Valley Health System, LLC d/b/a Desert Springs Hospital Medical Center, and Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center *and* Service Employees International Union, Local 1107. Case Nos. 28–CA–184993, 28–CA–185013, 28–CA–189709, 28–CA–189730, 28–CA–192354, 28–CA–193581, 28–CA–194185, 28–CA–194194, 28–CA–194450, 28–CA–194471, 28–CA–194790, 28–CA–195235, 28–CA–197426, and 28–CA–201519.

January 30, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On September 28, 2018, Administrative Law Judge Dickie Montemayor issued the attached decision. The Respondents filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed an answering brief, and the Respondents and the Charging Party each filed a reply brief. The Charging Party also filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

I. INTRODUCTION

Respondents Desert Springs Hospital Medical Center (Desert Springs Hospital) and Valley Hospital Medical Center (Valley Hospital) (collectively, the Respondents or the Hospitals) are acute care hospitals in Las Vegas, Nevada, owned and operated by Valley Health System, a subsidiary of Universal Health Services, Inc. (UHS). Service Employees International Union, Local 1107 (the Union) represents the registered nurses (RNs) at Desert Springs Hospital and Valley Hospital in separate bargaining units, as well as a third bargaining unit of the technicians and licensed practical nurses (LPNs) at Desert Springs Hospital. The issues in this case arose after the collective-bargaining agreements for each of the three bargaining units expired in spring 2016.[3] Over the succeeding months, the parties engaged in unsuccessful negotiations for successor collective-bargaining agreements.

We agree with the judge that, in February and March 2017, the Respondents violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by withdrawing recognition from the Union in all three bargaining units. The Respondents failed to prove an actual loss of majority support for the Union in any of the three bargaining units as required by *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001). In withdrawing recognition, the Respondents relied in part on unauthenticated email submissions for which they could not show that the purported email submitters actually supported decertifying the Union. As the judge found, "there is no real evidence to establish that the emails that were counted were in fact submitted by the employees listed on the emails."[4] Without the email submissions, the Respondents fall well short of establishing a lack of majority support for the Union in any of the three bargaining units.[5] Accordingly, the withdrawal of recognition as to each unit was unlawful.[6] Because the withdrawals of recognition were unlawful, we agree with the judge that the Respondents also violated

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

[2] We shall modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language, and we shall substitute new notices to conform to the Order as modified.

[3] The collective-bargaining agreement for the Desert Springs Hospital RN unit expired April 30, 2016. The collective-bargaining agreements for the Valley Hospital RN unit and the Desert Springs Hospital technician and LPN unit expired May 31, 2016.

[4] The Respondents assert that the email submissions complied with General Counsel Memorandum 15-08, which provides guidance to the Regional Offices on accepting submissions of electronic signatures to support a showing of interest for an election. Although General Counsel memoranda are not binding on the Board, we believe that electronic submissions that comply with General Counsel Memorandum 15-08 can demonstrate good-faith uncertainty as to whether a union enjoys majority support, and can therefore support the filing of an RM petition. Here, however, the Respondents did not seek an election, but rather withdrew recognition, so the question is whether the Respondents had objective evidence of actual loss of majority status, which they did not. See *Levitz*, 333 NLRB at 725. In any event, the Respondents' assertion that its email submissions complied with General Counsel Memorandum 15-08 is incorrect. The submissions were created via an online form that did not utilize digital signature technology. There is also no documentary evidence of the purported signers receiving an email Confirmation Transmission, as described in General Counsel Memorandum 15-08. In fact, the confirmation emails the Respondents offered into evidence were sent only to the employee who created the online form, not to any of the purported signers who the Respondents claim filled out the form and submitted it.

[5] We therefore find it unnecessary to rely on the judge's determination that he could not authenticate the signatures on some of the employee decertification cards that the Respondents also relied on in withdrawing recognition.

[6] We therefore find it unnecessary to pass on the judge's additional finding that the Respondents could not lawfully withdraw recognition because their unremedied unfair labor practices tended to cause

Section 8(a)(5) and (1) by granting wage increases to the employees in all three bargaining units immediately after withdrawing recognition.

We also adopt the judge's findings that Respondent Desert Springs Hospital violated Section 8(a)(1) by confiscating union literature from breakroom tables,[7] soliciting bargaining unit employees to support decertification of the Union,[8] and surveilling bargaining unit employees' union activity.[9] And we adopt the judge's finding that Respondent Desert Springs Hospital violated Section 8(a)(5) and (1) by implementing a unilateral change to union representatives' access to bargaining unit employees by prohibiting them from meeting with bargaining unit employees in an employee breakroom while nonbargaining unit employees were present.

Similarly, we adopt the judge's findings that Respondent Valley Hospital violated Section 8(a)(1) by promising bargaining unit employees wage increases if they decertified the Union[10] and conveying to employees the futility of union representation.[11] Additionally, we adopt the judge's findings that Respondent Valley Hospital violated Section 8(a)(5) and (1) by implementing unilateral changes to union representatives' access to bargaining unit employees by (i) prohibiting them from meeting with more than two bargaining unit employees at a time[12] and (ii) preventing them from speaking at new employee orientations;[13] and failing and refusing to provide the Union with requested information regarding bargaining unit employees.[14]

Lastly, we adopt the judge's dismissal of the 8(a)(1) allegation that Respondent Desert Springs Hospital, through

bargaining unit employees to become disaffected from the Union and thus, under *Master Slack Corp.*, 271 NLRB 78 (1984), tainted the evidence the Respondents relied on in withdrawing recognition.

[7] We find it unnecessary to pass on the judge's additional finding that the confiscation of union literature violated Sec. 8(a)(5) because such a finding would not materially affect the remedy that Desert Springs Hospital cease and desist from confiscating union literature. Moreover, no 8(a)(5) confiscation issue was before the judge for decision. The complaint did not allege that the confiscation violated the Act in any way. Although the judge granted the General Counsel's motion at the hearing to amend the complaint to allege that Desert Springs Hospital's Director of Nursing of the Intermediate Care Unit "Carol Dugan on about October 11th, [2016,] confiscated Union literature at Respondent's facility in violation of Section 8(a)(1) of the Act," the General Counsel did not allege that this conduct violated Sec. 8(a)(5).

Member Emanuel recognizes that confiscating from nonworking areas union literature that is not strewn about in an unsightly or hazardous manner violates Sec. 8(a)(1) under extant Board precedent. Although he applies that precedent here for institutional reasons, he believes it should be reconsidered in a future appropriate case.

[8] In agreeing with the judge that Corona Regional Medical Center employee Mark Smith was an agent of Desert Springs Hospital when he unlawfully solicited employees to decertify the Union, we reject Desert Springs Hospital's contention that Smith was an offsite employee and that its practice is to permit offsite employees to solicit and distribute literature in public areas of its hospital. Smith was not an offsite employee of Desert Springs Hospital. The judge found, without exception, that Desert Springs Hospital is owned and operated by Valley Health System (VHS), which is a subsidiary of UHS. Although Corona Regional Medical Center is also owned and operated by a subsidiary of UHS, it is not a part of VHS. Thus, Smith's employment by Corona Regional Medical Center does not make him an employee of Desert Springs Hospital or its parent company, VHS.

[9] We disavow the judge's reliance on *Kingsbridge Heights Rehabilitation Care Center*, 352 NLRB 6 (2008), a two-member Board case, and rely instead on *National Steel & Shipbuilding Co.*, 324 NLRB 499, 499 & fn. 4 (1997), enfd. 156 F.3d 1268 (D.C. Cir. 1998), to support the principle that "the employer must show that it had a reasonable, objective basis for anticipating misconduct" to justify recording of protected activity, not a "subjective, honest belief that unprotected conduct may occur."

[10] In finding that Valley Hospital unlawfully promised bargaining unit employees wage increases if they decertified the Union, we rely on the credited testimony of employee Sue Komeda that UHS Staff Vice President of Labor Relations Jeanne Schmid told bargaining unit employees that, with respect to market raises, "if we didn't have a union, we would get them," and that the purpose of the meeting was to inform employees about "what benefits we would receive from getting rid of the Union." See *Westminster Community Hospital, Inc.*, 221 NLRB 185, 185 (1975) (employer unlawfully depicted union as a barrier to increased benefits and implied that additional benefits would have been granted but for the union), enfd. 566 F.2d 1186 (9th Cir. 1977).

[11] In finding that Valley Hospital unlawfully conveyed to employees the futility of union representation, we rely on the judge's crediting of Komeda's testimony that Schmid did, in fact, make the alleged statements conveying that representation would be futile. Valley Hospital admits that the statements, if Schmid made them, violated the Act.

[12] Member Emanuel agrees that Valley Hospital violated Sec. 8(a)(5) and (1) by preventing union organizers from meeting with more than two bargaining unit employees at a time on its premises. However, he does so only because Valley Hospital acted contrary to its practice of permitting union organizers to speak with more than two bargaining unit employees at a time on its premises. Union organizer Romina Loreto testified that she knew she was not prohibited from speaking with more than two bargaining unit employees at a time because she had done so routinely without incident in the past. He does not rely on the language in the expired collective-bargaining agreement that granted union representatives access to Valley Hospital "to confer with *individual* bargaining unit employees" (emphasis added).

[13] We agree with the judge that Valley Hospital failed to maintain the status quo after the expiration of the collective-bargaining agreement, which provided that "[t]he Union will be granted access to new employee orientations" to discuss the Union and distribute union materials. However, in finding the violation, we do not rely on the judge's statements about Nursing Project Manager Kimberly Crocker's motive or subjective intent in ending an orientation without affording union representatives the opportunity to give their presentation, which is not relevant to whether Valley Hospital made an unlawful unilateral change. See *BASF Wyandotte Corp.*, 274 NLRB 978, 978 (1985) ("[T]he question of motive is not relevant to the allegation of unilateral changes in this case."), enfd. 798 F.2d 849 (5th Cir. 1986).

[14] Valley Hospital's only defense to the allegation that it unlawfully refused to provide the information is that it had no duty to do so following its withdrawal of recognition. We have found Valley Hospital's withdrawal of recognition unlawful, so we necessarily reject that defense. Because we are finding the violation for that reason, we find it unnecessary to rely on the judge's finding that Valley Hospital "slow walked" the Union's information request for 17 days before it withdrew recognition.

Security Guard Hank Castro, created an impression of surveillance of employees' union activity.

However, as discussed below, we find, contrary to the judge, that (1) the Respondents did not violate Section 8(a)(5) and (1) by ceasing to deduct union dues from bargaining unit employees' wages after the collective-bargaining agreements expired; (2) Respondent Desert Springs Hospital did not violate Section 8(a)(5) and (1) by removing union flyers from its bulletin boards in employee breakrooms; and (3) Respondent Valley Hospital did not violate Section 8(a)(1) by promising bargaining unit employees better working conditions if they decertified the Union.

II. CESSATION OF DUES-CHECKOFF DEDUCTIONS

The parties' expired collective-bargaining agreements contained a dues-checkoff provision requiring the Respondents to deduct union dues from the wages of each bargaining unit employee who submitted a signed dues-checkoff authorization form. The dues-checkoff authorization form stated that it was revocable only upon an employee "sending written notice to both the Employer and the Union by registered mail during a period from October 1-15 on [sic] each year of the agreement and shall be automatically renewed as an irrevocable check-off from year to year unless revoked as hereinabove provided."[15]

For several months after the expiration of the collective-bargaining agreements, the Respondents continued remitting payroll dues deductions to the Union. On September 14, 2016, the Respondents notified the Union that they would cease the dues deductions on September 23, 2016, because the Union's dues-checkoff authorization form did not permit an employee to revoke his or her authorization after the termination of the applicable collective-bargaining agreement as required by federal law. On September 19, 2016, after the Union challenged the Respondents' stated revocations as an unlawful unilateral change, the Respondents asserted that a refusal to deduct dues "based on an invalid authorization is not a unilateral change."

On September 20, 2016, the Respondents notified all unit employees that the Respondents were ceasing dues deductions because "the authorization lacks specifically required language from the law." The Respondents also informed employees that they would resume deducting union dues from their paychecks "upon receipt of a valid union dues deduction authorization." On September 22, 2016, the Union asserted that the Respondents were implementing a unilateral change and demanded bargaining. On September 23, 2016, the Respondents unilaterally ceased the dues deductions. In a letter to the Union's counsel dated September 23, 2016, Respondents' Counsel Thomas Keim wrote: "As stated multiple times, [the Respondents] are prepared to deduct dues when presented with a validly executed and statutorily compliant authorization."

The judge found that the Respondent's cessation of dues deductions violated Section 8(a)(5) and (1), relying heavily on *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015), which overruled *Bethlehem Steel*, 136 NLRB 1500 (1962), remanded on other grounds sub nom. *Marine & Shipbuilding Workers v. NLRB*, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964), and required employers to continue to honor dues-checkoff authorizations after the expiration of a collective-bargaining agreement that established such an arrangement.

Recently, in *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center*, we overruled *Lincoln Lutheran* and returned to the longstanding rule, first announced in *Bethlehem Steel*, that an employer's statutory obligation to check off union dues ends when its collective-bargaining agreement containing a checkoff provision expires. 368 NLRB No. 139 (2019). We also decided to apply the rule of *Valley Hospital Medical Center* retroactively in all pending cases. Id., slip op. at 8. Accordingly, the Respondents had no obligation under the Act to continue dues checkoff after the collective-bargaining agreements expired, and therefore they did not violate Section 8(a)(5) and (1) by unilaterally ceasing to do so.[16]

III. POSTING OF UNION FLYERS ON RESPONDENTS' BULLETIN BOARDS

The expired collective-bargaining agreements between the Respondents and the Union granted the Union access to the bulletin boards within employee break rooms regularly utilized by bargaining unit employees, provided that "[n]o material which contains personal attacks upon any other member or any other employee or which is critical of the hospital, its management, or its policies or practices, will be posted."

On August 8, 2016, Union Representative Lanita Troyano emailed Respondents' System Director for Human Resources Wayne Cassard a bargaining update flyer titled "VHS Fiction vs. Union Facts," which the Union was posting later that day at the Hospitals. The flyer

[15] Sec. 302(c)(4) of the Labor-Management Relations Act permits payroll dues deductions from bargaining unit employees' wages provided that the employee has provided the employer "a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner." 29 U.S.C. § 186(c)(4).

[16] Notwithstanding the Board's decision in *Valley Hospital Medical Center*, *Food & Commercial Workers Local One (Big V Supermarkets)*, 304 NLRB 952, 953 (1991), enfd. 975 F.2d 40 (2d Cir. 1992), relied on by the judge, is inapplicable here. The issue in that case was revocability of dues-checkoff authorizations by employees; the issue here is discontinuation of dues-checkoff deductions by an employer.

concluded, "VHS seems to care more about money than its own employees at Desert Springs and Valley Hospitals." On August 9, Cassard responded that the flyer violated the language in the expired collective-bargaining agreements providing that materials "critical" of the Respondents could not be posted and that the flyer, if posted, would be removed. On October 3, Troyano emailed Cassard another bargaining update flyer that the Union intended to post at the Hospitals. The flyer stated, in part: "UHS Walks Out! ASK YOURSELF WHY?" and "Don't be Fooled! UHS want [sic] to get rid of our Union." It also listed several of the Respondents' bargaining proposals and asserted that "[w]e can't believe" the Respondents want to implement them. Cassard responded to Troyano that the flyer "violates the contract" by mischaracterizing the Respondents' conduct as "walk[ing] out" of a bargaining session. On October 7, Troyano emailed a third flyer the Union intended to post that stated, in part: "UHS IS DICTATING YOUR RIGHTS!" Cassard responded by stating, "Same position as the last postings. We do not authorize and will remove them."

On October 11, two union representatives posted the October 7 bargaining update and a second flyer about a fall festival on the bulletin board in Desert Springs Hospital's intermediate care unit breakroom. Desert Springs Hospital's Director of Nursing of the Intermediate Care Unit Carol Dugan was immediately notified. She and Desert Springs Hospital's Chief Nursing Officer Ellie McNutt went to investigate. Soon thereafter, McNutt contacted Cassard. Before leaving the breakroom to speak privately with Cassard, Dugan removed the flyers from the bulletin board. After discussing the matter with Dugan, Cassard told the two union representatives that they could post the fall festival flyer on the bulletin board but not the October 7 bargaining update. On October 20, Cassard notified the Union that another bargaining update flyer posted on bulletin boards in employee break rooms violated the parties' collective-bargaining agreements and stated that "we will remove any and all that are posted." The October 20 flyer was titled "VHS WALKS AGAIN!" and claimed, "VHS is dragging its feet, forwarding unacceptable contract proposals in an effort to draw out bargaining and bust the Union. You deserve better."

The judge found that the Respondents violated Section 8(a)(1) by requiring preapproval of, and denying the Union authorization to post, its August 9, October 3, October 7, and October 20 bargaining updates, and by removing the October 7 bargaining update from the bulletin board at Desert Springs Hospital on October 11. We reverse.

In the absence of discriminatory treatment, which has not been alleged, the Union had no statutory right to use the Respondents' bulletin boards. See *Honeywell, Inc.*, 262 NLRB 1402, 1402 (1982), enfd. 722 F.2d 405 (8th Cir. 1983); *Container Corporation of America*, 244 NLRB 318, 318 fn. 2 (1979). Even in the absence of a statutory right, however, the Respondents were required to maintain the status quo following the expiration of their collective-bargaining agreements, under which the Union possessed a right to post materials on the Respondents' bulletin boards, subject to certain conditions. See *Triple A Fire Protection, Inc.*, 315 NLRB 409, 414 (1994) ("When a collective-bargaining agreement (CBA) expires, an employer must maintain the status quo on all mandatory subjects of bargaining until the parties either agree on a new contract or reach a good-faith impasse in negotiations."), enfd. 136 F.3d 727 (11th Cir. 1998), cert. denied 525 U.S. 1067 (1999). That is, the post-contract status quo included both the right and the conditions limiting the right.

In finding the violation, the judge relied on the Union's right of access to the bulletin boards in the employee break rooms under the bulletin board provisions in the parties' expired collective-bargaining agreements. He found that this right of access privileged the Union to post its bargaining updates. He deemed unpersuasive the Respondents' reliance on the portion of the bulletin board provisions specifying that any union posting could not be "critical of the hospital." The judge reasoned that, if read literally, the prohibition against union postings "critical" of the Respondents could include "nearly any pro-union posting" and would have "the practical result of giving the [Respondents] unfettered censorship of the [U]nion's message." The judge found that this would tend to have a "chilling and coercive effect" on employees' exercise of their Section 7 rights, in violation of Section 8(a)(1).

We disagree with the judge's analysis and 8(a)(1) finding. The status quo was defined by the terms of the now-expired contracts, and the judge abandoned the parties' agreed-upon contractual terms as to what materials the Union would be allowed to post on the Respondents' bulletin boards. Here, the parties agreed that the Union could not post materials "critical" of the Respondents, and the Respondents reasonably interpreted the Union's August 9, October 3, October 7, and October 20 bargaining updates as being exactly that. Accordingly, because there was no discriminatory treatment and the Union never had a contractual right to post its bargaining updates, the

Respondents did not violate Section 8(a)(1) by barring the Union from posting them on their bulletin boards.[17]

IV. ALLEGED PROMISE OF BETTER WORKING CONDITIONS

In late January or early February 2017, after an employee filed a petition with Region 28 to decertify the Union as the representative of the Valley Hospital bargaining unit, UHS Staff Vice President Schmid and Corona Regional Medical Center Progressive Care Unit Director Wendi Reyes held a mandatory meeting with bargaining unit employees at Valley Hospital. Reyes told the employees that Corona Regional Medical Center employees "voted the union out and then they got a better administration because better administrators only go to nonunion hospital[s]" and that "union hospitals were restricted in getting good administrators because those administrators could not do what they wanted to do."

The judge found that Reyes' statement, viewed in the context of Schmid's unlawful statements made at the same meeting promising bargaining unit employees wage increases if they decertified the Union and conveying to them the futility of union representation, violated Section 8(a)(1) because it had the "intended effect" of discouraging employees from supporting the Union by directly promising better working conditions if they withdrew their support. We disagree that the Respondent, by Reyes' statement, violated Section 8(a)(1).

First, the judge inappropriately relied on what he assumed was Reyes' intention in making the statement. See *Webasto Sunroofs, Inc.*, 342 NLRB 1222, 1223 (2004) ("The basic test for an 8(a)(1) violation is whether the employer engaged in conduct, regardless of intent, which reasonably tends to interfere with the free exercise of employee rights under the Act."). Second, Reyes may lawfully express her opinion as to the advantages and disadvantages of union representation so long as those comments "contain[] no threat of reprisal or force or promise of benefit." 29 U.S.C. § 158(c); see also *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969) ("[A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.'"). That is what occurred here.

Reyes communicated to employees her opinion that, at a hospital where she used to work, the quality of administrators improved after employees there decertified a union. Reyes also offered her opinion that better administrators prefer nonunion hospitals because, in that environment, they have a freer hand to do what they want. Reyes did not threaten employees with worse administrators if they continued supporting the Union or promise them better administrators if they decertified the Union. Indeed, no reasonable employee would have understood Reyes to promise anything. She was expressing an opinion about where good administrators *choose* to go, not promising that Valley Hospital would *recruit* better administrators if employees decertified the Union. Accordingly, we find that Reyes' statements did not constitute a promise of better working conditions should employees decertify the Union.

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 2:

"2. The Respondent Desert Springs violated Section 8(a)(1) by confiscating union literature."

2. Substitute the following for Conclusion of Law 4:

"4. The Respondent Valley violated Section 8(a)(5) and (1) by unilaterally changing its practice of allowing union representatives to speak to more than two bargaining unit employees at a time."

3. Substitute the following for Conclusion of Law 5:

"5. The Respondent Valley violated Section 8(a)(5) and (1) by unilaterally changing when union representatives could address new employees at their orientation."

4. Insert the following for Conclusion of Law 20:

"20. The Respondent Valley violated Section 8(a)(5) and (1) by refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent Valley's unit employees."

5. Delete Conclusions of Law 1, 3, 7, 10, and 19 and renumber the subsequent paragraphs accordingly.

AMENDED REMEDY

Having found that the Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(5)

[17] The judge relied on *Roll & Hold Warehouse & Distribution Corp.,* in which the Board adopted the finding that "employees have no statutory right to use an employer's bulletin boards but that if permission is granted, it must not be accorded selectively and disparately to prevent union postings whereas other nonbusiness postings are permitted." 325 NLRB 41, 51 (1997). However, that case is inapposite because the parties in that case had not contractually agreed to limit the type of materials the union could post.

The General Counsel alleged in the complaint that the Respondents' refusal to permit the Union to post its bargaining updates on their bulletin boards also violated Sec. 8(a)(5). The judge did not pass on that allegation, and no party excepted to the absence of a finding. Had this allegation been before us, we would have dismissed it for the same reasons explained above. Namely, the parties agreed that the Respondents could unilaterally prohibit the posting of materials "critical" of the Respondents, this agreed-upon contractual term continued as part of the status quo following expiration of the collective-bargaining agreements, and the Respondents' post-expiration conduct was consistent with that status quo.

and (1) of the Act, we shall order the Respondents to cease and desist from engaging in such conduct and to take certain steps to effectuate the policies of the Act.

To remedy their unlawful withdrawal of recognition from the Union, the Respondents must bargain on request with the Union as the exclusive collective-bargaining representative of employees in the appropriate bargaining units and embody any understanding reached in signed agreements.[18] The Respondents are required to meet to negotiate with the Union at reasonable times and reasonable places. The Respondents must also rescind their unilateral changes to unit employees' terms and conditions of employment. In accordance with Board practice and equitable considerations, however, we will condition rescission of the unlawful unilateral wage increases on a request from the Union that they do so. The Respondents shall also post appropriate informational notices, as described in the attached appendices.

We find merit in the Union's exception to the judge's failure to order the Respondents to read the remedial notice aloud to employees. Although notice reading is an extraordinary remedy, we believe it is warranted here. Based on unsubstantiated evidence obtained from an unsecure website, the Respondents withdrew recognition from the Union, and then immediately granted employees a wage increase, which would predictably undermine union support. Further demonstrating disdain of employees' Section 7 rights, Respondent Desert Springs permitted a nonemployee to sit inside the hospital as its apparent agent and solicit employees to decertify the Union. In addition, the Respondents committed a number of other violations of the Act, including additional unilateral changes and independent 8(a)(1) violations. In these circumstances, we find that a public reading of the remedial notice is an "'effective but moderate way to let in a warming wind of information and, more important, reassurance'" to the bargaining unit employees that their rights under the Act will not be violated in the future. See *United States Service Industries*, 319 NLRB 231, 232 (1995) (quoting *J.P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969)), enfd. 107 F.3d 923 (D.C. Cir. 1997). We shall accordingly order the Respondents to hold a meeting or meetings during working hours at their Las Vegas, Nevada facilities, scheduled to ensure the widest possible attendance of bargaining unit employees, at which the appropriate notice is to be read to unit employees by a high-ranking responsible management official of the Respondents in the presence of a Board agent and a union representative if the Region or the Union so desires, or, at the Respondents' option, by a Board agent in the presence of a high-ranking responsible management official and, if the Union so desires, a union representative.[19]

ORDER

A. The National Labor Relations Board orders that Respondent Valley Health System, LLC d/b/a Desert Springs Hospital Medical Center, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from Service Employees International Union, Local 1107 (the Union) and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of its bargaining unit employees.

(b) Unilaterally changing the terms and conditions of employment of its bargaining unit employees by granting them wage increases without first notifying the Union and giving it an opportunity to bargain.

(c) Confiscating union literature from breakroom tables.

(d) Soliciting bargaining unit employees to support decertification of the Union.

[18] Although the Respondents have excepted generally to the judge's recommended Order, they have not specifically excepted to the paragraphs requiring the Respondents to "bargain in good faith with the Union as the exclusive collective-bargaining representative" of the employees in each of the three bargaining units. Accordingly, we find it unnecessary to provide a justification for that remedy. See *Scepter, Inc. v. NLRB*, 280 F.3d 1053, 1057 (D.C. Cir. 2002); *Exxel/Atmos, Inc. v. NLRB*, 147 F.3d 972, 978 (D.C. Cir. 1998); *SKC Electric, Inc.*, 350 NLRB 857, 862 fn. 15 (2007); *Heritage Container, Inc.*, 334 NLRB 455, 455 fn. 4 (2001).

The Respondents violated Sec. 8(a)(5) not only by withdrawing recognition from the Union, but also by unilaterally changing unit employees' terms and conditions of employment. To remedy the latter 8(a)(5) violation, the Board typically issues a so-called limited bargaining order requiring the employer, before making any further changes in employment terms, to give the union notice and opportunity to bargain. See *American Security Programs, Inc.*, 368 NLRB No. 151 (2019). Here, however, to remedy the withdrawal of recognition, we are issuing an affirmative bargaining order, which will require the Respondents to resume bargaining for agreements to succeed those that expired in 2016. And

> when . . . the parties are engaged in negotiations, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to give notice and an opportunity to bargain; it encompasses a duty to refrain from implementation at all, unless and until an overall impasse has been reached on bargaining for the agreement as a whole.

Bottom Line Enterprises, 302 NLRB 373, 374 (1991), enfd. mem. sub nom. *Master Window Cleaning, Inc. v. NLRB*, 15 F.3d 1087 (9th Cir. 1994). In these circumstances, a limited bargaining order would imply a right of unilateral action—once notice and opportunity to bargain have been given—inconsistent with *Bottom Line Enterprises*. Accordingly, we will dispense with that remedy here.

[19] Member Emanuel would find that a notice-reading remedy is unwarranted in this case. He does not believe the Respondents' violations are "so numerous and serious" as to render the Board's standard notice-posting remedy insufficient to dissipate their effects, nor do they rise to an "egregious" level of misconduct. See *Postal Service*, 339 NLRB 1162, 1163 (2003).

(e) Placing bargaining unit employees under surveillance while they engage in union or other protected concerted activities.

(f) Unilaterally changing the terms and conditions of employment of its bargaining unit employees by prohibiting union representatives from meeting with them while nonbargaining unit employees are present.

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

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

(a) On request by the Union, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> [A]ll Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the Act.

(b) On request by the Union, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> [A]ll technicians and Licensed Practical Nurses (LPN) employed by the hospital; but excluding all other employees, guards and supervisors, as defined in the Act.

(c) On request by the Union, rescind the changes in the terms and conditions of employment for its bargaining unit employees that were unilaterally implemented.

(d) Within 14 days after service by the Region, post at its Las Vegas, Nevada facility copies of the attached notice marked "Appendix A."[20] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 11, 2016.

(e) Within 14 days after service by the Region, hold a meeting or meetings during working hours at the Desert Springs Hospital Medical Center in Las Vegas, Nevada, scheduled to ensure the widest possible attendance of bargaining unit employees, at which the attached notice marked "Appendix A" will be read to the employees by a high-ranking responsible management official of the Respondent in the presence of a Board agent and a union representative or, at the Respondent's option, by a Board agent in the presence of a high-ranking responsible management official of the Respondent and, if the Union so desires, a union representative.

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

B. The National Labor Relations Board orders that Respondent Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from Service Employees International Union, Local 1107 (the Union) and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of its bargaining unit employees.

(b) Unilaterally changing the terms and conditions of employment of its bargaining unit employees by granting them wage increases without first notifying the Union and giving it an opportunity to bargain.

(c) Promising bargaining unit employees wage increases if they decertified the Union.

(d) Threatening bargaining unit employees that retaining their union representation would be futile.

(e) Unilaterally changing the terms and conditions of employment of its bargaining unit employees by prohibiting union representatives from meeting with more than two bargaining unit employees at a time.

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

(f) Unilaterally changing the terms and conditions of employment of its bargaining unit employees by preventing union representatives from speaking at new employee orientations.

(g) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's bargaining unit employees.

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

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

(a) On request by the Union, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> [A]ll Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors, as defined in the Act.

(b) On request by the Union, rescind the changes in the terms and conditions of employment for its bargaining unit employees that were unilaterally implemented.

(c) Furnish to the Union in a timely manner the information requested by the Union on January 31, 2017.

(d) Within 14 days after service by the Region, post at its Las Vegas, Nevada facility copies of the attached notice marked "Appendix B."[21] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 27, 2017.

(e) Within 14 days after service by the Region, hold a meeting or meetings during working hours at the Valley Hospital Medical Center in Las Vegas, Nevada, scheduled to ensure the widest possible attendance of bargaining unit employees, at which the attached notice marked "Appendix B" will be read to the employees by a high-ranking responsible management official of the Respondent in the presence of a Board agent and a union representative or, at the Respondent's option, by a Board agent in the presence of a high-ranking responsible management official of the Respondent and, if the Union so desires, a union representative.

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

Dated, Washington, D.C. January 30, 2020

_____
John F. Ring, Chairman

_____
Marvin E. Kaplan, Member

_____
William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

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

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from Service Employees International Union, Local 1107 (the Union) and fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our bargaining unit employees.

WE WILL NOT change our bargaining unit employees' terms and conditions of employment by granting them wage increases without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT confiscate union literature from breakroom tables.

WE WILL NOT solicit you to support decertification of the Union.

WE WILL NOT place you under surveillance while you engage in union or other protected concerted activities.

WE WILL NOT unilaterally change our bargaining unit employees' terms and conditions of employment by prohibiting union representatives from meeting with them while nonbargaining unit employees are present.

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

WE WILL, on request by the Union, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> [A]ll Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and. supervisors, including all charge nurses, as defined in the Act.

WE WILL, on request by the Union, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> [A]ll technicians and Licensed Practical Nurses (LPN) employed by the hospital; but excluding all other employees, guards and supervisors, as defined in the Act.

WE WILL, on request by the Union, rescind the changes in the terms and conditions of employment for our bargaining unit employees that were unilaterally implemented.

DESERT SPRINGS HOSPITAL MEDICAL CENTER

The Board's decision can be found at www.nlrb.gov/case/28-CA-184993 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from Service Employees International Union, Local 1107 (the Union) and fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of our bargaining unit employees.

WE WILL NOT change our bargaining unit employees' terms and conditions of employment by granting them wage increases without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT promise you wage increases if you decertify the Union.

WE WILL NOT threaten you that retaining your union representation would be futile.

WE WILL NOT unilaterally change our bargaining unit employees' terms and conditions of employment by prohibiting union representatives from meeting with more than two of them at a time.

WE WILL NOT unilaterally change our bargaining unit employees' terms and conditions of employment by preventing union representatives from speaking at new employee orientations.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our bargaining unit employees.

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

WE WILL, on request by the Union, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> [A]ll Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors, as defined in the Act.

WE WILL, on request by the Union, rescind the changes in the terms and conditions of employment for our bargaining unit employees that were unilaterally implemented.

WE WILL furnish to the Union in a timely manner the information requested by the Union on January 31, 2017.

VALLEY HOSPITAL MEDICAL CENTER

The Board's decision can be found at www.nlrb.gov/case/28-CA-184993 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Sara Demirok Esq., and *Stephen Kopstein, Esq*., for the General Counsel.

Jonathan Cohen, Esq. (Rothner, Segall & Greenstone), for the Charging Party.

Thomas H. Keim, Jr., Esq., and *Henry F. Warnock Esq. (Ford Harrison LLP),* for the Respondent.

DECISION

STATEMENT OF THE CASE

DICKIE MONTEMAYOR, Administrative Law Judge. This case was tried before me over a 9-day period between July 3, 2017, and September 26, 2017, in Las Vegas, Nevada. Charging Party (Union) filed charges on September 23, 2016, December 12, 2016, December 22, 2016, January 6, 2017, February 2, 2017, February 21, 2017, March 2, 2017, March 3, 2017, March 7, 2107, March 14, 2017, March 21, 2017, April 24, 2017, May 18, 2017. October 20, 2014, and April 3, 2015, and an amended charge dated May 5, 2015, alleging violations by Respondents, Valley Health System LLC, d/b/a Desert Springs Hospital Medical Center, and Valley Hospital Medical Center Inc., d/b/a Valley Hospital Medical Center (Respondents) of Section 8(a) (5) and (1) of the National Labor Relations Act, as amended (the Act). A consolidated complaint was issued on March 7, 2017. Respondents on March 20, 2017, filed an answer to the consolidated complaint denying that they violated the Act. A second consolidated complaint issued on June 5, 2017. Respondents filed an answer on June 19, 2017. At the hearing, counsel for the General Counsel's motion to amend the second consolidated complaint to add other allegations was granted. Similarly, the General Counsel's motion to consolidate 28–CA–201519 was granted. (CG Exh. 1 (ccc), and 1 (fff). Respondents filed an answer on September 6, 2017. Respondents denied that they violated the Act in any respect. I find that Respondents violated the Act regarding some but not all of the allegations alleged.

FINDINGS OF FACT

I. JURISDICTION

The complaints allege, and I find that

1.(a) At all material times, Respondent Desert Springs has been a limited liability company with a place of business in Las Vegas, Nevada, and has been operating a hospital and medical center providing medical care.

(b) In conducting its operations during the 12-month period ending September 23, 2106, Respondent purchased and received at Respondent Desert Springs facility goods valued in excess of $50,000 directly from points outside the state of Nevada.

(c) In conducting its operations during the 12-month period

ending September 23, 2106, Respondent Desert derived gross revenues in excess of $250,000.
(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.
(e) At all material times, Respondent Valley Hospital has been a corporation with a place of business in Las Vegas, Nevada, and has been operating a hospital and medical center providing medical care.
(f) In conducting its operations during the 12-month period ending September 23, 2106, Respondent purchased and received at Respondent Valley Hospital's facility goods valued in excess of $50,000 directly from points outside the state of Nevada.
(g) In conducting its operations during the 12-month period ending September 23, 2106, Respondent Valley Hospital derived gross revenues in excess of $250,000.
(h) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.
2. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.
3. At all material times, Wayne Cassard held the position of System Director, Human Resources for Respondents and has been a supervisor of Respondents within the meaning of Section 2(11) of the Act and an agent of Respondents within the meaning of Section 2(13) of the Act.
4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Desert Springs within the meaning of Section 2(11) of the Act and agents of Respondent Desert Springs within the meaning of Section 2(13) of the Act:

Carol Dugan -	Director of Nursing
Ellie McNutt -	Chief Nursing Officer
Lori Reynolds-	Director of Surgical Services

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

Shawn Melly	- Clinical Supervisor
Kim Crocker	- Nurse Manager
Victoria Barnthouse	- Chief Nursing Officer
Dana Thorne	- Human Resource Director

6. At all material times, Jeanne Schmid held the position of Staff Vice President of Labor Relations and has been a supervisor of Respondent Valley within the meaning of Section 2(11) of the Act and an agent of Respondent Valley within the meaning of Section 2(13) of the Act.
7. At all material times, Wendi Reyes held the position of Progressive Care Unit Director at Corona Regional Medical Center and has been an agent of Respondent Valley within the meaning of Section 2(13) of the Act.
8.(a) The following employees of Respondent Desert Springs (the Desert Springs RN Unit) constituted a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act prior to the withdrawal of recognition the validity of which is contested and the subject of this litigation:

> All Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the Act.

(b) On October 3, 1994, the Board certified the Union as the exclusive collective-bargaining representative of the Desert Springs RN Unit.
(c) Since about October 3, 1994, and at all material times, Respondent Desert Springs has recognized the Union as the exclusive collective-bargaining representative of the Desert Springs RN Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 1, 2013, to April 30, 2016 (the Desert Springs RN Agreement).
(d) At all times since about October 3, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Desert Springs RN Unit.
(e) The following employees of Respondent Desert Springs (the Desert Springs Technical Unit) constituted a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act prior to the withdrawal of recognition the validity of which is contested and the subject of this litigation:

> All technicians and Licensed Practical Nurses (LPN) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

(f) On October 3, 1994, the Board certified the Union as the exclusive collective-bargaining representative of the Desert Springs Technical Unit.
(g) Since about October 3, 1994, and at all material times, Respondent Desert Springs has recognized the Union as the exclusive collective-bargaining representative of the Desert Springs Technical Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 2013, to May 31, 2016 (the Desert Springs Technical Agreement).
(h) At all times since about October 3, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Desert Springs Technical Unit.
(i) The following employees of Respondent Valley (the Valley RN Unit) constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

(j) On July 12, 1999, the Board certified the Union as the exclusive collective-bargaining representative of the Valley RN Unit.
(k) Since about July 12, 1999, and at all material times, Respondent Valley recognized the Union as the exclusive collective-bargaining representative of the Valley RN Unit. This recognition has been embodied in successive collective-

bargaining agreements, the most recent of which was effective from June 1, 2013, to May 31, 2016 (the Valley RN Agreement, collectively with the Desert Springs RN Agreement and the Desert Springs Technical Agreement, the Agreements).

(l) At all times since about July 12, 1999, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Valley RN Unit.

(m) The Desert Springs RN Agreement and the Desert Springs Technical Agreement each contained the following provision:

The hospital will provide a 2 foot by 4 foot section of a locked glass enclosed bulletin board located in the hospital's cafeteria and a second bulletin board at least 18 inches by 24 inches located in the immediate vicinity of the time clock near the main entrance to the facility for the Union's use in posting of materials related to Union business. The hospital will also provide the Union access to a portion of the bulletin boards in employee break rooms regularly utilized by bargaining unit employees. If existing bulletin boards do not have an area that is at least 18 X 24 inches for Union use, the Union can provide 18 X 24 inch bulletin boards to the hospital, which the hospital will mount for the Union's use. The portion of these existing bulletin boards accessible by the Union will be at least 18 X 24 inches. Any materials posted must be dated and signed by the Union representative responsible for the posting and a copy of the material being posted will be hand delivered to the Human Resource Director, or his/her designee, prior to posting. No material which contains personal attacks upon any other member or any other employee or which is critical of the hospital, its management, or its policies or practices, will be posted. Employees will not be precluded from accessing that portion of the bulletin boards located in break rooms for posting union related materials as provided above.

(n) The Valley RN Agreement contained the following provision:

(1) Bulletin Boards

The hospital provides an enclosed bulletin board located in the hospital's cafeteria. The hospital will also provide the Union access to a portion of the bulletin boards in employee break rooms regularly utilized by bargaining unit employees. If the existing bulletin boards do not have an area for Union use, the Union can provide bulletin boards to the Hospital, which the Hospital will mount for the Union's use, no larger than 18x24 inches. Any materials being posted must be dated and signed by the Union representative responsible for the posting and a copy of the material being posted will be hand delivered to the Human Resources Administrator or his/her designee, for review, prior to posting. No material which contains personal attacks upon any other member or any other employee or which is critical of the hospital, its management, or its policies or practices, will be posted. Employees will not be precluded from accessing that portion of the bulletin boards located in break rooms for posting union related materials as provided above.

(2) New Employee Orientation

The Union will be granted access to new employee orientations for the purpose of a fifteen (15) minute talk regarding the Union and the distribution of a Union information packet to all bargaining unit eligible employees. The packet and orientation discussion shall not contain any material derogatory towards the employer or critical of the services the Employer provides. The Employer will be absent from the room during the Union portion of new employee orientation. The union will provide the Employer with a copy of any written materials used or distributed by the Union during the new employee orientation at least seven (7) days in advance of their use, including any modifications to such materials.

(o) The Agreements also contained each of the following provisions:

(1) Union Access

The hospital shall allow duly authorized representatives of the Union to visit the hospital to ascertain whether a provision of the Agreement is being observed, to assist in adjusting grievances, to confer with individual bargaining unit employees, to participate in committees, and to facilitate patient care and staffing committee studies. Notification of each such visit will be made at least three (3) hours in advance, unless considered an emergency. If the lack of a 3 hour notice is deemed an emergency by the Union, the Union will give an explanation to the hospital as to the reason the notice period could not be given. The hospital will not unreasonably deny such request. Such notification must be specific as to date and timeframe. Upon arrival at the hospital the representative will notify the Human Resources Administrator, or Nursing Supervisor, if such visitation occurs in the evening or on a weekend, of his/her presence. The representatives will also notify the Human Resource Administrator or Nursing Supervisor when he or she departs the facility. The hospital shall issue two permanent badges to the union. Union representatives will wear this badge at all times when conducting union business in the hospital.

Access to the hospital shall be limited to meeting rooms selected by the hospital for grievance meetings or for the Union Representative's use in meeting with grievants on their non-working time. In addition, no more than two Union representatives may meet with individual employee in employee break rooms regularly utilized by bargaining unit employees' cafeteria, lobby, and other outdoor break areas. If it is necessary for the Representative to examine a working area of the hospital in order to investigate a grievance, permission to enter and examine the area will be granted by the Human Resources Administrator or Nursing Supervisor, as appropriate. In such cases, a management representative may accompany the Union Representative at all times while in any working area of the Hospital. There shall be no interference with patient care or the work of any employee. Union business shall not be conducted in hallways or other work areas. The Hospital will provide the Union with reasonable access to a conference room, subject to availability. The above access rights shall be limited to official union business related to the bargaining unit and shall not be used to engage in union organizing activity, solicit, or distribute literature to non-bargaining unit employees.

(2) Enforcement of Access Provisions

If the Union representatives fail to abide by the provisions of this Article, the hospital shall notify the Union and the representative of the date and nature of the violation. If the Union disputes the claim of the violation, at the Union's request, the parties will meet within forty-eight (48) hours to attempt to discuss and resolve the issue in good faith. If after the same representative has been given notice no less than three times of a violation and the violations have not been resolved in good faith to the satisfaction of the Hospital, then the Hospital may notify the Union that the representative is barred from the facility for ten (10) days. Immediately upon barring said representative, the Union may submit the matter to expedited arbitration. The arbitrator will come from the permanent panel as described in Article 21 of this agreement. If the arbitration cannot take place within ten (10) days, the Hospital will permit the representative into the hospital until such time as the arbitrator can make an immediate "bench" ruling on themerits of the complaint; provided, however, that if the representative commits another violation during such time the representative will be barred until a ruling is obtained from an arbitrator. If the arbitrator determines that a Union representative has repeatedly violated the limitations on access, the Arbitrator will fashion an appropriate remedy regarding the limitations or suspension of access rights for the specific Union representative. If the arbitrator determines that Management representatives have repeatedly violated the limitations on access, the arbitrator will fashion an appropriate remedy sufficient to enforce these rights. The parties will exercise due diligence to conduct the arbitration within fourteen (14) or less days from the date of the union request.

The hospital provides an enclosed bulletin board located in the hospital's cafeteria. The hospital will also provide the Union access to a portion of the bulletin boards in employee break rooms regularly utilized by bargaining unit employees. If the existing bulletin boards do not have an area for Union use, the Union can provide bulletin boards to the Hospital, which the Hospital will mount for the Union's use, no larger than 18x24 inches. Any materials being posted must be dated and signed by the Union representative responsible for the posting and a copy of the material being posted will be hand delivered to the Human Resources Administrator or his/her designee, for review, prior to posting. No material which contains personal attacks upon any other member or any other employee or which is critical of the hospital, its management, or its policies or practices, will be posted. Employees will not be precluded from accessing that portion of the bulletin boards located in break rooms for posting union related materials as provided above.

9. About the following dates, Respondents, by Wayne Cassard (Cassard), via email to the Union, informed the Union that bargaining updates provided by the Union to Cassard to be posted to the Union's bulletin boards at Respondents' facilities violated the Agreements and would be removed:

(1) August 9, 2016;
(2) October 7, 2016; and
(3) October 20, 2016.

10. About October 3, 2016, Respondents, by Cassard, via email to the Union, informed the Union that bargaining updates provided by the Union to Cassard to be posted to the Union's bulletin boards at Respondents' facilities violated the Agreements and instructed the Union not to post the updates.

11.(a) About February 19, 2017, Respondent Valley increased the wages of its employees in the Valley RN Unit.

(b) About March 19, 2017, Respondent Desert Springs increased the wages of its employees in the Desert Springs RN Unit and the Desert Springs Technical Unit.

(c) Respondents engaged in the conduct described above in paragraphs 6(a) through 6(h), 6(j)(1), and 7(a) through 7(b) without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements.

(d) Since about January 31, 2017, the Union has requested, in writing, that Respondent Valley furnish the Union with the following information pertaining to employees in the Valley RN Unit: employee job classification, name, address, telephone number(s), email or other electronic address, and department where employee works.

(e) Since about January 31, 2017, Respondent Valley failed and refused to furnish the Union with the information requested by it as described above in paragraphs 7(f) and 7(g).

(f) About February 17, 2017, Respondent Valley withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Valley RN Unit.

(g) Since about February 17, 2017, Respondent Valley failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Valley RN Unit.

(h) About March 12, 2017, Respondent Desert Springs withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Desert Springs RN Unit.

(i) Since about March 12, 2017, Respondent Desert Springs failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Desert Springs RN Unit.

(j) About March 18, 2017, Respondent Desert Springs withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Desert Springs Technical Unit.

(k) Since about March 18, 2017, Respondent Desert Springs failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Desert Springs Technical Unit.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondents are two acute care hospitals in Las Vegas – Valley Hospital Medical Center (Valley) and Desert Springs Hospital Medical Center (Desert Springs Springs) (together the "Hospitals" or "Respondents"). They are part of the Valley Health System which owns and operates the hospitals. Universal Health Services (UHS) owns and operates Valley Health System (VHS). Service Employees International Union, Local 1107 ("the Union") represented employees in three separate bargaining units

composed of nurses at Valley (the Valley RN Unit), nurses at Desert Springs (The Desert Springs RN Unit) and technical employees at Desert Springs (the Desert Springs Technical Unit). The Union was certified as the representative of Desert Springs nurses and technical employees in October 1994, and Valley nurses in July 1999. On April 30, 2016, the collective-bargaining agreements (CBAs) for the Desert Springs RN Unit expired, and on May 31, 2016, the CBAs for the Valley RN unit and Desert Springs Technical Unit also expired. Upon the expiration of these agreements the union and the Respondents began successor negotiations for all three bargaining units.

1. Respondents Unilaterally Stop All Dues Deductions

The parties' expired CBAs contained provisions for dues deductions if in fact employees authorized such. (GC Ex. 12, 13, 14). Nevertheless, on September 4, 2016, Respondents through their counsel Thomas Keim (Keim) sent the Union a letter informing it that the Respondents would cease deductions beginning Friday September 23, 2016. The letter citing Section 302 of the "LMRDA" asserted that the form was "missing explicit language required" by the statute. (Resp. Exh. 22). The letter further noted:

> "Section 302(c)(4) provides that employers are authorized to make dues deductions as long as the employees authorization shall not be revocable for a period of more than one year, or beyond the termination of the applicable collective agreement, whichever occurs sooner." Therefore our conclusion is that we are not properly authorized to make dues deductions for dues based on the missing language concerning the expiration of the applicable collective agreement. (Resp. Exh. 22).

The letter advised that Respondents had, "reviewed a sampling of employee dues authorizations submitted over the last 6 months and none of the authorizations contain the statutorily mandated language and invited the Union to provide it with any authority to establish that the authorization complied with the statutory requirements." (Resp. Exh. 22).

The dues deduction authorization cards referenced in the letter contained the following language:

> This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice to both the Employer and the Union by registered mail during a period from October 1-15 on each year of the agreement and shall be automatically renewed as an irrevocable check-off from year to year unless revoked as hereinabove provided, irrespective of whether I am a Union member. (Resp. Exh. 1).

In keeping with Respondents invitation, the Union on September 15, 2016, responded to Keim's letter. It began by noting that the "LMRDA" section cited by Respondents did not apply to union dues deduction. Then citing Section 302(c)(4) of the LMRA took the position that, "nothing in Section 302(c)(4) of the LMRA requires that the dues authorization from (sic) expressly state that the dues deduction shall not be revocable for a period of more than one year or beyond the termination date of the applicable collective bargaining agreement, whichever is sooner. Section 302(c)(4) only requires that the employer (Desert Springs and Valley) receive a written assignment for dues and that it not be revocable for a period of more than one year or the term of the collective bargaining agreement." (Resp. Ex. 23). The union further elaborated on its position by noting that, "Desert Springs and Valley have received the required written assignments signed by bargaining unit employees and they have the language that it is not revocable for a period of more than 1 year. In addition, each of the collective-bargaining agreements provide for the payroll deduction or union dues is applicable "during the life of the Agreement." (Resp. Exh. 23).

On September 19, 2016, Keim responded to the union by reiterating Respondents' contention that it did not have valid employee assignments to deduct dues. Keim set forth its position that refusal to deduct dues, "based on an invalid authorization is not a unilateral change." (Resp. Exh. 24). Keim also attached sample dues assignment forms of other labor organizations which it viewed as valid. (Resp. Exh. 24).

On September 20, 2016, Dana Thorne sent a letter to all bargaining unit nurses at Valley Hospital advising them that effective September 23, 2016, union dues would not be deducted unless the Hospital received valid dues authorization. (GC Exh. 29). The letter reiterated Keim's position that the authorizations were invalid stating, "although you may resign from the union at any time, the only time you can stop paying dues is within the once yearly opt out period. Upon review of the SEIU Local 1107 payroll deduction authorization, the Hospital has discovered that the authorization lacks specifically required language from the law." (GC Exh. 29). Attached to the letter was a notice in question and answer format advising employees of :1) the purpose of the notice, 2) why it was happening, and 3) what is a valid authorization for the deduction of union dues. This notice set forth plainly what Respondents viewed as the defect in the authorizations namely, "the current authorization does not contain the statutorily required language concerning the ability to revoke the authorization at the termination date of the Collective Bargaining Agreement." (GC Exh. 29 p. 2). On September 20, 2016, Wayne Cassard sent the identical letter to all Desert Springs employees in both the nursing and technical bargaining units. (GC Exh. 16).

On September 22, 2016, the Union responded by asserting that the Respondents were engaging in a unilateral change and demanded that the employer bargain over the change before Respondents stop deducting dues. (Resp. Exh. 25).

On September 23, 2016, Respondents ceased deducting dues for all bargaining unit members without engaging in any bargaining with the union over the matter.

(a) Respondents Unilateral Action was unlawful.

Section 302 (c)(4) makes it a crime for an employer to give payments to a union but makes an exception for dues check-off authorizations. The exception is set forth as follows:

> That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner. 29 USC Section 186(c)(4).

Respondents rely on a brief submitted by the General Counsel in *Stewart v. NLRB,* 851 F. 3d 21 (D.C. Cir. 2017), to support its position. However, in view of the fact that the court did not openly adopt the referenced position in that case and instead

remanded the matter back to the Board, I decline Respondents invitation to rely upon the brief or its rationale in reaching my conclusions. (Resp. Br. at 66–70).

While some of the questions in the case remain murky, courts have provided some useful guidance in addressing the questions presented. For example, in *Local Joint Executive Board of Las Vegas v. NLRB*, 657 F.3d 865 (9th. Cir. 2011), the court specifically referenced Section 302(c)(4) in finding:

> We see nothing in the NLRA that limits the duration of dues-check offs to the duration of a CBA in the absence of union security. Moreover, other statutory provisions suggest the opposite. For instance, the Labor–Management Relations Act provides that "a written assignment [for dues-check off] shall not be irrevocable ... beyond the termination date of the applicable collective agreement." 29 U.S.C. § 186(c)(4). This provision would be surplusage if Congress believed that dues-check off automatically terminated upon the expiration of a CBA. See *Northwest Forest Resource Council v. Glickman*, 82 F.3d 825, 834 (9th Cir.1996) ("We have long followed the principle that '[s]tatutes should not be construed to make surplusage of any provision.'") (citation omitted).
>
> Accordingly, we conclude that in a right-to-work state, where dues-check off does not exist to implement union security, dues-check off is akin to any other term of employment that is a mandatory subject of bargaining. Because each affected employee individually requested dues-check off, the Employers' actions in this case were an unlawful termination of a bargained benefit to employees, not merely the cessation of a provision that automatically terminated along with the CBA and union security. The Employers' unilateral termination of dues-check off in this case was thus "in effect a refusal to negotiate ... which reflect[ed] a cast of mind against reaching agreement." Katz, 369 U.S. at 747, 82 S.Ct. 1107. In ceasing dues-check off without bargaining to impasse, the Employers therefore violated section 8(a)(5) of the NLRA.

Worth emphasizing in the court's decision is the important point that dues authorizations are "individually requested." In this case, the evidence is undisputed that no individual requested termination of dues nor is it disputed that the collective-bargaining agreement's language afforded them the right to do so after termination. Respondents merely looked at a sample of authorizations and cancelled all "individually requested" authorizations. Current Board law does not appear to mandate changes in dues check off forms upon expiration nor do they appear to privilege Respondents to unilaterally cease dues deductions that are ambiguous regarding the applicable revocation periods. (Cp. Br. at 49). In this case, as in *Local Joint Executive,* the dues authorizations didn't automatically terminate upon contract expiration but remained valid. The only thing that changed upon expiration is the employees gained a right to terminate dues check off at will. *Big V Supermarkets*, 304 NLRB 952 (1991). A right which they individually, and not the Respondent, acting on their behalf could exercise. As noted by the Board in *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015)[1]:

> An employer's unilateral cancellation of dues check off when a collective-bargaining agreement expires both undermines the union's status as the employees' collective-bargaining representative and creates administrative hurdles that can undermine employee participation in the collective-bargaining process. Cancellation of dues check off eliminates the employees' existing, voluntarily-chosen mechanism for providing financial support to the union. By definition, it creates a new obstacle to employees who wish to maintain their union membership in good standing. This is significant, because employees who fail to take proactive steps to maintain their membership in the face of this new administrative hurdle lose their right to participate in the union's internal affairs, including matters directly related to the negotiations, such as the choice of a bargaining team, setting bargaining goals, and strike-authorization and contract-ratification votes. Such a change also interferes with the union's ability to focus on bargaining, by forcing it to expend time and resources creating and implementing an alternate mechanism for dues collection during a critical bargaining period. Finally, an employer that unilaterally cancels dues check off sends a powerful message to employees: namely, that the employer is free to interfere with the financial lifeline between employees and the union they have chosen to represent them. Because unilateral changes to dues check off undermine collective bargaining no less than other unilateral changes, the status quo rule should apply, unless there is some overriding ground for an exception. As the *Katz* Court observed, an employer's unilateral change "will rarely be justified by any reason of substance." 369 U.S. at 747. We see no such reason here.

It is well settled that dues check off relates to wages hours and terms and conditions of employment and is a mandatory subject of bargaining. *Tribune Publishing Co.*, 351 NLRB 196 (2007). It is undisputed that the union demanded that Respondents bargain over the dues cessation, but Respondents refused. Accordingly, I find that this failure to bargain violated Section 8(a)(5) of the Act.

2. The October 11, 2016 Incident in the Desert Springs IMC Break Room

On October 3, 2016, Lanita Troyano, a union official, sent Wayne Cassard, the System Director for Human Resources, an email advising him that the union would post the flyer that was attached to the email. (GC Exh. 18). Cassard responded by advising in part that the flyer, "violates the contract you are not to post at the facilities." (GC Exh. 18). Troyano responded by advising, "we respectfully disagree and object to any removal of the flyers." On October 7, 2016, Troyano sent another email to Casard advising him that the union intended to post the flyer attached to the October 7 email at both Desert Springs and Valley Hospital. (GC. Ex. 19). Cassard responded to the email by stating, "we do not authorize and will remove them." (GC 19). On

[1] *Lincoln Lutheran of Racine* unequivocally overruled *Bethlehem Steel*, 136 NLRB 1500 (1962), remanded on other grounds sub nom. *Shipbuilding v. NLRB*, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964). In doing so, the Board specifically found that, "requiring employers to honor dues-check off arrangements after contract expiration serves the Act's goal of promoting collective bargaining, consistent with longstanding Board precedent proscribing post contract unilateral changes in terms and conditions of employment." Id. at 188.

October 11, 2016, Union Representatives Randall Peters and Amelia Gayton entered the Desert Springs IMC break room for the purpose of posting flyers. The two flyers included the flyer referenced in Troyano's October 7, 2016, email and another related to the union's upcoming fall festival. (Tr. 565). Peters approached the union bulletin board and began posting the flyers. He and Gayton also placed a stack of flyers on the breakroom table. After posting the information, he was approached by Charge Nurse Bill Healy who asked if the flyers were approved. Peters advised that it was in fact, "fully approved." (Tr. 370). Healy thereafter said he would check and left the room. Healy contacted Desert Springs Nursing Director, Carol Dugan complaining that, "they were laying a bunch of stuff on the table." (Tr. 656).

Dugan and Elllie McNutt, the Desert Springs Chief Nursing Officer together went to investigate. Upon arrival, the conversation became heated with Duggan telling Peters and Gayton that there were "too many people in the break room, you shouldn't be in here." Gayton and Peters insisted that they had the right to post flyers. Dugan advised she was going to call security. Gayton called Toyano on her cell phone and put her on speakerphone so that Duggan, "could back down a little bit because she was yelling and screaming." (Tr. 567). Gayton held the phone while Troyano and Duggan spoke. McNutt called Cassard who arrived shortly thereafter with two security guards. Cassard reviewed the two flyers that were on the table. (Tr. 916). Peters and Gayton were asked to step out of the break room and wait in an office next door to the break room while Casard and Dugan discussed the matter. Before leaving Duggan took the flyers off the bulletin board and collected the ones that were on the table. (Tr. 372). After discussing the matter, Cassard advised Peters and Gayton that they could post the one flyer but not the other. After being told that only one of the flyers had been approved, Peters and Gayton returned to the break room to post the approved flyer and replaced those flyers that had been removed from the table with a copy of the one that was approved. (Tr.569, 570). After the posting of the approved flyer, all of the involved parties left the break room without further incident.

A few weeks later, Cassard on October 25, 2016, sent an email to his supervisors advising supervisors to "take down the attached flyer if the (sic) attempt to post or leave in the break room." (Resp. Exh. 11). This flyer was different than the flyer Gayton and Peters attempted to post and dealt with the issue of raises. At no time did the Hospitals ever file any grievances related to the union's literature.

(a) Duggan's Confiscation of Union Literature

The Board has held that credibility issues may be resolved with reference to the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole. *RC Aluminum Industries*, 343 NLRB 939 fn. 1 (2004). It is important to note regarding the October 11, 2016, incident that the above factual findings involved the analysis and synthesis of multiple conflicting versions of events. The factual findings and the crediting of witness testimony related to the events rests upon the comparison of the various versions of events in an effort to discern based upon the totality of all of the evidence what actually transpired.

It is well established that confiscation of union literature can violate Section 8(a)(1) of the Act. See *Photo Sonics,* 254 NLRB 567 (1981), *New Processes*, 290 NLRB 704 (1988), *NCR Corp*., 313 NLRB 574 (1993), and *Manor Care of Easton, PA LLC*, 356 NLRB 202 (2010). I find that Dugan, one of the Hospital's highest level managers, the Director of Nursing, confiscated union literature that she knew was union literature and did so because it concerned union matters. I also find that such conduct was done not for any general housekeeping reasons but for the express purpose of precluding employees from receiving the union's messaging. Thus, I find that the taking of literature interfered with the employees' Section 7 rights to be informed of the union's message and violated Section 8(a)(1) of the Act. See *Ozburn-Hessey Logistics, LLC* 357 NLRB 1632 (2011) *Healthbridge Management, LLC*, 360 NLRB 937 (2014), holding that in removing flyers "Respondent improperly acted to censor what could and could not be told by the union that Represented them." I also find that in confiscating the literature, Desert Springs failed to bargain with the union over this conduct or the effects of the conduct in violation of Section 8(a)(5) and (1).

(b) The Hospitals Prior Approval Requirement and the Removal of Other Union Literature.

The complaint also alleged that bargaining updates were removed on various dates. (GC Exh. 1. (pp)6(a)-(d)). Respondents admit in their answer that on August 9, 2016, October 3, 7, and 20, 2016. Wayne Cassard via email informed the union that bargaining updates provided by the union to Cassard to be posted to the union's bulletin boards at Respondent's facilities violated the CBA and would be removed. (Resp. Answer p. 5). It is also undisputed that on various occasions predating the dates of the allegations in the complaint, the union repeatedly objected to the hospitals requirement of prior approval. In an email on May 24, 2016, Troyano specifically informed Cassard, "the contract does not require your approval of this flyer or any other postings made by the union. The contract only requires that we deliver a signed copy of the material being posted." (Resp. Ex. 10). At issue is the language in the CBA which proved that, "any materials being posted and signed by the union representative responsible for the posting and a copy of the material being posted will be hand delivered to the Human Resources Administrator prior to posting. No material which contains personal attacks upon any other member or any other employee or which is critical of the hospital, its management, or its policies or practices will be posted." (Resp. Ex. 2).

(c) The Removal of Literature and Prior Approval Requirement Violated the Act.

The contract language did not define the terms "critical of the hospital, its management or its policies or practices." The contractual language did not on its face reserve the right of the hospital to make the determination of what could posted on a preapproval basis or what could be unilaterally removed. It is not difficult to imagine that nearly any pro-union posting could be characterized and viewed as being "critical of the hospital." In this regard, the application of the terms of the CBA as license for the hospital to approve any posting has the practical result of

giving the hospitals unfettered censorship of the union's message. A telling example of this is the flyer which Cassard in his email of October 25, 2016, advises all supervisors to remove. (Resp. Ex. 12 p. 2). The flyer attached and submitted by Troyano sets forth the union position regarding pay raises. It attempts to communicate the Union's position that the Union requested a 4 percent pay raise but that the employer was "dragging its feet." (Resp. Ex. 12 p. 5). Wages and communication about wages is at the heart of the union's responsibilities in representing employees and unfettered censorship of those types of communications violates the Act. The Board has repeatedly held that having established a bulletin board "the employer is not free to regulate its use selectively or disparately." *Roll & Hold Warehouse Distribution Corp*. 325 NLRB 41, 51 (1997), see also *NLRB v. Magnavox*, 415 U.S. 322 (1974). Respondent did not otherwise make a showing that the postings that it required pre-approval for on the dates in question were "personal attacks." I am also not persuaded by Respondents assertions that past practice gave it license to require pre-approval when in fact, as noted above, the union objected to such practices. (Resp. Ex. 11). Accordingly, I find that the practice of requiring pre-approval and the denial of the authorization to post union materials on August 9, 2016, October 3, 7, and 20, 2016 tended to have a "chilling and coercive effect" on the exercise of employee rights under Section 7 and violated Section 8(a)(1) of the Act.[2]

3. Interference with Union/Employee Contact

In an October 25, 2016, email Cassard advised Supervisors that the Union would be visiting break rooms and that:

> The Union should not have any more than 2 collective bargaining unit employees with them at a time in the break room, cafeteria, lobby and other outdoor break areas. If you see more that 2 collective bargaining employees with the Union, you can disrupt the meeting and ask the employees to return to work or if not on break to return to their unit. Also, please note that no more than 2 Union representatives may meet with individual nurses. (Resp. Exh. 11).

In January of 2017, Dana Thorne, the Human Resource Director of Valley sent similar instructions via email to supervisors advising them that union representatives were not to be talking to more than two nurses at a time. (Tr. 256).

On January 27, 2017, Union Representative Romina Loreto and organizer Gloria Madrid visited Valley Hospital's emergency room break room prior to the 7 p.m. shift change. While there, Loretto began discussing the latest bargaining update with three nurses who were sitting at a table in the break room. When it was time for the shift change briefing both Loretto and Madrid stepped out of the break room and waited. The briefing that evening was conducted by Charge Nurse, Shawn Melley. After the briefing, and as Loretto and Madrid were leaving, Melley approached them, identified himself, asked them their identities and whether they were affiliated with the union. The both identified themselves and acknowledged they were in the break room on behalf of the union. Melley then advised them both that they were only allowed in certain places in the hospital and could only to talk to one or two nurses at a time. (Tr. 281). Lorreto disputed this asserting that she was entitled to talk to more than two pursuant to the terms of the collective-bargaining agreement.

Article 14 of, Section C of the CBA provided:

> The hospital shall allow duly authorized representative of the Union to visit the hospital to ascertain whether a provision of the Agreement is being observed, to assist in adjusting grievances, to confer with individual bargaining unit employees, to participate in committees and to facilitate patient care and staffing committee studies. (GC Exh. 12, p.22).

(a) Employer Interference Violated the Act

Nowhere in the CBA was there a restriction regarding numbers of employees who could be spoken to at any particular time. There is no dispute that not only did Melley advise union officials that they could only talk to up to two nurses but Cassard openly directed supervisors to "disrupt" union employee gatherings of more than two bargaining unit employees. (Resp. Exh. 12). This openly stated policy of disruption tended to interfere with the contractually granted right of access of Article 14. It was also a unilateral change of a material condition of employment, and tended to interfere with the representational process. See *Frontier Hotel and Casino*, 309 NLRB 761 (1992), also finding similar conduct, "a direct coercion and restraint of employees who were engaging in the union activity of conversing with their bargaining representative." Applying the reasoning and rationale of *Frontier Hotel*, I find that Valley unlawfully restricted union representative access to bargaining unit members in violation of Sections 8(a)(5) and (1) Act.

4. The February 2, 2017 Orientation

On February 2, 2017, Union Representatives Loretto and Natalie Hernandez showed up at Valley Hospital to participate in a union presentation for new employees. They arrived around noon but were told upon arrival by Nursing Project Manager, Kimberly Crocker that the meeting time had been changed and to return at between 2 and 2:30 p.m. The union presentations had previously been held at 12 p.m. but all including the February 2, 2017 presentation were changed to 2:15 p.m. by Dana Thorne in a series of emails sent to Troyano. (Resp. Exh. 13, 14). Around 2:10 p.m. Loretto and Hernandez noticed approximately 10 people exiting.[3] They approached those exiting to inquire whether they were on lunch break or whether the orientation was over. They were told that the orientation was finished. Loretto thereafter approached Crocker to question her as to why they were told to return at 2:15 when the orientation finished earlier. (Tr. 284, 814). Crocker responded by telling Loretto that there were two nurses in the orientation and they didn't want to wait around until for the presentation. She also indicated that there wasn't anything she could do about it. (Tr. 285).

[2] General Counsel also alleged in paragraph 6(d) that Lori Reynolds removed materials. The matter was not actively litigated, not specifically referenced in General Counsel's Brief and there is insufficient factual basis to support the allegations in this paragraph and therefore these allegations are dismissed.

[3] There was some discrepancy in the testimony of all three regarding the actual time the meeting ended. There is no dispute however regarding the more important fact that the meeting terminated prior to the time Crocker advised the union officials to return.

Article 14 provided in relevant part that "the Union would be granted access to new employee orientations for the purpose of a fifteen (15) minute talk regarding the Union and the distribution of union information packet to all bargaining unit eligible employees." (GC Exh. 12).

(a) The Failure to Grant Union Access to new Employees Violated the Act.

There is a degree of discourtesy in a person knowing individuals are waiting to present to employees and purposefully terminating a meeting before their return (presumably in the hopes that the union officials would arrive to an empty room). What Crocker didn't factor in her calculation apparently is that the union officials would wait the entire time nearby within view of the meeting. A similar discourtesy is evident in Crocker walking out of the meeting without, on her own initiative, seeking out the union officials. Instead they had to approach other employees, and eventually her, to understand what was transpiring. Lastly, knowing that the union officials had been standing by waiting and without at least giving the union officials an opportunity to introduce themselves to employees is evidence that her actions of dismissing the employees without giving the union officials any opportunity to even introduce themselves was intentional. Although Crocker testified that she was told by the employees that they didn't want to stay, I find that dismissing the nurses before the Union had an opportunity to address them was not in compliance with the hospitals obligations under Article 14 of the CBA. Given the level of discourtesy in Crocker's actions, I do not credit her testimony that new nurses didn't want to stay as it appeared to be a convenient and self-serving attempt to justify her planned and seemingly purposeful attempt to thwart the union's contractual right to address the employees and violated Sections 8(a)5 and (1) of the Act.

5. The February 15, 2017 2-East Break Room Incident

On February 15, 2018, Union Representative Hernandez and union volunteer and former employee Katrina Alvarez stopped by the 2-East break room to distribute flyers. While Hernandez was posting flyers, Alvarez struck up a conversation with three nurses that were present. Also present were other non-bargaining unit members who were close by and may have been listening to the conversation. Dugan walked past the break room recognized Alvarez opened the door and said, "excuse me there are unrepresented employees in the room. And I request that you wait until they leave—finish their break and leave." (Tr. 651).

Dugan testified that she saw Alvarez talking to nonunion members and as she described "holding court." I however don't credit her testimony. It is logically inconsistent that she would have seen the conversation but only mentioned that they were present in the room in her attempt to break the meeting up instead of confronting Alvarez directly and stating that she was not allowed to speak with unrepresented employees. Nevertheless, Alvarez responded that they had the right to speak with union members. After hearing Dugan, two of the nurses involved in the union conversation abruptly left the room. (Tr. 326, 346, 348). Dugan responded by telling them to get out and threatened to call security on them. (Tr. 326, 346). Neither Alvarez nor Hernandez left and continued speaking with a nurse who remained in the break room. (Tr. 327, 346).

(a) Duggan's Actions Violated the Act

The CBA contained a provision that limited access to union official business and precluded the union from efforts to "engage in union organizing activity, solicit, or distribute literature to non-bargaining unit employees." (GC Exh. 13). The CBA however did not specifically limit conversations with bargaining unit members in the break room when other non-bargaining unit members happen to be present. Respondent's implied assertion that since the conversation was limited to less than a minute and because no employee was "barred" there was no inherent harm in Dugan's actions. I disagree. The actions of Dugan had a real time chilling effect on the exercise of Section 7 rights of the employees who abruptly left. Moreover, Dugan's imposing of this unilateral change and restriction violated Section 8(a)(5) and (1) of the Act.

6. The January 31, 2017 Union Request for Information

On January 31, 2017, the union sent a request for information to the Respondents asking for the following information:

> An updated list of all current employees in each bargaining unit at Desert Springs Hospital and Valley Medical Center. The list must contain the employee job classification, name, address, telephone number(s), email or other electronic address and the department where the employee works. Please provide this updated information no later than February 6, 2017. (GC Exh. 21).

On February 6, 2017, Respondents counsel Keim responded by indicating that:

> The requests are similar to requests made by the Union on December 7, 2016, requesting a response by December 30, 2016. Wayne Cassard timely responded to those requests. The January 31, 2017, requests seek additional information including employees' cell telephone numbers and personal e-mail addresses. Of greater concern is the Union's requested date for providing the information which is February 6, 2017. The Hospitals will work on providing the information, but will not meet the deadline which we believe is unreasonable. (GC Exh. 34)

On February 6, 2017, 36 minutes after receiving Keim's response, the union asked,"what date do you propose to get us the requested information?" (GC Ex. 34). Keim did not respond to the union's inquiry. On February 17, 2017, Valley withdrew recognition of the union. At no time prior to the withdrawal did Valley provide the requested information.

(a) The Duty to Provide Information

If an employer fails to provide the union with requested information that is relevant to the union's proper performance of its collective-bargaining obligations, it violates Section 8(a)(5) and (1) of the Act. *Leland Stanford Junior University & Service Employees Local No. 715, SEIU*, 262 NLRB 136, 138 (1982) (citing *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979)). An employer is obligated under the Act to provide requested information that is relevant to the union's responsibilities regarding both administration and enforcement of an existing collective-bargaining agreement. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). The relevance of any request is ascertained by analyzing the information request against a liberal "discovery"

standard of relevance as distinguished from the standard of relevance in trial proceedings. *NLRB v. Acme Industrial Co*., 385 U.S. 432 fn. 6 (1967). The discovery standard for relevance is construed "broadly to encompass any matter that bears on or that reasonably could lead to other matter[s] that could bear on, any issue…" *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978); *Hickman v. Taylor*, 329 U.S. 495 (1947). The information doesn't have to be dispositive of the issues between the parties; it only has to have some bearing on it. Thus, an employer must furnish information that is of even probable or potential relevance to the union's duties. *Pfizer Inc*., 268 NLRB 916 (1984); *Conrock Co*., 263 NLRB 1293, 1294 (1982).

(b) Relevance

The evidence of record establishes, and I find, that the contact information sought by the union including the employee job classification, name, address, telephone number(s), email or other electronic address and the department where the employee works are basic, simple and fundamentally related to the performance of the union's statutory duties and thus presumptively relevant. *Harco Laboratories, Inc*., 271 NLRB 1397 (1984).

(c) Respondent's Contentions

There is no dispute that Valley failed to furnish the information sought. This is true despite the fact that the information was readily available to it and could have been compiled with relative ease. The Respondent's duty was to provide the information sought yet it chose to simply ignore the union's request. This is borne out in Keim's failure to respond to the union's inquiry regarding when it could expect the information and the failure to engage internal hospital processes to comply with the request. (GC Exh. 34) (Tr. 694). Where simple, basic and presumptively relevant information is requested, the employer is required to furnish it in a timely fashion. *U.S. Postal Service*, 332 NLRB 635 (2000), *Capitol Steel and Iron Co*., 317 NLRB 809 (1995). Simply ignoring or "slow walking" the union's request at the critical time when a decertification effort was underway violated the employers duty to engage in "a reasonable good-faith effort to respond to the request as promptly as circumstances allow." *Goodlife Beverage Co*., 312 NLRB 1060, 1062 fn. 9 (1993). The duty to act in good faith requires "an honest effort to provide whatever information is required." *Decker Coal Co*., 301 NLRB 729, 740 (1991). The Respondent's "slow walking" and or simply ignoring the union's request for 17 days was a breach of its duty. In view of the fact that I have found the withdrawal of recognition unlawful, Respondent's is precluded from reliance upon such to support its contention that it had no duty to provide the information. See *Renal Care of Buffalo Inc.* 347 NLRB 1284 (2006). It is undisputed that Respondent failed to provide the requested information and in doing so its actions were in direct contravention of and in violation of Sections 8(a)(5) and (1) of the Act.

7. The Mandatory Meeting with Komeda

On or about January 27, and 31, 2017, petitions to decertify the Union as the representative of the Valley RN Unit were filed with the board. *Valley Hospital Medical Center Inc*., 28-RD-191978, 28-RD-192131. After the petitions were filed, Staff Vice President of Labor Relations Jeanne Schmid, and Wendi Reyes, Progressive Care Unit Director at Corona Regional Medical Center began conducting mandatory meetings with Valley nurses. The meetings were designated as "Act Training" with the goal of training to convince employees to vote against the union, communicate the hospital's "side," and to have employees make an "informed decision." (Tr. 747). Or as more subtly framed that the hospital "would prefer…welcome the opportunity to have a direct relationship…" (Tr. 748).[4]

Sue Komeda, a Valley RN was, in late July or early February of 2017, notified by her manager Johnny Candari, that she was required to attend a meeting. When she arrived, there were 10 to 11 other nurses from different floors already at the meeting. Presenting at the meeting were Schmidt and Reyes. The duration of the meeting was approximately 1-½ hours long. Various topics were covered in the meeting and described in relevant parts by Komeda as follows:

> Q - Okay. Now, I want to talk about what took place during this meeting. And you mentioned that Ms. Schmidt was conducting the meeting. Could you walk us through what it was that she was -- that she talked about?
> A -Well, she talked about how they -- she talked about how the administration did not want the Union in the Hospital anymore and that the bargaining was going on and that bargaining would go on and on and on and that while bargaining was going on, they would stretch it out to a long length of time and during that time, we would not get any raises. And that's about all I recall. (Tr. 525).
> Q - Okay. So when Ms. Schmidt was talking about the bargaining, could you tell us -- run through, to the best you can recall, exactly what she was saying about the bargaining between the Hospital and SEIU?
> A - She had an erasable board and she drew a line and it said -- and the line, she wrote next to -- or on the line, "Impasse." And then she wrote arrows up and down and she was saying, you know, that during all bargaining that -- how bargaining usually goes is that one set -- one side gives their -- what they want and the other side gives what they want and then they -- then they talk about it until, you know, they decide on -- on what it is, well, that the administration or the UHS side of it was not going to give anything unless they got something and they certainly weren't going to give anything unless they got everything that they wanted, and then they would extend this bargaining. She gave an example of a hospital in Philadelphia where they bargained and bargained and bargained for years and no one was getting any raises during all that bargaining and they would just bargain until impasse and they would eventually get what they wanted, which was to have no union. (Tr. 526)

[4] When the meetings were conducted, the Hospital's goal was to speak with all eligible voters and to that end the attendees were required to sign an attendance sheet. The General Counsel via subpoena requested the sign in sheets but Respondent failed to provide the records. Respondent admits that the sign in sheets existed but that after a search for them was not able to locate them. (Tr. 1115–1116). Counsel for the General Counsel requested that an adverse inference be drawn based upon the failure to produce the documents.

Q - Did she say anything about the market raises -- did she say anything else that you recall about that?
A - Just that if we didn't have a union, we would get them.
Q - Okay. And at the time were you -- did you have market value raises?
A - No. (Tr. 529).
Q - Okay. And what was it that you asked? What was your question?
A - Well, I -- I asked her -- what I really asked her was what the point of the whole meeting was.
Q - And did she respond?
A - Was to inform us on how to get rid of the Union and to --
Q - Okay.
A - inform us what benefits we would receive from getting rid of the Union. (Tr. 532).

Referring to Wedi Reyes, she testified that she didn't speak very much but that she did offer some commentary as follows:

> Well, she talked about that her -- the administration at her hospital wasn't doing a very good job of helping the employees out. And so what the hospital employees did was voted in a union. But then once the union got in there, they weren't happy with the union. So she had told them that they could vote the union out, and they did. So they voted the union out and then they got a better administration because better administrators only go to nonunion hospital -- yeah, only go to nonunion hospitals,that union hospitals were restricted in getting good administrators because those administrators could not do what they wanted to do. They had to go through the union. (Tr. 530).

(a) Valley's Mandatory Captive Audience Meeting was Coercive

At the outset it is important to set forth that I credit the testimony of Komeda as being truthful. I do so for a number of reasons. First, I had the opportunity to personally observe her testimony and although she did not record or videotape the meeting, she attempted to convey to what appeared to be the best of her ability the general ideas that were communicated to her in the meeting. I also credit her testimony because much of which she testified to was not directly controverted in the record as Schmid did not directly testify about the specific meeting in issue. Her testimony about what was generally said in "Act" meetings is insufficient to rebut Komeda's testimony about what was said at that particular meeting. As noted by the General Counsel in their brief, Schmid never directly denied telling employees at the Komeda meeting that they would receive wage increase if they did not have a union, that Valley wouldn't give up anything in bargaining unless it got everything it wanted, the hospital would drag out bargaining until the union relented, and that nonunion hospitals attract better administrators. (GC Br. 22–23). Thirdly, Valley's destruction of sign in sheets and the failure of Reyes to testify both warrant imposition of the adverse inference rule. The decision to draw an adverse inference lies within the sound discretion of the trier of fact. *Underwriters Laboratories Inc. v. NLRB*, 147 F.3d 1048, 1054 (9th Cir. 1998). In this instance, it is appropriate because without the information in the sign in sheets, the General Counsel was denied the ability to call other employees to testify not only about the Komeda meeting but other so called "Act" meetings. Regarding the failure of Reyes to testify, when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called, would have testified adversely to the party on that issue. Valley did not provide any explanation as to why Reyes did not testify, did not show that she was unavailable, and did not demonstrate other efforts to have her testify. Thus, I infer that if Reyes (or other witnesses on the sign in sheets) would have been called, their truthful version of events would have supported Komeda's version. See *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable witness regarding factual issue upon which that witness would likely have knowledge gives rise to the "strongest possible adverse inference" regarding such fact); *Martin Luther King Sr. Nursing Center*, 231 NLRB 15, 15 fn. 1 (1977) (adverse inference appropriate where no explanation as to why supervisors did not testify); accord *Graves v. United States*, 150 U.S. 118, 121 (1893) ("if a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable").

(i) Schmid's Promise of a Wage Increase Violated the Act.

An employer violates Section 8(a) (1) when it promises, either explicitly or impliedly, improved benefits contingent on employees giving up union representation. See *Bakersfield Memorial Hospital*, 315 NLRB 596 (1994). Similarly, an employer violates Section 8(a)(1) when it threatens that benefits will not be available if the employees are represented by a union. See *Libbey-Owens-Ford Co*., 285 NLRB 673 (1987). In this context, the burden is upon the General Counsel to establish by a preponderance of the evidence the existence of an unlawful promise of benefits or threats of the unavailability of benefits. *Wild Oats Markets*, 339 NLRB 81 (2003).

I find, relying on Komoda's credited testimony, that the General Counsel has met its burden. Schmid's statements, in essence that Valley would not provide any raises in a bargaining context as well as the clear inference that the only way to get a raise would be to get rid of the union on their face, fall within the realm of what the Board has found to be unlawful in both *Bakersfield Memorial Hospital* and *Libbey Owens Ford.* I therefore find that the promised wage increase violated Section 8(a)(1) of the Act.

(ii) Schmid's Expression of Futility Violated the Act

An employer violates the Section 8(a)(1) of the Act if it conveys to employees the futility of union representation. *E.I. DuPont de Nemours*, 263 NLRB 159, (1982), *Kona 60 Minute Photo,* 277 NLRB 867 (1985), *Overnite Transportation Corp*., 296 NLRB 669 (1989), *Hi Tech Cable Corp*., 318 NLRB 280 (1995). I find that a reasonable employee hearing Schmid's suggestion that the hospital wasn't going to give anything unless they got everything that they wanted, and then they would extend this bargaining would conclude that representation was not only futile but would result in potentially never receiving any wage

increase if represented by the union. The statements also in their very essence communicate what amounts to an underlying willingness or threat to bargain in bad faith. Accordingly, I conclude that Schmid's expression of futility violated Section 8(a)(1) of the Act.

(iii) Reyes' Statements Also Violated the Act

Reyes' statements conveyed the benefits of decertification including the view that hospitals with unions resulted in substandard administrators and by implication inferior working conditions. Her statements must be viewed in context of Schmid's other unlawful statements. Viewed from this perspective, her comments had the intended effect of discouraging the employees from supporting the union by directly promising better future conditions of employment specifically better administrators "because better administrators only go to nonunion hospital" without unions and thus violated Section 8(a) (1) of the Act.

8. Valley Withdraws Recognition from the Union

While the decertification effort was ongoing a Desert Springs hospital RN set up two online forms on the website "Typeform.com." One was set up for a Valley RNs and the other for Desert Springs. She also created flyers with "QR" codes and a Facebook page. Each form allowed for the entry of name, email address, telephone number, employer name, and a "yes/no confirmation to indicate whether the employee wished to be represented by the SEIU Local 1107. (Tr. 858–862, 865), (Resp. Exh. 28, 33). The forms did not include any form of electronic signature or other security feature to ensure that the person filling out the form was in fact the person whose name appeared on the form. After forms were completed and submitted, a copy was automatically sent to the email address richel.borg@gmail.com. Despite the email notifications there was no way to determine whether an email was in fact sent by the person whose name appeared on the form. Farese testified as follows:

> Q - And you don't have any personal familiarity with these emails prior to -- like the individual email addresses prior to you receiving these, correct?
> A - No.
> Q - So, for example, if I asked you John Arciaga's email address, could you tell me what his personal email address is?
> A - No.
> Q - So you don't know who sent these, correct?
> A - Correct.
> Q - You just know the name that's on each of these?
> A - Correct.
> Q - It could have been one person sending all of them and generating different email addresses, correct?
> A - In theory.
> Q - But you have no way of knowing?
> A - Nope.[5]

On February 17, 2017, Chief Nursing Officer of Valley Victoria Barnhouse met with Employees Richel Burog and Jennifer Yant. The meeting was to communicate with Barnhouse their belief that enough signatures and cards had been collected to support decertification. They handed over documents to her which consisted of photocopies of cards along with original inked signatures and 38 copies of the Typeform emails. (Resp. Exh. 27, 28). Barnhouse took possession of the materials and never asked any questions about the emails, visited the website Typeform.com, nor did she inquire or know for sure whether any of the emails were actually submitted by the employees whose names appeared on the forms. (Tr. 797, 798). In this regard she testified as follows:

> Q - But let's take, for example, the first one here. Respondent's 28, the very first page. There's a name on here. I might say it wrong --
> A - Yes, ma'am.
> Q - but it's Irene Dumlao (phonetic) Dumla (phonetic); is that right?
> A - I would say so, yes.
> Q - Okay. You don't -- when you looked at these, and even sitting here today, you don't know if Irene Dumlao had anything to do with this email that went to Ms. Burog; is that right?
> A - That's correct.
> Q - And that would be the same for all of these documents in here, right?
> A - Yes. (Tr. 798).

After receiving the materials Barnhouse, Schmid and Keim met in a conference room to sort count and alphabetize the materials. They then delivered the materials to Thorne who commissioned Nursing Project Manager Crocker and Annette Litton to split the cards between them and count them and compare signatures to signatures in employee personnel files. (Tr. 816, 832, 835). Neither has any special handwriting comparison expertise or training nor were either personally familiar with any of the employee signatures. (Tr. 825, 826, 844, 845). Each was given a list to check off against that purported to show who was employed at the time. (Resp. Ex. 29, 31). Litton concluded that there were 132 that could be verified. Crawford in her count concluded that there were 154 cards which could be verified. (Tr. 822). She testified that she identified two that could not be verified and asked Keim and Litton to review the cards but did not recall whether they were included in the count or not after the others reviewed them. (Tr. 269, 272). She (Tr. 822, 825), (Resp.

[5] The General Counsel and Charging Party vigorously objected to the hearsay content of the emails. The emails were admitted over counsel's objection with the proviso that whether or not every single one of the individuals who are purported employees of the hospital filled out the form was a matter that had yet to be determined as part and parcel of the ALJ authentication process. (Tr. 866–869). While there is no dispute that Farese received emails, there is no competent proof to contradict her own assertion that she could not determine who generated the forms or alternatively whether one person generated all of the forms. Regardless of whether the emails contained hearsay, the hospitals nevertheless relied upon them in their decision to withdraw recognition. With the benefit of a complete record, and the completion of the ALJ review process, it is clear that whether couched in terms of inadmissible hearsay or in terms of a failure of proof, the evidence of record clearly established that the emails are insufficient evidence from which to conclude that Respondents met their burden to establish that the emails were actually sent by the employees persons whose information appeared on them.

Exh. 30). Crocker and Litton counted the cards twice filled out the count sheet which was witnessed by Keim.

Keim counted the emails. Of the emails counted only 30 were counted to establish loss of majority status because there were duplicate cards. (Tr. 1049). As long as the phone number along with other information on the form but **not** the email address matched; or if the email address matched that of the employee, the Typeform email was counted.[6] (Tr. 1050, 1093).

According to the list that was printed, there were 534 employees in the Valley Unit. However, Keim used the figure of 533 after getting word that an employee had been terminated that day. (Tr. 1073) (Resp. Exh. 31). Despite the fact that the employee had been terminated and the number was subtracted from the total number of employees, it appears that the terminated employee was still counted as an employee who no longer wished to be represented by the Union. (Resp. Exh. 21, at 124, 27(a), at K1). Later that same day Respondent sent a letter to the Union notifying it of withdrawal of recognition and notified RN's of such through the distribution of a flyer.

(a) Valley Relied Upon Electronic Submissions That Did Not Establish Evidence of Actual Loss of Majority Support by a Preponderance of the Evidence.

In *Levitz Furniture Co*., 333 NLRB 717, 725 (2001), the Board articulated the current standard regarding withdrawal of recognition. In *Levitz,* the Board held that "an employer may rebut the continuing presumption of an incumbent union's majority status, and unilaterally withdraw recognition, only on a showing that the union has, in fact, lost the support of a majority of the employees in the bargaining unit." *Levitz*, 333 NLRB at 725. In so doing, the Board emphasized that an employer "withdraws recognition at its peril." Id. The employer bears the burden of proving by a preponderance of the evidence that the union had, in fact, lost majority support at the time of the withdrawal of recognition. If the employer fails, it will not have rebutted the presumption of majority status, and its withdrawal of recognition will violate Section 8(a)(5) of the Act. Under *Levitz*, an honest but mistaken belief that a union has lost majority support will not insulate a Respondent from liability.

In an attempt to meet its burden, Respondent relies upon email submissions that were delivered to it. There are many facts that are in dispute in this case however one undisputed fact stands out in the voluminous record. The undisputed fact is that there is no real evidence to establish that the emails that were counted were in fact submitted by the employees listed on the emails. The emails lacked electronic signatures and although Respondent made good faith efforts to verify by phone number or email, the undisputed evidence of record is that some or all of them could have been prepared by someone other than the person listed on the email. It is undisputed that presumably any person or persons with an employee roster (or and employee sign in sheet like those that were not produced) could have produced the email submissions. The Board has sanctioned the use of electronic communications in some instances (see GC-Memo 15-08) however; it has imposed strict requirements to ensure the integrity of the signatures requiring for example a written declaration or confirmation. (See GC Memo 15-08 (A) (2-3). No such safeguards were present here. There were also irregularities that were identified in the electronic submissions themselves. For example, approximately 55 of the email submissions for all the units did not match email addresses of employees in the hospital records or there was no email address in hospital records to compare to. (See GC Br. 75–77). Because of the failure to establish that the persons whose name appeared on the emails, actually were the same person that sent them, I find that Respondent failed to meet its burden to show actual loss of majority. In view of Respondent's failure to meet its burden regarding withdrawal of recognition, I find that Respondent violated Section (8)(a)(5) and (1) of the Act.[7]

(b) Valley Relied on Signatures Which Could Not Within a Reasonable Degree of Certainty be Authenticated

In accordance with FRE 901(b)(3), the Board has authorized the Administrative Law Judge to review signatures on cards in order to make some assessment regarding their genuineness and authenticity. See *Acme Bus Corp*., 357 NLRB 902 (2011), *Parts Depot Inc*., 332 NLRB 670 (2000) enfd. 24 Fed. Appx 1 (D.C. Cir. 2001). The General Counsel challenged 52 of the signatures that Respondent Valley relied upon in support of its withdrawal of recognition. (GC Br. at 69–71). I have carefully reviewed the signatures and compared the cards submitted to the signatures that appear in Respondent's personnel records. (Resp. Exh. 27 and 21). I agree in part with the General Counsel that some cards could not with any reasonable degree of certainty be determined to be genuine or authentic because of the variation between the signature on the card and that found in the personnel records. However, unlike the General Counsel, I do not find all 52 cards met this criteria. I find only the following cards fell into this category: Violeta Aguirre, James Aldridge, Meredith Barker, Lakeesha Blair, Arthur Catubaya, Savani Chettiar, Honk Kong Connolly, Afifa Dastagir, Lori Davis, Leoncio Del Castillo, Leslie Echols, Christine Edano, Michelle Elftman, Alfred Fonacier, Myung Han, Era Irlandes, Lisa Laurence, Jessica Mackey, Nicole McKay, Easterlyn Mendoza, Edward Nyame, Hayley Pelz, Lucinda Peterson, Ebony Towels, Paula Williams, and Carissa Young. (Resp. Exh. 27 A1, B1, B2, C4, C6, D2, D3, E1, F1, H1, I1, L1, M1, M3, M5, N3, P3, T2, W1, Y1). Accordingly, these 26 cards should not be counted for purposes of showing actual loss of majority. In addition, Valley relied upon a card for Timothy Mansfield that was dated after the withdrawal of recognition and should also not be counted. (Resp. Exh. 27 M1). The inescapable conclusion to be drawn from this evidence is that independent of the email submissions, if the above questionable cards are subtracted from the total, Respondent failed to meet its burden regarding withdrawal of recognition.

9. Valley Hospital's Wage Increase

On February 23, 2017, Valley sent a letter to all Hospital

[6] Schmid testified that emails were counted by simply comparing the name on the email with the name on the employee list provided by Thorne. (Tr. 74–76).

[7] Using Respondent's own figures regarding unit size and number of emails it counted, even (assuming for the sake of argument that all other cards were valid) once the emails are subtracted the count falls below the 267 required to show loss of majority support.

Medical Center Staff RN's advising them of an immediate wage adjustment. (GC Exh. 11). The pay adjustment was made effective February 19, 2017. The letter notified that each RN would "move to the level commensurate with his/her years of experience on the Valley Health system nonunion pay scale. It further provided that "every RN will receive something; the range of the adjustments are from 2 percent - 9 percent which were not based upon performance but were "market adjustments" to put nurses "on the VHS RN non-union market scale." The letter further noted that "as with all VHS nonunion hospitals, nurses will be eligible for a merit increase in July of 2017 ranging from 2.5 percent to 3.75 percent and RNs would be eligible for any other market adjustments implemented by Valley." (GC Exh. 11).

9. Unilateral Changes to Wages

Unilateral modification of wages or other mandatory subjects of bargaining can constitute a per se violation of Section 8(a)(5). In view of the fact that I have found that Valley's withdrawal of recognition was unlawful, it was not privileged to take unilateral action regarding wages (one of the most material and substantial subjects of bargaining) and in doing so violated Section 8(a)(5) of the Act. See *Southern Bakeries, LLC*, 364 NLRB No. 64 (2016) enfd. 871 F.3d. 811, 825 fn. 4 (2017), see also *Narricort Indistries, L.P.*, 353 NLRB 775, 776 fn. 11 (2009).

10. Decertification Efforts at Desert Springs - Mark Smith an RN from Corona Regional Medical Center in Corona, California Permitted Inside of Hospital to Solicit Decertification

In March of 2017, Mark Smith, although not an employee of Desert Springs Hospital was authorized by Desert Springs to solicit and collect decertification cards from employees. His stated purpose in going to Desert Springs was to "get rid of the union." (Tr. 498). He stayed in Las Vegas for 7 days and coordinated with Courtney Farese, who provided him with literature and a portable table. (Tr. 508). During his visit, he set up a portable table inside the hospital and stayed there during the shift changes. (GC Exh. 6). In between shift changes, he would set up in the cafeteria. The portable table had a sign that said, "Stop Unions" or "No Unions." (Tr. 507). At the time of his activities, Valley Hospital had in place a non-solicitation policy that provided as follows:

B. Non-Employees:

> 1. Solicitation by non-employees or distribution of non-Facility materials or literature by non-employees on Facility owned or leased property is prohibited at all times. The CEO, or his/her designee, must approve all fundraisers, hospital sponsored events, and the solicitation/distribution of literature by non-employees in the workplace.
> 2. Non-employees found soliciting and/or distributing literature on Facility property will be asked to leave the premises and may be charged with trespassing. (GC Exh. 22).

On March 6, 2017, Megan Bell, a Desert Springs employee arrived at the cafeteria to have lunch with Union Representative John Archer. (Tr. 442). While waiting for Archer to arrive she noticed Smith seated at his portable table who was dressed in a nurse uniform with a Corona Hospital ID badge. (Tr. 442). She approached Smith and asked what he was doing. He indicated that he was there "to get the union out of the hospital" and that he specifically told her "I'm here for UHS." (Tr. 443). UHS referring to United Health Services the parent company of Desert Springs. After approaching Smith, she sat back down to wait for Archer to arrive. Shortly after Archer arrived, he approached Smith and they began talking. Smith left his portable table and sat at a cafeteria table. Archer followed him moving to the same table where Smith was seated. (Tr. 445). Smith became irritated by Archer, left the cafeteria and called Farese on his cell phone and told her that he was being harassed. He returned with Schmid, CNO McNutt, Dugan and Security Guard Hank Castro. They approached Archer who credibly testified that he was seated at the cafeteria table and the following colloquy ensued:

> A - They walked up to the edge of the table and they -- Jeanne Schmid looked at me and says, you cannot sit there.
> Q - And what happened after she told you that?
> A - I asked her, I figured it was open seating and I should be able to sit there.
> Q - And what happened after you said that?
> A - I said, let's see, I asked -- I got up and I went over to the Union table and I got my notepad.
> Q - And what happened after you got your notepad?
> A - I asked her if she knew what Mark Smith was doing there.
> Q - And what was her response?
> A - She said she did not know what he was doing there and that it was none of her business.
> Q - And what happened after that?
> A - I asked if he had their permission to be there.
> Q - And what response, if any, did Jeanne Schmid give to that question?
> A - She said that he did not need her permission because he was an employee.
> Q - Okay. And what happened after that was said to you?
> A - She said in the future, you will not sit at the same table, you will not sit near Mark Smith.
> Q - Okay. Did anything happen after that?
> A - Well, the security guard kind of leaned in and said, am I going to have to babysit you two? (Tr. 411).

In a video recording of the incident Schmid (contrary to her testimony) openly tells Archer that he is "harassing" Smith. (Tr. 92–93). (GC Exh. 5). Smith thereafter moved to a different table. (Tr. 447).

The next day March 7, 2017, Desert Springs issued to employees a Bargaining Brief. The brief touted the raise that the nurses at Valley had received after Valley withdrew recognition. The bargaining brief contained the following language:

> On February 19, 2017, Valley was presented with signed, valid cards providing objective and indisputable evidence that the union had lost majority support of the nurses at Valley. The cards' signatures were verified against HR documents containing signatures of the signees. Because the union lost Majority status, Valley was required by federal law to withdraw recognition since SEIU no longer represented a majority of the bargaining unit. This is the only avenue available to staff when a union blocks an election scheduled by the NLRB. Despite what SEIU posts on its webpage, the hospital did not block the

election—the union did—the union was the one preventing Valley nurses from having their voices heard. (GC Exh. 4).

On that same day Smith returned to Desert Springs and set up a table near the entryway inside the main entrance. Archer also arrived and set up an information table. (Tr. 411). While Archer was setting up, employees stopped and spoke to him. At some point in time Archer noticed that Smith had a camera pointed in his direction and was recording him. He approached Smith and asked him to stop filming, advising him that he didn't want to be filmed. (Tr. 412–413). Smith responded with the comment "get over it" and in order to avoid a confrontation, Archer returned to where he was seated. (Tr. 413). Then Smith moved the camera and directed it again towards Archer. Later that evening Archer returned with Union Representative Barry Roberts who sat in stools in the main lobby engaging employees about the union during the shift change. Again, Smith began to film Archer and Roberts as they spoke to employees. (Tr. 384 414–415). Archer notified two security guards that Smith was filming them without their consent and after the security guards approached Smith he stopped recording. (Tr. 415).

The next day, March 8, 2017, Smith and Roberts both set up tables in the facility. Again, Smith filmed Roberts and employees who approached his table. Roberts moved to the cafeteria as did Smith and again Smith filmed him in the cafeteria as he spoke to employees. (Tr. 392).

(a) Smith was Vested with Apparent Authority to Solicit Support for Decertification

In addressing questions of agency, the common law rule traditionally applied by the Board is that of "apparent authority." *Allegany Aggregates Inc*., 311 NLRB 1165 (1993). The determination is whether under the circumstances, the employees would reasonably believe that the alleged agent was acting on behalf of management. *United Scrap Metal Inc*., 344 NLRB 467 (2005). The principal must intend to cause the third person to believe the agent is authorized to act on its behalf or should realize that its conduct is likely to create such a belief.

Applying this standard to the facts presented, I find that Smith was vested with, at the very least, apparent authority. There are numerous factors that support this conclusion. First Desert Springs expressly authorized Smith to solicit support for decertification in plain view in both the lobby and cafeteria. This is true despite its own written policies that prohibited solicitation by non-employees. Secondly, Desert Springs not only allowed Smith to solicit but also authorized this solicitation while dressed in a nurse's uniform wearing a hospital badge thereby bolstering the appearance of his legitimacy. High ranking management officials, including the Chief Nursing Officer, and the Director of Nursing openly authorized this solicitation in the cafeteria on March 6, 2017. Smith himself when specifically queried about his presence indicated he was "here for UHS." (Tr. 442–443). Smith was also given free meals while soliciting. All of these factors taken together establish that Desert Springs provided more than "ministerial aid" and would leave a reasonable employee to believe that Smith was acting on behalf of management. *Times Herald*, 253 NLRB 524 (1980). For its part, Desert Springs should have realized that its conduct was likely to create such a belief. Accordingly, the evidence supports a finding that Smith was acting as an agent of Desert Springs when he was soliciting support for the decertification effort. It is well settled, and I find that such conduct by Smith, Desert Springs's agent, taints the decertification effort and violates Section 8(a)(1) of the Act. See *Narricort Industries*., *L.P.* 353 NLRB 775 (2009).

(b) Smith Engaged in Unlawful Surveillance

The Board has long held that absent proper justification photographing or video-taping employees engaged in protected concerted activities violates the Act because it has a tendency to intimidate. *Waco, Inc*. 273 NLRB 746 (1984). Typically, in order to justify such photography or video-taping, Respondent must be able to point to misconduct or some reasonable objective basis to anticipate misconduct. *F.W. Woolworth Co*., 310 NLRB 1197(1993). The inquiry is whether the photographing has a reasonable tendency to interfere with protected activity under the circumstances. *Trailmoble Trailer, LLC* 343 NLRB 95 (2004).

There is no dispute that on at least three occasions, Smith video-taped union officials and employees who were speaking with union officials. The record is devoid of any reasonable objective evidence that the union officials who were engaging with employees were engaging in misconduct or that Smith had any reasonable objective basis to anticipate misconduct. Smith's testimony that he subjectively felt "harassed" is insufficient to provide such justification as purely subjective belief is insufficient. *Kingsbridge Heights*, 352 NLRB 6 (2008). Rather the standard requires some reasonable objective basis which in this case is completely lacking. I find that photographing of employees and union officials by Smith, who had been clothed with apparent authority to act on behalf of management, had a reasonable tendency to interfere with protected activity and therefore violated Section 8(a)(1) of the Act.

(c) Security Guard Castro Did Not Give the Impression of Surveillance

The test for determining whether an employer unlawfully creates an impression of surveillance is whether under the circumstances, the employee reasonably could conclude from the statement in question that his or her protected activities are being monitored. *Mountaineer Steel, Inc*., 326 NLRB 787 (1998), enfd. 8 Fed.Appx. 180 (4th Cir. 2001), see also, *Frontier Telephone of Rochester, Inc*., 344 NLRB 1270, 1276 (2005). The Board's view is that an employer "creates the impression of surveillance when it monitors employees' protected concerted activity in a manner that is "out of the ordinary" even if the activity is conducted openly noting that, "employees should not have to fear that "members of management are peering over their shoulders" taking note of their concerted activities. *Conley Trucking*, 349 NLRB 308 (2007).

The General Counsel's assertions regarding this claim revolve around the statement made by Castro inquiring whether he had to "babysit" both Smith and Archer. I disagree with General Counsel that the statement in and of itself would cause a reasonable employee to conclude that the security guard "intended to monitor employees protected activities." (GC Br. at 60). Rather, the statement addressed to both the agent of Desert Springs and the union official appeared to be merely a colloquial call for them to conduct themselves in a respectful manner. Accordingly, this allegation is dismissed.

11. Desert Springs RN Unit Withdrawal of Recognition

In early March 2017, in a similar course of events, the process of decertification began for the Desert Springs RN unit. As was the case with Valley Courtney Farese, a nurse at Desert Springs, set up an account for Desert Springs using the same Typeform.com website. (Tr. 861, 864). She publicized the online petition on a Facebook page, and distributed fliers with a link to the Facebook page and a QR scanner code that linked directly to the online petition. (Tr. 861, 862). This time she had the emails sent to her personal email address, courtneyfarese@gmail.com. (Tr. 861). As with the Valley online forms, there was no form of electronic signature or other security feature to ensure that the person filling out the form was in fact the person whose name appeared on the form. Nor did Farese have any personal familiarity with any of the individual email addresses listed on the emails she received from the online petitions. (Tr. 865, 875).

On March 12, 2017, Farese and two other employees presented McNutt a folder which contained decertification cards, and emails and a 4-page petition. (Resp. Exh. 33, 35, GC Exh. 7). McNnutt and Schmidt alphabetized the materials and culled out duplicates. (Tr. 208, 214). McNutt and Schmidt thereafter contacted Keim who met in a hospital conference room. Keim used a March 9, 2017 employee roster and used a yellow highlighter to mark which signatures needed to be compared to personnel files. (Resp. Exh. 38). Two employees assisted with signature review, Michele Crawford, Director of Business Development and Kent Forsythe, Director of Biomedical Engineering. (Tr. 940). Each took one half of the alphabet and compared cards to signatures from employees' personnel files. Crawford verified 62 cards and Forsythe 84. Forsythe set aside four cards which he could not verify. (Tr. (964, 968). Keim reviewed the cards and included them in the count. (Tr. 964, 967, 972). Keim reviewed the email submissions and used the same process to verify that he used for Valley counting submissions if the phone number **or** email address on the form matched hospital records. (Tr. 1092). Keim found three names that were not on the roster he was using and inquired of McNutt. McNutt verified the employment status of the employees. (Tr. 1070–1071). After completing the count, later that same day, March 12, 2017, Desert Springs notified the union and employees that it was withdrawing recognition of the Union. (GC Exh. 27).

(a) Desert Springs Relied Upon Electronic Submissions That Did Not Establish Evidence of Actual Loss of Majority Support by a Preponderance of the Evidence.

As I previously found regarding Valley's counting of emails, applying the same reasoning and rationale set forth above, I find Desert Springs failed to meet its burden to show actual loss of majority in its RN Unit.[8] In view of Respondent's failure to meet its burden regarding withdrawal of recognition, I find that Respondent violated Section (8)(a)(5) and (1) of the Act.

(b) Desert Springs Relied on RN Signatures Which Could Not Within a Reasonable Degree of Certainty be Authenticated

The General Counsel challenged 31 of the signatures that Respondent Desert Springs relied upon in support of its withdrawal of recognition. (GC Br. at 71–72). I have carefully reviewed the signatures and compared the cards submitted to the signatures that appear in Respondent's personnel records. (Resp. Exhs. 35 and 44). I agree in part with the General Counsel that some cards could not with any reasonable degree of certainty be determined to be genuine or authentic because of the variation between the signature on the card and that found in the personnel records. However, unlike the General Counsel, I do not find all 31 cards met this criteria. I find only the following cards fell into this category: Hollie Cato, Brandon Dabu, Elizabeth Santos, Matthew Gibson, Jennifer Labre-Go, Maria Lazo, Johnell Maralit, Jibran Miller, Benjamin Ritchie, Kelley Tuminaro, Kevin Virtusion, Julie Walton, Paola Watson. Resp. Exhs. 35. 2, 20, 21, 33, 46, 49, 54, 57, 66, 69, 80, 82, 83 and 84). Accordingly, these 14 cards should not be counted for purposes of showing actual loss of majority.

12. Desert Springs Implements RN Wage Increase

On March 14, 2107, Desert Springs sent a letter similar to that which it had sent to Valley nurses advising of a wage increase. (GC Exh. 9). The increase was effective March 19, 2017, and employees met with their supervisors to discuss the amount of their raises. (GC Exh. 33).

(a) Unilateral Changes to Wages

As previously noted, unilateral modification of wages or other mandatory subjects of bargaining can be a per se violation of Section 8(a)(5). In view of the fact that I have found that Desert Springs' withdrawal of recognition was unlawful, it was not privileged to take unilateral action regarding wages and in doing so violated Section 8(a)(5) of the Act. See *Southern Bakeries, LLC*, 364 NLRB No. 64 (2016) enfd. 871 F.3d. 811, 825 fn. 4 (2017), see also *Narricort Industries, L.P.*, 353 NLRB 775, 776 fn. 11(2009).

13. Desert Springs Withdrawal of Recognition of the Desert Springs Technical Unit

On March 18, 2017, in a similar manner as had previously transpired with Desert Springs, RNs Farese and Respiratory Therapist Andrea Ormonata met with McNutt and presented her with 42 signed decertification cards and 10 Typeform.com email notifications. (Resp. Exh. 34, 36). Again, the materials were sorted and duplicates were set aside by McNutt. Keim compared the emails to a list generated on December 30, 2016 and counted emails if the phone number or email matched. (Tr. 1030, 1060). Keim identified one name that wasn't on his list and as had been done previously, a call was placed to verify the employment status of the individual. (Tr. 1061). The signatures were verified by Jim Tran, Director of Pharmacy and Crawford. After the count was completed later that same day, Desert Springs withdrew recognition from the technical bargaining unit. (GC Exh. 28).

[8] Using Respondent's own figures once the emails are subtracted (even assuming for the sake of argument that all other cards were valid) the count falls below the 220 needed to establish loss of majority.

(a) Desert Springs Relied Upon Electronic Submissions That Did Not Establish Evidence of Actual Loss of Majority Support by a Preponderance of the Evidence.

As I previously found regarding Valley's counting of emails, applying the same reasoning and rationale set forth above, I find Desert Springs failed to meet its burden to show actual loss of majority in its Technical Unit.[9] In view of Respondent's failure to meet its burden regarding withdrawal of recognition, I find that Respondent violated Section (8)(a)(5) and (1) of the Act.

(b) Desert Springs Relied on One Tech Signature Which Could Not Within a Reasonable Degree of Certainty be Authenticated

The General Counsel challenged three of the signatures that Respondent Valley relied upon in support of its withdrawal of recognition. (GC Br. at 72). I have carefully reviewed the signatures and compared the cards submitted to the signatures that appear in Respondent's personnel records. (Resp. Exhs. 36 and 45). I agree in part with the General Counsel that one card, that of Kurtis Groseclose, could not with any reasonable degree of certainty be determined to be genuine or authentic because of the variation between the signature on the card and that found in the personnel records. Accordingly, this card should not be counted for purposes of showing actual loss of majority.

14. Desert Springs Implements Technical Unit Wage Increase

In much the same fashion as had been done with the RNs, Desert Springs announced and implemented a wage increase retroactive to March 19, 2017. (GC Exh. 10).

(a) Unilateral Changes to Wages

Unilateral modification of wages or other mandatory subjects of bargaining can be a per se violation of Section 8(a)(5). In view of the fact that I have found that the Desert Spring's withdrawal of recognition for the technical unit was also unlawful, it was not privileged to take unilateral action regarding wages and in doing so violated Section 8(a)(5) of the Act. See *Southern Bakeries, LLC*, 364 NLRB No. 64 (2016) enfd. 871 F.3d. 811, 825 fn. 4 (2017), see also *Narricort Industries, L.P.*, 353 NLRB 775, 776 fn. 11 (2009).

15. Respondent's Unfair Labor Practices Caused Disaffection.

It is established law that "an employer may not withdraw recognition from a union while there are unremedied unfair labor practices tending to cause employees to become disaffected from the union." *Broadway Volkswagen*, 342 NLRB 1244, 1247 (2004) (citations omitted). In determining whether a causal relationship exists between the unremedied unfair labor practices and the loss of union support, the Board considers the following factors: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the violations, including the possibility of a detrimental or lasting effect on employees; (3) the tendency of the violation to cause employees disaffection; and (4) the effect of the unlawful conduct on employees' morale, organizational activities, and membership in the union. *Master Slack Corp*., 271 NLRB 78, 84 (1984). See also, *Beverly Health & Rehab Services*, 346 NLRB 1319 (2006).

(a) Valley Withdrawal

Applying these factors here, I conclude that the Respondent's violations of the Act which took place close in time to the withdrawal of recognition including its efforts to censor union messaging, attempts to thwart union access to its facility, ceasing dues deductions, refusing to provide bargaining unit contact information at a critical time when decertification efforts were underway, its unlawful captive audience meeting with Komeda and others, which if taken together would, when viewed objectively, tend to have a significant effect on employee morale and organizational activities and tend cause employee disaffection. See *Kentucky Fried Chicken*, 341 NLRB 69 (2004) (blaming union for lack of wage increase caused disaffection), *Bakeries LLC*, 364 NLRB No. 64 enfd. 871 F.3d 827 (8th Cir. 2017) (interference with union access caused disaffection), *Scott Bros. Dairy,* 332 NLRB 1542 (2000) (statements about the futility of bargaining caused disaffection), *Wire Products Mfg. Corp*., 326 NLRB 625 (1998). (restricting union materials caused disaffection), *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015) (ceasing dues deduction).

(b) Desert Springs RN and Technical Unit Withdrawal

Applying the *Master Slack* factors, I conclude that the Respondent's violation of the Act by ceasing dues deduction, censoring union communications, disrupting union employee contacts, and relying on Valley's unlawful withdrawal and unlawful wage increase to promise wage increases if the union was decertified. I find that the legion of unfair labor practices, discussed above, which all took place close in time to the withdrawal of recognition would, when viewed objectively taken together, tend to cause employee disaffection, and would adversely affect organizational activities and membership in the union. See *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015).

CONCLUSIONS OF LAW

The Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

1. The Respondents violated Section 8(a)(5) of the Act by unilaterally ceasing dues deductions.

2. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by confiscating union literature.

3. The Respondents violated Section 8(a)(1) of the Act by requiring "pre-approval" to post union materials.

4. The Respondent Valley violated Section 8(a)(5) and (1) of the Act by unlawfully restricting union access to bargaining unit members.

5. The Respondent Valley violated Section 8(a)(5) and (1) of the Act by thwarting the union's contractual right to address new employees.

6. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by imposing unilateral changes regarding when union representatives could speak with unit members.

7. The Respondent Valley violated Section 8(a)(5) and (1) of the Act by imposing unilateral changes regarding when union representatives could speak with unit members.

[9] Using Respondent's own figures once the emails are subtracted (even assuming for the sake of argument that all other cards were valid) the count falls below the 48 needed to establish loss of majority.

8. The Respondent Valley violated Section 8(a)(1) the Act by unlawfully promising a wage increase only if employees got rid of the union.

9. The Respondent Valley violated Section 8(a)(1) of the Act by conveying to employees the futility of union representation.

10. The Respondent Valley violated Section 8(a)(1) of the Act by conveying to employees by promising better future conditions if employees got rid of the union.

11. The Respondent Valley violated Section 8(a)(5) and (1) of the Act by unlawfully withdrawing recognition of the union.

12. The Respondent Valley violated Section 8(a)(5) of the Act by unlawfully taking unilateral action regarding wages.

13. The Respondent Desert Springs violated Section 8(a)(1) of the Act by surveilling union officials and employees.

14. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of the RN unit.

15. The Respondent Desert Springs violated Section 8(a)(5) of the Act by unlawfully taking unilateral action regarding wages regarding the RN unit.

16. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of the Technical Unit.

17. The Respondent Desert Springs violated Section 8(a)(5) of the Act by unlawfully taking unilateral action regarding wages regarding the Technical Unit.

18. The Respondent Desert Springs violated Section 8(a)(1) by directly soliciting decertification through Smith.

19. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by unlawfully causing disaffection.

REMEDY

Having found Respondents have engaged in certain unfair labor practices, I find Respondents must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

a. Respondent Valley shall cease its interference with the Union's access to the employees it represents at Valley as permitted by the terms of its expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with more than two employees at a time or denying the Union access to new employees at our orientation programs.

b. Respondent Valley shall cease promising employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

c. Respondent Valley shall cease threatening to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

d. Respondent Valley shall cease casting blame upon the Union for the withholding of benefits, such as wage increases, from employees.

e. Respondent Valley shall cease suggesting to employees that they should decertify the Union as their collective-bargaining representative.

f. Respondent Valley shall cease granting benefits, such as wage increases, to undermine employee support for the Union.

g. Respondent Valley shall not refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit (the Valley RN Unit):

h. All Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the National Labor Relations Act (the Act).

i. Respondent Valley shall cease making changes to the wages, hours, and other terms and conditions of employment of employees in the Valley RN Unit, including by changing rules or practices related to Union access to the facilities and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

j. Respondent Valley shall not refuse to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of the Valley RN Unit.

k. Respondent Valley shall cease engaging in conduct that undermines the Union's status as the collective-bargaining representative of the Valley RN Unit.

l. Respondent Valley shall not withdraw recognition from the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused by our unfair labor practices.

m. Respondent Valley shall cease threatening employees with withholding benefits if the employees support the Union or promise to grant you benefits if you do not support the Union.

n. Respondent shall not in any manner interfere with employee rights under Section 7 of the Act.

o. Respondent shall, bargain in good faith with the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees.

p. Respondent Valley shall upon request of the Union, rescind the changes made to the wages, hours, and other terms and conditions of employment for the employees in the Valley RN Unit, including changes made to rules and practices related to the posting of materials on the Union's bulletin boards at its facilities, changing rules or practices related to union access to its facilities, promulgating new rules related to employee conduct or activities, failing to remit to the Union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union.

q. Respondent Valley shall provide the Union the following information it requested on January 31, 2017: Employee job classification, name, address, telephone number(s), email or other electronic address, and department where employee works.

r. Respondent Valley shall reimburse the Union, with interest, at no expense, for all dues that it failed to deduct and remit

pursuant to valid, unexpired, and unrevoked employee dues check off authorizations.

s. Respondent Desert Springs shall cease removing union literature from bulletin boards maintained by Service Employees International Union, Local 1107 (the Union) at our facility.

t. Respondent Desert Springs shall cease confiscating union literature from employee break rooms in the presence of employees.

u. Respondent Desert Springs shall not interfere with the Union's access to the employees it represents at our facility, as permitted by the terms of our expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with employees it represents in the presence of unrepresented employees.

v. Respondent Desert Springs shall not prohibit employees who support the Union from being near other people soliciting in opposition to the Union.

w. Respondent Desert Springs shall not engage in surveillance of union officials or employees including by recording employees speaking with union representatives.

x. Respondent Desert Springs shall cease providing assistance to employees in soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

y. Respondent Desert Springs shall cease soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

z. Respondent Desert Springs shall cease promising employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

aa. Respondent Desert Springs shall cease threatening to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

bb. Respondent Desert Springs shall cease granting employees benefits, such as wage increases, to undermine your support for the Union.

cc. Respondent Desert Springs shall cease its refusal to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit (the Desert Springs RN Unit): All Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the National Labor Relations Act the Act).

dd. Respondent Desert Springs shall cease refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Desert Springs Technical Unit):

> All technicians and Licensed Practical Nurses (LPN) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

ee. Respondent Desert Springs shall cease making changes to the wages, hours, and other terms and conditions of employment of employees in the Desert Springs RN Unit or the Desert Springs Technical Unit, including by changing rules and practices related to the posting of materials on the Union's bulletin boards at our facilities, changing rules or practices related to union access to its facilities, promulgating new rules related to employee conduct or activities, and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements.

ff. Respondent Desert Springs shall cease engaging in conduct undermining the Union's status as the collective-bargaining representative of the Desert Springs RN Unit and the Desert Springs Technical Unit.

gg. Respondent Desert Springs shall not withdraw recognition from the Union as the exclusive collective-bargaining representative of the employees in the Desert Springs RN Unit or the employees in the Desert Springs Technical Unit and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused or directly tainted by our unfair labor practices.

hh. Respondent Desert Springs shall not in any manner interfere with employee rights under Section 7 of the Act.

ii. Respondent Desert Springs shall upon request of the Union, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the Desert Springs RN Unit and the employees in the Desert Springs Technical Unit.

jj. Each Respondent will be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondents, Valley Health System LLC, d/b/a Desert Springs Hospital Medical Center and Valley Hospital Medical Center, Inc., d/b/a Valley Hospital Medical Center Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from engaging in the following conduct

a) Respondent Valley shall cease its interference with the Union's access to the employees it represents at Valley as permitted by the terms of its expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with more than two employees at a time or denying the Union access to new employees at our orientation programs.

b) Respondent Valley shall cease promising employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

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

c) Respondent Valley shall cease threatening to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

d) Respondent Valley shall cease casting blame upon the Union for the withholding of benefits, such as wage increases, from employees.

e) Respondent Valley shall cease suggesting to employees that they should decertify the Union as their collective-bargaining representative.

f) Respondent Valley shall cease granting benefits, such as wage increases, to undermine employee support for the Union.

g) Respondent Valley shall not refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit (the Valley RN Unit): All Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the National Labor Relations Act (the Act).

h) Respondent Valley shall cease making changes to the wages, hours, and other terms and conditions of employment of employees in the Valley RN Unit, including by changing rules or practices related to union access to the facilities and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

i) Respondent Valley shall not refuse to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of the Valley RN Unit.

j) Respondent Valley shall cease engaging in conduct that undermines the Union's status as the collective-bargaining representative of the Valley RN Unit.

k) Respondent Valley shall not withdraw recognition from the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused by our unfair labor practices.

l) Respondent Valley shall cease threatening employees with withholding benefits if the employees support the Union or promise to grant you benefits if you do not support the Union.

m) Respondent shall not in any manner interfere with employee rights under Section 7 of the Act.

n) Respondent shall, bargain in good faith with the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees.

o) Respondent Valley shall upon request of the Union, rescind the changes made to the wages, hours, and other terms and conditions of employment for the employees in the Valley RN Unit, including changes made to rules and practices related to the posting of materials on the Union's bulletin boards at its facilities, changing rules or practices related to union access to its facilities, promulgating new rules related to employee conduct or activities, failing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union.

p) Respondent Valley shall provide the Union the following information it requested on January 31, 2017: Employee job classification, name, address, telephone number(s), email or other electronic address, and department where employee works.

q) Respondent Valley shall reimburse the Union, with interest, at no expense, for all dues that it failed to deduct and remit pursuant to valid, unexpired, and unrevoked employee dues check off authorizations.

r) Respondent Desert Springs shall cease removing union literature from bulletin boards maintained by Service Employees International Union, Local 1107 (the Union) at our facility.

s) Respondent Desert Springs shall cease confiscating union literature from employee break rooms in the presence of employees.

t) Respondent Desert Springs shall not interfere with the Union's access to the employees it represents at our facility, as permitted by the terms of our expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with employees it represents in the presence of unrepresented employees.

u) Respondent Desert Springs shall not prohibit employees who support the Union from being near other people soliciting in opposition to the Union.

v) Respondent Desert Springs shall not engage in surveillance of union officials or employees including by recording employees speaking with union representatives.

w) Respondent Desert Springs shall cease providing assistance to employees in soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

x) Respondent Desert Springs shall cease soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

y) Respondent Desert Springs shall cease promising employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

z) Respondent Desert Springs shall cease threatening to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

aa) Respondent Desert Springs shall cease granting employees benefits, such as wage increases, to undermine your support for the Union.

bb) Respondent Desert Springs shall cease its refusal to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit (the Desert Springs RN Unit): All Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the National Labor Relations Act the Act).

cc) Respondent Desert Springs shall cease refusing to bargain in good faith with the Union as the exclusive collective-

bargaining representative of its employees in the following appropriate unit (the Desert Springs Technical Unit):
All technicians and Licensed Practical Nurses (LPN) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

dd) Respondent Desert Springs shall cease making changes to the wages, hours, and other terms and conditions of employment of employees in the Desert Springs RN Unit or the Desert Springs Technical Unit, including by changing rules and practices related to the posting of materials on the Union's bulletin boards at its facilities, changing rules or practices related to Union access to its facilities, promulgating new rules related to employee conduct or activities, and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements.

ee) Respondent Desert Springs shall cease engaging in conduct undermining the Union's status as the collective-bargaining representative of the Desert Springs RN Unit and the Desert Springs Technical Unit.

ff) Respondent Desert Springs shall not withdraw recognition from the Union as the exclusive collective-bargaining representative of the employees in the Desert Springs RN Unit or the employees in the Desert Springs Technical Unit and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused or directly tainted by our unfair labor practices.

gg) Respondent Desert Springs shall not in any manner interfere with employee rights under Section 7 of the Act.

hh) Respondent Desert Springs shall, upon request of the Union, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the Desert Springs RN Unit and the employees in the Desert Springs Technical Unit.

ii) Within 14 days after service by the Region, post at its facilities in Las Vegas, NV copies of the attached notices marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 23, 2016.

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.

Dated, Washington, D.C. September 28, 2018

APPENDIX A

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

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

WE WILL NOT interfere with the Union's access to the employees it represents at our facility, as permitted by the terms of our expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with more than two employees at a time or denying the Union access to new employees at our orientation programs.

WE WILL NOT promise employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

WE WILL NOT threaten to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

WE WILL NOT blame the Union for our withholding of benefits, such as wage increases, from employees.

WE WILL NOT suggest to employees that they should decertify the Union as their collective-bargainingrepresentative.

WE WILL NOT grant you benefits, such as wage increases, to undermine your support for the Union.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Valley RN Unit):

All Registered Nurses (RNs) employed by the hospital, but

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

excluding all other employees, guards and supervisors as defined in the National Labor Relations Act (the Act).

WE WILL NOT make changes to the wages, hours, and other terms and conditions of employment of employees in the Valley RN Unit, including by changing rules or practices related to union access to our facilities and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of the Valley RN Unit.

WE WILL NOT engage in conduct undermining the Union's status as the collective-bargaining representative of the Valley RN Unit.

WE WILL NOT withdraw recognition from the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused by our unfair labor practices.

WE WILL NOT threaten you with withholding benefits if you support the Union or promise to grant you benefits if you do not support the Union.

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

WE WILL, upon request of the Union, bargain in good faith with the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees.

WE WILL, upon request of the Union, rescind the changes we made to the wages, hours, and other terms and conditions of employment for the employees in the Valley RN Unit, including changes we made to rules and practices related to the posting of materials on the Union's bulletin boards at its facilities, changing rules or practices related to union access to its facilities, promulgating new rules related to employee conduct or activities, failing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union.

WE WILL provide the Union the following information it requested on January 31, 2017:

Employee job classification, name, address, telephone number(s), email or other electronic address, and department where employee works.

WE WILL reimburse the Union, with interest, at no expense to you, for all dues that we failed to deduct and remit pursuant to valid, unexpired, and unrevoked employee dues check off authorizations.

VALLEY HOSPITAL MEDICAL CENTER, INC., D/B/A VALLEY HOSPITAL MEDICAL CENTER

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-184993 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

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

WE WILL NOT remove union literature from bulletin boards maintained by Service Employees International Union, Local 1107 (the Union) at our facility.

WE WILL NOT confiscate union literature from employee break rooms in the presence of employees.

WE WILL NOT interfere with the Union's access to the employees it represents at our facility, as permitted by the terms of our expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with employees it represents in the presence of unrepresented employees.

WE WILL NOT prohibit employees who support the Union from being near other people soliciting in opposition to the Union.

WE WILL NOT watch out for or make it appear that we are watching out for your or other employees' union activity,

including by recording employees speaking with union representatives.

WE WILL NOT provide assistance to employees in soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

WE WILL NOT solicit employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

WE WILL NOT promise employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

WE WILL NOT threaten to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

WE WILL NOT grant employees benefits, such as wage increases, to undermine your support for the Union.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Desert Springs RN Unit):

> All Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the National Labor Relations Act the Act).

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Desert Springs Technical Unit):

> All technicians and Licensed Practical Nurses (LPN) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT make changes to the wages, hours, and other terms and conditions of employment of employees in the Desert Springs RN Unit or the Desert Springs Technical Unit, including by changing rules and practices related to the posting of materials on the Union's bulletin boards at our facilities, changing rules or practices related to union access to our facilities, promulgating new rules related to employee conduct or activities, and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements.

WE WILL NOT engage in conduct undermining the Union's status as the collective-bargaining representative of the Desert Springs RN Unit and the Desert Springs Technical Unit.

WE WILL NOT withdraw recognition from the Union as the exclusive collective- bargaining representative of the employees in the Desert Springs RN Unit or the employees in the Desert Springs Technical Unit and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused or directly tainted by our unfair labor practices.

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

WE WILL, upon request of the Union, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the Desert Springs RN Unit and the employees in the Desert Springs Technical Unit.

WE WILL, upon request of the Union, rescind the changes we made to the wages, hours, and other terms and conditions of employment for employees in the Desert Springs RN Unit and the employees in the Desert Springs Technical Unit without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements, including: changes we made to rules and practices related to the posting of materials on the Union's bulletin boards at our facilities, changes to rules or practices related to union access to our facilities, promulgation of new rules related to employee conduct or activities, and cessation of remission to the Union of dues deducted pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations.

WE WILL reimburse the Union, with interest, at no expense to you, for all dues that we failed to deduct and remit pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations.

VALLEY HEALTH SYSTEM LLC, D/B/A DESERT SPRINGS HOSPITAL MEDICAL CENTER

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