

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

STRIVE WELL-BEING, INC.

and

Cases 21-CA-318148
21-CA-319690
21-RC-316782

AMALGAMATED TRANSIT UNION
LOCAL 1756

Phuong Do, Esq., for the General Counsel.
James McMullen, Esq. and *David Hiester, Esq.*, for the Respondent.

DECISION

STATEMENT OF THE CASE

BRIAN D. GEE, Administrative Law Judge. This case was tried before me in Los Angeles, California, on August 4 and 5, 2025, and by Zoom on August 19, 2025. Based on charges filed by the Amalgamated Transit Union Local 1756 (the Union) in 2023, the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on December 20, 2024. On January 2, 2025, the Regional Director issued an order consolidating the objections to the election in Case 21-RC-316782. The consolidated complaint (the complaint) alleges that Strive Well-Being, Inc. (Respondent or Strive) committed numerous violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) which affected the results of the election. Respondent filed a timely answer to the complaint denying all substantive allegations. (GC Exh. 1.)¹

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their legal positions orally, and to file post hearing briefs.² Based on a careful review of the entire record, including the posthearing briefs and my observation of the credibility of the witnesses, I make the following

¹ To aid review, I have included certain citations to the record in my findings of fact. The citations are not necessarily exclusive or exhaustive, as my findings and conclusions are based on my review and consideration of the entire record.

² The Union did not appear at the hearing and did not file a brief to the ALJ.

FINDINGS OF FACT

I. JURISDICTION

Respondent is a California corporation with a principal place of business in San Diego, California, where it is engaged in the business of providing workplace and community health, fitness, and wellness services. During the time period material to the complaint, Respondent also had a facility located in Los Angeles, California, where it operated. During the 12 months prior to May 12, 2023, Respondent performed services in excess of \$50,000 in States other than the State of California. Respondent admits, and I find that during the times material to the complaint Respondent was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5). Based on the foregoing, the National Labor Relations Board (the Board) has jurisdiction over this matter, pursuant to Section 10(a) of the Act.

II. CREDIBILITY³

The General Counsel and Respondent presented factual narratives which differed in important ways. Additionally, to support alleged coercive statements made in large group settings, the General Counsel presented just one witness. Because of this, credibility played a crucial and impactful role in this case.

The General Counsel's primary witness was former transit ambassador and open union proponent Fabian Bolanos. For several reasons, I found him not credible. First, Bolanos' testimony often appeared to be exaggerated or even false, seemingly guided more by a desire to harm Respondent than to recount the truth. This can be seen in his steadfast insistence that his flawed transcription of the May 4, 2023, staff meeting was accurate. Bolanos used an application

³ A credibility determination may rest on various factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." *Hills & Dales General Hospital*, 360 NLRB 611, 617 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness's testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950). The Board has stated that "when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge." *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the Respondent's agent. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). Moreover, an adverse inference is warranted by the unexpected failure of a witness to testify regarding a factual issue on which the witness would likely have knowledge. See *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15, 15 fn. 1 (1977) (adverse inference appropriate where no explanation as to why supervisors did not testify); *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable witness regarding factual issue upon which that witness would likely have knowledge gives rise to the "strongest possible adverse inference" regarding such fact). Adverse inferences may also be drawn based on a party's failure to introduce into evidence documents containing information directly bearing on a material issue. See *Metro-West Ambulance Service, Inc.*, 360 NLRB 1029, 1030 fn. 13 (2014).

on his cellphone called “Live Transcribe” to produce the transcription. While it was mostly a mishmash of words which made no sense, Bolanos insisted that the transcription was accurate. Respondent counsel read one illustrative portion into the record: “it’s sorry a couple. Okay. So you see here. Is that mean Chinese from what care to radio right here?” He then asked Bolanos if those words were accurate. Incredulously, Bolanos replied, “Somebody was speaking. Yeah.” Counsel again asked if somebody said that, and Bolanos replied, “Yeah.” Because his answer was obviously false and to make sure there was no confusion, I asked him one last time if somebody uttered those words. Bolanos doubled down on his lie by stating, “Yes. Yeah.”⁴ (Tr. 70-71.) Second, much of Bolanos’ testimony was uncorroborated. Almost all the alleged coercive statements by Respondent’s managers were made before audiences of 20-plus employees, yet Bolanos was almost always the only witness called. Third, Bolanos tended to respond to narrow questions with unsolicited litanies of perceived misdeeds by Respondent. This resulted in me having to instruct him to answer only the question asked. Finally, I found it troubling that Bolanos engaged in dishonest conduct while on the witness stand. When I was discussing objections to the flawed transcription with counsel, I asked Bolanos to turn the document face down so that his testimony would be based on his memory, not the document. He complied with my instruction, but only briefly. After discussion resumed, I glanced over and saw that Bolanos had turned the document over and was reading it again. This caused me to instruct him for a second time not to do that. Bolanos again complied—but seconds later, I saw that he disregarded my instructions yet again. I therefore had to admonish him on the record. (Tr. 74–76.) I have largely not credited his testimony. However, where it pertained to uncontested facts or was corroborated by documentary evidence or credible accounts by others, I did credit some of Bolanos’ testimony.

On the other hand, I found Adam Brooks, the other witness called by the General Counsel to be credible. His testimony on direct examination was detailed, specific, and consistent; on cross-examination, he showed no hesitation but rather gave answers promptly and nonevasively. His testimony was also corroborated in important ways by the documentary evidence, portions of Bolanos’s testimony, and the testimonies of Sanjay and Amit which the General Counsel adduced on cross-examination.

Respondent’s two main witnesses, Sanjay and Amit Sangani, gave testimony that was mostly—but not entirely—credible. Their testimony was detailed and generally consistent with each other and with the written documents. Their answers on cross-examination often boosted their credibility because their explanations made sense within the overall context of events. They also readily admitted on cross-examination facts which might appear harmful. For example, when asked whether he told employees that wages were fixed, Sanjay immediately answered yes and explained that ambassador wage rates were set by its contract and Respondent could not change those rates absent negotiation with Metro. (Tr. 448–449.) Their testimonies were often detailed. For example, when asked on cross-examination to give examples of times when employees approached him to raise fears about the aggressive tactics used by Union organizers, Amit gave three examples, all of which were detailed and specific. (Tr. 263, 268–270.) I have

⁴ General Counsel originally marked two versions of the electronic transcription, GC Exhs. 6 and 7. After Respondent objected and I raised concerns about the documents’ unreliability, General Counsel asked Bolanos a series of leading questions. Following that testimony, General Counsel withdrew those exhibits. (Tr. 58–83.)

largely credited their testimonies. However, based on my observation of their demeanors, the testimony of Brooks, some of their concessions on cross-examination, and portions of the documentary evidence, I have generally not credited their testimonies about the alleged promise of benefits if the employees rejected the Union and threats of job loss if the employees selected the Union. I found their testimonies on those topics to not be entirely forthcoming.

As for Respondent witness and former lead supervisor Jennifer Sory, I found her testimony generally not credible. In contrast to her clear and straightforward answers on direct examination, Sory's answers to the General Counsel's questions on cross-examination were often evasive or false. An example of this was when the General Counsel caught Sory obviously exaggerating by saying that she conducted every single pre-shift meeting. Instead of simply admitting that she misspoke when the General Counsel caught her exaggerating, Sory sought to evade answering his questions. Only after the General Counsel painted her into a corner did she admit that the first-line supervisors also conducted pre-shift meetings. (Tr. 514–519.) I did not credit the bulk of Sory's testimony.

III. THE ALLEGED UNFAIR LABOR PRACTICES

STATEMENT OF FACTS

For its first decade, Strive was a small company that provided wellness education to individuals and companies. Amit Sangani founded the company in 2008 while still a college student. A few years later, his father, Sanjay Sangani, joined the company as the director of operations.⁵ In 2016, Strive began managing the employee fitness center run by the Los Angeles County Metropolitan Transportation Authority (Metro).⁶ At this time, the company had only three to six employees. With the COVID-19 pandemic in early 2020, Strive was forced to furlough about half of its staff. Following the worst of the pandemic, ridership began to return to normal and Metro invited bids for a private-company contractor that would operate the “Transit Ambassador Pilot Program” through which Metro would provide information and assistance to riders. In August 2022, Respondent won the bid and had to rapidly build its staff from 6 to over 55 employees. (R. Exhs. 6, 7, Tr. 204–205, 215–216, 229, 325–326.)

Metro required the program's leadership and staffing to reflect the diversity of Metro's ridership in terms of race, gender, disability, language, and other characteristics. Respondent therefore focused its recruitment on individuals with “lived experience that came from vulnerable backgrounds.” For example, it partnered with Homeboy Industries⁷ to recruit and hire

⁵ For brevity and to avoid confusion, I refer to Amit Sangani and Sanjay Sangani by their first names. Respondent admits, and I find, that Amit and Sanjay were supervisors and agents of Respondent pursuant to Sec. 2(11) and 2(13) of the Act, respectively.

⁶ Metro represents that it is, “the third largest transit operator in the nation, serving more than 10 million LA County residents” and operates 2300 buses, two subway lines, four light-rail lines, two rapid bus transit lines, and a network of 93 rail stations. (R. Exh. 6.)

⁷ Homeboy Industries describes its mission as providing “hope, training, and support to formerly gang-involved and previously incarcerated people, allowing them to redirect their lives and become contributing members of our community.” See [Our Mission | Homeboy Industries](#), last checked on April 20, 2026.

formerly incarcerated individuals, CALIF⁸ to attract disabled candidates, and Union Station Homeless Services⁹ to hire individuals who had experienced housing insecurity. Those three organizations also provided sensitivity training for ambassadors. (R. Exhs. 6, 19, Tr. 215–221, 229–230, 283, 326–327, 379–382.)

5 In August 2022, Respondent signed its initial contract with Metro.¹⁰ The contract had provisions explicitly governing minimum pay and annual wage increases. For minimum pay, the contract mandated that ambassador wages had to meet or exceed Metro’s Living Wage Policy.¹¹ That meant that, for the period July 1, 2022, to June 30, 2023, Respondent had to pay employees at least \$23.35 per hour if they opted not to have health benefits or \$17.58 per hour if they chose
10 to receive health benefits (at a cost of \$5.77 per hour). The contract also provided for 5-percent wage increases for all personnel between Years 1–2 and Years 2–3. (GC Exh. 5, R. Exhs. 6, 22, Tr. 439–444.)

 As of October 2022, Respondent was in the early stages of hiring and training its first cohorts of employees, called transit ambassadors (ambassadors).¹² The ambassadors’ job duties
15 included helping Metro riders buy tickets, giving directions on how to navigate the extensive Metro transportation network, and serving as the first point of contact for riders suffering injuries or emergencies. They wore neon green shirts with the “LA Metro” logo. At the beginning of each shift (morning or evening), ambassadors assembled at Union Station in downtown Los Angeles for their deployment meetings, which were conducted by either a supervisor or lead supervisor.
20 Supervisors used these meetings to discuss goals for the day, answer questions, and give the ambassadors their assignments, their partner, and an electronic tablet. (Tr. 29–32, 35–36, 183, 272–278, 483.)

 Shortly after it started deployments, Respondent realized it had a major attendance
25 problem, with ambassadors not reporting for work or leaving shifts early. Approximately 20 to 30-percent of the ambassadors were absent daily. This had a ripple effect on deployments since ambassadors always worked in two-person teams for purposes of safety. Moreover, these failed

⁸ The website of CALIF, or Communities Actively Living Independent & Free, states that it “provides advocacy programs and services for people with disabilities.” See [Communities Actively Living Independent & Free](#), last checked on April 20, 2026.

⁹ Union Station Homeless Services provides homeless services across the San Gabriel Valley; it works with “more than 130 local partners to provide street outreach, intake and assessment, connection to services, care coordination, housing navigation, housing placement, and retention services.” See [Our Programs — Union Station Homeless Services \(USHS\)](#), last checked on April 20, 2026.

¹⁰ Over its existence, this contract was modified several times.

¹¹ Metro’s website represents that it has labor wage and retention programs that provide for prevailing wages and living wage requirements for its contractors. See [Labor Wage & Retention Programs - LA Metro](#) last checked on April 20, 2026.

¹² Its management team at this time consisted of Amit and Sanjay, program manager Myron McCloud, and Lead Supervisor Jennifer Sory. Below Sory were approximately 10 ambassador supervisors (supervisors) who directly oversaw the ambassadors. The supervisors were not shown to possess any Sec. 2(11) indicia and were included in the petitioned-for bargaining unit. However, I did find them to be 2(13) agents based on their job duties, which included serving as conduits of information between management and employees, and vice versa. See *A.D. Conner, Inc.*, 357 NLRB 1770, 1781 (2011). (R. Exh. 27, Tr. 252–253, 255–256, 483–484, 510, 514–519.)

5 deployments were noticed by Metro, which tracked attendance through cameras or site visits to the stations. Metro complained about inadequate staffing of the program to Sanjay during their weekly progress meetings. He explained that their deployment issues were caused by a combination of factors, including the challenges faced by their employees. He asked Metro for
 10 patience while Respondent tried to figure out the best ways to improve attendance. “[T]his was a unique workforce,” Sanjay testified. “We had multiple objectives, so we [were] constantly adapting and encouraging [ambassadors], some more so than others because some had issues. Again, I explained that earlier as to people living far, people having domestic issues, babysitting perhaps. You know, occasionally . . . their babysitter wouldn’t show up.” Internally, Respondent
 15 tracked attendance problems and counseled ambassadors. (R. Exhs. 17, 18, Tr. 230–232, 373–379, 391, 426–427.)

By November 2022, it was clear that Respondent needed to implement stronger attendance rules to improve deployment rates. Sanjay therefore asked Human Resources Manager Peighton Ohlmeyer-Dawson to draft a new policy which would be more effective than
 15 its existing one-paragraph policy. (GC Exh. 5, Tr. 229, 344–354.)

At this same time in November 2022, the Union began its organizing campaign. Ambassador Fabian Bolanos signed his authorization card in December 2022 and assisted with the campaign by collecting authorization cards and urging coworkers to support the Union. (GC
 20 Exh. 2, Tr. 32–35.) While union organizers did not try to hide their efforts, there was no indication that Respondent knew about the campaign.¹³

In the early months of 2023,¹⁴ Respondent continued to formulate its new attendance policy. On January 12, Ohlmeyer-Dawson sent Sanjay initial drafts, which she split into two documents: the time-off policy and the time-off protocols. Respondent solicited feedback from
 25 ambassadors and supervisors. On January 25, Ohlmeyer-Dawson emailed Sanjay revised versions based on that feedback. On February 22, she made more revisions based on Sanjay’s instructions. By April 3, the policies were essentially complete and Sanjay instructed Ohlmeyer-Dawson to promptly prepare them for distribution to the ambassadors. On April 14, Sanjay emailed staff member Camille Romero the final version of the policies and told her not to make
 30 any changes. Romero said they would be able to issue the policies to the ambassadors by Monday, April 17, but issuance dragged on for another week. On April 25 at 1:04 p.m., Respondent emailed the ambassadors the new attendance policy and procedures. The procedures explained the steps on how to request leave and drop or add a shift on the third-party software system used by Respondent, Humanity.¹⁵ (GC Exhs. 9, 10, R. Exhs. 9–16, Tr. 344–354, 391, 426–427.)

¹³ Because I have not credited many portions of Bolanos’ testimony, there are various facts contained in the General Counsel’s proffered narrative which do not appear here. For example, the General Counsel contends Respondent knew of the organizing campaign as early as November 2022 based on Bolanos’ testimony that Dodds told a group of 20–25 ambassadors that “there [were] union representatives handing out flyers and that we were not to talk to them while we were working.” (Tr. 36–46.)

¹⁴ All subsequent dates are for the year 2023, unless specified otherwise.

¹⁵ Respondent continued to revise its policies and procedures over the next year and a half, at least four or five times. Even after Respondent issued these policies, there continued to be a problem with failed deployments. By August,

Later that day, at 3:55 p.m., the NLRB Regional office in Los Angeles emailed Respondent the Union’s representation petition.¹⁶ That was when Respondent first learned about the union organizing campaign.¹⁷ Respondent had a staff of 30 to 50 ambassadors then; the Union petitioned for a unit of ambassadors and supervisors. (GC Exhs. 1(o), 19, 20, 21, Tr. 233–234, 286–297.)

The following week, on Thursday, May 4, management met with 20 to 30 ambassadors in the Union Station conference room.¹⁸ Sanjay did most of the speaking, but Amit also made some points. For many of the ambassadors, this was the first time they had met either manager. Using a PowerPoint deck, Sanjay discussed the origins of Strive, the ambassador program, ambassador wages compared to similar programs, the need for only a majority vote to elect a union, and how a union could impact employee access to management. During the question and answer period, Sanjay made the following comments. He said that, if the ambassadors elected the Union, they would lose direct access to management. Bolanos recalled Sanjay saying, “by us having a union representative, . . . any grievances that we would have would have to go through the Union first, and it was, again, a bureaucratic process, that we would lose that direct contact with our employer.” In response to a question about wages, Sanjay explained that the contract with Metro specified wage rates for all company employees and the only way to change those was through negotiations with Metro. “I recall saying that our contract has specific rates,” Sanjay testified. “If we wanted anything different, we have to go to Metro because Metro is the contract determinant as far as what rates we provide. If it’s negotiated, that’s the rates we have to go by.”¹⁹ As to the potential for cancellation of the ambassador program, Sanjay said: “the pilot was an experiment at the time, and that . . . our pilot could get cancelled early . . . he said that Metro might cancel the—the pilot program, and then we would obviously not—not have employment.” On cross-examination, Sanjay conceded that, when making such representations, there were no indications that Metro would cancel the program. (GC Exh. 17, Tr. 55–57, 78–79, 81–83, 300–309, 436–455.)

On May 8, management met with over 20 ambassadors in the Union Station fitness room. After fielding various questions and requests, Amit said that management was working on

Metro started complaining in writing about this, emphasizing, “It is imperative that you fully staff all assignments 7 days a week.” (R. Exhs. 23–26, Tr. 373, 386–390, 394–395.)

¹⁶ In addition to the documents from 21–RC–316782 which the General Counsel offered into evidence, I have taken administrative notice of the representation case file.

¹⁷ At 10:02 a.m. Pacific Time on April 25, Union Associate General Counsel Christopher Bangs emailed a copy of the undocketed representation petition to Respondent at two email addresses (info@strive2bfit.com and info@strivepro.com). But those were general company email accounts which did not route directly to any manager; they needed to be affirmatively checked to see what emails came in. Both Amit and Sanjay credibly testified that they did not see that email on April 25. (GC Exhs. 20, 21, Tr. 267–272, 340–343, 411–413.)

¹⁸ Bolanos testified that the meeting occurred “at the end of May or the beginning of June” and on Thursday, “June 4,” even though that date was a Sunday. Based on my review of the entire record, including Respondent’s statement of position submitted during the underlying investigation (GC Exh. 23), I conclude that the meeting most likely occurred on May 4, as alleged in the complaint.

¹⁹ Sanjay’s recollection was similar to that of Bolanos, who testified that Sanjay said, “we were at a particular wage rate that was already a predetermined amount from what LA Metro had given them, and that we couldn’t just demand \$30 as our hourly wage out of nowhere because everything was on a predetermined contract that they had in writing from LA Metro.” (Tr. 80–81.)

providing employees with massage chairs. “He also began to tell us that, you know, he was trying to improve some things for us,” testified Bolanos. “[W]hat did we think if we were to have massage chairs provided for us so that we can wind down . . . and decompress while we’re working?” Amit also reminded employees that they were scheduled to get a 5-percent wage increase later that year.²⁰ (Tr. 93–95.)

By early May, the number of ambassadors had doubled. Respondent also expanded its management team by promoting Michael Todd and Jerry Serna to the position of lead supervisor. (R. Exh. 27, Tr. 252–253, 276, 280, 424, 501, 510, 514–519.)

On or about May 15,²¹ Respondent again met with the ambassadors in the Union Station fitness room. Present for management were Sanjay and Amit, as well as lead supervisors Sory, Michael Dodds, and Jerry Serna. Approximately 22 ambassadors attended. Sanjay and Amit spoke collectively for Respondent; “they were both, again, playing off one another,” recalled ambassador Adam Brooks. They talked about Strive’s history, the ambassador program, the contract with Metro, the Union and the organizing drive, the upcoming Board election, and their opinion that the Union would not be good for the employees. Sanjay and Amit said that one reason why a union would not benefit employees was because they would lose access to management: “we would not be able to speak directly with them anymore if we were unionized,” said Brooks. “We would have to go through union representatives, and we would lose the—the great relationship that was being built between us and them as our employers.” They said that the Union’s election could result in cancellation of the ambassador program, which was a pilot program. Brooks recalled, “they included that another reason why we should think twice about voting yes for a union was that if we did, there is a great potential for the pilot program to be cancelled by Metro, and then we would all lose our jobs.” Towards the end of the meeting, Sanjay and Amit asked for a show of hands who would be voting for the Union and who for the company. Brooks recounted, “close to the end of this entire meeting which lasted about two hours, they said let’s get a show of hands of how many . . . are considering voting for a union, and then how many are considering voting against a union, and staying just with us—the family. The family business.” More than half of the ambassadors participated in this voting. (Tr. 171–178.)

During that meeting, Sanjay and Amit also stated that if the employees voted against the Union they would get access to wellness benefits. The specifics of those benefits were not spelled out at that time but were detailed over the next few weeks in late May/early June. After finding out what the ambassadors wanted, management discussed the specific benefits during small group visits in the field. Brooks recalled, “I did hear, like, Amit specifically say what about massage chairs? I’m sure, you know, throughout the day . . . you get tired of standing . . . Wouldn’t that work?” Amit also proposed arranging for food trucks for the ambassadors: “Another example I heard Amit drop was food trucks, specialized food trucks, that they would look into wheeling out at our deployed stations, just, you know, exclusively for us to take

²⁰ I do not credit Bolanos’ testimony about Amit promising to implement a weekly pay schedule (from every 2 weeks) or sending employees home with pay if there were a Narcan incident during their shift. Those claims were uncorroborated. Nor do I credit his testimony that, after the May 8 meeting, Amit spoke with Bolanos one-on-one in the hallway and raised the possibility of creating a “special position” for him. (Tr. 94–95, 105–106.)

²¹ Brooks testified that the meeting was in “mid-May.” (Tr. 172–173.)

advantage of during our lunch breaks.” Brooks did not recall any discussion about implementing a weekly pay schedule. (Tr. 178–181, 185.)

5 In mid-May, employees began telling management that union organizers were intimidating them through aggressive tactics. For example, ambassador Constance Iloh asked for somebody to escort her home because union representatives had recently followed her home. She said the incident harmed her mental health. A second example involved program manager McCloud, who reported being so intimidated by union representatives that he was afraid to leave the office. A third example involved supervisor Omar Duarte, who said that he was so stressed out by the
10 Union that he needed mental health days off. (Tr. 249–256.)

In late May, several employees told Sanjay that a flyer was being circulated which supposedly showed that wages were going to be cut. To counter those false rumors, Sanjay emailed the ambassadors on May 29 to inform them about the wage increases built into the
15 Metro contract. At 7:19 p.m., he wrote, inter alia, that Metro’s living wage rate “typically increases every year,” “Strive is guaranteed to receive a 3% increase annually,” and the effective date for the increase was July 1. After an employee asked a clarifying question, Sanjay sent a follow up email at 8:03 p.m. to tell the ambassadors there would be no pay cut and the wage increase would actually be 5-percent, not 3-percent. Neither email conditioned the wage increase
20 on the ambassadors rejecting the Union. (GC Exh. 12, R. Exhs. 28, 29, Tr. 289–299, 408–409, 436–437.)

On the organizing side, Bolanos openly challenged coworkers who spoke up against him or the Union. On May 31, Ambassador Rickey Steen emailed the other ambassadors to urge them to vote against the Union. He also declared, “we all disagree with mr. Fabian Bolanos he’s
25 speaking for himself.” Bolanos responded by accusing Steen of unlawful conduct: “I take this as a friendly reminder from You and Strive telling us not to go union which is an Unfair Labor Practice. Intimidating circumstances place you as a representative of Strive.” Bolanos also promised to report Steen to the NLRB: “Your tone makes me uncomfortable enough to report this as a grievance . . . ¶ This conversation will [be] passed on to the right channels with the
30 NLRB.” (R. Exh. 28, Tr. 253–254.)

Bolanos also began sending scores of text messages to Amit’s personal cellphone; many of the texts promised to wage a public relations campaign against Strive in local news sources. For example, on June 6, he texted, “I’m on the phone with the LA times doing a complete
35 investigation about you and strive..I’ll send you the transcript . . . ¶ I’ve hired a publicist to help us get out story. Every action you do that violates federal rights will have consequences. Your legal fees fighting this could be raises going to ambassadors . . . ”²² The next day, Bolanos texted Amit: “By the way. This is not a marketing campaign This is real unionizing. . . . ¶ I’m going to finish line with more support from the Metro board...you have A PR nightmare my friend.” (R.
40 Exh. 1.)

On June 6, Sanjay sent two emails to the ambassadors. The first one was sent just after midnight with the subject line “Frequently Asked Questions” (the FAQ email). In it, Sanjay

²² The content and punctuation of the texts by Bolanos and Steen were left in the original.

responded to the circulating rumors and to the various concerns being raised. These topics included the wage decrease, union dues, reports of harassment and bullying by union representatives, and claims by the Teamsters that they should represent the ambassadors. As to the wage cut, Sanjay wrote that the rumor “is entirely false. Strive Ambassadors and Supervisors . . . are scheduled to receive a 5% annual wage increase. We are committed to providing the scheduled annual increases, effective September 1, 2023.” As to reports of harassment of ambassadors by representatives of the Union, Sanjay wrote:

Question: Some employees have reported visits to their homes and encountered harassment and bullying from union representatives at work. How will STRIVE address this?

Answer: At STRIVE, we are dedicated to fostering a workplace and community environment that prioritizes well-being, including the well-being of our employees....We do not endorse or tolerate any form of coercion, harassment, or bullying directed at our employees. If you feel harassed, threatened, or subject to inappropriate behavior, please inform us so that we can take appropriate action.

The second email was sent at 10:25 p.m. with the subject line “Concerns” (the Concerns email). In it, Sanjay discussed Bolanos’ threats against the company, his belief that Bolanos would not stay after the organizing campaign, his disapproval of Bolanos’ style of self-promotion, and his conjecture about Bolanos’ motivations. As to the company investigating reports of harassment of ambassadors, Sanjay wrote: “It is the union, in my opinion, that is placing imposters into your workplace and causing uncomfortable situations for some. If you experience harassment or intimidation, please report it to us and we will take appropriate action.” (GC Exh. 15.)

On June 9 and 10, the Regional office conducted the election in 21–RC–316782. The tally of ballots showed that, in a unit of approximately 113 employees, the Union lost by a vote of 65 to 30, with 3 challenged ballots.²³ On June 20, the Union filed 29 objections to the election.

²³ The following day, Sunday, June 11, Bolanos sent to Amit a cascade of texts that were threatening and personal in nature:

Be prepared to open your checkbook. I have proof you you interfered with a federal right. I’m dropping my case to you tomorrow. I’ve retained counsel. We’re challenging the election

Plus can’t wait to see your face when you see your transcript if captive meetings.

Plus I have your audio talking to new cohorts. I’m starting a class action. And Im personally suing Strive for 5 million dollars

You will spend at least 1 million in attorney fees. I have you exactly where I wanted.

After the Union withdrew 15 objections, the remaining ones were consolidated for hearing with the ULPs alleged in the complaint. (GC Exh. 1 (u).)

Two years later, on July 16, 2025, Metro informed Respondent that it was moving the Transit Ambassador Program in-house, a decision that ended Respondent's operation of the ambassador program. The transition was completed by August 31, 2025. (R. Exh. 8, Tr. 227–228.)

ANALYSIS

A. The May 4 Statements by Sanjay in the Conference Room

Complaint paragraphs 7(a)-(c) allege that Respondent, through Sanjay, violated Section 8(a)(1) on or about May 4, in the conference room at Union Station by making various coercive statements.

1. Allegation that Sanjay threatened employees with loss of access to management if they selected the Union as their bargaining representative (Par. 7(a))

Based on the testimony of Bolanos, Sanjay told the ambassadors that, “by us having a union representative, . . . any grievances that we would have would have to go through the Union first, and it was, again, a bureaucratic process, that we would lose that direct contact with our employer.”

At the time that Sanjay made this prediction in May 2023, the Board's view was as stated in *Tri-Cast, Inc.*, 274 NLRB 377 (1985), and its progeny: such employer statements merely explain that “the relationship that existed between employees and the employer will not be as before” and are thus “nothing more or less than permissible campaign conduct.” While the Board overruled *Tri-Cast* and adopted a new test for evaluating such predictions in *Siren Retail Corp.*, 373 NLRB No. 135, slip op. at 9–10 (2024),²⁴ it did so prospectively only. I therefore find that, under the *Tri-Cast* test, Sanjay's prediction was lawful campaign rhetoric.

Intimidating circumstances that put you and Daddy as a target.. You're going to have a barrage if statements coming out for ULP...look up the law frat boy.

You are looking at four different Unfair Labor Practice charges. Plus direct intimidation of the leading organizer. Federal labor law protects me. I've reached to the FBI, IRS, PPP Loans. Investigators for the NLRB. Have a great Sunday.

In addition to his messages to Amit, Bolanos threatened the Sangani family and Amit's girlfriend. He also telephoned Respondent's offices in San Diego and was hostile with the staff, threatened to make a disruption at Strive's offices, and threatened to cause a disruption outside of Amit's personal residence. These text and telephone messages, which were made at all hours of the day and night, continued from 2023 through the time of the ULP hearing. In turn, Amit never responded. Bolanos' conduct was left unexplained. (R. Exh. 1, Tr. 211–214, 283–285.)

²⁴ Under the *Siren Retail* test, “to be deemed lawful, employer predictions about the negative impacts of unionization on employees' ability to address issues individually with their employer ‘must be carefully phrased on the basis of

In urging a violation, the General Counsel contends that this prediction should instead be viewed as an “unlawful threat of loss of benefits.” But none of the decisions cited in his brief support finding a violation. *Station Casinos, LLC*, 358 NLRB 1556 (2012), is not valid authority, as it was a recess-Board decision invalidated by *NLRB v. Noel Canning*, 573 U.S. 513 (2014).
 5 See *XPO Logistics Freight, Inc.*, 2021 WL 2545228 at fn. 1 (2021). *Cemex Constr. Materials*, 372 NLRB No. 130 (2023), does not support finding a violation either; contrary to the General Counsel’s claim, the Board *dismissed* the loss of access allegation before it. See slip op. at 7 (“Because the judge’s finding of this violation is inconsistent with currently controlling law, we reverse that finding and dismiss the relevant complaint allegation”). Finally, while the Board in
 10 *Sysco Grand Rapids*, 367 NLRB No. 119 (2019), did find an unlawful threat of loss of benefits, the facts there are distinguishable. In *Sysco*, management said that the safety bonus program being discussed with employees “would be imperiled because the Union would have to become involved.” *Id.* at 25. In the instant case, by contrast, neither Sanjay nor Amit ever said or implied that the loss of access to management would impact job benefits. I therefore dismiss this
 15 allegation.

2. *Allegation that Sanjay made a statement of futility by saying that election of the Union would not result in better wages or benefits (Par. 7(b))*

Sanjay told the ambassadors that, since the contract with Metro established their wage rates, the ambassadors could not simply demand and receive higher wages; rather, Respondent
 20 would have to negotiate with Metro before modifying them. He said, “If we wanted anything different, we have to go to Metro because Metro is the contract determinant as far as what rates we provide. If it’s negotiated, that’s the rates we have to go by.”

Statements of futility are coercive because they send the message that the employees’ Section 7 activities will not result in improved terms and conditions. See, e.g., *M.D. Miller Trucking & Topsoil, Inc.*, 361 NLRB 1225, 1225 (2014) (employer statement that an employee
 25 would “get nowhere” by filing a grievance found to be a statement of futility because it “would be futile to file a grievance because the Respondent would make sure it went nowhere”); *North Star Steel Co.*, 347 NLRB 1364, 1365 (2006) (implied threat that election of the union would only result in reduced benefits a statement of futility). Sanjay’s statement did not amount to a
 30 statement of futility because he did not say that the ambassadors’ election of the Union would not or could not result in higher wages; he merely stated that there would need to be a process—renegotiation of contract terms—before this could happen. As such, Sanjay’s statement is distinguishable from the employer statement in *Trane Co.*, 137 NLRB 1506 (1962), relied on by
 35 the General Counsel. In that case, the employer’s campaign literature stated that election of the union would have no impact on wages. *Id.* at 1510. I therefore dismiss this allegation.

objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control.” 373 NLRB No. 135, slip op. at 2 (2024) (citing *Gissel Packing Co.*, 395 U.S. 575 (1969)).

3. *Allegation that Sanjay threatened employees with job loss if they selected the Union as their bargaining representative (Par. 7(c))*

Sanjay told the ambassadors: “the pilot was an experiment at the time, and that . . . our pilot could get cancelled early. . . ¶ he said that Metro might cancel the—the pilot program, and then we would obviously not—not have employment.” Sanjay admitted there were no indications that Metro would have cancelled the ambassador program if the Union were elected.

An employer may lawfully make predictions regarding the effects which it believes unionization will have on its business and employees, but in doing so, “the prediction must be carefully phrased on the basis of objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control.” *Gissel Packing Co.*, 395 U.S. 575, 618–619 (1969), citing *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 263, 274 fn. 20 (1965); see also, *National Propane Partners, L.P.*, 337 NLRB 1006, 1017 (2002). While an employer need not remain neutral during a union campaign and may ensure that employees are fully informed about their choice, its predictions about the effects of unionization beyond its control must have some objective basis. Absent that, the prediction amounts to an impermissible threat of retaliation based on misrepresentation and coercion, and thus loses the protection of the First Amendment. *Gissel* at 618–619, citing *NLRB v. River Togs, Inc.*, 382 F.2d 198, 202 (2d Cir. 1967).

In the instant case, Sanjay emphasized that the ambassador program was a pilot program, that Metro could cancel it, and that cancellation would result in the ambassadors losing their jobs. He made this prediction of dire consequences at a time when he lacked any indication from Metro that this was likely to happen or even reasonably could happen—it was nothing but a scare tactic. This statement was, therefore, a prediction not “carefully phrased on the basis of objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control.” *Gissel*, supra at 618–619.

Respondent conceded Sanjay’s comment but defends on the basis that he was just communicating the reality that Metro held the contractual right to cancel the program at any time for its “convenience.” As such, Sanjay’s words were simply a statement “rooted entirely in fact.” (R. Br. pp. 30–32.) This defense ignores that, when making this prediction, Respondent always paired it with reasons why management viewed the Union as bad for the employees, with the temporary nature of the ambassador program (emphasizing its status as a “pilot” program), and the impact contract termination would have on the ambassadors: termination of their jobs. Given this context, the coercive nature of the prediction was inescapable. I therefore find merit to complaint paragraph 7(c).

B. The May 29 Emails

Complaint paragraph 7(d) alleges that, on May 29, Respondent violated Section 8(a)(1) based on two emails from Sanjay to the ambassadors promising them a wage increase if they rejected the Union.

If an employer promises or grants benefits to employees during an organizing campaign, the Board will presume that it was intended to influence employees to vote against the union. *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964); *Yoshi's Japanese Restaurant & Jazz House*, 330 NLRB 1339, 1344 (2000). But that presumption applies to situations where an employer promises or grants a *new* benefit. If an employer merely reminds employees about an *existing* benefit to convince them that a union is not needed, that conduct is lawful. *Amazon.com Services LLC*, 374 NLRB No. 38, slip op. at 1 (2026) (“an employer may lawfully remind employees of existing benefits, so long as the employer does not communicate a threat that such benefits may be lost if employees choose the union”). That was precisely what happened here. Strive’s contract with Metro—which was executed in August 2022, months before the arrival of the Union—had a 5-percent wage increase in 2023 built into it. In both of his May 29 emails, Sanjay lawfully informed the ambassadors about this pre-existing benefit (for the legitimate purpose of quashing the false rumor about a wage cut). Moreover, neither email conditioned this wage increase on the employees rejecting the Union.

The General Counsel’s theory of a violation focuses solely on the fact that Respondent did not have a history of soliciting and promising benefits. But in doing so, he seeks to sidestep the distinction between offering a new benefit and mentioning an existing benefit. Even in the case the General Counsel relies on, *Imperial Eastman Corp.*, 139 NLRB 1255 (1962), the Board found it significant that the employer was offering new benefits. The Trial Examiner had dismissed the case after finding that no new benefits were promised, but the Board reversed and found an 8(a)(1) violation because the employer’s “efforts on these [home visits] to win the support of the employees consisted of promising certain benefits and advantages *which it had not theretofore held out to them.*” *Id.* at 1258–1259 (emphasis added). I am thus unpersuaded by the General Counsel’s argument and dismiss this allegation.

C. The June 6 Emails

Complaint paragraphs 7(e)-(h) allege that Respondent violated Section 8(a)(1) based on two emails sent by Sanjay to the ambassadors on June 6 that threatened discipline, promised wage increases, disparaged an employee, and threatened job loss all in connection with the Union.

1. *The allegation that Respondent threatened employees with discipline because of their support for the Union (Par. 7(e))*

The FAQ and the Concerns emails discussed harassment by union representatives, asked the ambassadors to report any such harassment or intimidation, and promised to “take appropriate action.” The General Counsel argues that these words threaten to discipline employees for “subjectively offensive activity” which objectively is protected Section 7 organizing activity. He cites to *Tawas Indus.*, 336 NLRB 318 (2001), for the proposition that the Board has “frequently found unlawful employers’ statements that employees who harass or pressure other employees in the course of union solicitations should be reported to management, who will discipline the offending individuals or otherwise take care of the problem.” (GC Br. pp. 60–61.) But this quoted language shows the flaw in the General Counsel’s argument: unlike

Tawas, Respondent’s promise to “take appropriate action” was directed towards union representatives, not towards Bolanos or other employees. I therefore dismiss this allegation.

5 2. *The allegation that Respondent promised employees wage increases if they rejected the Union (Par. 7(f))*

10 The FAQ email stated, in response to false rumors about a wage cut, that the ambassadors were, “scheduled to receive a 5% annual wage increase” and that Strive was “committed to providing the scheduled annual increases, effective September 1, 2023.” The Concerns email repeated that message: wages are “scheduled to increase by 5% each year starting on September 1, 2023.” As stated above, it was lawful for Respondent to inform employees about an existing benefit. *Amazon.com Services LLC*, supra. I therefore dismiss this allegation.

15 3. *The allegation that Respondent disparaged employees because of their support for the Union (Par 7(g))*

20 In the Concerns email, Sanjay accused Bolanos of many things, including spreading false information, making false accusations against management, offending people who oppose his views, likely leaving Strive after the election, posting racially offensive images on Facebook, and other misconduct. The General Counsel raised two arguments why this email unlawfully disparaged Bolanos. First, by holding Bolanos up for derision by his coworkers. Second, by sending the message to other ambassadors that, if they engaged in similar protected conduct, they would be treated the same. (GC Br. pp. 61–62.)

25 I find no merit to either argument. While the email was critical of Bolanos for conduct which appeared to touch on Section 7 activity, Sanjay’s statements contained neither threats nor promises. Section 8(c) of the Act ensures that “an employer’s free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the Board.” *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969). It gives employers the right to express their opinions about union matters, as long as those expressions contain no “threat of reprisal or force or promise of benefit.” *Progressive Electric*, 344 NLRB 426, 427 (2005). Employers may, therefore, criticize, disparage, or denigrate a union without violating Section 8(a)(1), provided that those comments contain no threat or otherwise interfere with Section 7 rights. See *Poly-America, Inc.*, 328 NLRB 667, 669 (1999), *affd. in part and revd. in part* 260 F.3d 465 (5th Cir. 2001)(citing *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617(1969)). Because 35 it contained no threat of reprisal, this criticism lawfully expressed Respondent’s disapproval of Bolanos. The General Counsel’s reliance on *Aldworth Co.*, 338 NLRB 137 (2002), is inapposite. In that case, the employer did threaten employees and drew a link between union activity and job loss; as the Board found, “By describing those individuals as having ‘one foot out the door,’ [the employer representative] was telling them that those prounion employees were about to lose their 40 jobs.” *Id.* at 141. Here, however, Sanjay’s criticisms of Bolanos would not reasonably cause employees to draw a connection between union activity and job loss. I dismiss this allegation because Sanjay’s comments were protected expressions of opinion under Section 8(c) and did not amount to unlawful disparagement.

4. *The allegation that Respondent threatened employees with job loss if they selected the Union (Par. 7(h))*

5 Both emails sent by Respondent to the ambassadors on June 6, just three days before the start of the election, contained implicit threats that Metro would cancel the pilot program if the Union won the election. The final paragraph of the FAQ email cautioned employees that, “Ultimately the future of the Pilot Ambassador Program is in your hands . . .” (GC Exh. 14.) By emphasizing that theirs was “pilot program” and telling employees that Strive’s “future” was in their hands, Respondent sent the message that the ambassador program was a temporary, 10 experimental program and that if they wanted the company to continue—which was necessary for continuation of their livelihoods—they should vote against the Union in the upcoming Board election. The Concerns email used even more foreboding language:

- “Consider what is best for you and your family in the long run.”
- 15 • “It’s important to understand that we are currently engaged in a Pilot Program with a predetermined timeframe.” (Emphasis in the original.)
- “make a well-informed decision for the long term when casting your vote on Friday and Saturday!”

20 This email reinforced the message that the ambassador program was temporary and subject to discontinuation, and that employees should vote against the Union if they wanted to continue to have jobs and support their families. It sent the chilling message that voting for the Union endangered the ambassadors’ jobs. See *Intermodal Bridge Transport*, 369 NLRB No. 37, slip op. at 19 (threat of job loss based on supervisor telling employee he was going to have an uphill battle taking on the company and then saying, “You have a family. What are you going to support them with?”) I therefore find merit to this allegation. 25

D. The May Statements by Amit

30 Complaint paragraphs 8(a)-(g) allege that Respondent, through Amit, violated Section 8(a)(1) on various dates in May by threatening employees, promising benefits and promotions, and interrogating and polling employees in connection with the Union.

1. *Allegation that Respondent, on May 7 or 15, unlawfully threatened employees with loss of access to management if they selected the Union (Par. 8(a))*

35 Brooks testified that Amit and Sanjay told the ambassadors at the meeting on or about May 15 in the fitness room that, if they unionized, they would lose direct access to management.²⁵ As discussed above, I find this protected campaign speech based on the precedent applicable at that time, *Tri-Cast, Inc.*, 274 NLRB 377 (1985), and progeny. I therefore dismiss this allegation.

²⁵ For the May 7 and 8 meetings, Bolanos did not testify as to any potential for loss of access to management. (Tr. 92–96.)

2. *Allegation that Respondent on May 8 promised employees massage chairs if they rejected the Union (Par. 8(b))*

During the May 8 meeting in the fitness room, Amit told the ambassadors that he was trying to “improve some things for us” and expressly offered them access to massage chairs “so that we can wind down . . . and decompress while we’re working.”²⁶

An employer violates Section 8(a)(1) by granting, announcing, or promising benefits during a union campaign to dissuade its employees from supporting the union. *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). The lawfulness of a promise of benefits in this context depends on the employer's motive, and “[t]he Board infers improper motive and interference with employees' Sec[ti]on 7 rights when an employer grants [or promises] benefits during an organizing campaign without showing a legitimate business reason.” *Vista del Sol Healthcare*, 363 NLRB 1193, 1193 fn. 2 (2016) (citing *Sisters’ Camelot*, 363 NLRB 162, 168 (2015), and *Pacific FM, Inc.*, 332 NLRB 771, 773 (2000)). In the instant case, Amit’s promise of access to massage chairs to enable the ambassadors to “decompress” after a hard day at work was an obvious attempt to sway the results of the election. While Respondent denies these facts, I have credited Brooks’ testimony that Amit made this promise. I therefore find merit to this allegation in regard to massage chairs. But for the alleged promises of wage increases and implementation of a weekly pay schedule, I find no merit. Management’s discussion about the 5-percent wage increase was a lawful reminder of an existing benefit, while the allegation about implementing a weekly pay schedule was not supported by any credible evidence.

3. *Allegation that Respondent offered Fabian Bolanos a “special job position” if he rejected the Union (Par. 8(c))*

While Bolanos claimed that, after the May 8 meeting, Amit offered him a “special position,” I did not credit his testimony. I therefore dismiss this allegation.

4. *Allegation that Respondent promised employees new wellness benefits if they rejected the Union (Par. 8(d))*

During the meeting in the fitness room on or about May 15, Amit and Sanjay promised employees wellness benefits but did not specify what those were. In the following weeks, Amit canvassed the ambassadors to find out what they wanted and then, in small group discussions, promised them access to massage chairs and food trucks.

The facts established a violation. Respondent offered these wellness benefits after the Union filed its petition, at least one employee had requested food trucks, and Respondent had no history of promising or granting such things. While Respondent asserts that this never happened, I credit Brooks’ testimony on this point. I therefore find that Respondent unlawfully promised the ambassadors wellness benefits to dissuade them from supporting the Union. *Sisters’ Camelot*, 363 NLRB 162, 168 (2015) (employer’s promise of benefits “in direct response to the

²⁶ I have credited this testimony by Bolanos based on corroboration by Brooks, who credibly testified that Amit promised access to massage chairs in late May/early June during small group discussions in the field.

canvassers' demands" provided "a strong basis for inferring that the Respondent intended to thwart the employees' organizing efforts"). I therefore find merit to this allegation.

5. *Allegation that Respondent threatened employees with job loss if they selected the Union (Par. 8(e))*

5 At the meeting on or about May 15 in the fitness room, Amit and Sanjay told the ambassadors that, "another reason why we should think twice about voting yes for a union was that if we did, there is a great potential for the pilot program to be cancelled by Metro, and then we would all lose our jobs." They said this even though there was no indication that Metro had any plans to cancel the program. This prediction, which linked voting for the Union with job
10 loss, was an obvious and impactful threat. *Wendt Corp.*, 371 NLRB No. 159, slip op. at 3–4 (2022) (threats made by high level managers that supporting a union would result in job loss are "not easily forgotten by employees"). I therefore find merit to this allegation.

6. *Allegation that Respondent interrogated and polled employees about their union support (Par. 8(f) and (g))*

15 At the meeting on or about May 15 in the fitness room, Amit and Sanjay asked employees to raise their hands if they supported the Union or if they supported the company. More than half of the ambassadors voted one way or the other.

Employees have a statutory right to keep their union sentiments confidential, and employers unlawfully pry into those sentiments by forcing them to make "an observable choice that demonstrates their support for or rejection of the union." *Allegheny Ludlum Corp.*, 333
20 NLRB 734, 740 (2001), *enfd.*, 301 F.3d 167 (3d Cir. 2002). Respondent unlawfully pried into the ambassadors' views by asking them to raise their hands to vote for or against the Union. Respondent thus engaged in both unlawful interrogation and polling. *Beverly California Corp.*,
25 326 NLRB 232, 238 (1998) (unlawful interrogation based on respondent asking employees to raise their hands and move to one side of the room if they supported management, thereby "requiring them to publicly assert their union sentiments"); *Perko's Inc.*, 236 NLRB 884, 896–
897 (1978) (by asking employees to raise their hands relating to employee contact with the union, the employer engaged in unlawful polling and interrogation). While Respondent denied that Sanjay and Amit did this, I credit Brooks' testimony that management asked the
30 ambassadors to raise their hands to vote for or against the Union. I therefore find merit to these allegations.

E. The May 9 Promulgation and Maintenance of Rules

Complaint paragraphs 9(a)-(c) allege that on May 9 Respondent violated Section 8(a)(3) and (1) by promulgating and maintaining two rules to discourage employees from joining and
35 assisting the Union or engaging in other protected concerted activities.

1. *The allegations that Respondent promulgated the Ambassador Time-Off Policy and the Ambassador Shift Adjustment Procedures on Humanity to discourage employees from joining or assisting the Union or engaging in other protected concerted activities.*

An employer violates Section 8(a)(1) if it promulgates facially neutral rules in response to union activity. *Lutheran Heritage Village—Livonia*, 343 NLRB 646, 646–647 (2004).²⁷ The General Counsel argues that Respondent unlawfully promulgated these two policies in response to the ambassadors’ organizing campaign, but there is no merit to that. The General Counsel’s theory relies on a finding that Respondent knew of the organizing in November 2022 or that Respondent did not implement the rules until May 9. Neither of those assertions are supported by the record. Based on the credited testimony and the documentary evidence, Respondent did not learn of the organizing campaign until 3:55 p.m. on April 25 when the Regional office emailed the representation petition. In contrast, Respondent began formulating its policies in November 2022 in response to severe absenteeism affecting its deployments and implemented the policies on April 25 at 1:04 p.m., more than three hours before receiving the petition. The General Counsel’s citation to *Riverside Cement Co.*, 286 NLRB 840 (1989), is inapposite since the employer there announced its new rule only after learning of the employees’ protected conduct. Moreover, the General Counsel’s claim that Respondent did not implement the rules until May 9 was unsupported by the record and was affirmatively disproved by the credited testimony and documentary evidence. While the General Counsel points to Respondent’s statements that it posted the policies on its electronic websites on May 9, that representation does not negate that Respondent also emailed the policies to the ambassadors on April 25. I therefore dismiss this 8(a)(1) and (3) allegation.²⁸

2. *The allegations that Respondent unlawfully maintained the time-off policy and the procedures policy.*

In *Stericycle, Inc.*, 372 NLRB No. 113 (2023), the Board adopted a revised standard for evaluating whether the maintenance of a facially neutral rule has a reasonable tendency to interfere with, restrain, or coerce employees who contemplate engaging in protected activity. In such instances, if the General Counsel demonstrates that an employee could reasonably interpret the rule to restrict or prohibit Section 7 activity, then they have carried their burden and the rule is presumptively unlawful. That would be so even if the employer did not intend for its rule to restrict Section 7 rights. However, an employer may rebut the presumption by proving that the rule advances a legitimate and substantial business interest, and that the employer is unable to advance that interest with a more narrowly tailored rule. *Id.* at slip op. at 9–10.

²⁷ The portion of *Lutheran Heritage* overruled by the Board in *Boeing Co.*, 365 NLRB 1494, 1495 (2017), pertained to an employer’s maintenance of rules which employees would reasonably construe to prohibit Sec. 7 activity (prong 1), not to rules promulgated in response to union activity (prong 2) or rules applied to restrict the exercise of Sec. 7 rights (prong 3).

²⁸ While the complaint contains no allegation that Respondent unlawfully applied the policies to restrict employees’ Sec. 7 activity, the General Counsel makes this argument in his brief. He contends that Respondent “enforced [the policies] to limit Bolanos’ ability to advocate for the Union. . . . Specifically, the record shows that Respondent did this by using the new Shift Adjustment Procedures that require all shift changes to be approved by the company’s scheduler.” (GC Br. p. 68.) However, the General Counsel did not explain how requiring centralized approval for shift changes restricted Bolanos’ Sec. 7 rights. Nor is any link between procedures for scheduling work shifts and the exercise of statutory rights evident to me. Therefore, I would dismiss this allegation, too.

Based on my review of the policies, there is no language in either from which an employee could reasonably discern a coercive meaning—even when viewed from the viewpoint of employees subject to the rule and economically dependent on the employer. Both rules are wholly neutral in content. The time-off policy covers topics such as how and when to inform management about absences and defines terms such as excused/unexcused absences, early departures, no calls/no shows, and holidays. It also details how employees accrue policy violations. The procedures policy simply explains how to request leave, release shifts, and pick up shifts in the Humanity software program operated by a third-party.

Based on the foregoing, I dismiss the allegations that these policies were maintained in violation of either Section 8(a)(1) or (3).

IV. THE UNION’S OBJECTIONS TO CONDUCT AFFECTING
THE RESULTS OF THE ELECTION

On April 25, the Union filed its representation petition in Case 21–RC–319690 seeking to become the collective-bargaining representative of a unit of ambassadors and supervisors. The election took place on June 9 and 10. The tally of ballots showed the following results:

Approximate number of eligible voters	113
Number of void ballots	0
Number of ballots cast for the Petitioner	30
Number of ballots cast against labor organization	65
Number of valid votes counted	95
Number of challenged ballots	3
Number of valid votes counted plus challenged ballots	98

The challenged ballots were not sufficient in number to affect the results of the election. Therefore, a majority of the valid votes were not cast for Petitioner.

On June 20, the Union filed timely objections to conduct affecting the results of the election and its supporting offer of proof. On January 2, 2025, the Regional Director issued his order approving withdrawal of certain objections, report on remaining objections, order consolidating cases, and notice of hearing. He ordered the consolidation of the representation and unfair labor practice cases for the purpose of hearing, ruling, and decision by an administrative law judge and, if necessary, the Board.

In this decision, I have found that the Respondent violated Section 8(a)(1) by threatening employees with job loss, promising benefits, and interrogating and polling employees. These violations, and other findings of fact, conform to Objections 4, 5, 16, and 22. I therefore sustain those objections. Based on my conclusions that the remaining unfair labor practices were not established, I dismiss the corresponding objections.

"[I]t is the Board's usual policy to direct a new election whenever an unfair labor practice occurs during the critical period since '[c]onduct violative of Section 8(a)(1) is, a fortiori,

conduct which interferes with the exercise of a free and untrammelled choice in an election." *Clark Equipment Co.*, 278 NLRB 498, 505 (1986), quoting *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786 (1962). The critical period in this case ran from April 25, 2023, the date the Union filed the petition, to June 9, 2023, the 1st day of the election. Within that period, the Respondent violated Section 8(a)(1) by threatening, interrogating, polling, and promising benefits to employees. That conduct was sufficient to warrant a new election. Accordingly, I recommend that the election be set aside and that a new election be held. *Onsite News*, 359 NLRB 797, 797 fn. 1 (2013); *La-Z-Boy Midwest*, 241 NLRB 334, 335 (1979).

CONCLUSIONS OF LAW

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

2. Amalgamated Transit Union Local 1756 is a labor organization within the meaning of Section 2(5) of the Act.

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

a. In May and June 2023, threatening its employees with job loss if they selected the Union as their collective-bargaining representative.

b. In May 2023, promising its employees wellness benefits, such as access to massage chairs and food trucks, to dissuade them from supporting the Union.

c. On or about May 15, 2023, polling and interrogating its employees about their support for the Union.

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

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

6. By the conduct described in Union Objections 4, 5, 16, and 22, which occurred during the critical period, Respondent interfered with the holding of a fair election and warrants setting aside the election in Case 21–RC–316782 that was conducted on June 9–10, 2023.

REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁹

²⁹ 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.

ORDER

The Respondent, Strive Well-Being, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

5 (a) Threatening employees with job loss if they selected Amalgamated Transit Union Local 1756 as their collective-bargaining representative.

(b) Promising employees wellness benefits, such as access to massage chairs and food trucks, to dissuade them from supporting the Union.

10 (c) Polling or interrogating its employees about their support for the Union.

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

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

15

(a) Within 14 days after service by the Region, post at its facilities in San Diego and Los Angeles, California, copies of the attached notice marked "Appendix." Copies of the notice, on a form provided by the Regional Director for Region 21, 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 Respondent shall distribute the notice 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 notice is not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its facility, 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 either of its facilities at any time since May 4, 2023.

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

35 IT IS FURTHER ORDERED that the election held on June 9–10, 2023, is set aside, and Case 21–RC–316782 is severed and remanded to the Regional Director for Region 21 to direct a second election whenever the Regional Director shall deem appropriate.

Dated, Washington, D.C. April 22, 2026

A handwritten signature in black ink, appearing to read "B. Gee", is written over a horizontal line. A vertical line is positioned at the right end of the horizontal line.

Brian D. Gee
Administrative Law Judge

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT threaten employees with job loss if they select the Amalgamated Transit Union Local 1756 (the Union) or any other labor organization as their bargaining representative.

WE WILL NOT promise employees wellness benefits, such as access to massage chairs and food trucks, to dissuade them from supporting the Union.

WE WILL NOT interrogate or poll employees about their support for the Union.

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

STRIVE WELL-BEING, INC.

(Employer)

Dated _____

By _____

(Representative)

(Title)

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

Regional Office set forth below. You may also obtain information from the Board's website:
www.nlr.gov.

312 N. Spring Street, 10th Floor
Los Angeles, California 90012
(213) 894-5200, Hours: 8:30 a.m. to 5:00 p.m. PT

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/21-CA-318148> 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 (213) 894-5200