Charter Communications, LLC *and* Jonathan French *and* Raymond Schoof *and* James Debeau. Cases 07–CA–140170, 07–CA–145726, and 07–CA–147521

March 27, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

On November 10, 2016, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent and the General Counsel each filed exceptions and supporting, answering, and reply briefs.

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

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions only to the extent consistent with this Decision and Order.[4]

We affirm the judge's findings that the Respondent violated Section 8(a)(1) of the Act by creating the impression that employee Jonathan French's union activities were under surveillance on July 16, 2014,[5] coercively interrogating French on July 16, subjecting French to close scrutiny on July 17, creating the impression that French's union activities were under surveillance on September 30, and threatening to discharge French on September 30. We also affirm the judge's findings that the Respondent violated Section 8(a)(3) and (1) by reassigning employees French, Raymond Schoof, and James DeBeau to rural areas and discharging French. Contrary to the judge, we additionally find that the Respondent violated Section 8(a)(1) by surveilling the handbilling activity on July 15, threatening French with closer supervision on July 16, and soliciting grievances from French on July 16. We also find, contrary to the judge, that the Respondent violated Section 8(a)(3) and (1) by discharging Schoof and DeBeau.

Background

On the morning of July 15, representatives of the International Brotherhood of Electrical Workers (the Union) handbilled outside the Respondent's Saginaw, Michigan facility. Before the handbilling commenced, a union representative coordinated with employee French. During the handbilling, three supervisors stood at the entrance gates to the Respondent's parking lot and observed the handbilling. One of the supervisors, Shawn Felker, alerted his superior, Manager of Plant Security and Technical Quality Assurance (TQA) Terry James Teenier II, about the handbilling, and Teenier drove from the Respondent's facility in Bay City, Michigan, to the Saginaw facility to observe the handbilling. In turn, Teenier called his superior, Regional Plant Security Director Greg Culver, and informed him about the handbilling. Culver instructed Teenier to note which employees were taking flyers. While employee Kent Payne was walking through the Saginaw parking lot, Supervisor Felker asked him if he had taken a flyer. In general, the Respondent reacted to the handbilling with management telephone conferences, union avoidance meetings, and individual conversations with employees whom it suspected to be union supporters.

During the first telephone conference, the managers identified French as someone who was potentially involved with the Union, and Regional Vice President Joseph Boullion instructed Teenier to speak to French. On July 16, Teenier asked French if he knew about the

[1] No party excepts to the judge's dismissal of complaint paragraphs 8(e), (f), and (g)(ii)-(iv), 9(b) and (c), and 11(b) and his failure to rule on paragraph 8(g)(i).

The General Counsel excepts to the judge's dismissal of complaint paragraph 9(a) without stating in his exceptions or supporting brief any grounds on which the judge's purportedly erroneous dismissal should be reversed. We shall disregard this bare, unsupported exception pursuant to Sec. 102.46(a)(1)(ii) of the Board's Rules and Regulations (formerly Sec. 102.46(b)(2)). See *New Concept Solution, LLC*, 349 NLRB 1136, 1136 fn. 2 (2007) (citing *Holsum de Puerto Rico, Inc.,* 344 NLRB 694, 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006)).

[2] The Respondent requests that we take administrative notice of a complaint that Terry James Teenier II filed under the Family and Medical Leave Act in the United States District Court for the Eastern District of Michigan. Because that complaint is not relevant to this case, we deny the Respondent's request.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] We shall amend the remedy and modify the judge's recommended Order to conform to our findings and the Board's standard remedial language. We shall also substitute a new notice to conform to the Order as modified.

Complaint paragraph 6 alleges that the Respondent violated Sec. 8(a)(1) by maintaining a number of provisions in its Professional Conduct policy. The judge dismissed that allegation on Sec. 10(b) grounds. The dismissal was erroneous because the Respondent stipulated at the hearing that it had continuously maintained the Professional Conduct policy since May 31, 2014. See *Cellular Sales of Missouri, LLC*, 362 NLRB No. 27, slip op. at 2 (2015) ("The Board has held repeatedly that the maintenance of an unlawful rule is a continuing violation."), enf. denied on other grounds 824 F.3d 772 (8th Cir. 2016). We shall sever complaint paragraph 6 and retain it for further consideration.

[5] All dates hereinafter are in 2014 unless otherwise indicated.

handbilling or anyone involved with the Union. French answered that he did not have any information. Teenier responded that French's name had come up as someone who was involved with the Union and that management was looking at French very closely. Teenier added that if French had any concerns about Teenier, other managers, or supervisors, or any other concerns, French could come to him with those concerns. On July 17, Culver went on a "ride-along" with French.[6]

During a telephone conference later in July, Technical Manager Bob Morgan stated that he had heard that French was the main union instigator and that employees Schoof, DeBeau, and Payne were also involved with the Union. In response, Vice President Boullion instructed Teenier to isolate French, Schoof, DeBeau, and Payne from the other employees. Teenier thereupon reassigned the four employees to rural areas outside Saginaw.

On September 19, Supervisor Rob Lothian informed Human Resources Generalist Stephanie Peters that Felker told him that Teenier, Schoof, and DeBeau were laying sod at Schoof's house during worktime. Lothian added that Teenier was instructing employees to complete other nonwork-related "special projects" during worktime. Peters investigated Lothian's allegations. She interviewed a number of employees and instructed each to not discuss the interview or the investigation with anyone else (the confidentiality directive).

On September 30, Lothian conducted a safety check of French's work truck, during which he asked French if he "knew what was going on." French said no. Lothian stated that French had been "outed as the union mastermind." French "was taken aback," denied involvement, and added that he "wasn't going to rat anyone out." Lothian asked if he "could trust" French, and French answered affirmatively. Lothian proceeded to tell French that he, Lothian, had complained to HR about employees laying sod during worktime, and that "the landscape of the department was going to change." Lothian added that considering that French had been "outed as the union mastermind," French "should get on [Lothian's] side with this because people were going to get fired," and that "years ago, he became a supervisor by squashing a union drive."

Peters concluded her investigation with written reports on October 13. On October 14, the Respondent discharged Teenier, Felker, Schoof, DeBeau, and French.

The 10(b) Issues

The complaint alleges a number of violations that are predicated on charges that were filed more than 6 months after the allegedly unlawful conduct occurred. The Respondent contends that those allegations are time barred by Section 10(b).

An otherwise untimely complaint allegation is not barred by Section 10(b) if the allegedly unlawful conduct occurred within 6 months of a timely-filed charge and is closely related to the allegations in that charge. See *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014). The Board's test for determining whether the otherwise untimely allegation is closely related to the timely charge is set forth in *Redd-I, Inc.,* 290 NLRB 1115 (1988). Under *Redd-I*, the Board considers the following factors: (1) whether the otherwise untimely allegation and the allegations in the timely-filed charge are of the same class, "i.e., whether the allegations involve the same legal theory and usually the same section of the Act" (legally related); (2) whether the otherwise untimely allegation and the allegations in the timely-filed charge arise from the same factual situation or sequence of events (factually related);[7] and (3) whether the respondent would raise the same or similar defenses to the otherwise untimely allegation and the allegations in the timely-filed charge. See *Alternative Energy*, 361 NLRB at 1203 (citing *Redd-I*, 290 NLRB at 1118).

The judge found that the otherwise untimely allegations in complaint paragraphs 7 (surveillance of handbilling), 8(a) (impression of surveillance) and (d) (coercive interrogation), 10 (closer scrutiny), 12 (confidentiality directive), and 13 (reassignment of French, Schoof, and DeBeau) are closely related to allegations in the timely-filed charges and thus are not barred by Section 10(b). The Respondent excepts to those findings. Additionally, the judge dismissed complaint paragraphs 8(b) (solicitation of grievances) and (c) (threat of closer supervision) on 10(b) grounds. The General Counsel excepts to those findings. As explained below, we agree with the judge that paragraphs 7, 8(a) and (d), 10, and 13 are closely related to the timely allegations, but we disagree with his finding that complaint paragraph 12 is closely related to the timely allegations.[8] Further, we disagree with the

[6] During a ride-along, also referred to as a "ride-out," a manager accompanies an employee on work assignments.

[7] The Board will find that the second factor has been satisfied when the timely and untimely allegations (1) "demonstrate similar conduct, usually during the same time period with a similar object," (2) share a causal nexus and "are part of a chain or progression of events," or (3) "are part of an overall plan to undermine union activity." *Carney Hospital*, 350 NLRB 627, 630 (2007) (internal quotations omitted); see also *Continental Auto Parts*, 357 NLRB 840, 842 (2011). The Board will not find that the second factor is satisfied "merely because timely and untimely allegations pertain to events that occurred during or in response to the same union campaign." *Carney Hospital*, 350 NLRB at 630.

[8] The allegedly unlawful conduct in the otherwise untimely complaint paragraphs discussed above occurred within 6 months of the timely charges filed by French on November 3 and 18, 2014. Thus,

judge's dismissal of complaint paragraphs 8(b) and (c) on 10(b) grounds.[9]

I. COMPLAINT PARAGRAPHS 7, 8(A)-(D), 10, AND 13: SURVEILLANCE, IMPRESSION OF SURVEILLANCE, SOLICITATION OF GRIEVANCES, COERCIVE INTERROGATION, THREATENED AND ACTUAL CLOSER SCRUTINY, AND REASSIGNMENT OF FRENCH, SCHOOF, AND DEBEAU

The relevant timely-filed charges by French on November 3 and 18 allege that the Respondent violated Section 8(a)(3) by discharging French on October 14 and violated Section 8(a)(1) on September 30 by telling French that it was aware of his union activities and threatening French with discharge for those activities. We find that the otherwise untimely allegations in complaint paragraphs 7, 8(a)-(d), 10, and 13 are closely related to the timely-filed charges. Complaint paragraph 7 alleges that the Respondent violated Section 8(a)(1) by surveilling the handbilling activity on July 15. Complaint paragraphs 8(a)-(d) allege that the Respondent, through Manager of Plant Security and TQA Teenier, violated Section 8(a)(1) on July 16 by (a) creating the impression of surveillance of French's union activities, (b) soliciting grievances from French, (c) threatening French with closer supervision, and (d) coercively interrogating French about union activity. Complaint paragraph 10 alleges that the Respondent, through Culver, violated Section 8(a)(1) on July 17 by subjecting French to closer scrutiny. Complaint paragraph 13 alleges that the Respondent violated Section 8(a)(3) by reassigning French, Schoof, and DeBeau to rural areas because of their suspected union activity. As detailed below, these otherwise untimely allegations satisfy the Board's *Redd-I* test for determining whether they are closely related to the timely-filed charges.

Under the first factor of the *Redd-I* test, complaint paragraphs 7, 8(a)-(d), and 10 are legally related to the timely allegations that the Respondent, through Lothian, created the impression of surveillance of French's union activities and threatened to discharge French for those activities; both the timely and untimely allegations allege that the Respondent's conduct discouraged employees from engaging in protected activities in violation of Section 8(a)(1). See *Metro One Loss Prevention Services Group*, 356 NLRB 89, 100 (2010). Complaint paragraph 13 and the timely allegation that the Respondent unlawfully discharged French are legally related because they both rely on the theory that the Respondent engaged in discriminatory conduct in violation of Section 8(a)(3). See *Success Village Apartments*, 347 NLRB 1065, 1067 (2006).

Under the second factor of the *Redd-I* test, complaint paragraphs 7, 8(a)-(d), 10, and 13 are factually related to the allegations in the timely-filed charges because the timely and untimely allegations represent a progression of events relating to the Respondent's response to the union campaign that culminated in the discharge of French. The Respondent's observation of the handbilling activity on July 15 triggered the Respondent's campaign, during which it engaged in the conduct alleged to be unlawful in both the timely and untimely charges. The Respondent's immediate response to the handbilling was to hold management telephone conferences. In the first of these conferences, managers identified French as a potential union supporter. In response, Regional Vice President Boullion instructed Teenier to have the July 16 conversation with French, during which Teenier committed the violations alleged in complaint paragraphs 8(a)-(d). Culver's July 17 ride-along with French, upon which the allegation of closer scrutiny in complaint paragraph 10 is based, occurred only 2 days after the handbilling, and it fulfilled Teenier's July 16 threat to closely monitor French because of his suspected union activity.[10] Later in July, as alleged in complaint paragraph 13, Boullion instructed Teenier to isolate French, Schoof, and DeBeau from other employees in response to a tip during a management telephone conference that those three employees were involved with the Union. Although the untimely allegations discussed above occurred in July and early August, they all relate to the timely allegations that on September 30, Lothian told French that he was "outed as the union mastermind" and threatened that French could be discharged and to the October 14 discharge of French. Overall, the untimely allegations and the timely allegations all relate to the Respondent's belief that French was the mastermind of the union activity and to the steps that it allegedly took to thwart that activity. See *Metro One Loss Prevention*, 356 NLRB at 100 (dismissing a 10(b) defense where "the allegations in the charges all relate[d] to the [r]espondent's reaction to the [u]nion's campaign and [an employee's] prominent role therein, and its attempt to thwart that campaign").

when we refer generally to "timely-filed charges" and "timely allegations," we are referring to French's November 3 and 18 charges and the allegations within them, respectively.

[9] The judge did not explain why he drew a distinction between the alleged 8(a)(1) violations in complaint paragraphs 8(a) and (d) and those in complaint pars. 8(b) and (c), which occurred during the same conversation.

[10] Culver was the ultimate decision maker for the alleged unlawful discharge of French. See *Alternative Energy*, 361 NLRB at 1204 (finding that the involvement of the same supervisor in both the timely and untimely allegations supported a finding of factual relatedness).

The third factor of the *Redd-I* test also supports finding that complaint paragraphs 7, 8(a)-(d), 10, and 13 are closely related to the allegations in the timely-filed charges. This factor "is concerned, at least in part, with whether a reasonable respondent would have preserved similar evidence and prepared a similar case in defending against the untimely allegations as it would in defending against the timely allegations." *Fry's Food Stores*, 361 NLRB 1216, 1217 fn. 5 (2014) (internal quotations omitted). Here, the General Counsel relies, in part, on the allegedly unlawful conduct in complaint paragraphs 7, 8(a)-(d), 10, and 13 to show that the Respondent's discharge of French was motivated by union animus. Thus, the Respondent had to defend against that conduct whether or not it was properly alleged as separate violations.

II. COMPLAINT PARAGRAPH 12: CONFIDENTIALITY DIRECTIVE

Complaint paragraph 12 alleges that the Respondent violated Section 8(a)(1) by issuing the confidentiality directive. We do not agree with the judge's finding that complaint paragraph 12 is closely related to the allegations in the timely-filed charges, and, thus, we will dismiss complaint paragraph 12 on 10(b) grounds.[11]

While complaint paragraph 12 may be legally related to the 8(a)(1) allegations in the timely-filed charges, it is not factually related to the timely allegations. Unlike the other untimely allegations discussed above, the Respondent's issuance of the confidentiality directive was not allegedly in response or connected to the union activity. Further, the Respondent does not claim to have relied on the confidentiality directive in discharging French. Also, unlike the untimely allegations discussed above, the Respondent would not have prepared to defend against the allegedly unlawful conduct in complaint paragraph 12 as part of its defense against the allegations in the timely-filed charges.

The Merits of the Allegations

I. THE UNION HANDBILLING ON JULY 15

For the following reasons, we reverse the judge and find that the Respondent violated Section 8(a)(1) by engaging in unlawful surveillance of the union handbilling activity on July 15. "It is well established that management officials may observe open and public union activity on or near the employer's premises, so long as such officials do not engage in behavior that is 'out of the ordinary.'" *PartyLite Worldwide, Inc.*, 344 NLRB 1342, 1342 (2005) (quoting *Arrow Automotive Industries*, 258 NLRB 860, 860 (1981), enfd. mem. 679 F.2d 875 (4th Cir. 1982)). Manager of Plant Security and TQA Teenier travelled from his office at the Respondent's Bay City facility to the Respondent's Saginaw facility to observe the handbilling; thus, Teenier's presence was out of the ordinary. Additionally, the Respondent "went beyond the mere lawful observation of open union activity." *Nashville Plastic Products*, 313 NLRB 462, 463–464 (1993). As discussed above, according to Teenier's undisputed testimony, Regional Plant Security Director Culver instructed him to note which employees were taking flyers from the union representatives. Employee Payne testified without contradiction that two supervisors were talking to employees while observing the union handbilling and that Supervisor Felker asked him if he had taken a flyer from the union representatives. In dismissing this allegation, the judge erred by focusing solely on whether the Respondent's management officials made written notes of the employees who accepted flyers. Although the management officials did not make written notes as instructed, their conduct went beyond the mere lawful observation of public union activity. Thus, the Respondent engaged in unlawful surveillance in violation of Section 8(a)(1).[12]

II. TEENIER'S CONVERSATION WITH FRENCH ON JULY 16

We agree with the judge that the Respondent, through Teenier, violated Section 8(a)(1) on July 16, by creating the impression of surveillance and coercively interrogating French. Additionally, we find that the Respondent, through Teenier, also violated Section 8(a)(1) on July 16, by threatening French with closer supervision and soliciting grievances from him.[13]

A. Impression of Surveillance

The Board's test for determining whether an employer has created an unlawful impression of surveillance is whether, under all of the relevant circumstances, the employer's statements or other conduct would lead reasonable employees to assume that the employer has placed their union activities under surveillance. See *Durham School Services, L.P.*, 361 NLRB 407, 407 (2014). Specifically, the Board has found that an employer unlawfully creates the impression of surveillance when it "tells employees that it is aware of their union activities, but fails to tell them the source of that information" because the "employees are left to speculate as to how the em-

[11] Therefore, we find it unnecessary to pass on the judge's discussion of the merits of complaint par. 12.

[12] In finding unlawful surveillance, Member Emanuel relies only on the fact that Supervisor Felker questioned employee Payne about the Union's handbilling by asking if he had taken a flyer from the union representatives.

[13] As explained above, the judge dismissed the threat of closer supervision and solicitation of grievances on 10(b) grounds and therefore did not reach the merits.

ployer obtained its information, causing them reasonably to conclude that the information was obtained through *employer* monitoring." *Stevens Creek Chrysler Jeep Dodge*, 353 NLRB 1294, 1296 (2009) (emphasis in original), affd. and incorporated by reference 357 NLRB 633 (2011), enfd. mem. sub nom. *Mathew Enterprise, Inc. v. NLRB*, 498 Fed. Appx. 45 (D.C. Cir. 2012); see also *Caterpillar Logistics, Inc.*, 362 NLRB No. 49, slip op. at 2 (2015), enfd. 835 F.3d 536 (6th Cir. 2016).[14] Here, Teenier told French that his name had come up as someone who was involved with the Union, but did not say how the Respondent learned this information. Therefore, Teenier created the impression of surveillance in violation of Section 8(a)(1).

B. Interrogation

To determine whether an employer's interrogation was unlawful, the Board must evaluate whether under all of the circumstances, it reasonably tended to interfere with, restrain, or coerce employees in the exercise of their protected rights under the Act. *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub nom. *Hotel & Restaurant Employees v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In making that determination, "the Board considers such factors as the background, the nature of the information sought, the identity of the questioner, the place and method of interrogation, and whether or not the employee being questioned is an open and active union supporter." *Southern Bakeries, LLC*, 364 NLRB No. 64, slip op. at 7 (2016), enfd. in relevant part 871 F.3d 811 (8th Cir. 2017). Teenier, who was French's supervisor's direct superior, met French in the field and asked French to sit in Teenier's vehicle. Teenier then asked French if he "had any information about what went on with the flyering" or knew of any employees who were involved with the Union. French replied that he did not have any information. This interrogation occurred the day after the union handbilling and during a conversation where Teenier created the impression of surveillance, solicited grievances from French, and threatened French with closer supervision. Given the circumstances, we find that Teenier coercively interrogated French in violation of Section 8(a)(1).

C. Threat of Closer Supervision

"The Board has long held that employer threats of closer supervision because of union activity violate Section 8(a)(1) of the Act." *Paul Mueller Co.*, 332 NLRB 312, 312 (2000). After stating that French's name had come up as someone who was involved with the Union, Teenier told French that he was "being looked at closely by members of upper management." The context in which Teenier made this statement clearly indicated that management was looking at French closely because of his suspected union activity. Thus, Teenier's threat of closer supervision violated Section 8(a)(1).

D. Solicitation of Grievances

An employer's solicitation of grievances during a union campaign is unlawful when it "carries with it an implicit or explicit promise to remedy the grievances and 'impress[es] upon employees that union representation [is] . . . [un]necessary.'" *Albertson's, LLC*, 359 NLRB 1341, 1341 (2013) (quoting *Amptech, Inc.*, 342 NLRB 1131, 1137 (2004), enfd. mem. 165 Fed. Appx. 435 (6th Cir. 2006)), affd. and incorporated by reference 361 NLRB 761 (2014). The solicitation itself raises an inference that the employer is promising to remedy the grievances, and that inference is particularly compelling when the solicitation significantly deviates from the employer's established policy for addressing employee complaints. See *Albertson's*, 359 NLRB at 1342. During a July 16 conversation, Teenier—who is two levels above French in the Respondent's hierarchy—told French that if French had any concerns about Teenier, other managers or supervisors, or any other concerns, French could come to him directly. The Respondent's "Open Door Policy" instructs an employee to discuss an issue "first with the individuals directly involved and, if needed, with your immediate supervisor." The "Open Door Policy" further states that if the issue is not resolved to the employee's satisfaction, he or she should then "go to the next higher level of management." Thus, Teenier's solicitation of grievances deviated from the Respondent's established policy for employee complaints and created a compelling inference that Teenier was promising to remedy any grievances that French might have had. Additionally, the solicitation of grievances occurred during a conversation where Teenier created an unlawful impression of surveillance, threatened French with closer monitoring, and coercively interrogated French. See *Sweet Street Desserts*, 319 NLRB 307, 307 (1995) (finding an unlawful solicitation of grievances where "[the employer's manager] initiated a conversation with [an employee], inquired about her union sentiments, threatened adverse consequences from unionization, then encouraged [the employee] to discuss her problems with [the manager] or a supervisor"), enfd. mem. 107 F.3d 7 (3d Cir. 1997). Given these circumstances, a reasonable employee would have interpreted Teenier's solicitation of grievances as an implied promise to remedy the grievances

[14] Member Emanuel expresses no opinion on whether this standard is correct, but he applies it here for institutional reasons. Under this standard, he agrees that the Respondent created the impression of surveillance of French's union activity on July 16 and again on September 30, as discussed below, in violation of Sec. 8(a)(1).

that caused employees to consider union representation. Therefore, Teenier's solicitation of grievances violated Section 8(a)(1).

III. CULVER'S RIDE-ALONG WITH FRENCH ON JULY 17

The judge found that Culver's ride-along with French on July 17 constituted unlawful surveillance. We do not agree that the ride-along constituted unlawful surveillance of French's union activities because French did not engage in any union or other protected activity during the ride-along. However, we find that the ride-along was coercive and violated Section 8(a)(1) because a reasonable employee would have believed that Culver was monitoring French more closely because he suspected that French was engaged in union activity. See, e.g., *Stabilus, Inc.*, 355 NLRB 836, 837, 864 (2010) (finding that the Respondent violated Section 8(a)(1) by closely monitoring union supporters), *Gold Kist, Inc.*, 341 NLRB 1040, 1040, 1049 (2004) (same). Prior to July 17, Culver—who is three levels above French in the Respondent's hierarchy—had never previously had any one-on-one contact with French, nor had he gone on a ride-along with French or with any other field auditor in the Saginaw system. In fact, no management official had ever gone on a ride-along with French. Further, as discussed above, only 2 days before the ride-along, the union handbilling occurred, and only 1 day before the ride-along, Teenier told French that his name had come up as someone who was involved with the union and, most significantly, that management officials were looking at French closely. French would have reasonably understood that Teenier's threat of closer supervision had come to fruition when Culver went on a ride-along with him the very next day. Therefore, the Respondent violated Section 8(a)(1) by more closely monitoring French.[15]

IV. TEENIER'S REASSIGNMENT OF FRENCH, SCHOOF, AND DEBEAU

We agree with the judge that the Respondent violated Section 8(a)(3) and (1) by reassigning French, Schoof, and DeBeau to rural areas. All three employees were field auditors whose jobs required them to inspect residential property to determine whether the customers were receiving any services for which they were not paying. During a management telephone conference in July 2014, the Respondent's Regional Vice President Boullion, responding to a tip that French, Schoof, and DeBeau were involved with the Union, instructed Teenier to isolate them from other employees. For several weeks, Teenier reassigned French, Schoof, and DeBeau to rural areas outside the Respondent's Saginaw system where they normally worked. This significantly increased their daily commutes and made it less likely they would encounter their coworkers.

The Respondent argues that even absent any suspected union activity by the three employees, it would have reassigned them because every area in Michigan needs to be audited at least once per year, and the Saginaw system had already been audited. However, the Respondent did not establish that those specific rural areas had to be audited at that specific time. In any event, Teenier's credited testimony establishes that Boullion instructed him to isolate French, Schoof, and DeBeau because they were suspected union supporters and not for any other reason. Thus, the reassignments violated Section 8(a)(3) and (1). See, e.g., *American Red Cross Missouri-Illinois Blood Services Region*, 347 NLRB 347, 348 (2006) (finding that the employer violated Section 8(a)(3) by isolating employees because of their union activities); *Alamo Rent-A-Car*, 336 NLRB 1155, 1179 (2001) (same).

V. LOTHIAN'S CONVERSATION WITH FRENCH ON SEPTEMBER 30

On September 30, Supervisor Lothian performed a safety check of French's vehicle. For the reasons that follow, we agree with the judge that Lothian violated Section 8(a)(1) during that safety check by creating the impression of surveillance of French's union activities and by threatening French with discharge for engaging in union activities.

A. Impression of Surveillance

As discussed above, an employer unlawfully creates the impression of surveillance when it tells an employee that it is aware of his or her union activities but does not indicate the source of that information. See *Caterpillar Logistics*, 362 NLRB No. 49, slip op. at 2. On September 30, Lothian told French that he had been "outed as the union mastermind" without explaining how the Respondent learned that information. Thus, the Respondent violated Section 8(a)(1) by creating the impression of surveillance.

B. Threat of Discharge

During the same conversation, Lothian told French, "[T]he landscape of the department [is] going to change. You know, being as that you're the—you know, you were outed as the union mastermind, you know, you should get on my side with this because people [are] going to get fired." A reasonable employee would construe

[15] Member Emanuel notes that ride-alongs are standard practice in many industries and that they are not inherently coercive or unlawful. He agrees, however, that the ride-along was unlawful under the particular circumstances of this case, specifically that Teenier had threatened French with closer supervision because of his suspected union activity only a day earlier.

Lothian's statement to imply that the Respondent may discharge French because of his union activities. The statement therefore violated Section 8(a)(1).

VI. THE RESPONDENT'S DISCHARGE OF FRENCH

To prove that an employee's discharge violated Section 8(a)(3) under *Wright Line*,[16] the General Counsel must initially establish that the employee's union activity was a motivating factor in the employer's discharge decision. More specifically, the General Counsel must show that the employee engaged in union activity, the employer had knowledge of that activity, and the employer harbored animus toward union activity. See *Lucky Cab Co.*, 360 NLRB 271, 273 (2014). If the General Counsel satisfies his initial burden, the burden shifts to the employer to establish that it would have discharged the employee even in the absence of his or her union activities. See id. at 275–276. The employer will not satisfy this burden if its proffered reasons for the discharge are pretextual, i.e., false or were not in fact relied upon. See id. at 276.

We agree with the judge's finding that the Respondent's discharge of French violated Section 8(a)(3) and (1). The Respondent does not dispute that French engaged in union activity and that it had knowledge of that activity. The numerous Section 8(a)(1) and (3) violations involving French discussed above demonstrate that the Respondent harbored animus toward his union activity. The Respondent argues that the union activity and its campaign in response, which began in mid-July, were remote in time to French's October 14 discharge. We disagree. The Respondent discharged French within 3 months of learning of the union activity and committing the 8(a)(1) and (3) violations discussed above during its campaign in response. See, e.g., *Dish Network, LLC*, 363 NLRB No. 141, slip op. at 13 (2016) (finding that "the close timing between [an employee's] escalated protected activity . . . and his firing, which all occurred within 3 months," supported a finding of animus), enfd. ___ Fed. Appx. ___ (10th Cir. Mar. 7, 2018). Additionally, the record shows that the Respondent was still concerned about and harbored animus toward union activity near the time of French's discharge. In early September, Teenier reassigned French, Schoof, and DeBeau from Felker's team to Lothian's team. Felker asked Teenier to reassign French instead of Payne because Felker wanted the union spotlight off of his team, and Lothian mumbled that Teenier was "giving him the guy that caused all that [sic] union problems." Further, as discussed above, only about 2 weeks before French's discharge, Lothian told French that he had been "outed as the union mastermind" and implied that French could be discharged as a result. For the reasons stated by the judge, we agree that the Respondent's proffered reasons for discharging French are pretextual, and that French's discharge violated Section 8(a)(3) and (1).

VII. THE RESPONDENT'S DISCHARGES OF SCHOOF AND DEBEAU

Because the Respondent's discharges of Schoof and DeBeau are closely connected, we will consider them together. As with French, *Wright Line* is the applicable framework. The judge found that the General Counsel failed to establish his initial burden under *Wright Line* and that, even if the General Counsel satisfied his initial burden, the Respondent established that it would have still discharged Schoof and DeBeau absent their union activities. We disagree for the reasons that follow.

The General Counsel argues that the Respondent discharged Schoof and DeBeau based on a mistaken belief that they were involved with the Union. See *Dayton Hudson Department Store Co.*, 324 NLRB 33, 35 (1997) ("In establishing that an employer's opposition to union activity was a motivating factor in an employer's decision to discharge an employee, it is . . . immaterial that the employee was not *in fact* engaging in union activity as long as that was the employer's perception and the employer was motivated to act based on that perception.") (emphasis in original); see also *Remington Lodging & Hospitality, LLC*, 363 NLRB No. 112, slip op. at 4 fn. 15 (2016) ("[T]he legality of the discharge does not turn on whether [the employee] in fact engaged in protected concerted activity. Rather, the key point is that the [r]espondent discharged her because it *believed* that she had done so or would do so.") (emphasis in original), enfd. 847 F.3d 180 (5th Cir. 2017).

We find that the Respondent mistakenly believed that Schoof and DeBeau were involved with the Union. As discussed above, in response to a tip that Schoof and DeBeau were involved with the Union, Boullion instructed Teenier to isolate Schoof and DeBeau from other employees, and Teenier did so by reassigning them to rural areas. Thus, the Respondent was suspicious enough of Schoof and DeBeau to reassign them in an effort to prevent them from spreading the Union's message. Additionally, Schoof and DeBeau were on Felker's team with the suspected "union mastermind," French, and, during a telephone conference, Boullion pointed out that all of the union activity seemed to have originated from Felker's team. The day after the handbilling occurred, Culver had a conversation with Schoof, which he reported in a management telephone conference. Also, Felker told Schoof that Culver intended to go on a ride-along

[16] 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

with Schoof on July 17, the same day on which he went on a ride-along with French.[17] Further, Teenier told DeBeau that management was closely watching DeBeau because of his suspected involvement with the Union, asked DeBeau how he felt about the Union, and cautioned DeBeau to steer clear of the Union.

The Respondent's reassignment of Schoof and DeBeau for the stated purpose of isolating them in order to prevent them from talking to other employees about the Union is direct evidence of its animus toward their suspected union activity. The Respondent's numerous contemporaneous Section 8(a)(1) violations discussed above also support a finding of animus. See *Bates Paving & Sealing, Inc.*, 364 NLRB No. 46, slip op. at 3 (2016); *Lucky Cab*, 360 NLRB at 274. As discussed above, in our analysis of French's discharge, the record shows that the Respondent continued to harbor animus toward employees' union activity close in time to its October 14 discharges of Schoof and DeBeau.

Our finding of animus is further supported by strong evidence that the Respondent's proffered reasons for discharging Schoof and DeBeau are pretextual. See *Lucky Cab*, 360 NLRB at 274. Schoof's and DeBeau's discharge notices stated that they violated the Respondent's "Ethics Standards," "Professional Conduct" policy, and, in DeBeau's case only, "Timekeeping" policy, without specifying the conduct for which the Respondent discharged them. The Respondent's internal investigation reports stated that it discharged Schoof for being dishonest during an investigation and DeBeau for that same reason and for completing non-Charter work during work time for the Respondent's vendor Complete Auto.

Regarding the Respondent's claim that DeBeau performed work for Complete Auto during work time, DeBeau admitted that he worked on Complete Auto's owner Pat Hozeska's Halloween haunted house while he was waiting for Complete Auto to fix his work vehicle, and that he otherwise would have sat idle during that time. Although DeBeau did not clock out when he worked on the haunted house, he testified, without contradiction, that he skipped his lunch that day and still worked the required 8 hours. More importantly, the Respondent knew that Teenier gave DeBeau permission to work on the haunted house. In fact, Teenier regularly gave the employees permission to vary their schedules or to work through lunch.[18] Thus, one of the asserted reasons for DeBeau's discharge is conduct that DeBeau had permission to do at a time when he otherwise would have been idly sitting and waiting for his work vehicle. The Respondent's justification suggests pretext.[19]

The Respondent's claim that it discharged Schoof and Debeau for dishonesty relates to the Respondent's investigation of a claim that Schoof and DeBeau laid sod at Schoof's house during work hours. The Respondent asserts that it concluded that Schoof and DeBeau were dishonest based primarily on information it received from Lothian, who did not testify at the hearing. According to the Respondent's investigation reports, Lothian told Human Resources Generalist Peters, who conducted the investigation, that Felker said that he had witnessed Teenier, Schoof, and DeBeau laying sod at Schoof's house during worktime, and showed Lothian pictures of the three doing so. But Felker contradicted Lothian's claims, and Teenier, Schoof, and DeBeau all told Peters that they laid sod at Schoof's house only after work hours. As explained below, we find that the Respondent's purported reasons for relying on Lothian's secondhand account suggest that its claim that it discharged Schoof and DeBeau because it believed that they lied about laying sod after work hours is pretextual.

The Respondent claims that it relied on Lothian's secondhand account because Lothian had nothing to gain from the complaint, while the other four were trying to avoid discipline. However, the record shows that the Respondent was aware that Lothian was concerned that Teenier had transferred French, Schoof, and DeBeau to him in an attempt to "force him out" and feared that those employees would hurt his productivity numbers. Thus, the Respondent knew that Lothian had a motive for damaging Teenier and the others and may have hoped to use the complaint to gain job security.

The Respondent also claims that it relied on Lothian's secondhand account because Teenier, Felker, Schoof, and DeBeau gave inconsistent stories. However, based on the Respondent's investigation reports, their stories were fairly consistent, especially concerning the primary allegation that they laid sod at Schoof's house during worktime. Schoof and DeBeau told Peters that after work, at around 5:30 to 6 p.m., they started working on the sod project at Schoof's house. DeBeau and Teenier told Peters that, at around 7 p.m., Teenier stopped by Schoof's house to help lay sod, and Schoof similarly added that Teenier stopped by his house later in the evening.

[17] Culver ultimately did not go on a ride-along with Schoof.

[18] The Respondent argues that it began to more strictly apply its rules and policies when Culver became Teenier's superior in February 2013. However, Teenier still allowed employees to vary their schedules up until the time of his discharge.

[19] The Respondent argues that because it expected DeBeau to "know right from wrong," Teenier's permission did not excuse DeBeau's conduct. Based on the above facts, the Respondent could not have expected DeBeau to conclude that even with Teenier's permission his conduct was objectively "wrong."

In addition, other evidence that Peters gathered during the investigation contradicted a number of Lothian's claims. First, as noted above, Felker denied that he had witnessed Teenier, Schoof, and DeBeau laying sod on worktime and that he took pictures of them doing so. Second, during the initial September 19 interview, Lothian told Peters that he believed that Schoof and DeBeau had worked on Teenier's rental house during worktime, but Teenier's tenant, a Charter employee who was unconnected to the sod project, told Peters that he had no knowledge of Schoof, DeBeau, or any other employee working on the rental house. Third, Lothian's concern that Schoof's and DeBeau's productivity numbers were low because they regularly completed non-Charter work during worktime was unfounded; Regional Plant Security Director Culver pulled their productivity numbers and emailed Peters that those numbers were "outstanding." Fourth, in a follow-up interview on October 3, Lothian told Peters that he had not spoken to French that week when in fact Lothian had spoken to French while he performed a safety check of French's vehicle a few days earlier, as he later admitted. Finally, during that same interview, Lothian added that he had not discussed the investigation with anyone, but another Charter employee who was unconnected to the sod project told Peters that Lothian attempted to discuss the investigation with him on October 1. The Respondent ignored the inconsistencies in Lothian's story.

In finding that the Respondent "had sufficient reason to believe" that Schoof and DeBeau lied about laying the sod after work hours, the judge relied heavily on the fact that Felker did not show Peters the photograph of the completed sod project that he testified he had taken with his personal cellular telephone. While the judge is correct that the photograph would likely have indicated the date and time that Felker took it, that information, contrary to the judge's suggestion, would not have assisted in determining whether Schoof and DeBeau laid the sod during worktime because Felker took the photograph approximately 2 weeks after Schoof and DeBeau finished laying the sod. The judge also seemed to fault Schoof and DeBeau for failing to tell Peters the exact date on which they laid the sod. During the September 30 interviews, Schoof said that he laid the sod about 4–5 weeks prior, and DeBeau said that he helped with the sod "a few weeks ago." The Respondent's investigation reports do not indicate that Peters asked if they could recall the specific date. Schoof and DeBeau should not be faulted for Peters' failure to ask for a more specific date. In any event, Schoof's and DeBeau's approximations put the date of the project in the August 25–29 timeframe, when the owner of Saginaw Valley Sod Farm, Thomas Armstrong, testified that the sod was delivered to Schoof's house and when Schoof and DeBeau were both working 8-hour shifts.[20]

Overall, the Respondent's purported reasons for relying on Lothian's secondhand account simply do not withstand reasonable scrutiny and thus suggest pretext.[21]

Even assuming that the Respondent actually believed that Schoof and DeBeau lied about laying the sod after work hours, the General Counsel put forward compelling evidence that the Respondent treated Schoof and DeBeau disparately compared to employees who previously committed similar offenses. Teenier testified about two investigations that he conducted for the Respondent in 2012. Regarding the first one, Teenier noticed an employee's work vehicle parked at his home prior to the end of the employee's shift. Teenier then began to keep a log of what time he would see that employee at home and compared that log to the employee's timecard. He found that the employee was clocking out at 6 or 7 p.m. on days when he was home at 3 or 3:30 p.m. Teenier reported the employee, but the Respondent did not discharge him. In the second investigation, Teenier found that employees were falsifying their job scorecards by, in part, reporting that they did jobs at addresses that did not exist; the Respondent did not discharge any of those employees.

Additionally, the General Counsel produced a number of Corrective Action Reports (CARs) that the Respondent had previously issued to employees for violations of the Respondent's Ethics Standards, Professional Conduct policy, and/or Timekeeping policy.[22] The following are summaries of the most relevant of those CARs. An employee received a final warning for falsifying documents at the direction of his supervisor, which resulted in an inventory variance of 1.6 million. An employee received a verbal warning when he submitted falsified documents of a completed work order for a job that he did not actu-

[20] Schoof's and DeBeau's testimony clearly establishes that they worked together to *lay* the sod, not to prepare for the delivery of the sod as the judge suggests. Also, Armstrong testified that the sod needed to be laid within 48 hours of delivery, which suggests that the sod was laid during the week of August 25–29.

[21] The Respondent claims that it relied, in part, on Peters' interview of employee Lucas Watkins to conclude that Schoof and DeBeau lied about laying the sod after work hours. However, Watkins did not testify at the hearing, and his information was even more attenuated than Lothian's information. In his interview, Watkins told Peters that he learned from Complete Auto's owner Hozeska that Felker had complained to Hozeska about Schoof and DeBeau laying the sod during worktime. But Hozeska denied this claim when the Respondent questioned him.

[22] The CARs indicate that the Respondent uses the following forms of corrective action (from least serious to most serious): (1) coaching, (2) verbal warning, (3) written warning, (4) final warning, and (5) termination.

ally complete, and less than 2 months later he received a final warning for providing false information to a supervisor and for being dishonest when questioned about it; this employee had previously received a coaching. An employee received a written warning for falsely indicating on a work order that he had completed two disconnect jobs; this employee had previously received six coachings, a verbal warning, and a final warning. An employee received a written warning when he left work early and left system outages for other teammates to handle; this employee had previously received four verbal warnings. An employee received a written warning for improperly "statusing" and documenting a work order; this employee had previously received a coaching. An employee received a written warning for arriving late for his first job of the day and for sleeping on the job, and he subsequently received a final warning for not using company time appropriately while on the job; this employee had previously received three coachings, five verbal warnings, five written warnings, and a final warning.

The foregoing evidence shows that the Respondent treated Schoof and DeBeau much more harshly than it has treated similarly-situated employees in the past. The Respondent simply has not previously discharged employees for allegedly engaging in dishonest conduct or nonwork conduct during worktime, even when, in some circumstances, those employees had lengthy disciplinary records. Neither Schoof nor DeBeau had a record of any prior discipline. Such strong evidence of disparate treatment suggests pretext. See *Bates Paving & Sealing*, 364 NLRB No. 46, slip op. at 4; *Lucky Cab*, 360 NLRB at 274.

In sum, we find that the General Counsel established that the Respondent's belief that Schoof and DeBeau were involved with the Union was a motivating factor in its decisions to discharge them. Further, based on the overwhelming evidence discussed above, we find that the Respondent's proffered reasons for discharging Schoof and DeBeau are pretextual, and that the Respondent thus failed to establish that it would have discharged Schoof and DeBeau even in the absence of its belief that they were involved with the Union. See *Austal USA, LLC*, 356 NLRB 363, 364 (2010); *Limestone Apparel Corp.*, 255 NLRB 722, 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). Therefore, we find that the Respondent violated Section 8(a)(3) and (1) by discharging Schoof and DeBeau.[23]

[23] Because we find that the Respondent's discharges of French, Schoof, and DeBeau violated Sec. 8(a)(3), we find it unnecessary to pass on the General Counsel's contention that those discharges also independently violated Sec. 8(a)(1). Finding such additional violations would not materially affect the remedy.

AMENDED CONCLUSIONS OF LAW

1. The Respondent, Charter Communications, LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Surveilling employees' union activities.

(b) Creating the impression of surveillance of an employee's union activities.

(c) Coercively interrogating an employee about his union activities.

(d) Threatening an employee with closer supervision because of his union activities.

(e) Soliciting grievances from an employee and impliedly promising to remedy them in order to discourage the employee from supporting a union.

(f) Closely monitoring an employee because of his union activities.

(g) Threatening an employee with discharge for his union activities.

3. The Respondent violated Section 8(a)(3) and (1) of the Act by engaging in the following conduct:

(a) Reassigning Jonathan French, Raymond Schoof, and James DeBeau to rural areas.

(b) Discharging Jonathan French, Raymond Schoof, and James DeBeau.

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

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by discharging Jonathan French, Raymond Schoof, and James DeBeau, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be 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). In accordance with our recent decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), we shall also

order the Respondent to compensate Jonathan French, Raymond Schoof, and James DeBeau for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses 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. Additionally, the Respondent shall be required to compensate Jonathan French, Raymond Schoof, and James DeBeau for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and to file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). Finally, we shall order the Respondent to remove from its files any reference to the unlawful discharges of Jonathan French, Raymond Schoof, and James DeBeau, and to notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.[24]

ORDER

The National Labor Relations Board orders that the Respondent, Charter Communications, LLC, Saginaw and Bay City, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Placing employees under surveillance while they engage in union or other protected activities.

(b) Creating the impression that it is engaged in surveillance of its employees' union or other protected activities.

(c) Coercively interrogating employees about their union activities.

(d) Threatening employees with closer supervision because of their union activities.

(e) Soliciting grievances from employees and impliedly promising to remedy them in order to discourage employees from supporting a union.

(f) Closely monitoring employees because of their union activities.

(g) Threatening employees with discharge because of their union activities.

(h) Reassigning employees to rural areas for supporting a union.

(i) Discharging or otherwise discriminating against employees for supporting a union.

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

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

(a) Within 14 days from the date of this Order, offer Jonathan French, Raymond Schoof, and James DeBeau full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Jonathan French, Raymond Schoof, and James DeBeau whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Compensate Jonathan French, Raymond Schoof, and James DeBeau for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 07, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter, notify Jonathan French, Raymond Schoof, and James DeBeau in writing that this has been done and that the discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Saginaw and Bay City, Michigan facilities copies of the attached notice marked "Appendix."[25] Copies of the

[24] The General Counsel additionally seeks a make-whole remedy that includes reasonable consequential damages incurred as a result of the Respondent's unfair labor practices. The relief sought would require a change in Board law. We are not prepared at this time to deviate from our current remedial practice. Accordingly, we decline to order the requested relief at this time. See, e.g., *Inverted Healthcare Staffing, LLC d/b/a United MedSource*, 365 NLRB No. 103, slip op. at 3 fn. 6 (2017); *Laborers' International Union of North America, Local Union No. 91 (Council of Utility Contractors, Inc. and various other employers)*, 365 NLRB No. 28, slip op. at 1 fn. 2 (2017).

[25] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judg-

notice, on forms provided by the Regional Director for Region 07, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 15, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 07 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that complaint paragraph 6, which alleges that the Respondent has unlawfully maintained a number of provisions in its Professional Conduct policy, is severed and retained for further consideration.

Dated, Washington, D.C. March 27, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT place you under surveillance while you engage in union or other protected activities.

WE WILL NOT create the impression that we are engaged in surveillance of your union or other protected activities.

WE WILL NOT coercively interrogate you about your union activities.

WE WILL NOT threaten you with closer supervision because of your union activities.

WE WILL NOT solicit grievances from you and impliedly promise to remedy them in order to discourage you from supporting a union.

WE WILL NOT closely monitor you because of your union activities.

WE WILL NOT threaten you with discharge because of your union activities.

WE WILL NOT reassign you to rural areas for supporting a union.

WE WILL NOT discharge you or otherwise discriminate against you for supporting a union.

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

WE WILL, within 14 days from the date of the Board's Order, offer Jonathan French, Raymond Schoof, and James DeBeau full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Jonathan French, Raymond Schoof, and James DeBeau whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest, and WE WILL also make such employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Jonathan French, Raymond Schoof, and James DeBeau for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 07, within 21 days of the date the amount of backpay is

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Jonathan French, Raymond Schoof, and James DeBeau, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

CHARTER COMMUNICATIONS, LLC

The Board's decision can be found at www.nlrb.gov/case/07-CA-140170 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Darlene Haas Awada and *Judith A. Champa, Esqs.,* for the General Counsel.

Henry E. Farber and *Taylor S. Ball, Esqs. (Davis Wright Tremaine),* of Seattle, Washington, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Bay City, Michigan on April 26–29, May 31–June 3, and August 15–16, 2016. On January 26, 2016, the General Counsel issued a consolidated complaint predicated on the charges filed by Jonathan French, Raymond Schoof and James Debeau. The complaint alleges that Respondent violated Section 8(a)(3) and (1) by terminating the 3 charging parties. It also alleges many 8(a)(1) violations that allegedly occurred between July and October 2014.

Given Respondent's contention that most of the 8(a)(1) allegations in the complaint are barred by Section 10(b) of the Act, an exposition of when the charges were filed and what they alleged is warranted in this case. Jonathan French filed his initial charge on November 3, 2014, stating that he was terminated on October 14, 2014, and that two supervisors and a manager told him that he was "outed" as the "mastermind" behind union activity amongst Respondent's employees. On November 18, 2014, French filed an amended charge alleging that Supervisor Rob Lothian told him that Respondent was aware of his union activities and threatened him with termination to discourage these activities. French also alleged that Respondent terminated him on October 14, 2014, in retaliation for his organizing activities.

French filed a second amended charge almost a year later, on October 29, 2015, alleging a host of 8(a)(1) violations by Respondent, including unlawful surveillance, soliciting grievances, threats and interrogation between July and October 2014. He also alleged that Respondent in July 2014, assigned him and three other field auditors, Charging Parties Raymond Schoof and James Debeau, and Kent Payne to remote areas to isolate them from other employees in order to discourage union activity.

French alleged in this charge that in mid-July 2014, Manager Greg Culver interfered with his Section 7 rights by subjecting him to closer scrutiny, (complaint par. 10). French filed a third amended charge on November 18, 2015, alleging among other things, that Respondent violated the Act in maintaining an overly broad professional conduct rule and instructing employees to not to discuss a disciplinary investigation with other employees..

On February 3, 2015, Raymond Schoof filed a charge alleging that he also had been fired on October 14, 1014, due to alleged union activity. On March 4, 2015, James Debeau filed a charge alleging that he was discharged the same day for alleged union activity.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent provides video, internet and phone service to customers throughout the United States. This case involves employees working out of its offices in Saginaw and Bay City, Michigan. In 2015, Respondent derived revenue in excess of $500,000 and purchased and received goods valued in excess of $5000 at its Saginaw, Michigan facility directly from points outside of Michigan. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES[2]

On or about October 14, 2014, Respondent terminated the employment of all three charging parties. At the same time, it terminated one of their immediate supervisors, Shawn Felker and his immediate boss, Terry James (TJ) Teenier, II, manager for Plant Security and Technical Quality Assurance for the entire state of Michigan. In their termination meetings, none of these individuals were told specifically why they were being fired.

The termination notices given to the charging parties stated they were being fired for violations of Charter's Code of Con-

[1] Tr. 70, line 4 should read Darlene, not darling. Tr. 1473, line 11 should be Farber, not Haas-Awada.

[2] I have not taken the testimony of any witness in this case at face value. Each and every one of them has a bias. What I have credited is often evidence that is corroborated by Respondent's documents and uncontradicted testimony by the General Counsel's witnesses on what I regard as the principal issues in this case.

duct and Employee Handbook and in Debeau's case, Charter's timekeeping policy (GC Exhs. 6, 14, 16). When Jon French asked human resources specialist Stephanie Peters how he violated these policies, she refused to be more specific (Tr. 77).

In Respondent's internal investigation reports, which were not give to the charging parties, the only specific reasons given were dishonesty during an investigation, (Schoof) (Exh. R-10); being disrespectful and uncooperative during an investigation and lying with the intent of damaging another employee's credibility (French) (Exh. R-11); and doing non-Charter work on company time at the direction of Teenier and being dishonest when questioned during an investigation (Exh. R-13) (Debeau).

Charging Parties French, Schoof and Debeau were three of the four field auditors assigned to Respondent's Saginaw, Michigan office. Kent Payne was the fourth field auditor.[3] Their jobs required them to inspect residential property to determine whether the customers were receiving more services from Respondent than those for which the customer was paying. Other field office employees working out of the Saginaw office were broadband technicians who installed the hardware necessary to receive Respondent's services and performed service calls. Several other employees were technical quality assurances employees, whose job it was to check on the work of the line technicians.

The Saginaw field auditors reported to Supervisor Shawn Felker, whose geographic responsibilities included Saginaw and points south, until sometime shortly after September 2, 2014, G.C. Exh. 9. Then they were reassigned to work under Supervisor Rob Lothian, whose responsibilities included Bay City, Michigan and points north. Felker and Lothian reported to Terry Teenier, manager for plant security and technical quality assurance. Other supervisors in Michigan, responsible for other geographic areas, also reported to Teenier. Since sometime in 2013, Teenier began reporting to Greg Culver, director of plant security and technical quality assurance. Culver's responsibilities extended beyond the State of Michigan.

Evidence of the Union and Other Protected Activities of the Charging Parties

The record evidence with regard to the union and other protected activities of Jonathan French is much different than the evidence regarding Ray Schoof and James Debeau. There is substantial evidence of protected activity on the part of French, Respondent's knowledge of those activities and animus towards French as a result. With regard to Schoof and Debeau there is little evidence of any of the elements that generally support an 8(a)(3) violation.

Jonathan French's Union Activities, Suspected Union Activities, Respondent's Knowledge of Those Activities and Evidence of Animus Towards him as a Result

From 2006 to 2009, Jonathan French worked for a contractor, RCH Cable of Saginaw, Michigan, which did work for Respondent. In August 2012, Respondent hired French as a field auditor. Respondent asserts that it fired French on October 14, 2014, for two reasons: 1) fabricating a story that Supervisor Rob Lothian had told him all about a confidential investigation that Respondent was conducting, and 2) fabricating a story that Lothian had a gun at work (Tr. 1426–1427).[4]

In about, or slightly before June 2014, French contacted Brian Groom, an organizer for the International Brotherhood of Electrical Workers (IBEW). As a result of French's discussions with Groom, a friend of French, who was not an employee of Respondent, placed union flyers on cars parked in the lot of Respondent's Bay City office on June 17, 2014. A month later, on July 15, 2014, Groom and two other union organizers passed out union flyers just off company property at Charter's Saginaw office.

On July 15, several supervisors, including Chad Erskine and Shawn Felker, went out into the parking lot to observe the distribution of flyers. Erskine asked Felker if Jonathan French worked for him. Erskine told Felker that French's name had been dropped as one of the people orchestrating the distribution of the flyers (Tr. 854).[5]

Respondent reacted to the July 15 hand billing by instituting daily phone calls about union activity. Less frequent calls continued until August 7. While the calls were in part designed to discover whether any employees were dissatisfied with their working conditions, they were also clearly designed to determine which, if any, employees were in contact with the IBEW.

On July 15, participants in the call included Harth Goulette, Human Resources Director for Field Operations Personnel in Michigan, David Slowik, a vice-president for Michigan, Sean Hayes, a vice-president for Michigan field operations, Joseph Boullion, Regional vice-president, Greg Culver, Regional Plant security director, and T.J. Teenier, manager for plant Security and Quality Assurance for Michigan. Goulette's notes indicate that these participants discussed the flyers. Slowik noted that they were identical to those passed on in Bay City on June 17. The discussion at one point focused on John French. Goulette's notes (GC Exh. 23), indicate the following observations by Sean Hayes:[6]

[3] Respondent issued Payne a disciplinary warning on October 15, 2014, as a result of its investigation of Teenier, Felker, Schoof and Debeau. French's termination was also a result of the investigation, not the conduct being investigated.

[4] Stephanie Peters, a human resource generalist, testified that French was terminated in part for knowing that other employees were doing noncompany work on company time and not reporting it, Tr. 637–638. There is absolutely no evidence that French knew anything about these matters until Supervisor Rob Lothian told him about some of them on September 30, 2014.

[5] Erskine testified on August 15, 2016. He admitted to speaking to Felker on July 15 and did not contradict Felker's testimony regarding his remarks about French.

[6] Hayes is the direct supervisor of Greg Culver. He was part of a collaborative effort in deciding to terminate French, Schoof, Debeau, Felker and Teenier, Tr. 720, 1430, 1707, 1745. Hayes was provided with Stephanie Peters' investigative report, GC Exh. 40. Hayes, who still works for Respondent, did not testify in this proceeding.

Greg Culver denied that Hayes played any role in the decision to terminate the five employees. Culver testified that he kept Hayes informed of why he was spending time in Bay City and nothing else. Based on Goulette's testimony, I find Culver's testimony regarding Hayes involvement incredible. What role Hayes played in the decision making is a mystery as far as this record is concerned. There is no indication, for example, with whom Hayes may have discussed the

French-Friends w/Sag techs *pull review & time card
Likes to stir the pot
Degree from CMU

Hayes also wanted the review and time card pulled for Ryan Lange, a broad band technician.

Boullion said something about getting a "friendly list."[7]

GC Exh. 23.

David Slowik made notes of a call the date of which is unclear (GC Exh. 34). I infer that despite the date of July 14, it is from a conference call occurring on July 15 or 16. His notes contain the following observations:

After a line from the name Shawn Felker (then French's immediate supervisor) Slowik wrote:

Jonathan French-a/ft/tqa[8]-is trouble-
Name was brought up-trying to get union
Ryan Lange-BBT[9]-trouble maker-listened to Jonathan

Further down the page is a note "TJ-talk to Jonathan French"

VP Boullion instructed Teenier to talk to French because his name came up as an instigator of the union flyers, Tr. 381.[10]

On July 17, Greg Culver rode with French on his route all morning. Brian Rock, regional director for field operations, rode with Ryan Lange, previously identified by Respondent's management as a "trouble-maker who listens to French." Although these "ride-a-longs" were not uncommon events, these particular ones were related to the suspicions that French and Lange might be union supporters. Culver was to report to Harth Goulette as to the results of his "ride-a-long" with French (GC Exh. 24, 26). There is no evidence that Culver made such reports routinely after a "ride-a-long," Tr. 1660–1669.

Goulette made notes of Culver's report on July 17 (GC Exh. 29):

French- Arrogant-felt entitled to applied positions
Tech passed up for promo-Carl Makowski
No desire in BBT. TQA Documents in his pocket
Wants nothing to do with Union-seems to know a lot about other areas
Asked if he was scheduled to be there today?

Ray Schoof-no concerns-loves Charter

Shane Robinson-Had lunch-pulled aside
Don't think he is a union supporter.

Further down there is a note about Manager T.J. Teenier:

Seems to be connected to Shane
After IBEW-TJ called Shane & French & told names brought up.

In July 2014, TJ Teenier assigned French to work around Cass City and Caro, Michigan, which are located east of Saginaw, in the thumb of Michigan.[11] Cass City is about 45 miles from Saginaw; Caro is about 30 miles east. French had also worked in the Cass City area in 2013. The other three Saginaw field auditors were also reassigned to areas away from Saginaw. James Debeau was assigned to work near Alma (west of Saginaw);[12] Kent Payne was assigned to work in Chesaning, southwest of Saginaw and Ray Schoof was assigned to work in St. Johns, further southwest of Saginaw. The General Counsel alleges in complaint paragraph 13 that this was done for discriminatory reasons in violation of Section 8(a)(3) and (1).

Shawn Felker testified that Greg Culver called and told him that he should move Jon French as far away from the Saginaw market as possible. Further, he testified that Culver told him to move the other three field auditors to outlying areas as well, so that moving French wouldn't look suspicious and to keep the four as far away as possible from each other (Tr. 860). If credible, this call would have been made on the evening of July 16, the the evening before Culver rode with French on his route, and would support the allegations in complaint paragraph 13.

After 2–3 weeks, the field auditors returned to the Saginaw area to work. During the first week of September, Teenier reassigned French, Debeau and Schoof to Rob Lothian's supervision (GC Exh. 9). Lothian was unhappy in having French assigned to him. He told Teenier and Felker that "you've given me the guy that caused all the union problems" (Tr. 869).[13]

On Tuesday, September 30, 2014, Rob Lothian met French in the field to do a safety inspection of French's truck. Afterwards, they had a long conversation:

We talked for quite a while. He asked me if I knew what was going on. And I told him no. And then he said that, you know, I seemed like kind of a loner, like I really don't talk to the people in the department much or, you know, hang out with them after work. And, you know, I told him, you know, I come to work and do my job, go home. Then he told me that I was outed as the union mastermind. And I kind of was taken aback that, taken aback by —
Q. Did you say anything in response?
A. I told him that it wasn't me, but I wasn't going to rat anyone out. He told me, he asked me again if he could trust me. And I said, yeah, you know, what's on your mind? He

terminations. However, the record makes clear that Hayes, as well as other top Charter managers, bore substantial animus towards French in part due to his union and other potentially protected activities.

[7] I infer that "friendly" means employees known to oppose unionization.

[8] This incorrectly identifies French as a full time TQA employee, rather than a field auditor.

[9] Broad band technician

[10] Boullion did not testify in this proceeding. Teenier's testimony on this point is uncontradicted.

[11] Just as a map of Italy resembles a boot, a map of Michigan resembles a mitten. The area north of Port Huron is often referred to as the thumb.

[12] There is some variation in the evidence as to where the field auditors, other than French worked during this period. However, it is clear they all worked some distance away from Saginaw. Debeau testified he worked in Ithaca, Michigan, which is very close to Alma. Felker testified Debeau was assigned to work in Ovid, which is also close to Alma. Schoof testified that he worked in St. Johns, Michigan.

[13] I credit Felker's testimony in this regard because Lothian said essentially the same thing to Stephanie Peters on October 3, R-9, p. 12.

> told me that he went to human resources with a story that Shawn Felker had told him.
> Shawn Felker told Rob that he discovered Ray Schoof, Jim Debeau, and TJ Teenier apparently laying sod on company time.
> He told me that the landscape of the department was going to change. You know, being as that you're the -- you know, you were outed as the union mastermind, you know, you should get on my side with this because people were going to get fired.
> He told me that years ago, he became supervisor by squashing a union drive, going around and asking people what they really wanted. And he was shocked that all they wanted were gloves and boots and stuff.
> Q. Did you say gloves?
> A. Yeah, like work gloves.
> Q. Okay.
> A. You know, he also went into like his finances, which I thought was just weird. But not wanting to poke the bear, I listened. Something to the effect of he makes $5,000 a month now, and it doesn't matter whether or not he–if he ends up getting fired out of this, it won't matter, because with his IRA money and a part-time job or unemployment, he would be right back at that mark.
> And as a 43-year-cable employee, he was very upset that he wasn't going to receive free cable. He was not happy about that at all. It was a pretty lengthy rant.

Tr. 67–68.[14]

On September 30 or October 1, French called Ray Schoof and told Schoof about his conversation with Lothian. Schoof called Stephanie Peters, who conducting an investigation of Lothian's allegations and told her about his call from French on the evening of October 1.[15]

On October 1, Peters summoned French to an interview the following morning, October 2.

The Investigation Leading to the Termination of Teenier, Felker, Schoof, Debeau, and French

On September 19, 2016, Rob Lothian came to the office of Stephanie Peters, a human resources generalist in Respondent's Bay City office. Lothian was very agitated and was worried about being fired. A major concern was that Lothian understood from Shawn Felker, that James Debeau and Raymond Schoof were doing work that would detract from his productivity statistics, some of which was noncompany work on company time. Lothian also told Peters that he was afraid that T.J. Teenier would retaliate against him if he complained about this.

Lothian had other concerns as well. These are relevant in assessing Respondent's claim that Lothian had no reason to lie when asked about assertions made about him by Jonathan French.

First of all, Lothian may have been justifiably worried that he was being set up to fail. Greg Culver had ordered Teenier to switch employees from Felker's team to Lothian's team in order to even out their workload. Teenier had resisted this order, telling Culver that Lothian could not handle more direct reports (Tr. 1691–1693, also see R. Exh. 15 pp.1017–1019, Tr. 525–526).

There is also a rather cryptic note at the beginning of Peters' investigatory notes as to other things that Lothian may have been concerned about:

> Rob first started off discussing a recent request of mine to provide Jonell Davis with a copy of the receipt for Rich Les Peance's boot purchase. Rob stated that he forwarded my email request directly to Manager, T.J. Teenier, as T. J. went around the process by purchasing Rich's boots with his T-Card. Rob stated that he didn't want to get into trouble for going around the process so he wanted T. J. to respond to me. I told Rob that I was copied on T. J's email to Jonell, indicating that he approved the transaction. Rob seemed relieved and I assumed that was the end of the conversation.[16]

Lothian then told Peters that Shawn Felker had shown him photographs that showed T.J. Teenier, Ray Schoof and James Debeau laying sod at Schoof's home on company time.[17] Lothian reported that Felker was angry that Teenier pulled employees for "special projects." Lothian also reported that another "special project" was work done on a haunted house owned by Pat Jozeska,[18] whose business worked on Charter vehicles.[19] Lothian told Peters that he believed that Debeau

[14] French's testimony about this conversation is uncontradicted and therefore credited. Although, I do not draw an adverse inference from Respondent's failure to call Lothian as a witness, he was available to testify in this proceeding, Tr. 1739.

[15] I do not fully credit Stephanie Peters' testimony or her report entries. The reports, however, Exhs. R-9 through 14, represent the basis upon which Respondent made the termination decisions in this case. Peters' account of her phone calls with French, Schoof and Lothian on October 1, Exh. R-9, p. 10, is particularly incredible. Unlike other parts of her computer report, there are no corresponding handwritten notes for these conversations. Moreover, this part of her report was altered on October 13, GC Exh. 40. The fact that her entries regarding a conversation with French at 2 p.m. precede her account of her conversation with Lothian at 12:30 p.m., also leads me to conclude the entries for that date are unreliable.

Peters' entry indicating that on October 1, she "reminded" French that meetings were confidential is not credible. There is no evidence that she had spoken to French about the investigation prior to October 1. I also do not credit the entry that indicates that Lothian told her that he had not spoken to anyone about the investigation. There was no reason for Lothian to make such a statement until after Peters' interview with French the next day.

There are also no handwritten notes of Peters' conversation with Rob Lothian on October 3. However, the important point regarding this entry is that the managers who decided to fire French saw the entry about French's union involvement before they made that decision.

[16] There are no handwritten notes by Peters correlating to this entry, R. Exh. 15, pp. 1017–1019. However, at the bottom of p. 1018, there is a note about Rich LesPeance and an audit having something to do with drill bits. On p. 1019, Peters' handwritten notes state [Lothian] "feels TJ moved guys to him-only 2 ½ years from retirement. Don't check up on guys. Laid back."

[17] Felker, in this hearing, denied he took any such photographs, an issue that I will address later.

[18] Although referred to as Jozeska in the record, this man's last name may be Hozeska.

[19] It is not clear from Peters' notes that Felker mentioned the haunted house to Lothian. Other than the sod-laying and the haunted house

fixed a drain in a rental unit owned by Teenier and leased to another Charter employee. The only mention of Jonathan French was that French had recently been transferred to Lothian's team from Felker's. Lothian did not report any misconduct on the part of French (R. Exh.-9, p. 2).

Peters told Lothian that he should not share their conversation with anyone at this time. Id. p. 4.[20] There is no evidence that she ever told Lothian that he was free to discuss it. This "confidentiality" instruction is critical in assessing the General Counsel's allegation that Respondent terminated Jonathan French in violation of Section 8(a)(3) and (1).

On September 24 and 26, Peters spoke to Lothian again. On September 26, Lothian reported that James Debeau told him he had been pulled for a "special project" to work on Jozeska's haunted house. Lothian reported that Debeau told him Felker had approved this, but that Felker denied doing so. Peters reported the content of this conversation to Greg Culver, Teenier's boss.

On September 29, Peters and Culver met with Felker. Peters asked Felker about "special projects" and specifically about the sod laying project. Peters' notes on this point are not relevant to the discharge of French, but are relevant to the discharges of Debeau and Schoof.

> At first, Shawn stated he knows nothing about this, but if it was happening, it was after hours. I asked how he would know that if he didn't know it was even happening. Shawn paused for a moment and then stated that TJ thought some employees were cutting out early and TJ asked him to check into it. Greg then asked Shawn when he checked into the matter and Shawn stated "about 4 or 5 weeks ago" and that he concluded this was being done after work.

Felker told Peters that sod was being laid at Schoof's house. According to Peters, Felker told her that Schoof had told him that Debeau had helped him lay the sod and that he had heard that Teenier also helped. Felker denied having photos of Charter employees laying sod.

On Tuesday, September 30, Peters met with Schoof. Schoof told Peters he had recently put down sod at his house and that Debeau had helped him because he had ridden with Debeau that day. Schoof told Peters that he and Debeau worked together that day because Schoof's truck was being fixed. On at least one occasion, however, Shawn Felker saw both Schoof and Debeau's trucks at Schoof's house while they were laying sod, Tr. 866. Schoof also told Peters the work was done after work starting about 5:45 or 6 p.m. He also told Peters that Teenier stopped by later in the evening and helped him and Debeau lay the sod.

Peters asked Schoof if he knew anything about work done on the Haunted House on Friday, September 26. Schoof said he did not because he worked 4-10 hours shifts and did not work on Fridays.[21] Peters told Schoof he should not discuss his conversation with her or anything related to this matter with anyone.

Peters also spoke with Debeau on September 30. Debeau told Peters that he had helped Schoof lay sod at his house several weeks ago. According to Peters, when she asked Debeau what time they started, "Jim thought for a moment and then said it was after work, so, around 5:30 or 6 p.m." Debeau told Peters that Schoof had ridden in his truck that day because Schoof's phone wasn't working.

Debeau said that one time he had to do a sweep of an apartment complex and another time drove around all day to verify addresses. That, he said, is what he'd call a special project. Debeau said he had worked for an hour at the Haunted House while waiting for his vehicle to be repaired. He denied ever doing plumbing work at Teenier's rental unit.

On the evening of Wednesday, October 1, Schoof called Peters. He told her that French, who Peters had not interviewed yet, had contacted him and wanted to talk to Schoof about the investigation. Schoof told Peters that he informed French that Schoof couldn't talk about it. Schoof reported to Peters that French told Schoof that Rob Lothian had sat down with him for about 2 hours and had told him everything. Lothian had performed a safety check on French's vehicle the day before, September 30 (Tr. 143–144).[22]

This is very significant in that it establishes that French did not, for the first time, come up with the story about Lothian discussing the investigation with him when he met with Peters the next day (Tr. 1198, R. Exh. R-9, p. 9–10). Moreover, the fact that he called Schoof within a day and half after he had been inspected by Lothian, suggests that he was not lying. In fact, had not Peters ordered French to an interview the next day, there is no evidence that French would have reported anything about Lothian to Peters.[23]

On Wednesday, October 1, Peters summoned French to a

work, no other noncompany work was identified by any witness as a "special project."

[20] At Tr. 1460 Peters testified that she told Lothian "that I *prefer* that he talk with me only and not discuss it with other individuals." I find that Peters clearly instructed Lothian not to talk to anyone else about the subject of the investigation. Otherwise, Respondent would not have reacted so adversely to French's statement that Lothian had told him everything about it. At Tr. 1540, in response to my questions, Peters conceded that if Lothian told French about the investigation, he would have violated company policy and her instructions. Her computer entry of October 3 states, "Rob said he knows he is not allowed to talk to anyone about it and has not." Exh. R-9 p. 12.

[21] Schoof occasionally worked 5-8 hour shifts and did so the week of August 25–29, 2014, which may or may not be relevant to whether he was on company time when laying sod.

[22] French testified the safety check was on September 30; but Respondent's records indicate it occurred on October 1. Since French told Peters on Thursday, October 2 that the safety check took place on Tuesday (September 30), I conclude that is the date it took place. The fact that Respondent's records indicated (incorrectly) that the safety check occurred on October 1, confused me during the hearing. However, now the chronology of events is quite clear. Lothian did a safety check of French's vehicle on September 30. On October 1, Peters called French to come in for an interview on October 2.

[23] Nobody had accused French of doing noncompany work off the clock and Peters' notes do not indicate that Lothian ever brought French's name up prior to October 2—other than to mention that French had recently been transferred from Felker's team to Lothian's. Nobody had suggested that French had any first-hand knowledge about the noncompany work allegedly performed by other field auditors on company time.

meeting in her office at 8:30 a.m. Thursday, October 2. At that interview, Peters started by telling French that their discussion was confidential and should not be shared with anyone. According to Peters, French sat back in his chair, smiled and told her he knew everything.

> I asked Jon what he knew and he stated that Rob (Lothian) told him everything about the investigation and then added that Rob had a gun. I stopped Jon and repeated his statement back to him, asking how he knew this and when he became aware of this. Jon stated that on Tuesday when Rob did a safety check, Rob told him about the gun.[24]

(Exh. R-9 at p. 10.)

> I went back to the comment about the gun and asked if he had seen it and he said he did not but, that he did see a gun that Rob brought to work once, back when he was a contractor and working for Charter. Jon said Rob brought a gun in his personal car and showed him because he got it as a gift and collected guns. I asked again if he saw the gun and he said no but, Rob was acting "weird" and said he had a gun so I just believed him. He said that Rob did a "weird" safety check on him, talking about being fired and that he was just planning on getting fired for things that were going on.[25]

French continued to tell Peters that Lothian had brought up the investigation and told him about employees laying sod on company time and somebody told Lothian that there were pictures of this. French's understanding was that the sod was laid 5–7 weeks prior. French did not have any material knowledge about any other allegedly improper conduct. He reiterated that everything he knew came from Lothian.

Peters interviewed Kent Payne on October 2, as well. Payne was initially uncooperative but told Peters that he had performed electrical work at the Haunted House after hours. French's name apparently did not come up in the interview.

French called Peters late in the afternoon of October 2. He asked to be transferred back to Felker's supervision. In response to Peters' inquiries, he said he did not feel threatened at work and was not concerned with his personal safety. When Peters told him she didn't know where the request was coming from, French said he just thought it would be better if he worked for Felker.

On Friday, October 3, Peters called Lothian. Peters' computer notes (for which there are no corresponding handwritten notes) reflect the following:

> I asked if he had talked with Jon French this week and if so, had he disclosed anything about the investigation to him. Rob stated, "no" Rob said he seldom talks to Jon because of Jon's union involvement and he is always afraid of saying the wrong thing to Jon and giving him anything to talk to the union about.
>
> I asked Rob if he had brought a gun on company property or had a gun in his Charter vehicle, this week. Rob stated that he only did one time and it was not in a Charter vehicle but it was in his personal car. Rob stated, years ago he got a new gun for his birthday and was excited and wanted to show a couple guys but that the gun was in a box (brand new) and in the trunk of his personal car. Rob was concerned that Jon would say that because it wasn't true.

(R. Exh. 9, p. 12–13, Tr. 1498.)

It is noteworthy that Lothian did not mention that he had inspected French's vehicle only 2 or 3 days earlier. Two significant things about this are that 1) Respondent displayed no curiosity as to why French called Schoof within 2 days of the safety check, and 2) French never said Lothian has shown him a gun recently. The entry indicating that Lothian was concerned about French talking about Lothian and a gun makes no sense unless he did mention guns to French on September 30.

French testified he could not remember if he told Peters when Lothian showed him a gun and thus would have to say he did not. However, Peters' handwritten notes establish that French told her he saw Lothian with a gun when he worked for Respondent as a contractor (Exh. R-15, pp. 1027–1028). That is also confirmed by Peters' entry for October 10, Exh. R-9, p. 19. Peters checked Respondent's records to determine whether French's work as a contractor corresponded to the date on which Lothian was disciplined for having a gun at work.

On October 3, Peters interviewed Aaron Rhode, a Charter employee, who rented a home from Teenier. Rhode said no company employee had performed repairs on the unit and that he was frustrated by the fact that plumbing problems in the house had not been fixed. This interview is significant in that it contradicts some of the accusations made by Lothian to Peters on September 19.

Peters called Lothian again on October 8, to talk to him

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[24] Peters' handwritten notes in the margins of the October 2 entry have the words "contractor with Sag? with Rob." Exh. R-15, p. 1027. Her computer notes of October 10 state that French worked as a contractor for RCH Cable (Saginaw, MI) between 07/2006-08/2009,"Also see Tr. 110–111.

[25] French's statements are somewhat consistent with Peters' notes of her conversations with Lothian on September 19, indicating that Lothian was in a very agitated state, actually crying at several points during her interview and telling her that he feared he would be fired. Exh. R-4, p. 4. He also appeared to be agitated when she spoke with him on September 26.

French testified at the hearing that Lothian did not mention guns on the day of the safety check, Tr. 227, but then retracted that at Tr. 245. French's testimony is somewhat confusing and/or contradictory about what Lothian said about guns, when Lothian made these statements, and when he saw Lothian with a gun, Tr. 232–245. However, I find this immaterial. Respondent fired French in part for stating that Lothian had had a gun at work at some time other than the incident for which Lothian was disciplined. The record establishes that Respondent did not have a reasonable belief that French was making up the story about Lothian having a gun at work. I would note that Respondent could have called Lothian to testify that he never talked to French about having a gun and never had one at work anytime other than the occasion on which he was disciplined in 2000, but did not do so. Thus, I find that on September 30, 2014, Lothian discussed having a gun with French and that he had a gun at work on at least one occasion other than the one for which he was disciplined in 2000. I also find that Lothian had a gun at work at some time when French was doing work for Charter.

French's remarks about the gun on October 2, were gratuitous. This cuts both ways because these remarks were irrelevant to whether the accusations Lothian was making about, Teenier, Schoof, and Debeau were true. They certainly did not impact Peters' investigation.

again about French.[26] Lothian confirmed that he recently had performed a safety check on French's vehicle, which took about a half hour. Lothian denied discussing the investigation with Jon "during this time."

Peters asked Lothian if he had a gun in a Charter vehicle or if he showed a gun to French during this safety check or at any time during this interaction with French. Lothian denied doing so.

On October 10, Peters noted that she checked French's employment records and the date that Lothian was disciplined for having a gun at work. That discipline occurred on May 23, 2000, long before French worked for Charter as a contractor or employee. While Peters obviously considered this very important, it begs the question as to whether French was lying. It is possible he saw Lothian with a gun at work on another occasion.

At this hearing French testified that Lothian showed him a gun on one occasion in 2013, and that Lothian had not threatened him.

On October 14, Peters summoned French to her office again. She informed him that his employment with Respondent was being terminated for violations of Respondent's code of conduct and employee handbook. She refused to be more specific than that. At the instant hearing, Respondent contends that it fired French for lying in claiming that Lothian told him all about Respondent's ongoing investigation and stating that Lothian told him that he had a gun on September 30, and that he had seen Lothian with a gun on a previous occasion (Tr. 1425–1426).

I credit French's account of his conversation with Lothian because it is uncontradicted. Although I do not draw an adverse inference from Respondent's failure to call Lothian as a witness, he was clearly available to testify. Greg Culver spoke to Lothian on the last day of this hearing, August 16, 2016, and in July 2016 (Tr. 1739).

Secondly, I find that Respondent's belief that French was lying was unreasonable. Respondent made no attempt to investigate French's assertion that Lothian told him about the investigation or that Lothian had a gun—other than to ask Lothian, who denied it. Respondent repeatedly stated that it credited Lothian because he had nothing to gain from his accusations against Teenier, Schoof, and Debeau (Tr. 1411). However, he clearly had a motive to deny French's accusations against him. Lothian had been disciplined for having a gun at work many years before, and he may have expected serious discipline and even discharge if Respondent believed the accusations against him. Similarly, if Lothian told French about Respondent's ongoing investigation, he may have been subject to discipline or even discharge.

While Respondent chose to reject the self-serving denials of misconduct by Teenier, Felker, Debeau, and Schoof, it took those of Lothian at face value. This was unreasonable. Someone obviously had told French about the sod incident since he was not present. Respondent had no evidence that the someone was anyone other than Lothian. It made no effort to find out who other than Lothian may have told French about the investigation or the sod incident (Tr. 1427–1430).[27]

At the time French told Schoof that Lothian had told him about the investigation and sod-laying incident, Peters had interviewed Felker, Debeau, Schoof and Lothian. It is unlikely that Schoof would have told French about the investigation and then reported this to Peters. Respondent did not seek to determine whether Felker or Debeau had talked to French recently. Before Respondent fired French, it knew that Lothian had face to face contact with French on September 30.

There was also other evidence available to Respondent during its investigation that corroborated French's statements to Peters about Lothian's breach of her confidentiality instructions. When Peters interviewed Tom Schuetz from plant security on October 6, Schuetz reported to her that on October 1, Lothian had tried to talk to him about things he had reported to HR (Exh. R-9, p. 16). This was the day after Lothian discussed the investigation with French.

On October 6, Peters also interviewed Lucas Watkins, a TQA tech.[28] He told Peters that he pretty much knew most of what was going on-second hand. Watkins indicated that he knew that there was an ongoing investigation relating to the laying of sod at Ray Schoof's house. Peters apparently never bothered to ask Watkins where he learned about the investiga-

[26] I note again that there are no handwritten notes of this conversation, or Peters' conversation with Lothian on October 3, and no explanation as to why such notes do not exist.

[27] At Tr. 1541 Peters raised the possibility that French had heard about the investigation from Pat Jozeska. There is no evidence that French saw or talked to Jozeska between the beginning of Peters' investigation on September 19, and October 2, when Peters interviewed French. French gave no indication that he had talked to Jozeska and Peters did not ask Jozeska whether he had talked to French.

I would also note that in his interview with Peters, French was very detailed about his conversation with Lothian, for example relating how Lothian discussed his financial situation. Respondent had absolutely no reasonable basis for concluding that French was lying about anything.

[28] Greg Culver's testimony that Watkins was interviewed because he asked to speak to Peters and himself is incorrect. Peters told Watkins to come in for an interview, Exh. R-9, p. 18.

Culver's testimony is riddled with what are at best inaccuracies; some benign, some material. At Tr. 1692, he testified that the charging parties were transferred to Lothian's team in July or August; the correct month is September. At Tr. 1698, he testified that Felker locked his phone when asked about photos of the sod laying. If this would be true, it would be reflected in Peters' notes. Exh R-9, pp. 6–7. At Tr. 1708, Culver testified that he began considering disciplining or discharging French after learning that French had reached out to Ray Schoof after being told not to discuss the investigation. This assertion is either simply incorrect or an outright fabrication. At Tr. 1710, Culver denied discussing French with Sharon Farquhar (née Olds). She testified at Tr. 1381–1384, that she made a recommendation to Culver that French be terminated. The discrepancy raises questions as to the credibility of Respondent's witnesses generally as to who was involved in the termination decisions and to what extent.

Finally, Culver testified at Tr. 1742 and 1744 that sought to review the disciplinary records of French, Debeau, Schoof, Felker and Teenier in June, July or August of 2014, but on recross examination testified that he did not request these records until after Peters' investigation started September 19, 2014. On course, if Culver requested these disciplinary records between June-August, it would strongly suggest that the discharges were pretextual and related to the union activity in June and July.

tion (as opposed to the fact that sod-laying had occurred).[29] I find that Watkins acquired much or all of his information from Lothian. This is something Peters and Culver could have deduced with the slightest exercise of some curiosity.

Watkins worked or had worked for Lothian. Lothian and Watkins had a conversation between September 29 and October 3, apparently at Respondent's Bay City office (Exh. R-9, p. 12, 17). During that conversation, Lothian told Watkins that he did not approve Debeau's work on a special project. This alone would appear to violate Peters' instructions to Lothian. Moreover, despite having been told about the confidentiality of the investigation, Lothian, according to Watkins, carried on telephone conversations with Debeau and Felker in Watkins' presence that related to the subject of Peters' investigation.

Respondent's inquiry into French's assertions about the gun was similarly half-hearted. The fact that French did not work for Charter when Lothian was disciplined for having a gun at work does not mean that Lothian did not have a gun at work on other occasions. Respondent made no effort to find out whether this was true or not.[30] Indeed, Kent Payne, who of all the witnesses in this case had the least reason to lie under oath, testified that Lothian showed him a bolt-action rifle in the Bay City office in 2012, and saw the outline of a derringer in Lothian's pocket in 2013 or 2014 (Tr. 1302–1303).[31] Payne reported seeing the outline of the derringer to Harth Goulette and Greg Culver after French had been terminated. Tr. 1305–1306, 1353.[32] Ray Schoof also testified that Lothian had showed him a gun in his company vehicle (Tr. 1205–1207). There is no evidence that Respondent made any further investigation as to whether Lothian had ever had a gun at work at times when French was working for Charter or its contractor.

All this is relevant to my conclusion that the reasons for which Respondent fired French were pretextual. In its posttrial brief, Respondent argues that it had a reasonable belief that French was lying about Lothian having a gun at work. It completely avoids discussing its belief that he was lying about Lothian violating Respondent's confidentiality instruction on September 30, by telling him about the HR investigation. Indeed, in its discussion of Lothian's September 30, 2014 safety check at pages 50–51 of its brief, Respondent argues that French's testimony that Lothian discussed French's union involvement is not credible. It makes no such claim about his testimony about Lothian's discussion about the sod incident and making a complaint to human resources. Nor does it do so at page 52 in defending Peters' confidentiality instructions.

Respondent's investigation report makes it absolutely clear that this was a basis for French's discharge. The second to last entry in that report concerns Peters' call to Lothian on October 8, asking him whether he had discussed the investigation with French.

More importantly, one of the managers who participated in the termination decision admitted, that French's "lie" about Lothian's disclosures was a primary reason for his discharge. When I asked Sharon Farquhar (née Olds), senior director, regional human resources, to be specific about the dishonesty that caused Respondent to terminate French, she replied, "It was the statement that he [Lothian] had a gun at work and it was a statement that he had spent 2 hours telling him all about the investigation." "Those were the primary reasons…" Tr. 1426–1427. I regard the absence of any discussion about its reliance of this "lie" as opposed to "lie" about the gun as an admission that Respondent has no reasonable basis for concluding that French was lying about his September 30 conversation with Lothian. Thus, one of the two reasons for French's discharge is obviously pretextual.

Moreover, with regard to both reasons for French's discharge, it was unreasonable for Respondent to conclude that French was lying simply on Lothian's say-so. I also rely on the fact that French's assertions about Lothian did not in any way interfere with Peters' investigation into the conduct of Teenier, Schoof and Debeau. They had no bearing on whether Lothian's accusations regarding "stealing time" were true or not.

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel generally must show that union activity or other protected activity has been a substantial factor in the employer's adverse personnel decision. To establish discriminatory motivation, the General Counsel must show union or protected concerted activity, employer knowledge of that activity, animus or hostility towards that activity and an adverse personnel action caused by such animus or hostility. Inferences of knowledge, animus and discriminatory motivation may be drawn from circumstantial evidence as well from direct evidence.[33] Once the General Counsel has made an initial showing of discrimination, the burden of persuasion shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity. *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (lst Cir. 1981).

However, if it is determined that the reasons given by the employer are pretextual, that defeats any attempt by the employer to show that it would have disciplined or discharged the discriminatee absent his or her protected/union activities, *Rood Trucking Co.,* 342 NLRB 895, 897–898 (2004). In such cases it is not necessary to engage in the second part of the *Wright*

[29] Watkins said he learned that employees were laying sod at Schoof's from Pat Jozeska. Jozeska denied this. Watkins did not assert that Jozeska told him about the on-going investigation. Peters' notes, Exh. R-9, p. 17, recount that Watkins learned about the sod laying before he knew there was an HR investigation.

[30] At Tr. 1051, James DeBeau testified that Stephanie Peters asked him if he had ever seen Rob Lothian with a gun in his office when she interviewed him on September 30. This testimony is clearly incorrect and the product of a faulty memory. Peters' notes of her one and only interview of DeBeau do not indicate that she asked DeBeau anything about Lothian, R. Exhs. 9, 13, and 15. Moreover, the issue of whether Lothian had a gun at work did not arise until French brought it up on October 2, 2 days after Peters interviewed DeBeau.

[31] Payne received a written warning for being uncooperative in the investigation of October 2014, but left Charter's employment voluntarily.

[32] Culver, who testified after Payne, made no attempt to contradict Payne's testimony that he told Culver that he saw the outline of a derringer in Lothian's pocket.

[33] *Flowers Baking Co., Inc.,* 240 NLRB 870, 871 (1979); *Washington Nursing Home, Inc.,* 321 NLRB 366, 375 (1966); *W. F. Bolin Co. v. NLRB,* 70 F. 3d 863 (6th Cir. 1995).

Line analysis, i.e., whether Respondent met its burden of proving that it would have disciplined or discharged an employee for nondiscriminatory reasons.

The General Counsel had met his burden under *Wright Line* and *Rood Trucking* with regard to Jonathan French. I thus find that Respondent violated Section 8(a)(3) and (1) in terminating his employment. On the other hand, I find the General Counsel has not met this burden with regard to James Debeau and Raymond Schoof.

Evidence Regarding James Debeau

Respondent hired James Debeau in March 2013, and fired him on October 14, 2014. While employed at Charter, Debeau generally worked five 8-hour days. Employees signed out from work on a honor system. Debeau normally signed out between 4 and 4:30 p.m.

Prior to working for Charter, Debeau had worked for an employer whose employees were represented by a local of the Sheet Metal Workers International Union. He did not engage in any union activity while working for Charter and there is no evidence that anyone in Charter management suspected Debeau of supporting the IBEW or any other union—except the following. T. J. Teenier testified that in a conference call, Technical Operations Manager Bob Morgan identified Debeau, Schoof, Payne, Ryan Lange, and Andrew Wakowski as being involved with the Union, Tr. 385–386. Morgan, who still works for Respondent as a supervisor and agent, did not testify in this proceeding. Thus, Teenier's testimony is uncontroverted, although not corroborated by any of Respondent's notes of these conference calls.

However, this evidence does not provide a sufficient reason to infer that Debeau's termination was related to suspected union or protected activity. I so conclude because I find that Respondent reasonably believed that Debeau had performed noncompany work on company time. Respondent fired Debeau ostensibly for two reasons: laying sod at Ray Schoof's house while on company time and working at Pat Jozeska's haunted house on company time (Tr. 820).

Debeau testified that he worked at the haunted house on three occasions. Further he testified that he had permission to work at the haunted house while getting his vehicle repaired on the third occasion, which I infer was on September 26, 2014. The circumstances, however, suggest that Respondent had good reason to believe that the permission to do this was improperly granted by T. J. Teenier (Tr. 1039–1043).

Stephanie Peters' notes (Exh. R-9, p. 5), recount that Rob Lothian told her on September 26, that Debeau informed Lothian that he was going to be doing work at the haunted house that morning. Those notes indicate that Debeau told Lothian that Shawn Felker had approved this work. In this hearing, Felker denied giving Debeau such permission (Tr. 874). At the hearing, Debeau testified that Lothian and Teenier approved his work at the Haunted House. It is clear that Lothian if he did so, approved the work begrudgingly and only because he thought Teenier had authorized it.

Even assuming that Respondent treated Debeau unfairly with regard to the Haunted House, it reasonably believed that Debeau helped Schoof lay sod at Schoof's home on company time.

I find this record insufficient to conclude that Respondent terminated Debeau in retaliation of any protected activity on his part. Further, I find the General Counsel has not met his burden of proving that Debeau would not have been terminated but for protected activity on the part of others.

A showing that the Employer had knowledge of union activities of each discharged employee is not necessary, where an employer lays off or eliminates a portion of the work force for the purpose of discouraging union support or to retaliate against its employees because of the union activities of some employees. "Common sense dictates that when employees are discharged for individual reasons, then the Employer's knowledge for each employee's union activity and the Employer's motivation for each discharge are the relevant inquires; but when the Employer makes a single decision to fire 15 people to [discourage union support], then the relevant inquiry is the Employer's motivation for that single decision." *Dillingham Marine & Mfg. Co. v. NLRB,* 610 F.2d 319, 321 (5th Cir. 1980).

Nevertheless, I find the evidence is not sufficient to establish that Debeau and Schoof (as well as Felker and Teenier) were terminated to cover up Respondent's discriminatory discharge of French. More likely, Respondent, when deciding to terminate Teenier, Felker, Debeau, and Schoof, concluded that it had found a convenient pretextual reason to fire French.

Evidence Regarding Raymond Schoof[34]

Respondent hired Raymond Schoof in August 2012. Schoof had worked for a union contractor prior to working for Charter. However, he did not engage in any union activity while working in Charter. The fact that Greg Culver made a point of talking to Schoof on July 16 (GC Exh. 29), indicates that Respondent may not have been certain that Schoof wasn't engaging in union activity. Culver had planned to ride with Schoof on his route on the afternoon of July 17, but decided not to do so.[35] Moreover, T.J. Teenier's uncontradicted testimony at (Tr. 385–386) indicates that Supervisor Robert Morgan identified Schoof as being involved with the Union.

Nevertheless, for the reasons I have found that the General Counsel has not proved that Respondent violated the Act in terminating James Debeau, I find that it has not done so with regard to Raymond Schoof.

Given what I regard as Respondent's reasonable belief that Schoof was doing noncompany work on company time (Tr. 826), I believe the scant evidence supporting the General Coun-

[34] Schoof's testimony is generally confusing and unreliable. He stated that he has difficulty reading and when testifying appeared to have some other cognitive difficulties. Schoof testified that he has a terrible memory, Tr. 1276, and his testimony certainly seems to confirm this. There is no question that some of Schoof's testimony, if credited, is very helpful to Respondent's case with regard to his termination and Debeau's termination.

[35] I credit Shawn Felker and Ray Schoof's testimony in this regard. Greg Culver testified that he planned to ride with Jonathan French all day. However, GC Exh. 29 establishes that Culver spoke to Schoof on July 16 and the record contains no explanation for this contact. Culver had a conversation with Shane Robinson on July 16, which in part was motivated by a desire to determine whether he had union sympathies.

sel's prima facie case is insufficient to find discriminatory motivation with regard to Schoof's termination.

Factual Findings Regarding the Sod Laying Incident and Respondent's Conclusion that it Occurred on Company Time

The terminations of Debeau, Schoof and to a much lesser extent French are related to the laying of sod at Schoof's home.[36] The record indicates that Respondent had good reason to suspect that this work was being done on company time.

I would note that neither the termination documents nor the investigation reports for Schoof and Debeau mention the sod-laying incident as the reason for their terminations. Moreover, this incident was not mentioned to them when they were terminated. In the hearing, only HR Manager Harth Goulette unequivocally testified that Schoof and Debeau were fired for laying sod at Schoof's house on company time. (Tr. 820 and 826.) Respondent's other witnesses were somewhat evasive on this point, although Greg Culver did testify that Schoof was fired for laying sod on company time, after first testifying that Schoof was fired for dishonesty and interfering with the company's investigation (Tr. 1701, 1709).

The termination documents focus on Schoof and Debeau's dishonesty during the investigation. They could only have been dishonest if they were lying about laying the sod on company time. There is no evidence that either was dishonest about anything else. Debeau, for example, said nothing that was untrue, other than possibly that he only worked at Schoof's house after hours.

One of the curious things about this case is that until the last day of the hearing there was no evidence as to what specific day or days the sod laying occurred. One problem with the General Counsel's case is that Schoof generally worked four 10-hour days and Debeau generally worked five 8-hour days. This raises the question of what Debeau did while Schoof was still on the clock. That question would be resolved if the sod work was done the week before Labor Day, August 25–29 when they both worked 8-hour shifts. Given that Peters interviewed Debeau and Schoof September 30, I find it strange that they would not be able to relate the work to the week before Labor Day or their transfer from Felker's crew to Lothian's crew.

On September 19, Rob Lothian told Stephanie Peters that it occurred somewhere in the September 9 timeframe (R. Exh. 9, p. 3–4). The General Counsel elicited testimony on August 16, 2016, that suggests that the sod was delivered to Ray Schoof's home during the week of August 25–29, 2014. This, even if correct, is not probative of when it was put on the ground or when Schoof, Debeau and Teenier worked at Schoof's house.[37]

The record shows that on one day or two, Schoof rode with Debeau during their workday and that Debeau helped Schoof lay sod at Schoof's home on one or two of those days. T.J. Teenier came to Schoof's home on one day and helped lay sod. Shawn Felker also stopped by Schoof's house.

Felker testified that on the day (or one of the days) that he saw Debeau and Schoof laying sod at Schoof's house, he was concerned that they might be leaving work early because he was unable to contact them by phone (Tr. 866, 928–936, 947–948). This certainly supports Respondent's suspicions that Debeau and Schoof were doing work at Schoof's house on company time.[38]

Lothian reported to Peters that Felker showed him photographs of people laying sod at Schoof's house. Felker told Peters he did not take any photographs. At the hearing in this matter, Felker testified that he did take a photo of the completed sod project about 2 weeks later on his personal phone. He did not tell that to Peters. If Felker were trying to absolve Debeau and Schoof of misconduct, I would expect that he would show Peters the photo. Cellphones generally show the time and date a picture was taken.

Moreover, why Felker would take a photo of the completed project remains unexplained. In its totality, the evidence suggests that when Felker discovered Schoof and Debeau working at Schoof's, they were still on the clock. His answers to Peters and at this hearing testimony suggest that he was trying to protect them from disciplinary measures and as a result Felker lost his own job.

The General Counsel's Theory that French, Schoof and Debeau were Terminated Because of their Association with Teenier

The General Counsel argues that the terminations of the Charging Parties were the result of Respondent's animus towards T. J. Teenier, who it regarded as an "inside man" for the Union. There is some evidence to support this theory. Other managers were upset and suspicious of Teenier because he told Jon French and Shane Robinson that their names had come up in a management conference call (Tr. 790–791, GC Exh. 27). Human Resources Director Harth Goulette testified that upper management thought that Teenier "wasn't being honest with us or that he was sharing too much information with employees" (Tr. 791).

On July 21, 2014, Robert Morgan passed on to Lloyd Collins, Director for Field Operations, and David Slowik a report from Jason Zacharko (now a supervisor; then a rank and file employee) ((GC Exh. 35). Zacharko reported that Shane Robinson told Zacharko that he had an "inside man." Zacharko continued to report that Robinson never stated who the inside man was but on a few occasions told Zacharko that he was receiving information from Teenier. Zacharko also reported that Teenier and Robinson's wives were close friends.

In the July 17 conference call, someone, apparently Lloyd Collins, noted that Teenier seemed connected to Shane Robinson (GC Exh. 29).

Teenier testified that during a conference call in July, Regional Vice President Joseph Boullion observed that everyone suspected of supporting the Union reported to Teenier through

[36] This incident also figures prominently in the discharges of Teenier and Felker, which are not before me.

[37] Schoof, Debeau and Teenier may have been working at Schoof's home before the sod was delivered, Felker's testimony suggests as much, Tr. 935–936.

[38] The record indicates there are a number of reasons that a field auditor might not answer his phone, for example, if he was on a ladder or fear that he might be kicked out of Respondent's communications system. Nevertheless, despite legitimate reasons for which Debeau and Schoof might not have answered their phone, Felker suspected they might be leaving work early.

Shawn Felker. Boullion did not testify and Teenier's statement was not contradicted by any other agent of Respondent.

Teenier also testified that Boullion instructed him to isolate the charging parties and Payne from other employees and that Boullion instructed Robert Morgan to do the same with Ryan Lang and Andrew Wakowki (Tr. 385–386). Since neither Boullion nor Morgan testified, Teenier's testimony in this regard was not contradicted. Respondent asked Greg Culver whether he had ever heard anyone give instructions to isolate any employees. Culver testified he had not (Tr. 1653–1654), but that begs the question as to whether Boullion gave these instructions when Culver was not present. Moreover, for reasons stated in footnote 27, I decline to take any of Culver's testimony at face-value. Thus, I credit Teenier on this point.[39]

Human Resources Director Harth Goulette conceded that Schoof's association with Teenier, Felker, Debeau, and French was a factor in Respondent's decision to terminate him, Tr. 828–830, 836.

Despite this evidence, I find that it is too speculative to conclude that the Charging Parties were terminated as the result of Respondent's suspicions about Teenier's possible support of the Union. Moreover, I find that even if this did play a part in the terminations of Schoof and Debeau, Respondent reasonably believed that the two employees were doing noncompany work on company time. Further, I find that Respondent acted upon that belief.

Conclusion with Regard to the Terminations of Schoof and Debeau

Assuming that the General Counsel made out a prima facie case that Schoof and Debeau were terminated in violation of Section 8(a)(3) and (1), I find that Respondent met its burden that it would have terminated them even in the absence of animus towards any suspected union activity on their part or that of Teenier, or French. Respondent had sufficient reason to believe that Schoof and Debeau were doing noncompany work on company time and therefore had, and acted upon, a legitimate nondiscriminatory reason for discharging them.

The General Counsel's reliance on disparate treatment with regard to Schoof and Debeau is beside the point. Assuming they were disparately treated, the question remains why? I find they were not disparately treated because of their own protected activity. I conclude they were not disparately treated due to protected activity on the part of French, and it is too speculative to conclude that they were disparately treated because of suspected union sympathies on the part of Teenier.

The Independent 8(a)(1) violations

Respondent's 10(b) defense

There is no question that a number of the 8(a)(1) allegations in the complaint are predicated on an amended charge filed more than 6 months after the alleged violations occurred.

However, in *Redd-I,* 290 NLRB 1115 (1988), the Board held that allegations made in an untimely filed charge may be considered to be timely filed if they are legally and factually "closely related" to an otherwise timely filed charge. The Board looks at whether (1) the otherwise timely allegations involve the same legal theory as the allegations in a timely charge; (2) whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in a timely charge; and (3) "may look" at whether a Respondent would raise the same or similar defenses to both the untimely and timely charge.

The charges filed within 6 months of the allegations in this case include the terminations of all three charging parties, the alleged statement and threat by Rob Lothian to Jonathan French on September 30, 2014, and French's statement in his initial charge that "two supervisors and a manager" told him that he had been "outed" as the mastermind by the union activity.

I find that many of the 8(a)(1) allegations in this case should be dismissed under the *Redd-I* test. Complaint paragraphs 8 and 9 contain numerous allegations of illegal conduct by Manager T.J. Teenier and Shawn Felker. Since Teenier and Felker were fired at the same time as the charging parties, I conclude that their conduct is not closely related to Respondent's terminations of the charging parties—except allegations that Teenier and Felker gave one or more of the charging parties the impression that their union activities were under surveillance and that Teenier interrogated French. I would also note that Felker, a witness called by the General Counsel, denied ever talking to any of the Charging Parties or about the Union (Tr. 882). He also denied asking Kent Payne to make inquiries regarding the union activity of other employees (Tr. 974–975).

The complaint allegations related to an allegedly unlawful rule, paragraphs 6 and 15(c) are also insufficiently related to a timely charge to meet the *Redd-I* criteria.[40] I reach the same conclusion with regard to paragraph 11(b) [interrogation by Lothian].[41] Thus, I dismiss the complaint allegations in paragraph 6, 8(b),(c),(e),(f) and (g) (ii)-(iii) and 9 (a)-(b), 11(b), and 15(c) on 10(b) grounds.

On the other hand, I find that complaint paragraphs 7, 8(a), 8(d), 10, and 12, 13 meet the *Redd-I* test. Paragraph 7 alleges illegal surveillance by three supervisors on July 15 when the Union distributed flyers at Respondent's Saginaw office. Although, I find this to be sufficiently closely related to French's charge, there is insufficient evidence to support it. First of all, the union activity was out in the open and there is nothing illegal about the supervisors going out in the parking lot to observe it, *Fred'k Wallace & Son, Inc.,* 331 NLRB 914, 915 (2000). There is absolutely no evidence that any supervisor took notes, as alleged in paragraph 7.

Terry Teenier testified that he was instructed by his boss,

[39] Shawn Felker testified that Culver told him to move French in order to isolate him from other employees and to move the rest of the field auditors so that French's assignment would not appear to be discriminatory, Tr. 860. Culver's testimony at Tr. 1653 contradicts Felker. Given that I credit Teenier's testimony that he was instructed to isolate Felker's field auditors, I need not resolve the credibility issue regarding Culver and Felker.

[40] While it is true that Respondent cited violation of the employee handbook as a reason for the discharges, the manner in which the employees violated the handbook appears to have no relationship to protected activity, see, e.g., Exh. R-9, p. 20. It is also difficult to discern any relationship between the language in the termination documents and the discharges. I would characterize the language as a nonsequitur.

[41] There is no evidence to support 11(b).

Greg Culver, to keep track of which employees were taking union flyers and to take notes of this. Teenier testified further that he passed these instructions on to Supervisors Shawn Felker and Chad Erskine. He also stated that Erskine passed on some names to him (Tr. 378). However, according to Teenier, Erskine did this from memory not from notes (Tr. 503). Erskine denied giving names to anyone. I have no basis for crediting Teenier over Erskine, so I dismiss complaint paragraph 7.

Paragraph 10 alleges closer scrutiny of employees (i.e., French) by Greg Culver in July 2014. Since Culver is the person, or one of the persons, who decided to fire the charging parties, I believe this allegation is closely related to the timely charges. It is part of the sequence of events leading to French's termination.

Similarly, I find paragraph 12 to be closely related to a timely charge in that Respondent's "confidentiality" instruction during the investigation was a major factor in the termination of French and hindered the three charging parties in defending their conduct during Respondent's investigation.

Paragraph 13 is sufficiently closely related to the timely filed charges because T. J. Teenier's uncontradicted testimony established that he was instructed by Regional Vice President Joseph Boullion to isolate Felker's entire crew, which I infer was due to suspicion that some or all of them were sympathetic to the Union.

Complaint paragraph 8 (a) & (d):

T.J. Teenier Gives Jon French the Impression that his Union Activities are Under Surveillance, and Interrogates him About Union Activities, on or About July 16, 2014

Jonathan French testified that on about July 16, the day after union organizers had passed out union flyers at Respondent's Saginaw office, Teenier drove out to his location and told French to get into his vehicle. Teenier asked French if he knew of anyone connected with the distribution of flyers. This testimony was corroborated by Teenier. The account of this conversation does not appear in the affidavits French gave to the General Counsel during investigation of his charges on November 14, 2014, and June 23, 2016. However, I credit it. G.C. Exh. 34 establishes that higher management instructed Teenier to talk to French about the union activity.

Additionally (GC Exh. 29), Harth Goulette's notes of July 17, 2014, confirm that Teenier spoke with French and told him that Respondent was investigating his possible connection to the IBEW flyers. Thus, the allegations in complaint paragraphs 8(a) and (d) are established by Goulette's notes and Teenier's testimony.

Complaint Paragraph 9(c) Alleged Violation by Felker

There is no evidence to support the allegation in complaint paragraph 9(c) that Shawn Felker told employees over the phone that he knew that they had spoken to a union representative. This allegation is dismissed.

Complaint Paragraph 10: Greg Culver Subjects Jonathan French to Closer Scrutiny:

Greg Culver, Teenier's boss, came to Respondent's Saginaw office on July 17, 2014, 2 days after the union handbilling. Prior to his arrival he asked to "ride-along" with Jonathan French as French performed his normal field auditor duties.

Culver's ride-along and inquiries to French, were, at least in part, motivated by a desire to find out which employees were connected to the distribution of the IBEW flyers. I find that Respondent, by Culver, engaged in surveillance of French's protected activities in violation of Section 8(a)(1).

Complaint Paragraph 11: Alleged Violations by Lothian

There is no evidence to support complaint paragraph 11(b) that Respondent by Rob Lothian interrogated Jonathan French about union activities on September 30, 2014. On the other hand, French's uncontradicted testimony establishes that Lothian gave French the impression that Respondent was watching French's union activities and that Lothian impliedly threatened French. The threat while not specific would lead a reasonable person to conclude that they may be disciplined or discharged in part due to their union activities.

Complaint Paragraph 12: Respondent by Stephanie Peters Issued Overly Broad Directives to Employees not to Discuss Respondent's Disciplinary Investigation.

On about October 1, 2014, Charter Human Resource Generalist Stephanie Peters told Jonathan French not to talk to anyone about what was discussed in the interview. Peters gave the same instruction to all the employees, supervisors and managers she interviewed in connection with her investigation.

I find that Respondent did not violate the Act in giving this "confidentiality" instruction.

In *Caesar's Palace,* 336 NLRB 271, 272 (2001), the Board held that the employer did not violate Section 8(a)(1) by instructing employees not to discuss an ongoing drug investigation. It observed that employees have a Section 7 right to discuss discipline or disciplinary investigations. However, it found that Caesar's established a substantial and legitimate business justification which outweighed its infringement on employees' rights. The Board in footnote 5 made it clear that it is the Respondent's burden to establish a legitimate and substantial business justification.

In *Hyundai America Shipping Agency, Inc.,* 357 NLRB 860 (2011), the Board found the employer violated Section 8(a)(1) by promulgating, maintaining and enforcing an oral rule prohibiting employees from discussing with other persons any matters under investigation by its human resources department. This rule was a blanket prohibition, applying to all matters regardless of the circumstances. The employer's rule in *Boeing Co.,* 362 NLRB No. 195 (2015), was similarly broad.

In *Caesar's Palace,* an employer witness testified that it never explained the purpose of the confidentiality instruction to the employees during the investigation, 336 NLRB at 273. The Board appears to have inferred from the circumstances of the investigation that the employer had a legitimate and substantial justification for its confidentiality instructions. I believe this could be inferred in many investigations in which the dangers of evidence being destroyed or fabricated, and witness intimidation are obvious. In this vein I would note the Rule 615 of the Federal Rules of Evidence, in requiring a judge to order the sequestration of witnesses upon the request of any party, is a tacit recognition of this danger.

In this case, I find that Respondent's legitimate reasons for

instructing each employee not to discuss its investigation are patently obvious. There was an obviously danger of the employees coordinating their stories or suggesting "helpful" interview answers to others. Thus, I find that Respondent's burden of establishing that these interests outweigh its infringement on employees' rights has been met.

Paragraph 13 (Isolation of the Charging Parties)

This record establishes that shortly after the union flyers were distributed, three members of Shawn Felker's crew, French, Schoof, and Debeau were assigned to do work outside of the Saginaw system. Although field auditors working out of Saginaw office had worked in these areas before, the record, specifically T. J. Teenier's uncontradicted testimony at Tr. 385–386, shows that in July and August 2014, this assignment was related to suspected union activity by some or all of them. The assignment was motivated by a desire to prevent Jonathan French, in particular, from interacting with other employees.

CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(3) and (1) in discharging Jonathan French.

2. Respondent did not violate the Act in discharging James Debeau and Raymond Schoof.

3. Respondent, by T.J. Teenier, violated Section 8(a)(1) by giving Jonathan French the impression that his union activities were under surveillance and interrogating him on or about July 16, 2014.

4. Respondent, by Greg Culver, violated Section 8(a)(1) by subjecting Jonathan French to close scrutiny on July 17.

5. Respondent, by Rob Lothian, violated Section 8(a)(1) by creating the impression that Jonathan French's union activities were under surveillance.

6. Respondent, by Rob Lothian, violated Section 8(a)(1) by impliedly threatening Jonathan French on September 30, 2014, in part due to French's union activities.

7. Respondent violated Section 8(a)(3) and (1) of the Act by assigning the charging parties to work outside of the Saginaw system in response to suspicions of union activity on the part of all or some of the charging parties.

8. Respondent did not violate the Act in instructing employees not to discuss its investigation with other employees, supervisors or managers.

The Respondent, having discriminatorily discharged Jonathan French, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be 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).

Respondent must also compensate Jonathan French for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, 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).

Respondent shall file a report with the Social Security Administration allocating Jonathan French's backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatee for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Latino Express, Inc.,* 359 NLRB 518 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[42]

ORDER

The Respondent, Charter Communications, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting the International Brotherhood of Electrical Workers or any other union.

(b) Giving employees the impression that their union or other protected activities are under surveillance.

(c) Interrogating employees about their suspected union or other protected activities.

(d) Subjecting employees to closer scrutiny due to their actual or suspected union or other protected activities.

(e) Impliedly threatening employees with adverse personnel actions on account of their actual or suspected union or other protected activities.

(f) Assigning employees to work locations in order to isolate them from other employees on account of their actual or suspected union or other protected activities.

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

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

(a) Within 14 days from the date of the Board's Order, offer Jonathan French full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Jonathan French whole for any loss of earnings, search-for-work and interim employment expenses, and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge and within 3 days thereafter notify Jonathan French in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other

[42] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Bay City and Saginaw, Michigan facilities copies of the attached notice marked "Appendix."[43] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 16, 2014.

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

Dated, Washington, D.C. November 10, 2016

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the International Brotherhood of Electrical Workers (IBEW) or any other union.

WE WILL NOT give you the impression that your union or other protected activities are under surveillance.

WE WILL NOT interrogate you about your suspected or known union or other protected activities.

WE WILL NOT subject you to closer scrutiny due to your actual or suspected union or other protected activities.

WE WILL NOT impliedly threaten you with adverse personnel actions on account of your actual or suspected union or other protected activities.

WE WILL NOT assign you to work locations in order to isolate you from other employees on account of your actual or suspected union or other protected activities.

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

WE WILL, within 14 days from the date of this Order, offer Jonathan French full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Jonathan French whole for any loss of earnings less any net interim earnings, search-for-work and interim employment expenses (regardless of interim earnings) and other benefits resulting from his discharge, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating Jonathan French's backpay to the appropriate calendar quarters.

WE WILL compensate Jonathan French for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Jonathan French, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

CHARTER COMMUNICATIONS, LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CA-140170 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

[43] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."