

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

A-V SERVICES, INC.

and

Case Nos. 22-CA-332620
22-RC-320562

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES LOCAL 59, AFL-CIO

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DECISION

Statement of the Case

LAUREN ESPOSITO, Administrative Law Judge. Based upon a charge filed on December 22, 2023 by International Alliance of Theatrical Stage Employees Local 59 (Local 59 or the Union), the Regional Director, Region 22, issued an Amended Complaint and Notice of Hearing on June 11, 2025. The Complaint alleges that Respondent A-V Services, Inc. (A-V or Respondent) violated Sections 8(a)(1) and (3) of the Act when it issued written warnings to Eddie Saintil, reduced employee hours at its Jersey City location by ceasing to assign employees there work at other locations, and increased the salaries of employees at all locations other than Jersey City, in retaliation for the Union support and activities of Saintil and the other Jersey City employees. The Complaint further alleges that A-V violated Section 8(a)(1) of the Act by the following conduct: (i) threatening the Jersey City employees with the loss of income by informing them that they would no longer be assigned to work at other locations; (ii) increasing its scrutiny and monitoring of employee hours at the Jersey City location; and (iii) expressly or impliedly threatening to withhold promotional opportunities from the Jersey City employees if Local 59 prevailed in an impending representation election, and/or promising increased promotional opportunity if the Union lost. A-V filed an Answer on January 11, 2025, denying the Complaint's material allegations.

Based upon a petition for a representation election filed by Local 59 on June 23, 2023, Region 22 conducted an election on July 21, 2023 to determine whether a unit of A-V's employees wished to be represented for the purposes of collective bargaining by Local 59. G.C. Ex. 2(b); Tr. 18-19. On July 31, 2023, Local 59 filed Objections to Conduct Affecting the Results of the Election. After issues involving a challenged ballot were resolved and all ballots were opened and counted, on May 9, 2025 a Revised Tally of Ballots was issued showing that the majority of the ballots were not cast for Local 59. G.C. Ex. 2(h), 3; R.S. Ex. 1; Tr. 21-22.

On June 13, 2025, the Regional Director, Region 22, issued a Report on Objections, Order Consolidating Cases, and Notice of Consolidated Hearing, finding that based upon the offer of proof provided by Local 59, several of its Objections could provide grounds for overturning the election. The Regional Director's Order consolidated those Objections with the allegations in Case No. 22-CA-332620. G.C. Ex. 2(i).

This case was tried before me at 20 Washington Place, 5th Floor, Newark, New Jersey, on September 10, 11, and 12, 2025. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for the General Counsel (General Counsel), A-V Services, Inc. and the Union, I make the following

Findings of Fact

I. Jurisdiction

A-V Services, Inc., a New York corporation with a principal place of business at 99 Fairfield Road, Fairfield, New Jersey, has at all material times been engaged in the business of providing audio-visual services to commercial customers throughout the United States, including locations at 575 Washington Boulevard (Floor 3), 545 Washington Boulevard, and 480 Washington Boulevard, in Jersey City, New Jersey. A-V admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

A-V admits, and I find, that Local 59 is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. *A-V Services, Inc.'s Organization and Services Provided to JP Morgan Chase*

A-V is a national audiovisual technology provider. Tr. 327. A-V designs and installs multimedia technology for corporate clients throughout the United States, and provides the staff necessary to operate, service and support its technology and equipment. Tr. 327-328.

In the New York City area, A-V operates out of multiple locations in Manhattan, Brooklyn, and Jersey City. Tr. 207. This case involves employees at A-V facilities in Jersey City located on the premises of A-V's client JP Morgan Chase (JP Morgan), who provide audiovisual services in connection with JP Morgan's business activities. Tr. 50-51, 283. A-V's audiovisual technicians at the Jersey City facilities are responsible for the operation and maintenance of audio and video equipment such as microphones, cameras, and videoconferencing equipment, and work with JP Morgan personnel to conduct event broadcasts and corporate meetings. Tr. 50-51, 133-134, 206, 280-282, 533-534.

Ralph Capria is A-V's Chief Executive Officer, and has been the Chair of its Board of Directors for eight years. Tr. 327. Michael Hagadorn is A-V's account executive responsible for the company's relationship with JP Morgan throughout the United States, including ensuring consistent service and addressing any difficulties which arise. Tr. 361-363, 365-367. John

Concepcion, who reports to Hagadorn, manages all of A-V's on-site managers in the New York City area. Tr. 51, 215, 269, 330-331, 365, 486-487. Zachary Coddington, who reports to Concepcion, is A-V's on-site manager at the Jersey City locations which are the subject of the Complaint's allegations, directly supervising the audiovisual technicians who were eligible to vote in the representation election. Tr. 51, 60, 91, 134, 206, 486-487, 508-509.

On his direct case, General Counsel called as witnesses Greg Hancox, the President of Local 59, as well as Patrick Hunter and Michael Cozine, both employed by A-V as audiovisual technicians in Jersey City when the hearing took place. Tr. 31-32, 49-50, 206-207. Former A-V technician Eddy Saintil also testified for General Counsel. Tr. 133-134. A-V called as witnesses CEO Ralph Capria, account executive Michael Hagadorn, and Jersey City on-site supervisor Zachary Coddington. Tr. 327, 361-363, 508-509.

B. Local 59's Organizing Campaign and the Representation Election

Patrick Hunter testified that he initially contacted Local 59 in April 2023 to discuss the Union's representation of A-V's audiovisual technicians at the Jersey City location. Tr. 52. Hunter met with Local 59's President, Greg Hancox, and the Union's business agent, Richard Hancox, around April 4, 2023. Tr. 33. Hunter and the Hancoxes discussed the potential impact of union representation and the process for recognition or certification of the Union as collective bargaining representative. Tr. 33-35, 52-53. At this meeting, Hunter filled out and signed a collective bargaining authorization card for Local 59. Tr. 34-35, 53-54; G.C. Ex. 4. Hancox provided Hunter with additional authorization cards, and Hunter distributed cards to technicians William Scott, Michael Cozine, and Eddy Saintil, who completed and signed them in May 2023. Tr. 37-38, 54-56, 136-137, 212-213; G.C. Exs. 5, 6, 7. Hancox met again with Hunter and Cozine in April or May 2023. Tr. 37, 211-212.

On May 30, 2023, Local 59's attorney, Sanford R. Oxfeld, Esq., sent a letter to A-V CEO Ralph Capria, informing Capria that Local 59 had obtained collective bargaining authorization cards from "well over a majority" of the technicians at A-V's Jersey City location. Tr. 348; G.C. Ex. 8. Oxfeld asked whether A-V would voluntarily recognize the Union and begin collective bargaining negotiations, and offered to prove Local 59's majority status before a mutually-selected arbitrator or mediator. G.C. Ex. 8. Capria responded by e-mail dated June 8, 2023, asking that the Union "clarify" which employees it sought to represent by providing the addresses of the work locations and the job classifications of the employees involved. Tr. 41; G.C. Ex. 9. Capria testified that A-V declined to recognize Local 59 in response to Oxfeld's letter. Tr. 331-332. Capria stated that he relied upon the advice of counsel in declining to recognize the Union, and would have been willing to recognize Local 59 if it had established its majority status. Tr. 350-352. However, A-V did not pursue Local 59's offer in its May 30, 2023 letter to demonstrate its majority status in a proceeding before a neutral. Tr. 351.

Cozine testified that on or around June 7, 2023, Coddington was called to a meeting during the workday. Tr. 213-214. Cozine testified that when Coddington returned from this meeting, he told the technicians, "you guys had a union drive, like you organized and didn't let me know." Tr. 213-214. Cozine testified that the technicians who were present acknowledged

that they had organized for union representation. Tr. 214. Coddington did not specifically address these events during his testimony.

On June 23, 2023, Local 59 filed a petition for a representation election in Case No. 22-RC-320562, in a bargaining unit of audiovisual technicians employed at A-V's Jersey City locations.¹ Jt. Ex. 1. On July 12, 2023, the parties entered into a Stipulated Election Agreement for an election to be conducted on July 21, 2023, with respect to the employees in the following appropriate bargaining unit:

INCLUDED: All full-time Audio-Visual Technicians employed by the Employer at its 575 Washington Boulevard, Floor 3; 545 Washington Boulevard; and 480 Washington Boulevard, Jersey City, New Jersey locations.

EXCLUDED: All other employees, including office clerical employees and guards, and professional employees and supervisors as defined in the Act.

Jt. Ex. 2. Pursuant to the terms of the Stipulated Election Agreement, A-V provided Local 59 with a voter list consisting of six eligible employees – Alberto Arias, Garrett Kruse, William Scott, Michael Cozine, Eddy Saintil, and Patrick Hunter. Jt. Exs. 2, 3.

On July 17 or 18, 2023, A-V conducted a meeting for the technicians on the 3rd Floor of 575 Washington Boulevard. Tr. 101-102, 220. Hunter and Cozine testified that this meeting was run by Hagadorn and Michael Laquidara, A-V's Vice President of Business Operations. Tr. 63-64, 219-220. Hunter testified that he had never met Laquidara in person prior to that time. Tr. 64, 102. All of the technicians were present, as was site manager Coddington. Tr. 63, 102. During the meeting, Hagadorn and Laquidara gave a PowerPoint presentation, and allowed the technicians to ask questions. Tr. 103-104, 220; R.S. Ex. 3. Hunter testified that Laquidara and Hagadorn communicated that the Union election "was a really big decision" which "could affect all of our lives and jobs." Tr. 104. Hagadorn stated that there were "no guarantees in union negotiations," and that the technicians' compensation and benefits could end up higher or lower than what currently existed. Tr. 104. Hagadorn or Laquidara stated that A-V was "just a middleman in the operation" with "no say" in the technicians' terms and conditions of employment or the scheduling of negotiations, and that the Union "would have to deal with JP Morgan Chase when negotiating the contract," specifically JP Morgan's attorneys, who would determine the pace of negotiations. Tr. 104-105, 106-107, 122-123, 220-221, 242. In response to a question from Hunter, Hagadorn told the technicians at the meeting that JP Morgan would be a party to any collective bargaining agreement reached with Local 59.² Tr. 107. Hagadorn also told the technicians that they "would not be able to vote on a tentative agreement" if one was reached, as the technicians would have ceded authority to Local 59. Tr. 105, 129.

¹ A-V has collective bargaining agreements with Local 1, IATSE, covering employees at 383 and 390 Madison Avenue and at 270 and 277 Park Avenue in Manhattan. Tr. 329-330, 348-349, 350, 394. Those locations are not involved in this proceeding.

² Hagadorn later retracted this assertion during a separate conversation with Hunter in the control room later that day. Tr. 107-108, 131.

On July 21, 2023, an election was conducted pursuant to the terms of the Stipulated Election Agreement. The Tally of Ballots showed three votes for Local 59, two votes against the Union, and one challenged ballot, that of Garrett Kruse. Jt. Ex. 4. On July 31, 2023, Local 59 filed Objections to the Election, and on August 1, 2023, the Union filed materials in support of its challenge to Kruse's ballot. G.C. Ex. 1(i), 2.

On the day of the election, Hagadorn spoke to Cozine privately at the 575 Washington Boulevard location. Cozine testified that on the morning of July 21, 2023, an hour or two before the polls opened, he was working in a conference room when Hagadorn pulled him aside and told him that he wanted to have a conversation. Tr. 229-230, 237. Hagadorn led Cozine to a storage room, where they spoke. Tr. 233. Cozine recorded their conversation, and the recording and a transcript were entered into evidence as General Counsel's Exhibits 10 and 11. Tr. 229-233, 323-324. Hagadorn began the conversation by mentioning that although Cozine had already had his yearly performance review, he wanted to know whether anyone from management had discussed Cozine's interest in progressing within the company by, for example, moving into commissioning³ or event production. Tr. 231-232; G.C. Ex. 10, p. 1, Ex. 11 (0:15-1:10). Cozine told Hagadorn that commissioning work was most appealing to him as an eventual career path, but until then he was interested in spending some time working as lead technician at the Jersey City location.⁴ G.C. Ex. 10, p. 1, Ex. 11 (1:12-1:32). Cozine mentioned that he had shadowed Concepcion as an event producer once, but that position did not appeal to him as much. G.C. Ex. 10, p. 1, Ex. 11 (1:38-2:22); see Tr. 269-271, 300-301. Hagadorn then asked Cozine, "do you find yourself wanting to be in a leadership role?" with respect to commissioning. G.C. Ex. 10, p. 2, Ex. 11 (2:24-2:40). Hagadorn asked whether Cozine had passed his CTS examination yet, and when Cozine said he had not taken the test, Hagadorn said that, "If you wanted to do the commissioning stuff, we pay for your training for some of those things."⁵ G.C. Ex. 10, p. 2, Ex. 11 (2:47-2:52). Hagadorn proceeded to tell Cozine that he had spoken to other A-V employees, including Coddington, regarding Cozine's aspirations within the company, but had not been able to discern any sense of Cozine's desired trajectory. G.C. Ex. 10, p. 2, Ex. 11 (2:54-3:18). Cozine responded that when management raised these issues in the past, he had asked about the compensation for positions in commissioning and/or event production. G.C. Ex. 10, p. 2, Ex. 11 (3:19-3:40). Hagadorn responded, "You're talking to the one person...that...handles all that," "I'm the one that controls all of that and can make those things happen." G.C. Ex. 10, p. 2, Ex. 11 (3:41-3:54). Hagadorn stated that, "whatever it is that...in terms of job or like if you're looking to do more, yeah, we can definitely have that conversation. That's not a problem." G.C. Ex. 10, p. 2, Ex. 11 (3:54-4:03). Hagadorn reiterated, "I could definitely work all that stuff out if we wanted to, to go that way...that's why

³ Hagadorn testified that commissioning involves testing newly deployed or installed technology to determine whether it is functioning properly. Tr. 412-413, 458. A-V maintains a team of employees that performs commissioning work at JP Morgan facilities throughout the country. Tr. 411-412.

⁴ Hagadorn testified that lead technicians act as site managers when a regular site manager is absent, coordinate among technicians at the site, and provide training. Tr. 411.

⁵ CTS refers to Certified Technology Specialist, a certification awarded by AVIXA, an organization which evaluates the proficiency of audiovisual technicians. Tr. 293-294. Candidates for the CTS certification must complete coursework and pass an examination designed to assess their knowledge of the course materials and practical experience. Tr. 294. At the time of the hearing, Cozine had obtained his CTS; A-V had paid his tuition for the course, as well as the fees for the CTS examination. Tr. 294-295.

I'm just trying to understand like what you want to do and like all that kind of stuff." G.C. Ex. 10, p. 2, Ex. 11 (4:29-4:42). The conversation then proceeded as follows:

5 Hagadorn: ...so what do you wanna do ultimately? You know, it's not event production, it's maybe commissioning, maybe leadership. Like do you plan on being here long-term?

Cozine: Probably, yeah...

10 Hagadorn: Probably?

Cozine: I do. I do want to be here. I plan on being here at least.

15 Hagadorn: Yeah.

Cozine: Maybe like. Alright, let's just say for the foreseeable future, I. I don't have any plans.

20 Hagadorn: Let me put this in the best way possible. Um. I want you to feel free that you can come to me with any questions or concerns at any time. Alright?

Cozine: Mmhmm

25 Hagadorn: Always. No problem. Open door policy.

Cozine: Right

30 Hagadorn: But if things were to change around here, it's all the same. There's no. There's no movement.

Cozine: Right. I understand that.

35 Hagadorn: You have to understand that. So and the same thing I always tell anyone in, in, in life and in their career is like, don't. Let me put this the best way possible. You have to worry about what's best for you and not be worried about what everyone thinks is, best for you, if that makes sense. You know what's good for you and you know what you want to do, but I'm just letting you know that if you're here long term and things go a different way. I don't know, like it's. There's going to be a very, it's going to be a very different place.

40 G.C. Ex. 10, p. 2, Ex. 11 (4:44-6:21). Hagadorn then referred to two A-V employees – Rodney Walsh and Callen – who had been technicians in Brooklyn but were promoted to more nationally-based event producer and commissioning positions, respectively. G.C. Ex. 10, p. 2, Ex. 11 (6:21-6:52); Tr. 246. Hagadorn testified that Callen had moved from a position in
45 California to Brooklyn, into a “role there that I was able to provide, essentially.” Tr. 453-454. After he confirmed that Cozine had spoken to Walsh and Callen, Hagadorn stated, “I keep my

word with stuff and in this world and especially in this environment, it's a very, very difficult thing to do...So if I'm telling you something, I mean it." G.C. Ex. 10, p. 2, Ex. 11 (6:52-7:08). Hagadorn ended the conversation by telling Cozine, "Like I said, open door whenever you need something, let me know." G.C. Ex. 10, p. 2, Ex. 11 (7:12-7:14).

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Hagadorn testified that prior to this conversation with Cozine, he had discussed Cozine's work performance with Eric from JP Morgan, as well as Callen and A-V employee Topher, who also worked in commissioning in Brooklyn. Tr. 454-456. Hagadorn had also discussed Cozine's performance, possible promotion and future in the company with Coddington.⁶ Tr. 456.

10 Hagadorn testified that "Probably at some point" he had discussed Cozine's career opportunities with Concepcion as well. Tr. 459-460. Hagadorn testified that he chose July 21, 2023, the day of the election, to speak with Cozine because, "It's just a review," or alternatively a "recap" of Cozine's performance review. Tr. 459; see also Tr. 484. Hagadorn also testified that he "was made aware" that he needed to discuss career opportunities with Cozine "Probably a couple
15 months...before" their conversation. Tr. 485-486.

On April 25, 2025, the Regional Director, Region 22, approved a Stipulation, Waiver, and Agreement between A-V and Local 59 to open and count Kruse's ballot. Jt. Ex. 5; see also R.S. 1. A Revised Tally of Ballots prepared on May 9, 2025 showed three votes for Local 59
20 and three against, with no challenged ballots remaining, so that the Union did not prevail in the election. Jt. Ex. 6.

On June 13, 2025, the Regional Director, Region 22, issued a Report on Objections, Order Consolidating Cases, and Notice of Consolidated Hearing, finding that several of Local
25 59's Objections could provide grounds for overturning the election, and consolidating the hearing with respect to those Objections with Case No. 22-CA-332620. G.C. Ex. 2(i).

C. Evidence Pertaining to Alleged Changes in Working Conditions

30 As discussed above, the A-V audiovisual technicians in Jersey City generally work out of the 575 Washington Boulevard location. Coddington and the technicians work out of a control room on the third floor of the building, from which they operate the equipment necessary for the events taking place in JP Morgan's multipurpose rooms and other event spaces. Tr. 60, 510.

35 The volume of work at A-V's Jersey City locations generally fluctuates during the year, based upon the number and nature of the events being conducted by JP Morgan. Cozine testified that as a general matter, January is not a busy month, and the technicians are encouraged to take paid time off during that period. Tr. 273-274. February and March are somewhat busier, but the volume of work increases substantially beginning in April, because new interns and employees
40 arrive at JP Morgan during that time. Tr. 274. The workload remains significant through July, due to trainings JP Morgan typically conducts during that period. Tr. 274. August and early September are relatively slow, whereas mid-September through the third week of December are quite busy. Tr. 274. Hunter similarly testified that the volume of work is usually particularly heavy in the fall, and recedes after the holidays, with the summer months relatively slow. Tr. 78-

⁶ Hagadorn testified that he did not have similar discussions regarding other A-V technicians at the time, but that Cozine had come to his attention for reasons he did not elaborate. Tr. 456-457.

79. Hagadorn testified as well that January through March are slower months, with the volume of work increasing in April through July, receding again in August, and then becoming significant in September through the end of the year. Tr. 440-441.

5 1. Assignment of A-V Technicians in Jersey City to Work at Other Locations

The A-V technicians and Hagadorn testified that prior to the spring of 2023, employees primarily assigned to either the Jersey City or the Brooklyn location were occasionally sent to another location to assist. Technicians primarily assigned to Jersey City or Brooklyn were typically sent to work at other locations when the volume of work there was particularly high. Tr. 69, 144, 186, 209; see also Tr. 398-399. Technicians were also assigned to work at another location during power events, which occur when electrical work or other issues require shutting down the power for an entire building. Tr. 208, 240-241; see also Tr. 394, 520-521. This requires that A-V manually “power down” all of its own equipment in the building in a specific sequence, to protect the equipment from potentially damaging power surges. Tr. 208, 394-395, 521. Typically, A-V employees would “power down” all of the company’s equipment on the Friday before a power event, and return to the building on Sunday to “power up” the equipment, test it, and report on its functioning. Tr. 208, 240, 395, 521. According to Cozine, the “power up” process took anywhere from four to eight hours. Tr. 208. Cozine testified that he assisted with power events in Brooklyn once or twice each year, and that Brooklyn technicians worked power events in Jersey City. Tr. 209, 241. Hunter similarly testified that most of A-V’s full-time technicians in Brooklyn reported to Jersey City to assist with power events. Tr. 58. Hunter testified that Jersey City technicians were likewise sent to Brooklyn and other A-V locations in such circumstances. Tr. 58. Cozine testified that between incidences of high work volume and power events, he worked at A-V’s Brooklyn location four or five times each month. Tr. 208. Saintil also testified that he was sent to A-V’s Brooklyn location on three or four occasions, and that technicians from Brooklyn were assigned to work in Jersey City. Tr. 135, 143, 144.

Hagadorn testified that Concepcion and the site managers determined when it was necessary to assign technicians from one location to work at another due to the volume of work and/or power events. Tr. 398-399. Coddington, however, testified that he was never directed to assign technicians working at the Jersey City location to Brooklyn, and vice versa, and that he made such assignments in conjunction with the onsite supervisor in Brooklyn, without Concepcion’s involvement. Tr. 519-520.

As discussed above, on May 30, 2023, Local 59’s attorney wrote to Capria, asserting that Local 59 had obtained collective bargaining authorization cards from “well over a majority” of the Jersey City techs, and Capria responded by e-mail dated June 8, 2023. G.C. Exs. 8, 9. Hunter testified that during the week of June 6, 2023, in the control room at 575 Washington Boulevard, Coddington told the technicians present that they “would no longer be allowed to work in Brooklyn and that the Brooklyn technicians would no longer be allowed to perform work in Jersey City.” Tr. 57, 96-97. Hunter stated that Coddington said that “because of the Union situation in Jersey City, there would be no cross-pollination between [the] Brooklyn Site and the Jersey City site and vice versa.” Tr. 130-131; see also Tr. 57-58, 96. Saintil also testified that Coddington stated after the technicians signed union authorization cards, in June or July 2023, that the Jersey City technicians “are no longer allowed to go to Brooklyn locations

and Brooklyn technicians can't come over to the Jersey City locations." Tr. 144. Cozine testified that during the first week of June 2023, in the control room, Coddington told all of the Jersey City technicians "on a particularly busy day," that pursuant to "a directive from his management...Jersey City employees would no longer be going to Brooklyn and vice versa."

5 Tr. 217-218, 275-276. Cozine testified that Coddington termed this decision "a brash, knee-jerk reaction from management." Tr. 217, 290. Cozine further testified that during later conversations in June or July, Coddington stated that the Jersey City and Brooklyn technicians were not being assigned to other locations due to the Jersey City technicians' "unionization efforts and letter for recognition." Tr. 242, 275-277.

10 The A-V technicians testified that following Coddington's remarks they were not sent from Jersey City to work at other A-V locations, nor were the Brooklyn technicians assigned to work in Jersey City. Cozine testified that the Jersey City technicians were not assigned to work at a power-down event in Brooklyn in July of 2023. Tr. 266-267. Saintil also recalled that the
 15 Brooklyn power-down event took place in the summer of 2023, and testified that none of the Jersey City technicians were sent to Brooklyn to assist.⁷ Tr. 185-186. Coddington confirmed that there was a power-down event in Brooklyn in July 2023; in fact, Coddington stated that because of unresolved issues with the HVAC system, the shut-down of the entire building continued into the Monday after the power-down event began. Tr. 521-523. Coddington
 20 testified that "people from [A-V's] remediation team," some of whom had worked as technicians at the Brooklyn location, attended in order to assist. Tr. 522-523. Cozine testified that Coddington told the technicians that they ordinarily would have worked at the Brooklyn power-down event, but because of the directive he had received prohibiting the Jersey City technicians from "collaborating" with Brooklyn, they would not be assigned to do so. Tr. 267, 300-301.

25 Coddington denied telling "any of the technicians in Jersey City" that "they weren't allowed to work in Brooklyn." Tr. 524. Coddington testified that the Jersey City technicians had not been assigned to assist with power-down events in Brooklyn, and vice versa, because Jersey City was "such a small site...compared to the rest of the metro region." Tr. 548-549.
 30 Coddington testified that since the summer of 2023, event volume had not necessitated the assignment of Brooklyn technicians to work in Jersey City, because the Jersey City location was relatively quiet, because he himself was capable of working as a technician in Jersey City when necessary, and because he was able to obtain additional technical staff from a third-party contractor, Michael Andrews Audiovisual Services.⁸ Tr. 513-515.

35 2. Reduction in Overtime

40 The A-V technicians also testified that around the time of the representation election in July 2023 their overtime hours were reduced. Hunter testified that Coddington repeatedly told the technicians during discussions regarding the Union that "your hours are going to get cut if you get the Union in here." Tr. 109-110. Coddington testified that during one of the discussions

⁷ Hunter testified that the Jersey City technicians were not assigned to work a power-down event in Brooklyn in 2023, but could not recall whether the event took place before or after Local 59 made its request for recognition on May 30. Tr. 88-89.

⁸ Hagadorn testified that JP Morgan selected Michael Andrews Audiovisual Services as its preferred third-party contractor for additional audiovisual staff in the New York City area. Tr. 380-381.

in the control room regarding the Union, a technician stated that the technicians in Manhattan covered by the collective bargaining agreement with Local 1, IATSE, were only guaranteed 28 hours of work per week, whereas the technicians in Jersey City “have to work 40 hours a week,” “since they’re non-union.” Tr. 516-516; see also Tr. 532-533. Coddington stated that he then
 5 conveyed to the technicians that “depending on if this goes through, depending on contract negotiations...anything’s on the table...hours can...go down to 28 hours in Jersey City...depending on, obviously, contract negotiations.” Tr. 516-517. Coddington generally denied telling the technicians that “overtime was going to be limited because they had undertaken a unionization effort.” Tr. 524. Cozine testified that Coddington or Concepcion
 10 stated that they needed to begin reporting unscheduled overtime caused by events which exceed scheduled time or extra work required to resolve equipment malfunctions. Tr. 271-272. According to Cozine, Coddington stated that the technicians would have to submit evidence that the overtime had occurred and was necessary by entering the relevant information into an online form. Tr. 272.

15 In addition, Hunter testified that beginning around the time of the election his schedule was altered, so that if he was assigned to work more than eight hours per day early in a particular week, his shifts on Thursday and Friday were reduced to only four or five hours, to limit his total weekly hours to 40. Tr. 59, 72-73, 84. Cozine testified that his schedule was also modified to
 20 provide for fewer hours later in the week when necessary to limit his total weekly work time to 40 hours, despite the typically higher volume of work during the fall of 2023. Tr. 218-219. Hunter testified that he was told at the time his overtime was reduced that A-V “wanted to mitigate overtime.” Tr. 59, 84. Hunter testified that every couple of weeks technicians complained about the lack of assigned overtime, and Coddington responded “we can’t do it, we
 25 can’t give overtime.” Tr. 116-118. Saintil similarly testified that Coddington told the technicians in response to complaints regarding a lack of assigned overtime, “it’s coming down from upper management that there will be no overtime.” Tr. 143, 195-196.

30 Capria testified that overtime for technicians is a pervasive component of budgeting and A-V’s contractual relationships with clients. Tr. 338. Capria stated that clients regularly request discounts or adjustments, and there are always internal discussions regarding reducing costs and enhancing efficiency, based upon information conveyed to account executives regarding the clients’ cost concerns. Tr. 338-339. That being said, Capria testified that it is “nearly impossible” for account executives or managers to prohibit overtime, given the constantly
 35 changing schedule of client events and status of the events themselves. Tr. 342-343, 344.

Hagadorn testified that while overtime generally needs to be justified based upon event volume, maintenance work, and necessary escalations, JP Morgan typically did not question the overtime A-V billed, because JP Morgan personnel were on site and aware of such
 40 circumstances as they were occurring. Tr. 372-374. Hagadorn stated that A-V maintains an online form where employees enter information regarding unscheduled overtime, but the majority of the time the information serves solely as documentation, and the overtime has already been approved. Tr. 374-375. Hagadorn testified that he did not recall when the process for documenting non-scheduled overtime was instituted, and denied directing Concepcion or
 45 Coddington to change the procedures involving overtime. Tr. 374, 376. Coddington testified that overtime is always a concern, and that he needed to ensure that the technicians were not

scheduled for more than 40 hours per week unless an event or a problem required it. Tr. 518-519. However, Coddington generally denied receiving any directive to reduce overtime in the spring or summer of 2023, and denied undertaking such an effort on his own initiative. Tr. 518, 519.

5 3. Increased Supervision and Scrutiny

The A-V technicians also testified regarding changes in supervision and the presence of management at the 575 Washington Boulevard location after Local 59 made its request for recognition on May 30, 2023. Hunter and Saintil testified that prior to that time, while
10 Coddington worked in the 3rd Floor control room with the technicians on a daily basis, they only saw Concepcion once or twice during a quarter or, as Saintil put it, “once in a blue moon” for significant events. Tr. 51-52, 60-61, 141. Cozine similarly testified that Concepcion’s office is located at 383 Madison Avenue in Manhattan, and that prior to June 7, 2023, he saw Concepcion at the Jersey City location “very rarely and randomly,” usually after morning events were
15 finished. Tr. 215-216, 241. Cozine testified, however, that after June 7, 2023, he saw Concepcion “At least every other day,” and Saintil testified that after A-V was made aware of the Union organizing effort Concepcion was present “pretty much every day.” Tr. 141-142, 215. In addition, Hunter and Cozine testified that after May 30, 2023, either Concepcion or Coddington visited the control room at 6:00 a.m., when the technicians’ shifts began, and at 6:00
20 p.m., when their shifts ended. Tr. 61, 70, 214-216, 274-275. Saintil similarly testified that during this period Concepcion was present at 575 Washington Boulevard from “early” until “later on in the day.” Tr. 141-142. Hunter testified that instead of entering the control room to perform work, at the beginning of the technicians’ shift Concepcion or Coddington would open the door, look around, and then leave, returning at the end of the shift to repeat the process. Tr.
25 61. Cozine also testified that when he worked a closing shift, Concepcion would “pop in around 6 p.m.” Tr. 216. Hunter testified that this occurred continuously in the days after the Union made its recognition request. Tr. 61.

The technicians testified that Hagadorn also increased his presence at 575 Washington
30 Boulevard in the period leading up to the election. Hunter testified that he had never met Hagadorn until after May 30, 2023, and Cozine testified that he had never seen Hagadorn at the Jersey City location before June 7, 2023. Tr. 62, 219. Saintil testified that prior to the Union organizing effort he had only seen Hagadorn at 575 Washington Boulevard twice each month. Tr. 142. However, Hunter, Cozine and Saintil testified that after May 30, 2023, Hagadorn
35 visited the Jersey City facility twice a week. Tr. 62-63, 97, 142, 219. Hunter and Cozine further testified that during the week of the election, Hagadorn was at the facility every day. Tr. 62, 97, 219. Hunter testified that this practice continued until after the representation election, in July or August 2023. Tr. 70, 97.

The witnesses all testified regarding exigent circumstances involving the most important
40 multipurpose room at JP Morgan’s Jersey City facilities during the summer of 2023. This multipurpose room, used to conduct meetings and events, involves extensive and heavily technical audiovisual capabilities, and is one of the most frequently used rooms in JP Morgan’s conference center. Tr. 98, 335. During the week before JP Morgan’s quarterly business review,
45 the equipment in the multipurpose room “completely malfunctioned technologically” and became unusable, with the network connection repeatedly failing, resuming, and failing again.

Tr. 98-99, 188, 335, 524-525. The problem was resolved within the week before the quarterly business review took place; Coddington testified that the “meltdown” took place on a Friday, and a “workaround” was devised by midnight on Sunday. Tr. 99-100, 121-122, 189, 345-346, 525. However, Capria testified that A-V “had a presence” in Jersey City “for a period of time
 5 afterwards...to give management within JPMC a comfort level” with respect to the multipurpose room’s operations. Tr. 335-336. Concepcion and Capria were present during that time, although Capria testified that he was the only manager directly engaged with resolving the problem, with Hagadorn and Concepcion involved primarily to reassure the client. Tr. 100, 122, 335, 345, 353-354, 397, 525-526. Hagadorn testified that he was present at Jersey City to address this issue
 10 “just the day, probably following up, maybe that week, maybe.” Tr. 429.

D. *The 2023 Wage Increase*

As a general matter, Capria, Hagadorn, and the technicians all testified that changes in
 15 the technicians’ compensation or wage rates take place in conjunction with annual performance reviews, which occur around the particular employee’s anniversary date. Tr. 81-82, 331, 388. Pursuant to parameters established by A-V, employees receive annual wage increases of zero to three percent. Tr. 81-82, 388.

Hagadorn testified that A-V performed a nationwide market analysis of wage rates for
 20 technicians at its various locations, “I think like late 2022, maybe” because Respondent was “going for funding, essentially.” Tr. 390. Hagadorn stated that he contacted A-V’s recruiter and Laquidara, who analyzed websites such as Indeed to determine the wage rates generally offered for the work that the technicians performed. Tr. 391. Based upon this research, A-V instituted a
 25 market rate increase in the wage rates for its employees in some areas of the country in late May or early June 2023. Tr. 391-392. Hagadorn testified that employees at individual sites were not made aware that an adjustment would be implemented, and that he personally informed each employee who would be receiving the market rate wage increase either in person or by phone.
 Tr. 392-393, 425-426.

Hagadorn testified that the Jersey City employees were not informed regarding the
 30 market rate wage increases after Local 59’s May 30, 2023 recognition request because A-V “didn’t want to influence anyone, I guess, with the election by doing a market adjustment.” Tr. 426. Hagadorn stated that the market rate wage increase would have been implemented in Jersey
 35 City in 2023 but for the ongoing Union organizing effort and pending petition for a representation election. Tr. 466-467, 492-493.

Cozine testified that he learned that technicians at other A-V locations had received the
 40 market rate wage increase after the organizing campaign began, during a phone call with Greg Ruban, a technician who had worked part-time at the Jersey City location before transferring to the Brooklyn location on a full-time basis. Tr. 221-223. Hunter testified that he found out that the Brooklyn technicians had received the market rate wage increase from Cozine on or around
 45 June 6, 2023. Tr. 64-66, 71. Hunter testified that he complained to Coddington that the Jersey City technicians had not received the market rate increase, but Coddington stated that he didn’t know anything about the issue, and could not address it. Tr. 65. Hunter also testified that in
 November 2023, he sent an e-mail to Concepcion inquiring about the wage increase the

Brooklyn technicians had received. Tr. 66. According to Hunter, Concepcion responded that the Brooklyn technicians had received the increase as a result of a market rate adjustment that was “negotiated on a site-by-site basis.” Tr. 66.

5 One technician at the Jersey City location – Garrett Kruse – did receive the market rate wage increase in 2023. Payroll materials in evidence as Respondent’s Exhibit 2 establish that Kruse’s hourly pay rate increased from \$26 to \$35.34 as of the pay date June 23, 2023, and increased again from \$35.34 to \$45 as of the pay date July 7, 2023. Hagadorn initially testified that the first of these increases was attributable to Kruse’s move from A-V’s Delaware location
10 to Jersey City. Tr. 472-474. However, Hagadorn later asserted that Kruse received the market rate wage increase while working in Delaware, and then a second increase when he transferred from Delaware to the Jersey City location during the pre-election period. Tr. 494-496. Hagadorn also testified that he did not know whether he played any role in determining when Kruse would move from Delaware or begin working in Jersey City.⁹ Tr. 497-498.

15 Hunter testified that on May 14, 2025, Hagadorn and Concepcion asked to meet with him in private. Tr. 66. During this meeting, Hagadorn and Concepcion told Hunter that his pay rate would be increased from \$40.80 per hour to \$45 per hour as a result of the market rate adjustment. Tr. 66-67. When Hunter asked why his pay was being increased at that particular
20 time, Hagadorn stated that “because of the Union election petition being sorted, he could give me the raise at that point.” Tr. 67. Cozine had a similar meeting with Hagadorn in early June 2025, where Hagadorn indicated that because the union election had been certified and “the dust had settled, he would be able to give me that raise.” Tr. 224. Hagadorn testified that A-V delayed the implementation of the market rate wage increase for the Jersey City technicians until 2025
25 pursuant to the advice of its attorneys. Tr. 493-494.

Hagadorn testified that the Jersey City technicians were never informed that once the representation election was concluded they would receive the market rate adjustment. Tr. 468-469. Hunter, Cozine, and Saintil all testified that they were never told by anyone from
30 management that they would receive the market rate wage increase prior to their receiving the increase in May or June 2025. Tr. 65-66, 68, 160-161, 225.

E. The Discipline Issued to Eddy Saintil

35 Eddy Saintil began working for A-V as an audiovisual technician in January 2023, and resigned his employment in September 2023. Tr. 133-134, 167-168. While employed by A-V, Saintil worked at the 575 Washington Boulevard location in Jersey City, and was supervised by site manager Zachary Coddington. Tr. 134.

40 Saintil signed a union authorization card in May 2023, which he received from Hunter. G.C. Ex. 6; Tr. 136-137. Saintil testified that the A-V technicians, including himself, discussed the Union every day in the 3rd Floor control room “around the May area” of 2023, with Coddington present. Tr. 137-139; see also Tr. 225-226, 229. Saintil testified that during these conversations the employees voiced their opinions regarding Union representation, and that he

⁹ Asked the question on cross-examination, Hagadorn stated, “I mean, just with him moving, I guess. Yeah. I don’t know.” Tr. 498.

spoke in support of Local 59, particularly in conversations with technicians William Scott and Alberto Arias, who were opposed to the Union. Tr. 138-140, 162, 193-194.

5 On July 25, 2023, Coddington issued a Progressive Discipline to Saintil. Jt. Ex. 7. The form identifies the “Type of Discipline” as “Written,” and the “Description” states as follows:

Verbal Warning:

10 Monday June 26th – Eddy had not reported to the control room at his scheduled in time and instead got breakfast while he was suppose[d] to be setting up as A2 for an event.

Date of Infraction:

15 Tuesday July 25th – Eddy’s scheduled in time was set for 6:30 a.m. and he did not arrive until 6:45 a.m. He had still noted, on his timesheet, that he was in at 6:30 a.m. There was no communication to me that he would be arriving late that morning.

20 Jt. Ex. 7. In the area entitled, “Plan for Improvement,” the form states, “Eddy was told that once he arrives onsite to first report to the control room and make sure he has no tasks that need his immediate attention. Also, that all documented time on his timesheet needs to reflect the time he steps into the control room.” Jt. Ex. 7. The Discipline also states, in the area entitled “Next Steps,” “When Eddy is running late he is to report that information to myself or John.”¹⁰ Jt. Ex.
25 7.

Coddington testified regarding the incidents on June 26, 2023 and July 25, 2023 which formed the basis for this Progressive Discipline. With respect to the June 26, 2023 incident, Coddington testified that the technicians were expected to be in the control room at the start of
30 their shifts to begin setting up and testing the equipment required for the first event taking place that day. Tr. 527. Coddington stated that instead of reporting directly to the control room that morning to prepare for the day’s first event, Saintil went to get breakfast. Tr. 526-527, 528-529. Saintil admitted during his testimony that he should have gone to assist in the control room before getting breakfast. Tr. 174-175. However, he testified that he knew that he would have
35 time to get breakfast and complete the event set-up before the client arrived. Tr. 175. Saintil further testified that Coddington was aware that in the past he had gotten breakfast after he arrived at 575 Washington Boulevard for the start of his shift but before beginning his work. Tr. 196. Saintil testified that he never received a copy of the July 25, 2023 Progressive Discipline, and could not recall any discussion with management regarding the June 26, 2023 incident. Tr.
40 146-147, 175.

Saintil testified that although he never received a copy of the July 25, 2023 Progressive Discipline, he was informed that he was 15 minutes late for his shift on that day. Tr. 147-148. Saintil testified that at the time he was hired, he told Coddington that he was not familiar with

¹⁰ Coddington testified that he discussed the July 25, 2023 Progressive Discipline with Concepcion before issuing it, but could not recall their conversation. Tr. 529-530.

the public transportation available to travel from his home to A-V's Jersey City location.¹¹ Tr. 148. According to Saintil, Coddington said that if Saintil was 15 or 20 minutes late for the start of his shift, that would not cause a problem, because other technicians would be present at the work site. Tr. 148, 179-180. Coddington also testified that a 15-minute lateness was generally not problematic so long as the technician involved communicated with him, but that Saintil had failed to do so on July 25, 2023. Tr. 529. Saintil further testified that he recorded his arrival time as 6:30 a.m. on that date, instead of 6:45 a.m., pursuant to Coddington's instruction that the technicians enter the time they were scheduled to begin their shift, regardless of the time that they actually arrived. Tr. 176.

Saintil also testified that prior to the Union's request for recognition on May 30, 2023, he had arrived 15 minutes late to the start of his shift once or twice a week, and was never verbally reprimanded or given a written warning. Tr. 148-149, 164-165. Saintil testified that on one occasion Coddington had no issue with his arriving later than 15 minutes for the start of his shift, when he missed his stop and let Coddington know by text message. Tr. 149. Cozine confirmed that in his experience Saintil's timeliness "was not the best." Tr. 278. Coddington similarly testified that Saintil was generally late arriving for the start of his shift – that his "punctuality" "wasn't the best" – and admitted that Saintil had been "consistently late for quite some time." Tr. 527-528, 537. However, Coddington testified that he had not issued any written discipline to Saintil because he preferred to "locally deal with these issues as best I can before it getting to progressive disciplines," through "brief" discussions regarding tardiness. Tr. 537, 538-539.

On August 1, 2023, Coddington issued a second Progressive Discipline to Saintil. Jt. Ex. 8. This form also identifies the "Type of Discipline" as "Written." The "Description" states as follows:

On 8/1, Eddy was observed by a fellow technician, idle with his head down, on the 3rd Floor Control Room, VDI workstation. This was observed in below time frame:

-Tuesday 8/1 from 7:14 a.m. to 8:00 a.m.

Then again Onsite Manager observed Eddy, head down and idle, on 301 audio console. This was observed during below timeframe.

-Tuesday 8/1 from 11:30 a.m. – 11:50 a.m.

Eddy was observed in the Palisades Lounge, a client facing area in the 3rd Floor Conference Center, idle and on his phone. He was then directed by the Onsite Manager to assist other technicians on the 2nd floor café. When asked to confirm Eddy's arrival at the café, 2 technicians advised they did not see him. This was observed during the below time frame.

¹¹ Saintil testified that when he was hired, he did not realize that he would need to take public transportation to the 575 Washington Boulevard location in Jersey City, or pay \$30 per day to park his vehicle. Tr. 148.

-Tuesday 8/1 from 12:30 p.m. – 12:45 p.m.

When asked about these idle time periods, Eddy stated that he was waiting to be given tasks by his manager or for emails to come in.

5

Remaining idle in front of other technicians and more importantly the client is not acceptable and requires immediate improvement. The above behavior is in violation of **1.1 Our Ethics** section of the **JPMC Code of Conduct**.

10

Additionally, it violates several policies laid out in the **AVS Handbook** found in **2.1, Values** section, **2.3 Ethics Code** and **8.8 Telephone Use**.

Jt. Ex. 8 (all emphasis in original). The “Plan for Improvement” section states as follows:

15

Eddy is to remain awake and alert during his time on shift. During Floor Support or any other “down-time” Eddy needs to communicate to his management that he is available for additional tasks. When Eddy is being paid for his time, he is to be working, completing sweeps, supporting clients or events.

20

Jt. Ex. 8. The “Next Steps” section states, “Any further infractions will be subject to further disciplinary action including termination.” Jt. Ex. 8.

25

Coddington testified that the first two incidents described in the August 1, 2023 Progressive Discipline involved Saintil’s sitting with his head down on the audio console during working hours, observed by Coddington himself from 11:30 a.m. to 11:50 a.m., “directly in front of me.”¹² Tr. 530, 531, 541-543. Coddington testified that he spoke to Saintil after the first such incident, from 7:14 a.m. to 8:00 a.m., but could not recall the specifics of their conversation. Tr. 541-542. Saintil testified that Concepcion and Coddington raised a concern about his idleness, particularly that his head was down and they “tried to accuse me of sleeping.” Tr. 149. Saintil testified that he told Concepcion and Coddington that he was not sleeping, but waiting for another task to be assigned to him. Tr. 149-150, 159. Saintil had no specific recollection of the first two incidents discussed in the August 1, 2023 Progressive Discipline – from 7:14 a.m. to 8:00 a.m. and from 11:30 a.m. to 11:50 a.m. – stating that they were “very blurry...just because it’s something so long ago,” and “a gray area,” respectively.¹³ Tr. 151, 153-154. Saintil testified generally, however, that having his head down was not sleeping, but “just a posture that I’ve always done,” “especially early in the morning” when he was on his phone or “waiting on standby” for an assignment. Tr. 151-152, 159. Saintil testified that he had assumed this posture in the past – placing his head down and intermittently looking up to see if he was needed before resuming his resting position – and had never been disciplined. Tr. 159-160. In addition, Saintil

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¹² Coddington testified that he discussed the August 1, 2023 Progressive Discipline with Concepcion, but could only recall describing the first incident, from 7:14 a.m. to 8:00 a.m., to him. Tr. 530-531. Coddington testified that when he saw Saintil with his head down from 11:30 a.m. to 11:50 a.m., he called Concepcion because he wanted to discharge Saintil at that point. Tr. 541.

¹³ Saintil’s testimony describing the 11:30 a.m. to 11:50 a.m. incident was as follows: “I believe in – at those times, especially at those hours, there was probably an all-day event that I was probably going to on A-2, but the meeting didn’t start till roughly probably around eight o’clock that I could remember and everything was set up just waiting for the client to come into the room. And that’s probably when he saw me being idle at that time.” Tr. 156.

testified that he was never provided with the August 1, 2023 Progressive Discipline in evidence as Joint Exhibit 8. Tr. 149.

5 The technicians generally testified that they experience a certain amount of time during a typical work day when they are waiting for a task to be assigned by a manager or via a shared e-mail inbox for client requests, and when they are “on standby,” expected to be responsive or available in case they are needed. Tr. 71-72, 118-120, 150, 151, 210-211. Saintil estimated that half of an 8-hour day, or even more, could consist of such “idle” time, whereas Cozine estimated that idle or standby time comprised about 2 hours out of each 8-hour day. Tr. 150, 211. Saintil testified that when the technicians completed a task they were expected to inform the manager that they had finished their work, and the manager then directed them to assist another technician or remain on standby, either reviewing e-mails or waiting for instruction via a walkie-talkie. Tr. 152-153. Saintil testified that if someone came into the area and requested assistance during periods when he was idle, he responded. Tr. 158.

15 Coddington described the third incident discussed in the August 1, 2023 Progressive Discipline to Saintil, from 12:30 p.m. to 12:45 p.m., as involving “me giving him a task, not doing that task, and then stating that no tasks were given to him.” Tr. 530. Specifically, Coddington testified that he had asked Saintil to assist two technicians working on the second floor, but the technicians reported that Saintil never showed up, and Coddington then saw Saintil sitting in the Palisades Lounge. Tr. 545. Saintil admitted that he was present in the Palisades Lounge at the relevant time. Tr. 155-156. Saintil stated that it was possible to take a lunch break in the Palisades Lounge, and no one discussed that with him prior to issuing the Progressive Discipline. Tr. 156. Coddington, however, stated that employees only eat in the Palisades Lounge when a specifically catered event takes place there, although there is seating where employees can spend their break time. Tr. 543-544.

Decision and Analysis

30 A. General Principles and Contentions Involving Witness Credibility

Credibility determinations involve consideration of the witness’ testimony in context, including factors such as witness demeanor, “the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole.” *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enf’d. 56 Fed.Appx. 516 (D.C.Cir. 2003); see also *Hill & Dales General Hospital*, 360 NLRB 611, 615 (2014). Corroboration and the relative reliability of conflicting testimony are also significant. See, e.g., *Pain Relief Centers, P.A.*, 371 NLRB No. 70 at p. 2, fn. 4, 14 (2022) , enf’d. 2023 WL 5380232 (4th Cir. 2023) (“detailed account” of meeting provided by employee witnesses credited where Respondent witnesses “skipped almost all of the moment-by-moment details” except for legally significant statements); *Precoat Metals*, 341 NLRB 1137, 1150 (2004) (lack of specific recollection, general denials, and comparative vagueness insufficient to rebut more detailed positive testimony). It is not uncommon in making credibility resolutions to find that some but not all of a particular witness’ testimony is reliable. See, e.g., *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014).

In addition, the Board has developed general evidentiary principles for evaluating witness testimony and documentary evidence. For example, the Board has determined that the testimony of an employer respondent's current employee which is contrary to the respondent's contentions in the case may be considered particularly reliable, in that it is potentially adverse to the employee's own pecuniary interests. *Avenue Care & Rehabilitation Center*, 360 NLRB 152, 152, fn. 2 (2014); *Flexsteel Industries*, 316 NLRB 745 (1995), *aff'd*, 83 F.3d 419 (5th Cir. 1996). It is also well-settled that an administrative law judge may draw an adverse inference from a party's failure to call a witness that would reasonably be assumed to corroborate the party's version of events, particularly where the witness is the party's agent. *Chipotle Services, LLC*, 363 NLRB 336, 336 fn. 1, 349 (2015), *enf'd*, 849 F.3d 1161 (8th Cir. 2017); *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). Adverse inferences may also be drawn based upon 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).

I find that Patrick Hunter and John Cozine were credible witnesses overall. Both Hunter and Cozine testified in a straightforward manner, specifically delineated the limitations of their recollection, and provided consistent testimony on direct and cross-examination. See, e.g., Tr. 217, 275-277. Cozine's testimony was particularly nuanced and detailed. Furthermore, as current employees of A-V who testified in a manner contrary to Respondent's contentions in the case, Hunter and Cozine's testimony is considered particularly reliable pursuant to Board precedent. *Avenue Care & Rehabilitation Center*, 360 NLRB at 152, fn. 2; *Flexsteel Industries*, 316 NLRB at 745.

Eddy Saintil's testimony was less reliable. Saintil did express concern with providing accurate testimony, stating at one point, "I don't want to say something that's not true." Tr. 146. On the other hand, Saintil admitted that his recollection regarding certain events – some of which were directly material to the Complaint's allegations – was nebulous or insubstantial. For example, Saintil referred to his memory regarding incidents where Brooklyn technicians worked at the Jersey City location as "very blurred," and stated that the July 17, 2023 meeting conducted by Laquidara and Hagadorn was "a very gray area for me." Tr. 145-146, 186. In addition, Saintil stated that his recollection of the events of August 1, 2023, which formed the basis for the contested discipline issued that day, was "very blurry...just because it's something so long ago." Tr. 151. Similarly, Saintil testified that the general fluctuation in work at the Jersey City location over the course of the year was a "gray area," because "I haven't been at the company for almost two years now." Tr. 173. Based upon Saintil's admitted lack of lucid recollection, I have generally credited his testimony only where it has been corroborated or is consistent with the testimony of other witnesses.

Turning to Respondent A-V's witnesses, I found Ralph Capria to be a generally credible witness with respect to the issues he addressed, predominantly an overview of A-V's business operations and management structure. Capria's testimony regarding the malfunctioning of the multipurpose room equipment during the summer of 2023, which required substantial intervention on the part of A-V's staff, was confirmed by several other witnesses. I find that Michael Hagadorn's testimony, however, was evasive, indeterminate, and speculative with respect to issues significant to the Complaint's allegations. For example, Hagadorn could

provide only an equivocal account of his role, repeatedly qualified by the use of the word “maybe,” in A-V’s disciplinary process and issues involving employee compensation, including the genesis of the market rate wage increase.¹⁴ Tr. 384-385, 388-391, 490-491. Hagadorn provided contradictory testimony regarding the timing of the market rate increase given to technician Garrett Kruse. Tr. 472-474, 496-498. Hagadorn’s conjectural testimony regarding the assignment of technicians to work outside of their regular location was also not convincing. Tr. 399. His mysterious assertion that he was present for the multipurpose room incident during the summer of 2023 “just the day” but “probably following up, maybe that week, maybe” is not reliable. Tr. 429. Hagadorn could not provide a definite account of the frequency of his visits to the Jersey City location. Tr. 487. Hagadorn even contended at one point that he could only recall his own testimony from the previous day of the hearing “Maybe a little bit, I don’t know.” Tr. 448. Given all of the foregoing, I have not generally credited Hagadorn, unless his testimony is corroborated by other, more reliable evidence.

I find that Zachary Coddington’s testimony was more straightforward and detailed than Hagadorn’s. I also find Coddington more credible than Saintil with respect to several issues involving the Progressive Disciplines which are the subject of the Complaint’s allegations. However, I do not credit his general denials regarding statements addressing the impact of union representation on the technicians’ employment, which were directly contravened by the significantly more detailed and reliable testimony of current employees Hunter and Cozine. See, e.g., Tr. 57-58, 96-97 (Hunter), 217-218, 275-277, 290 (Cozine), Tr. 524 (Coddington); see *Precoat Metals*, 341 NLRB at 1150. Nor do I credit Coddington’s testimony regarding the assignment of work to technicians which was contradicted by Hunter and Cozine, or by other more probative evidence.

As a general matter, in making credibility resolutions I have considered the demeanor of the witnesses, the context of their testimony, corroboration via other testimony or documentary evidence or lack thereof, the internal consistency of their accounts, and the witnesses’ apparent interests, if any. Any credibility resolutions I have made are addressed and incorporated into my analysis herein.

B. The Alleged Refusal to Assign the Jersey City Technicians to Work at Other Locations and Related Statements

Paragraph 7(a) of the Complaint alleges that A-V threatened employees with a loss of income when Zachary Coddington informed the Jersey City technicians on June 6, 2023 that they would no longer be assigned to work at other A-V locations. Paragraphs 7(b) and (c) of the Complaint allege that beginning on June 6, 2023, A-V reduced the Jersey City technicians’ hours and work assignments by ceasing to assign them work at other A-V facilities in retaliation for their activities in support of Local 59. Paragraphs 15 and 16 of the Complaint allege that this conduct in the aggregate violated Sections 8(a)(1) and (3) of the Act.

¹⁴ By contrast, when Cozine raised the issue of compensation for commissioning and event production positions during their conversation on the day of the representation election, Hagadorn asserted, “You’re talking to the one person...that...handles all that” and “I’m the one that controls all of that and can make those things happen.” G.C. Ex. 10, p. 2; Ex. 11 (3:41-3:54).

The Board has repeatedly found that alteration of employee work locations, work areas, and hours of work in order to isolate employees who support the union and/or have engaged in union activity from other employees violates Sections 8(a)(1) and (3). See, e.g., *Charter Communications, LLC*, 366 NLRB No. 46 at p. 6 (2018), enf'd. 939 F.3d 798 (6th Cir. 2019) (assignment of "suspected union supporters" to rural areas, such that it was "less likely they would encounter their coworkers" violated Section 8(a)(1) and (3)); *Corliss Resources, Inc.*, 362 NLRB 195, 196-198 (2015) (change in employee start time unlawful component of employers "ongoing agenda of isolating" union supporter); *American Red Cross Missouri-Illinois Blood Services Region*, 347 NLRB 347, 348, 365 (2006) (isolating union supporters via altered work schedules "to keep them from infecting the others" violated Sections 8(a)(1) and (3)); *Montgomery Ward*, 290 NLRB 981, 981-982 (1988) (transfer of pro-union employee to "take [him] out of circulation and to isolate him from other employees because of his union activities" unlawful); *Hall of Mississippi, Inc.*, 249 NLRB 775, 778-779 (1980) (assignment of union supporter to work in "wall enclosed rooms...physically separated" from other work areas to "isolate her from other employees" unlawful). The Board has also found that a retaliatory change in employer practices which results in reduced work hours for employees involved violates Sections 8(a)(1) and (3). Specifically, in *American Lumber Sales, Inc.*, the employer altered its practice to eliminate the transfer of employees to other job locations after work had been completed at their initially assigned work station, instead sending them home for the rest of the day. 229 NLRB 414, 420 (1977). The Board found that the retaliatory implementation of this new practice violated Sections 8(a)(1) and (3) of the Act. *American Lumber Sales, Inc.*, 229 NLRB at 420.

In more recent cases, the Board has tended to address allegations involving the isolation of employees in retaliation for their union support and activities by applying the *Wright Line* analysis. See *Corliss Resources, Inc.*, 362 NLRB at 197; *American Red Cross Missouri-Illinois Blood Services Region*, 347 NLRB at 348, 364-365. Pursuant to *Wright Line*, General Counsel must satisfy their initial burden by persuading by a preponderance of the evidence that employee protected conduct was a motivating factor in the employer's adverse employment action. *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981); see also *NLRB v. Transportation Management Corp.*, 462 US. 393, 395 (approving the *Wright Line* analysis); *Intertape Polymer Corp.* 372 NLRB No. 133 at p. 1-2, 6, 9, 11-13 (2023); *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120 at p. 7 (2019). In order to do so, General Counsel must adduce evidence to demonstrate that the employee or employees in question engaged in union or protected concerted activity, the employer's knowledge of that activity, and anti-union animus on the part of the employer. *Adams & Associates, Inc.*, 363 NLRB 1923, 1928 (2016), enf'd. 871 F.3d 358 (5th Cir. 2017). Proof of unlawful employer motivation may be based upon direct evidence, or may be inferred from circumstantial evidence based on the record as a whole. *Brink's, Inc.*, 360 NLRB 1206, fn. 3 (2014); *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004), enf'd. 184 Fed.Appx. 476 (6th Cir. 2006). Indeed, the Board has stated that "More often than not, the focus in litigation...is whether circumstantial evidence of employer animus is 'sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision.'" *Tschiggfrie Properties*, 368 NLRB No. 120 at p. 1 (quoting *Wright Line*).

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General Counsel’s satisfaction of their initial burden pursuant to *Wright Line* establishes a violation of the Act, subject to the employer’s demonstrating that “the same action would have taken place in the absence of the protected conduct.” *Wright Line*, 251 NLRB at 1089. In order to meet this standard, the employer must do more than assert a legitimate basis for the adverse employment action or show that legitimate reasons affected its decision. Instead, it must “persuade...by a preponderance of the evidence” that “the action would have taken place absent protected conduct.” *Weldun International*, 321 NLRB 733 (internal quotations omitted), enf’d. in relevant part 165 F.3d 28 (6th Cir. 1998); see also *NLRB v. Transportation Management Corp.*, 462 U.S. at 401. If the evidence establishes that an employer’s proffered reasons are pretextual, the employer fails by definition to meet its burden to show that it would have taken the same action absent protected activity. *Ground Zero Foundation*, 370 NLRB No. 22 at p. 7 (2020); *Hard Hat Services, LLC*, 366 NLRB No. 106 at p. 7 (2018).

The evidence here establishes a *prima facie* case that A-V ceased to assign the Jersey City technicians work at its other locations – particularly in Brooklyn – in order to sequester them from the technicians at those locations because of their support for and activities on behalf of Local 59. The record establishes that on May 30, 2023, Local 59’s attorney wrote to Capria, stating that the Union had obtained authorization cards from “well over a majority” of the A-V technicians in Jersey City, and requesting voluntary recognition. G.C. Ex. 8. The record further demonstrates, via Capria’s e-mail response on June 8, 2023, that he received the Union’s recognition request. G.C. Ex. 9. Thus, as of early June 2023, A-V was aware of the Jersey City technicians’ Union sentiments and activities.

In addition, the evidence overall establishes that during June and July, Coddington informed the Jersey City technicians that they would no longer be assigned work at other A-V locations due to their Union activities and Local 59’s organizing campaign. As an initial matter, I credit Hunter, Cozine, and Saintil’s uncontradicted and mutually corroborative testimony that they were typically assigned to another location, specifically Brooklyn, when the volume of work there was particularly high or a power event occurred. Tr. 58, 69, 135, 143-144, 186, 208-209, 240-241. Nor does any evidence contravene their testimony that Brooklyn technicians worked at Jersey City when necessitated by such considerations. *Id.* Hagadorn actually confirmed that technicians working primarily in Jersey City or Brooklyn had previously been assigned by Concepcion and the site managers to work at other locations when work volume or a power event required it. Tr. 398-399. Coddington also testified that Jersey City technicians had worked at the Brooklyn location during power events, himself included. Tr. 549.

I further credit the technicians’ descriptions of Coddington’s statements, beginning during the first week of June 2023, explicitly announcing that the Jersey City and Brooklyn technicians would no longer be assigned work at the other location due to Local 59’s organizing efforts. I credit the testimony of current employee Patrick Hunter that during the first week of June 2023, Coddington told the technicians that they “would no longer be allowed to work in Brooklyn and that the Brooklyn technicians would no longer be allowed to perform work in Jersey City,” and that “because of the Union situation in Jersey City, there would be no cross-pollination between [the] Brooklyn Site and the Jersey City site and vice versa.” Tr. 56, 96-97, 130-131. I further credit the testimony of current employee Michael Cozine that during the first week of June 2023, Coddington told the Jersey City technicians that based upon “a directive

from his management...Jersey City employees would no longer be going to Brooklyn and vice versa,” which Coddington termed “a brash, knee-jerk reaction from management.” Tr. 217-218, 275-276, 290. The latter remark could only refer to A-V’s having recently received Local 59’s letter requesting recognition based upon the union authorization cards it had obtained from “well
 5 over a majority” of the Jersey City technicians. Thus, Cozine’s testimony that during later conversations in June or July, Coddington stated that the Jersey City and Brooklyn technicians were not being assigned to one another’s location because of the “unionization efforts and letter for recognition” is also plausible. Tr. 242, 275-277. Given all of the foregoing, I credit the mutually supportive and believable testimony of these current employees over Coddington’s
 10 denials. Tr. 519-520, 524.

The evidence therefore establishes that Coddington informed the technicians in June 2023 that the Jersey City technicians would no longer be assigned work in Brooklyn – and vice versa – to isolate them from technicians at other locations as a result of their Union organizing,
 15 or, as Coddington put it, to prevent “cross-pollination” with respect to Union activity.¹⁵ Coddington’s statements in this regard violated Section 8(a)(1) of the Act and constitute evidence of anti-union animus in connection with the elimination of technician work assignments at different locations.¹⁶ See *American Lumber Sales, Inc.*, 229 NLRB at 415, 416-417, 420
 20 (employer President and General Manager violated Section 8(a)(1) by telling employees that they would be assigned “to a single position at which they would work until their tasks were completed, at which point they would be sent home” as opposed to being transferred to work at other locations).

Given all of the foregoing evidence, General Counsel has established a *prima facie* case
 25 pursuant to *Wright Line* that A-V ceased to assign the Jersey City technicians to work at other locations in order to isolate them from other A-V employees, in retaliation for their Union support and activities.

A-V has not adduced sufficient evidence to satisfy its burden under *Wright Line* to
 30 persuade that it ceased assigning the Jersey City technicians to work at other locations – and vice versa – for legitimate, non-discriminatory reasons. A-V generally contends that there was no reduction in hours, compensation or overtime opportunity afforded to the Jersey City technicians after Local 59’s request for recognition. Post-Hearing Brief at 15-16. A-V further argues that there is no evidence to establish that the Jersey City technicians were needed at the Brooklyn
 35 location, or were denied any opportunity to work there or at any other A-V location. Post-

¹⁵ I further credit Cozine’s testimony that Coddington told him that employee Garrett Kruse, who had transferred to Jersey City from A-V’s Delaware location prior to the representation election, had been instructed not to speak to Cozine, Hunter, or Saintil. Tr. 303-305. Coddington’s directive to Kruse is consistent with his concern that the Jersey City technicians would “cross-pollinate” their Union sentiments and activity to other A-V locations if they were assigned to work elsewhere.

¹⁶ I assume from Paragraphs 7(a) and 15 of the Complaint, and from General Counsel’s Post-Hearing Brief at pages 27 to 28, that General Counsel contends that Coddington’s statement constitutes an independent violation of Section 8(a)(1). In addition, A-V denies that any threats of retaliation for union support and activities were made, and contends that Coddington never made statements opposing Local 59, in its own Post-Hearing Brief at page 16. Thus, to the extent that the Complaint can be construed as lacking a specific allegation in this respect, the record establishes that the contention is closely related to the complaint’s subject matter and has been fully litigated. *Pergament United States*, 296 NLRB 333, 334 (1989), enf’d. 920 F.2d 130 (2d Cir. 1990).

Hearing Brief at 17. However, Cozine and Saintil testified that a power event took place in Brooklyn in July 2023. Tr. 185-186, 266-267. Coddington confirmed these assertions, and even testified that the Brooklyn power event was unusually prolonged due to unresolved issues with the building's HVAC system. Tr. 521-523. Nevertheless, Cozine and Saintil testified without
 5 contradiction that the Jersey City technicians were not assigned to work during the power event in Brooklyn, as they had been in the past. Tr. 185-186, 266-267.

A-V's purportedly legitimate reasons for its failure to assign the Jersey City technicians to work at the Brooklyn power event during the summer of 2023 are not convincing.

10 Coddington testified that the Jersey City technicians were not sent to work at the Brooklyn power event because employees from A-V's remediation team were assigned to assist, thus establishing that additional staff were in fact necessary. Tr. 522-523. In addition, Hagadorn testified that A-V's remediation team operates on a company-wide level, and Coddington

15 provided no rationale for A-V's having assigned the remediation team to assist with the Brooklyn power event instead of the Jersey City technicians. Tr. 411, 413-414. While Coddington testified that some members of the remediation team had previously worked at the Brooklyn location, the record establishes that the Jersey City technicians had repeatedly worked at power events in Brooklyn as well. Tr. 522-523; see Tr. 58, 135, 143, 208-209, 241.

20 Therefore, A-V ultimately provided no justification for assigning employees from its remediation team to work at the Brooklyn power event in July 2023, instead of the Jersey City technicians who had worked during such power events in the past. As a result, this purportedly legitimate, non-discriminatory rationale for A-V's conduct is pretextual. The record overall thus supports the conclusion that the Jersey City technicians were not assigned to participate in the 2023 Brooklyn power event based upon the managerial directive prohibiting them from
 25 "collaborating" or "cross-pollinating" with employees at the Brooklyn location. See Tr. 267, 300-301.

For all of the foregoing reasons, General Counsel has established a *prima facie* case that A-V ceased assigning the Jersey City technicians work at other locations in order to isolate them
 30 from other A-V employees due to their Union support and activities. A-V has failed to satisfy its burden to establish a legitimate, non-discriminatory reason for failing to assign such work to the Jersey City technicians in the wake of Local 59's recognition request. Thus, the evidence overall establishes that beginning in June 2023, A-V ceased assigning the Jersey City technicians work at other locations in retaliation for their support for and activities on behalf of the Union, in
 35 violation of Sections 8(a)(1) and (3) of the Act.

C. The Alleged Reduction in Overtime Opportunities

40 General Counsel argues in his Post-Hearing Brief that A-V "Unlawfully Reduced Employee Opportunities to Work Overtime Including at the Brooklyn Facility Because of Their Support for the Union," ostensibly in violation of Sections 8(a)(1) and (3) of the Act. Charging Party also argues in its Post-Hearing Brief that A-V reduced the Jersey City technicians'

overtime hours in retaliation for their Union support and activities, and A-V in its own Post-Hearing Brief contends that the overtime hours of the Jersey City technicians were not reduced.¹⁷

5 The evidence establishes that A-V unlawfully reduced overtime opportunities in retaliation for the Jersey City technicians' Union support and activities. I have already determined, as discussed above, that A-V ceased assigning the Jersey City and Brooklyn technicians work at one another's customary locations after Respondent received Local 59's recognition request, in retaliation for the Jersey City technicians' Union support and activities. The elements of General Counsel's *prima facie* case established in that context – the Jersey City technicians' Union support and activities, A-V's knowledge thereof, and Respondent's anti-Union animus – are also applicable in the context of an allegation that A-V reduced their overtime hours for retaliatory reasons. As discussed above, the evidence demonstrates that the Jersey City technicians were not assigned to work during a power event in Brooklyn which took place during the summer of 2023, although they had done so in the past. In addition, however, I credit current employee Hunter's testimony to the effect that Coddington told the Jersey City technicians during discussions regarding the Union that, "your hours are going to get cut if you get the Union in here." Tr. 109-110. Coddington himself confirmed that he stated in discussions with the Jersey City technicians that their hours could "go down to 28 hours," as was the case at A-V's facility in Manhattan, where the technicians were represented by Local 1, IATSE. Tr. 15 516-517, 532-533. I credit as well Hunter's testimony, corroborated by Saintil, that when technicians subsequently complained that they were not being assigned overtime work, Coddington stated, "we can't do it, we can't give overtime." Tr. 116-118, 143, 195-196.

I further credit the testimony of Hunter and Cozine that beginning around the time of the election in late July 2023, their schedules were altered to minimize or eliminate overtime hours, by allotting them fewer hours of work later in the week if they were scheduled to work in excess of eight hours per day earlier. Tr. 59, 72-73, 84, 218-219. Although Coddington denied receiving any specific directive to reduce overtime in the spring or summer of 2023, he also testified that he was expected to ensure that the Jersey City technicians were not scheduled for more than 40 hours per week unless a specific event or problem required it. Tr. 518-519. Hagadorn also testified that overtime generally needed to be justified based upon event volume, maintenance work, and "escalations," or problems that needed to be addressed. Tr. 372-374. Finally, I credit Cozine's testimony that around this time, Coddington directed the technicians to begin reporting unscheduled overtime by entering information into an online form in order to substantiate the basis for the overtime worked. Tr. 271-272. Hagadorn confirmed that the technicians were expected to do so, and testified that he could not recall when this procedure was instituted. Tr. 374-376. Thus, the record overall establishes that the overtime hours of the Jersey City technicians declined, and that A-V introduced a new procedure for documenting and substantiating the need for unscheduled overtime, after the representation election.

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¹⁷ As discussed above, Paragraphs 7(b), 7(c) and 16 of the Complaint allege that beginning on June 6, 2023, A-V reduced the Jersey City technicians' hours and work assignments by ceasing to assign them work at other A-V facilities in retaliation for their activities in support of Local 59, in violation of Sections 8(a)(1) and (3) of the Act. Thus, to the extent that the Complaint can be construed as lacking a specific allegation with respect to overtime, the record establishes that the contention is closely related to the complaint's subject matter and has been fully litigated. See *Pergament United States*, 296 NLRB at 334.

The foregoing evidence establishes a *prima facie* case that A-V reduced the overtime opportunities and overtime hours of the Jersey City technicians in retaliation for their support for and activities on behalf of Local 59.

5 Furthermore, the evidence does not substantiate any legitimate, non-discriminatory reason asserted by A-V in connection with the reduction of overtime hours and opportunities. A-V contends that the overtime opportunities and hours of the Jersey City technicians were never reduced, arguing that the payroll materials it introduced as Respondent's Exhibit 2 demonstrate that "employee overtime was consistent and reflected the seasonal reduction in July, August, and
10 early September." Post-Hearing Brief at 15-16. This assertion in and of itself somewhat contradicts the testimony of not only Cozine but Hagadorn, who stated that the volume of work in Jersey City generally increases in April through July, recedes in August, and then increases again in September. Tr. 273-274, 440-441.

15 More importantly, however, the payroll documents introduced as Respondent's Exhibit 2 are insufficient to determine whether or not the Jersey City technicians' overtime hours remained comparable prior to and after the representation election, given the typical seasonal fluctuations in their work hours throughout the year. The documents included in Respondent's Exhibit 2 begin with an initial paydate in March 2023, and continue through the last pay date in September
20 2025. Thus, the payroll introduced as Respondent's Exhibit 2 includes only three months – March, April, and May 2023 – before A-V was made aware of Local 59's organizing campaign via the Union's letter requesting recognition and asserting that "well over a majority" of the Jersey City technicians had signed union authorization cards. Given the typical fluctuations in work during the course of a calendar year, a representative payroll sample to provide an adequate
25 basis of comparison for determining whether overtime hours were indeed reduced in retaliation for the Jersey City technicians' Union support and activities would encompass the entire year prior to the recognition request, and therefore begin in June 2022, not in March 2023. See Tr. 273-274, 440-441. As it is, there is no way to determine based upon Respondent's Exhibit 2 whether, for example, the technicians were assigned less overtime in July through December of
30 2023, than they were assigned in July through December of 2022, prior to the inception of the Union's organizing effort. Therefore, Respondent's Exhibit 2 is of little utility in determining whether or not there was an overall reduction in the Jersey City technicians' overtime hours on an ongoing basis after the petition for a representation election was filed. This evidence is thus insufficient to rebut Hunter and Cozine's testimony that their overtime hours were reduced after
35 the representation election in late July 2023. As a result, the record overall does not substantiate by a preponderance of the evidence A-V's contention that overtime for the Jersey City technicians was not in fact reduced after the representation election took place, or that any reduction in overtime reflected only long-standing seasonal fluctuations.

40 For all of the foregoing reasons, General Counsel has established a *prima facie* case that A-V reduced overtime opportunities and overtime hours for the Jersey City technicians after the representation election, and A-V has not established a legitimate, non-discriminatory reason for doing so by a preponderance of the evidence. As a result, the record demonstrates that A-V reduced overtime opportunities and overtime hours for the Jersey City technicians after the
45 representation election, in violation of Sections 8(a)(1) and (3) of the Act.

D. The Alleged Increased Scrutiny and Monitoring of Employee Hours

Before the evidence pertaining to this contention can be considered, the nature of the allegation itself must be addressed. The Complaint alleges at Paragraphs 10 and 15 that A-V violated Section 8(a)(1) of the Act when Michael Laquidara, Zachary Coddington, Michael Hagadorn, and John Concepcion increased their scrutiny and monitoring of the Jersey City technicians' work hours during July 2023. The Complaint does not allege, however, that A-V increased its supervisory scrutiny and monitoring of the Jersey City technicians for retaliatory reasons, in violation of Section 8(a)(3) of the Act. General Counsel argues in his Post-Hearing Brief that by the managers' conduct, A-V "Engaged in Unlawful Surveillance" of the Jersey City technicians, in violation of Section 8(a)(1). However, the evidence does not establish any specific Union activity involved in A-V's alleged surveillance of the technicians, as is typically the case when conduct entailing actual surveillance is alleged. See, e.g., *Sprain Brook Manor Nursing Home*, 351 NLRB 1190, 1190-1191 (2007). In addition, all of the cases cited by General Counsel in his Post-Hearing Brief at pages 20 through 22 involve creation of the impression of surveillance of union activity, as opposed to the actual surveillance of employees. See *Starbucks Corp.*, 374 NLRB No. 10 (2024); *List Industries, Inc.*, 373 NLRB No. 146 (2024); *Caterpillar Logistics, Inc.*, 362 NLRB 395, 396 (2015), enf'd. 835 F.3d 536 (6th Cir. 2016); *Flexsteel Industries, Inc.*, 311 NLRB at 257-258.¹⁸ As will become apparent from the evidence discussed below, all parties were provided with the opportunity to adduce evidence pertinent to a claim that A-V's conduct created the impression of surveillance of Union activity, including cross-examining witnesses. In addition, all parties address the evidentiary basis for such an allegation in their Post-Hearing Briefs, with Charging Party arguing that the increased scrutiny implemented by the named managers created the impression of surveillance (pages 16 through 19), and A-V asserting that there was no increased oversight, and any unusual managerial presence was necessitated by an emergency situation involving one of the multipurpose rooms at JP Morgan's facilities in Jersey City (pages 16 and 17). Thus, a contention that A-V violated Section 8(a)(1) by creating the impression of surveillance is closely related to the complaint's subject matter and has been fully litigated. See *Pergament United States*, 296 NLRB at 334.

The evidence establishes that the conduct of A-V's managers in the period prior to the representation election on July 21, 2023 created the impression of surveillance of the Jersey City technicians' Union activity, in violation of Section 8(a)(1). The Board determines whether an employer's conduct created an unlawful impression of surveillance by considering "whether, under all the circumstances, the employer's statements or other conduct would lead reasonable employees to assume that the employer has placed their union activities under surveillance." *Charter Communications, LLC*, 366 NLRB No. 46, slip op. at 4; see also *Starbucks Corp.*, 374 NLRB No. 10 at p. 8-9, quoting *Flexsteel Industries*, 311 NLRB at 257. As a general matter, while an employer may observe "open and public union activity on or near the employer's premises," employer activities which are "out of the ordinary" unlawfully create the impression of surveillance. *Starbucks Corp.*, 374 NLRB No. 10 at p. 103; *Sprain Brook Manor Nursing Home, LLC*, 351 NLRB at 1191. In particular, the Board has found that an employer may unlawfully create the impression of surveillance via the unprecedented appearance of higher-

¹⁸ There is no case entitled *First Student, Inc.* reported at 360 NLRB 903 (2014), as cited by General Counsel in his Post-Hearing Brief. The case reported at that citation is entitled *Laborers' Local 310 (Donley's, Inc.)*, and involves a jurisdictional dispute pursuant to Section 10(k) of the Act.

level management officials, increased managerial presence, and a change in the “style and frequency” of supervisory observation of employees’ work. See *Starbucks Corp.*, 374 NLRB No. 10 at 1-2, 102-103; *New Era Cap Co.*, 336 NLRB 526, 527, 534 (2001).

5 The record establishes that the presence of A-V’s supervisory and managerial personnel at 575 Washington Boulevard changed in terms of the level of manager, and the nature and frequency of their visits, after Local 59 made its request for recognition on May 30, 2023. The evidence generally establishes that site manager Zachary Coddington worked with the Jersey City technicians in the third floor control room at that facility on a daily basis. However, I credit
10 the testimony of Cozine, Hunter, and Saintil that prior to June 2023, John Concepcion – who manages all of the on-site managers in the New York City area, reports to Hagadorn and does not have an office in Jersey City – visited the third floor control room only rarely. Tr. 51, 60-61, 141, 215-216. I credit their un rebutted testimony that beginning in early June 2023, Concepcion was present at 575 Washington Boulevard “at least every other day,” or “pretty much every day.”
15 Tr. 141-142, 215. I credit as well Hunter and Cozine’s testimony that while they had never seen Hagadorn at the Jersey City location prior to June 2023, beginning in early June Hagadorn visited the 575 Washington Boulevard facility twice a week, and every day during the week of the representation election. Tr. 62-63, 70, 97, 219. Saintil’s testimony that Hagadorn increased his visits to 575 Washington Boulevard from a couple of times per month to once or twice each
20 week is plausible as well. Tr. 142. The increased presence of higher-level management – Coddington’s supervisor Concepcion, and Concepcion’s manager Hagadorn, the account executive responsible for A-V’s relationship with JP Morgan throughout the United States – would reasonably lead the technicians to conclude that their Union activities were under surveillance. Tr. 361-363, 365-367; see *Starbucks Corp.*, 374 NLRB No. 10 at 1-2, 103-104
25 (unprecedented appearance in individual stores by “a legion of corporate executives” and “mass arrival of support managers” created impression of surveillance). The dramatically increased frequency of Concepcion and Hagadorn’s visits would reasonably engender the same conclusion. *Starbucks Corp.*, 374 NLRB No. 10 at 1-2, 103-104; *New Era Cap Co.*, 336 NLRB at 527, 534 (employees “could objectively and reasonably believe that they were subject to...increased
30 attention” due to union activity, based upon “marked increase in the frequency and time of supervisors’ visits to the employees’ work areas”).

 The evidence further establishes that Coddington and Concepcion altered their typical method or style of conducting supervision after the May 30, 2023 recognition request. I credit
35 Cozine’s testimony that prior to June 2023, there was no supervisor or manager regularly present at 6:00 a.m., the start of the technicians’ first shift. Tr. 214-215, 216. I further credit Hunter and Cozine’s testimony that beginning in June 2023, either Concepcion or Coddington appeared in the control room at 6:00 a.m., when the technicians’ shifts began, and at 6:00 p.m., when their shifts ended. Tr. 61, 70, 215-216, 274-275. Hunter also testified that instead of coming into the
40 control room and beginning their work, Concepcion and Coddington would “poke their head in, look around and then leave,” returning only at the end of the day to repeat the process. Tr. 61, 70; see also Tr. 216. This change in managerial “style” in terms of Coddington and Concepcion’s “observation of employees’ nominal work functions” would further support a reasonable belief that the technicians were “being subjected to...increased attention” due to their
45 activities in support of the Union. *New Era Cap Co.*, 336 NLRB at 534.

A-V contends at page 17 of its Post-Hearing Brief that whatever increased managerial presence occurred at its Jersey City location in the summer of 2023 was necessitated by an exigent situation involving the most important multipurpose room at JP Morgan’s Jersey City facilities the weekend before the bank’s quarterly business review was scheduled to take place. I credit the testimony of the various witnesses – both technicians and managers – that this multipurpose room “completely malfunctioned technologically” and could not be used. Tr. 98-99, 188, 335, 345-346, 525. However, Coddington credibly testified that the “meltdown” took place on a Friday, and that by midnight on Sunday, a “workaround” had been devised, with other witnesses confirming that the problem was resolved within a week. Tr. 525; see also Tr. 99-100, 121-122, 189, 345-346. Although Capria testified that A-V retained a “presence...for a period of time afterwards” to maintain “a comfort level” among JP Morgan managers with the multipurpose room’s operations, Hagadorn testified that he was present in Jersey City to address the issue “just the day, probably following up, maybe that week, maybe.” Tr. 335-336, 429. As a result, this incident does not convincingly explain the unprecedented daily presence of Concepcion and regular presence of Hagadorn at 575 Washington Boulevard during the weeks preceding the representation election. Nor does it explain Concepcion and Coddington’s daily “spot checks” of the control room where the technicians performed their work at 6:00 a.m. and 6:00 p.m., the beginning and end of the technicians’ shifts, during the months before the election took place.

For all of the foregoing reasons, the evidence establishes that A-V created the impression of surveillance of the Jersey City technicians’ activities in support of Local 59, in violation of Section 8(a)(1) of the Act.

E. Hagadorn’s Statements to Cozine on July 21, 2023

The Complaint alleges that on July 21, 2023, Michael Hagadorn expressly or impliedly threatened to withhold promotional opportunities from A-V’s Jersey City employees if Local 59 prevailed in the representation election, and/or promised promotional opportunities if the Union lost, in violation of Section 8(a)(1) of the Act. The evidence substantiates this allegation.

Section 7 of the Act states in part that employees “shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Section 8(a)(1) of the Act provides that an employer may not “interfere with, restrain, or coerce employees” in the exercise of their rights to engage in activity protected by Section 7. It is well-settled that employer motive and an employee’s subjective interpretation of the employer’s conduct is generally “immaterial” when evaluating an alleged violation of Section 8(a)(1). *Lush Cosmetics, LLC*, 372 NLRB No. 54 at p. 3 (2023), quoting *KSM Industries, Inc.*, 336 NLRB 133 (2001); see also *Boar’s Head Provisions Co.*, 370 NLRB No. 124 at p. 1, fn. 1 and at p. 16 (2021). Instead, the Board determines whether “statements alleged to violate Section 8(a)(1)...have a reasonable tendency to coerce employees in the exercise of their Section 7 rights.” *Id.* In applying this analysis, the Board “considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees’ free exercise of their rights” pursuant to Section 7. *Lush Cosmetics Co.*, 372 NLRB No. 54 at p. 3, citing *American Tissue Corp.*, 336 NLRB 435, 441-442 (2001).

It is well-settled that statements which promise employees promotions or promotional opportunity if they refrain from supporting a union – and statements threatening employees with a loss of promotional opportunity due to their union activities – are coercive, and violate Section 8(a)(1). See *Cintas Corp. No. 2*, 372 NLRB No. 34 at p. 3-5 (2022) (employer violated Section 8(a)(1) by threatening employee with the loss of promotional opportunity in retaliation for his protected concerted activity); *Stern Produce Co.*, 368 NLRB No. 31 at p. 2, 28 (2019) (promise of a promotion if employee ceased engaging in union activity unlawful); *Venture Industries*, 330 NLRB 1133, 1139 (2000) (threatened loss of promotional opportunity if employees selected union as collective bargaining representative violated Section 8(a)(1)); *Pacific Intermountain Express*, 250 NLRB 1451, 1459 (1980), *aff'd*. 672 F.2d 893 (D.C. Cir. 1981).

The evidence here establishes that Hagadorn impliedly threatened Cozine with a loss of promotional opportunity if Local 59 prevailed in the representation election during their conversation on July 21, 2023. Cozine’s advancement within A-V was the sole topic Hagadorn addressed, and the purpose of their conversation. Hagadorn immediately broached the issue, suggesting commissioning or event production as potential career paths. G.C. Ex. 10, p. 1. When Cozine indicated that he was more interested in commissioning, Hagadorn asked, “do you find yourself wanting to be in a leadership role?” and stated that A-V would fund the training necessary to obtain qualifications. G.C. Ex. 10, p. 2. Hagadorn then attempted to impress upon Cozine that he had the authority to ensure that a promotion was implemented. When Cozine raised the question of compensation for commissioning positions, Hagadorn responded, “I’m the one that controls all of that and can make those things happen.” G.C. Ex. 10, p. 2. Hagadorn proceeded to tell Cozine that “in terms of job or...looking to do more...we can definitely have that conversation” and “I could definitely work all that stuff out.”¹⁹ *Id.* Indeed, Hagadorn stated that such opportunity was “why I’m just trying understand like what you want to do and like all that kind of stuff.” *Id.* Hagadorn later reiterated his authority with respect to promotions by discussing Walsh and Callen, who had begun their employment as technicians at the Brooklyn location but were promoted to national event production and commissioning positions based upon his efforts, adding, “I keep my word with stuff...if I’m telling you something, I mean it.” *Id.* Hagadorn also stated twice that Cozine could avail himself of his promotional authority, telling Cozine, “feel free that you can come to me with any questions or concerns at any time” under his “open door policy,” and later, “Like I said, open door whenever you need something, let me know.” *Id.*

Hagadorn followed both of his assertions that he was capable of effectuating promotions by implying that if Local 59 prevailed in the imminent representation election, he would be precluded from doing so. After telling Cozine that he “controls all of that and can make those things happen” and informing Cozine of his “open door policy, Hagadorn cautioned that, “if things were to change around here, it’s all the same...There’s no movement.” *Id.* Similarly, after describing the promotions that he had facilitated for Walsh and Callen, Hagadorn told Cozine, “You have to worry about what’s best for you,” “You know what’s good for you and

¹⁹ Such assertions remove Hagadorn’s statements from the realm of speculative conjecture. See *Keystone Lamp Mfg. Corp.*, 284 NLRB 626, 633, fn. 10 (1987), *enf’d*. 849 F.2d 601 (3rd Cir. 1988) (company President’s statement to employee that “if her supervisor had wanted to elevate her to the position of assistant supervisor, he would have approved” “purely hypothetical” and overly “cryptic” to establish alleged promise of promotion).

you know what you want to do, but...if you're here long term and things go a different way...it's going to be a very different place.” Id. The Board has determined that such managerial statements conveying that a collective bargaining representative would constrain the ability to promote employees constitute unlawful threats that employees would lose promotional opportunity if they support union representation, and violate Section 8(a)(1). See *Venture Industries*, 330 NLRB at 1133, 1139 (manager’s statement that “there would be no chance for promotion in a union shop because supervision is hired from ‘outside’” unlawful threat of loss of promotional opportunity); *Air Express International*, 281 NLRB 932, 935-936 (1986) (manager’s statement that employee “deserved a raise and a promotion” but “if the Union came in, his hands would be tied” unlawful).

The surrounding circumstances of Hagadorn and Cozine’s interaction further support the conclusion that Hagadorn’s statements were coercive. Hagadorn initiated their private discussion on the day of the representation election, only an hour or two or so before the voting was scheduled to begin. Tr. 237; see *Cintas Corp. No. 2*, 372 NLRB No. 34 at p. 4 (considering timing of statement in order to determine its potentially coercive effect); *Stern Produce Co.*, 368 NLRB No. 31 at p. 2, 28 (timing of statement, “just days before the scheduled election,” supports finding that employer unlawfully promised employee promotion if they ceased engaging in union activity); *Fisher-Haynes Corp.*, 262 NLRB 1274, 1280 (1982) (manager’s promise of promotion and pay raise the week before representation election unlawful). Hagadorn is A-V’s account executive responsible for Respondent’s contractual relationship with JP Morgan on a national basis. Thus, Hagadorn had authority not only over site manager Zachary Coddington, Cozine’s supervisor, but over John Concepcion, to whom Coddington reported. Cozine testified without contradiction that he had never seen Hagadorn in Jersey City until June 17, 2023, and had never spoken to Hagadorn at any sort of length prior to July 21, 2023. Tr. 219, 285, 287-288. All of these factors bolster a finding that Hagadorn’s statements coercively implied that Cozine’s promotional opportunities would be circumscribed if Local 59 prevailed in the election.²⁰

For all of the foregoing reasons, the evidence establishes that on July 21, 2023, Hagadorn impliedly threatened employees with the loss of promotional opportunities if Local 59 prevailed in the representation election that day, in violation of Section 8(a)(1) of the Act.

²⁰ I note that Hagadorn’s testimony regarding the impetus for his conversation with Cozine on the day of the representation election is not plausible. As Hagadorn acknowledged at the outset of their conversation, Cozine had already had his annual performance review. G.C. Ex. 10, p. 1. Nevertheless, Hagadorn claimed in his testimony that he spoke to Cozine on July 21, 2023 because, “It’s just a review,” then contended their conversation was a “recap” of Cozine’s performance review earlier in the year. Tr. 459, 484. In addition, Hagadorn testified that he “was made aware” that he needed to discuss career opportunities with Cozine “Probably a couple months...before” their conversation, and could have come to Jersey City to speak with Cozine at any time. Tr. 475-476, 485-486. Yet Hagadorn did not choose to raise Cozine’s promotional possibilities with him until July 21, 2023, the day of the representation election. There was simply no reason for Hagadorn to conduct his discussion with Cozine an hour or two before the polls opened, other than to influence Cozine’s vote by implying that if the Union prevailed any promotional opportunity for Cozine would be eliminated. While employer motive is generally irrelevant to establish a violation of Section 8(a)(1), Hagadorn’s implausible testimony in this respect reflects poorly on his credibility overall.

F. Failure to Implement the Market Rate Wage Increase in Jersey City

The Complaint alleges that A-V violated Sections 8(a)(1) and (3) of the Act by increasing the salaries of employees at all locations other than Jersey City in July and August 2023, in retaliation for the Jersey City technicians' support for and activities on behalf of Local 59. The Board analyzes such allegations pursuant to the framework articulated by the Supreme Court in *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26, 33-34 (1967). See *Longmont United Hospital*, 373 NLRB No. 97 at p. 2-4 (2024); *Woodcrest Health Care Center*, 366 NLRB No. 70 (2018), enf'd. 779 Fed.Appx. 908 (3rd Cir. 2019), and 360 NLRB 415 (2014). Pursuant to *Great Dane Trailers, Inc.*, where employer policies "facially discriminate" between union and non-union employees, no proof of anti-union motivation need be established when the discriminatory conduct is "inherently destructive" of the employees' statutory rights. 388 U.S. at 34. However, where the adverse effect of the discriminatory conduct is "comparatively slight," and the employer has adduced evidence "of legitimate and substantial business justifications for the conduct," anti-union motivation must be demonstrated. *Id.* The employer bears the burden of establishing "legitimate objectives" for the facially discriminatory conduct. *Id.*

The Board has developed a concomitant set of principles for addressing situations where benefits are withheld by an employer in the context of the representation election process. The Board has long held that an employer should generally determine "whether to grant benefits while a representation election is pending...as if a union were not in the picture." *Great Atlantic & Pacific Tea Co.*, 166 NLRB 27, 29, fn. 1 (1967), enf'd. in relevant part 409 F.2d 296 (5th Cir. 1969); see also *Longmont United Hospital*, 373 NLRB No. 97 at p. 3; *Woodcrest Health Care Center*, 366 NLRB No. 70 at p. 5. This general principle applies where objections to the conduct of the election or to conduct affecting the results of the election are pending before the Board, as well as during an employer's challenge to the Board's certification of a union as collective bargaining representative. *Longmont United Hospital*, 373 NLRB No. 97 at p. 3, citing *Holland American Wafer Co.*, 260 NLRB 267, fn. 1 (1982), and *Wells Fargo Alarm Services*, 224 NLRB 1111 (1976). It is immaterial in this context whether the benefits in question were granted pursuant to an existing "regular pattern" or employer policy, or were "newly announced." *Longmont United Hospital*, 373 NLRB No. 97 at p. 3; *Woodcrest Health Care Center*, 366 NLRB No. 70 at p. 5. In addition, an employer's "good faith belief that a pending representation election precludes the grant of wage or benefit improvements," does not justify withholding such improvements to the affected employees, nor does "the fear of being charged with unfair labor practices." *Longmont United Hospital*, 373 NLRB No. 97 at p. 3; *Woodcrest Health Care Center*, 366 NLRB No. 70 at p. 6. An employer may, however, postpone a wage increase or other benefit adjustment "so long as it makes clear to employees that the adjustment would occur whether or not they select a union, and that the sole purpose of the adjustment's postponement is to avoid the appearance of influencing the election's outcome." *KOFY TV-20*, 332 NLRB 771, 792 (2000); *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 at p. 5, 75, reconsideration denied 372 NLRB No. 157 (2023); *Aluminum Casting & Engineering Co.*, 328 NLRB 8 (1999), enf'd. in relevant part 230 F.3d 286 (7th Cir. 2000).

The evidence here establishes that A-V violated Sections 8(a)(1) and (3) by failing to implement the market rate wage increase for employees in Jersey City, while applying the market rate wage increase in other locations, in late May or early June 2023. There is no dispute

that the market rate increase was not provided to the Jersey City employees, although it was implemented in other A-V locations at that time; thus the policy was “facially discriminatory” within the meaning of *Great Dane Trailers* and potentially “inherently destructive” of employee Section 7 rights. *Longmont United Hospital*, 373 NLRB No. 97 at p. 2; *Great Dane Trailers, Inc.*, 388 U.S. at 34. Furthermore, A-V’s facially discriminatory conduct involved wages, which the Board has characterized as a “vital term and condition of employment,” “probably the most critical element in employment,” and “the grist on which concerted activity feeds.” *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218, 220 (1995), enf. denied in part on other grounds 81 F.3d 209 (D.C. Cir. 1996) (citations omitted). Thus, the Board has previously held that the failure to implement wage increases at facilities involved in a contested representation election, while implementing such increases at other facilities, violates Sections 8(a)(1) and (3) pursuant to the *Great Dane Trailers* analysis. *Longmont United Hospital*, 373 NLRB No. 97 at p. 1-4, 14-17. It is therefore impossible to construe the adverse impact of A-V’s failure to provide the market rate increase to the Jersey City technicians as “comparatively slight” within the meaning of *Great Dane Trailers*.

While A-V does not directly address the *Great Dane Trailers* analysis, Respondent makes two arguments which could conceivably relate to a claim that the adverse impact of its failure to implement the market rate increase in Jersey City was “comparatively slight.” First, A-V argues on page 17 of its Post-Hearing Brief that the Jersey City technicians were not made aware that they would receive the market rate adjustment in the summer of 2023. However, as discussed below, the record establishes that A-V’s sole motivation for declining to implement the market rate increase in Jersey City was the Union organizing campaign and representation proceedings. As a result, any notice to the Jersey City technicians that they would not be receiving a market rate increase at that time would have simply constituted an independent violation of the Act. See *Longmont United Hospital*, 373 NLRB No. 97 at p. 4, citing *Hostar Marine Transport Systems*, 298 NLRB 188, 192 (1990), and *Wellstream Corp.*, 313 NLRB 698, 707 (1994) (memoranda announcing that employees would receive wage and benefit increases, except for the group of employees who voted in representation election, independently violated Section 8(a)(1)). A-V then contends that not all of the Jersey City technicians would have received the market rate increase, even if it had been implemented at that location. Post-Hearing Brief at 17. However, Hagadorn testified that at least three of the six employees eligible to vote in the representation election – Hunter, Cozine, and Saintil – would have received market rate increases had they been implemented by A-V in Jersey City in May or June of 2023.²¹ Tr. 491-492. The evidence further demonstrates that technician Garrett Kruse, another eligible voter, received the market rate wage increase prior to the election.²² Given that the market rate

²¹ Hunter and Cozine received the market rate wage increase to \$45 per hour in May and June of 2025, two years after the representation election took place. Tr. 66-67, 224; R.S. Ex. 2.

²² The evidence overall indicates that Kruse had already begun working in Jersey City as of July 2023, in that the wage increase reflecting his transfer from Delaware to Jersey City occurred as of the pay date June 23, 2023. R.S. Ex. 2; Tr. 471-472. Kruse then received the market rate wage increase to \$45 per hour, beginning as of the pay date July 7, 2023. R.S. Ex. 2; see Tr. 66-67, 224. The Stipulated Election Agreement, approved by the Regional Director on July 12, 2023, required the submission of a list of eligible voters – technicians employed at A-V’s Jersey City location – within two business days. G.C. Ex. 2(g). The list submitted by A-V included Kruse. Jt. Ex. 3. Thus, at the time that the voter eligibility list was submitted, Kruse was employed in Jersey City and had received the market rate wage increase. Given the foregoing evidence, I do not credit Hagadorn’s testimony that Kruse received the market rate increase while working at A-V’s Delaware location. Tr. 495-497.

increase affected at least four of the six bargaining unit employees, any argument advanced by A-V that the adverse impact of its failure to implement the increase in Jersey City on the technicians' Section 7 rights was "comparatively slight" would not be compelling.

5 Furthermore, A-V provided no "substantial and legitimate business justification" for its failure to provide the market rate increase to the Jersey City technicians in May or June 2023, when it implemented the market rate increase at its other locations. *Woodcrest Health Care Center*, 366 NLRB No. 70 at 3. In fact, Hagadorn directly attributed A-V's failure to implement the market rate increase in Jersey City to the Union organizing effort, admitting during his
10 testimony that the market rate increase would have been applied in Jersey City at that time as well, if not for the request for recognition and ongoing Union organizing campaign. Tr. 466-467, 492-493; see also Tr. 224. In addition, at page 17 of its Post-Hearing Brief, A-V contends that after receiving Local 59's May 30, 2023 request for recognition it was legally precluded from implementing the market rate increase for the Jersey City technicians, lest it be perceived as
15 attempting to interfere with the representation election. The Board has repeatedly rejected such arguments.²³ See *Longmont United Hospital*, 373 NLRB No. 97 at p. 3 ("neither an employer's good-faith belief that a pending representation precludes the grant of wage or benefit improvements, nor the fear of being charged with unfair labor practices, justifies the withholding of improvements that normally would have been extended to the affected employees");
20 *Woodcrest Health Care Center*, 366 NLRB No. 70 at p. 6, citing *Care One at Madison Avenue, LLC v. NLRB*, 832 F.2d 351, 359-360 (D.C. Cir. 2016).

Finally, there is no evidence that A-V took any steps at all, let alone any effective measures, to make clear to the Jersey City technicians that the market rate wage increase "would
25 occur whether or not they select a union, and that the sole purpose of the adjustment's postponement [was] to avoid the appearance of influencing the election's outcome." *KOFY TV-20*, 332 NLRB at 792; *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 at p. 5, 75. A-V adduced no evidence to contradict Hunter, Cozine, and Saintil's testimony that they were never informed in 2023 that the market rate wage increase would be implemented in Jersey
30 City. Tr. 65-66, 68, 160-161, 225. In fact, Hagadorn concurred that the Jersey City technicians were never informed that they would receive the market rate increase once the representation election was definitively concluded. Tr. 468-469.

For all of the foregoing reasons, the evidence establishes that in May and June 2023, A-V
35 implemented a market rate increase in the wage rates of technicians at locations other than its Jersey City location, while failing to implement the market rate wage increase for the Jersey City technicians, based upon the Jersey City technicians' organizing and pending petition for a representation election, in violation of Sections 8(a)(1) and (3) of the Act.

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²³ Hagadorn's contention during his testimony that A-V delayed the implementation of the market rate adjustment for the Jersey City technicians based upon the advice of its counsel has likewise been rejected by the Board. Tr. 493-494; see *Longmont United Hospital*, 373 NLRB No. 97 at p. 3; *Woodcrest Health Care Center*, 366 NLRB No. 70 at p. 6, fn. 13.

G. The Progressive Discipline Issued to Eddy Saintil on July 27, 2023 and August 1, 2023

The Complaint alleges that A-V violated Sections 8(a)(1) and (3) of the Act when John
 5 Concepcion issued disciplinary warnings to Eddy Saintil on July 27, 2023 and August 1, 2023, in
 retaliation for Saintil’s activities on in support of Local 59. The Board analyzes cases involving
 employer motivation for employee discipline using the theoretical framework articulated in
Wright Line, discussed above. Thus, General Counsel must satisfy their initial burden by
 10 persuading by a preponderance of the evidence that employee protected conduct was a
 motivating factor in the discipline, by adducing evidence to demonstrate that Saintil supported
 the Union and/or engaged in Union activity, that A-V was aware of Saintil’s Union support or
 activity, and anti-union animus. *Adams & Associates, Inc.*, 363 NLRB at 1928. The burden then
 shifts to A-V to persuade by a preponderance of the evidence that “the same action would have
 15 taken place in the absence of the protected conduct,” and that its reasons for issuing the
 disciplinary warnings to Saintil were not pretextual. *Wright Line*, 251 NLRB at 1089; *Weldun
 International*, 321 NLRB at 733; *Ground Zero Foundation*, 370 NLRB No. 22 at p. 7.

Based upon the evidentiary record, General Counsel has established a *prima facie* case
 that A-V issued Progressive Disciplines to Saintil on or about July 27, 2023 and August 1, 2023
 20 in retaliation for Saintil’s Union support and activities. The evidence demonstrates that Saintil
 engaged in protected Union activity in connection with Local 59’s organizing campaign. Saintil
 signed a Union authorization card, and I credit his testimony – consistent with Cozine’s – that he
 participated in discussions regarding the Union with other technicians in the control room in
 front of Coddington, and sometimes involving Coddington himself. Tr. 136-140, 162, 193-194,
 25 225-226, 229. I further credit Saintil’s testimony that during these conversations he made
 statements countering opposition to the Union voiced by technicians William Scott and Alberto
 Arias. Tr. 162, 193-194. The evidence overall therefore establishes that Saintil engaged in
 protected Union activity, and that A-V, via Coddington, was cognizant of Saintil’s support for
 and activities on behalf of Local 59.

The evidence further establishes anti-Union animus on the part of A-V. The evidence
 demonstrates that A-V committed a number of unfair labor practices in response to Local 59’s
 organizing effort, as discussed above. A-V violated Section 8(a)(1) of the Act by informing the
 Jersey City technicians that they would no longer be assigned to work at other locations as a
 35 result of their Union activity, creating the impression of surveillance by increasing its scrutiny
 and monitoring of the Jersey City technicians after the recognition request, and impliedly
 threatening employees with the loss of promotional opportunities if Local 59 prevailed in the
 representation election. In addition, the evidence demonstrates that A-V violated Sections
 8(a)(1) and (3) by refusing to assign the Jersey City technicians work at other locations and
 40 reducing their overtime opportunities and overtime hours in retaliation for the Jersey City
 technicians’ Union support and activities, and by unlawfully implementing a market rate increase
 in the wages of technicians at other locations while failing to do so in Jersey City. This unlawful
 conduct establishes animus against Local 59 in the context of the Progressive Disciplines issued
 to Saintil. See, e.g., *Metro-West Ambulance Service*, 360 NLRB at 1029, 1051 (employer’s other
 45 violations evince animus in connection with discipline issued to employee); *Lucky Cab Co.*, 360

NLRB 271, 274 (2014), enf'd. 621 Fed.Appx. 9 (D.C. Cir. 2015) (employer's contemporaneous violations demonstrate anti-union animus).

5 The timing of the Progressive Disciplines issued to Saintil also supports a *prima facie* case that the disciplinary warnings were unlawfully motivated. The first of the Progressive Disciplines was issued on or around July 25, 2023, only four days after the representation election on July 21, 2023, and the second was issued on August 1, 2023, little more than one week later. This temporal proximity constitutes evidence of anti-union animus, particularly combined with A-V's other unfair labor practices committed in and around the same period. See
 10 *Bannum Place of Saginaw, LLC*, 370 NLRB No. 117 at p. 3, fn. 12 (2021), enf'd. 41 F.4th 518 (6th Cir. 2022) (intervals of three to five weeks between discharge and filing of representation petition, unlawful threats and interrogation, and upcoming election evidence of animus); *Evenflow Transportation, Inc.*, 358 NLRB 695, 697 (2012), affirmed and adopted 361 NLRB 1482 (2014) (inference of animus appropriate based upon timing, where layoff occurred "within
 15 a few weeks of the renewal of the organizing campaign" and soon after unlawful interrogation).

General Counsel having established a *prima facie* case that the Progressive Disciplines issued to Saintil were unlawfully motivated, the burden shifts to A-V to establish that the Progressive Disciplines were issued for legitimate, non-discriminatory reasons. I find that A-V
 20 has satisfied this burden based upon the evidentiary record.

As an initial matter, I note again that Saintil's testimony was less reliable than the testimony of Hunter, Cozine, or Coddington. As discussed above, Saintil repeatedly testified that his memory of certain material events was "very blurred," "very blurry," and/or "a very gray
 25 area for me" given that he left his employment with A-V two years before the hearing. Tr. 145-146, 151, 173, 186. This lack of recall encompassed the events of August 1, 2023, which formed the basis for the Progressive Discipline issued that day. Tr. 151. Saintil also evinced a willingness to speculate regarding the rationale for some of his conduct on August 1, 2023, indicating a lack of reliability with respect to his testimony, as will be addressed in further detail
 30 below. Based upon these considerations, I have generally credited Saintil's testimony only where it is corroborated by a more reliable witness. For the foregoing reasons, I credit Coddington's testimony regarding the events surrounding the Progressive Disciplines issued to Saintil where it conflicts with Saintil's account. I also credit Coddington's testimony that there were no Progressive Disciplines issued to other technicians at the Jersey City location because
 35 the other technicians there "do what they're supposed to do." Tr. 531. This assertion is consistent with the impression of competence and diligence evident from Hunter and Cozine's testimony and demeanor at the hearing.

The first of the Progressive Disciplines, dated July 25, 2023, involves two incidents –
 40 Saintil's alleged failure to report to the control room at his scheduled time on June 26, 2023, and a 15-minute lateness where he failed to communicate to Coddington on July 25, 2023. G.C. Ex. 7. With respect to the first of these incidents, Saintil admitted during his testimony that he should have reported directly to the control room on the morning of June 26, 2023, instead of going to get breakfast. Tr. 174-175. He only maintained that he knew that he could complete
 45 the preparations for the morning's event despite taking the time to get breakfast first. Tr. 175. I credit Coddington's testimony that technicians are expected to report directly to the control room

when they arrive at the facility in the morning to begin setting up for a scheduled event, to inform the other technicians that they are present, determine what needs to be done, and make the necessary preparations. Tr. 527, 528-529. Neither Hunter nor Cozine testified that technicians went to get breakfast before reporting to the control room at the start of their shifts, and there is no evidence to corroborate Saintil's assertion that Coddington was aware that he had done so in the past. Thus, I find that the evidence overall substantiates Coddington's assertion that Saintil should have first reported to the control room prior to getting breakfast on June 26, 2023, and failed to do so.

The second incident addressed in the July 25, 2023 Progressive Discipline involved Saintil's arriving to work 15 minutes late that day, without communicating with Coddington. Saintil did not deny that he had arrived to work late, but testified that in the past, Coddington had no issue with his arriving more than 15 minutes late, so long as he informed Coddington by text message. Tr. 149. Coddington confirmed in his testimony that the issue ultimately involved Saintil's failure to communicate with him regarding the fact that he would be late that morning. Tr. 528-529. The evidence overall therefore establishes that Saintil was late on July 25, 2023, and that he did not inform Coddington that he would be late, although he was expected to do so and had in fact done so in the past.

General Counsel contends that the evidence demonstrates that A-V tolerated Saintil's lateness until it became apparent that Saintil supported the Union. It is well-settled that the discipline or discharge of an employee for misconduct which the employer has previously condoned supports a conclusion that the employer's asserted legitimate, non-discriminatory reason for the adverse employment action is in fact pretextual. See, e.g. *David Saxe Productions and V Theater Group, LLC*, 370 NLRB No. 103 at p. 35 (2021) (unlawful motivation established where employer claimed employee was discharged based upon "conduct that it had long condoned"); *Deep Distributors of Greater New York d/b/a The Imperial Sales, Inc.*, 365 NLRB 947, 948, 965 (2017), enf'd. 740 Fed.Appx. 216 (2nd Cir. 2018); *California Gas Transport, Inc.*, 347 NLRB 1314, 1320 fn. 9, 1352 (2006), enf'd. 507 F.3d 847 (5th Cir. 2007).

The record does establish that Saintil was repeatedly late for his shifts. Both Coddington and Cozine corroborated Saintil's testimony that he was regularly 15 minutes late for the start of his shift prior to the Union's recognition request on March 30, 2023, with Coddington stating that Saintil had been "consistently late for quite some time," and Cozine confirming that Saintil's timeliness "was not the best." Tr. 164-165, 278, 537. I further credit Saintil's testimony, corroborated by Coddington, that Saintil never received written discipline for lateness prior to July 25, 2023. Tr. 164-165, 537-539. However, Coddington's testimony that he preferred to address the issue initially through direct discussions with Saintil prior to issuing Progressive Discipline is also credible, particularly given Saintil's relatively short tenure with A-V. Tr. 537-359. It is also plausible given Saintil's testimony that at the time he was hired in January 2023, he informed Coddington that he was not familiar with the public transportation available to travel from his home to the Jersey City facility, and might be late as a result. Tr. 148. In such circumstances, it does not appear that Coddington's more informal attempts to address Saintil's latenesses during the initial six months of Saintil's employment prior to the Progressive Discipline issued on July 25, 2023 constituted condonation of what evolved into chronic lateness on Saintil's part.

General Counsel further contends that Progressive Disciplines issued to other employees for lateness tend to demonstrate that Saintil was treated differently from other employees who engaged in similar conduct, for retaliatory reasons. Post-Hearing Brief at 24-25. It is well-

5 settled that the disparate treatment of employees who committed similar or more serious infractions may constitute evidence that an employer’s allegedly legitimate, non-discriminatory justification for an adverse employment action is in fact pretextual. See, e.g., *Pontiac Care & Rehabilitation Center*, 344 NLRB 761, 767 (2005); *New Otani Hotel & Garden*, 325 NLRB 928, fn. 2 (1998). However, the disciplinary incidents which General Counsel discusses do not tend

10 to establish that Saintil was treated differently than other employees disciplined for lateness. For example, on July 5, 2022, employee Andres Garcia was issued Progressive Discipline described as “Verbal” after three incidents during the previous of month where he was late for 10 minutes or more. G.C. Ex. 12(a). On February 11, 2024, employee Gregory Ruban was also issued a “Verbal” Progressive Discipline for three incidents of lateness. G.C. Ex. 12(c). However, both

15 of these Progressive Disciplines involve a sequence of events roughly consistent with the manner in which Saintil was treated, where two initial incidents of lateness were addressed outside of the formal disciplinary process prior to issuing a Progressive Discipline to the employee regarding the issue. Furthermore, the July 25, 2023 Verbal Progressive Discipline issued to Saintil addressed not only Saintil’s lateness, but also his failure to report to the control room upon

20 arriving at work on June 26, 2023. The Verbal Progressive Discipline issued to Garcia and Ruban involved solely multiple instances of lateness. General Counsel contends that a Progressive Discipline issued to Shamel Hughes on May 5, 2024 constitutes additional evidence of disparate treatment. G.C. Ex. 12(b); Post-Hearing Brief at 24-25. However, Hughes received a “Final” Progressive Discipline after he was over an hour late for his shift at a power event.

25 Thus, I do not find that Hughes’ misconduct was comparable to Saintil’s – Hughes’ misconduct was of a more significant nature given the critical nature of a power event, and he accordingly received a more severe “Final” Progressive Discipline. For all of the foregoing reasons, evidence involving the discipline of other employees does not establish that Saintil received a harsher penalty for the same or similar infractions in a manner that tends to establish pretext or

30 retaliatory motivation.

A-V has satisfied its evidentiary burden to establish a legitimate, non-discriminatory reason for the August 1, 2023 Progressive Discipline as well. Saintil testified that his recall with respect to the first two incidents involved – sitting with his head down in the control room from

35 7:14 a.m. to 8:00 a.m. and from 11:30 a.m. to 11:50 a.m. – was “very blurry...just because it’s something so long ago,” and “a gray area.” Tr. 151, 153-154. Saintil’s speculation regarding these incidents – that “there was probably an all-day event that I was probably going to” which did not begin until “probably around eight o’clock...and everything was set up just waiting for the client to come” such that Coddington “probably saw me being idle at that time” – is not

40 convincing. Tr. 156. Thus, I credit Coddington’s testimony that during these periods, Saintil was sitting with his head down on the audiovisual equipment. Tr. 530-531, 541-543. Indeed, Saintil admitted that resting his head on his arms was “a posture that I’ve always done,” “especially early in the morning.” Tr. 151-152. While the evidence establishes that Saintil had never received a Progressive Discipline for this conduct, he testified that both Coddington and

45 Concepcion had raised the issue with him previously, accusing him of sleeping during work hours. Tr. 149-150, 159.

General Counsel also argues that Saintil was treated differently from other technicians, all of whom experienced periods of idle time, where they have no tasks assigned and/or remain “on standby” to respond if they are needed. I credit Cozine’s testimony that approximately 2
 5 hours out of each 8 hour day might consist of such idle time. Tr. 211. General Counsel contends that the other technicians never received Progressive Discipline for experiencing idle time. Post-Hearing Brief at 25. However, Coddington’s testimony indicates that the September 1, 2023 Progressive Discipline was not issued to Saintil for experiencing idle time, but for sitting with his head down on the control room equipment for extended periods of time, which Coddington
 10 reasonably construed as sleeping. Tr. 530-531, 541-543. I further credit Coddington’s testimony that he spoke to Saintil regarding the first such incident, from 7:14 a.m. to 8:00 a.m., only to witness Saintil engaging in the same behavior from 11:30 a.m. to 11:50 a.m. Tr. 541-542.

The evidence in connection with the third incident described in the August 1, 2023
 15 Progressive Discipline is more equivocal. Coddington testified that he had asked Saintil to assist two technicians who were working on the second floor, and the technicians reported that Saintil never arrived, after which Coddington saw Saintil sitting in the Palisades Lounge. Tr. 545. Saintil testified that when he went to assist technician Michael Scott at that time, Scott was not present. Tr. 154-155. Based solely upon their relative credibility overall, I credit Coddington’s
 20 assertion that the technicians reported that Saintil never came to the second floor to assist them, over Saintil’s contention that Scott was not present when he arrived on the second floor. In this respect, Saintil testified that “So I believe I returned and I guess that’s when whoever saw me decided to say that I was idle. Or if I wasn’t that – if that wasn’t the specific situation, that I assume it would be around lunch time.” Tr. 154. This testimony is too speculative to support a
 25 finding that Saintil was taking a lunch break when Coddington saw him in the Palisades Lounge, and in any event I generally credit Coddington’s testimony that employees only eat in the Palisades Lounge when a catered event takes place in that area. See Tr. 543-544. Thus, the relative reliability of Saintil and Coddington’s testimony regarding the incident supports a conclusion that Coddington reasonably believed that Saintil did not in fact report to the second
 30 floor to assist the technicians, as Coddington had directed, and acted upon that belief when issuing the August 1, 2023 Progressive Discipline to Saintil. See *DTR Industries*, 350 NLRB 1132, 1135 (2007), *enf’d*. 297 Fed.Appx. 487 (6th Cir. 2008), citing *McKesson Drug Co.*, 337 NLRB 935, 937, n. 7 (2002).

35 For all of the foregoing reasons, the evidence is sufficient to satisfy A-V’s burden to establish legitimate, non-discriminatory reasons for the Progressive Disciplines issued to Saintil on July 25, 2023 and August 1, 2023. As a result, I will recommend that the Complaint’s allegations that A-V issued the Progressive Disciplines in retaliation for Saintil’s Union support and activities, in violation of Sections 8(a)(1) and (3) of the Act, be dismissed.
 40

H. Local 59’s Objections to Conduct Affecting the Results of the Election

As discussed above, Local 59 lost the representation election conducted on July 21, 2023. After the challenged ballot of Garrett Kruse was opened and counted pursuant to the parties’
 45 agreement, there were three votes in favor of representation by the Union and three against in a unit of six eligible voters, so that a majority of the eligible employees had not voted in favor of

Union representation. G.C. Ex. 2(i), p. 1. On July 31, 2023, Local 59 filed Objections to Conduct Affecting the Results of the Election, and on June 13, 2025, the Regional Director issued a Report on Objections, Order Consolidating Cases, and Notice of Consolidated Hearing, which consolidated the representation and unfair labor practice cases for the purpose of a hearing, ruling, and decision in the instant case.

In this decision, I have determined that A-V violated Section 8(a)(1) by: (i) informing the Jersey City technicians that they would no longer be assigned to work at other locations as a result of their Union activity; (ii) creating the impression of surveillance by increasing its scrutiny and monitoring of the Jersey City technicians after the recognition request; and (iii) impliedly threatening employees with the loss of promotional opportunities if Local 59 prevailed in the representation election. In addition, I have found that that A-V violated Sections 8(a)(1) and (3) by refusing to assign the Jersey City technicians work at other locations and reducing their overtime opportunities and overtime hours in retaliation for the Jersey City technicians' Union support and activities, and by unlawfully implementing a market rate increase in the wages of technicians in other locations while failing to do so in Jersey City. These violations, together with other findings of fact, conform to Local 59's Objections 2, 3, 5, 7, and 8 to Conduct Affecting the Results of the Election. G.C. Ex. 2(i). As a result, I sustain Local 59's Objections 2, 3, 5, 7, and 8 to the election.

The Board's long-standing policy is to direct a new election whenever an unfair labor practice has occurred during the critical period, since conduct which violates Sections 8(a)(1) and (3) 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); see also *Starbucks Corp.*, 374 NLRB No. 9 at p. 2, 17 (2024); *Garten Trucking, LC*, 373 NLRB No. 94, at p. 3, fn. 8, p. 31 (2024), enf'd. 2026 WL 458394 (4th Cir. 2026). The critical period in this case began on June 23, 2023, when Local 59 filed its Petition for a Representation Election, and ended on July 21, 2023, when the election took place. During that period, A-V's conduct which created the impression of surveillance was ongoing, and its implied threat that employees would lose promotional opportunities if the Union won the election took place hours before the polls opened. Its retaliatory refusal to assign the Jersey City technicians work at other locations was also continuing during the critical period, as was the exclusion of the Jersey City technicians from the market rate increase for employees implemented at other locations. Thus, A-V's unfair labor practices warrant ordering a new election. The Board will decline to order a new election based upon unfair labor practices committed during the critical period only where it is "virtually impossible" to conclude that they may have affected the results of the election, based upon "the number of violations, their severity, the extent of dissemination, and the size of the unit." See *Starbucks Corp.*, 374 NLRB No. 10 at p. 17, quoting *Bon Appetit Management Co.*, 334 NLRB 1042, 1044 (2001). The bargaining unit at issue here consisted of six employees, and except for the threat that employees would lose promotional opportunities, all of the unfair labor practices plausibly affected every bargaining unit member. Thus, A-V's unlawful conduct cannot be considered *de minimis* in this context.

As a result, I will order that the election be set aside, and direct that a new election be conducted. *Garten Trucking, LC*, 373 NLRB No. 94, at p. 32, citing *Onsite News*, 359 NLRB 797, fn. 1 (2013).

5 I. General Counsel’s Request for a *Gissel* Bargaining Order

General Counsel requests that A-V be ordered to bargain with Local 59 pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In *Gissel Packing Co.*, the Supreme Court held that a bargaining order is appropriate in situations where a labor union has obtained majority status, and the employer has committed unfair labor practices such that “the possibility of erasing [their] effects...and of ensuring a fair election...by the use of traditional remedies...is slight,” so that “employee sentiment once expressed through” union authorization cards “would, on balance, be better protected by a bargaining order” than a rerun election. *Gissel Packing Co.*, 395 U.S. at 614-615; see also *Starbucks Corp.*, 374 NLRB No. 10 at p. 13-14, 120-121; *List Industries, Inc.*, 373 NLRB No. 146 at p. 4, 48-49; *Garten Trucking LC*, 373 NLRB No. 94 at p. 3-4.

The evidence establishes that Local 59 had achieved majority status at the time of its May 30, 2023 recognition request. There is no genuine dispute that at that time there were six audiovisual technicians at A-V’s Jersey City location eligible to vote in the election, and that four of those six had signed union authorization cards. G.C. Ex. 4-7; see also Tr. 34-35, 37-38, 53-56, 136-137, 212-213. A-V does not challenge the authenticity of the union authorization cards entered into evidence, and does not contend that Local 59 lacked majority support among the audiovisual technicians in Jersey City at the time it made its recognition request or the time that it filed the petition for an representation election. As a result, the evidence demonstrates that Local 59 had the majority support of the Jersey City technicians as of May 30, 2023.

In order to determine whether a bargaining order is appropriate in such circumstances, the Board considers the “seriousness of the violations and the pervasive nature of the conduct,” including factors such as “the number of employees directly affected by the violations, the size of the unit, the extent of the dissemination among employees, and the identify and position of the individuals committing the unfair labor practices.” *Starbucks Corp.*, 374 NLRB No. 10 at p. 121, quoting *Hogan Transports, Inc.*, 363 NLRB 1980, 1986 (2016); see also *Garten Trucking LC*, 373 NLRB No. 94 at p. 4. Evaluating all of these considerations, the evidence here establishes that a bargaining order is appropriate.

The character and impact of the violations militates in favor of concluding that a bargaining order is warranted. I find it appropriate to consider A-V’s exclusion of the Jersey City technicians from the market rate wage increase implemented at other A-V locations a “hallmark” violation under the pertinent caselaw. The Board and the courts have found that “hallmark” violations engender “such a coercive and long-lasting effect on employees’ free choice in a potential rerun election” that they “generally warrant a bargaining order ‘without extensive explication.’” *Garten Trucking LC*, 373 NLRB No. 94 at p. 5, quoting *NLRB v. Jamaica Towing, Inc.*, 632 F.2d 208, 212-213 (2d Cir. 1980); see also *List Industries, Inc.*, 373 NLRB No. 146 at p. 49. The Board has repeatedly held that an employer’s grant of wage increases or other benefits to bargaining unit employees during the critical period prior to a representation election constitutes a “hallmark” violation. See *Starbucks Corp.*, 374 NLRB No.

10 at p. 13, 121; *Hogan Transports, Inc.*, 363 NLRB 1980, 1985 (2016); *Evergreen America Corp.*, 348 NLRB 178, 180 (2006), enf'd. 531 F.3d 321 (4th Cir. 2008). As discussed previously, the Board has noted that wages are a “vital term and condition of employment,” and “probably the most critical element in employment.” *Aroostook County Regional Ophthalmology Center*, 317 NLRB at 220.

In the instant case, A-V implemented the market rate wage increase at all locations *except* the Jersey City location due to Local 59’s organizing campaign and the impending representation election, in order to discourage the Jersey City technicians’ Union support and activities. Thus, A-V’s unlawful conduct here similarly impressed upon the Jersey City technicians that “Respondent, and not the Union, is the source of such benefits, and that they may continue as long as the employees do not support the Union.” *Gerig’s Dump Trucking*, 320 NLRB 1017, 1018 (1996). Furthermore, the record establishes that this violation had a “particularly lasting effect” on the bargaining unit employees. *List Industries, Inc.*, 373 NLRB No. 146 at p. 49, quoting *Adam Wholesalers*, 322 NLRB 313, 314 (1996); *Starbucks Corp.*, 374 NLRB No. 10 at p. 121. The evidence demonstrates that A-V did not implement the market rate wage increase for the Jersey City technicians until May 2025, two years after it was implemented elsewhere and after the organizing campaign commenced. Because annual wage increases are based upon the employee’s wage rate at the time of their annual review, the Jersey City technicians are still earning less than they would be earning had the market rate wage increase been implemented there at the time it was implemented at other A-V locations. Thus, as Cozine explicated during his testimony, the Jersey City technicians continue to experience reduced earnings as a result of A-V’s unlawful conduct. See Tr. 244-245. For all of the foregoing reasons, the record establishes that A-V’s failure to implement the market rate wage increase at the Jersey City location, while implementing the wage increase elsewhere, has had “such a coercive and long-lasting effect on employees’ free choice in a potential rerun election” that a bargaining order is appropriate pursuant to *Gissel Packing Co.*

A-V’s other violations of the Act must be considered as well in evaluating whether a bargaining order is appropriate, and its other unlawful conduct is also significant. See *Starbucks Corp.*, 374 NLRB No. 10 at p. 121; *Garten Trucking LC*, 373 NLRB No. 94 at p. 6. A-V’s unlawful new policy – announced by Coddington the week after Local 59 made its recognition request – that the Jersey City technicians would no longer be assigned to work at other facilities, and vice versa, to prevent “cross-pollination,” directly affected the Jersey City technicians’ earnings, as did the unlawful reduction in the technicians’ overtime hours in retaliation for their Union activities. The unprecedented presence of Concepcion and Hagadorn at the Jersey City location, and Concepcion and Coddington’s intensified monitoring of the technicians’ hours, which also began after the recognition request, created the impression of surveillance and constituted unlawful coercion. See *Starbucks Corp.*, 374 NLRB No. 10 at p. 121; *Garten Trucking LC*, 373 NLRB No. 94 at p. 6. Hagadorn’s implied threat on the day of the representation election that promotional opportunities for Cozine would be eliminated if Local 59 prevailed in the representation election is another substantial violation, intimating that Cozine’s potential career path with A-V was contingent upon a continued non-Union work environment.

The number of employees affected by the violations further supports the conclusion that a bargaining order is warranted. The violations of Section 8(a)(3) established by the record – withholding the market rate wage increase from the Jersey City technicians while implementing the increase elsewhere, ceasing to assign the technicians work at other A-V locations, and reducing their overtime hours and opportunities – affected all six of the technicians eligible to vote in the election. Hunter, Cozine, and Saintil – half of the bargaining unit employees – testified to having heard Coddington’s statements that the Jersey City technicians would no longer be assigned to work at other locations as a result of their Union activities. Because Coddington made these remarks in the 3rd Floor control room where all of the technicians worked, and expressed the sentiment on more than one occasion, it is not unreasonable to assume that other technicians heard them as well. And in a unit consisting of only six eligible employees, even Hagadorn’s private conversation with Cozine impliedly threatening a loss of promotional opportunity if Local 59 prevailed in the election is significant. Thus, the record establishes that the vast majority of A-V’s unlawful conduct – which involved wages and hours, the core components of the employment relationship – affected the entire unit of employees eligible to vote in the election. Such a finding supports a determination that a bargaining order is appropriate. See *Horizon Air Services*, 272 NLRB 243, 244 (1984), enf’d. 761 F.2d 22 (1st Cir. 1985) (“pervasiveness” of unlawful conduct “specifically demonstrated” where “at least 6 of the 12 unit employees were direct targets of [President’s] interrogations, threats, or adverse actions”).

The identity and position of the individuals who committed the unfair labor practices substantiated by the record evidence also supports issuing a bargaining order. In this respect, the increased presence of Concepcion and Hagadorn at the Jersey City technicians’ work location in the weeks preceding the election, which unlawfully created the impression that the technicians’ Union activity was under surveillance, is particularly significant. The evidence establishes that prior to Local 59’s recognition request, Coddington, A-V’s Jersey City site manager, was the sole supervisor or manager the technicians interacted with on a daily basis. However, after May 30, 2023, Concepcion, who managed all of A-V’s site managers from an office located in Manhattan, appeared at the Jersey City location almost daily. During that same period, Hagadorn, A-V’s account manager responsible for its relationship with JP Morgan on a nationwide basis, began visiting the Jersey City location twice a week, making a daily appearance during the week leading up to the representation election. And on the day of the election, Hagadorn initiated a private meeting with Cozine to impliedly threaten him with the loss of promotional opportunity if the Union prevailed. The sudden presence of these higher-level managers – which constitutes an unfair labor practice in and of itself – and Hagadorn’s unlawful threat, indicates that a bargaining order is appropriate. See *Starbucks Corp.*, 374 NLRB No. 10 at p. 121 (“unprecedented incursion of...highest-level corporate executives...likely left a lasting impact as to the importance of voting against representation”); *Garten Trucking LC*, 373 NLRB No. 94 at p. 6.

Finally, the record does not establish any considerations militating against issuing a bargaining order. A-V does not argue in its Post-Hearing Brief that the passage of time, employee or management turnover, or other changed circumstances render a bargaining order inappropriate. See, e.g., *Starbucks Corp.*, 374 NLRB No. 10 at p. 14, 121-122; *Garten Trucking LC*, 373 NLRB No. 94 at p. 7-8. Although the evidence establishes that technician William Scott

argued against union representation during conversations in the control room with the other technicians and Coddington, Scott in fact signed a union authorization card the same day as Saintil, on May 16, 2023. G.C. Exs. 5, 6. Thus, it is impossible to conclude from the record that Scott was genuinely opposed to Union representation, as opposed to influenced by A-V's unlawful conduct.

For all of the foregoing reasons, General Counsel's request for a bargaining order pursuant to *Gissel Packing Co.* is granted, and I will recommend that A-V be ordered to bargain with Local 59.²⁴

Conclusions of Law

1. Respondent A-V Services, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. During the first week of June 2023, A-V informed its audiovisual technicians employed at 575 Washington Boulevard, Jersey City, New Jersey, that they would no longer be assigned to work at other A-V locations in retaliation for their support for and activities on behalf of Local 59, IATSE, in violation of Section 8(a)(1) of the Act.

3. Beginning in early June 2023, A-V created the impression that the activities of the audiovisual technicians employed in Jersey City in support of Local 59 were under surveillance, in violation of Section 8(a)(1) of the Act.

4. On July 21, 2023, A-V impliedly threatened audiovisual technicians employed in Jersey City with the loss of promotional opportunities if Local 59 prevailed in the representation election that day, in violation of Section 8(a)(1) of the Act.

5. Beginning in June 2023, A-V ceased assigning its audiovisual technicians employed in Jersey City to work at other A-V locations in retaliation for their support for and activities on behalf of Local 59, in violation of Sections 8(a)(1) and (3) of the Act.

²⁴ In addition to the bargaining order discussed above, the Complaint seeks a number of other remedies apart from the Board's traditional make-whole remedies and a notice posting. Specifically, the Complaint requests as relief an order requiring that A-V do the following: (i) distribute the Board's notice to its employees by mail and text message; (ii) hold a meeting of its employees at which the Board's notice is read aloud by one of A-V's managers in the presence of a Board agent, or by a Board agent in the presence of A-V's managers; (iii) distribute the Board's notice to all current supervisors and managers and conduct training for all employees, including supervisors and managers, regarding employees' rights under the Act and/or compliance with the Board's orders; (iv) provide reasonable access for Local 59 to A-V's non-work areas on non-work time; and (v) provide notice to Local 59 and access to A-V's facilities to respond to any address made by A-V regarding Union representation. General Counsel does not discuss or provide legal authority with respect to any of these non-traditional remedies – some of which have never been ordered by the Board – in his Post-Hearing Brief. Nor did General Counsel address these remedies in his opening statement. Tr. 22-24. As a result, I will consider these components of the Complaint's request for relief to have been abandoned. See *A.S.V., Inc.*, 366 NLRB No. 162 at p. 59, fn. 73 (2018), reconsideration denied, 368 NLRB No. 138 (2019).

6. Beginning in June 2023, A-V reduced overtime opportunities and overtime hours for its audiovisual technicians employed in Jersey City in retaliation for their support for and activities on behalf of Local 59, in violation of Sections 8(a)(1) and (3) of the Act.

5 7. In May and June 2023, A-V implemented a market rate increase in the wage rates of audiovisual technicians at locations other than its Jersey City location, while failing to implement the market rate wage increase for the audiovisual technicians in Jersey City, in order to discourage the Jersey City technicians from supporting Local 59, in violation of Sections 8(a)(1) and (3) of the Act.

10 8. A-V has not violated the Act or engaged in objectionable conduct in any other manner.

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

The Remedy

20 Having found that A-V Services, Inc. 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.

25 Respondent, having unlawfully failed to implement its market rate wage increase for the audiovisual technicians employed in Jersey City at the time it implemented the wage increase at other facilities, shall be ordered to make the audiovisual technicians employed in Jersey City whole for any loss of earnings and other benefits they may have suffered as a result. The make-whole remedy shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Respondent shall further
30 compensate the audiovisual technicians for any other direct or foreseeable pecuniary harms incurred as a result of Respondent's unlawful failure to implement the market rate wage increase in Jersey City. *Thryv, Inc.*, 372 NLRB No. 22 at p. 14 (2022); *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enf'd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017). Compensation for such harms shall be calculated separately from taxable net back pay, with interest at the rate
35 prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Respondent shall further compensate the audiovisual technicians employed in Jersey City for the adverse tax consequences, if any, of receiving a lump sum back pay award, and file a report allocating backpay to appropriate years, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). The Regional Director will then assume responsibility for
40 transmission of the report to the Social Security Administration as appropriate. In addition to the backpay-allocation report, Respondent shall file with the Regional Director copies of corresponding W-2 forms reflecting the backpay award. *Cascades Containerboard Packing—Niagara*, 370 NLRB No. 76 (2021).

45 A-V Services, Inc. shall also post an appropriate information notice, as described in the attached Appendix. This notice shall be posted in the Respondent's facilities in Jersey City, New

Jersey, including 575 Washington Boulevard, 545 Washington Boulevard, and 480 Washington Boulevard, wherever notices to employees are regularly posted, for 60 days, without anything covering the notice or defacing its contents. In addition to the physical posting of paper notices, notices shall be distributed electronically, posted on an intranet or an internet site, and/or other electronic means, to the extent Respondent customarily communicates with its employees in such a manner. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed its locations in Jersey City, New Jersey, including 575 Washington Boulevard, 545 Washington Boulevard, and 480 Washington Boulevard, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since May 1, 2023.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:²⁵

Order

A-V Services, Inc., its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Informing its audiovisual technicians employed at 575 Washington Boulevard, Jersey City, New Jersey, that they would no longer be assigned to work at other A-V locations in retaliation for their support for and activities on behalf of Local 59, IATSE.

(b) Creating the impression that its employees' activities on behalf of Local 59, IATSE, are under surveillance.

(c) Impliedly threatening its employees with the loss of promotional opportunities if Local 59, IATSE, prevails in a representation election.

(d) Ceasing to assign its audiovisual technicians employed in Jersey City to work at other A-V locations in retaliation for their support for and activities on behalf of Local 59, IATSE.

(e) Reducing overtime opportunities and overtime hours for its audiovisual technicians employed in Jersey City in retaliation for their support for and activities on behalf of Local 59, IATSE.

(f) Implementing a market rate increase in the wage rates of audiovisual technicians at locations other than its Jersey City location, while failing to implement the market rate wage increase for the audiovisual technicians in Jersey City, in order to discourage its Jersey City technicians from supporting Local 59, IATSE.

²⁵ 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.

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

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

5

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

10

All full-time Audio-Visual Technicians employed by the Employer at its 575 Washington Boulevard, Floor 3; 545 Washington Boulevard; and 480 Washington Boulevard, Jersey City, New Jersey locations.

15

(b) Make the audiovisual technicians employed in Jersey City whole for any loss of earnings as a result of A-V's failure to implement its market rate wage increase in Jersey City in 2023, and for any other direct or foreseeable pecuniary harms, suffered as a result of A-V's unlawful conduct, in the manner set forth in the Remedy section of this decision.

20

(c) Compensate the audiovisual technicians employed in Jersey City for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or by a Board order, a report allocating the backpay award to the appropriate calendar year(s).

25

(d) 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.

30

35

(e) Within 14 days after service by the Region, post at its facilities in Jersey City, New Jersey, including 575 Washington Boulevard, 545 Washington Boulevard, and 480 Washington Boulevard, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22, 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. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed its facilities at 575 Washington Boulevard, 545 Washington Boulevard, and 480 Washington Boulevard, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since May 1, 2023.

40

45

(f) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. April 30, 2026

5

A handwritten signature in black ink that reads "Lauren Esposito". The signature is written in a cursive style with a large initial 'L' and 'E'.

Lauren Esposito
Administrative Law Judge

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT inform our audiovisual technicians employed in Jersey City, New Jersey, that they will no longer be assigned to work at other A-V locations in retaliation for their support for and activities on behalf of Local 59, IATSE.

WE WILL NOT create the impression that our employees' activities on behalf of Local 59, IATSE, are under surveillance.

WE WILL NOT impliedly threaten our employees with the loss of promotional opportunity if Local 59, IATSE prevails in a representation election.

WE WILL NOT cease to assign our audiovisual technicians employed in Jersey City to work at other A-V locations in retaliation for their support for and activities on behalf of Local 59, IATSE.

WE WILL NOT reduce overtime opportunities and overtime hours for our audiovisual technicians employed in Jersey City in retaliation for their support for and activities on behalf of Local 59, IATSE.

WE WILL NOT implement a market rate increase in the wage rates of audiovisual technicians at locations other than our Jersey City location, while failing to implement the market rate wage increase for the audiovisual technicians in Jersey City, in order to discourage employees from supporting Local 59, IATSE.

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

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

All full-time Audio-Visual Technicians employed by the Employer at its 575 Washington Boulevard, Floor 3; 545 Washington Boulevard; and 480 Washington Boulevard, Jersey City, New Jersey locations.

WE WILL make the audiovisual technicians employed in Jersey City 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 failure to implement the market rate wage increase in Jersey City, while implementing the increase in other locations, in 2023, less interim earnings, plus interest.

WE WILL compensate the audiovisual technicians employed in Jersey City for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the of the date that the amount of backpay is fixed by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

A-V SERVICES, INC.
(Employer)

Dated: _____ By: _____
Representative Title

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

20 Washington Place, 5th Floor, Newark, New Jersey 07102
(973)645-2100, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-332620 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, (862) 229-7055.