Catholic Health Initiatives Colorado d/b/a Centura Health—St. Mary Corwin Medical Center *and* Communications Workers of America, AFL-CIO. Cases 27–CA–273705, 27–CA–273747, and 27–CA–274650

September 9, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On April 20, 2023, Administrative Law Judge Brian D. Gee issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel also filed cross-exceptions with supporting argument, and the Respondent filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

For the reasons stated by the judge, we adopt the judge's findings that the Respondent violated Section 8(a)(1) of the Act by prohibiting employees from talking about the Union during working time, threatening employees with discipline and reassignment to a different work location if they talked about the Union at work, soliciting employees to sign a petition to decertify the Union as their collective-bargaining representative, promising employees higher pay if they signed a petition to decertify the Union and rejected the Union as their bargaining representative, and providing more than ministerial assistance to employees in propelling a petition to decertify the Union.[3]

For the reasons set forth below, however, we reverse the judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union on March 5, 2021, absent a valid showing of actual loss of majority status, and by failing and refusing, since that date, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. We also reverse the judge's findings that the Respondent violated Section 8(a)(5) and (1) by unilaterally granting wage increases to employees in the unit, ceasing to deduct dues from unit employees and remitting those dues to the Union, and removing materials from the union bulletin boards and ending union access to those bulletin boards.

I. BACKGROUND

The Respondent operates two medical facilities in Pueblo, Colorado: St. Mary Corwin Medical Center (the Hospital) and the Southern Colorado Family Medical Clinic (the Clinic), collectively referred to as the "Pueblo facilities." Since November 11, 1974, the Respondent has recognized the Union as the exclusive representative of approximately 151 nonprofessional employees at the Pueblo facilities and has entered into numerous collective-bargaining agreements (CBAs) with the Union, with the most recent CBA expiring on September 30, 2020. Just prior to the expiration of this CBA, the parties began negotiations for a successor agreement. By March 5, 2021,[4] only three matters remained unresolved: the status of Martin Luther King Jr. Day as a paid holiday, the maintenance of the annual cash-out period, and the determination of wage increases.

On February 16, employee Ruth Mares filed a decertification petition for the Pueblo facilities. Before and after filing that petition, Mares, along with other employees, solicited signatures for the decertification campaign. By February 23, they had collected signatures from 53% of the unit. On February 24 and 26, the Respondent promised employees higher pay if they signed the decertification petition and solicited signatures. Also on February 26, the Respondent prohibited an employee from discussing the Union during working time and threatened discipline and reassignment for discussing the Union while at work.

On the morning of March 5, Mares delivered approximately 30 pages of decertification signatures to Trujillo. Human resources personnel immediately began verifying signatures and concluded that a majority of unit employ-

[1] The Respondent 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.

[2] We have amended the conclusions of law and remedy consistent with our findings herein. We shall modify the judge's recommended Order to conform to our findings and the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

[3] Although the judge found violations pertaining to February 24 and 26, 2021, he dismissed related allegations pertaining to February 25, 2021, and early March 2021, concerning the Respondent's solicitation of employee signatures and providing more than ministerial assistance to the decertification process. In the absence of exceptions, we adopt the judge's dismissal of those allegations.

[4] All dates herein are 2021 unless otherwise indicated.

ees had signed the decertification petition. Subsequently, the Respondent notified the Union that it was withdrawing recognition because it had received "credible, objective evidence" that the Union had lost majority support. On March 8, the Union objected and asserted that the Respondent had a continuing obligation to bargain in good faith.

On March 9, the Respondent announced wage increases for unit employees, effective retroactively to March 7, without providing the Union notice or an opportunity to bargain. Later in March, the Respondent also ceased deducting and remitting union dues and removed union bulletin boards from the facility.

II. DISCUSSION

Contrary to the judge, we find that the Respondent's withdrawal of recognition, and subsequent actions based on that withdrawal, did not violate Section 8(a)(5) and (1). Section 9(a) of the Act provides that "[r]epresentatives designated or selected for the purposes of collective bargaining by *the majority of the employees* in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining." 29 U.S.C. § 159(a) (emphasis added). In turn, the Supreme Court has long recognized that an employer violates Section 8(a)(2) by recognizing a minority union. See *International Ladies' Garment Workers' Union v. NLRB*, 366 U.S. 731, 738-739 (1961).

Under longstanding Board precedent, when an employer recognizes a union as the collective-bargaining representative of a unit of employees, that union is entitled to a presumption that it enjoys the support of a majority of the represented employees. See *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 785–787 (1996). The presumption of majority status is irrebuttable in certain circumstances, such as for up to three years during the term of a collective-bargaining agreement. Id. at 786. Thereafter, the presumption becomes rebuttable. Id. When there is only a rebuttable presumption, an employer may withdraw recognition from an incumbent union on a showing that the union has in fact lost the support of a majority of the bargaining unit employees. *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717, 717, 723727 (2001). Indeed, with the exception of the safe-harbor option to file an RM petition, "if a union actually has lost majority support, the employer must cease recognizing it, both to give effect to the employees' free choice and to avoid violating Section 8(a)(2) by continuing to recognize a minority union." Id. at 724.

Regarding what qualifies as evidence of actual loss of majority support, the Board usually presumes an employer may not rely on a disaffection petition "it unlawfully assisted, supported, or otherwise unlawfully encouraged" to withdraw recognition. See *SFO Good-Nite Inn*, 357 NLRB 79, 79 (2011) (citing *Hearst Corp.*, 281 NLRB 764 (1986), affd. mem. 837 F.2d 1088 (5th Cir. 1988)). The Board has also implicitly recognized, however, that there is no logical basis to apply that presumption where the record establishes that a majority of unit employees signed the petition prior to any employer conduct that would taint their signatures. See *Pacific Grove Convalescent Hospital* , 350 NLRB 518, 521–522 (2007) (finding petition that was signed by a majority of the bargaining unit before the employer unlawfully solicited two additional signatures was not tainted and that, accordingly, the employer lawfully withdrew recognition based on that petition).[5]

The record establishes that, beginning on February 24, the Respondent unlawfully aided or otherwise tainted additional signatures on the decertification petition. Critically, however, the record also establishes that 53 percent of the bargaining unit had already signed the petition *prior to that date*.[6] And there is nothing in the record to suggest

[5] Our dissenting colleague believes this case is controlled by the "conclusive" *Hearst* presumption described in *SFO Good-Nite*, but this is not a *Hearst* case. *Hearst* deals only with the circumstance where the employer's conduct could have impacted the loss of majority support. The presumption is grounded in the recognition that "the objective foreseeable consequence of such misconduct—and frequently its purpose—is an inherent tendency to contribute to the union's loss of majority status." *SFO Good-Nite Inn*, 357 NLRB at 82 (internal quotations and citations omitted). Here, the Respondent did not engage in any misconduct before a majority of the unit indicated, in writing, that they did not want to be represented by the Union anymore.

Although our colleague criticizes our reliance on *Pacific Grove* because "neither the Board nor the administrative law judge referenced *Hearst* or addressed the *Hearst* presumption," there was no reason for the Board to have addressed *Hearst* in *Pacific Grove*. That case involved facts materially different from those at issue in *Hearst;* specifically, as in the instant case, the record established that the employer's subsequent conduct could not have affected the earlier decision by the majority of unit employees to express their desire not to be represented by the union. Furthermore, we disagree that it is inappropriate to rely on *Pacific Grove* because the employer there had received the evidence of loss of majority support before its unlawful conduct. Again, what matters is that the employer's later conduct could not have had any effect on an earlier expression of disaffection.

[6] There is no basis in the record for our dissenting colleague's conjecture that the unit might have been larger before the Respondent's unlawful conduct commenced on February 24, such that the untainted signatures might not have constituted a majority of the unit at that time. We also will not engage with his conjecture that, by the time the Respondent withdrew recognition on March 5, the Union might have regained majority support because of the Respondent's unlawful efforts to encourage the decertification effort. Nor do we understand our colleague's position that the Respondent could not rely on the signatures at issue because it "sorted through the petition to find signatures as to which it claims—but I do not believe this was even proven—its unfair labor practices had no effect." The question here turns on whether or not the majority of the unit indicated that it no longer wanted to be represented by the Union prior to the Respondent's unfair labor practices and whether the Re-

that any unlawful action on the part of the Respondent had tainted the validity of those employees' signatures expressing their loss of support for the Union. Accordingly, at the time that the Respondent withdrew recognition, it possessed untainted evidence that the Union had lost the support of the majority of employees in the bargaining unit. For that reason, the judge's finding that the Respondent withdrew recognition "absent a valid showing of actual loss of majority status" is not supported by the record. Moreover, to hold otherwise, would yield an affirmative bargaining order and attendant decertification bar that would inappropriately shackle employees to a union for which a majority of unit employees have freely exercised their statutory right to indicate that they would prefer to be represented by a different bargaining representative, or not to be represented at all. Cf. *Wyman Gordon Pennsylvania, LLC*, 368 NLRB No. 150, slip op. at 8-11 (2019) (ordering an affirmative bargaining order that would temporarily bar decertification petitions where the employer unlawfully withdrew recognition without valid evidence that the union lost majority support), enfd. 836 F. App'x 1 (D.C. Cir. 2020).[7]

Therefore, we reverse the judge and dismiss the complaint allegations that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union absent a valid showing of loss of majority status. It follows, therefore, that the Respondent did not violate the Act by failing and refusing thereafter to recognize and bargain with the Union, by unilaterally granting wage increases, by ceasing to deduct and remit union dues, or by removing material from and ceasing access to union bulletin boards.

AMENDED CONCLUSIONS OF LAW

Delete Conclusions of Law 3–5 and renumber the subsequent paragraphs accordingly.

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist 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.

Having dismissed the allegation that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from, and thereafter failing and refusing to bargain with, the Union, we shall delete the requirement in the judge's remedy that the Respondent be ordered to rescind unilateral changes to terms and conditions of employment following its withdrawal of recognition and that the Union be made whole for any dues it would have received but for the Respondent's unilateral action of ceasing dues deductions and transmitting those dues to the Union. We shall also delete the requirement in the judge's remedy that the Respondent recognize the Union and, upon request, bargain for a reasonable period of time.

The judge's recommended remedy also required a public reading of the notice by a Board agent or responsible management official. The Board will order a notice-reading remedy "where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious." *Postal Service*, 339 NLRB 1162, 1163 (2003). Here, a notice-reading remedy is neither necessary nor appropriate to remedy the violations in this case because the Board's traditional remedies suffice to inform employees of the Respondent's unlawful conduct. See, e.g., *Bodega Latina Corp. d/b/a El Super*, 367 NLRB No. 34, slip op. at 1 (2018). We accordingly

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spondent could rely on the validity of those signatures in withdrawing recognition. Our colleague's speculation that those employees' preferences could have been influenced by the unfair labor practices that took place after they signed the petition is not established in the record, nor does the record establish that the size of the unit changed at some point in the relevant period. The record before us—upon which our decision must be based—is controlling, and it does not contain evidence rebutting either the validity of the signatures on the decertification petition or the date by which a majority of the unit employees had signed the decertification petition.

[7] Our dissenting colleague frames our holding as letting the Respondent get away with its unlawful conduct in not reversing its withdrawal of recognition, but the rights of employees to choose different or no representation are at stake here, too. Our colleague makes no effort to grapple with their rights. Here, the evidence shows that a majority of employees did not support their representative even before the Respondent's unlawful conduct seeking to propel the decertification effort. Requiring employees to stay with a union—they unquestionably did not support—because of their employer's misconduct is inconsistent with the Act.

Chairman Murphy adds that he fully agrees with the majority opinion in this case and writes separately only to address and reject our dissenting colleague's characterization of that opinion. Chairman Murphy believes that we are united, by oath and statute, in our obligation to protect employee free choice with respect to collective bargaining representation. That is a fundamental principle of the Act. The question presented in this case is how to do that in an apparently anomalous factual situation, where a majority of bargaining unit employees indicated that they no longer wished to be represented by their union prior to an employer's unfair labor practices that clearly could have impacted subsequent expressions of disaffection. It is a close question. Should we give effect to the prior showing here—one that the General Counsel does not argue was affected by the subsequent employer misconduct—or should we find that a presumption arising from the subsequent misconduct applies retroactively to preclude consideration of the preceding showing of interest. Chairman Murphy does not gainsay where his dissenting colleague would weigh the balance in that regard, but he rejects and greatly regrets his implication that we have abdicated our statutory responsibilities in striking a different balance.

amend the judge's remedy to delete the notice-reading requirement.[8]

ORDER

The National Labor Relations Board orders that the Respondent, Catholic Health Initiatives Colorado d/b/a Centura Health—St. Mary Corwin Medical Center, Pueblo, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Providing more than ministerial assistance to employees in propelling a petition to decertify the Union.

(b) Promising employees higher pay if they sign a petition to decertify the Union and reject the Union as their bargaining representative.

(c) Soliciting employees to sign a petition to decertify the Union as their collective-bargaining representative.

(d) Prohibiting employees from talking about the Union during working time, while permitting employees to talk about other nonwork subjects.

(e) Threatening employees with discipline and reassignment to a different work location if they talk about the Union at work.

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

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

(a) Within 14 days after service by the Region, post at its Pueblo, Colorado, facilities copies of the attached notice marked "Appendix."[9] Copies of the Notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an internet or an intranet 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. If the Respondent has gone out of business or closed the office involved in this proceeding, 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 February 24, 2021.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 9, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting in part.

Contrary to my colleagues, I would affirm all of the judge's findings, including that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union on March 5, 2021,[1] based on a tainted petition and absent a valid showing of actual loss of majority status. Accordingly, I would also find that the Respondent violated the Act by failing and refusing, since March 5, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit, and by, also in March, granting wage increases to employees in the unit, ceasing to deduct dues from unit employees and remitting those dues to the Union, and removing materials from the Union's bulletin boards while ending union access to those boards.[2]

My colleagues take the position that an employer that unlawfully assists a decertification petition—including by directly soliciting signatures—may, upon receipt of the petition it tainted, nonetheless lawfully withdraw recogni-

[8] The General Counsel excepts to the judge's refusal to order that the Respondent's managers and supervisors undergo training regarding employees' rights under the Act, and that the Respondent distribute the notice to its supervisors and managers. We agree with the judge and decline to order such remedies in this case.

[9] 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."

[1] Hereinafter, all dates refer to 2021 unless otherwise noted.

[2] I join my colleagues in adopting the judge's findings that the Respondent violated Sec. 8(a)(1) by prohibiting employees from talking about the Union during working time, threatening employees with discipline and reassignment to a different work location if they talked about the Union at work, soliciting employees to sign a petition to decertify the Union as their collective-bargaining representative, promising employees higher pay if they signed a petition to decertify the Union and rejected the Union as their bargaining representative, and providing more than ministerial assistance to employees in propelling a petition to decertify the Union.

tion as long as it is able to glean from the tainted petition that the signatures of a majority of unit employees were obtained before its unlawful assistance commenced. However, this approach is inconsistent with *Hearst Corp.*, where the Board "rejected counting the number of petition signers the unfair labor practices affected" and "made clear that, where 'an employer engages in unlawful activity aimed specifically at causing employee disaffection with their union, its misconduct . . . will bar any reliance on an expression of disaffection by its employees, notwithstanding that some employees may profess ignorance of their employer's misconduct.'" *SFO Good-Nite Inn*, 357 NLRB 79, 81 (2011) (quoting *Hearst Corp.*, 281 NLRB 764 (1986), enfd. mem. 837 F.2d 1088 (5th Cir. 1988)) (omission in original), enfd. 700 F.3d 1, 4 (D.C. Cir. 2012) ("We hold that the Board's *Hearst* presumption is reasonable and consistent with the Act."). As the *SFO Good-Nite* Board explained,

> *Hearst* thus creates a conclusive presumption that an employer's commission of unfair labor practices assisting, supporting, encouraging, or otherwise directly advancing an employee decertification effort taints a resulting petition. As described, this presumption is based on the predictable result of an employer's unlawful, direct participation in an employee decertification effort—a petition plagued with uncertainty because of the very nature of the employer's unfair labor practices, which is *per se* insufficient to rebut the presumption of continuing majority status.

SFO Good-Nite, above at 81.

The Board then further expanded on the rationale underlying *Hearst*:

> [T]he *Hearst* presumption . . . is grounded in the Board's approach, in all cases, of objectively assessing whether an employer's unlawful interference with employee rights likely undermined the reliability of an expression of employee choice. . . . [W]hen an employer unlawfully thrusts itself into its employees' decertification debate there is little need for extended analysis of the likely impact of the employer's misconduct. As recognized in *Hearst* and in other cases, the objective "foreseeable consequence" of such misconduct—and frequently its purpose—is "an inherent tendency to contribute to the union's loss of majority status." Thus, no direct proof of the unfair labor practices' effect on petition signers is necessary to conclude that the violations likely interfered with their choice.
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> Further, as a matter of policy, to the extent *Hearst* broadly prohibits employers from withdrawing recognition based on decertification petitions that they themselves unlawfully assisted, it provides a strong incentive to employers to steer clear of potentially unlawful conduct. Any other rule would condone the employer's unlawful acts, allowing it to take advantage of its coercion so long as its victims remained silent. As the Board stated in *Hearst*, "we are unwilling to allow [the employer] to enjoy the fruits of its violations by asserting that certain of its employees did not know of its unlawful behavior."

Id. at 82 (quoting *Hearst*, above at 765, and *Caterair International* 309 NLRB 869, 880 (1992), enfd. in relevant part 22 F.3d 1114 (D. C. Cir. 1994)).

In this case, the facts are straightforward. On February 16, employee Ruth Mares filed a decertification petition. By February 23, Mares and other employees had collected signatures from what the Respondent alleges to be 53 percent of the unit.[3] On February 24 and 26, the Respondent unlawfully assisted the decertification petition by telling employees that in order to get raises, they had to decertify the Union, and directly participated in the petition by soliciting signatures. Also on February 26, the Respondent unlawfully prohibited employee Kenny Martinez from discussing the Union during working time, told Martinez that he could be "written up" for talking about the Union, and threatened job reassignment.

One week later, on March 5, after being presented with the tainted decertification petitions, the Respondent withdrew recognition based on what it claimed to be an actual loss of majority support. Since that date, the Respondent has refused to bargain with the Union. Also in March, without providing the Union with notice or an opportunity to bargain, the Respondent announced pay raises, informed the Union that it would be taking down the Union's five bulletin boards, and ceased deducting and remitting union dues.

On these facts, it is uncontested that the Respondent unlawfully participated in and assisted the decertification process and began doing so over a week before it was presented with the petition and before it withdrew recognition. I would thus find, contrary to my colleagues, that the *Hearst* presumption requires finding the petition relied upon by the Respondent to be tainted, and that the Respondent violated the Act by withdrawing recognition based on that tainted petition.

My colleagues agree that the judge correctly found that the Respondent unlawfully assisted the decertification

[3] As discussed below, this fact is contested by the General Counsel. See GC's Answering Br. at 47–48.

petition by telling employees that in order to get raises, they had to decertify the union, and also directly participated by soliciting signatures. However, instead of applying *Hearst's* conclusive presumption to these facts, my colleagues find it appropriate to sift through the decertification petition and count, as untainted valid expressions of disaffection, signatures received by the petition's organizers—but not by the Respondent—up to the date of the commencement of the Respondent's egregious unfair labor practices. By doing so, my colleagues not only muddy a formerly clear standard but defy *Hearst* by transforming its irrebuttable presumption into a rebuttable one. [4] Moreover, my colleagues assume without basis that the Respondent's unfair labor practices had no impact on the sentiments of employees who signed the petition before the Respondent's unlawful conduct began, something that neither my colleagues nor the Respondent can know.[5] Finally, by allowing the Respondent to rely on a petition that was, without dispute, tainted by its own misconduct by the time the Respondent received it, my colleagues "condone the employer's unlawful acts, allowing it to take advantage of its coercion," precisely contrary to the "strong incentive to employers to steer clear of potentially unlawful conduct" that the *Hearst* presumption was designed to achieve. *SFO Good-Nite Inn*, above at 82.

In support of their position, my colleagues cite a single case, *Pacific Grove Convalescent Hospital*, 350 NLRB 518, 521–522 (2007). In their view, that case stands for the proposition that *Hearst*'s conclusive presumption does not apply if "a majority of unit employees signed the petition prior to employer misconduct that would taint their signatures." It does not. *Pacific Grove* involved a unit of 43 employees in which an untainted petition already signed by a majority—25—of the bargaining unit employees was submitted to *and received* by the employer before it committed a single unfair labor practice. Only after receiving the petition, and on the same day that the employer's attorney wrote to the union withdrawing recognition, did the employer unlawfully solicit two additional signatures. The Board found the withdrawal of recognition lawful in these circumstances. But that case, in which neither the Board nor the administrative law judge referenced *Hearst* or addressed the *Hearst* presumption, obviously does not mean that, as here, where petitioners submitted and the Respondent relied upon a disaffection petition tainted upon receipt—and in this case significantly tainted by egregious unfair labor practices—the Respondent may then rely upon that tainted petition as evidence of an uncoerced disaffection by a majority. That proposition flouts *Hearst.* Nothing in *Pacific Grove* suggests that the Board even considered *Hearst*—let alone attempted to narrow its holding—and, until today, *Pacific Grove* has never been cited by the Board for that proposition.[6]

In sum, the judge properly applied the *Hearst* presumption to find that the Respondent violated the Act by withdrawing recognition based on a tainted petition. Accordingly, I would affirm the judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by

[4] My colleagues insist that *Hearst* does not apply when considering signatures obtained (by employee solicitors) before an employer's unfair labor practices commenced, but that is not what *Hearst's* conclusive presumption means. As noted, and for a variety of reasons explained in *SFO Good-Nite Inn*, above, *"Hearst* thus creates a conclusive presumption that an employer's commission of unfair labor practices assisting, supporting, encouraging, or otherwise directly advancing an employee decertification effort taints a resulting petition" and no "proof of the unfair labor practices' effect on petition signers" is required. Id. at 81–82. By the time the Respondent here received the petition and relied upon it to withdraw recognition, the petition was undoubtedly tainted by the Respondent's unlawful conduct. Thus, pursuant to *Hearst*, the Respondent could not rely on that petition nor was it permitted to rebut this conclusive presumption of taint by sorting through the petition to find signatures as to which it claims—but I do not believe even this was proven—its unfair labor practices had no effect.

[5] My colleagues call this "conjecture" and "speculation" and declare that they "will not engage" with it, but it is neither conjecture nor speculation. Indeed, the evidence shows, and that Respondent directly acknowledges, that at least one employee asked the Respondent's representative on February 24 if she could withdraw her name from the decertification petition and did not receive a response (and therefore was presumably included in the Respondent's calculation). See Respondent's Exceptions Br. at 10 fn. 9 (citing Tr. 382:2–11). Thus, the majority's contention that no clinic employees who signed the decertification petition were impacted by the Respondent's unfair labor practices is belied by the record. Given this, my colleagues' declared unwillingness to engage the point seems like framing a lack of capacity as a lack of interest. In any event, as discussed, *Hearst* and *SFO Good-Nite* preclude such arguments from rehabilitating a petition tainted by the Respondent's unfair labor practices.

[6] The majority states, in reference to *Pacific Grove*, that "[t]he Board has also recognized, however, that there is no logical basis to apply that presumption where the record establishes that a majority of unit employees signed the petition prior to any employer conduct that would taint their signatures." This is simply untrue, as the Board in *Pacific Grove* did not mention, much less recognize anything at all, logically or otherwise, relating to the *Hearst* presumption. Moreover, it is notable that *Pacific Grove* issued before *SFO Good-Nite Inn,* where the Board reaffirmed *Hearst* and emphasized that it established a conclusive presumption against reliance on tainted petitions.

I further note that even accepting, for the sake of argument only, my colleagues' misreading of *Pacific Grove*, here the General Counsel disputes the Respondent's allegation, apparently adopted by my colleagues —but on no stated or discernible basis–that a majority of unit signatures were collected before the Respondent's unlawful conduct began. See GC Answering Br. at 47–48 ("There is no Board precedent for this situation specifying whether the denominator should be the number of employees in the Unit as of February 24, or the number of employees employed when Respondent actually received the petition on March 5."). My colleagues call this "conjecture," but it is a fact that the record does not speak to whether the signatures collected as of February 24 constituted a majority of the unit at that time. That is the Respondent's burden to prove, and it has not done so.

withdrawing recognition and, thereafter, by refusing to bargain with the Union, unilaterally granting wage increases to unit employees in the unit, ceasing to deduct and remit dues from unit employees, and removing materials from the Union's bulletin boards while ending union access to those boards.[7] The majority's conclusion otherwise is both contrary to precedent and offers perverse incentives to employers who wish to undermine employee free choice. See *SFO Good-Nite Inn*, above at 82 ("[A]s a matter of policy, to the extent *Hearst* broadly prohibits employers from withdrawing recognition based on decertification petitions that they themselves unlawfully assisted, it provides a strong incentive to employers to steer clear of potentially unlawful conduct."); see also *TNT USA, Inc. v. NLRB,* 208 F.3d 362, 368 fn. 3 (2d Cir. 2000) ("The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created.") (quoting *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 265 (1946)).[8] For the foregoing reasons, I dissent.

Dated, Washington, D.C. September 9, 2026

David M. Prouty, Member

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT provide more than ministerial assistance to employees in propelling a petition to decertify the Union.

WE WILL NOT promise you higher pay if you sign a petition to decertify the Union as your bargaining representative.

WE WILL NOT solicit you to sign a decertification petition.

[7] I would affirm the judge's recommended remedies for the Respondent's violations, including the notice-reading remedy. In addition, I would order that the notice be distributed to employees before it is read, for the reasons stated in my concurrence in *CP Anchorage Hotel 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151 (2022), enfd. 98 F.4th 314 (D.C. Cir. 2024). While I reiterate my view that notice reading and distribution should be standard for all unfair labor practices found by the Board, I also note that these remedies are particularly appropriate where, as here, the employer committed egregious violations of the Act by soliciting decertification signatures and unlawfully assisting the decertification petition. Further, I would require the Respondent to post and read an explanation of rights, supervisors and managers to attend the meeting at which the notice and explanation of rights are read, and distribution of the explanation of rights (as well as the notice) to employees, supervisor-s, and managers at the meeting before the reading. The direct participation of management officials in providing unlawful assistance to the decertification petition and other unfair labor practices demonstrates the Respondent's clear hostility to its employees' Section 7 rights. These additional remedies would thus help ameliorate the negative impact of the Respondent's unlawful actions. See *Omni Excavators, Inc*., 373 NLRB No. 18, slip op. at 3 (2024) (ordering posting and reading of notice and explanation of rights), enfd. 2024 WL 4594715 (DC Cir. 2024).

I join my colleagues in denying the General Counsel's requested supervisory-training remedy, but I would be open to considering, in a future appropriate case, whether it would better effectuate the policies of the Act to order that *employees* receive training from a Board agent, during working time, regarding their rights under the Act.

[8] I strongly reject my colleagues' unfounded suggestion that barring an employer from unilaterally withdrawing recognition based on a petition tainted by its own unfair labor practices is "inconsistent with the Act" and thwarts the rights of employees by requiring them to "stay with a union." This is unequivocally wrong. My colleagues

> fail to recognize the crucial distinction between employees challenging a union's representational status by asking the Board to hold an election and an employer withdrawing recognition from a union unilaterally. The Board, with court approval, has repeatedly stated that the decertification election process, with the safeguards it provides for Section 7 rights, is the preferred method of resolving questions regarding employees' support for an incumbent union. . . . Employer self-help, by contrast, has always been judged by different standards.

Young Women's Christian Association of Western Massachusetts, 349 NLRB 762, 763 (2007) (citing Levitz Furniture, 333 NLRB 717, 723, 727 (2001)).

Indeed, the Supreme Court has found that:

> The Board is accordingly entitled to suspicion when faced with an employer's benevolence as its workers' champion against their certified union, which is subject to a decertification petition from the workers if they want to file one. There is nothing unreasonable in giving a short leash to the employer as vindicator of its employees' organizational freedom.

Auciello Iron Works, Inc. v. NLRB, 517 US 781, 790 (1996); see also *SFO Good Nite-Inn*, above at 82.

The Board's concern with employee free choice has already been factored into its rules governing unilateral employer withdrawal of recognition. The *Hearst* presumption is one such rule, and it is unnecessary, unwarranted, and certainly not required by the Act to water down this presumption in order to expand employers' "self-help" rights to rid themselves of unions under the guise of protecting employee free choice.

WE WILL NOT prohibit you from talking about the Union during working time while permitting you to talk about non-work subjects.

WE WILL NOT threaten you with discipline or reassignment to a different work location if you talk about the Union at work.

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

CATHOLIC HEALTH INITIATIVES COLORADO D/B/A CENTURA HEALTH—ST. MARY CORWIN MEDICAL CENTER

The Board's decision can be found at https://www.nlrb.gov/case/ 27-CA-273705 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.

Julia M. Durkin, Esq., for the General Counsel.
Patrick R. Scully, Esq., and *Amy Knapp, Esq.,* for the Respondent.
William Reinken, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRIAN D. GEE, Administrative Law Judge. This case was tried before me in Pueblo, Colorado, on October 4–7 and November 2, 2022. The General Counsel issued the order consolidating cases, consolidated complaint and notice of hearing on May 5, 2022, and an amendment to consolidated complaint and notice of hearing on July 1, 2022 (collectively, the complaint). The complaint is based on the three unfair labor practice charges and amended charges filed by Charging Party Communications Workers of America (CWA), AFL–CIO (the Union) referenced in the caption. Respondent filed timely answers on May 12 and July 6, 2022, denying all material allegations.

The complaint alleges that Catholic Health Initiatives Colorado dba Centura Health—St. Mary Corwin Medical Center (Respondent) committed various violations of Section 8(a)(1) and 8(a)(5) of the National Labor Relations Act (the Act) by making coercive statements; promising employees higher pay if they signed a decertification petition; soliciting signatures on a decertification petition; providing more than ministerial assistance to employees seeking to decertify the Union; withdrawing recognition from the Union; refusing to recognize and bargain with the Union; and unilaterally granting wage increases, ceasing dues deductions, and ending Union access to bulletin boards without first providing the Union with notice and the opportunity to bargain and absent any good-faith overall impasse in bargaining for a successor collective-bargaining agreement.

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

FINDINGS OF FACT[1]

I. JURISDICTION

Respondent operates two medical facilities located in Pueblo, Colorado: St. Mary Corwin Medical Center (the Hospital) and the Southern Colorado Family Medical Clinic (the Clinic). While their operations are separate in various respects, the Clinic is located adjacent to and is a department of the Hospital. (Tr. 451, 607.) The two facilities are referred to collectively as the "Pueblo facilities." In conducting its operations, Respondent annually derives gross revenues in excess of $250,000 and purchases and receives at its Pueblo facilities goods valued in excess of $50,000 directly from points located outside of the State of Colorado. Respondent admits, and I find, that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act. R. Ans., p. 2.

It is admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. R. Ans., p. 2.

Accordingly, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction over this matter, pursuant to Section 10(a) of the Act.

II. FACTS[2]

The Hospital is a regional medical center and is part of the Centura Health Network. It specializes in orthopedics, cancer care, emergency services, robot-assisted surgery, breast care, and women's services.[3] Michael Cafasso is the chief executive officer (CEO). Glen Griesheim is the chief operating officer and

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

[2] Most of the following facts were not contested. However, where there was differing testimony, I have presented only the facts that I found credible; testimony in contradiction to my factual findings has been carefully considered but discredited. In the Witness Credibility section below, I have discussed some of my credibility resolutions and the bases for them.

[3] See https://en.wikipedia.org/wiki/St._Mary-Corwin_Medical_Center (last visited April 17, 2023).

chief nursing officer. Cafasso, Griesheim, and the chief medical office form the Hospital's executive team. (Tr. 414–415.)[4] Cecelia Trujillo is the director, strategic human resources business partner.[5] She serves as an advisor in the executive teams for various Centura hospitals. (Tr. 409–410.) John Garcia is the supervisor in the Environmental Services department. (Tr. 612.) Respondent admits, and I find, that Cafasso, Griesheim, Cecelia Trujillo, and Garcia were, during the dates relevant to the complaint, supervisors or agents of Respondent pursuant to Section 2(11) and 2(13) of the Act, respectively. (R. Ans., p. 2.)

The Clinic is a primary care physician outpatient clinic that provides family and medicine services to individuals living in Pueblo and the surrounding counties. It is a "safety net clinic" that provides services to the most medically underserved and underinsured members of the community. More than 70-percent of its patients are uninsured or underinsured. (Tr. 536–538.) Patients and the public enter into the Clinic to a waiting room, where they can check in with the patient service representatives. (Tr. 362–363.) The waiting room and the interior of the Clinic are separated by a locked security door. Employees have a code to enter through the security door, while patients and the public need to be permitted in. (Tr. 159, 227–228, 232, 608, GC Exh. 29.)

Dr. Emilia Lloyd was the medical director of the Clinic in February 2021. (Tr. 196.) Christine Medina is the practice manager of the Clinic. In this capacity, she oversees the patient service representatives (PSRs), medical assistants, one business support person, one financial liaison, and nurses who work at the Clinic. Her duties include hiring, training, ensuring regulatory compliance, supporting the staff and their development, budget, and ensuring patient satisfaction. In consultation with human resources, she will issue verbal warnings, written warnings, and termination notices.[6] (Tr. 536–540.)

Aspasia "Ace" Fowler is the lead registered nurse at the Clinic. In this role, she oversees approximately 15 medical assistants, one licensed practical nurse (LPN), and one registered nurse (RN). (Tr. 154.) She conducts monthly meetings with her staff of clinical support staff members to discuss issues such as vaccine administration updates and any changes that will affect workflow. (Tr. 164.) Fowler also conducts daily "safety huddles" which are attended by medical assistants, nurses, medical residents, attending physicians, and a PSR representative to inform Clinic staff about matters which could affect Clinic operations, such as whether the Clinic is at full capacity or whether there are any known security risks.[7] (Tr. 167–169.) After the meeting, the PSR representative will communicate to their colleagues what they heard at the huddle. PSRs are also sometimes referred to as "front office" employees, presumably because they are located in the front of the Clinic, where they interface with individuals walking into the lobby. (Tr. 167–170).

From November 11, 1974, to March 5, 2021, Respondent recognized the Union as the Section 9(a) collective-bargaining representative of the non-professional employees unit employed by Respondent at its Pueblo facilities. (Jt. Exh. 1.) The bargaining unit is described as follows:

> All non-professional employees employed by Respondent at its hospital in Pueblo, Colorado and the Southern Colorado Family Medicine (SCFM) facility located at 902 Lakeview Ave.; excluding all professional employees, which includes the following classifications: pharmacists, registered nurses, psychiatric technicians, educational coordinators, development technologists, medical technologists, mental health clinicians, dieticians, physical therapists, X-ray technicians (RT's diagnostic and nuclear), speech therapists, occupational therapists, inhalation therapists, medical records librarians and social workers, all employees in the pastoral care department, all nuns, all employees in the personnel department, confidential employees, management employees, guards and supervisors as defined by the Act.

(Jt. Exh. 1.)

The most recent collective-bargaining agreement between the parties was for the period October 1, 2017, through September 30, 2020. (GC Exh. 2.) Four articles in the Collective Bargaining Agreement ("CBA") provide for policies that are relevant to the allegations here.

Article 3—UNION DUES

DEDUCTION—provides, in pertinent part, that Respondent "agrees to make collection of Union dues or an amount equal thereto from any such eligible employee through payroll deduction. . . to pay over the amount deducted to the Union. Union dues shall be transmitted by the end of each month to the Secretary-Treasurer of the Union along with the Employer's monthly report." (GC Exh. 2, p. 9.)

Article 21—BULLETIN BOARDS—states, in pertinent part, that Respondent "will provide five (5) bulletin boards for the exclusive use of the Union. . . . The Union will have access to the Union bulletin boards to post notices of Union meetings, changes in by-laws, election of Officers, social events and the like." (GC Exh. 2, p. 37.)

Article 26—ATTENDANCE. This article adopts the Centura attendance and tardiness policies. The attendance policy states, in pertinent part: "Associates are required to report to work, in uniform if applicable, and to be prepared to work at the beginning of their shift. Associates are required to accurately record

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

[5] Because two key witnesses have the same surname of "Trujillo," I will make an effort to reference their first names to avoid any potential confusion.

[6] Respondent admits, and I find, that Dr. Lloyd and Medina are supervisors or agents pursuant to Section 2(11) and 2(13) of the Act, respectively. (R. Ans., p. 2.)

[7] I find that Lead RN Fowler is, and at all material times was, a Section 2(13) agent of Respondent. At the Clinic, Fowler serves as a principal conduit of information between management and employees in such a way that employees would reasonably conclude that she speaks on management's behalf. *Victor's Café 52*, 321 NLRB 504, 504 fn. 1 (1996); *Southern Bag Corp*., 315 NLRB 725, 725 (1994); and *B-P Custom Building Products*, 251 NLRB 1337, 1338 (1980).

their work and break time. . . " The tardiness policy states, in pertinent part that, "[a]n associate is tardy or out early when he/she is not at his/her workstation, ready to work, at the designated arrival time on the work schedule or does not work through their shift." (GC Exh. 2, pp. 40-44.)

Article 34—WAGE DETERMINATION. The CBA also provides a listing of all unit positions and their corresponding wage rates. (GC Exh. 2.)

In addition to the CBA, Respondent has various workplace rules, including the Centura Health Non-Solicitation/Non-Distribution/Posting policy. That policy provides, inter alia, that:

> 1. On duty associates are not permitted to solicit during his/her working time or in immediate patient care areas. One associate may not solicit a second associate during the second associate's working time. . . .
> 2. On duty associates are not permitted to distribute literature or other materials during working time and/or in working areas. . . .

(GC Exh. 11.)

At the end of September 2020, just prior to the CBA's expiration, the parties began negotiations for a successor contract. The Union was represented in bargaining by CWA Local 7774 President Marcy Harris, CWA Local 7774 Vice President Kenny Martinez, and CWA district representative Garry Jordan. Respondent was represented by Cecelia Martinez, Kim Kmentt, and Cathy Roberts, vice president, strategic human resources partnership. (Tr. 52-53, 420.) At certain points in the bargaining, a mediator of the Federal Mediation and Conciliation Services was also involved. (Tr. 55–56.) Due in part to the Coronavirus pandemic, the parties' bargaining sessions were conducted by Zoom, with proposals and counterproposals sent by email. (Tr. 53–54.)

One of the sticking points in negotiations involved employee wages. The Union proposed wage increases of 5-percent, while Respondent countered with an offer of 3-percent wage increases. (GC Exh. 20, 21, 22.) However, the parties were able to make progress in their discussions. By March 5, 2021, they were down to just three open issues: unit employees receiving Martin Luther King Jr. Day as a paid holiday, maintenance of the annual cash out period, and the amount of the wage increases. (GC Exhs. 23 and 24.)

Employer Assistance with the Decertification Petition

On February 16, 2021[8], employee Ruth Mares filed a decertification for the Pueblo facilities with NLRB Region 27 in Case 27–RD–272778. (GC Exh. 5.) After that, Mares, Michelle Valdez, and others solicited signatures for the decertification effort from unit employees. (GC Exh. 18, Tr. 332.)

The decertification petition states that the employees signing the document "do not wish to be represented by COMMUNICATIONS WORKERS OF AMERICA" and provides for two different possibilities, depending on the percentage of the unit employees who sign the petition. If 30 to 50-percent of the unit employees signed the decertification petition, the employees agreed to petition the NLRB to conduct a decertification election; if more than 50-percent of the unit employees signed, then the employees "hereby request that ST. MARY CORWIN HOSPITAL withdraw recognition from this union immediately, as it does not enjoy the support of a majority of employees in the bargaining unit." (GC Exh. 18.)

On February 23, Respondent sent employees a message about the decertification petition as part of its weekly internal newsletter, the Insight. In addition to articles of interest to employees such as new dishes at the Lakeside Café and Centura hospitals being named among the top maternity hospitals in the United States, Insight featured an article in a link stating, "Important Information About Petition to Decertify the Union." (GC Exh. 9, pp. 1–3.) The linked article explained that employees had filed a decertification petition with the NLRB and provided some information about the process. Respondent stated that it was committed to bringing information to its employees, adding that: "Your leaders will keep you informed, through timely communications, about the NLRB's process and the details of the election as that information becomes available." The one-page article concludes with the promise that, "Your leaders will be available to answer any questions you may have about unions or the NLRB decertification process."[9] (GC Exh. 9, p. 8.) Additionally, on the morning of February 23, Clinic Manager Christine Medina emailed her staff at the Clinic a copy of the Insight with the message, "If anyone has any questions, please let me know." (GC Exh. 30, p. 2.)

On February 24, Medina again emailed staff at the Clinic to provide them with another document on Centura Health stationery. Titled, "USE YOUR VOICE Decertification Petition Filed at St. Mary Corwin," the flyer informed individuals that they will "soon have a chance to decide" whether they still wished to be represented by the Union. It closed with the same promise that, "Your leader will be providing facts in the coming weeks to help you make an informed decision." (GC Exhs. 25 and 26.)

Midday on February 24, lead RN Fowler was in her office at the Clinic when she received a telephone call.[10] (Tr. 153, 192—193.) During the lunchtime break between noon and 1 p.m., when the Clinic is closed to patients, chief nursing officer/chief operating officer Glenn Griesheim telephoned Fowler on her office line. (Tr. 192.) Griesheim said that he was sending someone to answer questions about the decertification petition and that Fowler should take that person to go speak to Dr. Emilia Lloyd, the medical director of the Clinic. (Tr. 194.) Fowler replied that they were expecting a "leader" to come speak to staff, based on the emails they had received. (Tr. 195.)

Almost immediately, Fowler heard a knock on the secured door that was next to her office. When she opened it, Fowler saw Michelle Valdez and an unidentified female standing in the doorway. Both Valdez and the other person were wearing Centura badges. (Tr. 195–197.) Valdez said she was there to speak to Dr. Lloyd, and Fowler realized that Valdez was the person

[8] All dates hereafter are for the year 2021 unless stated otherwise.

[9] While the article did not specify who was considered a "leader," human resources director Cecelia Trujillo testified that, "leaders would be people who have associates that report to them." (Tr. 510, 523–524.)

[10] Fowler's testimony about the events of February 24 were uncontroverted by Medina, any other supervisor or manager, or any employee witness. Dr. Lloyd, Griesheim, and Valdez were not called by Respondent to testify as to any contrary version of events or circumstances.

Griesheim was sending over. [Tr. 196.) Valdez was not employed at the Clinic; rather, she was a business support staff member in the Operating Department in the Hospital. (Tr. 527.) Nonetheless, Fowler let Valdez and the other woman through the secured door and led them to where Dr. Lloyd was speaking to a medical resident. Fowler introduced Valdez to Lloyd, saying that Griesheim wanted Lloyd to speak to Valdez. Lloyd nodded and began speaking with Valdez, and so Fowler returned to her office. (Tr. 196–197.)

Lloyd came by Fowler's office shortly thereafter and told Fowler that Valdez was going to be answering employee questions about the Union.[11] She added that Valdez was going to be placed in Dr. Dempsey's office because Dempsey was out that day.[12] Lloyd added that Fowler should mention Valdez' presence at the 1:05 p.m. safety huddle. (Tr. 198.)

Clinic staff closely monitor who is permitted through the security door. (Tr. 365–367, 551.) Other than Hospital employees entering for a business purposes, such as housekeeping or security, Clinic staff is trained not to permit employees through the locked door.[13] (Tr. 365–367, 551–552.) It was also unusual for non-clinical staff to use a doctor's office for work or personal reasons.[14] For example, staff was not permitted to take their breaks in a doctor's office. (Tr. 364, 589.)

Director Medina arrived at the Clinic midday and saw Fowler speaking to Valdez in an interior hallway.[15] Fowler explained that Valdez was there to answer employee questions about the decertification process and that Griesheim had sent her. (Tr. 201, 545–548.) Fowler asked Medina if Valdez could use Dr. Dempsey's office in the back of the Clinic. Medina said that would be fine. (Tr. 545–548.) Medina understood that the Valdez' purpose of being inside the Clinic was for her to answer employee questions. (Tr. 554.) Valdez was on duty at the time, even though she was not in her work area of the Operating Department in the Hospital. (GC Exh. 40.)

At 1:05 p.m., Fowler conducted the afternoon safety huddle, which was attended by medical assistants, medical residents, providers, and the PSR representative. Pursuant to the instructions of Dr. Lloyd, Fowler informed the attendees that Valdez was present in the Clinic, was there to answer questions about the decertification petition, and that anyone could go at any point in the day to speak with Valdez. (Tr. 199–201.)

At 1:54 p.m., Fowler followed up by sending a Skype message to Clinic staff notifying them that Valdez was there to answer employee questions from Respondent's point of view. The message stated, "Hello everyone! I just wanted to let you know that Michelle Valdez is here in Dr. L. Dempsey's office to help [answer] any questions you may have about the union, from Centura's side." (GC Exh. 13.) When employee Brenda Quezada asked if they needed permission from supervision to speak with Valdez, Medina said employees could speak with Valdez anytime they were not busy: "You can just go ahead and go talk to her Brenda, she is in Dr. Leslie Dempsey's office. As long as Check Out is covered, you can go." (GC Exh. 13.) Medina viewed Valdez as the representative of Respondent who would be speaking to unit employees about the decertification petition. (Tr. 570–571.) She testified: "Ms. Valdez is from Centura's side because when Ms. Valdez came to the clinic, she was wearing a Centura badge and we were also – Ace was going off of the communication indicating that leadership would be available to answer questions. So the message, I guess, that we interpreted it as that was Centura who would be coming over to answer questions."[16] (Tr. 570.)

Shortly after receiving this message from director Medina, PSR Brenda Quezada and co-worker Deborah Medina, a referral specialist, went to speak with Valdez. Valdez was sitting behind the desk in Dr. Dempsey's office when they arrived. (Tr. 371.) Valdez informed the two that she was there to answer their questions about decertifying the Union. (Tr. 373, 377.) When Quezada asked if the employees were going to get raises, Valdez told them that in order to get raises they had to first decertify the Union. She had a folder containing decertification petitions next to her. (Tr. 379-381.) During the course of their conversation, Valdez told the two that, if they signed the decertification petition, they would receive a 5-percent pay raise and would get a "pay analysis." Valdez explained that, pursuant to the pay analysis, employees' wages would be compared to and made equal to the wages being paid at other hospitals.[17] (Tr. 379-381.)

On February 25, billing employee Lorraine Trujillo sent an

[11] As stated above, there is sufficient evidence showing Fowler to be a Sec. 2(13) agent of Respondent based on her role as a conduit of management directives. With regard to her conduct on February 24, the record also showed that Fowler acted pursuant to the direct instructions of Dr. Lloyd and Griesheim, both admitted Sec. 2(11) supervisors or 2(13) agents. As such, the facts are sufficient to also establish that Fowler was acting as a 2(13) agent based on actual authority. *Tyson Fresh Meats*, 343 NLRB 1335, 1336–1337 (2004) ("Actual authority refers to the power of an agent to act on his principal's behalf when that power is created by the principal's manifestation to him," citing *Communications Workers Local 9431 (Pacific Bell)*, 304 NLRB 446, fn. 4 (1991)).

[12] While most of the testimony referred to the office as "Dr. Dempsey's office," the doctor had recently vacated that office and moved into a different office at the Clinic. (Tr. 592, 600)

[13] Medina shared this anecdote on how strictly the staff safeguards access to the interior of the Clinic. "I'll give an example, my boss, the original director, was stopped at the secure door and she wasn't allowed in. The staff didn't recognize her. So it was a running joke that she couldn't even get through the door." (Tr. 552.)

[14] In its brief, Respondent points out that Union representatives were permitted to use the cafeteria to speak with employees. R. Br, p. 10. But the Union's access to the cafeteria was pursuant to a collectively bargained right contained in Article 23 of the CBA, not a spontaneous grant of access pursuant to the discretion of Clinic management.

[15] Medina testified that this brief conversation occurred on February 25 or 26. However, based on Fowler's testimony and Medina's Skype comments on the February 24 Skype message, I conclude that Medina was introduced to Valdez on February 24. (Tr. 199–200, GC Exh. 13.)

[16] On February 24, Valdez was on-duty and paid, even though she was not performing her duties as a Business Support staff member in the Operating Department, located in the Hospital. (GC Exhs. 40 and 47, Tr. 526-527.)

[17] Brenda Quezada had to have her recollection refreshed numerous times during her testimony. While I do not credit all of her testimony, I did consider her testimony about Valdez' words and actions in the Clinic on February 24 and 26 to be worthy of belief. There was no indication that her affidavit was inaccurate or unreliable; upon reading her affidavit, Quezada testified with competent recall and confidence; her demeanor was forthright; her testimony held up on cross-examination and was not

email to director Medina inquiring that, since Valdez had come to the Clinic to talk to employees from the pro-decertification side, could the employees also have a Union representative come to the Clinic to answer questions? (GC Exh. 14.) Medina forwarded the email to human resources director Cecelia Trujillo with a courtesy copy to Lorraine. Later in the email chain, Lorraine explained that the person was Michelle Valdez of Surgery, Valdez had been in the Clinic for "3 days in a row,"[18] was placed in a doctor's office, and staff was told that they could "go in and ask questions about Decertifying the union." (GC Exh. 14.) While Cecelia Trujillo sought clarification of the email, Respondent did not otherwise respond to Lorraine Trujillo's request for equal time for a Union representative. (Tr. 281.)

On February 26, Valdez appeared at the Clinic again. (Tr. 389.) Quezada and fellow PSR Brandi Watters were sitting at their adjacent cubicles looking out to the lobby area. Upon being admitted past the security door, Valdez handed some decertification petitions to Watters, who swiftly placed them in her desk drawer. (Tr. 363, 388–391.) Before leaving, Valdez walked over to Quezada's cubicle, pointed to a nearby calculator, and offered to conduct a pay analysis for her. Quezada declined, and Valdez left the area. (Tr. 393-394.)

Coercive Statements to Kenny Martinez

Kenny Martinez was an Environmental Services (EVS) department employee in February.[19] While most of his cleaning duties were in the Hospital, he was also assigned to go to the Clinic each day to clean the three restrooms there between 12 and 12:30 p.m., while the staff were on their lunch breaks. (Tr. 604–605, 608.) He had access to the interior of the Clinic as part of his job. (Tr. 608.) At this time, Martinez also served as the vice president of CWA Local 7774. (Tr. 608.)

On February 26, at approximately 12:10 p.m., Martinez was inside the Clinic when he ran into lead medical assistant Clarissa Lujan and another medical assistant in the hallway.[20] He took that opportunity to briefly get Lujan's input about getting therapy for his granddaughter. Martinez' granddaughter had recently developed behavioral problems and he knew that Lujan had similarly arranged for therapy for her child. (Tr. 610.) Employees are not prohibited from speaking to each other about either personal or professional topics while in the Clinic. (Tr. 554, 584, 618–619.) During their conversation, director Medina approached, directed herself towards Martinez, and asked, "Is everything OK?" Medina then walked off. (Tr. 611.) Martinez proceeded to the restroom for cleaning. (Tr. 611.)

At 12:39 p.m., Medina sent an email to Cecelia Trujillo and Christine Abney, EVS vice president. In it, Medina complained about Martinez speaking to her staff in the breakroom during their lunch break, handing out Union materials to some staff members, and speaking to staff in the hallway.[21] On that final point, Medina wrote: "today, I passed him in the clinical hallway talking to more staff. If he is busy cleaning bathrooms, he should not be socializing with staff."[22] Later in the email, Medina wrote that, "if he is talking to my staff about union activities while they are on the clock, I would really like him to stop doing that." (GC Exh. 44.)

Upon returning to the Hospital, EVS supervisor John Garcia approached Martinez and instructed him to report to Garcia's office immediately. (Tr. 612–613.) When the two men arrived there, Garcia reprimanded Martinez. "I got chewed out," Martinez testified. (Tr. 613.) Garcia explained that Medina had emailed Abney to complain that Martinez was at the Clinic talking to employees about the Union. (Tr. 575, 613.) Martinez replied that was untrue, that he had never spoken to Clinic staff about the Union during their lunch hour. (Tr. 613.) Garcia said that, given his status as the Local 7774 vice president, Martinez should know that he was not allowed to talk about the Union. (Tr. 614.) Garcia added that Martinez could get "written up" for doing that. (Tr. 623, 626–627.) Garcia reiterated that he could only talk about the Union during his breaks or his lunch hour given that he was Union vice president.[23] (Tr. 614)

Garcia told Martinez that he was no longer allowed to go to the Clinic to clean the restrooms at noontime. Martinez responded that elimination of that job duty was unfair because he had not been talking about the Union—he was talking to employees about getting a therapist for his granddaughter. (Tr. 614.) Garcia continued, saying that Martinez was allowed to talk about the Union only during breaks or his lunch hour because he was the Local vice president. Then, upon hearing the explanation that Martinez had not spoken to the employees about the Union, Garcia evidently reconsidered the reassignment and asked Martinez to resume cleaning the Clinic restrooms on his next shift. This reversal in position occurred approximately five minutes after he told Martinez not to go to the Clinic anymore. (Tr. 615,

contradicted by either Medina or Valdez. In fact, Valdez never testified at the hearing. Finally, as a current employee of Respondent, Quezada's testimony warrants heightened credibility. *Flexsteel Industries*, 316 NLRB 745, 745 (1995), enfd. mem. 83 F.3d 419 (5th Cir. 1996) ("[T]he testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interests.")

[18] Other than this email, I do not credit Lorraine Trujillo's testimony about Valdez being in the Clinic on February 25. As explained in the credibility discussion below, while she appeared to be a sincere witness, Lorraine Trujillo's memory was too faulty to credit absent corroboration by others.

[19] Martinez' testimony about the events of February 26 were uncontroverted by supervisor Garcia, who was not called by Respondent to testify as to any contrary version of events or circumstances. Martinez' testimony was also consistent with the documentary evidence, i.e., Medina's email to Abney and Trujillo. (GC Exh. 44.) I credit Martinez' testimony in its entirety. Not only was his version of events uncontroverted, Martinez answered all questions, whether on direct or cross-examination, without hesitation and in a direct fashion.

[20] Martinez' testimony was only that this was in February. (Tr. 609.) However, based on the email from Medina referencing this event, the date has been established as February 26. (GC Exh. 44.)

[21] Respondent's security cameras captured an image of Martinez in the lobby of the Clinic. But he was not holding Union organizing materials, but rather the "Steward's Resource Manual." (GC Exh. 44.) Moreover, Martinez was not handing out those materials, but rather was retrieving them. (Tr. 633.)

[22] On cross-examination, Medina conceded that she did not know what this hallway conversation was about. (Tr. 579.) She also stated that Respondent does not prohibit employees from speaking to each other. "They can talk about whatever they want," Medina testified. "They're free to speak." (Tr. 584.)

[23] Respondent has no such rule. (Tr. 584, 618.)

630–631.) Martinez said that he did not want to return to the Clinic because he wanted to keep his job and angrily walked out of the office. (Tr. 615–616.)

After a break of 10 to 15 minutes, Martinez returned to Garcia's office, apologized for losing his temper, and said that he would resume his job duties of cleaning the restrooms at the Clinic. Garcia told Martinez to just go to the Clinic, clean the restrooms, and then leave without speaking to anybody. (Tr. 616, 629.)

At 2:57 p.m., Abney sent a reply email to Medina and Cecelia Trujillo, advising them that, "Kenny has already been spoken [to.] I guess John and Christine already spoke [to him] as well. . . . Kenny will be pulled out of there on Monday." (GC Exh. 44.) Nonetheless, Martinez continued to be assigned to clean the Clinic restrooms the following Monday and thereafter. (Tr. 585, 631–632.)

Respondent's Differing Views of the Activities of Martinez and Valdez

On March 1, Medina sent an angry follow up email to Cecelia Trujillo, complaining again about Martinez. (GC Exh. 44.) By permitting him to distribute Union literature at the Clinic, Medina asserted that Respondent was failing to help Martinez "realize that his primary role as an EVS Associate and his secondary role [is] as a Union Representative. . . . If he is not communicated to effectively, it results in continued unacceptable behavior in his role with EVS because he now feels as though his actions are permissible." Medina continued, saying that Martinez' communications were negatively impacting Clinic operations: "I respect the Union if their true intent is for the betterment of the staff, however, I have a clinic to run and patient care to attend to. I cannot do my job effectively if this employee is permitted to continually visit with staff, sit in the breakroom with them and socialize, and distribute materials that are not conducive to patient care while they are on Centura time." (GC Exh. 44.)

In contrast to Martinez, director Medina did not contact Cecelia Trujillo or any supervisor in the Operating department to complain about Valdez' presence in the Clinic on February 24 and 26 while on duty. (Tr. 583–584.) No evidence was presented to show that Valdez' presence in the Clinic was investigated or subject to discipline. When asked on cross-examination to explain her differing reactions to Valdez and Martinez, director Medina explained that Valdez was at the clinic for the work purpose of answering questions on behalf of Respondent:

> Q: And was it your understanding that Michelle Valdez had a work purpose for being in the clinic, correct?
> A: I know that her purpose for being there was to answer employee questions.
> Q: And that wasn't – it wasn't your understanding that she was just there on her own personal desire?
> A: No. I mean, I – I don't know what her personal desire is or was.

(Tr. 585.)

Medina further testified that she requested that Martinez be spoken to about talking to her staff while they performed patient care and that he should instead be cleaning the restrooms. (Tr. 585.) But Medina pointed to no times when she observed Martinez speaking to employees while they were performing patient care. Nor did she testify that the restrooms in the Clinic went uncleaned. (Tr. 586.)

The Withdrawal of Recognition

A series of events occurred on Friday, March 5, which culminated in Respondent withdrawing recognition from the Union. At approximately, 9 a.m., decertification petitioner Ruth Mares visited Human Resources Director Cecelia Trujillo at her office in the Hospital to drop off a manila envelope containing signed decertification petitions. There were about 30 sheets of signatures in that envelope. (GC Exh. 18, Tr. 436, 442–443.) This was the first time that any member of Respondent's executive team received the decertification signature forms. (Tr. 440–441.) Later that morning, Mares presented Trujillo with one additional page of signatures. (Tr. 441–442, 505.)

Upon receiving the initial batch of signatures, Trujillo scanned and emailed them to her supervisor, Cathy Roberts. Roberts reviewed the documents and told Trujillo over the telephone that they pertained to the decertification petition. The two then strategized on what to do with the signatures. (Tr. 443–446.) Roberts and Trujillo enlisted two human resources employees, Andrea Carter and Hilda "Suzy" Jimenez, to verify the signatures. Each person downloaded a list of unit employees and attempted to independently verify each of the signatures on the decertification petition by cross-referencing the petition signatures against the signatures in the employee's personnel file. (Tr. 448–449, 464–465, GC Exh. 15.)

At the same time, Union and Respondent negotiators were continuing to make progress in their bargaining for a successor CBA. By 12:58 p.m., the two sides had reached tentative agreements on all but three provisions in the successor CBA. (GC Exhs. 3 and 4.)

At 1:38 p.m., Carter sent Trujillo an email stating that they had verified 87 signatures for the 96 signers (leaving nine signatures that could not be verified). (GC Exh. 138.) This number would represent a majority of the approximately 151 unit employees.[24] The four continued to search for ways to verify signatures. When done, they had a Zoom meeting to compare the results of

[24] Based on this, 1:38 p.m. on March 5 would have been the earliest time when Respondent would have had evidence of loss of majority support for the Union. However, several hours earlier that day, Respondent had already prepared a highly detailed and specific action plan for changing the unit employees' terms and conditions following its withdrawal of recognition. At 9:08 a.m., Roberts sent an email to Trujillo listing more than 17 tasks Respondent needed to undertake from March 5 through 8 to implement its withdrawal of recognition from the Union. GC Exh. 33. This set of instructions articulated in minute detail the changes Respondent would make—everything from PTO accrual for the MLK Day holiday to cross-training to how managers would message those changes to the staff. The email also provided a specific timeline for when the various changes would be implemented. Titled "union benefit changes," this email was transmitted before Respondent had supposedly even received the decertification signatures from Mares. In response to questioning by the General Counsel, Cecelia Trujillo claimed not to remember the email, even going so far as to say, "I probably ignored the email." (Tr. 495.) I find it difficult to believe that Trujillo would have ignored such an important email sent to her and just one other person on such a critical date. Rather, I conclude that Cecelia Trujillo

their signature checks. (Tr. 458.) Based on cross-referencing signatures, they were able to specifically confirm 89 employees' signatures. For 11 additional employees, they lacked signatures in the personnel files. For those, they evaluated whether there was any basis for concluding that the signature was invalid or valid, e.g., was there a basis, such as a signer's unique way of writing a letter, for deciding whether the signature was forged or not forged. (Tr. 466–468.) Of the approximately 151-unit employees, they came to the belief that they confirmed signatures for 100 of them. (Tr. 475.) Trujillo said she could not recall the time of day they concluded this Zoom call. (Tr. 472.)

After the Zoom meeting, Roberts met separately with Respondent's executive leadership and legal counsel to update them about the decertification signatures. (Tr. 471.)

At 3:13 p.m., Roberts sent Union Officials Marcy Harris and Garry Jordan a letter informing them that Respondent had received "credible, objective evidence" that the Union had lost majority support amongst the unit employees and that Respondent was therefore withdrawing recognition from the Union. (GC Exhs. 3 and 4.)

At 4:30 p.m., Respondent CEO Mike Cafasso sent an email to all employees at the Pueblo facilities, informing them that Respondent had withdrawn recognition from the Union and that on Monday, March 8, Respondent would host information sessions to answer employee questions about the withdrawal. (GC Exhs. 31, 35.)

Also on March 5, Mares requested withdrawal of her decertification petition in 27–RD–272778. The Region processed that withdrawal on March 8.

On Monday, March 8, CWA district representative Garry Jordan sent an email to Roberts asserting that Respondent had an ongoing obligation to bargain in good faith. Roberts emailed back, reiterating that Respondent had withdrawn recognition from the Union on March 5 based on an actual loss of majority support within the unit. (GC Exh. 3.) Since March 5, Respondent has refused to bargain with the Union. (Tr. 78–79.)

Post-Withdrawal Changes in Terms and Conditions

On March 9, Centura Health CEO Peter D. Banko announced pay raises for employees across the different facilities within its system, including at the Pueblo facilities. The pay raises were made retroactive to March 7. Prior to this, Union president Harris received no notice or opportunity to bargain over the wage increases. (GC Exh. 12, Tr. 79–80.)

On March 24, Cecelia Trujillo emailed Harris to inform her that Respondent would be taking down the Union's five bulletin boards located throughout the Hospital the next day, and that Harris could come by Trujillo's office to pick up the union materials removed from those boards. The Union had maintained those bulletin boards pursuant to Article 21 of the CBA and used them to inform employees about matters related to the Union, such as meeting dates and locations. Prior to this announcement, Harris had received no notice or opportunity to bargain over the removal of the bulletin boards. (GC Exhs. 8 and 31, Tr. 81–85.)

In March, Respondent ceased deducting Union dues from employees' paychecks. Prior to that, Respondent deducted union dues pursuant to Article 3 of the CBA. The Union received no notice or opportunity to bargain over the decision to cease dues deductions. (GC Exh. 2, Tr. 86–87.)

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." *Hills & Dales General Hospital*, 360 NLRB 611, 615 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness' testimony. *NLRB v. Universal Camera Corp*., 179 F.2d 749 (2d Cir. 1950).

In evaluating each side's proffered facts, I have reviewed the entire record and carefully observed the demeanor of all the witnesses. I have considered the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or the lack of it; consistencies or inconsistencies within the testimony of each witness and between witnesses with similar apparent interests. See, e.g., *NLRB v. Walton Mfg. Co*., 369 U.S. 404, 408 (1962). Testimony in contradiction to my factual findings has been carefully considered but discredited. Where there is inconsistent evidence on a material point, my credibility findings are incorporated into my legal analysis below.

Having observed their demeanors and considered the context of their testimonies, I found Aspasia "Ace" Fowler and Brenda Quezada to be a highly credible witness. They listened to the questions, took a moment to recall the event, and carefully and directly answered the questions. Key portions of their testimonies were corroborated by others and/or by documentary evidence. Significantly, as current employees, their answers contrary to Respondent's defense were particularly reliable, as they ran contrary to their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, 1305 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink, Div. of Unarco Industries*, 197 NLRB 489, 491 (1972).

On the other hand, I decline to credit much of the testimonies of Lorraine Trujillo and Christina Olguin. While Trujillo came across as a sincere witness, her memory was poor, requiring General Counsel to refresh her recollection over and over. Additionally, as to her testimony about the events of February 25, that testimony went uncorroborated by any of the three other employees who were present. Absent corroboration, Lorraine Trujillo's recollection was too inconsistent to rely on. Olguin also came across as a sincere witness, but her recollection was unclear and her testimony was often confused and contradictory.

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claimed not to remember the email to avoid answering tough questions about it. I also find it highly unlikely that that Respondent would have prepared such a detailed action plan if it did not know in advance that Mares had collected a majority showing of loss of support for the Union. In short, this email provides the basis for inferring that Respondent had been communicating with Mares before March 5 about the decertification campaign.

Additionally, her testimony differed from her affidavit and from her own hand-written notes in important ways.

DISCUSSION AND ANALYSIS

A. The Alleged Coercive Statements by EVS Supervisor John Garcia

Paragraph 7 of the Complaint alleges that Respondent violated Section 8(a)(1) in the last week of February 2021 when supervisor John Garcia at the Hospital prohibited employees from talking about the Union during working time while permitting employees to talk about other non-work subjects; threatened employees with discipline if they talked about the Union at work; and threatened employees that they could be reassigned to a different work location because they talked about the Union at work. Based on the credible evidence, I find merit to all three allegations.

Prohibiting employees from talking about the Union during working time while permitting employees to talk about other non-work subjects. During their conversation on February 26, supervisor Garcia told Martinez that he was not allowed to speak to Clinic employees about the Union. This occurred twice: during the first conversation upon Martinez' return to the Hospital and during the second conversation a few minutes later. It was established in the record that Respondent did not prohibit its employees from discussing other nonwork related topics during working time. Nor was there any evidence of a work rule prohibiting employees from speaking to each other during working time. Accordingly, Garcia's undisputed prohibition to Martinez would reasonably tend to interfere with Martinez' exercise of his Section 7 right to speak to others about the Union during working time. *Tschiggfrie Properties, Ltd*., 365 NLRB No. 34, slip op. at 6 (2017) ("Employee would reasonably understand the. . . letter, prohibiting the discussion of 'union organizational viewpoints' but not other matters, as a warning that employees would be subject to discipline for exercising their Section 7 rights.")

Threatening employees with discipline if they talked about the Union at work. During their first conversation, Garcia told Martinez that he could be "written up" for speaking to Clinic employees about the Union. Respondent presented no evidence refuting or challenging these facts. This threat of discipline would have the obvious effect of causing Martinez or any employee to refrain from engaging in such Section 7 conversations going forward. *Dish Network Corp*., 366 NLRB No. 119, slip op. at 11 (2018).

Threatening employees that they were being reassigned to a different work location because they talked about the Union at work. This happened during the first conversation, when Garcia told Martinez that he was no longer allowed to go to the Clinic to clean the restrooms at noontime because Martinez had been observed speaking to others about the Union. Respondent presented no evidence refuting or challenging these facts. This statement that Garcia was reassigning Martinez based on his discussions with others about the Union was plainly coercive and, while Garcia changed his mind shortly thereafter, that did not erase the fact that the threat was made. Additionally, Respondent presented no evidence showing that it effectively rescinded, disavowed, or repudiated the threat of reassignment. See *Passavant Memorial Area Hospital*, 237 NLRB 138, 138–139 (1978).

Based on the foregoing, Respondent, through its supervisor or agent John Garcia, violated Section 8(a)(1) by making unlawful prohibitions and threats, as alleged in paragraph 7 of the complaint.

B. The Alleged Promises and Solicitation by Respondent Through Agent Michelle Valdez

Paragraph 8 of the complaint alleges that Respondent violated Section 8(a)(1) on February 24 and 25, and during the first week of March, by the conduct of actual or apparent agent Business Support IV Michelle Valdez at the Clinic and the Hospital. Based on the credible evidence, I find merit to the allegations occurring at the Clinic but not the Hospital.

The agency status of Michelle Valdez. There is sufficient evidence to establish that Valdez was a Section 2(13) agent of Respondent pursuant to apparent authority. Agency status based on apparent authority is created when a principal manifests to a third-party that another is his agent. *Tyson Fresh Meats*, 343 NLRB 1335, 1336–1337 (2004). That is precisely what occurred here on February 24 when COO/CNO Griesheim told Fowler that he was sending someone to answer employee questions about the decertification petition. That person turned out to be Valdez. Medical director Dr. Lloyd reaffirmed Valdez' agency status minutes later when she also told Fowler that Valdez was going to be answering employee questions about the Union. Fowler and director Medina then took numerous steps to create in the minds of unit employees that Valdez was a person authorized to speak on behalf of management, that she was the "leader" who would be providing facts to employees to "help [them] make an informed decision" about the Union. They permitted Valdez free movement within the interior of the Clinic, past the security door. They placed Valdez in a doctor's office, a space that is typically off-limits to non-clinical staff. During the afternoon safety huddle, Fowler told the attendees that Valdez had been sent by Griesheim and was there to answer questions about the decertification process. The purpose of these huddles was to disseminate important Clinic information to the staff. Fowler sent a Skype message to Clinic staff, advising them that Valdez was in Dr. Dempsey's office "to help [answer] any questions you may have about the union, *from Centura's side*." (Emphasis added.) Fowler added that anyone could go speak with Valdez at any point in the day. Medina reiterated that point, writing: "You can go ahead and talk to her. . . . As long as Check Out is covered, you can go."[25] Even Medina admitted to being under the impression that Valdez was there to represent Respondent, testifying that Fowler "was going off of the communication in-

[25] While employees would not necessarily be aware of this, Valdez was paid for her time at the Clinic on February 24 and 26. Additionally, even though she was outside of her work area, in contravention of Respondent's work rules, there was no evidence to show that she was ever counseled, reprimanded, or disciplined for that violation of Centura rules. Respondent's support for Valdez spending several hours at the Clinic and speaking to employees stood in stark contrast to its heavy-handed treatment of Kenny Martinez for his brief hallway conversation with staff to get a medical referral for his granddaughter.

dicating that leadership would be available to answer questions. So the message, I guess, that we interpreted it as that was Centura who would be coming over to answer questions." Based on the foregoing undisputed facts, Clinic employees would reasonably conclude that Valdez was there to act and speak on behalf of Respondent. *Service Employees Union Local 87 (West Bay)*, 291 NLRB 82, 82-83 (1988); *Alleghany Aggregate, Inc*., 311 NLRB 1165, 1165 (1993); *Dentech Corp*., 294 NLRB 924, 925–926 (1989). Moreover, there was no evidence showing that Medina or Fowler ever disputed Valdez' ability to speak for Respondent or otherwise disavowed any promises, solicitations, or other representations she made to the employees.

At the Clinic on February 24, Valdez promised employees that they would get 5-percent raises and a "pay analysis" if they signed the decertification petition. On February 26, she offered to calculate the pay raise an employee would receive, implicitly if the employees decertified the Union. Respondent presented no evidence refuting or challenging these facts. As its agent, Valdez' conduct is imputed to Respondent. *Valmet, Inc*., 367 NLRB 84, slip op. at 2 and 11–12 (2019) ("Statements of a supervisor or agent may be imputed to an employer even if that employer was not aware that the statements were made.") Therefore, Respondent violated Section 8(a)(1) by promising employees higher pay if they signed the decertification petition. *Curwood, Inc*., 339 NLRB 1137, 1147 (2003) ("The announcement, promise, or grant of benefits in order to discourage union support is unlawful.")

On February 24, Valdez also asked Quezada and co-worker Deborah Medina to sign one of the decertification petitions she kept visible in a folder next to her. Respondent presented no evidence refuting or challenging this fact. Accordingly, Respondent, through its agent Valdez, solicited employee signatures on the decertification petition, thereby interfering with their Section 7 right to make this decision free of any employer interference or coercion. *Wismettac Asian Foods*, 370 NLRB No. 35, slip op. at 28 (2020).

Based on the foregoing, Respondent, through its agent Michelle Valdez, violated Section 8(a)(1) as alleged in paragraph 8 of the complaint on February 24 and 26 at the Clinic by promising employees pay raises if they signed the decertification petition and by soliciting employee signatures on the decertification petition. To the extent that paragraph 8 alleges this same unlawful conduct at the Clinic on February 25 and at the Hospital during the first week of March, those two portions of the allegation were unsupported by credible evidence and are therefore partially dismissed.

C. The Alleged Providing of Unlawful Assistance to the Decertification Process

Paragraph 9 of the Complaint alleges that Respondent, through various supervisors and agents, violated Section 8(a)(1) by providing more than ministerial assistance to employees in propelling the decertification petition.

An employer violates Section 8(a)(1) of the Act by "actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative." *Wire Products Mfg. Co*., 326 NLRB 625, 640 (1998), enfd. sub nom. mem. *NLRB v R.T. Blankenship & Associates, Inc*., 210 F.3d 375 (7th Cir. 2000). When evaluating whether an employer has provided unlawful assistance, the Board evaluates "whether the Respondent's conduct constitutes more than ministerial aid." *Process Supply*, 300 NLRB 756, 758 (1990); *Times Herald*, 253 NLRB 524 (1980). This more-than-ministerial aid can take many forms, including planting the seed for the circulation and filing of a petition, providing assistance in its wording, typing, or filing with the Board, and knowingly permitting its circulation on worktime. See *Marriott In Flite Services*, 258 NLRB 755, 768–769 (1981); *Silver Spur Casino*, 270 NLRB 1067, 1071 (1984); *Weisser Optical Co*., 274 NLRB 961 (1985); *Central Washington Hospital*, 279 NLRB 60, 64 (1986); *Wire Products Mfg. Corp*., 326 NLRB 625, 627 (1998). Such undue assistance would cause employees to reasonably conclude that the employer is sponsoring or instigating the petition. *Process Supply*, 300 NLRB 756, 758 (1990). Additionally, if an employee with apparent authority circulates the petition, the employer is simply directly accountable under settled principles of agency for propelling the decertification. *Process Supply* at 758–759; *Technodent Corp*., 294 NLRB 924 (1989). Both avenues to unlawful assistance were present here: not only did Respondent's supervisors and agents provide more than ministerial assistance to the decertification petition but Respondent, through agent Michelle Valdez, directly participated in the decertification process.

The credible facts show that Respondent provided more than ministerial assistance to Valdez at the Clinic on February 24 and 26. After announcing in various emails and the *Insight* newsletter that Respondent was going to have "leaders" inform unit employees about the decertification process, Griesheim telephoned Fowler to tell her that he was sending somebody (who turned out to be Valdez) to the Clinic to answer questions about the decertification petition. Dr. Lloyd reiterated to Fowler the message that Valdez was there to answer questions about the Union and instructed her to announce Valdez' presence during the afternoon huddle to notify employees. Fowler permitted Valdez access to the secure part of the suite, set her up in Dr. Dempsey's former office, announced at the afternoon huddle that Valdez was there to answer questions about the decertification process and that anyone could go and speak with her, and told the staff via her Skype message that Valdez was in the Clinic to answer questions about the Union "from Centura's side." Director Medina was informed of and consented to Valdez' presence in Dr. Dempsey's office and told Clinic staff that they were free to go speak with Valdez "[a]s long as Check Out is covered." Medina did or said nothing to disavow Fowler's actions. Valdez' access to the Clinic carried through to February 26, as well. Finally, even though her presence in the Clinic during her worktime was in contravention of Respondent's Attendance and Tardiness rules requiring employees to be at their workstations, ready to work, at the beginning of their scheduled shifts and throughout their shifts, Valdez was not disciplined in any way for spending hours in the Clinic. To the contrary, she was fully paid for her work shifts on February 24 and 26. Based on these facts, Respondent plainly provided more than ministerial assistance to Valdez in her efforts to decertify the Union.

In addition to providing undue assistance, Respondent directly solicited signatures for the decertification petition through its agent, Valdez, on February 24 at the Clinic. *Process Supply*, 300 NLRB 756, 758–759 (1990).

Based on the foregoing, Respondent violated Section 8(a)(1), as alleged in paragraph 9 of the complaint, on February 24 and 26 by providing more than ministerial assistance to the decertification process and by directly, through agent Valdez, soliciting employee signatures. Paragraph 9 is partially dismissed to the extent that it alleges unlawful employer assistance on February 25.

D. The Alleged Unlawful Withdrawal of Recognition

Paragraph 10 of the Complaint alleges that Respondent violated Section 8(a)(5) on March 5 when it withdrew recognition from the Union and by refusing to recognize and bargain with the Union since that date.

An employer may not withdraw recognition based on a decertification petition that it has tainted by providing unlawful assistance to the decertification effort. *SFO Good-Nite Inn, LLC*, 357 NLRB 79, 79 (2011), enfd. 700 F.3d 1, 403 U.S. App. D.C. 75 (D.C. Cir. 2012); *Narricot Industries, L.P.*, 353 NLRB 775, 775 (2009); see also *NLRB v. Powell Elec. Mfg. Co*., 906 F.2d 1007, 1014 (5th Cir. 1990). This unlawful assistance gives rise to the presumption that the decertification petition was tainted and Respondent was thus unable to rely on it as proof of the Union's actual loss of majority status. *Kauai Veterans Express Co*., 369 NLRB No. 59, slip op. at 1–2 (2020) (citing *Hearst Corp*., 281 NLRB 764 (1986), enfd. mem. 837 F.2d 1088 (1988)).

In the instant case, Respondent withdrew recognition based on the tainted decertification petition, rendering its withdrawal invalid. Accordingly, Respondent violated Section 8(a)(5) on March 5 by withdrawing recognition from the Union absent a valid showing of loss of majority status and by failing and refusing thereafter to recognize and bargain with the Union, as alleged in paragraph 10 of the complaint.

E. The Alleged Unilateral Changes

Paragraph 11 of the Complaint alleges that Respondent violated Section 8(a)(5) on various dates in March by granting wage increases to unit employees, ceasing to deduct and remit dues to the Union, and removing materials from the union bulletin boards and ceasing Union access to those bulletin boards absent an overall good-faith impasse in bargaining and without even offering the Union notice and the opportunity to bargain.

It is uncontested that Respondent acted unilaterally in granting unit employees raises; ceasing to deduct dues from employees and remit those dues to the Union; and terminating the Union's use of five bulletin boards located throughout the Hospital. The unit employees' wages were an established term and condition of employment and a mandatory subject of bargaining. *Strategic Resources, Inc*., 364 NLRB 451, 457–458 (2016). By granting employees wage increases Respondent made a material, substantial, and significant change to a mandatory subject of bargaining. Respondent's obligation to deduct dues and remit them to the Union was an established term and condition of employment and a mandatory subject of bargaining. *Valley Hospital Medical Center (Valley Hospital II)*, 371 NLRB No. 160, slip op. at 1 (September 30, 2022) ("dues checkoff should be treated as part of the status quo that cannot be changed unilaterally after contract expiration."). By ceasing to deduct and remit dues, Respondent made a material, substantial, and significant change to a mandatory subject of bargaining. The Union's right to use five bulletin boards located throughout the Hospital was an established term and condition of employment and a mandatory subject of bargaining. *RCN Corp*., 333 NLRB 295, 310 (2001). By terminating the Union's use of those bulletin boards effective March 25, removing materials from them, and thereby eliminating employees' ability to obtain information about union meetings, officers, and other matters, Respondent made a material, substantial, and significant change to a mandatory subject of bargaining.

At the time Respondent took these actions, the parties were not at impasse in their overall bargaining for a successor CBA—in fact, by March 5, the parties had narrowed their differences to just three open issues. Therefore, these changes by Respondent violated Section 8(a)(5). *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991). Nor did Respondent even offer the Union notice and the opportunity to bargain over these changes. While it seeks to justify its actions based its withdrawal of recognition prior to effecting these changes, Respondent's withdrawal of recognition on March 5 was invalid.

Based on the foregoing, Respondent violated Section 8(a)(5) by making unilateral changes to mandatory subjects of bargaining, as alleged in paragraph 11 of the complaint.

CONCLUSIONS OF LAW

1. Respondent Catholic Health Initiatives Colorado d/b/a Centura Health St. Mary Corwin is, and at all materials has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, as well as a healthcare institution within the meaning of Section 2(14) of the Act.

2. Charging Party Communications Workers of America is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act, and was at all material times the Section 9(a) collective-bargaining representative of the following unit of Respondent's employees (the unit), an appropriate unit for purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All non-professional employees employed by Respondent at its hospital in Pueblo, Colorado and the Southern Colorado Family Medicine (SCFM) facility located at 902 Lakeview Ave.; excluding all professional employees, which includes the following classifications: pharmacists, registered nurses, psychiatric technicians, educational coordinators, development technologists, medical technologists, mental health clinicians, dieticians, physical therapists, X-ray technicians (RT's diagnostic and nuclear), speech therapists, occupational therapists, inhalation therapists, medical records librarians and social workers, all employees in the pastoral care department, all nuns, all employees in the personnel department, confidential employees, management employees, guards and supervisors as defined by the Act.

3. Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union on March 5, 2021, absent a valid showing of actual loss of majority status.

4. Respondent violated Section 8(a)(5) and (1) of the Act by

failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit since March 5, 2021.

5. Respondent violated Section 8(a)(5) and (1) of the Act by granting wage increases to employees in the unit, ceasing to deduct dues from unit employees and to remit those dues to the Union, and removing materials from the union bulletin boards and ending union access to those bulletin boards in the Pueblo facilities, absent an overall good-faith bargaining impasse and without offering the Union notice and the opportunity to bargain, in March 2021.

6. Respondent violated Section 8(a)(1) by:

a. Prohibiting employees from talking about the Union during working time while permitting employees to talk about other non-work subjects;

b. Threatening employees with discipline if they talked about the Union at work;

c. Threatening employees that they were being reassigned to a different work location because they spoke to other employees about the Union;

d. Promising employees higher pay if they signed a decertification petition;

e. Soliciting employees to sign a decertification petition; and

f. Providing more than ministerial assistance to employees in propelling a decertification petition.

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

Remedy

Having found that Respondent 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.

With regard to Respondent's unilateral changes to terms and conditions of employment following its withdrawal of recognition, I recommend the following that Respondent be ordered to:

(a) Upon request by the Union, rescind the wage increases provided to unit employees in March 2021, a time when the parties were not at an overall good-faith bargaining impasse, and in the absence of notice and the opportunity to bargain.

(b) Rescind the other unilateral changes in terms and conditions of employment for its employees that were implemented in March 2021: removal of five Union bulletin boards and ceasing to deduct and remit dues to the Union.

(c) Make the Union whole for any dues it would have received but for the Respondent's unilateral action of ceasing dues deductions and transmitting those dues to the Union. *Valley Hospital Medical Center (Valley Hospital II)*, 371 NLRB No. 160, slip op. at 1 (2022). Respondent will make the Union whole only for dues it would have received from employees who have individually signed dues-checkoff authorizations. See, e.g., *W.J. Holoway*, 307 NLRB 487, 491 (1992); *Creutz Plating Corp*., 172 NLRB 1, 1 (1968). 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). See *Space Needle, LLC*, 362 NLRB 35, 39 (2015), enfd. on other grounds 692 Fed.Appx. 462 (9th Cir. 2017).

The General Counsel requests that Respondent be ordered to post and electronically distribute the Notice to Employees, including to distribute the Notice to Employees via any text-based mobile messaging platform, such as Skype, if the Respondent customarily communicates with employees through such electronic means. *J. Picini Flooring*, 356 NLRB 11, 11 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate here and, if so what method of electronic notice (e.g., Skype, text, Instant Messaging) should be required, is to be resolved at the compliance stage. Id. at 13.

The General Counsel requests that Respondent be ordered to read the Notice aloud to employees. While a Notice reading is an extraordinary remedy, I conclude that these serious unfair labor practices affecting all unit employees warrants such a remedy. *Nexstar Broadcasting, Inc., d/b/a KOIN-TV*, 371 NLRB No. 118, slip op. at 3 (2022). A Notice reading by, or in the presence of, a high-ranking management official of Respondent would serve to reassure employees that their employer and its managers are bound by the Act's requirements. *Homer D. Bronson Co*., 349 NLRB 512, 515 (2007), enfd. mem. 273 Fed.Appx. 32 (2d Cir. 2008). Accordingly, I recommend that Respondent be ordered to convene its employees at its Pueblo facilities and have a high-ranking management official read, or be present while a Board agent reads, the Notice aloud to employees and, if the Union so desires, in the presence of an agent of the Union.

For its withdrawal of recognition and subsequent refusal to recognize and bargain with the Union in violation of Section 8(a)(5), I recommend that Respondent be ordered to recognize the Union and, upon request, bargain for a reasonable period of time, as set forth in *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), enfd. 310 F.3d 209, 354 U.S. App. D.C. 13 (D.C. Cir. 2002) with the Union as the bargaining representative of the Unit 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. The Board has previously held that an affirmative bargaining order is "the traditional, appropriate remedy for a Section 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Caterair International*, 322 NLRB 64, 68 (1996). For the reasons set forth in *Caterair*, an affirmative bargaining order is warranted as a remedy in this case.

While the Board applies *Caterair*, the U.S. Court of Appeals for the D.C. Circuit, in several cases, has required the Board to justify on the facts of each case the imposition of an affirmative bargaining order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727, 738-739, 341 U.S. App. D.C. 99 (D.C. Cir. 2000); *Lee Lumber & Building Material Corp. v. NLRB*, 117 F.3d 1454, 1462, 326 U.S. App. D.C. 104 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248, 307 U.S. App. D.C. 376 (D.C. Cir. 1994). The Board therefore analyzes each case's facts in accordance with the D.C. Circuit cases which, as summarized by the Court in *Vincent*, supra at 738, require that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: first, the employees' § 7 rights; second, whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and third, whether alternative remedies are adequate to remedy the violations of the Act."

Adhering to the Board's approach and analyzing the facts under the three-factor balancing tests outlined by the D.C. Circuit, an affirmative bargaining order is warranted in the instant case. First, an affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees, who were denied the benefits of collective bargaining by the Respondent's withdrawal of recognition and resulting refusal to bargain with the Union for a successor collective-bargaining agreement. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. To the extent such opposition exists, moreover, it may be at least in part the product of the Respondent's unfair labor practices.

Second, an affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace in that it removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. Such an affirmative bargaining order would also ensure that the Union will not be pressured by the Respondent's withdrawal of recognition and subsequent refusal to bargain to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

Third, a cease-and-desist order alone would be inadequate to remedy the Respondent's refusal to bargain with the Union in these circumstances, because it would permit another challenge to the Union's majority status before the taint of the Respondent's unlawful withdrawal of recognition has dissipated, and before the employees have had a reasonable amount of time to regroup and bargain through their representative to reach a successor collective-bargaining agreement. Such a result would be particularly unjust in circumstances such as those here, where the Respondent's withdrawal of recognition would likely have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. Moreover, the Respondent's refusal to recognize and bargain with the Union following its unlawful withdrawal of recognition would likely have a similar continuing effect of tainting any employee disaffection until employees have had a reasonable time to bargain through their representative. I find that these circumstances would outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, an affirmative bargaining order with its temporary decertification bar is necessary to adequately remedy the violations herein.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[26]

ORDER

Respondent, Catholic Health Initiatives Colorado d/b/a Centura Health—St. Mary Corwin Medical Center, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Communications Workers of America, as the exclusive representative for the following bargaining unit:

> All non-professional employees employed by Respondent at its hospital in Pueblo, Colorado and the Southern Colorado Family Medicine (SCFM) facility located at 902 Lakeview Ave.; excluding all professional employees, which includes the following classifications: pharmacists, registered nurses, psychiatric technicians, educational coordinators, development technologists, medical technologists, mental health clinicians, dieticians, physical therapists, X-ray technicians (RT's diagnostic and nuclear), speech therapists, occupational therapists, inhalation therapists, medical records librarians and social workers, all employees in the pastoral care department, all nuns, all employees in the personnel department, confidential employees, management employees, guards and supervisors as defined by the Act.

(b) Withdrawing recognition of the Union as the exclusive bargaining representative of the Unit, absent objective evidence that the Union has actually lost the support of a majority of the bargaining unit employees and absent any notice and the opportunity to bargain.

(c) Changing the terms and conditions of employment of its unit employees, absent an overall good-faith bargaining impasse and without first notifying the Union and giving it the opportunity to bargain.

(d) Providing more than ministerial assistance to employees in propelling any decertification petition.

(e) Promising employees higher pay if they reject the Union as their bargaining representative by signing any petition to decertify the Union as their bargaining representative.

(f) Soliciting employees to sign any petition to decertify the Union as their bargaining representative.

(g) Prohibiting employees from talking about the Union during working time while permitting employees to talk about other nonwork subjects.

(h) Threatening employees with discipline or reassignment to a different work location if they talked about the Union at work.

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

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

(a) Beginning within 15 days of the Union's request, meet with the Union at reasonable times and bargain in good faith with the Union as the exclusive bargaining representative of employees in the above-described bargaining unit concerning terms and conditions of employment and, if an understanding is reached,

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

embody the understanding in a signed agreement. Upon the Union's request, such bargaining sessions shall be held for a minimum of 15 hours per week or in the alternative on another schedule to which the Union agrees. The Respondent shall submit written bargaining progress reports every 15 days to the compliance officer for Region 27, and shall serve copies of them on the Union.

(b) Upon request by the Union, rescind the wage increases provided to unit employees in March 2021, a time when the parties were not at an overall good-faith bargaining impasse.

(c) Rescind the other changes in terms and conditions of employment for its employees that were implemented, absent an overall good-faith impasse in bargaining, in March 2021: removal of five Union bulletin boards and ceasing to deduct and remit dues to the Union.

(d) Make the Union whole for any dues it would have received but for the Respondent's unilateral action of ceasing dues deductions and transmitting those dues to the Union. *Valley Hospital Medical Center (Valley Hospital II)*, 371 NLRB No. 160, slip op. at 1 (2022). Respondent will make the Union whole only for dues it would have received from employees who have individually signed dues-checkoff authorizations. See, e.g., *W.J. Holloway*, 307 NLRB 487, 491 (1992); *Creutz Plating Corp*., 172 NLRB 1, 1 (1968). 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). See *Space Needle, LLC*, 362 NLRB 35, 39 (2015), enfd. on other grounds 692 Fed.Appx. 462 (9th Cir. 2017).

(e) Post at its Pueblo, Colorado, facilities copies of the attached notice marked "Appendix."[27] Copies of the Notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed 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 February 24, 2021.

(f) Hold a meeting or meetings during work hours at its Pueblo facilities, scheduled to ensure the widest possible attendance of bargaining unit employees, at which the attached Notice marked "Appendix" will be read to employees by a high-ranking management official of the Respondent in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of a high-ranking management official of the Respondent and, if the Union so desires, the presence of an agent of the Union.

(g)_ Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 20, 2023

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with the Communication Workers of America as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

> All non-professional employees employed by Respondent at its hospital in Pueblo, Colorado and the Southern Colorado Family Medicine (SCFM) facility located at 902 Lakeview Ave.; excluding all professional employees, which includes the following classifications: pharmacists, registered nurses, psychiatric technicians, educational coordinators, development technologists, medical technologists, mental health clinicians, dieticians, physical therapists, X-ray technicians (RT's diagnostic and nuclear), speech therapists, occupational therapists, inhalation therapists, medical records librarians and social workers, all employees in the pastoral care department, all nuns, all em-

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

ployees in the personnel department, confidential employees, management employees, guards and supervisors as defined by the Act.

WE WILL NOT withdraw recognition from the Union or refuse to recognize and bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT unilaterally change your wages or other terms and conditions of employment without first having reached an overall good-faith impasse in bargaining for a successor Collective Bargaining Agreement and without first notifying and giving the Union an opportunity to bargain.

WE WILL NOT unilaterally cease deducting and remitting dues to the Union.

WE WILL NOT unilaterally remove Union materials from bulletin boards or cease providing the Union with access to its bulletin boards at the Pueblo facilities.

WE WILL NOT provide more than ministerial assistance to employees in propelling any decertification petition.

WE WILL NOT promise employees higher pay or other benefits if they reject the Union as their bargaining representative.

WE WILL NOT solicit employees to sign a decertification petition.

WE WILL NOT prohibit employees from talking about the Union during working time while permitting employees to talk about non-work subjects.

WE WILL NOT threaten employees with discipline or reassignment to a different work location if they talk about the Union at work.

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, beginning within 15 days of the Union's request, meet with the Union at reasonable times and bargain in good faith with the Union as your exclusive bargaining representative concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a written agreement. Upon the Union's request, such bargaining sessions shall be held for a minimum of 15 hours per week, or in the alternative on another schedule to which the Union agrees.

WE WILL submit written bargaining progress reports every 15 days to the compliance officer for Region 27, and WE WILL serve copies of these reports on the Union.

WE WILL, on request by the Union, rescind the wage increases provided to unit employees that were unilaterally implemented in March 2021.

WE WILL rescind the other changes in the terms and conditions of employment for unit employees that were unilaterally implemented in March 2021: removal of Union bulletin boards and ceasing of Union access to those bulletin boards and ceasing to deduct dues and remit those dues to the Union.

WE WILL, before making any changes in the terms and conditions of employment for unit employees, provide the Union with notice and the opportunity to bargain as their collective-bargaining representative.

WE WILL make the Union whole for any dues it would have received but for our unilateral cessation of dues deductions and failure to remit those dues to the Union starting in March 2021.

CATHOLIC HEALTH INITIATIVES COLORADO D/B/A CENTURA HEALTH-ST. MARY CORWIN MEDICAL CENTER

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/ 27-CA-273705 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.