UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

INLAND WATERS POLLUTION CONTROL, INC.,

Respondent

and **Case 07-CA-277239**

SHINAR E. REED, an Individual

Charging Party Reed

and **Case 07-CA-279287**

QUAMAAR HAASHIIM, an Individual

Charging Party Haashiim

THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION OF BOARD DECISION

Pursuant to Section 102.24(a) of the Board's Rules and Regulations, the General Counsel hereby responds to Respondent's Motion for Reconsideration or, Alternatively, for Modification and Clarification of the Board's decision in the above-captioned case, reported at 375 NLRB No. 15 (2026). The motion should be denied because Respondent has not demonstrated any "extraordinary circumstance" or "material error" warranting reconsideration as required by Section 102.48(c)(1) of the Board's Rules and Regulations. Instead, Respondent seeks to exploit the Board's reconsideration process to raise new issues, litigate compliance matters not presently before the Board and re-litigate issues the Board has considered and clearly addressed in the decision. As Respondent has failed to show that reconsideration is warranted under the Board's Rules, the General Counsel respectfully asks that the motion be denied.

I. BACKGROUND

On July 29, 2026, the Board issued a decision in this case concluding, among other things, that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Charging Parties Shinar Reed and Quamaar Haashiim because of their protected activity. *Id*., slip op. at 1.

To remedy the unlawful discharges, the Board adopted the Administrative Law Judge's recommended order which included the standard reinstatement and make-whole remedies long applied in unlawful discharge cases. [Board at 2]. Also, in accordance with the decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), *vacated in part on other grounds* 102 F.4th 727 (5th Cir. 2024), the Board ordered Respondent to compensate the Charging Parties "for any other direct or foreseeable pecuniary harms" resulting from their unlawful discharges. 375 NLRB No. 15, slip op. at 2-3.

On August 18, 2026, Respondent filed the instant motion asserting that multiple "defects" in the Board's "legal framework, reasoning, and remedial provisions" warrant the Board's reconsideration. [Respondent Motion at 1]. Specifically, Respondent urges the Board to revisit the following::

- The Board's order that Respondent compensate the Charging Parties for direct or foreseeable pecuniary harms resulting from their unlawful discharges, in accord with extant law. *Thryv, Inc*., 372 NLRB No. 22 (2022) vacated in part on other grounds, 102 F.4th 727 (5th Cir. 2024).
- The Board's adoption of the Administrative Law Judge's finding that Respondent discharged Charging Party Reed in violation of Section 8(a)(3), without conducting a "new *Wright Line* analysis."
- The Board's adoption of the Administrative Law Judge's recommended remedies of reinstatement and make-whole relief for Charging Party Reed's unlawful discharge without addressing "Section 10(c)'s independent prohibition against reinstatement and backpay where an employee was discharged for cause."
- The Board's "expansion" of the Administrative Law Judge's recommended remedy for Respondent's unlawful discharge of Charging Party Haashiim by omitting the "medical-qualification limitation" to Haashiim's reinstatement rights referenced in the Administrative Law Judge's recommend remedy.

Respondent cites no relevant legal authority supporting its arguments that the averred "defects" in the Board's decision constitute material errors much less extraordinary circumstances warranting

reconsideration. As set forth below, in each instance, Respondent's arguments run contrary to longstanding Board precedent and policy.

II. ARGUMENT

A. RESPONDENT HAS NOT SHOWN THAT EXTRAORDINARY CIRCUMSTANCES OR MATERIAL ERRORS WARRANT RECONSIDERATION OF THE DECISION

The Board should deny Respondent's motion because it has failed to make the requisite showing that extraordinary circumstances or material errors warrant reconsideration of the Board's decision. The Board's rules governing extraordinary post-decisional motions provide a process for parties to seek reconsideration of material errors in a Board decision or order. Section 102.48(c) of the Board's Rules provides that "a party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order." Section 102.48(c)(1) requires that a motion for reconsideration "state with particularity the material error claimed and with respect to any finding of material fact, must specify the page of the record relied on."

Section 102.48 is not a vehicle for parties to re-argue their cases in the hopes of getting a different result. See, e.g., *Roy Spa, LLC,* 2017 WL 6034112 (NLRB) (Dec. 5, 2017); *Hacienda Resort Hotel and Casino*, 2016 WL 4036087 (NLRB) (July 26, 2016), *Pressroom Cleaners,* 361 NLRB No. 133 (Dec. 15, 2014). The Board's longstanding adherence to this principal is evident in Board members' consistent denial of motions for reconsideration where they dissented in the underlying decision. See, e.g., *Id.* at 1, fn. 1 (Members Miscimarra and Johnson dissenting in Board's decision but concurring in denial of motion for reconsideration). Thus, a party's mere disagreement with the Board's decision does not constitute "extraordinary circumstances." See also *Allied Mechanical Services, Inc.,* 2011 WL 6886277 (NLRB) (2001) (Board denied motion for reconsideration that "merely expresses its disagreement with the majority's findings" as "clearly" lacking grounds for reconsideration); *Pressroom Cleaners,* supra, slip op. at 1 (motion for reconsideration denied where respondent argued "*why* it disagrees with the Board's decision"

[emphasis added] but failed to identify any material error or demonstrate extraordinary circumstances warranting reconsideration). Moreover, the Board disapproves of parties misusing the reconsideration procedures "to circumvent the Board's Rules and Regulations and raise new issues." *H&M International Transportation, Inc.,* 363 NLRB 1861, 1861–62 (2016) citing *Bloomingdale's, Inc.*, 363 NLRB No. 172, slip op. at 2-3 fn. 4 (2016); *Boeing Co.*, 362 NLRB No. 195, slip op. at 1, fn. 1 (2015).

Instead of demonstrating extraordinary circumstances and material errors as required by the Board's Rules, Respondent's motion is premised entirely on its disagreement with the Board decision's "legal framework, reasoning, and remedial provisions." [Respondent Motion at 1]. As discussed below, Respondent seeks to reargue matters the Board has considered and decided, while simultaneously injecting into this proceeding new arguments and issues that are either untimely or more appropriately addressed in compliance proceedings. The Board should not sanction Respondent's misuse of the reconsideration process for these improper purposes.

B. RESPONDENT IS ATTEMPTING TO LITIGATE COMPLIANCE MATTERS THAT ARE NOT PRESENTLY BEFORE THE BOARD, RAISE NEW ISSUES, AND RE-LITIGATE ISSUES THE BOARD HAS CONSIDERED AND DECIDED

1. *The Thryv Remedy*

The Board amended the Administrative Law Judge's recommended remedy to include compensation to the Charging Parties for any direct or foreseeable pecuniary harms incurred as a result of the unlawful discharges [Board at 2].[1] The Board explained:

> In accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), vacated in part on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondent shall also compensate Reed and Haashiim for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge, including reasonable search-

[1] The Administrative Law Judge denied the General Counsel's request for "compensatory damages" in this matter, noting in his June 24, 2022 decision that the *Thryv* case was under review by the Board at that time. [Board at 16, fn. 23]. The Board issued the *Thryv* decision on December 13, 2022.

> for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.

Citing neither extraordinary circumstances nor material error, Respondent asks the Board to "withdraw the *Thryv* remedy," from its order in this case arguing that the Board's reliance on *Thryv* represents a "defect" in its decision. Specifically, Respondent seeks reconsideration based on a court of appeals decision which, it argues, precludes the Board from applying *Thryv* in the instant matter. [Respondent Motion at 2, citing *NLRB v. Starbucks Corp.,* 159 F.4th 455 (6th Cir. 2025)].

It has been the Board's consistent policy to determine for itself whether to acquiesce in the contrary views of a circuit court of appeals or whether, with due deference to the court's opinion, to adhere to its previous holding until the Supreme Court has ruled otherwise. *Scherrer & Davisson Logging Co*., 119 NLRB 1587, 1589 (1958). See also *Sunbelt Rentals, Inc.,* 372 NLRB No. 24, slip op. at 17 fn. 40 (2022); *D. L. Baker, Inc.,* 351 NLRB 515, 529 fn. 42 (2007). Thus, the Board has long regarded an adverse court decision as only "the law of that particular case." *Id.*[2] Indeed, in the instant matter, the Board explicitly declined to reconsider *Thryv*, noting:

> As stated in *Performance Plumbing, LLC*, 374 NLRB No. 48, slip op. at 2 fn. 2 (2026), and *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 NLRB No. 26, slip op. at 3 fn. 3 (2026), Members Murphy and Mayer find no need at this time to express an opinion whether the novel remedies announced by the Board majority in *Thryv* are permissible under the Act. They would be open to reconsideration of that precedent in a future proceeding, but in the absence of a three-member majority to overrule it at this time, they agree to apply *Thryv*. [Board at 2, fn. 9, emphasis added].

[2] The practical considerations informing the Board's non-acquiescence policy are particularly apparent where, as here, there is a "circuit split" among U.S. Courts of Appeals regarding the Board's interpretation of the Act. Compare *International Union of Operating Engineers, Stationary Engineers, Local 39 v. NLRB,* 155 F.4th 1023 (9th Cir. 2025) (*Thryv* remedies are consistent with the purposes of the Act to make workers whole for losses suffered due to unfair labor practices and are akin to backpay and restitution), with *NLRB v. Starbucks Corp*., 125 F.4th 78 (3d Cir. 2024) (order of remedial relief for all foreseeable pecuniary harms exceeded Board's authority); and *Hiran Management, Inc., v. NLRB*, 157 F.4th 719 (5th Cir. 2025) (same).

In its motion, Respondent acknowledges the Board's unambiguous ruling to leave reconsideration of the *Thryv* decision to "a future proceeding" [Respondent Motion at 6]. Nevertheless, Respondent urges the Board to misuse its processes and reconsider *Thryv* in this proceeding arguing that the instant case provides a "timely and appropriate vehicle" for doing so. In this regard, Respondent cites the recent swearing-in of Board Member James R. Macy on August 17, 2026, which, Respondent speculates, provides the three-member majority needed to overrule *Thryv.* [Respondent Motion at 6]. But the Board has expressly held that a mere change in the Board's composition is not an "extraordinary circumstance" warranting reconsideration. See, e.g., *UFCW, Local No. 1996 (Visiting Nurse Health System, Inc.),* 338 NLRB 1074, 1074 (2003) citing *Iron Workers Local 471 (Wagner Iron Works)*, 108 NLRB 1237, 1239 (1954). Respondent neglects to address this longstanding precedent in its motion, much less offer any reasoned justification for the Board's deviation from it in the instant case.

In sum, absent the Board specifically acquiescing to the decision of the Sixth Circuit regarding *Thryv* remedies, or otherwise overruling *Thryv*, the Board's decision remains controlling precedent.[3] In any event, Respondent's mere disagreement with the holding in *Thryv* and a change in the composition of the Board's membership are not extraordinary circumstances warranting reconsideration.[4]

2. *Charging Party Reed's Unlawful Discharge, the ALJ's Recommended Remedy and Respondent's Untimely Section 10(c) Argument*

Respondent next contends that the Board erred when it agreed with the Administrative Law Judge's determination that Respondent discharged Charging Party Reed in violation of

[3] Notwithstanding this Opposition, the General Counsel urges the Board to reconsider its decision in *Thryv* in a future appropriate case.

[4] Respondent's assertions of prejudice with regard to the Board's order of *Thryv* remedies fall flat. The General Counsel has not even issued a compliance specification in this case. Moreover, any make-whole relief comprised of direct or foreseeable pecuniary harms is subject to litigation in compliance proceedings. *Thryv,* supra at 11-12.

Section 8(a)(3) and adopted the Judge's recommendation of the standard reinstatement and make whole remedies long applied in unlawful discharge cases [Board at 1-2]. As to the Board's merits determination, Respondent argues that the Board erred by failing to "conduct a new *Wright Line* analysis" of Reed's discharge allegation after declining to rely on the ALJ's findings that certain statements by Respondent disparaging Reed's grievance filing activity were evidence of its animus toward Reed's protected activity [Respondent Motion at 1, 7-8]. Respondent cites no supporting authority for the proposition that the Board's adoption of an administrative law judge's reasoning in these circumstances (i.e., where the Board finds a violation based on some, but not all, evidence of animus found by the Judge) amounts to extraordinary circumstances or material error.

The Board clearly stated its bases for affirming the ALJ's finding that Respondent's discharge of Reed violated Section 8(a)(3). First, the Board explicitly stated that it was not relying on Respondent's statements disparaging Reed's grievance filing activity as evidence of animus towards Reed's protected activities.

> In light of our finding that the Respondent's statements disparaging Reed's grievance filing were lawful, we do not rely on those statements as evidence that the Respondent harbored animus towards Reed's protected activities. [Board at 1, fn. 5].

With this qualification clearly articulated, the Board agreed with the Administrative Law Judge "*for the reasons he states*," that Respondent's discharge of Reed violated Section 8(a)(3). [Board at 1 (emphasis added)].[5] Thus, the Board unambiguously identified the evidence it relied on in finding the violation. That evidence is described in specific detail and analyzed comprehensively by the ALJ in his decision [Board at 13-14]. Indeed, the record evidence demonstrating Respondent's animus toward Reed's protected activity – beyond its disparaging statements

[5] The Board further noted that in adopting the judge's finding that Reed was unlawfully discharged, it relied on the judge's analysis under *Wright Line* citing *General Motors, LLC*, 369 NLRB No. 127 (2020). [Board at 1, fn. 5].

regarding his grievance filing – is prodigious. In this regard, the ALJ found, and the Board affirmed:

- The timing of Reed's discharge in relation to his protected activities establishes animus and causation [Board at 13].
- Respondent's shifting defenses/explanations for why it discharged Reed evinces animus and pretext [Board at 13].
- Respondent's disparate treatment of others alleged to have engaged in offensive or harassing behavior demonstrates animus and pretext [Board at 14].
- Respondent's failure to fully investigate Reed's alleged misconduct, which the Judge found was a deviation from its established practice [Board at 14].

Notably, when summarizing his *Wright Line* analysis of Reed's discharge allegation, the ALJ did not reference Respondent's disparaging statements regarding Reed's grievance filing activity, focusing instead on the other substantial evidence of animus cited in his decision.

> Upon the General Counsel establishing Reed's protected activities were a motivating factor in the employer's decision to discharge him, the burden shifts to Respondent to establish it would have taken the same action regardless of his protected activities. Respondent has failed to meet this burden. As explained, Respondent's stated reason is pretext, and all the surrounding facts tend to reinforce that inference of unlawful motivation. Even if it were not pretext, Respondent's disparate treatment of those who engaged in comparable conduct belies its claim that it would have taken the same action. [Board at 14].

Thus, Respondent's argument that the Board must "conduct a new *Wright Line* analysis" with regard to Reed's discharge, is supported by neither the law nor the facts found by the Judge, adopted by the Board, and acknowledged by Respondent to be "undisputed." [Respondent Motion at 2, 8].

Equally without merit is Respondent's argument that the Board erred by adopting the Administrative Law Judge's decision without addressing what Respondent refers to as an "independent prohibition against reinstatement and backpay where an employee was discharged for cause" in Section 10(c) of the Act. [Respondent Motion at 1, 9]. Once again, Respondent

cites no supporting authority for the proposition it asserts. To the extent that Section 10(c) permits a respondent to raise an affirmative defense that reinstatement and backpay may not be awarded because the discipline was "for cause," it must be timely raised. *GE Appliances,* No. 09-CA-332521, 2026 WL 1983786, at 1 (July 1, 2026) citing 102.46(a)(1)(ii) and subsection (f), and *H&M International Transportation*, 363 NLRB 1861 (2016) (arguments not asserted before the judge or the Board on exceptions are waived and therefore do not serve as a basis for granting reconsideration under Sec. 102.48(c)(1)).

In the instant case, Respondent did not plead its Section 10(c) defense in its answer to the complaint [GC Ex 1(i) at 6-7] or argue it before the ALJ.[6] Nor did Respondent "specifically urge" its Section 10(c) arguments before the Board in its exceptions to the Administrative Law Judge's decision. The Board's Rules are clear. "Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged will be deemed to have been waived." Section 102.46(a)(1)(ii). Similarly, Subsection (f) provides: "Matters not included in exceptions or cross-exceptions may not thereafter be urged before the Board, or in any further proceeding."[7]

Thus, in accord with the Board's Rules and case decisions, the Respondent's arguments pertaining to Section 10(c), raised for the first time in a motion for reconsideration, are waived and may not serve as a basis for granting reconsideration under Section 102.48(c)(1). *H&M International Transportation*, supra at 1861. See also *Newspaper & Mail Deliverers' Union of*

---

[6] See Administrative Law Judge's decision: "Respondent raised other affirmative defenses in its answer, but it failed to present evidence or argument to support them. As Respondent seems to have abandoned those remaining defenses, I will not address them further." [Board at 12, fn. 17].

[7] Respondent's argument that Section 10(c) "independently requires reconsideration of Reed's reinstatement and backpay" appears nowhere in its exceptions or supporting brief. In its submissions to the Board, Respondent argued that reinstatement is improper – not under Section 10(c) – but under *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002). However, the Section 10(c) proviso relied on by Respondent in its motion was not addressed by the Court in *Hoffman.* Instead, the issue in *Hoffman* was whether the Board's remedial discretion under the Act may be limited by "policies *unrelated to the NLRA*." Id. at 1280 citing *Southern S.S. Co. v. NLRB*, 316 U.S. 31 (1942).

New York (New York Post), 337 NLRB 608, 609 (2002) (untimely 10(b) defense waived); *Yorkaire, Inc.*, 297 NLRB 401 (1989), enfd. 922 F.2d 832 (3d Cir. 1990) (same).

3. *Charging Party Haashiim's Reinstatement Remedy*[8]

Finally, Respondent asks the Board to "restore the ALJ's medical condition restriction on Haashiim's reinstatement." [Respondent Motion at 12]. Respondent argues that the Board erred by "expanding" the Administrative Law Judge's recommended remedy for Respondent's unlawful discharge of Charging Party Haashiim by omitting the "medical-qualification limitation" to Haashiim's reinstatement rights referenced by the Judge in his recommend remedy.[9]

While Respondent is correct that the Board's order does not include the ALJ's language regarding Reed and Haashiim's medical ability to return to work for Respondent, this appears to be inadvertent. In any event, this is harmless error at best. An unlawfully discharged employee's eligibility for reinstatement is a compliance matter. See, e.g., *Contemporary Guidance Services,* 300 NLRB 556, 558-560 (1990). See also *Tschiggfrie*, 365 NLRB 251, 252-253 (2017) enf. denied in part and remanded 896 F.3d 880 (8th Cir. 2018), reaffirmed 368 NLRB No. 120, slip op. at fn. 27 (2019) (respondent may establish in a compliance proceeding that discharged discriminatee should not be reinstated and/or that backpay should be tolled). See also *San Fernando Valley Advanced Imaging Center*, 31-CA-235878, unpublished order (2025 WL 243150) (issues regarding discriminatee reinstatement appropriately addressed during compliance proceeding). Thus, the absence of the ALJ's language regarding the discriminatees' medical eligibility to return to work from the Board's order does not prejudice Respondent.

---

[8] Respondent also urges the Board to reconsider its finding that Haashiim's discharge violated the Act. However, Respondent's motion "merely express its disagreement with the majority's findings" in this regard, and thus "clearly" lacks grounds for reconsideration. See *Pressroom Cleaners,* supra.

[9] In the remedy section of his decision, the ALJ recommended that Respondent offer Reed and Haashiim reinstatement to their former or substantially equivalent positions "assuming they are medically able and cleared to do so."

III. CONCLUSION

For the foregoing reasons, the General Counsel respectfully asks the Board to deny Respondent's motion for reconsideration in its entirety. Respondent has failed to demonstrate that reconsideration is warranted by extraordinary circumstances and material error as required by the Board's Rules. Respondent's alternative request for "modification and clarification" of the Board's decision should also be denied as unnecessary and unwarranted in this case.

Dated at Grand Rapids, Michigan this 4th day of September 2026.

Respectfully submitted,

/s/ *Steven E. Carlson*
Steven E. Carlson
Counsel for the General Counsel
National Labor Relations Board
Region 7 – Resident Office
110 Michigan Street, NW – Room 299
Grand Rapids, MI 40503-2363
616-930-9160
steven.carlson@nlrb.gov

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the General Counsel's Response to Respondent's Motion for Reconsideration were served on the parties listed below via their respective e-mail addresses on September 4, 2026.

/s/ *Steven E. Carlson*
Steven E. Carlson
Counsel for the General Counsel

Attorneys for Respondent:

Grant T. Pecor
pecor@millercanfield.com

Ahmad A. Chehab
chehab@millercanfield.com

Russell Post
rpost@beckredden.com

Charging Parties:

Shinar E. Reed
shinar@live.com

Quamaar Haashiim
jimmyneutron1236@gmail.com