UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

THE BOOK RESCUERS INC.

and Case 12-CA-360500

CHARLEE HOWARD, an Individual

COUNSEL FOR THE GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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I. STATEMENT OF THE CASE

When The Book Rescuers (Respondent) opened its used bookstore in Pinellas Park, Florida, in 2022, the very first employee it hired was Charging Party Charlee Howard (Howard). In January 2025,[1] Howard discussed rates of pay and other terms and conditions of employment with her coworkers and learned that other junior employees earned the same wage rate as her. With the encouragement of a coworker, on February 14, 2025, Howard approached Respondent's co-owner Sarah Stewart, revealed to Stewart that she had discussed wages with her coworkers, and asked Stewart for a raise. On February 17, just three days after requesting a raise, Respondent fired Howard, specifically citing her conversations about pay as the reasons for her discharge and characterizing those conversations as "snooping" and "going behind [supervisors'] backs."[2] [ALJD 3:11-13].

A hearing on this matter was held on July 29 and 30, 2026, before Administrative Law Judge Arthur Amchan (ALJ Amchan). ALJ Amchan credited Howard's testimony and found that she had conversations with her coworkers about wages and other terms and conditions of employment. (ALJD 2:8-29, 3:19-21). ALJ Amchan also specifically discredited Stewart and Brooks' assertion that Howard gained unauthorized access to its computer systems to obtain her coworkers' wage rate information. (ALJD 4:11-20, 5:3-5). ALJ Amchan then found, again as a matter of *fact*, that Respondent discharged Howard specifically for discussing wages with her coworkers. (ALJD 5:10-11). However, he incorrectly concluded as a matter of *law* that Howard's conversations with coworkers about wages – despite those conversations leading Howard's

[1] All dates are in 2025 unless otherwise indicated.

[2] Howard also discussed Respondent's lack of both direction and established policies; the fact that Respondent did not keep money in a secure location; and how Respondent permitted marijuana paraphernalia in the facility.

coworker to encourage her to ask for a raise – constituted neither protected concerted activity, inherently concerted activity, nor even a preemptive strike against protected concerted activity designed to discourage employees from engaging in further protected conversations about wages. (ALJD 5:10-6:26).

Additional error was committed when, in the ALJ Decision fn 12, ALJ Amchan improperly consulted and cited to the transcript in *Alternative Energy Applications*, 361 NLRB No. 139 (2014), in an effort to distinguish the instant matter, rather than considering the Board's holdings and conclusions of law to find that Howard's wage discussions with coworkers was inherently concerted and her discharge unlawfully. Furthermore, during the hearing, ALJ Amchan improperly required Howard to comply with Respondent's subpoena duces tecum, despite the fact that Respondent did not tender the statutorily required witness fee or mileage to reimburse her and therefore, the subpoena was void *ab initio*.

Counsel for the General Counsel respectfully requests that the Board grant General Counsel's Exceptions to the Decision of the Administrative Law Judge, for the reasons discussed in detail below.

II. QUESTIONS TO BE RESOLVED

The central issues to be resolved are as follows:

1. Did the ALJ err by failing to conclude that Charlee Howard engaged in protected concerted activity and inherently concerted activity when she talked to her coworkers about their wages, her coworker encouraged Howard to ask for a raise, and/or when Howard informed Respondent that she was asking for a raise after speaking with her coworkers about wage rates, and by failing to order an appropriate remedy to rectify her unlawful discharge? (Exceptions 1-5, 8-11).

2. Did the ALJ err by failing to find that Respondent discharged Howard to preempt future protected concerted activity, and to unlawfully discourage other employees from engaging in protected concerted activity? (Exceptions 6, 7).

3. Did the ALJ err by failing to find that Respondent violated the Section 8(a)(1) of the Act by telling employees to bring their concerns about wage rates directly to management? (Exceptions 12).

4. Did the ALJ err by reviewing and citing to testimony in the transcript from the hearing in *Alternative Energy Applications*, 361 NLRB No. 139 (2014) in his ALJ Decision, instead of relying on and citing only to the facts relied on by the Board in its decision? (Exceptions 13).

5. Did the ALJ err by ordering Charlee Howard to produce documents in response to a subpoena duces tecum that was void *ab initio* because Respondent did not tender the required witness fee or mileage reimbursement? (Exceptions 14).

For the reasons set forth below, Counsel for the General Counsel submits that the Questions to be Resolved must be answered affirmatively and respectfully requests that Counsel for the General Counsel's exceptions be granted in their entirety.

III. STATEMENT OF FACTS

A. Howard starts working for Respondent and discusses wages and terms and conditions of employment with coworkers

Charlee Howard was hired by Respondent in October 2022 as a store associate, and she was the first employee hired by Respondent. (ALJD 1; Tr. 19, 43). By November 2024, Respondent had hired several additional employees, including Debra Lankford (Lankford), Logan Davis, Emily Butrick, and Danny [last name not disclosed by the record]. (ALJD 1; Tr. 21).

Respondent does not maintain any set or written policies or employee handbooks. (Tr. 27-29). Each morning, store owners Stewart or Brooks told Howard what each employee should do that day, and Howard relayed those instructions to her coworkers. (Tr. 51-52). Brooks and Stewart directly admonished employees on several occasions for not performing the work that they believed the employee should be doing.[3] (Tr. 51-52). Respondent kept its money in an unlocked cabinet in an unsecured breakroom, and permitted marijuana paraphernalia to be kept in the warehouse where the customers could see. (Tr. 28-30).

Beginning in January 2025, Howard discussed the above working conditions with coworkers Davis, Lankford, and Danny. (ALJD 2:11-12). First, Lankford complained to Howard that Respondent did not provide sufficient direction or policies. (ALJD 2:14-15, fn 4; Tr. 26-27). In a separate conversation in early January, Davis told Howard that he was concerned that Respondent did not have clear work policies, that the store money was unsecured, and that Respondent allowed marijuana in the workplace. (ALJD 2:15-17; Tr. 28-29). Danny also spoke with Howard about the lack of clear direction and policies and about money being unsecured. (Tr. 28). Howard raised these concerns with Brooks on or about January 16, and Brooks addressed one of the issues by putting a lock on the cabinet where money was kept. (ALJD 2:18-20, Tr. 29). Danny was subsequently discharged. Butrick told Howard that the reason for Danny's discharge was because Danny had taken money that he thought was a tip. (ALJD 2:21-22).

During another conversation between Howard and Davis in early January, Davis volunteered that he was making $15 an hour. Davis remarked that he could go back to work at McDonald's to earn $15 an hour. (ALJD 2:8-9; Tr. 21-22). Davis told Howard that he was hired

[3] There is no contention that Howard was a supervisor within the meaning of Section 2(11) of the Act.

in at $15 an hour. (Tr. 21-22) Howard also believed she was making $15, and told Davis she was making the same. (Tr. 22). However, Howard later checked her paystub and found that her wage rate was actually $16 an hour. (ALJD 2:9-10; Tr. 22). On January 10, Howard texted Brooks to thank him for the raise. (ALJD 2:10-11; Tr. 22-23; GCX 5).

In early February, Davis and Howard were again discussing the daily task assignments, when Davis mentioned that Howard seemed to be doing better. (Tr. 31-32). Howard told Davis that she had received a raise since they last spoke about wages, when Howard previously believed they were making the same amount: $15 an hour. (ALJD 2:24-25; Tr. 32). Davis replied that he hoped she was making $17 now. Howard stated that it was only a $1 raise but "it's a start," confirming she was earning $16 an hour. (Tr. 32). Davis then told Howard that Butrick was making $16 an hour as well. (ALJD 2:25-26; Tr. 32).

Howard approached Butrick the following day and told Butrick that she heard that they were making the same amount: $16, and Butrick nodded affirmatively. (ALJD 2:26-28; Tr. 32-33). Howard and Butrick both agreed that it was not fair because Howard, as the longer-tenured employee, should be paid more, and they both agreed that Howard would talk to Sarah Stewart about the pay discrepancy. (ALJD 2:28-29; Tr. 32-33). Of note, Howard held a manager title,[4] and was the longest tenured employee at Respondent. (ALJD 1; Tr. 21).

B. Howard raises pay concerns with Respondent, citing the information her coworkers shared with her

Sometime between February 11 and February 14,[5] Howard walked past Stewart in the warehouse behind the retail section of the store, and Stewart initiated a conversation by remarking

[4] There is no evidence or assertion that Howard is a statutory supervisor, agent, or manager.
[5] Howard testified it was February 14, Stewart testified it was February 11 or 12. (ALJD 2:37-38; Tr. 35-36, 124-125).

that Howard seemed miserable. (ALJD 2:38-3:1; Tr. 35-36). Then, as Howard and Butrick had discussed, Howard asked Stewart for a wage increase. Howard used the wage information Butrick and Davis shared with her to support her request for a raise. (ALJD 3:1-8; Tr. 36-37). Specifically, Howard informed Stewart during this meeting that she spoke with Davis and Butrick and learned that Butrick's wage rate was the same as Howard's wage rate, and asked for a raise. (ALJD 3:1-2, Tr. 36). Of note, Howard was mistaken, as she earned $16 an hour, and Butrick earned $15 an hour. (ALJD 3:3-5; GCX 7). Stewart told Howard that she would speak with her husband, Brooks, because she did not think Howard and Butrick should have the same wage rate. (ALJD 3:5-8; Tr. 36).

During the investigation and at the hearing, Respondent asserted that Howard told Stewart during this meeting that she accessed her coworkers' wage rates using Respondent's computer systems without authorization. (ALJD 2:5-6). However, Howard denied accessing Respondent's computers to learn her coworkers' wage rate and denied that Stewart or Brooks said anything about improperly accessing the computer. (ALJD 3:13-16; Tr. 35). ALJ Amchan credited "Howard's testimony that she told Stewart prior to her termination that her information about Butrick's wage rate came from Davis and Butrick." (ALJD 4:23-25). ALJ Amchan credits Howard's testimony in part, because her contemporaneous text messages with Davis and Butrick on February 17, are consistent with her trial testimony. (ALJD 3:18-21, 7:42-8:2; GCX 2, 3).

ALJ Amchan discredited Brooks and Stewart's assertion that Howard gained unauthorized access to Respondent's computer systems to view her coworkers' wage information for a litany of reasons. (ALJD 4:11-5:5; GCX, 4(a), 7). In particular, ALJ Amchan noted that in a written statement submitted as Respondent's position statement during the investigation, Stewart admitted that Howard told her that she received the information about employee wage rates from her

coworkers. (ALJD 3:23-4:5; GCX 4, 4(a)). In her statement, Stewart wrote, "[Howard] also stated that she chose not to approach us and instead went around to every employee asking how much they make & telling them that she must be worthless to us …" (ALJD 3:23-4:5; GCX 4, 4(a)). ALJ Amchan found that Stewart further admitted in her written statement that, "Howard mentioned asking other employees what they earned when she met with Stewart the week before her termination." (ALJD 4:25-27; GCX 4(a)).

While discrediting Brooks and Stewart's assertion that Howard accessed Respondent's computers without authorization, ALJ Amchan noted that, inconsistent or shifting reasons for a Respondent's actions often indicates that the stated reasons for the employer's actions are pretextual, *Trader Horn of New Jersey, Inc*., 316 NLRB 194, 199 (1995); *Zurn Industries*, 255 NLRB 632, 634-635 (1981) enfd. 680 F.2d 683 (9th Cir. 1982)." (ALJD 5:3-8).

C. Respondent discharges Howard on February 17 for talking to other employees about their wages to support her contention that she was underpaid, interrogates her, and instructs her not to discuss wages

On Monday, February 17, Howard met with Brooks and Stewart. (ALJD 3:9). Stewart told Howard that she was incorrect about Butrick's wage rate, and that Butrick was being paid backpay for overtime hours. (ALJD 3:10-11). Stewart told Howard "… that she was being terminated for snooping, i.e., for talking to employees about what they made and going behind the backs of Brooks and Stewart," but did not mention any alleged unauthorized computer access. (ALJD 3:12-16, 7:23-26). ALJ Amchan specifically found that Stewart told Howard that she was being terminated, "… because she had no right to talk to employees about what they made…," and because Howard "should have brought her concerns to her and Brooks as soon as she could." (ALJD 7:23-26).

While Howard was packing her belongings to leave, Stewart told Howard that she was the only person who was miserable, and Howard replied that she was not the only one who was miserable. (ALJD 7:28-30). Stewart then asked if other employees, including Logan [Davis], Deb [Lankford], or Emily [Butrick], were miserable. (Tr. 37-38). Howard, already discharged, did not reply. (ALJD 7:29-30; Tr. 37-38). Within a few minutes, Howard sent contemporaneous text messages to Butrick and Davis that she had been fired, and told Davis that the reason given for her discharge was "Because I went around their backs and asked what everyone else was making. And didn't go to them first." (GCX 2, 3). Howard's testimony about what Stewart told her in the discharge meeting was consistent with her contemporaneous text messages, which enhances her credibility. (ALJD 3;18-21). Respondent provided no contemporaneous corroboration of events, and did not provide a termination letter or other documents regarding what occurred. (ALJD 4:7-9). As stated above, ALJ Amchan did not credit Brooks or Stewart's testimony of what occurred on February 17, and instead credited Howard.

ALJ Amchan found that, "If [Howard's conduct] constituted protected concerted activity, I would find that her termination violated the Act. However, I find to the contrary, that Howard's activities were not concerted." (ALJD 5:11-13). ALJ Amchan also concluded that Howard's conduct did not constitute inherently protected activity or a preemptive strike. (ALJD 6:12-26). In doing so, ALJ Amchan cited various cases, but also relied on testimony in the hearing transcript of *Alternative Energy Applications*, 361 NLRB No. 139 (2014), to distinguish that case from the instant matter. (ALJD 6:fn 12).

ALJ Amchan recommended dismissal of the allegation that Howard was unlawfully discharged. (ALJD 6:4-6, 8).

ALJ Amchan also found, "Stewart's statement about bringing concerns to Respondent does not necessarily imply that Howard was prohibited from discussing them with other employees." Accordingly, ALJ Amchan did not find that Stewart's instruction that, "that they were going to have to let me go on the basis that I had no right talking to employees about what they made and going behind their backs, that I should have brought it to them as soon as I could," constituted an unlawful instruction for employees to bring wage concerns directly to management.

D. Charlee Howard is required to comply with the subpoena, despite Respondent's failure to tender the required witness fees and mileage with the subpoena or during hearing

Respondent served Charlee Howard with a subpoena duces tecum prior to the hearing. (GCX 8, Exhibit A). However, the subpoena did not include the statutory witness fee or mileage payment. (Tr. 7). Counsel for the General Counsel timely filed a Petition to Partially Revoke Respondent's subpoena, but also argued that the subpoena should be revoked in its entirety because the witness fee and mileage were not tendered with the subpoena as required. (GCX 8).

When the matter was discussed at the opening of the hearing, Counsel for the General Counsel again argued that, in addition to the paragraph specific objections, Respondent did not tender the required witness fee or mileage, and for that reason the subpoena should be revoked in its entirety. (Tr. 7). However, the ALJ still required the production of subpoenaed records. After Howard's direct examination, before cross examination, Counsel for the General Counsel again requested that the subpoena be revoked in its entirety because Respondent did not tender the required witness fee and mileage payment, but ALJ Amchan denied the request after Respondent's counsel belatedly represented that Respondent would provide the witness fees and mileage as required. (Tr. 42-43). At the opening of the second day of the hearing, Counsel for the General Counsel asked if Respondent had brought the fees to cure the subpoena defect. (Tr. 138).

Respondent counsel conceded that despite her representation that Respondent would pay, not only had Respondent not brought the witness fee or mileage check, but they did not even look up what the requisite amount would be. (Tr. 138). Counsel for the General Counsel argued to ALJ Amchan that the subpoena was still deficient and should be revoked, but he nonetheless required Howard to comply with the subpoena *duces tecum*, which Howard did before the hearing continued. (Tr. 138).

IV. ARGUMENT IN SUPPORT OF THE GENERAL COUNSEL'S EXCEPTIONS TO THE ALJ'S DECISION

A. The ALJ erred by failing to find and conclude that Howard was engaged in protected concerted activity, that Respondent unlawfully discharged Howard for engaging in protected concerted activity, that unlawfully Respondent instructed Howard to bring wage concerns to management, and to order an appropriate remedy for this unfair labor practice. (Exceptions 1- 13)

Charlee Howard discussed wage rates with her coworkers, obtained her coworker's approval and encouragement to use those discussions to ask for a wage increase, and Respondent fired Howard for talking to her coworkers about wages, and using that information to request a raise. ALJ Amchan erred by finding that this conduct did not constitute protected concerted activity, by failing to find that Respondent discharged Howard because she engaged in protected concerted activity, and by failing to conclude that that Respondent violated Section 8(a)(1) of the Act by discharging Howard, as alleged in paragraphs 4 and 6 of the Complaint and Notice of Hearing.

Charlee Howard's conduct 1) constituted protected concerted activity 2) constituted inherently concerted under extant case law conduct because the discussions involved wage discussions, and 3) caused Respondent to make a preemptive strike against Howard to nip any protected concerted activity in the bud. Further, even if Howard was not engaged in protected

concerted activity, her discharge was unlawful because it coerced other employees from engaging in protected concerted wage discussions and other protected concerted activity.

i. Charlee Howard was engaged in protected concerted activity

ALJ Amchan erred by not finding and concluding that Charlee Howard engaged in protected concerted activities in January and February 2025, when she discussed wage rates and other terms and conditions of employment with coworkers, obtained her coworker's support to ask Respondent's owner for a raise, and then used her wage discussions with her coworkers to support her request for a wage increase. ((ALJD 5:10-14). ALJ Amchan further erred by not finding and concluding that Respondent unlawfully discharged Howard for engaging in protected concerted activity. (ALJD 5:10-14; GCX 1(f)).

Section 7 of the Act establishes the right "to engage in . . . concerted activities for the purpose of . . . mutual aid or protection," and Section 8(a)(1), in turn, makes it an unfair labor practice "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." (ALJD 5:15-20) 29 U.S.C. §§ 157, 158(a)(1).

The Board held in *Miller Plastic Products, Inc.*, that, "the question of whether an employee engaged in concerted activity is, at its heart, a factual one" based on the totality of the record evidence." 372 NLRB No. 134, slip op at 10 (2023), citing *Meyers Industries*, 281 NLRB 882 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). The Board has held that "concerted" activity "encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." *North Mountain Foothills Apartments, LLC.*, 373 NLRB No. 26, slip op at 12 (2024), citing *Meyers Industries*, 268 NLRB 493, 497 (1984), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C.

Cir. 1985), cert. denied 474 U.S. 948 (1985), supplemented *Meyers Industries*, 281 NLRB 882, 887 (1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). The Board clarified in *Fresh and Easy Neighborhood Market, Inc.*, 361 NLRB 151, 153 (2014) that, "whether an employee's activity is 'concerted' depends on the manner in which the employee's actions may be linked to those of his coworkers." *Fresh and Easy*, 361 NLRB 151, 153 (2014), citing *NLRB v. City Disposal Systems,* 465 U.S. 822, 831 (1984); *Meyers Industries*, 268 NLRB 493, 497 (1984) (*Meyers I*), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), supplemented *Meyers Industries*, 281 NLRB 882, 887 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). "Employees may act in a concerted fashion for a variety of reasons-- some altruistic, some selfish--but the standard under the Act is an objective one." *Circle K Corp.*, 305 NLRB 932, 933 (1991), enfd. mem. 989 F.2d 498 (6th Cir. 1993).

Howard spoke with Davis and Butrick about wages, and "… Respondent terminated Charlee Howard for talking to other employees about their wages to support her contention that she was underpaid." (ALJD 5:10-11). Accordingly, the ALJ erred in finding that there is no evidence that Respondent terminated Howard for any reason other than her February 2025 discussion with Emily Butrick about Butrick's wages," because Respondent also took issue with her wage discussions with Davis. ALJ Amchan found that Howard's conversation did not constitute protected concerted activity because she was seeking a raise for herself, that it did not constitute inherently concerted activity, and that her discharge was not an unlawful preemptive strike.[6] (ALJD 5:10-6:26). ALJ Amchan also found that *if* Howard's conduct had constituted

[6] The assertion that Howard was not engaged in inherently concerted activity, and that Respondent's conduct did not constitute a preemptive strike will be discussed in more detail below.

protected concerted activity, then he would have found that her discharge violated the Act. (ALJD 5:10-12). However, ALJ Amchan found that Howard's conduct was not concerted, and therefore found her discharge to be lawful. (ALJD 5:12).

Howard's actions are concerted under extant Board law. Howard, an individual employee, spoke with coworkers Davis and Butrick about wages, seeking support for her request for a wage increase. (Tr. 31-33). Davis and Butrick shared their wage rate information with Howard, and Butrick also told Howard that it was not fair and voiced her support for Howard asking Stewart for a raise. (ALJD 2:24-29). Whether Howard, Davis, or Butrick's motivations were altruistic, selfish, or even false, the group of employees undoubtedly joined together to share information and aid Howard in asking for a wage increase. When Howard spoke with Stewart to ask for a wage increase, she linked her conduct to her conversations with coworkers, specifically stating that she had discussed the situation with her coworkers. (ALJD 3:1-2). Stewart admitted in her written statement that Howard disclosed that she had talked with her coworkers. (GCX 4(a)). It is also evident that Howard engaged in concerted activity, because she immediately texted Davis and Butrick to notify them of her discharge. (GCX 2, 3).

ALJ Amchan further erred by finding that, "The language of Section 7 does not generally support finding a violation of the Act when an employee discusses wages and working conditions that are of concern only to that employee, e.g., 'It is not fair that you are being paid as much as I am being paid.'" (ALJD 6:17-20). The Board has repeatedly found that employees engage in protected concerted activity even though such activities will only aid one employee. In *Fresh and Easy Neighborhood Market, Inc.*, 361 NLRB 151, 151 (2014), employee Margaret Elias posted a sign requesting "TIPS" training which was subsequently changed to "TITS" with a picture of a worm or peanut urinating on Elias' name. Elias complained to her coworkers and asked them to

sign a recreation of the altered sign. *Id* at 151-152. Three employees signed the recreated sign, and one employee suggested Elias report the matter to management, which Elias did. *Id.* at 152. The three employees believed they were only attesting that the sign was accurate, as altered, and noted that they felt pressured or forced to sign the document, and they did not want to assist Elias in raising her complaint. *Fresh and Easy*, 361 NLRB 151, 152 (2014). The ALJ found that Elias was not engaged in concerted activity, because her complaint was personal, and not shared by coworkers. *Id*. However, the Board held that, "Elias' conduct in approaching her coworkers to seek their support of her efforts regarding this workplace concern would constitute concerted activity. Elias did not have to engage in *further* concerted activity to ensure that her initial call for group action retained its concerted character." *Fresh and Easy*, 361 NLRB 151, 153 (2014).

The Board has recognized the importance of wage discussions to employees. Thus, the Board found in *Belle of Sioux City L.P*, 333 NLRB 98, 101 (2001), that held that, "Few topics are of such immediate concern to employees," as the topic of wages. The Board has long held that, "… wages are a 'vital term and condition of employment,' the 'grist on which concerted activity feeds,' and such discussions are often preliminary to organizing or other action for mutual aid or protection." *North Mountain Foothills Apartments*, 373 NLRB No. 26, slip op at 6, (2024), citing *Aroostook County Regional Ophthalmology Ctr.*, 317 NLRB 218, 220 (1995), enf. denied in part on other grounds 81 F.3d 209, 214, 317 U.S. App. D.C. 114 (D.C. Cir. 1996); See also *Trayco of S.C., Inc*., 297 NLRB 630, 634-635 (1990), enf. denied mem. 927 F.2d 597 (4th Cir. 1991). The Board has also found protected concerted activity where there is only one speaker and one listener, or if the listener disagrees and refuses to join the cause. *North Mountain Foothills Apartments, LLC.*, 373 NLRB No. 26, slip op at 12, (2024), *Belle of Sioux City L.P*, 333 NLRB 98, 105 (2001), *Mushroom Transportation Co., Inc. v NLRB*, 330 F.2d 683, 685 (3rd Cir. 1964).

Accordingly, Howard's vital wage discussions with her coworkers, constitute protected concerted activity, regardless of whether Howard was the only speaker (which she wasn't because Davis and Butrick shared their wages), or whether they disagreed with Howard that she was paid enough (which they didn't because Butrick said it wasn't fair and supported Howard asking Stewart for a raise and Davis implicitly supported Howard getting a raise), or if everyone was acting in their own self-interest (if Howard gets a raise, maybe everyone will get a raise) or disinterest (if I tell Howard I make $16 an hour that will end the conversation).

ALJ Amchan distinguished *Belle of Sioux City, L.P.,* 333 NLRB 98, (2001) from the instant case, but they are analogous. (ALJD 6: fn 6). ALJ Amchan noted in footnote 6 of his decision that the employer in *Belle of Sioux City, L.P.,* 333 NLRB 98, 101-106 (2001), perceived an employee's personal, independent complaint about her being sent home on Labor Day to be group sponsored because everyone agreed with employee Marshall. In *Belle of Sioux City, L.P.,* employee Deborah Marshall discussed her unique situation of being sent home on Labor Day with coworkers, much like Howard discussed her unique situation that she believed, as the longest tenured employee, she should not be paid the same as less senior employees. Marshall's coworkers supported her individual complaint, protesting that she was sent home on Labor Day, Marshall voiced her complaint to her supervisor, and told the supervisor that she spoke with her coworkers, and was discharged for speaking with coworkers. *Id* at 101-103. Likewise, Howard voiced her complaint to Stewart that she was underpaid, told Stewart that that she had discussed the matter with her coworkers, and was discharged for talking to other employees to support her contention that she was underpaid. (ALJD 5:10-11). ALJ Amchan noted that the issue in *Belle of Sioux City,* became a "matter of common concern," amongst employees, which the supervisor perceived as "group sponsored." (ALJD 6:fn 13), citing *Belle of Sioux City L.P*, 333 NLRB 98, 105 (2001). The Board

in distinguishing *Belle Sioux City,* 333 NLRB 98, 105 (2001), where Marshall discussed her workplace issues with coworkers, from *Alleluia Cushion Co.*, 221 NLRB 999 (1975), where the employee did not discuss his workplace issues with coworkers noted that,

> More importantly […] various employees acted on their agreement that Marshall had been treated unfairly; they suggested actions which could be taken by her in connection with perceived unfair treatment. […] some employees suggested steps which Marshall could take to obtain redress. In that regard the situation differs not at all from one where employees support redress for the discharge of one of their coworkers. Only one employee benefits, should reinstatement occur, but the activities to obtain that objective are no less concerted than if more than one employee benefited directly.

Accordingly, Howard engaged in protected concerted activity by discussing wage rates with Davis and Butrick to obtain their aid in her labor dispute in the form of information to support her request for a raise. Notably, Butrick offered further support for the labor dispute by encouraging Howard to request a raise. It is immaterial that only Howard would benefit if her request for a raise were granted, or that Howard was the main speaker. Like the supervisor in *Belle of Sioux City,* who focused on the group discussions, Respondent, by Stewart, also focused on the collective aspect of Howard's conversations, repeatedly asking why she talked with her coworkers, snooped, and did not bring her wage concerns directly to Respondent. (GCX 4(a)).

The Board has repeatedly found employees to be engaged in protected concerted when disclosing their own wages or learning a coworker's wages, and not otherwise connected with protected concerted discussions or taking next steps. For example, in *Morgan Corp.*, 371 NLRB No. 142, slip op at 1, (2022), the employer gave employee Russell Bannan a wage increase, and instructed him not to tell anyone. Bannan disclosed his raise to his coworkers despite the warning, and encouraged them to ask the supervisor for a raise. *Morgan Corp.*, 371 NLRB No. 142, slip op at 1-2, (2022). One employee, Elsenpeter, asked the employer for a wage increase for himself, citing Bannan's raise, and noted that other employees were threatening to quit unless they got a

raise. *Id* at 2. Bannan was discharged for attendance issues and for disclosing his pay, but the ALJ found that the reference to attendance issues was pretextual. *Id.* The Board upheld the ALJ's finding, that Bannan had engaged in protected concerted activity, "when he discussed his pay with other employees and encouraged them to seek higher wages, which they did," and that even if he had not engaged in protected concerted activity, the discharge constituted an unlawful preemptive strike. *Morgan Corp* at 2-3, citing *Parexel International, LLC*, 356 NLRB 516, 518-519 (2011). The employer argued that Brannan was not engaged in protected concerted activity, as he was acting on his own behalf, and not working in concert with other employees. *Id* slip op at 12. However, the Board found, "Here, Bannan encouraged other employees to seek pay raises, which was the common grounds for group action." *Id* slip op at 13. The ALJ held that when Bannan told his coworker to "move on a request for raise. This statement takes the discussion about Bannan's pay raise beyond a plain Jane remark to a protected status." 371 NLRB No. 142, slip op at 12, (2022). Here, Butrick encouraged Howard to request a raise, Howard did so and used the wage information that her coworkers shared with her to support her request and was discharged for discussing wages with her coworkers. Thus, Howard engaged in protected concerted activity and was discharged for doing so.

Based on the record, the Board should grant General Counsel's exception, and revise the ALJ's Statement of the Case/Findings of Fact to reflect that Charlee Howard was engaged in protected concerted activity, and that Respondent unlawfully discharged Howard for engaging protected concerted activity.

ii. Charlee Howard engaged in inherently protected activity

It is well established that employees' wage discussions are "inherently concerted" activity protected by Section 7 of the Act and that an employer violates Section 8(a)(1) the Act by

prohibiting employees from discussing pay with others. *Automatic Screw Products Co.*, 306 NLRB 1072 (1992), enfd. Mem 977 F. 2d 582 (6th Cir. 1992); see also *Alternative Energy Applications, Inc.*, 361 NLRB 1203 (2014); see also *North Mountain Foothills Apartments, LLC*, 373 NLRB No. 26, (2024); *Belle of Sioux City L.P*, 333 NLRB 98, 101 (2001). The Board has also held that where initial discussions involving wages and other protected concerted activity do not lead to taking additional steps, "… the lack of group action does not cause the discussion to be unprotected." *Morgan Corp.*, 371 NLRB No. 142, slip op at 13, (2022), *Noland Co.*, 269 NLRB 1088 (1984), citing *Jeannette Corp.*, supra, and *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683 (3d Cir. 1964).

In *North Mountain Foothills Apartments*, a maintenance employee, Jasper Press, disclosed to his coworkers that he did not mind the excessive work orders because he was earning $25 an hour and received a $1,500 monthly housing subsidy. 373 NLRB No. 26, slip op at 6, (2024). Press' coworkers complained to their supervisor who called Press into a meeting where they chastised him for disclosing his wage rate and housing subsidy and terminated his employment the following day. *Id* slip op at 7-11. The Board upheld the ALJ's finding that Press was engaged in inherently concerted activity by discussing wages with coworkers. *North Mountain Foothill,* slip op at 8, (2024). In determining that Press' actions were inherently concerted, the ALJ reasoned,

> The right of employees to discuss their wages and terms and conditions of employment with each other is a core substantive right protected by the Act. See, e.g., *Triana Industries, Inc*., 245 NLRB 1258, 1258 (1979). Discussions about wages are deemed "inherently concerted" activity, and as such are considered protected, regardless of whether they are engaged in with the express object of inducing group action. See *Automatic Screw Products Co*., 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992) and *Alternative Energy Applications, Inc*., 361 NLRB 1203, 1203 (2014). The rationale is that wages are a "vital term and condition of employment," the "grist on which concerted activity feeds," and such discussions are often preliminary to organizing or other action for mutual aid or protection. *Aroostook County Regional Ophthalmology Ctr.*, 317 NLRB 218, 220 (1995), enf. denied in part on other grounds 81 F.3d 209, 214, 317

> U.S. App. D.C. 114 (D.C. Cir. 1996); See also *Trayco of S.C., Inc*., 297 NLRB 630, 634-635 (1990), enf. denied mem. 927 F.2d 597 (4th Cir. 1991).

North Mountain Foothills Apartments, 373 NLRB No. 26, slip op at 6, (2024).

In *Noland Company*, 269 NLRB 1082, 1088 (2022), the Board held, "These discussions, which go to the very heart of employees' traditional concerns, are the type of preliminary discussions that frequently result in organized activity or in the taking of positive steps towards presenting demands. That they do not eventually lead to such group action does not, somehow, subsequently render them unprotected."

Accordingly, even if no employees shared their wages with Howard, which they did, or if they did not support Howard in her endeavors to request a wage increase, which they did, Howard's initial conversations constitute protected concerted activity. This is the outcome even if Howard only spoke, and Davis and Butrick only listened.

As such, ALJ Amchan erred in finding that Howard was not engaged in inherently concerted activity. (ALJD 6:12-20). ALJ Amchan asserted in his decision that, "Cases in which the Board has opined that discussions about wages are 'inherently concerted' and thus protected are distinguishable from the instant case. In *Component Bar Products, Inc.*, 364 NLRB 1901 (2016) and *Hoodview Vending Co.*, 362 NLRB 690 (2015) at least one employee was making or trying to make common cause with another." (ALJD 6:12-15). ALJ Amchan found,

> In *Component Bar Products,* the discriminatee called another employee to warn him that his job was in jeopardy. In *Hoodview Vending,* the discriminatee talked to another employee about a possible termination. This is also true in *Whitehawk Worldwide,* 371 NLRB No. 122 (2022) at 17. In that case the Respondent Employer did not file exceptions to the Judge's conclusion that the Respondent violated the Act in discharging the employee in question. *Alternative Energy Applications,* 361 NLRB No. 139 (2014) is also distinguishable. The company president testified that an employee other than the discriminatee had told him that the discriminatee had complained that wages were too low. The transcript of this case 12-CA-72037 at 55 and 156 establishes that Alternative Energy was aware of the concerted nature of that discriminatee's complaints." (ALJD 6:fn 12)

Component Bar Products, Inc., 364 NLRB 1901 (2016) and *Hoodview Vending Co.*, 362 NLRB 690 (2015) deal with inherently concerted activity pertaining to job security, not wage discussions, but they are still instructive. In *Component Bar Products, Inc.*, 364 NLRB 1901, 1908 (2016), employee Stout called another employee, Burgess, to warn Burgess that his job may be in danger. However, Burgess disavowed Stout's activity of trying to save Burgess' job, complained of Stout's activity to the employer, and the employer discharged Stout. *Id* at 1908-1909. Accordingly, in *Component Bar Products, Inc.*, the speaker, Stout, was found to be engaged in inherently concerted activity despite that the listener, Burgess, refused to engage with or support the proposed action and despite that it would only aid one employee. *Id.* In the instant case, Howard sought information and assistance from her coworkers, and her coworkers, Davis and Butrick responded positively to her workplace wage discussions by disclosing their wage rates and encouraging Howard to seek a raise. *Component Bar Products Inc.*, is also instructive because Stout only intended to assist one individual, Burgess, but his activity was still protected concerted. *Id.* In the instant case Davis, Butrick, and Howard's activity was only intended, at this stage, to aid Howard, but it nonetheless constitutes protected concerted activity. Accordingly, the Board should find that ALJ Amchan erred in finding that, "The language of Section 7 does not generally support finding a violation of the Act when an employee discusses wages and working conditions that are of concern only to that employee, e.g., 'It is not fair that you are being paid as much as I am being paid.'" is not correct because the Board has repeatedly found a violation where the employee discussions only benefit or pertain to one employee (i.e., only Burgess was going to be discharged, but Stout tried to aid him, which was protected concerted activity).

ALJ Amchan also distinguished *Hoodview Vending*, 359 NLRB 355, (2012) from the instant case. (ALJD 6:13-15). In *Hoodview Vending*, 359 NLRB 355, 355-356, (2012), affirmed

in 362 NLRB 690, (2015), one employee, LaDonna George, notified a coworker, Steve Boros, that the employer was advertising for a route driver, speculated that the employer may fire an employee, and asked Boros who he thought it would be. LaDonna George was also heavily involved in a union organizing campaign. *Hoodview Vending*, 359 NLRB 355, 355-356, (2012), affirmed in 362 NLRB 690, (2015). The employer discharged George for untrustworthiness. *Id.* The ALJ found that the employer discharged George in retaliation for her union activity, but did not find that her discussions regarding the speculative discharge constituted protected concerted activity. *Id* at 356-357. However, the Board found that even this discussion regarding speculative terminations was closely related enough to job security to constitute inherently concerted activity, and that the employer discharged George for engaging in inherently concerted activity. *Id* at 356-359. The Board found that the employer's discharge of George for discussing job security, "illustrates why conversations about job security are inherently concerted." *Id* at 358. The Board reasoned, "Clearly, such action [discharging George] would inevitably shut down future discussions and any other concerted actions that might follow, because if anything would coerce employees in the right to act concertedly for mutual aid and protection, it would be discharging an employee for suggesting that another employee's job might be on the line." *Hoodview Vending*, 359 NLRB 355, 358 (2012).

The instant case also demonstrates why wage discussions are inherently concerted and why they must be protected. Respondent's reaction to Howard's wage discussions, like the employer's reaction to George's job security discussions in *Hoodview*, was to discharge an employee for engaging in core Section 7 rights. Surely Howard was entitled to discuss her wages with her coworkers, to ask them what their wages were, and to ask them to support her request for a wage increase, and Respondent would have violated the Act if it discovered her engaging in such a

conversation and immediately discharged her. It is illogical then that those same conversations are not protected simply because Howard reported her conversations with coworkers to Respondent to seek a wage increase for herself.

ALJ Amchan also determined that *Alternative Energy Applications*, 361 NLRB No. 139 (2014) is distinguishable from the instant case, however, instead of relying on the facts and findings recited in the Board's decision, ALJ Amchan erred by reviewing the underlying transcript to reach his own findings of fact, instead of relying on the rationale articulated by the Board. ALJ Amchan stated in fn. 12 that, "The company president testified that an employee other than the discriminatee had told him that the discriminatee had complained that wages were too low. The transcript of this case 12-CA-72037 at 55 and 156 establishes that Alternative Energy was aware of the concerted nature of that discriminatee's complaints."

ALJ Amchan's reliance on testimony in a transcript, rather than the facts set forth in the Board decision to conclude that the employer was aware of the concerted nature of the activity, is improper. That reliance assumes without support that the Board considered and relied on that testimony in reaching its decision on the merits. Further, by relying on facts not recited in the Board decision or Judge's decision, he puts a burden on parties to review the underlying transcript and exhibits in each case. This is untenable not only because of the burden on the parties, but also because copies of these transcripts and exhibits are not readily accessible to the parties. The Board has long held that administrative law judges have a "duty to apply established Board precedent, which the Supreme Court has not reversed." *TBC Corporation and TBC Retail Group Inc.*, 367 NLRB No. 18, slip op at 6, (2018). Courts have held that the Board must distinguish cases where a party makes a "significant showing that analogous cases have been decided differently." *LeMoyne-Owen College v. NLRB* 357 F.3d 55, 51 (D.C. Cir. 2004).

Here, ALJ Amchan did not rely on or cite Board precedent to distinguish *Alternative Energy Applications*, and instead cited to underlying facts that the Board did not discuss or rely on in reaching its decision, and in doing so, he substitutes the Board's analysis with his own. While an ALJ is permitted to take judicial notice of underlying facts, there is no evidence that this is what occurred in this instance, either on the record during the hearing or in the ALJ decision. Furthermore, in footnote 10 of its decision in *Alternative Energy Application*, the Board rejects the arguments offered by respondent and the dissent that the charging party's complaints were unprotected individual complaints by explaining that it does not matter "because employee wage discussions are 'inherently concerted,' and as such are protected, regardless of whether they are engaged in with the express object of inducing group action." 361 NLRB at fn.10. Thus, ALJ Amchan's conclusion that the employer was aware that the charging party engaged in protected concerted activity misses the point, which is that even if it was an individual complaint, the complaint was protected because of the inherently concerted nature of wage discussions.

The Board's finding in *Alternative Energy Applications*, 361 NLRB 1203(2014), supports finding that Respondent unlawfully discharged Howard for engaging in protected concerted, and inherently concerted, activities. In *Alternative Energy Applications*, employee Rivera-Chapman was given a wage increase after frequently complaining about pay. Rivera-Chapman disclosed his wage increase to his coworkers, despite the employer telling him not to. *Id.* The ALJ did not find that Rivera-Chapman was discharged for discussing pay, despite the employer providing a written statement to OSHA noting that Rivera-Chapman was discharged for discussing wages. *Alternative Energy Applications*, 361 NLRB 1203, 1215 (2014). The Board overruled the ALJ, finding, "Unlike the judge, we find that the General Counsel demonstrated that the Respondent discharged Rivera-Chapman because it believed that he had discussed wages with other employees. To begin,

we find the statement in the Respondent's letter to OSHA that Rivera-Chapman was fired for discussing his wages is an admission against interest and thus persuasive evidence both that the Respondent believed that Rivera-Chapman disclosed his rate of pay and that it discharged him for that reason." *Id*. at 1205 The dissent protested the finding that Rivera-Chapman's conduct constituted inherently concerted activity, and the Board at fn. 10 of *Alternative Energy Applications*, 361 NLRB No. 139, (2014), explained:

> The Respondent and our dissenting colleague argue that Rivera-Chapman's wage-related complaints to others were individual, rather than concerted activities, because they were not undertaken in contemplation of group action. This argument lacks merit because employee wage discussions are "inherently concerted," and as such are protected, regardless of whether they are engaged in with the express object of inducing group action. See, e.g., *Automatic Screw Products Co.,* 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992); *Scientific-Atlanta, Inc.,* 278 NLRB 622, 624–625 (1986). This is because wages are a "vital term and condition of employment," and the "grist on which concerted activity feeds"; discussions of wages are often preliminary to organizing or other action for mutual aid or protection. *Aroostook County Regional Ophthalmology* Center, 317 NLRB 218, 220 (1995) (citations omitted), enf. denied in part on other grounds 81 F.3d 209, 214 (D.C. Cir. 1996). See also *Trayco of S.C., Inc.,* 297 NLRB 630, 634–635 (1990), enf. denied mem. 927 F.2d 597 (4th Cir. 1991) (contemplation of group action not required when employee discussion is about wages); *Whittaker Corp.,* 289 NLRB 933, 933 (1988) (particularly with respect to wage discussions, "object of inducing group action need not be express"). Our colleague rejects this view, but implicitly concedes that it represents established Board law.
>
> Moreover, even if we did not regard Rivera-Chapman's wage-related discussions as inherently concerted, we would still find his discharge unlawful. The evidence amply supports finding not only that the Respondent believed that Rivera-Chapman had discussed wages with other employees, but also that the discharge was a product of the Respondent's unlawful intent to ensure that wage-related discussion did not lead to group action. The discharge of an employee to prevent him from engaging in protected concerted activity violates Sec. 8(a)(1). *Parexel International, LLC*, 356 NLRB 516, 518 (2011).[7]
>
> ….
>
> The discharge of Rivera-Chapman not only prevented his discussion of wages from developing into group action, but "also had the effect of keeping other employees in the dark about these matters, thus preventing them from discussing, and possibly inquiring further or acting in response to,

[7] The nip in the bud and preemptive strike analysis will be examined in more detail below.

> substandard wages or perceived wage discrimination." Id. at 5; see also *United States Service Industries*, 314 NLRB 30, 30–31 (1994), enfd. mem. 80 F.3d 558 (D.C. Cir. 1996) (employee unlawfully discharged for "stirring up the other workers" by complaining about hours and work assignments).

Employees' discussions of wages are inherently concerted activity, even if no other employees reciprocate. *Automatic Screw Products Co.*, 306 NLRB 1072 (1992), enfd. Mem 977 F. 2d 582 (6th Cir. 1992); see also *Alternative Energy Applications, Inc.*, 361 NLRB 1203 (2014).

The instant case is analogous to *Alternative Energy Applications* on the facts established by the Board. Charlee Howard spoke to her coworkers about pay, much like Rivera-Chapman talked with coworkers about pay. The employer in *Alternative Energy Applications*, confirmed in writing to OSHA that it discharged Rivera-Chapman for discussing pay, much like Stewart confirmed in writing to the NLRB through her position statement that she was upset that Howard discussed her pay with coworkers. (GCX 4(a)). However, Stewart went further, and also made unlawful coercive statements to Howard, prohibiting her from engaging in protected concerted activity at the time of her discharge. (ALJD 8:6-8). ALJ Amchan found, "that Respondent has not sufficiently contradicted Howard's testimony as to what was said after she was discharged. I credit Howard and find that Respondent violated Section 8(a)(1) in at least implicitly telling Howard that she could not discuss wages with other employees." Accordingly, ALJ Amchan correctly found that Respondent violated the Act by prohibiting employees from discussing wages.

However, ALJ Amchan erred by not finding that Stewart's statement during the discharge meeting, "I had no right talking to employees about what they made and going behind their backs, that I should have brought it to them as soon as I could," constituted an unlawful instruction to bring wage complaints to management. (Tr. 37).

Employees have a Section 7 right to discuss wages and other working conditions with others. *Inova Health System*, 360 NLRB 1223, 1228 (2014), citing *Westside Community Mental*

Health Center, 327 NLRB 661, 666 (1999). "It is well-established Board law that 'an employer violates Section 8(a)(1) of the Act if its conduct may reasonably be said to have a tendency to interfere with the free exercise of employee rights.'" *Corporate Interiors, Inc.*, 340 NLRB 732, 732 (2003), quoting *Frontier Hotel & Casino*, 323 NLRB 815, 816 (1997); see also *American Freightways Co.*, 124 NLRB 146, 147 (1959). The standard of inquiry is an objective one, examining the effect of the employer's actions on a reasonable employee. *Rocky Mountain Eye Center, P.C.*, 363 NLRB No, 34, slip op. at 7 (2015); *EF International Language Schools, Inc.*, supra; *Miller Electric Pump*, 334 NLRB 824, 825 (2001). The entirety of ALJ Amchan analysis for not finding a violation is that, "Stewart's statement about bringing concerns to Respondent does not necessarily imply that Howard was prohibited from discussing them with other employees." (ALJD 7:fn 14). However, the standard is not whether the statement necessarily implies that an employee is prohibited from discussing wages with coworkers, the standard is whether a reasonable employee under the circumstances would understand the statement to chill Section 7 rights. In this instance, Howard had just been discharged, and instructed that she should not have snooped behind management's back and told that she should have brought the matter to management as soon as she could. The implication to a reasonable employee is that she violated the instruction by talking to her coworkers instead of bringing the wage complaint issue directly to management.

As such, Howard engaged in inherently concerted activity by discussing wages with her coworkers which are, "protected, regardless of whether they are engaged in with the express object of inducing group action." *Alternative Energy Applications*, 361 NLRB No. 139, fn. 10, (2014).

iii. Respondent discharged Charlee Howard as a preemptive strike against protected concerted activity and to nip it in the bud

The Board has repeatedly found that an employer violates the Act when it discharges an employee before they can engage in protected concerted activity as a preemptive strike to nip protected concerted activity in the bud. *Parexel International, LLC.*, 356 NLRB 516, 523 (2011), see also *Alternative Energy Applications, Inc.*, 361 NLRB 1203, (2014). Despite this longstanding Board precedent, ALJ Amchan did not find that Respondent unlawfully discharged Howard as a preemptive strike against future protected concerted activity and he erred by failing to do so.

In *Parexel International, LLC*., an employee, Neuschafer, was, falsely, told by coworker Van der Merwe, that employees had quit, and were rehired at a higher wage rate. 356 NLRB 516, 516 (2011). Neuschafer complained to her supervisor, who discharged Neuschafer before she could raise these matters with her coworkers. *Id.* The Board found the employer's actions constituted a "preemptive strike to prevent [Neuschafer] from engaging in activity protected by the Act." *Parexel*, 356 NLRB 516, 517 (2011). The Board reasoned that an employer is prohibited from promulgating and maintaining rules prohibiting employees' discussion of wages, even if no employee has yet engaged in said activity, and therefore the discharge of an employee to prevent protected concerted activity, such as wage discussions, also violates the Act. *Parexel* at 518.

The Board in *Alternative Energy Applications, Inc.*, 361 NLRB 1203, fn. 10, found that even if the Rivera-Chapman had not engaged in protected concerted activity, the employers' actions would still be an unlawful preemptive strike against future protected concerted activity. The Board reasoned that:

> The evidence amply supports finding not only that the Respondent believed that Rivera-Chapman had discussed wages with other employees, but also that the discharge was a product of the Respondent's unlawful intent to ensure that wage-related discussion did not lead to group action. The discharge of an employee to

> prevent him from engaging in protected concerted activity violates Sec. 8(a)(1). *Parexel International, LLC*, 356 NLRB 516, 518 (2011). Sipperley's early admonition to Rivera-Chapman not to talk to anyone about his raise ("because we have fired employees in the past for talking about their wages"), together with the Respondent's obvious concern when Rivera-Chapman's discussions at least apparently triggered another employee's wage complaints (which were directly linked to conversations with Rivera-Chapman), support the inference that Rivera-Chapman was discharged in order to deny him and other employees "the opportunity to compare their wages and other terms of employment and to determine whether to take further concerted action." *Id*. The discharge of Rivera-Chapman not only prevented his discussion of wages from developing into group action, but "also had the effect of keeping other employees in the dark about these matters, thus preventing them from discussing, and possibly inquiring further or acting in response to, substandard wages or perceived wage discrimination." Id. at 5; see also *United States Service Industries*, 314 NLRB 30, 30–31 (1994), enfd. mem. 80 F.3d 558 (D.C. Cir. 1996) (employee unlawfully discharged for "stirring up the other workers" by complaining about hours and work assignments).

The Board noted in *Hoodview Vending*, that, "Clearly, such action [discharging George] would inevitably shut down future discussions and any other concerted actions that might follow, because if anything would coerce employees in the right to act concertedly for mutual aid and protection, it would be discharging an employee for suggesting that another employee's job might be on the line." *Hoodview Vending*, 359 NLRB 355, 358 (2012). If Respondent's actions are permitted, it "would inevitably shut down future discussions and any other concerted actions that might follow." *Hoodview Vending*, 359 NLRB 355, 358, (2012). Similarly, employees will not be willing to risk discharge to discuss wages, when there are no assurances that such discussions are protected, and will cause confusion.

Further, the Board in *Morgan Corp*., found a violation where the employer discharged its employee for discussing wages regardless of whether or not it constituted protected concerted activity, because "the predictable effect of the discharge on other employees who may have [engaged in protected concerted activities]." 371 NLRB No. 142, slip op at 3.

Here, Respondent told Howard during the discharge meeting that she was not permitted to discuss wages with employees and was discharged because she had in fact discussed wages with her coworkers, Davis and Butrick, and used the information they shared with her to strengthen her request for a wage increase. Further, Respondent's employees are aware that Howard was discharged for discussing wages. (GCX 2, 3; Tr. 154). It is apparent that Respondent unlawfully instructed Howard not to discuss her wages with coworkers at the time of her discharge and discharged her to discourage other employees from discussing wages. The Board should grant General Counsel's exceptions and find that Respondent violated Section 8(a)(1) of the Act by discharging Howard.

iv. The Remedy should be amended to address Howard's unlawful discharge and the unlawful instruction to bring wage concerns to managemet

The ALJ erred by failing to recommend an order that provides an appropriate remedy for the unlawful discharge of Howard, the unlawful instructions of Respondent, and one that includes an appropriate Notice to Employees. Thus, the Board should order that Respondent reinstate Howard to her former job or if that job no longer exists, to a substantially equivalent position without prejudice to her seniority and other rights and privileges she would have enjoyed absent the discrimination against her. Respondent should also be ordered to make Howard whole for loss of earnings and other benefits, computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010).

The ALJ further should have ordered Respondent to compensate Howard for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharges, consistent with *Thryv, Inc.*, 372 NLRB No. 22, slip op. at 14 (2022), including reasonable search-for-work

and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.[8] Compensation for those harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Respondent should also be required to post and distribute the Notice to Employees attached hereto.

B. The ALJ erred by requiring Charlee Howard to comply with Respondent's defective subpoena (Exceptions 14)

Respondent served Charlee Howard with a subpoena duces tecum the night before the unfair labor practice hearing, but did not tender the required witness fee or mileage. (GCX 8; Tr. 6-7). Counsel for the General Counsel promptly filed a petition to revoke Respondent's subpoena duces tecum, noting in part that Respondent failed to include the required witness fee and mileage reimbursement with the subpoena. (GCX (8). At the start of the hearing, Counsel for the General Counsel sought to have ALJ Amchan rule on the petition to revoke. (Tr. 6-7). Counsel for the General Counsel argued that the subpoena should be revoked in its entirety because it did not include the witness fee or mileage. (Tr. 7). However, ALJ Amchan ruled that Howard was required to comply with the defective subpoena. (Tr. 7-8).

At the start of the second day of the hearing, Counsel for the General Counsel asked if Respondent had brought the required fees to cure the subpoena defect as Respondent's counsel represented it would do. (Tr. 138). Respondent counsel informed the court that she did not bring the payment, and in fact, did not even bother to look it up, "No. You give me the amount, and I'll send it." (Tr. 138).

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[8] The General Counsel disagrees with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), *vacated in part*, 102 F.4th 727 (5th Cir. 2024), and will be urging the Board to reconsider the policy in a future, appropriate case.

29 U.S.C. § 102.32 requires,

> Witnesses summoned before the Administrative Law Judge must be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the officer taking them are severally entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage will be paid by the party at whose instance the witnesses appear, and the persons taking the deposition will be paid by the party at whose instance the deposition is taken.

The Act and the Rules and Regulations of the Board also require payment of fees. See Sec. 11(4) of the Act; Sec. 102.32 of the Board's Rules; *Zurn/NEPCO*, 329 NLRB 484, 486–487 (1999). Thus, there is no question that the payment of fees and mileage is required. This rule applies, not only to a subpoena ad testificandum, but also to a subpoena duces tecum if it requires a witness to appear at the hearing and produce the records. See *Colburn Electric* Co., 334 NLRB 532, 538 n. 2 (2001), enfd. 54 F. Appx. 793 (5th Cir. 2002). The Board routinely finds that subpoenas are facially defective when the fees are not paid. See *Rolligon Corporation*, 254 NLRB 22, 22 (1981) ("subpenas (sic) were defective because they were not accompanied by witness and mileage fees as required by Section 102.32 of the National Labor Relations Board Rules and Regulations, Series 8, as amended.") Here, despite multiple opportunities and counsel's representation that it would do so, Respondent failed to tender the required witness fees and mileage to Howard prior to the close of the hearing, and based on information and belief, still has not tendered the required fees. Accordingly, the Board should find the ALJ erred by not revoking Respondent's subpoena duces tecum in its entirety as being facially defective for failing to tender the required witness and mileage fees.

V. CONCLUSION

For the foregoing reasons, and the overwhelming record evidence considered as a whole, Counsel General Counsel respectfully urges the Board to find that Charlee Howard was engaged

in protected concerted activity, and/or inherently concerted activity, grant the General Counsel's Exceptions in their entirety and modify the ALJ's findings, conclusions of law, and recommended Order, and Notice to Employees to include complete remedies for all Respondent's violations of Section 8(a)(1) of the Act, as described above.

Dated: November 12, 2026

Respectfully submitted,

/s/ Steven Barclay

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, Counsel For The General Counsel's Brief In Support of Exceptions to the Decision of the Administrative Law Judge, was served on November 12, 2026, as follows:

By electronic filing:

Hon. Roxanne Rothschild, Executive Secretary
Office of the Executive Secretary
1015 Half Street SE
Washington, D.C. 20570-0001

By electronic mail to:

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ATTACHMENT

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.

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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.

YOU HAVE THE RIGHT to discuss wages, hours, and other terms and conditions of employment with coworkers and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT tell employees that they are not permitted to talk to coworkers about wage rates.

WE WILL NOT tell employees that they must bring concerns about wage rates directly to management.

WE WILL NOT discharge employees because they engage in protected concerted activities by talking to coworkers about wage rates or because they do not bring their concerns about wage rates directly to management.

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

WE WILL, within 14 days from the date of the Board's Order, offer Charlee Howard full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Charlee Howard whole for any loss of earnings and other benefits resulting from her unlawful discharge, less any interim earnings, plus interest, and **WE WILL** also make her whole for any other direct or foreseeable pecuniary harms suffered as a result of those actions, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Charlee Howard for the adverse tax consequences, if any, of receiving a lump-sum backpay award and **WE WILL** file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, a copy of Charlee Howard's corresponding W-2 form reflecting the backpay award.

WE WILL, within 14 days of the date of the Board's Order, remove from our files any reference to the discharge of Charlee Howard on or about February 17, 2025, and **WE WILL**, within 3 days thereafter, notify Charlee Howard in writing that this has been done and that the discharge will not be used against her in any way.

THE BOOK RESCUERS INC.
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The Board's Decision can be found at https://www.nlrb.gov/case12-CA-360500 or by using the QR code below. Alternatively, you may 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.