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

SATELLITE HEALTHCARE, INC.

and

Cases 20-CA-315531
20-CA-316334
20-CA-321160
20-CA-322476
32-CA-322804
20-CA-327603
32-CA-327746
32-CA-327820
32-CA-327847

SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS – WEST

Jason Wong, Esq. and *McKenzie Langvardt, Esq.,* for the General Counsel.

William T. Hanley, Esq., for the Charging Party.

Michael Moschel, Esq., Erin O. Sweeney, Esq., and *Amanda Ploof, Esq.,* for the Respondent.

DECISION

STATEMENT OF THE CASE

BRIAN D. GEE, Administrative Law Judge. This case was tried before me by Zoom on July 8, 2024, and in-person in San Francisco, California, from July 9 through 12, and August 12 through 14, 2024. Based on charges filed by the Service Employees International Union, United Healthcare Workers—West (the Union) on various dates in 2022 and 2023, the General Counsel issued several consolidated complaints between November 13, 2023, and March 25, 2024 (the complaint). Respondent filed timely answers between December 4, 2023, and April 8, 2024. It also filed an amended answer on June 7, 2024 (Respondent Answer).

The complaint alleges that Satellite Healthcare, Inc. (Respondent or Satellite), violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act by making coercive statements, withholding annual merit wage increases, changing policies related to breaks and signing in for

shifts, denying pay raises and reimbursements, disciplining and discharging employees, refusing to bargain in good faith, and failing to timely furnish information requested by the Union.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file post hearing briefs.[1] Based on a careful review of the entire record, including the post hearing briefs and my observation of the credibility of the witnesses, I make the following

FINDINGS OF FACT[2]

I. JURISDICTION

Respondent is a California nonprofit corporation with offices and places of business located in California, including facilities in Vallejo, San Francisco, Rohnert Park, Folsom, Morgan Hill, Blossom Valley/San Jose, and Gilroy, that has been engaged in business as a healthcare institution providing hemodialysis treatment and medical care. During the calendar year ending December 31, 2023, it derived gross revenues in excess of $250,000 and purchased and received goods or services valued in excess of $5,000 at its California facilities which originated outside the State of California. I find that, during all times material to the complaint, Respondent was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7), and was a healthcare institution within the meaning of Section 2(14) of the Act.

II. STATEMENT OF FACTS[3]

A. Background and Respondent's Operations

Respondent operates more than 90 dialysis centers located across seven states: California, Hawaii, Texas, Tennessee, New Jersey, Georgia, and South Carolina.[4] This matter pertains to seven facilities spread throughout the broader San Francisco Bay Area. In 2022 and 2023, the Union filed various representation petitions seeking to become the collective-bargaining representative of mixed bargaining units (e.g., registered nurses and technicians) and/or nonprofessional units (e.g., only technicians).

Respondent stipulated, and I find, that the following individuals were its Section 2(11) and/or Section 2(13) agents during the times material to the complaint: Marco Castellanos—human resources principal manager and later director of employee relations; market directors (MDO) Donald Danks, Rachel Cruz, and David Baba; clinic managers Myrna Hernandez, Paula

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[1] By letter dated December 17, 2024, counsel for the General Counsel provided notice to the undersigned that the Regional Director of Region 20 on October 24, 2024, filed a petition for a preliminary injunction pursuant to Sec. 10(j) of the Act. The General Counsel therefore requested that the ALJ decision here "be rendered as expeditiously as possible."

[2] Abbreviations used in this decision are as follows: "GC Exh." for General Counsel's exhibits; "R Exh." for Respondent's exhibits; "Jt Exh." for joint exhibits; "Tr." for citations to the hearing transcript; and "R Ans." for Respondent's answer. I refer to Counsel for the General Counsel as the "General Counsel."

[3] Most of the following facts were not subject to conflicting testimony, since Respondent did not call many of the supervisors and agents involved in these allegations. However, where there was differing testimony, I have presented only the facts that I found credible; testimony in contradiction to my factual findings has been carefully considered but discredited.

[4] See History of patient-centered care | Satellite Healthcare, last checked on March 16, 2025.

Luong, Mildred Peralta, Sally Tesorero, and Lucille Nowakowski[5]; and assistant clinic manager Jaime Gapasin.[6] Respondent stipulated that Cindy La has been a compensation analyst and a Section 2(13) agent from October 30, 2022, through the present. It also stipulated that outside attorney Erin Sweeney was a Section 2(13) agent of Respondent during all times material to the complaint. (R. Answer, Jt. Exh. 1, Tr. 57–58.)

Each Satellite facility is staffed by a clinic manager, registered nurses (RNs), technicians, dieticians, social workers, environmental specialist technicians (ESTs),[7] and clinical administrative coordinators (CACs).[8] Some larger facilities also have an assistant clinic manager. Physicians from the referring hospitals also visit clinics to make rounds and check on their patients. (Tr. 137.)

Hemodialysis, or simply "dialysis," is a process by which water, solutes, and toxins are removed from the blood of patients whose kidneys are no longer able to perform that function.[9] Patients are attached by tubes to machines called dialyzers, which filter their blood. Dialysis treatment typically last 4 hours. Dialysis must be conducted regularly, and patients visit the centers approximately three times per week for treatment. A typical patient schedule might be Tuesday, Thursday, and Saturday. (Tr. 137, 393–398.)

Dialysis patients are treated directly by both technicians and registered nurses. Under the guidance of RNs, techs interface with patients by escorting them into the treatment room, taking their blood pressure and other vital signs, cannulating them, hooking them up to dialyzers, and monitoring them every 30 minutes. They also sanitize the dialyzers and replenish supplies. The two main categories of technicians are patient care technicians (PCTs or trainees) and certified clinical hemodialysis technicians (CCHTs, CHTs, or techs). PCT is the entry level trainee position, while CCHT is the journeyman tech position. (R Exh. 15, Tr. 235–237, 319–320, 340–341, 392–399, 486, 515, 571.)

Techs are overseen by RNs. Depending on the size of the facility, there can be two or three RNs on duty during each shift. RNs' duties include providing medication, patient assessment, handling care plans, and making rounds with doctors. (Tr. 137.)

Both RNs and techs work 12-hour shifts, 3 days per week. They are paid hourly, with overtime rates being paid after the 8th hour of each shift. Facilities have alternating cohorts which work schedules of Monday, Wednesday, and Friday or Tuesday, Thursday, and Saturday. California State law requires certain minimum staffing ratios. For every tech, there is a maximum of four patients. For every RN, there is a maximum of three techs who service 12 patients. However, due to RN staffing shortages, it was common for facilities to conduct patient care even while out of ratio. "Nurses come and go," testified RN Cathy Mendoza. "[A]nd

[5] Additionally, I find there is sufficient evidence showing that Mary Ann Mercado, a former clinic manager at Gilroy and Hollister, was a Section 2(11) supervisor and/or 2(13) agent during the dates material to the complaint. (Tr. 861–869.)

[6] Consistent with the verbiage of the parties, I refer to these supervisors and agents as "managers."

[7] ESTs do not provide any patient care. They only handle tasks such as cleaning, emptying trash bins, and restocking materials. (Tr. 404.)

[8] CACs are essentially receptionists. (Tr. 449.)

[9] See Kidney dialysis - Wikipedia, last checked on March 16, 2025.

especially during the pandemic, we were short all the time, most of the time." Satellite does not strictly enforce the ratio—as long as an RN is present, techs are still allowed to provide direct patient care." (Tr. 312–313, 393, 439, 572.)

While the size of each facility varies, they appear to follow a similar floorplan. In addition to a lobby and reception area, there are managerial offices, a small isolation room, and a large treatment room. The treatment room can be rectangular with one or two nurses' stations and treatment chairs positioned around the circumference.[10] Patients sit in those chairs while receiving their dialysis treatment. Patients are grouped into 4-chair units called "pods" and each pod is serviced by a tech. Pods and techs are paired with each other; for example, Pod A and its tech is paired with Pod B and its tech. The two techs work together and provide assistance to each other during breaks. Using the Vallejo facility as an example, there are approximately 20–25 patients who are treated by teams of eight or so techs and three RNs. At the nurses' stations, RNs do their charting and give medications. (Tr. 156–159, 235–237, 439–440.)

B. The Union's Organizing Campaign Through Certification

In Fall 2022, the Union began its organizing campaigns at Satellite. On October 31 and November 1, 2022, the Union filed representation petitions for the clinics located in San Francisco, Gilroy, Blossom Valley in San Jose, and Morgan Hill.[11] The organizing effort was driven by the employees' goals of getting higher wages, improving workflow and patient care, and getting more respect from management. On December 28, 2022, Region 20 conducted the elections and then certified the Union at those four initial facilities between January 9 and 24, 2023.[12] The bargaining units are described in the chart below. (Tr. GC Exh. 26, Tr. 578–579, 621.)

Clinic and Case number	Dates of election and certification	Bargaining unit
San Francisco 20–RC–306221	12/28/22 1/24/23	Included: Certified Hemodialysis Technician; Environmental Services Technician; Patient Care Technician Trainee; Certified Clinical Hemodialysis Technician; Certified Clinical Hemodialysis Technician – Advanced. Excluded: All other employees, confidential employees, managers, guards, and supervisors as defined in the Act.
Blossom Valley 32–RC–306314	12/28/22 1/10/23	Included: IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers; MSW I; RNs; Staff – PD; Nephrology Dietitians I; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT), Advanced; Certified Clinical Hemodialysis Technicians (CCHT), Master; Patient Care Technician Trainees; Environmental Services Techs and LVNs.

[10] Vallejo is one of the larger facilities; its treatment room measures approximately 60-feet by 40-feet and has 20 to 25 patient chairs. (Tr. 155–157.)

[11] The parties refer to these as the "initial four facilities," so I will too.

[12] All dates hereafter are for the year 2023, unless specified otherwise.

		Excluded: Center Managers, office clerical employees, guards, and supervisors as defined by the Act.
Gilroy 32-RC-306319	12/28/22 1/10/23	Included: Home RN4s, Advanced; Home RN5s, Expert; IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers; MSW II; Nephrology Dietitian Is; RNs, Staff - PD; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT); Advanced; Certified Clinical Hemodialysis Technicians (CCHT); Master; Patient Care Technician Trainees; and Environmental Services. Excluded: center managers, office clerical employees, guards, and supervisors, as defined by the Act.
Morgan Hill 32–RC–306334	12/28/22 1/9/23	Included: IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers; MSW III; Nephrology Dietitians I; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT), Advanced; Certified Clinical Hemodialysis Technicians (CCHT), Master. Excluded: Center Managers, office clerical employees, guards, and supervisors as defined by the Act.

Over the next several months, the Union filed representation petitions for three more Bay Area facilities: Vallejo, Rohnert Park, and Folsom. On March 9, the Union filed its representation petition in 32–RC–313698 to represent employees at Vallejo. On April 21, the election was held and the Union won. On May 1, the Union was certified[13] as the bargaining representative of a mixed-unit consisting of RN Staff – Per Diem; RN Clinical Nurse I; IC RN3 Intermediate; IC RN4 Advanced; IC RN5 Expert; Certified Clinical Hemodialysis Technician (CCHT); Certified Clinical Hemodialysis Technician (CCHT) Advanced; Certified Clinical Hemodialysis Technician (CCHT) – Per Diem; and Environmental Services Technician. The unit excluded all other employees, confidential employees, managers, guards, and supervisors as defined in the Act.

On May 10, the Union filed its representation petition in 32–RC–317817 to represent employees at Rohnert Park. On June 21, the election was held and, on August 2, the Union was certified as the representative of a mixed-unit consisting of IC RN3 – Intermediate; IC RN4 – Advanced; Nephrology Social Worker (MSW I); Nephrology Dietician I; Nephrology Dietician II; Certified Hemodialysis Technician; Environmental Services Technician; Patient Care Technician Trainee; Certified Clinical Hemodialysis Technician; Certified Clinical Hemodialysis Technician – Master; Certified Clinical Hemodialysis Technician – Advanced; Certified Clinical Hemodialysis Technician – less than 1 year. The unit excluded: Manager, Center 2 – Advanced, all other employees, confidential employees, managers, guards, and supervisors as defined in the Act.

[13] The May 1 certification was corrected on February 14, 2024.

On May 17, the Union filed its representation petition in 32–RC–318296 to represent employees at Folsom. On June 28, the election was held and the Union was certified on July 27, in a mixed-unit consisting of Home RN2- Intermediate; IC RN3 - Intermediate, Nephrology Dietician I; RN Staff - Per Diem, Certified Clinical Hemodialysis Technician (CCHT); Certified Clinical Hemodialysis Technician (CCHT) - Per Diem; Licensed Vocational Nurse (LVN) - Per Diem. The unit excluded: Center Managers and all other employees, confidential employees, managers, guards, and supervisors as defined in the Act.

The Union continues to be the certified bargaining representative at all seven facilities.

C. Respondent's Conduct Following the Union's Certification

After the Union won election at the initial facilities and during the months in 2023 when it sought to begin first contract bargaining, Respondent was alleged to have engaged in a broad pattern of unlawful conduct which included threatening employees with loss of merit wage increases, withholding merit increases from all represented employees (while giving them to non-union employees), threatening retaliation for unionizing, discharging a key union supporter, and unilaterally changing workplace policies.

1. Delayed Start to Bargaining and Delay in Furnishing Information

On January 4, following the elections at the four initial facilities, Union Assistant Director Jason Capell reached out to Manager Marco Castellanos to schedule bargaining and to request information. On January 19, Castellanos replied, stating that Satellite intended to bargain over each facility individually, was still assembling its bargaining team, was awaiting proposed dates from the Union, and would gather the requested information. (GC Exhs. 2, 3, Tr. 33–41.)

By March 31, Castellanos, who had just been promoted to director of employee relations, sent most of the requested information to Capell. While that production satisfied most of the request, it was missing the information on each unit employee's "employee number" and the "current pay scales/ranges for each covered position." (Items 1(f) and 3 in the Union's request.) In an email dated April 6, Capell explained why the Union needed those two items, as well as other information. For example, the Union needed information related to the "employee number" because that information "is crucial in order to identify each individual employee instead of having to make assumptions based on name only." With regard to current pay scales/ranges for unit positions, Capell explained that the Union "cannot make a wage proposal without knowing what employee's wages are based upon." In short, he explained that the Union needed this information to bargain in an informed manner. (GC Exh. 6, 41, Tr. 48–58, 93–95.)

On April 11, Capell telephoned Castellanos to ask where bargaining would take place and to declare the Union's plan to negotiate a single contract covering all units. Castellanos said he would confer with his bargaining team and get back to Capell. (Tr. 64–65.)

On April 24, Capell proposed various dates in June to begin negotiations. (GC Exh. 8, Tr. 65–66.)

On May 3, Capell requested information for the newly certified unit at Vallejo. By email dated May 5, Castellanos introduced outside counsel Erin Sweeney as Respondent's lead

negotiator and proposed starting negotiations on June 27. The following day, Capell confirmed for June 27 and floated the possibility of additional dates in the first 2 weeks of July. Hearing no response, Capell followed up by email on May 18. On June 14, Sweeney said Respondent had to postpone the first bargaining session because Satellite had just entered into a management services agreement with U.S. Renal Care and that development would result in "some significant operational and management shifts and realignments" which would impact its bargaining team and/or proposals. After Capell offered new dates in July and August, Sweeney confirmed July 25 for the first bargaining session. (GC Exh. 9, Tr. 69–74.)

On June 13, Capell reiterated the Union's request for various items, including the wage ranges/wage scales for unit positions. (Tr. 120–121.)

On June 20, Capell sent Castellanos a new request seeking information pertaining to the discharge of Cathy Mendoza, a registered nurse at Vallejo and a leading union supporter. By email dated June 30, Respondent told the Union that, in its view, it had no obligation to bargain over disciplinary actions involving unit employees during the period between certification and completion of an initial contract. Therefore, it would not be providing such information. (GC Exh. 16, Tr. 79–81.)

On July 11 and August 7, Capell requested information about the newly certified units at Rohnert Park and Folsom, respectively. These requests sought information about unit employees (e.g., their names and contact information), job descriptions for unit positions, current pay scales and ranges, and information on health, dental, and vision plans. Respondent did not furnish any information in response to these requests until early September. On August 25, Capell reiterated those information requests. On August 31, Capell reiterated the Union's request for the wage ranges/wage scales for all represented employees. (GC Exhs. 12, 14, and 15, Tr. 83–91.)

On July 15, Sweeney emailed Capell to again push back the first bargaining session. She said that Respondent could no longer meet to bargain in July and August because Castellanos had to take temporary leave due to a family emergency. Sweeney explained that, since Castellanos was Satellite's director of employee relations and primary company representative for bargaining, they were not prepared to meet—especially with the newly entered arrangement with U.S. Renal Care. With Castellanos projected to return on September 6, Sweeney proposed starting bargaining on September 18 and 19. Capell agreed to those new dates. While he asserted that Respondent's "continued delays and cancellations are unacceptable," Capell did acknowledge that Respondent was "in complete disarray." (GC Exh. 9, R Exh. 56, Tr. 64–76.)

In early September, Respondent furnished the information related to the employee numbers and the wage rates/wage scales at the represented facilities. (GC Exhs. 11, 15, 50, R. Exhs. 51, 52, 54, Tr. 56, 88–91.)

Bargaining began on September 18 and continued through the time of the hearing. As of date of the hearing, the parties had yet to reach an initial agreement. (Tr. 86, 91–92, 108.) There was no evidence to support any finding that the parties had ever reached an overall impasse in their bargaining.

2. Annual Merit Wage Increases

Every spring, Satellite granted annual merit wage increases to eligible employees.[14] Upon the Union's certification at the initial four facilities, however, Respondent decided to withhold the 2023 merit increases from all represented employees, while granting those same increases to unrepresented employees.

For more than two decades, employees received merit increases in the spring. This process followed a regular schedule, beginning in the preceding fall when company leadership formulated the budget for merit increases at each facility. In early March, after employees completed their self-evaluations, managers submitted their recommendations for the amount of the raises. Second-level managers reviewed those recommendations before making final approvals. In early April, managers conducted one-on-one meetings with employees to discuss their job performance during the prior year and to tell them how much they would be getting. In mid-April, employees started receiving their merit raises. (Tr. 672-680, 759-760.)

Respondent followed this process from the early 2000s through 2022. (Jt Exh. 1, GC Exh. 49 and 55, Tr. 517–520, 348–352, 374–375, 489–492, 623, 751–752.)

With regard to the amount of each employee's raise, all or nearly all eligible employees received some percentage increase. Clinic Manager Mercado explained that she always gave employees increases—the amount of the raises was never zero.[15] This was confirmed by Clinic Manager Peralta and former Gilroy Assistant Clinic Manager Michael Badilla. Badilla testified that it was, "standard practice that every April. . . you're getting an[] evaluation and with that evaluation comes a merit raise." (Tr. 356, 915, 920–921, 967–968.)

Managers' recommendations were to be based on set criteria, such as the allotted budget for merit increases (e.g., raises based on a 3-percent average), each employee's performance in the prior calendar year (e.g., 2022 raises based on performance in 2021), "external competitiveness" (e.g., competition for these positions from competitors in the dialysis industry), "internal equities" (e.g., fairness given what other employees within the facility are being paid), and the "compensation-ratio" or "compa-ratio" (a calculation based on the employee's pay rate in relation to the midpoint for that position). Additionally, there was a ceiling for increases which managers could not exceed without getting approval from upper management. (GC Exh. 54, R Exhs. 33–35, Tr. 657–665, 773, 866–867, 913.)

On March 20, Castellanos sent Capell an email with the subject line, "Notice to Union re Annual Wage Increases." The email included sample letters which represented that Satellite had started the annual performance evaluation process for 2023, that there was no fixed criteria or

[14] Exclusions for merit increases were based on considerations such as disciplinary status, recent promotions, and employment status at the time of payment. For example, per diem employees, employees on a performance plan, interns and contingent workers, and PCT trainees were categorically excluded from merit increases in 2023. (Jt Exh. 1, GC Exhs. 54 and 55.)

[15] For Respondent exhibits 36, 38, and 42, it was uncertain why some employees did not receive merit raises in 2023. For example, those employees may simply have been excluded from eligibility for any of the reasons listed in the footnote above or because they were maxed out in their hourly pay and received lump sum payments in lieu of hour wage increases. (Tr. 713-714.)

practice for determining wage increases, and that the company had not yet decided whether there would be any wage increases or changes for unit employees. Castellanos told the Union that "no decisions have been made regarding represented employee's wage increases" for 2023 and that Capell could respond "if you would like to discuss further." Capell did not respond, thinking that Satellite was "simply continuing their long-established practice" of conducting performance evaluations and granting merit wage increases every spring and that there was "really nothing to bargain over." (GC Exh. 4, Tr. 41–43.)

In April and May, managers started telling unionized employees that they were not going to get merit increases. The employees relayed this news to the Union. Tech Michael Badilla told Jonathan Kim, the union representative handling the Gilroy facility. Bargaining committee members also told Capell round this time.[16] Prior to that, nobody from Satellite gave the Union with notice (other than Castellanos' March 20 email to Capell). (Tr. 367–369, 624–625, 627.)

Respondent's managers were well-aware that higher wages were an issue central to the organizing drive and that employees would care about their merit increases. An email discussion from May revealed their thinking. Several supervisors—including MDO Donald Danks and Clinic Managers Mary Ann Mercado and Mildred Peralta—discussed merit increases as they related to two employees, Andrew Gastelum and Isabel Cardenas, who were transferring from the unionized facility in Morgan Hill to the then-nonunionized facility at Hollister. On May 24, Mercado suggested giving them merit increases since they had been denied raises "because of the ongoing bargaining unit" at Morgan Hill. She recommended giving them 3-percent merit increases plus additional 4-percent geographical increases, since "[w]e all know that employees talk/discuss salary and there is a possibility that this will be brought up once they transfer." Peralta agreed with that proposal and reminded everyone that the raises would have the added benefit of dampening future union activity: "I totally agree with Mary Ann. Isabel needs the 3% merit increase . . . Let's not forget the reason why they joined the union—they demanded the same rate as everyone else in [the] San Jose area. ¶ Isabel and Crystal are 2 leaders of the union group.[17] If they feel we treated [them] less, then they can easily form [a] union in Hollister." Within hours, Respondent authorized the 3-percent merit increases plus the 4-percent geographical increases for both Gastelum and Cardenas. (GC Exh. 43.)

Statements by Managers Baba and Tesorero at the San Francisco Clinic. On April 4, the day before payday, MDO Baba, Clinic Manager Tesorero, and Assistant Clinic Manager Vincent Maniquis conducted an employee briefing, called a "huddle," to discuss merit increases. While all of the clinic employees received merit increases in 2022, none of the represented employees would get merit increases in 2023. "David Baba mentioned that—that represented employees will not get their merit increase," testified Tesoro. But Baba added that the unrepresented employees would get their merit raises the next day. (Tr. 801–804, 816–817.)

Sometime prior to summer, Tesorero also discussed merit increases at a morning huddle at the San Francisco clinic. When tech Eugene Dela Pena asked if employees were going to get

[16] On October 5, the Union filed its charge in Case 32–CA–327848 alleging that Respondent had violated Sec. 8(a)(5) by "withholding previously scheduled raises." Region 32 served the charge on Respondent on October 13.

[17] "Crystal" was not further identified.

their merit increases, Tesorero said, "no, because you are in the bargaining process. (Tr. 495–496.)

In mid-August, Tesorero and Baba conducted another huddle to answer employee questions about Satellite losing money. During that meeting, Dela Pena reiterated his questions about merit increases in 2023. Baba responded, "no . . . you will not get the merit increase because you are in the process of bargaining." (Tr. 500–502.)

Statements by Manager Luong at the Blossom Valley facility. At a huddle in June, Clinic Manager Paula Luong told the techs and RNs in attendance that, even though employees were to turn in their self-evaluations for their performance evaluations, none of the unionized employees would be getting merit increases. Tech Alber Li testified without contradiction that Luong said, "Since you become Union, I mean, you're not going to get a merit increase. And you have to wait for the bargaining if you're going to have it, going to have a merit increase or not." [18] Li, who had received a merit increase every year for the past two decades, said that the news was upsetting to him and his coworkers: "Well, everybody's not happy. They'll be asking why. I mean, we've been receiving annually. They're not happy, they're furious, and they're mad." The following day, Luong reiterated that message to the other cohort of employees. In the morning huddle, Luong told the two RNs and four techs working that day that they would not be getting any pay raise for 2023 because they unionized. "[S]he simply said the same thing about we're not getting it because we've been unionized, and we have to wait for the outcome of the bargaining session," Li testified. (Tr. 518–526.)

Statements by Manager Peralta at the Morgan Hill facility. In April, Morgan Hill tech Eric Martin Del Campo received feedback from his manager, Midred Peralta, about his work performance in 2022. When he did not receive any accompanying merit increase, he asked Peralta about that on July 30. She told him, "because [you're] union, nothing could be done until the contract was settled." (Tr. 322–323, 331.)

Around August 15, Del Campo asked Peralta about a different subject: how he could get promoted to the advanced tech position, something that would come with a wage increase. Peralta replied that, because Satellite and the Union were "in bargaining still, that she couldn't guarantee any kind of pay increases." Del Campo interpreted that to mean that, even if he did apply and got promoted, Satellite still might not give him the corresponding pay raise due to the absence of contract. He therefore decided against even applying for a promotion, explaining "I'm trying to make a living, and if I can't get some kind of increase to support my family, I'm just not going to do it." (Tr. 323–325, 332–335.)

Respondent admitted that it did not grant merit increases to unit employees at any of the initial facilities in 2023, while it did grant them to the eligible nonunion employees at those facilities. Respondent withheld these merit increases without first providing the Union with notice and the opportunity to bargain. (Jt. Exh. 1. Tr. 108–109.) By letter dated October 11, the Union demanded bargaining over the withheld merit increases. (R Exhs. 4, 49, Tr. 125–126.)

[18] Respondent did not call Luong to testify. Additionally, it asked Alber Li no questions on cross-examination. (Tr. 526.)

3. Satellite's Reaction to Organizing at the Vallejo Clinic

The Vallejo clinic is one of Satellite's larger facilities. On any given shift, there are eight techs and three RNs. In 2023, the clinic manager was Myrna Hernandez and the assistant clinic manager was Jaime Gasparin. (Tr. 231-236.)

Clinic Manager Hernandez Warns Employees About Unionizing. In late 2022, the Vallejo employees secretly began organizing. They were led by RN Cathy Mendoza, RN Maria Estorco, and techs Mark Calma and Dennis Torres. Their goal was to get higher wages, improve workflow and patient care, and receive better treatment from management. On March 10, the employees went public when Mendoza, Calma, and Torres walked into Hernandez' office and handed her their SEIU-UHW flyer publicly announcing the campaign. All three employees' names and photos were featured on the flyer. (GC Exh. 26, Tr. 142–145, 574–575, 578–579.) Upon seeing it, Hernandez told the employees to close the door, revealed that human resources already told her that was coming, and then let loose a barrage of dire threats and warnings. Hernandez started by saying that they could be blackballed if associated the Union. "She said that she was sad to see our pictures on this flyer because she said that dialysis is a small community and all the managers are going to see your face on the—this flyer," Mendoza recalled.[19] To emphasize this, Hernandez pointed to a post it note on her computer with a job applicant's name and said, "see this name right here? . . . a manager just called me, told me that if this person applied, do not hire them because they're pro-Union." When Mendoza said that would be discriminatory, Hernandez replied, "[N]o, it's not discrimination because you're—they're not their employees yet. They have a right to hire who they want." Hernandez pointed to Mendoza, who had problems with tardiness, and cautioned, "especially you, Cathy; you know where you stand."[20] Torres interjected, saying that Hernandez was "just telling us what—what could happen, that we're going to get blacklisted or something." Hernandez made no effort to deny that. She went on to say that unionizing might cause the Vallejo clinic to close: "I just want you guys to do your research because I know the—financial status of the company, and there are three clinics that are closing." She added, "I just want you to do your research because if . . . the company can't meet your fund—you know, your demands, our clinics could close, you know?"[21] (Tr. 145–150, 534–536, 549–550, 576–577.)

That night, during a lengthy back-and-forth over text, Hernandez and Mendoza—two longtime friends—continued their conversation about the Union.[22] Sometime after 9:28 p.m., Hernandez wrote, "This might be the last text I will send you because after the election and we

[19] There are reportedly only four dialysis providers in Vallejo and its neighboring cities: DaVita, Fresenius, U.S. Renal, and Respondent. (Tr. 150–151.)

[20] In his testimony, Torres corroborated much of this account by Mendoza. As to Hernandez singling out Mendoza and asserting that she was jeopardizing her job security by publicly supporting the Union, Torres testified: Hernandez "gave special attention to Cathy saying, I—especially you, I don't know why you're doing this because I've helped you through your career, and helped you get jobs." (Tr. 576.)

[21] While not identical, Torres recounted a similar message by Hernandez. "She also said that . . . I can't give you guys what you are asking for. I don't think this company can give you guys what you guys are asking for. This company might even close down because what you guys are doing." (Tr. 576.)

[22] This exchange contains messages from Hernandez which are germane to the *Wright Line* analysis for the allegations in par. 13 of the complaint alleging Section 8(a)(3) discipline and discharge of Cathy Mendoza. Those text messages are presented later in this decision. The texts presented here pertain only to the Section 8(a)(1) allegations in par. 6(b) of the complaint.

got unionized. I cannot talk to you anymore. Just want to than[k] you for all your help and friendship."[23] Mendoza responded, "Omg ate Myrna we can still talk as friends your still my ate my mentor its not personal its satellite."[24] Hernandez replied, "That [is] what we think but its totally different scenario Cathy. You cannot talk to me straight you have to go to your representative. I cannot talk to you anymore I have to talk to your representative." (GC 17, pp. 2–5; Tr. 164–165, 234.) Transitioning to the impact of unionizing, Mendoza wrote, "You['re] still my ate please don't be mad at me I have to do it for my family. . . I'm the only one working it's not fair satellite doesn't pay fair wages for the increased cost of living." Hernandez cautioned, "That is why I'm so worried for you because you know how much I care for you. I know the financial status of the company and I don't know if they can grant the demands. There are 3 clinics already close[d]. Satellite is not as big as FMC [Fresenius Medical Care] and Davita thats [w]hy before the union is not even [i]interested at SHC [Satellite]." (GC 17, p. 7; Tr. 165–166.) When the topic turned to Mendoza's chronic tardiness, Hernandez wrote, "Did you hear anything from me? You know I approve payroll and I can see your time clock, because of our working relationship that I value so much I just close my eyes and I don't say nothing. I even talk to you multiple times and people criticizing me for not doing anything, im thinking [o]f your family I know this is your bread and butter. I just close my eyes and [p]retend i don't know." (GC 19, pp. 18–19; Tr. 171–172.)

On April 20 and 21, Region 20 conducted the election at Vallejo. On May 1, the Regional Director certified the Union as the collective-bargaining representative of a mixed bargaining.

Changes to the Break and Attendance Policies. In terms of break periods, employees get three: a 30-minute breakfast (unpaid), an hour lunch (paid), and a 30-minute "third" break in the afternoon (paid). The practice was for employees to sign in and out for breakfast only, and not for lunch or the third break. But at staff huddles on May 2 and 3, Hernandez and Gapasin announced that, from that day on, employees had to sign in and out for those breaks, too. Employee compliance would be monitored through a sign in sheet placed near the time clocks. Management reinforced this new policy through emails to the staff. Torres stated that he viewed this as mandatory because clinic manager Hernandez "said we had to do that. And I think everybody just complied." (GC Exh. 45, R. Exh. 5, Tr. 196–202, 537–542, 551–552, 581–584.)

Additionally, Respondent announced a change to its policy on clocking in for the day. Going forward, employees could no longer clock in more than 5 minutes before their scheduled start time. Prior to this, there was no limitation on arriving early. For example, Tech Mark Calma routinely arrived 10 minutes early to restock his work area with medicines and supplies. This new policy put him behind schedule in his work. Also, Respondent eliminated any grace period—now employees who were just 1-minute late would be marked as tardy. (GC Exh. 45, Tr. 202–204, 543–546, 551–552, 584–587, 603–604, 614–615.)

Prior to making these changes, Respondent did not offer the Union notice or the opportunity to bargain. (Tr. 613–615.)

[23] Unless necessary to avoid confusion, I have not corrected minor errors in spelling, diction, punctuation, and grammar.
[24] "Ate" means "big sister" in Tagalog. (Tr. 163.)

Denial of Union Representative to Dennis Torres. One Saturday morning in May, Torres went to clock out for his break when he noticed that the clock was malfunctioning and that two co-workers were having problems clocking in for their shifts. One of those co-workers was Cathy Mendoza. Two days later on a Monday, Hernandez called Torres into her office asked him if Mendoza had been late on Saturday. When Torres said no, Hernandez asked if he was sure. Torres said he was. With that, the meeting ended. On June 27, however, Hernandez called Torres into her office again and accused him of "lying" because Respondent purportedly had video footage showing that Mendoza had been late. Hernandez asked him why he was lying. Fearing the possibility of discipline, Torres asked for a union representative, but Hernandez denied the request saying, "you guys are not really a union. You guys just voted yes, but you don't have a contract. Therefore you're not. . . a real union." Done with arguing, Torres left her office. He was not disciplined for the interaction. (Tr. 589–591.)

Discipline and Discharge of Cathy Mendoza. Mendoza had several years of experience with Satellite. She started at the Larkspur clinic in 2017, transferred to Vallejo in 2018, transferred to Oakland in 2020, and transferred back to Vallejo in 2022. In 2023, Mendoza worked as the "closing nurse" at Vallejo, meaning that she was the RN who stayed at the clinic, along with a tech, to treat the final group of patients and to wind down operations for the day. She typically worked the Tuesday, Thursday, Saturday closer shifts from 7 a.m. to 7 p.m. or later. (Tr. 135–141.)

By her own admission, Mendoza had a problem with tardiness, regularly reporting to work 5 to 10 minutes late. "I hate to admit it, but I'm always late, and everybody knows I'm late," she conceded on direct examination. This meant that the techs on her team could not begin providing patient care until she arrived since they needed to have their supervising RN present. They could, however, use those minutes to set up the dialyzers and handle other nonpatient care duties. There was no evidence to show that Vallejo's operations were otherwise impacted by Mendoza's chronic tardiness. (Tr. 169, 243–244, 299–200.)

Respondent has a policy titled, "Attendance and Punctuality." It begins with the message, "To maintain a safe and productive environment, Satellite Healthcare expects all employees to be reliable and punctual in reporting for scheduled work. We often work in small groups and even one employee missing from work affects the entire team's workload." While most of the policy pertains to attendance, it does instruct employees to notify their managers for any "anticipated tardiness." Nonetheless, it was not uncommon for employees to arrive a few minutes late—and there was no evidence to show that they were disciplined for such minor infractions. (Tr. 547, 592–593.)

Over the years, Respondent noted Mendoza's tardiness and would issue warnings to her. In 2019, she was issued a final written warning in Vallejo based in part on "excessive tardiness." In 2020, she received another final written warning for "excessive tardiness." In 2021, she received a third final written warning based in part on "a pattern of reporting to work late." Mendoza's performance evaluations in 2019 and 2020 mention the need for her to start reporting to work on time. But, despite these warnings, Respondent never elevated the discipline level to a suspension or discharge. Even after returning to Vallejo in 2022, Mendoza continued to report late most mornings. But Hernandez either ignored it or gave token oral warnings—only

occasionally saying something about it but never issuing any written discipline. (R Exhs. 8–12, Tr. 169–171, 238–239, 243–244.)

Moreover, the tardiness problem did not result in poor performance evaluations—Mendoza received good overall ratings in 2020, 2021, and 2023.[25] For her final performance evaluation dated March 30,[26] Hernandez rated Mendoza as "Meeting Expectations" and included positive comments such as "Cathy is a seasoned dialysis nurse, knowledgeable, dependable, and reliable. When she is at work she give[s] her 100% dedication to her role and to her patients" and "She is a strong nurse and demonstrate[s] strong leadership in terms of short staffing, she stepped up and help looking for coverage and willing to [go the] extra mile to make sure the clinic run smooth and safe. I truly value Cathy so much and I can rely on her when I need help on nurse coverage." As to tardiness, Hernandez noted the issue but added that Mendoza was improving: "The only thing that I need for Cathy to improve is her tardiness. She already improves a lot compare from last year but a good nurse set a good example for her team and tardiness is one of them." (GC Exh. 17, p. 17, Union Exh. 1, R Exhs. 9 and 12, Tr. 169.)

During their text exchange on the evening of March 10, Hernandez explained why she tolerated Mendoza's chronic tardiness. Hernandez wrote: "How much your hourly now? I gave you 4% instead of 2% despite you still coming late and you know you are already on final write up." Hernandez continued, saying: "You know I approve payroll and I can see your time clock, because of our working relationship that I value so much I just close my eyes and dont say nothing. I even talk to you multiple times and people criticizing me for not doing anything, im thinking [of] your family I know this is your bread and butter. I just close my eyes and [p]retend i dont know." (GC Exh. 17, pp. 18–19.)

But Respondent's tolerance for Mendoza's tardiness stopped with the arrival of the organizing campaign at Vallejo. Beginning on March 10, Mendoza outed herself as a union leader by presenting the union flyer, telling Hernandez that she had been elected to the union organizing committee, wearing union stickers to work, and serving as a union observer during the NLRB representation election. Within 11 days of that delegation, Respondent began issuing written disciplines for her tardies. (GC Exh. 17, p. 15; Tr. 245–246, 249–250.)

On the morning of March 21, Assistant Manager Gapasin called Mendoza to his office and handed her four separate written warning notices. Gapasin said he was converting four prior oral warnings (for tardies on March 1, 2, 7, and 10) to written warnings. Looking at them, Mendoza noted that they looked different from the warnings she received in the past since there were four individual warnings, as opposed to one consolidated warning. Gapasin did not explain why he converted the oral warnings to written ones. Even though she had been tardy "frequently" since returning to Vallejo in 2022, this was the first time Respondent issued her any written warnings. At lunchtime, Mendoza told Union Representative Eleni Johnson about the warnings. (GC Exh. 18, Tr. 174–179, 180–182, 184, 610–611.)

[25] No evaluation for 2022 was offered into evidence.

[26] The document contains a few minor errors in composition. I have kept the original wording, except where needed to avoid confusion.

Four days later, on March 25, Satellite Regional Director Rachel Cruz called Mendoza into the clinic manager's office. Marco Castellanos joined by telephone. Cruz explained that what Gapasin had done was incorrect, and that she was issuing a single warning notice to replace the four that Gapasin had given to Mendoza. Cruz added that, even though Mendoza had previously been issued a final written warning in October 2021, Respondent was giving her just a "first warning—written." Mendoza asked, "why am I getting written up all of a sudden for being tardy when . . .they've only given me, you know, verbal warnings?" Then Mendoza asked if it was because she was organizing the Union. Cruz denied that and the meeting ended. (GC Exh. 19, Tr. 185–187.)

On March 28, Hernandez met with Mendoza to give her the annual evaluation. During the meeting, Hernandez explained that she could not give Mendoza the highest merit increase because of her tardiness. Mendoza pushed back, questioning why Gapasin had to issue her written warnings when management had always just given her oral warnings for such minor infractions, such as coming in five minutes late. Hernandez replied that Satellite had to issue official written warnings because Mendoza went and complained to the Union. "[S]he said, well why did I have to tell my union representative that Jaime wrote me up. Now, they had to write me up officially. Rachel had to come in and do it because I told my union," Mendoza testified. (Tr. 188–189, 612.)

On April 4, Cruz called Mendoza in for another meeting, with Castellanos present by telephone. Even though she acknowledged that Mendoza had improved, Cruz handed her a final written warning based on three more tardies. Mendoza asked why Respondent went straight from a first written warning to a final warning, skipping the second written warning level. Cruz said it was because Mendoza had such a long history of tardiness. (GC Exh. 21, Tr. 190–194.)

On May 9, during her break, Mendoza texted a group of employees to report that some of their co-workers had received disciplinary warnings and to remind them that, if either Hernandez or Gapasin called anyone into their office for an interview, they had the right to request a union representative. She attached a sample *Weingarten* statement. After sending the text, Mendoza realized that she mistakenly sent it to everyone at Vallejo, including Hernandez. Mendoza could not rescind the text. Moments later, Hernandez paged her over the intercom: "Cathy, can you come to my office please?" When Mendoza went there, Hernandez asked, "why do you need a union representative? I don't—you know, because you guys don't have a contract yet. I thought, you don't need a union representative." Mendoza explained that unionized employees had *Weingarten* rights even if they did not have a contract. Hernandez replied, "okay, well, now I know." The meeting ended with that. (GC Exhs. 23 and 24; Tr. 204–214.)

On June 17, Mendoza was working her normal Saturday shift when she saw Hernandez at the clinic, which she found unusual. Shortly after that, Hernandez summoned Mendoza to her office. When Mendoza entered and saw Cruz, she knew she was getting discharged. [27] Mendoza pleaded to Hernandez, saying that she had been trying to come in on time and was improving. Cruz said that, while she recognized Mendoza's improvement, she still had to discharge her.[28] Hernandez then said, "why did you have to go to the union when [Gasparin] wrote you up. If you

[27] Respondent did not call Hernandez, Cruz, or Castellanos to testify.
[28] Respondent skipped the step of issuing a suspension and proceeded straight to discharge.

wouldn't have done that, you wouldn't be in this situation." Cruz told Mendoza to turn in her badge, denied Mendoza's request to retrieve her personal items from the patient room, and instructed security to escort her out of the facility. "[S]he had me walk out, like, with security, like I was a criminal," Mendoza testified. "I couldn't say goodbye to my coworkers or my patients." During the meeting, Mendoza was handed a discharge notice giving two reasons for her termination: repeated issues with tardiness and "violations of the Time & Attendance policy" that was announced on May 2. That was Mendoza's last day with Satellite. Prior to discharging Mendoza, Respondent did not offer the Union notice or the opportunity to bargain. (GC Exh. 25, Tr. 214–216, 615–616.)

4. Events Relating to Cristina Cortez

Individuals with little or no medical experience can apply for positions within the job track to become CCHTs. Upon hire, those new employees hold the position of patient care technicians (PCT or trainee). Because trainees are required by California law to obtain their CCHT certification with 18 months of hire, they participate in both on-the-job training at the clinics under the guidance of an experienced tech, called a preceptor, as well a separate educational program provided by Satellite.[29] Once trainees complete their programs and work the required number of hours, they become eligible to take the CCHT examination administered by the California Department of Public Health (CDPH). If they pass the test, the next step is to apply for the CCHT certificate. Once the trainee actually receives the certificate and turns it in, the manager will submit proof of the exam result and the CCHT certificate to initiate the status change from trainee to CCHT, which results in an automatic pay raise. If a trainee fails to obtain their certification within 18 months, they are prohibited from providing patient care. However, during the COVID-19 pandemic, when healthcare workers were greatly needed, the Centers for Medicaid and Medicare Services (CMS), issued a blanket waiver, no longer requiring trainees to obtain their CCHT certifications within 18 months. (R Exh. 18, Tr. 443–446, 877–879, 887–894, 924–928, 930–932.)

Cristina Cortez began her career at Satellite in April 2020 as a trainee at the Gilroy clinic. In December 2022, she was one of the approximately 15 employees who voted in the mail ballot election in Case 32–RC–306319, which the Union won by a vote of 12–0, with three challenged ballots. During the period April 2020 through April or May, Cortez never took the CCHT exam yet was permitted to work as a trainee at Gilroy pursuant to the CMS waiver. Then, in April or May, CMS let the waiver expire. Because of that, Satellite told clinic manager Mary Ann Mercado that Cortez could no longer provide patient care. Wanting to keep her on staff, Mercado allowed Cortez to switch positions from trainee to environmental services technician (EST). (R Exh. 15, 16, 18, Tr. 391–395, 402–404, 443–446, 881–882.)

In mid-2023, Cortez tried to pass the CCHT exam. After failing to pass it in April, she took it again on June 6. After she finished the exam, Cortez received notice that she passed and immediately texted Mercado the good news. To be able to reassign Cortez from EST back to a

[29] Section 1247.6(a) of Chapter 3 of the California Business Code provides, "Except during training under immediate supervision. . .no person shall provide services as a hemodialysis technician without *being certified* by the [California State Department of Public Health] as a Certified Hemodialysis Technician (CHT)." (Emphasis added.) Section 1247.61 establishes the requirements for certification as a CCHT.

patient-care position, Mercado asked her to provide proof of the exam results and submit the required application to CDPH. On June 7, Cortez worked with administrative staff at Gilroy to complete and submit the application. That evening, Mercado emailed Castellanos and MDO Danks to share the news that Cortez passed and submitted her application. Mercado said she would put in for a job status change only after she received the certificate, consistent with her practice. Danks replied that Mercado could reassign Cortez from EST to trainee once she had proof that Cortez passed the exam and submitted her application for the certificate. The only limitation was that a preceptor would also have to be assigned on that same shift, which was standard practice just in case the trainee required assistance, until she actually received the certificate. Mercado said she would ask Cortez for that documentation. (GC Exh. 27 pp. 5–6, R Exhs. 16, 19, 65, Tr. 402–413, 882–888, 901–902, 929–931.).

On June 7, Cortez asked Mercado about getting reimbursed the $240 cost to take the CCHT exam, a standard benefit at Satellite. Mercado asked Cortez to put in for it by submitting an expense report. On June 8, Cortez submitted her request for reimbursement and Mercado approved it. On July 14, Respondent paid Cortez $240 to reimburse her for the CCHT exam fees. This was in her paycheck for the June 25-July 8 pay period. (GC Exh. 27 pp. 8–9, R Exhs. 24, 45, 67. Tr. 413–416, 722–724, 893–901.)

After submitting the application to the state on June 8, Mercado followed up with administrative staff about the status of Cortez' CCHT certification on June 20. Since Mercado was in the process of transferring from Gilroy to Hollister by the end of June, she wanted to make sure to finalize Cortez' job change before leaving. On June 27, CDPH informed Cortez that her application was denied because it was filled out improperly. Upon learning this, Mercado immediately asked Cortez to resend her the materials, pulled up samples at Satellite of other submissions, and then resubmitted the application on June 28. On July 11, Cortez received her verification of CCHT status CDPH. (GC Exh. 27 pp. 15–17, 52, Tr. 416–420.)

When PCTs become CCHTs, they received a raise of $2 per hour. Because of that, on July 15, Cortez emailed management to ask about a raise related to her promotion to CCHT. With Mercado now gone, Cortez emailed Danks and Peralta. On July 18, new clinic manager Nowakowski approached Cortez and said that, to answer the email, Cortez "didn't qualify for the raise at the time because [she] was unionized." But it was clear that Nowakowski—who started just eight days before—was confusing the $2 raise associated with the promotion to CCHT with the 2023 merit increase. When Cortez pointed out that Nowakowski was mixing up the two, Nowakowski confessed that "she was new" and that she "didn't really have an answer for me."[30] (Jt Exh. 1, Tr. 400–401, 420–423.)

[30] Similarly, in an email exchange dated August 11, Nowakowski confused the 2023 merit increase with Cortez' request to get reimbursed for taking the CCHT exam. This prompted Cortez to explain, "That is for my pay increase. I am not talking about that. I am talking about reimbursement for the payment of me taking my test." (GC Exh. 51.) Cortez even conceded that because Nowakowski "was so new, she really, I don't think, understood what I was asking her." (Tr. 423.)

On August 14, Nowakowski initiated the status change process to promote Cortez from trainee to CCHT and to receive the corresponding wage increase.[31] In her request, Nowakowski sought to make the promotion retroactive to July 7, but compensation analyst Cindy La replied by email to say that the request had to be for the current pay period, not back to July 7. Danks approved the request within minutes. After a few more administrative steps, Cortez' promotion was completed by August 18. On September 8, Cortez started receiving the higher CHT pay rate—as well as retroactive pay dating back to July, when she received proof of her CHT certification—for the August 20–September 2 pay period. (R Exhs. 44, 46, 47, 48, Tr. 718–721, 724–728, 784–788, 795.)

III. DECISION AND ANALYSIS

A. Credibility

A credibility determination may rest on various factors, including "the context of the witness' testimony, the witness' demeanor, 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." *Hills & Dales General Hospital*, 360 NLRB 611, 617 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness's testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950).

The Board has agreed that "when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge." *International Automated Machines,* 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the Respondent's agent. *Roosevelt Memorial Medical Center,* 348 NLRB 1016, 1022 (2006). Moreover, an adverse inference is warranted by the unexpected failure of a witness to testify regarding a factual issue on which the witness would likely have knowledge. See *Martin Luther King, Sr., Nursing Ctr.*, 231 NLRB 15, 15 fn. 1 (1977) (adverse inference appropriate where no explanation as to why supervisors did not testify); *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable witness regarding factual issue upon which that witness would likely have knowledge gives rise to the "strongest possible adverse inference" regarding such fact). Adverse inferences may also be drawn based on a party's failure to introduce into evidence documents containing information directly bearing on a material issue. See *Metro-West Ambulance Service, Inc.*, 360 NLRB 1029, 1030 fn. 13 (2014).

Where there was conflicting testimony, my credibility findings are incorporated into my legal analysis below. I found the testimony of current employees Dennis Torres, Mark Calma, Alber Li, Eugene Dela Pena, Eric del Campo, and Michael Badilla to be mostly credible. Each of

[31] I discredit Cortez' testimony that La stated in an email that Satellite could not grant the promotion-related wage increase because Cortez was unionized and that it had to be resolved through bargaining. (Tr. 434–436.) The General Counsel never presented this email, La credibly testified that she never made any such statement, and the only email that La sent to Nowakowski on the subject contained no reference to the Union or bargaining. (R Exh. 48, Tr. 784–788.)

them listened carefully to questions and answered without hesitation, even in instances where their answers would appear to be harmful to their position. The content of their testimonies was corroborative and painted a consistent pattern of action by Respondent's managers. Additionally, as current employees, their testimony tends to be particularly reliable because it goes against their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Div. of Unarco Industries*, 197 NLRB 489, 491 (1972).

I also found the testimony by alleged discriminatee Cathy Mendoza to be highly credible. She answered questions directly and without hesitation, even where her answers could be viewed as harmful to her position. Her testimony was detailed, straightforward, and consistent with that of the current employees. I found the testimonies by Union Representatives Jonathan Kim and Eleni Johnson to be credible.

I found the testimony by current employee Cristina Cortez to not be entirely reliable. On some subjects, she exhibited a faulty recall and an unclear understanding about key details of her case. For example, Cortez failed to look at her own paychecks to determine whether she received reimbursement for taking the CCHT exam. When Respondent presented Cortez with her July 14 paycheck stub showing the $240 exam reimbursement, she appeared to be wholly unaware of that. (R Exh. 24, Tr. 471–474.)

My general observation was that Clinic Manager Sally Tesorero was not entirely honest in her testimony. For some questions by Respondent's counsel, she appeared quick to offer the expected answer, as opposed to taking the time to consider the question and answer it accurately. She also appeared to exaggerate some of her answers, especially those involving discretion when determining merit increases. Other than the facts discussed above, I have not credited any of her testimony.

B. The Section 8(a)(1) Statements

The complaint alleges numerous threats and coercive statements by Respondent in violation of Section 8(a)(1). The test for such allegations is whether, under all the circumstances, Respondent's statements reasonably tended to restrain, coerce, or interfere with employees' rights guaranteed by the Section 7 of the Act. *Mediplex of Danbury*, 314 NLRB 470, 472, (1994); *Sunnyside Home Care Project*, 308 NLRB 346 fn. 1 (1992), citing *American Freightways Co*., 124 NLRB 146, 147 (1959). The General Counsel holds the burden of proving Section 8(a)(1) allegations by a preponderance of the evidence.

1. The Alleged Coercive Statements by Manager Hernandez

Complaint paragraphs 6(a)(i)-(iv) allege that Respondent violated Section 8(a)(1) when clinic manager Myrna Hernandez made multiple coercive statements to employees on March 10.

In support of these allegations, the General Counsel presented former employee Cathy Mendoza, as well as current employees Mark Calma and Dennis Torres. All three credibly testified that Hernandez repeatedly threatened them after they handed her the Union organizing flyer on March 10. In contrast, Respondent did not present Hernandez as a witness. Based on the credible testimony, I find that Hernandez threatened that Respondent would not hire applicants who supported a union when she said: "see this name right here? . . . a manager just called me, told me that if this person applied, do not hire them because they are pro-Union." *Air Management Services, Inc*., 352 NLRB 1280, 1287 (2008). I also find that Hernandez threatened employees by suggesting that the few other dialysis companies in the Gilroy area would not hire union supporters when she said: "she [Hernandez] was sad to see our pictures on the flyer because she said that dialysis is a small community and all the managers are going to see your face on the—this flyer." Finally, I find that Hernandez threatened plant closure for unionizing and a statement of futility when she said: "I just want you guys to do your research because I know the financial status of the company, and there are three clinics that are closing" and "I just want you to do your research because if. . . the company can't meet your fund—you know your demands, our clinics could close, you know?" *Systems West LLC*, 342 NLRB 851, 860–861 (2004). Based on the foregoing, I find merit to these allegations.

2. The Alleged Coercive Text Messages by Manager Hernandez

Complaint paragraphs 6(b)(i)-(iii) allege that Respondent violated Section 8(a)(1) through Hernandez' texts messages to Mendoza on the night of March 10, following the employee delegation.

Paragraph 6(b)(i) alleges that Hernandez implicitly threatened Mendoza by sending text messages saying that employees would no longer be able to speak directly to management if they selected the Union as their bargaining representative. Hernandez sent several texts to Mendoza warning that, if the employees selected the Union, she could no longer speak with Mendoza. For example, Hernandez wrote: "This might be the last text I will send you because after the election and we got unionized. I cannot talk to you anymore" and "You cannot talk to me straight you have to go to your representative. I cannot talk to you anymore I have to talk to your representative." At the time that Hernandez wrote these, Board law was that such statements were lawful comments on the impact that unionization could have on the relationship between employees and management. *Tri-Cast, Inc*., 274 NLRB 377, 377 (1985). However, on November 8, 2024, the Board, in *Siren Retail Corp*., 373 NLRB No. 135 (2024), overruled *Tri-Cast, Inc*., to adopt a new legal standard when evaluating the lawfulness of employer predictions about the impact that unionization would have on the relationship between management and employees. The Board replaced the *Tri-Cast* standard with a new one under which such employer statements would be analyzed on a case-by-case basis. To be lawful, these predictions about the negative impacts of unionizing "must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control." Slip op. at 1 (citing *Gissel Packing Co*., 395 U.S. 575, 618 (1960)). The Board specified, however, that its

holding would apply only to future cases and not be applied retroactively. Slip op. at 10. Because these texts occurred prior to *Siren Retail*, I apply the *Tri-Cast* standard and find that they amounted to lawful predictions which were protected by the First Amendment and Section 8(c) of the Act. Accordingly, I dismiss this allegation.

Paragraph 6(b)(ii) alleges a threat of plant closure based on Hernandez' text asserting, "I know the financial status of the company and I don't know if they can grant the demands [of the Union]. There are 3 clinics already close[d]." The plain import of these words was that, because of its uncertain financial status, Satellite might be unable to accommodate increased financial demands from the Union and instead be forced to close clinics. *Systems West, Inc*., 342 NLRB 851, 857 (2004) (company president's comment that, if the employees voted for the union, the company could not remain competitive was a "blatant threat of business closure intended to coerce them to cease any support for the Union"). I therefore find merit to this allegation.

Paragraph 6(b)(iii) alleges an implicit threat of stricter enforcement of time and attendance policies if the employees unionized based on Hernandez texting: "You know I approve payroll and I can see your time clock, because of our working relationship that I value so much I just close my eyes and I don't say nothing. I even talk to you multiple times and people criticizing me for not doing anything, im thinking [o]f your family I know this is your bread and butter. I just close my eyes and [p]retend i don't know." This text did not suggest that Hernandez would cease turning a blind eye to Mendoza's chronic tardiness as a result of the union organizing drive. I see no implicit threat of stricter enforcement and therefore dismiss this allegation.

3. The Alleged Coercive Statements by Manager Hernandez About Weingarten Rights

Complaint paragraphs 6(c) and (d) allege that Respondent violated Section 8(a)(1) on May 9 and June 27 when Hernandez told employees that they could not have a union representative present during investigative interviews that could lead to discipline unless they had a union contract.

The allegation in paragraph 6(c) was based on Mendoza's testimony that, on May 9 when she accidentally sent a group text discussing *Weingarten* rights to the entire staff at Vallejo, Hernandez summoned her and asked, "why do you need a union representative? I don't—you know, because you guys don't have a contract yet. I thought, you don't need a union representative." In saying this, Hernandez did not deny Mendoza a union representative and did not assert that she could not have a union representative present; rather, she merely asked Mendoza a question. Even though Hernandez' question misstated the law, I find that employees would not reasonably interpret it to mean that they should refrain from requesting a union representative. I therefore dismiss this allegation.

Paragraph 6(d) was supported by the uncontradicted testimony of Dennis Torres. He testified that, on June 27, after Hernandez accused him of lying about Mendoza not being late, he asked for a union representative, and she denied his request, saying: "you guys are not really a union. You guys just voted yes, but you don't have a contract. Therefore you're not…a real union." General Counsel argues that Hernandez' statement violated Section 8(a)(1) because it misinformed employees about their legal rights and thus had a reasonable tendency to coerce

employees in the exercise of the Section 7 rights, e.g., cause Torres to mistakenly assume that he had no *Weingarten* rights until the parties reached a CBA. General Counsel relies on *PAE Aviation*, 366 NLRB No. 95 (2018). In that case, the Board held that the respondent employer threatened an employee when the manager said that the company did not follow the *Weingarten* rule. The Board held that the manager's incorrect statement of the law violated Section 8(a)(1) by "unlawfully conveying to employees that it would be futile for them to invoke their *Weingarten* rights." Id. at 1, fn. 5. Respondent argues that this allegation should be dismissed, as it was de minimis, employees did not believe the statement to be accurate, and did not occur in the context of denying an employee representative. I find no merit to Respondent's defenses. Given that this statement was one of numerous coercive statements by Respondent, it cannot be deemed de minimis. Whether or not employees subjectively believed a coercive statement by their manager is irrelevant to this analysis. And Hernandez did utter her misstatement of the law while denying Torres a union representative. Based on the foregoing, I find merit this allegation.

Respondent Blames the Union for the Withholding of Merit Increases

Complaint paragraphs 7, 8, and 9 allege that Respondent violated Section 8(a)(1) by telling employees that they would not be receiving merit increases in 2023 because they had voted in favor of the Union. It is well-settled that employers violate Section 8(a)(1) by blaming the employees' selection of a union for the withholding of expected wage increases or other specific employment benefits. *Illiana Transit Warehouse Corp.*, 323 NLRB 111, 114–115 (1997) (employer's statement that expected benefits, such as annual wage increases, would be frozen until a contract was negotiated was an unlawful threat of loss of benefits and less favorable treatment if the union were elected); *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130, slip op. at 5, 75 (2023), reconsideration denied 372 NLRB No. 157 (2023) (unlawful for general manager to blame union and the upcoming election for the withholding of annual cost of living increases); *First Student, Inc*., 359 NLRB 208 (2012); *Pacific FM, Inc. d/b/a KOFY*, 332 NLRB 771, 792 (2000); *Aluminum Casting & Engineering Co.*, 328 NLRB 8, 8–9 (1999)(unlawful for employer to blame the union for the withholding of wage increases).

4. The Alleged Coercive Statements by Manager Paula Luong

Complaint paragraphs 7(a) and (b) allege that, on consecutive days in early June, Respondent violated Section 8(a)(1) when unit manager Paula Long told employees that Satellite could not provide annual merit wage increases due to the ongoing bargaining between the Union and the company. Both allegations were supported by the uncontradicted testimony of tech Alber Li, who credibly testified that, during a huddle in June at Blossom Valley, Clinic Manager Paula Luong said, "Since you become Union, I mean, you're not going to get a merit increase. And you have to wait for the bargaining if you're going to have it, going to have a merit increase or not." Luong repeated the same statement at the following day's huddle. By blaming the Union for the withholding of merit increases, Respondent violated Section 8(a)(1). I therefore find merit to these allegations.

5. The Alleged Coercive Statements by Manager Mildred Peralta[32]

Complaint paragraph 8(a) alleges that Respondent violated Section 8(a)(1) on July 30 when Mildred Peralta said that Satellite would not give annual merit increases until it and the Union reached a bargaining agreement. This allegation is supported by the uncontradicted testimony of tech Eric Martin Del Campo. On July 30, at the Morgan Hill clinic, he asked Peralta if they were going to get merit increases. She told him no, saying: "because [you're] union, nothing could be done until the contract was settled." Peralta's statement violated Section 8(a)(1) because it blamed the Union for the withholding of their long-standing benefit of merit increases. I therefore find merit to this allegation.

Complaint paragraph 8(b) alleges that Respondent violated Section 8(a)(1) on or about August 15 when Peralta told employees that Satellite was waiting for bargaining with the Union before it granted any promotions that came with salary increases. This allegation was also supported by the uncontradicted testimony of Del Campo. On August 15, he asked Peralta how he could get promoted from tech to advanced tech, a move that would come with a pay increase. Peralta said that, because Respondent and the Union were "in bargaining still, that she couldn't guarantee any kind of pay increases." This statement that Satellite could not grant standard wage increases associated with advancing to a higher position was coercive. See *Oberthur Techologies of America Corporation*, 362 NLRB 1820, 1820 (2015) (Board held that the employer's statement that promotions would be on hold until after the election was unlawful). I therefore I find merit to this allegation.

6. The Alleged Coercive Statements by David Baba and Sally Tesorero

Complaint paragraph 9(a) alleges that Respondent violated Section 8(a)(1) in April when MDO David Baba and Clinic Manager Sally Tesorero told employees that they would not receive annual merit increases because they were unionized. No evidence was presented in support of this allegation, so it is dismissed.

Complaint paragraph 9(b) alleges that Respondent violated Section 8(a)(1) in April when Tesorero told employees that they would not receive annual merit increases because they were unionized. This allegation was supported by the uncontradicted testimony of tech Eugene Dela Pena, who testified that, sometime prior to his vacation in June or July, Tesorero discussed merit increases at a morning huddle. In response to his question whether they were going to get merit increases in 2023, she answered, "no, because you are in the bargaining process."[33] Because Respondent simply blamed the Union and made no mention of the give-and-take which can occur in bargaining, I find merit to this allegation.

Complaint paragraph 9(c) alleges that Respondent violated Section 8(a)(1) in August when Baba told employees that he could do nothing about their annual merit wage increases because they were unionized and in the process of bargaining. Dela Pena credibly testified that, in August at a huddle at the San Franciso clinic, he asked about merit increases for 2023. Baba

[32] Even though Respondent called Peralta as a witness, it did not ask her about either of these allegations.

[33] While Dela Pena's testimony was imprecise about the date of this comment, he did appear to recall the event with sufficient clarity for me to credit his testimony.

responded, "you will not get the merit increase because you are in the process of bargaining." Because Respondent simply blamed the Union and made no mention of the give-and-take which can occur in bargaining, I find merit to this allegation.

7. The Alleged Coercive Statements by Manager Lucille Nowakowski

Complaint paragraph 10(a) alleges that Respondent violated Section 8(a)(1) on or about July 18 when center manager Lucille Nowakowski told employees that Respondent could not give them a pay raise for obtaining license certification because the employees were unionized. This allegation was based on the conversation between Cristina Cortez and new clinic manager Nowakowski on July 18. It was clear that Nowakowski—who started as clinic manager just eight days before—had confused merit increases with the automatic wage increase for advancing from trainee to CCHT. Nowakowski confessed her confusion to Cortez, admitting that "she was new; she was our new manager. She didn't really have an answer for me." (Tr. 421–422.) Based on Nowakowski's mix up, I conclude that employees would not reasonably be coerced by her remarks and therefore dismiss this allegation.

Paragraph 10(b) alleges that Respondent violated Section 8(a)(1) on or about August 22 when Nowakowski supposedly showed Cortez an email from Cindy La stating that employees did not qualify for the CCHT wage increase because they had had unionized. I conclude that no credible evidence supported this assertion: I have not credited Cortez on this point, the General Counsel presented no such email, La credibly testified that she never made any such statement, and the email that La sent on the subject contained no reference to the Union. I therefore dismiss this allegation.

The Withholding of Merit Increases in 2023

The complaint alleges that Respondent violated Section 8(a)(5) and (3) by withholding merit increases from represented employees unilaterally and in retaliation for their union organizing. I find merit to both allegations.

1. *The Alleged Unilateral Withholding of Merit Wage Increases in 2023*

Complaint paragraph 16 alleges that Respondent violated Section 8(a)(5) by withholding merit wage increases in 2023 from unit employees at the four initial clinics without first providing the Union notice and the opportunity to bargain.

An employer violates Section 8(a)(5) of the Act if it changes the unit employees' terms and conditions of employment without first providing their collective-bargaining representative with notice and the opportunity to bargain about the change. *NLRB v. Katz*, 369 U.S. 736, 743 (1962). "A wage increase program constitutes a term or condition of employment when it is an 'established practice . . . regularly expected by the employees.'" *Mission Foods*, 350 NLRB 336, 337 (2007) (quoting *Daily News of Los Angeles*, 315 NLRB 1236, 1236 (1994) (*Daily News II*), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997)) (ellipses in original). Factors relevant to the determination whether a wage increase is an established practice include "the number of years the program has been in place, the regularity with which raises are granted,

and whether the employer used fixed criteria to determine whether an employee will receive a raise, and the amount thereof." *Rural/Metro Medical Services*, 327 NLRB 49, 51 (1998).

In the immediate case, the record shows that annual merit increases were a term and condition of employment, as they were a long-established practice. Many aspects of the process were regular and predictable. Employees received merit increases every spring for more than two decades. The process involved employees submitting their self-evaluations, meeting with managers to discuss their job performance, and receiving their increases every April. Respondent's determination of the amount of the increase included consideration of set criteria. Employees could always expect to receive some level of increase, and that amount would be at or near the budgeted average for the year. These facts establish a regularly recurring pattern. See, e.g., *Mission Foods*, supra at 337 (practice in effect for at least 4 years); *Lee's Summit Hospital*, supra at 841 fn. 3 (practice in effect for 4 years); *Daily News of Los Angeles*, 304 NLRB 511, 514 (1991) (*Daily News I*) (practice in effect for at least 3 years), remanded on other grounds 979 F.2d 1571 (D.C. Cir. 1992), supplemented by *Daily News II*. After so many years, with such consistency and regularity in timing, employees would reasonably come to expect to receive a wage increase in 2023.

While Respondent may have exercised some discretion in determining the amounts of each employee's merit increase, those determinations were based on set, objective criteria, such as the budgeted amount for that year's merit increases (e.g., raised based on a 3-percent average), employee performance in the prior year, "external competitiveness" (e.g., competition for these positions from competitors in the dialysis industry), "internal equities" (e.g., fairness given what other employees within the facility are being paid), and the "compa-ratio" (a calculation based on the employee's pay rate in relation to the midpoint for that position). Based on this, Respondent was required to maintain the fixed elements of its practice (e.g,, the timing of the increases every spring) and bargain over the discretionary aspects (e.g., the precise amount given to each employee). See *Windsor Redding Care Center, LLC*, 366 NLRB No. 127, slip op. at 5 (2018)(finding employer was obligated to maintain fixed elements of merit wage program, specifically the timing of the wage increases); *Mission Foods*, supra at 337 (finding employer obligated to maintain fixed elements of structural wage increase and negotiate with the union over discretionary element); *Daily News II*, supra at 1236 (finding employer obligated to maintain annual merit increase "[n]otwithstanding the element of discretion retained by the [r]espondent in setting the amount of merit raises"); and *Central Maine Morning Sentinel*, 295 NLRB 376, 376 (1989) (finding employer obligated to maintain annual wage increase even though the amount was discretionary).

In its defense, Respondent cited *NLRB v. Katz*, 369 U.S. 736 (1962), to argue that its merit increase system was not an established practice that required bargaining. Applying Board precedent to the facts here, I disagree. The evidence showed that Satellite's granting of merit increases was well-established: merit increases were granted annually for more than 20 years, were paid every April, involved the same steps for employees (self-evaluations followed by a one-on-one meeting with their manager), were based on set criteria, and always resulted in some amount of increase. While there was some testimony about the various factors which managers considered when deciding how much to give employees (such as attendance, contributions to the clinic, and projects undertaken) those factors would have been part of the employees' annual

performance review, and thus part of the set criteria. Moreover, the evidence showed that managers still largely awarded amounts falling within a narrow percentage range based on the year's average. For that reason, I am unpersuaded by Respondent's argument that its determination of merit increases was "highly discretionary."

Moreover, even if the amount of each employee's increase did involve some measure of discretion or variance, most aspects of the program were fixed, such as the occurrence of merit increases every year and the timing of the increases every April. Respondent was therefore required to maintain those fixed aspects, while bargaining over the discretionary aspects. *Omni Hotels Mgmt. Corp.*, 371 NLRB No. 53, slip op. at 4–5 (2022).

Respondent also argues that, to the extent it was required to bargain over the discretionary aspects of its merit increases, Castellano's March 20 letter to Capell constituted sufficient notice and the Union waived its right to bargain by taking no action. I disagree. That letter fell far short of Respondent's duty to provide the Union with clear notice of a change—it merely stated that Respondent was *undecided* about the future of merit increases for represented employees: "no decisions have been made regarding represented employee's wage increases" for 2023. Such vague and uncertain language fails to constitute notice that Respondent would change a long-established term and condition of employment. *First Energy Generation, LLC*, 366 NLRB No. 87, slip op. at 16 (2018) ("A union cannot have waived bargaining where it did not receive clear and timely notice of change.")

Based on the foregoing, I find that Respondent had an established past practice of granting employees merit increases every spring based on fixed criteria and was not privileged to unilaterally change this system once the bargaining unit employees at the San Francisco, Blossom Valley, Gilroy, and Morgan Hill facilities selected the Union as their representative. *Atlanticare Management, LLC*, 369 NLRB No. 28, slip op. at 3 (2020)(citing *United Rentals*, 349 NLRB 853, 854 (2007)). I therefore find merit to this allegation.

2. The Alleged Discriminatory Withholding of Merit Wage Increases in 2023

Complaint paragraph 11 alleges that Respondent violated Section 8(a)(3) by withholding merit wage increases in 2023 in retaliation for the employees' exercise of union activities at the initial four facilities and that this conduct was inherently destructive of employees' Section 7 rights.

An employer violates Section 8(a)(3) if it withholds merit increases from its union-represented employees, while granting those increases to unrepresented employees, in retaliation for them selecting a union as their collective-bargaining representative. To establish a prima facie case that union activity was a motivating factor, the General Counsel must demonstrate union activity by the employees, employer knowledge of that activity, an adverse employment action, and sufficient evidence of employer animus. If the General Counsel does that, then the burden shifts to the employer to show that it would have taken the same action even absent the employees' union activity. *Arc Bridges, Inc*., 362 NLRB 455, 457 (2015), enf. denied 861 F.3d 193 (D.C. Cir. 2017)("*Arc Bridges II*")(citing *Wright Line Industries*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982)).

In the immediate case, the evidence squarely demonstrated that Respondent withheld the 2023 merit increases from unit employees at the four initial clinics because they elected the Union as their bargaining representative. Applying the *Wright Line* factors, the union activity that was known to Respondent was the employees' organizing campaign and election of the Union in December 2022. The adverse employment action was the withholding of merit increases in April from the represented employees. There was ample evidence of animus. First and foremost, multiple managers at these clinics explicitly told employees that they would not be receiving merit increases due to their election of the Union. This is compelling evidence of animus. See *Times Wire & Cable Co.*, 280 NLRB 19, 18 (1986) (respondent employer violated Section 8(a)(3) by withholding expected wage increase to employees and "by attributing the loss of the increase to the Union"). Respondent's anti-union animus was also shown by the close proximity (approximately 5 months) between the withholding and the election of the Union, Respondent giving merit increases to the unrepresented employees at those same four clinics, the discharge of open union supporter Cathy Mendoza, and Respondent's commission of numerous other unfair labor practices once it learned of the employees' organizational activities. See *Atlanticare Management, LLC*, supra at 20 (animus based on, inter alia, the discharge of a known union supporter and respondent's demonstrated animus toward the employees' union activity.)

Respondent defends by arguing that the General Counsel failed to establish a prima facie case. It asserts that there was no evidence of animus, that various managers' statements that merit increases were being withheld because of the Union or because of bargaining were merely "explanations of the collective bargaining process." This argument fails because the managers' statements did not present the issue in terms of the give-and-take that occurs in bargaining. Rather, their statements simply blamed the Union for why Respondent was withholding merit increases. Respondent also argues that it did not cancel or eliminate the merit increases, it merely told the Union in the March 20 letter that its usual process might be impacted by the need to bargain over discretionary aspect of the program. I find no merit to that argument. To the contrary, Respondent by its words and deeds withheld merit increases from the represented employees at the four initial clinics.

Based on the foregoing, I find that Respondent violated Section 8(a)(3) by withholding the 2023 merit increases from union-represented employees at the four initial clinics.

Additionally, I find that Respondent engaged in conduct that was inherently destructive to the exercise of Section 7 rights. When, an employer deliberately withholds an existing benefit from unionized employees, the Board has held such conduct to be "inherently destructive" of Section 7 rights and thus a violation of Section 8(a)(3), even absent any discriminatory motive. *Arc Bridges, Inc*., 355 NLRB at 1222, 1223 (2010), enf. denied 662 F.3d 1235 (D.C. Cir. 2010); accord *NLRB v. Great Dane Trailers, Inc*., 388 U.S. 26, 34 (1967). The Board has held that withholding benefits from unionized employees in deviation of an established practice is a violation of Sections 8(a)(3). See, e.g., *Aluminum Casting & Engineering Co*., 328 NLRB 8, 14 (1999), enfd. in relevant part, 230 F.3d 286 (7th Cir. 2000) (employer withheld annual wage reviews from unionized employees in deviation of established practice of granting wage increases, not to avoid violating the Act but to punish employees).

I have already found above that the grant of merit increases to employees every spring was an established practice that occurred with such regularity and frequency that employees could reasonably expect the practice to continue on a regular and consistent basis. Respondent's conduct in withholding these merit increases thus sent the clear message to employees that their Section 7 activity of choosing union representation was the cause of the loss of their merit increases. I therefore find that this conduct by Respondent was also inherently destructive.

C. The Alleged Stricter New Interpretation of Time and Attendance Policies and Application to Cathy Mendoza

Complaint paragraphs 13(d) and (e) allege that Respondent violated Section 8(a)(3) by announcing a stricter new interpretation of its policies for clocking in and out for breaks, and for clocking in for the day, in response to the union organizing drive. It is unlawful for employers to more strictly enforce existing rules in retaliation for employees' union activity. *Print Fulfillment Services, LLC*, 361 NLRB 1241, 1245–1246 (2014). Applying *Wright Line*, the General Counsel established a prima facie case. Respondent was well aware of the union activity at the Vallejo clinic by May 2 and 3, when Respondent announced these changes.[34] Animus for the changes can be inferred from the close timing (just over 2 months) between the public announcement of the organizing campaign at Vallejo on March 10 and the announcement of these changes. The adverse employment actions were Respondent's changes to its policies. As of May 2 and 3, employee were required to sign in and out for their lunch break and their third break, when that was not required in the past; employees could no longer clock in more than 5 minutes before the start of their shifts, when they could in the past; and employees would now be marked tardy if they signed just 1-minute late, when previously there appeared to be a grace period for clocking in a few minutes late. In response to this prima facie case, Respondent failed to present any explanation for why it changed these policies—and it certainly did not carry its burden to show that it would have made these changes absent the employees' election of the Union. Based on the foregoing, I find merit to these allegations.

Complaint paragraphs 14(a) and (b) allege that Respondent violated Section 8(a)(5) by announcing the above changes without first providing the Union with notice and the opportunity to bargain and without reaching an overall good-faith bargaining impasse. An employer violates Section 8(a)(5) if it unilaterally changes a mandatory subject of bargaining. To be unlawful, that change needs to be material, substantial, and significant. *Flambeau Airmold Corp*., 334 NLRB 165, 165 (2001), quoting *Alamo Cement Co*., 281 NLRB 737, 738 (1986), modified on other grounds 337 NLRB 1025 (2002). In the instant case, Respondent was obligated to provide the Union with notice and the opportunity to bargain before it made any changes to its policies over signing in and out for breaks and for clocking in for the day. First, both changes involved mandatory subjects of bargaining. See *Venture Packing*, 294 NLRB 544 (1989). Second, it was uncontested that Respondent changed both policies. For breaks, employees did not previously have to sign in and out for the lunch break or for the third breaks. Third, the changes had a material, substantial, and significant impact on the employees' terms and conditions of

[34] While complaint par. 13(g) alleges that Respondent's stricter interpretations of the break and the clock in policies were in retaliation for Mendoza's union activity, the evidence supports finding violations based on overall union activity at Vallejo.

employment. Tech Mark Calma explained that previously he would report to work 10 minutes or so early to prepare his work area and to stock supplies for the day. As a result of the changed policies, he could no longer do that. This put him behind schedule in his work. Moreover, Respondent cited violation of the sign in policy as one basis for Mendoza's discharge. Any new policy that can result in discipline or discharge constitutes a material and substantial change. *Ferguson Enterprises, Inc*., 349 NLRB 617, 618 (2007) ("a threat of discipline for breach of a unilaterally implemented policy is sufficient to establish that the policy constitutes a material change in work conditions"). Despite this, Respondent failed to provide the Union with notice and the opportunity to bargain before it changed these policies and practices. Moreover, Respondent made these changes absent an overall good-faith bargaining impasse. See *Bottomline Enterprises*, 302 NLRB 373, 374 (1991) (where the parties are engaged in negotiations for a CBA, an employer must refrain from implementing any changes to terms and conditions of employment unless and until the parties have reached an overall bargaining impasse). In its defense, Respondent argued that the change was not material. But, for the reasons explained above, that argument is unpersuasive. Based on the foregoing, I find that Respondent violated Section 8(a)(5) by announcing these changes absent an overall good-faith bargaining impasse and without even providing the Union with notice and the opportunity to bargain.

Complaint paragraph 14(c) alleges that Respondent violated Section 8(a)(5) by issuing Mendoza the four separate written warnings on March 1, 2, 7, and 10, because doing that was "dissimilar in kind and degree from what Respondent did in the past." While it did appear that Assistant Center Manager Gapasin erred by issuing four separate warnings, as opposed to a single consolidated warning, it cannot be said that this lone oversight arose to a unilateral change in policy or practice. The paragraph also alleges that Respondent violated Section 8(a)(5) by issuing the written warnings on March 25 and April 4, issuance of those warning was not shown to be dissimilar in kind or degree to Respondent's past practice. Based on the foregoing, I dismiss this allegation.

Complaint paragraph 14(d) alleges that Respondent violated Section 8(a)(5) by issuing Mendoza the discharge notice since its did so "in a manner dissimilar in kind and degree from what Respondent did in the past." No evidence supported this allegation, and so I dismiss it.

Complaint paragraph 14(e) alleges that Respondent violated Section 8(a)(5) by terminating Mendoza without first providing the Union with notice and the opportunity to bargain. I find merit to this allegation based on General Counsel's argument that the discharge was based, at least in part, on the changed time and attendance policy announced by Hernandez on May 2 and 3. The June 17 discharge notice expressly stated that it was based in part on Mendoza's "violations of our Time & Attendance policy." Having found that Respondent unlawfully changed its time and attendance policy to eliminate any grace period, this discharge was also unlawful. As the Board explained in *Ferguson Enterprises, Inc*., 349 NLRB 617, 618–619 (2007), discipline issued pursuant to an unlawfully implemented policy is also unlawful. See also *Flambeau Airmold Corp.*, 334 NLRB 165, 167 (2001) (citing *Great Western Produce*, 299 NLRB 1004, 1005 (1990)) ("the discipline or discharge of an employee violated Section 8(a)(5) if the employer has unlawfully implemented work rules or policies that were a factor in the discipline or discharge").

However, to the extent that General Counsel argues that this allegation is based on their assertion that the Board wrongly decided *800 River Road Operating Co., LLC dba Care One at New Milford*, 369 NLRB No. 109 (2020), I find no merit to that. *Care One* is presently before the Board on the question whether it should be overruled. See, e.g., *Starbucks Corp.*, 373 NLRB No. 115, slip op. at 1 (2024). *Care One* thus represents extant Board law on whether employers are required to bargain over the imposition of serious discretionary discipline at a time when the union and the employer have yet to reach an initial collective-bargaining agreement. Since my role as the Administrative Law Judge is limited to applying current Board law, I find no merit to this argument.

D. The Alleged Discriminatory Discipline and Discharge of RN Cathy Mendoza

Complaint paragraph 13 alleges that Respondent violated Section 8(a)(3) by disciplining and discharging Cathy Mendoza in retaliation for her union activity.

The General Counsel presented a compelling prima facie case of discrimination under *Wright Line*. Mendoza's support for the Union was well-known to center Manager Hernandez: she was one of the union leaders at Vallejo, she presented the union flyer to management on March 10, her name and photo were on the flyer, she served as one of the union observers during the Board election, and Hernandez explicitly warned her about the perils of supporting the Union. The adverse employment actions were the verbal warnings on March 1–10; the first written warning on March 25; the final written warning on April 4; and Mendoza's discharge on June 17.

Evidence of Respondent's antiunion animus against Mendoza was overwhelming. In terms of direct evidence, there was uncontroverted evidence that, on June 17, Hernandez told Mendoza twice that she was being discharged because she complained to the Union about the March 21 warnings (which resulted in the warnings being rescinded). In response to Mendoza's question why management was not simply issuing oral warnings, as it had done consistently since 2022, Hernandez countered with, "why did you have to go to the union when [assistant clinic manager Gasparin] wrote you up. If you wouldn't have done that, you wouldn't be in this situation." Hernandez thus admitted that the discharge was in response to Mendoza's protected conduct of speaking to her union representative about being disciplined. I also infer animus from the following. Respondent started disciplining Mendoza for tardiness just 11 days after her presentation of the union flyer to Hernandez. The delegation was on March 10 and Respondent issued the first written warnings for tardiness on March 21. This close timing indicates that Respondent's sudden intolerance of Mendoza's chronic tardiness was prompted by her union activity. See *Starbucks Corp*., 373 NLRB No. 83, slip op. at 16 (2024) (the close timing between the discriminatee's union activity and the discharge showed animus). Animus was shown by Hernandez' coercive statements on March 10 about the harms that could befall the employees because they supported the Union. These dire consequences included plant closure, a statement of futility, and being blackballed by Respondent and other dialysis companies. Once Hernandez gave her warning about being blackballed, she pointed at Mendoza and said, "especially you, Cathy, you know where you stand." Animus is also evident in Respondent's sudden decision to clamp down on Mendoza's chronic tardiness, an issue that had been occurring for the entirety of her career yet had never resulted in suspension or discharge. Respondent's decision to seize upon

this reason strongly suggests that her discipline and discharge were pretextual. See *DH Long Point Mgmt.*, 369 NLRB No. 18, slip op. at 15 (2020) (evidence showed that employer seized upon a minor incident as pretext to issue a final warning to employee and thus create a foundation to rid itself of one of the union's most active and outspoken supporters). Finally, animus is shown by Respondent's numerous violations of the Act in response to the Union organizing drive. See *Dynasteel Corp.*, 346 NLRB 86, 88 (2005)("The Respondent's numerous 8(a)(1) violations provide evidence of its anti-union animus") and *Galicks, Inc.*, 354 NLRB 295, 298 (2009), affirmed 355 NLRB 366 (2010), enfd. 670 F.3d 602 (6th Cir. 2012) ("Conduct violative of Section 8(a)(5) may evidence union animus").

In terms of a *Wright Line* defense, Respondent argued that it did not tolerate her chronic tardiness and that the only reason why Mendoza was not discharged earlier was because she had transferred from Oakland to the Vallejo clinic after receiving a final written warning. But neither of these defenses holds up. First, Respondent did tolerate Mendoza's chronic tardiness: even though she was late on most days during her second stint in Vallejo, Hernandez admitted: "I just close my eyes and dont say nothing." Second, the reason why Mendoza was not discharged after her transfer from Oakland to Vallejo was not because she evaded policing by leaving Oakland, but because Hernandez simply accepted her chronic tardiness—that is, until Mendoza started engaging in union activities, such as presenting the SEIU-UHWW flyer to Hernandez and raising complaints to her union representative.

Based on the foregoing, I find merit to the allegations in complaint paragraph 13.

E. The Allegations Relating to Cristina Cortez

Complaint paragraphs 12 and 15 allege that Respondent violated Section 8(a)(3) and (5) by denying Cristina Cortez reimbursement, raises, and other benefits in retaliation for her union activity and pursuant to unilaterally changed rules, respectively. Paragraph 15(c) further alleges that Respondent assigned Cortez to work with a preceptor "in contradiction of prior practice and/or policy." I find insufficient evidence to support these allegations.

For the 8(a)(3) allegation, the General Counsel failed to establish a prima facie case. Cortez had scant Section 7 activity: she was one of 15 Gilroy employees who voted in the Board election in December 2022, more than half a year prior to the alleged adverse employment actions. There was no evidence of animus. Moreover, there was no evidence of any adverse employment action. For the licensing exam costs, Respondent reimbursed Cortez $240 on July 14, which covered the June 25-July 8 pay period. Concerning the pay raise for becoming a PCT, Respondent started paying her the new, higher wage on September 8. It also paid Cortez retroactively to July, when she received proof of her CCHT certification. As to having Cortez work with a preceptor, the facts merely showed that Respondent required a preceptor to also be on duty during Cortez' shifts, consistent with California State law and its past practice.

For the 8(a)(5) allegation, there was no evidence of any change, unilateral or otherwise, relating to reimbursement for exam fees, for payment of a higher wage rate for becoming a CCHT, or for working with a preceptor. Respondent's actions were consistent with the way it handled such matters in the past.

Based on the foregoing, I dismiss all allegations in paragraphs 13 and 15.

F. The Alleged Delay in Furnishing Information

Complaint paragraphs 17 through 23 allege that Respondent violated Section 8(a)(5) by failing to furnish or failing to timely furnish information requested by the Union.

An employer's duty to bargain pursuant to Section 8(a)(5) encompasses the duty to provide information requested by a union which is relevant and necessary for the union's performance of its duties as collective-bargaining representative. *NLRB v. Truitt Mfg. Co*., 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co*., 385 U.S. 422, 435-436 (1967). Information pertaining to unit employees is presumptively relevant and must be provided by the employer. See, e.g., *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71, slip op. at 2 (2019); *Disneyland Park*, 350 NLRB 1256, 1257 (2007). An employer's duty to furnish information includes the duty to promptly furnish the union with information necessary and relevant to collective-bargaining negotiations. *George Koch Sons, Inc*., 295 NLRB 695, 695 (1989).

The information requested—e.g., a current list of unit employees, unit job descriptions, current pay scales/ranges, health, dental, and vision plans offered to unit employees, retirement plans covering unit employees, handbooks and policies, staffing matrices for department, OSHA logs—was presumptively relevant and was plainly necessary to the Union's duty to negotiate terms and conditions in the initial collective-bargaining agreement. Moreover, in his April 6 email, Capell explained to Castellanos in detail why it needed this information.

Respondent furnished almost all of the requested information; the question presented by most of these allegations was whether Respondent did so in a dilatory fashion. This inquiry is based on an objective analysis. *FCA US LLC*, 371 NLRB No. 32, slip op. at 2, fn. 8 (2021). The chart below summarizes the time that Respondent took to provide information responding to the Union's five separate requests.

Clinic	Date of Initial Request and Employer Response	Follow Up Requests	Information Provided
CPT ¶ 19 Blossom Valley, Gilroy, Morgan Hill, San Francisco	January 4 On January 19, Respondent said it was gathering the information and expected to complete that task "in the next few weeks." On March 31, Respondent provided most of the information, but not the "current pay scales/ranges for each covered position." (Par. 3 of Union information request).	On April 6 and June 13, the Union reiterated its request for the "current pay scales/ranges."	In early September, Respondent provided the "current pay scales/ranges."
CPT ¶ 20 Vallejo	May 3	August 25	In early September, Respondent provided the information.
CPT ¶ 21 Cathy Mendoza	June 20		On June 30, Respondent said it would not be

			providing the information because it was not obligated under current law to bargain over the Mendoza discipline or discharge.
CPT ¶ 22 Rohnert Park	July 11	August 25	In early September, Respondent provided the information.
CPT ¶ 23 Folsom	August 7	August 25	In early September, Respondent provided the information.

Complaint paragraph 19 alleges that Respondent violated Section 8(a)(5) by unreasonably delaying in furnishing the Union with information about the "current pay scales/ranges for each covered position" at the four initial clinics.[35] This information was presumptively relevant and obviously needed by the Union to formulate its bargaining proposals, especially about wages. The period of delay was from January 4 through early September. While Respondent provided the bulk of the requested information timely, it did not furnish information about the pay scales/ranges until eight months after the initial request. In its brief, Respondent sought to justify this as an "inadvertent mistake during a time of upheaval within the Company." While I recognize that that many important changes were occurring at Respondent in 2023, given the importance of this information to the Union's ability to formulate its bargaining proposals and the number of times the Union reiterated its request, I find this defense insufficient. *Meda-Care Ambulance*, 285 NLRB 471, 491 (1987) ("the 8-month delay in providing information highly relevant to the bargaining process was unreasonable"). I therefore find merit to this allegation.

Complaint paragraph 20 alleges that Respondent violated Section 8(a)(5) by unreasonably delaying in furnishing the Union with information relating to the unit employees at Vallejo. The information was presumptively relevant, as it sought information pertaining to the unit, such as their names, contact information, job descriptions, current pay scales and ranges, and information on health, dental, and vision plans. While the Union requested the information on May 3 and reiterated that request on August 25, Respondent did not provide anything until early September. In its brief, Respondent explained that they delay was caused by Castellanos' absence, the volume of the information requested, and the need for Respondent to compile information requested in connection with other facilities. But at the time, Respondent gave the Union no explanation for the delay. I find this defense deficient; waiting 4 months to provide such important information needed for bargaining was unreasonable. *Postal Service*, 332 NLRB 635, 638 (2000) (delay of 4 to 5 months held unreasonable, especially since the respondent failed to give any explanation). I therefore find merit to this allegation.

[35] In their brief, General Counsel argue that Respondent failed to also furnish evidence on "employee numbers" and "retirement benefit plans." But neither of those items were listed in the complaint or mentioned in the General Counsel's opening statement. Given that the General Counsel could have moved to amend the complaint to include that information—and thus provide notice of the parameters of the alleged violation—it would be unfair to permit General Counsel to include those items now.

Complaint paragraph 21 alleges that Respondent violated Section 8(a)(5) by refusing to furnish the Union with information relating to the discipline and discharge of Cathy Mendoza. Since Respondent had no obligation to bargain over the discretionary discipline and discharge of Mendoza, the Union's information request was not necessary and relevant to its role as the bargaining representative at Vallejo. I therefore dismiss this allegation.

Complaint paragraphs 22 and 23 allege that Respondent violated Section 8(a)(5) by failing to timely furnish information in response to the Union's requests pertaining to the Rohnert Park and Folsom bargaining units. The Union requested that information on July 11 and August 7, respectively. Respondent furnished the information in early September. These modest amounts of time—1 and 2 months—were not unduly lengthy, especially given the number of documents requested, Castellanos' emergency leave, and the need for Respondent to gather information in connection with other facilities. I therefore dismiss these allegations.

G. The Alleged Failure to Bargain in Good Faith

Complaint paragraph 17 alleges that Respondent violated Section 8(a)(5) by cancelling bargaining sessions and generally refusing to meet with promptness and at reasonable times. Section 8(d) of the Act describes the obligation to bargain collectively and provides, in pertinent part, that both employers and unions will "meet at reasonable times." In *Rutter-Rex Mfg. Co*., 86 NLRB 470, 506 (1949), the Board explained that the duty to bargain "surely encompasses the affirmative duty to make expeditious and prompt arrangement, within reason, for meeting and conferring." In the instant case, while Respondent did push back the start of bargaining various times, it did so for valid reasons and in a manner that showed no pattern or intent to frustrate the bargaining process. After the Union was certified as the bargaining representative at the four clinics in January, Castellanos and Capell began communicating with each other about bargaining. On April 24, Capell specifically proposed initial bargaining dates in June. On May 3, Castellanos agreed to start bargaining on June 27 and introduced outside counsel Erin Sweeney as Satellite's lead negotiator. Over the next few months, Respondent postponed the start of bargaining several times based on unanticipated events. In June, Satellite entered into a management services contract with U.S. Renal. In July, Castellanos, Satellite's director of labor relations and the main management representative for bargaining, took sudden leave for a family emergency. He ultimately left the company on September 6. Capell himself said that, "Satellite Healthcare is in complete disarray." Additionally, after the first four clinics organized, the Union won elections at several other clinics. For the seven clinics involved in this case, the Union was certified as the bargaining representative from January to August. Respondent never refused to meet and bargain; when she told Capell that they had to push back the start of bargaining yet again, Sweeney always explained the reasons and offered new dates. Given the totality of these facts, Respondent's need to postpone the start of bargaining did not show any bad faith or reveal an overall attempt to frustrate the bargaining process. I therefore dismiss this allegation.

Complaint paragraph 18 alleges that Respondent violated Section 8(a)(5) through its overall conduct, which included engaging in delay tactics and committing various unfair labor practices. In determining whether a party has engaged in surface bargaining or bad-faith bargaining, the Board will look at the party's overall conduct, including delay tactics, unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining,

efforts to bypass the union, designating an agent lacking sufficient authority to bargain, withdrawal of tentative agreements, and arbitrary scheduling of meetings. *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984). In the instant case, while there was some delay in holding the first bargaining session, I found, as explained above, that there were circumstances beyond Respondent's control which caused that delay. There was no evidence of any Respondent conduct at the bargaining table that suggested a desire to frustrate the bargaining process, such as insisting on unreasonable demands, withdrawing tentative agreements, or appointing a bargaining representative lacking authority to bind Respondent. In fact, there was no evidence of any conduct during any of the negotiating sessions suggesting an absence of good-faith bargaining. While I have found that Respondent did engage in other unfair labor practices, such as committing unilateral changes at a single facility and delaying in furnishing some items of information, its overall conduct fell far short of signaling an intention to defeat or frustrate good -faith bargaining. Thus, given the totality of the circumstances presented here, I find no refusal to bargain by Respondent and dismiss this allegation.

CONCLUSIONS OF LAW

1. Respondent Satellite Healthcare, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).

2. Service Employees International Union, United Healthcare Workers—West (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by its supervisors and/or agents, engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by the following conduct:

a. On March 10, 2023, telling employees that it would be futile for them to select the Union as their collective-bargaining representative, threatening employees with plant closure if they selected the Union, threatening employees that both Satellite and other employers in the dialysis industry would not hire them because they supported the Union.

b. On March 10, 2023, sending text messages to employees threatening them with plant closure if they selected the Union.

c. On or about June 27, 2023, coercing employees by misinforming them they did not have the right to have a union representative present at investigatory interviews they reasonably believed could lead to discipline because the Union had yet to negotiate a collective-bargaining agreement with Satellite.

d. On multiple dates between April and August 2023, telling employees that their merit wage increases would not be paid due to the Union and/or bargaining between the Union and Satellite.

4. Respondent engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act by the following conduct:

a. In or around April 2023, withholding annual merit wage increases from bargaining unit employees represented by the Union at the San Francisco, Gilroy, Morgan Hill, and Blossom Valley facilities because they voted in favor of union representation.

b. On various dates in March and on April 4, 2023, issuing disciplinary warnings to Cathy Mendoza because of her support for and activities on behalf of the Union.

c. On June 17, 2023, discharging Cathy Mendoza because of her support for and activities on behalf of the Union.

d. On May 2 and 3, 2023, announcing new stricter interpretations of its policies concerning signing in and out for breaks, as well as clocking in for shifts, because of the employees' support for and activities on behalf of the Union.

5. Respondent engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act by the following conduct:

a. In April 2023, changing employees' terms and conditions of employment by withholding annual merit wage increases from bargaining unit employees represented by the Union at the San Francisco, Gilroy, Morgan Hill, and Blossom Valley facilities without first offering the Union notice and the opportunity to bargain.

b. In May 2023, changing employees' terms and conditions of employment by announcing new stricter interpretations of its policies concerning signing in and out for breaks, as well as clocking in for shifts, without first bargaining to an overall impasse with the Union and without first offering the Union notice and the opportunity to bargain.

c. During various period in 2023, unreasonably delaying to provide the Union with relevant information pertaining to the facilities at San Francisco, Blossom Valley, Morgan Hill, Gilroy, and Vallejo.

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

7. Respondent has not otherwise violated the Act as alleged in the complaint.

REMEDY

Having found that Respondent engaged in certain unfair labor practices, I recommend that the Board order it to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act.

Having found that Respondent violated Section 8(a)(5) and (3), by unilaterally and discriminatorily changing terms and conditions of employment by withholding merit wage increases from bargaining unit employees at the San Francisco, Gilroy, Morgan Hill, and Blossom Valley facilities without giving the Union notice or the opportunity to bargain, and in retaliation for the unit employees' support for the Union, Respondent shall be ordered to make those employees whole for any loss of earnings and other benefits suffered as a result of the unlawful changes to their terms and conditions of employment. Backpay shall be calculated in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), with daily compounded interest. See *Community Health Services, Inc.*, 361 NLRB 333 (2014) (interim earnings should not be deducted in applying the *Ogle Protection Service* backpay formula when the employment of employees is not severed).

Having found that Respondent violated Section 8(a)(3) and (5) by discharging Cathy Mendoza in retaliation for her support for and activities on behalf of the Union, and pursuant to a time and attendance policy that was changed unilaterally, Respondent shall be ordered to offer her reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and make her whole for any loss of earnings and other benefits. Backpay 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 1153 (2016), Respondent shall compensate Mendoza for her search-for-work and interim employment expenses regardless of whether those expenses exceed her 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*, supra.

In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall be ordered to compensate Cathy Mendoza for her discharge, as well as all employees affected by the withholding of merit increases, for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful actions. 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*.

The Respondent shall be ordered to compensate Cathy Mendoza for her discharge, as well as all employees affected by the unlawful withholding of merit increases for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and be ordered to file with the Regional Director for Region 20, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay allocation report, Respondent should be ordered to file with the Regional Director for Region 20 a copy of Mendoza's and each affected employees' corresponding W-2 forms reflecting the backpay award. *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

I do not grant the General Counsel's requests for a notice reading, posting of the Explanation of Rights, mandatory training, and issuance of a letter of apology to Cathy Mendoza. The remedies discussed above will effectively remedy the unfair labor practices found, making these enhanced remedies unnecessary. I also do not grant the General Counsel's request for an extension of the certification at the San Francisco, Gilroy, Blossom Valley, and Morgan hill facilities based on my finding that Respondent did not fail or refuse to bargain in good faith, as well as the absence of any express request for such a remedy in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[36]

ORDER

The Respondent, Satellite Healthcare, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

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

(a) Telling employees that it would be futile for them to elect Service Employees International Union, United Healthcare Workers – West (the Union) as their collective-bargaining representative.

(b) Threatening employees with plant closure if they elected the Union.

(c) Threatening employees that Respondent and other dialysis companies would not hire them because of their support for the Union.

(d) Sending text messages to employees threatening them with plant closure if they selected the Union.

(e) Telling employees they could not have Union representation during investigatory interviews which they reasonably believed could lead to discipline unless they had a Union contract.

(f) Blaming the Union for the withholding of annual merit wage increases.

(g) Discharging or disciplining employees because of their support for and activities on behalf of the Union or any other labor organization.

(h) Changing any terms and conditions of employment of its unit employees, including but not limited to withholding annual merit wage increases, in retaliation for the employees electing the Union or any other labor organization as their collective-bargaining representative.

(i) Changing any terms and conditions of employment of its unit employees, including but not limited to withholding annual merit wage increases, without first notifying the Union and giving it the opportunity to bargain.

(j) Changing any terms and conditions of employment of its unit employees, including but not limited to creating a new rule about signing in and out for breaks or changing an established practice about signing in for shifts, in retaliation for the employees electing the Union or any other labor organization as their collective-bargaining representative.

(k) Changing any terms and conditions of employment of its unit employees, including but not limited to creating a new rule about signing in and out for breaks or changing an established practice about signing in for shifts, without reaching an overall good faith bargaining impasse with the Union and without first notifying the Union and giving it the opportunity to bargain.

(l) Refusing to bargain collectively with the Union by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the unit employees at the San Francisco, Blossom Valley, Morgan Hills, Gilroy, and Vallejo facilities.

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

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

(a) Within 14 days from the date of this Order, offer Cathy Mendoza full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Cathy Mendoza whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against her, in the manner set forth in the remedy section above.

(c) Compensate Cathy Mendoza for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 20, 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 for each employee.

(d) File with the Regional Director for Region 20, 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, a copy of Cathy Mendoza's W-2 forms reflecting the backpay award.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful disciplines and the discharge of Cathy Mendoza, and within 3 days thereafter, notify her in writing that this has been done and that the disciplines and discharge will not be used against her in any way.

(f) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining units:

Blossom Valley facility: Included: IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers, MSW I; RNs; Staff – PD; Nephrology Dietitians I; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT), Advanced; Certified Clinical Hemodialysis Technicians (CCHT), Master; Patient Care Technician Trainees; Environmental Services Techs and LVNs. Excluded: Center Managers, office clerical employees, guards, and supervisors as defined by the Act.

Gilroy facility. Included: Home RN4s, Advanced; Home RN5s, Expert; IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers, MSW II; Nephrology Dietitian Is; RNs; Staff- PD; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT), Advanced; Certified Clinical Hemodialysis Technicians (CCHT), Master; Patient Care Technician Trainees; and Environmental Services. Excluded: center managers, office clerical employees, guards, and supervisors, as defined by the Act.

Morgan Hill facility. Included: IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers, MSW III; Nephrology Dietitians I; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT), Advanced; Certified Clinical

Hemodialysis Technicians (CCHT), Master. Excluded: Center Managers, office clerical employees, guards, and supervisors as defined by the Act.

San Francisco facility. Included: Certified Hemodialysis Technician; Environmental Services Technician; Patient Care Technician Trainee; Certified Clinical Hemodialysis Technician; Certified Clinical Hemodialysis Technician – Advanced. Excluded: All other employees, confidential employees, managers, guards, and supervisors as defined in the Act.

Vallejo facility. Included: RN Staff – Per Diem; RN Clinical Nurse I; IC RN3 Intermediate; IC RN4 Advanced, IC RN5 Expert; Certified Clinical Hemodialysis Technician (CCHT); Certified Clinical Hemodialysis Technician (CCHT) Advanced; Certified Clinical Hemodialysis Technician (CCHT) – Per Diem; and Environmental Services Technician. Excluded: All other employees, confidential employees, managers, guards, and supervisors as defined in the Act.

(g) Make the affected bargaining unit employees at San Franciso, Morgan Hill, Blossom Valley, Gilroy whole for any loss of earnings and other benefits suffered as a result of the unilateral and discriminatory changes in terms and conditions of employment, including but not limited to the withholding of annual merit increases in 2023, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against her, in the manner set forth in the remedy section above.

(h) Compensate the affected employees at San Franciso, Morgan Hill, Blossom Valley, Gilroy for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 20, 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 for each employee.

(i) File with the Regional Director for Region 20, 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, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(j) 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.

(k) Rescind the changes to employees' terms and conditions of employment at the facilities located in San Franciso, Morgan Hill, Blossom Valley, Gilroy, and Vallejo.

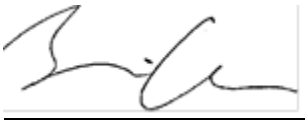
(l) Post at its facilities in San Franciso, Morgan Hill, Blossom Valley, Gilroy, Vallejo, Rohnert Park, and Folsom copies of the attached notice[37] marked "Appendix" in English and any

[37] Based on the facts involved in these cases—e.g., bargaining for all seven facilities was being conducted jointly and Respondent's admission that employees at the different facilities share information with each other—I recommend that a single Notice be posted at all seven facilities involved in this complaint.

other language deemed appropriate by the Regional Director. [38] Copies of the notice, on forms provided by the Regional Director for Region 20, 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.

(m) Within 21 days after service by the Region, file with the Regional Director for Region 20 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. April 2, 2025.



Brian D. Gee
Administrative Law Judge

[38] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 threaten employees with plant closure if they selected the Union Service Employees International Union, United Healthcare Workers – West (the Union) or any other labor organization as their bargaining representative.

WE WILL NOT threaten employees that we would not hire them because of their support for the Union.

WE WILL NOT threaten employees that other companies would not hire them because of their support for the Union.

WE WILL NOT misinform employees by saying that they were not entitled to union representation during investigatory interviews they reasonably believed could lead to discipline because there was no union contract.

WE WILL NOT blame the Union for the withholding of merit wage increases.

WE WILL NOT threaten employees by saying that merit wage increases or pay increases associated with being promoted could not be paid due to bargaining between Satellite and the Union.

WE WILL NOT threaten employees that we will not hire them in the future because of their support for the Union.

WE WILL NOT withhold annual merit wage increases because of the employees' support for and activities on behalf of the Union.

WE WILL NOT discharge, issue warnings to, or otherwise discriminate against employees because of their support for and activities on behalf of the Union.

WE WILL NOT more strictly enforce workplace rules or policies because of the employees' support for and activities on behalf of the Union, including by announcing that employees may no longer clock in more than five minutes before their shifts and that clocking in even 1-minute

late is considered a tardy, and by requiring employees to sign in and out for the lunch break and the third break of the day.

WE WILL NOT change employees' terms and conditions of employment, such as those pertaining to merit wage increases, without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT change employees' terms and conditions of employment, such those pertaining to signing in for shifts and signing in and out for certain break periods, without first reaching an overall good faith bargaining impasse with the Union or without notifying the Union and giving it an opportunity to bargain.

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

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 Act.

WE WILL, within 14 days from the date of the Board's Order, offer Cathy Mendoza full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Cathy Mendoza whole for any loss of earnings and other benefits resulting from the unlawful discrimination against her, less any net interim earnings, plus interest, and WE WILL also make her whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful discrimination, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Cathy Mendoza for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 20, within 21 days of the date of the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of this recommended Order, remove from our files any reference to the unlawful discharge and warnings of Cathy Mendoza, and WE WILL, within 3 days thereafter, notify her in writing that we have done so and that we will not use the discharge or the warnings against her in any way.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining units:

Blossom Valley facility: Included: IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers, MSW I; RNs; Staff – PD; Nephrology Dietitians I; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT), Advanced; Certified Clinical Hemodialysis Technicians (CCHT), Master; Patient Care Technician Trainees;

Environmental Services Techs; and LVNs. Excluded: Center Managers, office clerical employees, guards, and supervisors as defined by the Act.

Gilroy facility. Included: Home RN4s, Advanced; Home RN5s, Expert; IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers, MSW II; Nephrology Dietitian Is; RNs; Staff- PD; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT), Advanced; Certified Clinical Hemodialysis Technicians (CCHT), Master; Patient Care Technician Trainees; and Environmental Services. Excluded: center managers, office clerical employees, guards, and supervisors, as defined by the Act.

Morgan Hill facility. Included: IC RN3s, Intermediate; IC RN4s, Advanced; Social Workers, MSW III; Nephrology Dietitians I; Certified Clinical Hemodialysis Technicians (CCHT); Certified Clinical Hemodialysis Technicians (CCHT), Advanced; Certified Clinical Hemodialysis Technicians (CCHT), Master. Excluded: Center Managers, office clerical employees, guards, and supervisors as defined by the Act.

San Francisco facility. Included: Certified Hemodialysis Technician; Environmental Services Technician; Patient Care Technician Trainee; Certified Clinical Hemodialysis Technician; Certified Clinical Hemodialysis Technician – Advanced. Excluded: All other employees, confidential employees, managers, guards, and supervisors as defined in the Act.

Vallejo facility. Included: RN Staff – Per Diem; RN Clinical Nurse I; IC RN3 Intermediate; IC RN4 Advanced, IC RN5 Expert; Certified Clinical Hemodialysis Technician (CCHT); Certified Clinical Hemodialysis Technician (CCHT) Advanced; Certified Clinical Hemodialysis Technician (CCHT) – Per Diem; and Environmental Services Technician. Excluded: All other employees, confidential employees, managers, guards, and supervisors as defined in the Act.

WE WILL make our affected employees at San Franciso, Morgan Hill, Blossom Valley, Gilroy whole for any loss of earnings and other benefits suffered as a result of our unlawful change to their terms and condition of employment without first notifying the Union and giving it an opportunity to bargain, plus interest.

WE WILL compensate the employees at San Franciso, Morgan Hill, Blossom Valley, and Gilroy who affected by our unilateral actions for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 20, within 21 days of the date of the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 20, 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, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL rescind the changes made to unit employees' annual merit wage increases at the San Francisco, Gilroy, Blossom Valley, and Morgan Hill facilities.

WE WILL rescind the changes made to the time and attendance policies at the Vallejo facility pertaining to signing in and out for breaks, and for signing in for shifts.

WE WILL post this notice at our facilities in San Francisco, Gilroy, Blossom Valley, Morgan Hill, Vallejo, Rohnert Park, and Folsom, California, for a period of 60 days. In addition, WE WILL post the notice electronically, including email, and by any such means as we generally use to communicate with you.

SATELLITE HEALTHCARE, INC.

Dated _____ _____
(Employer)

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.

Phillip Burton Federal Building
450 Golden Gate Ave, 3rd Floor, Suite 3112,
San Francisco, CA
(415) 356-5130, Hours of Operation: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-315531 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