JD-04-25
Valley Stream, NY

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

PARKING SYSTEMS PLUS, INC.

and **Case No. 29-CA-331253**

LOCAL 1102, RETAIL WHOLESALE & DEPARTMENT STORE UNION, UNITED FOOD AND COMMERCIAL WORKERS

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*f*or the General Counsel
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for the Respondent.
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for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

BENJAMIN W. GREEN, Administrative Law Judge. The complaint in this case alleges that Parking Systems Plus, Inc. (the Respondent or Parking Systems), as a successor valet parking contractor at the Stony Brook University Hospital (the Hospital), violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent allegedly violated Section 8(a)(1) by telling employees they would not be hired because they were represented by Local 1102, Retail Wholesale & Department Store Union, United Food and Commercial Workers (the Union) and offering to hire employees on the condition that they abandon union representation. (G.C. Exh. 1(e) – complaint ¶ 9) The Respondent allegedly violated Section 8(a)(3) by refusing to hire bargaining unit employees employed by predecessor employer Classic Valet Parking, Inc. (Classic). (G.C. Exh. 1(e) – complaint ¶ 10-11) The Respondent allegedly violated Section 8(a)(5) by, as the successor of Classic, refusing to recognize and bargain with the Union and by changing the terms and conditions of employment of unit employees. (G.C. Exh. 1(e) – complaint ¶ 15-16) As discussed below, except for the allegation that the Respondent unlawfully offered to hire employees on the condition that they abandon union representation, I find that the Respondent violated the Act as alleged in the complaint.

The charge was filed on December 4, 2023[1] and an amended charge was filed on February 7, 2024. The complaint issued on April 23, 2024 and the Respondent filed an answer thereto on May 7, 2024. (G.C. Exh. 1)

On the entire record, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs filed by the General Counsel and the Respondent, I render these

[1] All dates refer to 2023 unless stated otherwise.

FINDINGS OF FACT[2]

JURISDICTION

The Respondent admits that it satisfies the commerce requirements for jurisdiction and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (Tr. 12-13) Accordingly, I find that this dispute affects commerce and the Board has jurisdiction pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

The Respondent

The Respondent was founded by Mark Baron in 1978 and provides valet parking services at various locations in multiple states. The Respondent's core business (about 70 percent of its work) is in Long Island, New York. (Tr. 881-885, 911) The Respondent employs up to about 1,000 employees at about 250-350 locations during the peak summer season. (Tr. 884) The Respondent is owned by nine partners, including President Mark Baron, Vice President of Business Operations Michael Petruzzelli, Vice President of Business Development Jonathon "Johny" Baron (Mark Baron's son), Account Executive Robert "Bobby" Gust, and Account Executive Josh Candiotti. Among the owners, Mark Baron and Petruzelli are senior lead partners. (Tr. 409, 536) (G.C. Exh. 6)

The company is managed by owners and non-owners. Acquisitions VP Jonathon Baron is responsible for acquiring new business, including sales, marketing, and the submission of bids for valet parking contracts. (Tr. 409, 881-882) Regional Managers Jeffrey Gluck and Matt Killary oversee operations in Suffolk and Nassau county, respectively. (Tr. 562-564) Account executives, such as Gust and Candiotti, oversee the day-to-day operations of their respective accounts, including hiring, scheduling, processing payroll, training, bill collection, client relations, quality control, and the like. (Tr. 407-408, 481-482, 530, 537-539, 763-764) The account executives generally service clients in certain geographic regions and business areas. (Tr. 537-542) Account representatives, such as Andrew Goldsmith, perform much the same functions as account executives, but have less seniority. (Tr. 409-410, 542, 562, 782) (Tr. 409) The Respondent has a "flat" management structure with each account executive and account representative responsible for hiring their own staff and overseeing the operation of their respective accounts. (Tr. 409-410, 481, 562, 763)

[2] The Findings of Fact are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent evidence of a fact is trustworthy and not contested, the fact is generally stated without reference to the underlying evidence. To the extent testimony contradicts the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was otherwise unworthy of belief. In assessing credibility, I rely upon witness demeanor. I also consider the context of witness' testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions and witnesses may be credited in part. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951)).

Account Representative Goldsmith is mostly responsible for accounts in Eastern Long Island which operate seasonally during the summer. (Tr. 410-411, 542, 781, 786-788) During the offseason, Goldsmith worked as a site manager for the Respondent's valet operation at Jake's 58 Casino Hotel. (Tr. 786) As an account representative, Goldsmith has participated in the opening of new Parking Systems locations and was aware of the Respondent's policies and procedures. (Tr. 683, 786-788) Goldsmith was employed by the Respondent at the time of the hearing as the account representative responsible for the Respondent's operation at the Hospital. (Tr. 411, 874-875) Goldsmith was not called to testify at the hearing.

The Respondent's rank-and-file employees include parking attendants, cashiers, and traffic directors (all classified as attendants). (Tr. 552-554) The Respondent finds prospective employees through job advertisements, referrals, unsolicited job inquiries, and online short-from intake applications. (Tr. 903-905) Account Executive Gust has business cards with a QR code which can be used to access a URL landing page for the short-form intake application.[3] (Tr. 790) (G.C. Exh. 18) Job applicants are generally interviewed by an account executive in the geographic area where the applicant lives. If the account executive extends a job offer to the applicant, the Respondent emails that person a long-form job application packet. (Tr. 501, 606, 905, 932) (R. Exh. 13) This long-form application includes a three page "Application for Employment" which requests contact information, experience, references, availability, and certain acknowledgements.[4] (R. Exh. 13 p. 1-3) The long-form application also includes policies and guidelines, a W-4 form, an I-9 form, and an arbitration agreement. (R. Exh. 13) An employee must complete the long-form application to obtain an employee ID in the Respondent's Paychex payroll system. (Tr. 906-907) Upon the return of the completed long-form application, the Respondent has a third-party perform a criminal background check and verify the applicant's driver's license. The employee is then formally hired, trained, and placed on the schedule. (Tr. 678-6812, 699, 704-707, 719-736, 790, 903-906, 912-913) Although account executives and account representatives are responsible for their own payroll and schedules, they do consult and exchange staff when necessary. (Tr. 763-764) An employee working at a medical center generally requires specialized training. (Tr. 699-700)

The Respondent's employees at one location, the Nassau Coliseum, are represented by a union. (Tr. 543-544, 601, 695-698, 851, 899-900, 946) Jonathon Baron testified that the presence of a Union and collective-bargaining agreement at Nassau Coliseum does not affect the operation in any way. (Tr. 946)

Although the Respondent employs up to about 1,000 attendants, owners and managers work at least occasionally parking cars. (Tr. 411, 535, 550-551, 554, 558-559, 580-582, 765)

The Respondent's personnel, including managers when working in the field, wear uniforms that are primarily black with logos on everything from the waste up. The uniform includes a black dress shirt and black dress slacks. For cold weather, the Respondent provides a heavy waterproof jacket. The Respondent's personnel also where ID badges with their job titles on them. (Tr. 552, 546-548, 765-766)

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[3] There was significant discussion at hearing as to whether these forms were "applications" or "intake forms." (Tr. 436-437) I combine the terms herein as "short-form intake applications," but note that, in a text, Gust described them as "short form applications." (G. C. Exh. 13)

[4] The "Application for Employment" is somewhat duplicative of information in the short-form intake application, but requests additional information such as experience and the verification of a driver's license. (R. Exh. 13 p. 1-3)

The Hospital, Classic, and the Union

The Hospital is a publicly owned academic medical center with four parking lots, including a staff lot for employees of the Hospital and visitor lots at the main entrance, cancer center, and emergency room. (Tr. 483-484) (R. Exh. 11) Each parking lot has a valet booth where attendants work and store car keys. Keys are placed on a board or a table with numbers corresponding to ticket stubs provided to the customer. (Tr. 47, 112-115)

Classic valet attendants were generally stationed at one of the four lots on a regular basis. (Tr. 43-44, 49-50, 148-150, 300-301) From about 2020 to 2023, Classic employees Francis Gil Reyes and Edward Arias Gil (the son of Gil Reyes) were stationed at the cancer center. (Tr. 49-50, 145-147) Gil Reyes and Arias worked at other lots before 2020. (Tr. 145-147) Classic employees were sometimes assigned to a different lot which was busy or to replace an absent employee. (Tr. 148-150, 300-301) Gil Reyes testified that she also worked at a Classic location in South Hampton, Long Island (not the Hospital), but did not recall when or how often. (Tr. 339-340)

From about 2015 to November 30, the State University of New York at Stoney Brook (the University), through its Mobility & Parking Services ("MAPS") department, contracted Classic to provide valet parking services at the Hospital. (Tr. 440-441, 569-570) On November 9, 2015, the Union was certified as the bargaining representative of the following appropriate bargaining unit of Classic employees (G.C. Exh. 2):

> Included: All full-time and regular part-time runners (also known as drivers), greeters and cashiers who are regularly employed by the Employer at its Stony Brook University Hospital site, located in Stony Brook, New York.
>
> Excluded: All employees employed at other sites, administrative employees, clerical employees, professional employees, confidential employees, casual per diem employees, managerial personnel, guards and supervisors as defined by the Act.

The most recent collective-bargaining agreement (the CBA) between Classic and the Union was effective November 1, 2022 to October 31, 2025. (G.C. Exh. 7) Three contracts preceded the CBA. (Tr. 211) CBA Article 5 provided that tipped employees must earn $0.25 above any applicable minimum wage and non-tipped employees would receive hourly wage rate increases of $0.50 on November 1 in 2023 and 2024. (G.C. Exh. 7) Classic employees at each lot pooled their tips (e.g., cancer center attendants pooled their tips). (Tr. 36, 118, 147-148, 304-305) The evidence did not indicate that Classic employees received significantly more or less tips depending on the lot where they worked. (Tr. 147-148, 304-305) CBA Article 7 provided for 6 paid days off per year. (G.C. Exh 7) CBA Article 9 provided for a $35-per-month shoe reimbursement with increases to $40, $41, and $42 on January 1, November 1, and November 1, 2024, respectively. (G.C. Exh. 7)

From 2017 to November 30, Union business agent Ayse Porsuk was responsible for negotiating and administering Union contracts with Classic. From 2015 to 2017, Porsuk was a Classic employee and the Union shop steward. (Tr. 208-210)

Classic payroll records for the period November 20 to November 26 list 31 employees and manager Richard Orue. (Tr. 50, 117) (Jt. Exh. 3) The General Counsel also introduced a Union "Member Listing" of Classic employees who worked at the Hospital, including four individuals (Jose Mar Angeles Presinal, Reir Dejesus Rojas Garcia, Juan Carlos Fernandez,

and Jose Herandez) not on Classic's last payroll. (Tr. 211) (G.C. Exh. 8) The member list has a column for "Last Dues Last Health" and contains "11/1/2023" in that column next to the four names not on Classic's payroll. (G.C. Exh. 8) (Jt. Exh. 3) Porsuk testified that she has met and seen all the employees on the member list working at the Hospital. (Tr. 211-217, 225-226)

Classic attendants were responsible for greeting Hospital visitors, providing them with a numbered ticket which could be broken into three identical stubs, obtaining the vehicle key, directing them to the proper Hospital entrance, parking the car, placing a ticket stub on the dashboard, returning to the booth to place the key and a ticket stub on a board or table under the corresponding ticket number, and returning the car to the visitor upon request. This work was largely the same at all four Hospital parking lots. (Tr. 37, 47, 112-115)

The Hospital Awards the Valet Contract to the Respondent

In June, the University solicited bid proposals from contractors to provide valet parking services at the Hospital beginning November 1. (R. Exh. 11) As part of the bid process, each bidding contractor was allowed to submit questions. The University then provided the questions and answers to all the prospective bidders, including the following (R. Exh. 12) (Tr. 891-896):[5]

Question	Answer/Clarification/Statement
Q1. Is the current team unionized?	A1. Yes. However, this is based on the vendors relationship with their employees and is not determined by the University.
Q11. . . . 5. Are [the] employees union? a. If so, please a copy of the CBA and any MOAs.	A11 . . . 5. The valets are employees of the vendor therefore if they are unionized or not is based on the employees arrangements with the vender not the University.
Q14. Can you confirm if this location is operating under a union agreement? If so, can you provide the CBA?	A14. The contract is with the vendor and therefore should their employees unionized is the agreement with the vendor and its respective employees.

In response to a question from a prospective contractor regarding the strengths of Classic's current operation, the University answered, "A7. Overall, the current program meets the contract requirements and expectations especially in staffing levels, and patient interactions."[6] (Tr. 930-932) (R. Exh. 12)

On July 6, the Respondent submitted a bid for the Hospital contract with a proposed hourly rate. Over 5 years, the Respondent's bid was expected to yield about $11.7 million in revenue. (Tr. 896-899) At the time, the Respondent did not know Classic was unionized or that it potentially had a legal obligation to recognize and bargain with the Union. (Tr. 890-891) Likewise, the Respondent did not have the Classic CBA and did not have any other knowledge

[5] None of the questions quoted here were posted by the Respondent. The Respondent asked the questions listed under "Q10." (R. Exh. 12) (Tr. 894-896)

[6] The Respondent increased staffing at the Hospital when they took over the operation because the volume of visitors increased. (Tr. 932)

of the terms and conditions of employment of Classic employees. Accordingly, the Respondent did not rely on the same to calculate expected labor costs. Business Development VP Jonathon Baron testified that any requirement to pay a certain wage would normally be included in the request for proposals, but was not in this case. (Tr. 895-898, 947-948)

In about July, the Respondent learned it had submitted the lowest bid for the Hospital contract. (Tr. 589)

In about early-August, the University formally awarded the Respondent the Hospital contract. (Tr. 901) The Respondent considered the Hospital to be an important new account. (Tr. 683, 935)

The Respondent's startup process for taking over the Hospital valet operation included the selection of a management team, identifying staff, a review of the operation, deciding on operational changes, and obtaining equipment. (Tr. 902-903, 914-915) The managerial transition team included Petruzzelli, Gust, Candiotti, Goldsmith, and Travis Gilliland. Goldsmith was expected to be the account representative responsible for the Hospital operation and Gilliland was expected to be the Hospital site manager under Goldsmith. (Tr. 409, 545, 781-782, 804, 816, 914-915, 951) During the transition period prior to the start of the Hospital operation, Gust was mentoring Goldsmith and Gilliland because, presumably, Goldsmith had not previously been involved in a startup that large and Gilliland was being promoted from attendant to site manager. (Tr. 409-411, 787, 874) Goldsmith and Gilliland were responsible for interviewing employees for the new Hospital operation. (Tr. 607)

Respondent managers Jonathan Baron, Gust, and Candiotti testified that it was never the Respondent's intent to retain Classic employees for the Hospital startup because that would be contrary to a company policy against poaching the employees of a predecessor contractor. Candiotti testified that the policy against hiring the employees of a predecessor would likely be in the corporate handbook. (Tr. 710) According to the managers, the company maintained such a policy because it was difficult to change the culture and practices of predecessor employees to conform with those of the Respondent. (Tr. 587-588, 592, 596-597, 622, 692-693, 714-716, 791-795, 907-908, 911, 916-918) Jonathon Baron and Candiotti further testified that there was not enough time to hire Classic employees after they were laid off by the predecessor. (Tr. 598, 604, 721-736, 913-914) Jonathon Baron and Candiotti claimed it was the Respondent's plan to staff the new location, at least initially, with current Parking Systems employees at other locations and supplement that staff as needed with new hires.[7] (Tr. 587-588, 598-607, 668-675, 692-693, 902-903, 907-908, 924-925)

In about mid-October, the Respondent learned that the start date for the Hospital operation would be moved back from November 1 to December 1. (Tr. 922-923)

On October 23, University MAPS Assistant Director for Parking Dan Akins, copying University MAPS Field Operations Coordinator Nick Stefanelli, emailed Respondent managers Petruzzelli, Gust, and Goldsmith to schedule a weekly Zoom meeting for the upcoming transition to a new valet parking contractor. (Tr. 967, 985) (G.C. Exh. 14-15)

On October 24, in anticipation of the meeting with MAPS, Goldsmith sent an email to the

[7] Gust denied it was the Respondent's policy to permanently exclude predecessor employees from employment and the Respondent did, ultimately, hire about six former Classic employees between December 19, 2023 and May 30, 2024. (Tr. 812-813) (R. Exh. 8) (J. Exh. 4)

Respondent's Hospital management team asking certain questions. (G.C. Exh. 14) Goldsmith preceded the questions by stating, "As we approach the start date of SB Hospital, there are a few questions we need to have answered. Especially with Dan from the Stony Brook team looking for a progress report where we're at. Here are a few questions I have, that maybe Johny can shed some light on if he possesses this information." (G.C. 14) Jonathon Baron did not respond to Goldsmith's email. (Tr. 940)

On October 27, Candiotti replied to Goldsmith with the following email which contained Goldsmith's questions and Candiotti's highlighted comments underneath (G.C. Exh. 15) (Tr. 441-446) (highlights in the original):

> 1. When are we allowed to contact members of the other valet companies staff. I feel like this is the biggest domino right now. Once we figure out how many we're retaining, we can then hyper focus on hiring. We've been continuously interviewing and hiring over the last few weeks. We need a targeted number we need to hire to go along with the staff we already have in place to move over once we start. Talking to Richard, he has 32 staff members. I don't know if that is a total for the whole day or just his active roster. (Have we confirmed the schedule yet? We should mock it up and see how many staff members are needed).
>
> 2. Are we entertaining the idea of retaining Richard, the supervising manager from Classic who has reached out to me. (Should put him in through staff training in our office)
>
> 3. Actual schedule that they use right now. 400 employees have been dispersed from the staff lot. Easing what needs to be done once we take over. (Is the staff lot under construction?)
>
> 4. Signage and runway on how long to get that equipment made. (For this volume I think 4 weeks. We should do a walk through this week and change it out. Wednesday 11/1/23?)
>
> 5. Elimiwait and if they are charging to pay after instead of pay before. (I think we should switch to pay on entry. Can we verify if our booths have electric?)
>
> 6. When can we start shadowing at SB Hospital? I've already made arrangements with Josh to shadow him November 2nd.
>
> 7. What would be a better hospital Travis and I can shadow. South Side or Mt. Sinai? (I recommend MSSN especially since there is revenue collection).

Candiotti testified that Goldsmith was a "manager for a long time" who previously helped with the startup of new accounts and was aware of the Respondent's policies and procedures. (Tr. 683-687, 692) Nevertheless, Candiotti claimed that Goldsmith made a "mistake" in this October 24 email as it was against the Respondent's policy to hire a predecessor's employees after acquiring a contract. (Tr. 692) (G.C. Exh. 14-15) Candiotti admitted he is a supervisor who generally corrects somebody who is doing something wrong, but that he did not, in his October 27 reply to Goldsmith, correct Goldsmith's mistake. (Tr. 692-693, 754) (G.C. Exh. 15) According to Candiotti, "[t]his was not what we were going to actually do" and "[t']here was no relevance in even getting [into] it." (Tr. 692) Likewise, Gust denied that the statement in

Goldsmith's email – "we need a targeted number we need to hire to go along with the staff we already have in place" – was a fair and accurate representation of the Respondent's strategy. (Tr. 496-497) (R. Exh. 14)

In about late-October, Classic manager Orue told Classic employees that Classic lost the Hospital contract to Parking Systems in a bidding process. (Tr. 38-41, 119-120, 151-154) About a week later, Classic owner Julian Marte told employees the new contractor would be taking over on November 30 and might offer them jobs. (Tr. 41-43)

In about late-October or early-November, Gust, Candiotti, Goldsmith, and Gilliland began going to the Hospital to observe Classic's operation. Initially, the managers simply observed the operation, but later spoke to Classic employees and handed out business cards. (Tr. 52-55, 63, 120-122, 154-156, 422, 438-439, 665-666, 783-788, 800-801) (G.C. Exh. 13)

On November 9, Union attorney Matthew Rocco sent an email to Petruzzelli and the University requesting that the Respondent retain Classic employees, recognize the Union as the bargaining representative of employees, and assume the Classic CBA. (G.C. Exh. 9) Rocco attached the following letter to the email (G.C. Exh. 9):

> I hope this letter finds you well. I am writing to introduce myself as legal counsel for Local 1102 R WDSU UFCW, a labor union which represents hundreds of employees on Stony Brook University's campus including those employed by Classic Valet, the outgoing valet parking service provider at Stony Brook University Medical Center effective 12/1/23. I understand that Parking Systems will be taking over valet parking operations at the medical center, and we look forward to establishing a productive and cooperative relationship with your company.
>
> First and foremost, we want to stress the importance of continuity and the well-being of the dedicated valet parking employees who have been serving Stony Brook University Medical Center under Classic Valet. These individuals have been an integral part of the hospital community and have contributed to a seamless and high-quality patient and visitor experience. As such, we kindly request that you retain the previous Classic Valet parking employees as your workforce.
>
> In addition, we request that Parking Systems recognize the rights of these employees to union representation and adhere to the existing collective bargaining agreement (CBA) in place with Classic Valet. Enclosed is a copy of the assumption agreement for the CBA, which outlines the terms and conditions for the transfer of the CBA to Parking Systems. We respectfully request that you sign a copy and send it back to us because preserving the terms of the current CBA is not only beneficial to the employees but also ensures a smooth transition of services and maintains the high standards of care and professionalism that the medical center expects.
>
> Recognizing and respecting the union representation and the CBA in place will undoubtedly foster a positive and cooperative working relationship between Parking Systems and Local 1102. We are committed to working with you to facilitate this transition seamlessly and with the best interests of all stakeholders in mind.

> Should you have any questions or require further information, please do not hesitate to reach out to us. We appreciate your attention to this matter and anticipated assumption of the CBA, and look forward to working with Parking Systems to continue providing exceptional valet parking services at Stony Brook University Medical Center.

Candiotti testified that this letter was the first time he heard of any issue regarding a union. The Respondent forwarded the letter to labor counsel. (Tr. 599-600, 613) Prior to receiving the letter, the Respondent was not aware of the terms and conditions of employment of Classic employees. (Tr. 716)

Candiotti testified that, by November 9, preparations had already been made to staff the Hospital parking lots.[8] (Tr. 614, 744-746) None of the Respondent's employees had received the training that is normally required to work at a medical center. (Tr. 699)

On November 10, Petruzzelli emailed Rocco's letter to the rest of the Respondent's Hospital management team and they made plans to hold a virtual meeting to discuss the matter. (G.C. Exh. 17) Candiotti and Gust then exchanged the following emails (G.C. Exh. 17):

Candiotti – 6:02 a.m.: What are the next steps for us?

Gust – 6:35 a.m.: Next step.

> Need to re run the numbers. I was led to believe we were pretty close to the bone from the outset. Jonny may have assumed a PTO expense but I'm sure $17k for shoes was not planned for.
>
> 6 day PTO for all staff mandatory to pay out unused at year end per CBA
>
> Assuming 35 full time employees (which seems unrealistic)
> and
> Assuming all at min wage which they will not be. ……
> 48 hours x 16.25 */* hr x 35 employees
> = $27,300
>
> Shoe Allowance
> $40 per month x 12 months x 35 employees = $16,800

On November 10, the Respondent posted an employment advertisement on "Indeed.com" for "Parking Lot Attendant / Hospitality / Suffolk County Stony Brook Hospital." (Tr. 858-861) (G.C. Exh. 25)

In about mid-November, Gust instructed Goldsmith and Gilliland to hand out his business

[8] I do not credit Candiotti in this regard. As described below, after November 9, the Respondent continued to post advertisements that it was urgently hiring for jobs at the Hospital. Further, consistent with Goldsmith's October 24 email, the Respondent handed out to Classic employees certain business cards with a QR code which could be used to access and complete a short-form intake application. The business cards also stated, "Looking for a rewarding position where your talent and hard Work are rewarded. Come join our winning team[.]" (G.C. Exhs. 3, 10-11, 25-26)

cards to Classic employees. (Tr. 784) These cards identified Gust as a "Recruitment Specialist" and contained a QR code to access a URL landing page for a short-form intake application. (G.C. Exh. 3) Gust had the cards made in about 2020, but did not hand many out and simply kept them in his desk. (Tr. 783, 790) Gust described the distribution of these cards to Classic employees as a "one off" occurrence. (Tr. 790) On the back, the card stated, "Looking for a rewarding position where your talent and hard Work are rewarded. Come join our winning team[.]" (G.C. Exh. 3) According to Gust, he told Goldsmith and Gilliland to hand out the cards at the Hospital if they were being pressured by the current Classic staff about interviews. (Tr. 784) Gust, Candiotti, and Goldsmith also exchanged the following texts regarding the cards and the interview of Classic employees (G.C. Exh. 13) (Tr. 438-440, 784-786):

> Gust: I am bringing cards to Travis now on. The back of the cards is a QR Code. Which leads them to [a] short form application that gets emailed directly to me
>
> Gust: Handout the cards to anyone who inquires about work and set them up for an interview.
>
> Gust: This does 2 things for us one. We have an answer for people that wanna work. So they don't feel in limbo and 2 during the interview process, it gives an opportunity to pump them for information.
>
> Candiotti: Thank you Bobby
>
> Goldsmith: Perfect

During about the week of November 13, Gilliland and Goldsmith handed out to Classic employees at the Hospital, including Gil Reyes, the business cards of Gust and Petruzelli. Gust's card contained the QR code for accessing the short-form intake application and Petruzzelli's card contained three office phone numbers. (G.C. Exh. 3, 6) Gil Reyes testified that a man gave her several business cards and said she could give them to her co-workers to apply for employment with Parking Systems. (R. Exh. 4 ¶ 3) (Tr. 56-57, 63-68, 51-69, 120-124, 154-159, 176-178, 288-294, 342-345, 359, 422, 436-438)

On November 17, 21 Classic employees, including Gil Reyes and Arias, used the QR code on Gust's business cards to submit short-form intake applications online. Between November 18 and 21, another 9 Classic employees used the QR code to submit short-form intake applications online. (G.C. Exh. 18) (Jt. Exh. 3) (Tr. 69-71, 124, 858-861) The following is a list of the 30 Classic employees who submitted short-form intake applications and their responses on those forms to the question, "How did you hear about us?" (G.C. Exh. 18):[9]

Last Name	First Name	Submitted	Answer: How did you hear about us?
Almonte Cepeda	Virgilio	11/17/2023	At work
Alvarado Tobar	Juan	11/17/2023	
Argyris	Irene	11/17/2023	Andrew Manager

[9] Certain Classic employees submitted more than one short-form intake application, but only Gil Reyes is listed twice because her applications contained different answers to the question, "How did you hear about us?" (G.C. Exh. 18) The record does not contain a short-form intake application from an employee on the Classic payroll named Fabian Rodriguez. (J. Exh. 3) Likewise, the record does not contain a short-form intake application from employees on the Union member list named Jose Angeles Presinal, Reir Dejesus Rojas Garcia, and Claudio Meija Garcia. (G.C. Exh. 8)

Arias Gil	Edward	11/17/2023	Work
Arias Almonte	Edwin	11/17/2023	Work
Barett-Martinez	Pedro	11/18/2023	Classic Valet Supervisor
Dublin	Delva	11/20/2023	Myself
Diaz Lora	Albery	11/17/2023	
Estevez Rodriguez	Rolando	11/18/2023	
Fernandez	Juan	11/17/2023	for a friend
Garcia Rodriguez	Vladimir	11/17/2023	
Gil Reyes	Francis	11/17/2023	at my work
Gil Reyes	Francis	11/20/2023	New company is taking over from SBU classic valet
Hernandez	Jeyson	11/18/2023	Walk by
Hernandez	Jose D.	11/21/2023	I work in classic valet parking I was in charged overnight for parking emergency room of the stony brook hospital I have 8 years of experience I work every night from Monday to Sundays
Meija Garcia	Salvador	11/17/2023	Business Card
Mejia Cruz	Ana	11/17/2023	
Morel	Agustin	11/17/2023	I work at Stony Brook Valet already
Morel Castillo	Reye	11/18/2023	
Mosquea	Juan	11/17/2023	Union rep.
Peralta Espinal	Ramon	11/20/2023	Hospital old parking agency
Perez	Jose Lorenso	11/17/2023	At my work
Perez	Ramon	11/17/2023	
Perez Arias	Michael	11/17/2023	I already currently work at Stony Brook Valet
Perez-Perez	Jose Miguel	11/17/2023	I already work at Stony Brook Valet
Rojas Garcia	Reinaldo	11/17/2023	
Romero	Blas	11/19/2023	I work at Stony Brook Valet currently
Tavarez Liriano	Santiago	11/17/2023	I work at Stony Brook Valet
Thomas	Issac	11/17/2023	Business Card
Valdez	Indhira	11/17/2023	Business card
Valdez	Ynoe	11/18/2023	Web

At about the time the Respondent received these short-form intake applications, University MAPS managers Akins and Stefanelli recommended that the Respondent try to retain Gil Reyes because she was excellent at dealing with cancer patients and essentially ran the cancer center parking lot. (Tr. 621-622, 625-631, 880, 968) Candiotti testified that the Respondent advised MAPS that such a hire would need to be approved by senior leadership because it was inconsistent with company protocol against hiring the predecessor's staff following a contract acquisition. (Tr. 551, 626) Neither Akins nor Stefanelli testified that they were advised by Respondent of a company policy against hiring a predecessor's employees.

On November 19, in a text thread among the Respondent's Hospital management team, Jonathon Baron stated, "Permission to hire the 1[.]" (Tr. 457) (G.C. Exh. 19) Josh Candiotti replied, "Francis[.] That will be good[.]" (G.C. Exh. 19) Candiotti testified that the Respondent reluctantly interviewed Gil Reys even though it was against company policy because MAPS

raved about how great she was. (Tr. 621-622, 625-626)

On November 20, Gust emailed the Respondent's Hospital management team the short-form intake application Gil Reyes submitted that day and stated, in his email, "I think this is the one!." ((Tr. 461-462) (G.C. Exh. 20)

On November 20, the Respondent reposted a job advertisement for "Parking Lot Attendant / Hospitality / Suffolk County Stony Brook Hospital." (Tr. 858-861) (G.C. Exh. 26)

On about November 21, Arias called one of the office phone numbers on Petruzzelli's business card and spoke to a woman who gave him a different number. (Tr. 125-127) Arias then sent the following text to the phone number he was given (G.C. Exh. 5 - emphasis in original):

> Good afternoon,
> This is Edward Arias with Classic Valet Service at Stony Brook Hospital. I was informed Friday of last week that I along with all my Valet coworkers would be interviewed starting November 20th 2023, and it is the end of November 21st 2023, and we have yet to receive[ ] word or email regarding the applications we all filled out. I expect to hear from you soon

On November 21, the Respondent's managers exchanged the following emails regarding the text Petruzzelli received from Arias (G.C. Exh. 21):

> **Petruzzelli – 4:30 p.m.**: Today one of the current parking staff sent this text message: This is Edward Arias with Classic Valet Service at Stony Brook Hospital. I was informed Friday of last week that I along with all of my Valet coworkers would be interviewed starting November 20th 2023, and it is the end of November 21st 2023, and we have yet to received word or email regarding the applications we all filled out. I expect to hear from you soon
>
> Our first draft response: Thank You for reaching out Edward. We are going through the list and will be reaching out on a rolling basis. It is possible that some current employees will not be interviewed until after the December 1st hand off. Depending on how quickly our HR team gets through the list.
>
> **Candiotti – 4:31 p.m.**: Would it be best for legal to provide us a response since this is sensitive?
>
> **Mark Baron – 6:04 p.m.:** Who told this employee that someone would be contacting them in the first place ?
>
> **Petruzzelli – 6:08 p.m.**: We gave out some staffing cards with q scans before we all talked last Friday.
>
> **Candiotti – 6:12 p.m.:** It also is from miscommunication on the site (not to do with us)[.] They are 35 lost soul attendants chatting with no info and they are making up some stuff internally. I think we should get Milman to give us a formal statement that we can use.
>
> **Petruzzelli – 6:22 p.m.**: I do feel badly for the staff currently working as they will all be out of work in December. We have to be careful of our messaging

because they cant have walk outs in the last 10 days or so.

On November 21, Goldsmith sent Gust the text Petruzzelli received from Arias. (G.C. Exh. 21-22) Gust replied by text to Goldsmith, "This is a good way to weed [o]ut the pain in the asses." (G.C. Exh. 22) Gust testified that Arias' text suggested he (Arias) was not suited for customer service because he demanded to hear from the person responsible for hiring him. (Tr. 847-848)

The record contains employment advertisements posted by the Respondent on about November 20 and 21.[10] (G.C. Exh. 10-11) Both ads indicated that Parking Systems was "urgently hiring" for "Full-Time and Part-Time parking attendant and hospital personnel positions available at Stony Brook Hospital, Overnights and weekends predominantly." (G.C. Exh. 10-11)

On about November 23, Gust called Gil Reyes and asked her to come to Jake's 58 Casino Hotel on November 25 at 1 p.m. for a job interview. The Respondent provides valet parking services for the hotel. Gil Reyes agreed. Gil Reyes' primary language is Spanish and she asked Arias to attend the interview in case she needed help with interpretation.[11] Gil Reyes also told Union business agent Porsuk and coworkers she was going to be interviewed. (Tr. 73-75, 321-326, 349-351, 875) Gil Reyes was the only Classic employee the Respondent offered to interview or hire before December 1. (Tr. 455, 497-498)

On November 25, Gil Reyes and Arias drove to Jake's 58 Casino Hotel for the interview. They did not see anyone from the Respondent upon arrival and, therefore, Gil Reyes texted Gust to notify him she had arrived. Gust directed Gil Reyes to the back of the casino where the valet operation was located. Gil Reyes and Arias did so and were met by Gust, Candiotti, and Gilliland. They brought Gil Reyes and Arias inside the casino to a café or lounge area where the group sat at a table for the interview. (Tr. 75-78, 130-133, 462-462, 631-634, 875-878) The interview was conducted entirely in English without Arias interpreting for Gil Reyes. (Tr. 74, 80, 83, 633) Of the interview participants, everyone testified at the hearing except Gilliland. Gil Reyes testified that Gust did most of the speaking for the Respondent. (Tr. 82-83) Gust and Candiotti testified that they both spoke for the Respondent. (Tr. 632, 875-878) Arias did not specifically recall, among the managers, who said what. (Tr. 134)

During the interview, the Respondent admittedly offered Gil Reyes a job. (Tr. 702-704) Gil Reyes described the remainder of the interview as follows: Gil Reyes asked whether she was the only Classic employee being interviewed. The managers said she was. Gil Reyes asked, "why?" Gust said he could only hire her and a few (2-3 or 3-4) other people, but not all the staff "because you guys have a union and we don't work with the union." (Tr. 80, 82) Gil Reyes told the managers she did not feel comfortable taking the job because the other workers were heads of families. Gust told Gil Reyes she could think about it and call him later if she changed her mind. Gil Reyes asked Arias whether he heard what Gust said. Arias said yes and they should leave because there was nothing else they could do. (Tr. 78-83, 321, 349-351, 354)

In an affidavit provided on December 12, Gil Reyes described the November 25 interview as follows (R. Exh. 4 ¶ 7):

[10] The screen shot of one ad is dated December 12 and was "posted 22 days ago," (i.e., November 20). (G.C. Exh. 10) The screen shot of the other ad is dated December 16 and was "posted 25 days ago," (i.e., November 21). (G.C. Exh. 11)

[11] Gil Reyes mostly testified in Spanish with an interpreter, but also testified briefly in English. Gil Reyes testified that she speaks English, but does not know certain words. (Tr. 75)

> Bobby began by saying that he would like me to continue working at Stonybrook, but he said that the company would only be able to hire maybe 3 or 4 of the current workers there. He said that the Employer would not hire more of us because the company does not work with unions, and the current employees at Stonybrook had a union. I responded that the workers at Stonybrook Hospital all work together as a team, and it would be wrong to break us up. I said that many of us had been working there for many years. I said that I had been working there for 8 years and I knew several co-workers who had been there for 10 years or more. I told Bobby that we all depended on our jobs and needed to stay employed. Bobby responded that hiring 3 or 4 of us was the only thing he could do. He asked me to think about whether I wanted to continue working under those circumstances. I said that I didn't feel good about this decision because I felt it was wrong that all of my co-workers would lose their job, and only I would stay working. Bobby said he was sorry. He repeated that I should contact him again if I wanted to work with Parking Systems.

In a supplemental affidavit provided on April 9, 2024, Gil Reyes clarified that, during her November 25 interview, "Gust said to me that Parking Systems would not hire more than 3 to 4 of the then existing Classic employees because we were unionized and Parking System does not work with unions and he said that I should think about working under these circumstances and to contact him if I agreed, which I understood to mean to contact him if I agreed to work non-union without most of my co-workers." (R. Exh. 2)

Arias described the November 25 interview as follows: The managers said they were happy Gil Reyes accepted the interview and that the University spoke highly of her. The managers asked if she was open to continue working at the Hospital for the Respondent. Gil Reyes asked what their plans were for everybody else she worked with. The managers said they had no interest in anyone else as they were bringing in fresh employees and Gil was the only one spoken for. The managers also said they would give her a choice of four or five other coworkers to bring with her to work for Parking Systems. Gil Reyes declined to be hired if the other Classic employees were going to lose their jobs. Gil Reyes said, hire all of us or none of us. The managers said they were not able to hire everybody. Gil Reyes asked why. The managers said, "they do not work with unions, so they could not hire all the Union workers." (Tr. 135) Gil Reyes said she did not want to be part of that as it would make her seem selfish. The managers said she could contact them and would still have a spot with the company if she changed her mind. Arias did not say anything during the meeting. (Tr. 133-137, 171, 173)

Candiotti described the November 25 interview as follows: Candiotti told Gil Reyes they wanted to hire her because MAPS raved about the great service she provided at a sensitive region of the hospital (the cancer center) and described her as a "must keep." Gil Reyes asked, "why me?" Candiotti repeated that MAPS requested her as a standout employee. Gil Reyes repeated, "why me?" Gust said, "this is a one-off situation where you've been specifically recommended for the role." Gil Reyes expressed concern that the Classic team worked together for a long time and were like her family. Gust said, without promising anything, Gil Reyes could make a list of real stand-out people and they would pass it along. Candiotti did not believe those people would actually be hired because the Respondent did not hire the employees of a predecessor contractor and it was difficult to obtain approval to hire just one employee (i.e., Gil Reyes). Gil Reyes declined the job offer. Candiotti did not recall Arias saying anything other than have a brief side-bar conversation with Gil Reyes. Candiotti denied that any manager mentioned the word "union." (Tr. 631-636, 677-678)

Gust described the November 25 interview as follows: Candiotti began the interview by telling Gil Reyes the company was interested in bringing her on board. Gil Reyes asked, "why

me?" The managers explained that MAPS thought highly of her and recommended that the Respondent reach out. Gil Reyes continued to ask why her and why not everybody else. Arias also asked why the Respondent was not talking to everybody. Gust asked whether Gil Reyes understood what they were saying. Gil Reyes said she understood everything. Arias said, you need to understand that some of the employees are like her family. Gust said he realized it was an awkward position for Gil Reyes. Gust said they might be able to see a few people Gil Reyes wanted to bring in for interviews and then they could see what they could do. Gust said they would love to have Gil Reyes on board. Gil Reyes said she was not comfortable with that. Gust said that was fine but she could call if she changed her mind. (Tr. 875-877) Gust denied he ever said the word "union." (Tr. 849)

On November 25, after the interview, Gil Reyes called Union business agent Porsuk and said Gust "told me that he couldn't hire everybody because we worked with a union, and they don't hire people from the union." (Tr. 83-84, 244-245) Over the next two days, Gil Reyes also told her co-workers what Gust said about not hiring unionized Classic employees. (Tr. 84-85)

On about November 27, in the Hospital's Starbucks café, University MAPS managers Akins and Stefanelli met with Gil Reyes and Classic manager Orue. (Tr. 86-90, 968-972, 975-979, 986-991) Orue was only present briefly before taking a phone call. Gil Reyes testified that the MAPS managers asked her whether she would be staying to work with Parking Systems. Gil Reyes responded that she was not sure because she just met with someone from Parking Systems who said he would not hire people from the Union. According to Gil Reyes, the MAPS managers confirmed they heard Parking Systems did not work with the Union. (Tr. 89-90)

After this meeting, Gil Reyes sent Porsuk the following text (G.C. Exh. 4) (Tr. 86):[12]

> Hi Ayse, I am Francis Gil. I spoke with neck and them -- Nick and them today in the morning. And they themselves said that the new company don't want to hire us because we have the Union. And they don't work with a union. So and is the same what Bobby told me on Saturday from the same company. Who told me on that Saturday, when they meet with me to make the proposition to stay with them, because only five people can stay with them -- with us.[13]

Akins and Stefanelli denied they told Gil Reyes that Parking Systems would not hire union employees or deal with a union. (Tr. 971, 990) Stefanelli recalled that Gil Reyes or Orue said something about the Union and, in response, he and Akins said the valet contract goes to the lowest bidder and does not require a union. (Tr. 971, 979) Stefanelli did not recall whether the topic of the Union came up in discussing why employees other than Gil Reyes were not being hired by Parking Systems. (Tr. 979) Akins testified that the subject of a union might have come up, but it was not a big part of the discussion. (Tr. 990-991) Akins testified that he had

[12] At hearing, I accepted evidence of certain communications in which Gil Reyes told Porsuk what Gust allegedly said about not hiring Classic's unionized employees. See *Pagerly Detective and Security Agency, Inc.*, 273 NLRB 494 fn. 1 (1984), affd. 784 F.2d 1132 (D.C. Cir. 1986) (Board held that judge should have permitted testimony that an employee told another employee what the employer's president said as a prior consistent statement under FRE 801(d)(1)(B)). (Tr. 93) (G.C. Exh. 4) However, I noted that the weight of the evidence would depend upon the motive of the witness to fabricate the statement at the time of the utterance. *Tome v. U.S.*, 513 U.S. 150, 167 (1995). Gil Reyes testified that, prior to November 27, she did not know it was unlawful for the Respondent to refuse to hire employees because they were represented by a union. (Tr. 98)

[13] This text was written in Spanish and translated by the hearing interpreter. (Tr. 86)

heard Parking Systems was a non-union organization. (Tr. 991-992)

At hearing, the Respondent presented evidence purporting to show that its operation at the Hospital differed from Classic's operation in certain respects. The Respondent's employees who regularly work at the Hospital sometimes perform additional shifts at other locations and employees who regularly work elsewhere sometimes perform additional shifts at the Hospital. (Tr. 557-560, 619-620, 771-772, 806-807, 824-828) (R. Exh. 10) The Respondent entered into evidence payroll records of employees who, at some point during their employment, have worked at the Hospital and other locations. However, those records do not indicate how often employees worked at other locations. (R. Exh. 8, 10) (Tr. 830-831, 845, 850, 942)

The Respondent has a practice of, when necessary, assigning staff from a less busy Hospital parking lot to a busier lot. (Tr. 573-579, 807-811) Gil Reyes testified that, with Classic, she was sometimes moved from the cancer center to a busier lot. (Tr. 301) Arias testified that, with Classic, he was sometimes assigned to work at another lot if an employee called out, but was not assigned to work at another lot that was busier. (Tr. 149)

The Respondent pools tips among all attendants who work at the Hospital, whereas Classic pooled tips among employees at each individual lot. (Tr. 549, 553-555, 807-811)

The Respondent stores car keys in each booth on a board that closes and locks automatically to prevent theft. (Tr. 564-565) The Respondent also has a policy of requiring that attendants handle only one key at a time to avoid losing them, whereas Candiotti observed Classic employees handing multiple keys at a time and leaving keys on the tire or hood of a vehicle. (Tr. 566-567, 575)

The Respondent used signs and cones to designate a new valet lane at the main entrance with attendants facilitating traffic flow. (Tr. 570-572)

The Respondent implemented a new emergency room parking validation process to distinguish between ER visitors who were entitled to valet parking for free and other visitors who were not. (Tr. 575-576)

CREDIBILITY

The primary credibility dispute in this case is whether, during the November 25 interview of Gil Reyes, Account Executive Gust said the Respondent could not hire all the Classic employees because the company does not work with the Union or unions. As discussed below, I credit Gil Reyes and Arias over Gust and Candiotti.

I generally found the General Counsel's witnesses more credible than the Respondent's witnesses because the latter testified in a manner inconsistent with more reliable evidence.[14] The Respondent is accused of attempting to avoid a bargaining obligation with the Union by refusing to hire Classic employees. The Respondent defended against this allegation by, in part, calling managers Jonathon Baron, Gust, and Candiotti to testify that they did not intend to interview and hire Classic employees to start the Hospital operation because it was against company policy. However, as discussed below, the following email exchange among the

[14] As to demeanor, I found Arias particularly credible. Arias listened attentively to every question regardless of who was asking it and provided factual answers unencumbered by argument or advocacy. I did not find that entirely true of the Respondent's managers or Gil Reyes.

Respondent's managers suggests the opposite was true (G.C. Exh. 14-15):[15]

> 1. When are we allowed to contact members of the other valet companies staff. I feel like this is the biggest domino right now. Once we figure out how many we're retaining, we can then hyper focus on hiring. We've been continuously interviewing and hiring over the last few weeks. We need a targeted number we need to hire to go along with the staff we already have in place to move over once we start. Talking to Richard, he has 32 staff members. I don't know if that is a total for the whole day or just his active roster. (Have we confirmed the schedule yet? We should mock it up and see how many staff members are needed).

Thus, Goldsmith indicated that the Respondent would, as the "biggest domino" in effectuating the transition, speak to Classic employees to determine how many would be retained and whether additional employees were needed to supplement that staff. (G.C. Exh. 14) In fact, Goldsmith referred to Classic employees (32 staff members according to Classic manager Richard Orue) as "the staff we already have in place" and other employees as those "we need to hire to go along with the staff." Further, Goldsmith referenced "interviewing and hiring," but did not refer to any plan to staff the Hospital by obtaining Parking System employees from other locations. And contrary to Candiotti's testimony that he simply ignored Goldsmith's alleged "mistake" regarding the hire of Classic employees, Candiotti appeared to confirm Goldsmith's analysis of the "biggest domino" by suggesting that the schedule be "mocked up" to see how many staff members were needed.

Indeed, it seems unlikely that the entire management team would simply ignore such a fundamental mistake by Goldsmith regarding the Respondent's hiring policy as it pertained to the Hospital startup. Gust testified that he was mentoring Goldsmith during the Hospital transition and Candiotti testified that he generally corrected somebody who was doing something wrong. It is also telling that Jonathon Barron did not correct Goldsmith even though Goldsmith specifically asked "that maybe Johnny can shed some light on" the questions he had posed. (G.C. Exh. 14-15) That most managers ignored Goldsmith's alleged mistake and Candiotti appeared to agree with Goldsmith's analysis suggests that Goldsmith did not make a mistake at all. This, in turn, significantly undermines the credibility of Jonathan Barron, Gust, and Candiotti.

The Respondent's managers may have been more credible if Goldsmith were called to confirm and explain why he made this alleged mistake and the Respondent produced a written policy against hiring predecessor employees for startup operations. Goldsmith has been a manager for a "long time," according to Candiotti, and was still employed by the Respondent at the time of trial. Goldsmith previously worked on the startup of new accounts and was aware of the Respondent's policies and procedures. Accordingly, Goldsmith and his subordinate, Gilliland, were entrusted with interviewing employees for the Hospital operation. It seems unlikely that Goldsmith would be entirely ignorant of a company policy not to hire the predecessor's employees and the Respondent did not call him to explain his alleged misunderstanding. *International Automated Machines*, 285 NLRB 1122, 1123-1124 (1987) ("[W[hen 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

[15] On October 24, Goldsmith circulated an email to the Respondent's Hospital management team which asked seven numbered questions. (G.C. Exh. 14) On October 27, Candiotti replied to all recipients by adding highlighted comments at the bottom of each question. (G.C. Exh. 15)

which the witness is likely to have knowledge").[16] Further, the Respondent did not produce the alleged policy against hiring predecessor employees even though Candiotti testified that such a policy would likely be found in the corporate handbook. See *Seaboard Farm of Athens*, 292 NLRB 776, 786 (1989) citing *Penn Industries*, *Inc.*, 233 NLRB 928, 936 fn. 28 (1977) (a party's failure to produce documents within its control which could confirm a witness' testimony may be weighed as an inference against that testimony). I find it telling of the managers' lack of credibility that the Respondent did not call Goldsmith or produce a written hiring policy to corroborate their story.

The Respondent's managers' testimony that they planned to use Parking Systems employees from other locations rather than Classic employees is also belied by their reaction to the November 9 letter from Union attorney Rocco (requesting that Classic employees be retained and work under the CBA). In internal emails, managers did not reference the use of Parking Systems staff at other locations or a company policy against retaining Classic employees for the transition. Rather, on November 10, Gust attempted to calculate the additional cost of paying 35 employees pursuant to the Classic CBA. (G.C. Exh. 17)

The testimony of Candiotti and Gust regarding the hiring process was also belied by texts between them and Goldsmith regarding the prospective interview of Classic employees who wanted to work. (G.C. Exh. 13) In mid-November, Gust directed Goldsmith and Gilliland to distribute to Classic employees certain business cards with a QR code which could be used to access a short-form intake application and to interview all employees who inquired, thereby having "an answer for people that wanna work[, s]o they don't feel in limbo . . .." (G.C. Exh. 13) Gust's reference to employees who "wanna work" suggests the Respondent was, at the time, considering them for the same. (G.C. Exh. 13) Moreover, Gust's statement that the Respondent should interview any Classic employee who inquired about work contradicted Candiotti's testimony that the Respondent did not plan to interview Classic employees. The Respondent's reluctance to interview Classic employees other than Gil Reyes and perhaps a few Classic employees that Gil Reyes recommended was a new development which only materialized later in November. (Tr. 592, 602-604, 625-631, 668-678, 690-692)

For its part, the Respondent challenges the credibility of Gil Reyes and Arias on the basis of inconsistencies in their testimony. For example, Arias originally testified that he did not have contact with Parking Systems personnel who came to the Hospital in November, but his December affidavit indicated that he spoke to and received a business card from a Parking Systems representative. Arias also indicated in his affidavit that he did not know the name of the Parking Systems representative who gave him the business card (identified by Arias at hearing as Gust) even though he perhaps should have been able to identify Gust after attending Gil Reyes' November 25 interview. Similarly, Gil Reyes indicated in her December 12 affidavit that Gust gave her a business card, but testified at hearing that one of Gust's colleagues gave her the card instead.[17] Gil Reyes also testified that she provided three investigatory affidavits even though the General Counsel represented at hearing that she only provided two affidavits. In her supplemental April 9, 2024 affidavit, Gil Reyes clarified that, on November 25, Gust said

[16] Contrary to the Respondent's assertion, the General Counsel cannot be faulted for not calling Goldsmith. See *International Automated Machines*, 285 NLRB 1122,1122-1123 (1987) (Board rejects argument that adverse inference should not be drawn against respondent that failed to call owner because "the owner was equally available to be called by both the [r]espondent and the General Counsel").

[17] Gil Reyes explained that she stated in her affidavit that Gust gave her the card because it was Gust's cards. (Tr. 343)

"Parking Systems would not hire more than 3 to 4 of the then existing Classic employees because we were unionized and Parking Systems does not work with unions and . . . that I should think about working under these circumstances . . .." (R. Exh. 2) At hearing, Gil Reyes did not testify that Gust said she should consider working for the Respondent without the Union or under those circumstances. Gil Reyes recalled having a brief side discussion with Arias at the end of the interview, but Arias did not.

The Respondent is certainly correct that Gil Reyes and Arias did not, at trial several months after the events of October and November, evince a perfect recollection consistent with each other and their prior statements. However, I do not believe their testimony was intentionally false. Their inconsistencies at trial were either immaterial or detrimental to the General Counsel's case. For example, Gil Reyes did not echo certain comments in her affidavits which would have supported the allegation that the Respondent offered employees employment on the condition that they abandon the Union. Likewise, Gil Reyes' recollection that she gave three affidavits rather than two was not an attempt to deny the existence of an affidavit and was not favorable to the General Counsel. As for testimony regarding who gave Gil Reyes and Arias business cards and whether they had a brief side-bar exchange at the end of the November 25 interview, those facts are not significant to a resolution of the case. These types of inconsistencies and the fact that Gil Reyes did not simply parrot her affidavits (often drafted by a Board agent) are common results of an imperfect recollection of events. By contrast, the Respondent's witnesses seemed to manufacture a narrative at odds with contemporaneous internal communications exchanged at the time of relevant events in order to defend against the refusal to hire allegation. I find the admittedly imperfect recollection and testimony of Gil Reyes and Arias more reliable than what appears to be the intentionally disingenuous testimony of Gust, Candiotti, and Jonathan Baron.

Turning to the specific issue of whether Gust, during the November 25 interview of Gil Reyes, admitted that the Respondent would not hire all Classic employees because the company does not work with the Union or unions, as noted above, I credit Gil Reyes and Arias over Gust and Candiotti. First, although Gil Reyes and Arias admittedly had an imperfect recollection of events, the Respondent's reason for not hiring Classic employees was clearly of great importance to them and likely more memorable than less significant aspects of the interview which they were more likely to forget.

Further, the Respondent's failure to call Gilliland to testify regarding the November 25 interview warrants an inference that he would not have corroborated the testimony of Gust and Candiotti. *Ready Mixed Concrete Co.*, 317 NLRB 1140, 1143, fn. 16 (1995) (an adverse inference may be drawn when a party fails to call or explain the absence of a corroborating witness expected to be favorably disposed to the party) citing *Basin Frozen Foods*, 307 NLRB 1406, 1417 (1992) and *International Automated Machines*, 285 NLRB 1122, 1122-1123 (1987). See also *Starbucks Corp.*, 374 NLRB No. 8, slip op. at 5 (2024). This, in turn, undermines the credibility of the managers who did testify.

I also rely to a limited degree on Gil Reyes' text and comment to Union business agent Porsuk in which Gil Reyes stated that a manager told her the Respondent would not hire Classic employees because Parking Systems does not work with the Union. (Tr. 83-86, 244-245) (G.C. 4) As discussed at hearing, my concern about relying on such prior statements to evaluate credibility is that the declarant can effectively corroborate her own testimony in anticipation of being challenged at trial. However, Gil Reyes credibly testified that, at the time of the text, she did not know it was unlawful for the Respondent to refuse to hire Classic employees because they were represented by the Union. Accordingly, Gil Reyes would not have had a motive to fabricate the text when she sent it to Porsuk.

The Respondent contends that Gust and Candiotti must be credited because to do otherwise would infer Gust is stupid or lacks self-control. I disagree. The record does not establish that, prior to November, the Respondent was aware of the law as it pertains to successorship. Although the Respondent forwarded to labor counsel the Union's November 9 letter requesting that the company assume the Classic CBA, we do not know what managers learned regarding the legal landscape. It is possible that, by November 25, Gust knew the Respondent would be required to recognize and bargain with the Union if a majority of the Respondent's workforce was composed of Classic employees, but did not know it was unlawful to refuse to hire Classic employees to avoid the same. That is, Gust may not have known it was problematic to admit the true reason why the Respondent did not want to hire all Classic employees.[18]

I do credit Gust and Candiotti to the extent they testified that, on November 25, they merely offered to pass along and possibly interview a few employees other than Gil Reyes, but did not offer to hire those employees. The managers would have been in a better position to recall what they said in this regard and the somewhat subtle difference would not benefit the defense. Conversely, the difference was likely insignificant to Gil Reyes and Arias since Gil Reyes declined the job and did not recommend other employees for hire.

ANALYSIS

8(a)(1) Statements

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by telling employees the Respondent would not hire them because they were represented by the Union and only offered employment to job applicants on the condition that they abandon the Union.

"An employer violates Section 8(a)(1) by making statements to employees that union applicants will not be hired" as "[s]uch statements are clearly coercive and have a reasonable tendency to interfere with employee's rights under the Act." *Exterior Systems, Inc.*, 338 NLRB 677, 679 (2002) citing *Lin R. Rodgers Electrical Contractors*, 328 NLRB 1165, 1167 (1999); *GM Electrics*, 323 NLRB 125, 126 (1997); *Sunland Construction Co.*, 311 NLRB 685, 704 (1993); *J. L. Phillips Enterprises*, 310 NLRB 11, 13 (1993). In *Exterior Systems*, the Board noted that the "supervisor's motive or intent in making the statement has no relevancy in an 8(a)(1)" and,

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[18] The General Counsel urges me to credit Gil Reyes and Arias because the Respondent violated the sequestration rule by having Candiotti and Jonathon Baron in the hearing room while Gust testified. I decline to do so. Such a sanction would not change my credibility findings and, further, I do not believe Candiotti or Jonathon Baron were present and listened to Gust testify regarding an issue that turned on credibility.

The General Counsel and Respondent both contend that Gil Reyes' November 27 meeting with University MAPS managers Akins and Stefanelli supports the credibility of their respective witnesses. I disagree. I credit Akins' and Stefanelli's denials that they told Gil Reyes that Parking Systems does not hire union employees or work with the Union or unions. However, neither MAPS manager evinced a strong recollection of what was said about the Union or unions. Stefanelli recalled that the Union was only mentioned to the extent he and Akins said the contract with Parking Systems did not require a union. Akins vaguely recalled that the subject of a union may have come up but was not a big part of the discussion. Akins did testify that he had heard Parking Systems was a non-union organization. I think it likely that Gil Reyes misunderstood a comment by the MAPS managers that Parking Systems was not required to have a union or was a non-union company as a confirmation of what Gust said during the November 25 interview two days earlier.

instead, "the test to determine if a supervisor's statement violated Section 8(a)(1) is whether under all circumstances the supervisor's remark reasonably tends to restrain, coerce, or interfere with the employee's rights guaranteed under the Act." 338 NLRB at 679, quoting *GM Electrics*, 323 NLRB at 127.

For reasons discussed above in the credibility section, I credit Gil Reyes and Arias in their testimony that, during Gil Reyes' November 25 job interview, Gust said the Respondent could not hire all Classic employees because the company does not work with the Union or unions. This statement was clearly coercive and violated Section 8(a)(1) of the Act as it conveyed that most Classic employees would not be hired by the Respondent because they were represented by the Union. See *Exterior Systems, Inc.*, 338 NLRB 677,679 (2002) citing *Lin R. Rodgers Electrical Contractors*, 328 NLRB 1165, 1167 (1999); *GM Electrics*, 323 NLRB 125, 126 (1997); *Sunland Construction Co.*, 311 NLRB 685, 704 (1993); *J. L. Phillips Enterprises*, 310 NLRB 11, 13 (1993)

The General Counsel further asserts that "an employer may not lawfully condition employment on union membership considerations" and that the Respondent violated Section 8(a)(1) when Gust offered Gil Reyes a job "with the understanding that Respondent does not work with unions and would not hire employees affiliated with the Union." (G.C. Brf. pp. 42-43) The General Counsel relies on cases – *Parkview Gardens Care Center*, 280 NLRB 47, 50 (1986); *County Window Cleaning Co.*, 328 NLRB 190, 197 (1999); *Wehr Construction*, 315 NLRB 687 (1994) – in which the Board found that an employer either expressly or impliedly conditioned employment on employees abandoning a union representative or foregoing union activity. For example, in *Parkview Gardens*, an employer unlawfully told employees "that if they wanted to continue to work, or if they went on strike and later wanted to come back to work, it would be necessary for them to first resign from the Union." 280 NLRB at 50. However, Gust did not urge Gil Reyes or her coworkers to take an affirmative action of resigning from the union, disavowing the union, or refraining from union activity. Gust simply urged Gil Reyes to accept the job offer and indicated a willingness to consider the employment of a few other Classic employees. I do not believe these comments rise to the level of an unlawful 8(a)(1) statement that conditions employment on employees abandoning the Union or their union activity.[19] Accordingly, I recommend the dismissal of this allegation.

8(a)(3) Refusal to Hire

The complaint alleges that the Respondent violated Section 8(a)(3) of the Act by refusing to hire all Classic employees because they were represented by the Union and to discourage them from engaging in union activities.

Where it is alleged that "a successor employer refuse[d] to hire employees of its predecessor because of their known or suspected union sympathies, . . . the appropriate analysis is that set forth in *Wright Line*, 251 NLRB 1083), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 91982)." *Planned Building Services, Inc.*, 347 NLRB 670, 670 (2014).[20] Thus, unlike in the non-successor refusal-to-hire analytical framework governed by *FES*, 331 NLRB 9 (2000), the General Counsel need not establish that the employer was hiring

[19] It is a separate matter pertaining to the remedy of the 8(a)(3) refusal to hire violation, found below, whether the job offer to Gil Reyes was valid. As discussed in the remedy section, I find that the job offer was not valid and not a basis for denying Gil Reyes backpay and instatement.

[20] In *Pressroom Cleaners*, 361 NLRB 1166 (2014), the Board overruled *Planned Building Services* on a remedial issue, but not the framework for determining liability.

or that the alleged discriminatees were qualified for those positions. Rather, "the same concerns regarding hiring plans and applicants' qualifications are not ordinarily present where a refusal to hire occurs when an alleged successor employer does not retain employees of the predecessor" because it will be presumed that the employer must fill vacant positions and the predecessor employees currently in those positions are qualified to perform them. *Planed Building Services, Inc.*, 347 NLRB at 673. Accordingly, consistent with *Wright Line*, "to establish a violation of Section 8(a)(3) and (1) in cases where a refusal to hire is alleged in a successorship context, the General Counsel has the burden to prove that the employer failed to hire employees of its predecessor and was motivated by antiunion animus." Id. The following factors are among those used to determine whether an alleged successor violated the Act by refusing to hire predecessor employees:

> [S]ubstantial evidence of union animus; lack of a convincing rationale for refusal to hire the predecessor's employees; inconsistent hiring practices or overt acts or conduct evidencing a discriminatory motive; and evidence supporting a reasonable inference that the new owner conducted its staffing in a manner precluding the predecessor's employees from being hired as a majority of the new owner's overall work force to avoid the Board's successorship doctrine.

Id. quoting *U.S. Marine Corp.,* 293 NLRB 669, 670 (1989). The General Counsel must also establish that the Respondent knew of the union status of predecessor employees. See *Voith Industrial Services, Inc.*, 363 NLRB 1038, 1067 (2016). Inferences of knowledge may be drawn from direct or circumstantial evidence. See *NRNH, Inc.*, 332 NLRB 300, 307-308 (2000) citing *Flowers Baking Co.*, *Inc.*, 240 NLRB 870, 871 (1979).

"Once the General Counsel has shown that the employer failed to hire employees of its predecessor and was motivated by antiunion animus, the burden then shifts to the employer to prove that it would not have hired the predecessor's employees even in the absence of its unlawful motive." *Planned Building Services, Inc.*, 347 NLRB at 674. However, if it is found that "the reasons advanced by the employer were pretextual, . . . the employer fails by definition to show it would have taken the same action in the absence of the protected conduct and it's *Wright Line* defense necessarily fails." *Adams & Associations, Inc.*, 363 NLRB 1923, 1928 (2016) enfd. F.3d 358, 374 (5th Cir. 2017).

The General Counsel's Prima Facie Case

Knowledge

The Respondent contends it did not know who the Classic employees were and whether they filled out short-form intake applications because "the QR codes are handed out to anyone" and certain short-form intake applications did not contain that information. (R. Brf. p. 20)

As noted above, inferences of knowledge may be drawn from direct or circumstantial evidence. See *NRNH, Inc.*, 332 NLRB 300, 307-308 (2000) citing *Flowers Baking Co.*, *Inc.*, 240 NLRB 870, 871 (1979). Here, the circumstances warrant a finding that the Respondent was aware of the identity of Classic employees. First, as discussed above, in an October 24 email, Goldsmith noted the Respondent's need to determine how many Classic employees to retain and that, "[t]alking to Richard, he has 32 staff members." (G.C. Exh. 14) This indicates that Goldsmith talked to Classic Manager Orue about Classic employees and was in a position to learn the names of those employees from him.

Contrary to the Respondent's assertion that QR codes were handed out to "anyone," Gust testified that he rarely used the business cards containing the QR codes and giving them to Classic employees was a "one off." (Tr. 790) And although Gust could distribute the URL landing page address without the business card QR code, he did not testify that he did so in mid-November. Rather, in mid-November, Gust directed Goldsmith and Gilliland to hand out the business cards to Classic employees at the Hospital. Shortly thereafter, on November 17, the Respondent received 21 short-form intake applications. The Respondent received nine more short-form intake applications from November 18 to November 21. And on November 21, the Respondent received a text from Arias in which he identified himself as a Classic employee and inquired about the applications he and his coworkers "all filled out." (G.C. Exh. 5) This sequence of events warrants an inference that the Respondent was aware that the short-form intake applications were submitted by Classic employees.

More importantly, most Classic employees either expressly stated or at least implied in their short-form intake applications that they worked for Classic at the Hospital. Of the 30 Classic employees who applied, nine expressly indicated that they worked for Classic and/or at the Hospital. Another 10 applicants implied the same by stating that they heard of Parking Systems through "Andrew Manager" (presumably Goldsmith), at "work," from a "business card," or from a "union rep." To the extent these ten applications were perhaps ambiguous, as noted above, the Respondent could reasonably assume that the applications were submitted by Classic employees who were given business cards and confirm the same with Orue.

The General Counsel asserts that the Respondent must be found to have unlawfully refused to hire all Classic employees, including about four employees who did not submit short-form intake applications. The General Counsel relies on Board law that a discriminatees' failure to apply for a job is not a valid defense to a refusal to hire allegation where the employer has demonstrated that filing an application would be futile. *Capital Cleaning Contractors*, 322 NLRB 801, 807 (1996); *Planned Bldg. Services,* 347 NLRB 670, 716 (2006); *Inland Container Corp.*, 275 NLRB 378, 378 fn. 5 (1985); *Shortway Suburban Lines*, 286 NLRB 323, 326 (1987). In this case, according to the General Counsel, the Respondent, by Gust, conveyed to Classic employees the futility of applying for work by telling Gil Reyes (who, in turn, told coworkers) that the Respondent could not hire all Classic employees because Parking Systems does not work with the Union or unions. The General Counsel is correct that a discriminatee's failure to apply for a job will not prevent the finding of a violation where, as here, the Respondent has demonstrated to employees that it would be futile to file an application. Id. However, that line of cases does not relieve the General Counsel of its burden to demonstrate that the Respondent was aware of the Classic employees who did not apply.

Nevertheless, I find, by a preponderance of the evidence, that the Respondent was aware of the Classic employees who did not submit applications. As of October 24, the Respondent was contemplating the retention of Classic employees and talking to Classic manager Orue about it. In his October 24 email, Goldsmith stated, "we need a targeted number we need to hire to go along with the staff we already have in place" and, "[t]alking to Richard [Orue], he has 32 staff members." (G.C. Exh. 14) By late-November, as discussed below, the Respondent had pivoted to a plan to avoid a bargaining obligation by refusing to hire most Classic employees. In order to avoid hiring Classic employees, the Respondent would have needed to know the identity of those employees and likely learned the same from Orue. Accordingly, I find that the Respondent was aware of the identity of all Classic employees, including those who did not submit short-form intake applications. Further, by the November 9 letter the Respondent received from Union attorney Rocco, the Respondent was aware that Classic employees were represented by the Union.

Antiunion Animus

I find that the Respondent's decision not to hire Classic employees was to avoid an obligation to bargain with the Union.

For reasons discussed in the credibility section above, I found that, during the November 25 interview of Gil Reyes, Account Executive Gust truthfully told Gil Reyes and Arias that the Respondent could not hire all Classic employees because those employees were union and Parking Systems does not work with the Union or unions. This is strong evidence in support of the General Counsel's prima facie case. See *Eastern Essential Services, Inc.*, 363 NLRB 1722, 1722 fn. 2 (2016) (employer's unlawful statements to two incumbent employees that they were not being hired because of their union membership are substantial evidence of antiunion animus); *Capital Cleaning Contractors*, 322 NLRB 801, 806 (1996) (prima facie case established where the employer told employee it was not hiring union workers); *Weco Cleaning Specialists, Inc.*, 308 NLRB 310, 310 (1992) (prima facie case established where employer told certain predecessor employees they were selected for employment but that a majority of the predecessor's work force would not be hired to avoid the union).

For reasons also discussed in the credibility section above, the Respondent's antiunion animus is demonstrated by its failure to offer a convincing rationale for refusing to hire Classic employees. The Respondent's managers testified that they never intended to interview and hire Classic employees for the Hospital startup because it was contrary to company policy. However, account representative Goldsmith, who was admittedly familiar with the Respondent's policies and previously helped with the startup of new accounts, said the opposite in an October 24 email. See *Weco Cleaning Specialists, Inc.*, 308 NLRB 310, 310 (1992) (antiunion animus found where successor admitted it had no problems with the predecessor's employees and would hire them, but later inexplicably determined it would hire only six predecessor employees). As noted above, in his October 24 email, Goldsmith stated, "we need a targeted number we need to hire to go along with the staff we already have in place" and, "[t]alking to Richard [Orue], he has 32 staff members." (G.C. Exh. 14) It was only in November, after the Respondent received a letter from the Union requesting recognition and forwarded it to labor counsel, that the Respondent became reluctant to hire Classic employees.

Candiotti claimed that "long-time" manager Goldsmith simply made a mistake in his October 24 email and that hiring predecessor employees was against company policy. (Tr. 692-692) However, the Respondent did not call Goldsmith to testify and did not produce its alleged policy against hiring predecessor employees (even though Candiotti testified that such a policy would likely be found in the corporate handbook). See *Starbucks Corp.*, 374 NLRB No. 8, slip op. at 5 (2024) quoting *International Automated Machines*, 285 NLRB 1122, 1123 (1987) ("[W]hen 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"); *Seaboard Farm of Athens*, 292 NLRB 776, 786 (1989) citing *Penn Industries*, *Inc.*, 233 NLRB 928, 936 fn. 28 (1977) (a party's failure to produce documents within its control which could confirm a witness' testimony may be weighed as an inference against that testimony). This favors a finding that the Respondent's stated reason, offered at trial, for refusing to hire Classic employees was a mere pretext for antiunion animus.

Indeed, the Respondent's entire management team failed to correct Goldsmith's alleged mistake even though Gust was mentoring Goldsmith on the Hospital project (an admittedly important account) and Candiotti had a practice of correcting someone who did something wrong. Jonathon Barron also failed to comment on Goldsmith's mistake even though, in Goldsmith's email, he specifically asked questions "that maybe Johny can shed some light on . .

.." (G.C. Exh. 15) More importantly, Candiotti did not simply ignore Goldsmith's alleged mistake of asserting that the "biggest domino right now" was to "figure out how many we are retaining" in order to obtain "a target number we need to hire to go along with the staff we already have" among the 32 staff members identified by Classic manager Orue. (G.C. Exh. 15) Rather, Candiotti appeared to confirm Goldsmith's analysis by replying that the schedule should be mocked up to "see how many staff members are needed."[21] (G.C. Exh. 15) And the Respondent never effectively explained why its plan to interview and hire Classic employee ultimately changed to, reluctantly, interviewing and offering to hire only a single Classic employee (i.e., Gil Reyes) at the request of the University.

As suggested above, the timing of the Respondent's pivot in its hiring plans also suggests antiunion animus. On October 24, Goldsmith sent an email discussing the importance of speaking to Classic employees to determine "how many we're retaining" and the number of additional employees "we need to hire to go along with the staff we already have in place . . .." (G.C. Exh. 14) On October 27, Candiotti responded to Goldsmith by saying "we should mock" the schedule "and see how many staff members are needed." (G.C. Exh. 15) Until November 9, the Respondent's managers were admittedly unaware of any potential legal obligation to recognize the Union as the bargaining representative of employees or any Union request to hire Classic employees under the terms of the Classic CBA. The Respondent, admittedly, did not use the CBA wages and benefits to determine and propose a wage rate in its bid for the Hospital contract. On November 9, Union attorney Rocco sent the Respondent a letter requesting that all Classic employees be retained under the terms of the CBA. The Respondent forwarded that letter to labor counsel. On November 10, in an email, Gust described his understanding of the Respondent's bid for the Hospital contract as "pretty close to the bone" and calculated the additional cost of applying the Classic CBA to 35 employees. In about mid-November, by text, Gust directed Goldsmith and Gilliland to hand out business cards at the Hospital "to anyone who inquires about work and set them up for an interview." It was only later in November that the Respondent modified its plan to interview and hire Classic employees. On November 19, Jonathon Baron sent a text to the management team granting "[p]ermission to hire the 1" Classic employee (i.e., Gil Reyes) (G.C. Exh. 19) On November 25, Gust told Gil Reyes the Respondent would consider hiring a few additional employees but could not hire all Classic employees because the Respondent does not work with the Union or unions. The Respondent's new limit on the number of Classic employees to be interviewed and hired suggests a new determination that interviewing more or all Classic employees might result in an unwanted bargaining obligation. That is, the timing of the Respondent's change in its interview and hiring plans, shortly after receiving the Union's November 9 letter, suggests that the subsequent decision not to hire Classic employees was to defeat a finding of successorship.

Based upon the foregoing, I find that the General Counsel has established a prima facie case that the Respondent refused to hire Classic employees because they were represented by the Union and to avoid an obligation to bargain with the Union.

The Respondent's *Wright Line* Defense

The Respondent has not established a *Wright Line* defense. As noted above, the Respondent's purported business reason for not hiring Classic employees is pretextual and not

[21] The Respondent also contends that Goldsmith's October 24 email was "vague" because "[t]he 'domino' could refer to the sensitivity of making the approach to potentially poach." (R. Brf. p. 22) However, managers did not testify that the email was vague. Candiotti merely testified that the email was wrong.

the true reason for doing so. See *Adams & Associations, Inc.*, 363 NLRB 1923, 1929 (2016). The Respondent claimed at hearing that it had no intention to hire Classic employees as that would be a violation of company policy. However, as discussed above, the credible evidence established that the opposite was true. The Respondent has also failed to establish, "for example, that it did not hire particular employees because they were not qualified for the available jobs" or that "it had fewer unit jobs that there were unit employees of the predecessor." *Planned Building Services*, 347 NLRB 670, 674 (2014). Accordingly, I find that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire Classic employees because they were represented by the Union and to avoid an obligation to bargain with the Union.

8(a)(5)

The General Counsel contends that the Respondent was a successor of Classic with an obligation to recognize and bargain with the Union as the bargaining representative of an appropriate unit of employees and not unilaterally change the terms and conditions of employment of unit employees by establishing initial terms different than those defined in the Classic CBA. According to the General Counsel, the Respondent having admittedly failed to recognize and bargain with the Union and having set certain initial terms and condition of employment of employees which were not consistent with those in the Classic CBA, the Respondent violated Section 8(a)(5) and (1) of the Act.

Successorship

Successorship is found if there is a "substantial continuity" between the predecessor and successor. *Fall River Dyeing & Finishing Corp.*, 482 U.S. 27, 43 (1987) ("*Fall River*"). The issue of "substantial continuity" can be further divided into an analysis of the continuity of the workforce and a continuity of the business enterprise or operation. See, e.g., *J.R. Sousa & Sons*, 210 NLRB 982 (1974). Continuity of the workforce is generally just a question of numbers to determine whether predecessor employees comprise a majority of the successor's employees once the successor has hired, on a nondiscriminatory basis, a "substantial and representative complement" of employees in an appropriate unit. *Fall River*, 482 U.S. 47-52. However, "where a successor engages in a discriminatory refusal to hire, the Board will infer that all former employees would have been retained absent the unlawful discrimination." *M. Mogul Enterprise, Inc.*, 348 NLRB 1096, 1103 (2006). A continuity of the business enterprise or operation is satisfied if the successor "continued, without interruption or substantial change, the predecessor's business operations." *Fall River*, 482 U.S. at 43, quoting *Golden State Bottling Co.*, 414 U.S. 168, 184 (1973).

Appropriate Bargaining Unit

The Respondent defends against a finding of successorship by contending that the Classic unit did not remain appropriate because the Respondent's operation at the Hospital "has no separate identity from the balance of Parking Systems [at] its near[b]y locations." (Resp. Brf. p. 45) However, the historic single facility unit of Classic employees as certified by the Board and recognized in the Classic CBA is presumptively appropriate. *Stein, Inc.*, 369 NLRB No. 10, slip op. 2, fn. 6 (2020). In fact, an alleged successor must meet a "'heavy evidentiary burden' of showing that historical bargaining units are 'repugnant to the Act's policies' and no longer appropriate." Id. quoting *Banknote Corp. of America*, 315 NLRB 1041, 1043 (1994). Factors in this unit analysis include geographic proximity between locations, the degree of employee interchange between locations, similarity of skills, functions, and working conditions between employees at multiple locations, centralized control and functional integration of labor relations and other operations, common supervision, and bargaining history. *Always East Transportation*,

365 NLRB 686, 688-689 (2017); *Children's Hospital of San Francisco*, 312 NLRB 920, 928 (1993); *West Jersey Health System*, 293 NLRB 749, 751 (1989).

Here, the Union was the certified bargaining representative of a unit of Classic employees from 2015 to November. Over that period, the Union and Classic signed multiple collective-bargaining agreements. This bargaining history favors a finding that the existing unit remains appropriate. See *Printing Industry of Seattle, Inc.*, 116 NLRB 1883, 1884 (1956) ("the fact that collective bargaining has proceeded successfully for over 9 years on the basis of the unit herein sought is, in itself, a persuasive reason for finding such a unit appropriate").

The record contains little evidence regarding the Respondent's other locations except for Jake's 58 Casino Hotel and the Nassau Coliseum. As the Nassau Coliseum is the Respondent's only unionized location and, presumably, an appropriate single-facility unit, it is unclear why a single-facility unit at the Hospital would not also be appropriate.

The record also contains little evidence regarding employee interchange and any coordination of employees' terms and conditions of employment. The Respondent presented evidence that employees at the Hospital might work additional shifts at other locations and vice versa, but presented no evidence as to how often this occurs. Likewise, the record does not indicate how often managers come to the Hospital to help park cars. The Respondent also presented no evidence as to what extent employees at multiple locations, including the Hospital, have centrally determined and shared terms and conditions of employment. Regardless, the Board has observed that "[t]he extent to which the three historical bargaining units . . . had some interaction and shared some of the same terms and conditions of employment did not make maintaining separate units repugnant to the Act's policies" and render the historical units inappropriate. *Stein, Inc.*, 369 NLRB No. 10, slip op. 2, fn. 6 (2020).

The record does not establish a significant degree of functional integration, administrative centralization, or common supervision. Like other Parking Systems locations, the Hospital operation has a single site manager (Gilliland). And like other locations, the Hospital operation has a single account representative (Goldsmith). Indeed, Gust testified that the Respondent has more of a "flat" management structure than a centralized hierarchical one.

As for the Respondent's reliance on certain operational changes between the Classic and Parking Systems operations, the record contains insufficient evidence to establish that the Respondent's ability to effectuate such changes would be hindered as a result of a bargaining obligation. The Respondent has a single-facility unit of unionized employees at Nassau Coliseum and Jonathon Barron testified that the presence of a union and collective-bargaining agreement do not affect that operation in any way.

For the foregoing reasons, I find that the Respondent has failed to establish that the historical single-facility unit of Classic employees did not remain appropriate after the Respondent assumed the Hospital operation.

Continuity of the Workforce

The continuity of the workforce is normally determined by counting the number of predecessor employees the successor has hired among a substantial and representative complement of employees, but this is not so when the successor has refused to hire the predecessor's employees to avoid a bargaining obligation. See *Planned Building Services*, 347 NLRB 670, 674 (2006) citing *Love's Barbeque Restaurant No. 62*, 245 NLRB 78, 82 (1979). Thus, "[a]lthough it cannot be said with certainty whether the successor would have retained all

of the predecessor employees if it had not engaged in discrimination, the Board resolves the uncertainty against the wrongdoer and finds that, but for the discriminatory motive, the successor employer would have employed the predecessor employees in its unit positions." Id.

Here, since I found, above, that the Respondent unlawfully refused to hire Classic employees to avoid a bargaining obligation with the incumbent Union, it must be presumed that the Respondent would have hired Classic employees in sufficient number to make up a majority of the workforce when the Respondent commenced operations at the Hospital on December 1.[22]

Continuity of the Business Enterprise

In determining the continuity of the business enterprise or operation, "the Supreme Court has identified the following factors as relevant to the analysis: "(1) whether the business of both employers is essentially the same; (2) whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and (3) whether the new entity has the same production process, produces the same products, and basically has the same body of customers." *Always East transportation, Inc.*, 365 NLRB 686, 687 (2017), citing *Fall River*, 482 U.S. at 43. See also *N.L.R.B. v. Burns International Security Services, Inc.*, 406 U.S. 272, 280 fn. 4 (1972) ("*Burns*"); *Aircraft Magnesium*, 265 NLRB 1344, 1345 (1982); *Premium Foods, Inc.*, 260 NLRB 708, 714 (1982). These factors are analyzed from the perspective of unit employees – the question being whether they "'understandably view their job situations as essentially unaltered" or, conversely, would view their job situations as so altered that "they would change their attitudes about being represented." Id. at 688, quoting *Fall River Dyeing*, 482 U.S. at 43 and *Van Lear Equipment, Inc.*, 336 NLRB 1059, 1064 (2001). See also *Golden State Bottling Co.*, 414 U.S. 168, 184 (1973). Accordingly, "the essence of successorship . . . is not premised on an identical re-creation of the predecessor's customers and business . . .." *A.J. Myers & Sons, Inc.*, 362 NLRB 365, 371 (2015).

Here, the evidence established that Classic's employees would have viewed their job situation as essentially unaltered and not so different as to warrant a change in attitude regarding union representation. When the Hospital changed valet parking contractors on December 1, there was no hiatus between the Classic operation and the Respondent's operation. See *Cadillac Asphalt Paving Co.*, 349 NLRB 6, 9 (2007) (lack of a hiatus in the operations of the predecessor and successor is a factor in finding continuity of the operation). Upon taking over the operation, the Respondent's attendants continued to take possession of cars, provide the customer with a ticket stub, park the car, store the keys and duplicate ticket stubs where they could be retrieved, and returned the car to the customer upon request. This service also continued to be provided at the Hospital for the same clientele – patients, visitors, and staff. In fact, in the bidding process, MAPs expressed satisfaction with the way Classic was functioning and did not require a change of the same.

The Respondent contends that the continuity of the operation was significantly disrupted because unit employees working at the Hospital had a greater opportunity to work additional shifts at other Parking Systems locations, were assigned to assist at a busy lot different than their usual lot, split tips among all Hospital attendants rather than the attendants of a particular lot, wore a different uniform and ID badge, had different supervision, had a more secure board

[22] Succession is determined when the Respondent has hired a substantial and representative complement of employees. *Sprain Brook Manor Rehab, LLC.*, 365 NLRB 483, 513 (2017). Here, there was no gradual or staggered hiring after the start of the operation and, accordingly, the date of succession was when the Respondent assumed the Hospital contract. Id.

for storing keys, and had somewhat different policies and procedures for storing keys and collecting fees. However, such differences in the details of the operation and employees' terms of employment are generally insufficient to overcome a finding that, from the employees' perspective, the business operation continued without significant change. See *The Esplanade Hotel*, 369 NLRB No. 62, slip op. at 15-16 (2020), citing *Morton Development Corp.*, 299 NLRB 649, 651 (1990) (minor changes in management, equipment, and the way employees perform their jobs would not be sufficient to undermine the general continuity of the enterprise). See also *Always East Transportation, Inc.*, 365 NLRB 686, 687-688 (2017) (substantial continuity of the operation found where drivers and monitors performed the same general business service despite differences in the successor's operation and employees' terms and conditions of employment); *A.J. Meyers and Sons, Inc.*, 362 NLRB 365, 371) (2015) (substantial continuity of the operation found where bus drivers operate the same general business of transporting the same body of students despite differences in the model of bus, terminal, supervision, and scale of the operation); *Pressroom Cleaners*, 361 NLRB 643, 674-675 (2014) (substantial continuity of the operation found even though successor changed policy to hiring only part-time employees who seek no career in the janitorial business); *Marine Spill Response Corp*., 348 NLRB 1282, 1287-1288 (2006) (substantial continuity of the operation found where employees performed the same essential duties of oil spill cleanup even though successor was larger in geographic scope and services, held a different management philosophy, and centralized its labor relations with standardized compensation).

Based on the foregoing, I find that the record established a continuity of the business enterprise or operation and that, since December 1, the Respondent was a successor of predecessor Classic.

Refusal to Recognize and Bargain

The Respondent does not contend that it recognized and offered to bargain with the Union. The Respondent merely defended against the 8(a)(5) allegations by contending that it had no such bargaining obligation. Having found that, as of December 1, the Respondent was a successor of predecessor Classic with an obligation to recognize and bargain with the Union as the bargaining representative of an appropriate unit of employees, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to do so.

Unilateral Changes

The Supreme Court has observed that a successor is ordinarily free to set initial terms on which it will hire the employees of a predecessor and is not bound by the substantive provisions of the predecessor's collective bargaining agreement. *Fall River*, 482 U.S. at 40; *Burns*, 406 U.S. at 284, 294. However, if a successor unlawfully refuses to hire the predecessor's unionized employees to avoid a bargaining obligation, the successor will forfeit its right to set initial terms and conditions of employment of unit employees. See *Planned Building Services*, 347 NLRB 670, 674 (2006) citing *Love's Barbeque Restaurant No. 62*, 245 NLRB 78, 82 (1979).

As discussed above, I found that the Respondent refused to hire Classic employees to avoid a bargaining obligation with the Union. Accordingly, the Respondent forfeited the right to set initial terms and conditions of employment inconsistent with the terms of employment of unit employees as described in the Classic CBA. As reflected in Gust's November 10 email to other managers, the Respondent did not implement certain terms of the Classic CBA, including wages, paid time off, and shoe allowances. Thus, the Respondent violated Section 8(a)(5) and

(1) of the Act by unilaterally changing the terms and conditions of employment of unit employees.

CONCLUSIONS OF LAW

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

2. On November 25, the Respondent violated Section 8(a)(1) of the Act by telling employees they would not be hired because they were represented by a union and the Respondent does not work with the Union or unions.

3. The Respondent did not, on November 25, violate Section 8(a)(1) of the Act by offering employees employment on the condition of their abandoning the Union.

4. Since about mid-November, the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire Classic employees because they were represented by the Union.

5. Since December 1, the Respondent has been the successor of Classic.

6. Since December 1, the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as the bargaining representative of employees in an appropriate bargaining unit.

7. Since December 1, the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the preexisting terms and conditions of employment of unit employees by setting initial terms of employment inconsistent with those described in the Classic CBA.

8. The unfair labor practices committed by the Respondent affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent engaged in unfair labor practices, I shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully refused to hire employees of predecessor Classic because they were represented by the Union, the Respondent must offer those employees instatement to their former jobs or if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges they enjoyed.

The Respondent shall make Classic unit employees whole for any loss of earnings and other benefits resulting from their discriminatory refusal to hire. The backpay make whole remedy for the refusal to hire violation shall be computed in accordance with *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Scoopers, Inc*., 364 NLRB No. 93 (2016), the Respondent shall compensate Classic unit employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at

the rate prescribed in *New Horizons*, supra, and compounded daily as prescribed in *Kentucky River Medical Center*.

The Respondent will be required to remove from its files any reference to the unlawful refusal to hire Classic unit employees. The Respondent shall then notify Classic unit employees in writing that their unlawful refusal to hire will not be used against them in any way.

The Respondent will be ordered to recognize and bargain on request with the Union with respect to the terms and conditions of employment of unit employees, and, if an agreement is reached, reduce the agreement to a written contract.

The Respondent will on request of the Union, rescind any departures from the terms of employment that existed before the Respondent assumed the operation at the Hospital, and to retroactively restore preexisting terms and conditions of employment as described in the Classic CBA, including wage rates, paid time off, and shoe allowances. Those terms of employment will be maintained and not changed until the Respondent negotiates in good faith with the Union to agreement or to impasse. *Weco,* 308 NLRB 310, 321 (1992). The remission of wages and benefits shall be computed as in *Ogle Protection Service,* 183 NLRB 602 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest as prescribed in *New Horizons,* supra.

In accordance with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall compensate all discriminatees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful adverse actions against them, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), the Respondent shall compensate Classic employees for the adverse tax consequences, if any, of receiving a lump sum backpay award, and, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 29 a report allocating backpay to the appropriate calendar year. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. Pursuant to *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021), the Respondent will file with the Regional Director of Region 29 a copy of Classic employees' W-2 forms reflecting the backpay award.

The Respondent did not contend that Gil Reyes is not entitled to the remedies of backpay and instatement because she, unlike other employees, was offered employment by the Respondent on November 25. See *Packaging Techniques, Inc.*, 317 NLRB1252 (1995) (traditional remedy for an unlawful refusal to hire continues to run until a valid offer for employment is made and accepted or rejected). The General Counsel has contended that "an employer may not lawfully condition employment offers on union membership considerations." (G.C. Brf. p. 42) Although I did not find that the Respondent violated Section 8(a)(1) of the Act by expressly or impliedly advising Classic employees that they would not be hired unless they abandoned the Union, the job offer to Gil Reyes was effectively conditioned upon the same since the Respondent sought to avoid an obligation to bargain with the Union by refusing to hire Classic employees. The Board has recognized that where "employment essentially was conditioned on employees' abandonment of their union representation," it "is an unlawful

condition which employees are not required to accept." *Weco Cleaning Specialists, Inc.*, 308 NLRB 310, 310 fn. 5 (1992) citing *City Electric*, 288 NLRB 443, 453-455 (1988) and *A-1 Schmidlin Plumbing Co.*, 284 NLRB 1506 (1987), enfd. 865 F.2d 1268 (6th Cir. 1989). Therefore, the Respondent's offer of employment to Gil Reyes was not valid. And since Gil Reyes was not required to accept the Respondent's invalid offer of employment, I do not find that the offer is a basis for denying her the traditional remedies of backpay and instatement.

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

ORDER[23]

The Respondent, Parking Systems Plus, Inc., Valley Stream, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that employees will not be hired because they are represented by a union and the Respondent does not work with the Union, Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers, or unions.

(b) Refusing to hire former employees of Classic Valet Parking, Inc. (Classic) because they were represented for purposes of collective bargaining by the Union.

(c) Refusing to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate bargaining unit:

> Included: All full-time and regular part-time runners (also known as drivers), greeters and cashiers who are regularly employed by the Employer at its Stony Brook University Hospital site, located in Stony Brook, New York.
>
> Excluded: All employees employed at other sites, administrative employees, clerical employees, professional employees, confidential employees, casual per diem employees, managerial personnel, guards and supervisors as defined by the Act.

(d) Refusing to recognize and bargain with the Union by unilaterally changing the terms and conditions of employment of unit employees without prior notification to and bargaining with the Union.

(e) In any like or related manner interfering, 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) Notify the Union in writing that it recognizes the Union as the exclusive bargaining

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

representative of unit employees under Section 9(a) of the Act and that it will bargain with the Union concerning terms and conditions of employment for employees in the above-described appropriate bargaining unit.

(b) On request of the Union, rescind any departures from the terms of employment of Classic unit employees that existed immediately prior to the Respondent's assumption of the valet parking operation at the Stony Brook University Hospital (the Hospital), retroactively restoring preexisting terms and conditions of employment, including wage rates and other benefits, until it negotiates in good faith with the Union to agreement or to impasse.

(c) Make whole, in the manner set forth in the remedy section of this decision, the unit employees for losses caused by the Respondent's failure to apply the terms and conditions of employment that existed immediately prior to its assumption of the operations of predecessor Classic at the Hospital location.

(d) Within 14 days from the date of this Order, offer employment to the following former Classic unit employees, who would have been employed by the Respondent but for the unlawful discrimination against them, in their former positions or, if such positions no longer exist, in substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any employees hired in their place:

Last Name	**First Name**
Almonte Cepeda	Virgilio
Alvarado Tobar	Juan
Angeles Presinal	Jose Mar
Argyris	Irene
Arias	Edward
Arias Almonte	Edwin
Barett-Martinez	Pedro
Dejesus Rojas Garcia	Reir
Diaz Lora	Albery
Dublin	Delva
Estevez Rodriguez	Rolando
Fernandez	Juan
Garcia	Claudio Meija
Garcia Rodriguez	Vladimir
Gil	Francis
Gil	Francis
Hernandez	Jeyson
Hernandez	Jose D.
Meija Garcia	Salvador
Mejia Cruz	Ana
Morel	Agustin
Morel Castillo	Reye
Mosquea	Juan
Peralta Espinal	Ramon
Perez	Jose Lorenso

Perez	Ramon
Perez Arias	Michael
Perez-Perez	Jose Miguel
Rodriguez	Fabian
Rojas Garcia	Reinaldo
Romero	Blas
Tavarez Liriano	Santiago
Thomas	Issac
Valdez	Indhira
Valdez	Ynoe

(e) Make the unit employees referred to above in paragraph 2(d) whole for any loss of earnings and other benefits they may have suffered by reason of the Respondent's unlawful refusal to hire them, in the manner set forth in the remedy section of this decision.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire the employees named above in paragraph 2(d) and, within 3 days thereafter, notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

(g) Compensate employees referred to above in paragraph 2(d) for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director of Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(h) Within 21 days of the date the amount of backpay is fixed by agreement, or Board order, or such additional time as the Regional Director may allow for good cause shown, file with the Regional Director for Region 29 a copy of the corresponding W-2 form reflecting the backpay award provided to the employees referred to above in paragraph 2(d).

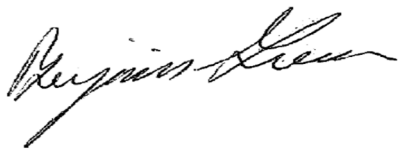
(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all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

(j) Within 14 days after service by the Region, post at its Hospital location in Stony Brook, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, 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. 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, copies of the notice

to all current employees and former employees employed by the Respondent at any time since November 19, 2023.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 29 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 24, 2025.



Benjamin W. Green
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT refuse to hire or otherwise discriminate against you because you were represented for purposes of collective bargaining by Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers (the Union).

WE WILL NOT tell you that employees will not be hired because they were represented by a union and we do not deal with the Union or unions.

WE WILL NOT refuse to recognize and bargain in good faith with the Union as your exclusive collective-bargaining representative in the following appropriate bargaining unit:

> Included: All full-time and regular part-time runners (also known as drivers), greeters and cashiers who are regularly employed by the Employer at its Stony Brook University Hospital site, located in Stony Brook, New York.
>
> Excluded: All employees employed at other sites, administrative employees, clerical employees, professional employees, confidential employees, casual per diem employees, managerial personnel, guards and supervisors as defined by the Act.

WE WILL NOT refuse to recognize and bargain with the Union by unilaterally changing your terms and conditions of employment in the above appropriate bargaining unit without prior notification to and bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act (the Act).

WE WILL notify the Union in writing that we recognize the Union as the exclusive representative of our employees in the above unit under Section 9(a) of the Act and that we will bargain with the Union concerning your terms and conditions of employment in the above-described appropriate bargaining unit.

WE WILL on request of the Union, rescind any departures from your terms and conditions of employment that existed immediately prior to the start of our operation at the Stony Brook University Hospital (the Hospital), retroactively restoring your preexisting wages, hours, and other terms and conditions of employment, as reflected in the collective-bargaining agreement then in effect between your predecessor employer Classic Valet Parking, Inc. (Classic) and the Union, until we negotiate in good faith with the Union to agreement or to impasse.

WE WILL offer employment to the following former unit employees of Classic, who would have been employed by us but for our unlawful discrimination against them, in their former positions or, if such positions no longer exist, in substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any employees hired in their place:

Last Name	**First Name**
Almonte Cepeda	Virgilio
Alvarado Tobar	Juan
Angeles Presinal	Jose Mar
Argyris	Irene
Arias	Edward
Arias Almonte	Edwin
Barett-Martinez	Pedro
Dejesus Rojas Garcia	Reir
Diaz Lora	Albery
Dublin	Delva
Estevez Rodriguez	Rolando
Fernandez	Juan
Garcia	Claudio Meija
Garcia Rodriguez	Vladimir
Gil	Francis
Gil	Francis
Hernandez	Jeyson
Hernandez	Jose D.
Meija Garcia	Salvador
Mejia Cruz	Ana
Morel	Agustin
Morel Castillo	Reye
Mosquea	Juan
Peralta Espinal	Ramon
Perez	Jose Lorenso
Perez	Ramon
Perez Arias	Michael
Perez-Perez	Jose Miguel
Rodriguez	Fabian
Rojas Garcia	Reinaldo

Romero	Blas
Tavarez Liriano	Santiago
Thomas	Issac
Valdez	Indhira
Valdez	Ynoe

WE WILL make you whole, in the unit set forth above, for losses caused by our failure to apply the terms and conditions of employment that existed immediately prior to the start of operations at the Hospital.

WE WILL make you whole, with interest, for any loss of earnings and other benefits you may have suffered by reason of our unlawful refusal to hire you.

WE WILL compensate the unit employees listed above for the adverse tax consequences, if any, of receiving a lump-sum backpay award and **WE WILL** file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 29 a copy of the corresponding W-2 forms reflecting the backpay award received by the unit employees listed above.

WE WILL remove from our files any reference to the unlawful refusal to hire you, and **WE WILL**, within 3 days thereafter, notify you in writing that this has been done and that his discharge will not be used against in any way.

Parking Systems Plus, Inc.
(Employer)

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

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One Metrotech Center, 20th Floor, Suite 200, Brooklyn, NY 11201-3948
(718) 330-7713, Hours: 9 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-331253 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (212) 264-0300