JSK Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott and Fairfield Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott as its Successor *and* Hotel and Gaming Trades Council, AFL–CIO and Eric Vasquez. Cases 22–CA–305280, 22–CA–317107, 22–CA–317582, 22–CA–325867, 22–CA–325868, 22–CA–329984, and 22–CA–331820

June 4, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On November 19, 2024, Administrative Law Judge Susannah Merritt issued the attached decision, and on November 21, 2024, she issued an errata.[1] Respondent Fairfield Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott filed exceptions and a supporting brief, the General Counsel filed an answering brief, and Respondent Fairfield filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions[2] and briefs and has decided to affirm the judge's rulings,

[1] Member Prouty notes that on January 7, 2025, the United States District Court for the District of New Jersey issued a preliminary injunction under Sec. 10(j) of the National Labor Relations Act enjoining Respondent Fairfield Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott (Fairfield) from refusing to hire or discharging employees because they engaged in union activities, failing and refusing to recognize and bargain with the Hotel and Gaming Trades Council, AFL–CIO (Union), unilaterally changing employees' terms and conditions of employment, failing and refusing to apply to the unit employees the terms and conditions of employment in place prior to Respondent Fairfield's assumption of hotel operations from Respondent JSK Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott (JSK), and failing and refusing to provide requested information to the Union that is necessary and relevant to its role as collective-bargaining representative. *Sullivan v. Fairfield Parsippany, LLC*, Civil Action No.:24-8413 (ES) (MAH), 2025 WL 40086 (D.N.J. Jan. 7, 2025). Pending our disposition of these allegations, the court ordered Respondent Fairfield, inter alia, to recognize and bargain with the Union, reinstate unlawfully discharged employees, and restore the status quo ante in effect at the time Respondent Fairfield took over operations of the hotel.

[2] In the absence of an answer, and upon Respondent JSK's failure to appear at the hearing, the judge granted the General Counsel's motion for default judgment and found that Respondent JSK violated Sec. 8(a)(5), (3), and (1), as detailed in Attachment A of her decision. We adopt those findings.

There are no exceptions to the judge's finding that Respondent Fairfield violated Sec. 8(a)(1) of the Act by failing to provide *Johnnie's Poultry* assurances before questioning employees about matters subject to unfair labor practice proceedings. 146 NLRB 770, 774–775 (1964), enf. denied 344 F.2d 617 (8th Cir. 1965). Further, no party has excepted to the judge's dismissal of the allegations that Respondent Fairfield violated Sec. 8(a)(5) and (1) by refusing to hire Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, and Yoni Almonte, and Sec. 8(a)(3) and (1) by refusing Flerida Sanchez' request to be reinstated, unilaterally changing the terms and conditions of employment of the unit employees, failing to deduct and remit dues to the Union, and failing to allow Union representatives access to its facility for the purpose of meeting with the unit employees.

findings,[3] and conclusions,[4] and to adopt the recommended Order as modified and set forth in full below.[5]

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 11: "Respondent Fairfield violated Section 8(a)(1) of the Act by failing to provide the required minimum safeguards when it questioned employees in preparation for the trial in this unfair labor practices proceeding."

AMENDED REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist from engaging in such conduct and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we amend the judge's remedy in the following respects.

First, the judge correctly ordered make-whole relief for Respondent JSK's unlawful assignment of fewer hours between June and October 2022, and July 16 and August 18, 2023.[6] Backpay amounts Respondent JSK is required to pay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), not, as the judge indicated, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950). The *Ogle Protection* formula applies when, as here, the Board is remedying "a violation of the Act which does not involve cessation of employment status or interim earnings that would in the course of time reduce backpay." *Ogle Protection Service*, above at 683.

Second, the judge recommended ordering Respondent JSK to mail and email a copy of the notice to its former unit employees. We shall delete the requirement that Respondent JSK email the notice because the General Counsel has not shown that the additional measure is needed to remedy the effects of its unfair labor practices. See, e.g., *Flatline Construction, LLC*, 373 NLRB No. 35, slip op. at 2 fn. 4 (2024).[7]

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[3] Respondent Fairfield has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that Respondent Fairfield was a successor to Respondent JSK under *NLRB v. Burns International Security Services*, 406 U.S. 272 (1972), we observe that the New Jersey Hotel Worker Retention Statute (NJHWRS), N.J. Stat. Ann. § 29:4-13, did not relevantly affect the composition of Respondent Fairfield's workforce on August 19, 2023, the date Respondent Fairfield began operating Fairfield Inn & Suites with a substantial and representative employee complement. As Respondent Fairfield notes, the NJHWRS requires successor hotel employers to retain all hotel service employees for at least 90 working days after a change in control, controlling interest, or employer identity, and provide current employees notice of their rights under the law. Id. However, Respondent Fairfield admits that it was not aware of its obligations under the NJHWRS when it decided to retain nine former employees of Respondent JSK, which is at least a majority, if not all, of its workforce, on August 19, 2023. Accordingly, the record evidence establishes that Respondent Fairfield chose to hire predecessor employees as a majority of its initial complement. See *County Agency Inc. & Esplanade Partners Ltd. d/b/a Esplanade Venture Partnership d/b/a Esplanade Hotel*, 369 NLRB No. 62, slip op. at 1–2 & fn. 5 (2020) (rejecting employer's claim that New York worker retention statute restricted its hiring decision where the record showed that the employer "freely chose" to hire a majority of its predecessor's employees), enfd. mem. sub. nom. *305 West End Holding, LLC v. NLRB*, 855 Fed. Appx. 43 (2d Cir. 2021) (emphasis omitted).

In adopting the judge's finding that Respondent Fairfield violated Sec. 8(a)(3) and (1) by discriminatorily refusing to hire six Union supporters to evade successorship pursuant to an analysis under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), we additionally rely on *Planned Building Services*, 347 NLRB 670, 673–674 (2006), which sets forth the formulation of *Wright Line* applied to cases involving discriminatory refusals to hire in the successorship context. That formulation requires the General Counsel to prove that "the employer failed to hire employees of its predecessor and was motivated by antiunion animus," after which the burden "shifts to the employer to prove that it would not have hired the predecessor's employees even in the absence of its unlawful motive." Id. For the reasons explained by the judge, that standard is satisfied here.

In affirming the judge's findings, we do not rely on her citation to *Cook DuPage Transportation Co.*, 354 NLRB 262 (2009), a two-member Board decision. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).

We have corrected several inadvertent errors made by the judge in her decision, including misspellings and typographical errors. These errors have not affected our disposition of this case.

[4] We amend the judge's Conclusion of Law 11 to conform to the violation found.

[5] We have amended the remedy and modified the judge's recommended Order to conform to the violations found, the Board's standard remedial language, and in accordance with *Ferguson Electric Co.*, 335 NLRB 142 (2001), and *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall substitute a new notice to conform to the Order as modified.

Because Respondent Fairfield failed to raise particularized exceptions to the judge's recommended affirmative bargaining order, we find it unnecessary to provide a justification for that remedy. See *Scepter, Inc. v. NLRB*, 280 F.3d 1053, 1057 (D.C. Cir. 2002) (stating that in the absence of a "particularized" exception, a party has not preserved for appeal an objection to the imposition of an affirmative bargaining order); *Excel/Atmos, Inc. v. NLRB*, 147 F.3d 972, 978 (D.C. Cir. 1998), cert. denied 525 U.S. 1067 (1999); *SKC Electric, Inc.*, 350 NLRB 857, 862 fn. 15 (2007); *Heritage Container, Inc.*, 334 NLRB 455, 455 fn. 4 (2001).

[6] The judge inadvertently stated "August 2023," rather than "August 18, 2023" as alleged in the complaint.

[7] Member Prouty observes that the Board's standard notice-posting remedy requires electronic distribution of notice, including by email, if employers use such means to communicate with employees, thereby "ensuring that remedial notices are adequately communicated to the employees or members affected by the unfair labor practices." *J. Picini Flooring*, 356 NLRB 11, 13 (2010); see id. at 15 (requiring distribution of the notice electronically "such as by email . . . if the [r]espondent customarily communicates with its employees by such means"). He sees no reason not to apply the same principle to the notice-mailing remedy, given the ubiquity of electronic communication in the modern workplace.

Third, having found that Respondent Fairfield violated Section 8(a)(5) and (1) by unilaterally ceasing to deduct and remit dues to the Union since August 19, 2023, we shall order Respondent Fairfield to make the Union whole for any dues it would have received but for Respondent Fairfield's failure to comply with its obligation to provide notice and an opportunity to bargain before changing terms and conditions of employment.[8] See, e.g., *W.J. Holloway & Son*, 307 NLRB 487 (1992); *West Coast Cintas Corp.*, above at 156; *Creutz Plating Corp.*, 172 NLRB 1 (1968). This order requires only that Respondent Fairfield make the Union whole for dues it would have received from employees who have individually signed dues-checkoff authorizations.[9] See, e.g., *W.J. Holloway*, above at 487 fn. 3; *Creutz Plating Corp.*, above at 1. The make-whole remedy shall be remitted to the Union with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center*, 371 NLRB No. 160, slip op. at 17–18 (2022), enfd. 100 F.4th 994 (9th Cir. 2024), cert. denied 145 S.Ct. 1425 (2025).[10]

Fourth, having found that Respondent Fairfield violated Section 8(a)(5) and (1) by refusing to reinstate employee Flerida Sanchez after her medical leave, we shall order it to offer Sanchez reinstatement to her former job or, if the job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and make her whole for any loss of earnings and other benefits. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, above, with interest to be computed in the manner prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above. We shall also order Respondent Fairfield to remove from its files any reference to its unlawful refusal to reinstate and notify Sanchez in writing that this has been done.

Moreover, we amend the judge's backpay remedy to require the Respondents to compensate all of the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, 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 Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016).[11] In addition, we shall order the Respondents to file with the Regional Director for Region 22 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021). Finally, in accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondents shall compensate the affected employees for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful conduct, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.[12] Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

ORDER

A. The National Labor Relations Board orders that Respondent, JSK Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott, Parsippany, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[8] To prevent a double recovery by the Union, however, payment by Respondent Fairfield to the Union under this remedy shall be offset by the amount of dues *actually collected* by the Union from members who authorized dues checkoff, notwithstanding Respondent Fairfield's failure to remit such amount to the Union. See *A.W. Farrell & Sons, Inc.*, 361 NLRB 1487, 1487 fn. 3 (2014).

In addition, in ordering this remedy, we note that, under extant precedent, Respondent Fairfield is prohibited from seeking to recoup from the employees any dues amounts Respondent Fairfield is required to reimburse to the Union. See *Alamo Rent-A-Car*, 362 NLRB 1091, 1091 fn. 1 (2015) ("[T]he 'financial responsibility for making the [u]nion whole for dues it would have received but for [r]espondent's unlawful conduct rests entirely on the [r]espondent and not the employees.'") (quoting *West Coast Cintas Corp.*, 291 NLRB 152, 156 fn. 6 (1988)), enfd. sub nom. *Enterprise Leasing Co. of Florida v. NLRB*, 831 F.3d 534 (D.C. Cir. 2016).

[9] A showing of valid dues-checkoff authorizations can be made at the compliance stage of this proceeding. See *O'Neill, Ltd.*, 288 NLRB 1354, 1357 fn. 20 (1988), enfd. 965 F.2d 1522 (9th Cir. 1992), cert. denied 509 U.S. 904 (1993).

[10] Chairman Murphy and Member Mayer agree to apply *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center*, 371 NLRB No. 160 (2022), as extant precedent for institutional reasons and express no opinion regarding whether that case was correctly decided.

[11] Thus, we do not rely on the judge's citation to *Latino Express, Inc.*, 359 NLRB 518 (2012), reaffirmed in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

[12] As stated in *Performance Plumbing, LLC*, 374 NLRB No. 48, slip op. at 2 fn. 2 (2026), and *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 NLRB No. 26, slip op. at 3 fn. 3 (2026), Chairman Murphy and Member Mayer find no need at this time to express an opinion whether the novel remedies announced by the Board majority in *Thryv* are permissible under the Act. They would be open to reconsideration of that precedent in a future proceeding, but in the absence of a three-member majority to overrule it at this time, they agree to apply *Thryv*.

(a) Coercing employees to waive their right to participate in the Hotel and Gaming Trades Council, AFL–CIO (the Union)'s health insurance plan.

(b) Hiring employees for the purpose of dissipating the Union's majority status.

(c) Placing employees under surveillance while they engage in union or other protected concerted activities.

(d) Coercively interrogating employees about their union support.

(e) Directing employees to interrogate their coworkers about their support for the Union.

(f) Encouraging and soliciting employee support for the filing of a decertification petition.

(g) Impliedly threatening employees with unspecified reprisals if they engage in protected concerted activity.

(h) Assigning employees fewer work hours because they supported the Union and engaged in protected concerted activities.

(i) Disparately applying its work rules to employees because they supported the Union and engaged in protected concerted activities.

(j) Imposing limitations on the Union's right to access its facility because of employees' support for and activities on behalf of the Union.

(k) Refusing to schedule employees according to seniority because of their support for and activities on behalf of the Union.

(l) Refusing to pay employees the prescribed rates and failing to grant the prescribed raises because of their support for and activities on behalf of the Union.

(m) Unilaterally changing the terms and conditions of employment of its unit employees.

(n) Failing to continue in effect all the terms and conditions of its April 1, 2018 to March 31, 2023 collective-bargaining agreement with the Union, without the Union's consent, including by imposing limitations on the Union's right to access its facility, refusing to schedule employees according to seniority, failing to pay employees the prescribed rates, and failing to grant employees the prescribed raises.

(o) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of its unit employees.

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

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

(a) Upon request by the Union, rescind the changes in the terms and conditions of employment for its unit employees that have been unilaterally implemented since April 2022.

(b) Make the affected employees 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 conduct, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, 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 Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(d) File with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(e) Furnish to the Union in a timely manner the information requested by the Union on April 20, 2023, and August 21, 2023.

(f) 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.

(g) Within 14 days after service by the Region, duplicate and mail, at its own expense, after being signed by Respondent JSK's authorized representative, copies of the attached notice marked "Appendix A" to all former employees employed by Respondent JSK at its Parsippany, New Jersey facility at any time since April 1, 2022.[13]

(h) 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 JSK has taken to comply.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

B. The National Labor Relations Board orders that Respondent, Fairfield Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott, Parsippany, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire employees because they are members of and support the Hotel and Gaming Trades Council, AFL–CIO (the Union).

(b) Discharging or otherwise discriminating against employees for supporting the Union or any other labor organization.

(c) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(d) Unilaterally changing the terms and conditions of employment of its unit employees.

(e) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of its unit employees.

(f) Coercively interrogating employees about matters that are the subject of unfair labor practice proceedings.

(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.

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

(a) Within 14 days from the date of this Order, offer Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, Yoni Almonte, and Flerida Sanchez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, Yoni Almonte, and Flerida Sanchez 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 refusals to hire and discharges, and the refusal to reinstate after medical leave, including reasonable search-for-work and interim employment expenses, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the refusals to hire and unlawful discharges of Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, and Yoni Almonte, and refusal to reinstate Flerida Sanchez after medical leave, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful refusals to hire, discharges, and refusal to reinstate after medical leave, will not be used against them in any way.

(d) On request, bargain with the Union as the exclusive collective-bargaining 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 and regular part-time maintenance techs, breakfast hosts, housemen and housekeepers employed by the Respondent at its facility located at 3535 U.S. Highway 46, Parsippany, New Jersey.

(e) Upon request by the Union, rescind the changes in the terms and conditions of employment for its unit employees that were unilaterally implemented on and after August 21, 2023, and restore the status quo ante until such time as Respondent Fairfield and the Union reach an agreement for a new collective-bargaining agreement or a lawful impasse based on good-faith negotiations.

(f) Make the affected employees whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the unilateral changes in terms and conditions of employment in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(g) Remit to the Union, at no cost to employees, dues payments required by the April 1, 2018 to March 31, 2023 collective-bargaining agreement between JSK Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott and the Union for employees who executed checkoff authorizations prior to and during the period of Respondent Fairfield's unlawful conduct, as described in the amended remedy section of this decision.

(h) Furnish to the Union in a timely manner the information requested by the Union on August 25, 2023.

(i) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, 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 Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(j) File with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 forms reflecting the backpay award.

(k) 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.

(l) Within 14 days after service by the Region, post at its facility in Parsippany, New Jersey copies of the attached notice marked "Appendix B."[14] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by Respondent Fairfield's authorized representative, shall be posted by Respondent Fairfield and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent Fairfield customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent Fairfield to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent Fairfield has gone out of business or closed the facility involved in these proceedings, Respondent Fairfield shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Fairfield at any time since August 19, 2023.

(m) 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 Fairfield has taken to comply.

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

Dated, Washington, D.C. June 4, 2026

_____
James R. Murphy, Chairman

_____
David M. Prouty, Member

_____
Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES MAILED 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 coerce you to waive your right to participate in the Hotel and Gaming Trades Council, AFL–CIO (the Union)'s health insurance plan.

WE WILL NOT hire employees for the purpose of dissipating the Union's majority status.

WE WILL NOT place you under surveillance while you engage in union or other protected concerted activities.

WE WILL NOT coercively interrogate you about your union support.

WE WILL NOT direct you to interrogate your coworkers about their support for the Union.

WE WILL NOT encourage and solicit your support for the filing of a decertification petition.

WE WILL NOT impliedly threaten you with unspecified reprisals if you engage in protected concerted activity.

WE WILL NOT assign you fewer work hours because you supported the Union and engaged in protected concerted activities.

WE WILL NOT disparately apply our work rules to you because you supported the Union and engaged in protected concerted activities.

WE WILL NOT impose limitations on the Union's right to access our facility because of your support for and activities on behalf of the Union.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to schedule you according to seniority because of your support for and activities on behalf of the Union.

WE WILL NOT refuse to pay you the prescribed rates and fail to grant the prescribed raises because of your support for and activities on behalf of the Union.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT fail to continue in effect all the terms and conditions of our April 1, 2018 to March 31, 2023 collective-bargaining agreement with the Union, without the Union's consent, including by imposing limitations on the Union's right to access our facility, refusing to schedule you according to seniority, failing to pay you the prescribed rates, and failing to grant you the prescribed raises.

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

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

WE WILL, upon request by the Union, rescind the changes in terms and conditions of employment for our unit employees that have been unilaterally implemented since April 2022.

WE WILL make the affected employees whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful conduct, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL furnish to the Union in a timely manner the information requested by the Union on April 20, 2023, and August 21, 2023.

JSK PARSIPPANY, LLC D/B/A FAIRFIELD INN & SUITES BY MARRIOTT

The Board's decision can be found at https://www.nlrb.gov/case/22-CA-305280 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.

APPENDIX B

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to hire you because you are members of and support the Hotel and Gaming Trades Council, AFL–CIO (the Union).

WE WILL NOT discharge or otherwise discriminate against you for supporting the Union or any other labor organization.

WE WILL NOT fail and refuse to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's

performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT coercively interrogate you about matters that are the subject of unfair labor practice proceedings.

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

WE WILL, within 14 days from the date of the Board's Order, offer Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, Yoni Almonte, and Flerida Sanchez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, Yoni Almonte, and Flerida Sanchez whole for any loss of earnings and other benefits suffered as a result of our unlawful refusals to hire and discharges, and our refusal to reinstate after medical leave, less any net interim earnings, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms suffered as a result of our unlawful refusals to hire, discharges, and refusals to reinstate after medical leave, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our refusals to hire and unlawful discharges of Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, and Yoni Almonte, and our refusal to reinstate Flerida Sanchez after medical leave, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful refusals to hire and discharges, and our refusal to reinstate after medical leave, will not be used against them in any way.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our 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 and regular part-time maintenance techs, breakfast hosts, housemen and housekeepers employed by us at our facility located at 3535 U.S. Highway 46, Parsippany, New Jersey.

WE WILL, upon request by the Union, rescind the changes in the terms and conditions of employment for our unit employees that were unilaterally implemented on and after August 21, 2023, and restore the status quo ante until such time as the Respondent Fairfield and the Union reach an agreement for a new collective-bargaining agreement or a lawful impasse based on good-faith negotiations.

WE WILL make the affected employees whole for any loss of earnings and other benefits suffered as a result of our unilateral changes in terms and conditions of employment, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful conduct, plus interest.

WE WILL remit to the Union, at no cost to employees, dues payments required by the April 1, 2018 to March 31, 2023 collective-bargaining agreement between JSK Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott and the Union for employees who executed checkoff authorizations prior to and during the period of our unlawful conduct, plus interest.

WE WILL furnish to the Union in a timely manner the information requested by the Union on August 25, 2023.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

FAIRFIELD PARSIPPANY, LLC D/B/A FAIRFIELD INN & SUITES BY MARRIOTT

The Board's decision can be found at https://www.nlrb.gov/case/22-CA-305280 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.

Nancy Slahetka, Esq., for the General Counsel.
Alfred Maurice, Esq., for the Respondent.
Alyssa Tramposch, Esq., for the Charging Party.

DECISION

SUSANNAH MERRITT, Administrative Law Judge. I heard this case between May 1, and June 6, 2024, in Newark, New Jersey. This case was tried following the issuance by the Regional Director for Region 22 of the National Labor Relations Board (the Board) of a consolidated complaint on September 15, 2023, a second consolidated complaint on April 1, 2024, and the second amended consolidated complaint (the complaint) on April 9, 2024.[1] The complaint was based on unfair labor practice charges filed by Charging Party Hotel and Gaming Trades Council, AFL-CIO (the Union) against Respondents JSK Parsippany, LLC, (JSK) and Fairfield Parsippany, LLC (Fairfield), as its successor.

The complaint alleges that JSK committed violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act), in an effort to eliminate its obligation to bargain with the Union, which culminated in the sale of its hotel operations to Fairfield. The complaint further alleges that Fairfield, as a successor, also violated Section 8(a)(1), (3), and (5) of the Act by continuing the same pattern of refusing to recognize and bargain with the Union and committing various other unfair labor practices after purchasing the hotel and taking over its operations.

Specifically, the Counsel for the General Counsel (hereafter the General Counsel) alleges that JSK: 1) coerced employees by telling them that JSK wanted them to waive their rights to participate in the Union's health insurance plan in violation of Section 8(a)(1) of the Act; 2) hired nine employees for the purpose of dissipating the Union's majority status in violation of Section 8(a)(1) of the Act; 3) engaged in surveillance in violation of Section 8(a)(1) of the Act; 4) interrogated employees in violation of Section 8(a)(1) of the Act, 5) directed employees to interrogate their coworkers in violation of Section 8(a)(1) of the Act; 6) encouraged and solicited employee support for the filing of a decertification petition in violation of Section 8(a)(1) of the Act; 7) threatened employees with unspecified reprisal if they engaged in protected concerted activity in violation of Section 8(a)(1) of the Act; 8) discriminatorily assigned prounion employees fewer work hours in violation of Section 8(a)(1), (3), and (5) of the Act; 9) took adverse action against employees in the maintenance and housekeeping departments by disparately applying work rules to them in violation of Section 8(a)(1), (3), and (5) of the Act; 10) failed to continue in effect all the terms and conditions of the parties' collective-bargaining agreement by: imposing limitations on the Union's right to access its facility, blocking union access to its facility; refusing to schedule housekeepers according to seniority; failing to pay employees rates as prescribed in the collective-bargaining agreement, and failing to grant employees raises as prescribed in the parties collective bargaining in violation of Section 8(a)(1), (3), and (5) of the Act; and (11) failed and refused to furnish the Union with information relevant to the Union's performance of its duties as the employees' exclusive collective-bargaining representative in violation of Section 8(a)(5) and (1) of the Act.

In addition, the General Counsel alleges that Fairfield, as a successor: 1) refused to hire six employees in the maintenance and housekeeping departments in violation of Section 8(a)(3), (5), and (1) of the Act; 2) terminated six employees in the maintenance and housekeeping departments in violation of Section 8(a)(3), (5), and (1) of the Act; 3) refused to reinstate an employee in violation of Section 8(a)(3), (5), and (1) of the Act; 4) failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit in violation of Section 8(a)(5) and (1) of the Act; 5) unilaterally changed the terms and conditions contained in the parties' collective-bargaining agreement by: failing to reinstate employees after sick leave, failing to provide the Union with notice of terminations, failing to follow the parties' collective-bargaining agreement with regard to seniority, hours of work, wages, and benefits, in violation of Section 8(a)(3), (5), and (1) of the Act; 6) failed to remit to the Union dues deducted pursuant to valid, unexpired, and unrevoked checkoff authorizations in violation of Section 8(a)(5) and (1) of the Act; 7) failed to allow Union representatives access to its facility for the purposes of meeting with employees in violation of 8(a)(5) and (1) of the Act; and 8) failed and refused to furnish the Union with information relevant to its performance of its duties as the employees' exclusive collective-bargaining representative in violation of Section 8(a)(5) and (1) of the Act. (GC Exh. 1(tt).)

At hearing, the General Counsel also moved to amend the complaint to add an allegation that Fairfield violated Section 8(a)(1) of the Act by interrogating employees about the Union during prehearing interviews without providing *Johnnie's Poultry* assurances. I directed the parties to address the motion and the allegations in their post hearing briefs. (Tr. at 593–594.)

While Fairfield filed a timely answer denying that it engaged in any unlawful conduct, JSK failed to file an answer to the complaint and did not make an appearance at the hearing. (GC Exh. 1(vv).)

On May 1, 2024, after the start of the hearing in the instant matter, the General Counsel made a motion for default judgment against JSK due to its failure to file an answer to the complaint in this case. On May 9, 2024, I issued an order to show cause for JSK to show why the General Counsel's motion should not be granted. JSK has not made an appearance in person, or by counsel, or otherwise, showing good cause for its failure to file an answer. On May 29, 2024, I granted the General Counsel's motion for default judgment finding that all allegations in the complaint against JSK are deemed true. I incorporate the order granting the motion for default judgment in this decision, which is attached as Attachment A.

At trial, all parties present were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file posthearing briefs.[2] The General Counsel and Fairfield have agreed to some stipulated facts (Jt. Exh. 1–3), litigated the case, and filed posthearing briefs, which have been

[1] At hearing I granted the General Counsel's motion to amend the second amended complaint. (Tr. at 9.)

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's Exhibit; "R. Exh." for Respondent's Exhibit; "Jt. Exh." for Joint Exhibit; "GC Br." for General Counsel's posthearing brief; and "R. Br." for Respondent's posthearing brief

carefully considered. Accordingly, based upon the entire record herein,[3] including the stipulated facts, default judgment, posthearing briefs and my observation of the credibility of the witnesses,[4] I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times and continuing until August 18, 2023, JSK was a Pennsylvania limited liability company with a facility located at 3535 U.S. Highway East 46, Parsippany, New Jersey, where it was engaged in the operation of a hotel. During the 12-month period preceding August 18, 2023, in conducting its business operations, JSK derived gross revenues in excess of $500,000 and received at its New Jersey facility goods and services valued in excess of $5000 directly from suppliers located outside of the State of New Jersey. (Attachment A at para. 2.)

Fairfield is a New Jersey limited liability company with a facility located at 3535 US 46 East, Parsippany, New Jersey, where it is engaged in the operation of a hotel. Based on a projection of its operations since about August 19, 2023, Fairfield will derive annual gross revenues in excess of $500,000 and purchase and receive at its New Jersey facility goods valued in excess of $5000 from guest supply, a provider of hospitality supplies, which is an enterprise engaged directly in interstate commerce. (Jt. Exh. 1.)

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(vv) at 2.)

II. STIPULATED FACTS

Set forth below are the stipulations of fact agreed to by the General Counsel and Fairfield. The parties stipulated to the first set of facts on May 7, 2024, and embodied those stipulations in Joint Exh. 2. They are as follows:

1. The following employees of Respondents constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time maintenance techs, breakfast hosts, housemen and housekeepers employed by the Employer at its facility located at 3535 U.S. Highway 46, Parsippany, New Jersey (the Unit).

2. On June 23, 2017, the New York Hotel & Motel Trades Council (now named the Hotel & Gaming Trades Council, AFL–CIO) (Union) was certified as the exclusive collective-bargaining representative of the Unit by arbitrator-mediator Elliot Shriftman of the Office of the Impartial Chairperson.

3. On October 30, 2017, Respondent JSK Parsippany, LLC, d/b/a Fairfield Inn & Suites by Marriott (Respondent JSK), and the Union entered into an agreement whereby Respondent JSK adopted the Greater Regional Industry Wide Agreement (GRIWA) through March 31, 2018, and the successor GRIWA, as modified by attached riders.

4. The most-recent GRIWA adopted by Respondent JSK expired on March 31, 2023.

5. On about July 18, 2023, Respondent Fairfield purchased the business of Respondent JSK located at 3535 U.S. Highway 46, Parsippany, New Jersey (hotel).

6. On August 19, 2023, Respondent Fairfield took over operations of the hotel from Respondent JSK. Between August 19, 2023 and August 21, 2023, bargaining unit employees Krystal Basulto, Noreen Basulto, Stephanie Bembridge, Hansaben Nakrani, Tulsibhai Nakrani, Champakla Patel, Meenaxibe Patel, Natverlal Lad and Chetnakumari Lad performed housekeeping and breakfast attending work.

7. The hotel has operated continuously since its transfer from Respondent JSK to Respondent Fairfield.

8. Since at least August 19, 2023, Zia Jaffrey has been a general manager of Respondent Fairfield and a supervisor of Respondent.

9. On August 21, 2023, via email, the Union notified Respondent Fairfield that it violated New Jersey Statute Section 29:4-13.

10. On August 22, 2023, Respondent Fairfield hired Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, and Yoni Almonte and notified them that they were hired as probationary employees for 90 working days.

11. On August 21, and 25, 2023, via email, the Union requested that Respondent Fairfield recognize it as the exclusive collective-bargaining representative of the Unit.

12. On August 25, 2023, via email, the Union requested information regarding terms and conditions of employees in the Unit, as set forth in Exhibit C to the Complaint.

13. Respondent Fairfield has not produced the information that the Union requested on August 25, 2023.

14. Since August 19, 2023, Respondent Fairfield has not deducted dues from Unit employees.

15. On or about August 31, 2023, Respondent Fairfield refused to allow Union representatives access to its facility for the

[3] The transcript and exhibits in this case are generally accurate, but I hereby make the following corrections to the transcripts: replace the reference to "the gas" at p. 55, l. 13 with "the guests"; replace "We consented" at p. 68, l. 17 with "It's admitted"; replace "Christopher" at p. 90, l. 8 with "Krystal"; replace "sevens" at p. 124, l. 22 with "severance"; replace "their employee" at p. 127, l. 1 with "they were employees"; replace "Fred" at p. 142, l. 24 with "Flerida"; replace "Flerida" at p. 145, l. 15 with "Elcira"; replace "Greenwell" at p. 311, l. 8 with "GRIWA"; replace "Johnny" at p. 351, l. 25, p. 353, l. 17, p. 363, l. 23 and 24, p. 420, l. 3 with "Yoni"; replace "Bron" at p.391, l. 16 with "Brown"; replace "Catalina" at p. 420, l. 3 with "Claribel"; replace "Sunriver" p. 425, l. 10 with "signed by"; replace "reasons" at p. 459, l. 15 with "records"; replace "Ian" at p. 612, l. 23 with "Zia"; and replace "retired" at p. 672, l. 2 with "rehired."

[4] Certain of my findings are based on witness credibility. A credibility determination may rest on various factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom. 56 Fed. Appx. 516 (D.C. Cir. 2003). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness' testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950). Where there is inconsistent evidence on a relevant point, my credibility findings are specifically addressed.

purpose of meeting with employees in the Unit.

16. On November 1, 2023, Jaffrey informed Flerida Sanchez that there was no position open for her, and he could only hold her position for 12 weeks. Respondent Fairfield did not hire Flerida Sanchez.

17. Beginning sometime after December 8, 2023, Respondent Fairfield subcontracted all work previously handled by Unit employees to Hotel Cleaning Services.

The parties stipulated to the following facts on May 8, 2024, and embodied that stipulation in Joint Exhibit 3:

> On August 19, 2023 and thereafter, the hotel continued operating in the same manner as it had under the ownership of JSK Parsippany, LLC. Between August 19, 2023 and August 21, 2023, all job positions were filled, substantially by former JSK employees.

III. UNFAIR LABOR PRACTICES

As set forth above, I resolved the allegations against JSK in my order granting default judgment, which is attached as Attachment A. In light of this, I only address allegations against JSK insofar as they are relevant to the Fairfield allegations addressed below.

A. JSK's Operations and Relationship with the Union

JSK owned and operated the Fairfield Inn & Suites by Marriott in Parsippany, New Jersey (the Hotel), at all material times until August 18, 2023.[5] JSK is owned by Peter Patel aka Peter Viradia (Patel) and his wife Kajal Patel aka Kajal Viradia. (Attachment A at para. 4.) JSK also used management company Growth Properties to manage the Hotel during that time period. (Tr. at 336, 339–340.) Dalay Hernandez (Hernandez) was the general manager of the Hotel for JSK for the period from August 2021, until her termination in July 2022. (Attachment A at para. 4; Tr. at 334.) Patel hired Zia Jaffrey (Jaffrey) after firing Hernandez and Jaffrey worked as the general manager for JSK until the Hotel changed hands in August 2023.[6] Lori Brown (Brown) was the Hotel's sales manager under JSK at all material times until the Hotel changed hands in August 2023. (Tr. at 137.)

On June 23, 2017, the Union was certified as the collective-bargaining representative of JSK's bargaining unit of full-time and regular part-time maintenance technicians, breakfast hosts, housemen and housekeepers (the Unit). (GC Exh. 47.) JSK executed a memorandum of agreement (2017 MOA) dated October 30, 2017 adopting the Greater Regional Industry Wide Agreement (GRIWA) along with several riders, which modified the terms of the GRIWA. (GC Exh. 47; Tr. at 33, 35, and 38.) The GRIWA in effect at that time expired on March 31, 2018, and its successor contract was effective from April 1, 2018, through March 31, 2023. (GC Exh. 2; Tr. 35; Attachment A at paras. 5-6.)

The GRIWA is a comprehensive contract which requires employers to deduct dues upon receipt of written authorization and remit those dues to the Union. (GC Exh. 2 at 30–31.) The contract also includes a Union access provision, which provides the Union with access to the employer's premises and employees, and provisions that dictate the terms and conditions of employment of unit employees, including wages, leave, layoffs, severance pay, seniority,[7] discharges, and subcontracting.[8] (GC Exh. 2.) The GRIWA renders the contract binding upon successors and assigns of its signatories, and that none of its provisions shall be affected by any change in ownership,[9] and that the signatory employer is required to make it a written material condition of any transfer of ownership that the purchasing party assume and be bound by the contract and provides that the successor must execute an assumption agreement at least 10 days before any transfer. (GC Exh. 2 at 42.)

Hernandez testified at the hearing that when she was the general manager at the Hotel from August 2021 through July 2022, she had management responsibilities over all of the hotel employees, which included the bargaining unit employees. As general manager, her responsibilities included hiring, disciplining, scheduling, and "at times" firing employees. (Tr. at 338.) Although she reported to Patel and the management team at Growth Properties by phone and email, Hernandez was the top manager on site at the Hotel property. Patel informed Hernandez from the beginning of her employment that it was his goal to decertify the Union. (Tr. at 337.) Patel repeatedly instructed Hernandez to find out which unit members were prounion and which ones were anti-union. (Tr. at 351.) Patel would refer to employees who were prounion as "red" and those who would be willing to

[5] All dates are from 2023, unless otherwise noted.

[6] Jaffrey had previously been the general manager of the Hotel for JSK from 2018 through March 2020, when the pandemic temporarily shut down the hotel. (Tr. at 546-547.)

[7] Article 14(A) of the GRIWA provides: "Seniority: Layoffs (by inverse seniority) and recalls (by seniority) shall be governed by classification seniority . . . (B) Notice: In accordance with the time frames set forth in Article 9(D)(4), the Employer shall give the Union and employee prior written or electronic notice of layoff." Article 9(D)(4) of the GRIWA provides: "The Employer shall provide written or electronic notice to an affected employee prior to any change in schedule, including, but not limited to, any layoffs . . . in accordance with Article 9(D)(2) above." Finally, Article 9(D)(2) of the GRIWA provides: "Schedules shall be posted not less than five (5) calendar days prior to the commencement of the workweek." (GC Exh. 2 at 18, 15.)

[8] Article 26 of the GRIWA provides: "The Employer shall not subcontract bargaining unit work, or work which is fairly claimable bargaining unit classification is on layoff, reduced work week, or otherwise adversely affected and provided further such subcontracting does not erode the bargaining unit." (GC Exh. 2 at 28.)

[9] Article 54 of the GRIWA provides: "This Agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the consolidation, merger, sale, transfer, or assignment of either party hereto or affected, modified, altered or changed in any respect whatsoever by any change of any kind in the legal status, ownership, or management of either party hereto. Any successor Employer shall assume all of the obligations under this Agreement of the prior operator of the facility or concession to the employees, the Union or any of the funds to which Employer is required to contribute hereunder . . . Purchaser agrees that it shall retain all current bargaining unit employees, whose employment will continue uninterrupted and without loss of seniority, compensation, benefits or fringe benefits . . ." (GC Exh. 2 at 41–43.)

vote the union out as "green." Hernandez admitted that at Patel's direction, she unlawfully interrogated bargaining unit members about their feelings about the Union and that she told Patel what she had learned.[10] (Tr. at 351–355, 400.) When Hernandez was the general manager at the Hotel in early 2022, JSK employed 10 bargaining unit employees. These were housekeeping employees Ramona Almonte de Valdez (Almonte de Valdez), Ruth Ashitey (Ashitey), Claribel Mejia (Mejia), Carlena Ponce (Ponce), Flerida Sanchez (Flerida),[11] Asuncion Toribio (Toribio); engineer Yoni Almonte (Almonte); and breakfast attendants Stephanie Bembridge, Noreen Basulto, and her daughter Krystal Basulto.

B. JSK Brings in Housekeeping Supervisor Elcira Sanchez to Pack the Bargaining Unit with Antiunion Employees

In April 2022, Patel brought housekeeping supervisor Elcira Sanchez (Elcira) in to head up the housekeeping department at the Hotel. When she arrived, Elcira told Hernandez that she had been brought in by Patel in order to hire "green" unit members with a goal of voting the Union out. (Tr. at 376–377.)

Soon after her arrival at JSK, Elcira hired nine new bargaining Unit members in June and July of 2022, including housekeeping employees: Hansaben Nakrani, Tulsibhai Nakrani, Meenaxibe Patel, and Champakla Patel. (Tr. at 381, 285–286.) As found in the default judgment against JSK, Elcira and Hernandez hired these nine employees for the purpose of dissipating the Union's majority status in violation of Section 8(a)(1) of the Act. (Attachment A at para. 7(b)). Soon thereafter, Patel fired Hernandez, and replaced her with Jaffrey, who had worked at the Hotel previously. (Tr. at 546–547.) As found in the default judgment, once Elcira brought in the new hires, JSK representative Cesar,[12] unlawfully encouraged and solicited employee support for the filing of a decertification petition by asking employees to sign a decertification petition. (Attachment A at para. 7(f).) Elcira hired another housekeeping couple sometime in May, named Natverlal Lad and Chetnakumari Lad. (Tr. at 670.) The decertification petition was dismissed on August 28, as the Region found that it was tainted by JSK's aforementioned unfair labor practices.[13] (See Dismissal Letter at Attachment B.)

C. Employees Engaged in Union Activity

From 2021 through 2023, housekeeper Ponce was the Union shop steward, when the Union was very active filing multiple grievances against JSK. (Tr. at 76–77, 84, 139–140, 260.) Between the Fall of 2022 and March of 2023, the Union's grievances led to about 15–20 arbitration hearings. (Tr. at 76–78.) Jaffrey attended almost every arbitration hearing on behalf of JSK until late 2023. (Tr. at 78–79; GC Exh. 16.) Bargaining unit member Almonte testified in an arbitration hearing in October 2022, regarding allegations of JSK's failure to follow appropriate procedures for employee recall after the Pandemic. (Tr. at 76.) Meanwhile, bargaining unit members Ashitey, Mejia and Toribio all testified about JSK's failure to make contributions to the Union's health care plan in a different arbitration hearing around that same time. (GC Exh. 27 at 1, 4; Tr. at 77, 84, 260–261.) JSK's hostility toward the Union was manifest in an email Jaffrey sent in response to the Arbitrator's decision finding merit to the Union's health care plan grievance. In that email Jaffrey complains that JSK was "the top victim of a brutal union" and refers to the arbitration procedure as a "Kangaroo Court." (GC Exh. 28.)

In addition to testifying on behalf of the Union in the arbitration hearings, housekeepers Ponce, Ashitey, Mejia, Toribio, Almonte de Valdez, Flerida, as well as engineer Almonte regularly attended union meetings, which were held out in the open in the Hotel's break room and parking lot. (Tr. at 228–229; 412–413.) In October 2022, Jaffrey and sales manager Brown stood outside the Hotel and watched a union meeting which was being held outside at nearby picnic tables about 10–20 feet away. The meeting attendees were concerned that members of management were watching the meeting, and Jaffrey was holding his phone up toward the group and appeared to be recording the meeting. When the Union representatives approached Jaffrey and asked him what he was doing he admitted that he was recording the meeting with his phone camera. He was loud and repeatedly accused the Union representatives of being part of a "RICO organization," and told the representatives that they had no right to be at the property and that they needed to leave. Housekeepers Ponce, Ashitey, Mejia, Almonte de Valdez, and engineer Almonte were all in attendance at that meeting. (Tr. at 441–443, 304–310.) As found in the default judgment, Jaffrey violated Section 8(a)(1) by surveilling the union meeting and violated Section 8(a)(5) and (1) of the Act by limiting the Union's right of access to the Hotel. (Attachment A at paras. 7(h) and 9(a)(i).)

Jaffrey was also involved in several other unfair labor practices when he worked as general manager for JSK, including other incidences of blocking Union access to the facility, threatening to call the police if the Union representatives did not leave the Hotel, and refusing to provide the Union with information requested regarding terms and conditions of employment. (Attachment A at paras. 9(a), 10(d), and 10(e); Tr. at 311–313; GC Exh. 30.) Moreover, as general manager, Jaffrey received services of the unfair labor practice charges on behalf of JSK and Fairfield. (GC Exh. 1(b)-1(hh).) Jaffrey also was notified of the Region's initial decision to issue complaint against JSK by email on June 20, 2023, and he forwarded the email to Patel and Respondent Fairfield's attorney Alfred Maurice. (GC Exh. 55 at 2.)

D. JSK Sold the Hotel to Fairfield without Notifying or Bargaining with the Union and Fairfield Failed to Hire the Six

[10] Hernandez specifically referenced interrogating housekeeping employee Flerida Sanchez and engineer Yoni Almonte. (Tr. at 351–352.) I found that these interactions to constitute unlawful interrogations violation of Section 8(a)(5) in the Default Judgment issued on May 29, 2024. (Attachment A at para. 7(d).)

[11] As there are two individuals with the last name Sanchez, I refer to these individuals by their first names in order to not confuse the record. This practice is consistent throughout the decision.

[12] It is uncontested that Elcira Sanchez and Cesar were Section 2(11) supervisors and 2(13) agents for JSK at all relevant times. (Attachment A at para. 4.)

[13] I take administrative notice that the decertification petition was dismissed on August 28, due to the Region finding merit to several unfair labor practices, including that Respondent JSK "unlawfully packed the bargaining unit and supported, encouraged, and fostered decertification of the Union." (See Dismissal Letter 22–RD–304996 at Attachment B.)

Prounion Bargaining Unit Employees

The parties stipulated that on about July 18, 2023, Fairfield purchased the Hotel's assets from JSK. (Tr. at 115; Jt. Exh. 2 at para. 5; R. Exh. 2.) The asset purchase agreement contains a clause that indemnifies Fairfield from "all losses, costs, expenses . . . claims, damages, obligations or [l]iabilities, whether or not involving a third-party claim . . . to the extent such Damages result or arise from . . . any breach of any representation or warranty of the Seller . . . made in this Agreement." (R. Exh 2 at 131–133.) On the same date, US Fair Ventures, LLC, sold the real property that the hotel is on to 3535 Parsippany, LLC (R Exh. 1.), and the same parties entered into an indemnification agreement, which holds "the Purchaser harmless from and against any and all losses, liabilities, claims, damages, costs and expenses whatsoever . . . arising out of or related to the Property which accrued as of the date hereof."[14] (R. Exh. 3.) The indemnification agreement also sets forth that "[i]f any action or proceeding is brought against Purchaser in respect of which indemnity may be sought pursuant to this agreement; Purchaser shall notify the Seller in writing of the institution of such action, and Seller shall pay all costs and expenses related to such action, including employment of counsel." (R. Exh. 3.) Karunaben Kotadia (Kotadia) is the owner of Fairfield. (R Exh. 2.) Kotadia signed the warranty deed on behalf of 3535 Parsippany, LLC, and Kajal Patel signed on behalf of USFAIR Ventures, LLC. (R. Exh. 1.) Jaffrey never met Kotadia or had any communication with him. (Tr. at 541–542.) Jaffrey's interaction has been with AJ (last name unknown), who is the owner representative or managing partner of Fairfield. (Tr. at 513, 540–541.)

The Union did not receive notice of these sales. (Tr. at 115.)

On August 19, Fairfield took over operations of the hotel from JSK. (Jt. Exh. 2 at para. 6.) Fairfield retained Jaffrey as the general manager and Brown as the sales manager. (Jt. Exh. 2 at para. 8; Tr. at 137, 349, 471–472, 477, 525, 531.) Fairfield also continued using Growth Properties as its managing company. (Tr. at 542–544.) As general manager for Fairfield, Jaffrey was the onsite manager responsible for managing the entire staff, including the bargaining unit members, scheduling employees, inspecting rooms, processing payroll, and paying invoices. (Tr. at 520.)

At the end of the work-day on August 18, Jaffrey informed prounion bargaining unit members Almonte de Valdez, Toribio, Ashitey, Mejia, Ponce, and Almonte, that the Hotel had been sold and that JSK was terminating their employment. (Tr. at 165.) He called the employees into his office and provided them with termination notices. (GC Exh. 36.) This was the first time that the employees were informed of the sale of the Hotel and that their jobs were being terminated. After receiving the notice, shop steward Ponce immediately contacted the Union to let them know that the employees had been told that the Hotel had been sold and the Union supporters had been terminated. (Tr. at 413.) The Union had received no notice of the Hotel being sold or of the employees being terminated prior to Ponce letting them know. (Tr. at 109, 115, 414.) Once the Union received notice of the sale and termination of members of the bargaining unit, Union attorney Gregory Fries (Fries) sent a letter to Patel copying Jaffrey. In the letter dated August 21, Fries pointed out that JSK was in violation of Article 54 of the GRIWA which requires that the Hotel bind any new owner, operator or manager, and their successor or assign to the collective-bargaining agreement. (GC Exh. 34.) The letter also states that JSK violated its obligations under the GRIWA as well as the New Jersey worker retention Statute Section 29:4-13,[15] when it terminated current bargaining unit employees without the required notice. In the letter, Fries also enumerates the various ways that JSK violated the terms of the GRIWA by terminating employees without providing them with benefits such as severance and COBRA payments as well as reminding JSK of their obligations to pay various arbitration awards. Fries also made a formal request for information regarding the sale of the Hotel, so that the Union could learn more about the sale as well as the Hotel's new owners. (GC Exh. 34 at 3–5.) In response to the Union's letter to JSK, Jaffrey sent an email asking the Union to remove him from all future communications related to JSK or Patel, stating that Jaffrey was no longer an employee or the representative of JSK. (GC Exh. 34 at 6.) JSK never responded to Fries' letter and never provided the information requested. (Tr. at 119–120.)

It is uncontested that Fairfield retained the following bargaining unit employees on August 19: three breakfast attendants Krystal Basulto, Noreen Basulto, and Stephanie Bembridge, and the six housekeepers hired by Elcira: Hansaben Nakrani, Tulsibhai Nakrani, Champakla Patel, Meenaxibe Patel, Natverlal Lad and Chetnakumari Lad. (Jt. Exh. 2 at para. 6; Tr. at 167.) However, Fairfield failed to hire the six openly prounion employees: housekeepers Almonte de Valdez, Toribio, Ashitey, Mejia, Ponce, and engineer Almonte, who were working at the Hotel at the time. (GC Exh. 36, 38; Tr. at 164.) Thus, Fairfield hired all of JSK's bargaining unit employees except for the six prounion employees.

The parties stipulated that on August 19, the Hotel continued operating in the same manner as it had under the ownership of JSK, and all job positions were filled, substantially by former JSK employees. (Jt. Exh. 3.)

Fries also sent a letter to Fairfield on August 21, informing Fairfield of its obligations to current bargaining unit members under both the GRIWA and New Jersey Statute Section 29:4- 13, requiring the hotel to retain all hotel service employees at the

[14] The asset purchase agreement (R. Exh. 2); the warranty deed (R. Exh. 1), and the indemnification agreement (R. Exh. 3) were all signed by Kajal Viradia, owner of JSK, and Karunaben Kotadia, owner of Fairfield, on July 18.

[15] New Jersey statute sets forth: "(1) Not less than 30 days before a change in control or change in controlling interest or identity, a former hotel employer shall provide the successor hotel employer with a full and accurate list containing the name, address, date of hire, phone number, wage rate, and employment classification of each hotel service employee employed at an affected hotel. At the same time that the former hotel employer provides the list, the former hotel employer shall post the list in a notice to the hotel service employees that also sets forth the rights provided by this section, in the same location and manner that other statutorily required notices to the employees are posted at the affected hotel; provided that if the hotel is not open to the public, the notice shall be transmitted in the same manner as any offer of employment made pursuant to paragraph (2) of this subsection a. The notice shall also be provided to the employees' collective-bargaining representative, if any.

same or higher rate for no less than 90 days after a change in ownership and to provide employees notice of their rights under the law. In the same letter, Fries requested to meet and bargain with Fairfield in order to negotiate terms of a collective-bargaining agreement. Patel and Jaffrey are cc'd on this letter. (GC Exh. 34 at 9.)

E. Fairfield Offers Six Prounion Employees Temporary 90-Day Probationary Employment

Fairfield failed to respond to Fries' letter, but on Tuesday, August 22, Jaffrey called in the six employees it had not hired, had them fill out applications, and provided them with employment offers. The employment letters set forth that the employees were being offered employment for a probationary period of 90 working-days after which their employment would either be extended or terminated.[16] (Jt. Exh. 2 at para. 10; GC Exhs. 37, 39, 40; R Exh. 8 at Bates numbers 68, 70, 72, 79–96; Tr. at 168–169.)

F. On August 25, the Union Requests Recognition and Makes a Request for Information

On August 25, Fries wrote to Jaffrey as general manager of the Hotel for Fairfield asking him to confirm in writing that Fairfield had hired all of the bargaining unit employees previously employed by JSK and noting that the New Jersey statute prohibited the hotel from firing any employee without cause making the establishment of the 90-day "probationary period" violative of the statute. The letter also reminds Fairfield of its obligation to maintain the terms and conditions of employment of its bargaining unit employees and that any unilateral change would be a violation of the bargaining unit members rights under the NLRA. In the letter, Fries also informs Fairfield of its obligation to pay remittance owed to the Union for, inter alia, unpaid arbitration awards, and renews the Union's request to meet with Fairfield in order to negotiate the terms for a new collective-bargaining agreement. (GC Exh. 34 at 11–12.)

Finally, in the August 25 letter Fries requests that Fairfield provide the Union with the 0 following information on or before August 31:

> 1. The names and contact information of all principals, shareholders, or other individual or entity with any interest in or ownership of the Fairfield Inn & Suites Parsippany or the Hotel; and Fairfield Parsippany, LLC, as well as a description of the interest each has; and
> 2. An updated list of all bargaining unit employees, including: first and last names, classifications, wage rates, date and amount of last wage increase, current addresses, phone numbers, dates of hire, union membership, and statuses as full time or part time employees, whether on layoff or working, the date of layoff and the date of any offers of recall.

Union Representative Farelli testified that the Union needed the information listed in paragraph 1, because the Union needed to know the identity of the new owner of the property in order to negotiate the successor collective-bargaining agreement, and that the Union needed the information in the second paragraph in order to learn about the categories of employees employed by Fairfield so as to know which employees would be included as part of the appropriate bargaining unit. (Tr. 118–122.)

The parties stipulated that the information requested by the Union on August 25 was about terms and conditions of employees in the Unit and that Fairfield never provided the information requested in the letter. (Jt. Exh. 2 at paras. 12 and 13.)

Fairfield never responded to the Union's August 21, and 25 requests to recognize and bargain with the Union. (Tr. at 122; GC Exh. 1(vv) at para. 13(a).)

G. Fairfield Blocks Union Access to the Hotel

The GRIWA contains a clause permitting union representatives broad access to the Hotel. Article 27 of the GRIWA sets forth: "Union representatives shall be granted access to the Employer's premises and employees. Union representatives shall advise management sufficiently in advance when a formal meeting with a large group of employees requiring arrangements is scheduled . . . under no circumstances shall Union representatives be barred from the premises or access as a result of failure to provide such notice." (GC Exh. 2 at 28.)

Union representatives Nicholas Ruiz and Tom Oliva credibly testified that they had a practice of visiting the hotel two times a month on average, but there was no set schedule for the visits. They also testified that they were never required to notify JSK ahead of time when they were having a meeting with bargaining unit members either in the breakroom or in the parking lot. (Tr. at 304–305; 440.)

Around noon on August 31, Union representative Antonio Codita, Union organizer Lillian Uribe, and Union Vice President George Padilla (Padilla) went to the hotel as it was the Union's practice to meet with bargaining unit employees in the cafeteria during their lunch break. (Tr. at 228.) Upon entering the hotel lobby, Padilla approached the front desk and introduced himself and explained that they wanted to go to the hotel break room and meet with the bargaining unit members. The front desk employee told Padilla that she would not be able to let them in unless she contacted general manager Jaffrey. She proceeded to page Jaffrey, who arrived and told the group that they were not allowed to meet with employees in the break room. Padilla explained that Jaffrey was violating the GRIWA which was still in effect until Fairfield negotiated with the Union. Jaffrey responded that there was a new owner, and they had no contract and that if Padilla attempted to meet with employees in the break room, he would call the police.[17] (Tr. at 418–419.) The Union representatives left

[16] Respondent Fairfield also provided similar August 22 hire letters that were addressed to the Lads, the Patels, and the Nakranis, even though it is undisputed that these six housekeeping employees had been working as housekeepers since Fairfield took over on August 19. (R Exh. 8(h)-(m); Jt. Exh. 2 at para. 6.) With regard to R. Exh. 8, Jaffrey testified at hearing that some of the pages in that exhibit were only internal drafts that were never provided to employees. These drafts are pages marked with Bates numbers: 71, and 73–78, and these pages of that exhibit do *not* constitute hire letters distributed to employees. (Tr. at 500–501.)

[17] The parties stipulated that Fairfield refused to allow Union representatives access to the facility on this date. (Jt. Exh. 2 at para 15.) Jaffrey testified that the "new ownership" said that they had no contract with the Union and advised Jaffrey not to allow any union visitations and that as a result Jaffrey did not permit the Union on the hotel's premises for a "protracted period." Jaffrey also admitted that he had since "learned"

the premises that day, but they came back and met with active Union supporters Ponce, Almonte de Velez, Toribio, Ashitey, Meija, and Almonte in the parking lots adjacent to the property regularly after that. (Tr. at 419–420.)

H. Fairfield Stopped Deducting and Remitting Union Dues

Article 32 of the GRIWA requires employers to deduct dues upon receipt of written authorization and remit those dues to the Union monthly.[18] (GC Exh. 2 at 30–31.) Prior to August 19, JSK would regularly deduct and remit dues as was established in the GRIWA. The parties stipulated that after taking over operations at the Hotel on August 19, Fairfield failed to deduct and remit Union dues from Union members who had signed authorization cards. (Jt. Exh. 2 at para. 14; Tr. at 174.)

I. Fairfield Refuses to Reinstate Flerida Sanchez After her Disability Leave

Prior to the sale of the hotel, housekeeper Flerida was an open union supporter who signed a union authorization card and regularly attended union meetings. (Tr. at 89, 229.) On March 1, Flerida had to take unexpected medical leave when she experienced serious complications with her pregnancy. (Tr. at 230.) Flerida brought disability paperwork to Jaffrey who filled it out authorizing Flerida's disability leave. (Tr. At 232.) On November 1, after she had given birth, Flerida texted Jeffrey letting him know that she would be ready to return to work int 2 weeks on November 14. Jaffrey responded that he did not have a position open for her and that he had only been able to hold her job open for 12 weeks. (Tr. at 232-233; GC Exh. 46.) Article 22 of the GRIWA provides that:

> A non-probationary employee absent from work because of sickness, injury, or FMLA or other protected reason, or because s/he is otherwise on leave and receiving pay or compensation for not more than twenty-four (24) consecutive months shall be entitled to reinstatement, provided the employee is capable of performing the essential duties of the job. The Employer may require satisfactory proof of sickness or injury and recovery. (GC Exh. 2 at 23.)

When Flerida texted Jaffrey about being ready to return to work, she had been on leave for 8 months. Jaffrey made no inquiry of whether Flerida was capable of performing the essential housekeeping duties. (Tr. at 230–233.) Fairfield never contacted the Union about Flerida's request to return from leave. (Tr. at 121–122.)

J. Fairfield Terminates the Six Prounion Employees on December 8

On December 8, without prior notice to the Union, Jaffrey terminated all six of the prounion employees at the end of the workday.[19] Jaffrey told the six prounion employees that Fairfield had hired a new company to perform the housekeeping work and that the company would be bringing in its own staff and the employees' services were no longer needed. (Tr. at 267, 297, and 175.) These employees were not provided with severance pay, accrued sick time or accrued vacation time as required by the GRIWA. (Tr. at 175–176, 266–267, 279, 298, 421.) In addition, neither the Union nor the employees were provided with written or electronic notice of their layoffs 5 days beforehand as required by the GRIWA.[20]

Although, the six prounion employees were told that their services were no longer needed because the new company had their own staff, the rest of the bargaining unit employees continued working for Fairfield and were eventually hired by the new cleaning company sometime around December 24.[21] Although the testimony was vague, three of these employees testified that at some point during these transitions they were laid off and rehired, only one indicated that he was laid off for more than 1 day.[22](Tr. at 659, 638, and 672.)

The six prounion employees were not called back to work for the new cleaning company. The "outside" cleaning service was a cleaning company formed by Elcira Sanchez, the former JSK housekeeping supervisor who had previously informed general manager Hernandez that she had been brought into the hotel to hire "green" employees in an effort to "decertify the [U]nion." (Tr. at 376.) Elcira Sanchez formed and registered Hotel Cleaning Services, LLC (HCS) on August 17, just 2 days before Fairfield took over operations. (GC Exh. 48.) That same day, HCS and Fairfield entered into a service agreement pursuant to which HCS would provide staff to perform all bargaining unit work. (GC Exh. 52, R. Exh. 5, Tr. at 481.) As set forth above, the contract did not become operational until sometime in late December. (Jt. Exh. 2 at para. 17; Tr. at 481–482.) Patel and Jaffrey

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that his obligations toward the Union were different from what he had previously understood them to be. (Tr. at 523–524.)

[18] Article 32 provides "Upon receipt of written authorization, the Employer agrees to deduct such dues . . . from the wages of salaries of the respective employees bi-weekly . . . and the Employer agrees to transmit on a monthly basis such sums collected by the Employer to the Union in the month of collection." (GC Exh. 2 at 30–31.)

[19] Five of the six were terminated in person at the end of their shift and Ashitey was informed over the phone as she was on vacation that day. (Tr. at 421.)

[20] Taken together Articles 9(D)(2), 9(D)(4), and 14(B) of the GRIWA require that the employer provide employees five-days' notice prior to employee layoff. (GC Exh. 2 at 15, 18.) See footnote 7, supra.

[21] The hearing testimony of bargaining unit employees Noreen Basulto, Krystal Basulto, Meenaxibe Patel, Champakla Patel, Tulsibhai Nakrani, Hansaben Nakrani, and Natverlal Lad, shows that they continued working for Fairfield and were eventually hired by the new cleaning company. (Tr. at 571, 576, 579, 638, 659, and 672.) Although Chetnakumari Lad did not testify, the fact that she was hired by HCS was admitted by Fairfield in its brief and also established by the fact that she signed her name to a petition submitted by HCS bargaining unit employees in February 2024. (R.'s Brief at 18; R Exh. 9.) It is unclear from the record whether breakfast attendant Stephanie Bembridge (the only other bargaining unit employee) was hired by the new cleaning service as she did not testify and did not sign the petition. Respondent stipulated that HCS began handling unit work at some point after December 8, and the invoices for HCS services produced by Fairfield pursuant to subpoena indicate that HCS did not take over the bargaining unit work until December 24. (Jt. Exh. 2 at para. 17; GC Exh. 50.)

[22] Hansaben Nakrani testified that she was terminated from Fairfield and hired by HCS. (Tr. at 659.) Tulsibhi Nakrani testified that he was fired from JSK and rehired by Fairfield in August. (Tr. at 638.) Natverlal Lad testified that he was laid off for a period of time that he could not specifically recall, but that he was rehired sometime in 2023. (Tr. at 672.)

were involved in structuring this contractual relationship before Fairfield took over operations as Jaffrey testified that he met with Fairfield representative AJ and Patel at the Hotel in early August where the three discussed subcontracting out the bargaining unit members. Patel also signed the service contract as a witness on August 17, and Jaffrey signed a version of the contract as a representative of Fairfield on August 17.[23] (Tr. at 513-514, 516, 518, 548; GC Exh. 49 at p. 6; GC Exh. 52 at p. 6.)

K. Anti-union Petition

Sometime around February 27, 2024, long after the first complaint issued in this case, HCS employees Noreen Basulto, Krystal Basulto, Champakla Patel, Meenaxibe Patel, Tulsibhai Nakrani, Hansaben Nakrani, Natverlal Lad, and Chetnakumari Lad, signed a petition setting forth they did not want the Union to represent them and presented it to Jaffrey.[24] (R. Exh. 9; Tr. 506-507.)

L. Fairfield's Prehearing Interviews

Fairfield subpoenaed breakfast attendant Krystal Basulto (Krystal) to testify at the hearing in this case. (Tr. at 580.) On May 8, 2024, during cross examination Krystal testified that she and fellow breakfast attendant Noreen Basulto,[25] met with Fairfield's attorney, Alfred Maurice, about three weeks prior to the hearing. When asked what Fairfield's attorney told her was the purpose of the prehearing meeting, she replied: "For the Union. Just to see like if we wanted it or what's going on with it." When the General Counsel asked Krystal whether Fairfield's attorney told her that if she decided not to talk to him that day or answer his questions, that she would not face any punishment or retaliation, Krystal credibly testified that he did not give her those assurances. Although given the opportunity to redirect the witness, Fairfield's attorney declined to do so. (Tr. at 582.)

When the hearing resumed on the morning of June 6, 2024, before any testimony was elicited, the General Counsel made a motion to amend the complaint to add an allegation that Fairfield's counsel had violated Section 8(a)(1) of the Act by coercing employees during pre- hearing interviews. (Tr. at 593.) The parties were directed to address the motion and the allegations in their posthearing briefs. (Tr. at 593–594.)

After the General Counsel's motion, Respondent called subpoenaed housekeeper Hansaben Nakrani (Hansaben) to the stand to testify. (Tr. at 657.) During direct examination, Fairfield's attorney asked Hansaben about the prehearing interview she had with him and he asked her if she recalled him making any threats or promises regarding her showing up and testifying at the hearing. Hansaben responded that Fairfield's attorney had not made any threats or promises during the interview. (Tr. at 662.) On cross examination, the General Counsel asked Hansaben what Respondent asked her in the prehearing interview and she responded that he had called her in to discuss the Union.[26] Then the General Counsel asked her if Fairfield's attorney had told her that she was free to leave the conversation during the prehearing interview, and she responded that he had not told her that. Then the General Counsel asked her if Fairfield's attorney had told her that she would not be punished if she refused to answer any questions about the union, and she again responded in the negative. Finally, the General Counsel asked if Fairfield's attorney had told her that she would not be punished based on any of her answers to his questions, and again she responded that he had not said that to her. (Tr. at 667.) On redirect, Fairfield's attorney asked Hansaben again if she had been threatened or promised anything if she did not provide the information that was being requested of her and she responded that she had not. Then he asked her if she had come into the interview against her will or if he had kept her from leaving the interview against her will and she answered that she had not. (Tr. at 668.) *River Dyeing*, 482 U.S. at 46-47; *Torch Operating Co.*, 322 NLRB 939, 939 (1997); *Eye Weather*, 325 NLRB 973, 973 fn.1 (1998).

This prong of the analysis is satisfied as the parties explicitly stipulated that on August 19, the day that Fairfield took over hotel operations from JSK, the hotel continued operating in the same manner as it had under JSK and all job positions were filled, substantially by former JSK employees. (Jt. Exh. 3.) The parties also stipulated that Fairfield immediately hired nine of JSK's 15 bargaining unit employees.[27] (Jt. Exh. 2 at para. 6.)

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[23] Although Jaffrey testified that he could not identify Patel's signature on the service contract, his testimony is simply not credible. (Tr. at 560–562.) First, Jaffrey worked closely with Patel at JSK for at least 4 years and his testimony that he was not able to identify Patel's very distinct signature after all of that time is simply not believable. Second, the signature on the last page of the service agreement (GC Exh. 49) is identical to Patel's signature on other documents in the record. (See e.g. GC Exh. 21.) In general, I found Jaffrey's testimony to be evasive, self-serving, and unreliable. For example, Jaffrey initially testified that he was not familiar with the HCS service contract because he was neither part of the negotiations *nor did he sign it*. (Tr. at 482–483.) However, upon being shown a copy of that same contract with his signature on it, he contradicted that testimony and admitted that not only had he signed the contract, but that he had done so as Fairfield's representative. (Tr. at 558–559; GC Exh. 52.)

[24] Although Noreen Basulto testified that she wrote the petition, when her daughter Krystal Basulto was asked by Fairfield's counsel who wrote the petition, she testified that she believed that Jaffrey had prepared it. Upon being directed by Fairfield's counsel to language in the letter that indicated that her mother was the author, Krystal acknowledged that the document indicated that her mother Noreen was the author. (Tr. at 572, 580.)

[25] Noreen Basulto is also Krystal's mother. (Tr. at 580.) Noreen also testified at the hearing, but she denied meeting with anyone to discuss her testimony before the hearing. (Tr. at 578.) I credit Krystal's testimony over Noreen's with regard to the meeting as Krystal's testimony was direct and forthcoming, while Noreen was terse, rehearsed, and evasive when answering questions.

[26] Hansaben recalled that her husband housekeeper Tulsibhai Nakrani was also at the meeting. (Tr. at 660.) Tulsibhai also testified at hearing. He recalled a meeting with Fairfield's attorney, his wife and two other housekeepers during which he they were handed subpoenas. Tulsibhai testified that he did not understand what Fairfield's attorney said to them as Mr. Maurice was speaking in English without an interpreter, and Tulsibhai's first language is Gujarati. When he was asked how he knew that he had been called to testify at the hearing, he explained that one of the other housekeepers who speaks some English explained it to him. (Tr. at 637, 646.)

[27] According to the stipulation, those employees were: Krystal Basulto, Noreen Basulto, Stephanie Bembridge, Hansaben Nakrani,

As the Union made its first request to bargain with Fairfield in Fries' August 21 letter, Fairfield's obligation to recognize and bargain with the Union was triggered on that date as Fairfield had a "substantial and representative complement" of employees at that time. *Fall River Dyeing*, 482 U.S. at 52.

Fairfield makes two arguments to support its position that it is not a *Burns* successor to JSK. First, Fairfield contends that it intended to contract out the bargaining work to a third-party housekeeping provider when it took over the hotel's operations. Second, Fairfield asserts that it protected itself from being a *Burns* successor by incorporating indemnification clauses in its sales contract with JSK, as well as signing a separate indemnification agreement.

Fairfield's initial contention that it intended to contract out the bargaining unit work fails because regardless of Fairfield's intentions, it did not immediately engage a third-party cleaning company to take over the housekeeping department, instead it directly hired nine employees out of the 15-member bargaining unit and did not bring in the third-party cleaning service until December, which was 4 months after taking over operations.

Fairfield's second argument that it was not a successor employer because it had negotiated indemnification agreements in its contract with JSK, also fails to exempt Fairfield from its successor status. The fact that Fairfield negotiated an indemnification agreement with JSK, has no effect on whether it satisfies the *Burns* successor requirements. Per the terms of the indemnification agreement, Fairfield is free to pursue reimbursement of its costs related to the unfair labor practices, but it cannot shirk its responsibilities as a *Burns* successor by pointing to language in its private contract with JSK. It is well settled that "the Board does not give effect to private agreements that purport to limit the exercise of its remedial powers in the public interest." *County Agency, Inc.*, 369 NLRB No. 62 (2020), citing *Kelly Services*, 368 NLRB No. 130, slip op. at 4 (2019). As set forth in *Kelly Services*, "the Board's remedial powers are an aspect of its broader power to prevent unfair labor practices, and Congress has provided that this broader power 'shall not be affected by any other means of adjustment or prevention that has been or may be established by *agreement*, law, or otherwise.'" Id., slip op. at 5 (quoting Section 10(a) of the Act). The clear language of the Act and well-settled precedent preclude private limitation of the Board's authority to remedy violations of the Act in the public interest. Id. To find otherwise

IV. ANALYSIS

A. Fairfield is a Burns Successor to JSK and is Obligated to Recognize and Bargain with the Union (Complaint para. 13)

The General Counsel contends that Fairfield is a *Burns* successor and violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union as the bargaining unit employees' exclusive collective-bargaining representative. For the reasons set forth below, I agree.

A new employer is a successor to the old employer--and thus required to recognize and bargain with the incumbent labor union--when there is "substantial continuity between the two business operations and when a majority of the new company's employees had been employed by the predecessor. UGL-UNICCO Service Co., 357 NLRB 801, 803 (2011), citing *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 42-44, 46-47 (1987); see also *NLRB v. Burns International Security Services*, 406 U.S. 272, 281 (1972). Once the new employer is deemed a Burns successor, the obligation to recognize and bargain with the union is triggered when the union makes a bargaining demand. *Fall River Dyeing*, 482 U.S. at 52.

In determining the continuity of the enterprise, the Board considers the following factors: "whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers." *Fall River Dyeing*, 482 U.S. at 43; *Allways East Transportation, Inc.*, 365 NLRB No. 71 (2017). These factors are analyzed from the perspective of unit employees and whether they "understandably view their job situations as essentially unaltered." *Fall River Dyeing*, 482 U.S. 27 quoting *Golden State Bottling Co.*, 414 U.S. 168, 184 (1973).

These factors are satisfied here. Fairfield continued to provide the same hotel services to the same body of customers as JSK, as it continued to operate as the Fairfield Inn & Suites by Marriott, without pause. Employees performed the same jobs under the same supervisory structure, as Jaffrey who was in charge of hotel staff maintained his position as general manager, Brown was kept on as the director of sales, and Growth Properties continued in its same role as management company to Fairfield. With regard to continuity of operations there is no dispute as the parties stipulated that the Hotel continued operating in the same manner as it had under the ownership of JSK the day after Fairfield took over operations. (Jt. Exh. 3.)

In determining continuity of work force, the Board looks at whether the new employer has hired a majority of the old employer's employees once it has hired a "substantial and representative complement" or a "full complement" of employees. *Fall River Dyeing*, 482 U.S. at 47–48. When there is an immediate transfer of the workforce without any interruption or start up time, a full and representative complement is present on the 1st day of operations. *County Agency Inc.*, 369 NLRB No. 62, slip op at 2, fn. 5 (2020), enf. mem., No. 20-1522, 2021 WL 1941820 (2d Cir. 2021.) (quoting *Ford Motor Co.*, 367 NLRB No. 8, slip op. at 13 (2018); *Fall River Dyeing*, 482 U.S. at 46–47; *Torch Operating Co.*, 322 NLRB 939, 939 (1997); *Eye Weather*, 325 NLRB 973, 973 fn. 1 (1998).

This prong of the analysis is satisfied as the parties explicitly stipulated that on August 19, the day that Fairfield took over hotel operations from JSK, the hotel continued operating in the same manner as it had under JSK and all job positions were filled, substantially by former JSK employees. (Jt. Exh. 3.) The parties also stipulated that Fairfield immediately hired nine of JSK's 15 bargaining unit employees.[27] (Jt. Exh. 2 at para. 6.)

Tulsibhai Nakrani, Champakla Patel, Meenaxibe Patel, Natverlal Lad, and Chetnakumari Lad. (Jt. Exh. 3.)

As the Union made its first request to bargain with Fairfield in Fries' August 21 letter, Fairfield's obligation to recognize and bargain with the Union was triggered on that date as Fairfield had a "substantial and representative complement" of employees at that time. *Fall River Dyeing*, 482 U.S. at 52.

Fairfield makes two arguments to support its position that it is not a *Burns* successor to JSK. First, Fairfield contends that it intended to contract out the bargaining work to a third-party housekeeping provider when it took over the hotel's operations. Second, Fairfield asserts that it protected itself from being a *Burns* successor by incorporating indemnification clauses in its sales contract with JSK, as well as signing a separate indemnification agreement.

Fairfield's initial contention that it intended to contract out the bargaining unit work fails because regardless of Fairfield's intentions, it did not immediately engage a third-party cleaning company to take over the housekeeping department, instead it directly hired nine employees out of the 15-member bargaining unit and did not bring in the third-party cleaning service until December, which was 4 months after taking over operations.

Fairfield's second argument that it was not a successor employer because it had negotiated indemnification agreements in its contract with JSK, also fails to exempt Fairfield from its successor status. The fact that Fairfield negotiated an indemnification agreement with JSK, has no effect on whether it satisfies the *Burns* successor requirements. Per the terms of the indemnification agreement, Fairfield is free to pursue reimbursement of its costs related to the unfair labor practices, but it cannot shirk its responsibilities as a *Burns* successor by pointing to language in its private contract with JSK. It is well settled that "the Board does not give effect to private agreements that purport to limit the exercise of its remedial powers in the public interest."

County Agency, Inc., 369 NLRB No. 62 (2020), citing *Kelly Services*, 368 NLRB No. 130, slip op. at 4 (2019). As set forth in *Kelly Services*, "the Board's remedial powers are an aspect of its broader power to prevent unfair labor practices, and Congress has provided that this broader power 'shall not be affected by any other means of adjustment or prevention that has been or may be established by *agreement*, law, or otherwise.'" Id., slip op. at 5 (quoting Section 10(a) of the Act). The clear language of the Act and well-settled precedent preclude private limitation of the Board's authority to remedy violations of the Act in the public interest. Id. To find otherwise would pervert public policy and leave bargaining unit employees with no stability or protection when companies change hands.[28]

In light of all of the above, I agree with the General Counsel that Fairfield was clearly a *Burns* successor to JSK. As Fairfield has admitted and the record shows that it has refused to recognize and bargain with the Union,[29] I find that it violated Section 8(a)(5) and (1) of the Act.[30]

B. Refusal to Hire (Complaint para. 11(a))

The complaint alleges that Fairfield violated Section 8(a)(3) and (1) of the Act when it refused to hire JSK's six most senior housekeepers and engineer because they supported the Union and engaged in protected concerted activities.[31] The Act does not require a new employer to hire the employees of its predecessor. It does, however, prohibit a new employer from refusing to hire or retain the employees of its predecessor solely because they are union members or in order to avoid having to recognize the union. *Howard Johnson Co. v. Hotel & Restaurant Employees*, 417 U.S. 249, 262 fn.8 (1974); *Daufuskie Island Club & Resort*, 328 NLRB 415, 421 (1999); *Love's Barbeque Restaurant No. 62*, 245 NLRB 78, 82 (1979), enfd. in relevant part sub nom. *Kallman v. NLRB*, 640 F.2d 1094 (9th Cir. 1981).

The legal standard to be applied in cases where an employer allegedly refuses to hire its predecessor's employees to avoid an obligation to bargain with the union is the traditional standard set out in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *Adams & Associates*, 363 NLRB 1923 at 1928 (2016). To sustain a finding of discrimination, the General Counsel must make an initial showing that the employee's union or other protected activity was a motivating factor in the employer's decision. The requisite elements to support a finding of discriminatory motivation are union or other protected concerted activity by the employee, employer knowledge of that activity, and animus on the part of the employer. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 2–3 (2019). To support its initial burden under *Wright Line*, the General Counsel must prove by a preponderance of the evidence that union animus was a substantial or motivating factor in the adverse employment action. *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2nd Cir. 2009). Proof of discriminatory motivation (animus) can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. Circumstantial evidence of discriminatory motivation may include evidence of: suspicious timing; false or shifting reasons provided for the adverse employment action; and/or disparate treatment of the employee. See *Volvo Group North America, LLC*, 370 NLRB No. 52, slip op. at 3 (2020); *Medic One, Inc.*, 331 NLRB 464, 475 (2000). The evidence must be sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee. *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 8 (2019).

If the General Counsel makes the required initial showing, then the burden shifts to the employer to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee's union or protected activity. *T&J Trucking Co.*, 316 NLRB 771 (1995).

Here, the six employees engaged in significant union activity as they filed numerous grievances, testified at grievance proceedings, and attended union meetings held on the premises. Management was aware of the employees' union activity as general manager Jaffrey was involved in the handling of grievances

[29] (Tr. at 122; GC Exh. 1(vv) at para. 13(a).)

[30] In its answer to the complaint, Fairfield admitted that: "Fairfield did not recognize the Union as collective-bargaining agent as it had engaged in a mass layoff upon purchasing the hotel business and sought to begin operations anew pursuant to the law." (GC Exh. 1(vv) at para. 13(a).)

[31] Although the General Counsel alleged that Fairfield violated Sec. 8(a)(5) of the Act by failing to hire the six prounion employees, it did not address this allegation in its brief and I therefore deem it waived. (Complaint para. 11(a), (e), and (f)).

and attended grievance hearings during which these employees testified. He also unlawfully surveilled employees while they attended union meetings and even went so far as to videotape a union meeting using his phone. As Fairfield retained Jaffrey as general manager, the same position he held for JSK, his knowledge of employees' prounion activities is imputed to Fairfield. See *D & T Limousine Service, Inc.*, 328 NLRB 769 (1999) (Board affirmed finding that a retained supervisor's knowledge of an employee's union activity was imputed on successor); *Henry M. Hald High School Ass'n*, 213 NLRB 415, 422 (1974) (predecessor's principal's knowledge of employees' union activity imputed onto successor, when successor retained the same individual as its principal); *Dobbs International Services*, 335 NLRB 972, 973 (2001) ("It is well established that a supervisor's knowledge of union activities is imputed to the employer.")

With regard to animus, there are several examples of Jaffrey's union animus. First, Jaffrey committed several unfair labor practices while working as the general manager for JSK, such as surveilling employees engaged in union or protected concerted activity, refusing union access, and refusing to provide the Union with information regarding terms and conditions of bargaining unit employees. (Attachment A at para 7(h), 9(a)(i), and 10.) Jaffrey continued to demonstrate his animus toward the Union as general manager working for Fairfield as well when he refused to allow Union representatives into the Hotel and threatened to call the police unless they left.[32]

Not only did Jaffrey have knowledge of the employees' Union activity and openly demonstrated union animus, but Fairfield also offers no explanation whatsoever for why it hired all of JSK's bargaining unit employees except for the six Union adherents on August 19, when it took over operations. This is especially suspect as the six employees who were not hired were the ones with the longest working history in those positions at the hotel and there is no evidence that they were anything other than exemplary employees. See *U.S. Marine Corp.*, 293 NLRB 669 at 671 (1989). Moreover, the bargaining unit employees who were hired by Fairfield, included the six housekeeping employees, who Elcira Sanchez hired after informing Hernandez that she had been brought in by Patel in order to hire anti-union employees in an effort to decertify the Union. Thus, even if Jaffrey's union animus could not be imputed to Fairfield, Fairfield's disparate treatment in hiring all of the bargaining unit employees except the six openly prounion employees by itself constitutes strong evidence of animus. See *Wendt Corp*, 369 NLRB No. 135, slip op. at 4 (2020) ("circumstantial evidence of animus under *Tschiggfrie Properties* is clearly established by the Respondent's disparate treatment of [employee] Hudson"); *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 2-3 (2020) (lack of evidence that employer disciplined others for similar offenses shows animus); *Constellium Rolled Prod. Ravenswood, LLC*, 371 NLRB No. 16, slip op. at 4 (2021).

In light of the above, I find that the General Counsel has demonstrated by a preponderance of the evidence that antiunion animus was the motivating factor in Fairfield's decision not to employ the six bargaining unit members.

Under *Wright Line*, Fairfield may nonetheless avoid a finding that it violated the Act by demonstrating that it would not have hired the six employees even in the absence of their union conduct. *Willamette Industries*, 341 NLRB 560, 563 (2004); *Wright Line*, supra. Fairfield, however, offered no rationale for failing to hire the six known Union adherents, while immediately employing all of the other bargaining unit members.

In light of the above, I find that Fairfield violated Section 8(a)(3) and (1) of the Act by refusing to hire these six prounion bargaining unit employees.

C. Fairfield Terminates the Six Prounion Bargaining Unit Employees (Complaint para. 11(d))

As set forth above, Fairfield eventually did hire the six prounion employees on August 22, after the Union pointed out that Fairfield would be violating New Jersey Statute Section 29:4- 13, if it failed to do so. On December 8, however, once it apparently considered the 90-day "probationary period" concluded, Fairfield immediately terminated those same six employees. The General Counsel alleges that Fairfield violated Section 8(a)(3) and (1) of the Act when it did so. For the same reasons established above, I find that the General Counsel has overcome its burden to show a prima facie case of discriminatory motive in terminating the six prounion employees. In its defense, Fairfield contends that it terminated the six employees on December 8, because it was contracting out its housekeeping services to third-party provider HCS. The problem with Fairfield's defense is manifold. First, although Fairfield terminated the six prounion adherents on December 8, telling them that there would be no work for them at HCS, all but one of the other bargaining unit members employed by Fairfield at the time were retained *and* eventually hired by HCS. Here again, Fairfield provides no rationale for terminating only the 6 prounion employees, while keeping the rest of the bargaining unit intact. Second, although Jaffrey told the six prounion employees that HCS would be bringing in its own workforce, HCS, in fact hired the rest of Fairfield's bargaining unit and there is no evidence that HCS had any staff of its own. In addition, although Fairfield attempted to present HCS as an "independent third-party," the evidence establishes that JSK management Patel, Jaffrey, and Sanchez were intimately involved in creating the cleaning service and the service contract.[33]

As Fairfield failed to overcome its burden, I find that Fairfield terminated the six housekeeping employees on December 8, in violation of Section 8(a)(3) and (1) of the Act.

D. Fairfield's Refusal to Reinstate Flerida Sanchez (Complaint para. 12(b) and (c))

The General Counsel also alleges that Fairfield violated Section 8(a)(3) and (1) of the Act when it refused to reinstate housekeeper Flerida Sanchez after she had completed her medical leave. The first prong of the *Wright Line* analysis is satisfied here as the evidence shows that Flerida Sanchez was engaged in Union activity when she attended employee Union meetings which took place on the Hotel premises in 2022 and 2023. The record also establishes that members of JSK management Hernandez

[32] See supra at 12, infra at 25–26.

[33] GC Exh. 48.

and Patel were aware of Flerida's prounion leanings.[34] The second prong of *Wright Line* requires, however, that *Fairfield* management had knowledge of Flerida's union activity. Despite the General Counsel's assertions that Flerida would have been lumped together with the cohort of union supporters, there is no evidence in the record that Jaffrey, Brown, or any other member of Fairfield's management had knowledge of Flerida's union activity. Further frustrating the knowledge prong of *Wright Line* is the fact that Flerida was on leave for the entire time that Fairfield took over operations. As the General Counsel failed to prove the knowledge prong of *Wright Line*, I recommend dismissing this allegation of the complaint.

E. Alleged Unilateral Changes and Fairfield's Obligation to Maintain the Status Quo (Complaint para. 14(a))

The General Counsel further alleges that Fairfield violated Section 8(a)(5) and (1) of the Act when it made a series of changes to bargaining unit members' terms and conditions of employment without contacting or bargaining with the Union. As a *Burns* successor, Fairfield was not bound to the collective-bargaining agreement of the predecessor and was free to make a one-time unilateral change in the status-quo terms and conditions of employment for bargaining unit employees, provided that it set those terms before the duty to bargain arose. *Burns*, supra, 406 U.S. at 293–295; see also *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 40–41(1987); see *Tramont Manufacturing, LLC*, 369 NLRB No. 136, slip op. at 5 (2020) ("The successor can, in effect, reset the status quo at the commencement of a bargaining relationship.") Once a *Burns* successor has set initial terms and conditions of employment, however, a bargaining obligation attaches with respect to any subsequent changes to terms and conditions of employment. *Paragon Systems*, 362 NLRB 1385, 1386 (2015).

However, where a *Burns* successor employer fails to set its own initial terms, the employer is obligated to maintain the established terms and conditions of employment. *Banknote Corp. of America*, 315 NLRB 1041, 1042 (1994); *Royal Vending Services*, 275 NLRB 1222, 1227–1228 (1985). The terms and conditions of employment of union-represented employees will normally be those established by the predecessor's collective-bargaining agreement or by the predecessor acting unilaterally to the extent that the union had waived bargaining. These status quo terms and conditions of employment are kept in place by virtue of Section 8(a)(5) of the Act rather than by force of contract. *Holiday Inn of Victorville*, 284 NLRB 916, 916 (1987) (citing *NLRB v. Burns Security Services*, 406 U.S. 272, 281–291 (1972)); *Nexstar Broad., Inc.*, 369 NLRB No. 61, slip op. at 3 (2020) (quoting *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 206 (1991)).

As set forth above, Fairfield stipulated that it filled all job positions, substantially by former JSK employees, including hiring nine of the 15 bargaining unit members between August 19 and August 21, and I have found that it became a *Burns* successor at that time. (Jt. Exh. 3; Jt. Exh. 2 at para. 6.) There is no evidence that Fairfield announced or set its own initial terms and conditions of employment prior to taking over operations on August 19, or prior to the Union's request to meet and bargain on August 21.[35] Thus, Fairfield was obligated to maintain the status quo with regard to established terms and conditions of employment, and any change to those terms and conditions of employment without providing the Union prior notice and an opportunity to bargain violates Section 8(a)(5) of the Act. *Banknote Corp. of America*, 315 NLRB 1041, 1042 (1994); *Royal Vending Services*, 275 NLRB 1222, 1227-1228 (1985).

F. Fairfield Unilaterally Terminated the Six Prounion Employees (Complaint 11(d), (f) and (g))

The General Counsel alleges that Fairfield violated Section 8(a)(5) and (1) of the Act when it terminated Almonte de Valdez, Ashitey, Mejia, Ponce, Toribio, and Almonte on December 8, without notifying and bargaining with the Union.

An employer "violates Section 8(a)(5) if it unilaterally changes a term or condition of employment for bargaining unit employees without giving their bargaining representative advance notice and an opportunity to bargain about the change." *Omni Hotels Mgmt. Corp.*, 371 NLRB No. 53, slip op. at 3 (2022); *NLRB v. Katz*, 369 U.S. 736, 743 (1962). Under Board law, the requirement persists after the expiration of a collective-bargaining agreement, at which time "an employer must maintain the status quo of all mandatory subjects of bargaining until the parties either agree on a new contract or reach a good-faith impasse in negotiations." *Richfield Hospitality, Inc.*, 368 NLRB No. 44, slip op. at 3 (2019). It is well settled that decisions to terminate or lay off employees is a mandatory subject of bargaining. *Cook Dupage Transportation Co.*, 354 NLRB 262, 267 (2009); *Ryder Distribution Resources*, 302 NLRB 76, 90 (1991); *N.K. Transport, Inc.*, 332 NLRB 547, 551 (2000). It is uncontested that Fairfield failed to provide the Union notice prior to terminating the six pro- union employees on December 8. As the successor, Fairfield was obligated to abide by the status quo as set forth in the expired GRIWA, which provides that the employer was required to provide five calendar days' notice prior to laying off an employee.[36] There is no provision setting forth that

[34] Flerida Sanchez had told General Manager Hernandez that she was strongly in favor of the Union and Hernandez credibly testified that she had reported Flerida's union leanings to Patel at the time. See *supra*, at p. 7.

[35] Although not raised as a defense by Fairfield, I note that the hire letters provided to bargaining unit employees on August 22, indicate that Fairfield offered to hire the bargaining unit employees as probationary employees for the first 90 working days, "after which [their] employment may be extended or terminated." (R. Exh. 8(a)-(m).) As these letters were presented to the bargaining unit employees on August 22, after a substantial complement of employees had been hired and after the Union made its bargaining demand, they were instituted after Fairfield's duty to bargain had taken effect, and therefore Fairfield would have to notify and bargain with Union before any such change could be implemented. *Banknote Corp. of America*, 315 NLRB No. 1041, 1042 (1994) (respondent required to bargain with the union regarding any changes in employment terms and conditions instituted after respondent's duty to bargain took effect); *Adams & Associates*, 363 NLRB 1923, 1945 (2016) (probationary periods constitute a mandatory subject of bargaining); *Camelot Terrace*, 357 NLRB 1934, 1941 (2011) (same).

[36] Article 9(D)(4) and 14(B) of the GRIWA. (GC Exh. 2 at 15 and 18.)

this clause expired with the expiration of the contract, and there is also no contractual language that would allow Fairfield to unilaterally change the policy.

Therefore, I find that Fairfield violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with prior notice and an opportunity to bargain prior to terminating Almonte de Valdez, Ponce, Toribio, Ashitey, Mejia, and Almonte on December 8, 2023. *Cook Dupage Transportation Co.*, 354 NLRB at 267-268.

G. Fairfield Unilaterally Refused to Reinstate Flerida Sanchez (Complaint para. 11(b))

The General Counsel also alleges that Fairfield violated Section 8(a)(5) and (1) of the Act by failing to notify and bargain with the Union before rejecting Flerida's offer to return to work after her leave. Reinstatement is a mandatory subject of bargaining. *N.K. Transport, Inc.*, 332 NLRB 547, 551 (2000). As the successor, Fairfield was obligated to abide by the status quo as set forth in the expired GRIWA, which provides that employees on sick leave for less than 24 months are entitled to reinstatement provided that the employee is capable of performing the essential duties of the job. (GC Exh. 2 at 23.) As Flerida had taken leave for less than 8 months and there was no indication that she could not perform the functions of the housekeeping work, she would have been eligible for reinstatement under the GRIWA provision.[37] Thus, by failing to reinstate Flerida, Fairfield unilaterally changed the terms and conditions of employment as laid out in the GRIWA, in violation of Section 8(a)(5) and (1) of the Act.

H. Other Alleged Unilateral Changes (Complaint 14(a))

The General Counsel also alleges that Fairfield unilaterally changed the terms and conditions of employment of the six terminated employees with regard to seniority, hours of work, wages and benefits in violation of Section 8(a)(1) and (5) of the Act.

With regard to benefits, the General Counsel alleges that upon their termination or permanent layoff, Fairfield failed to provide Almonte de Valdez, Toribio, Ashitey, Mejia, Ponce, or Almonte with severance pay,[38] payment for accrued vacation,[39] and sick leave[40] as was provided for in the GRIWA. Board precedent clearly establishes that an employer must continue to apply provisions of an expired contract, such as accrued sick leave and vacation benefits, until either a new agreement or impasse is reached. *Made 4 Film, Inc.*, 337 NLRB 1152 (2002); *REC Corp.*, 296 NLRB 1293 (1989); *University Moving & Storage*, 350 NLRB No. 2, slip op at 4 (2007) (finding respondent's denial of accrued sick time and vacation benefits after the expiration of the contract violated Section 8(a)(5) of the Act).

Fairfield does not contend that it provided any of these benefits to the terminated employees, but rather asserts that it was not obligated to do so as it is not a *Burns* successor. In light of all of the above, I find that Respondent violated Section 8(a)(5) and (1) of the Act by failing to pay severance, accrued vacation, and sick leave to Almonte de Valdez, Toribio, Ashitey, Mejia, Ponce, or Almonte, upon their termination on December 8.[41]

With regard to seniority, the General Counsel alleges that Fairfield violated Section 8(a)(5) and (1) when it failed to lay off housekeeping employees in reverse seniority order as required by the GRIWA.[42] In support of its contention, the General Counsel asserts that Fairfield laid off Almonte de Valdez, Toribio, Ashitey, Mejia, Ponce, and Almonte, all of whom had worked in their positions in the housekeeping department in the Hotel longer than the other housekeeping employees who were retained. Fairfield raises no defense to this allegation other than to assert that it is not a *Burns* successor. As the GRIWA requires any successor employer to retain all bargaining unit employees without loss of seniority,[43] I find that Fairfield violated Section 8(a)(5) and (1) of the Act when it terminated or permanently laid off the more senior bargaining unit members while retaining the newer housekeeping employees.

I. Unilateral Changes Refusing Union Access (Complaint para.14(c))

The complaint alleges that Fairfield violated Sections 8(a)(5) and (1) of the Act when it failed to allow Union representatives access to its facility for the purpose of meeting with bargaining unit employees on August 31, 2023.

The evidence establishes that the GRIWA contains a clause permitting union representatives broad access to the Hotel. Article 27 of the GRIWA sets forth: "Union representatives shall be granted access to the Employer's premises and employees. Union representatives shall advise management sufficiently in advance when a formal meeting with a large group of employees requiring arrangements is scheduled . . . under no circumstances shall Union representatives be barred from the premises or access as a result of failure to provide such notice." (GC Exh. 2 at 28.) It is well-settled that a union access provision is a term and condition of employment that survives a contract's expiration. See, e.g., *Southern Bakeries, LLC*, 364 NLRB 804 at 804, 834 (2016), enf. granted and denied in part on other grounds 871 F.3d 811 (8th Cir. 2017); *Great Western Coca-Cola Bottling Co.*, 265 NLRB 766, 778 (1982), enfd. 740 F.2d 398 (5th Cir. 1984). In addition, union visitation is a mandatory subject of bargaining which may not be unilaterally changed. See, e.g., *Noel Canning*, 364 NLRB No. 45 at p. 4 (2016); *Turtle Bay Resorts*, 355 NLRB 1272 (2010).

[37] Although there is no indication that Fairfield ever formally hired Flerida, Jaffrey's response to Flerida when she offered to return to work was not that she was not an employee of Fairfield, but rather that he did not have any position open for her because she had taken too much leave. As Fairfield did hire all of JSK's bargaining unit employees by August 22, in response to the New Jersey retention statute's requirements, Jaffrey clearly considered her to be a Fairfield employee who was on leave when she made her offer to return.

[38] Article 55(A) of the GRIWA. (GC Exh. 2 at 45.)

[39] Article 15(B) of the GRIWA. (GC Exh. 2 at 19.)

[40] Article 17(E) of the GRIWA. (GC Exh. 2 at 21.)

[41] The General Counsel also alleges that Respondent violated Sec. 8(a)(3) of the Act by making these unilateral changes because the changes were motivated by the Respondent's union animus. (GC Br. at 68.) I find that the General Counsel failed to show that Respondent was specifically motivated by union animus by failing to provide the employees with these benefits and as such recommend denying this allegation in the complaint. (Complaint para. 14(d).)

[42] Article 14 (A) of the GRIWA. (GC Exh. 2 at 18.)

[43] Article 54(C) of the GRIWA. (GC Exh. 2 at 43.)

As set forth above, the plain language of the GRIWA gives the Union broad access to its premises. In addition, Union Representatives Nicholas Ruiz and Tom Oliva credibly testified that they had a past practice of visiting the Hotel two times a month on average and there was no set schedule, and that they were never required to notify JSK ahead of time when they were having a standard meeting with bargaining unit members. No evidence was presented to establish that union representatives were expected to provide notice before visiting the Hotel for a standard meeting with bargaining unit employees.

The evidence establishes that on August 31, Jaffrey told Union Representatives Antonio Codita, Lillian Uribe, and Union Vice President Padilla, that they were not allowed to meet with employees in the employee breakroom and that he would call the police if they did not leave the premises. Fairfield stipulated and Jaffrey testified that on or about August 31, it refused to allow Union representatives access to its facility for the purpose of meeting with employees in the Unit. (Jt. Exh. 2 at para 15.)

For all of the foregoing reasons, the evidence establishes that Fairfield violated Section 8(a)(5) and (1) of the Act by unilaterally denying union representatives access to the hotel on August 31, 2023.

J. Fairfield Failed to Remit Union Dues (Complaint para. 14(b))

The General Counsel alleges that Fairfield violated Section 8(a)(5) and (1) by failing to remit to the Union dues deducted pursuant to valid, unexpired, and unrevoked employee checkoff authorizations The Board recently found that dues-checkoff provisions properly and reasonably belong in the broad category of mandatory bargaining subjects that Section 8(a)(5) of the Act bars employers from changing unilaterally after the expiration of a contract. *Valley Hospital Medical Center (Valley Hospital II)*, 371 NLRB No. 160 (2022), enfd. *Valley Hospital Medical Center, Inc. v. National Labor Relations Board*, 93 F.4th 1120, 2024 WL 678727 (9th Cir. 2024). Thus, as JSK's successor, Fairfield was obligated to maintain the status quo by continuing to deduct and remit dues in accordance with this provision.

There is no dispute that Fairfield has not deducted dues from Unit employees since it took over operations on August 19. (Jt. Exh. 2 at para. 14.) There is no evidence that unit employees who had signed authorization cards requested that Fairfield stop deducting these dues. Fairfield's sole defense appears to be its unsupported assertion that it is not a *Burns* successor to Fairfield and therefore has no obligation to recognize and bargain with the Union about any changes to the status quo.

In light of all of the above, I find that Fairfield violated Section 8(a)(5) and (1) of the Act by failing to deduct and remit dues to the Union since August 19.

K. Failure to Provide Relevant Information in Response to the Union's August 25 Information Request (Complaint para. 15(c))

The General Counsel contends that Fairfield violated Section 8(a)(5) and (1) of the Act by refusing to provide the Union with information regarding employees' terms and conditions of employment or otherwise necessary for, and relevant to, its duties as the exclusive bargaining representative of the unit employees.

On August 25, the Union requested two sets of information from Fairfield. First, it requested information regarding the entities or individuals who hold an ownership interest in Fairfield. Second, it requested information regarding the identity of its bargaining unit employees, including terms and conditions of their employment as well as their contact information.

It is well settled that a collective-bargaining representative is entitled to information from the employer that may be relevant and reasonably necessary to administering the parties' collective-bargaining agreement. The test of the union's need for such information is simply a showing of probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities. The Board uses a liberal, discovery-type standard to determine whether information is relevant, to require its production. See *Washington Star Co.*, 273 NLRB 391, 395–396 (1984) (citing *Westinghouse Electric Corp.*, 239 NLRB 106 at 107 (1978); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

With regard to the first request, the Board has held that where the bargaining representative has received information that the employer has transferred its business to another entity, the union is entitled, upon appropriate request, to information bearing on that issue, so that the union may properly represent the unit employees. *Washington Star*, 273 NLRB 391, 396 (1984); *Westwood Import Co.*, 251 NLRB 1213 (1980). The Union requested Fairfield's ownership information shortly after its members had informed them that the Hotel had been sold. The Union needed the ownership information in order to identify and contact the new owners and in order to protect its members' rights under the NLRA.

With regard to the second request, information pertaining to the terms and conditions of bargaining unit members is presumptively relevant, as is information regarding unit employees' names, addresses, seniority dates, and rates of pay. *Tegna, Inc.*, 367 NLRB No. 71, slip op. at 2 (2019); *Southern California Gas Co.*, 344 NLRB 231, 235 (2005); *DynCorp/Dynair Services*, Inc. 322 NLRB 602 (1996). Upon request, an employer must furnish presumptively relevant information to the union unless it can prove either lack of relevance or provide adequate reasons why it cannot in good faith supply the information. *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993) (citing *Emeryville Research Center v. NLRB*, 441 F.2d 880 (9th Cir. 1971)).

Fairfield stipulated that it has not produced the information that the Union requested on August 25, and its only defense is that it is not a *Burns* successor and thus has no obligation to recognize and bargain with the Union. (Jt. Exh. 2 at para. 13.) As I have found that Fairfield is a *Burns* successor, Fairfield's defense fails.

Based on the foregoing, I find that Fairfield violated Section 8(a)(5) and 8(a)(1) of the Act by refusing to furnish information requested by the Union on August 25.

L. Fairfield did Not Provide Johnnie's Poultry Assurances Before Questioning (Complaint amended at hearing)

As set forth above, during the hearing the General Counsel moved to amend the complaint in light of evidence adduced at hearing to allege that Fairfield violated Section 8(a)(1) of the Act by coercing employees during prehearing interviews. (Tr. at 593.) In deciding to grant the General Counsel's motion, I have

considered: (1) whether there was surprise or lack of notice, (2) whether there was a valid excuse for the delay in moving to amend, and (3) whether the matter was fully litigated. *Rogan Bros. Sanitation, Inc.*, 362 NLRB 547, 549 fn. 8 (2015), enfd. 651 F. Appx. 34 (2d Cir. 2016); In Re *Cab Assocs. & Bldg. Material Teamsters, Loc. 282*, 340 NLRB 1391, 1397 (2003).

In the present case, the General Counsel's motion to amend the complaint to add the *Johnnie's Poultry* allegation was based on evidence which was adduced from Respondent's own witness on the 4th day of the hearing regarding a meeting that Respondent's counsel was present for. In these circumstances, there is no basis for a finding of surprise, lack of notice, or prejudice to the Respondent. Additionally, the General Counsel first learned of the conduct from the testimony of the Respondent's witness and thus had a good excuse in these circumstances for not moving to amend the complaint at a time prior to the last day of the hearing. With regard to the third prong, the General Counsel moved to amend the complaint while Respondent was still putting on their case, and before one of the witnesses testified regarding their prehearing interview. Thus, the Respondent was put on notice of the General Counsel's motion to amend before the second witness Hansaben Nakrani testified and Respondent's counsel asked her questions about the issues raised by the General Counsel both on direct and redirect examination. With regard to Krystal Basulto's testimony, Respondent had notice of the General Counsel's motion well before he had finished putting on his case and he had the opportunity to call Krystal back to the stand, but he refrained from doing so.

In light of all of the above, I grant the General Counsel's Motion to amend the complaint as the evidence regarding these interviews came to light during trial testimony and Respondent had an opportunity to fully litigate the matter prior to the close of hearing. See *Amalgamated Transit Local 1498 (Jefferson Partners)*, 360 NLRB No. 96, slip op. at 2 fn. 7 (2014) (mid- hearing complaint amendment properly granted, as issue "was fully litigated from that point forward").

Although the Act generally prohibits employers from questioning employees about their protected activities, the Board recognizes that an employer may sometimes have to interview employees to prepare a defense against unfair labor practice allegations. The Board balanced employees' Section 7 rights with an employer's right to prepare a defense by allowing employees to be questioned only under the following conditions:

1. The employer must tell the employee why they are being questioned.
2. It must provide assurances that no reprisals will be taken against the employee.
3. It must secure the employee's participation on a voluntary basis.
4. The questioning must not be "coercive in nature" and must be conducted in an environment free of hostility toward protected activity.
5. The questioning must not go beyond the legitimate need to prepare a defense by seeking information about the employee's subjective state of mind or otherwise interfering with their rights.

Johnnie's Poultry Co., 146 NLRB 770, 774–775 (1964), enf. denied 344 F.2d 617 (8th Cir. 1965). See also *Sunbelt Rentals*, 372 NLRB No. 24, slip op. at 7 (2022) (reaffirming *Johnnie's Poultry* as a "bright-line" rule offering "both stability and clarity in the law.").

In *Sunbelt Rentals,* the Board specifically recognized that prehearing interviews have a particularly high potential to be coercive as they are conducted by an employer that is accused of unlawfully interfering with employees' Section 7 rights and is seeking information to vindicate itself. *Sunbelt*, 372 NLRB slip op. at 8.

Here the evidence shows that the Respondent's counsel brought two employees in for separate interviews in preparation for hearing testimony during which he asked them about their views of the Union without assuring them that their participation was entirely voluntary and that no reprisal would take place if they failed to answer his questions, or that no reprisal would take place if he did not like their answers. At the hearing, Respondent's counsel elicited testimony from the witnesses that the employees were not threatened, promised benefits, or held in the meetings against their will. Eliciting this testimony at hearing after the interviews have taken place is not the same as affirmatively providing *Johnnie's Poultry* assurances. *Sunbelt*, 372 NLRB No. 24 (2022). Because questioning an employee about their protected activity presents an "inherent danger of coercion" the Board allows it only when employers provide *all* the *Johnnie's Poultry* assurances. See *Sunbelt Rentals*, supra, slip op. at 24, 27 (employer violated the Act when it failed to tell one employee that he would not suffer any reprisals and failed to tell the other that his participation was voluntary); see also *Bill Scott Oldsmobile*, 282 NLRB 1073, 1075 (1987) (giving partial assurances insufficient).

Under all of the circumstances, I find that Fairfield violated Section 8(a)(1) during these employee pre-hearing interviews.

JOINT AND SEVERAL LIABILITY

In its posthearing brief, the General Counsel contends that Fairfield should be held jointly and severally liable for JSK's unfair labor practices as it was on notice of those violations when it purchased JSK's assets. (GC Br. at 76-77.) In *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), the Supreme Court held that an employer who acquires substantial assets of a predecessor and who continues without substantial change the predecessor's business operations, can be required to remedy the predecessor's unremedied unfair labor practices if it is on notice of the predecessor's unlawful conduct. *M&J Supply Co.*, 300 NLRB 444, 444–446 (1990).

In *Golden State*, the successor's knowledge of the unfair labor practices was presumed from the fact that the predecessor's secretary and manager of the bottling business, became the general manager and president of the successor company. *Golden State*, supra at 173. Moreover, this individual had personally engaged in the unfair labor practices and "closely followed the progress of the litigation." Id. The Supreme Court held that it was permissible to draw the inference that this individual informed his prospective employer of the litigation before completion of the sale, and to discredit respondent testimony to the contrary. Id. at 173–

174. In more recent *Burns* successor cases, the Board has continued to rely on *Golden State* to find that when a supervisor personally engaged in unfair labor practices and obtained a supervsory or managerial position at the successor company, the supervisor's knowledge of the previous unfair labor practices is imputed onto the successor employer. See *Bell Glass Co.*, 293 NLRB 700, 708 (1989) (Predecessor owner's personal knowledge of predecessor's unfair labor practices is imputed to successor employer as predecessor's owner was hired by successor as general manager.); *Wyandanch Rebuilders, Inc.*, 328 NLRB 866, 874 (1999); In re *Roberts*, 333 NLRB 987, 1002 (2001).

In the instant case, Jaffrey, the general manager of JSK, became the general manager of Fairfield, having personally participated in the predecessor's unfair labor practices. Moreover, as general manager, he received services of the unfair labor practice charges on behalf of JSK and Fairfield. Jaffrey was notified of the Region's initial decision to issue complaint against JSK by email on June 20, 2023, before Fairfield purchased the Hotel from JSK, and he forwarded the email to Patel *and* Respondent Fairfield's attorney Alfred Maurice. (GC Exh. 55 at 2.) These circumstances give rise to a presumption that Fairfield acquired the business with knowledge of the unfair labor practices. *Perma Vinyl*, 164 NLRB 968, 972 (1967); *Golden State*, supra, at 173.

With respect to the public policy considerations raised in the *Golden State* line of cases, Fairfield has become the beneficiary of the predecessor's unfair labor practices. The predecessor's unremedied unfair labor practices laid the groundwork for Fairfield's own unfair labor practices, particularly the failure to meet and bargain in good faith. In addition, as in *Perma Vinyl* and *Golden State*, Fairfield has continued to operate the Hotel in unchanged form, employing the predecessor's bargaining unit employees without hiatus. Thus, there has been no real change in the employing industry insofar as the victims of past unfair labor practices are concerned, or the need for remedying those unfair labor practices." *Perma Vinyl*, supra at 969.

In light of all of the above, I find that Fairfield is liable for its own unfair labor practices and JSK and Fairfield are jointly and severally liable for JSK's unfair labor practices.

CONCLUSIONS OF LAW

1. Respondent Fairfield is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Hotel and Gaming Trades Council, AFL–CIO (Union), is a labor organization within the meaning of Section 2(5) of the Act representing the following appropriate unit of employees: All full-time and regular part-time maintenance techs, breakfast hosts, housemen and housekeepers employed by the Employer at its facility located at 3535 U.S. Highway 46, Parsippany, New Jersey (Unit).

3. Respondent Fairfield is the successor employer of the employees in the above-described Unit.

4. Respondent Fairfield violated Section 8(a)(3) and (1) of the Act, on or about August 19, 2023, by refusing to hire the following employees: Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, and Yoni Almonte, because they were members of and supported the Union.

5. Respondent Fairfield violated Section 8(a)(3) and (1) of the Act, on or about December 8, 2023, by terminating the following employees: Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, and Yoni Almonte, because they were members of and supported the Union.

6. Respondent Fairfield violated Section 8(a)(5) and (1) of the Act, on or about August 21, 2023, by failing and refusing to recognize and bargain with the Union as the exclusive bargaining representative of the Unit.

7. Respondent Fairfield violated Section 8(a)(5) and (1) of the Act, by unilaterally changing terms and conditions of employment with regard to reinstatement, termination, seniority, severance pay, and accrued vacation and sick leave to employees upon their termination, without prior notice to the Union and/or affording the Union an opportunity to bargain.

8. Respondent Fairfield violated Section 8(a)(5) and (1) of the Act, since about August 2023, by failing to remit to the Union dues deducted pursuant to valid, unexpired, and unrevoked employee checkoff authorizations, without prior notice to the Union and/or affording the Union an opportunity to bargain.

9. Respondent Fairfield violated Section 8(a)(5) and (1) of the Act, on or about August 31, 2023, by failing to allow Union representatives access to its facility for the purpose of meeting with employees in the Unit, without prior notice to the Union and/or affording the Union an opportunity to bargain.

10. Respondent Fairfield violated Section 8(a)(5) and (1) of the Act, on or about August 25, 2023, by failing and refusing to furnish the Union with information necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

11. Respondent Fairfield violated Section 8(a)(1) of the Act by coercively interrogating employees about their union sympathies.

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

REMEDY

As I have concluded that Respondent Fairfield has 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.

Having found that Respondent Fairfield violated Section 8(a)(3) and (1) of the Act by initially failing to hire and eventually terminating Ramona Almonte de Valdez, Asuncion Toribio, Ruth Ashitey, Claribel Mejia, Carlena Ponce, and Yoni Almonte. I shall recommend that it be ordered to offer employment to those employees and to make them whole for their loss of earnings and benefits.

Having found that the Respondent Fairfield violated Section 8(a)(5) and (1) by failing and refusing to collectively bargain with the Union as the collective-bargaining representative of an appropriate bargaining unit of employees (described above in the conclusions of law), Respondent Fairfield shall recognize and, upon request, bargain collectively with the Union as the bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed document.

Having found that Respondent violated Section 8(a)(5) and (1) of the Act by implementing certain unlawful unilateral changes in terms and conditions of employment, the Respondent shall be ordered, upon the Union's request, to rescind those changes and restore the status quo ante.

Having found that the Respondent Fairfield failed and refused to furnish the Union with requested and relevant information, the Respondent shall be ordered to provide that information to the Union. To the extent any of the information, is not in the possession, custody, or control, of Respondent Fairfield, it shall be ordered to make a good-faith effort to obtain it.

The Respondent will be required to make whole any bargaining unit employees for losses suffered as a result of the Respondent's unlawful actions. The make-whole remedy shall be computed in accordance with *Ogle Protective Services*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), or *F. W. Woolworth Co.*, 90 NLRB 289 (1950), as appropriate, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Latino Express, Inc.*, 359 NLRB 518 (2012), the Respondent shall compensate affected employees for the adverse tax consequences, if any, of receiving lumpsum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee. In addition, Respondent is ordered to reimburse the affected employees for all search-for-work-related expenses regardless of whether they received interim earnings in excess of these expenses overall or in any given quarter. *King Soopers, Inc.*, 364 NLRB No. 93 (2016).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[44]

ORDER

Respondent Fairfield, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to hire bargaining unit employees because they were members of and supported the Union.

(b) Terminating bargaining unit employees because they were members of and supported the Union.

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

> All full-time and regular part-time maintenance techs, breakfast hosts, housemen and housekeepers employed by the Employer at its facility located at 3535 U.S. Highway 46, Parsippany, New Jersey.

(d) Unilaterally implementing changes to terms and conditions of employment which are mandatory subjects of bargaining, such as terminations, reinstatement, union access, Union dues, seniority, severance pay, and accrued vacation and sick leave, without prior notice and affording the Union an opportunity to bargain with respect to these matters and without first bargaining to impasse (e) Failing and refusing to furnish information requested by the Union that is relevant and necessary for the Union to fulfill its role as the collective-bargaining representative of the Unit employees.

(f) Coercively interrogating employees about their union sympathies.

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

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

(a) Within 14 days of the Board's Order, offer immediate employment to employees Ramona de Valdez, Ruth Ashitey, Claribel Mejia, Carlena Ponce, Asuncion Toribio, and Yoni Almonte.

(b) Make employees Ramona de Valdez, Ruth Ashitey, Claribel Mejia, Carlena Ponce, Asuncion Toribio, and Yoni Almonte whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(c) Notify the Union in writing that it recognizes the Union as the exclusive representative of its unit employees under Section 9(a) of the Act and that it will bargain with it concerning terms and conditions of employment for employees in the above-described appropriate unit.

(d) Recognize and, on request, bargain with the Union for a reasonable period of time, 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 and regular part-time maintenance techs, breakfast hosts, housemen and housekeepers employed by the Employer at its facility located at 3535 U.S. Highway 46, Parsippany, New Jersey.

(e) At the request of the Union, rescind any departures from terms and conditions of employment that existed immediately prior to Respondent Fairfield's takeover of predecessor JSK's operation, retroactively restoring preexisting terms and conditions of employment, including wage rates and benefit plans, until it negotiates in good faith with the Union to agreement or to impasse.

(f) Make whole, in the manner set forth in the remedy portion of this decision, the unit employees for losses caused by Respondent Fairfield's failure to apply the terms and conditions of employment that existed immediately prior to its takeover of predecessor JSK's operation.

(g) Furnish information requested by the Union on or about August 25, 2023.

(h) Within 21 days of the date the amount of backpay is fixed either by agreement or Board Order, or such additional time as the Regional Director may allow for good cause shown, Respondent shall file with the Regional Director for Region 22 a copy of the corresponding W-2 forms reflecting the backpay award,

[44] 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 Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

as set forth in the remedy section of this decision.

(i) Within 14 days after service by the Region, post at its Parsippany, New Jersey location copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or lost access to the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 19, 2023.

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

Dated, Washington, DC, November 19, 2024.

APPENDIX A

NOTICE TO EMPLOYEES
MAILED 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 fail or refuse to hire employees in retaliation for their union and/or protected concerted activity.

WE WILL NOT terminate employees for their union and/or protected concerted activity.

WE WILL NOT refuse to recognize the Hotel and Gaming Trades Council, AFL–CIO (the Union), as the bargaining unit's collective-bargaining representative.

WE WILL NOT unilaterally change the terms and conditions of your employment by terminating employees without notifying and bargaining with the Union.

WE WILL NOT unilaterally change the terms and conditions of your employment by refusing to reinstate employees when they offer to return after an approved leave of absence.

WE WILL NOT unilaterally change the terms and conditions of your employment by failing to provide employees with their established benefits including severance pay, accrued vacation time and accrued sick leave.

WE WILL NOT unilaterally change the terms and conditions of your employment by failing to lay off employees in reverse seniority order.

WE WILL NOT unilaterally cease dues checkoff.

WE WILL NOT unilaterally change your terms and conditions of employment by imposing limitations on the Union's right to access our facility.

WE WILL NOT unilaterally change your terms and conditions of employment by refusing to schedule you by seniority.

WE WILL NOT unilaterally change the terms and conditions of your employment by failing to pay you the prescribed rates and/or failing to grant the prescribed raises.

WE WILL NOT fail and refuse to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as your collective- bargaining representative.

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

WE WILL, make those of you affected by our discriminatory conduct 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 discriminatory conduct plus interest.

WE WILL, make those of you affected by the unlawful unilateral changes 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 changes plus interest.

WE WILL, furnish to the Union in a timely manner the information requested by the Union on about April 20, 2023, and August 21, 2023.

JSK PARSIPPANY, LLC D/B/A FAIRFIELD INN & SUITES
BY MARRIOTT

APPENDIX B

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 22
20 WASHINGTON PL
FL 5
NEWARK, NJ 07102-3127

Agency Website: www.nlrb.gov
Telephone: (973)645-2100
Fax: (973)645-3852

August 28, 2023

[redacted]

Re: JSK Parsippany, LLC d/b/a
Fairfield Inn & Suites by Marriott
22-RD-304996

Dear [redacted]:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, and petitioning to vote on recission of dues deduction authorizations under Section 9(e), has been carefully investigated and considered.

Decision to Dismiss: Regarding your petition seeking to decertify the New York Hotel & Motel Trades Council (the Union), subsequent to your filing, I have found merit to unfair labor practice allegations that were filed against JSK Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott (the Employer). Specifically, in Case 22-CA-305280, I have decided to issue Complaint against the Employer alleging numerous unfair labor practices, including that the Employer unlawfully packed the bargaining unit and supported, encouraged, and fostered decertification of the Union. These unfair labor practices would interfere with employee free choice in an election and are inherently inconsistent with the petition itself. *See Rieth-Riley Construction Co., Inc.*, 371 NLRB No. 109, slip op. at *9 (2022); *Overnite Transportation Co.*, 330 NLRB 1392, 1393 (2001). Additionally, there is a causal connection between these unfair labor practices and any subsequent employee disaffection for the Union. *See Overnite Transportation Co.*, 330 NLRB at 1395.

I recognize that the Board's current blocking-charge policy as set forth in Section 103.20 of the Board's Rules and Regulations instructs Regions to proceed with Representation elections notwithstanding the pendency of unfair labor practice charges that may impact the petition and/or the election. However, as the Board has recently reaffirmed, "Section 103.20 of the Board's Rules and Regulations effectively preserved merit-determination dismissals, notwithstanding other changes made to the blocking-charge policy." *Rieth-Riley Construction Co., Inc.*, 371 NLRB No. 109. Accordingly, I am dismissing the petition in this matter, subject to a request for reinstatement by the Petitioner after final disposition of the unfair labor practice charge. This petition is subject to reinstatement only if the allegations in the unfair labor practice case, which caused the petition to be dismissed, are ultimately found to be without merit. An application for reinstatement under any other circumstances shall be denied. In order to assure notification of the disposition of the unfair labor practice proceeding, you will be made a party-in-interest in the unfair labor practice proceeding, with an interest limited solely to receipt of a copy of the order or other document that operates to finally dispose of the proceeding.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review*: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(c) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time)** on **September 12, 2023**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on **September 12, 2023.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this

proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Very truly yours,

Eric Schechter
Acting Regional Director

cc: Office of the Executive Secretary (by e-mail)

[redacted]
JSK Parsippany, LLC d/b/a
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Parsippany, NJ 07054

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