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Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, Community Health Systems, Inc., and/or Community Health Systems Professional Services Corp., LLC a single employer and/or joint employers and National Nurses Organizing Committee/National Nurses United (NNOC/NNU). Case 10–CA–153544

September 30, 2026

**SUPPLEMENTAL DECISION AND ORDER
REMANDING**

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On June 18, 2020, the National Labor Relations Board issued a Corrected Decision and Order in this proceeding, approving the parties’ Formal Settlement Stipulation providing for a consent order indicating that the Respondent, Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, violated Sections 8(a)(1), (3), and (5) of the National Labor Relations Act.¹ The Board ordered the Respondent to make whole eight discriminatees for their loss of earnings, if any, and other benefits, if any, suffered as a result of their discharges, compensate them for any adverse tax consequences of receiving lump-sum backpay awards, if any, and file reports with the Regional Director allocating the backpay awards, if any, to the appropriate calendar years. On July 23, 2020, the United States Court of Appeals for the Fourth Circuit entered its Judgment, Order, and Mandate enforcing the Board Order in full.²

On September 18, 2023, a controversy having arisen over the amount of backpay owed to the discriminatees, the Acting Regional Director for Region 10 issued a compliance specification and notice of hearing alleging the amounts owed under the Board’s Order and notified the Respondent of its obligation to file a timely answer complying with the Board’s Rules and Regulations.³ On Oc-

tober 30, 2023, the Regional Director issued an Order Rescheduling Hearing. The Respondent filed a timely answer on November 9, 2023, and asserted certain affirmative defenses. By a letter sent via email, and dated November 14, 2023, the General Counsel advised the Respondent that parts of its answer were deficient under Section 102.56(b) of the Board’s Rules and Regulations.⁴ The letter requested that the Respondent file an amended Answer that complies with the Rules by November 17, 2023, and indicated that, in the absence of such an answer, the General Counsel would file a motion for default judgment. The Respondent did not file an amended Answer. On February 14, 2024, the Regional Director issued an Order Rescheduling Hearing and Setting Location. On April 25, 2024, the Regional Director issued an Order Postponing the Hearing Indefinitely.

On November 5, 2024, the Regional Director issued an amended compliance specification and notice of hearing. On December 10, 2024, the Respondent filed a timely answer to the amended compliance specification, admitting in part and denying in part the allegations in the specification. The Respondent denies, among other things, the alleged backpay formula, asserting that the General Counsel “has not used an appropriate measure” of employees’ backpay because the measure should not “include any wage increases for any of the employees.” The Respondent also denies the interim earnings formula, asserting that interim earnings should not be “based upon an ‘estimate’ and aver[ring that] the [interim] earnings should be based upon the earnings [employees] actually received, which are presently unknown to the” Respondent. Regarding 401(k) benefits, the Respondent denies that employees are entitled to employee contributions, matching contributions, or lost investment earnings and avers that, assuming arguendo any employees are entitled to such contributions or earnings, they should be paid consistent with the terms of any governing 401(k) plan or in accordance with applicable law. The Respondent also asserts that it is unable to formulate a response to certain allegations involving adverse tax consequences asserting,

¹ *Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, Community Health Systems, Inc., and/or Community Health Systems Professional Services Corporation, LLC, a single employer and/or joint employers*, Case No. 10–CA–153544, 2020 WL 3415693 (NLRB June 18, 2020).

The General Counsel and the Respondent also negotiated an informal settlement agreement that provides, among other things, for the posting, reading, emailing, and mailing of a Notice to Employees that includes the allegations covered by this Formal Settlement Stipulation. These remedies are not at issue here.

² *NLRB v. Bluefield Hospital Co., LLC d/b/a Bluefield Regional Medical Center*, No. 20-1695 (10–CA–153544) (4th Cir. July 23, 2020).

³ The Regional Director acted pursuant to the Formal Settlement Stipulation, which expressly provided that the General Counsel and the Respondent “have not reached agreement concerning the amount of backpay, if any, owed arising from the stipulated violations.” The Stipulation continued that, “[u]pon the issuance of a Board Order approving this Stipulation, the Regional Director for Region 10 . . . shall issue a Compliance Specification and Notice of Hearing to determine the amount of backpay, if any, due . . . for the stipulated violations.”

⁴ Several individuals served as General Counsel or Acting General Counsel during the pendency of this case. For simplicity, we refer to the “General Counsel” throughout.

among other things, that the allegations do not identify the tax rates used for the calculations.

By letter dated February 3, 2025, the General Counsel advised the Respondent that parts of its answer to the amended compliance specification were deficient under Section 102.56(b) of the Board's Rules and Regulations. The letter requested that the Respondent file an amended Answer that complies with the Rules by February 10, 2025, or the Region would file a motion for partial summary judgment. The Respondent did not file an amended Answer, but, on February 10, 2025, the Respondent requested to meet and confer to narrow the scope of the dispute. The parties met on February 18, 2025, but did not reach an agreement. On February 28, 2025, the Region notified the Respondent in writing that its continued failure to cure the insufficient Answer would result in the General Counsel filing a motion for partial summary judgment.

On March 28, 2025, the General Counsel filed the instant Motion for Partial Summary Judgment, with exhibits attached. The General Counsel argues that certain paragraphs of the Respondent's answer fail to meet the requirements of Section 102.56(b) of the Board's Rules because significant portions of its Answer lack the requisite specificity, contain general denials and conclusionary statements without setting forth the basis of such disagreement, do not contain alternative premises, and/or do not contain supporting figures. The General Counsel also seeks summary judgment based on the Respondent's "unqualified admission" to certain allegations.

On June 23, 2025, the Chief Administrative Law Judge, acting pursuant to 29 C.F.R. § 102.179, issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted.

On July 14, 2025, the Respondent filed a response to the Notice to Show Cause and opposition to the motion whereby it supplemented its answer in reliance on *Daufuskie Club, Inc. d/b/a Daufuskie Island Club and Resort, Inc.*, 341 NLRB 595, 596 (2004). Among other arguments, the Respondent supplemented its denial of the backpay allegations by asserting that each employee was a party to an employment agreement with the Respondent and these agreements did not include any obligation of the Respondent to pay the wage increases sought by the General Counsel.

On July 28, 2025, the General Counsel filed a reply to the Respondent's opposition. On August 7, 2025, the Re-

spondent filed a motion to strike parts of the General Counsel's Reply.⁵

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motion for Partial Summary Judgment

Sections 102.56(b) and (c) of the Board's Rules and Regulations provide as follows:

(b) Form and contents of answer. The answer to the specification must be in writing, signed and sworn to by the Respondent or by a duly authorized agent with appropriate power of attorney affixed, and contain the address of the Respondent. The answer must specifically admit, deny, or explain each allegation of the specification, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial. Denials must fairly meet the substance of the allegations of the specification at issue. When a Respondent intends to deny only a part of an allegation, the Respondent must specify so much of it as is true and deny only the remainder. As to all matters within the knowledge of the Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial will not suffice. As to such matters, if the Respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer must specifically state the basis for such disagreement, setting forth in detail the Respondent's position and furnishing the appropriate supporting figures.

(c) Failure to answer or to plead specifically and in detail to backpay allegations of specification. If the Respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the Respondent, find the specification to be true and enter such order as may be appropriate. If the Respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure to deny is not adequately explained, such allegation will be deemed admitted as true, and may be so found by the Board without the taking of evidence supporting such allegation, and the Respondent will be precluded from introducing any evidence controverting the allegation.

⁵ We deny this motion as an impermissible surreply. In consideration of the need for administrative finality, surreply briefs are generally not permitted "except by special leave of the Board." Here, the Respondent

has not presented any circumstances warranting special leave. *Baker Electric*, 330 NLRB 521, 523 fn. 4 (2000).

Having reviewed the parties' contentions, we grant in part and deny in part the General Counsel's Motion for Partial Summary Judgment.⁶

Gross Backpay

The General Counsel alleges that an appropriate measure of gross backpay is based on each discriminatee's average gross bi-weekly earnings during the 12 months immediately preceding the Respondent's subcontracting of their work, *plus wage increases that they would have received throughout the backpay period*, pursuant to the average amount of the Respondent's wage increases granted to each respective discriminatee during their employment. In its answer and opposition, the Respondent denies that the calculation of discriminatees' gross backpay should include the wage increases described by the General Counsel. The Respondent asserts that each employee was a party to an employment agreement with the Respondent, the agreements address the employee's compensation, and the agreements do not include any obliga-

tion on the part of the Respondent to pay the wage increases sought by the General Counsel. The Respondent also asserts that the agreements set forth the entirety of the parties' agreement on the subjects addressed in the document, such as compensation, and additionally provide that any changes to the parties' agreement must be confirmed in a document signed by the parties. Finally, the Respondent asserts that these agreements were never amended to impose on the Respondent any new obligation related to the employees' compensation. The General Counsel seeks summary judgment on grounds that the Respondent's answer and opposition provide insufficient general denials in contravention of Section 102.56(b) of the Board's Rules.

Whether the discriminatees would have received wage increases throughout the backpay period is a genuine factual issue in dispute. Accordingly, we deny the General Counsel's motion for summary judgment as to specification allegation paragraph 2.⁷ At the hearing, the Respond-

⁶ In its answer to the amended compliance specification, the Respondent admits allegations involving the backpay period (par. 1(a)-(e) (except as to employee Van Browning, discussed below)); gross backpay (par. 4(a)-(b) and 4(c)(ii)(2)); interim earnings (par. 5(a)); net backpay (par. 6(d)); 401(k) benefit (pars. 11(a), 11(c), 11(d), 12(a), 13(c) (to the extent the allegation refers to the table of employees' 2015 401(k) contribution election percentage listed in specification par. 4(d)), 13(e), and 14(f)). We grant summary judgment as to these paragraphs.

By its defense to certain allegations, the Respondent impermissibly seeks to relitigate the remedy in the court-enforced Board Order providing, in relevant part, that the alleged discriminatees should be made "whole for any loss of earnings, if any, and other benefits, if any, suffered as a result of their discharges" and that the Respondent should compensate the alleged discriminatees for "adverse tax consequences, if any, of receiving lump-sum backpay awards." Even if relitigation of the remedy were otherwise permissible, which it is not, we have no jurisdiction to modify a court-enforced order. See, e.g., *Interstate Bakeries Corp.*, 360 NLRB 112, 112 fn. 3 (2014); *Grinnell Fire Protection Systems Co.*, 337 NLRB 141, 142 (2001). Accordingly, we grant summary judgment as to allegations involving adverse tax consequences (par.16(a)-(b)), and the specification's summary (par. 17(b)).

We deny the General Counsel's motion for summary judgment as to allegations involving discriminatee Van Browning's backpay period. Here we refer to specification pars. 1(b)-(c) and 4(c)(i). The Respondent is entitled to attempt to establish that, even in the absence of the alleged unlawful conduct settled by the Stipulation, Browning would not have retained his employment and that backpay would have been tolled because of Browning's purported misconduct. Under Board precedent, "if an employer satisfies its burden of establishing that the discriminatee engaged in unprotected conduct for which the employer would have discharged any employee, reinstatement is not ordered and backpay is terminated on the date that the employer first acquired knowledge of the misconduct." *Tel Data Corp.*, 315 NLRB 364, 367 (1994) (citing cases), reversed in part on other grounds 90 F.3d 1195 (6th Cir. 1996). Here, because the Respondent contends that Browning is not entitled to any backpay, the Respondent can argue to the administrative law judge on remand that it knew of Browning's purported misconduct prior to the backpay period start date of February 9, 2015. However, by arguing only that no backpay is due and not providing an alternative backpay period, the Respondent has waived any argument that backpay should be tolled

at some point after the alleged backpay period start date of February 9, 2015. The Respondent may also attempt to establish that, even if Browning were to receive some backpay, the Respondent had no knowledge regarding his purported temporary unavailability for employment.

With respect to discriminatee Browning's backpay period, Member Prouty would grant the General Counsel's motion for summary judgment, including pars. 1(b)-(c) and 4(c)(i), because the Respondent put forth a legally insufficient denial. The Respondent asserts that Browning engaged in misconduct "during the proceedings in th[is] case" but that he is not entitled to any backpay. Because Board law provides for backpay to be tolled only as of the date the Respondent first acquired knowledge of the misconduct, and this case did not begin until after the Respondent discharged Browning on February 9, 2015, any misconduct "during the proceedings in th[is] case" would necessarily be after the discharge. Accordingly, Browning should necessarily be awarded some backpay, even if he engaged in the alleged misconduct after this case had commenced. However, instead of providing an alternative backpay period end date for when it learned of Browning's alleged misconduct, as required under Sec. 102.56(b) of the Board's Rules and Regulations, the Respondent summarily stated that Browning was not entitled to any backpay and provided no alternative backpay period end date. The Respondent's answer to these paragraphs is therefore insufficient to withstand summary judgment.

The General Counsel does not seek, and we do not grant, summary judgment as certain specification allegations involving interim earnings (par. 5(b)); search-for-work and interim employment expenses (pars. 7(a)-(d), 8(a)-(c), 9(a)-(d), and 10(a)-(d)); 401(k) benefits (par. 14(g), 14(i), and 14(k)-(l)); and the specification summary (par. 17(c)-(d)).

We note that the General Counsel's compliance specification does not allege a subparagraph 15(i).

⁷ We address various specification paragraphs that are "dependent" on or "related to" paragraph 2, such as paragraphs 3(a)-(c), 4, and 4(a)-(f), below. See *Alaris Health at Harborview*, 371 NLRB No. 62, slip op. at 3 (2022) (finding certain specification allegations "dependent" on other adequately denied allegations and denying summary judgment as to these "related" allegations).

Member Prouty would grant the General Counsel's motion for summary judgment as to the method for calculating gross backpay in par. 2 based on the following Respondent admission in its answer: "Assuming arguendo any backpay is owed to any of the employees, [the Respondent]

ent can submit into evidence its employment agreements and other documents, if any, that purportedly show that the employees would not have received wage increases during the backpay period. See *1621 Route 22 West Operating Co., LLC d/b/a Somerset Valley Rehabilitation*, 371 NLRB No. 86, slip op. at 7 (2022) (denying summary judgment as to alleged pay increase).

Interim Earnings

We also deny the General Counsel's motion for summary judgment as to the amended compliance specification's allegations regarding interim earnings. Under longstanding Board precedent, a general denial is sufficient to warrant a hearing on issues that are not within a respondent's knowledge, such as interim earnings. *M&M Affordable Plumbing, Inc.*, 365 NLRB 546, 548 (2017). Here, the General Counsel alleges at specification paragraphs 5(d)-(e) that discriminatees' interim earnings were "estimated" based on documentary evidence showing the terms of an agreement offered by an interim employee to one of the Respondent's employees, and that a part-time employee's full-time interim earnings should be prorated consistent with her average bi-weekly hours while employed by the Respondent. The Respondent denies that the interim earnings should be based upon an "estimate" and avers that the earnings should be based upon the interim earnings discriminatees' actually received, which are presently unknown to the Respondent. The Respondent also denies that the part-time employee's interim earnings should be prorated and avers that the entirety of her actual interim earnings should be applied as an offset to any calculation of her gross backpay. The General Counsel seeks summary judgment on the grounds that the Respondent's answer and opposition provide only general denials, which are insufficient under Section 102.56(b) of the Board's Rules. Relatedly, the Respondent also denies knowledge or information as to specification allegation

par. 5(c), which alleges that no interim earnings were offset against weeks for which no backpay was due.

Contrary to the General Counsel's assertion, the Respondent's general denial based on lack of knowledge or information is sufficient to warrant a hearing on these issues. See *M&M Affordable Plumbing*, above, 365 NLRB at 548. Furthermore, the Respondent also supplied an alternative methodology for calculating interim earnings. Specifically, the Respondent asserts that interim earnings should not be estimated but determined based on actual earnings, and interim earnings should not be prorated, but that the entirety of the part-time employee's interim earnings should be applied as an offset to any calculation of her gross backpay. Because the actual amounts of interim earnings are beyond the Respondent's knowledge, and the Respondent provided an alternative method of determining the discriminatees' interim earnings, the Respondent has raised a triable issue as to what amounts of interim earnings should be used to offset gross backpay.⁸

We also deny the General Counsel's motion for summary judgment with respect to the allegations involving interim employer retirement benefits, set forth at compliance specification paragraph 14(h), 14(m), and 14(n).⁹ The Respondent generally denied these allegations, including for lack of knowledge or information as to the accuracy of the allegations. In *Alaris Health at Harborview*, the Board explained that "[u]nder certain limited circumstances, a respondent's gross liability for lost pension contributions may be offset by pension contributions made by a discriminatee's interim employer." 371 NLRB No. 68, slip op. at 3 (citing NLRB Casehandling Manual (Part Three) Compliance, Section 10544.3). The Board held that the respondent's general denial of certain pension-related allegations was sufficient to warrant a hearing because the question whether any offsetting pension contributions were made was a matter outside of the respondent's knowledge. *Id.*; see also *M&M Affordable*

admits that Par[.] (2) of the Specification sets forth an appropriate measure of gross backpay except denies that the measure should include any wage increases for any of the employees." He agrees, however, with his colleagues that the Respondent has raised a triable issue as to whether the employees are entitled to have wage increases included in the computation of gross backpay, and he joins in denying summary judgment as to the specification paragraphs that directly pertain to whether the discriminatees are entitled to any wage increases, including par. 4(c)(ii)(1).

⁸ Member Prouty would grant summary judgment as to par. 5(c) providing that no interim earnings are offset against weeks for which no backpay is due, as this assertion is correct as a matter of law. See *Somerset Valley Rehabilitation & Nursing Center*, 371 NLRB No. 101, slip op. at 2 fn. 7 (2002) (granting summary judgment as to allegations that are correct as a matter of law). He joins his colleagues, however, in denying summary judgment on pars. 5(d)-(e) pertaining to the discriminatees' interim earnings because the Respondent provided an alternative method of determining the discriminatees' interim earnings and the actual

amounts of interim earnings received by the discriminatees are beyond the Respondent's knowledge.

⁹ Member Prouty joins his colleagues in denying summary judgment on par. 14(h) pertaining to interim employer retirement benefits, which is beyond the Respondent's knowledge, and par. 14(n) that summarizes the General Counsel's computation of the amount the Respondent owes to each discriminatee in 401(k) matching contributions. He would, however, grant summary judgment on par. 14(m) providing that interim employers' automatic retirement contributions do not offset the 401(k) matching contributions owed by the Respondent because automatic retirement contributions were not offered by the Respondent and, thus, are not part of the gross backpay. See NLRB Casehandling Manual (Part Three) Compliance, Sec. 10552.4 ("[C]ontributions to a retirement fund are not normally treated as interim earnings and offset against gross backpay. . . . [R]etirement contributions earned through interim employment may, however, be offset against equivalent benefits that are components of gross backpay.").

Plumbing, 365 NLRB at 548. Similarly, here, we find that the Respondent's denial regarding interim employer retirement benefits is sufficient to warrant a hearing.

For the reasons discussed above, we deny the General Counsel's motion for summary judgment as to specification paragraphs 5(c)-(e), 14(h), 14(m), and 14(n).

Dependent Allegations

Certain other allegations in the compliance specification are dependent on the calculation of backpay amounts and/or interim earnings or otherwise relate to material issues involving the Respondent's 401(k) benefit. Specifically, those allegations involve the Respondent's liability for gross backpay (par. 4(d)); 401(k) benefits (11(b), 11(e), 12, 13(a)-(b), 13(d), 15(a)-(g), and 15(k)-(l)); adverse tax consequences (16(c)-(l)); the specification's summary (par. 17(a)); and specification Appendices A-C setting forth amounts owed by the Respondent. Because the Respondent's answer and opposition have adequately

denied the specification's allegations involving backpay, interim earnings, and the 401(k) benefit, discussed above, we deny the General Counsel's motion for partial summary judgment as to these related allegations as well.¹⁰ See *Alaris Health at Harborview*, 371 NLRB No. 68, slip op. at 3 (2022) (finding certain specification allegations "dependent" on other adequately denied allegations and denying summary judgment as to these "related" allegations); *Alaris Health at Harborview*, 371 NLRB No. 62, slip op. at 3 (2022) (same).¹¹

We also deny summary judgment as to other allegations involving gross backpay (pars. 3, 3(a)-(c), 4, 4(c), 4(c)(ii)(1), and 4(e)-(f)); net backpay (par. 6(a)-(c)); and 401(k) benefit (pars. 12(b), 14(a)-(e), 14(j), 15(h), and 15(j)).¹² We find that the Respondent's partial admissions to these allegations do not preclude our denial of summary judgment because they relate to other specification allegations that the Respondent sufficiently denied. See gener-

¹⁰ Member Prouty joins his colleagues in denying summary judgment on pars. 12, 13(a), 13(d), 15(k), and 17(a) that summarize the General Counsel's computations of the amounts owed for various components of the discriminatees' backpay awards. However, Member Prouty would grant summary judgment as to the paragraphs that pertain to information about the discriminatees' participation in the Respondent's 401(k) plan that was indisputably within the Respondent's knowledge and for which the Respondent only provided a general denial: par. 4(d) (discriminatees' 401(k) contribution election percentage), par. 15(d) (discriminatees' investment allocations), par. 15(e) (annual fund performance of Respondent 401(k) investment options). Similarly, Member Prouty would grant summary judgment as to the following paragraphs that are correct as a matter of law: par. 11(b) (discriminatees who participated in Respondent's 401(k) plan at the time of their discharge are entitled to be made whole for loss 401(k) contributions, 401(k) matching contributions, and investment earnings); par. 11(e) (401(k) make whole remedy should be directed to discriminatees' 401(k) retirement account, if permitted, or paid as backpay plus an additional offset for tax withholdings); par. 13(b) (quarterly gross backpay to be set aside as 401(k) contributions is based on the discriminatees' elected 401(k) contribution rate in the year of their discharge); par. 15(a) (missed investment earnings are a component of the 401(k) portion of the make whole remedy); pars. 15(b) and 15(g) (discriminatees who participated in Respondent's 401(k) in the year of their discharge are owed for missed 401(k) investment earnings); par. 15(c) (missed investment earnings are based on the quarterly performance of the funds in which discriminatees' 401(k) contributions were allocated); par. 15(f) (401(k) benefits are not offset by interim wage earnings); and par. 15(l) (missed 401(k) investment earnings accrue to the date of payment). See *Somerset Valley Rehabilitation & Nursing Center*, 371 NLRB No. 101, slip op. at 2 fn. 7 (granting summary judgment as to allegations that are correct as a matter of law). Furthermore, Member Prouty would grant summary judgment as to the premises and methodology in pars. 16(c)-(l), regarding the adverse tax consequences of the discriminatees' backpay award, for which the General Counsel's motion for summary judgment "acknowledges that any calculations of adverse tax consequences for the [discriminatees] are subject to adjustment based on the final determination of the net backpay owed to each of them." See *1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation & Nursing Center*, 371 NLRB No. 86, slip op. at 4 fn. 8 (granting summary judgment as to the methods for computing an excess tax award). He does not read the General Counsel's

motion on pars. 16(c)-(l) as requesting summary judgment on the calculations of the final amounts the Respondent owes to the discriminatees for the adverse tax consequences of their backpay award.

¹¹ See also *Fugazy Continental Corp.*, 260 NLRB 1225, 1226 (1982). There, the Board denied the General Counsel's motion for partial summary judgment as to net backpay and noted that the "Respondent's answers made general denials to those paragraphs of the backpay specification, and inasmuch as the general denial on the issue of interim earnings is directly related to the computation and accuracy of net backpay, which, in turn, is dependent upon the data derived from interim earnings, these general denials are sufficient to require a hearing on the issue." *Id.*

¹² Member Prouty joins his colleagues in denying summary judgment on par. 14(a) that alleges the amount of quarterly 401(k) matching contributions owed to each discriminatee and, as noted above, par. 4(c)(ii)(1). He would grant summary judgment as to paragraphs admitted to by the Respondent involving gross backpay (pars. 3, 3(a)-(c), 4, 4(c), and 4(e)-(f)); net backpay (par. 6(a)-(c)); and 401(k) benefit (pars. 12(b), 15(h), and 15(j)). Member Prouty would also grant summary judgment as to paragraphs 14(b)-(e) that lay out the calculation of quarterly 401(k) matching contributions owed to the discriminatees who participated in the Respondent's 401(k) plan in the year of their discharge. The relevant specification paragraphs provide for multiplying the discriminatees' quarterly 401(k) contributions by the Respondent's 401(k) matching rates minus matching rate contributions from interim employers, without regard to whether quarterly interim earnings exceeded quarterly gross backpay. This is an appropriate method for calculating quarterly 401(k) matching contributions. See NLRB Casehandling Manual (Part Three) Compliance, Sec. 10544.3 ("Retirement benefits are not offset by interim wage earnings. . . . 401(k) retirement benefits often necessitate individual calculations for each discriminatee [I]t is generally necessary to determine individual contribution amounts, employer matching contributions, investment selections, and finally to chart the earnings/loss of each discriminatee's 401(k) investments for the duration of the backpay period."). In addition, Member Prouty would grant summary judgment on par. 14(j) alleging that the Respondent did not offer an automatic employer retirement contribution benefit separate from its 401(k) match, for which the Respondent's answer asserted that the allegation was ambiguous and only provided a general denial, despite the Respondent indisputably knowing what employment benefits it provided the discriminatees.

ally *Alaris Health at Harborview*, 371 NLRB No. 68, slip op. at 3 (denying summary judgment as to “dependent” allegations); *Alaris Health at Boulevard East*, 371 NLRB No. 62, slip op. at 3 (same); *V&J Cleaners Co.*, 310 NLRB 525, 526 (1993) (finding respondent entitled to compliance hearing on certain specification allegations that had “been answered in accordance with the Board’s Rules and in large part denied”).

ORDER

IT IS ORDERED that the Respondent’s motion to strike portions of the Acting General Counsel’s Reply is denied.

IT IS FURTHER ORDERED that the General Counsel’s Motion for Partial Summary Judgment is granted as to the allegations contained in the following paragraphs of the amended compliance specification: 1(a)-(e) (except as to employee Van Browning), 4(a)-(b), 4(c)(ii)(2), 5(a), 6(d), 11(a), 11(c)-(d), 12(a), 13(c) (to the extent the allegation refers to the table of employees’ 2015 401(k) contribution election percentage listed in specification par. 4(d)), 13(e), 14(f), 16(a)-(b), and 17(b).

IT IS FURTHER ORDERED that the General Counsel’s Motion for Partial Summary Judgment is denied as to paragraphs 2, 3, 3(a)-(c), 4, 4(c), 4(c)(ii)(1), 4(d)-(f), 5(c)-(e), 6(a)-(c), 11(b), 11(e), 12, 12(b), 13(a)-(b), 13(d), 14(a)-(e), 14(h), 14(j), 14(m), and 14(n), 15(a)-(h), 15(j)-(l), 16(c)-(l), 17(a), and specification Appendices A-C.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 10 for the

purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge limited to taking evidence concerning paragraphs of the amended compliance specification as to which summary judgment was denied.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge’s decision on the parties, the provisions of Section 102.46 of the Board’s Rules and Regulations shall be applicable.

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

James R. Murphy,	Chairman
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David M. Prouty,	Member
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Scott A. Mayer,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD