

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

PARAGON SYSTEMS, INC.

and

Case 21-CA-267599

**SECURITY, POLICE AND FIRE
PROFESSIONALS OF AMERICA (SPFPA),
LOCAL 3**

Thomas Rimbach, Esq., for the General Counsel.

Jean Dober, Esq. (in-house counsel),
for the Respondent.

Darryl Hill (party representative),
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case on March 8 and 9, 2021, via videoconference. This case was tried following the issuance of a December 10, 2020 complaint issued by the Regional Director for Region 21 of the National Labor Relations Board, based on an unfair labor practice charge, as captioned above, filed by Charging Party Security, Police and Fire Professionals of America (SPFPA), Local 3 (Local 3 or the Union) against Paragon Systems, Inc. (Respondent or Paragon). Specifically, it is alleged that, on September 10 and 18, 2020, Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et. seq. (the Act), by denying a union representative's ability to provide assistance and counsel to an employee during an investigatory meeting, in violation of that employee's *Weingarten* rights. Respondent denies committing the alleged unfair labor practices as alleged.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and

to file post-hearing briefs.¹ Counsel for the Acting General Counsel (herein the General Counsel) and Respondent filed post-hearing briefs, which have been carefully considered. Accordingly, based upon the entire record herein, including the post-hearing briefs and my observation of the credibility of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. FACTUAL BACKGROUND²

A. Respondent's Operations

Paragon provides armed security officers for federal facilities, including the Roybal Federal Courthouse and Office Building in downtown Los Angeles (the Roybal facility). Paragon's administrative office is located in Covina, California. During the relevant time period, Local 3 represented the security guards, known as "Protective Service Officers" (or PSOs), employed at the Roybal facility. Darryl Hill (Hill) was Local 3's president. As part of his duties, Hill regularly represented bargaining unit members at investigatory meetings. (Tr. 25–26, 52–53, 55, 197; GC Exhs. 4, 5.)

Discriminatee Robert Preclaro (Preclaro) worked for Paragon as a PSO from approximately March 2008 until September 24, 2020. As a PSO, he was stationed in a guard shack on the property and charged with controlling access to facility, as well as with ensuring the safety and security of visitors, employees, contractors and other individuals on the property. PSOs at the facility are supported by the Roybal Monitoring Center (RMC). Located in the basement of the Roybal facility, the RMC contains video feeds from cameras on the property that are monitored by an officer who acts as a relay to contact local police or FPS for dispatch to an incident. Also

¹ Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's Exhibit; "GC Br." for the General Counsel's post-hearing brief and "R Br." for Respondent's post-hearing brief.

² Certain of my findings are based on witness credibility. A credibility determination may rest on various factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom. 56 Fed.Appx. 516 (D.C. Cir. 2003). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness' testimony. *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citation omitted). Where there is inconsistent evidence on a relevant point, my credibility findings are incorporated into my legal analysis.

present to assist the PSO stationed in the guard shack is a “rover” officer, that is, an officer assigned to patrol the property and assist other PSOs as needed. (Tr. 24, 26, 37, 208, 217.)

B. The September 6 Incident and Preclaro’s Suspension

Preclaro was on duty at the guard shack on September 6, 2020,³ when an incident occurred at the Roybal facility. On September 9, Manuel Arriaga (Arriaga), Respondent’s project manager for the Roybal facility received a report on the September 6 incident from an analyst from the Federal Protective Service (FPS), which manages Respondent’s contract for the facility.⁴ The report described the arrest by the Los Angeles Police Department (LAPD) of a female suspect who appeared to be carrying a gun on the Roybal property. The report included a timeline that purported to describe the FPS video footage of the incident, which involved Preclaro interacting with the subject three times, on each occasion causing her to leave the property, but failing to react to her pointing a weapon (later identified as a BB gun) at cars, including those driven by federal employees exiting the building, as well as at “people passing by.” Preclaro was described as sitting inside his guard shack and watching a movie or video on his smartphone. (GC Exh. 6 at 3–4.)

According to the report, Preclaro failed to notify RMC, the “rover” officer, FPS or emergency 9-1-1 about the trespasser. The report concluded that the incident had been “totally unacceptable” and warranted immediate corrective action. Specifically, it accused Preclaro of having disregarded the safety of federal employees entering and exiting the building and having failed to communicate threats and report a suspicious person. (Tr. 37, 217; GC Exh. 6 at 3–4.)

Following receipt of the report, Arriaga called Preclaro and ordered him to report to Respondent’s Covina office the following day to surrender his duty weapon, ammunition and federal identification card. At that time, he was informed that he was being suspended pending investigation of an incident that had occurred days earlier and ordered to report for an interview the following day. (Tr. 28.)

C. The September 10 Investigatory Meeting

Preclaro arranged for the Local 3 President Hill to represent him at the interview. On September 10, Preclaro, accompanied by Hill, reported, as ordered, to Arriaga’s office. As Hill testified, he knew that there had been an incident on Preclaro’s shift but believed that he merely faced a suspension for violating Respondent’s cell phone policy. He also knew there was video footage of the incident and that neither he nor Preclaro had seen it. In addition to Arriaga, Captains Veronica Cazares (Cazares) and Sanjuana Mendoza (Mendoza) were present on behalf of Respondent, functioning mainly as notetakers. (Tr. 29, 58–59, 71, 73, 117–118, 132, 196.)

³ Unless otherwise noted, all dates herein refer to the year 2020.

⁴ The Federal Protective Service (FPS) is responsible for the protection of federal facilities through its statutory authority in 40 U.S.C. § 1315. It provides integrated security and law enforcement services to more than 9500 federal facilities nationwide. These services include: conducting facility security assessments; responding to crimes and other incidents to protect life and property; and detecting, investigating, and mitigating threats. See <https://www.dhs.gov/fps-operations>

Arriaga opened the meeting⁵ by stating that they were there to discuss an incident that had been reported by FPS as occurring on September 6. Reading from the FPS report, he described the incident and said he was going to ask Preclaro some questions. He then asked Preclaro, “can you tell me what happened that night?” Preclaro responded by recounting that he had confronted two individuals arguing on the Roybal property and ordered them to leave. He then stated that they initially complied, but that, thereafter, one of them lingered and eventually wandered back onto the property several times; each time she did, Preclaro stated, he flashed his flashlight at her and again told her to leave. Arriaga then asked Preclaro if anything else had happened. Preclaro explained that the Los Angeles Police Department (LAPD) had shown up and interacted with the “lingering” individual, eventually taking her into custody. (Tr. 30–32; 60–61, 200.)

Arriaga then began questioning Preclaro about his response to the evening’s incidents. First, he asked whether Preclaro had made an entry in his daily activity log about his initial encounter with the two individuals.⁶ When Preclaro said no, Arriaga asked him to explain why, to which Preclaro responded that the individuals had complied with his order to leave, so he did not believe a log entry was warranted. Arriaga then repeatedly asked Preclaro about his response to the LAPD’s presence and arrest of the female suspect on federal property. Asked why he had not documented the arrest in his log, he responded, “I don’t have an answer for that.” Asked why he had not called the RMC when the local police had arrived, he said that he initially thought that they were simply pulling over a vehicle, but then realized the officers were talking to the suspect.

During a pause in the questioning as Arriaga took notes, Hill turned to Preclaro and asked him whether he considered the presence of the trespassers to be a “casual” or “hostile” encounter. Both Hill and Preclaro testified that PSOs are not required to document incidents deemed “casual,” and this testimony went un rebutted by Respondent’s witnesses. Thus, Hill’s question appeared designed to prompt Preclaro to make this argument in his defense.⁷ Hill’s interjection worked, and Preclaro told Arriaga that he considered his interaction with the trespassers to have been a casual encounter. (Tr. 31–33, 61–62.)

Arriaga responded by accusing Hill of interrupting him, to which Hill retorted that no one else had been talking when he spoke up. Arriaga then addressed Cazares and Mendoza and instructed them not to write down the question Hill had asked.⁸ He then told Hill, “you’re not allowed to talk, you’re not allowed to ask questions, you’re just here as an observer.” Hill

⁵ I base my findings regarding this meeting mainly on the testimony of Hill, with one exception noted herein. Hill was a highly credible witness with a clear memory of the events. He was consistently cooperative under both direct and cross-examination. As the employee under investigation, Preclaro’s recollection of the meeting’s details was, understandingly, spottier, but he generally was corroborated by Hill.

⁶ This log is referred to throughout the transcript as an “1103” (shorthand for its official governmental designation, ICE Form 87-1103). (Tr. 31–32.)

⁷ Respondent, by its post-hearing brief, argues with the factual premise of Hill’s question, claiming that an incident’s categorization as “casual” bears in no way on a PSO’s duty to report it. Respondent, however, adduced no evidence in support of this claim, or to rebut Preclaro and Hill’s testimony demonstrating that the question was pertinent.

⁸ In fact, neither the question nor Preclaro’s answer appear in any of the meeting notes Respondent produced. (See GC Exhs. 8, 16, 20.)

responded, “I’m his union rep.” Arriaga then repeated, “you’re not allowed to ask questions... you can take notes if you’d like to or you can take a break and take him outside and ask a question.” He then offered that Hill could ask his questions at the end of the interview, but until then, was not allowed to speak.⁹ Hill, as instructed, said nothing in response. Arriaga then

5 resumed questioning Preclaro, again asking whether he had contacted the RMC on the night in question. Preclaro stated that he did not typically call the center, but rather that the center usually called him. At this point, Hill requested a break to speak with Preclaro. (Tr. 62–65, 71–72, 111, 134–135.)

10 After 10 minutes, they returned, at which point Arriaga again reminded Hill that he was to remain silent. He then asked Preclaro whether he had contacted the assigned “rover” that evening, who was PSO Benjamin Monge (Monge), or conducted any radio checks that night. Preclaro responded that he had not. Arriaga then asked a series of questions about Preclaro’s interaction with Monge on the night in question and then resumed his line of questioning about

15 Preclaro’s failure to call in the night’s events to the RMC. Preclaro was asked no fewer than three times about this topic; he responded each time, explaining why he had felt it unnecessary to do so and adding that, as part of his job, he did not regularly contact the RMC. When, according to Hill, Arriago’s questions became repetitive to the point of becoming badgering, he interjected, asking Preclaro whether the telephone in his guard shack had been working during the shift.

20 According to Hill, Arriaga “got highly upset” and again admonished him that he was not permitted to talk. (Tr. 37–38, 69; GC Exh. 8 at 12–15.)

Next, Arriaga began reading from the FPS transcript of the video feed from that night. Essentially, the timeline described a video showing Preclaro’s various contacts with the subject,

25 as well as her conduct (pointing a weapon at multiple individuals) while Preclaro sat in his guard shack, apparently watching a video on his phone. Referring to various timestamps on the video (which neither Preclaro nor Hill had seen), he asked Preclaro whether the timeline he had recited was accurate. Before Preclaro could answer, Hill jumped in, asking him whether he had a video monitor inside the guard booth and whether he had actually seen the video. Preclaro responded

30 that he did not have a monitor in the booth and had not reviewed the video. According to Hill, Arriaga then “lost it,” demanding of Hill, “what are you doing? I told you you’re not allowed to talk.” Hill protested that Preclaro could not be expected to attest to the accuracy of Arriaga’s summary without first establishing that he had actually seen the video. (Tr. 67, 113; GC Exh. 6 at 3–4.)

35 The next exchange between Arriaga, Preclaro and Hill—the subject of conflicting testimony—led to Arriaga terminating the meeting. Arriaga asked Preclaro whether he had

⁹ Significantly, Arriaga did not deny instructing Hill that he was to remain silent until the end of the interview. According to him, he instructed Hill that he could ask questions, “but at the right place and time” and that, “[r]ight now, we are asking the questions. I’m asking the questions. Give me chance to finish.” I do not credit his testimony (which appeared rehearsed and self serving) that he also told Hill, “if you need any clarification, or you have any questions, then you can do so.” (Tr. 219–220.)

observed the suspect waving a gun at people.¹⁰ Arriaga testified that this question was based, in part, on the fact that the view from the guard shack was obstructed by a chain-link fence and a “big pillar”; as he explained, he was attempting to elicit whether Preclaro, who had earlier exited the guard shack and confronted the suspect, had been able to observe the suspect with a gun, despite the obstructions. Preclaro denied having seen the subject holding a weapon, pointing out the visual obstructions, at which point Hill chimed in, agreeing that Preclaro’s view from the shack had been blocked.¹¹ Arriaga again told Hill not to interrupt, to which Hill responded that, as the union president, he was there to represent Preclaro. Ultimately, Arriaga announced that the interview was over and Hill and Preclaro left the office. (Tr. 152, 212–214.)

While Hill may have spoken simultaneously with Preclaro during this final exchange, I do not credit Arriaga’s testimony that he in fact “took over” and attempted to answer for Preclaro. Nor do I credit Cazares’ more detailed, histrionic version of this exchange, in which she claimed that Hill “quickly jumped in to stop Preclaro from continuing to speak.”¹² Instead, I find that, after Preclaro denied that he had witnessed the suspect holding a gun, both he and Hill spoke, each pointing to the visual obstructions that made Preclaro’s denial more plausible.

D. The Second Investigatory Meeting and Preclaro’s Discharge

On September 17, Arriaga called Preclaro and instructed him to report to the Covina office at 10 a.m. the following day. Preclaro contacted Hill and arranged for him to be present. They met with Arriaga, who was accompanied by Mendoza. According to Hill, the meeting began essentially where the last one had ended:

It started off by Mr. Arriaga reminding me that I’m not allowed to talk during the meeting. If I want to take breaks, I can take a break

¹⁰ I credit Arriaga’s testimony (corroborated by Cazares) that this was the final question he posed to Preclaro. Neither Hill nor Preclaro included this exchange in their account; according to Hill, his final exchange with Arriaga involved him attempting to ask Preclaro whether the phone in the guard shack was operable. (Tr. 69–70, 115.) While I found Hill to be, overall, the most credible source on the meeting in general, I do not rely on his recollection on this particular point.

¹¹ I base this finding on Arriaga’s testimony that, when Hill spoke, he “describe[d] what . . . Preclaro was trying to say or trying to describe the location for Preclaro.” (Tr. 261.)

¹² I found Cazares particularly unreliable as a witness, mainly due to her demonstrated willingness to exaggerate and even misrepresent events. She insisted that Hill had prevented Respondent from ascertaining Preclaro’s version of events by engaging in “constant interruptions and speaking over [Preclaro] when we were getting to answers,” but could not explain why this was not noted in her meeting notes, which were supposedly “90 percent word-for-word” accurate. She also she claimed that those notes reflected only her own observations but was impeached by documentary evidence (and Arriaga’s testimony) revealing that she had conformed her notes to those taken by him and Mendoza. (GC Exh. 8; Tr. 157–160.)

and ask questions. But I can't ask questions. I did—I know it—so I said—I asked him—I said, so what if I have questions for clarification. He said, we'll cross that bridge when we come to it.¹³

Arriaga then announced that they were there to finish up the investigation, and then proceeded to rehash the same questions to Preclaro that he had asked at the first meeting. After approximately half an hour, Arriaga announced that he had enough information and presented Preclaro with a suspension form. According to Arriaga, Hill did not interrupt any of his questions during this meeting or otherwise prevent him from asking Preclaro questions. (Tr. 37–38, 74–76, 218.)

On September 30, Preclaro received a written notification that he had been discharged the prior week on September 24 for dereliction of duty. Specifically, his discharge notice states, “you failed to properly respond or timely report” the September 6 incident, and additionally “failed to properly log [] the incident.” (Tr. 41; GC Exh. 3.)

III. THE COMPLAINT ALLEGATIONS

It is alleged that, by announcing on September 10 and 17 that Hill was not permitted to speak until Respondent's interview of Preclaro was over, and by additionally curtailing Hill's participation during the September 10 meeting, Arriaga violated Preclaro's right to the assistance of his *Weingarten* representative in violation of Section 8(a)(1) of the Act. As explained in detail below, I find that Respondent violated the Act as alleged.

A. *The Weingarten Right*

In 1975, the Supreme Court recognized that Section 7 of the Act guarantees an employee the right to be accompanied and assisted by a union representative at an “investigatory” interview, that is, one which an employee would reasonably believe may result in disciplinary action. *NLRB v. Weingarten*, 420 U.S. 251, 260 (1975). The Court found that recognizing this employee right to representation—now commonly referred to as the “*Weingarten* right”—effectuates the Act's stated purpose of eliminating the “inequality of bargaining power between employees . . . and employers.” *Id.* at 262. The Court specifically noted that an employee's need for representation and assistance was heightened in view of employers' use of surveillance techniques in the workplace, such as closed-circuit televisions, to monitor and investigate employee conduct. *Id.* at 234–235 fn. 10.

In upholding a represented employee's statutory right to union representation in an investigatory meeting, the *Weingarten* Court rejected the premise that representative's presence would necessarily “transform the interview into an adversary contest.” *Id.* at 262–263. Rather, where all parties are acting in good faith, the Court reasoned, the presence of a representative may be mutually advantageous in both clarifying issues and avoiding formal grievances where

¹³ I again credit Hill's recollection regarding the details of the meeting; he was generally corroborated by Preclaro, with one exception. Unlike Hill, Preclaro recalled that, during this second meeting, Hill again attempted (unsuccessfully) to ask questions. (Tr. 38.) Hill, however, adamantly denied posing any substantive questions at the second meeting; Arriaga corroborated this, testifying that Hill did not interrupt him during the second meeting. I believe that Preclaro mistakenly recalled that certain of Hill's September 10 interjections occurred in the later meeting. (Tr. 79, 125, 127–128, 218.)

the action on the part of management appears to be justified. *Id.* at 262 fn. 7 (citing *Independent Lock Co.*, 30 Lab. Arb. 744, 746 (1958); *Caterpillar Tractor Co.*, 44 Lab. Arb. 647, 651 (1965)). As the Court explained:

[a] single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. A knowledgeable union representative could assist the employer by eliciting favorable facts, and save the employer production time by getting to the bottom of the incident occasioning the interview.

Id. at 262–263.

The *Weingarten* Court nonetheless acknowledged that an employee’s statutory right to representation must not displace “legitimate employer prerogatives” in effectuating workplace discipline. One such prerogative is the employer’s right to decline outright an employee’s request for a representative. *Id.* at 258–259 (citing *Mobil Oil Corp.*, 196 NLRB 1052, 1052 (1972)). Under this ‘nuclear option,’ an employer faced with a request for a *Weingarten* representative may simply decline the request and instead proceed to discipline absent any interview. In practice, this means the employer may force the employee facing discipline to choose between proceeding with the interview unaccompanied or foregoing it altogether, along with its potential benefits. *Id.* at 258.

B. The Scope of Permissible Representation under Weingarten

The *Weingarten* and *Mobil Oil* cases dealt with an employer’s refusal to permit a representative to attend an investigatory meeting in the first instance; the question in this case, however, concerns the extent to which an employer, having granted an employee’s request for a representative, has the prerogative to insist that representative remain silent during the investigatory interview without effectively denying representation. In this regard, *Weingarten* itself outlined certain principles regarding the parties’ conduct once an employer, having granted a request for representation, begins its investigatory interview:

[t]he employer has no duty to bargain with the union representative at an investigatory interview. ‘The representative is present to assist the employee, and may attempt to clarify the facts or suggest other employees who may have knowledge of them. The employer, however, is free to insist that he is only interested, at that time, in hearing the employee’s own account of the matter under investigation.’

Id. at 260 (citing Board’s brief).

1. “Advice and active assistance”

On several occasions following the Supreme Court’s decision, the Board has been charged with interpreting the above-quoted language in order to define, under various circumstances, the appropriate extent of a representative’s participation in an investigatory meeting, or as one court has put it, “[t]he careful *Weingarten* balance between employer prerogative and employee right.” *Postal Service v. NLRB*, 969 F.2d 1064, 1070 (1992), enfg. 303 NLRB 463 (1991). No hard or fast rules apply, and the representative’s permissible role has been described as “seem[ing] to lie somewhere between mandatory silence and adversarial confrontation.” *Postal Service*, 288 NLRB 864, 867 (1988).

At a minimum, a union representative is entitled to “provide advice and active assistance” and may not be relegated to sitting in silence “like a mere observer.” *PAE Applied Technologies, LLC*, 367 NLRB No. 105, slip op at 3 (2019) (citing *Barnard College*, 340 NLRB 934, 935 (2003); *Manhattan Beer Distributors, LLC*, 362 NLRB 1731, 1732 (2015), enfd. 670 Fed.Appx. 33 (2d Cir. 2016); *Washoe Medical Center*, 348 NLRB 361, 361 (2006)). The first “mandatory silence” case was *Texaco, Inc.*, in which the Board held that an employer had violated the Act by conditioning union representatives’ presence at two investigatory meetings on them remaining silent during the interview. 251 NLRB 633, 633 (1980), enfd. 659 F.2d 124, 125–127 (9th Cir. 1981).

Years later, the Board expanded the concept of “active assistance” in *Lockheed Martin*, 330 NLRB 422, 429 (2000). In that case, at the outset of an investigatory meeting, the *Weingarten* representative asked what the meeting was about, and the investigator told him to “shut-up as she was asking the questions.” Although the representative was later allowed to ask questions, the Board adopted the administrative law judge’s finding that the original admonishment amounted to a violation of the interviewed employee’s Section 7 rights as “an improper attempt to limit [the representative’s] role in the interview” that was not cured by the representative’s later participation. *Id.* at 429. As such, the Board has found that even temporarily silencing a *Weingarten* representative may violate the Act.

2. Permissible limits on a representative’s participation

The *Texaco* and *Lockheed Martin* cases took a dim view of an employer’s prior restraint of a *Weingarten* representative’s participation at the outset of the meeting. Whether an employer may limit a representative’s participation once a meeting is underway, however, may turn on the conduct of the representative, with an eye towards the employer’s right to investigate employee conduct in a non-adversarial setting and/or to refrain from bargaining with the representative during the interview. In two cases, the Board has found that a representative’s conduct impermissibly stepped over one or both of those lines.

a. Objecting to repetitious questioning as adversarial conduct: *New Jersey Bell*

In *New Jersey Bell Telephone Co.*, 308 NLRB 277 (1992), employees were questioned in connection with an investigation into equipment sabotage and the ransacking a supervisor’s office. During one interview, the employee in question frequently responded to questioning by the employer’s security officials by stating, “I don’t know,” or “I don’t remember.” The officials

then began repeating their questions, at which point the employee, along with his *Weingarten* representative, repeatedly interrupted the questions by objecting that they had been previously asked. The security officials warned the employee that, if the representative continued to interrupt, he (the employee) would be subject to discipline. The representative continued to interrupt, was ordered but refused to leave, and was ultimately arrested and charged with criminal trespass. *Id.* at 278–280 & fn. 11.

The General Counsel alleged that, by ejecting the representative from the interview, the employer violated the *Weingarten* rights of the interviewed employee. The Board disagreed, however, finding that, while a *Weingarten* representative has the right to object to questions that may reasonable be construed as “harassing” or “intimidating,” the employer’s security officials’ repeated questioning had not risen to that level, especially considering that the employee’s initial responses had been unresponsive. Under these circumstances, the Board concluded, it was “understandable and reasonable that the Respondent would want to probe [the employee’s memory and candor without constant interference from [the representative].” Because the representative’s “persistent objections and interruptions” worked to prevent the employer from re-asking questions that had essentially not been answered, the Board concluded, he exceeded the bounds of permissible *Weingarten* representation. *Id.* at 279–280 & n. 11. Objecting to questions being asked more than once, the Board found, would, contrary to the Supreme Court’s guidance, “only serve to turn an investigatory interview into a formalized adversarial form.” *Id.* at 279.

b. Adversarial conduct and attempts to force bargaining: Yellow Freight

In *Yellow Freight System, Inc.*, 317 NLRB 115, 115 (1995), the Board found that a representative’s “excessively vigorous representation” exceeded the permissible scope of *Weingarten* representation during a “coaching session” with an employee accused of sexual harassment. In that case, a manager began the meeting by asking the participants (the accused employee, the representative and an additional management representative) to conduct themselves in an orderly manner and keep their voices down. He then began reading from the employer’s anti-sexual harassment policy, at which point the union representative “persistently interrupted” him, specifically challenging the company’s definition of sexual harassment and the manager’s authority to police the workplace for the same. *Id.* at 119.

After the manager stated that the representative was “out of order,” the representative countered that the coaching session was itself “out of line” because the employee’s alleged conduct was not inappropriate. The manager then attempted to get the employee to represent that he would not violate the anti-sexual harassment policy in the future, but this effort was derailed by the representative, who instructed the employee to continue to deny the incident. The manager then announced that the employee would be receiving a warning, at which point the representative “jumped up, pounded [the manager’s] desk, and shouted to him that he was a ‘mother fucking liar.’” *Id.* Ordered to leave, the representative instead continued to shout obscenities and was eventually escorted out of the office. *Id.* at 119–120.

The Board found that the representative, who ultimately himself received a warning letter for his conduct, had forfeited the Act’s protections by attempting to convert the coaching session into an “adversarial confrontation,” and additionally that his conduct exceeded the proper scope

of *Weingarten* representation insofar as he tried to force the manager to negotiate a definition of sexual harassment. *Id.* at 124.

3. Interrupting/objecting as permissible participation

In the absence of adversarial conduct or an attempt to force bargaining, the mere fact that a *Weingarten* representative interjects during an investigatory meeting will not justify silencing her. Indeed, on three occasions, the Board has found that a *Weingarten* representative's conduct, including interrupting and/or objecting to questions remained protected, and that the employer's admonishment that the representative refrain from doing so violated the Act.

a. Interjections as lawful representation: Postal Service (1988)

In *Postal Service*, 288 NLRB 864 (1988), a union steward acted as representative for an employee being interviewed by a postal inspector in connection with a shortage in her cash drawer. During the meeting, the inspector accused the employee of wrongdoing and pressured her to take a polygraph test. The steward chimed in three times; his interruptions, the administrative law judge noted, did not appear designed to obstruct the investigation, but rather to assist the clerk and defend her from the inspector's accusations and to push back on the inspector's demand for a polygraph test. The steward's demeanor was "low key and conciliatory"; nonetheless, each time he spoke up, the inspector silenced him, twice threatening to eject him from the interview. *Id.* at 868. The Board affirmed the administrative law judge in finding that the employer denied the steward the right to participate in the employee's interview. *Id.* at 864.

b. Objecting at "the moment of maximum usefulness": Postal Service (2007)

In *Postal Service*, 351 NLRB 1226 (2007), a union representative was present for the interview of a mail carrier accused of failing to deliver mail; per *Postal Service* rules, the penalty for willfully delaying the delivery of mail is discharge. During the course of the interview, the representative was allowed the opportunity to provide information, as well as to ask questions. At one point, the employee admitted to carrying out his route while aware that he had left the mail behind at the postal facility. The supervisor then asked him whether he was aware of the penalty for willfully delaying the mail. The representative interjected, attempting to challenge the implication of the word, "willful." The supervisor silenced the representative, allowing him to speak only after she had moved on to another inquiry. *Id.* at 1226–1232.

The Board found that temporarily preventing the representative from speaking violated the carrier's right to representation, because the representative was silenced "at a critical juncture of the interview" (i.e., when the employee was on the verge of incriminating himself). This meant that the employer had curtailed his participation at "[t]he moment of maximum usefulness": the very time when an employee, in *Weingarten* parlance, "may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors." *Id.* at 1226–1227 (citing *Weingarten*, *supra* at 262). The representative's right to object to a potentially incriminating question, the Board found, could not be delayed in the name of management prerogatives:

[n]either an employer’s right to conduct the interview, nor any other legitimate prerogative, extends to entrapping an employee into unknowingly confessing to misconduct without objection from his representative.

Id. at 1227.

c. “Clarifying interjections”: *Purple Communications*

In *Purple Communications*, 370 NLRB No. 26 (2020), an employee, accompanied by her union steward, was questioned about her work efficiency. The supervisor opened the meeting by stating that they were going to discuss the employee’s failure to meet a minimum productivity requirement. At this point, the steward attempted to question the employee about an extenuating circumstance that may have caused her underperformance, but the supervisor interrupted and said that the circumstance did not apply. Id. at 41. The supervisor then asked the employee to explain why her “session efficiency” was low during two specific work shifts; the steward interjected in an attempt to make sure that the employee understood the meaning of that term before she answered. The supervisor again told the steward to stop interrupting, and the employee continued attempting to explain her performance. Id.

The Board found that the supervisor had violated the Act by instructing the steward to stop interrupting. Specifically, the Board noted, each of the steward’s interjections had been “clarifying” in nature, and “the interruptions had not reached the point of interfering with the Respondent’s right to get [the employee’s] version of events. Id. at 1 fn. 8.

4. The “out of control” meeting: *PAE Applied Technologies*

Prior to 2019, the Board’s *Weingarten* cases, while obviously fact-driven, consistently adhered to the dual principles that: (a) an employer could reasonably curtail the participation of a *Weingarten* representative to the extent their conduct impeded the employer’s investigation by converting it into an adversarial or bargaining event; and (b) silencing a representative in the absence of such conduct—including issuing prior restraints on the representative’s participation—violates the Act. In *PAE Applied Technologies, LLC*, 367 NLRB No. 105 (2019), however, the Board recognized a new employer prerogative: prospectively limiting the participation of a *Weingarten* representative when circumstances suggest that the interview threatens to be “unproductive,” potentially denying management the ability to elicit a factual account from the employee under investigation. Id. at 4.

In the *PAE* case, a local union president accused of “offensive and confrontational conduct” was called to an investigatory meeting; after an initial dispute over whether he was permitted to be accompanied by union counsel, he appeared with one of the local’s vice presidents serving as his *Weingarten* representative. Also present was the local’s second vice president. Management was represented by four individuals, including a “security specialist” designated to conduct the investigation. Id. at 13–14. The meeting was contentious from its onset; it began with a dispute over whether the union president’s alleged misconduct was in fact protected by the Act, as well as whether he and his representative had the right to review the complaint against him. The *Weingarten* representative then began asking questions of the security specialist, but this quickly

devolved into all seven attendees speaking at once, at which point the security specialist told everyone to stop talking and that “all the questions had to come through him as he was the one running the inquiry.” *Id.* at 2. According to the Board, when he made this announcement, the security specialist “felt that the meeting had gotten out of control.” *Id.*

The security specialist then instructed the union president to prepare a written statement regarding the incident under investigation, during which time he was not permitted to consult with his *Weingarten* representative. After he completed the statement, he was permitted to consult with the two vice presidents, albeit without a copy of his statement. *Id.* Next, the parties reconvened and the security specialist interviewed the union president in a somewhat unusual fashion: after each verbal question was posed to him, the union president was required to write down his answer, which was then read aloud by the security specialist. Neither of the union vice presidents were permitted to speak during this process but were permitted to do so after the interview was complete. *Id.*

The Board concluded that the employer’s conduct was justified, in part because of the security specialist’s determination that the meeting had “gotten out of control” when all of the participants began talking at the same time. By insisting that all questions “come through him,” the Board found, the security specialist was merely keeping order and ensuring that the employer would be able to elicit the union president’s account of the incident in question. Distinguishing *Lockheed Martin*, the Board found that the security specialist’s direction to stop talking was lawful in that it applied to all attendees, not just the *Weingarten* representative. *Id.* at 3–4. The Board also distinguished *Postal Service* (2007), finding that there was no evidence of any “loaded question” being posed to the union president to which his representative, had he not been silenced, could have objected or added clarification. *Id.* at 4.

D. Arriaga’s Conduct Violated the Act

As a preliminary matter, this case does not present a case of a blanket restriction being issued at the onset of an investigatory meeting (i.e., *Texaco*), because each of Arriaga’s admonitions followed an attempt by Hill to participate in the interview process. Nor does this case present facts similar to that of *Yellow Freight*, in that there is no evidence that Hill either engaged in hostile, adversarial conduct or attempted to engage Arriaga in bargaining. The issues to be resolved, then, are whether Arriaga’s curtailment of Hill’s participation was justified based on the latter’s own conduct and/or whether *PAE*’s “out of control meeting” exception applies.

The General Counsel argues that Arriaga impermissibly silenced Hill for exercising his protected right, under *Postal Service* (1988), *Postal Service* (2007) and *Purple Communications*, to ask clarifying questions, elicit facts favorable to Preclaro, as well as to interject to ensure that, before answering, Preclaro fully understood the questions put to him. Respondent argues, based on *New Jersey Bell* and *PAE*, that Arriaga’s conduct was justified based on Hill’s behavior, including making inappropriate interjections “at critical junctures” and attempting to speak for Preclaro when Arriaga was attempting to get his factual account of the incident under investigation.

As explained below, I find that Hill’s participation during the interviews remained within the permissible scope of *Weingarten* representation, in that it did not impermissibly interfere with

Respondent's ability to question Preclaro. Accordingly, I find that, by silencing Hill on five separate occasions during the September 10 interview, and once again at the outset of the September 18 interview, Respondent, by Arriaga, denied Preclaro the active assistance of his *Weingarten* representative in violation of Section 8(a)(1) of the Act. Because Arriaga made multiple statements limiting Hill's participation, each in response to an attempt at participation on the latter's part, I will address each of his pronouncements separately.

1. The first admonition: Silencing Hill for asking
Preclaro whether the September 6 incident was "casual"

Arriaga's first order that Hill be silent and merely act "as an observer" until the interview was over, does not present much of a close call. It was issued at a point when Hill's only active role in the meeting had been to prompt Preclaro—while no question was pending from Arriaga—to defend his conduct on the grounds that he had considered the trespassers' presence to be a "casual" incident not warranting documentation on his daily activity log. According to Respondent, this attempt by Hill to justify conduct for which Preclaro faced discipline (i.e., failure to log the incident) was impermissible because it "was asked at a point in time when there was no apparent confusion whatsoever between Preclaro and Arriaga" and therefore did not serve to "clarify" anything. (R. Br. at 12.)

Respondent's argument fundamentally misapprehends one of the primary goals of affording employees *Weingarten* representation: as the Supreme Court recognized, allowing a knowledgeable union representative to "elicit favorable facts" and "extenuating factors" on behalf of an employee facing discipline may in fact assist the employer in "getting to the bottom of the incident occasioning the interview." *Weingarten*, 420 U.S. at 262–263. In other words, Hill, rather than hampering Arriaga's investigation, civilly posed a single exculpatory question designed to allow Preclaro to explain himself—precisely the representative conduct the Supreme Court lauded as a "win-win" in labor relations.¹⁴

Nor do I find, as Respondent suggests, that the *PAE* decision justifies Arriaga's silencing Hill. Unlike the interviewer in that case, Arriaga did not face a cacophonous outburst during which seven people spoke simultaneously; there is simply no evidence that Hill's single attempt to elicit exculpatory information somehow threatened to prevent Arriaga from hearing Preclaro's factual account. Nor am I convinced that Arriaga was indeed concerned about getting to the truth of the matter, as evidenced by his falsely accusing Hill of interrupting him and ordering that the exonerating facts be omitted from the meeting notes. Rather, it appears that Arriaga seized upon Hill's brief query as an excuse for denying Preclaro the active participation of his representative for the balance of the interview. I do not read the *PAE* Board's narrow exception for "out of control" meetings to condone such an overreach under the guise of management's prerogative to investigate.

¹⁴ Respondent, by its post-hearing brief, also argues that Hill's question was impermissible because its premise was flawed. According to Respondent, whether an incident was classified as "casual" has no bearing on whether it must be reported. (R. Br. at 13.) As this argument went unsupported by record evidence, I therefore reject it.

Accordingly, I find that Respondent, by Arriaga's first admonition on September 10, denied Preclaro's right to *Weingarten* representation in violation of Section 8(a)(1) of the Act.

2. The second admonition: Silencing Hill following his caucus with Preclaro

After Hill and Preclaro returned from their caucus, Arriaga reiterated that Hill was to remain silent. Based on *PAE*, Respondent broadly asserts that Hill's interruptions justified silencing him because he was preventing management from getting Preclaro's version of events. However, at the point when Arriaga silenced him for a second time, the only thing that Hill had done to assist Preclaro since last being silenced was to confer with him outside the presence of management. If anything, the "temperature" in the room—having been raised by Arriaga's own outburst—had lowered, and silencing Hill served no purpose other than to deny Preclaro his active assistance.

Accordingly, I find that Respondent, by Arriaga's second admonition on September 10, denied Preclaro's right to *Weingarten* representation in violation of Section 8(a)(1) of the Act.

3. The third admonition: Silencing Hill for asking whether communications equipment was working during the incident

During the first interview, Arriaga devoted a significant amount of time to grilling Preclaro about why he had failed to contact the RMC about the presence of trespassers and/or the LAPD on the property. Sensing that the questions had become repetitive and badgering,¹⁵ Hill's response was to suggest the possibility that an equipment failure was to blame. Respondent insists that Hill was not privileged to elicit a potentially relevant fact (i.e., that the guard shack phone was inoperable) because doing so in effect prevented Preclaro from speaking at a "critical juncture"; the credible evidence, however, establishes otherwise. Preclaro had already offered multiple explanations for his conduct, and Hill was simply suggesting an additional, potentially exculpatory fact. This in no way prevented Preclaro from speaking and is precisely the type of defense and assistance that an employer must tolerate from a *Weingarten* representative. See, e.g., *USPS* (1988), *supra* (steward's three interruptions, designed to assist and defend employee accused of misconduct, did not justify silencing him); *Purple Communications*, *supra* (steward permissibly questioned employee about extenuating circumstance that may have caused her underperformance).

Respondent counters that, even though it may have appeared that Preclaro had run out of responses to Respondent's question, the "prerogative" to ask any follow-up questions belonged to Arriaga alone. Once again, Respondent fails to apprehend that an acknowledged role of a *Weingarten* representative is to "assist the employer by eliciting favorable facts" that explain the employee's alleged misconduct. See *Weingarten*, *supra* at 262–263. Here, Preclaro was called onto the carpet to justify the conduct for which he was ultimately discharged and was entitled to Hill's assistance in doing so.

Accordingly, I find that Respondent, by Arriaga's third admonition on September 10, denied Preclaro's right to *Weingarten* representation in violation of Section 8(a)(1) of the Act.

¹⁵ It is undisputed that Hill did not object to Arriaga's technique of repeating questions (see *New Jersey Bell*, *supra*).

4. The fourth admonition: Silencing Hill for asking
Preclaro whether he had seen the surveillance video

Hill next spoke up to protest what he considered an unfair question; specifically, Arriaga related a summary of the events of September 6, which he stated was based on an FPS transcript of video footage, and asked Preclaro whether his summary was accurate. There is no question that Preclaro's answer had the potential to inculcate him; he was facing discipline for failing to respond and/or report a suspect threatening people with a gun, and the video in question purportedly showed the suspect repeatedly doing just that while Preclaro was preoccupied with his phone. Before Preclaro could answer as to the accuracy of the summary, Hill (who knew that Preclaro had not seen the video) asked him whether his guard booth had a video feed and whether he had otherwise been able to view the footage.

According to the General Counsel, Hill's interruption was justified because Preclaro risked "mistakenly answer[ing] something he had no knowledge of." (GC Br. at 21.) I agree. Specifically, by asking in a convoluted manner whether events—including the suspect waving a weapon—had unfolded in keeping with a certain timeline, Arriaga attempted (albeit clumsily) to con Preclaro into admitting that he had in fact seen the dangerous conduct he had failed to report. Under these circumstances, Hill was well within the scope of his duty as *Weingarten* representative to remind all present that Preclaro (who denied ever seeing the suspect with a gun) that he had never had occasion to do so, either from his guard shack or after the fact. This clarification prevented Preclaro from mistakenly admitting to an outright dereliction of duty, the very infraction for which he was ultimately discharged.

Respondent characterizes Hill's interjection as an impermissible distraction at a "critical juncture" in the interview. I agree that whether Preclaro had a clear line of view of the suspect from his guard shack post was, indeed, perhaps *the* critical question regarding his conduct on September 6. But Respondent again misconstrues the *Weingarten* balance between employer investigation and employee representation: under Board law, Arriaga was entitled to obtain Preclaro's factual account, not dupe him into a confession without objection by Hill. See *Postal Service* (2007), *supra* at 1227. Indeed, Respondent is correct that Hill spoke up at a critical juncture—he jumped in to prevent Preclaro from "unknowingly confessing to misconduct." This is *Weingarten* conduct the Board has specifically found employers must abide. See *id.*

Finally, Respondent argues that, pursuant to *PAE*, it nonetheless was privileged to require Hill to hold his question until after Preclaro had answered Arriaga's. While, in that case, the Board found finding that an employer may, under appropriate circumstances, delay a representative's participation until the employer has finished its own questioning, it explicitly distinguished the *USPS* (2007) scenario in which the representative objects to protect the interviewed employee from being entrapped by an incriminating, "loaded" question such as that posed by Arriaga. See *PAE*, *supra* at 4 & fn.7.

Accordingly, I find that Respondent, by Arriaga's fourth admonition on September 10, denied Preclaro's right to *Weingarten* representation in violation of Section 8(a)(1) of the Act.

5. The fifth admonition: Ordering Hill not to interrupt after his final interjection

Thwarted by Hill, Arriaga ultimately resorted to directly asking Preclaro whether, on September 6, he had observed a suspect waving a gun at people on the property he was assigned to guard. As discussed, a question existed as to whether, due to visual obstructions, Preclaro had been unable to observe this conduct; it is therefore not an exaggeration to say that Preclaro's continued employment potentially hinged on his answer to this question. Rather than objecting to the question or otherwise preventing Preclaro from answering, Hill waited until Preclaro had explicitly denied having seen the suspect and then joined him in explaining that visual obstructions had blocked his view. This spurred Arriaga's final admonishment that Hill not interrupt his questioning.

The General Counsel asserts that Hill's statement—even to the extent it constituted an interruption—was entitled to protection under Section 7, as he was raising a potentially critical extenuating circumstance to justify Preclaro's conduct. Respondent counters that, by jumping into the interview when he did, Hill prevented management “from actually hearing, obtaining and ascertaining [Preclaro's] direct and complete answer” and instead “created an adversarial contest.” (R. Br. at 8, 10.) Balancing Respondent's right to interview against Preclaro's right to representation, I find that Arriaga's fifth effort to silence Hill was not justified.

As noted, *supra*, the mere act of interrupting does not exceed the permissible scope of *Weingarten* representation, and the Board has, on two occasions, found a representative was entitled to interrupt an employer's questioning for the purpose of clarifying and/or defending the represented employee. See *Postal Service* (1988) and *Purple Communications*, *supra*. Such interjections are distinguished from “out of order” conduct (i.e., desk pounding, shouting expletives) and objecting to repeated questions, which risk losing the Act's protection. See *Yellow Freight* and *New Jersey Bell*, *supra*.

Here, Arriaga silenced Hill as he attempted, civilly, to corroborate Preclaro's explanation as to why the September 6 incident had gone unreported. As I have found, I do not believe that Hill's interjection worked to prevent Preclaro from answering; rather, with the latter's job on the line, Hill was vigorously defending him, creating a brief period during which the two men spoke simultaneously. Nor do I believe, as Respondent urges, that Hill's participation put at risk Respondent's ability to comprehend Preclaro's own explanation. Unlike the situation in *PAE*, in which the interviewer was aurally distracted by seven people speaking at once, Arriaga was merely presented with two voices making the same, uncomplicated point—that Preclaro's view had been blocked. As such, I find that Hill's final interjection on September 10 consisted of him offering a “favorable fact” of the type the Supreme Court predicted would be clarifying and mutually advantageous to both employer and employee.

Accordingly, I find that Respondent, by Arriaga's fifth admonition on September 10, denied Preclaro's right to *Weingarten* representation in violation of Section 8(a)(1) of the Act.

6. The September 18 admonition: Arriaga orders Hill not to talk during the meeting

I have found that Arriaga, at the onset of the September 18 meeting, instructed Hill that he was not allowed to speak during the meeting. By this conduct, the General Counsel alleges,

Respondent again denied Preclaro the active assistance of his *Weingarten* representative, in violation of Section 8(a)(1) of the Act. It is undisputed that this admonition was not precipitated by any conduct by Hill during the second meeting, and Respondent does not directly address the September 18 allegation in its post-hearing brief.

I find that Arriaga's prior restraint on Hill's participation was unprovoked by any alleged misconduct on Hill's part and therefore violated the Act pursuant to *Texaco* and *Lockheed Martin*, supra. To the extent Respondent argues that it was privileged to curtail Hill's participation based on his efforts to participate in the September 10 meeting, I reject this defense for the reason stated herein.

Accordingly, I find that Respondent, by Arriaga's September 18 admonition, denied Preclaro's right to *Weingarten* representation in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent Paragon Systems, Inc. (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Security, Police and Fire Professionals of America (SPFPA), Local 3 (the Union) is a labor organization within the meaning of Section 2(5) of the Act with 9(a) status under the Act.

3. Respondent has violated Section 8(a)(1) of the Act by refusing to allow a union representative to participate and assist an employee during portions of investigatory interviews held on September 10 and 18, 2020.

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

5. Respondent has not violated the Act in any other manner as alleged in the complaint.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) of the Act, 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. I will order that Respondent post a notice in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. *Id.* at 13.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁶

¹⁶ 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.

ORDER

Respondent Paragon Systems, Inc., Covina, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to permit union representatives to speak during certain portions of a meeting where an employee selects a union representative of his choice when he reasonably believes the discussion might lead to discipline.

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

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

(a) Within 14 days after service by the Region, post at Respondent's Covina, California facility copies of the attached notice marked "Appendix."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent's authorized representative, shall be posted by 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, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed its facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at Respondent's facility at any time since September 10, 2020.

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

¹⁷ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

It is further ordered that the complaint allegations are dismissed insofar as they allege violations of the Act not specifically found.

Dated: Washington, D.C. December 15, 2021

A handwritten signature in black ink, consisting of a series of loops and a final upward stroke.

Mara-Louise Anzalone
Administrative Law Judge

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 the National Labor Relations Act and has ordered us to post and abide by 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 benefits and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT prevent your union representative from speaking during a meeting when you reasonably believe you may be questioned in a manner that could lead to discipline.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

PARAGON SYSTEMS, INC.

(Employer)

Dated _____ By: _____
(Representative) (Title)

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

312 N. Spring St. 10th floor
Los Angeles, CA 90012
Hours: 8:30 a.m. to 5:00 p.m.
(213) 894-5254

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/21-CA-267599> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (213) 894-5254.