BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NEW VITAE, INC. d/b/a NEW VITAE WELLNESS AND RECOVERY

and **Cases** **04-CA-324629**
04-CA-328382
04-CA-328762
04-CA-347986
04-CA-354024

DISTRICT 1199C, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, AFSCME, AFL-CIO

Lea Alvo-Sadiky, Esq.,
and Jun S. Bang, Esq.
for the General Counsel.
Kathleen Bichner, Esq.,
and Patrick K. Martin, Esq.,
(O'Donoghue & O'Donoghue)
Philadelphia, Pennsylvania,
for the Charing Party.
Guy Vilim, Esq.,
and Noreen Amir, Esq.,
(The Law Office of Guy Vilim)
Media, Pennsylvania,
for the Respondent.

DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. I heard this case on May 20 and 21, 2025, in Philadelphia, Pennsylvania. District 1199, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO (the Charging Party or the Union) filed the charge: in case 04-CA-324629 on August 25, 2023; in case 04-CA-328382 on October 23, 2023, and amended that charge on November 8, 2023 and November 4, 2024; in case 04-CA-328762 on October 27, 2023, and amended that charge on December 4,

2023, December 13, 2023, and November 4, 2024; in case 04-CA-347986 on August 9, 2024, and amended that charge on August 26, 2024, and March 17, 2025; in case 04-CA-354024 on November 4, 2024 and amended that charge on November 19, 2024, December 23, 2024, and March 17, 2025.

The Regional Director for Region 4 of the National Labor Relations Board (the Board) filed the Consolidated Complaint (the Complaint) on April 8, 2025. The Complaint alleges that New Vitae, Inc. d/b/a New Vitae Wellness and Recovery (the Respondent or the Employer or New Vitae) violated Sections 8(a)(5), 8(a)(3) and 8(a)(1) of the National Labor Relations Act (the Act) by laying off and subcontracting the work of all the employees in the recently certified bargaining unit because they had formed a union and engaged in protected concerted activities, and by doing this without providing the Union with notice and an opportunity to bargain. The Complaint also alleges that the Respondent retaliated against employee Danita Alexander for engaging in protected concerted activities and union activities, and failed to meet its bargaining obligations, in violation of Section 8(a)(5), 8(a)(3) and 8(a)(1) of the Act when it suspended Alexander, withheld held pay from her, denied her shifts, gave her a negative performance appraisal, and discharged her. The Complaint further alleges the Respondent violated Section 8(a)(1) of the Act by directing employees not to discuss working conditions and threatening that the employees would be disciplined if they did so. In addition, the Complaint alleges that the Respondent failed to meet its bargaining obligations, and violated Section 8(a)(5) of the Act by: refusing to meet and bargain collectively with the Union; refusing to provide and/or delaying the provision of information requested by the Union; and failing to give the Union prior notice and an opportunity to bargain before withholding holiday bonuses and wage increases from unit employees. The Respondent filed a timely answer in which it denied committing any of the violations alleged.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Limeport, Pennsylvania, is a health-care institution, the activities of which include operating residential treatment centers for adults in Philadelphia, Pennsylvania. In conducting its operations at the residential treatment centers for adults in Philadelphia, Pennsylvania, it has derived gross revenues in excess of $250,000, and has purchased goods and materials valued in excess of $5000 directly from points outside the Commonwealth of Pennsylvania. The Respondent admits, and I find, that at all relevant times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act, and

that the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

The Respondent is a health care corporation whose operations include residential treatment facilities for adults (RTFAs), personal care homes, assisted living homes, apartment programs, mobile psychiatric rehabilitation programs, and a peer support program. Transcript at Page(s) (Tr.) 222-223, 381. This litigation focuses on events at three RTFAs that the Respondent operates in Philadelphia. The residents of these RTFAs are men with mental health, behavioral, and/or addiction issues. Each of the three facilities has a maximum capacity of 12 residents. Tr. 330.

A bargaining unit of the full-time, part-time, and per-diem registered nurses (RNs) employed at the Respondent's Philadelphia RTFAs voted, on March 16, 2023, to be represented by the Charging Party Union. Approximately 13 to 21 employees were in bargaining unit positions immediately prior to November 1, 2024. Tr. 95-96, 257-258; General Counsel Exhibit Number (GC Exh.) 9(b). On May 9, 2023, after the Charging Party was certified as the unit's bargaining representative, the Charging Party told the Respondent that it wanted to commence contract negotiations, and those negotiations started about 17 months later on October 10, 2024. GC Exh. 2. On Friday, November 1, 2024 – less than a month after the start of contract negotiations – the Respondent informed the Charging Party that it was laying off, and ending the employment of, all of the bargaining unit employees effective later that day and was subcontracting all of the unit work to staffing agencies. Tr. 109-110; GC Exh. 12; see also GC Exh 1(gg) at Paragraph 8 (Respondent admits to Complaint paragraph alleging that it laid off all the unit employees and subcontracted their work on about November 1, 2024). The Respondent did not include in the layoff any of the non-unionized employees at the same facilities, or in any of its other programs The employees who the Respondent continued to employ included therapists, care coordinators, and direct care employees known as "mentors." Tr. 221-222.

III. NURSES' COMPLAINTS AND UNION CAMPAIGN

Previously, in a letter to the Respondent, dated September 25, 2022, a group of eight nurses at the Respondent's Philadelphia RTFAs expressed concerns about their terms and conditions of employment, including about compensation and the perception that the Respondent did not appreciate their work as nurses. GC Exh. 17; Tr. 98-99. Nurses Myra Heard and Danita Alexander were the ones who sent the letter to the Respondent, and were also among the letter's signatories.

Employees were dissatisfied with management's response to the concerns expressed in the September 25 letter, and decided to contact the Charging Party Union in December 2022 to inquire about representation for the nurses. Tr. 99-101. Subsequently, Heard, with help from alleged discriminatee Danita Alexander, campaigned for union representation. Tr. 100. The Respondent maintained a typed

report in its files that discussed the union campaign and that report stated, inter alia, that "Myra[Heard], Danita[Alexander],[1] and Paula are the only names that keep coming up for voting yes." GC Exh. 76. These notes also directed that Heard and Alexander be excluded from the invitation to a forum the Respondent planned to conduct about the union election. Ibid.

On March 31, 2023 – about 2 weeks after the nurses voted to be represented by the Charging Party – the Respondent's owner, Adam Devlin informed the unit members that the Respondent was challenging the election results, and that even if the Respondent's challenge was unsuccessful, there would be no changes "that we do not agree with." GC Exh. 19. After the election, he also visited an RTFA facility and had conversations with bargaining unit employees. Tr. 41-42, 84-85. The election results were subsequently upheld and, on May 5, 2023, the Charging Party was certified as the exclusive collective bargaining of the nurses at the Respondent's RTFAs in Philadelphia.[2]

IV. DANITA ALEXANDER

Alleged discriminatee Alexander began working for the Respondent's Philadelphia RTFAs as a per diem RN starting on about December 6, 2021. Tr. 28-29. She worked multiple shifts each week, but did not have a fixed schedule. Tr. 28-29. In September 2022, Alexander began raising concerns about working conditions with Heard and other co-workers. Tr. 32-33. The concerns she discussed included: unfair compensation; the Respondent requiring one nurse to simultaneously perform two nurses' assignments; and the Respondent's non-responsiveness to nurses' complaints. Tr. 31-33.

As noted above, after the representation election, Devlin (owner of Respondent) visited an RTFA and had conversations with staff. One of the employees he spoke with was Alexander. Tr. 41-42. During their conversation, Alexander told Devlin that the nurses would not have had to bring in the Union if the Respondent addressed the nurses' issues. Alexander also complained to Devlin about an incident between a staff member and a resident.

In April 2023 – after the representation election, but before the bargaining representative was certified – the Respondent had an outside consultant conduct what it termed "stay interviews." During these interviews, unit employees were asked to identify positive and negative aspects of their work environment. Employee

[1] Maribel Perotta (director of human resources) stated that Danita Alexander was the only "Danita" and Myra Heard the only "Myra" on the Respondent's staff. Tr. 278-279

[2] The certified bargaining unit is defined as:
All full-time, regular part-time, and per-diem Registered Nurses employed by the Employer at its facilities located at 5644 Walnut Street, 5646 Walnut Street, and 1909 South 6th Street in Philadelphia, Pennsylvania, excluding all other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined by the Act.

participation in the stay interviews was voluntary and employees were told that, if they chose to participate, the interviews would not be used as a basis for any punitive action. Tr. 43-44, 228.[3] Alexander voluntarily participated in a stay interview on April 21, 2023, and, although she was offered the opportunity to participate anonymously, she chose to provide her name. Tr. 44. During the interview, Alexander expressed a number of workplace concerns, including: nepotism, favoritism, management's failure to address employee complaints and conflicts, disrespectful treatment, and retaliatory scheduling by the director of wellness (Taliah Mason). Tr. 44, 227, 230, GC Exh. 41(b). She also criticized the performance of the non-unit employees, known as "mentors," whose tasks included escorting residents to appointments, assisting them with activities, and taking them outside the facility when necessary. Tr. 44, 240-241.[4]

About 6 days after the voluntary stay interview, Alexander received an email from Samantha Perch, who at the time was the Respondent's director of human resources.[5] The April 27 email stated:

> During your stay interview, you raised a number of issues of concern in connection with your employment. New Vitae takes seriously such concerns, if the expression of those concerns is made in good faith. The issues you raised warrant a further investigation by New Vitae if they are legitimate. To determine this, we are inviting you to a meeting to allow you to state your concerns with specificity and to add any other legitimate concerns you may have. You may want to consider having a union representative accompany you during this meeting.

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[3] Curiously, the interview forms required that the results be shared with Maribel (Poretta) within 24 hours of completion – even though Poretta was not employed by the Respondent until 3 months later, on July 16, 2023, when she became the Respondent's human resources director after being referred by the same outside consultant who conducted the "stay" interviews. GC Exh. 50 ("Reporting" section); Tr. 216.

[4] During the "stay interview," the questioner asked Alexander about a recent incident in which a resident had left the facility without the required supervision or permission – an occurrence referred to as an "elopement". See Merriam Webster Dictionary (defining "elopement" as "to leave a health care or educational facility without permission or authorization"), https://www.merrriam-webster.com/dictionary (retrieved November 18, 2025). Alexander responded that she had nothing to report about the elopement because she was not present at the facility when it occurred. Tr. 81-82. The Respondent asserts that Alexander had spread rumors that security videotape reflecting the elopement had been tampered with. Brief of Respondent at pages 3 and 9. For this, the Respondent relies on testimony from Samantha Perch (a human resources staffer) about what a manager had told her that Alexander had told him. Tr. 377. I give no weight to that testimony which not only is rank hearsay, but is also undercut by by Alexander's testimony that she did not give an account of the elopement because she was not present. I note, moreover, that Perch first claimed that she found out about the elopement rumor because Alexander raised it during the stay interview, but at trial she conceded that this was untrue, and that Alexander had not raised the subject during the stay interview. Tr. 377.

[5] Subsequently, on about July 16, 2023, Perch was demoted to "human resources partner," and began reporting to the person who replaced her as human resources director (Maribel Poretta).

GC Exh. 54.

Alexander responded by email on May 2, 2023, and stated that she was not comfortable having the meeting with Perch. Although the April 27 email had only "invited" Alexander to meet, and although the precipitating April 21 interview was expressly voluntary, the Respondent's managers reacted harshly to Alexander's response to the invitation to further discuss the interview. In a May 2 email communication among managers,[6] Perch wrote that "in the past we have written employees up for not attending mandatory meetings." Devlin, the Respondent's owner, told the group that his inclination was "to terminate [Alexander] because of not wanting to meet with us." GC Exh. 54. The course the managers eventually decided upon was to suspend Alexander from shift assignments until she accepted Perch's invitation to meet. The Respondent chose this course of action even though Mason stated that suspending Alexander would cause difficulty meeting staffing needs and could conflict with the effort "to ensure that we are not perpetuating the 'I do not find it fair to work alone at [RFTA]West' energy that nurses have been vocalizing." GC Exh. 54.

By email dated, May 4, 2023, Perch informed Alexander that "Since you did not want to attend the meeting I requested, you are suspended until you are able to meet with me." GC Exh. 23. The email stated that "you have the right to have a union representative attend the meeting with you." That same day, Alexander emailed Devlin to complain about the suspension. She stated that she had not been told that the meeting with Perch was mandatory prior to when Perch suspended her for declining to attend. GC Exh. 24. The Respondent did not notify the Union about the suspension, but union representative Grubb found out about it from Alexander. Tr. 147.

Alexander scheduled a May 5 meeting with Perch, and the parties tried to meet on that day, but technical difficulties interfered and the meeting was rescheduled to May 8. Tr. 53. Those present at the May 8 meeting were Alexander, Grubb , Speakes (administrator), Perch, and Yardley Georges (human resources department representative). The Respondent asked Alexander about the concerns she raised during her stay interview, and Alexander replied that she thought employees were treated unfairly and retaliated against if they spoke up, and that supervisors did not take appropriate action when employees raised issues.

At the conclusion of the May 8 meeting, Perch told Alexander that an investigation was underway and that she was prohibited from talking to anyone about the subjects discussed. Perch stated that Alexander would be subject to discipline if she violated that prohibition. Tr. 58-59, 136-137. Grubb asked for clarification about the subjects Alexander was being prohibited from talking about and for a timeline for completion of the investigation, but Perch did not answer his inquiries. Tr. 135-137.

[6] This recipients in this email exchange included: Devlin (owner), Judith Yanacek (president), Samara Speakes (administrator), Mason (director of wellness), Perch (director of human resources), and Guy Vilim (legal counsel). The chain does not include any communications from attorney Vilim, although he is a recipient and referenced by the other participants.

Subsequently, by email on May 16, 2023, Perch directed that, while the investigation was ongoing, Alexander was prohibited from discussing with co-workers or other involved persons (with the exception of the Union representative) the subjects of nepotism, retaliation, and management's response to conflict. GC Exh. 29. Perch warned Alexander that failure to abide by this prohibition could result in disciplinary action.

During the May 8 meeting, Grubb made a request that Alexander be paid for the mandatory meeting, but the company officials did not respond to that request. Tr. 138, 143. After the meeting on May 8, the Respondent allowed Alexander to return to work. She was not paid for the 2 or 3 days of work she had lost as a result of the suspension. In addition, she was not paid for the time she spent participating in the mandatory meeting even though, in the past, she had been paid for meetings that the Respondent required her to attend when she was not otherwise working. Tr. 57-58,147. On about May 23, 2023, the Union requested in writing that the Respondent furnish information, including, "the names, positions, email addresses, phone numbers and current employment status of all New Vitae bargaining unit employees who participated in stay interviews.'" GC Exh. 40. On May 25, 2023, the Respondent refused, in writing, to supply that information, stating that it was "available to you through your own means." GC Exh. 41(a).

The evidence shows that, following the May 8 meeting, there was a decline in the number of shifts that director of wellness Mason approved Alexander to work. During the four months prior to the suspension – January to April 2023 – the Respondent approved Alexander for an average of about 9.4 shifts per month. GC Exhs. 55, 56. During the four months in 2023 following the suspension – May to August – the Respondent approved Alexander to work an average of about 6.5 shifts per month. A similar reduction is seen if one compares assignments during the May to August following the suspension in 2023, to the same May to August period a year earlier in 2022. Specifically, from May through August of 2022, the Respondent approved Alexander to work an average of 9.5 shifts per month, whereas, as previously noted, during same months in 2023 after the suspension, the Respondent approved Alexander to work only 6.5 shifts per month. GC Exhs. 55, 56. Alexander testified that while she was being assigned fewer shifts during the post-suspension period, another per diem nurse who was an outspoken critic of the union effort was assigned most of the available shifts, including shifts that the Respondent had previously assigned to Alexander. Tr. 65. In an August 24, 2023 email, Alexander complained to Perch about the reduction in her shift assignments. GC Exh. 49.

Mason completed a 2023, mid-year performance evaluation, for Alexander. GC Exh. 32(b). These ratings are used by the Respondent to determine employee raises. Tr. 249. Mason gave Alexander a rating of "3," defined as "meets expectations," on nine of the eleven individual elements, and a rating of "2," defined as "partially meets expectations," for "accountability" and for one other element. Mason explained on the rating form that Alexander's rating for "accountability" was "2" because Alexander had "[e]xperienced access deactivation lead by HR due to non-compliance with HR

directives" – a reference to the period during which the Respondent had suspended Alexander for declining Perch's invitation to meet. Alexander's overall rating was "3" – i.e., "meets expectations."

On August 21, 2023, Alexander wrote to Mason that the accountability rating was improper because human resources had not issued written discipline to her. GC Exh. 32(a). Mason wrote back to Alexander, defending her decision to issue the "2" rating. GC Exh. 33. Alexander pursued her objections to the accountability rating by writing to Perch (human resources director) on August 24. GC Exh. 49. In addition, Grubb raised the issued in a September 13, 2023, email to the Respondent. GC Exh. 34. Around this time, Maribel Poretta was hired as the Respondent's human resources director, and Perch was demoted from human resources director to human resources staffer. On October 17, Alexander emailed Poretta about her concerns regarding the performance evaluation and, during an October 18 phone conversation, Poretta assured Alexander that the rating would be changed. GC Exh. 35(a); Tr. 71-73. Notwithstanding Alexander's dissatisfaction with the original "accountability" rating, her overall rating was high enough to qualify for a raise based on the 3 point scale the Respondent was using in 2023. Tr. 249.

Alexander did not receive confirmation that the Respondent had followed through with Poretta's October 18 promise to change the performance evaluation. Instead, 6 days later, on October 24, Poretta notified Alexander that she wanted to talk about terminating Alexander's employment. Tr. 74-75; GC Exh. 35(b). The Respondent had not previously issued any discipline to Alexander and had never indicated to Alexander that she was in danger of being terminated. Tr. 74-77. Poretta testified that, prior to the October 24 communication, the Respondent did not notify the Union about the plan to terminate Poretta on October 25. Tr. 291.[7] That October 24 communication did not state any reason why the Respondent was terminating Alexander. GC Ex. 35(b). On October 25, the Respondent met with Alexander using videoconferencing technology and terminated Alexander's employment effective immediately. Tr. 74-75, 154-155. Participating in the meeting were Poretta, Speakes (administrator), Alexander and union representative Grubb. Tr. 74-75. Grubb asked the Respondent to explain why it was terminating Alexander, and Poretta declined to do so, stating that the Respondent did not have to give a reason because Pennsylvania was an "at-will" employment jurisdiction. Tr. 74-75, 155-156. The Respondent did not provide any termination paperwork to Alexander at, or after, the termination meeting, and did not subsequently provide the Union with notification of a reason for the termination. Tr. 74-75, 155-156. The Respondent's refusal to state a reason for the disciplinary action against Alexander was inconsistent with how it treated other employees, who it had supplied with written

[7] Elsewhere in her testimony, Poretta contradicted herself, and claimed that she gave the Union advance notice of the plan to terminate Alexander in an email on October 15. Tr. 292. That claim is not credible given not only Poretta's testimonial inconsistency, but also the fact that the Respondent did not produce the purported October 15 email in response to a General Counsel subpoena for any such communication. Tr. 313-314.

documentation and an explanation of disciplinary actions. Tr. 159-161, 176; GC Exh. 48.[8]

Poretta was solely responsible for the decision to terminate Alexander and testified that she reached that decision based on complaints from staff members, known as "mentors." Tr. 241. As discussed below, the evidence indicates that there was friction between the mentors and other staff members, but does not show that Alexander was a particular source of that tension.

The record shows that Respondent's RTFA nurses, including Alexander, had responsibility for overseeing the mentors and making sure they completed their work duties. Tr. 240. During Alexander's April 21 stay interview, she complained about the performance of the mentors, and during the May 8 follow-up interview she commented that the inadequate training of the mentors was leading to tension with the nurses. Tr. 43-44; GC Exh. 53 at Page 2. In response to Alexander's comment about this tension, Yardley Georges (an agent of the Respondent)[9] randomly selected five mentors to interview in June 2023 and completed a report about his findings. GC Exh. 53. Georges' report makes clear that the investigation was not disciplinary in nature, but rather was meant to "get a pulse on how the staff . . . was feeling and take a deeper look into what working at New Vitae is like for them." Ibid. Georges reported that "[m]ost of the mentors interviewed reported that they felt they were being treated poorly by the nursing staff, administration (therapist and case managers), and a few members of the leadership team (Fatima, Katie, Mike[10] and Taliah[11])." Two of the mentors brought

[8] Poretta conceded that, during the termination meeting, she stated that Alexander's employment was "at-will." She testified, however, that she had nevertheless intended to explain the termination decision, but that she did not have a chance to do so because Grubb became agitated. Tr. 298-300. I find Poretta's claim that she did not provide reasons because of Grubb's conduct is wholly lacking in credibility. I note, first, that even assuming things became too heated during the meeting to articulate the basis for the decision, that would not explain why Respondent did not provide termination/disciplinary paperwork during the meeting or at any point subsequent to the meeting. The Respondent provided such paperwork to other employees who it disciplined. In addition, Perotta's claim that she intended to provide reasons for the discharge is undermined to an extent by her admission that earlier in the meeting she had reacted to Grubb's questions regarding motive by telling him that Alexander was an "at-will" employee, suggesting that in her view she had no obligation to provide reasons justifying the discharge. Lastly, I find that the Poretta's claim that she intended to explain the accusations and findings is dubious given that Poretta had made the discharge decision without advising Alexander of the accusations or giving Alexander any opportunity to respond. This is one of numerous instances, see, e.g., supra footnote 7, in which Poretta gave self-serving and unreliable testimony. Based on Poretta's testimony, contradictions between her testimony and the documentary evidence, and the record as a whole, I find that Poretta was not only a biased witness, but one who was exceptionally disposed to provide biased testimony. I give Poretta's testimony no weight regarding disputed matters.

[9] The Respondent admits that Georges is a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act. GC Exh. 1(GG), Answer to Complaint Paragraph 4; GC Exh. 1(EE) Complaint Paragraph 4.

[10] This is a reference to Mike Guerico, the Respondent's assistant director. Tr. 234.

[11] This is a reference to Taliah Mason, the Respondent's director of wellness. Tr. 235.

up problematic conduct by a case manager named Rasheeda. Georges identified five specific staff members who the mentors had stated were problematic, but Alexander was not one of those. Moreover, the group that elicited the greatest criticism from the mentors was not the nursing staff, of which Alexander was a part, but the administrative staff, who Georges reported had been complained about by every single mentor he interviewed. GC Exh. 53, Tr. 233-237. Georges' report does not state that any of the persons interviewed were instructed not to discuss the interview subjects with co-workers, and he concluded by stating that the Respondent should "close out the review of Danita[Alexander]'s feedback." Perch never informed Alexander that the investigation had ended or that the prohibition on discussing workplace issues had been lifted. Tr. 58.

Poretta, while testifying about her decision to remove Alexander for creating friction with the mentors, did not mention Georges' report or the staff members identified in that report as sources of the friction with the mentors. Instead, she testified about a subsequent investigation that she herself initiated into Alexander's conduct after a receiving an anonymous phone report from a mentor who stated that Alexander was "being very aggressive" with her. Tr. 292. Poretta testified that in response to the anonymous phone complaint she initiated an investigation and, from October 5 to 12, 2023, interviewed mentors who had worked with Alexander. She completed a report of her investigation, which consists of her accounts of one anonymous phone call, and of interviews with four mentors. R Exh. 6. As part of Poretta's investigation, she did not interview Alexander, and did not report interviewing any other nurses even though the mentors had implicated "the nurses" in the inappropriate behavior. Without giving Alexander a chance to respond to the purported reports of bullying, or even alerting Alexander that she was under investigation for bullying, Poretta made the decision that her investigation warranted terminating Alexander.

The five summaries completed by Poretta include the following complaints about Alexander: "just nasty"; "gets a little loud when directing you but that is the way she speaks. She could be aggressive with her tone but I don't mind her"; "thinks cuz she is a nurse that she is high and power"; "reflects her anger on others" and "feels she knows better or more than you do"; "is cool people but she always takes it a step further"; "bosses people around by making employees feel less worthy"; "goes around and acts superior to the mentors" and "speaks to me like she is my supervisor."[12] Respondent Exhibit Number (R Exh.) 6.

Based on my review of Poretta's testimony, and the investigation report, I find that neither is credible or entitled to weight as justification for the Alexander's termination on October 25. Of the five interview reports, three are dated in mid-November – *after* Poretta terminated Alexander and *after* the filing of the charge (04-CA-328762) that challenged that termination.[13] Three of the five reports state that the mentor had made the report anonymously. Moreover, Alyssa Morena, one of only two

[12] Alexander was not a supervisor, but, as mentioned earlier, she was responsible as a registered nurse for seeing that the mentors completed their work. Tr. 240.

[13] Poretta testified that this dating was a mistake.

interviewees who was not anonymous, had been interviewed 2 months earlier on the same subject by Georges and reportedly identified "Kate" and "Rasheeda" as problematic, but made no mention of Alexander. That prior interview calls into question Poretta's claim that Morena singled out Alexander as a bully.

I also note that Poretta's interview summaries are, on their face, tainted by leading questions and the use of seemingly boilerplate questions and answers. The summaries report that Poretta started each interview by asking "who committed the alleged inappropriate behavior" – not what, if any, inappropriate had been committed. In three of the cases, Perotta reported that each mentor gave exactly the same initial response – i.e., "the nurses" – not a specific nurse or Alexander. According to Poretta's report, every time she received that answer, she followed up by asking "any nurse in particular?" and in each case she reports that the interviewee responded with exactly the same words – the full name, "Danita Alexander." In addition, Poretta's investigation report is suspect because Poretta did not give Alexander an opportunity to respond to the purported reports of bullying, or even alert her to the fact that she was the subject to an investigation initiated because of an anonymous phone complaint. Finally, I note that the Respondent did not call as a witness a single one of the co-workers whose complaints Poretta claims compelled her to terminate Alexander.

In addition, I find that even if one assumes that the Respondent reached a good faith conclusion that Alexander had been a particular source of friction between the nurses and the mentors, the Respondent disciplined her more severely than other employees. Prior to terminating Alexander, the Respondent had never issued discipline to Alexander for bullying or anything else.[14] In her June 16, 2022, interim performance evaluation, Alexander was rated as "meets expectations" or higher in every category, GC Exh. 60, and received a high enough overall score to merit a raise. The evaluation noted that Alexander was making "ongoing" progress towards a goal of "improv[ing] conflict resolution."[15] Her most recent performance evaluation was, as discussed earlier, high enough to qualify Alexander for a raise, notwithstanding the fact that Alexander had challenged it as insufficiently positive. GC Exhs. 32(b), 34, 49; Tr. 69, 249. The Respondent did not discipline, much less discharge, any of the employees who the mentors had accused of bullying during Georges' investigations just 3 months earlier. The only employee who the Respondent showed that it disciplined prior to Alexander for arguably similar conduct at an RTFA in Philadelphia received an "initial

[14] The suspension that the Respondent imposed in May to pressure Alexander to meet with Perch was not characterized by the Respondent as a disciplinary action. In addition, Speakes (administrator) testified that she participates in meetings between employees who have "a disagreement of some sort that doesn't rise to a true concern." Tr. 382-33. She testified that Alexander was among the participants in three such meetings between late 2022 and about May or June 2023, but Speakes stated that none of those meetings involved discipline. Tr. 385.

[15] The Respondent's counsel also identified, and questioned witnesses about, a document purporting to be a performance appraisal dated December 6, 2022, but that document had multiple indicia of unreliability and the Respondent chose not to offer it as an exhibit. Tr. 293-294, 311. I give the testimony about the substance of that document no weight.

warning" on August 23, 2023, even though the corrective notice reported that there had been previous complaints about the employee's conduct. GC Exh. 48, Tr. 243-244.[16]

V. CONTRACT NEGOTIATIONS

As previously discussed, in an election on March 16, 2023, the nurses voted to be represented by the Charging Party Union, and on May 5, 2023, the Board certified the Union as the nurses' collective bargaining representative. In a May 9, 2023, letter to the Respondent's counsel, the Union's counsel stated that "[t]he Union would like to commence negotiations as soon as possible," and made 12 requests for information "in order to prepare for collective bargaining negotiations."[17] GC Exh. 2. The Union's May 9 letter did not suggest any dates to commence bargaining. Over 5 months later, on October 31, 2023, the Respondents counsel provided the information requested in the Union's May 9 communication, and also asked the Union to provide dates when it would be available to bargain GC Exh. 3(a). The Union responded on November 2, 2023, that it had received the information, and that it was "putting together our bargaining team" and would "send you dates of our availability." GC Exh. 4.

On December 11, 2023, the Union identified five dates in January when it could be available to commence negotiations. GC Exh. 5. Respondent's counsel answered in a December 13 email, stating that he would let the Union know about an agreeable date after coordinating with the management bargaining team. Ibid. Counsel for the Respondent stated, in addition, that he was soliciting the Union's "approval to proceed with" "annual performance reviews and related salary increases" for unit members "in accordance with procedures used in the past." The Respondent's counsel stated that these would be granted "pending bargaining for a collective bargaining agreement." The Union, however, declined to grant approval for those evaluations and salary increases because it was planning to propose that, contrary to the procedures referenced by the Respondent, employees be granted increases without regard to performance evaluation scores. Tr. 177-178, 200. In the absence of the Union's approval, the Respondent did not make the salary increases that it had proposed. See also GC Exh. 67 (9/27/204 email from Beck to Yanacek, stating that Respondent was "waiting on word related to the union and whether we could give [the holiday gift/bonus]").

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[16] Poretta gave vague testimony about two unidentified employees who she claimed were terminated for bullying subsequent to Alexander's termination. Tr. 304-308. Poretta conceded, however, that in response to the General Counsel's subpoena request the Respondent indicated that Alexander was the only person who it had disciplined for "conflict with co-workers, and/or bullying issues." Tr. 310. At trial the Respondent did not produce any documentation of the other purported terminations. Moreover, as noted previously, Poretta was an unusually biased and unreliable witness. For all these reasons I give no weight to Poretta's testimony that other employees were terminated for bullying or causing friction with co-workers.

[17] In its brief, the Respondent does not make any argument that the May 9 information requests, all of which concerned bargaining unit employees, were not relevant to the Union's responsibilities as collective bargaining representative. Therefore, it is not necessary in this decision to repeat here the 12 requests set forth in the Union's communication. The Respondent's Answer admits that those requests are accurately set forth in the Complaint.

The record does not include any documents in which the Respondent followed through on its December 13 commitment to respond about the bargaining dates the Union offered in January 2024. Tr. 178. Grubb, an organizer for the Union, testified, however, that "by January 2024" the Respondent "had said they were ready to bargain. . . . but [the Union was] working in 2023 to build the committee." Tr. 170. The record shows that Grubb was having considerable difficulty securing the participation of unit members on the bargaining team. Tr.163, 173-174.[18] Grubb testified that although the Union prefers to have unit employees on the bargaining team it has, in the past, bargained without any unit employees on its team. Tr. 171.

In late 2023 or early 2024, Kathleen Bichner took over from Lance Geren, her law partner, as the attorney primarily responsible for representing the Union in contract negotiations. Tr. 175. The record does not show that there were any communications between the Union and the Respondent from January to May 2024. On June 7, 2024, Vilim, the Respondent's attorney, wrote to the Union: "It has been almost 6 months since I heard from you guys about bargaining for New Vitae. Where does that stand?" He stated that "the Employer is ready to sit down and, hopefully, wrap things up." GC Exh. 6. On June 27, 2024, Bichner, wrote to Vilim. Bichner stated that she would be bargaining on behalf of the Union and that she expected to coordinate dates after July 4, and requested that the Respondent supply an updated roster of employees. GC Exh. 7(a). On July 9, Bichner wrote to Vilim, asking the Respondent to identify dates when it could bargain, and also noting that she had an outstanding information request. Bichner did not propose any bargaining dates, but did note that her schedule was "pretty free." On July 22, Bichner wrote to Vilim, "following up again on the outstanding information request and request for bargaining dates." On July 29, Bichner wrote to Vilim again, noting that she had not heard back from him about the information request or bargaining dates. Ibid. Bichner testified that the Union was prepared to bargain as of June 2024, but the evidence does not show that either the Union or the Respondent suggested specific bargaining dates in June, July, August or September.

On September 16, 2024, Bichner wrote to Vilim that the Union was, inter alia, still awaiting a response to outstanding information requests, and then added three additional information requests.[19] GC Exh. 8. On September 20, 2024, Vilim wrote to Bichner and stated that the Respondent could bargain on October 8 and 10, 2024. Bichner accepted the October 10 date. Ibid. Bichner also stated the Respondent's

[18] As of a March 14, 2024, meeting that Grubb had with unit members, the only person who had agreed to serve as an employee-member of the bargaining team was Alexander, who had been terminated 5 months earlier. Tr. 170-171. The Union's position was that Alexander had been wrongly terminated and therefore could still serve as an employee-member of the bargaining team. Tr. 171. When contract negotiations began, however, the Union did not include Alexander among its four team members at the bargaining table. Tr. 202.

[19] The Complaint makes no allegation about the employer's response to the three information requests that the Union added on September 16, although the Complaint does allege that, on that date, the Union reiterated its request for an updated roster of employees, and that the Respondent unreasonably delayed providing it.

questions regarding backpay for Alexander should be directed to the NLRB, since Bichner was not representing Alexander personally. On October 3, Vilim provided Bichner with information the Union had requested, but noted that he was "still waiting for the details of bonuses that were paid out to bargaining unit members prior to certification and will forward that as soon as I receive it." GC Exh. 9(a).

On October 10, 2024 representatives of the Union and the Respondent met to begin contract negotiations. Present for the Union were attorney Bichner, Heard (unit employee), and two other union officials. Present for the Respondent were Vilim and Poretta. The parties exchanged proposals and reached tentative agreement on many items, but left two outstanding, including one about the Respondent's use of nurses who were not unit employees, but obtained from outside staffing agencies.

The Parties scheduled a second negotiating session for October 24, but on October 23, Vilim asked to postpone that session because "my client is contemplating re-working the workforce at its RTFAs in ways that could materially affect our bargaining." GC Exh. 10; Tr. 184-185. The parties agreed to postpone the next session until November 1, 2024, and before that session the Union forwarded various bargaining proposals to the Respondent. Tr. 185-186.

When the parties met on November 1, Bichner asked Vilim if the Respondent had any questions about the Union's proposals. Vilim did not respond with any questions, but rather responded by informing the Union that the Respondent had decided to lay off, and end the employment of, all bargaining unit nurses effective that evening and was subcontracting all the unit work to staffing agencies. Tr. 187. The layoff was effective either that evening or the next weekday. 195-196.

VI. RESPONDENT LAYS OFF ALL THE UNIT EMPLOYEES AND SUBCONTRACTS THEIR WORK

As noted above, rather than resuming contract negotiations at the scheduled November 1 bargaining session, the Respondent took that opportunity to inform the Union that it was laying off the entire bargaining unit and subcontracting its work. Tr. 109-110. Vilim, the Respondent's counsel, informed the Union negotiators that the company had already contracted with the outside staffing agencies to take over the bargaining unit work and that the layoffs were set to happen later that same day. Tr. 191. Vilim provided the Union with a letter announcing that the layoff would be effective that day at 7 pm, and also setting forth proposals for severance terms relating to retirement benefits, medical insurance, accrued vacation, and severance payments. GC Exhs. 12, 36. The Respondent had not given the Union prior notice that subcontracting the entirety of the bargaining unit work was under consideration. Tr. 191. Poretta testified that the layoff/subcontracting decision had already been made at the time it notified the Union on November 1. Tr. 259.

Later on November 1, Bichner sent an email to Vilim stating that subcontracting is a mandatory subject of bargaining and demanding bargaining over the Respondent's

layoff/subcontracting decision. GC Exh. 15. The next day, Vilim responded by, inter alia, stating that the subcontracting was "no change" because the Respondent "has always contracted for nurses at the RTFAs in Philadelphia." Ibid. On November 4, Bichner responded by, inter alia, requesting that, as soon as possible, the Respondent provide information "explaining why it is completely transferring the work to an outside agency." Vilim responded that the Respondent's "decision to utilize contract agencies to staff its programs is consistent with its practice since before the Union was certified and represents an exercise of its lawful right to manage and staff its programs as it chooses." Then he stated that the Respondent does "not disagree that issue of subcontracting is a legitimate subject of bargaining and New Vitae will honor its obligation to bargain in good faith on the issue looking into the future, but New Vitae does not agree that it must abandon its rights while bargaining occurs." Ibid. He asked when the Union would address the Respondent's November 1 proposal on severance terms "for those who are being laid off." Ibid.

On November 4, Bichner informed Vilim in an email that the Union was filing unfair labor practices charges based on the Respondent's statements indicating that it did not intend to bargain over the decision to subcontract the bargaining units' work or to provide information in response to the Union's request for the "reasoning/basis for the Employer's decision to subcontract the work of the bargaining unit." GC Exh. 15. In a December 18, 2024, email, Bichner informed Vilim, "I want to make clear that, in addition to its pending demand to bargain over the Employer's decision to subcontract, the union is also demanding bargaining over the decision to layoff the bargaining unit employees." Ibid. Over a month later, on January 28, 2025, Vilim responded by email. He asserted that "[w]e have never refused to bargain over any of these issues" and that "[w]e were ready and we remain ready to bargain." He further claimed that his understanding was that the Union had terminated bargaining "and, instead, pursued unfair labor practice charges." GC Exh. 16. On February 3, the Union, by attorney Lance Geren, stated that it was the Respondent that had not engaged in bargaining "with respect to its decision to subcontract, and its related decision to layoff the entire bargaining unit." He acknowledged that the Respondent had invited Union to bargain over the effects of the company's decision to subcontract the bargaining unit work, but stated that the Union had advised the Respondent at that time that effects "bargaining would be premature because it desired to bargain over the decision to subcontract." Ibid. Bichner testified that the Respondent had never offered to bargain over the layoff decision itself, only over the effects. Tr. 195. In a February 3 email, Geren reiterated the Union's request for "the Employer's reasoning behind its decision to subcontract the bargaining unit work." GC Exh. 16.

The Respondent contends that, despite the suspicious timing of the decision to lay off the entire bargaining unit and subcontract all the bargaining unit work – i.e., shortly after the final failure of the Respondent's efforts to overturn the Union's election victory and the start of contract negotiations – the layoff/subcontracting decision was unrelated to those developments, but rather was based on unrelated economic considerations. The record shows that the layoff/subcontracting decision was made by Judith Yanacek (president) and Michelle Beck (vice president of business operations).

Tr. 259, 340-341. In September 2024, Beck created a chart that purports to summarize the costs associated with the Respondent continuing to use its own employee-nurses (the bargaining unit) at the Philadelphia RTFAs, and the cost associated with, instead, using nurses who were employees of outside staffing agencies. R Exh. 1. Yanacek testified that she "imagines" it was her decision to do this cost comparison regarding the recently unionized employees, but she did not initiate a cost comparison for a single one of the Respondent's non-unionized employees, either at the RTFAs or in its many other programs. Tr. 366-367.

Yanacek testified that the cost comparison showed that the Respondent would save $102,000 per year by laying off all of its bargaining unit employee-nurses and instead meeting its nursing needs by subcontracting that work to a staffing agency known as Clipboard. It concluded that doing the same thing using a different staffing agency, U.S. Medical, would result in a cost saving of $276,644 per year. Tr. 343, 348, R Exh. 1. Based on my review of the cost comparison document itself and the testimony, I find that the purported savings evaporate under scrutiny. The document shows that the average hourly cost for registered nurses obtained from Clipboard was actually *higher* than that for the bargaining unit registered nurses (RNs) – $64.00 per hour versus $59.03 per hour. The claimed savings really come primarily from the Respondent, for the first time, using some licensed practical nurses (LPNs) in the place of more highly trained RNs. The per hour cost for the U.S. Medical RNs was slightly lower than for the bargaining unit RNs -- $57.20 per hour versus $59.03 per hour – but, once again, the projected savings include the use of LPNs for work previously done by RNs. The Respondent has not shown that it was required to terminate any of the unit RNs, much less the entire unit of RNs, in order to realize the savings from introducing LPNs into its staff. Indeed, Respondent has not asserted that the LPNs could not, instead, have been used to substitute for the staffing agency RNs that the Respondent was already using prior to November 1, instead of substituting them for the bargaining unit RNs.

I note, in addition, that Yanacek's claimed savings are also based on transparently pretextual assumptions. These include the assumption that all the unit RNs who were being replaced received benefits such as health insurance and workers' compensation. However, the evidence shows that the Respondent did not provide those benefits to the per diem RNs in the bargaining unit, and did not automatically provide them to the unit part-time RNs in the bargaining unit. Tr. 260-261, 361-362. Similarly, Yanacek testified that a portion of the projected savings from the layoff would come from eliminating the cost of paying employees for the "oversight" that was being provided by three non-bargaining unit staffers – Juanita Cooper (the lead nurse), Mason (the director of wellness), and Shakira Brathwaite (human resources staffer). Tr. 346, 350-351. The Respondent did not explain how switching to staffing agencies would eliminate the need for oversight. Indeed, the evidence shows that subcontracting did not eliminate that need. After the layoff/subcontracting was implemented, the Respondent continued to employ Cooper to provide oversight to nurses, continued to

employ Brathwaite (until she moved out of the country and a replacement was hired), and continued to employ Mason as director of wellness. Tr. 217, 369; GC Exh. 1 (gg).[20]

Lastly, the Respondent's putative saving from replacing all the unit employees with nurses from outside staffing agencies did not account for the effects of overtime pay on its cost. In an e-mail exchange between Yanacek and Beck on September 20, 2024, Yanacek herself observed "bottom line, it[']s cheaper to stay in house?" GC Exh. 73. Beck responded, that there could be savings, but that her calculation was based on there being no need for overtime. Ibid. Yanacek responded that there was "always" overtime. Beck said that with that in mind "[t]he cost could sway the other way" to subcontractors "costing more." Ibid. Thus, both Yanacek and Beck contemporaneously acknowledged doubts about the savings upon which the Respondent now relies to justify ending the employment of every one of the recently unionized employees.

Prior to November 1 – when it laid off the entire bargaining unit and subcontracted the unit's work – the Respondent had used staffing agencies to "fill vacancies." Tr. 338. This consisted of using staffing agency nurses to "supplement" its in-house nursing staff and permit it to "schedule vacancies, time off, vacancies." Ibid. The Respondent has contracted for staffing agency nursing support since 2016. Ibid. Yanacek testified that nurses from staffing agencies have filled approximately 50 percent of shifts at the RFTAs, however, she did not state during what period of time this was the case, Tr. 339, and the Respondent did not submit evidence clarifying the timeframe or otherwise supporting Yanacek's estimate, which, on its face, is hard to square with the fact that the agency nurses had previously been used only to fill-in for the Respondent's employee-RNs.

VII. HOLIDAY BONUSES AND WAGE INCREASES

The record shows that in 2020, 2021, and 2022, the Respondent granted wage increases to nurses who later voted to be represented by the Union. Tr. 364-365. Heard, a witness for the General Counsel, testified that she had worked for the Respondent for 7 years, and received raises three times. Tr. 115. In 2023 and 2024 – the years after the employee-nurses chose to be represented by the Union, the Respondent did not give wage increases to those employees. Tr. 115-117; GC Exh. 65. Villim (the Respondent's counsel) had, by email on December 13, 2023, requested the Union's approval to proceed with the annual performance evaluations and salary increases "in accordance with procedures used in the past." GC Exh. 5. The Union, however, withheld that approval because it wished to negotiate a new procedure for salary increases that did not depend on performance evaluations. Tr. 200.

The record shows that in 2020, 2021, and 2022, the Respondent granted all of the employee-nurses at its Philadelphia RFTAs holiday gifts and/or bonuses. GC Exh. 65. The Respondent did not provide the holiday gifts/bonuses to any of the employee-nurses after those nurses elected to be represented by the Union. Tr. 115-117. Mason,

[20] In its Answer the Respondent admits to the Complaint paragraph alleging that Mason was director of wellness at all material times.

the director of wellness, told employee Heard that the Union was the reason the Respondent was not giving the holiday bonuses. Tr. 117. In 2023 and afterwards, the Respondent continued paying holiday gift/bonuses to RTFA employees, but only to those who were not represented by the Union. Tr. 252-253.

ANALYSIS

I. RESPONDENT'S CONFIDENTIALITY INSTRUCTION TO ALEXANDER

The Complaint alleges that the Respondent interfered with employees' Section 7 rights in violation of Section 8(a)(1) of the Act at the May 8, 2023, meeting when Perch prohibited Alexander from discussing the meeting subjects with other employees, and on May 16, when Perch gave the same directive to Alexander in an email. In both instances, Perch stated that Alexander could be subject to discipline if she violated the prohibition. Employees have a Section 7 right to discuss ongoing employer investigations involving themselves or coworkers. *Stericycle, Inc.*, 372 NLRB No. 113, slip op. at 2 and 11 n. 22 (2023). Such discussions are vital to employees' ability to aid one another in addressing employment terms. An employer's restriction on such discussions is unlawful unless the employer establishes a legitimate and substantial business justification that outweighs employees' Section 7 rights. *Southwest Areas, Health & Welfare and Pension Funds*, 362 NLRB 1280, 1281 (2015) ("prohibition of the discussion of discipline reasonably tends to interfere with the exercise of Section 7 rights and is therefore unlawful unless outweighed by a legitimate and substantial business justification"); *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 158 (2014) ("There is no question that, as a general matter, employees have a Section 7 right to discuss with one another ongoing employer investigations into alleged employee misconduct."); *Inova Health Systems*, 360 NLRB 1223, 1228-1229 (2014) ("employees have a Section 7 right to discuss . . . disciplinary investigations with fellow employees" absent a legitimate business justification that outweighs the infringement), enfd. 795 F.3d 68 (D.C. Cir. 2015).[21]

I find that the Respondent has not shown that its interference with Alexander's Section 7 right to discuss the work issues discussed during the interview was outweighed by legitimate and substantial business justifications. I note, first, that the interference with Section 7 rights was profound. This is not a case in which Perch prohibited Alexander from discussing a discrete incident so that witness accounts would not be tainted by knowledge of what others said about that incident. Rather Perch prohibited Alexander from discussing a broad array of topics of worker concern, including nepotism, favoritism, retaliation, and failure to address staff conflict. See *Hyundai Shipping*, 805 F.3d 309, 314-315 (D.C. Cir. 2015) (employer failed to present a legitimate business justification where the confidentiality rule was "broad and undifferentiated"). Perch's imposition on Section 7 rights was even heavier because the prohibition on discussing this wide array of topics was not of a definite duration.

[21] The Respondent's reliance on *Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144 (2019), to defend Perch's directive, Brief of Respondent at Page 8, is misplaced, inter alia, because that decision was overturned by *Stericycle,* supra.

Although Perch's May 16 email stated that the prohibition applied while the investigation was pending, Perch never notified Alexander that the prohibition had been lifted, and declined to answer when asked for a timeline for the investigation's completion.

Not only was the imposition on Section 7 rights heavy, but the Respondent's interest in the confidentiality directive was not significant. If the employer had been investigating a particular episode or considering discipline, it arguably would have been necessary to demand confidentiality in order to gather accounts from witnesses with confidence that those accounts had not been tainted by advance knowledge of what other witnesses reported. That is not the case here. First, the Respondent has not shown that it was conducting a disciplinary investigation. To the contrary, Georges stated that the investigation's purpose was "to get a pulse" on how employees were feeling and "what working at New Vitae is like for them." Indeed, although the investigation identified several employees (not including Alexander) as sources of workforce friction, no one was disciplined as a result of the investigation that the Respondent prohibited Alexander from discussing. The apparent intent, and certainly the effect, of Perche's confidentiality directive was to prohibit employees from concertedly engaging in discussions of a wide array of working conditions. The suspicion that the Respondent wanted to stop such communications is lent additional credence by the fact that, just days earlier, Mason (wellness director) had expressed concern about the nurses who "have been vocalizing" complaints about being asked to work alone at the Respondent's West Philadelphia RFTA location.

I find that the Respondent violated Section 8(a)(1) of the Act, on May 8, 2023, and May 16, 2023, when it directed Alexander not to discuss working conditions with other employees and threatened to discipline Alexander if she violated that prohibition.

II. SECTION 8(A)(3) AND (1) ALLEGATIONS

A. ALLEGED DISCRIMINATION AGAINST ALEXANDER

The Complaint alleges that the Respondent discriminated against Alexander for exercising her Section 7 rights to engage in protected concerted activity and union activity by: suspending her; withholding her pay; reducing her hours; giving her a negative performance appraisal; and terminating her employment. Allegations that an employer violated Section 8(a)(3) and (1) of the Act by discriminating against an employee on the basis of union or protected concerted activity, and which turn on motivation, are analyzed using the framework set forth in *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983); see also *Davis Defense Group, Inc.*, 373 NLRB No. 132, slip op. at 1 (2024) (applying *Wright Line* analysis to allegation of discrimination based on protected concerted activity that turns on motivation). Under the *Wright Line* framework, the General Counsel bears the initial burden of showing that the Respondent's decision to take adverse action against an employee was motivated, at least in part, by the employee's union or protected concerted activity. *Mondelez Glob., LLC*, 369 NLRB No. 46, slip op. at 1-2. (2020)

(evidence must show a causal relationship between the employee's protected activity and the adverse action). The General Counsel can meet its initial *Wright Line* burden by showing that: (1) the employee engaged in protected concerted activity and/or union activity union, (2) the employer knew of such activities, and (3) the employer harbored animosity towards the union and/or the protected concerted activity, and there was a causal connection between the discipline and the protected activity. *Camaco Lorain Mfg. Plant,* 356 NLRB 1182, 1184-1185 (2011); *ADB Utility Contractors,* 353 NLRB 166, 166-167 (2008), enf. denied on other grounds, 383 Fed. Appx. 594 (8th Cir. 2010); *Intermet Stevensville,* 350 NLRB 1270, 1274-1275 (2007); *Senior Citizens Coordinating Council,* 330 NLRB 1100, 1105 (2000). If the General Counsel establishes discriminatory motive, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected activity. *Camaco Lorain*, supra; *ADB Utility*, supra*; Intermet Stevensville*, supra; *Senior Citizens*, supra.

I find that the General Counsel has established a prima facie case with respect to all of the Respondent's adverse actions against Alexander. The evidence shows that Alexander signed, and helped send, the September 25, 2022, letter to the Respondent in which multiple nurses complained about their working conditions. In addition, during the April 21 and May 8, 2023, interviews, Alexander raised complaints about subjects touched on in that letter, including unfair scheduling and inadequate responses to staff conflict. Alexander also assisted with the organizing campaign that culminated in the Union being certified as the exclusive collective bargaining representative of the nurses. The evidence also shows that the Respondent was aware of Alexander's activities. Regarding union activity, the evidence shows that during the union campaign the Respondent placed in its files a report stating that Alexander was one of just three employees whose names "keep coming up for voting yes." In addition, the Respondent was aware of Alexander's protected concerted activities since Alexander was a signatory to the letter that employees transmitted to the Respondent to express their complaints about working conditions. Alexander also raised the employees' concerns and pro-union views to Respondent officials, including directly to the owner, Devlin.

The record evidence also establishes that the Respondent bore animus towards Alexander's Section 7 activity. This is shown first, as discussed above, by the Respondent unlawfully directing Alexander not to discuss complaints about working conditions with her co-workers. Further evidence of animus is provided by the notation in the Respondent's files identifying Alexander as union supporter and instructing that she be excluded from the Respondent's upcoming meeting about the Union with Alexander's co-workers. This evidence is sufficient to establish the Respondent's animus towards Alexander's Section 7 activity. At any rate, the finding that the Respondent bore animus towards that activity is further shown by management's extreme reaction to Alexander's initial decision to decline Perch's invitation to an interview to follow-up on the "stay" interview. Even though the Respondent had not told Alexander that the follow-up interview was mandatory, and even though the precipitating interview was wholly voluntary, the Respondent's owner told other managers in an email exchange that he wanted to terminate Alexander's employment

for declining the "invitation" to the follow-up interview.[22] In the same email chain, Perch noted that the Respondent had previously disciplined employees for failing to attend "mandatory" meetings – ignoring the fact that the Respondent had not yet informed Alexander that the meeting was mandatory.

The Respondent's unlawful animus is also evidenced by Poretta's flagrantly one-sided investigation of Alexander's conduct, and by the timing of the disciplinary actions. *Medic One, Inc.*, 331 NLRB 464, 475 (2000) (evidence of animus includes, inter alia, failure to adequately investigate, departure from past practices, and suspicious timing). As discussed earlier, Poretta did not inform Alexander that she was being investigated and made the decision that termination was warranted without first giving Alexander any opportunity to respond to the allegations against her. Moreover, Poretta's investigation report shows not only that three of the five employees whose reports she relied on were anonymous, but that three of the reports were dated *after* Alexander was terminated. In addition, as discussed in the statement of facts, Poretta's own interview reports betray an effort to secure a basis for taking action against Alexander. Finally, Poretta did not claim, either in her report or in her testimony, that she gave any consideration to the fact that Georges' investigation, just months earlier, had named others, not Alexander, as the sources of the workplace friction that Poretta uses to justify firing Alexander.

The suspicious timing of the disciplinary actions against Alexander further buttresses the finding of animus. *Medic One, Inc.*, supra; see also *Camaco*, 356 NLRB at 1185 ("Animus may be inferred from circumstantial evidence, including timing and disparate treatment.") and *LB&B Associates, Inc.*, 346 NLRB 1025, 1026 (2005) (timing of adverse action supports finding of animus), enfd. 232 Fed. Appx. 270 (4th Cir. 2007). The Respondent had never disciplined Alexander prior to the Union campaign and Alexander's most recent performance appraisal was high enough to qualify for a raise. Nevertheless, a couple of months after the Union prevailed in the representation election that Alexander openly supported, and while the Respondent was fighting to overturn the Union's victory, the Respondent began its course of adverse actions against Alexander.

For the above reasons, and the record as a whole, I find that the General Counsel has established a prima facie case that the Respondent discriminated against Alexander on the basis of her protected concerted activity and union activity, and the burden shifts to the employer to demonstrate that it would have taken the same actions even in the absence of the protected activity. *Camaco Lorain*, supra; *ADB Utility*, supra; *Intermet Stevensville*, supra; *Senior Citizens*, supra. For the reasons discussed below,

[22] I note, moreover, that Perch's invitation itself smacks of hostility to Alexander's expression of work-related concerns. Perch states that the Respondent wants to further investigate whether Alexander's "expression of those concerns is made in good faith" and warned that Alexander "may want to consider having a union representative" at the interview. In essence, Perch indicated that she was making Alexander's complaints about working conditions (which were solicited by the Respondent, and voluntarily given by Alexander) into a basis for investigating Alexander.

the Respondent has failed to meet its responsive burden with respect to the challenged actions.

Suspension: Regarding the suspension, the reason the Respondent gives for its action is that Alexander declined to attend a meeting. That reason is clearly pretextual. The Respondent had merely "invited" Alexander to attend a follow-up meeting in what had been expressly presented to employees as a voluntary interview process about their work experiences. The Respondent did not advise Alexander that the follow-up meeting had become mandatory, and give her an opportunity to comply, before it suspended her for declining the initial invitation. When Alexander was informed that the meeting was mandatory, she immediately agreed to meet. Nevertheless, the Respondent went ahead with imposing the unpaid suspension on Alexander. Since the Respondent has not shown either that Alexander ever declined to attend a meeting that was presented to her as mandatory, or that it had disciplined anyone else under comparable circumstances, the Respondent has failed to demonstrate that, absent its discriminatory motive, it would have suspended Alexander for initially declining to attend the meeting.

The Respondent discriminated in violation of Section 8(a)(3) and (1) of the Act when it suspended Alexander on May 4, 2023.

Withheld Pay: The Respondent did not compensate Alexander for the time she spent attending the mandatory May 5 and May 8 meetings. There was unrebutted testimony that the Respondent's practice was to compensate employees for attending mandatory meetings and that Grubb, the union representative, asked the Respondent to compensate Alexander for the time she spent on the May 5 and 8 meetings. The Respondent has not made any showing that it would have deviated from its practice and withheld pay from Alexander for these meetings if not for her protected concerted and union activities. Since the Respondent has failed to respond to the prima facie case of unlawful discrimination by meeting its responsive *Wright Line* burden, a violation is established.

The Respondent discriminated in violation of Section 8(a)(3) and (1) of the Act when it withheld pay from Alexander for the meetings the Respondent required her to attend on May 5 and 8, 2023.

Reduced Hours: The evidence shows that after the Respondent allowed Alexander to return to work following her unlawful suspension, it reduced her work hours. During the four months – May to August 2023 -- following the suspension, the Respondent assigned Alexander an average of 6.5 shifts. This was down by approximately 30 percent from both the same May to August period in 2022, and from the 4 months immediately preceding the suspension. There was unrebutted testimony that, during the post-suspension months, the Respondent began assigning some shifts that Alexander had previously worked to another RN who was a vocal opponent of the Union. The Respondent has not shown that it did not reduce the number of shifts being assigned to Alexander, nor did it articulate, much less prove, a basis for finding that it

would have reduced Alexander's hours absent its hostility towards her Section 7 activities.

The Respondent discriminated in violation of Section 8(a)(3) and (1) of the Act in May 2023 when it reduced Alexander's work hours.

Negative Performance Appraisal: On August 21, 2023, Mason gave Alexander an "accountability" rating of 2 – meaning "partially meets expectations" and lower than a rating of 3 or "meets expectations." On the appraisal form, Mason explained the lower rating by noting Alexander's suspension, which, as discussed above, was discriminatory and unlawful. After Alexander complained about this, Poretta verbally assured her that the rating would be changed, but Alexander never received a new performance appraisal and the Respondent has not shown that Poretta ever followed through with her promise to adjust it. The Respondent has not shown the existence of any reason, other than the discriminatory suspension, for rating Alexander as only partially meeting expectations, rather than as meeting expectations, for accountability. The Respondent has failed to meet its responsive burden with respect to that action.

The Respondent discriminated in violation of Section 8(a)(3) and (1) of the Act On August 21, 2023, when it gave Alexander a less than fully satisfactory rating for accountability.

Termination of Employment: The Respondent terminated Alexander's employment on October 25, 2023. According to the Respondent, this action was justified because Perotta "gave credence to" coworker complaints that Alexander was "either unwilling or unable to work cooperatively with co-workers." Brief of the Respondent at Page 9. I find that the Respondent has not only failed to meet its burden of showing that this reason would have led it to terminate Alexander's employment absent her protected activity, but that the Respondent's explanation is patently pretextual. As discussed earlier, Perotta did not engage in a neutral inquiry that led her to "give credence" to the view that Alexander could not work cooperatively, but rather engaged in an appallingly one-sided investigation that could not fail to reach her desired result. Perotta decided that Alexander had engaged in termination-worthy misconduct without first giving Alexander an opportunity to respond. Moreover, as noted earlier, Perotta's investigation notes betray her one-sided questioning of sources, most of whom were anonymous. Not one of the purportedly complaining employees was called by the Respondent to testify and the anonymity of most of them would impede opposing counsel from asking those employees what they did, or did not, report to Perotta. As noted earlier, several of Perotta's own written reports of the interviews are dated *after* the decision to terminate Alexander. Moreover, Perotta did not explain how she squared her conclusion that Alexander was to blame for staff friction, with the investigation that the Respondent completed on the subject only a few months earlier and which identified other employees, *not Alexander*, as the sources of friction between staff members.

Lastly, during the meeting at which it terminated Alexander, the Respondent refused to provide Alexander with a reason for the decision to terminate her. See *Troy Grove*, 372 NLRB No. 94, slip op. at 2 and 26 (2023) (employer's failure to provide any reason for layoff notice at the time of the action provides support finding that later provided explanation was pretextual) , enfd. in relevant part, 140 F.4th 506 (D.C. Cir. 2025). The Respondent did not subsequently provide paperwork regarding the termination to Alexander or the Union. The failure to provide Alexander with an explanation for the termination was at odds with the Respondent's established practice of providing employees with documentation setting forth the basis for disciplinary action. See *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 7 (2023) (departure from past disciplinary practice is evidence of discrimination), enfd. 2024 WL 2764160 (6th Cir. May 9, 2024). The Respondent has not presented evidence credibly or persuasively meeting its responsive burden under *Wright Line* of showing that it would have terminated Alexander even absent its animosity towards her protected concerted activity and union activity.

The Respondent discriminated in violation of Section 8(a)(3) and (1) of the Act on October 25, 2023, when it terminated Alexander's employment because of her union and protected concerted activities.

B. Lay off of Entire Bargaining Unit

The Complaint alleges that the Respondent discriminated in violation of Section 8(a)(3) and (1) of the Act on November 1, 2024, when it laid off the entire bargaining unit of RNs and subcontracted the bargaining unit work to staffing agencies. The Respondent's defense is that this action was motivated not by employees' union and concerted activities, but by the cost savings it could realize by laying off the unit employees and subcontracting their work to an outside staffing agency. I find that the General Counsel has met its initial *Wright Line* burden with respect to the Respondent's action. The laid-off employees engaged in union activity by electing the Union as their collective bargaining representative and then, by that representative, making information requests, filing unfair labor practices charges, and seeking to bargain a first contract. There is no dispute that the Respondent was aware of these activities. Moreover, eight of the Respondent's nurses had concertedly complained to the Respondent in a letter dated September 25, 2022. The evidence also establishes the third element of the General Counsel's initial *Wright Line* burden – i.e., that the Respondent bore animus towards the employees' union activity. This is demonstrated both by the multiple unlawful acts that it recently took against Alexander in retaliation for protected concerted and union activity, and by its coercive directive prohibiting discussions of work-related complaints with co-workers. Animus is further evidenced by the suspicious timing of the Respondent's action, which came early during negotiations for a first contract, and not long after the final failure of its efforts to overturn the election results. *Camaco*, 356 NLRB at 1185 (suspicious timing evidence of animus), *LB&B Associates, Inc.*, 346 NLRB at 1026 (same), *Medic One*, 331 NLRB at 475 (same).

Since the General Counsel has met its initial *Wright Line* burden of showing that unlawful animus played a part in the decision to layoff the entire bargaining unit, the burden shifts to the Respondent to show that it would have taken the same action even in the absence of the unit employees' union and protected concerted activities. The Respondent attempted to meet this burden with testimony from Yanacek, the Respondent's president, about a cost comparison prepared by chief financial officer Beck, who did not testify. The evidence presented by the Respondent not only fails to meet its responsive burden, but is transparently pretextual. First, Yanacek conceded that the only group of the Respondent's employees for whom it conducted a cost analysis of this type was the group of employees in the recently unionized bargaining unit. It did not perform an analysis to determine whether cost savings could be achieved by subcontracting the work of any of its non-union employees – either at the RTFAs or at its multiple other programs. Putting aside that the analysis was biased *ab initio*, a review of that analysis shows that it did not, in fact, show the cost savings that Yanacek claimed. Rather those savings were based on assumptions that the Respondent knew to be false. For example, the analysis assumes that all the bargaining unit RNs were receiving full fringe benefits, when Respondent knew that per diem unit RNs did not receive those benefits and part-time unit RNs only received them under certain conditions. The analysis also assumes that subcontracting the bargaining unit work would mean it would not have to pay three non-unit employees who provided "oversight" to the RNs, but the Respondent continued to employ those three employees after it replaced the unit employees with the subcontractors. In addition, the analysis assumes that the RNs would not have to work overtime, while in internal communications about the analysis, Yanacek and Beck recognize that it may be "cheaper to stay in house," especially given that there is "always" overtime. Finally, the savings claimed by the Respondent result largely not from replacing bargaining unit RNs with staffing agency RNs, but from a decision to begin using less highly- trained LPNs for some tasks. The Respondent has pointed to nothing in the record, and I see nothing, to indicate that it was necessary to replace its unit RNs with staffing agency RNs, in order to begin using LPNs for some tasks.

The Respondent discriminated in violation of Section 8(a)(3) and (1) of the Act on November 1, 2024, when it laid off all the bargaining unit employees and subcontracted the unit work because the bargaining unit employees had engaged in union and protected concerted activities.

III. SECTION 8(A)(5) AND (1) ALLEGATIONS

A. BARGAINING ALLEGATIONS REGARDING ALEXANDER

The Complaint alleges that the same actions regarding Alexander that, as previously found, were unlawfully discriminatory, were also unlawful because the Respondent failed to meet is bargaining obligation. Specifically, the Complaint alleges that the Respondent failed to meet its bargaining obligations with respect to the following actions regarding Alexander: suspending her for declining to accept an invitation to meet with management, withholding her pay during the suspension,

withholding her pay for the meetings it required her to attend as a condition of ending the suspension, reducing her shifts, issuing a less that fully satisfactory performance appraisal to her, and terminating her employment. Where, as here, employees are represented by a union, their employer violates Section 8(a)(5) and (1) of the Act by making changes to the employees' terms and conditions of employment without providing the union with notice and an opportunity to bargain. *NLRB v. Katz,* 369 U.S. 736, 746-747 (1962); *Midwest Terminals*, 365 NLRB 1680, 1691 (2017), enfd. 783 Fed. Appx. 1 (D.C. Cir. 2019); *Whitesell Corp.*, 357 NLRB 1119, 1171 (2011); *Ivy Steel & Wire, Inc.,* 346 NLRB 404, 419 (2006); *Mercy Hospital of Buffalo,* 311 NLRB 869, 873-874 (1993); *Associated Services for the Blind,* 299 NLRB 1150, 1164-1165 (1990); *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968); *Bethlehem Steel Co. (Shipbuilding Div.),* 136 NLRB 1500, 1503 (1962).[23]

I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to give the Union notice and an opportunity to bargain before: suspending Alexander on May 4, 2023; declining to pay her for attending the meetings it required her to attend on May 5 and May 8, 2023; reducing her assigned shifts; and terminating her. The Board has held that "upon commencement of a collective-bargaining relationship, employers do not have obligation under . . . 8(a)(5) to bargain prior to disciplining unit employees in accordance with an established disciplinary policy or practice." *800 River Road Operating Co., LLC d/b/a Care One at New Milford,* 369 NLRB No. 109, slip op. at 7, enfd. 848 Fed. Appx. 443 (D.C. Cir. 2021). The Board determines whether an employer's action is in accordance with established policy or practice, and thus can be undertaken without bargaining, by examining the extent to which the "employer's individual disciplinary action is similar in kind and degree to what the employer did in the past within the structure of established policy or practice." Id. at 5-6.

The record is clear that the Respondent did not provide notice and bargaining with respect to the actions regarding Alexander, each of which significantly affected a unit employee's employment and was a mandatory subject of bargaining.[24] The Respondent did not show that the suspension, withholding of pay, reduction in shifts, or

[23] The Respondent took all of the allegedly unlawful actions against Alexander after the employees voted to be represented by the Union. The Respondent's obligation to refrain from making unilateral changes attached on March 16, 2023 – the date of that vote – not on the later date when the Respondent exhausted its attempts to overturn that election. See *Alta Vista Regional Hospital*, 357 NLRB 326, 327 (2011) (when an employer makes changes in terms and conditions of employment of unit employees after an election, but before the union is certified, it does so at its peril in the absence of compelling economic considerations), enfd. 697 F.3d 1181 (D.C. Cir. 2012), *Tri-Tech Servs., Inc.*, 340 NLRB 894, 895 (2003) (employer's obligation to refrain from making unliteral changes in working conditions commences at the time the of the ballot victory, rather than at the time the union is certified).

[24] See, e.g., *Ivy Steel & Wire, Inc.*, 346 NLRB 404, 418-419 (2006) (reduction of a single unit employee's wage is a mandatory subject); *Sheraton Hotel Waterbury*, 312 NLRB 304, 307 (1993), enfd. in part 31 F.3d 79 (2d Cir. 1994) (elimination of shift is a mandatory subject); see also *Carpenters Local 1031*, 321 NLRB 30, 32 (1996) (change to the terms of employment of even a single unit employee is a mandatory subject).

termination was in accordance with an established disciplinary policy or practice. To the contrary, as discussed with respect to the finding that these actions were discriminatory, the Respondent's harsh treatment of Alexander was not similar in kind and degree to what the employer did in the past.

For the above reasons, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to give the Union notice and an opportunity to bargain before it suspended, withheld pay from, reduced the shifts of, and terminated, Alexander.

I find that the General Counsel has not shown that the Respondent violated its bargaining obligations when it issued an "accountability" category rating of "2" ("partially meets expectations") on Alexander's 2023 mid-year performance evaluation. This rating was of insufficient significance to trigger a bargaining obligation. I note that accountability was just one of the nine appraisal categories and did not affect Alexander's overall rating of "3" (meets expectations) or interfere with her ability to qualify for a raise. Cf. *Ampersand Publishing, LLC*, 358 NLRB 1415, 1472 (2012) (employer's change to use of self-evaluation in appraisal practice is of insufficient significance to trigger a bargaining obligation). The Respondent was not shown to have violated Section 8(a)(5) and (1) of the Act when it issued the accountability category rating to Alexander.

B. Bargaining Allegation Regarding Layoff of Entire Bargaining Unit

An employer's decision to replace employees in the bargaining unit with employees of an independent contractor to do the same work under similar working conditions is a mandatory subject of bargaining. *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 213-214 (1979); *Sunoco, Inc.,* 349 NLRB 240, 240 n.1 and 244 (2007); *Torrington Industries*, 307 NLRB 809, 809-810 (1992). In this case the Respondent, without any prior notice or bargaining with the Union, announced on November 1, 2024, that, later that day, it was ending the employment of every one of the bargaining unit employees and subcontracting all of the unit work to an outside staffing agency. As previously discussed, this action was a violation of Section 8(a)(3) and (1) of the Act because it was taken in retaliation for the employees' recent decision to elect the Union as their bargaining representative and their protected concerted activity. As discussed below, the action was also a violation of Section 8(a)(5) of the Act because it was taken in violation of the Respondent's obligation to bargain with the employees' bargaining representative over the decision to lay off the bargaining unit employees and replace them with subcontractors doing the same work under similar working conditions.

I have considered the Respondent's arguments in defense of its bargaining conduct with respect to the layoff/subcontracting and find that, in light of the record, those arguments are without merit. First, the Respondent contends that it did not refuse to bargain before laying off the entire bargaining unit. It takes this position even though it informed the Union about the action on the same day that it began implementing the

action and even though it argued to the Union then, and continues to argue in this litigation, that it did not engage in bargaining prior to the layoff/subcontracting action because it had no obligation to do so. Brief of the Respondent at 20, 22-23. The fact that the Respondent offered to bargain over the action's effects (i.e., severance terms) is not a defense. This is so not only because the Respondent had an obligation to bargain over the layoff/subcontracting decision, not just over the effects of that decision, but also because the decision was presented as a *fait accompli* – finalized without giving the Union advance notice and an opportunity to bargain. *Tri-Tech Services, Inc.*, 340 NLRB 894, 894 (2003) (employer's "unilateral implementation of the layoff was presented to the Union as a *fait accompli*, making any demand for bargaining futile") *Gannett Co.*, 333 NLRB 355, 357-358 (2001) (notice given too soon before implementation to allow bargaining or indicating that the employer is not open to changing its mind, is merely notice of a *fait accompli* and does not meet its bargaining obligation); *Pontiac Osteopathic Hospital*, 336 NLRB 1021,1023 (2001) (employer does not meet its bargaining obligation if it presents the decision as a *fait accompli*); *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013, 1017-1018 (1982) (notice of changes must be given sufficiently in advance to allow for bargaining), enfd. 722 F.2d 1120 (3d Cir. 1983). Poretta admitted that the layoff/subcontracting decision had been made by the time the Respondent notified the Union about it. At any rate, the Respondent did not notify the Union of the decision sufficiently in advance of implementation to permit bargaining.

The Respondent contends that it did not have any obligation to bargain over the layoff/subcontracting action because it already had an established practice of using subcontracted RNs to perform bargaining unit work. This contention is without merit. Although the Respondent had previously used staffing agency nurses it did so only to *fill-in* for bargaining unit nurses. The Respondent did not have a practice of ending the employment of bargaining unit nurses in order to create vacancies to be filled by staffing agency nurses, much less a practice of ending the employment of its entire complement of employee nurses and replacing them with contractor nurses from outside staffing agencies. The complete elimination of the bargaining unit employees' positions was, to state the obvious, a profound change to their working conditions and triggered an obligation to provide the Union with advance notice and an opportunity to bargain. The Board has repeatedly held that even if an employer has previously used subcontractors, it has an obligation to bargain before expanding the use of those subcontractors to replace bargaining unit employees. *Cascades Containerboard Packaging*, 370 NLRB No. 76, slip op. at 17 (2021) ("an employer must bargain when it substantially increases or expands the use of contractors to perform bargaining unit work even if it had subcontracted to some degree in the past"); *O.G.S. Technologies, Inc.*, 356 NLRB 642, 645-647 (2011) (an employer who had used subcontractors to perform 85 percent of a category of bargaining unit work had an obligation to bargain before subcontracting the remainder of that unit work); *Tri-Tech Services, Inc.*, 340 NLRB at 895 (rejecting employer's argument that, because it had intermittently laid off employees in the past, it did not have to bargain over the layoff of 24 bargaining unit employees); *Equitable Gas Co.*, 245 NLRB 260 NLRB 264-265 (1979) (subcontracting unit work without prior notice or bargaining violates the Act where the subcontracting was different in "kind or degree"

that under the past subcontracting practice), enfd. denied 637 F.2d 980 (3d Cir. 1981); see also *Mi Pueblo Foods,* 360 NLRB 1097, 1099-1100 (2014) ("Absent an obligation to bargain, an employer could continue freely to subcontract work and not only potentially reduce the bargaining unit but also dilute the Union's bargaining strength.").

The Respondent claims that, after it implemented its decision to replace the bargaining unit with subcontractors, it expressed a willingness to bargain over the subject. This is disingenuous. Although it made vague statements after the layoff/subcontracting that muddied the waters somewhat, the Respondent never made a comprehensible offer to bargain over that decision. To the contrary, as noted above, it has repeatedly stated that it had no obligation to do so. At any rate, even assuming, contrary to the facts here, that the Respondent offered to bargain after the layoff/subcontracting was implemented, the change still violated the Act, because the Respondent's obligation was to bargain *before* implementing the change. That obligation cannot be met by expressing some openness to bargain over undoing the change it had unilaterally implemented or to entertain potential union proposals to claw back the status quo ante. As the Board has recognized, bargaining without first restoring the status quo by reinstating the laid off bargaining unit employees would deprive the Union of its bargaining power and would not give the Union a true opportunity to negotiate over the subcontracting. *Cascades Containerboard Packaging*, 370 NLRB No. 76, slip op. at 17. "Negotiations must proceed from the status quo ante, not from circumstances that the Respondent unlawfully changed and which increase its bargaining power by permitting it, during bargaining, to enjoy the very change that it is statutorily required to bargain over before making." Id.

Regarding the argument that the Respondent was entitled to make this change without bargaining because of the cost-savings that would result, I note, first, that as discussed with respect to the discrimination allegations, the cost savings evaporate under scrutiny and, as the communications between Yanacek and Beck reveal, the Respondent's reliance on cost savings is transparently pretextual. At any rate, even if one assumes, contrary to the evidence, that the projections of cost savings were legitimate, that fact would not justify the Respondent leapfrogging over the bargaining obligation. As the Board has properly recognized, an employer's changes to working conditions to achieve "cost reduction" not only trigger a bargaining obligation but are "'peculiarly suitable for resolution within the collective bargaining framework.'" *Mi Pueblo*, 360 NLRB at 1098, quoting *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. at 213-214.

For the reasons discussed above, I find that the Respondent violated Section 8(a)(5) and (1) of the Act on November 1, 2024, when it laid off all the bargaining unit employees and subcontracted their work, without providing the Union with reasonable prior notice and an opportunity to bargain.

C. Allegation That Respondent Refused to Meet and Bargain with the Union from May 9, 2023, to October 10, 2024

The General Counsel argues that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to fulfill its statutory obligation to meet and bargain with the Union at "reasonable times." Section 8(d) ("the mutual obligation of the employer and the representative of employees is to meet at reasonable times"); see also *Ford Motor Co. v. NLRB*, 441 U.S. 488, 495 (1979). The Union was certified on May 5, 2023, and, on May 9, 2023, wrote to the Respondent that it would "like to commence negotiations as soon as possible." The parties did not actually meet for contract negotiations until October 10, 2024 – and the General Counsel alleges that the 17-month delay is attributable to the Respondent's unlawful refusal to meet at reasonable times.[25] The record evidence shows, however, that the Union bears a substantial share of the responsibility for the delay and did not test the Respondent's willingness to meet at reasonable times. The Union did not propose any bargaining dates in the May 9, 2023 letter, and the record does not show that during the subsequent 7-month period it proposed bargaining dates or otherwise pressed to meet for contract negotiation. Indeed, after the passage of 5 months, it was the Respondent, not the Union, who attempted to initiate negotiations, asking on October 31, 2023, that the Union identify dates when it would be available for contract negotiations. The Union responded on November 2, but still did not identify any bargaining dates. Instead, the Union informed the Respondent that it was still "putting together our bargaining team" and would subsequently "send you dates of our availability."

On December 11, 2023, the Union proposed four dates in January 2024 for negotiations, although it still had not succeeded in creating a bargaining committee. It is true that the Respondent did not accept or reject the January 2024 dates proposed by the Union, but the record does not show that the Union followed up with the Respondent about bargaining on those dates, or any other dates, for the next 6 months. After that 6-month delay it was, once again, the Respondent, not the Union, who, on June 7, wrote to inquire about initiating contract negotiations. Bichner, responded to that inquiry on June 27 and indicated that the Union would not be able to negotiate until after July 4. The record does not show that either the Union or the Respondent proposed July, August, or September bargaining dates. Eventually, on September 20, the Respondent proposed bargaining dates in October, and the parties subsequently met on one of those dates, October 10, for the first day of negotiations.

On these facts, I cannot find that, as alleged by the General Counsel, a refusal by the Respondent to meet at reasonable times caused the delay in negotiations from May 9, 2023, to October 10, 2024. Rather the record shows that neither the Respondent nor the Union was conscientious about scheduling negotiations during that time. The Union – perhaps because it was still seeking unit members willing to join the

[25] The General Counsel also argues that the Respondent has refused to meet and bargain since November 1, 2024 – the date when the Respondent laid off the entire bargaining unit and subcontracted the unit work. As found above, the Respondent violated the Act, by failing to meet its bargaining obligations with respect to that action and the Union's subsequent demands to bargain over it. I find that any refusal to bargain by the Respondent during the period since November 1, 2024, is addressed by the part of this decision regarding the Respondent's unlawful refusal to bargain over the layoff and subcontracting.

bargaining committee, or perhaps because of a change in the Union's lead legal counsel – dropped the the ball with respect to contract negotiations for extended periods of time. In more than one instance, it was the Respondent, not the Union, who took steps to revive communications about contract negotiations. *J.W. Rex & Co.*, 308 NLRB 473, 474 (1992) (employer did not violate its bargaining obligation when there was a delay, but the union, inter alia, had not proposed dates for negotiations), enfd. 998 F.2d 1003 (3d Cir. 1993).[26]

I find that the record does not show that the Respondent violated Section 8(a)(5) and (1) of the Act from May 9, 2023, to October 10, 2024, by failing and refusing to fulfill its statutory obligation to meet and bargain with the Union at reasonable times.

D. Allegation That Respondent Made Unlawful Unilateral Changes to Wages and Holiday Bonuses

The General Counsel alleges that the Respondent violated Section 8(a)(5) and (1) of the Act in December 2023 and January 2024, when, after the Union was certified, it did not give the unit employees a raise or a holiday bonus. In support of this, the General Counsel cites cases holding than an employer violates the Act by denying unit members regularly expected increases and benefits during negotiations with a newly certified union. Brief of the General Counsel at Pages 55-56 citing *Longmont United Hosp.*, 373 NLRB No. 97, slip op. at 1, fn. 6 (2024); *Harrison Ready Mix Concrete Co.,* 316 NLRB 242, 242 (1995); *Daily News of Los Angeles*, 315 NLRB 1236, 1239 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. denied 519 U.S. 1090 (1997).

The record does not support finding that the Respondent unlawfully withheld regularly expected raises and bonuses. Indeed, on December 13, 2023, the Respondent specifically informed the Union that it *wanted* to provide unit employees with annual performance evaluations and raises "in accordance with procedures used in the past" and would do so if the Union approved this action. The Union, however, declined to approve the request because it planned, during contract negotiations, to seek a change to how raises were determined. It withheld this approval even though the Respondent did not condition the raises on the Union waiving the right to seek a change to how future raises were determined. To the contrary, the Respondent specifically stated that the regular raises would be paid "pending bargaining for a collective bargaining agreement." Given the Union's refusal to approve the performance evaluations and raises, the Respondent cannot, under the circumstances present here, be faulted for declining to grant them.

[26] Although, as found below, the Respondent improperly delayed providing and/or withheld some information requested by the Union, the evidence does not show that this was the cause of the delays in bargaining. I note, for example, that the information the Union requested on May 9, 2023, to prepare for bargaining, was provided by the Respondent on October 31, 2023, but the first negotiating session was not held until a year later on October 10, 2024.

The granting of pay enhancements such as bonuses constitutes "an established past practice" that can be continued without bargaining "if it occurs with such regularity and frequency, e.g. over an extended period of time, that employees could reasonably view the bonuses as part of their wage structure and that they would reasonably be expected to continue." *Philadelphia Coca-Cola Bottling Co.*, 340 NLRB 349, 353-354 (2003), enfd. 112 Fed. Appx. 65 (D.C. Cir. 2004). Although such a practice likely existed here, there was still room for reasonable doubt about whether the Respondent's existing practices with respect to raises and bonuses were predictable and certain enough to permit the Respondent to grant them without running afoul of the Act for making a unilateral change. The General Counsel's witness, Heard, testified that she had worked for the Respondent for 7 years, but only received raises three times – which indicates that annual raises may not have been consistently granted. Regarding the bonuses, the record shows that the unit employees had received them in each of the prior 3 years, but does not specifically show that they were granted with regularity prior to that. Under the circumstances present here I find that the Respondent did not violate the Act by awaiting the Union's approval before proceedings with the annual performance reviews and related increases and bonuses. Moreover, the General Counsel points to no evidence that the Union contemporaneously asked the Respondent to grant the raises and bonuses or objected to the fact that the Respondent had not done so.

For the reasons discussed above, the allegation that the Respondent violated Section 8(a)(5) and (1) of the Act when, after the Union was certified, it did not give the unit employee a raise or holiday bonus in December 2023 and January 2024, should be dismissed.

E. Allegation That Respondent Unlawfully Refused and Delayed the Provision of Information to the Union

The General Counsel alleges that the Respondent refused to provide, or unreasonably delayed providing, information requested by the Union on May 9 and 23, 2023, June 27, 2024, and November 4, 2024. An employer's obligation to bargain in good faith under Section 8(a)(5) of the Act, includes the obligation to furnish the employees' bargaining representative, upon request, with information relevant to and necessary for the performance of the Union's statutory duty as the employees' bargaining representative. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435-436 (1967). An employer's "unreasonable delay in furnishing . . . information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Naperville Jeep/Dodge*, 357 NLRB 2252, 2252 n. 5 and 2272-2273 (2012), enfd. 796 F.3d 31 (D.C. Cir. 2015), cert. denied 577 U.S. 1217 (2016); see also *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2001).

The Respondent refused to provide the information that the Union sought on May 23, 2023, regarding the identities of unit employees with whom the Respondent had conducted "stay" interviews (which it said the Union could obtain from the employees), and on November 4, 2024, regarding the reasons for its decision to subcontract the entirety of the bargaining unit work (which the Respondent said was not

a change). Where, as here, the request is for information about the unit employees, it is presumptively relevant. *Beverly Health & Rehabilitation Services,* 328 NLRB 885, 888 (1999); *Samaritan Medical Center,* 319 NLRB 392, 397 (1995). The Respondent's brief points to nothing in the record or the relevant law that excuses its refusal its refusal to provide this presumptively relevant information relating to the bargaining unit employees

I find that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide the Union with the information it sought in its requests of May 23, 2023, and November 4, 2024.

With respect to the information that the Union requested on May 9, 2023, the evidence shows that the Respondent did not provide that information until October 31, 2023 – over 5 months later. Similarly, the evidence shows that the Respondent did not supply the roster of unit employees that the Union requested on June 27, 2024, until October 3, 2024 – over 3 months later. The Board has repeatedly held that, absent a showing that requested information was particularly voluminous or difficult to gather, even delays of less than 3 or 5 months are unreasonable and a violation of the Act. *Dodge of Naperville Jeep/Dodge*, supra (delay of 2 months a violation); *Woodland Clinic*, 331 NLRB 735, 737 (2000) (delay of 7 weeks a violation); *House of the Good Samaritan*, 319 NLRB 392, 398 (1995) (delay of 2 to 3 months a violation); *Bundy Corp.*, 292 NLRB 671, 672 (1989) (delay of 6 weeks a violation). Here the Respondent has not argued, much less shown, that the information requested was particularly voluminous or difficult to gather.

The Respondent defends its delay in supplying the requested information by arguing that the delay was not unreasonable because it was not until "on or about August 16, 2023" that the last of its unsuccessful efforts to overturn the Union's election win was rejected. Brief of the Respondent at Page 10 and 21. That argument is foreclosed as a matter of both law and fact. The Board has held that an employer violates the Act "if it refuses to provide relevant information requested by a union during the pendency of objections or challenges, even if the request is made prior to certification." *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, slip op. at 2 n. 8 (2018), citing *Alta Vista Regional Hospital*, 357 NLRB 326, 327 (2011), enfd. sub nom. *San Miguel Hospital Corp. v. NLRB*, 697 F.3d 1181 (D.C. Cir. 2012); see also *Sunstrand Heat Transfer, Inc.*, 221 NLRB 544, 545 (1975), enfd. in relevant part 538 F.2d 1257, 1259 (7th Cir. 1976). As a factual matter, I note that the Respondent, in its Answer to the Consolidated Complaint, admitted both that the Union was certified on May 5, 2023, and that the Union was the bargaining representative as of the election on March 16, 2023. GC Exh. 1(gg) Paragraph 5 and GC Exh.1(ee) Paragraph 5(b); see also Case 04-RC-310585 (Decision on Objections and Certification of Representative, Dated May 5, 2023). Furthermore, even after the August 16, 2023, rejection of its efforts to overturn the election results, the Respondent waited for 2 ½ months before providing the information that the Union had requested. As discussed above, the Board has held that a delay of that length is unreasonable when, as here, there is no showing that the information was particularly voluminous or difficult to gather. See *Dodge of Naperville Jeep/Dodge*, supra, *Woodland Clinic*, supra, *Bundy Corp.*, supra. I find that the

Respondent's argument based on the pendency of its efforts to overturn the election results fails.

I find that the Respondent violated Section 8(a)(5) and (1) the Act by unreasonably delaying the provision of the information requested by the Union on May 9, 2023 and June 27, 2024.

CONCLUSIONS OF LAW

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

2. The Charging Party Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent interfered with employees' exercise of their rights under Section 7 of the Act and violated Section 8(a)(1) of the Act on May 8, 2023, and May 16, 2023, when it directed employee Danita Alexander not to discuss working conditions with other employees and threatened to discipline Alexander if she violated that prohibition.

4. The Respondent discriminated against Alexander on the basis of her union and protected concerted activity in violation of Section 8(a)(3) and (1) of the Act: on May 4, 2023, when it suspended Alexander; when it withheld pay from Alexander for the time spent attending mandatory meetings on May 5 and 8, 2023; in May 2023 when it reduced the number of shifts assigned to Alexander; on August 21, 2023, when it gave Alexander a reduced performance appraisal rating for accountability; and on October 25, 2023, when it terminated Alexander's employment.

5. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to give the Union notice and an opportunity to bargain before: suspending Alexander on May 4, 2023; declining to pay Alexander for attending the meetings it required her to attend on May 5 and May 8, 2023; reducing the number of shifts it assigned to Alexander; and terminating Alexander's employment on October 25, 2023.

6. The Respondent discriminated in violation of Section 8(a)(3) and (1) of the Act on November 1, 2024, when it laid off all the bargaining unit employees and subcontracted the entirety of the unit work because the bargaining unit employees had engaged in union and protected concerted activities.

7. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to give the Union notice and an opportunity to bargain before, on November 1, 2024, it laid off all the bargaining unit employees and subcontracted the entirety of the bargaining unit work.

8. The Respondent violated Section 8(a)(5) and (1) of the Act by: refusing to provide the Union with the information it requested on May 23, 2023, and November 4,

2024; and by unreasonably delaying the provision of the information the Union requested on May 9, 2023, and June 27, 2024.

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

10. The Respondent was not shown to have committed the other unfair labor practices alleged in the Complaint.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, having found that the Respondent unlawfully discharged Danita Alexander, and unlawfully laid off all the bargaining unit employees, I order the Respondent to fully reinstate those individuals to their former jobs, or if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. In addition, the Respondent is to expunge from its files and records any reference to the unlawful discharge and other unlawful actions against Alexander and to notify her, in writing, that it has done so and that those actions will not be used against her in any way. I will also order that the Respondent make the affected individuals whole, with interest, for any loss of earnings and other benefits suffered as a result of the unlawful discharge and layoffs. With respect to the termination and layoffs, 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 addition, having found that the Respondent unlawfully suspended, withheld pay from, and reduced the hours of, Alexander, I order the Respondent to provide make-whole relief to her for those violations computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), 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 the decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds, 102 F.4th 727 (5th Cir. 2024), I also order the Respondent to compensate the affected employees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful actions against them, including reasonable search-for-work and interim employment expenses, if any, regardless of whether those expenses exceed interim earnings. See *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). 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, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Further, the Respondent is ordered to compensate the affected individuals for the adverse tax consequences, if any, of receiving a lump-sum backpay award and file a report with the Regional Director for Region 4 allocating the back-pay award to the appropriate calendar

year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay allocation report, I will order the Respondent to file with the Regional Director for Region 4 a copy of the affected employees' W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76, slip op. at 1 n. 2.

In the remedy request section of its brief, the General Counsel states that the typical remedy for transferring bargaining unit work to subcontractors includes restoring the status quo ante, but that the Respondent in this case should be permitted to argue at the compliance stage that restoring the status quo would be unduly burdensome. Brief of the General Counsel Page 69, citing *San Luis Trucking, Inc.*, 356 NLRB 168 (2010), incorporating by reference 352 NLRB 211, 211 n. 5 (2008), enfd. 479 Fed. Appx. 743 (9th Cir. 2012); *Allied General Services*, 329 NLRB 568, 569 (1999); *Lear Siegler, Inc.*, 295 NLRB 857, 861-862 (1989). I find that inviting that argument at the compliance stage is not appropriate under the circumstances present here. The Respondent's unlawful responses to employees' union and protected concerted activity – especially retaliating against employees for choosing union representation by laying off every one of the bargaining unit employees – was not only unlawful, but brutally and brazenly so. I note, moreover, that this is not a case in which the Respondent's unlawful action included closing an operation, such that restoring the status quo might facially raise a question of undue burden. The cases relied on by the General Counsel to suggest that undue burden should be considered – *San Luis Trucking*, *Allied General Services*, *Lear Siegler* – all addressed circumstances where, unlike those present here, the employer ceased an operation.[27] In the instant case, the Respondent did not close or cease operations at the facilities. Rather it continued its business as before, except for the fact that it replaced its bargaining unit employees with subcontractors. Under these circumstances, the Respondent should not be allowed to escape the standard remedy of restoring the status quo.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[28]

ORDER

The Respondent, New Vitae, Inc. d/b/a New Vitae Wellness and Recovery, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[27] Moreover, while the remedy discussion in the Board's original *San Luis Trucking* decision suggested that the employer would be permitted to introduce previously unavailable evidence showing undue burden, the Board subsequently modified the remedy and its amended remedy made no mention of allowing the presentation of evidence of undue burden. See 352 NLRB at 211 n.5 and 356 NLRB 168.

[28] 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) prohibiting employees from discussing their working conditions with co-workers and/or threatening that employees will be disciplined if they do so;

(b) suspending, withholding pay, shift assignments, reducing performance appraisal ratings, discharging, laying off, subcontracting the work of, or otherwise discriminating against employees because they engage in protected concerted activity and/or union activity;

(c) failing and refusing to bargain with the Union over mandatory subjects of bargaining, including the decision to subcontract or transfer the work of employees in the following bargaining unit (the Unit) to non-unit employees or entities.:

> All full-time, regular part-time, and per-diem Registered Nurses employed by the Employer at its facilities located at 5644 Walnut Street, 5646 Walnut Street, and 1909 South 6th Street in Philadelphia, Pennsylvania, excluding all other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined by the Act .

(d) unilaterally suspending, withholding pay from, reducing the shift assignments of, discharging, or laying off any employee in the Unit without providing the Union with prior notice and an opportunity to bargain over the decision;

(e) subcontracting and/or transferring Unit work to non-Unit workers and/or entities because employees selected union representation and/or engaged in protected concerted activity;

(f) delay furnishing and/or refuse to furnish the Union with requested information to which the Union is entitled as the exclusive bargaining representative of the Unit;

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

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

(a) Provide meaningful advance notice to, and, on request, bargain in good faith with, the Union regarding proposed changes to the terms and conditions of employment of unit employees, including any decision to lay off employees, or to subcontract or transfer unit work to non-unit individuals or entities;

(b) Restore all bargaining unit work as it existed immediately before November 1, 2024;

(c) Within 14 days of the date of this Order, offer all the employees who, immediately before November 1, 2024, were members of the Unit, reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or the other rights and privileges previously enjoyed.

(d) Make all the employees who, immediately before November 1, 2024, were members of the Unit, whole for any losses of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful layoff decision as set forth in the remedy section of this decision.

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

(f) Make Danita Alexander whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful suspension, withholding of pay, reduction in shifts, and discharge, as set forth in the remedy section of this decision.

(g) Compensate Danita Alexander, and the employees who were members of the Unit immediately before November 1, 2024, for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file with the Regional Director for Region 4 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar quarters.

(h) Within 14 days from the date of this Order, expunge from its files all references to the unlawful accountability rating score, suspension, and discharge of Danita Alexander and notify her in writing that this has been done and that none of those will be used against her in any way.

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

(j) File with the Regional Director for Region 4 copies of the W-2 form(s) reflecting the backpay awards.

(k) Provide the Union with the requested information that was unlawfully withheld.

(l) Within 14 days after service by the Region post at its residential treatment facilities for adults in Philadelphia, Pennsylvania, copies of the attached notice marked

"Appendix."[29] Copies of the notice, on forms provided by the Regional Director for Region 4 of the National Labor Relations Board, 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, the notice shall be distributed to employees electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of its residential treatment facilities for adults in Philadelphia, Pennsylvania, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at those facilities since May 1, 2023.

(m) Within 21 days after service by the Region, file with the Director for Region 4 sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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

Dated, Washington, D.C., December 2, 2025.

PAUL BOGAS
U.S. Administrative Law Judge

[29] 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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT prohibit you from discussing your working conditions with co-workers or threaten you with discipline for doing so.

WE WILL NOT suspend you, withhold pay from you, reduce your shift assignments, reduce your performance evaluation scores, discharge you, subcontract your work, or lay you off because you engage in protected concerted activity or union activity.

WE WILL NOT fail or refuse to give prior notice to and bargain with District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO (the Union), over mandatory subjects of bargaining, including the decision to subcontract or transfer bargaining unit work.

WE WILL NOT unilaterally suspend, withhold pay from, reduce the shift assignments of, discharge, or layoff bargaining unit employees without providing the Union with prior notice and an opportunity to bargain over the decision.

WE WILL NOT subcontract or transfer bargaining unit work to non-unit workers and/or entities because employees select union representation and or engage in protected concerted activity.

WE WILL NOT delay furnishing, or refuse to furnish, the Union with requested information to which it is entitled as the exclusive collective bargaining representative of employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide meaningful advance notice to, and, on request, bargain in good faith with, the Union regarding proposed changes to the terms and conditions of employment of bargaining unit employees, including with respect to any decision to lay off bargaining unit employees, and/or subcontract or transfer bargaining unit work to non-unit individuals or entities.

WE WILL restore all bargaining unit work as it existed immediately before November 1, 2024.

WE WILL offer all employees who, immediately before November 1, 2024, were members of the bargaining unit, reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or the other rights and privileges previously enjoyed.

WE WILL make all the employees who, immediately before November 1, 2024, were members of the bargaining unit whole for any losses of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of our unlawful layoff of those employees.

WE WILL offer Danita Alexander full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or the other rights and privileges previously enjoyed.

WE WILL make Danita Alexander whole for any loss of earnings and other benefits, and for any other direct and foreseeable harms, suffered as a result of the unlawful suspension, withholding of pay, reduction in shifts, and discharge.

WE WILL compensate the employees who were members of the bargaining unit immediately before November 1, 2024, and Danita Alexander, for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

WE WILL file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

WE WILL file with the Regional Director for Region 4 a copy of the W-2 form(s) reflecting the backpay awards.

WE WILL expunge from our files all references to the unlawful suspension, reduced performance rating score, and discharge of Danita Alexander and **WE WILL** notify her in writing that this has been done and that none of those will be used against her in any way.

WE WILL provide the Union with the information that we unlawfully withheld.

NEW VITAE, INC. d/b/a
NEW VITAE WELLNESS
(Employer)

Dated _____ By_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov
Wanamaker Building, 100 Penn Square, East, Suite 403, Philadelphia, PA 19107
(215) 597-7601 Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-324629 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 (215) 597-5354.