Covenant House New York *and* 1199SEIU United Healthcare Workers East. Case 02–CA–337831

August 5, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On September 29, 2025, Administrative Law Judge Lauren Esposito issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and Charging Party 1199SEIU United Healthcare Workers East (the Union) each filed answering briefs, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions[3] and to adopt the recommended Order as modified.[4]

The Respondent does not except to the judge's substantive findings that it violated the National Labor Relations Act as alleged. Specifically, no exceptions were filed to the judge's findings that the Respondent: (1) violated Section 8(a)(5) and (1), since on or about February 13, 2024, by its overall conduct, including cancelling bargaining sessions, refusing to make bargaining proposals, refusing to meet since February 13, 2024, conditioning bargaining on the Union's selection of bargaining representatives and refusing to bargain unless the Union removed certain members of its bargaining committee, refusing to bargain with the Union under any circumstances since July 2024, and refusing to provide information necessary for the Union's performance of its duties as the exclusive collective bargaining representative, thereby failing and refusing to bargain collectively and in good faith; (2) violated Section 8(a)(5) and (1), since on or about November 15, 2023, and February 22, 2024, by failing and refusing to provide information requested by the Union which is necessary and relevant to the Union's performance of its duties as the unit employees' collective-bargaining representative, thereby failing and refusing to bargain collectively and in good faith; and (3) violated Section 8(a)(1), on or about June 4, 2024, by threatening employees, both orally and in writing, with discipline if they engaged in activity on behalf of the Union, including interacting with the Union and/or discussing the Union with other employees.

Instead, the Respondent's exceptions argue that the Board should reverse the judge's violation findings because: (1) the judge disregarded its purported admissions that Respondent Director of Development and Communications John Sentigar and Respondent Program Compliance Coordinator Gabrielle Perez are managerial employees; and (2) it was denied due process by the Region's application of the Board's Skip Counsel Policy, which is set forth in §10058.2 of the Board's Casehandling Manual, Part One, Unfair Labor Practice Proceedings, by interviewing Sentigar and Perez as part of its investigation of the unfair labor practice charge, without obtaining the consent of the Respondent's counsel.[5]

We find both arguments are meritless for the same reasons that they were thoroughly rejected by the judge.[6]

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[1] For the reasons stated by the judge, we find that the judge did not abuse her discretion by denying the Respondent's motion to adjourn the hearing and hold the record open pending a response from the Board's Freedom of Information Act (FOIA) Branch.

[2] 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.

[3] Despite noting the violation in her decision, the judge failed to include in the second Conclusion of Law that the Respondent's overall conduct of failing and refusing to bargain in good faith with the Union violated Sec. 8(a)(5) and (1). We shall correct this inadvertent omission.

[4] In paragraph 2(b) of the judge's recommended Order, the judge misstated the date of the Union's first information request on November 15, 2023 and the date of the Certification of Representative in Case 02–RC–296488, which issued on August 10, 2022. We shall correct these errors. We shall also modify the judge's recommended Order to conform to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

[5] To the extent the Respondent's exceptions could be construed as excepting to the judge's substantive violation findings independent of these contentions, the Respondent made only "bare" exceptions without supporting argument and, accordingly, we disregard them under Sec. 102.46(a)(1)(ii) of the Board's Rules and Regulations. See *TBC Corp. and TBC Retail Group, Inc.*, 367 NLRB No. 18, slip op. at 2 fn. 3 (2018).

The judge recommended an affirmative bargaining order to remedy the Respondent's unlawful failure and refusal to bargain in good faith with the Union. We note that, because no party filed a particularized exception to the affirmative bargaining order, the Board is not required to furnish a specific justification for it. See *Scepter v. NLRB*, 280 F.3d 1053, 1057 (D.C. Cir. 2002) (holding the Board may issue an affirmative bargaining order without providing a specific justification in the absence of particular exceptions).

[6] While not directly addressed by the judge, the Respondent's challenge to the facial validity of the Board's Skip Counsel Policy is without merit. The Board's Skip Counsel Policy comports with American Bar Association (ABA) Model Rule 4.2, which provides that "a lawyer shall not communicate about the subject of the representation with a person the lawyer *knows* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order" (emphasis added). The Board's Skip Counsel Policy appropriately provides for a preliminary interview to be conducted to determine whether an individual being interviewed is a party agent represented by the party's counsel and that any substantive interviews without the consent of the party's counsel must only occur after it be-

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 2: "Since on or about February 13, 2024, by its overall conduct, Covenant House New York has failed and refused to bargain collectively and in good faith, in violation of Section 8(a)(5) and (1), with 1199SEIU United Healthcare Workers East, the exclusive collective bargaining representative of the employees in the following appropriate unit:

> All full-time, regular part-time and per diem professional employees of the Employer, including employees in the following classifications: Nurse Practitioner, Social Worker, Senior Social Worker, Child Development Director, Director of Development and Communications, Grants Manager, Program Compliance Manager, Data Strategy Specialist, Database Administrator, Program Compliance Coordinator, Project & Communications Coord., Project Coordinator Leasing and Housing, Operations Engineer, and Senior Staff Accountant, and all full-time and regular part-time and per diem nonprofessional employees of the Employer, including employees in the following classifications: Case Managers, Individual Placement and Support, Custodian Specialists, Facilities Manager, Facility Specialist, Cook, Kitchen Helper, Shift Lead, Resident Advisor, Senior Resident Advisor, Youth Advancement Specialist, Youth Benefits Support Specialist, Childcare Specialist, Intake Specialist, Lead Medical Assistant, Medical Assistant, Medical Receptionist, Training Coordinator, WOW Instructor, Development & Communications Associate, Facilities Administrative Coordinator, Health Center Office and Insurance Coordinator, Housing Voucher Specialist, In Kind Donation Specialist, Real Estate Coordinator, Youth Development & LGBTQ Program Specialist, Youth Development Coordinator, Program Schedule Coordinator, and Senior Vocational Specialist, in working at or out of the following locations in the five (5) boroughs of New York City: 460 West 41st Street, New York, NY 10036; 3322 Bainbridge Avenue, Bronx, NY 10467; 2501 Glebe Avenue, Bronx, NY 10461; 1272 Fteley Avenue, Bronx, NY 10472; 927 Avenue Saint John, Bronx, NY 10455; 3306 Steuben Avenue, Bronx, NY 10467; and 45 West 177 Street, Bronx, NY 10453."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Covenant House New York, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

> "(b) Provide to 1199 in a timely manner the information requested by the Union in the November 15, 2023 and February 22, 2024 e-mails from Union Vice President Kareem Cooper to Covenant House New York Chief Executive Officer Dr. Shakeema North-Albert, including the following:
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> (i) Copies and dates of all communications and/or announcements to bargaining unit employees related to the required disclosure of secondary and/or outside employment, a list of employees who have been requested or required to disclose their secondary and/or outside employment, and any employment actions (including warnings and other disciplinary actions) taken in response to or related to disclosure by bargaining unit employees of outside or secondary employment and/or refusal by any bargaining unit employee to disclose outside or secondary employment;
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> (ii) The dates, amounts, and affected job classifications for the five most recent salary increases for bargaining unit employees; and
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> (iii) An updated seniority list of bargaining unit employees, including all current bargaining unit employees, dates of hire, job title, personal email, phone, and address, which contains all bargaining unit job titles listed in the Certification of Representative in Case No. 02-RC-296488, issued on August 10, 2022."

2. Substitute the following for paragraph 2(c).

> "(c) Within 14 days after service by the Region, post at its facilities in the 5 boroughs of New York City, including 460 West 41st Street, New York, NY 10036, 3322 Bainbridge Avenue, Bronx, NY 10467, 2501 Glebe Avenue, Bronx, NY 10461, 1272 Fteley Avenue, Bronx, NY 10472, 927 Avenue Saint John, Bronx, NY 10455, 3306 Steuben Avenue, Bronx, NY 10467, and 45 West

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comes clear that the individual is not a supervisor or party agent. In addition, comment 5 to ABA Model Rule 4.2 expressly permits communications that are part of the investigative activities of lawyers representing governmental entities prior to civil enforcement proceedings. Moreover, contrary to the Respondent's claim, the Board's Skip Counsel Policy did not need to be promulgated through notice-and-comment rulemaking because it is only nonbinding internal agency guidance intended to ensure that Board attorneys comport with ABA Model Rule 4.2. See 5 U.S.C. § 553(b)(A).

Member Mayer agrees with his colleagues that the Respondent's challenge to the Board's Skip Counsel Policy provides no basis for reversing the judge's unfair labor practice findings in this case. In a future appropriate proceeding, he would be open to considering whether the Policy could be further refined to ensure that the rights of parties are properly protected.

177 Street, Bronx, NY 10453, copies of the attached notice marked 'Appendix.'[7] Copies of the notice, on forms provided by the Regional Director for Region 2, 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. 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 any of its facilities in the 5 boroughs of New York City, including 460 West 41st Street, New York, NY 10036, 3322 Bainbridge Avenue, Bronx, NY 10467, 2501 Glebe Avenue, Bronx, NY 10461, 1272 Fteley Avenue, Bronx, NY 10472, 927 Avenue Saint John, Bronx, NY 10455, 3306 Steuben Avenue, Bronx, NY 10467, and 45 West 177 Street, Bronx, NY 10453, 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 that closed facility at any time since November 15, 2023."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. August 5, 2026

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 bargain collectively and in good faith with 1199SEIU United Healthcare Workers East (the Union), the exclusive collective- bargaining representative of the employees in the following appropriate unit:

> All full-time, regular part-time and per diem professional employees of the Employer, including employees in the following classifications: Nurse Practitioner, Social Worker, Senior Social Worker, Child Development Director, Director of Development and Communications, Grants Manager, Program Compliance Manager, Data Strategy Specialist, Database Administrator, Program Compliance Coordinator, Project & Communications Coord., Project Coordinator Leasing and Housing, Operations Engineer, and Senior Staff Accountant, and all full-time and regular part-time and per diem non-professional employees of the Employer, including employees in the following classifications: Case Managers, Individual Placement and Support, Custodian Specialists, Facilities Manager, Facility Specialist, Cook, Kitchen Helper, Shift Lead, Resident Advisor, Senior Resident Advisor, Youth Advancement Specialist, Youth Benefits Support Specialist, Childcare Specialist, Intake Specialist, Lead Medical Assistant, Medical Assistant, Medical Receptionist, Training Coordinator, WOW Instructor, Development & Communications Associate, Facilities Administrative Coordinator, Health Center Office and Insurance Coordinator, Housing Voucher Specialist, In Kind Donation Specialist, Real Estate Co-

[7] If this Order is enforced by a judgment of the 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."

> ordinator, Youth Development & LGBTQ Program Specialist, Youth Development Coordinator, Program Schedule Coordinator, and Senior Vocational Specialist, in working at or out of the following locations in the five (5) boroughs of New York City: 460 West 41st Street, New York, NY 10036; 3322 Bainbridge Avenue, Bronx, NY 10467; 2501 Glebe Avenue, Bronx, NY 10461; 1272 Fteley Avenue, Bronx, NY 10472; 927 Avenue Saint John, Bronx, NY 10455; 3306 Steuben Avenue, Bronx, NY 10467; and 45 West 177 Street, Bronx, NY 10453.

WE WILL NOT fail and refuse to provide information to the Union, which is relevant and necessary to the Union's performance of its duties as the exclusive collective bargaining representative of the employees in the appropriate unit described above.

WE WILL NOT threaten you with discipline if you engage in activity on behalf of the Union, including interacting with the Union and/or discussing the Union with other employees.

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

WE WILL, 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 collecive-bargaining representative of the employees in the above-described bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. Upon the Union's request, such bargaining sessions shall take place at least twice each month, and sessions shall last for at least four hours, or, in the alternative, shall occur on another schedule to which the Union agrees.

WE WILL submit written bargaining progress reports every 30 days to the Regional Director for Region 2 describing the progress of collective bargaining negotiations, and WE WILL serve copies of such reports to the Union.

WE WILL provide to the Union in a timely manner the information requested by the Union in the November 15, 2023, and February 22, 2024 emails from Union Vice President Kareem Cooper to Covenant House New York Chief Executive Officer Dr. Shakeema North-Albert, including the following:

> (i) Copies and dates of all communications and/or announcements to bargaining unit employees related to the required disclosure of secondary and/or outside employment, a list of employees who have been requested or required to disclose their secondary and/or outside employment, and any employment actions (including warnings and other disciplinary actions) taken in response to or related to disclosure by bargaining unit employees of outside or secondary employment and/or refusal by any bargaining unit employee to disclose outside or secondary employment;
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> (ii) The dates, amounts, and affected job classifications for the five most recent salary increases for bargaining unit employees; and
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> (iii) An updated seniority list of bargaining unit employees, including all current bargaining unit employees, dates of hire, job title, personal email, phone, and address, which contains all bargaining unit job titles listed in the Certification of Representative in Case No. 02-RC-296488, issued on August 10, 2022.

COVENANT HOUSE NEW YORK

The Board's decision can be found at [http://www.nlrb.gov/case/ 02-CA-337831](http://www.nlrb.gov/case/02-CA-337831) 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.

Jacob Frisch, Esq., for the General Counsel.

Don Carmody, Esq. and *Kaitlin Kaseta, Esq. (Carmody & Kaseta, LLP),* of North Andover, Massachusetts, for Respondent.

Jessica Apter, Esq. (Levy Ratner, P.C.), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAUREN ESPOSITO, Administrative Law Judge. Based upon a charge filed on March 8, 2024, and amended on June 24, 2024, by 1199SEIU United Healthcare Workers East (1199 or the Union), the Regional Director, Region 2, issued an Amended complaint and notice of hearing on December 18, 2024. The complaint alleges that Respondent Covenant House New York (Covenant House or Respondent) violated Sections 8(a)(1) and (5) of the Act by failing and refusing to bargain collectively and in good faith with 1199, and by failing and refusing to provide 1199 with information which is relevant and necessary for 1199 to fulfill its responsibilities as the exclusive collective-bargaining representative of the bargaining unit employees. The complaint further alleges that Covenant House violated Section 8(a)(1) of the Act by threatening employees with discipline if they engaged in union activity, including interacting with 1199 and/or discussing 1199 with other employees. Covenant House filed an Answer on January 2, 2025, and Amended Answers on February 14, 2025, and March 11, 2025, denying the complaint's material allegations.

This case was tried before me at 26 Federal Plaza, New York, New York, on March 18 and 19, 2025. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by General Counsel and Covenant House, I make the following

FINDINGS OF FACT

I. JURISDICTION

Covenant House New York, a nonprofit New York corporation with offices and places of business in New York City, is engaged in the business of providing housing, medical care, education/workforce development, and social services at the following locations: 460 West 41st Street, New York, New York; 3322 Bainbridge Avenue, Bronx, New York; 2501 Glebe Avenue, Bronx, New York; 1272 Fteley Avenue, Bronx, New York; 927 Avenue Saint John, Bronx, New York; 3306 Steuben Avenue, Bronx, New York; and 45 West 177 Street, Bronx, New York. Covenant House admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Covenant House admits, and I find, that 1199 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Covenant House's Organizational and Managerial Structure

As discussed above, Covenant House provides housing, medical care, educational and work force development, and social services at multiple facilities located in Manhattan and the Bronx. Covenant House's Chief Executive Officer is Dr. Shakeema North-Albert, and its executive team consists of North-Albert, Chief Programs Officer Lisa Crook, Chief Planning and Performance Officer Vesna Selmanovic, Chief Administrative Officer Akash Mangar, and Senior Vice President of People and Culture (HR) Tony Johnson. (Tr. 73–75, 203; GC Exh. 24.) The members of Covenant House's executive team have offices at Covenant House's 460 West 41st Street location. (Tr. 74.) Camden McDaris-Black is Covenant House's vice president of development and communications, and Jenn Strashnick is Respondent's vice president of compliance. (Tr. 73, 202; GC Exh. 24.) At all times material to the complaint's allegations, McDaris-Black reported to North-Albert, and Strashnick reported to Selmanovic. (Tr. 74–75, 202; GC Exh. 24.)

General Counsel called Jessica Apter, Esq., an attorney representing 1199, to testify as a witness regarding 1199's organizing campaign at Covenant House, the representation election, and the parties' collective-bargaining negotiations. (Tr. 132). General Counsel also called as witnesses John Sentigar, Covenant House's director of development and communications, and Gabrielle Perez, Respondent's program compliance coordinator at all times material to the complaint's allegations. Sentigar and Perez testified regarding their duties and responsibilities as Director of development and communications, and program compliance coordinator, respectively.[1] At the time of the hearing, Sentigar was still employed by Covenant House as director of development and communications, and Perez was no longer employed by Respondent. (Tr. 69.)

Covenant House did not call any witnesses to testify at the hearing.

B. 1199's Organizing Campaign and the Representation Election

Jessica Apter, Esq. testified that she represented 1199 in connection with the Union's organizing campaign, the representation proceedings, and collective bargaining negotiations between 1199 and Covenant House. (Tr. 132.) Apter testified that she has been chief spokesperson for 1199 during the majority of the collective-bargaining negotiations. (Tr. 132.) Apter also represented the Union in connection with the instant proceeding.

On May 26, 2022, 1199 filed a petition for a representation election in Case 02–RC–296488, seeking certification as the exclusive collective-bargaining representative of a bargaining unit of employees employed by Covenant House New York. (Jt. Exh. 8, ¶ 1; GC 2(a); Tr. 133.) The petition described the bargaining unit as "All full-time and regular part-time, and per diem employees of the Employer working at or out of its locations in the 5 boroughs of New York City, including 460 West 41st Street, New York, NY 10036, 3322 Bainbridge Avenue, Bronx, NY 10467, 2501 Glebe Avenue, Bronx, NY 10461, 1272 Fteley Avenue, Bronx, NY 10472, 927 Avenue Saint John, Bronx, NY 10455, 3306 Steuben Avenue, Bronx, NY 10467, and 45 West 177 Street, Bronx, NY 10453." (GC Exh. 2(a).) Guards, confidential employees, managers, and supervisors as defined in the Act were excluded. Id.

On June 15, 2022, the Acting Regional Director, Region 2, approved a Stipulated Election Agreement, executed by 1199 and Covenant House. This Agreement described "Voting Group A," which the parties stipulated was part of an "appropriate" bargaining unit within the meaning of Section 9(b) of the Act, as follows:

> INCLUDED: All full-time, regular part-time and per diem professional employees of the Employer, including employees in the following classifications: Nurse Practitioner, Social Worker, Senior Social Worker, Child Development Director, Director of Development and Communications; Grants Manager, Program Compliance Manager, Data Strategy Specialist, Database Administrator, Program Compliance Coordinator, Project & Communication Coordinator; Project Coordinator Leasing and Housing; and Senior Staff Accountant, working at or out of [the locations set forth in the petition].[2]

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[1] General Counsel also called Covenant House employee Molly Gearan as a witness; Gearan's testimony focused on the impact of Covenant House's conduct which is the subject of the complaint's allegations. Tr. 250–251. I overruled Covenant House's objection to Gearan's testimony. Tr. 250.

[2] The Stipulated Election Agreement also contained a "Voting Group B," with additional bargaining unit job classifications.

(GC Exh. 2(b), p. 2; Tr. 133.) Subsequently, on June 17, 2022, Covenant House, by its counsel Daniel D. Schudroff, Esq., filed and served a Voter List identifying the employees eligible to vote in the upcoming election pursuant to the Stipulated Election Agreement. (GC Exh. 2(b, c, d); Tr. 133.) The Voter List consisted of separate lists entitled "Voting Group A," "Voting Group B," and "Voting Group A (Subject to Challenge)." (GC Exh. 2(c).) The Voting Group A list included John Sentigar, Director of Development and Communications, and Gabrielle Perez, Program Compliance Coordinator. (GC Exh. 2(c).) Sentigar and Perez did not appear on the list of employees entitled "Voting Group A (Subject to Challenge)." (GC Exh. 2(c).)

An election was conducted, with the ballots opened and counted on July 27, 2022, and the majority of the valid votes were cast for 1199.[3] (Jt. Exh. 1; Tr. 71–72, 134.) On August 8, 2022, Covenant House's Executive Director, Sister Nancy Downing, sent an email to all Covenant House staff, containing answers to "FAQs" regarding the election. (GC Exh. 23.) One of the questions addressed in Downing's email was, "Who is in the bargaining unit?" and Covenant House's answer listed all of the bargaining unit job titles, including Director of Development and Communications and Program Compliance Coordinator. (GC Exh. 23, p. 2; Tr. 71.) On August 10, 2023, the Acting Regional Director, Region 2, issued a Certification of Representative certifying 1199 as the exclusive collective bargaining representative of Covenant House employees in the following appropriate unit:

> Included: All full-time, regular part-time and per diem professional employees of the Employer, including employees in the following classifications: Nurse Practitioner, Social Worker, Senior Social Worker, Child Development Director, Director of Development and Communications, Grants Manager, Program Compliance Manager, Data Strategy Specialist, Database Administrator, Program Compliance Coordinator, Project & Communications Coord., Project Coordinator Leasing and Housing, Operations Engineer, and Senior Staff Accountant, and all full-time and regular part-time and per diem non-professional employees of the Employer, including employees in the following classifications: Case Managers, Individual Placement and Support, Custodian Specialists, Facilities Manager, Facility Specialist, Cook, Kitchen Helper, Shift Lead, Resident Advisor, Senior Resident Advisor, Youth Advancement Specialist, Youth Benefits Support Specialist, Childcare Specialist, Intake Specialist, Lead Medical Assistant, Medical Assistant, Medical Receptionist, Training Coordinator, WOW Instructor, Development & Communications Associate, Facilities Administrative Coordinator, Health Center Office and Insurance Coordinator, Housing Voucher Specialist, In Kind Donation Specialist, Real Estate Coordinator, Youth Development & LGBTQ Program Specialist, Youth Development Coordinator, Program Schedule Coordinator, and Senior Vocational Specialist, in working at or out of the following locations in the five (5) boroughs of New York City: 460 West 41st Street, New York, NY 10036; 3322 Bainbridge Avenue, Bronx, NY 10467; 2501 Glebe Avenue, Bronx, NY 10461; 1272 Fteley Avenue, Bronx, NY 10472, 927 Avenue Saint John, Bronx, NY 10455; 3306 Steuben Avenue, Bronx, NY 10467; and 45 West 177 Street, Bronx, NY 10453.
>
> Excluded: Guards, supervisors, managers and confidential employees as defined by the Act.

(Jt. Exh. 8, ¶ 1; Jt. Exh. 1, p. 1-2.)

C. The Parties' Collective Bargaining

As discussed above, Union counsel and chief spokesperson Jessica Apter, Esq., testified regarding Covenant House's collective bargaining negotiations with 1199. In addition, John Sentigar testified that he was chosen by the bargaining unit members to be a member of the 1199 bargaining committee, and joined the committee negotiating on the Union's behalf. (Tr. 72–73.) Gabrielle Perez testified that she was also a member of the Union's bargaining committee beginning after the election, until March 2024. (Tr. 239.) Perez testified that while she was a member of the bargaining committee, the committee members discussed the events of each session after the session concluded, reviewed proposals and contracts drafted by the Union, and attended 5 to 6 negotiating sessions. (Tr. 240, 241.)

Covenant House and 1199's first negotiating session took place on May 16, 2023. (Jt. Exh. 8, ¶ 3.) On May 17, 2023, North-Albert sent an email to Covenant House staff announcing that Covenant House had begun bargaining with the Union. (Jt. Exh. 8, ¶ 4; Jt. Exh. 2.) North-Albert stated that she had been present for the negotiating session, along with representatives from 1199, its attorneys, and a "Bargaining Committee . . . made up of CHNY employees that were chosen to represent all employees" in the bargaining unit. (Jt. Exh. 2.) After briefly describing the meeting and additional dates planned for negotiations, North-Albert stated as follows:

> If you've received confirmation that your position is a part of the union (i.e. bargaining unit) and have questions about the process and/or the collected [sic] bargaining agreement terms that were presented to us, please contact your union members or members of your bargaining committee directly.
>
> If you're unsure whether your role is included in the bargaining unit, please review the attached document, which lists the positions currently part of the union bargaining unit.

(Jt. Exh. 2.) The list of bargaining unit positions attached to North-Albert's email included "Director of Development & Communications" and "Program Compliance Coordinator." (Jt. Exh. 2, p. 2.)

On June 6, 2023, the parties met for a second negotiating session. 1199 attorney Allyson L. Belovin, Esq., was chief spokesperson for the Union, and Covenant House attorney Joseph B.

[3] Gabrielle Perez testified that she was an observer for 1199 during the ballot count on July 27, 2022, and was released from work by Covenant House in order to attend. Tr. 201, 240.

Cartafalsa, Esq. represented Respondent, with 1199 leadership and Covenant House executives also present. Tr. 135. Prior to this meeting, Cartafalsa sent Belovin a letter contending that 6 job titles included in the bargaining unit as described in the certification were statutory supervisors, and that Sentigar and Perez were "Managers/Confidential Employees." (GC Exh. 5, p. 1–3; Tr. 137–138.) Cartafalsa also asserted that one position included in the bargaining unit was represented by Local 94, International Union of Operating Engineers, and identified 9 other positions which, while not included in the certified bargaining unit, "Appear[] to Share A Community of Interest" with the bargaining unit employees. (GC Exh. 5, p. 3–4.) Apter testified that Cartafalsa raised these issues during the negotiating session that day, but Belovin stated that they were not appropriate for negotiations. (Tr. 136.) Belovin suggested that the parties address such matters away from the bargaining table to the extent necessary. (Tr. 136.)

Apter assumed the role of 1199's chief spokesperson after the June 6, 2023 negotiating session, and the parties met again in 2023 on June 13 and 27, July 25, August 8 and 22, September 7, October 4 and 16, November 15 and 30, and December 19. (Tr. 136; Jt. Exh. 8, ¶ 7.) Apter testified that 1199 Executive Vice President Pat Martone and/or Vice President Kareem Cooper were present for 1199 during these sessions, as well as the 1199 bargaining committee consisting of Sentigar, Perez, and 4 other bargaining unit employees. (Tr. 135, 136–137.) Cartafalsa represented Covenant House, together with members of its executive team. (Tr. 137.)

On November 15, 2023, Cooper sent an email to North-Albert attaching a letter requesting the following information:

> 1) Copies of any and all pre-existng, new and/or updated policies related to the following, and the effective dates thereof:
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> > a) the required disclosure of secondary and/or outside employment; and
> > b) the recent change in holiday pay.
>
> 2) Copies and dates of all communications and/or announcements to bargaining unit employees related to:
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> > a) any 2023 wage increases within the organization; and
> > b) the required disclosure of secondary and/or outside employment.
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> 3) Dates, amounts, and affected job classifications for:
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> > a) the most recent five (5) wage/salary increases for employees; and
> > b) the most recent two (2) changes to holiday pay for employees.
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> 4) A copy of CHNY's disclosure form(s) regarding secondary and/or outside employment.
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> 5) All documents or communications setting forth the criteria or process for determining which employees are requested or required to complete a disclosure form regarding secondary and/or outside employment.
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> 6) A list of employees who have been requested or required to disclosure their secondary and/or outside employment.
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> 7) Any employment actions, including warnings and other disciplinary actions, taken by the Employer in response or related to the following occurrences:
>
> > a) disclosure by bargaining unit employees of outside or secondary employment;
> > b) refusal by any bargaining unit employee(s) to disclose outside or secondary employment;

(Jt. Exh. 8, ¶ 5; Jt. Exh. 3; Tr. 138.) Cooper asked that the above information be provided no later than November 22, 2023. (Jt. Exh. 3.)

On November 30, 2023, Cartafalsa emailed 1199 and its attorneys with an initial response to Cooper's information request, attaching an Acknowledgement Form regarding secondary or outside employment. (Jt. Exh. 8, ¶ 6; Jt. Exh. 4; Tr. 138–139.) Cartafalsa's email also referred the Union to a "Notification of a Second Stream of Employment" form, provided by Covenant House in June 2023. (Jt. Exh. 4; GC Exh. 6; Tr. 139–140.) Apter testified that Covenant House did not provide any other materials related to its policies regarding secondary or outside employment at the time, or during the negotiating session on December 19, 2023. (Tr. 139, 141–142; GC Exh. 7.) Cartafalsa's November 30, 2023 email also attached a spreadsheet containing information regarding per diem employees, active bargaining unit members, separated bargaining unit members, and promotions of bargaining unit employees. (Jt. Exh. 4; Tr. 140.) This spreadsheet includes Sentigar as "Director of Development & Communications" and Perez as "Program Compliance Coordinator." (Jt. Exh. 4.)

On December 20, 2023, 1199 attorney Maceo Torres-Trujillo, Esq., emailed Cartafalsa regarding the information requested by Cooper on November 15, 2023, pertaining to secondary employment policies, disciplinary actions, and wage increases, which remained outstanding. (GC Exh. 8; Tr. 142, 144.) Apter testified that when Covenant House did not provide this information, she again emailed Covenant House attorney Don Carmody on March 7, 2024, forwarding the information request. (Tr. 143–144; GC Exh. 8.) Apter testified that 1199 never received the requested information. (Tr. 143–144.)

As 2024 began, the parties were scheduled to meet for negotiations on January 10. (Tr. 144.) However, on January 8, 2024, Cartafalsa sent Apter an email asking to cancel the January 10 negotiating session. (Tr. 154–155; GC Exh. 9; Jt. Exh. 8, ¶ 9.) Cartafalsa also attached Covenant House's Sick and Safe Leave Policy, which Apter had requested. GC Exh. 9. Cartafalsa then canceled a negotiating session scheduled for January 23, 2024. (GC Exh. 10; Tr. 145; Jt. Exh. 8, ¶ 9.) Cartafalsa proposed alternative dates, and Apter agreed to meet on January 30 and February 13, 2024. (GC Exh. 10; Tr. 145–146.) Then, on January 30, 2024, North-Albert emailed Apter stating that Covenant

House was "in the process of substituting Counsel in connection with our ongoing collective bargaining negotiations," and would be prepared to proceed with bargaining on the February 13, 2024 date. (Tr. 146–147; GC Exh. 11; Jt. Exh. 8, ¶ 9.) As a result, the January 30, 2024 session was canceled. (Tr. 146–147.) On February 12, 2024, Cooper requested the name and contact information for Covenant House's new attorney, which North-Alert provided. (Tr. 147; GC Exh. 12.)

Apter testified that the parties met for the February 13, 2024, negotiating session with Covenant House's new attorney Don Carmody, Esq., as well as North-Albert, Simone Hawkins, and Lisa Crook. (Jt. Exh. 8, ¶ 8; Tr. 148.) Apter testified that the parties introduced themselves because Carmody was new to the bargaining. (Tr. 148.) Apter and the Union then reviewed the status of the negotiations and made some additional proposals. (Tr. 148.) The parties also agreed to dates for negotiating sessions on March 6 and 26, 2024. (Tr. 148.) However, the February 13, 2024 negotiating session would be the last meeting between the parties. (Tr. 156.)

On February 22, 2024, Cooper wrote to North-Albert, requesting an updated seniority list for bargaining unit members, and asking that 1199 be informed regarding staffing changes affecting the bargaining unit. (GC Exh. 13, p. 4; Jt. Exh. 8, ¶ 10; Jt. Exh. 5; Tr. 148–149.) North-Albert responded that the information would be provided, sending a copy to Carmody. (GC Exh. 13, p. 3–4.) North-Albert then asked Cooper to forward all future information requests solely to Carmody. GC Exh. 13, p. 2. When 1199 did not receive the information requested by Cooper, Apter emailed Carmody on March 4, 2024, to ask again that it be provided, "without <u>any</u> further delay." (GC Exh. 13, p. 1; Jt. Exh. 8, ¶ 11.)

The negotiating session scheduled for March 6, 2024 did not take place. (Tr. 149; Jt. Exh. 8, ¶ 9.) Apter testified that earlier that day, Carmody called her. According to Apter, Carmody stated that there was "a serious problem" because "members of [1199's] bargaining committee . . . were unlawfully sitting on the committee." (Tr. 150.) Apter asked Carmody what he meant by that statement, and Carmody responded that the parties could schedule a meeting the following week to discuss it, when he would be in New York City "on other business." (Tr. 150.) Apter testified that she asked Carmody whether the negotiating session could take place virtually, as it had already been scheduled for that evening, and given Carmody's statement that Covenant House "would not bargain with the Union as long as the bargaining committee consisted of its then current members." (Tr. 150.) Carmody declined to do so, stating that he needed more time to prepare for the negotiating session and was not available for the rest of the day. (Tr. 150.) Carmody also did not identify the members of bargaining committee who were allegedly participating "unlawfully." (Tr. 150.) Apter then suggested that Belovin, who had represented 1199 during the representation case, be included in a meeting to discuss the issue, but Carmody refused "to meet with two lawyers." (Tr. 150–151.)

On March 6, 2024, North-Albert sent an email to Covenant House staff stating in part as follows:

> In the update email I sent you back in July, I informed you of the issue where several employees who are "supervisors," "managers," and "confidential" employees were included in the bargaining unit. We attempted to address the issue with the union when we first started the negotiation process since the participation of individuals possessing supervisory, managerial, or confidential authority participating in the uion or acting as spokespersons for the union, through the bargaining committee, is prohibited by the National Labor Relations Act. Not only is this prohibited by law, but when the election was conducted in June 2022, and the union was certified at CHNY, ". . . supervisors, managers, and confidential employees . . ." were expressly **excluded** by the National Labor Relations Board from being eligible to vote in the election, and that was not adhered to.
>
> Earlier today, we raised the issue again with the union, as we are insisting that this process be lawful and that the complications arising out of their insistence on including ineligible employees on their bargaining committee be resolved before we move forward with discussions with 1199/SEIU and the bargaining committee representing union employees. Since we were unable to mediate this issue with 1199 directly, we will likely turn to the National Labor Relations Board to sort out the complexities of having to negotiate in such extraordinary, disrupting circumstances.

(Jt. Exh. 8, ¶ 12; Jt. Exh. 7.)

On March 7, 2024, Carmody emailed Apter an Excel document responding to Cooper's February 22, 2024 request for an updated seniority list of bargaining unit employees, with a copy to North-Albert. (Jt. Exh. 8, ¶ 11; Jt. Exh. 6; Tr. 151.) Sentigar, Perez, and a number of other job titles contained in the certification were not included in the updated seniority list of bargaining unit employees sent by Carmody. (Jt. Exh. 8, ¶ 11; Jt. Exh. 1, 6; Tr. 151.)

On or about March 8, 2024, 1199 filed the initial unfair labor practice charge in the instant case. This charge alleged that Covenant House had refused to bargain in good faith with 1199 by canceling or failing to make proposals at the five scheduled bargaining sessions since January 1, 2024, conditioning further bargaining on the Union's agreement to remove one or more members of its bargaining committee, and failing and refusing to provide information necessary and relevant to the Union's performance of its duties as collective-bargaining representative. (GC Exh. 1(b).)

Apter testified that on approximately March 12, 2024, after discussing another issue with Carmody, she asked Carmody whether he was ready to identify which members of 1199's bargaining committee were not properly included in the bargaining unit. (Tr. 151–152.) Apter testified that Carmody responded by accusing her of "talking apples when he was talking oranges" with respect to the bargaining committee as opposed to the bargaining unit, and that Apter had "convinced him that he could no longer" discuss the matter with her as a result. (Tr. 152.) Carmody stated that he would therefore be communicating with her in writing regarding the issue. Tr. 152. Apter asked Carmody if he would provide her with his written position prior to the negotiating session scheduled for March 26, 2024, as she was interested in the authority he would rely upon "for the proposition that an employer can dictate who represents the Union in collective bargaining." (Tr. 152). Carmody responded by telling Apter to "hold [her] breath" so Apter ended the call. (Tr. 152.)

On March 15, 2024, Apter emailed Carmody, again requesting the information regarding secondary employment policies and disciplinary actions that had originally been requested by Cooper on February 22, 2024. (GC Exh. 14; Tr. 152–153.) Apter also requested an updated bargaining unit list, noting that the list Carmody provided on March 7, 2024 excluded a number of job titles encompassed by the Board's certification. (GC Exh. 14.) Apter asked Carmody to "please ensure that nobody holding a bargaining unit title is excluded from the list." (GC Exh. 14.) On March 19, 2024, Carmody responded, stating that 1199's certification excluded "supervisors, managers and confidential employees," and asking, "Please identify the name(s) of the individual(s) who you believe is/are not either a 'supervisor' and/or a 'manager' and/or a 'confidential employee' who has/have been excluded" from Covenant House's March 7, 2024 list. (GC Exh. 15; Tr. 153.) Apter responded an hour later, asking Carmody to "send a *complete* list of every employee holding every title listed in the certification." (GC Exh. 16; Tr. 154.) Apter further stated that 1199 "simply does not have a burden to perpetually prove it is entitled to represent each and every employee in the bargaining unit," and that Covenant House was "subjecting itself to liability for an unfair labor practice" by failing to provide the information requested.[4] (GC Exh. 16.) Apter testified that none of the information she requested on March 15, 2024, was provided by Covenant House. (Tr. 153-154; see also Tr. 158–159.)

On March 21, 2024, Apter sent Carmody a letter by email. (GC Exh. 17; Tr. 154–155.) In her letter, Apter stated that Carmody had not provided any "writing" describing the legal authority for his assertion that 1199's negotiating committee was "unlawful," or identifying the committee members which Covenant House contended were "confidential, managerial, or supervisory employees." (GC Exh. 17.) Apter stated, however, that 1199 "deduces" from Covenant House's omission of John Sentigar and Gabrielle Perez from the list of bargaining unit employees provided on March 7, 2024, that Sentigar and Perez were the employees whose membership in the bargaining unit and participation in the bargaining committee Covenant House had deemed "unlawful."[5] (GC Exh. 17.) Apter stated that Sentigar and Perez' job titles were included in the bargaining unit pursuant to the Stipulated Election Agreement and Covenant House's list of eligible voters, and that Sentigar and Perez were chosen by the bargaining unit employees to represent them on 1199's bargaining committee. (GC Exh. 17.) Apter also stated that 1199 had filed an unfair labor practice charge alleging that Covenant House was violating the Act by conditioning bargaining on Sentigar and Perez' removal from the committee. (GC Exh. 17.) However, Apter stated that the Union would appear at the upcoming March 26, 2024 negotiating session without Sentigar and Perez, in order to move the negotiations forward. (GC Exh. 17.)

Because Carmody did not respond to Apter's March 21, 2024 letter, Apter wrote to him again at 5:57 a.m. on March 26, 2024, stating, "Please let me know whether you intend to come to the table and present proposals tonight." (GC Exh. 18; Tr. 155–156.) At 9:55 a.m. on March 26, 2024, Carmody responded to Apter's March 21, 2024 letter, stating that "my primary focus at this juncture will be upon defending [Covenant House] against the unfair labor practice charge," and construing 1199's offer to meet without Sentigar and Perez as "incongruous…as [Covenant House] presents its defense" to the charge. (GC Exh. 19; Jt. Exh. 8, ¶ 9; Tr. 156–157.)

On May 8, 2024, Covenant House filed an unfair labor practice charge in Case No. 2-CB-342290 against 1199, alleging violations of Sections 8(b)(1)(A), 8(b)(1)(B), and 8(b)(3) of the Act. (GC Exh. 3(a).) This charge alleged that 1199 had "restrained and coerced employees in the exercise" of their Section 7 "rights," had "restrained or coerced Covenant House" in "the selection of [its] representatives for the purpose of collective bargaining or the adjustment of grievances," and had "refused to bargain collectively" with Covenant House. (GC Exh. 3(a), Attachment p. 1.) Covenant House further alleged that 1199 had "violated the Act" by "admitting to membership and insisting upon representing" Covenant House employees "who, at all material times, were and are 'supervisors and managers' excluded pursuant to the Certification from representation." Id. The charge also alleged that 1199 had violated the Act by "soliciting and authorizing" Covenant House's supervisors and managers "to serve as representatives of 1199…for the purpose of collective bargaining" and "insisting to the point of impasse upon a 'ground rule' requiring [Covenant House] to agree to the including and recognition of . . . Supervisors and Managers as representatives of 1199 . . . for the purpose of collective bargaining." (GC Exh. 3(a), Attachment p. 1–2.) The charge went on to allege that 1199 had violated the Act by "soliciting, sponsoring, and directing" Covenant House supervisors and managers "to engage in surveillance of, interrogation of, and interference with and restraint and coercion of" Covenant House employees. (GC Exh. 3(a), Attachment p. 2.) The charge alleged that 1199 had also violated the Act by "admitting to membership and insisting on representing "confidential employees" of Covenant House who were excluded from the bargaining unit pursuant to the union's certification, and by "soliciting and authorizing" confidential employees "to serve as representatives of 1199 . . . for the purpose of collective bargaining," again by "insisting to the point of impasse upon a 'ground rule' requiring" Covenant House to "agree to the inclusion and recognition of" such confidential employees as representatives of 1199 for the purpose of collective bargaining. Id. Covenant House contended that it was thereby deprived "from choosing and designating such Confidential Employees" as its own representatives for collective bargaining "in circumstances where [Covenant House] necessarily relies upon [them] to assist [it] in collective bargaining with 1199." Id.

On or about June 24, 2024, 1199 filed an amended unfair labor

[4] Apter also requested an updated bargaining unit list in an email to Carmody dated October 8, 2024. GC Exh. 22; Tr. 159–160.

[5] Carmody represented on the record that Sentigar and Perez were the only bargaining unit employees that Covenant House was contending were managerial employees. Tr. 12.

practice charge in the instant case. In addition to the allegations contained in the initial charge, 1199 alleged in the amended charge that in June 2024, Covenant House threatened to suspend or otherwise discipline employees for continued union activity and for communicating with the Union or with other bargaining unit employees regarding the Union or union activity. (GC Exh. 1(d).)

On July 9, 2024, Apter wrote to Carmody again, stating that Sentigar and Perez had resigned from the 1199 bargaining committee, and asking to resume bargaining without prejudice to the Union's positions in connection with the certification, the selection of bargaining committee members, and the Union's contentions in connection with Case 02–CA–337831 and 02–CB–342290. (GC Exh. 20; Tr. 157–158.) Apter proposed that the parties meet for negotiations on July 16, 2024. GC Exh. 20. Carmody rejected this overture in an email dated July 10, 2024, requesting documentation of Sentigar and Perez' resignations from 1199's negotiating committee, and stating that the Union's "preservation of positions" was inadequate to "remedy the disruption to the bargaining process." (GC Exh. 21; Tr. 158–159.) Carmody stated that Covenant House would not "resume bargaining unless and until the Union becomes signatory to a formal National Labor Relations Board remedial process providing a complete remedy for the unfair labor practice conduct alleged in N.L.R.B. Case No. 02-CB-342290." (GC Exh. 21.)

D. The June 2024 Meetings with Sentigar and Perez and Senior Vice President of HR Tony Johnson's Letters

Sentigar testified that on June 4, 2024, he attended a meeting via Zoom with North-Albert and Senior Vice President of HR Tony Johnson, after receiving an email invitation. (Tr. 95–96, 97–98.) Sentigar testified that during this meeting, North-Albert and Johnson told him that Covenant House was contending that as Director of Development and Communications, he should not be serving as a member of the Union's bargaining committee, and should not be included in the bargaining unit. Tr. 96. North-Albert and Johnson told Sentigar that he was a manager pursuant to NLRB caselaw, and that as a result he was not included in the bargaining unit and his communications with 1199, and its representatives were "illegal." (Tr. 96.) According to Sentigar, North-Albert and Johnson directed him to cease communicating with 1199 and stated that if he failed to comply with this instruction he would be suspended without pay. (Tr. 96.)

Perez testified that she also met with North-Albert and Johnson on June 4, 2024, having received a virtual invitation the previous evening. (Tr. 232–233, 234.) Perez testified that during the meeting, North-Albert and Johnson stated that they viewed her as a manager, and that she was no longer permitted to participate in union activities. (Tr. 203, 233.) North-Albert and Johnson told Perez that if they discovered that she had been involved in union activities, she would be suspended without pay. (Tr. 233.) Perez asked North-Albert and Johnson if the NLRB had issued a decision regarding her position in connection 1199's petition for a representation election. (Tr. 233.) North-Albert and Johnson stated that the NLRB was not involved, and they had made the decision regarding her managerial status themselves. (Tr. 233.)

On June 4, 2024, Sentigar and Perez received identical letters from Johnson, with North-Albert copied. (GC Exh. 26, 28; Tr. 97–98, 233–234.) These letters stated as follows, in pertinent part:

> In furtherance of your session this morning with me and Dr. Shakeema ("Shak") North-Albert, this is to affirm the determination reached by Covenant House New York ("CHNY") relative to your "managerial" status, and to confirm the results of the determination.

. . .

> This morning, you were informed that CHNY has determined that you possess and exercise "managerial" authority within the meaning of the N.L.R.A. such that you are expressly excluded from the collective bargaining unit represented by the Union, described in the attached Certification. In this regard, you can see that the unit description set forth in the Union's Certification specifically excludes ". . . managers . . . as defined by the [N.L.R.A.]"
>
> The fact that your present job title, "Program Compliance Coordinator," is referenced in the description of "Included" employees in the text of the Certification does not negate your exclusion as a "manager."—Any individual occupying the position of "Program Compliance Coordinator" would be included in the collective bargaining unit if and when the position is occupied by an employee who does not possess "managerial" (or "supervisory" or "confidential") authority. In other words, as long as the individual – you at present – occupying the Program Compliance Coordinator job classification possesses "managerial" authority, the individuals is not included in the collective bargaining unit represented by the Union.
>
> We appreciate the critical role you play in the management of CHNY, and want you to understand how fulfilling your managerial responsibilities is inherently obstructed and compromised by any conflicting allegiance to the Union.
>
> I also want to assure that, as explained when we met, it is CHNY's belief that you are not to blame for the fact that you have lacked this clear determination while interacting with the Union in the manner you have since the Certification. Accordingly, you should have no concern about suffering any discipline or other adverse action on account of your involvement with the Union to date. However, now that you have been informed of our determination that you possess "managerial" authority, you must refrain from any continued interaction with the Union and/or with employees on behalf of the Union.
>
> In this connection, it is unlawful for CHNY, among other acts and conduct, to "…interfere with, restrain or coerce…" employees in the exercise of the rights guaranteed in [the N.L.R.A.]" and/or to "…dominate or interfere with the formation or administration of [the Union]…" Furthermore, the N.L.R.B. and Court precedent defines the sort of activity in which you have been engaged (as we have witnessed, openly) or in which we reasonably assume you have been engaged (considering your active involvement in the bargaining process) as constituting unlawful interrogation of and/or surveillance of employees, amounting to

"interference with, restraint of and coercion of" employees in their exercise of their rights under the N.L.R.A. Also, Board and Court precedence [sic] would hold that CHNY, *qua* organization, is responsible for your conduct as our "manager," even including conduct about which we are not expressly aware, and have not specifically condoned.

Accordingly, as you were also instructed this morning, you are to refrain from contacting any Representative of the Union, including any attorney representing the Union, hereafter, unless literally authorized to do so, in writing, by me. Thus, CHNY could be bound by anything you might say or do relative to their representation of certain of our employees, and you are not authorized to act on behalf of CHNY in our interactions with the Union. The only secure way of avoiding any negative consequence arising out of any contact of the Union Representatives on your part is to avoid any such behavior altogether.

I particularly want to draw your attention, as was done this morning, to the fact that your conduct in interacting with employees about the Union could be attributed to CHNY in the same way as explained above relative to engaging with the Union Representatives. CHNY has a clear policy of not interfering with, restraining, or coercing any employee in any manner from engaging in union activity. However, as a CHNY Manager, we must regulate your interaction with employees when the topic of discussion or objective of any sort of engagement is about union activity, to ensure that our policy of respecting union activity is observed. Therefore, you must avoid initiating any discussion about the Union with any CHNY employee and, if an employee approaches you with a question or comment about the Union, you must explain to them that you have been instructed to speak with me or Dr. Shakeema North-Albert for guidance as to how to provide pertinent, suitable information in response to any inquiry or concern they may have brought to you, and promise to get back to them.

In closing, I emphasize that you have been provided with this written communication so that there can be no confusion or misunderstanding about precisely what determination was shared with you and what our expectations are of you as a result of our determination. At the same time, while your prior conduct will not form the basis of any negative action toward you, we expect that you will adhere, hereafter, to the direction set forth above, and your failure, refusal, or hesitancy to do so could result in appropriate disciplinary action.

(GC Exhs. 26, 28.)

Sentigar testified that after receiving Johnson's June 4, 2024 letter, he did not participate in 1199's bargaining committee, nor did he attend any of the committee's meetings. (Tr. 98.)

E. The Work Performed by Director of Development and Communications John Sentigar and Program Compliance Coordinator Gabrielle Perez

John Sentigar testified that he had been employed by Covenant House as its Director of Development and Communications since October 2017. (Tr. 69.) At the time of the hearing, Sentigar's supervisor was Vice President of Development and Communications Camden McDaris-Black, and McDaris-Black reported to Covenant House's Chief Executive Officer Dr. Shakeema North-Albert. (Tr. 73, 74–75; GC Exh. 24.) Sentigar testified that his position was not an executive position, and he was not a member of the executive team. (Tr. 73–74; see also GC Exh. 24.) Sentigar testified that he does not have an office with the executive team members at Covenant House's 460 West 41st Street, New York, New York location. (Tr. 74.) Sentigar testified that he does not receive stock options as part of his compensation with Covenant House, nor does he receive any bonus based upon Respondent's performance. (Tr. 73.)

Sentigar testified that his overall responsibilities entail ensuring the continuity of Covenant House's government grant portfolio for its annual operating budget of $32 million, approximately $19 million of which consists of government grants. (Tr. 75–76.) Sentigar testified that his job duties involve locating grant opportunities, applying for and securing new grants, and renewing grant opportunities which Covenant House has obtained in the past. Tr. 76. Sentigar testified that no other Covenant House employees report to him. (Tr. 98–99.)

Sentigar testified that the initial step in obtaining a new grant entails locating a grant opportunity. Sentigar testified that several Covenant House employees, including himself, his supervisor, and individuals in management, locate grant opportunities via different list-servs or portals that announce Requests for Proposals (RFPs) in order to apply for grants. (Tr. 76.) Sentigar stated that after he locates or is notified of a grant opportunity, he reviews the RFP, which is often lengthy, and prepares an analysis which describes the amount of the award, the length of the contract term, the required program service, and the compliance responsibilities involved. (Tr. 76–77, 78.) Sentigar sends his analysis to a larger team—typically his supervisor, the relevant program team lead, Chief Program Officer Lisa Crook, CEO North-Albert, and the finance team—who review the RFP and determine whether to submit an application for the grant.[6] (Tr. 76–77, 78.) Sentigar testified that based upon a meeting of this team, which he would attend, a decision would be made regarding whether to submit an application. (Tr. 78.) Sentigar testified that he could not determine whether to apply for a new grant opportunity himself, without sending it the team for a decision, nor did he have the authority to apply for the grant if the team decided against submitting an application. (Tr. 77, 78–79, 80–81.) Sentigar stated that he could only apply for a grant without the team's determination if Covenant House receives the same grant routinely each year, which generally entails an identical amount of funding. (Tr. 81.) In such cases, Sentigar submits the same application he has submitted in past years, changing the dates and updating any pertinent information as necessary. (Tr. 81.)

[6] Sentigar testified that he does not refer every grant opportunity that he discovers to the team for consideration. Tr. 79. Sentigar testified that if new grant opportunities apply to populations that Covenant House did not serve, for example, he would not pursue that particular RFP further. Tr. 79.

Sentigar testified that if the team including Crook and North-Albert decides that a grant application will be submitted, he works with the finance team to compile a budget for the relevant services, including personnel, fringe benefits, and unrelated costs. (Tr. 78.) Sentigar stated that this process involves meeting with the finance team, which provides him with a detailed itemized budget for the grant proposal based upon the anticipated staffing necessary to provide the relevant services that Sentigar then incorporates into the application. (Tr. 79–80.) Sentigar testified that he cannot unilaterally decide what salaries are listed on a grant application, or formulate a budget for the necessary staffing, because expansion of staff and staff pay rates are determined by Covenant House's executive team. (Tr. 80.) Sentigar further testified that he does not draft and submit applications involving an itemized staffing budget without finance's involvement. (Tr. 80.) Finally, after he has obtained all of the required information, Sentigar ensures that the actual grant proposal is as well-written as possible and is reviewed by all relevant parties and submitted in a timely manner. (Tr. 78.)

Sentigar testified that he has no unilateral authority to determine how any grant money is spent and cannot divert funds from the commitments made in any particular grant application. (Tr. 81.) Any decisions regarding deviations from spending commitments made as part of the grant process are determined by the executive team. (Tr. 83.) Sentigar further testified that he has no authority to decide whether to reapply for grant funds or determine what programs would be terminated if Covenant House declined to do so – such decisions are within the purview of Covenant House's executive team. (Tr. 81–82.) Sentigar testified that in the event that Covenant House decides to forego reapplying for grant funds, or loses out on a grant, he has no authority to lay off staff, reduce employee pay or otherwise modify employee pay rates, or freeze hiring. (Tr. 82–83.) Senitgar similarly testified that if Covenant House wins a grant he has no authority to hire additional staff, alter employee pay rates, or establish employee work schedules. (Tr. 83.)

Sentigar testified that his Director of Development and Communications position encompasses other responsibilities as well. Sentigar stated that he is responsible for sending administrative emails to all Covenant House staff regarding upcoming events or changes in facility hours, based upon information he receives from other sectors of the organization. (Tr. 87–88.) Sentigar is also responsible for preparing an internal employee newsletter which is occasionally issued. (Tr. 88.)

Sentigar testified that he is also responsible for preparing quarterly reports for Covenant House's Board of Directors. (Tr. 84, 88.) Sentigar testified that generally he does not attend Board of Directors meetings, and the quarterly reports constitute his only involvement with the Board of Directors.[7] (Tr. 84, 89.) Sentigar stated that the quarterly report is "a very high-level report that summarizes and gives highlights of any major updates from every department," so that each report will have updates from the relevant department regarding residential services, training, planning, performance, compliance, and other issues. (Tr. 89.) Sentigar testified that in order to prepare the quarterly report he contacts the department heads to obtain information regarding the department's overall activities, such has how many youth obtained jobs during the quarter in question and compiles the information into a report that is approximately 12 pages long.[8] (Tr. 89.) North-Albert reviews the report before it is presented to the Board of Directors, and when the report complete Sentigar provides it to North-Albert or Selmanovic to include with other materials for the Board of Directors meeting. (Tr. 89.) Sentigar testified that the quarterly reports do not contain any information regarding Covenant House's collective bargaining negotiations with 1199. (Tr. 90.) Finally, Sentigar testified that he does not have access to minutes of the meetings of Covenant House's Board of Directors. (Tr. 91–92.)

During his testimony, Sentigar was questioned regarding the duties and responsibilities enumerated in Covenant House's most recent Job Description for the Director of Communication and Development position, which was admitted into evidence as General Counsel's Exhibit 25. (Tr. 83–84.) Sentigar testified that he did not perform the following duties and responsibilities listed in the Job Description: (i) "Provide support to the Executive Director for monthly Board meetings including preparing reports, coordinating onboarding of new Board members, providing support for [Board] committees;" (ii) "Work closely with the Project Manager/Executive Assistant to develop agendas, maintain corporate documents (minutes, resolutions, and other record keeping) and communicate with the Board;" (iii) "Serve as the Liaison between the CHNY Executive Team and CHI Development team to coordinate meetings, events, etc.;" (iv) "Lead initiatives, in collaboration with the HR department, related to employee engagement;" (v) "Assist with all strategic planning activities conducted by the Executive Team and other senior leaders, including calendaring and managing meetings, taking and maintaining minutes, and handling strategic planning activities, as needed;" and (vi) "This position may have management responsibilities." (Tr. 84–85, 86–87.) Sentigar explained that shortly after he was hired, Covenant House hired a Vice President of Development and Communications to supervise the Director of Development and Communications; the Vice President assumed some of these responsibilities, as did members of other teams. (Tr. 85–86; see also GC Exh. 24.)

As a general matter, Sentigar testified that he is not involved in meetings where Covenant House sets terms and conditions of employment such as wage rates, staffing levels, or benefits. (Tr. 92.) He stated that he had no authority to determine staffing levels, pay rates, employee schedules, facility hours, or the size of Covenant House's workforce, nor does he have authority to determine whether Covenant House would offer different ser-

[7] Sentigar testified that he attended a Board of Directors meeting only once during the past 2 years, in April 2024. Tr. 90. Sentigar testified that at this meeting he provided an overview of an assessment he had prepared of Covenant House's health center, pursuant to an audit conducted by the health center's federal funder, the Health Resources and Services Administration. Tr. 90–91. Sentigar testified that he had no unilateral authority to keep the health center open or affect the services the health center provides. Tr. 91. Sentigar testified that there was no discussion regarding Covenant House's collective bargaining negotiations with 1199 during this Board of Directors meeting. Tr. 91.

[8] Sentigar testified that the only changes he makes to material obtained from the department heads involve "spelling, grammar, kind of like formatting." Tr. 89–90.

vices. (Tr. 92–93.) Sentigar testified that he has no access to data, records, or information regarding labor relations issues such as negotiations, wages, working conditions, benefits, or other aspects of employment. (Tr. 93.) Sentigar testified that he had no access to minutes or agendas of meetings where Covenant House's bargaining strategy was discussed, nor had he attended any such meetings. (Tr. 93–94.) Sentigar testified that he had no involvement in deciding what bargaining or policy proposals Covenant House might formulate, determine, or effectuate as a result of winning or losing grants. (Tr. 94.) Finally, Sentigar testified that he follows established Covenant House policies, and cannot decide to disregard, unilaterally change, unilaterally implement, or act independently of existing policies—nor could he direct other employees to do so. (Tr. 95.)

Gabrielle Perez testified that she was employed by Covenant House as its Program Compliance Coordinator from March 2020 until October 2024. (Tr. 200.) As Program Compliance Coordinator, her supervisor was Jenn Strashnick, Covenant House-'s Vice President for Program Compliance. (Tr. 202; GC Exh. 24.) Strashnick reported to Chief Planning and Performance Officer Vesna Selmanovic. (Tr. 202; GC Exh. 24.) Other members of the Program and Compliance Department included the Senior Program Compliance Manager and the Compliance Coordinator; Perez described her job as "between" these two titles in terms of the Department's hierarchy.[9] (Tr. 202; see also GC Exh. 24.) Perez testified that she did not receive stock options or bonuses based on company performance and was not an executive of Covenant House. (Tr. 203.)

Perez testified that her primary job responsibilities involved conducting internal reviews or audits of Covenant House's shelter programs, to ensure that the programs complied with regulatory standards established by the New York City Department of Youth and Community Development (DYCD) and the New York State Office of Children and Family Services (OCFS).[10] (Tr. 204–) These standards applied to individual service plans for clients, and Perez was responsible for reviewing materials to ensure that such plans were updated in a timely manner, and that adequate weekly case notes and goals were entered correctly. Tr. 207-208. After completing an internal review, Perez sent an email containing the findings to the relevant program staff, to inform them of necessary edits or additions prior to an external audit. (Tr. 208.) Perez testified that she had no authority to require that programs make the changes she suggested, to discipline or recommend the discipline of employees, or to require employee retraining based upon the results of an internal audit. (Tr. 208–209.)

Perez stated during her testimony that as Program Compliance Coordinator she also acted as a liaison between Covenant House program managers and New York City and State regulatory bodies. (Tr. 205, 213.) Perez testified that OCFS conducted its own audits each year, and DYCD conducted audits every month. (Tr. 213.) After performing an audit, DYCD held a closeout meeting with Perez and the leadership of the particular Covenant House program involved to discuss any DYCD findings. (Tr. 214.) If program leadership could not attend, Perez emailed them a closeout sheet prepared by DYCD. (Tr. 213–214.) If DYCD discovered an issue during its audit, they provided Covenant House with a strategic action plan or a corrective action plan identifying necessary changes; OCFS provided a performance improvement plan in such a situation. (Tr. 214.) Perez testified that the Covenant House program leadership or department involved in the audit had authority to ameliorate the issues identified by DYCD and/or OCFS in the plan the auditing agency provided, and she personally had no authority to do so. (Tr. 214.) If DYCD or OCFS issued a strategic action or performance improvement plan, Perez arranged a meeting with the "stakeholders involved," to discuss the plan and create a summary with solutions to be implemented, which was then forwarded to the relevant agency. (Tr. 214–215.) Perez testified that she had no authority to independently respond to a plan issued by DYCD or OCFS. (Tr. 215.)

Perez testified that she was also responsible for working with Covenant House's Human Resources department to ensure that staff files complied with program standards set by DYCD and OCFS in connection with the audits they performed. (Tr. 220, 221–222.) Generally, DYCD and OCFS reviewed staff files through the VisualVault digital system, which permits administrators to establish privacy standards that restrict the information that can be viewed. (Tr. 220–221.) Perez testified that when an audit took place, Covenant House HR was provided with a list of the relevant staff and placed their personnel files in a VisualVault folder accessible by compliance and the agency auditor. (Tr. 221.) Perez, however, did not have access to the folder of staff files created by HR in such situations. (Tr. 221.)

In addition, Perez testified that as part of her job responsibilities she developed resources for and trained case managers to assist with their documentation efforts and ensure that they were satisfying Covenant House's program compliance standards. (Tr. 205, 210–211.) Thus, Perez compiled desk aids, a case manager manual, and flyers – which contained existing Covenant House policies—to assist caseworkers in performing their duties.[11] (Tr. 209–210.) Perez also revised Covenant House's case manager manual. (Tr. 210.) Perez testified that all of the policies she utilized in creating these materials had been established by Covenant House's CEO or Chief Compliance Officer and were not set by her. (Tr. 210.) Perez further testified that she created training for caseworkers, based upon the manuals and desk aids, to ensure that Covenant House's policies were uniformly implemented, eliminate discrepancies in documentation among caseworkers, and ensure that documentation was completed in a timely manner. (Tr. 210–211.) Perez testified that she did not create any new policies for any of the training she developed. (Tr. 211.) Perez further testified that documentation standards were established by program leadership, based upon requirements set by DYCD and OCFS, and that she did not have authority to determine or deviate from the applicable doc-

[9] Perez also testified that she sometimes supervised unpaid college interns during the summer months. Tr. 215.

[10] A job description for the Program Compliance Coordinator position was entered into evidence as GC Exh.27. Tr. 203–(204.

[11] For example, an incident reporting desk aid was created using Covenant House's existing Child and Youth Protection Policy. Tr. 209–210.

umentation requirements. (Tr. 211.) Likewise, compliance policies were updated and changed by Vice President of Compliance Jenn Strashnick, together with the Chief Program Officer Lisa Crook and CEO North-Albert. (Tr. 215–216.) Perez testified that she had no authority to unilaterally change, create, or update a Covenant House compliance policy, and never did so. (Tr. 216.) Perez testified that Strashnick wrote compliance policies for Covenant House, which were reviewed by the compliance team in draft form, after which Strashnick had the final authority to determine whether they would be implemented or not. (Tr. 217.) Perez testified that she followed established policies set by Covenant House and could not refuse to follow or deviate from them, nor could she direct any other employee to do so. (Tr. 217–218.)

Perez also maintained and participated in Covenant House's system of incident reporting. (Tr. 222.) Perez testified that there were two types of incident reports generated at Covenant House —one for youth incidents and another for staff incidents. (Tr. 222) Covenant House's Child and Youth Protection Policy required that incidents which occurred on site involving youth clients—such as physical altercations—be recorded in its internal reporting system, to determine whether the appropriate protocols were followed to ensure youth safety and potentially report the incident to the agency funder. (Tr. 222–223.) These incidents were be reported into a system called Efforts to Outcomes (ETO), for appropriate action based upon the nature of the incident. (Tr. 223.) In the case of a physical altercation, if the youth was discharged from a Covenant House program, the matter needed to be reported to DYCD or OCFS as well. (Tr. 223.) Perez testified that she had no authority to designate what youth or staff incidents or categories of incident required reporting. (Tr. 223.)

Perez testified that she did not make a determination as to whether an incident which required reporting had occurred; such "incidents" were defined by Covenant House's Child and Youth Protection Policy, and by DYCD and OCFS reporting standards. (Tr. 212, 213.) DYCD and OCFS required that incidents be reported within their systems within 72 hours of occurrence, and Covenant House policy mandated that incidents were to be internally reported by the close of the reporter's shift. (Tr. 212.) Perez' department then ensured that internal incident reports were submitted to DYCD and/or OCFS within the prescribed period. (Tr. 212.) Perez testified that she determined whether to report a youth incident to DYCD or OCFS based upon the index to Covenant House's Child and Youth Protection Policy. (Tr. 225.) If the incident was to be reported to DYCD or OCFS, Perez determined whether any editing, grammatical changes, additional information, or clarifications needed to be made to the report. (Tr. 225–226.) Perez testified that she was not involved in determining whether to discharge a youth based upon an incident; program leadership made such a decision, possibly with the involvement of Covenant House's ombudsman. (Tr. 224–225.)

A staff incident report was a narrative created by an individual who observed an incident involving staff misconduct, including the events witnessed, the individuals involved, a description of the incident, and appropriate follow-up action. (Tr. 223–224, 226.) The report was then sent to a Listserv entitled staff incidents, which included the compliance team, specifically North-Albert, Crook, Selmanovic, and a representative from HR. (Tr. 226.) Strashnick then contacted program leadership or the executive team to inform them, and ensure that HR conducted interviews with the appropriate individuals, including any youth involved. Tr. 227. Covenant House's Child Protection Officer Diana Clay, who was a consultant with HR at the time, then investigated by conducting interviews with the relevant staff. (Tr. 227–228.) HR prepared a conclusion section to the staff incident report which recommended action, including possible discipline. (Tr. 228.) Perez' only involvement with the staff incident reports themselves involved reviewing them for correct grammar and completeness, and to contact the funder, such as DYCD or OCF-S, if necessary, to ensure that they received the documentation. (Tr. 228–229.) On some occasions, an incident was referred to the Justice Center, a hotline for vulnerable persons, which conducted its own investigation into possible mistreatment and created an action plan. (Tr. 230.) When an incident was submitted to the Justice Center, Perez served as a liaison to arrange interviews with the youth involved, set up a visit to the site and program leadership, and obtain any documentation requested. (Tr. 229.) Perez testified that she was not otherwise involved in staff incident reports, interviews, or recommendations. (Tr. 228, 229–230.) In the event that discipline or corrective action was recommended, HR or Clay sent a follow-up form with the disciplinary recommendation, which was entered into a confidential folder in the program compliance drive on Covenant House's computer system. (Tr. 230–231.)

Perez testified that she attended meetings every other week where open staff incidents were discussed. (Tr. 231.) These meetings were initiated by Strashnick to ensure that staff incidents were closed in a timely manner, and to discuss the outcomes of interviews and investigations. (Tr. 231.) During these meetings, HR presented recommendations, and program leadership, which had final authority with respect to disciplinary issues, either assented to or changed HR's recommendations. (Tr. 231–232.) Perez testified that she was present at these meetings as an observer only and did not make any recommendations with respect to discipline. (Tr. 232.) Perez testified that she did not have authority to discipline employees, issue corrective action, or otherwise independently resolve staff incidents. (Tr. 232.)

Perez testified that she had no involvement in the formulation of management policies involving terms and conditions of employment, such as wage rates, staffing levels, or benefits, and was never present at meetings where such issues were addressed. (Tr. 218.) Perez testified that she had no authority to establish staffing levels, pay rates, employee schedules, facility hours, establishment and closure of facilities, or services offered. (Tr. 218–219.) Perez stated that she had no access to knowledge, data, or records pertaining to labor relations matters involving wages, working conditions, and other terms and conditions of employment. (Tr. 219.) Finally, Perez testified that she had no access to documents pertaining to Covenant House's bargaining strategy, bargaining proposals, payroll information, or financial information. (Tr. 219–220.)

F. Procedural History, Evidentiary Issues, and the Course of *the Hearing*

As discussed above, the initial unfair labor practice charge in this proceeding was filed on March 8, 2024, and an amended charge was filed on June 24, 2024. On December 6, 2024, the Regional Director, Region 2, issued a complaint and notice of hearing. (GC Exh. 1(f).) On January 2, 2025, Covenant House filed an Answer to the Amended Complaint, denying the Amended Complaint's material allegations. (GC Exh. 1(l, m, n).)

During the investigation of the instant charge, Covenant House raised issues regarding the agency's policies involving contacts with employees who are potentially managerial or supervisory, which it would eventually style as a "skip counsel defense" to the Complaint's allegations. On August 27, 2024, Carmody wrote to the Regional Director, Region 2, asserting that the Regional Office had acted improperly pursuant to Section 10058 of the agency's Casehandling Manual, entitled Contacts with Represented Parties and Witnesses. Carmody contended that the Region had violated these provisions by issuing an investigative subpoena to John Sentigar, and meeting with Sentigar and Gabrielle Perez, without notifying Covenant House and providing Respondent with the opportunity to be present. (GC Exh. 4(a).) On October 1, 2024, Carmody wrote to General Counsel Jennifer A. Abruzzo raising these same issues and arguing that the agency's Contacts with Represented Parties and Witnesses policies were improper and unenforceable in and of themselves. (GC Exh. 4(b).) On November 26, 2024, General Counsel Abruzzo responded, stating that the Region's conduct had been consistent with Section 10058 of the Board's Casehandling Manual, which comported with the provisions of Rule 4.2 of the American Bar Association's Model Rules of Professional Conduct, as incorporated into the New York State Bar Association's professional standards. (GC Exh. 4(c).)

On December 14, 2024, the Regional Director, Region 2, issued a letter dismissing Covenant House's charge in Case 02–CB–342290, which alleged that 1199 violated Sections 8(b)(1)(A), 8(b)(1)(B), and 8(b)(3) of the Act. (GC Exh. 3(a, b); Tr. 12–13.) The Regional Director stated that the individuals at issue in the charge "worked in job classifications that the Employer and the Union stipulated to be included in the appropriate collective bargaining unit certified in Case 2-RC-296488," and that "the Employer included these individuals' names on the list of eligible voters the Employer submitted to the Region" in the context of the representation case. (GC Exh. 3(b), p. 1.) The Regional Director further concluded as follows:

> The evidence obtained during the investigation was insufficient to establish that these individuals formulate, determine, or effectuate labor relations policies of management by making operative decisions or that they possess discretion to unilaterally implement, update, or change any Employer policy, or direct employees to disregard any policy. Similarly, the evidence obtained during the investigation was insufficient to establish that either individual possess any of the supervisory indicia enumerated in Section 2(11) of the Act…Lastly, the evidence obtained during the investigation was insufficient to establish that either individual is a confidential employee under the Board's jurisprudence, which assesses that access to information that may be confidential in nature does not render an employee confidential for the purposes of the NLRA unless the confidential information is related to labor relations policies or decisions.

(GC Exh. 3(b), p. 1–2.)

On February 11, 2025, the agency's Office of Appeals issued a letter denying Covenant House's appeal of the Regional Director's refusal to issue a complaint in Case 02–CB–342290. (GC Exh. 3(c).) The Director of the Office of Appeals stated that "the record evidence does not support your positions on appeal," in particular that Covenant House had "not met its burden in establishing that the two employees in question are supervisory, managerial, or confidential employees under the Act." Id.

On February 14, 2025, Covenant House filed a First Amended answer to the Amended complaint. (GC Exh. 1(o).) This Amended Answer purported to admit that Sentigar and Perez were "managers" and "agents" of Respondent. (GC Exh. 1(o), p. 8–9.) Covenant House contended in its Amended Answer that Sentigar and Perez were therefore excluded from the bargaining unit pursuant to the Certification of Representative's provision that "Guards, supervisors, managers, and confidential employees as defined in the Act" were not included. Id.

On or about February 28, 2025, Covenant House filed a Motion for a Bill of Particulars, seeking information in connection with the Amended Complaint's allegations that North-Albert and Johnson unlawfully threatened employees with discipline if they engaged in union activity, including interacting with 1199 and/or discussing 1199 with other employees. (R.S. Exh. 11, 12; Tr. 288–290.) Covenant House argued that these allegations were inadequate because they did not identify the employees who were allegedly threatened. I denied Covenant House's Motion in an Order dated March 11, 2025, based upon the longstanding principle that a Complaint need not identify the specific employees to whom an alleged threat, or other statement purportedly violating Section 8(a)(1) of the Act, was directed. (R.S. Exh. 13; Tr. 288–290); see *Walsh-Lumpkin Wholesale Drug Co.*, 129 NLRB 294, 295 (1960); *Storkline Corp.*, 141 NLRB 899, 902–903 (1963), enf'd. in part 330 F.2d 1 (5th Cir. 1964); and see *Pacific 9 Transportation, Inc.*, 21–CA–116403, unpub. Board order issued June 11, 2015 (2015 WL 364583).

On March 3, 2025, Covenant House filed a Petition to Revoke a Subpoena *Duces Tecum* served by General Counsel on or about February 14, 2025. (R.S. Exh. 5, 6; Tr. 278–280.) In its Petition to Revoke, Covenant House argued that its Amended Answer "admitted the allegation that the Respondent had violated the Act by its overall conduct, by admitting that [Sentigar and Perez] were, at all material times, 'managers' and 'agents' of the Respondent, and further admitting that, as a result of Sentigar's and Perez' respective managerial status, the Respondent's overall conduct constituted a failure and refusal on the part of Respondent to bargain in good faith." (R.S. Exh. 6, p. 4–5.) Covenant House contended that as a result, materials pertinent to the managerial status of Sentigar and Perez, which were sought in General Counsel's Subpoena *Duces Tecum*, were irrelevant to the complaint's allegations. (R.S. Exh. 6, p. 5.) In an Order Denying Respondent's Petition to Revoke dated March 11, 2025, I rejected this argument. (R.S. Exh. 8, p. 2–3; Tr. 278–280.) As I discussed in my Order, pursuant to existing Board caselaw, the party asserting managerial status bears the burden to demonstrate that the employee in question formulates, develops, or effectuate its policies "with sufficient independent judgment or discretion in performing their duties." *Reading Eagle Co.*, 306 NLRB 871, 872 (1992); see also *Long Beach Press-Telegram*, 305 NLRB 412 (1991); see (R.S. Exh. 8, p. 3.) As I noted, such a contention must therefore be established based upon an evidentiary record, as opposed to Covenant House's purported "admission" in its Answer that Sentigar and Perez were managerial employees. (R.S. Exh. 8, p. 2–3.)

On March 10, 2025, Carmody wrote to the Regional Director, Region 2, again asserting that the Regional Office had acted improperly pursuant to the agency's Contacts with Represented Parties and Witnesses policies for the reasons discussed in his August 27, 2024 letter. (R.S. Exh. 9; GC Exh. 4(a); Tr. 292–293.) Carmody also stated that "it is plausible to assume" that Counsel for the General Counsel had continued to interact with Sentigar and Perez since that time. (R.S. Exh. 9, p. 1.) Carmody further contended that given Covenant House's Amended Answer "admitting" that Sentigar and Perez were managerial employees, the Regional Director was required to submit the issue to the agency's Special Ethics Counsel for guidance. (R.S. Exh. 9, p. 2). The next day, Covenant House filed a Second Amended Answer to the Complaint, containing additional Affirmative Defenses involving the agency's Contacts with Represented Parties and Witnesses policies contained in Section 10058 of the Casehandling Manual, and Sentigar and Perez' alleged supervisory status. (GC Exh. 1(q).)

The hearing in this matter opened on March 18, 2025. On March 17, 2025, Covenant House filed a Motion to Adjourn the Hearing and a Motion in Limine which sought to adjourn the hearing as well. Both motions were based upon Covenant House's contentions with respect to the violation and impropriety of the agency's Contacts with Represented Parties and Witnesses policies. (R.S. Exhs. 14, 15; Tr. 288–292, 297–298.) I denied both of these Motions on the record after the hearing opened.[12] (Tr. 28, 32–33.)

During the hearing, there was substantial discussion regarding Covenant House's production of documents and materials pursuant to General Counsel's Subpoena Duces Tecum. While some of the contested issues had been resolved via stipulation, the vast majority of the materials responsive to the Subpoena had not been produced when the hearing opened. (Tr. 35–36, 38–39.) For example, with respect to Paragraphs 6 and 7 of the Attachment to the Subpoena, which required the production of all documents pertaining to 1199's information requests and Covenant House's response, Carmody, stated that while Respondent had "produced some, I believe," they had "failed" to produce all relevant materials and their response was "not complete." (Tr. 36–37, 39.) Although Carmody represented that Covenant House would provide a complete response with respect to Paragraphs 6 and 7 by the end of the first hearing day, this did not in fact occur, which Carmody attributed to his inability to obtain access to the internet in the hearing room. (Tr. 59, 180–182.) The next day, General Counsel stated that while Carmody had provided additional materials responsive to Paragraphs 6 and 7, Covenant House had failed to produce materials which had been prepared using the Excel platform as they were kept in the ordinary course of business, as required pursuant to the Subpoena.[13] (Tr. 191–192; see R.S. Exh. 5, Par. j.)

Covenant House also flatly refused to produce materials related to the responsibilities and authority of Sentigar as Director of Development and Communication and Perez as Program Compliance Coordinator—and related to any direction that Sentigar and Perez refrain from contacting 1199 or discussing the Union with other employees—despite my March 11, 2025 Order requiring that they do so. Paragraphs 10 through 16 of the Attachment General Counsel's Subpoena *Duces Tecum* required the production of such materials,[14] while Paragraph 17 required the production of documents "that set forth or explain Respondent's defenses to the Complaint." At the opening of the hearing, Carmody stated that "we have no responsive documents that we will produce" with respect to these Paragraphs, "because of our admissions" with respect to Sentigar and Perez' purported managerial status. (Tr. 42.) Reminded of my March 11, 2025, ruling that Covenant House could not obviate its evidentiary burden to prove Sentigar and Perez' managerial status by claiming to "admit" it, Carmody stated, "we are standing on our admissions." (Tr. 42.) Asked by me, "So then you're refusing to comply with my order," Carmody replied, "Yes, ma'am." Id. Carmody

[12] The Motion to Adjourn the Hearing and Motion in Limine were both admitted into evidence. R.S. Exhs. 14, 15; Tr. 288–289, 290–291. However, the exhibits Covenant House offered for admission into evidence with these motions were rejected after an objection by General Counsel, in that they contained substantive evidence – including hearsay statements of Chief Program Officer Lisa Crook and Vice President for Program Compliance Jenn Strashnick, who were not called to testify and could not be cross-examined, and evidence for which authenticity and relevance had not been established. Tr. 288–292, 297.

[13] General Counsel's Subpoena *Duces Tecum* required the production of Electronically Stored Information (ESI), and my March 11, 2025 Order specifically directed the parties to meet and confer in good faith regarding various aspects of the electronic discovery process, such as identification of ESI custodians, data sources, search terms, and the form for production of information. It is obvious from the parties' statements on the record that no meaningful conferral regarding these issues took place, despite General Counsel's efforts to do so. See Tr. 47–57. Indeed, when asked by me whether he had retrieved all of the "electronically stored materials" in the possession of Covenant House's former attorney, Carmody responded, "I don't know what you mean by electronically." Tr. 51.

[14] Paragraph 10 required the production of documents "discussing, referencing or relating to the inclusion or exclusion of any employee in the bargaining unit." Paragraphs 14 and 15 required the production of documents pertaining to the Director of Development and Communication and Program Compliance Coordinator's duties, responsibilities, and authority. Paragraph 16 sought documents describing the job duties, responsibilities, and authority of employees in bargaining unit job classifications either excluded from lists of bargaining unit employees provided to the Union or "instructed to refrain from contacting the Union or discuss[ing] the Union with other employees." Pars. 11 and 12 sought all communications instructing Sentigar and Perez, respectively, to "refrain from contacting the Union or discuss[ing] the Union with other employees," and Par. 13 sought such materials with respect to any bargaining unit job classification.

then claimed, however, that he "would not cast it in terms of refusing to comply," and appeared to contend that the "admissions" contained in Covenant House's February 14, 2025 and March 11, 2025, Amended Answers somehow constituted a legitimate "response to your [March 11, 2025] order." (Tr. 42–43.)

Covenant House engaged in similar dissimulation with respect to the preparation and production of a privilege log. Paragraph y of the Attachment to General Counsel's Subpoena provided for the preparation of a privilege log with respect to all materials subject to assertions of any privilege, as did my March 11, 2025 Order. See *CNN America, Inc.*, 353 NLRB 891, 899 (2009), final decision and order issued 361 NLRB 439 (2014), reconsideration denied 362 NLRB No. 38 (2015), rev. granted in part anddenied in part 865 F.3d 740 (D.C. Cir. 2017); see also *Benedictine Health Center*, 18–CA–196456, unpub. Board order issued Dec. 27, 2017 (2017 WL 6728886), at fn. 1; See R.S. Exh. 8. However, when the hearing opened, Carmody stated that he was "still working on" a privilege log and would provide a complete privilege log the following morning, a claim he reiterated at the close of the first hearing day.[15] (Tr. 39–40, 183–184.) When General Counsel raised the privilege issue on the morning of the second day of the hearing, however, Carmody had no privilege log to provide. (Tr. 192–195.) In addition, the scope of the privilege log expanded substantially during the course of the hearing, with Carmody initially claiming that only documents responsive to Paragraph 10 of the Attachment to General Counsel's Subpoena *Duces Tecum* were privileged, then stating at the end of the day that Paragraph 17 encompassed privileged material, and subsequently announcing on the second day of the hearing that any privilege log would also include materials responsive to Paragraph 2.[16] (Tr. 40–41, 183, 192–195.) Pressed to provide a privilege log pursuant to the Subpoena and my March 11, 2025 Order, Carmody contended that "a problem with getting the internet here" prevented him from doing so, only to immediately admit that he had not attempted to use the internet in the hearing room that day. (Tr. 195.) Carmody then asserted that Covenant House would not provide a privilege log with respect to materials responsive to Paragraphs 10 through 17 of Attachment based upon Respondent's "admissions" with respect to Sentigar and Perez' purported managerial status, while reiterating Covenant House's refusal to produce any non-privileged materials responsive to these Paragraphs on that basis as well. (Tr. 196–197.) Finally while Carmody represented that he would provide a privilege log with respect to materials responsive to Paragraph 2, he had not done so when the second day of hearing began, again alluding to difficulties with the internet which he had not yet attempted to use that morning. (Tr. 197–198.) Thus, General Counsel was not provided with a privilege log until after his direct case was finished. (Tr. 273–274.)

Covenant House also raised assertions regarding purported violations of the agency's Contacts with Represented Parties and Witnesses policies on several occasions during the course of the hearing. Carmody initially took the position, during his cross-examination of Sentigar, that documents and testimony obtained as a result of what he termed the Region's "skip counsel violation" should be excluded from the record. (Tr. 106–107.) Carmody stated that Covenant House was seeking to exclude "Any and all evidence that was obtained from Mr. Sentigar by . . . the NLRB in the course of their investigation of . . . this case and the CB case, the related CB case, and the issuance of this complaint. Any and all evidence is what we will be seeking." (Tr. 107.) In response to my specific question, Carmody stated that he was seeking to have Sentigar's testimony excluded from the record and argued that Sentigar's testimony was "memorialized . . . odified in the Jencks statement," Sentigar's affidavits. (Tr. 108.) Carmody then, however, had Sentigar's affidavits marked as exhibits, only to contend minutes later that "we are looking to exclude all testimony from this witness."[17] (Tr. 108–109, 112.) At the conclusion of Sentigar's testimony Carmody declined to move for the admission of Sentigar's affidavits, nor was he able to identify the evidence based upon Sentigar's testimony that should be excluded from the record based upon the purported "skip counsel violation." (Tr. 129–130.) Carmody also did not move for the admission of Perez' affidavits, which he had marked as exhibits, at the conclusion of her testimony. (Tr. 248.) Instead, Covenant House moved for the admission of Sentigar and Perez' affidavits at the end of the hearing, contending that the affidavits were "probative" with respect to "the skip counsel issue," and characterizing them as "primary source evidence." (Tr. 295, 296; see Tr. 293–297.) I declined to admit the affidavits into evidence, in that Covenant House had the opportunity to question Sentigar and Perez extensively regarding their interactions with the Region, and the circumstances under which their affidavits were created. (Tr. 295297.) In addition, Covenant House did not provide any legal authority to explicate their contention that Sentigar and Perez' affidavits should be admitted as "primary source evidence."

As discussed above, Covenant House did not call any witnesses to testify at the hearing. After offering a number of documents for admission into evidence, Covenant House made a motion to adjourn the hearing and hold the record open pending the agency's response to a Freedom of Information Act request it had made on September 30, 2024, for materials involving the Contacts with Represented Parties and Witnesses policies and their application in the investigation of the instant charge. (Tr. 298–299, 302–303; R.S. Exh. 10.) In denying that motion, I noted the following: (i) Covenant House's contentions regarding the Contacts with Represented Parties and Witnesses policies had been raised during the investigation and rejected by the General Counsel; (ii) Covenant House had the opportunity to question Sentigar and Perez regarding their contacts with the Region

[15] Carmody stated at that time, "I'll just estimate that there's 100 emails" subject to a privilege of some kind, and then stated, "There might be 50. There might be 150. But there's 100 emails, somewhere in that range," which would be encompassed by Covenant House's privilege log. Tr. 184.

[16] Paragraph 2 required the production of documents including "all communications, from Respondent's supervisors, agents and/or representatives to its employees regarding the unionization process and negotiations between Respondent and the Union."

[17] Carmody appeared to also contend that Sentigar's affidavit should somehow be evaluated as part of the record in lieu of his live testimony at the hearing, arguing that "in the event that the . . . document is consistent with his testimony, basically records his testimony for all intents and purposes, then we'll deal . . . with the document." Tr. 112.

and the General Counsel, and did so on cross-examination; (iii) Covenant House had the opportunity to attempt to obtain the testimony of Regional staff, the Regional Director, and other personnel via the Board's Rules and Regulations but did not do so; (iv) Covenant House did not seek to exclude any evidence implicating the Contacts with Represented Parties and Witnesses policies during the hearing, and had in fact attempted to introduce such evidence into the record; (v) Covenant House had provided no legal authority for the proposition that any issues involving the Contacts with Represented Parties and Witnesses policies warranted dismissal of the Complaint or any allegations contained therein; (vi) Covenant House's previous contention in Case 02–CB–342290 that Sentigar and Perez were managerial employees had been rejected by the Regional Director and the Office of Appeals, and Covenant House had the opportunity to cross-examine Sentigar and Perez regarding their duties, responsibilities, and authority as Director of Development and Communications and Program Compliance Coordinator; and (vii) Covenant House was now attempting to introduce into the record the hearsay statements of its Chief Program Officer and Vice President for Program Compliance in lieu of calling these individuals to testify, thereby depriving General Counsel and 1199 of the opportunity to cross-examine them. (Tr. 303–305.)

Decision and Analysis

A. General Principles and Contentions Involving Witness Credibility

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

The instant case does not involve issues of contested witness testimony creating a credibility issue. Covenant House presented no witnesses to rebut the testimony of Sentigar, Perez, and Apter. Respondent's cross-examinations of Sentigar and Perez focused on their contacts with General Counsel and the Regional staff and did not address their job duties and responsibilities. (–ee Tr. 101-129, 236–248.) I generally find that the testimony of all three witnesses was forthright, internally consistent, consonant with the relevant documentary evidence, and sufficiently detailed. I note in addition that Sentigar remained employed by Covenant House at the time that he testified. It is well-settled that the testimony of an employer respondent's current employee which is contrary to the respondent's contentions in the case may be considered particularly reliable, in that it is potentially adverse to the employee's own pecuniary interests. *Avenue Care & Rehabilitation Center*, 360 NLRB 152, 152 fn. 2 (2014); *Flexsteel Industries*, 316 NLRB 745 (1995), aff'd, 83 F.3d 419 (5th Cir. 1996).

To the extent that any considerations of credibility are applicable here, I have considered the demeanor of the witnesses, the context of their testimony, corroboration via other testimony or documentary evidence or lack thereof, the internal consistency of their accounts, and the witnesses' apparent interests, if any. Any credibility resolutions I have made are addressed and incorporated into my analysis herein.

B. The Status of Director of Communications and Development John Sentigar and Program Compliance Coordinator Gabrielle Perez

As discussed above, the Complaint alleges that Covenant House failed and refused to bargain collectively and in good faith with 1199, and refused to provide 1199 with information which is relevant and necessary for the Union to fulfill its responsibilities as the exclusive collective bargaining representative of the bargaining unit employees, in violation of Sections 8(a)(1) and (5) of the Act. The complaint further alleges that Covenant House violated Section 8(a)(1) by threatening employees with discipline if they engaged in union activity, including interacting with 1199 and/or discussing 1199 with other employees. Covenant House's defense to these allegations is premised upon the purported managerial status of Director of Communications and Development John Sentigar and Program Compliance Coordinator Gabrielle Perez, and Sentigar and Perez' participation in the 1199 negotiating committee. As a result, I will begin by addressing Covenant House's assertion that Sentigar and Perez were managers within the meaning of the Act.

It should be noted that Covenant House declines in its Post-Hearing Brief to address the probative evidence contained in the record regarding Sentigar and Perez' job duties, responsibilities, and authority as Director of Development and Communications and Program Compliance Coordinator, respectively. Covenant House instead argues that its "admission" that Sentigar and Perez were managers pursuant to Board caselaw "removed" the issue of their status "from the instant case." (Posthearing Br. at 15, 17, 24, 27–33.) I will begin by applying existing Board law to analyze the probative evidence in the record relevant to Sentigar and Perez' status and then address Covenant House's argument that the "admissions" contained in its Amended Answer preclude an evaluation of the evidentiary record.

The evidence here establishes that Sentigar and Perez were not managerial employees at the times material to the Complaint's allegations. Managerial employees are employees who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980), quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974). As a general matter, employees may properly be considered managerial "only" where they "represent[] management interests by taking or recommending discretionary actions that effectively control or implement employer policy." *NLRB v. Yeshiva University*, 444 U.S. at 683; *Republican Co.*, 361 NLRB 93, 95 (2014). The critical element of this analysis involves discretion in the performance of the disputed employee's work duties "independent of their employer's established policy," or the prerogative to deviate from established employer policies. *Wolf Creek Nuclear Operating Corp.*, 364 NLRB 1619, 1621 (2016), quoting *Republican Co.*, 361 NLRB at 95; *Case Corp.*, 304 NLRB 939 (1991), enf'd. 995 F.2d 700 (7th Cir. 1993). Exercise of judgment within parameters or policies established by the employer is insufficient to demonstrate managerial authority. *General Dynamics Corp.*, 213 NLRB 851, 858 (1974) (employees not managerial where "their job discretions in fact are exercised in conformity with the Employer's established policy"). It is well-settled that the burden of proving an employee's managerial status rests with the party asserting it. *Wolf Creek Nuclear Operating Corp.*, 364 NLRB at 1621; *Connecticut Humane Society*, 358 NLRB 187, fn. 1, 209 (2012).

The record further establishes that Sentigar and Perez were not supervisors within the meaning of Section 2(11) of the Act.[18] As enumerated in Section 2(11), the primary or statutory indicia of supervisory authority involve the authority to "hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action." The evidence must demonstrate that the purported supervisor's exercise of authority "is not of a merely routine or clerical nature but, requires the use of independent judgment." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006), quoting *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). Independent judgment consists of discretion in decision-making which is not "dictated or controlled by detailed instructions" contained in "company rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Oakwood Healthcare, Inc.*, 348 NLRB at 693. The evidence must also demonstrate that such authority is exercised "in the interest of the employer." Id. Secondary indicia of supervisory authority include the ratio of alleged supervisors to employees, differences in terms and conditions of employment, attendance at management meetings, and the manner in which the alleged supervisor is held out to and/or perceived by other employees. See, e.g., *Connecticut Humane Society*, 358 NLRB at 208; *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007); *J.C. Brock Corp.*, 314 NLRB 157, 159 (1994). The party asserting that an employee is a statutory supervisor bears the burden of presenting evidence sufficient to establish the existence of supervisory authority with respect to at least one of the prerogatives set forth in Section 2(11). See, e.g., *Oakwood Healthcare, Inc.*, 348 NLRB at 687, citing *Kentucky River Community Care*, 532 U.S. at 711–712.

Finally, the record establishes that Sentigar and Perez were not confidential employees within the meaning of the Act.[19] In order to determine whether an employee is appropriately excluded from a bargaining unit as "confidential," the Board applies a "labor nexus" standard. See *Waste Management de Puerto Rico*, 339 NLRB 262 fn. 2, 282 (2003), enf'd. 359 F.3d 36 (1st Cir. 2004), citing *NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. 170, 188-189 (1981). Pursuant to the labor nexus analysis, in order to establish confidential employee status the individual in question must "share a confidential relationship with managers who 'formulate determine and effectuate management policies in the field of labor relations'" and "assist and act in a confidential capacity to such managers." *Waste Management de Puerto Rico*, 339 NLRB at 262 fn. 2, quoting *NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. at 188–189. An individual may also be considered confidential to the extent that the employee has "regular" access to "confidential information concerning anticipated changes that may result from collective-bargaining negotiations." *Crest Mark Packing Co.*, 283 NLRB 999 (1987), citing *NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. at 188–189. However, mere access to personnel information underlying labor relations policy, or access to labor relations information after or in the process of being disclosed to the union or the employees involved, is insufficient to establish confidential employee status. *Lincoln Park Nursing Home*, 318 NLRB 1160, 1164 (1995); *Bakersfield Californian*, 316 NLRB 1211, 1212 (1995); *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1196 (1994). The party asserting that the employee in question is confidential pursuant to the Act bears the burden of proof on the issue. *Waste Management de Puerto Rico*, 339 NLRB at 282; *Crest Mark Packing Co.*, 283 NLRB at 999.

1. The Status of Director of Development and Communications John Sentigar

The record evidence does not establish that Director of Development and Communications John Sentigar is a managerial employee pursuant to Board caselaw, in that there is no evidence that Sentigar exercised discretion in the performance of his du-

[18] Covenant House did not purport to "admit" that Sentigar and Perez were statutory supervisors in its Answers, and does not address any record evidence pertinent to Sentigar and Perez' supervisory status in its Post-Hearing Brief. However, Respondent made such an assertion on several occasions during the course of the parties' negotiations, and in the context of its charge against 1199 in Case 02–CB–342290. See, e.g., GC Exh. 5, p. 1-3; GC Exhs. 15, 17; Jt. Exh. 7; GC Exh. 3(a-c). Johnson's letters to Sentigar and Perez directing them to refrain from union activity and stating that they would be suspended without pay if they continued to interact with 1199 or discuss the Union with other employees, also obliquely refer to supervisory status. GC Exh. 26, 28. Furthermore, Covenant House's Twelfth and Thirteenth Affirmative Defenses contend that General Counsel's conduct in investigating and issuing the Complaint violated the Act's provision that employers shall not be "compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." GC Exh. 1(q). As a result, I will address the issue herein.

[19] While Covenant House does not contend in its Post-Hearing Brief that Sentigar and Perez are confidential employees, it made such an allegation in connection with its charge in Case 02–CB–342290. In addition, Covenant House's arguments, as alleged in Respondent's Amended Answer, appear to be premised in part upon the bargaining unit's explicit exclusion of confidential employees. See GC Exs. 1(q), 3(a). Furthermore, both General Counsel and Charging Party address the issue in their Post-Hearing Briefs. As a result, I will do so here as well.

ties as Director of Development and Communications independent of existing Covenant House policy. *Wolf Creek Nuclear Operating Corp.*, 364 NLRB at 1621; see also *Case Corp.*, 304 NLRB at 939. Sentigar's primary duties and responsibilities involve locating and analyzing new funding opportunities for review, and preparing applications for grants after review and approval by a team which included Covenant House executives and its CEO. Sentigar's uncontradicted testimony establishes that once he discovers a new grant opportunity as part of his job duties, he has no authority to apply for the particular grant without the review and approval of a team including his supervisor, Vice President of Development and Communications Camden McDaris-Black, Chef Program Officer Lisa Crook, the pertinent program team lead, the finance team, and Covenant House CEO North-Albert.[20] (Tr. 76–81.) The record does not even establish that Sentigar makes a recommendation as to whether to apply for the grant in question, as Sentigar testified that the analyses of RFPs relevant to grant applications that he prepares merely summarize the RFP itself. (Tr. 76–77, 78.) In any event, it is well-settled that the ability to make recommendations based upon technical or professional expertise is insufficient to establish the requisite discretion for a finding of managerial status. See *Connecticut Humane Society*, 358 NLRB at 188, 200–201, 209–210 (no managerial status established where Development Manager made recommendations regarding the purchase of software and computer equipment based upon "her technical expertise"); *Reading Eagle Co.*, 306 NLRB 871, 872 (1992) (managerial status not established where district managers' recommendations regarding "splits, mergers, expansions, and contraction of routes" were "not necessarily accepted"); *Neighborhood Legal Services*, 236 NLRB 1269, 1273 (1978) (unit heads not managerial employees where views incorporated into decision-making process would "be attributable primarily to their professional expertise").

Sentigar's preparation of grant applications after the team described above has determined to pursue the particular grant opportunity also does not involve the exercise of managerial discretion. Sentigar testified without contradiction that his role is limited to preparing Covenant House's application in response to the proposal, and ensuring that the application is well-written, reviewed by "all pertinent parties," and then submitted in a timely manner. (Tr. 78.) To the extent that a budget is required as part of Covenant House's submission, staffing and salaries are determined by members of the executive team, with a detailed, itemized budget for the grant proposal prepared by the finance team. (Tr. 78, 79–80.) Sentigar testified that he has no authority to formulate a budget for the necessary staffing or determine the salaries at issue. (Tr. 80.) Furthermore, Sentigar testified without contradiction that he has no authority to divert funds from commitments made in a grant application, determine what programs would be terminated if Covenant House decided to forego reapplying for specific funding, or make any decisions regarding staffing levels, pay rates, or employee work schedules as a result of changes in funding. (Tr. 81–83.) Such job duties obviously do not entail the exercise of managerial discretion.[21] See *Reading Eagle Co.*, 306 NLRB at 871–872 (district managers did not exercise managerial discretion where they had no authority with respect to compensation of carriers purchasing newspapers from the Respondent employer wholesale).

The evidence further establishes that Sentigar is not a supervisor pursuant to Section 2(11) of the Act. The record contains no evidence whatsoever that Sentigar has the authority to take or effectively recommend employment actions such as the hiring, transfer, suspension, lay off, recall, promotion, discharge, assignment, reward, or discipline of any other Covenant House employees. Nor does the record establish that Sentigar has the authority to responsibly direct other Covenant House employees in the performance of their work, or to adjust their grievances. Simply put, the record does not establish that Sentigar had any authority to exercise independent judgment in order to affect the terms and conditions of employment for any other Covenant House employee in any way. In particular, Sentigar's uncontroverted testimony establishes that he had no ability to make any determinations with respect to the labor relations consequences when one of the grant applications that he was directed to submit was successful, or when he was instructed to forego applying for specific funding. (Tr. 81–83, 92–94.) Sentigar's testimony that no Covenant House employees report to him was also uncontradicted by any other record evidence. (Tr. 98–99.) Thus, the record establishes that Sentigar is not a supervisor within the meaning of Section 2(11) of the Act.

Finally, the evidence establishes that Sentigar was not a confidential employee. The record is entirely devoid of evidence that Sentigar's Director of Development and Communications position involves a confidential relationship with any manager who formulates and effectuates Covenant House's labor relations policies. Nor is there any evidence that Sentigar has access to confidential labor relations or personnel information. As a result, I find that Sentigar is not a confidential employee pursuant to Board caselaw.

For all of the foregoing reasons, the evidence establishes that Sentigar is neither a managerial employee nor a statutory super-

[20] Sentigar testified that he could apply for grants Covenant House received routinely every year without the team's review, and that in such cases he submitted the same application prepared in past years, changing the dates and updating any relevant information as required. Tr. 81. Such work does not entail the independent discretion necessary to establish an exercise of managerial authority. See *Connecticut Humane Society*, 358 NLRB at 188, 200, 211 (Finance Assistant Manager did not exercise managerial discretion to prepare clinic's budget where she merely inserted "estimates of increases and decreases" pursuant to executive's direction into a "template" prepared by executive).

[21] Sentigar's preparation of quarterly reports for Covenant House's Board of Directors also does not involve the exercise of managerial authority. Sentigar's testimony establishes that the preparation of these reports entails contacting department heads to obtain information regarding each department's activities, reviewing each department head's submission for "spelling, grammar" and "formatting," and compiling the information into a report for North-Albert's review. Tr. 89–90. In addition, I credit Sentigar's uncontradicted testimony that he *did not* perform certain duties and responsibilities enumerated in Covenant House's most recent Job Description for the Director of Communication and Development, as well as his testimony that after his employment began Covenant House hired a Vice President of Development and Communications, who assumed some of these responsibilities, with others relegated to members of different teams. Tr. 83-86; GC Exh. 24, 25.

visor. The evidence further establishes that Sentigar is not a confidential employee within the meaning of the Act.

2. The Status of Program Compliance Coordinator Gabrielle Perez

The record also does not establish that Program Compliance Coordinator Gabrielle Perez was a managerial employee at any time material to the Complaint's allegations. Instead, the evidence demonstrates that whatever discretion Perez exercised in connection with her job duties and responsibilities occurred within policies and limitations established by Covenant House's executive team.

Perez' uncontroverted testimony establishes that her primary job functions entailed conducting internal reviews of Covenant House programs to ensure compliance with standards formulated by New York City and State regulatory bodies, and subsequently acting as a liaison between the City and State agencies involved and Covenant House staff after the agencies completed their own audits. (Tr. 204–205, 207–208, 213–215.) Perez testified that she had no authority in connection with these responsibilities to require that Covenant House programs make any changes that she suggested to individual service plans, weekly case notes, and goals in anticipation of an upcoming audit. (Tr. 207–209.) Nor did Perez have the authority to discipline employees, recommend discipline, or require employee retraining based upon the results of the internal reviews she conducted. (Tr. 208–209.) Similarly, while Perez met with Covenant House program personnel to discuss strategic action and performance improvement plans issued by City and State agencies after their audits, she had no authority to independently respond to such plans or implement the recommendations they contained. (Tr. 213–215.) Thus, Perez' work involved the exercise of technical expertise in an informational or advisory role, without the prerogative to alter or deviate from established Covenant House policy and did not entail the exercise of managerial discretion. See *Neighborhood Legal Services*, 236 NLRB at 1273; *General Dynamics Corp.*, 213 NLRB at 857-858. Perez' responsibilities as a liaison with New York City and State agencies are also insufficient to establish managerial authority. See *Connecticut Humane Society*, 358 NLRB at 209–210 (employee oversight of direct mail advertising vendor, including ensuring timely submission of necessary information and monitoring of donations based upon vendor's projections, insufficient to establish managerial status).

Perez' job duties also included developing training resources for and training case managers to ensure that case documentation comported with Covenant House's program compliance standards. However, Perez' uncontradicted testimony demonstrates that the materials she created—such as desk aids, a case manager manual, and flyers—simply incorporated policies established by CEO North-Albert or Covenant House's Chief Compliance Officer, which were themselves based upon standards created by New York City and State regulators. (Tr. 209–210.) The training materials Perez created were likewise based upon existing Covenant House policies, and were specifically developed to ensure that these policies were uniformly implemented to eliminate discrepancies in documentation. (Tr. 210–211.) Thus, Perez testified that she had no authority to determine, update, or deviate from applicable Covenant House compliance policies, which were modified by Strashnick, together with Crook and North-Albert. (Tr. 215–218.) Under such circumstances, Perez' responsibilities with respect to developing resources and conducting training regarding Covenant House's compliance standards do not evince a level of independent discretion sufficient to establish managerial authority. See *Wolf Creek Nuclear Operating Corp.*, 364 NLRB at 1621–1622 (Security Training Instructors at nuclear facility not managerial employees, where "any discretion [they] exercise in developing or conducting the training programs is severely restricted" by Nuclear Regulatory Commission regulations); *Roofing, Metal & Heating Associates*, 304 NLRB 155 fn. 2, 161 (1991), enf'd. 975 F.2d 1551 (3rd Cir. 1992) (instructor without "power or authority to act autonomously in any meaningful sense" or "deviate from . . . established policies" not a managerial employee).

Perez' discretion was similarly limited with respect to her role in Covenant House's system of youth and staff incident reporting. Thus, Perez testified that she had no authority to designate what specific incidents or types of incidents involving youth or staff were subject to reporting. Instead, Perez testified that such "incidents" were exclusively defined by Covenant House's Child and Youth Protection Policy, as well as by New York City and State regulatory agency requirements. (Tr. 212, 213, 233.) Perez testified that she determined whether to report a youth incident to the City and State regulators solely based upon Covenant House's Child and Youth Protection Policy, determining only whether editorial or grammatical changes, additional information, or clarifications needed to be made to the report itself. (Tr. 225–226.) Similarly, staff incident reports were addressed by North-Albert, Crook, Selmanovic, and a representative from Covenant House Human Resources, which conducted an investigation. (Tr. 227–228.) Perez' only duties with respect to staff incident reporting were to review the reports themselves for grammar and completeness, and to contact the funder to ensure they had received the documentation. (Tr. 228–229.) Perez also acted as a liaison to arrange interviews and obtain documentation in connection with an outside agency investigation. (Tr. 230.) While Perez attended meetings which addressed open investigations and included Human Resources' recommendations regarding potential employee discipline, Perez testified the meetings were initiated by Strashnick, and that she attended solely as an observer, with no authority to discipline employees, issue corrective action, or resolve staff incidents. (Tr. 232.) This evidence does not establish that Perez exercised discretion in the formulation, control or implementation of Covenant House policy.

The evidence also fails to establish that Perez was a supervisor within the meaning of Section 2(11) of the Act. There is no record evidence that Perez had any authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline of any other Covenant House employees. In particular, Perez testified without contradiction that she had no authority to discipline employees, recommend corrective action, or otherwise exercise supervisory authority in connection with Covenant House's system of incident reporting and resolution. (Tr. 232.) Perez also testified that she had no authority with respect to establishing staffing levels, pay rates, benefits, or employee work schedules. (Tr. 218–219.) In addition, the record does not demonstrate that Perez had the authority to responsibly direct other Covenant House employees, or to adjust their grievances. While Perez testified that she sometimes supervised unpaid college interns at Covenant House during the summer months, it is well-settled that the supervision of individuals who are not employees is insufficient to confer supervisory status pursuant to Section 2(11) of the Act. See *Connecticut Humane Society*, 358 NLRB at 207 ("an individual must exercise supervisory authority over employees of the employer in order to qualify as a supervisor under Section 2(11)"); *Franklin Home Health Agency*, 337 NLRB 826, 286–827 (2002) (collecting cases holding supervision of a different employer's employees inadequate to demonstrate supervisory status); *North General Hospital*, 314 NLRB 14 (1994) (attending physician's supervision of interns and residents insufficient to establish supervisory authority where interns and residents were not statutory employees). Thus, the record does not establish that Perez was a supervisor pursuant to Section 2(11) of the Act.

Finally, the evidence does not establish that Perez was a confidential employee. The evidence does not demonstrate that Perez shared a "confidential relationship" with any manager that formulated, determined, or effectuated management policies with respect to labor relations, as opposed to program regulatory and policy compliance. *Waste Management de Puerto Rico*, 339 NLRB at 262, fn. 2. In addition, there is no evidence in the record that Perez had "regular" access to "confidential information concerning anticipated changes that may result from collective-bargaining negotiations." *Crest Mark Packing Co.*, 283 NLRB at 999. In particular, the evidence fails to establish that Perez' involvement in Covenant House's system of staff incident reports rendered her position confidential in nature.[22] Perez testified that she reviewed and confirmed the submission of staff incident reports, which might contain recommendations by HR for employee discipline as part of corrective action, to the relevant funder. (Tr. 228–229.) Perez also attended bi-weekly meetings which included discussions regarding open staff incidents, where HR recommendations with respect to disciplinary issues were presented to program leadership. Tr. 231-232. However, as discussed above, confidential employee status cannot be established solely based upon access to personnel information such as potential discipline. See *Lincoln Park Nursing Home*, 318 NLRB at 1160 (access to records of grievances inadequate to establish confidential employee status); *Bakersfield Californian*, 316 NLRB at 1212 (employee not confidential by virtue of "mere exposure to" disciplinary and grievance information "before it is formally presented to the employees involved or the Union," where the information in question "is in the process of being forwarded to the interested parties"); *S.S. Joachim & Anne Residence*, 314 NLRB at 1196 (employees not confidential "who merely have access to personnel or statistical information on which an employer's labor relations policy is based"); see also *PTI Communications*, 308 NLRB 918, 919 (1992) (employee whose work "may well allow her to learn of personnel matters prior to their being revealed to employees affected by them" not confidential "absent a confidential relationship with a person who formulates, determines and effectuates the Employer's labor policy"). As a result, the record fails to demonstrate that Perez was a confidential employee.

For all of the foregoing reasons, the evidence does not establish that Perez was a managerial employee, a supervisor pursuant to Section 2(11), or a confidential employee within the meaning of the Act.

3. Covenant House's "Admissions" With Respect to Sentigar and Perez' Purported Managerial Status

As stated previously, Covenant House does not address any of the record evidence pertinent to Sentigar and Perez' purported managerial status in its Post-Hearing Brief. Instead, Covenant House argues that the "admissions" in its Amended Answer to the effect that Sentigar and Perez were managerial employees are "dispositive," and "removed" the issue of their managerial status "from the instant case." Post-Hearing Brief at 15, 17, 24, 27-33. This argument is meritless. First of all, the Complaint contains no allegations with respect to the job duties, responsibilities, authority, or status of Sentigar and Perez. See GC Exh. 1(j). Thus, the following contentions in Covenant House's Amended Answer regarding Sentigar and Perez' purported managerial status as the basis for its refusal to bargain with 1199 constitute an affirmative defense to the Complaint's allegations, and not "admissions:"[23]

> Covenant House New York admits that, at all material times [Sentigar/Perez] possessed the authority to, and actually exercised the authority to, formulate, determine, or effectuate labor relations policies of Covenant House New York by making operative decisions, and possessed and actually exercised the discretion to unilaterally implement, update, or change Covenant House New York policies, or direct employees to disregard Covenant House New York policies and further admits that [Sentigar/Perez] was a "manager" within the meaning of the classification "managers" as that term is set forth in the unit description in Paragraph 6, above, of this First Amended Answer, and an "agent" of Covenant House New York for the purposes of the Complaints, and further admits that Covenant House New York's overall conduct, including the conduct described in paragraph 11(a) [of the Complaints], included conduct on the part of [Sentigar/Perez] which constituted a 'failure and refusal on the part of Covenant House New York to bargain in good faith with the Charging Party as the exclusive collective bargaining representative of the Unit; described in Paragraph 6, above, of this First Amended Answer.

(GC Exhs. 1(o) and (q), at p. 7–8.) Covenant House further contends that the Complaint's allegation that Respondent failed and refused to bargain in good faith "By its overall conduct" somehow transforms its assertion that Sentigar and Perez were managerial employees from an affirmative defense into a legally oper-

[22] Perez' uncontradicted testimony established that she did not have access to employee personnel files placed in the VisualVault system by HR in preparation for an audit by New York City or State regulators. Tr. 220–221.

[23] As a result, the basic legal precepts pertaining to the import of admissions which Covenant House enumerates in its Post-Hearing Brief at page 28 are inapplicable.

ative "admission." (GC Exh. 1(j), p. 5; Posthearing Br. at 2930.) However, Covenant House provides no legal authority in support of this otherwise unconvincing proposition. As discussed above, it is well-settled that the burden of proving an employee's managerial status rests with the party asserting it. *Wolf Creek Nuclear Operating Corp.*, 364 NLRB at 1621; *Connecticut Humane Society*, 358 NLRB at 187 fn. 1, 209; *Waste Management de Puerto Rico*, 339 NLRB at 279. As I stated in my March 11, 2025, Order denying Covenant House's Petition to Revoke General Counsel's Subpoena *Duces Tecum,* Covenant House cannot evade this burden by casting its contention that Sentigar and Perez were managerial employees as an "admission" precluding the creation of an evidentiary record with respect to the issue.[24]

Other well-settled Board precepts also nullify Covenant House's claims regarding the legally dispositive impact of its vaunted "admission" that Sentigar and Perez were managerial employees. Specifically, the Board has long held it to be "axiomatic" that absent "newly discovered and previously unavailable evidence or special circumstances," a respondent facing refusal to bargain allegations pursuant to Section 8(a)(5) may not "relitigate issues that were or could have been litigated in a prior representation proceeding." *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921, 922 (1997); *Salem Hospital Corp. v. NLRB*, 808 F.3d 59, 73 (D.C. Cir. 2015); *Staff Builders Services*, 289 NLRB 373, 375 (1988), enf'd. 879 F.2d 1484 (7th Cir. 1989); *Sandpiper Convalescent Center*, 279 NLRB 1129, 1132 (1986), enf'd. 824 F.2d 318 (4th Cir. 1987). The Board has applied this standard in order to preclude litigation regarding the scope of the appropriate bargaining unit, as well as the supervisory status of job titles listed in the bargaining unit description during an earlier representation case. See *Salem Hospital Corp.*, 808 F.3d at 73 ("relitigation ban plainly applied to Salem," where "Salem had already raised the CNs' supervisory status issue in the representation proceeding and lost"), and see *Salem Hospital Corp*., 357 NLRB No. 119 at p. 1 (2011) (rejecting challenge to certification based upon "contention in the underlying representation proceeding that the bargaining unit improperly includes statutory supervisors"); *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB at 921–922 (rejecting attempt to relitigate supervisory status); *Sandpiper Convalescent Center*, 279 NLRB at 1131–1132 (rebuffing attempt to relitigate "appropriateness of bargaining unit").

The evidence here establishes that not only did Covenant House fail to raise any issue with respect to Sentigar and Perez' status as bargaining unit employees during the representation proceedings, Respondent, explicitly agreed to the inclusion of their job titles in the bargaining unit. Thus, Covenant House entered into a Stipulated Election Agreement which included the Director of Development and Communications and Program Compliance Coordinator job titles and included Sentigar and Perez as eligible voters in its Voter List served on the Union. (GC Exh. 2(b), p. 2; GC Exh. 2(c).) While the Professional Unit contained in the Stipulated Election Agreement explicitly excluded "All non-professional employees, guards, supervisors, managers and confidential employees as defined in the Act," Covenant House did not contend at that time that Sentigar and Perez' positions were encompassed by those categories, and specifically included them in the bargaining unit. Id. In addition, Perez was personally released from work by Covenant House in order to serve as a Union observer during the ballot count. (Tr. 201, 240.) And after the election, Covenant House's Executive Director sent all Covenant House staff a list of bargaining unit job classifications which contained the Director of Development and Communications and Program Compliance Coordinator job titles. (GC Exh. 23.) These job titles were of course also included in the Board's Certification of Representative, and prior to the first bargaining session, North-Albert sent a letter to all Covenant House staff attaching a list of bargaining unit positions which included them as well. (Jt. Exh. 1, p. 1–2; Jt. Exh. 2, p. 2.) This evidence establishes that Covenant House not only failed to raise the purportedly managerial status of the Director of Development and Communications and Program Compliance Coordinator positions during the representation case proceedings but, specifically agreed to the inclusion of these titles in the bargaining unit. It cannot now circumvent the Board's well-settled principle precluding relitigation of the issue in this case by construing the contention that Sentigar and Perez are managerial employees as an "admission" in its Amended Answer.

For all of the foregoing reasons, Covenant House's argument that its self-styled "admissions" regarding the managerial status of Sentigar and Perez' positions as Director of Development and Communications and Program Compliance Coordinator precluded the creation of an evidentiary record with respect to this issue is rejected.

4. The Adverse Inferences Sought by General Counsel

General Counsel argues that certain adverse inferences against Covenant House are appropriate in connection with the status of Sentigar and Perez. General Counsel contends that I should draw such adverse inferences as an evidentiary sanction for Covenant House's failure to comply with my March 11, 2025 Order that it provide documents responsive to General Counsel's Subpoena Duces Tecum. General Counsel further argues that an adverse inference is appropriate based upon Covenant House's failure to call Chief Program Officer Lisa Crook and Vice President for Program Compliance Jenn Strashnick as witnesses to testify at the hearing. I have determined that Sentigar and Perez are not managerial, supervisory or confidential employees based upon the evidentiary record, as discussed above, without the benefit of any adverse inference against Covenant House on the grounds asserted by General Counsel. However, I find that an adverse inference is appropriate based upon Covenant House's willful refusal to respond adequately to General Counsel's Subpoena Duces Tecum and comply with my March 11, 2025 Order. I further find that an adverse inference is appropriate based upon Covenant House's brazen attempt to introduce non-probative material into the record in lieu of Crook and Strashnick's testimony, and thereby deprive General Counsel and Charging Party of the opportunity to conduct cross-examination.

The Board has long held that adverse inferences may be drawn

[24] I decline to reconsider my March 11, 2024 Order denying Respondent's Petition to Revoke General Counsel's Subpoena Duces Tecum on this basis, as Covenant House suggests in its Post-Hearing Brief at pages 30 to 31, for all of the reasons discussed herein and in the Order itself.

based upon a party's failure to produce materials pursuant to a Subpoena Duces Tecum and/or failure to comply with an Administrative Law Judge's rulings in connection with the Subpoena. See generally, *McAllister Towing & Transportation Co.*, 341 NLRB 394, 396 (2004), enf'd. 156 Fed.Appx. 386 (2nd Cir. 2005); see also *Metro-West Ambulance Service, Inc.*, 360 NLRB 1029, 1030 fn. 13 (2014) (failure to produce subpoenaed accident reports pertinent to the "treatment of similarly situated employees" warrants adverse inference that records would have established that such employees were treated more leniently than the alleged discriminatee). Adverse inferences are also appropriate where a party fails to introduce into evidence documents containing information directly bearing on a material issue. See *Massey Energy Co.*, 358 NLRB 1643, 1692 fn. 63 (2012); see also *Zapex Corp.*, 235 NLRB 1237, 1239 (1978), enf'd. 621 F.2d 328 (9th Cir. 1980) (failure to produce personnel files of alleged permanent replacement employees warrants inference that records would have tended to show that replacements were not in fact permanent).

An adverse inference is manifestly appropriate here based upon Covenant House's bald refusal to produce materials pursuant to General Counsel's Subpoena Duces Tecum—and comply with my March 11, 2025 Order denying Respondent's Petition to Revoke – which were relevant to the status of Sentigar and Perez. Carmody flatly admitted on the record that Covenant House was refusing to comply with my March 11, 2025 Order and produce materials pertinent to Respondent's claims regarding the managerial, supervisory, and confidential status of Sentigar and Perez, which were sought in Paragraphs 10 through 17 of the Attachment General Counsel's Subpoena. (Tr. 42–43.) Perhaps realizing the import of this concession, Carmody then attempted to represent that Covenant House had effected a proper "response" to my Order via Respondent's "admissions" regarding Sentigar and Perez' status. (Tr. 42–43.) This rejoinder was chronologically insensible, since Covenant House's "admissions" were first raised in its Amended Answer filed almost a month before my Order issued. And my March 11, 2025 Order explicitly rejected Covenant House's contention that its "admissions" obviated the necessity of developing an evidentiary record regarding Sentgar and Perez' purported managerial status. It should further be noted that Covenant House failed to timely respond to the Subpoena in other respects, as evinced by: (i) Carmody's admission that Covenant House had "failed" to produce all relevant materials and that its response was "not complete;" (ii) Carmody's flimsy contentions that a lack of internet service in the hearing room had stymied Covenant House's production; and (iii) Covenant House's failure to provide any sort of a privilege log, as required pursuant to the Subpoena and March 11, 2025 Order, until General Counsel had all but closed his direct case.[25] (See Tr. 36–37, 39–42, 59, 180–184, 191–198, 273–274.) For all of the foregoing reasons, the record establishes that Covenant House willfully refused to respond to General Counsel's Subpoena Duces Tecum and to my March 11, 2025 Order denying Respondent's Petition to Revoke. It is therefore appropriate to draw an adverse inference to the effect that had Covenant House produced the materials sought in Paragraphs 10 through 17 of the Attachment to the Subpoena, the documents would have tended to corroborate Sentigar and Perez' testimony and to support General Counsel's contention that Sentigar and Perez were not managerial, supervisory, or confidential employees.

It is also appropriate to draw an adverse inference with respect to the purported managerial, supervisory, and/or confidential status of Sentigar and Perez based upon Covenant House's failure to call Cook and Strashnick as witnesses at the hearing, and subsequent attempt to introduce into the record non-probative hearsay statements from these witnesses, thereby depriving General Counsel and Charging Party of the opportunity to cross-examine them. It is well-settled that an administrative law judge may draw an adverse inference from a party's failure to call a witness that would reasonably be assumed to corroborate the party's version of events, particularly where the witness is the party's agent. See, e.g., *Chipotle Services, LLC*, 363 NLRB 336, 336 fn. 1, 349 (2015), enf'd. 849 F.3d 1161 (8th Cir. 2017); *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). Perez and Sentigar's uncontroverted testimony established that Perez reported to Vice President for Program Compliance Jenn Strashnick, and Chief Program Officer Lisa Crook was a member of Covenant House's executive team. (Tr. 73–75, 202–203; GC Exh. 24.) Crook and Strashnick were therefore both members of Covenant House management. In addition, there is no evidence that Crook and Strashnick were no longer employed by Covenant House at the hearing, and Covenant House did not assert that they were unavailable to testify at the hearing for any legitimate reason in response to my questions. (See Tr. 288–291.) Despite these circumstances, Covenant House not only failed to call Crook and Strashnick as witnesses at the hearing, but actually attempted to have hearsay statements that they purportedly prepared admitted into the record, as exhibits Covenant House attached to its Motion to Adjourn the Hearing and Motion in Limine filed the day before the hearing began.[26] (See Tr. 288–292, 297; R.S. Exh. 14, 15.) Thus, Covenant House sought to introduce as evidence hearsay representations and assertions it apparently attributed to Crook and Strashnick without their live testimony and exposure to cross-examination. Such a scenario compels the drawing of an adverse inference to the effect that if Cook and Strashnick had testified at the

[25] In addition, it was obvious from Carmody's remarks at the close of the first day of the hearing—that there "might be" 50, 100, or 150 emails encompassed by Covenant House's privilege log—that Covenant House had not made an adequate effort to prepare a privilege log when the hearing in this matter began. It was also apparent that Covenant House had not engaged in any meaningful attempt to meet and confer with General Counsel regarding the production of ESI pursuant to my March 11, 2025, Order prior to the opening of the hearing. See Tr. 47–57.

[26] After the hearing closed, Covenant House again attached Crook and Strashnick's hearsay statements to its Opposition to General Counsel's Motion to Strike Portions of Respondent's Posthearing Brief. I declined Covenant House's offer to provide me with the statements by email in connection with Respondent's Opposition, and have not considered Crook and Strashnick's hearsay statements in any way in connection with the evaluation of this case and preparation of this decision. Covenant House's assertion at p. 13 of its Posthearing Brief that these statements "were received into the record" is false; they were placed in the Rejected Exhibits file. See Tr. 289–292.

hearing, their testimony would have tended to undermine Covenant House's contention that Sentigar and Perez were managerial, supervisory, or confidential employees within the meaning of the Act.

C. Covenant House's Alleged Refusal to Bargain and Provide Requested Information

The complaint alleges that since November 15, 2023, Covenant House has failed and refused to bargain in good faith by the following conduct: (i) cancelling bargaining sessions; (ii) refusing to make bargaining proposals; (iii) refusing to meet since February 13, 2024; (iv) conditioning bargaining on 1199's selection of bargaining representatives, and refusing to bargain unless 1199 removed certain members of its bargaining committee; (v) refusing to bargain with 1199 under any circumstances since July 2024; and (vi) refusing to provide information necessary for 1199's performance of its duties as exclusive collective bargaining representative. The record evidence substantiates these allegations.

Section 8(a)(5) of the Act provides that an employer may not "refuse to bargain collectively with the representative of [its] employees." Section 8(d) of the Act defines collective bargaining as involving a "mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." Good faith bargaining "presupposes a desire to reach ultimate agreement, to enter into a collective bargaining agreement." *NLRB v. Insurance Agents' Int'l Union*, 361 U.S. 477, 485–486 (1960); see also *NLRB v. Katz*, 369 U.S. 736, 747 (1962). While the Act "does not compel any agreement whatsoever," or require that the parties "contract on any specific terms," the parties "are bound to deal with each other in a serious attempt to resolve differences and reach a common ground." *NLRB v. American National Insurance Co.*, 343 U.S. 395, 401–402 (1952); *NLRB v. Insurance Agents Int'l Union*, 361 U.S. at 486. Thus, the parties must refrain from conduct which "reflects a cast of mind against reaching agreement," and "is in effect a refusal to negotiate," as well as conduct which "directly obstructs or inhibits the actual process" of collective bargaining negotiations. *NLRB v. Katz*, 369 U.S. at 747.

In order to determine whether an employer has failed to bargain in good faith, the Board engages in a "totality of the circumstances" analysis, evaluating the employer's overall conduct both at negotiations and "away from the bargaining table." *Noah's Ark Processors, LLC d/b/a WR Reserve*, 370 NLRB No. 74 at p. 1, fn. 2, and at p. 35 (2021), enf'd. 31 F.4th 1097 (8th Cir. 2022); *Regency Service Carts*, 345 NLRB 671 (2005), citing *Public Service Co. of Oklahoma (PSO)*, 334 NLRB 487 (2001), enf'd. 938 F.2d 815 (7th Cir. 1991). Factors considered include dilatory or delaying tactics, arbitrarily cancellation and scheduling of negotiating sessions, failure to provide relevant information, and failure to exchange proposals or counterproposals. *Noah's Ark Processors, LLC d/b/a WR Reserve*, 370 NLRB No.74 at p. 35; *Regency Service Carts*, 345 NLRB at 671; see also *Mid-Continent Concrete*, 336 NLRB 258, 259–260 (2001), enf'd. 308 F.3d 859 (8th Cir. 2002). The evidence in the record overall establishes that Covenant House failed and refused to bargain in good faith with 1199 based upon the totality of Respondent's conduct, in the manner discussed below.

The evidence establishes that Covenant House cancelled multiple bargaining sessions and refused to meet with 1199 beginning in early 2024. The Board has repeatedly held that cancellation of bargaining sessions and a general failure to meet for negotiations may constitute "dilatory tactics" which evince a refusal to bargain in good faith. See *Noah's Ark Processors, LLC d/b/a WR Reserve*, 370 NLRB No. 74 at p. 35 ("dilatory tactics, such as delaying the scheduling, limiting, or cancelling of bargaining sessions, is evidence of bad faith"); *Professional Transportation, Inc.*, 362 NLRB 534, 535 (2015) (cancellation of "seven consecutive bargaining sessions" constituted an "impermissible pattern of dilatory conduct" evincing a failure to bargain in good faith); *Lancaster Nissan*, 344 NLRB 225, 226–228 (2005), enf'd. 223 Fed.Appx. 100 (3rd Cir. 2007) (employer's repeated cancellation of negotiating sessions, often on the day they were scheduled to take place, evidence of refusal to bargain in good faith). In particular, the Board has held that a delay of three months in negotiations caused by such stratagems is indicative of bad faith bargaining. See *J.G. Kern Enterprises, Inc.*, 371 NLRB No. 91 at p. 1, 24–25 (2022), enf'd. 94 F.4th 18 (D.C. Cir. 2024) (3-month delay in bargaining due to employer's cancellation of negotiating sessions, refusal to schedule additional sessions, and declining to offer alternative dates evinces refusal to bargain in good faith); *Fruehauf Trailer Services, Inc.*, 335 NLRB 393, 393 fn. 5 (2001) (failure to bargain in good faith evinced by employer's delay of bargaining "for almost 3 months after the union's request for an initial bargaining session").

The evidence here establishes a pattern of cancellations and refusals to meet on behalf of Covenant House indicative of an overall refusal to negotiate in good faith with 1199. Specifically, in January 2024, Covenant House canceled bargaining sessions scheduled for January 10 (on January 8), January 23 (on January 19), and January 30 (on the same day). (Tr. 145–147, 154–155; GC Exh. 9, 10, 11; see also Jt. Exh. 8, ¶ 9) (stipulating that Covenant House canceled these sessions "shortly before they were going to occur").[27] After a negotiating session on February 13, 2024, with Carmody representing Covenant House for the first time, Covenant House never met with 1199 again. (Tr. 156.) Carmody canceled the next scheduled session, on March 6, the day it was to take place, claiming that there were members of 1199's bargaining committee "unlawfully sitting on the committee," while refusing to identify the committee members in question. (Tr. 149–151.) Carmody also refused to conduct the March 6 session virtually. (Tr. 150.) Carmody continued to refuse to identify the "unlawful" participants in 1199's bargaining committee in a subsequent conversation with 1199 counsel Apter, telling Apter to "hold [her] breath" when she asked Carmody to provide legal authority for his position. (Tr. 151–152.) Subsequently, Apter wrote to Carmody on March 21, offering to

[27] Covenant House appears to argue that these cancellations were attributable to its substitution of Carmody for its previous counsel. Posthearing Br. at 54, fn. 16. However, the record establishes that Covenant House only offered this rationale as a justification for cancelling the January 30, 2024 session.

meet on March 26 without Sentigar and Perez, whom 1199 had "deduce[d]" were the employees Carmody contended were "unlawful" members of the Union bargaining committee. (GC Exh. 17.) When Carmody again did not respond, Apter wrote to him early in the morning of March 26, asking him, "whether you intend to come to the table and present proposals tonight," and Carmody refused. (GC Exh. 18, 19; Tr. 155–157.) Covenant House's course of repeated cancellations does not evince a good-faith approach to negotiations. Covenant House's accusations with respect to "unlawful" members of 1199's negotiating committee, its refusal to identify the individuals involved, refusal to meet without Sentigar and Perez present, and failure to substantiate Sentigar and Perez' purported managerial status in the instant proceeding, further demonstrate a lack of good faith in its approach to collective bargaining and the collective-bargaining relationship overall.

The evidence further demonstrates that Covenant House failed to make bargaining proposals and counterproposals, in a manner contrary to good faith negotiations. It is well-settled that a party's failure to provide proposals or counterproposals during negotiations may evince a lack of good-faith participation in the bargaining process. See *Noah's Ark Processors, LLC d/b/a WR Reserve*, 370 NLRB No. 74 at p. 35 ("lack of exchange of proposals or counterproposals is a factor" considered in evaluating good-faith bargaining); *Fallbrook Hospital*, 360 NLRB 644, 652 (2014); *Bryant & Stratton Business Institute*, 321 NLRB 1007, 1041–1042 (1996), enf'd. 140 F.3d 169 (2d Cir. 1998) ("failure to pursue proposals or lack of exchange of proposals or counterproposals" indicative of bad faith); *AMR Associates, Inc.*, 245 NLRB 676, 677 (1979) (employer's failure to submit "any written proposal . . . over a 5 week period" evinces "basic intransigence . . . in derogation of the [employer's] duty to bargain"). Here, it is undisputed that Covenant House has not made any proposals or counterproposals in negotiations since at least November 2023. (Tr. 38.) Such conduct strongly suggests a failure to bargain in good faith.

The evidence also establishes that Covenant House unlawfully conditioned bargaining on 1199's selection of bargaining representatives, refusing to meet and bargain unless 1199 removed certain members of its bargaining committee. Section 8(a)(1) of the Act provides that employees and employers may "bargain collectively through representatives of their own choosing." See also *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33 (1937). Parties are generally entitled to choose their representatives in collective bargaining, and neither party may dictate to one another the representatives they select. See *General Electric Co. v. NLRB*, 412 F.2d 512, 516–517 (2d Cir. 1969); *Atlas Refinery, Inc.*, 354 NLRB 1056, 1070 (2010); *Pan American Grain Co.*, 343 NLRB 205, 206 (2004).

As a result, the Board will restrict a party's right to select its own bargaining representatives only where "persuasive evidence" establishes that "the presence of the particular individual would create ill will and make good-faith bargaining impossible." *Atlas Refinery, Inc.*, 354 NLRB at 1070; see also *Pan American Grain Co.*, 343 NLRB at 206, quoting *KDEN Broadcasting Co.*, 225 NLRB 25, 35 (1976). The Board has generally found the refusal to deal with a bargaining representative appropriate based upon an established history of violence or threats of violence. See *Pan American Grain Co.*, 343 NLRB at 205–206 (union representative's prior threat to "tear off" supervisor's head, suggestion that human resources director resolve a dispute by "exchanging blows," and threat to kill employer's president adequate to justify employer's refusal to deal with him); *Fitzsimmons Manufacturing Co.*, 251 NLRB 375, 376, 379–380 (1980), enf'd. 670 F.2d 663 (6th Cir. 1982) (union representative's physical assault of Personnel Director in the presence of union bargaining committee and other management officials sufficient to establish that representative's presence would preclude good-faith bargaining). The Board has also found the refusal to deal with a party representative warranted in the context of a demonstrable conflict of interest. See *Milwhite Co.*, 290 NLRB 1150, 1151–1152 (1988) (evaluating employer concerns regarding union representative's "confidential knowledge" given his contemporaneous employment with employer's local competitor); *NLRB v. International Ladies' Garment Workers' Union*, 274 F.2d 375 (3rd Cir. 1960) (union established inability to bargain with employer representative who had previously held "highly confidential positions" during a "lengthy tenure" and performed "the same functions" with the union, given employer-'s statement that representative had been hired for his "years of familiarity" with the union's operations, so that employer had "put one over on the union"). Unfounded fear or supposition regarding the impact of a particular representative upon the bargaining process is inadequate to support a refusal to deal with the individual in question. See, e.g., *Atlas Refinery, Inc.*, 354 NLRB at 1070–1071; *Milwhite Co.*, 290 NLRB at 1152 ("The mere fear that negotiations will result in compromising confidentiality is insufficient"); *KDEN Broadcasting Co.*, 225 NLRB at 35 (employer's contention that good-faith bargaining would be impossible because representative was "loud, bitter, and abusive," "had threatened civil suit," and "as a managerial employee . . . had access to confidential records" was "anticipatory and speculative").

Here, Covenant House has failed to adduce "persuasive evidence" to establish that Sentigar and Perez' participation on 1199's bargaining committee "would create ill will and make good-faith bargaining impossible," pursuant to the caselaw discussed above. The only rationale that Covenant House has ever offered in support of this contention—during the bargaining itself and in the context of the instant case—is to assert that Sentigar and Perez were managerial employees within the meaning of the Act at the time that they were members of 1199's bargaining committee. (See Tr. 149–152; GC Exhs. 1(o, q), 3(a), 4(a, b), 17; R.S. Exh. 9.) As discussed at length above, the evidence fails to substantiate this contention. Nor does the evidence establish that Sentigar and Perez were supervisory or confidential employees. As a result, Covenant House has failed to establish that the inclusion of Sentigar and Perez in 1199's bargaining committee would somehow "create ill will and make good-faith bargaining impossible." Covenant House's refusal to bargain with 1199 based upon Sentigar and Perez' inclusion 1199's bargaining committee therefore violated Sections 8(a)(1) and (5) of the Act, and constitutes evidence of an overall refusal to bargain in good faith with the Union. *Atlas Refinery, Inc.*, 354 NLRB at 1056, 1071; *People Care, Inc.*, 327 NLRB 814, 824–825 (1999); *Milwhite Co.*, 290 NLRB at 1152-1153.

Finally, the evidence demonstrates that Covenant House has refused to bargain with 1199 under any circumstances since July 2024. As discussed above, Carmody, on behalf of Covenant House, refused to attend the scheduled March 26, 2024 negotiating session, even after Apter informed him that the Union was willing to meet without Sentigar and Perez present. (GC Exh. 17, 18, 19; Tr. 155–157.) However, on July 9, 2024, Apter again wrote to Carmody, stating that Sentigar and Perez had resigned from 1199's bargaining committee, and asking to resume negotiations without prejudice to the Union's position regarding their employee status in connection with the certification of representative and the then-pending unfair labor practice charges. (GC Exh. 20.) Carmody refused, stating that Covenant House would not "resume bargaining unless and until the Union becomes signatory to a formal National Labor Relations Board remedial process providing a complete remedy" in connection with the unfair labor practice charges Covenant House had filed against the Union. It is well-settled that a party is not excused from continued bargaining based upon the existence of a pending unfair labor practice charge. See *Columbus Electrical Cooperative, Inc.*, 372 NLRB No. 89 at p. 1, fn. 1, and at p. 20 (2023); *Pine Manor Nursing Home, Inc.*, 230 NLRB 320, 326 (1977), enf'd. 578 F.2d 575 (5th Cir. 1978); *Postal Service*, 205 NLRB 624, 625 fn. 13 (1973). Nor may a party condition, continued bargaining on the settlement or withdrawal of pending unfair labor practice charges. *First Student, Inc.*, 366 NLRB No. 13 at p. 1, fn. 3 (2018), enf'd. 935 F.3d 604 (D.C. Cir. 2019); *Ellicott Development Square*, 320 NLRB 762, 772 (1996), enf'd. 104 F.3d 354 (2nd Cir. 1996). Covenant House's continued refusal to bargain after 1199 informed Carmody that Sentigar and Perez had resigned from the Union's bargaining committee constitutes compelling evidence of a failure to bargain in good faith.

Covenant House contends that the Complaint's refusal to bargain allegations should be dismissed on two different bases, both of which are ultimately premised upon the "admissions" in its Answer regarding Sentigar and Perez' purported "managerial status" and "agency." First, Covenant House claims that these "admissions" in and of themselves warrant dismissal of the refusal to bargaining allegations. (Posthearing Br. at 52–55.) Covenant House then contends that the refusal to bargain allegations must be dismissed given the Union's "bad faith bargaining conduct in violation of § 8(b) of the Act," due to Sentigar and Perez' participation in the Union's bargaining committee as "managers and agents." (Posthearing Br. at 63-69; GC Exh. 1(q)) (First and Second Affirmative Defenses). As discussed at length previously, Covenant House's "admissions" are not dispositive, and the evidentiary record establishes that Sentigar and Perez were not managers within the meaning of the Act while on the union's bargaining committee. Furthermore, Covenant House offers no specific evidence or argument in support of its assertion that Sentigar and Perez were "agents" of Respondent – presumably within the meaning of Section 2(13) of the Act–but merely claims that Sentigar and Perez' agency status has been established based upon the "admissions" in its Answer. As with managerial and supervisory status, the burden of proof with respect to agency status rests with the party asserting it. See *CNP Mechanical*, 347 NLRB 160, 169 (2006), enf'd. 269 Fed.Appx. 25 (2nd Cir. 2008); *Pan-Oston Co.*, 336 NLRB 305 (2001). A bald assertion of agency status is insufficient to satisfy this standard, even when characterized as an "admission," for all of the reasons discussed above.[28]

The complaint further alleges that Covenant House violated Sections 8(a)(1) and (5) of the Act by failing and refusing to provide information requested by 1199 in 2023 and 2024. Pursuant to Section 8(a)(5) of the Act, employers have an obligation to provide the union with information which is relevant and necessary for the union to perform its duties as collective bargaining representative, including information pertinent in the context of collective bargaining negotiations. *Wyman Gordon Pennsylvania, LLC*, 368 NLRB No. 150 at p. 6 (2019), enf'd. 836 Fed.Appx. 1 (D.C. Cir. 2020), citing *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-154 (1956). Information regarding the terms and conditions of employment for the bargaining unit employees represented by the union is "presumptively relevant." *Wyman Gordon Pennsylvania, LLC*, 368 NLRB No. 150 at p. 6; *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 2 (2019). Thus, no specific showing of relevance is necessary, and the employer has the burden to prove that the information in question lacks relevance. *Rieth-Riley Construction Co.*, 372 NLRB No. 142 at 19 (2023), enf'd. 114 F.4th 519 (6th Cir. 2024). Information relevant to the wages, hours, and working conditions of bargaining unit employees are "so intrinsic to the employer-employee relationship (as to be) considered presumptively relevant." *Rieth-Riley Construction Co.*, 372 NLRB No. 142 at 19, quoting *Coca-Cola Bottling Co.*, 311 NLRB 424 (1993).

The information at issue here pertained directly to the bargaining unit employees' terms and conditions of employment and was therefore presumptively relevant. The information requested by 1199 Vice President Kareem Cooper on November 15, 2023, involved Covenant House's communications with the bargaining unit employees regarding the required disclosure of secondary and/or outside employment, a list of employees who had been requested or required to disclose secondary and/or outside employment, and any actions taken by Covenant House in response to a bargaining unit employee's disclosure of secondary and/or outside employment, or their refusal to do so. (Jt. Exh. 8, ¶ 5; Jt. Exh. 3.) Cooper's November 15, 2023 email also requested the dates, amounts, and affected job classifications for the five most recent wage or salary increases for employees. Id. The Union's request for this information was reiterated by Apter on March 7 and 15, 2024. (GC Exh. 8, 14.) The requested information regarding wage increases and secondary employment directly concerned the bargaining unit employees' wages, hours, and terms and conditions of employment, and was therefore presumptively relevant. See *Rieth-Riley Construction Co.*, 372 NLRB No. 142 at 18-19 (information regarding employee wages

[28] In addition, Covenant House offers no legal authority for its ostensible contention that the participation of an employee who acts as employer's agent for some purpose in a union bargaining committee somehow permits the employer to renounce its obligation to bargain, or constitutes a violation of Section 8(b) of the Act. See *Pan-Oston Co.*, 336 NLRB at 306 ("an employee may be the agent of the employer for one purpose but not another").

presumptively relevant); *KDFW-TV, Inc.*, 274 NLRB 1014, 1015 (1985), enf'd. 790 F.2d 1273 (5th Cir. 1986) (information regarding employer policies pertaining to "outside employment" "necessary for, and relevant to, the Union's performance of its functions as the exclusive collective-bargaining representative of the unit"). The evidence establishes that Covenant House never provided this information to 1199. Thus, the evidence demonstrates that Covenant House violated Sections 8(a)(1) and (5) by failing and refusing to provide the requested information to the Union.

The evidence further establishes that, Covenant House unlawfully refused to provide complete lists of bargaining unit employees requested by 1199. In a letter to North-Albert dated February 22, 2024, Cooper asked that Covenant House provide "a new updated seniority list of bargaining unit members" and "all current 1199 bargaining unit members, dates of hire, job title, personal email, phone and address." (Jt. Exh. 5.) This information request was reiterated by Apter on March 4 and 15, 2024, as well as on July 9, 2024, and October 8, 2024. (GC Exh. 13, 14, 20, 22.) The parties stipulated that in its responses, Covenant House "did not provide a full bargaining unit list and excluded multiple unit employees whose positions are listed in the Certification of Representative." (Jt. Exh. 8, ¶ 11.) It is well-settled that such rudimentary information is "presumptively relevant" to the Union's discharge of its responsibilities as exclusive collective bargaining representative. See, e.g., *NP Palace LLC d/b/a Palace Station Hotel and Casino*, 368 NLRB No. 148 at p. 2–3 (2019), enf'd. on other grounds 1 F.4th 12 (D.C. Cir. 2021); *Transit Connection, Inc.*, 365 NLRB 1402, 1402–1403 (2017). Covenant House's refusal to provide this information therefore violated Sections 8(a)(1) and (5) of the Act.

Covenant House contends that the evidence fails to substantiate the Complaint's information request allegations by misallocating the burden of proof in terms of presumptive relevance. (Posthearing Br. at 59–60, 62.) En route, Covenant House utterly misconstrues the District of Columbia Circuit's Opinion in *Irontiger Logistics, Inc. v. NLRB*, 823 F.3d 696 (2016). In that case, the court noted that it had "previously approved the Board's policy holding that some information is so central to the core of the employer-employee relationship that it is deemed presumptively relevant," characterizing that doctrine as "the sort of legal and policy determination to which we are obliged to defer." *Irontiger Logistics, Inc.*, 823 F.3d at 699–700. The court remanded the case, however, for the Board to consider the employer's contentions that the union was harassing it "by repeated and burdensome requests for irrelevant information" given a union representative's concession that the information request "was asking for 'a lot of bullshit'" and the ALJ's finding that the requested information was "irrelevant."[29] 823 F.2d at 698–701. Thus, the court did not "redefine[] whether requested information can be deemed 'presumptively relevant,'" or rule that "where the parties continued to discuss the relevance of requested information, it was incumbent upon Counsel for the General Counsel to establish at the hearing grounds for relevance, rather than resting upon an unsupported conclusion that the information was 'presumptively relevant,'" as Covenant House claims in its Posthearing Brief at age 59. Nor did the court's opinion somehow establish a "*prima facie* burden" on the part of General Counsel to establish to establish the relevance and existence of information pertaining to employee wages as Covenant House claims on page 62 of its Posthearing Brief.[30]

Based upon the foregoing, the evidence demonstrates that Covenant House unlawfully refused to provide presumptively relevant information requested by 1199 which involved core aspects of the employment and collective bargaining relationship, including the identity of the bargaining unit employees and their wage rates. Covenant House's failure to provide this fundamental information requested by the Union further supports a determination that Covenant House has failed and refused to bargain in good faith with 1199, as discussed above. See *Columbus Electrical Cooperative, Inc.*, 372 NLRB No. 89 at p. 1, fn. 1, and at p. 24; *Regency Service Carts*, 345 NLRB at 673.

C. The June 4, 2024, Meetings with Sentigar and Perez, and Johnson's Letters

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

The complaint alleges that on June 4, 2024, North-Albert and Johnson threatened employees with discipline if they engaged in activity on behalf of 1199, including interacting with the Union and/or discussing the Union with other employees, in violation of Section 8(a)(1). The Complaint further alleges that Johnson violated Section 8(a)(1) in an identical manner via a letter issued the same day. It is well-settled that threatening employees with

[29] On remand, the Board reversed its previous holding on the latter basis. See *Irontiger Logistics, Inc.*, 366 NLRB No. 2 (2018).

[30] In addition, it is well-settled that the agency follows a policy of non-acquiescence with respect to decisions of the Courts of Appeal, such that *Irontiger Logistics, Inc. v. NLRB* would not be precedential here in any event. See, e.g., *Minnesota Timberwolves Basketball, LP*, 365 NLRB 1214, 1216, fn. 13 (2017); *D.L. Baker, Inc.*, 351 NLRB 515, 529 fn. 42 (2007).

discipline if they do not refrain from engaging in union or protected concerted activity violates Section 8(a)(1) of the Act. See, e.g., *Siren Retail Corp. d/b/a Starbucks Reserve Roastery*, 373 NLRB No. 140 at p. 1, 19 (2024); *Cemex Construction Materals Pacific, LLC*, 372 NLRB No. 130 at p. 3 and at p. 3, fn. 19 (2023). Instructing or directing employees to refrain from engaging in union or protected concerted activity is also unlawfully coercive. *Siren Retail Corp. d/b/a Starbucks Reserve Roastery*, 373 NLRB No. 140 at p. 1, 18; *Cemex Construction Materals Pacific, LLC*, 372 NLRB No. 130 at p. 3; *American Tool & Engineering Co.*, 257 NLRB 608 (1981).

The evidence establishes that Covenant House violated Section 8(a)(1) when North-Albert and Johnson threatened Sentigar and Perez with discipline if they engaged in activity on behalf of 1199 on June 4, 2024. Sentigar testified that he attended a meeting with North-Albert and Johnson that day, where North-Albert and Johnson told him that because he was a manager, he was not included in the bargaining unit, and his communications with 1199 and its representatives were "illegal." Sentigar further testified that North-Albert and Johnson instructed him to cease communications with 1199 and told him that he would be suspended without pay if he continued his contacts with the Union. (Tr. 96.) Perez similarly testified that at a meeting on June 4, 2024, North-Albert and Johnson told her they had determined that she was a manager, and as such she was no longer permitted to participate in Union activities. North-Albert and Johnson told Perez that if she was discovered engaging in Union activities, she would be suspended without pay. (Tr. 232–234.) Because North-Albert and Johnson did not testify, Sentigar and Perez' testimony regarding these meetings is uncontradicted. As discussed previously, the record does not establish that Sentigar and Perez were managerial or supervisory employees. Thus, the evidence demonstrates that on June 4, 2024, North-Albert and Johnson threatened employees with discipline if they did not refrain from engaging in Union activity, in violation of Section 8(a)(1) of the Act.

Johnson's June 4, 2024 letters to Sentigar and Perez contained similar threats of discipline. These letters asserted that Sentigar and Perez were "managers" within the meaning of the Act, and "instructed" Sentigar and Perez that "you must refrain from any continued interaction with the Union and/or with employees on behalf of the Union," and "you are to refrain from contacting any Representative of the Union…unless literally authorized to do so, in writing, by me." Johnson's letter further stated that any "failure, refusal, or hesitancy" to comply with Johnson's "direction" "could result in appropriate disciplinary action." (GC Exhs. 26, 28.) Given Sentigar and Perez' status as bargaining unit employees, Johnson's June 4, 2024 letters constituted threats of discipline if Sentigar and Perez did not refrain from engaging in union activity, which violated Section 8(a)(1) as well.

D. Covenant House's "Skip Counsel" Assertions and General Counsel's Motion to Strike Portions of Covenant House's Posthearing Brief

In addition to its defenses premised upon Sentigar and Perez' purported managerial status, Covenant House contends that "remedies," including dismissal of the complaint, are appropriate based upon the facial invalidity and the improper application of the agency's policies regarding contacts with individuals who are potentially supervisory or managerial employees during the investigation of an unfair labor practice charge. (Posthearing Br. at 51–52; see GC Exh. 1(q)) (Seventh through Twelfth Affirmative Defenses). Section 10058 of the Board's Casehandling Manual, entitled "Contacts with Represented Parties and Witnesses," describes the agency's approved process for approaching and obtaining evidence from individuals who may possibly be supervisory employees or agents under the Act. Section 10058.2(c) addresses interactions in the investigative context with individuals whose potential status as supervisors or agents is "uncertain." In such circumstances, Section 10058.2(c) provides that Regional staff "should inquire about the individual's status prior to conducting a substantive interview." If "it becomes clear" that the individual is a supervisor or agent, the interview cannot proceed without the consent of the party's attorney, and if the individual's status remains unclear, the Regional office should be consulted for a determination before the interview continues. However, if "it becomes clear either through the preliminary interview or through consultations with the Regional Office that the individual is not a supervisor or agent of a party, the Board agent may conduct the substantive interview of the witness without informing or obtaining consent from the party's attorney." Covenant House contends that these policies are invalid, and that the Regional staff impermissibly deviated from them in connection with the investigation of the instant charge.

These assertions, like Covenant House's other arguments in this case, ultimately founder upon the evidentiary record establishing that Sentigar and Perez are bargaining unit employees, and not managers or supervisors within the meaning of the Act. Because the evidence demonstrates that Sentigar and Perez were not managers, supervisors, or agents, any communication or interaction Regional Office staff and/or General Counsel may have had with them in connection with the investigation of the instant charge could not possibly have run afoul of the agency's policy regarding Contacts with Represented Parties and Witnesses. Furthermore, there is no evidence in this case that Regional staff and/or the General Counsel failed to comply with the process prescribed in Section 10058.2(c) of the Casehandling Manual for Contacts with Represented Parties and Witnesses. Covenant House's extensive cross-examinations of Sentigar and Perez did not reveal any failure to comport with the provisions of Section 10058.2(c), and the evidentiary record here in fact substantiates the Region's position during the investigation that Sentigar and Perez were not managerial employees, supervisors or agents of Covenant House.[31]

In addition, Covenant House has never provided any legal support for its contention that some sort of "violation" of the procedures described in Section 10058.2(c) of the Board's Casehandling Manual would constitute a legally cognizable defense

[31] As I pointed out at the hearing, Covenant House also had the opportunity to attempt to obtain the testimony of Regional staff in the manner prescribed pursuant to Sec. 102.118(b) of the Board's Rules and Regulations, but did not do so. See Tr. 303–304.

warranting dismissal of the complaint.[32] Covenant House failed to provide any authority for this proposition at the hearing, in the face of my repeated exhortations that it legally substantiate this argument either with directly pertinent caselaw or by some appropriately analogous doctrine, merely asserting that the issue presented "a case of first impression." (See Tr. 304.) Similarly, Covenant House includes no legal support for this assertion in its Post-Hearing Brief.[33] (Posthearing Brief at 51–52.) Thus, Covenant House's contention that a violation of the procedures contained in Section 10058.2(c) would require dismissal of the Complaint is meritless.[34]

General Counsel also moves to strike portions of Covenant House's Post-Hearing Brief, contending that the Brief contains misrepresentations and assertions of fact which are not supported by the evidentiary record. See, e.g., *Roemer Industries, Inc.*, 367 NLRB No. 133 at p. 1, fn. 2, and at p. 9, fn. 10 and p. 12, fn. 14 (2019), enf'd. 824 Fed.Appx. 396 (6th Cir. 2020); *Public Service Electric & Gas Co.*, 323 NLRB 1182 fn. 2 (1997), enf'd. 157 F.3d 222 (3rd Cir. 1998). General Counsel further moves to strike references in Covenant House's Posthearing Brief to materials which were not admitted into evidence. See *All American School Bus Corp.*, 29–CA–100827, et al, unpub. Board order dated January 28, 2014 (2014 WL 317197); *Cintas Corp.*, 353 NLB 752, 756 (2009), enf'd. 589 F.3d 905 (8th Cir. 2009).

General Counsel refers in particular to Covenant House's contention on pages 46 and 47 of its Posthearing Brief that the Region engaged in "apparently intentional and willful manipulation" with respect to the scheduling of Sentigar and Perez' affidavits because it "sought to move up the date" of those affidavits thereby "precluding Respondent from preparing" Sentigar and Perez to meet with the Regional staff. The portions of the evidentiary record Covenant House cites to support these statements consist of Sentigar and Perez' testimony at the hearing. Specifically, Covenant House roughly cites to Sentigar's testimony as follows:[35]

> Q: Were you originally scheduled to speak with Mr. Frisch in response to the subpoena and provide a statement on a date after August 16 or 2024, after you met with me?
>
> A: I don't know that there was an exact date that was stipulated. So—
>
> Q: Do you recall whether or not – let me, let me start over. You and I met in New York, correct?
>
> A: Correct.
>
> Q: So you came to New York. You reside in Pittsburgh, as I understand it?
>
> A: Correct.
>
> Q: So you came to New York from Pittsburgh, right?
>
> A: Yes.
>
> Q: Were you supposed to meet with Mr. Frisch the following Tuesday in response to the subpoena to give a statement to Mr. Frisch, do you recollect?
>
> A: Yes.
>
> Q: Okay. So you recollect you were supposed to meet with Mr. Frisch on the following Tuesday, correct?
>
> A: If that were to have been an in-person meeting, that was the date that was stipulated on the subpoena. The option was given for me to meet virtually, which would have been more convenient for myself because I reside in Pittsburgh. And so that's what happened.

Tr. 111–112.

> MR. CARMODY: Now back where we were. You recall, as I understand it, you've now testified that you do recall that you were originally scheduled to meet with Mr. Frisch and give him a statement in response to a subpoena after you met with me on August 16 of—Friday, August 16 of 2024. Is that correct?

[32] Nor has Covenant House ever provided any legal authority for its apparent contention that the "facial invalidity" of Sec. 10058 of the Board's Casehandling Manual is an issue appropriate for litigating in the context of an unfair labor practice proceeding, and/or warrants dismissal of the Complaint. R.S. Posthearing Brief at 36–43.

[33] As I explained at the hearing, the case identified by Covenant House in this respect – *Metropolitan Transportation Services*, 351 NLRB 657 (2007)—does not constitute precedential authority on the issue. See Tr. 238. It is clear from the Board's decision in that case that General Counsel did not file Exceptions addressing the ALJ's dismissal of the complaint allegation involving the witness testimony that the ALJ found was misrepresented by General Counsel in their Posthearing Brief. *Metropolitan Transportation Services*, 351 NLRB at 657–663, 695. In *Operating Engineers Local 17 (Hertz Equipment Rental)*, 335 NLRB 578, 578–580 (2001), the Board rejected the union respondent's argument that the complaint should be dismissed based upon investigative contacts between Regional staff and a union organizer which allegedly violated the Board's procedures; the union sought to have the case investigation reassigned to another Region.

[34] Covenant House further argues on pp. 49 through 51 of its Posthearing Brief that the affidavits of Sentigar and Perez should have been admitted into evidence. As described in the Statement of Facts, supra, Respondent oscillated at the hearing between contending that Sentigar and Perez' testimony and affidavits should be excluded from and admitted into the record, finally settling upon an argument that the affidavits should be admitted as what it termed—without explanation or legal authority—"primary source evidence." (Tr. 106–109, 129, 293–297.) I decline to revisit my ruling sustaining General Counsel's objection to the admission of Sentigar and Perez' affidavits. (Tr. 296–297.) As I explained on the record, Covenant House had the opportunity to, and did in fact question Sentigar and Perez extensively regarding the preparation of their affidavits and contacts with Regional staff. (Tr. 294–296.)

[35] The line citations Covenant House provides at pg. 47 of its Posthearing Brief are inaccurate, as they begin and end in the middle of questions and answers; as a result I have reproduced what appears to be the entire relevant portion of the testimony being referred to.

JUDGE ESPOSITO: No, that was not his testimony. His testimony was that the date for which he was subpoenaed to appear in person was after your meeting with him. But he was also provided with the option to meet with Mr. Frisch over Zoom, which was more convenient to him because he resides in Pittsburgh. And so that was the manner in which he chose to have this meeting with Mr. Frisch. Is that fair to say, Mr. Sentigar?

THE WITNESS: That's correct, your Honor.

Tr. 115.

BY MR. CARMODY:

Q: Do you recall whether or not you had a discussion with Mr. Frisch about providing him with a statement in response to the subpoena you got from the NLRB when you knew that you were meeting with me in New York the first time and, and discussed with him providing a statement before you met with me in New York? Did that happen?

A: The discussion that I had with him would have been around what was most convenient for me. And that was to prepare this affidavit, affidavit virtually at a time that worked for me. And I am very much a person who wants to get these things cleared up and, and move on. So I said, let's, let's do this as soon as possible and get it done. And that was what I recall of the conversation.

Tr. 116–117.

Covenant House cites to the following excerpt from Perez' testimony:

Q: And that would have been the date that it gave the statement as dated there?

A: We met before I signed this.

Q: Do you recollect how long before?

A: Early August. So it was the same week that I met with you.

Q: Was it before or after you met with me?

A: It was before.

Tr. 238. Immediately preceding this testimony, Perez testified as follows:

Q: Okay. Was there anything else that you could recollect discussed during that conversation?

A: During my meeting with Mr. Frisch?

Q: No. During the telephone – you said you received a telephone call from him?

A: Yes.

Q: Yeah.

A: So we discussed when we would meet and that it would happen over Zoom.

Q: Okay. And did you set a time to meet at that time in that phone call?

A: Yes.

Tr. 237.

None of this material establishes in any way that the Region engaged in some sort of "apparently intentional and willful manipulation" with respect to the scheduling of Sentigar and Perez' affidavits, or "sought to move up the date" of those affidavits thereby "precluding Respondent from preparing" Sentigar and Perez to meet with the Board's staff, as Covenant House claims. Nor does it "allow the inference that the Region was acting in a way that it knew was not 'above board,'" as Covenant House argues. (R.S. Posthearing Br. at 46.) Instead, Sentigar and Perez both testified that they were provided with the option of meeting in person with the Board agent investigating the instant charge to prepare an affidavit, or meeting with the Board agent by videoconference using the Zoom platform. Both chose to do so by videoconference. As a result, the portions of Covenant House's Post-Hearing Brief asserting that the Region engaged in "apparent intentional and willful manipulation" and "sought to move up the date" of Sentigar and Perez' affidavits in order to "preclude" Covenant House from "preparing" them to meet with the Regional staff are hereby stricken.

I further find it appropriate to strike Covenant House's references in its Posthearing Brief to the hearsay statements of Chief Program Officer Lisa Crook and Vice President for Program Compliance Jenn Strashnick, which were excluded from the evidentiary record. On page 44 of its Post-Hearing Brief, Covenant House states that "the record illustrates conclusively" that the Region was aware of Sentigar and Perez' supervisory status, because Covenant House "provided affidavits from supervisory personnel," to wit Crook and Strashnick, which "set forth the grounds" for determining that Sentigar and Perez were managers and agents. Covenant House proceeds to ask rhetorically, "what possible information could the Region have elicited…which would call into question firsthand evidence" of Sentigar and Perez' status "provided by their employer?" This material clearly refers to the hearsay statements of Crook and Strashnick which were excluded from the evidentiary record in this case. As a result, it is stricken from Covenant House's Post-Hearing Brief. See *All American School Bus Corp.*, 29–CA–100827, et al, unpub. Board order dated January 28, 2014 (2014 WL 317197) (striking references to affidavits that were not admitted into evidence and "are, therefore, not part of the record in this matter"); *Cintas Corp.*, 353 NLB at 756 ("only documents of record are appropriately cited in posthearing briefs to the trial judge").[36]

For all of the foregoing reasons, General Counsel's Motion to Strike Portions of Covenant House's Post-Hearing Brief is granted, in the manner discussed above.

CONCLUSIONS OF LAW

1. Respondent Covenant House New York is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Since on or about February 13, 2024, Covenant House has failed and refused to bargain collectively and in good faith with 1199SEIU United Healthcare Workers East, the exclusive collective bargaining representative of the employees in the following appropriate unit:

> All full-time, regular part-time and per diem professional employees of the Employer, including employees in the following classifications: Nurse Practitioner, Social Worker, Senior Social Worker, Child Development Director, Director of Development and Communications, Grants Manager, Program Compliance Manager, Data Strategy Specialist, Database Administrator, Program Compliance Coordinator, Project & Communications Coord., Project Coordinator Leasing and Housing, Operations Engineer, and Senior Staff Accountant, and all full-time and regular part-time and per diem non-professional employees of the Employer, including employees in the following classifications: Case Managers, Individual Placement and Support, Custodian Specialists, Facilities Manager, Facility Specialist, Cook, Kitchen Helper, Shift Lead, Resident Advisor, Senior Resident Advisor, Youth Advancement Specialist, Youth Benefits Support Specialist, Childcare Specialist, Intake Specialist, Lead Medical Assistant, Medical Assistant, Medical Receptionist, Training Coordinator, WOW Instructor, Development & Communications Associate, Facilities Administrative Coordinator, Health Center Office and Insurance Coordinator, Housing Voucher Specialist, In Kind Donation Specialist, Real Estate Coordinator, Youth Development & LGBTQ Program Specialist, Youth Development Coordinator, Program Schedule Coordinator, and Senior Vocational Specialist, in working at or out of the following locations in the five (5) boroughs of New York City: 460 West 41st Street, New York, NY 10036; 3322 Bainbridge Avenue, Bronx, NY 10467; 2501 Glebe Avenue, Bronx, NY 10461; 1272 Fteley Avenue, Bronx, NY 10472, 927 Avenue Saint John, Bronx, NY 10455; 3306 Steuben Avenue, Bronx, NY 10467; and 45 West 177 Street, Bronx, NY 10453.

3. Since on or about November 15, 2023, and February 22, 2024, Covenant House New York has failed and refused to provide information requested by 1199 which is necessary and relevant to 1199's performance of its duties as collective bargaining representative, thereby failing and refusing to bargain collectively and in good faith, in violation of Sections 8(a)(1) and (5) of the Act.

4. On or about June 4, 2024, Covenant House New York, by its Chief Executive Officer Dr. Shakeema North-Albert and its Senior Vice President, People & Culture Tony Johnson, threatened employees with discipline if they engaged in activity on behalf of 1199, including interacting with 1199 and/or discussing 1199 with other employees, in violation of Section 8(a)(1) of the Act.

5. On or about June 4, 2024, Covenant House New York, by its Senior Vice President, People & Culture Tony Johnson, threatened employees by letter with discipline if they engaged in activity on behalf of 1199, including interacting with 1199 and/or discussing 1199 with other employees, in violation of Section 8(a)(1) of the Act.

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

THE REMEDY

Having found that Covenant House New York engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Covenant House violated Sections 8(a)(1) and (5) of the Act, I will order Respondent to meet and bargain in good faith with the Union and, if an agreement is reached, embody that agreement in a signed contract. Covenant House will also be ordered to provide 1199 with the information it requested in Union Vice President Kareem Cooper's February 15, 2023, and February 22, 2024 emails to Covenant House New York Chief Executive Officer Dr. Shakeema North-Albert, requests which the Union reiterated on several occasions.

Covenant House New York shall also post an appropriate information notice, as described in the attached Appendix. This notice shall be posted in the Respondent's facilities in the 5 boroughs of New York City, including 460 West 41st Street, New York, New York 10036, 3322 Bainbridge Avenue, Bronx, New York 10467, 2501 Glebe Avenue, Bronx, New York 10461, 1272 Fteley Avenue, Bronx, New York 10472, 927 Avenue Saint John, Bronx, New York 10455, 3306 Steuben Avenue, Bronx, New York 10467, and 45 West 177 Street, Bronx, New York 10453, wherever notices to employees are regularly posted, for 60 days, without anything covering the notice or defacing its contents. In addition to the physical posting of paper notices, notices shall be distributed electronically, posted on an intranet or an internet site, and/or other electronic means, to the extent Respondent customarily communicates with its employees in such a manner. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed its facilities at its locations in the 5 boroughs of New York City, including 460 West 41st Street, New York, New York 10036, 3322 Bainbridge Avenue, Bronx, New York 10467, 2501 Glebe Avenue, Bronx, New York 10461, 1272 Fteley Avenue, Bronx, New York 10472, 927 Avenue Saint John, Bronx, New York

[36] General Counsel suggests in his Motion to Strike Portions of Covenant House's Posthearing Brief that I refer Carmody for an investigation into misconduct and possible discipline based upon his misrepresentations and reference to evidence not admitted into the record in this case, pursuant to Sec. 102.177(e)(1) of the Board's Rules and Regulations. I decline to do so, but note that repeated misconduct of this nature may warrant such a referral. See *Roemer Industries*, 367 NLRB No. 133 at p. 1, fn. 2; *Roemer Industries*, 362 NLRB 828, 831 fn. 7 (2015), enfd. 688 Fed.Appx. 340 (6th Cir. 2017).

10455, 3306 Steuben Avenue, Bronx, New York 10467, and 45 West 177 Street, Bronx, New York 10453, Respondent shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since February 1, 2023.

General Counsel requests that I order several additional remedies. General Counsel seeks an order establishing a bargaining schedule which requires that Covenant House and 1199 meet for a minimum of two negotiating sessions each month, for sessions which last for at least four hours each. General Counsel further argues that my order should require that Covenant House and 1199 submit monthly progress reports to the Regional Director, Region 2, describing the status of their negotiations. Posthearing Brief at 63–64. The Board has previously ordered bargaining schedules and reports to the pertinent Regional Director regarding the progress of bargaining where the employer has engaged in dilatory tactics, such as the cancellation of bargaining sessions, failure to meet, and placing unlawful conditions on bargaining. See, e.g., *Grill Concepts Services, Inc. d/b/a The Daily Grill*, 372 NLRB No. 30 at p. 5–6, 10–12 (2022), enf'd.—F4th—2024 WL 726641 (9th Cir. 2024) (ordering such relief based upon "dilatory tactics" including overall refusal to meet); *UPS Supply Chain Solutions, Inc.*, 366 NLRB No. 111 at 2–4 (2018) (refusing to schedule and cancelling bargaining sessions, failing to submit counterproposals, and improper conditions warrant remedial bargaining schedule with progress reports to Regional Director); *Professional Transportation, Inc.*, 362 NLRB at 534–536 (bargaining schedule and periodic progress reports appropriate given cancellation of bargaining sessions and unlawful conditional bargaining demand). All of these cases involved recently certified unions negotiating an initial collective bargaining agreement, as does the instant case. See *Grill Concepts Services, Inc. d/b/a The Daily Grill*, 372 NLRB No. 30 at p. 8–9; *UPS Supply Chain Solutions, Inc.*, 366 NLRB No. 111 at p. 1–2; *Professional Transportation, Inc.*, 362 NLRB at 534; see also *All Seasons Climate Control, Inc.*, 357 NLRB 718, 718 fn. 2, 722, 734 (2011), enf'd. 540 Fed.Appx. 484 (6th Cir. 2013).

I find that the bargaining schedule requested by General Counsel is appropriate here. The evidence establishes that during its negotiations for an initial collective-bargaining agreement with 1199, Covenant House engaged in dilatory tactics such as cancelling negotiating sessions and failing to provide proposals or counterproposals. Covenant House's lack of good faith in the bargaining process is further evinced by its unlawfully conditioning continued bargaining upon 1199's removal of bargaining committee members, refusal to identify the bargaining committee members to which it objected, and refusal to negotiate with the Union without those committee members present. Finally, when 1199 represented that the committee members in question had resigned, Covenant House countered by conditioning further bargaining upon the Union's capitulation in the unfair labor practice charge Respondent had filed against it. This set of circumstances warrants the order establishing a bargaining schedule sought by General Counsel. In addition, I will order that Covenant House submit monthly progress reports to the Regional Director, Region 2, describing the status of the negotiations. See *Grill Concepts Services, Inc. d/b/a The Daily Grill*, 372 NLRB No. 30 at p. 6; *UPS Supply Chain Solutions, Inc.*, 366 NLRB No. 111 at p. 4; *Professional Transportation, Inc.*, 362 NLRB at 536.

General Counsel and Charging Party further request an order requiring that Covenant House issue an email from its CEO North-Albert to all employees in the 1199 bargaining unit, which "assure[s] them that they are part of the bargaining unit because their title is listed in the Certification of Representative…and assure[s] them that Respondent respects their right to engage in protected concerted and union activities." (GC Posthearing Brief at 64–65.) General Counsel offers no Board precedent in support of its request for such relief. As a result, General Counsel's request for this remedy is denied.[37]

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:[38]

ORDER

Covenant House New York, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with 1199SEIU United Healthcare Workers East, the exclusive collective bargaining representative of the employees in the following appropriate unit:

> All full-time, regular part-time and per diem professional employees of the Employer, including employees in the following classifications: Nurse Practitioner, Social Worker, Senior Social Worker, Child Development Director, Director of Development and Communications, Grants Manager, Program Compliance Manager, Data Strategy Specialist, Database Administrator, Program Compliance Coordinator, Project & Communications Coord., Project Coordinator Leasing and Housing, Operations Engineer, and Senior Staff Accountant, and all full-time and regular part-time and per diem non-professional employees of the Employer, including employees in the following classifications: Case Managers, Individual Placement and Support, Custodian Specialists, Facilities Manager, Facility Specialist, Cook, Kitchen Helper, Shift Lead, Resident Advisor, Senior Resident Advisor, Youth Advancement Specialist, Youth Benefits Support Specialist, Childcare Specialist, Intake Specialist, Lead Medical Assistant, Medical Assistant, Medical Receptionist, Training Coordinator, WOW Instructor, Development & Communications Associate, Facilities Administrative Coordinator, Health Center Office and Insurance Coordinator, Housing Voucher Specialist, In Kind Donation Specialist, Real Estate Coordinator, Youth Devel-

[37] General Counsel states in his Post-Hearing Brief that he is no longer seeking an order that Covenant House "make affected bargaining unit employees whole for the lost opportunity to engage in collective bargaining at the time and in the manner they were entitled to under the Act." Post-Hearing Brief at 1, fn. 2, at 53-54, and at 63, fn. 9; see also GC Exh. 1(q) (Third, Fourth, and Fifth Affirmative Defenses).

[38] 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.

> opment & LGBTQ Program Specialist, Youth Development Coordinator, Program Schedule Coordinator, and Senior Vocational Specialist, in working at or out of the following locations in the five (5) boroughs of New York City: 460 West 41st Street, New York, NY 10036; 3322 Bainbridge Avenue, Bronx, NY 10467; 2501 Glebe Avenue, Bronx, NY 10461; 1272 Fteley Avenue, Bronx, NY 10472, 927 Avenue Saint John, Bronx, NY 10455; 3306 Steuben Avenue, Bronx, NY 10467; and 45 West 177 Street, Bronx, NY 10453.

(b) Failing and refusing to provide information to 1199, which is relevant and necessary to 1199's performance of its duties as the exclusive collective bargaining representative of the employees in the appropriate unit as described above.

(c) Threatening employees with discipline if they engage in activity on behalf of 1199, including interacting with 1199 and/or discussing 1199 with other employees.

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

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

(a) 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 collective-bargaining representative of the employees in the above-described bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. Upon the Union's request, such bargaining sessions shall take place least twice each month, and sessions shall last for at least four hours, or, in the alternative, shall occur on another schedule to which the Union agrees. Covenant House shall submit written bargaining progress reports every 30 days to the Regional Director, Region 2, describing the progress of negotiations, serving copies of such reports on the Union.

(b) Provide to 1199 in a timely manner the information requested by the Union in the February 15, 2023, and February 22, 2024, emails from Union Vice President Kareem Cooper to Covenant House New York Chief Executive Officer Dr. Shakeema North-Albert, including the following:

> (i) Copies and dates of all communications and/or announcements to bargaining unit employees related to the required disclosure of secondary and/or outside employment, a list of employees who have been requested or required to disclose their secondary and/or outside employment, and any employment actions (including warnings and other disciplinary actions) taken in response to or related to disclosure by bargaining unit employees of outside or secondary employment and/or refusal by any bargaining unit employee to disclose outside or secondary employment;
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> (ii) The dates, amounts, and affected job classifications for the five most recent salary increases for bargaining unit employees; and
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> (iii) An updated seniority list of bargaining unit employees, including all current bargaining unit employees, dates of hire, job title, personal email, phone, and address, which contains all bargaining unit job titles listed in the Certification of Representative in Case 2–RC–296488, issued on August 10, 2023.

(c) Within 14 days after service by the Region, post at its facilities in the 5 boroughs of New York City, including 460 West 41st Street, New York, New York 10036, 3322 Bainbridge Avenue, Bronx, New York 10467, 2501 Glebe Avenue, Bronx, New York 10461, 1272 Fteley Avenue, Bronx, New York 10472, 927 Avenue Saint John, Bronx, New York 10455, 3306 Steuben Avenue, Bronx, New York 10467, and 45 West 177 Street, Bronx, New York 10453, copies of the attached notice marked "Appendix."[39] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed its facilities in the 5 boroughs of New York City, including 460 West 41st Street, New York, New York 10036, 3322 Bainbridge Avenue, Bronx, New York 10467, 2501 Glebe Avenue, Bronx, New York 10461, 1272 Fteley Avenue, Bronx, New York 10472, 927 Avenue Saint John, Bronx, New York 10455, 3306 Steuben Avenue, Bronx, New York 10467, and 45 West 177 Street, Bronx, New York 10453, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since February 1, 2023.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent have taken to comply.

Dated, Washington, D.C. September 29, 2025

[39] If the facilities involved in these proceedings are open and staffed by a substantial completement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen 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, Respondent are 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 the 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."

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 bargain collectively and in good faith with 1199SEIU United Healthcare Workers East, the exclusive collective bargaining representative of the employees in the following appropriate unit:

> All full-time, regular part-time and per diem professional employees of the Employer, including employees in the following classifications: Nurse Practitioner, Social Worker, Senior Social Worker, Child Development Director, Director of Development and Communications, Grants Manager, Program Compliance Manager, Data Strategy Specialist, Database Administrator, Program Compliance Coordinator, Project & Communications Coord., Project Coordinator Leasing and Housing, Operations Engineer, and Senior Staff Accountant, and all full-time and regular part-time and per diem non-professional employees of the Employer, including employees in the following classifications: Case Managers, Individual Placement and Support, Custodian Specialists, Facilities Manager, Facility Specialist, Cook, Kitchen Helper, Shift Lead, Resident Advisor, Senior Resident Advisor, Youth Advancement Specialist, Youth Benefits Support Specialist, Childcare Specialist, Intake Specialist, Lead Medical Assistant, Medical Assistant, Medical Receptionist, Training Coordinator, WOW Instructor, Development & Communications Associate, Facilities Administrative Coordinator, Health Center Office and Insurance Coordinator, Housing Voucher Specialist, In Kind Donation Specialist, Real Estate Coordinator, Youth Development & LGBTQ Program Specialist, Youth Development Coordinator, Program Schedule Coordinator, and Senior Vocational Specialist, in working at or out of the following locations in the five (5) boroughs of New York City: 460 West 41st Street, New York, NY 10036; 3322 Bainbridge Avenue, Bronx, NY 10467; 2501 Glebe Avenue, Bronx, NY 10461; 1272 Fteley Avenue, Bronx, NY 10472, 927 Avenue Saint John, Bronx, NY 10455; 3306 Steuben Avenue, Bronx, NY 10467; and 45 West 177 Street, Bronx, NY 10453.

WE WILL NOT fail and refuse to provide information to 1199, which is relevant and necessary to 1199's performance of its duties as the exclusive collective bargaining representative of the employees in the appropriate unit as described above.

WE WILL NOT threaten employees with discipline if they engage in activity on behalf of 1199, including interacting with 1199 and/or discussing 1199 with other employees.

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

WE WILL, 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 collective-bargaining representative of the employees in the above-described bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. Upon the Union's request, such bargaining sessions shall take place least twice each month, and sessions shall last for at least four hours, or, in the alternative, shall occur on another schedule to which the Union agrees.

WE WILL submit written bargaining progress reports every 30 days to the Regional Director, Region 2, describing the progress of collective bargaining negotiations, and WE WILL serve copies of such reports on the Union.

WE WILL provide to 1199 in a timely manner the following information requested by the Union in the February 15, 2023 and February 22, 2024 emails from Union Vice President Kareem Cooper to Covenant House New York Chief Executive Officer Dr. Shakeema North-Albert:

> (i) Copies and dates of all communications and/or announcements to bargaining unit employees related to the required disclosure of secondary and/or outside employment, a list of employees who have been requested or required to disclose their secondary and/or outside employment, and any employment actions (including warnings and other disciplinary actions) taken in response to or related to disclosure by bargaining unit employees of outside or secondary employment and/or refusal by any bargaining unit employee to disclose outside or secondary employment.
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> (ii) The dates, amounts, and affected job classifications for the five most recent salary increases for bargaining unit employees
>
> (iii) An updated seniority list of bargaining unit employees, including all current bargaining unit employees, dates of hire, job title, personal email, phone, and address, which contains all bargaining unit job titles listed in the Certification of Representative in Case No. 2-RC-296488, issued on August 10, 2023.

COVENANT HOUSE NEW YORK

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-337831 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.