UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

MEDIC AMBULANCE SERVICE, INC.

Case 20-CA-375918

and

PROFESSIONAL EMS RESPONDERS OF SONOMA COUNTY, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1401

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I. INTRODUCTION

During a two-day hearing before Administrative Law Judge Lisa Friedheim-Weis[1] beginning on June 16, 2026, the evidence demonstrated that Medic Ambulance Service, Inc. (Respondent) violated Sections 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., by removing two employees from their Field Training Officer (FTO) positions and unilaterally changing the eligibility requirements to be an FTO. Respondent side-stepped the Professional EMS Responders of Sonoma County, Local 1401 (the Union) by adding a requirement that bargaining unit employees serving in FTO positions could only maintain their FTO status if they worked full-time. Starting in April 2025,[2] Respondent began systematically removing employees from their FTO positions without providing the Union advance notice and an opportunity to bargain, thereby violating Section 8(a)(5) of the Act. Two employees who were removed from their FTO positions were Union leaders.

In January, Brian Bower was elected to be the Union Director. During the first few months of his tenure, Bower's relationship with management was relatively nonconfrontational, with most issues being resolved informally and without the need for formal grievances. Starting in August, the relationship between the parties changed drastically. For the first time, the Union needed to file many grievances on issues ranging from employment termination to safety issues to company policy to issues with pay. (Tr. 70). Two months later, on October 30, Bower attended an FTO meeting where he brought safety issues to management's attention on behalf of, and in the presence of, his fellow employees. Cindy McBride, Vice President of Quality Assurance, and Brian Meader, Vice President of Operations, condemned these comments as "inappropriate union

[1] Hereinafter referred to as the ALJ. References to the transcript will state: (Tr. ___); exhibits will be identified as (J. Exh. ___, GC Exh. ___, or R. Exh. ___).

[2] All dates herein refer to 2025 unless otherwise noted.

speeches, grievances, or attempts to reopen items already governed by the [CBA]." (J. Exh. 12). Four days later, Bower was removed from his position as an FTO, which Respondent claimed was due to his part-time status.[3] This removal violates Sections 8(a)(1) and (3) of the Act. Later that same day, Respondent notified Shop Steward Caitlin O'Shei that she too was being removed from her FTO position due to her part-time status,[4] also in violation of Sections 8(a)(1) and (3) of the Act.

II. STATEMENT OF FACTS

Respondent provides contracted ambulance services for Sonoma County. When Respondent was awarded the Sonoma County contract in late 2022, Respondent recognized and negotiated a new CBA with the Union, which represents a Unit of full-time and part-time Paramedics, Emergency Medical Technicians (EMTs), and Support Services Technicians (SSTs) at four different Sonoma County facilities (J. Exh. 1 at 2), who had formerly been employed by prior contractor American Medical Response (AMR). (Tr. 269-70). The parties' newly-negotiated CBA went into effect on June 10, 2023 and extends to January 8, 2028. (J. Exh. 1 at 1).

A. Field Training Officers Program

When Respondent began operating in Sonoma County in late 2023, it assumed the FTO program that had been established by the predecessor AMR. Respondent implemented the FTO Program Policy (the FTO Policy), Policy No. 201.08.01, dated May 2014. (J. Exh. 2 at 1). The FTO Policy outlines the eligibility requirements for becoming an FTO, how to apply for an FTO

[3] Respondent changed its rationale the next day and claimed that it removed Bower from his FTO position because he had "not trained a sufficient number of workers within the past 120 days." (J. Exh. 16).

[4] Similar to Bower, the reason for removing O'Shei from the FTO program changed from her part-time status to "her limited availability to effectively train new trainees." (J. Exh. 17).

position, and the criteria for maintaining FTO status. (J. Exh. 2).[5] Section C.4 of the FTO Policy provides that FTOs must do the following to maintain their FTO status:

i. Attend no less than 6 Medic CQI Committee meetings in a rolling 12 Months.
ii. Cannot miss more than 3 consecutive CQI Committee meetings in a rolling 3 months.
iii. Assist with at least 8 total hours of Orientation Academy Training per year.
iv. Have Evaluated at least 4 EMTs or Paramedics in a rolling 12 months.
v. Be in continuous good standing with Administration and QA Departments.

Respondent's FTO Policy does not state that FTOs must be full-time employees or must work full-time in order to maintain their FTO status.

It is undisputed that Respondent and the Union bargained about the FTO program and agreed to incorporate the FTO Policy into the CBA. Section 7.04 of the parties' CBA includes the following agreement regarding the FTO program:

> "[e]mployees who serve as FTOs shall be paid an additional two dollars and fifty cents ($2.50) for Paramedics and two dollars ($2.00) for EMTs per hour for all hours worked. To remain in paid FTO status, employees must be and remain in full compliance with all terms and conditions in FTO Policy 201.08.01." (J. Exh. 1 at 11).

According to the parties' Agreement, FTOs earn an additional $2.50 or $2.00 per hour for all hours worked, not just for the hours spent training. (Tr. 33, 146, 172-73). Bower, as a Paramedic FTO, earned an additional $2.50 per hour. (Tr. 33; J. Exh. 21 at 5). O'Shei, as an Emergency Medical Technician (EMT) FTO, earned an additional $2.00 per hour. (Tr. 146; J. Exh. 21 at 18). The parties' Agreement did not set any requirements for remaining a paid FTO other than maintaining compliance with Respondent's FTO Policy.

[5] Although Joint Exhibit 2 references Respondent's "Solano/Sacramento Policy & Procedures," witnesses for both the General Counsel and Respondent affirmed that the FTO Policy described in Joint Exhibit 2 is the same policy that was implemented in Sonoma County in 2023 and that applies to its employees in Sonoma County. (See Tr. 29, 145).

1. Brian Bower Was an FTO for Respondent.

Brian Bower began working for Respondent in January 2024, when it took over the Sonoma County contract from AMR. (Tr. 21). Bower was hired by Respondent as a part-time employee, and he has continued to work for Respondent only as a part-time employee. (Tr. 21-22). On average, he works about 12 hours per week for Respondent. (Tr. 21-22). Bower became a Paramedic FTO for Respondent on about March 25, 2024. (J. Exh. 21 at 5; J. Exh. 22 at 9). Prior to working at Respondent, Bower served as an FTO at AMR in Hemet, California. (Tr. 35). Over the course of his 23-year career as a Paramedic, Bower has worked for a variety of employers that include fire departments, private ambulance companies, emergency room departments, and as a Paramedic educator. (Tr. 22).

Individuals serving as Paramedic FTOs were eligible to train EMT interns, EMT New Hires, Paramedic Interns, Paramedic New Hires, and 5-Calls.[6] (Tr. 36). When there was a need to train incoming interns or new hires, Respondent would either assign an FTO based upon a bidding system or management would ask for volunteers through a WhatsApp group chat entitled "FTO Chat." (Tr. 40, 46; J. Exh. 22). On May 1, 2024, Bryan Smith, Education/Training/Events Manager, sent a message over the "FTO Chat" asking who was available to train an employee named Amanda Rugnis. (J. Exh. 22 at 23). Without hesitation, Bower volunteered for the shift. (J. Exh. 22 at 23). He was subsequently assigned to train Rugnis on May 13, 2024. A few months later, on July 17, 2024, Smith sent another message on the FTO Chat asking for volunteers to train employees David Sutton and Tim Rexroth (J. Exh. 22 at 33). Again, Bower was the first to respond and volunteer for the job. (J. Exh. 22 at

[6] A "5-Call" refers to an employee who is licensed as an EMT or Paramedic in a separate jurisdiction, but must be evaluated by an FTO on at least five different ambulance calls to ensure they understand how to provide care in compliance with Sonoma County local guidelines. (Tr. 39).

33). Bower subsequently trained Sutton on July 18, 2024 and July 19, 2024, and then trained Rexroth on July 26, 2024 and July 27, 2024. (R. Exh. 16(c)). On November 1, 2024, Smith sent an email to Brian Bower and Art Hsieh, both part time Paramedic FTOs, asking if either of them would be available to train Amber Carns, an incoming Paramedic. (R. Exh. 3). Twenty minutes after Smith's email, Bower volunteered to train Carns for three consecutive days in November 2024. (R. Exh. 3). Respondent assigned Bower to the job and he trained Carns on November 11-13, 2024. (R. Exh. 16(c)).

Under Section C(4)(iv) of the FTO Policy, the language dictates that FTOs must evaluate "at least 4 EMTs or Paramedics in a rolling 12 months." According to Bower, it was his understanding that so long as FTOs trained at least four trainees within the period specified in the FTO Policy, employees were eligible to maintain their FTO status. (Tr. 116-117). From the time he became an FTO in March 2024 until the end of the year, Bower conducted 11 training sessions as an FTO and trained a total of six individuals – Amanda Ruginis, Paul Gray, David Sutton, Tim Rexroth, Nikki Pappas, and Amber Carns. (R. Exh. 16(c)). From the beginning of 2025 until Respondent removed him from the FTO role on November 3, Bower conducted 15 training sessions as an FTO and trained seven individuals – Julian Newberry, Abby Cipperly, Byron Roberts, Phillip Seaman, Abdul Mohammed, Maddy Goodwin, and an unnamed 5-call paramedic. (J. Exh. 19; J. Exh. 20 at 3; R. Exh. 3; R. Exh. 16(c)).

For comparison, Respondent had four full-time Paramedic FTOs: Justin Bowen, Josh Nultemeier, Andrew Natoli, and Kayla Shults. (J. Exh. 7 at 4). In 2024, Bowen trained nine trainees, Nultemeier trained 14 trainees, and Natoli trained 11 trainees. (R. Exh 16(b), (o), (r), (x)). However, in 2025, Bowen trained three trainees, Nultemeier trained 16 trainees, Natoli trained three trainees, and Shults trained two trainees. (R. Exh 16(b), (o), (r), (x)). Thus, at the

time of Bower's removal from the FTO program on November 3, Bower had not only met the requirement under Section C(4)(iv) of the FTO Policy, he had exceeded it. Furthermore, three of the four full-time Paramedic FTOs had yet to meet that requirement despite working more hours than Bower. Even if Respondent claims that the number of trainees is less important than the number of hours training each trainee, a summary of the training hours submitted by Respondent show that Bower spent more of his working hours training (35% hour on task) than full time employee Josh Nultemeier (33% hours on task), both of whom started working as FTOs in March and May of 2024, respectively. (R. Exh. 16).[7]

2. Caitlin O'Shei Was an FTO for Respondent.

Caitlin O'Shei began working for Respondent in April 2024. (Tr. 136). She was hired as a full-time EMT, and she continued to work for Respondent full-time until about January 2025 when she began working less than 40 hours per week in order to attend Paramedic school. (Tr. 137, 139). O'Shei had a written agreement with Respondent, approved by Operations Manager Eric Constantine, that allowed her to shift her schedule to less than 40 hours per week to accommodate the days she would need to attend classes. (Tr. 136-137, 142). From about January 2025 to the present, O'Shei switches between full-time and part-time work hours depending on her class schedule. (Tr. 136-42). Prior to November 3, Respondent allowed O'Shei to shift between full-time and part-time status while serving as an EMT FTO and gave her no indication that it was a problem. Furthermore, Respondent, and Constantine in particular, was aware that O'Shei would be returning to full-time status in December 2025. (Tr. 137, 141-42, 149).

[7] The summary listed in Respondent Exhibit 16 covers the period of January 16, 2024 – February 18, 2026. Bower was removed on November 3, 2025, meaning that Nultemeier had an additional 3 months to improve his percentage of hours on task for training, but still could not reach Bower's level of "availability" for training new trainees.

O'Shei became an FTO for Respondent on about July 16, 2024. (J. Exh. 21; J. Exh. 22 at 22). Shortly thereafter, she volunteered to serve as a Union shop steward. (Tr. 143, 146). From the time she became an FTO in 2024 until the end of the year, O'Shei conducted 16 training sessions as an FTO and trained three individuals – Arturo Pena, Jonathan Oseguera, and Vicente Vasquez. (R. Exh. 16(t)). From the beginning of 2025 until Respondent removed her from the FTO role on November 3, O'Shei conducted 30 training sessions as an EMT FTO and trained eight individuals – Vicente Vasquez, Adam Bautista, Sarah Woolsey, Jonah Elias, Jarred Buchanan, Katrina Kaiser, Many Ruiz Flores, and Kathleen Donovan. (R. Exh. 16(t)).

On October 19, O'Shei sent an email to Training Manager Smith asking that one of her trainees, Kathleen Donovan, be transferred to a more experienced FTO because she felt that Donovan was not progressing at the appropriate rate to meet the demands of the EMT position. (Tr. 146; J Exh. 8). Prior to this email, O'Shei had never had any issues related to being unable to train an employee. Smith subsequently informed her that Donovan was transferred to another FTO, but did not state that O'Shei's request to transfer Donovan to another FTO was grounds for removal from the FTO program. (Tr. 147-48).

B. Union Activity and Grievances filed by Bower and O'Shei.

Brian Bower was elected to the position of Union Director by the Unit employees in January 2025. (Tr. 24). Prior to his role as Union Director, Bower served as a Union Shop Steward from April 2024 to November 2024 and then as Assistant Union Director from November 2024 – December 2024 before his election to Union Director. On August 8, Vice President of Operations Meader asked Bower for a list of the names of all Union shop stewards. O'Shei's name was on the shop steward list that Bower provided Meader. (GC Exh. 3). Under the parties' three-step grievance and arbitration procedure, the Union Director files grievances at

Step 1. (Tr. 70; GC Exh. 4). All Step 1 grievances are handled by Vice President of Operations Meader. If the parties failed to resolve the issue, the Union has the option to escalate the grievance to a Step 2 hearing, which would be handled by Respondent President James Pierson.

During his first seven months as Union Director, Bower did not file any formal grievances. (Tr. 68). However, in August and September 2025, he filed 10 grievances on behalf of Unit employees. (Tr. 69).[8] The nature of these grievances ranged from contesting an employee termination, to raising safety concerns, to complaints about company policy, to issues with employee pay. (Tr. 70; GC Exh. 3). While the majority of these grievances were filed by Bower, one of these grievances was filed by O'Shei. (Tr. 108).

Shortly after Bower and O'Shei filed these grievances, the relationship between the Union and Respondent quickly soured. Both Respondent President James Pierson and Vice President of Operations Brian Meader commented to Bower that his level of grievance filing was "unprecedented" and that Respondent had "a long, good working relationship with the Union" prior to his tenure as Union Director. (Tr. 87). Bower testified that he was told by Vice President of Operations Brian Meader and President James Pierson that the good relationship with the Union ended once Bower took over, and that he was the source of the relationship turning sour. (Tr. 88). Respondent did not call any witnesses to contradict Bower's testimony regarding the strain that arose in the relationship between the Union and management after Bower filed the grievances.

[8] Bower stated that he filed between 8-10 grievances during the period of August and September 2025, but did not recall have an exact number. (Tr. 69). Meader stated on cross examination that he was also unsure as to the exact number of grievances filed during this time period, but believed it was closer to 10. (Tr. 308). Since 10 appears to be a number that both parties agree on, this will be the number of grievances referred to in this Brief.

Of the 10 grievances filed by the Union, one of them was escalated to a Step 2 grievance hearing. In response to the Union's request for a Step 2 hearing, Pierson stated that the Union's claim about unsafe working conditions was "inaccurate and unsubstantiated" and that the Union's reliance on "secondhand information-is both misleading and disappointing, particularly given our long history of good faith collaboration with Local 1401." (GC Exh. 7 at 3). At the time of Bower's and O'Shei's removal from the FTO program on November 3, only half of the Union's filed grievances had been addressed or resolved by Respondent. (Tr. 105).

C. Bower Files Safety Grievance in August 2025.

On August 12, Bower filed a grievance alleging that management had failed to adequately address safety concerns. (GC Exh. 3). One of the primary points of contention between the Union and Respondent was Respondent's continued use of the Commercial Emergency Vehicle Operator (CEVO) system to train employees. (Tr. 76-78). According to Bower, another program, the Emergency Vehicle Operator Course (EVOC) system, provides employees with more hands-on training, while the classroom approach used in CEVO does not effectively prepare trainees on how to drive ambulances in the field. (Tr. 76-77). This issue was particularly important for employees serving as FTOs because their safety depended on the basic training incoming EMTs and Paramedics received prior to taking calls with FTOs in the field.

FTOs are responsible for evaluating new EMTs and Paramedics' patient care, driving heavy ambulance trucks, and using sirens – all of which must all be done from the back of a moving ambulance. (Tr. 76). Thus, employees believed EVOC to be more advantageous for training because it teaches incoming EMTs and Paramedics about backing and stopping an ambulance and would allow for Respondent to "keep [its] employees safe, the public safe, and [its] patients safe." (Tr. 77). Although the Union had urged Respondent to switch to EVOC

during every Labor Management Committee (LMC) meeting held in 2024 and prior to August 2025, Respondent continued to use CEVO for training. (Tr. 77-78). Prior to the filing of the August 2025 grievance, Bower stated that he had spoken with his co-workers "at least ten times" and received feedback of employees' preference for the EVOC system. (Tr. 95).

On September 15, Bower and Meader met for a Step 1 grievance hearing to discuss Respondent's continued use of CEVO and other safety concerns that the Union felt had been ignored by management. (Tr. 74). At the grievance hearing, Bower raised concerns around portable radios not having an emergency activation button, underutilizing equipment such as LUCAS devices, and Respondent's continued use of CEVO instead of the EVOC system. (Tr. 74-78). Bower estimated that Respondent would only allocate "5 to 20 minutes" to hear any given Step 1 grievance. (Tr. 78).

About two weeks later, on September 30, Respondent's Legal Director Michael Coan denied the grievance at Step 1, stating "all of the issues raised have already been addressed and resolved through the several Labor Management Committee meetings between the union and Medic and Medic following the terms of the CBA and policies." (GC Exh. 5). Beyond this email, Respondent provided no follow up or any documentation to support the notion that the Union's safety concerns had been "resolved" during the LMC meetings. In its response to Respondent's flat denial of the Union's Step 1 grievance, on October 6, the Union escalated the grievance to a Step 2 hearing. (GC Exh. 6). According to the Union, employees had "repeatedly alert[ed] management of safety hazards, sometimes over periods of months" without taking any action.

Furthermore, the Union claimed that Respondent's rationale for denying the grievance conflicted with the language of Article 16 of the CBA, which reads as follows:

> "A Joint Labor-Management Committee shall be established to discuss issues such as health and safety and other work-related issues where there is mutual agreement that such discussions should take place. The Committee shall have no power to change any provisions of this Agreement…or [] resolve grievances, unless there is specific written mutual consent from the Employer and the Union." (J. Exh. 1 at 28).

The Union argued that management's reasoning for denying the Step 1 grievance fell within the definition listed in CBA and therefore the safety issues raised in Bower's August 12 grievance needed to be escalated to Step 2. Of the 10 grievances filed by Bower and O'Shei, Bower stated that this was the only one to be escalated to Step 2 and was "one of the first" grievances ever taken to a Step 2 by the Union. (Tr. 80-82).

On October 14, Pierson sent a formal response to the Union, objecting to its request for a Step 2 grievance. He claimed that "[a]t no point has Medic ever represented that the LMC process is a substitute for the grievance process under the Collective Bargaining Agreement (CBA)" and that the "assertion that 'employee concerns remain unresolved for long periods of time, endangering both employees and patients' is inaccurate and unsubstantiated." (GC Exh. 7 at 3). He wrote that Respondent had "an exemplary record of safety and service" and any claim that suggested otherwise was "both misleading and disappointing, particularly given our long history of good faith collaboration with Local 1401." (GC Exh. 7 at 3). At the time of Bower's and O'Shei's removals from the FTO program, the parties had yet to hold the Step 2 grievance hearing due to scheduling conflicts. Ultimately, the Union decided to withdraw its safety grievance in November 2025. (Tr. 84, 280).

D. Bower Raises EVOC/CEVO Concerns at October 30 FTO Meeting.

On October 30, Bower attended Respondent's monthly FTO meeting. While Bower attended the meeting virtually, he stated that approximately 10 FTOs attended the meeting, with four of those attending via videoconference. (Tr. 90). Also in attendance at the meeting were five

managers: Cindy McBride, Elisa Martinez, Jack Bagnoli, Marcus Bond, and Bryan Smith. (Tr. 88-90). During the FTO meeting, Bower commented that "the FTOs and other employees were interested in going to EVOC…and we felt it was a safety concern." (Tr. 91). He further stated that "because [management] was talking about driving standards, and how much time each person has driving code 3," it was appropriate to bring up employees' safety concerns about Respondent's use of CEVO instead of EVOC. (Tr. 91). Bower testified that Respondent President Pierson had "said that he would meet [with the Union] about it," but that no such conversation had taken place. (Tr. 91).

Bower also wrote in Respondent's videoconference "chat" feature that "management also makes changes to polic[ies] and doesn't provide updates. Last updates 6/22/23. You can't hold employees accountable for policies that are not provided to them." (J. Exh. 11). He went on to say that Respondent "need[ed] to make sure that the employees know where all the policies are" and pointed out that there were "policies that were missing…numbers that were skipped" and that "policies were out of date." (Tr. 94). Vice President of Quality Assurance Cindy McBride subsequently stepped out of the room to contact Vice President of Operations Meader and verify Bower's claims. (Tr. 92). Upon her return, McBride stated that Respondent's "policy manual had been updated at the beginning of 2025." (Tr. 92). During the FTO training, Bower also noted that there was insufficient clarity on employee "time punches and getting off late," limited guidance on "securing monitors," and a lack of employee access to up-to-date employment policies. (Tr. 100).

Shortly after the FTO meeting ended, Education/Training/Events Manager Bryan Smith sent an email to the FTOs and Respondent's managers briefly summarizing the discussion at the

meeting. (J. Exh. 12 at 7-9). A few hours later, Bower sent an email to Smith, highlighting omissions from Smith's summary:

> "We talked about the need for EVOC.
>
> Cindy said we could use the notes in ESO for OT reasons and that we only need to contact the supervisor as a backup if we missed a punch.
>
> We talked about monitor securing devices that I think were included in SCFD's bid. Marcus said he would contact Stryker for a sample, because they didn't have one available before.
>
> Cindy said that policies were updated at the beginning of the year for CAAS. Also, we talked about how the policy manual located in ESO is out of date, that the union did not receive notification on updates for l& and that employees cannot be held accountable for policies that they were never provided. Cindy stated that she called Meader and that Shane approved the change, though I pointed out that I was the union Director 06/2025 (when the policy was last reviewed) and that I didn't believe Shane worked at Medic during that time."
>
> (J. Exh. 12 at 6-7).

Bower stated that his purpose for sending the email was to ensure that his comments about EVOC being superior to CEVO and employees having outdated versions of company policies be noted in Respondent's meeting summary notes. (Tr. 100).

The next day, October 31, Vice President of Quality Assurance Cindy McBride responded to Bower's email to Manager Smith about the discussion at the FTO meeting. She admonished Bower that an FTO meeting is not the appropriate place to raise issues that are the subject of pending grievances; therefore, the issues he raised did not need to be included in the meeting notes. (J. Exh. 12 at 6). McBride was not the only manager who thought Bower behaved inappropriately at the FTO meeting. Vice President of Operations Meader called Union Counsel Easton Broome on October 31, and complained about Bower's comments during the October 30th meeting. Meader further informed Broome that he did not appreciate Bower

"putting management on blast." (Tr. 103; 162-64). Prior to this phone call on October 31, Meader had never before contacted Broome to complain about an individual Unit employee's comments at a meeting. (Tr. 163-64).

E. Respondent Removes Bower and O'Shei from the FTO Program.

Starting in March 2025, Respondent began looking more closely into employees working as part-time FTOs. On March 20, Smith sent an email to Meader and Constantine recommending the removal of Art Hsieh and Brian Bower, both part-time Paramedic FTOs, claiming that Respondent needed "someone who is more present." (R. Exh. 4). Constantine agreed with Smith, stating in a follow-up email that "we no longer have a reason to continue the part-time FTO program. This may require we create a defining line and have no part-time personnel in an FTO capacity unless they satisfy greater than 40-hours per week in a rolling 6-week window." (R. Exh. 4).

In April 2025, Smith did an audit of Bower's FTO training records and found that Bower had worked 1009 hours, with 24% of his "time worked" spent training paramedics as an FTO over a rolling 12-month period. (J. Exh. 4). Shortly after this email was sent out, Smith had a conversation with Hsieh where Hsieh "agreed" to step down from his FTO position. (Tr. 181).[9] When asked for the reason for Hsieh's removal, Smith stated that he recommended Hsieh's removal due to his part time status and the "[difficulty in being] able to assign [Hsieh] regular incoming employees or students." (Tr. 181). A few weeks later, on April 10, Jack Bagnoli, Employee Engagement/Outreach Specialist, sent an email to Eric Constantine

[9] The Union contests that Hsieh ever resigned from his FTO position. Bower testified that the first time he heard about Hsieh leaving the FTO program was from Eric Constantine during their conversation on November 3. Prior to that moment, neither Bower nor the Union was aware that Hsieh was no longer serving as an FTO. (Tr. 51-52). Bower testified that he spoke with Hsieh sometime after his conversation with Constantine and that Hsieh disclosed that management removed him from the FTO position and that he did not resign from the position. (Tr. 51-53).

confirming that Hsieh was "stepping down as an FTO." The only remaining part-time FTOs were Bower and O'Shei. Respondent presented no evidence as to why it retained Bower, or O'Shei, in their part-time capacities, after this March email announcing eliminating part-timers from FTO program, or after the April audit of Bower's training hours.

For the next seven months, Bower and O'Shei continued to work as FTOs without issue. Respondent was aware that Bower was working part-time and that O'Shei was switching between full-time and part-time to accommodate her class schedule. Despite this knowledge, Respondent made no effort to speak with either Bower or O'Shei about their unavailability due to their part-time status.

On September 4, during the six-week period when Bower filed 10 grievances with management, Meader sent an email to Smith asking for a list of every employee working as an FTO, as well as information on the number of Quality Assurance (QA) meetings they attended and the number of trainees they evaluated. (J. Exh. 7). According to Meader's email, his purpose for asking for the information was to "know who is compliant" because it was time for Respondent to "start enforcing the policies." (J. Exh. 7 at 3). Smith sent a follow up email to Meader and Constantine showing that "all of the FTO's have had at least 4 trainees this year." (J. Exh. 7 at 1). However, a review of Respondent's training records (see R. Exh. 16(b), (o), (r), and (x)), Justin Bowen, Andrew Natoli, and Kayla Shults, all full-time Paramedic FTOs, had trained fewer than four different trainees at the time of Smith's email.

On October 7, Smith sent an email to Meader and Constantine expressing his desire to hire an additional Paramedic FTO. (R. Exh. 6). He stated that Respondent was getting "multiple requests for internships" from local paramedic schools and that an additional Paramedic FTO would be helpful consider "how tight the training [had] been." (Tr. 192; R.

Exh. 6). Meader denied this request, stating that he "did not want to any additional FTOs" until "we finalize FTO requirements and we go about enforcing [them.]" (R. Exh. 6). At the time that this email exchange took place, Respondent was on notice that Bower and O'Shei were still working part-time and serving as FTOs. Despite this knowledge, neither Smith nor any other member of management approached Bower or O'Shei to notify them that their "limited availability" was "not necessarily a good fit to train the new hires who need[ed] a consistent amount of training." (Tr. 180).

On October 31, Meader and Constantine requested that Smith provide a list of each FTO's last assignments. (Tr. 194; J. Exh. 14 at 3). Smith sent out the requested information by email at 10:19 am. Six minutes later, at 10:25 am, Meader sent the following reply:

> "O'Shei needs to be removed. If she is not full time and is passing on to others with more seniority then there is no reason she should be an FTO…. Bower-prior to 10/2 what has he done?
>
> Can we get on the phone to discuss? 130?"
>
> (J. Exh. 14 at 2).

At approximately 11:00 a.m. on October 31, Meader made a phone call to Easton Broome, Union Legal Counsel, to speak with him about Bower's comments at the FTO meeting the day prior. (Tr. 161-63, 285). Meader testified that his call to Broome on October 31 was made purely "in the spirit of collaboration" with the Union and that he merely "wanted to get ahead of it before it [] went anywhere [with the Union]." (Tr. 285-86). Broome had a different account of the conversation, stating that the "theme of the call" was that Meader "was upset" with Bower's comments the day prior and that Meader did not like Bower "putting management on blast" and "talking about grievances openly." (Tr. 162-163). Broome recalled the meeting lasting about 5 minutes. (Tr. 163).

At approximately 1:30 p.m., Meader met with Constantine and Smith over the phone to discuss Bower's and O'Shei's participation in the FTO program. (Tr. 194-95, 257-59, 316; J. Exh. 14). Smith testified that they discussed that they had many interns coming in and needed FTOs with availability. Smith testified that Meader said though they had an existing group of FTOs, there could be a need to bring on more, and let go of those FTOs who were not "engaged."[10] (Tr. 234-35). According to Smith, he recommended the removal of Bower and O'Shei due to their "limited unavailability." (Tr. 189, 195). Meader stated that he recommended the removal of Bower due to his "lack of trainees" and O'Shei's "unavailability." (Tr. 275, 290). Constantine stated that he recommended that Bower be removed due to "a need to have more regular full time [FTOs] for the demand of internships" and that O'Shei was removed due to her "limited availability," "her modified work schedule," and that she was could not "meet the demands of…being an FTO trainer" due to her request to transfer a trainee to another FTO. (Tr. 257-59). Ultimately, Respondent's witnesses stated that Constantine was the one with authority to remove Bower and O'Shei from their FTO positions and that Meader merely "supported [Constantine's] decision." (Tr. 291).

Four days later, on November 3, at 8:35 am, Meader drafted language notifying Bower and O'Shei of their removal from the FTO program. (R. Exh. 7 at 1-2). In the email regarding Bower, Meader wrote that Respondent would be "discontinuing his FTO assignment" due to Bower being assigned trainees "on only four of [his] shifts over the past 120 days." (R. Exh. 7 at 2). In the email regarding O'Shei, Meader wrote that Respondent would "removing [her] from the active FTO roster" due to "[her] recent request to have a trainee reassigned to a more

[10] Respondent failed to present any evidence that Bower was not "engaged." To the contrary, the evidence showed that as an FTO, he was not only quick to volunteer to train employees, he was on the constant lookout to improve the training program. It seems that the use of the term "engaged" means someone with less Union activity.

senior FTO." (R. Exh. 7 at 2). Smith responded to Meader stating his approval with the language Meader used because it "covered the 'part-time' aspect of both of them." (R. Exh. 7 at 1). Meader ended the email chain by stating "Great. Let's get them sent. I will let HR know both are effective today." (R. Exh. 7 at 1).

Shortly thereafter, on November 3, three months after the filing of 10 grievances and four days after making comments at the October 30th FTO meeting, Bower received a phone call from Constantine where he was told that he was being removed from the FTO program "because he was working part-time." (Tr. 107; 110). O'Shei stated that she received a similar call from Constantine that same day where he stated that she was being removed from the FTO program because "[Medic] needed FTOs with more availability than what [she] had, hours−wise." (Tr. 148-49). The following day, November 4, Constantine sent emails to Bower and O'Shei with the exact language drafted by Meader. (J. Exh. 16; J. Exh. 17). Both Bower and O'Shei testified that the reasons stated in Constatine's emails, as the bases for their removals, were never communicated to them during their phone calls the day prior. (Tr. 110, 149-50). Indeed, O'Shei testified that when she asked whether her removal was due to her performance, Constatine stated that he thought "[she] had done a good job and appreciated [her] help" and made no mention of her inability to "effectively train new trainees." (Tr. 149-50).

F. Respondent Changed the FTO Requirements without Bargaining.

It is undisputed that Respondent failed to give the Union notice and an opportunity to bargain prior to removing Bower and O'Shei from their FTO positions on November 3. On the one hand, Respondent claims that it did not actually make any eligibility requirement changes and that it did not announce that part-timers were no longer eligible. On the other hand, Respondent claims that it had long removed part-timers from the FTO program, and the Union

had not objected. Respondent had removed Raymond Gillespie from the FTO program in October 2024 in connection with a disciplinary action. (J. Exh. 3 at 1). This removal is clearly distinguishable from Bower's and O'Shei's, as it was related to discipline issued to the removed FTO. It was not a unilateral change to the eligibility requirements of the FTO program. Respondent also removed Frankie Quinci on July 24, and then Ryan Siple on October 20. (J. Exh. 6; J. Exh. 9). However, Quinci and Siple had been full-time employees. (R. Exh. 16 ("On Task 1/16/2024 – 2/18/2026)). Respondent removed them from their FTO positions only *after* their work hours changed from full-time to part-time. (Tr. 60, 63, 66, 187; J. Exh. 6 at 1; J. Exh. 9; J. Exh. 21 at 2, 19). Their situation is distinguishable from Bower's and O'Shei's because Quinci and Siple had only ever worked as full-time FTOs.

Although their removal from the FTO program was attributable to the change in their employment status, it did not represent a change to the eligibility requirements for FTOs. Perhaps their removal meant that Respondent did not need any more part-time FTOs at that time, but it did not mean that part-time employees were categorically excluded from the FTO program, because in April, July, and even October 2025, Respondent still had other part-time FTOs, namely Bower and O'Shei. Thus, the removal of these two employees at different times over the course of six months, when they reduced their work schedules from full-time to part-time could not have signaled to the Union that Respondent had changed the eligibility requirements for the FTO program.

Respondent provided no evidence that its removal of Art Hsieh, a part-timer, from the FTO program on April 10 was due to him not meeting the eligibility standards listed in the FTO policy,[11] indicating that Respondent made a change to the eligibility requirements of the FTO

[11] See J. Exh. 2.

program to justify Hsieh's removal. While Respondent did inform the Union that it removed Hsieh, Quinci, and Siple from the FTO program, this did not occur until November 3, a full seven months after Hsieh was removed, four months after Quinci was removed, and one month after Siple was removed. (Tr. 51-53, 55, 59-60, 62-63). Had Respondent chosen not to notify Bower and O'Shei of their removal from the FTO program on November 3, a mere four days after Bower made comments at the October 30th FTO meeting, the Union would have never known about any of Respondent's covert activity and would have never been able to object to Respondent's unilateral change to the eligibility requirements of the FTO program.

III. CREDIBILITY

Much of this case will depend upon credibility resolutions. General Counsel's witnesses testified to certain statements or incidents, and Respondent's witnesses flatly denied them. For example, Bower and O'Shei both testified that they received a call from Operations Manager Constantine on November 3, during which Constantine told them that they had been removed from the FTO program due to their part-time status. Constantine denies ever making these statements and claims that Bower's and O'Shei's removals from the FTO program were simply due to business needs.

In making credibility determinations, administrative law judges may rely on several factors, including "the witness' testimony in context,…the [witness'] demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole." *BJ's Wholesale Club*, 374 NLRB No. 79 (2024), *enf'g* ALJ Decision (citing *Double D Construction Group, Inc.,* 339 NLRB 303, 305 (2003); *Daikichi Sushi,* 335 NLRB 622, 623 (2001)). The Board has not created a presumption in favor of the testimony of current employees, but the Board has found that "the testimony of current

employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests...thus, witness' status as a current employee may be a significant factor, but it is one among many which a judge utilizes in resolving credibility issues." *Advocate South Suburban Hospital,* 346 NLRB 209 fn. 1 (2006) (citing *Flexsteel Industries,* 316 NLRB 745 (1995)).

A. Bower and O'Shei Testified Credibly.

1. Union Director Brian Bower's Testimony

Brian Bower was a knowledgeable, articulate witness with a good understanding of the issues involved in the hearing. Throughout his testimony, he remained remarkably consistent about events that transpired eight to nine months earlier. When asked, he was able to recall the number of grievances he filed with management, the dates he requested information from Respondent, the details of conversations he had with managers, and the names of all managers present at the FTO meeting on October 30. (Tr. 69, 88-92, 108-110, 116). In spite of the fact that he was greatly involved in the Union at Respondent's Santa Rosa facility and had been removed from the FTO program, Bower showed that he was willing to risk the benefits of his employment to testify at the hearing against his employer. His decision to testify at the hearing augmented his credibility, as indicated in prior Board decisions, because such actions were contrary to his pecuniary interests. *Advocate South Suburban Hospital,* 346 NLRB 209 fn. 1 (2006) (citing *Flexsteel Industries,* 316 NLRB 745 (1995)); *BJ's Wholesale Club*, 374 NLRB No. 79 (2024).

Respondent attempted to imply that Bower did not have a full understanding of the language of the CBA because he was not present at the table when its terms were negotiated. (Tr. 121-22, 124). The record indicates that this allegation was baseless. This is not a case about what was said at the bargaining table, so first-hand knowledge of it is unnecessary and irrelevant.

Instead, the language in the resulting CBA is operative. Not only had Bower served in a leadership role for the Union since April 2024, his duties included policing the CBA, which he dutifully did. Bower also testified that he was told by management that once he took over the leadership of the Union, the relationship with the Union soured. (Tr. 88) Respondent did not call any witnesses to dispute that Respondent's managers said this to Bower.

Based on the previously outlined facts, General Counsel submits that Bower's testimony should be fully credited herein.

2. Shop Steward Caitlin O'Shei

O'Shei did not willingly testify. She appeared at the hearing only to comply with the General Counsel's subpoena and did not meet, as requested, with Counsel for the General Counsel to prepare her scheduled testimony. (Tr. 135-36). While she could have failed to appear all together or attended the hearing but refused to answer questions, she chose instead to cooperate, answer each of the General Counsel's questions, and then undergo cross examination by Respondent's counsel. It can be inferred from her unwillingness to testify voluntarily that she feared retaliation by Respondent. Nevertheless, O'Shei was calm, articulate, and confident in her testimony about the series of events preceding her removal from the FTO program.

She corroborated Bower's statement that Constantine removed them from the FTO program due to their part-time status. (Tr. 148-49). She also confirmed that she was never told by Constantine during their phone conversation on November 3, that she was removed due to her inability to effectively train new trainees, as stated in Constantine's formal email on November 4. (Tr. 149-50). O'Shei, like Bower, is still a current employee at Respondent and testified against her pecuniary interests. She has an even greater stake than other current employees because she has an agreement with Respondent whereby they will pay for her Paramedic school and allow

her to work on a modified work schedule. (Tr. 136-37). An employee under these circumstances would likely refuse to testify to avoid the risk of potentially losing her employment, her special schedule, and Respondent's payment for school. Based on these factors, her testimony at the hearing, while limited, should be given significant weight in comparison to that offered by Respondent.

B. Decision-Makers Meader and Constantine Did Not Testify Credibly.

Contrary to all documentary evidence, Constantine incredulously testified that the decision to remove Bower was made due to "shifting demand developing for paramedic internships" and a need for "full time schedules to accommodate…the time constraints that we [had]." (Tr. 255, 257). Meader testified that he agreed with Constantine's recommendation and told him to "go for it." (Tr. 291). Both of their testimonies should not be considered credible because they were inaccurate and directly contradictory to Respondent's own training records. If Bower's "unavailability" was truly the reason for his removal, then it would have to be reflected in Respondent's records. Instead, Meader and Constantine's rationale for removing Bower went contrary to the facts, implying that both of them had ulterior motives for removing Bower from his FTO position.

Meader's and Constantine's justification for Bower's removal was also discredited by the fact that Bower actively volunteered for FTO assignments when asked by management. On three different occasions, Respondent reached out to Bower, to ask if he would be willing to volunteer to train incoming employees. (J. Exh. 22 at 23, 33; R. Exh. 3). In each instance, Bower agreed to take the assignment and was subsequently assigned by Respondent to conduct the requested paramedic training. The fact that Respondent asked Bower and ultimately assigned him to train three different incoming paramedics indicates that Bower was available and that Respondent had

knowledge of that availability. Therefore, any testimony from Respondent claiming that Bower's part-time status made him too unavailable to meet the needs of the business was simply incorrect and of questionable truthfulness.

C. Operations Manager Eric Constantine's Testimony Should Not Be Credited.

Constantine testified that full-time employees were "a better fit" for the FTO program because EMT and Paramedic interns "require a consistent schedule" to "successfully move towards completion of their programs and obtain licensure." (Tr. 253). He admitted to writing an email to Meader and Smith, dated March 20, where he recommended that Respondent should discontinue the "part time FTO program" and "create a defining line and have no part-time personnel in an FTO capacity." (R. Exh. 4 at 1). When asked about the language of this email, Constantine dismissed it as a mere "poor choice of words" and claimed that Bower's removal was due to the business need to shift to FTOs who had full-time schedules to accommodate the "demand of internships that [Respondent was] getting." (Tr. 254-55, 257).

The fact remains that Constantine did not remove Bower from the FTO program until November 3, almost eight months after his email to Meader and Smith, but just days after Bower raised training and safety concerns at the October 30th FTO meeting. When asked why he took so long to remove Bower and O'Shei, Constantine's only response was that he was busy and that he "dropped the ball." (Tr. 255). Respondent offered no explanation as to why Constantine suddenly decided to pick up the ball again and remove Bower from the FTO program at a time when Respondent needed more, not fewer, FTOs, as evidenced by Training Manager Smith's October 7 email. (R. Exh. 6). The whole sequence of events indicates that Constantine's testimony was dishonest in his rationale for removing Bower and had motives contrary to what was said at the hearing. Such behavior raises serious questions about his credibility.

Constantine testified that he personally made the decision to remove Bower from the FTO program and that he had no knowledge of Bower's comments at the October 30th FTO meeting. (Tr. 255, 257). Considering the closeness in time between the October 30th meeting, Constantine's October 31 phone call with Meader and Smith, and the November 3 notification to Bower that he was removed from the FTO program, it is far-fetched to believe that Constantine had no knowledge of Bower's comments at the October 30th FTO meeting. Constantine, Meader, and Smith discussed Bower's and O'Shei's continued participation in the FTO program during a phone call on October 31 that Meader scheduled for the express purpose of having that discussion. (Tr. 257-59; J. Exh. 14).

Despite Constantine's denial of personal knowledge of what transpired at the October 30th FTO meeting, it is irrefutable that two of the three managers present on the phone call knew about Bower's actions at the meeting. Training Manager Smith attended the October 30th meeting and heard Bower's criticisms for himself, while Meader learned about Bower's comments from Vice President of Quality Assurance McBride and was disturbed enough to call Union Counsel Broome to express his dissatisfaction with Bower's behavior. This whole episode raises even more questions about Respondent's credibility, as well as Constantine explanation for the removal of Bower from the FTO program.

D. Vice President of Operations Brian Meader's Testimony Should Not be Credited.

Meader made a special effort to point out early in his testimony that neither he nor Respondent held any animus towards the Union. In Meader's own words, Respondent was "pro-union," "work[ed] well with unions," and was "open to becoming a unionized workforce." (Tr. 270). He insisted that he was "a firm believer" in collaborating with the Union and that "all communication [with the Union] is good communication." (Tr. 286).

When Meder was asked "how did Local 1401 become the Union," Meader gave a three-paragraph response that displayed nothing but love for the Union. (Tr. 270-71). However, this testimony is inconsistent with his views and treatment of Bower (as the Union leader), as demonstrated in both his NLRB affidavit and email communications.

Meader testified that he sent Bower an email on September 23, to set up a labor management meeting (LMC) to discuss proposed changes to the Respondent's Policy and Procedure Manual. (R. Exh. 12). He testified that Bower never responded to this message, implying that it was the Union, not Respondent, who was failing to engage in the collective-bargaining process. (Tr. 289). Similarly, when the General Counsel provided Meader with a copy of an affidavit he submitted to the National Labor Relations Board in a separate case filed against the Union, Meader acknowledged that he characterized the Union's communication with him after Bower took over as "almost nonexistent." (Tr. 307). However, the General Counsel showed Meader the entire email chain that began with his September 23 email to Bower that showed that Bower responded to the Meader's email on September 25, and Meader and Bower continued to exchange emails about setting up an LMC meeting well into October 2025. (U. Exh. 3; Tr. 320-22).

Additionally, Meader's explanation for calling Broome on October 31 directly contradicts the evidence presented at the hearing. He testified that he called Broome because "he hadn't heard from [Bower]" since his last email on September 23 and that he "wanted to get ahead of it" of any future Union grievances." (Tr. 286-87). However, this statement is untruthful because Bower did, in fact, communicate with Meader after September 23, as shown by their email exchange over the period of September 25 to October 17. (U. Exh. 3 at 2-6). Therefore, it can be inferred that Meader's motivation for calling Broome was not to "get ahead" of any future

grievances, but rather to complain about Bower's statements on October 30. The inconsistencies between Meader's testimony, his written statements to the NLRB, his written statements to the Union, and his motivation for calling Broome cast doubt on his credibility and raise serious concerns as to the truthfulness of any of his testimony.

IV. ANALYSIS

A. Respondent Violated Section 8(a)(1) and (3) of the Act by Removing Bower and O'Shei from the FTO Position.

To prove unlawful discrimination based on protected concerted activity in violation of Section 8(a)(1) of the Act or based on union activity in violation of Section 8(a)(3) of the Act, the General Counsel bears the initial burden of establishing by a preponderance of the evidence that the employee engaged in protected concerted or union activity, the employer had knowledge of that activity, and the employer harbored animus against that activity. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6 (2023). If the General Counsel satisfies this initial burden, the burden shifts to the employer to prove that it would have taken the same action even in the absence of the employee's protected concerted or union activity. *Wright Line,* 251 NLRB 1083, 1089 (1980), enfd. *NLRB v. Wright Line*, 662 F.2d 899 (1st Cir. 1981), cert. denied, *Wright Line v. NLRB*, 455 U.S. 989 (1982). The employer cannot meet its burden merely by showing that it had a legitimate reason for the action; rather, it must demonstrate that it would have taken the same action even in the absence of the protected conduct. *See, e.g.*, *Consolidated Bus Transit*, 350 NLRB 1064, 1066 (2007). A showing that the employer's proffered justification for its action is pretextual satisfies the General Counsel's rebuttal burden and establishes the violation. *Id.*

1. Bower Engaged in Intensified Union and Protected Concerted Activity beginning in August 2025.

Prior to August 2025, the Union had not filed grievances against the Employer. After failed informal resolutions, the Union, led by Bower, was compelled to file 10 grievances. This unprecedented move particularly angered management who up to this point had had "good" relations with the Union.

Bower was particularly active in trying to get Respondent to adopt stronger safety protocols. Bower testified that he had spoken with his co-workers "at least ten times" regarding the CEVO system and received feedback from workers' of a preference for the EVOC system over the CEVO training system. (Tr. 95). He stated that in every LMC meeting he attended in his capacity as a Union representative, starting in March 2024 onward, he urged Respondent to switch to the EVOC system. (Tr. 77-78). Despite these protests, Respondent continued using CEVO for training. (Tr. 77-78). On August 12, Bower, in his capacity as Union Director, acted on unit members' feedback and filed a Step 1 grievance with Respondent, claiming that "management had failed to adequately address safety concerns." (GC Exh. 3). Bower then met with Respondent in a grievance meeting over the continued use of CEVO and other safety concerns and after Respondent denied the grievance, on October 6, Bower escalated it to Step 2, an unprecedented move by the Union.

Bower's activity on behalf of the Union and employees intensified further when he raised several worker and safety concerns at the FTO meeting on October 30th. Bower's comments at this meeting touched upon four primary issues: 1) Respondent's use of CEVO instead of EVOC, 2) procedural steps for employees gaining overtime if they "missed a punch" at the end of their shift, 3) discussion of "monitor securing devices," and 4) that "the

union did not receive notification on updates" to the policy manual and how "employees could not be held accountable for policies that they were never provided." (Tr. 100; J. Exh. 11; J. Exh. 12 at 7). The EVOC system was a persistent complaint amongst employees. Bower had discussed this issue with his co-workers "at least 10 times" and that he personally had brought it to the attention of management during at least 2-4 LMC meetings in his capacity as Union Director. (Tr. 78, 95; GC Exh. 2).

2. Bower's Conduct at the October 30 FTO Meeting Was Protected Concerted Activity.

To constitute concerted activity under Section 7 of the Act, an employee's conduct that is not union-related must be both "concerted" and engaged in for the purpose of "mutual aid or protection." *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 152-53 (2014). In *Meyers I*, the Board held that an employee's activity is concerted when it is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." 268 NLRB 493, 497 (1984), *remanded sub nom. Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985). Subsequently, in *Meyers II*, the Board clarified that concerted activity under Section 7 "encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action." 281 NLRB 882, 887 (1986), *aff'd. sub nom Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987).

However, the Board cautioned that this definition of concerted activity "is by no means exhaustive" and it acknowledged that a "myriad of factual situations . . . have arisen, and will continue to arise[.]" *Meyers I*, 268 NLRB at 496-497; *Meyers II*, 281 NLRB 887. Therefore, "the question of whether an employee engaged in concerted activity is, at its heart, a factual one" based on the totality of the record evidence. *Miller Plastic Products*, 372 NLRB No. 134, slip op. at 4 (2023) (citing *Meyers I* & *Meyers II*). In this case, Bower's comments at the October 30th

meeting were concerted activity and not a "mere gripe." Bower's EVOC comments arose from many discussions with employees about their concerns about driving ambulance safety and the Union's repeated efforts to have this addressed had not been resolved.

Any issue regarding overtime pay and the "punch in/punch out" process is directly related to both wages and work schedules, subjects that the Board has deemed "inherently concerted." The inherently-concerted doctrine emerged in *Trayco of South Carolina, Inc*., 297 NLRB 630 (1990), *enforcement denied*, 927 F.2d 597 (4th Cir. 1991), where the Board held that an employee's discussions with her co-workers about higher wages constituted concerted activity even though the discussions did not contemplate group action. In reaching that decision, the Board observed that the object of inducing group action need not be expressed but can instead be implied from the subject matter of discussion. Because higher wages are a "frequent objective of organizational activity," the Board reasoned that the employee' s discussions about that subject impliedly were concerted. *Id.* at 634.

The doctrine was enlarged in *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218 (1995), *enforcement denied in part on other grounds*, 81 F.3d 209 (D.C. Cir. 1996), where the Board decided that discussions about changes in work schedules were inherently concerted activity despite the absence of any talk about the initiation of group action. Like wages, the Board concluded that work schedules are a "vital term and condition of employment" that is "likely to spawn collective action." *Id.* at 220. In this case, employees have a collective interest in knowing what the proper procedure for notifying Respondent is if they "miss a punch" because it could not only affect their ability to earn overtime pay, but also could prevent situations where Respondent would not be able to know how much to pay

employees due to a lack of a definitive "punch out" during a shift. Based on the above, Bower's comments about "time punches" are inherently concerted.

The issue of "monitor securing devices" also constitutes inherently concerted activity because it concerns the installation of secure clips to hold electronics while employees are driving an ambulance, a topic clearly related to workplace safety. (J. Exh. 13 at 3-4). Workplace safety is a vital term and condition of employment, and such concerns often serve as a precursor to organizing or other actions for mutual aid and protection.[12] As the Board has observed, "health and safety matters regarding unit employees' workplaces are of vital interest to employees,"[13] and indeed, "[f]ew matters can be of greater legitimate concern to individuals in the workplace . . . than exposure to conditions potentially threatening their health, well-being, or their very lives."[14]

In this case, having devices that can properly secure monitors within a moving ambulance is a safety concern that affects not only the employee driving the ambulance during a field call, but also the employees in the back of the vehicle providing care to a patient. While the Board had required that there be a conversation between employees about

[12] *E.g.*, *Crossing Rehabilitation Services*, 347 NLRB 228, 231 (2006) (employees wanted union in order to negotiate over "concerns about safety at work, employment benefits, and job security"); *Snowshoe Co.*, 217 NLRB 1056, 1058 (1975) (employee unionization efforts began for the purpose of "improving working conditions, particularly safety measures, and wages"), *enforced mem.*, 530 F.2d 969 (4th Cir. 1975).

[13] *Detroit Newspaper Agency*, 317 NLRB 1071, 1071 (1995) (confirming relevancy of union's request for information addressing health and safety issues).

[14] *Minnesota Mining & Mfg. Co.*, 261 NLRB 27, 29 (1982) (finding that employer was required to comply with union request for certain health and safety information), *enforced sub nom.*, *Oil, Chemical & Atomic Workers Local Union No. 6-418 v. NLRB*, 711 F.2d 248 (D.C. Cir. 1983).

the relevant topic in order to find concert,[15] Bower's comments about the importance that the monitor securing devices for employee safety would certainly lead to more traditional discussions with coworkers regarding safe driving in the workplace generally. Thus, like the preliminary discussions about vital terms in *Trayco of South Carolina, Inc*. and *Aroostook County Regional Ophthalmology Center*, Bower's comments during the meeting related to monitor securing devices should be considered inherently concerted activity.

Bower's verbal and written comments related to Respondent's policy manual are concerted activity because they were brought up by Bower in his capacity as a Union representative. During the meeting, attended by many employees, Bower wrote in the videoconference chat feature that "management also makes changes to polic[ies] and doesn't provide updates. Last updates 6/22/23. You can't hold employees accountable for policies that are not provided to them." (J. Exh. 11). In an email sent after the FTO meeting, dated October 30, Bower specifically references that "the union did not receive notification on updates for l&I [sic] and that employees cannot be held accountable for policies that they were never provided." (J. Exh. 12 at 7).

These two correspondences show that Bower was speaking as a representative of employees and not on his own behalf when he referenced the issue of outdated policies in Respondent's policy manual. Evidence presented at trial shows that Cindy McBride proceeded to step outside and call Brian Meader, the primary contact for Union grievances, to discuss Bower's comments. These actions by a member of senior management lend credence to the fact that Bower was not making a mere gripe about outdated policies. He was

[15] *See Hoodview Vending*, 359 NLRB 355, 358 n.16 (2014), *vacated*, 2014 WL 2929781 (Jun. 27, 2014), *reconsidered & affirmed*, 362 NLRB 690 (2015) ("Inherently concerted activity involves a conversation between two or more individuals.").

verbalizing the Union's desire to be apprised of any changes to the policy manual so that employees are informed of all terms and conditions of their employment. Therefore, for the reasons above, Bower's comments related to Respondent's outdated policy manual, both verbal and written, constitute concerted activity as defined under the *Meyers* test.

Bower's comments at the October 30th FTO meeting were for the purpose of mutual aid or protection because he was raising issues which would improve his co-workers' terms and conditions of employment. On this occasion, Bower was confronting management with safety issues that employees as a whole believed were continually being ignored by Respondent. In his capacity as Union Director, it was his job to ensure that new hires were given the proper training to do their jobs and that FTOs were given the proper tools to ensure safety for both employees and patients.

Similarly, Bower's comment about the process of certifying overtime hours if employees fail to "punch out" was directly related to wages, one of the vital elements of the employment relationship. Thus, the raising of this issue was clearly for the mutual aid and benefit of unit members. Lastly, Bower's concerns about employees not receiving adequate notice of changes to Respondent's policy manual were crucial to mutual aid and protection because they not only affects employees' job requirements, they could also have an impact on the disciplinary process. If employees were not given proper notice of changes in Respondent's policy manual, it could lead to the rise of potential disciplinary actions on the basis of a "failure to comply" with Respondent's policies. By bringing this up during the FTO meeting. Bower's comments functioned as an appeal to the "mutual aid and protection" of unit members.

3. Respondent's Animus Towards Bower's Union and Protected Concerted Conduct following the October 30th Meeting.

Evidence that an employer's hostility or animus to protected activity motivated its decision to take adverse action against an employee may include the timing of the employer's adverse action in relationship to the employee's protected activity,[16] statements and actions showing the employer's general and specific animus,[17] the disparate treatment of the discriminatees,[18] and evidence that the employer's proffered explanation for the adverse action is a pretext.[19]

In this case, Meader testified that after Bower became Union Director, communications dwindled to the point of almost non-existence, citing Bower's failure to respond to a September 23 email as evidence of the Union's bad faith. (Tr. 286, 307). He further testified that his reason for calling Broome on October 31, one day after Bower made comments about safety in an FTO meeting, was simply because he "hadn't heard from [Bower]" about setting a date for an LMC meeting and that he wanted "to get ahead of the situation" rather than voicing concerns about what Bower. (Tr. 286, 289).

However, both of these statements were untrue as the evidence showed Meader had an extensive email exchange with Bower about setting up an LMC meeting that took place from September 23 to October 17. (U. Exh. 3). Furthermore, Broome testified that when Meader

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[16] *See Golden Day Schools v. NLRB*, 644 F.2d 834, 838 (9th Cir. 1981); *NLRB v. Rain-Ware, Inc*., 732 F.2d 1349, 1354 (7th Cir. 1984) ('Timing alone may suggest anti-union animus as a motivating factor in an employer's action.")

[17] *NLRB v. Vemco, Inc*., 989 F.2d 1468, 1473-1474 (6th Cir. 1993); *Affiliated Foods, Inc*., 328 NLRB 1107 (1999) (statements).

[18] *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999) (disparate treatment).

[19] *Wright Line*, 251 NLRB at 1089.

called him on October 31, he sounded "upset" and complained about Bower's comments the day before during the FTO meeting. These facts are evidence of a clear pattern of false or misleading testimony regarding the relevant facts and circumstances, which the Board has found may support an inference of animus and discriminatory motive. *See DH Long Point Management*, 369 NLRB No. 18, slip op. at 15 (2020).

a. Respondent's Statements Show Its Animus.

Bower testified that at least five managers attended the October 30th FTO meeting, including Training Manager Bryan Smith and Vice President of Quality Assurance Cindy McBride. (Tr. 88-90). Although Vice President of Operations Brian Meader did not attend the FTO meeting, he learned of Bower's comments at the meeting from Cindy McBride. (Tr. 92, 284-85). McBride's email to Bower shows management's immediate contempt for Bower's outspoken comments at the FTO meeting, where she wrote, "

> The issue with the policy you are discussing, you stated 1s [sic] being grieved and is in progress thus does not need to in these notes as the FTO meeting is not the forum for in process union grievances.
>
> (J. Exh. 12 at 6).

McBride's email shows that Respondent viewed Bower's complaints at the meeting as an extension of the Union's August 12 grievance related to employee safety concerns. (GC Exh. 3). McBride chastised him for bringing those group complaints, or mentioning union grievances, to management's attention during an FTO meeting. McBride's statement indicates that she, as an agent of Respondent, disapproved of an employee even mentioning that a grievance existed outside the confines of a formal grievance hearing. McBride's characterization of Bower's conduct is evidence of Respondent's animus towards Bower's protected concerted activity.

Meader also expressed specific animus towards Bower in the telephone call he made to the Union's attorney Easton Broome on October 31. Meader alleges that he reached out to Broome "in the spirit of collaboration." (Tr. 286). However, it is clear from Broome's testimony that Meader called him with the specific purpose of complaining about Bower's conduct at the FTO meeting and likely for the purpose of getting the Union's counsel to somehow change, or reign in Bower's leadership style. Meader then met with Constantine and Smith over the phone about two and a half hours later, where they mutually agreed to entirely remove Bower from the FTO program. This shows that Respondent was particularly aggravated by Bower's comments at the FTO meeting, implying animus not just at Bower as an employee, but Bower as the head of the Union.

b. Respondent's Abrupt Removal of Bower and O'Shei from the FTO Position Show Its Animus.

The timing of Respondent's removal of Bower and O'Shei from the FTO position in relation to Bower's conduct at the October 30 meeting is strong evidence that Respondent was motivated by animus towards Bower's conduct at the meeting. Though the evidence established that Respondent had long been considering making changes to the eligibility requirements of the FTOs and allegedly asked or demanded that Hsieh step down, Respondent had no such conversation with Bower. (Tr. 231-32). Smith's only explanation as to why he did not also address Bower's part-time status as an FTO was that he was able to track Bower's calendar and was aware of his scheduling "unavailability." (Tr. 228-31). So, Respondent kept Bower in his FTO position for months and months until his Union activity grew and he was very outspoken at the FTO meeting.

The Board has long held that the timing of adverse action shortly after an employee has engaged in protected activity may raise an inference of animus and unlawful motive.

Lucky Cab Co., 360 NLRB 271, 274 (2014). Although Respondent removed Hsieh from the FTO position in March 2025 due to his part-time status, or at least strongly encouraged him to "step down," Respondent put no such pressure on Bower. (Tr. 183, 231-32). At no time prior to his sudden removal from the FTO program did Respondent ever indicate to Bower that his part-time status might affect his FTO position.

Nor did Respondent ever indicate to O'Shei that switching to a part-time schedule while attending Paramedic school would put her FTO position in jeopardy. On the contrary, Respondent allowed O'Shei to retain her FTO position while expressly approving her request to switch from a full-time to a part-time schedule when attending classes. However, on October 31, less than 24 hours after Bower made his comments at the FTO meeting, and shortly after calling Union Counsel Broome to express his displeasure with Bower's comments, Meader gathered Constantine and Smith on a phone call to discuss Bower's and O'Shei's removal from the FTO program due to their part-time status. It was only after Bower engaged in protected concerted activity at the October 30th FTO meeting that management abruptly decided that part-time status was incompatible with the FTO role.

In *Webco Industries,* 334 NLRB 608, 609 n. 5 (2001), the Board described the typical condonation case "in which an employer tolerates an employee's misconduct until union activity begins, and then discharges him, assertedly because of the previously tolerated misconduct. In such cases, the only intervening event is the union activity." In those circumstances, the Board has found that the intervening event is the true reason for the discharge. This case does not involve misconduct, but Respondent tolerated Bower serving as an FTO despite working part-time in the same way that employers in condonation cases tolerate misconduct until the trouble-making employee engages in undesirable protected activity.

Here, as in condonation cases, the only intervening event was Bower's undesirable intensified protected concerted and Union activity, including his filing multiple grievances in August and September 2025 and bringing those grievances, particularly the CEVO grievance, to management's attention in front of the assembled FTOs at the October 30th FTO meeting. Similarly, Respondent was aware and approved of O'Shei's part-time schedule and allowed her to remain as an FTO without taking action until the increased protected concerted and Union activity culminated in Bower's challenge to management at the October 30th FTO meeting, prompting Respondent to condemn what it had previously condoned, Bower's and O'Shei's part-time FTO status. As in condonation cases, the ALJ should find that it was the intervening protected activity, and not Bower's and O'Shei's part-time status, that caused Respondent to remove them from their FTO positions.

c. Respondent's Departure from the FTO Policy and Disparate Treatment of Bower Shows Its Animus.

The Board has held that disparate enforcement of a policy is a factor that helps demonstrate animus. *Mountain View Care and Rehabilitation Center, LLC*, 368 NLRB No. 128, slip op. at 1 fn. 1 (2019). Bower was informed that he was being removed from the FTO program due to only being assigned trainees on four of his shifts over the past 120 days. (J. Exh. 16). Even if it were true that Bower was not assigned at least four trainees within a given 120-day period, this requirement is not listed in the language of the FTO Policy. Instead, under Section C(4)(iv) of the FTO policy, it states that FTOs are required "to have evaluated at least 4 EMTs or Paramedics in a *rolling 12 month period*." (J. Exh. 2 at 2) (emphasis added). Nowhere in the FTO Policy does it state that an employee must have been assigned trainees within the last 120 days. According to Bower's training records, he conducted 18 training sessions with 8 different trainees in the rolling 12-month period prior

to his removal on November 4. (R. Exh. 16(a)-(z) – Bower). Respondent created a new criteria that was never communicated to employees and was inconsistent with the FTO Policy.

In an email dated October 31, Training Manager Smith informed Constantine and Meader that two other Paramedic FTOs, Josh Nultemeier and Andrew Natoli, had a similar lack of assigned trainees as Bower, even though they were full-time employees and thus presumably should have had more trainees. (J. Exh. 14 at 3). Nultemeier and Natoli were not removed from their FTO positions, although the reason stated for Bower's removal applied equally to them. Joint Exhibit 14 shows that Respondent knew of two other FTOs whose number of trainees was similar to Bower's in a similar time period, but Respondent allowed them to remain in the program while removing Bower. This discrepancy clearly indicates that Respondent treated Bower differently from his co-workers.

When the ALJ asked Vice President of Operations Meader at the hearing whether Natoli's and Nultemeier's availability was addressed by Respondent, Meader simply stated "no" because "both employees were working full time." Respondent's disparate treatment of Bower and failure to give a "clear, consistent and credible explanation" for removing him from the FTO program supports a finding that his part-time status and training on only four of his shifts over the past 120 days were pretextual reasons for his removal, and the real reason for his removal was his intensified Union activity and particularly his protected concerted comments at the October 30 FTO meeting. *Airgas USA, LLC v. NLRB*, 916 F.3d 555, 565-566 (6th Cir. 2019) (internal quotes and cites omitted), enfg. 366 NLRB No. 104 (2018).

d. Respondent's Pretextual Reasons for Removing Bower and O'Shei Show Its Animus.

Where an employer's stated reasons for taking an adverse action are false or not in fact relied on, the Board may infer that the employer was attempting to conceal its true, discriminatory motive, where the surrounding circumstances reinforce such an inference. *See Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966). Persuasive evidence that an employer's reasons for taking an adverse action are pretextual include shifting explanations for the adverse action, abrupt implementation of the adverse action, and disparate treatment. *Lucky Cab Co.*, 360 NLRB at 274 (2014). Bower and O'Shei experienced all three.

In addition to Respondent's abrupt removal of Bower and O'Shei from the FTO position and disparate treatment of Bower already discussed above, Respondent's shifting explanations for its actions are strong evidence that its asserted reasons for removing Bower and O'Shei were pretextual. *Roemer Industries,* 367 NLRB No. 133 (2019). Operations Manager Constantine called Bower on November 3, and informed him that he was being removed from the FTO program due to his part-time status. (Tr. 107-108, 110). Constantine also called O'Shei and told her that he "appreciated what [she had] done as an FTO" but that she was being removed from the program because the company "needed FTOs with more availability than what [she] had." (Tr. 148-49).

Constantine provided neither of them any other reason for their removal from the FTO program. However, the following day, November 4, Constantine's email to Bower stated that "[a]fter reviewing current staffing and program needs, including that trainees were assigned on only four of your shifts over the past 120 days, we will be discontinuing your FTO assignment effective immediately." (J. Exh. 16). This issue, if it was one, had never been brought to Bower's attention prior to this email. (Tr. 110-11). O'Shei received a similar email

from Constantine stating, "[b]ased on current program needs, including your limited availability to effectively train new trainees, we will be removing you from the active FTO roster effective immediately." (J. Exh. 17). Similarly, O'Shei testified that this reason was never communicated to her during her phone call with Constantine as the reason for her removal. (Tr. 148-149).

At trial, Respondent once again shifted its explanation for removing Bower and O'Shei. This time, Constantine testified that he made the decision to remove Bower due to his "unavailability" to meet the increasing demand for internship placements but stated that he recommended removal of O'Shei for two reasons: 1) "her limited availability" due to being in paramedic school "on a modified work schedule;" and 2) inability to "meet the demands" of the FTO position. (Tr. 258-59). Brian Meader testified that he agreed with Constantine's rationale for removing Bower and that he made the decision to remove O'Shei because of her "inefficiency to be able to train a trainee as an FTO." (Tr. 290-91). It is clear from the evidence that Respondent gave three different and changing explanations for the removal of Bower and O'Shei from the FTO program. Respondent's shifting explanations for its removal of Bower and O'Shei from the FTO program suggest that the proffered reasons are pretextual.

The Board has consistently held that a finding of pretext defeats an employer's attempt to meet its *Wright Line* rebuttal burden. *Stevens Creek Chrysler Jeep Dodge*, 357 NLRB 633, 637 (2011). Applying these principles here, there is sufficient evidence to establish that Respondent's proffered reasons for removing Bower and O'Shei from their FTO positions was pretextual. Here, the combination of shifting explanations, departure from established policy, disparate treatment, and suspicious timing, demonstrate that its asserted reasons for

removing Bower and O'Shei from the FTO program were pretextual. Accordingly, Respondent cannot meet its burden of showing that it would have removed them even in the absence of protected concerted and Union activities.

e. O'Shei was the "White Sheep" and Bower Was the "Black Sheep" in Respondent's Blanket Removal of Part-Timers from the FTO Program.

Caitlin O'Shei became a Union shop steward shortly after joining the FTO program in July 2024, and Respondent knew that she was a steward (Tr. 145-46; GC Exh. 3; J. Exh. 21 – O'Shea [sic]). O'Shei also filed one of the grievances the Union submitted in August and September 2025. (Tr. 108). Though it is possible that Respondent harbored animus towards O'Shei due to this Union activity, it is more likely that Respondent lumped her together with Bower when it unilaterally created the no part-timers rule to create the illusion that it did not harbor animus towards Bower.

When an employer takes action against a group of employees to discourage employees from engaging in union activities, it is the adverse action taken, not the selection of individual employees, that is unlawful. *Activ Industries,* 277 NLRB 356, 356 fn. 3 (1985). Thus, the General Counsel is not required to show a correlation between each employee's union activity and his or her discharge. *Ibid*. Instead, the General Counsel's burden is to establish that the adverse action was ordered to discourage union activity or in retaliation for the protected activities of some of the employees. *Ibid*. For example, "[a] power display in the form of a mass lay-off, where it is demonstrated that a significant motive and a desired effect were to 'discourage membership in any labor organization,' satisfies the requirements of Section 8(a)(3) to the letter even if some white sheep suffer along with the black." *In re*

Alliance Steel Product, Inc., 340 NLRB 495, 499 (2003) (citing *Majestic Molded Products, Inc. v. NLRB,* 330 F. 2d 603 (2nd Cir. 1964)).

In this case, Bower, whom Respondent blamed for the relationship between the parties turning sour, who filed an unprecedented number of grievances and for the first time took a grievance to Step 2, and who challenged Respondent's CEVO training program at the October 30, FTO meeting, was the "black sheep." O'Shei, who, like Bower, was both a Union official and an FTO, but who was not present at the October 30 meeting, was the "white sheep."

O'Shei's removal from the FTO program, assertedly because of her part-time status, was a means of disguising Respondent's true motive of wanting to discourage employees from engaging in the Union and protected concerted activism Bower had engaged in since August 2025 and particularly at the October 30 meeting. However, for the disguise to be successful, Respondent needed to remove all part-time employees from the FTO program. The fact that O'Shei happened to be working in a part-time capacity at the time that Respondent chose to remove Bower, made it necessary for Respondent to remove her from the FTO position to keep the appearance of a legitimate reason for its removal of Bower. Thus, Respondent's removal of O'Shei is precisely the type of conduct the "white sheep" theory is designed to address, and her removal from the FTO program violated Section 8(a)(3) of the Act as surely as Bower's.

B. Respondent Violated Section 8(a)(5) of the Act by Changing the Eligibility Requirements for the FTO Program without Bargaining.

Section 8(a)(5) requires that an employer provide its employees' representative with prior notice and an opportunity to bargain before instituting changes in any matter that constitutes a mandatory bargaining subject. *NLRB v. Katz*, 369 U.S. 736 (1962). Mandatory

subjects of bargaining include those delineated in Section 8(d) as "wages, hours, and other terms or conditions of employment,"[20] but exclude "managerial decisions at the core of entrepreneurial control."[21] However, even if a change implicates a mandatory subject of bargaining, the duty to bargain only arises if the unilateral action by the employer causes a "material, substantial, and significant change in wages, hours or terms and conditions of employment." *Northstar Memorial Group, LLC, d/b/a Skylawn Funeral Home*, 369 NLRB No. 145 (2020), citing *Fresno Bee*, 339 NLRB 1214 (2003); *see, e.g, Salem Hospital Corp.*, 360 NLRB 768, 769 (2014) (unilateral change to dress code policy assigning color coded uniforms to each hospital department had material, substantial, and significant effect on employees).

An unlawful unilateral change "frustrates the objectives of Section 8(a)(5)" because such a change "minimizes the influence of organized bargaining and emphasizes to the employees that there is no necessity for a collective bargaining agent." *Katz*, *supra* at 744; *May Dep't Stores Co. v. NLRB*, 326 U.S. 376, 385 (1945). To establish a unilateral change violation, the General Counsel must establish what the terms and conditions of employment were before the alleged change, then establish what the terms and conditions of employment were after the change, and then compare the two. *Golden Stevedoring Co*., 335 NLRB 410, 435 (2001).

[20] *Ford Motor Co. v. NLRB*, 441 U.S. 488, 496 (1979).

[21] *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 224 (1964) (Stewart, J., concurring); *see First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 686-88 (1981) (employer decision to close part of business for economic reasons not a mandatory subject of bargaining despite affecting working conditions because it involved a change in the scope and direction of the enterprise).

1. FTO Eligibility Is a Mandatory Subject of Bargaining.

Respondent's FTO Policy constitutes a mandatory subject of bargaining because any unilateral change to its terms would have a direct impact on an employee's wages and participation in the program. It is undisputed that the parties bargained for a $2.00 per hour wage differential for EMTs who served as FTOs and a $2.50 per hour wage increase for Paramedics who served as FTOs. While the language of the FTO policy itself was not a part of the bargaining process with the Union, Respondent's decision to include this wage differential as a term within the CBA makes any subsequent changes to the FTO policy subject to bargaining with the Union. By bargaining with the Union regarding the receipt of wage differentials if employees were qualified to serve as FTOs, Respondent opened the door to recognize the terms of the FTO policy as a mandatory subject of bargaining.

The Board has determined that changes that result in only "minor inconveniences" or eliminate mere "token" items are not a material or substantial change to a mandatory subject of bargaining.[22] In this case, O'Shei and Bower's removal from the FTO program resulted in them losing a $2.00 and $2.50 per hour wage differential, respectively, which amounted to approximately a 10% decrease in income for each of them. (J. Exh. 1 at 34-35). An employee's removal from the FTO program was not a minor inconvenience or a mere token event.

[22] Compare *United Parcel Service*, 336 NLRB 1134 (2001) (finding an additional 20 minutes added to a commute due to a change in parking rules was material and substantial) to *Success Village Apartment, Inc*., 348 NLRB 579 (2006) (finding a parking rule that resulted in employees having to walk an additional 200 yards was de minimus); and *Benchmark Industries*, 270 NLRB 22 (1984) (finding holiday food offerings or other one time gifts of nominal value to be token items) to *Wald Mfg. Co.. v. NLRB*, 426 F.2d 1328 (6th Cir. 1970) (enforcing a Board order finding that elimination of an annual picnic was material and substantial).

The Board has recognized that wage provisions are "perhaps the most important element of the many in the employment relationship which Congress remitted to the mandatory process of collective bargaining under the Act." *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), enfd. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975). Respondent's unilateral change to the terms of the FTO policy was effectively a reduction in wages and in work status to employees Bower and O'Shei. By being removed from their FTO positions, Bower and O'Shei were denied wages they had earned. For these reasons, the terms of the FTO Policy were a mandatory subject of bargaining.

2. Respondent Changed the FTO Eligibility Requirements without Giving the Union Notice or an Opportunity to Bargain.

Under Section 8.14 of the CBA, employees who are part-time are required to work a total of "four shifts monthly or 48 hours in total – whichever is less." (J. Exh. 1 at 17). Part-time employees are defined as "those employees not regularly scheduled and work less then [sic] forty (40) hours per week." (J. Exh. 1 at 17). Therefore, any employee who is designated as "part time" at Respondent is not permitted to work more than 40 hours per week by the terms of the CBA.

Respondent alleged at trial that its decision to remove Bower and O'Shei was not based on their part-time status but based upon scheduling needs. However, this assertion is in total contradiction to what the evidence submitted at trial indicates. Respondent's Exhibit 4, dated March 20, contains a series of emails between Smith, Constantine, and Meader that discuss the issue of potential removal of part-time employees Hsieh and Bower. In that email exchange, Constantine writes the following:

> "[W]e no longer have a reason to continue the part-time FTO program. This may require that we create a defining line and have no part-time personnel in an FTO capacity unless they satisfy greater than 40 hours per week in a rolling 6-week period." (R. Exh. 4 at 1).

Respondent intended to add a term to the eligibility requirements of the FTO Policy. Respondent also knew that this change would effectively exclude any part-time employees from continuing to serve as FTOs because part-time employees, by definition, are prohibited from working more than 40 hours per week.

These emails imply that Respondent knew it had an obligation to bargain with the Union and chose instead to ignore its responsibilities under the Act. Respondent then began independently removing part time employees from the FTO program without notifying the Union. Hsieh, a part-time employee, was the first person to leave the FTO program after Respondent began enforcing the unilateral change. He "stepped down" from the FTO program on or before April 10, 2025, but continues to work to this date as a part-time paramedic at Respondent. (J. Exh. 5). The Union, however, was never notified about Hsieh's departure until November 3, when Bower made inquiries about Hsieh's FTO status. If Hsieh voluntarily resigned, then Respondent unilaterally removed part-timers on November 3. If Hsieh was involuntarily removed, the Union was unaware of this until November 3. In either case, the Union was not informed of the eligibility change. After Hsieh was removed from the FTO program, Bower and O'Shei were the only part time employees serving as FTOs as of April 2025 and served a full 7 months after Respondent made the unilateral change to the terms of the FTO program.

Taking all of these facts into consideration, it is clear that Respondent violated Section 8(a)(5) of the Act when it unilaterally changed the eligibility requirements of the FTO program without notifying the Union or providing them an opportunity to bargain.

3. Respondent's Defenses

a. Respondent Failed to Prove a Regular Past Practice.

Respondent asserted at the hearing that its unilateral change to the terms of the FTO Policy was justified because it had established a past practice of removing part time employees from the FTO program prior to its removal of Bower and O'Shei on November 3rd. This assertion does not meet the legal standard required to establish a past practice. To constitute a past practice, the practice must occur "with such regularity and frequency that employees could reasonably expect the 'practice' to continue or reoccur on a regular and consistent basis." *In re Caterpillar, Inc.*, 355 NLRB 521, 522 (2010), enf'd 2011 WL 2555757 (D.C. Cir. May 31, 2011) (quoting *Sunoco, Inc.*, 349 NLRB 240, 244 (2007)). A party contending that the employment condition is a past practice bears a heavy burden of proof,[23] and both the Board and the courts have construed the past-practice defense narrowly.[24]

Here, Respondent cannot say it established a past practice because its unilateral decision to remove employees on the basis of their part-time status was never communicated to employees or to the Union. The evidence presented at the hearing suggests the opposite. In the first instance with Art Hsieh, formal notice was not given to the Union until seven months after the fact. In the second instance with Bower and O'Shei, formal notice was given to the Union the same day, which was promptly contested by the Union. It cannot be presumed that a past practice is established if neither the Union nor any of the employees subject to the "practice" were aware

[23] See *Eugene Iovine*, 328 NLRB 294, 294-295 fn. 24 (1999); *NLRB v. Allis Chalmers Corp.,* 601 F.2d 870, 875-876 (5th Cir. 1979)

[24] *Wendt Corp.*, 372 NLRB No. 135 (2023), slip op. at 11; *City Cab Co. of Orlando v. NLRB*, 787 F.2d 1475, 1478-1480 (11th Cir. 1986), cert. denied 479 U.S. 828 (1986) (rejecting a past practice defense under *Katz* because the employer's practice was "irregular" and it "had not committed itself to any fixed practice.").

that it had been implemented. The alleged practice also only affected one employee prior to Bower and O'Shei, both of whom are union officials.

If there was any past practice in place at Respondent, it was its long-term policy of allowing part-time employees to continue working as FTOs without any issue. A prime example is Bower. He became an FTO in March 2024 while simultaneously working part time. At no point over the subsequent year and a half was Bower ever told that he would have to be working full time to maintain his FTO status or that anyone else was prohibited from doing so. Including Quincy and Siple in any argument to establish past practice should be ignored. When they had been made FTOs, they were full-time employees, unlike Bower who had always been part-time, and O'Shei who was temporarily part-time while in school. Therefore, the past practice was that those who had become FTOs while part-time could remain as FTOs.

a. The Union Did Not Waive its Right to Bargain.

i. The "Clear and Unmistakable Waiver" Standard, as Restated in *Endurance,* Applies.

Respondent argues that the Union had been placed on notice about its unilateral change on October 23, 2024, when Bower received an email from Meader stating that Respondent had a "management right[] to select who represented the company as an FTO." (J. Exh. 3 at 1). Respondent further argued that Bower's failure to follow up on this vague statement constituted a waiver of the Union's right to bargain on the terms of the FTO Policy. For the Board to find a waiver of the Union's right to bargain, any such waiver must be clear and unmistakable. *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024). That standard has not been met in this case.

In 2019, the Board departed from the "clear and unmistakable waiver" standard and adopted the "contract coverage" standard for waiver as set forth in *MV Transportation, Inc.*, 368

NLRB No. 66 (2019). Under the contract coverage standard, the Board would "examine the plain language of the collective-bargaining agreement to determine whether action taken by an employer was within the compass or scope of contractual language granting the employer the right to act unilaterally." *Id.*, slip op. at 2. However, the Board returned to the "clear and unmistakable waiver" standard in *Endurance* in 2024, where it held that a union's waiver of its statutory rights must be "explicitly stated" and "clear and unmistakable." *Endurance Environment Solutions*, 373 NLRB, slip op. at 11. The standard in *Endurance* is the current law applicable to the facts in this case. [25]

Waiver can be established through the provisions in the parties' collective-bargaining agreement, by the conduct of the parties (including past practice, bargaining history, and action or inaction), or by a combination of the two. *American Diamond Tool*, 306 NLRB 570 (1992). The clear and unmistakable waiver standard is "firmly grounded in the policy of the National Labor Relations Act promoting collective bargaining." *Provena Hospitals*, 350 NLRB 808, 811 (2007). Before it was overturned in 2019 by *MV Transportation*, the clear and unmistakable waiver standard was the standard since at least 1949 and was upheld on numerous occasions by U.S. appellate courts, as well as the Supreme Court. *Endurance*, 373 NLRB slip op. at 2, fn. 4. Unlike the clear and unmistakable waiver standard, the contract coverage standard "exacerbates the difficulties associated with collective-bargaining by encouraging employers to insist on the broadest possible language, while unions necessarily feel constrained to insist on exacting specificity lest they be held to have bargained away their statutory rights." *Endurance*, slip op. at 20.

[25] The General Counsel intends to urge the Board to overturn *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024), and return to the contract-coverage standard articulated in *MV Transportation, Inc.*, 368 NLRB No. 66 (2019), when assessing whether unilateral changes are privileged by a collective-bargaining agreement.

Beyond Meader's one email on October 23, 2024, Respondent submitted no evidence to suggest it provided notice to the Union that it had sole discretion over making changes to any of the terms of the FTO program. While the General Counsel does not dispute that the Union failed to respond to Meader's email, its inaction is insufficient to meet the "clear and unmistakable waiver" under *Endurance* because neither Bower nor the Union made any explicit waiver of its right to bargain. The parties' CBA and the text of the FTO Policy itself are silent on the issue of removal of part-time employees from the FTO program. (J. Exh. 1 at 11; J. Exh. 2). Nowhere in either of these documents is there explicit language indicating that the Union intended to waive its right to bargain over the terms of the FTO Policy.

Meader's October 23, 2024 email contains vague language and only addresses the Respondent's right to select employees for FTO positions. It also emphasizes Respondent's position that it has the right to unilaterally control the FTO process and is not required to have the Union involved in the process. This position contradicts the Union's statutory rights under the Act and its interpretation by the Board and the courts. More telling is that Meader's email was not even initially sent to the Union as a "heads up." The email was sent in response to the Union's inquiry into why Raymond Gillespie was removed from the FTO program.

Bower testified that had Gillespie not told the Union about his removal, the Union would have had no knowledge of Respondent's actions. (Tr. 50). Respondent acts like it can unilaterally add terms to the FTO Policy without Union involvement. Its actions directly contradict Meader's testimony that Respondent is a "firm believer" in collaboration with the Union. (Tr. 286). The Union's nonresponse to this one email is insufficient to support a finding that it clearly and unmistakably waived its right to bargain over the terms of the FTO Policy.

ii. Even if the "Contract Coverage" Standard Applies, the Union Did Not Waive its Right to Bargain.

Assuming *arguendo* that the contract coverage standard applies, Counsel for the General Counsel asserts that the Union did not waive its right to bargain over the terms of the FTO policy. To determine whether an employer's unilateral action is permitted under the contract coverage standard, the Board will "examine the plain language of a collective-bargaining agreement to determine whether action taken by an employer was within the compass or scope of contractual language granting the employer the right to act unilaterally." *MV Transportation*, 368 NLRB No. 66, slip op. at 2 (2019). While the Board recognizes that the contract does not need to specifically mention a managerial decision at issue to cover it,[26] it has held that there must at least be a substantially clear relationship between the contract language and the unilateral action taken by the employer to sustain a contract coverage defense. *Metro Health, Inc.*, 372 NLRB No. 149, slip op. at 5 (2023).

The issuance of a wage differential to employees serving as FTOs was written into the CBA, but there is no evidence showing that Respondent's ability to unilaterally change the terms of the FTO policy was fully discussed or consciously explored during negotiations. The only reference Respondent has ever made to its "management rights" as it relates to the FTO Policy was Meader's email to the Union on October 23, 2024. (J. Exh. 3 at 1). Meader's claim that Respondent had an absolute right to regulate the FTO Policy was based on his position that the Union had made a unilateral waiver of its right to bargain, a claim that the Union strongly contests. Respondent's reliance on the Management Rights Clause amounts to a post hoc rationalization for its conduct. *See generally Youngstown Steel Door Co.*, 288 NLRB 949, 950

[26] *Wilkes-Barre Hospital Co. v. NLRB*, 857 F.3d 364, 377 (D.C. Cir. 2017).

(1988) (rejecting respondent's contractual interpretation where there was "no contemporaneous reference to a contract interpretation" when it engaged in the conduct at issue).

Article 18 of the CBA provides Respondent with the "right to enforce its current policies and procedures." Respondent primarily relied on this language to justify its change to the terms of the FTO Policy. However, beyond the vague reference to "current policies," there is nothing in the CBA's plain language to suggest that the parties authorized the unilateral addition of terms to the FTO Policy. The conflicting evidence indicates that neither party had exclusive control over the FTO Policy. Under the circumstances, it is clear that both parties had a duty to bargain and come to an agreement that would fully satisfy the needs of Respondent and the Union.

If the plain language of the CBA does not grant the employer the right to act unilaterally, the Board applies the waiver analysis. *MV Transportation*, 368 NLRB slip op. at 2. Under this analysis, if an employer's action has materially, substantially, and significantly changed a term or condition of employment constituting a mandatory subject of bargaining, the employer has violated the Act unless the union clearly and unmistakably waived its right to bargain over the change. *Ibid*. To determine whether a clear and unmistakable waiver exists, the Board looks at contractual language, bargaining history, and past practice. *Id*. at 5.

A denial of part-time employees' access to the FTO program is a material, substantial, and significant change in their terms or conditions of employment that constitute a mandatory subject of bargaining. There is nothing in the language of the CBA to show that a waiver of those rights was ever contemplated. While Respondent may argue that the CBA's silence on unilateral changes to removal of FTOs constitutes a waiver, such silence should not imply that the Union waived employees' right to bargained-for wage increases. Rather, such a finding would mean that part-time employees' access to other mandatory subjects of bargaining would be waived in

other contexts simply because the exact circumstances at issue were not specifically addressed during bargaining. To infer that a bargaining right has been waived because collectively bargained policies and the bargaining history are silent sets a dangerous precedent. For the reasons stated above, Respondent's unilateral change to the FTO Policy was a violation of Section 8(a)(5) under the contract coverage standard.

V. REMEDIES

In unilateral change cases, the Board requires the restoration of the status quo ante, including reinstating and making discriminatees whole. *See, e.g., Fibreboard Paper Products Corp. v. NLRB,* 379 U.S. 203, 216-217 (1964). Such a remedy is appropriate in this case for three reasons. First, the discriminatees should be made whole for the income they lost due to the employer's unlawful unilateral change.[27] Second, this remedy prevents Respondent from reaping the benefits of its unfair labor practices.[28] Third, restoring the status quo ante ameliorates the negative impact on employees' confidence in the Union as their bargaining representative caused by the unfair labor practice.[29] When Respondent unlawfully changed a significant term and condition of employment, while excluding the Union from bargaining, it weakened the Union's ability to effectively represent employees.

In *Uniserv,* the Board ordered reinstatement and a make-whole remedy for employees discharged under a new, unilaterally-implemented drug testing policy. 351 NLRB 1361, 1361 n.1, 1362 (2007). There, the Board made clear that because the new

[27] *See, e.g., Goya Foods of Florida,* 356 NLRB 1461, 1462 (2011).

[28] *Beacon Piece Dyeing and Finishing Co., Inc.,* 121 NLRB 953, 963 (1958)

[29] *Die Supply Corp.,* 160 NLRB 1326, 1344 (1966). *See also NLRB v. Hardesty Co.,* 308 F.3d 859, 865 (8th Cir. 2002) ("Such unilateral action will often send the message to the employees that their union is ineffectual, impotent, and unable to effectively represent them.")

policy was an unlawful unilateral change, and that change constituted "cause" for discipline, the employer had to reinstate the employees with backpay unless it could show that the employees would have been discharged under the pre-existing policy. *Id.* Similarly, Respondent implemented a unilateral change to the FTO Policy that was used as "cause" to remove Bower and O'Shei from their FTO positions. Accordingly, Respondent should be ordered to reinstate Bower and O'Shei to their FTO positions with backpay, rescind the unilateral eligibility change.

The General Counsel requests that, as part of the remedy for Respondent's violation of Section 8(a)(1) and (3) of the Act, Respondent be ordered to reinstate Brian Bower and Caitlin O'Shei to FTO positions with FTO pay premium and to compensate them for the wages they lost when Respondent unlawfully removed them from the FTO positions.

VI. CONCLUSION

The General Counsel submits that the foregoing and the record as a whole establishes that Respondent violated Sections 8(a)(1), (3), and (5) of the Act, as alleged in the Complaint, by removing Brian Bower and Caitlin O'Shei from their FTO positions. Respondent cannot demonstrate that it would have removed them from their positions even in the absence of the Union and protected concerted activity that took place from August 2025 through the end of October, culminating in Bower's protected concerted conduct at the October 30 FTO meeting. Respondent unilaterally-changed its FTO Policy to make part-time employees ineligible for the FTO position, which supported its discriminatory removal of Bower and O'Shei from the FTO program. Respondent owed the Union notice and an opportunity to bargain before implementing such a change. The General Counsel respectfully requests that the ALJ find the violations alleged

in the Complaint and issue a Decision and Order granting all relief appropriate to remedy those violations, including the relief requested in the attached Notice to Employees.[30]

DATED AT San Francisco, California, this 31st of July, 2026.

Respectfully,

/s/ Omar A. Cancio

Omar A. Cancio

Counsel for the General Counsel
National Labor Relations Board
Region 20
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[30] See Appendix A for the Proposed Order, and Appendix B for the Proposed Notice to Employees.

Case No. 20-CA-375918

APPENDIX A - PROPOSED ORDER

The National Labor Relations Board orders that the Respondent, Medic Ambulance Service, Inc., its officers, agents, successors, and assigns, shall,

1. Cease and desist from:

   (a) Removing employees from the Field Training Officer positions because of their union and/or protected concerted activities.

   (b) Removing employees from the Field Training Officer positions because of their part-time status.

   (c) Failing to provide notice to the Union and failing to bargain with the Union regarding terms and conditions of Unit employees' employment, including but not limited to removing employees from their Field Training Officer positions because of their part-time employment status.

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

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

   (a) Within 14 days from the date of the Board's Order, offer Brian Bower and Caitlin O'Shei to their Field Training Officer positions.

   (b) Make Brian Bower and Caitlin O'Shei whole for any loss of earnings and other benefits suffered as a result of their unlawful removals from their Field Training Officer positions.

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

   (d) Within 14 days after service by the Region, post at 1269 Corporate Center Parkway, Santa Rosa, California, and all other locations in Sonoma County, copies of the attached notice marked "Appendix B." On forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, the Notice 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

(e) email, text message, 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 Respondent in Sonoma County, at any time since November 3, 2025.

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

APPENDIX B - Proposed Notice

(To be printed and posted on official Board notice form)

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

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

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

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

WE WILL NOT remove you from your Field Training Officer position because you exercised your right to discuss wages, hours and working conditions with other employees, or because you engaged in union activities.

YOU HAVE THE RIGHT to freely bring safety and compliance with policies issues and complaints to us on behalf of yourself and other employees and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT remove you from your Field Training Officer position because you exercise your right to bring issues and complaints to us on behalf of yourself and other employees or because you engaged in union activities.

Professional EMS Responders of Sonoma County, International Association of Fire Fighters, Local 1401 (Union) is the employees' representative in dealing with us regarding wages, hours, and other working conditions of the employees in the following unit (Unit):

> All full-time and part-time Paramedics, Emergency Medical Technicians (EMTs), and SSTs employed by Respondent and who are working at or out of its facilities located in Sonoma County, California; excluding all other professional, administrative, confidential employees, managerial employees, and all other employees, guards, and supervisors as defined in the Act.

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

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

WE WILL NOT ban part-time employees from participating in the Field Training Officer program.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the unit described above.

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

WE WILL allow part-time employees to participate in the Field Training Officer Program.

WE WILL offer part-time employees their Field Training Officer positions back.

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

WE WILL offer Brian Bower and Caitlin O'Shei their Field Training Officer positions back.

WE WILL pay Brian Bower and Caitlin O'Shei for the lost wages, and benefits and other expenses they incurred because we removed them from their Field Training Officer positions.

Medic Ambulance Service, Inc.
(Single Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation, and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Callers who are deaf or hard of hearing who wish to speak to an NLRB representative should send an email to relay.service@nlrb.gov. An NLRB representative will email the requestor with instructions on how to schedule a relay service call.

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Hours of Operation: 8:30 a.m. to 5:00 p.m.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MEDIC AMBULANCE SERVICE

Case 20-CA-375918

and

PROFESSIONAL EMS RESPONDERS OF SONOMA COUNTY, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1401

AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 31, 2026, I served the above-entitled document(s) by electronic mail, as noted below, upon the following persons, addressed to them at the following addresses:

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July 31, 2026
Date

Vicky L. Luu, Designated Agent of NLRB
Name

/s/ Vicky L. Luu
Signature