LEAVE.....	10
ARTICLE 19 - JURY DUTY	10
ARTICLE 20 - LEAVES OF ABSENCE.....	10
ARTICLE 21 – UNIFORMS	11

ARTICLE 22 – SAFETY.....11

ARTICLE 23 – MEDICAL AND SAVINGS11

ARTICLE 24 – SCOPE OF AGREEMENT13

ARTICLE 25 - TERM OF AGREEMENT13

AGREEMENT

This Agreement is between Trinity Services Group, Inc. (the "Company") and United Food and Commercial Workers Union Local No. 99 (the "Union").

ARTICLE 1 - RECOGNITION

The Company recognizes the Union as the sole and exclusive collective bargaining agent for all full time and regular part time Foodservice Aides, Warehouse Aides and Drivers employed by the Company at the Douglas, Arizona Correctional Facility; but excluding office clerical employees, guards and supervisors as defined in the National Labor Relations Act and as agreed to in the FMCS supervised card check on March 28, 1995, in Phoenix, Arizona.

ARTICLE 2 - PROBATIONARY EMPLOYEES

Employees hired or transferred into the bargaining unit shall be on probation during their first ninety (90) calendar days of work. An employee's probation period may be extended in the Company's discretion for up to an additional 30 days of work. The Company will notify the employee of the extension. During the probation period, employees will be introduced to key aspects of their jobs. Probationary employees may be transferred, laid off, disciplined, or discharged in the Company's sole discretion, without recourse to the grievance and arbitration procedure.

ARTICLE 3 - UNION DUES DEDUCTION

Section 1. The right of employees to work shall not be denied or abridged on account of membership or non-membership in the Union, or in any labor organization, labor union or any other type of association. Further, employees shall not be required to become members, or otherwise maintain membership in the Union, or any labor organization, labor union or any other type of association, as a condition of employment or continuation of employment with the Company.

Section 2. Neither the Company nor the Union will restrain or coerce any employee with respect to his or her decision to join or refrain from joining the Union, and no agent, officer, employee or member of the Union will compel or force, or attempt to compel or force, any employee to join or refrain from joining the Union, or any other labor organization, labor union or any other type of association.

Section 3. During this Agreement, The Company will deduct an amount equivalent to dues, initiation fees and assessments ~~biweekly~~ from the wages of the employees who voluntarily authorize such deductions in writing, and will forward same to the Union monthly during the term of this Agreement unless the authorization is canceled in writing by the employee to the Union ~~and the Union notifies~~ and the Company. No deduction will be made on any employee until receipt by the Company of a signed copy of a voluntary deduction authorization.

For the authorization to be valid, it must be voluntary, written, signed and dated by the employee, and in the following form:

~~Section 9. An employee who reports for work as scheduled, who finds no work is available, shall receive two hours of pay at his regular, straight time rate as report in pay.~~

~~Section 10. An employee who is called in to work during a scheduled day off shall be assigned to work the balance of the available shift, but no less than 1/2 of a regular shift.~~

ARTICLE 16 – OVERTIME WORK

Section 1. In all overtime work situations, the primary consideration must be to promote the safe and efficient conduct of the operations by having qualified employees do the necessary work.

Section 2. The Company will attempt to give employees reasonable notice of the need to perform overtime work.

Section 3. Employees will receive one and one-half times their regular rate for hours worked in excess of 40 in a workweek in accordance with the Fair Labor Standards Act. There shall be no duplication or pyramiding in the computation of overtime pay.

ARTICLE 17 – PAID TIME OFF (PTO)

Section 1. During this Agreement, employees will accrue Paid Time Off (PTO). ~~Employees with at least one completed year of service will accrue five days of PTO on January 1. Employees with at least three completed years of service will accrue ten, not five, days of PTO on January 1. Additional PTO will accrue as follows:~~

<u>Completed Years-Months of Service</u>	<u>Accrual Per Pay Period</u>	<u>Maximum Allowed Not to Exceed Balance</u>
Up to 24 months	4 hours	104 hours (13 days)
25 – 60 months	4.62 hours	136 hours (17 days)
61 – 120 months	5.54 hours	168 hours (21 days)
121 – 180 months	6.46 hours	200 hours (25 days)
181 + months	7.69 hours	224 hours (28 days)
1-7 Years	0.92 Days / Month	11 Days / Year
8-14 Years	1.33 Days / Month	16 Days / Year
15+ Years	1.75 Days / Month	21 Days / Year

Employees will accrue PTO in any pay period in which they work 40 hours or receive 40 hours of PTO. PTO is not accrued during any pay period in which an employee is on unpaid leave, or in a pay period in which his employment ends.

Section 2. A day of PTO will be paid at the employee's regular, straight time rate in effect at the time he takes the time off for the regularly scheduled hours of work that are necessarily missed. PTO will not be treated as hours worked for purposes of calculating overtime pay.

Section 3. With management approval, employees who have completed their probation period may use PTO. PTO may be used after it has accrued. PTO may be used in increments of one hour. Earned, unused PTO hours will continue to accrue and be credited up to the Maximum Allowed Balance, based on length of service. PTO must be taken in the year it accrues and may not be carried over from year to year. Accrued, unused PTO will be paid out upon termination of employment.

Section 4. An employee must request to use PTO at least fourteen calendar days in advance unless the need for PTO is due to the employee's illness or injury that renders him unable to perform the essential functions of his position, or as provided by Arizona law. Medical certification will be required for requests to use PTO due to illness or injury starting with the third consecutive absence. When certification is required, the certification and release to return to work must be furnished before the employee will be permitted to return to work. Employees may not take time off as unpaid if PTO is available.

Section 5. All use of PTO is subject to approval by management. PTO will be scheduled so as not to interfere with orderly, continuous, and efficient operations. When possible management will approve PTO requests for observed holidays subject to operational needs. An employee's PTO may be rescheduled when the Company determines that the safe and efficient conduct of the operations requires such rescheduling. ~~PTO rescheduled in December will be rescheduled no later than January.~~—An employee who provides satisfactory evidence that nonrefundable airline tickets have been purchased will not have his PTO rescheduled.

~~Section 6. —A new employee will accrue two days of PTO at the conclusion of his probation period. Starting the first full month following his first anniversary date, the employee will accrue 0.92 days of PTO per month through December, and will then accrue PTO pursuant to Section 1 above.~~

ARTICLE 18 - FUNERAL LEAVE

An employee who has completed his or her probation period may be granted up to three consecutive calendar days off in order to attend the funeral of the employee's immediate family member within the State of Arizona, or up to five consecutive days off to attend the funeral outside the State. Immediate family member means the employee's father, mother, current spouse, child, current father-in-law, current mother-in-law, brother, sister, grandparent, current step-parent, or current step-child. One of the days off must be the day of the funeral. Pay for funeral leave will be an employee's regular, straight time rate for the hours of regularly scheduled work he misses. To be eligible for paid funeral leave, an employee must furnish the Company with satisfactory evidence of attendance at the funeral and relationship to the deceased.

ARTICLE 19 - JURY DUTY

Section 1. An employee who is required to serve jury duty will be excused from work for the days on which he is required to serve. An employee who has completed one year of service will receive pay for regularly scheduled work hours necessarily missed due to jury service, less the fee or other compensation provided by the court. The employee will return

Linda Snoeyenbos
Regional Human Resources Director - West
813-833-1058
linda.snoeyenbos@trinityservicesgroup.com

From: TC [<mailto:tc@ufcw99.com>]
Sent: Thursday, June 08, 2017 2:44 PM
To: Snoeyenbos, Linda <Linda.Snoeyenbos@trinityservicesgroup.com>; jesus.puentes@trinityservicegroup.com
Cc: David Ceballos <davidc@ufcw99.com>; Fred Carter <Fredc@ufcw99.com>
Subject: UFCW vs Trinity Douglas 2016.12.05 Arbitration

Good afternoon.

Please see the attached letter.

Thank you.

Trisha Crance
Assistant to the Grievance Director
UFCW Local 99
602-251-0408
tc@ufcw99.com

6/8/17

UFCW ARIZONA
99

a VOICE for working America

www.ufcw99.com

JAMES J. McLAUGHLIN - President, International Vice President**STAN E. CHAVIRA** - Secretary / Treasurer

June 8, 2017

Email Only

Ms. Linda Snoeyenbos
ASPC Douglas
PO Box Drawer 3867
Douglas AZ 85608

Dear Ms. Snoeyenbos:

RE: UFCW vs Trinity Douglas / 12.05.16 (PTO time)

Please be advised the Union is submitting this grievance to arbitration. The Union has filed for an FMCS arbitration panel.

When you receive the panel (via email), please contact me to select an arbitrator from the panel, pursuant to the Collective Bargaining Agreement.

Sincerely,



Frederick Carter
Grievance Director

tc

c: David Ceballas
Jesus Puentes

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 99

2401 North Central Avenue, 2nd Floor, Phoenix, Arizona 85004-1331 • Main: (602) 254.0099 • TF: (800) 997.0099 • F: (602) 251.0459
877 South Alvernon Way, Suite 100, Tucson, Arizona 85711-5352 • Main: (520) 884.9716 • TF: (800) 997.0099 • F: (520) 884.9023

December 8, 2017

Negotiations News



TRINITY SERVICES
GROUP, INC.

TRINITY PRESENTS ITS LAST, BEST OFFER FOR A NEW AGREEMENT

Representatives of Trinity and the UFCW met on December 6 to continue working on a new agreement to replace the one that expired on June 30.

During the meeting, Trinity presented its last, best offer for a new agreement. Some of the highlights of the offer are:

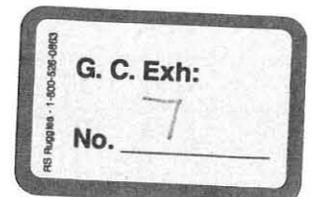
- * Team members will keep participating in the UFCW's medical plan, and Trinity will increase its contributions to the cost of the plan each year of the proposed agreement.
- * The new PTO benefit will allow PTO hours to accrue every pay period and roll-over from year to year. Currently, PTO hours are lost if not used by December 31.
- * No team member will earn any less pay under our proposed agreement.
- * January 1, 2018, the minimum rate will increase to \$10.50 per hour.
- * January 1, 2019, the minimum rate will increase again to \$11.00.
- * January 1, 2020, the minimum rate will increase again to \$12.00.
- * Most Douglas team members will experience wage raises because of these increases.
- * Our proposed agreement includes Trinity's continuing commitment to a workplace free from discrimination, and also includes a prohibition against discrimination against you by the Union.
- * Vacancies at Douglas will be posted in the facility as we already have started doing.
- * Correction action will be in a team member's personnel file for a shorter period than they are now.
- * You will receive performance reviews regularly, and consistently.
- * Schedules will be posted weekly for the following two weeks, as we already have started doing.
- * You will receive notice when changes are made in your schedule.
- * Trinity's proposal commits to continuing to assure a safe, healthy and productive work environment for everyone as we always have at Douglas, and companywide.

Trinity's proposal is the result of the hard work and advocacy for our Douglas team by everyone on our committee. We have had a lot of good discussion at our meetings and Trinity has made a lot of concessions to be able to present this complete proposal.

Our proposal will support all of us and the work we do for the DOC for the next three years. We believe it reflects the best agreement possible as a result of our bargaining process.

Just The Facts

JA83



UFCW Local 99 Wage Proposal**12/1/17****Article 17- PTO**

The Union is in Agreement with the PTO changes provided at our last negotiation on October 18, 2017 with the understanding that employees will continue to accrue days as they use days and they will not be deleted at the end of the year, but carried over until they have reached the max days for the amount of years they have been employed and as long as employee's current (2017 pto) hours on the books as of December 6, 2017 are rolled over in addition to hours earned going forward. The rolled over days from 2017 will not expire.

Article 23- Medical and Savings

November 1, 2017 4% increase in employer contributions per eligible employee

November 1, 2018 4% increase in employer contributions per eligible employee

October 1, 2019 4% increase in employer contributions per eligible employee

Employees initially will pay the following weekly amounts based on their coverage elections:

EE	\$10/week
EE/Child	\$15/week
EE/children	\$20/week
EE/spouse	\$40/week
EE/Spouse/child	\$40/week
EE/Family	\$40/week

Wages

Starting rate: \$10.50 an hour base rate or minimum wage whichever is higher retro to July 27, 2017

Mohave: will remain \$1 an hour more for starting base rates retro to July 27, 2017

Longevity pay-years of service

Years of Service	Increase	Cumulative
1	.10	.10
2	.05	.15
3	.10	.25
4	.05	.30
5	.05	.35
6	.05	.40
7	.10	.50
8	.05	.55
9	.05	.60
10	.05	.65

11	.05	.70
12	.05	.75
13	.05	.80
14	.10	.90
15+	.10	1.00

Premium Pay:

PIC (person in charge) \$1.00 an hour above the employee's rate of pay (base +longevity pay)

Night Premium: Employees who work between the hours of 12 a.m.-5 a.m. shall receive an additional \$1.00 an hour above the employee's rate of pay (base + longevity pay)

*note: premiums shall be combined. For example: employees who are designated as the PIC between the hours of 12 a.m.- 5 a.m. will receive an additional \$2.00 an hour between the hours of 12 a.m. and 5 a.m.

*Any employee above scale who does not receive an increase with the new implemented wage scale will receive a twenty-five (.25) cent increase each year of the Agreement until the wage scale catches up to them.

Pending language

Article 15- Hours of Work

The Unions proposed section 11: Employees who are called in on a scheduled day off for a training or mandatory meeting will be paid a minimum of 2 hours pay or the length of the training/meeting, whichever is greater. Employees will not be required to flex hours earned during a mandatory meeting or training.

Article 13- Performance of Work

Section 3 add: the performance review process will be administered in a consistent and fair manner.

From: Hammond, Dawn
Sent: Monday, February 20, 2017 3:11 PM
To: Snoeyenbos, Linda <Linda.Snoeyenbos@trinityservicesgroup.com>; Arvonio, Lori <Lori.Arvonio@trinityservicesgroup.com>
Cc: Morse, Khadeeja <Khadeeja.Morse@trinityservicesgroup.com>
Subject: RE: CBA Douglas- I logged case 08486032

Thank you Linda. We haven't actually done anything other than open a case with UltiPro to find out how the system is accruing PTO for the Douglas union. We will wait to hear from you.

Best Regards,

Dawn Hammond, PHR
Director of Human Resources Support
Trinity Services Group
477 Commerce Blvd
Oldsmar, FL 34677
Internal: (21) x222
Direct: (813) 475-7212
Fax: (813) 606-4175
Email: Dawn.Hammond@trinityservicesgroup.com

From: Snoeyenbos, Linda
Sent: Monday, February 20, 2017 12:25 AM
To: Hammond, Dawn <Dawn.Hammond@trinityservicesgroup.com>; Arvonio, Lori <Lori.Arvonio@trinityservicesgroup.com>
Cc: Morse, Khadeeja <Khadeeja.Morse@trinityservicesgroup.com>
Subject: FW: CBA Douglas- I logged case 08486032
Importance: High

Hello Dawn/Lori,

Please do not respond to Jesus Puentes via email or telephone regarding this matter until I can talk with our labor lawyer and Khadeeja and only then will I respond to Jesus. Please advise Jesus as I have via my call to him Friday, 2/17/17 that I

would look into this matter and follow-up with him. If you need more information about this matter, please call me. Thank you for your time with this important email.

 Thanks,
Linda

Linda Snoeyenbos
Regional Human Resources Director - West
813-833-1058
linda.snoeyenbos@trinityservicesgroup.com

From: Puentes, Jesus
Sent: Friday, February 17, 2017 3:40 PM
To: Hammond, Dawn <Dawn.Hammond@trinityservicesgroup.com>
Cc: Thumma, David <David.Thumma@trinityservicesgroup.com>; Rendon, John <John.Rendon@trinityservicesgroup.com>; Snoeyenbos, Linda <Linda.Snoeyenbos@trinityservicesgroup.com>; Morse, Khadeeja <Khadeeja.Morse@trinityservicesgroup.com>
Subject: RE: CBA Douglas- I logged case 08486032

Good afternoon Dawn:

As per our conversation on the phone. Could you please respond to me via e-mail so that I can inform my Bosses.

Thank you for looking into this for me. As I stated my concern is that all the Douglas team members were loaded with 40 hours on the system Is this correct?

 Thank you

Jesus Puentes
Food Service Director IV
Trinity Services Group, Inc
6911 N. BDI Blvd
Douglas Az. 85607
Office: (520) 364-7521 x 34160
Cell: (520) 254-9584
Fax: [364-2536](tel:364-2536) Jesus.Puentes@TrinityServicesGroup.com

From: Hammond, Dawn
Sent: Friday, February 17, 2017 6:39 AM
To: Unit8987 ASPC - Douglas <Unit8987@trinityservicesgroup.com>
Subject: FW: CBA Douglas- I logged case 08486032

Good morning Mr. Puentes,
Would you be able to call me today regarding the PTO plan for your union team members?

 Best Regards,

Dawn Hammond, PHR

Director of Human Resources Support
Trinity Services Group
477 Commerce Blvd
Oldsmar, FL 34677
Internal: (21) x222
Direct: (813) 475-7212
Fax: (813) 606-4175
Email: Dawn.Hammond@trinityservicesgroup.com

From: Arvonio, Lori
Sent: Thursday, February 16, 2017 5:59 PM
To: Hammond, Dawn <Dawn.Hammond@trinityservicesgroup.com>
Subject: RE: CBA Douglas- I logged case 08486032

Dawn,
I logged case 08486032. After reviewing Douglas again and comparing it to our plan for non-Exempt, I believe they should only be accruing the additional days up to the Max per year. So as crazy as it sound, even though someone whose YRS are 3 or more will get 10 days in January they should only accrue one more day for the year at .92 days per month. So by March they have their max of 11 days and they are not to exceed 11 days per year. Once they hit the 8 year mark they will accrue 6 more days.

If what I am saying is accurate, then they have been over accruing all year.

If you compare their days to our PTO plan based on the max per year it is not far off from our plan. And on our PTO there is no one who will get 31 days a year no matter how long they are with the company. So I think we misinterpreted it.

What do you think?

From: Hammond, Dawn
Sent: Thursday, February 16, 2017 1:54 PM
To: Arvonio, Lori <Lori.Arvonio@trinityservicesgroup.com>
Subject: CBA douglas

Negotiations News



TRINITY SERVICES
GROUP, INC.

August 4, 2017

TRINITY AND THE UFCW MEETING AGAIN ON AUGUST 9

As you know, representatives of Trinity and the UFCW met to start negotiations for a new Agreement at Douglas on June 27. Our next meeting with the Union is scheduled next Wednesday, August 9.

The Douglas facility is the only location in the nation where Trinity team members are represented by a union. At our meeting on June 27, we provided the UFCW information about the benefits we offer at facilities that are similar to Douglas, including copies of our Team Member Playbook and Benefits Enrollment Guide.

We also presented a complete proposal for a new Agreement with a number of new and improved provisions. Our proposal includes:

- An improved Paid Time Off Article that would provide the same PTO benefits here at Douglas as Trinity already provides to unrepresented team members at similar facilities.
- Compared with the Union Agreement, the PTO benefits in our proposal start to accrue on the first day of employment, PTO carries over and continues to accrue from year to year up to a maximum balance, the use of PTO is expanded, and PTO can be used one hour at a time.
- We proposed the same Trinity medical coverage that is offered to team members at similar facilities.

As you may be aware, the Arizona minimum wage rate will increase from \$10 per hour to \$12 per hour over the next few years. This is good news and will provide real increases in the paychecks of all our Arizona team members. Just like at other facilities, Douglas team members will benefit from these improvements, and we have included them in our proposal for an Agreement.

Since our meeting with the UFCW, we have continued to communicate with the union about important issues here in Douglas. As you know, on July 20 five team members were affected by a reduction in force. We worked with the team members to find positions for them at other facilities. Some accepted those opportunities and some chose new ones. We wish all of them the very best.

Just The Facts

JA89

67 (13)

April 23, 2018

Negotiations News



TRINITY SERVICES
GROUP, INC.

UFCW INFORMS TRINITY OF RATIFICATION OF THE DECEMBER 6, 2017 LAST, BEST OFFER

As you know, representatives of Trinity and the UFCW last met on December 6 to work on a new agreement to replace the one that expired on June 30, 2017. During the December 6 meeting, Trinity presented our last, best offer for a new agreement to the Union.

On April 17, 2018, we received an email from the Union informing us that the last, best offer finally has been ratified.

We are very pleased that the negotiations that began last June have been successful. Reaching a new agreement required a lot of time, energy and patience. We appreciate the input of everyone who participated in the process that led to this new achievement.

The ratified agreement is in the process of being prepared and we anticipate it will be signed soon. Once it is complete, copies will be available. In the meantime, please speak with Human Resources if you have any questions.

Resp 1

Just The Facts

JA90

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2020 a true and correct copy of the foregoing **Joint Appendix** was electronically filed and served upon all counsel of record through the Court's Case Management and Electronic Case Filing (CM/ECF) system:

/s/ S. Libby Henninger
S. Libby Henninger