Electrolux Home Products, Inc. *and* J'vada Mason
Case 15–CA–206187

August 2, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND KAPLAN

On July 2, 2018, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

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 and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee J'Vada Mason because of her union activities. We find merit in the Respondent's exceptions to this finding. Specifically, we find that the General Counsel has failed to carry his burden of demonstrating that the discharge was unlawfully motivated.[2]

Facts

The facts, which are set forth in more detail in the judge's decision, are as follows. The Respondent, Electrolux Home Products, manufactures gas and electric ovens at its facility in Memphis, Tennessee, where it employs over 700 workers in a bargaining unit represented by Local 474 of the International Brotherhood of Electrical Workers (the Union). The Union first attempted to organize the Respondent's facility in 2015 but lost a representation election. The Union held another organizing drive in 2016, and, on October 5, 2016, it was certified as the exclusive collective-bargaining representative of the unit employees. Only 3 weeks after the certification, the parties reached an interim agreement regarding employee discipline.

J'Vada Mason was hired in April 2013, and within 2 months was promoted to the position of materials department team lead for assembly line 2. The function of the materials department is to ensure that the assembly lines are stocked with the materials needed to assemble ovens. Mason received only one performance evaluation during her more than 4 years of employment, in 2014, and it was positive. However, Mason was also disciplined twice during her tenure. In November 2013, Mason was suspended for 3 days for improperly clocking in to work. In December 2016, she was verbally counseled for failing to properly scan inventory.

The Respondent discharged Mason on May 5, 2017,[3] citing her failure on April 28 to comply with a superior's directive to ensure that microwaves were delivered to the production line, a failure that the Respondent found insubordinate. On the morning of April 28, two forklift drivers assigned to assembly line 2 during Mason's shift were off work on FMLA leave. Mason's superior, John "Chris" Fair, was the materials department supervisor for all production lines. Fair approached Mason and asked her to personally deliver microwaves to assembly line 2. Mason did not do so.[4] Later that morning, Fair and Hamza Huqq, assembly line supervisor for line 1, approached Mason at her workstation. Huqq told Mason that his line needed materials; however, Mason was not responsible for delivering materials to line 1, and Fair did not instruct her to deliver materials to line 1. Mason did not deliver the materials to line 1. Subsequently, production on line 2, and possibly line 1, stopped, but for reasons unrelated to Mason's refusal to deliver the microwaves.

Fair complained to Human Resources Business Partner Diana Jarrett about Mason's insubordinate failure to deliver microwaves to line 2. Jarrett promptly conducted an investigation, asking Fair to submit a written statement chronicling the events of that morning. Fair also obtained statements from Huqq; Candace Cox, acting team lead on line 2; and John Collins, assembly supervisor for line 2. Jarrett met with Mason, Fair, Labor Relations Manager Erika Robey, and others later that same day regarding Fair's complaint. During the meeting, Stanley Reese, the Union's chief steward, advised Mason against submitting

[1] 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.

[2] The judge also dismissed an allegation that the Respondent violated Sec. 8(a)(1) of the Act by discharging Mason for the protected concerted activity of complaining about terms and conditions of employment. We adopt that dismissal for the reasons stated by the judge.

[3] All dates are in 2017 unless specified otherwise.

[4] The judge observed that "there [was] a lot of conflicting testimony regarding the details of what transpired on April 28" before stating that his "factual finding as to what occurred on April 28 is limited to the following: Fair asked Mason to deliver microwaves to line 2 on at least one occasion and she did not do it."

a written statement. Disciplinary action was not taken at the meeting, and at its conclusion Mason returned to work until May 5, consistent with the parties' interim agreement regarding employee discipline.[5]

On or about May 1, Jonathan Pearson, the Respondent's lead negotiator in the ongoing collective bargaining, emailed Paul Shaffer, the Union's business manager, to inform him that Mason was being investigated for insubordination. Shaffer then informed Mason that the Respondent was considering terminating her employment, and on May 4, Mason submitted her incident statement to Jarrett. On May 5, Mason went to the human resources office to change a leave request when Leola Roberts, the Respondent's human resources director, summoned Mason into a meeting to inform her that she was being terminated for insubordination. Mason's separation notice was prepared and signed by Roberts that day.

Long before she was discharged on May 5, 2017, Mason assisted the Union's organizational efforts. During both the first campaign in 2015 and the second campaign in 2016, Mason distributed authorization cards, handed out union flyers, and wore a prounion T-shirt.

In September 2016, approximately a week before the second election, Mason attempted to speak at a mandatory meeting held by the Respondent. The Respondent's then-plant manager, Sebastian Gulka, and a manager named Matt called the meeting to discuss with employees the Respondent's opposition to the Union's organizing efforts.[6] Mason sat in the front row and repeatedly raised her hand in an attempt to respond to statements made by Gulka about the cost of union dues and a strike at another employer's nearby facility. Mason was not allowed to respond.[7] At the end of the meeting, Mason stood up and challenged Gulka's statements on those issues. Both Gulka and Matt told Mason to "shut up" and said that she didn't know what she was talking about. The complaint does not allege that the Respondent violated the Act during this mandatory meeting.

Mason was one of six employees who served on the Union's bargaining committee during the parties' negotiations, which began in January. Mason attended the bargaining sessions, which occurred 3 days per week, 1 week per month. The complaint does not allege that the Respondent ever failed to bargain in good faith with the Union.

On several occasions during her employment, Mason raised concerns about terms and conditions of employment. For example, around February 25, she complained that a team lead for assembly line 2 had posted a bathroom signup sheet, requiring employees to sign in and out when they visited the restroom. Management promptly ordered the team lead to remove the signup sheet. Mason and Fair engaged in a conversation regarding the incident. Mason testified that during the conversation, Fair said that if something like that happened again, he would lie and implicate Mason to avoid being disciplined himself.[8] At the following bargaining session, Mason reported Fair's statement, and the Respondent's bargaining team participated in a sidebar discussion concerning Mason's complaint.

The Judge's Decision

Applying *Wright Line*,[9] the judge found that the General Counsel satisfied his burden of proving that Mason's union activity motivated the Respondent's decision to discharge her. The judge found that Mason had engaged in union activities by campaigning for the Union during the two organizing drives and by serving on the bargaining committee, and that the Respondent had knowledge of these activities. The judge also found that the Respondent harbored animus towards Mason's union activities based on the confrontation between Mason and the managers who ran the mandatory meeting in September 2016. Further, based on documentary evidence that the Respondent had imposed lesser discipline on several other employees who the Respondent had also deemed guilty of insubordination, the judge found that the Respondent's proffered justification for Mason's discharge was pretextual and that the real reason was her union activities. Accordingly, the judge found that the Respondent violated Section 8(a)(3) of the Act.

Discussion

To prove that a discharge violates the Act under *Wright Line*, the General Counsel must initially show that the employee's Section 7 activity was a motivating factor in the employer's decision to discharge the employee. The elements required to support this initial showing are union or

[5] Under the interim agreement, the Respondent was prohibited from taking disciplinary action against unit employees without first giving the Union 3 days' notice to request bargaining, provided that "[t]erminations involving workplace violence, weapons, drugs and other serious violations can result in immediate suspension while the 3 day period runs."

[6] The record does not indicate Matt's last name.

[7] Mason testified that when she attempted to speak during the meeting, "they just kept telling me to put my hand down and they'll open the floor for questions at the end of the meeting." (Tr. 143–144.) She further testified that the Respondent did not, however, solicit employee questions at the end of the meeting. (Tr. 144.) While the judge did not mention her testimony on those specific points, he found that "Mason's testimony about what occurred at this meeting is uncontradicted and therefore credited."

[8] Mason and Fair gave conflicting accounts of the conversation, but the judge found it unnecessary to resolve the conflict because he found the conversation irrelevant to the disposition of the case.

[9] 251 NLRB 1083 (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, 399–403 (1983).

other protected concerted activity by the employee, employer knowledge of that activity, and animus on the part of the employer. If the General Counsel makes such a showing, the burden of persuasion shifts to the employer to demonstrate that it would have taken the same adverse action even in the absence of the employee's protected conduct. *Wright Line*, 251 NLRB at 1089; see also *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996), enfd. mem. 127 F.3d 34 (5th Cir. 1997).

Under certain circumstances, animus may be inferred from circumstantial evidence based on the record as a whole. See *Fluor Daniel, Inc.*, 304 NLRB 970, 970 (1991), enfd. 976 F.2d 744 (11th Cir. 1992). Moreover, when the Respondent's stated reasons for its decision are found to be pretextual—that is, either false or not in fact relied upon—discriminatory motive *may* be inferred, but such an inference is not compelled. See *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) ("If [a trier of fact] finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal—an unlawful motive—at least where . . . the surrounding facts tend to reinforce that inference."); *Wright Line,* 251 NLRB at 1088 fn. 12 ("The absence of any legitimate basis for an action, of course, may form part of the proof of the General Counsel's case.") (citing *Shattuck Denn Mining*, supra).

As noted above, the judge found that the Respondent's stated reason for discharging Mason—insubordination—was pretextual based on documentary evidence introduced by the General Counsel indicating that certain other employees were suspended or warned, not discharged, for engaging in other acts that the Respondent had deemed insubordinate. The records themselves are sparse on details, and the General Counsel did not introduce any testimonial evidence elaborating on the circumstances of the comparators' insubordination. The Respondent argues that the General Counsel's comparators were not similarly situated to Mason because they either were not team leads, worked in a different department, were disciplined by a different decisionmaker, and/or engaged in dissimilar insubordination. The Respondent also asserts that the documentary evidence actually undercuts the General Counsel's case because it reveals that the Respondent did discharge two other employees, Carey Taylor and Lakelia Davis, for repeated acts of insubordination. Nevertheless, we agree with the judge, for the reasons he stated, that the evidence establishes that the Respondent generally treated other insubordinate employees more leniently, and that this tends to show that the Respondent's stated reason for discharging Mason was pretextual.

Although the Respondent's proffered justification for discharging Mason instead of imposing lesser discipline was pretextual, we find that, on the record as a whole, the General Counsel failed to satisfy his burden of proving that Mason's union activity was a motivating factor in her discharge. As explained above, the Board may infer from the pretextual nature of an employer's proffered justification that the employer acted out of union animus, "*at least where . . . the surrounding facts tend to reinforce that inference*." *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d at 470 (emphasis added); see also *Active Transportation*, 296 NLRB 431, 432 fn. 8 (1989), enfd. 924 F.2d 1057 (6th Cir. 1991).[10] When an employer has offered a pretextual reason for discharging or disciplining an alleged discriminatee, the real reason might be animus against union or protected concerted activities, but then again it might not. It is possible that the true reason might be a characteristic protected under another statute (such as the employee's race, gender, religion, or disability), or it could be some other factor unprotected by the Act or any other law, which would be a permissible basis for action under the at-will employment doctrine.[11]

[10] There is support in Board and court precedent for the proposition that a finding of pretext, standing alone, cannot satisfy the General Counsel's initial *Wright Line* burden and that the General Counsel must adduce evidence of additional supporting circumstances to establish that the actual reason for the discharge or discipline was animus toward union activities. See *Valmont Industries, Inc. v. NLRB*, 244 F.3d 454, 466 (5th Cir. 2001) ("An ALJ may not rest [his] entire decision that antiunion animus motivated an employee's discipline on a finding that the employer gave a pretextual reason for its action."); *American Crane Corp. v. NLRB*, 203 F.3d 819 (4th Cir. 2000) ("That the employer's stated reasons for its actions are shown to be pretextual is not enough, standing alone, to permit the finding of a violation; the General Counsel must affirmatively adduce evidence of sufficient substance to support a rational conclusion that anti-union animus more likely than not factored into the employer's decision.") (citing *Sam's Club v. NLRB*, 173 F.3d 233, 243 (4th Cir. 1999)); *Union-Tribune Pub. Co. v. NLRB*, 1 F.3d 486, 491 (7th Cir. 1993) ("A finding of pretext, standing alone, does not support a conclusion that a firing was improperly motivated."), quoted in *Laro Maintenance Co. v. NLRB*, 56 F.3d 224, 230 (D.C. Cir. 1995); *College of the Holy Cross,* 297 NLRB 315, 316 (1989) ("Both the Board and the court[s] require something more than a bare showing of a false reason, i.e., the support of surrounding circumstances."). On the other hand, there is also some precedential support for the proposition that pretext alone may satisfy the General Counsel's burden of proof. See *El Paso Electric Co.*, 355 NLRB 428, 428 fn. 3 (2010); *Whitesville Mill Service Co.*, 307 NLRB 937 (1992). We need not resolve this inconsistency here. Even assuming the General Counsel could, under certain circumstances, satisfy his initial *Wright Line* burden simply by proving that an employer's proffered justification for an adverse employment action was pretextual, this is not such a case. As explained in the text, *El Paso Electric* and *Whitesville Mill Service* are distinguishable, and the surrounding circumstances and the record as a whole undermine any inference that Mason's union activity was a motivating factor in the Respondent's decision to discharge her.

[11] Our dissenting colleague misunderstands this statement. She claims that we are speculating about the reasons the Respondent discharged

Here, there is no basis to infer that the Respondent discharged Mason because of her union activities, other than the finding of pretext derived from evidence of disparate treatment. The General Counsel, who bears the burden of proving unlawful motivation, has not shown that the Respondent has committed any contemporaneous unfair labor practices,[12] and we find nothing suspicious in the Respondent's investigation of Mason's insubordinate failure and refusal to deliver microwaves to the production line.

Contrary to the judge, the exchange between Mason and Managers Gulka and Matt at the mandatory meeting in September 2016 also does not demonstrate unlawful motivation. It is lawful for an employer to conduct a captive-audience meeting to persuade employees not to unionize while refusing to allow others to express their opposing, prounion viewpoints during the meeting. See *Livingston Shirt Corp.*, 107 NLRB 400 (1953).[13] Accordingly, the Respondent's attempt to limit its captive-audience meeting to the expression of its own views by telling the Charging Party to "shut up," rude as it may have been, does not by itself, or in conjunction with the evidence of disparate treatment, establish that the Respondent harbored union animus.[14]

Additionally, we note that the mandatory meeting occurred in late September 2016, more than 7 months before the Respondent discharged Mason on May 5, 2017. Consequently, even assuming for argument's sake that one could reasonably find a hint of union animus in the captive-audience exchange, we find that it was too remote in time from Mason's discharge for us to infer that the discharge was unlawfully motivated. See *New Otani Hotel & Garden*, 325 NLRB 928, 939 (1998) (declining to rely on employer's alleged expression of antiunion animus 8 months before discharge in part because temporally remote); *Magic Pan, Inc.*, 242 NLRB 840, 853 (1979) (finding employer's alleged antiunion statements made 6 months before discharge too remote to support finding of animus).[15]

Not only is there no other evidence to support an inference that the Respondent was motivated by Mason's union activities, but the record contains countervailing evidence that the Respondent bore no animus against collective bargaining or toward the employee members of the Union's bargaining team. As stated above, after the Union was certified, the parties quickly reached an interim agreement on employee discipline. Further, by the time Mason was discharged in early May, the parties had been meeting and bargaining in good faith 3 days each month, beginning in January. The record does not reveal any incidents of animosity during that bargaining, nor does it suggest any reason why the Respondent would have singled Mason out from the group of employees who served on the bargaining committee. Under all the circumstances of the case, we cannot find that the disparity in disciplinary treatment

Mason and of "attempt[ing] to meet the Respondent's rebuttal burden for it." Not so. First, we are not, in this statement, talking about the facts of this case at all. We are addressing why pretext alone may be insufficient to support an inference of unlawful motive as a matter of law. Second, we are not talking about the employer's *Wright Line* "rebuttal" burden, let alone whether the Respondent met that burden here—an issue we do not reach, since the burden *never shifted* to the Respondent. Rather, we are addressing the General Counsel's burden of proof under *Wright Line* and pointing out that where pretext alone furnishes the whole of the General Counsel's case, the possibility that something other than union activity motivated the discharge means that the General Counsel may have failed to sustain that burden. For the reasons stated in the text, the General Counsel has failed to do so here.

[12] In September 2017, the Regional Director approved an informal settlement agreement resolving certain other unfair labor practice charges against the Respondent. (GC Exh. 3.) That informal settlement agreement contains a non-admission clause, and hence the General Counsel's reliance on it to establish that Mason's discharge was motivated by union animus is misplaced. *Diamond Electric Mfg. Corp.*, 346 NLRB 857, 859 (2006); *Steves Sash & Door Co.*, 164 NLRB 468, 476 (1967).

[13] As the Board explained in *Livingston Shirt,* supra at 405–406, Sec. 8(c) of the Act expressly prohibits the Board from finding that uncoercive speech constitutes an unfair labor practice, and "to say that conduct which is privileged gives rise to an obligation on the part of the employer to accord an equal opportunity for the union to reply under like circumstances, on pain of being found guilty of unlawful conduct, seems to us an untenable basis for a finding of unfair labor practices. If the privilege of free speech is to be given real meaning, it cannot be qualified by grafting upon it conditions which are tantamount to negation."

[14] The Board has held that, under certain circumstances, an employee's attempt to ask questions or express views at a captive-audience meeting may constitute protected concerted activity. *Prescott Industrial Products Co.*, 205 NLRB 51 (1973), enf. denied in relevant part 500 F.2d 6 (8th Cir. 1974). Although the Act may prohibit an employer from discharging an employee for engaging in such protected concerted activity, it does not require the employer to accede to the employee's request during the meeting, as explained above.

[15] Our dissenting colleague would find that the confrontation at the meeting supports a finding of unlawful motivation, citing *Relco Locomotives, Inc.*, 358 NLRB 229 (2012), enfd. 734 F.3d 764 (8th Cir. 2013). *Relco* is distinguishable. There, the Board found union animus based in part on the fact that, at the end of a captive-audience meeting, a manager "invited questions but then immediately told [employee] Smith to 'shut up and sit down' when he asked whether [the manager] would agree to discuss unionization of the [r]espondent's employees." Id. at 229. Here, unlike in *Relco*, the Respondent did not solicit questions and then immediately silence an employee for asking a prounion question. Although, to stop Mason's repeated interruptions, the Respondent stated in the midst of its meeting that it would later open the floor, it chose not to do so at the end of the meeting, and the record is clear that the Respondent wanted to limit the content of the meeting to its own views, as was its right. Additionally, the timing of the discharge in *Relco* tended to support an inference of union animus. Relco discharged Smith, who initiated the organizing campaign, less than a month after the meeting in that case (and it discharged another prounion employee 3 months later). Here, in contrast, 7 months had passed since the captive-audience meeting, and in the meantime, the Respondent had bargained in good faith with the Union, including with Mason, who served on the negotiating committee.

warrants an inference that the discharge was motivated by Mason's union activities. See *Alexandria NE, LLC*, 342 NLRB 217, 221–222 (2004) (finding punishment for first-time offense harsh but failing to find violation based on the absence of evidence in the record to infer that the discharge was causally related to union animus); *New Otani*, 325 NLRB at 928 fn. 2 (finding that the record as a whole did not warrant an inference of antiunion motivation for discharges despite some evidence of disparate treatment); see also *Alldata Corp. v. NLRB*, 245 F.3d 803, 808–809 (D.C. Cir. 2001) (finding that surrounding circumstances in the record undermined an inference of unlawful motivation despite circumstantial evidence of timing and disparity in treatment).[16]

Our dissenting colleague accuses us of "call[ing] into question" the Supreme Court's decision in *NLRB v. Transportation Management*, supra. We do not. In that case, the Court upheld the burden-shifting framework of *Wright Line* as a reasonable interpretation of the Act, and we apply that framework here. Contrary to the dissent's suggestion, the Supreme Court in *Transportation Management* did not speak to whether the General Counsel can satisfy his initial *Wright Line* burden of proving that animosity toward union activity motivated a discharge simply by demonstrating that the employer's proffered justification was pretextual, much less that he can do so where countervailing evidence dispels any possible inference of union discrimination.[17] In that case, no party disputed that the General Counsel had shown that the employer discharged an employee in part because of his protected activities, as the Court noted. Id. at 400 fn. 5.

The dissent also asserts that "[u]nder longstanding Board precedent," a finding of pretext "would logically preclude any conclusion that the Respondent acted lawfully in discharging Mason," i.e., that a finding of pretext *compels* the Board to conclude that the employer was concealing an anti-union motive and violated the Act. That is not an accurate description of longstanding Board precedent. In most of the cases cited by our dissenting colleague, the Board found unlawful motive based not only on pretext but also on other evidence of animus toward union activities.[18]

Our dissenting colleague cites two decisions to support her assertion that the Board "routinely" infers that an employer harbored a motive prohibited by the Act based solely on a finding that the employer's stated justification for an adverse employment action was pretextual. As noted above, there is ample precedent to the contrary. See fn. 10, supra. Moreover, the cases our colleague cites are distinguishable.

[16] Our dissenting colleague suggests that the Respondent's good-faith bargaining and the absence of retaliation against any other prounion employees or members of the Union's negotiating committee are not circumstances tending to undermine a conclusion that the General Counsel satisfied his burden of proving unlawful motivation. But the Board relied on precisely such factors in *Wackenhut Corp.*, 290 NLRB 212 (1988). There, the Board assumed that the employer's proffered justifications for refusing to hire union agents were "feeble," but nevertheless dismissed the complaint because there was "no other evidence, circumstantial or direct, of unlawful motivation." Id. at 215. To the contrary, "other stewards and union officials were hired," and the employer "made no discernible effort to evade its bargaining obligation, but, rather, promptly entered into bargaining with the [u]nion . . . ." Id. at 214–215.

[17] To the contrary, the Supreme Court was considering whether the Board could permissibly require the employer to prove that it would have discharged the employee even in the absence of his or her protected activity, *after* the General Counsel has satisfied his initial burden under *Wright Line.* In the course of analyzing this issue, the Court stated that "*if* the employer fires an employee for having engaged in union activities and has no other basis for the discharge, or if the reasons that he proffers are pretextual, the employer commits an unfair labor practice." 462 U.S. at 398 (emphasis added). The issue presented here, in contrast, is *whether* the Respondent fired Mason for having engaged in union activities, and whether such a finding could be based on pretext alone, particularly where, as here, the record contains countervailing evidence.

Our conclusion that pretext does not compel a finding that Mason's discharge violated the Act is consistent with the Supreme Court's holding that a pretext finding does not compel judgment for the plaintiff in Title VII cases. See *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 509–511 (1993). We recognize that Title VII precedent is not directly applicable to *Wright Line* cases because of the differences in the respective analytical frameworks. However, we believe that the Court's analysis is instructive with respect to the issue, common to this case and *St. Mary's Honor Center*, of whether pretext alone compels a finding that an adverse action was discriminatorily motivated. As explained, we find that it does not. Accord: *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 148 (2000) ("Certainly there will be instances where, although the plaintiff has established a prima facie case and set forth sufficient evidence to reject the defendant's explanation, no rational factfinder could conclude that the action was discriminatory."). The dissent says that *Reeves* cuts against our position, but her discussion of that case omits key information. The question presented in *Reeves* was whether an ADEA *defendant* was entitled to judgment as a matter of law where the plaintiff's case consisted exclusively of a prima facie case of discrimination and pretext. In other words, the question was whether, on that showing, a reasonable factfinder could not possibly find for the plaintiff. In answering that question in the negative, the *Reeves* Court observed that "*[i]n appropriate circumstances*, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose" (emphasis added). Appropriate circumstances are not present here, for the reasons already explained. Moreover, the issue in this case is not, as in *Reeves*, whether a plaintiff must show more than pretext to avoid a directed verdict for the defendant, but whether pretext compels a finding that Mason's discharge was unlawfully motivated. *St. Mary's Honor Center,* a case the dissent ignores, speaks to that issue. See 509 U.S. at 524 ("That the employer's proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the plaintiff's proffered reason . . . is correct.").

[18] *Laro Maintenance Corp. v. NLRB*, 56 F.3d 224 (D.C. Cir. 1995) (basing finding of unlawful motive on contemporaneous unfair labor practice, discriminatory hiring practices, and pretext); *Rood Trucking Company, Inc.*, 342 NLRB 895 (2004) (basing finding on pretext and ample evidence of employer's displeasure with unionization); *Pro-Spec Painting, Inc.*, 339 NLRB 946 (2003) (basing finding on contemporaneous Sec. 8(a)(1) statements, disparate treatment, and pretext).

In *Whitesville Mill Service Co.*, 307 NLRB at 937, the Board found that the employer violated Section 8(a)(3) of the Act by discharging employee Roy Hurt less than 2 weeks after he initiated an organizing drive at its facility. The employer claimed that it terminated Hurt because he had damaged company equipment on a number of occasions. The judge, whose decision the Board adopted, found this claim pretextual. In so finding, the judge emphasized that the employer had no intention of discharging or even disciplining Hurt for several days after the alleged culminating incident of equipment damage. Several days after that incident, the employer learned that Hurt was leading the union campaign and had organized a meeting of employees, whereupon "the incident took on a new life." Id. at 944. Subsequently, the employer fabricated damage reports to justify the discharge. Id. at 937, 940. In finding that the General Counsel had satisfied his initial *Wright Line* burden, the judge relied on the employer's expressed hostility to the union (a manager's statement that he was "shocked" by the campaign), the timing of the discharge, and the pretextual nature of the proffered justification. Id. at 945. The Board found it unnecessary to rely on the manager's statement that he was "shocked" by the campaign, id. at 937, but it did not similarly disclaim reliance on timing, which undergirded the judge's finding of pretext. Like the judge, the Board "infer[red] from the pretextual nature of the reasons for the discharge advanced by the [employer] that the [employer] was motivated by union hostility." Id. (citing *Shattuck Denn Mining Corp. v. NLRB*, supra).

In *El Paso Electric Co.*, 355 NLRB 428, 428 fn. 3 (2010), the Board adopted the judge's finding that the employer violated Section 8(a)(1) by giving employee Sira Fanely an unsatisfactory performance appraisal (and consequently denying her a raise and bonus) because she had engaged in protected concerted activity by raising safety concerns about the employer's plan to require employees to drive 135 miles through desolate, sparsely populated country to cover the employer's Van Horn, Texas office—a plan the employer ultimately abandoned. The employer claimed that the negative performance appraisal was motivated not by Fanely's protected concerted activity but by her failure to meet performance expectations, negative attitude, and insubordination. The judge found those reasons pretextual, citing the employer's failure to investigate complaints regarding Fanely's alleged misconduct and its reliance on conduct for which it had previously failed to discipline Fanely, on alleged poor attitude directly contradicted by a favorable appraisal, and, importantly, on Fanely's refusal to drive to the Van Horn facility (the subject of her protected concerted activity). Id. at 443-444. In adopting the judge's violation finding, the Board stated that it relied "only on the judge's finding that the [employer's] reasons for its actions were pretextual, raising an inference of discriminatory motive and negating the [employer's] rebuttal argument that it would have taken the same action in the absence of Fanely's protected activities." Id. at 428 fn. 3.

Although the Board in *Whitesville Mill* and *El Paso Electric* found unlawful motive based on the pretextual nature of the employers' justifications, those cases do not compel or support a similar conclusion here. Unlike in those cases, where the surrounding circumstances supported an inference that the discriminatees' protected activities motivated the adverse employment actions, here the surrounding circumstances not only do not support such an inference, they undermine it. Again, Mason's organizing activities were long since past the Respondent's good-faith bargaining undercuts any finding of animus towards those activities, and Mason's service on the Union's negotiating committee did not set her apart in any meaningful way from other employee-members of the committee, who have not been alleged to have suffered any discrimination. Moreover, whereas Fanely was not insubordinate and did not perform poorly or have a poor attitude, and whereas the employer in *Whitesville Mill* actually fabricated evidence to support its discharge of Hurt, Mason was in fact insubordinate when she failed to comply with a supervisor's directive to deliver microwaves to assembly line 2. While Mason was discharged where other employees were suspended or warned for their insubordination, the General Counsel has not persuaded us, on this record, that the difference in treatment was attributable to animus toward Mason's union activities.[19]

For all of the foregoing reasons, we find that the General Counsel has failed to establish by a preponderance of the evidence that the Respondent was unlawfully motivated in discharging Mason. Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

[19] Contrary to the dissent, there is no inconsistency between the pretext finding we have adopted and our finding that Mason was in fact insubordinate. The General Counsel never established, and the judge never found, that Mason was not insubordinate, and the evidence clearly shows that she was. Mason was told by a supervisor to do something within the scope of her duties, and she did not do it. The evidence shows that other insubordinate employees were also disciplined, although not discharged, as Mason was.

Dated, Washington, D.C. August 2, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting in part.

The Supreme Court has observed that "if the employer fires an employee for having engaged in union activities and has no other basis for the discharge, or if the reasons that he proffers are pretextual, the employer commits an unfair labor practice." *NLRB v. Transportation Management*, 462 U.S. 393 (1983). The majority takes this key principle—reflected consistently in the Board's prior decisions—and calls it into question. Despite the majority's agreement with the judge that the Respondent's proffered reason for the discharge of J'Vada Mason—insubordination—was pretextual, it nonetheless concludes that the Respondent's action was not motivated by antiunion animus. Compounding this error, the majority inexplicably disregards obvious additional evidence of animus, namely the Respondent's repeated demands that Mason "shut up" after she attempted to respond to antiunion rhetoric during a captive audience meeting. Contrary to the majority, the Board should affirm the judge's well supported finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Mason based on her union activity.[1]

I.

The facts are straightforward. The Respondent, an oven manufacturer, hired Mason in April 2013. She was an active union supporter—she distributed authorization cards, handed out flyers, and wore a prounion shirt—and one of six employees who served on the Union's bargaining committee. Approximately 1 week before the union election in late-September 2016, Mason attempted to respond to a manager's statements during a captive-audience meeting regarding a strike at another employer's nearby facility. The Respondent did not allow her to speak; instead, both the plant manager and another manager told her to "shut up" and that said she did not know what she was talking about.

On April 28, 2017, Materials Department Supervisor John "Chris" Fair asked Mason to personally deliver microwaves to assembly line 2, but Mason failed to do so. Fair subsequently complained to Human Resources Partner Diana Jarrett about Mason's alleged insubordination. Following an investigation, Jarrett recommended that Mason be terminated, and the Respondent discharged Mason on May 5. Notably, this was Mason's first instance of insubordination; the judge who reviewed evidence of seven previous disciplinary actions against the Respondent's employees, found that the Respondent failed to adduce any evidence that it had ever discharged an employee based on a single instance of insubordination. In fact, in every other record example of insubordination, the Respondent had meted out punishment short of discharge, e.g., counseling, a warning, or a suspension.

Applying *Wright Line*,[2] the judge found that the Respondent had knowledge of Mason's union activity and found animus based on the Respondent's hostile statements to Mason during the meeting, as well as the Respondent's "inability to explain why she was terminated and other employees guilty of insubordination were not." In so finding, he noted the "blatant disparity" between Mason's treatment and the treatment of other insubordinate employees, for which the Respondent "fail[ed] to give any credible explanation." Accordingly, the judge found the Respondent's given reason for the discharge – insubordination—to be pretextual; he thus inferred a discriminatory motive, concluded that the "Respondent seized upon Mason's misconduct to retaliate against her because of her union activity," and consequently found her discharge unlawful.

II.

Under longstanding Board precedent, the judge's finding that the Respondent's sole stated reason for Mason's discharge was pretextual—a finding adopted by the majority—would logically preclude any conclusion that the Respondent acted lawfully in discharging Mason. Under *Wright Line*, the General Counsel must show that the discharged employees' protected conduct was a "motivating factor" in the employer's decision. 251 NLRB at 1089. As part of his initial showing, the General Counsel may offer proof that the employer's reasons for the personnel decision were pretextual. *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003). "When the employer presents a

[1] For the reasons stated by the judge, I agree that the Respondent did not violate the Act by discharging Mason in retaliation for other protected concerted activity, e.g., complaining about a pay disparity and other workplace protests, for which the judge found the evidence to be insufficiently developed.

[2] 251 NLRB 1083 (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).

legitimate basis for its actions which the factfinder concludes is pretextual . . . the factfinder may not only properly infer that there is some other motive, but that the motive is one that the employer desires to conceal—an unlawful motive." *Laro Maintenance Corp. v. NLRB*, 56 F.3d 224, 229 (D.C. Cir. 1995). Significantly, a finding of pretext also "defeats any attempt by the Respondent to show that it would have discharged the discriminatees absent their union activities." *Rood Trucking Co.*, 342 NLRB 895 (2004). Accordingly, the Respondent's reliance on a pretextual reason—coupled with its failure to present any credible reason at all for Mason's treatment—both "rais[es] an inference of discriminatory motive" and precludes any lawful rebuttal by the Respondent that it would have taken the same action in the absence of Mason's protected activities. *El Paso Electric Co.*, 355 NLRB 428 fn. 3 (2010).

The majority, bucking decades of precedent, finds otherwise.[3] First, the majority holds that a finding of pretext is insufficient to support a finding that Mason's firing was unlawfully motivated. But the Board, as a matter of course, has routinely inferred the existence of discriminatory motive in cases like this one. Indeed, this has been true even where an employer's reliance on pretext is the *only* evidence of animus present. See, e.g., *Whitesville Mill Service Co.*, 307 NLRB 937, 937 (1992). Of course, the case for finding unlawful motivation is even more compelling here where—in addition to the pretext evidence—the Respondent's representatives, including the plant manager, repeatedly directed Mason to "shut up" when she tried to refute their antiunion rhetoric. See *Relco Locomotives*, *Inc.*, 358 NLRB 229 (2012), enfd. 734 F.3d 764 (8th. Cir. 2013) (finding animus where employer's asserted reasons for discharges were pretextual, and where employer told discriminatee to "shut up and sit down" during captive-audience meeting). In any event, I am unaware of a single decision where the Board has made a finding of pretext but then determined that the General Counsel did not establish animus or, for that matter, declined to find a violation of the Act. Certainly, the majority does not cite any such decision here.[4]

Instead of reaching what should be the inevitable conclusion here, the majority strays into speculation. Despite finding the Respondent's sole rationale for Mason's discharge to be pretextual, it suggests that "the real reason [for Mason's discharge] might be animus against union or protected activities, but then again it might not." But under the governing *Wright Line* framework, there is no proper occasion to speculate: a finding of pretext means that the Respondent has "fail[ed] by definition to show that it would have taken the same action for those reasons, absent the protected conduct." *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003) (citing *Limestone Apparel Corp.*, 255 NLRB 722 (1981)). The majority then speculates that "the true reason might be a characteristic protected under another statute . . . . or it could be some other factor

[3] Contrary to the majority's characterization, I cite to *NLRB v. Transportation Management*, above, for the general principle that, pursuant to *Wright Line*, an employer commits an unfair labor practice where it fires an employee for having engaged in union activities and has no other basis for the discharge, or, as here, if the reasons that it proffers are pretextual.

[4] The majority cites various decisions for the proposition that, a finding of pretext, standing alone, does not support a conclusion that an action was improperly motivated. But in *Shattuck Den Mining Corp. v. NLRB*, 362 F.2d 466 (1966), *Union-Tribune Pub. Co. v. NLRB*, 1 F.3d 486 (7th Cir. 1993), and *American Crane Corp. v. NLRB*, 203 F.3d 819 (4th Cir. 2000), the courts affirmed the Board's findings of pretext, animus, and ultimately the violations. See also *Active Transportation*, 296 NLRB 431, 432 (1989), enfd. 924 F.2d 1057 (6th Cir. 1991) (finding that the General Counsel met his initial burden under *Wright Line* where "most significantly the pretextual reasons advanced for the discharges [were] indicative of illegal motivation.").

In *Valmont Industries, Inc. v. NLRB*, 244 F.3d 454, 466 (5th Cir. 2001), cited by the majority, the court rejected the Board's underlying finding of pretext based on the Board's inconsistent treatment of the relevant evidence. And in *College of the Holy Cross*, 297 NLRB 315, 320 (1989), the Board also declined to find pretext at all, stating that "[t]he reasons proffered by [employer] to explain its conduct under scrutiny in this case have not been shown to be false." Accordingly, the majority is unable to produce a single Board or court decision where there was a finding of pretext, but no violation.

The majority further states that its "conclusion that pretext does not compel a finding that Mason's discharge violated the Act is consistent with the Supreme Court's holding that a pretext finding does not compel judgment for the plaintiff in Title VII cases." But *Reeves v. Sanderson Plumbing Products*, *Inc*., 530 U.S. 133 (2000)—an age discrimination case that the majority relies on—cuts against the majority's position here, even granting the differences between the *Wright Line* framework and the framework used in antidiscrimination law.

In *Reeves*, the Supreme Court expressly overruled the lower court's holding that a prima facie case of discrimination combined with "sufficient evidence . . . to disbelieve the defendant's legitimate, nondiscriminatory reason for its decision" was insufficient, without more, to sustain a finding of discrimination. Id. at 146. Accordingly, the Court concluded that the lower court erred in "proceeding from the premise that a plaintiff must always introduce additional, independent evidence of discrimination" after a prima facie case and a finding of pretext have already been established. Id. at 149. The Court's general observations apply with some force here:

> In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt." Moreover, *once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision.*

Id. at 147–148 (citations omitted; emphasis added).

This is certainly not a case, meanwhile, where evidence in the record has "revealed some other, nondiscriminatory reason for the employer's decision." Id. at 148. No such reason has been offered by the employer or independently established by the record evidence.

unprotected by the Act or any other law." But the Respondent has had its chance to articulate, and to establish, why it discharged Mason. Once the Respondent decided to present only a false reason for its action, it forfeited its chance to establish that it acted for a lawful reason under the Act. If the Respondent actually had discharged Mason for a reason unrelated to her union activity (even if that reason could potentially be unlawful under some other statute), it was required to present that reason to the Board to avoid liability under the Act. Here, the majority concedes the Respondent's dishonesty, but essentially attempts to meet the Respondent's rebuttal burden for it by spinning out a list of purely hypothetical reasons for its action lacking any support in the record and contrary to the Respondent's own proffered explanation. This approach not only turns the Board's longstanding methodology on its head; it evinces a fundamental misinterpretation of the import of pretext within the *Wright Line* framework.[5]

Puzzlingly, the majority later states, in support of its holding, that "Mason was in fact insubordinate when she failed to comply with a supervisor's directive to deliver microwaves" and that "Mason was discharged where other employees were suspended or warned for their insubordination." But the majority cannot have it both ways: by adopting the judge's finding of pretext, the majority necessarily concedes that insubordination was *not* the actual reason for Mason's discharge, and that the Respondent was precluded from presenting a lawful rebuttal. In its tortured logic for dismissing the allegation, the majority's treatment of pretext is internally inconsistent, and leads to an arbitrary result that cannot stand under our well-established *Wright Line* precedent.

III.

The result here is bad enough: finding no violation in a routine case where the Respondent discharged a known union supporter—who was told to "shut up" when she tried to respond to the Respondent's antiunion arguments—and then lied about its reason for doing so. The worker who was unlawfully fired in this case deserves better from the Board. But the broader ramifications of today's decision are even more troubling. Specifically, this decision calls into question the Board's longstanding tenets regarding pretext and marks the first time in history the Board has declined to find a violation of the Act when there is clear reason to infer an antiunion motive and *no* evidence—other than hypotheses spun by the majority itself—of *any* other lawful motive. The puzzling outcome here seems to open the door for employers to lie to the Board and get away with it. I hope that this case is an aberration and not a sign that the majority intends to fundamentally alter the role of pretext in the *Wright Line* framework. But because I cannot condone either the outcome in this case, or the majority's unexplained abandonment of Board precedent, I dissent.

Dated, Washington, D.C. August 2, 2019

Lauren McFerran, Member

NATIONAL LABOR RELATIONS BOARD

Linda M. Mohns, Esq., for the General Counsel.
Reyburn W. Lominack, III and *Stephen C. Mitchell, Esqs. (Fisher* and *Phillips LLP)*, of Columbia, South Carolina, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Memphis, Tennessee on May 7–9, 2018. J'Vada Mason filed the initial charge in this case on September 14, 2017. The General Counsel issued the complaint on December 20, 2017.

Respondent, Electrolux Home Products, discharged the Charging Party, J'Vada Mason on May 5, 2017. The General Counsel alleges that in doing so Respondent was motivated at least in part by Mason's union and other protected activities. Thus, he alleges that Respondent violated Section 8(a)(3) and (1) of the Act.

On the entire record, 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, a corporation, manufactures ovens at its facility in Memphis, Tennessee, where it annually sells and ships, and purchases and receives goods valued in excess of $50,000 directly to and from points outside of Tennessee. 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 and that Local 474 of the International Brotherhood of Electrical Workers (IBEW), which represented J'vada Mason during her employment with Respondent is a labor organization within the

[5] The majority also cites, as evidence of the Respondent's lack of animus, its willingness to bargain with the Union and the fact that it did not take any discriminatory action against the other employees on the bargaining committee. As discussed by the judge however, an employer's failure to take action against all or some other union supporters does not disprove discriminatory motive, otherwise established, for its adverse action against a particular supporter. See, e.g., *Master Security Services*, 270 NLRB 543, 552 (1984). The majority, asserting otherwise, cites support from a decision in the refusal-to-hire context, which is not directly on point to the case here.

meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent opened the facility in question in Memphis in 2013. It now employs over 700 bargaining unit workers at this facility where it produces gas and electric ovens. Respondent hired J'Vada Mason in April 2013 and within 2 months promoted her to the position of team lead in the materials department. At all times relevant to this case, Mason was the materials team lead for assembly line 2. The materials department's function is to keep the assembly lines stocked with materials needed for production. During the 5 years Mason worked for Respondent she received one performance evaluation. That occurred in 2014 and was positive. She had been disciplined twice; once in 2013 for improperly clocking in, for which she was suspended for 3 days, and once for failing to properly scan an item taken from inventory in December 2016, for which she was verbally counseled a month later.[1]

The IBEW attempted to organize the facility in 2015, but lost a representation election. It had another organizing drive in 2016. This one was successful. On October 5, 2016, the Union was certified as the exclusive bargaining representative of all regular full-time production, maintenance, quality, shipping and receiving, and materials handling employees at Respondent's main plant and a warehouse in Memphis. On October 20, 2016, Respondent and the Union reached an interim agreement regarding employee discipline as follows:

> For terminations, suspensions without pay and disciplinary demotion, the company will send relevant paperwork to the Union by email and wait 3 business days to allow bargaining if requested. The action will be taken after 3 days but bargaining can continue if necessary. Terminations involving workplace violence, weapons, drugs and other serious violations can result in immediate suspension while the 3 day period runs.

R. Exh. 6.

J'Vada Mason distributed authorization cards, handed out union flyers and wore a prounion T-shirt during both organizing campaigns. At a mandatory meeting approximately 1 week prior to the second election, Mason sat in the front row and attempted to respond to statements by plant manager Sebastian Gulka. She was not allowed to do so but stood up and challenged Gulka's statements regarding strikes at Kellogg's Memphis plant. Mason has family members who worked at Kellogg's. Both Gulka and a manager named Matt told Mason to shut up because she didn't know what she was talking about.[2]

On January 13, 2017, the Union identified six unit employees, including Mason, who would serve on its negotiating team in collective-bargaining negotiations. Mason attended the negotiations which commenced in January. The parties met 1 week per month; 3 days per week. At a session in March or April 2017 the Union and Respondent participated in a sidebar discussion concerning a complaint Mason had about her supervisor, John "Chris" Fair.

Respondent hired Fair in October 2016 and it appears that friction between Mason and Fair started almost from the beginning of his employment. On or about February 25, 2017, an assembly team lead for line 2 posted a bathroom signup sheet on her cubicle. Respondent's managers quickly ordered that the team lead take the sign-up sheet down. Mason and Fair had a discussion about this event. According to Mason, Fair told her something to the effect that if anything like that happened again he would lie and implicate Mason to avoid being disciplined himself. Fair's version is as follows:

> And I told J'Vada, I said if you make that decision, you're going to eat that one, because I ain't—I'm not—you know, John [Collins] is a different kind of guy than me and I'm not going to take up for you on that. You're going to get that one. You're going to be on your own, because there's some things you cannot do. And that's one of them.

Tr. 336.[3]

Mason went to the human resources department and complained that Fair told her that he would "lie on her" to save his job.

The events of April 28, 2017

Mason's shift began at 6 a.m. On the morning of Friday, April 28, 2017, the two forklift drivers assigned to assembly line 2 on her shift were off work taking FMLA leave. Fair, who was the supervisor for the materials department for all seven or eight production lines,[4] approached Mason, who was materials team lead responsible to assembly line 2.

Fair asked Mason to take some microwaves to assembly line 2.[5] She did not do so.[6] Sometime later, Fair approached Mason

[1] Respondent argues at pp. 45–46 of its brief that the fact that it did not fire Mason in January shows that her discharge had nothing to do with her union activity. However, R. Exh. 5 shows that Respondent would have had to terminate 10 other employees for the same offense to prove that Mason was not being terminated disparately. Her offense, which occurred in December 2016, would have been very difficult to justify as a legitimate nondiscriminatory basis for a discharge.

[2] Mason's testimony about what occurred at this meeting is uncontradicted and therefore credited. Both briefs state that Gulka was no longer the plant manager in May 2018 when this trial occurred. There is no evidence as to that fact in the record. Respondent did not call Gulka as a witness or explain why it could not call him.

[3] John Collins was the supervisor for assembly line employees on line 2. It was one of his team leads that posted the bathroom log. I do not need to resolve the disparate testimony about this event because it is irrelevant to the disposition of this case. Fair left Respondent to take a job with a different employer in October 2017. Respondent subpoenaed Fair to testify in this proceeding.

[4] Lines 1–4 assemble electric ovens; the others assemble gas ovens. Line 1assembles single-wall ovens; line 2 assembles double-wall ovens.

[5] Fair's testimony is unclear as to whether he asked Mason to deliver anything other than microwaves to line 2. I find that is all he asked her to do. His statement and that of John Collins indicated that his requests/orders to Mason only involved the microwaves for line 2.

[6] Fair testified that if Mason couldn't deliver the microwaves herself, she should have asked someone else to do so. There is no other evidence he told Mason that. I find that Fair was insisting that Mason personally deliver the microwaves. There is a lot of conflicting testimony regarding the details of what transpired on April 28. I do not fully credit Mason's testimony because it is self serving. I do not fully credit Fair's because it is very confusing and at times inconsistent. For example, Fair's testimony at Tr. 354 and his April 28, 2017 statement suggest that Fair asked

at her workstation with the assembly line supervisor for line 1, Hamza Huqq.[7] Huqq told Mason that his line needed materials. However, Mason was not responsible for delivering materials to line 1 and Fair did not tell her to deliver materials to line 1. At about 10 a.m. production on the assembly line 2 and possibly 1 stopped for reasons unrelated to the delivery of microwave ovens to line 2 or anything that Mason did or did not do.

Fair complained to Human Resources Business Partner Diana Jarrett about Mason. Jarrett conducted a meeting regarding this complaint later that day. Jarrett had Fair submit a written statement about the events of that morning. He also obtained statements for Jarrett from Hamza Huqq, Candace Cox, an acting team lead on line 2, and John Collins, the assembly supervisor for line 2.[8] At the meeting Jarrett suggested that Mason submit a written statement. Stanley Reese, the Union's chief steward, who was in attendance, advised Mason not to do so. Neither Jarrett, nor any other company official said anything to Mason as to the consequences of her conduct. Jarrett did, however, prepare a termination recommendation presumably on April 28, GC Exh. 5. That document was never presented to Mason either before or after her termination on May 5.

April 28—May 5, 2017

At the end of the meeting Mason returned to work and continued to work without incident until Friday, May 5. On or about May 1, Jonathan Pearson, Respondent's lead negotiator in the collective bargaining negotiations, emailed Paul Shaffer, IBEW Local 474's business manager.[9] In the email, Pearson informed Shaffer that Mason was being investigated for insubordination. Attached to Pearson's email were the statements given to Jarrett and the proposed discipline (Tr. 25–26).[10] On May 3, Shaffer spoke with Pearson over the telephone. Pearson informed Shaffer that he did not have a statement from Mason. Afterwards, Shaffer called Mason.

Shaffer told Mason that Respondent was talking about terminating her for insubordination and the she should submit a statement to Respondent. Mason submitted her statement to Diana Jarrett on the morning of Thursday, May 4 (GC Exh. 6).

Mason went to the human resources office to change a leave request for May 5 from a full day to a half day at about 10:55 a.m., almost 3 hours after she reported to work, R. Exh. 3. Leola Roberts, Respondent's human resources director at the time,[11] summoned Mason into a meeting that lasted less than 10 minutes and informed her that Respondent was terminating her for insubordination.[12]Mason's separation notice was prepared on May 5 and was signed by Roberts that day (GC Exh. 70. Roberts testified she conducted the termination meeting only because Jarrett was not at the facility on May 5. Roberts appears to have learned that Respondent was terminating Mason on May 5. If she or Jarrett knew that for certain before May 5, it is unlikely that Mason would have been allowed to work that day.

The evidence as to the procedure by which Respondent decided to terminate Mason is as follows: Jarrett testified that she did an investigation, met with Roberts and recommended that Mason be terminated because Mason disrupted its operations. I do not credit her testimony. There is no credible evidence that Mason's insubordination disrupted Respondent's operations in any material way. Moreover, Jarrett's testimony with regard to her conversation with Roberts is particularly incredible. Jarrett testified:

> So I had the discussion with Leola, and she always asks for my feedback. And I, you know, told her, you know, even after talking with J'Vada—I asked J'Vada to tell me what happened. I said, why couldn't you just, you know, get someone on your team to fulfill the—you know, Line 1, like Ham said, Line 1 is the key. If Line 1 and 2 don't run, that makes the money of the building. It doesn't matter if the other lines are slow. So we have an obligation.
>
> She said, well, Chris could have done it. You know, he tells somebody else to tell me, you know, to get somebody to do it. I said, that's your responsibility as a team lead; we direct. You know, you're part of the leadership. So that's what we do, we lead.

Tr. 450.

I find this testimony does not accurately reflect any conversation Jarrett had with Mason or Roberts. Mason was not responsible for supplying line 1 and Fair never asked her to supply line 1. Fair never told Jarrett that Mason was insubordinate with regard to line 1, which was the responsibility of team lead James Allen; not Mason.

Jarrett did not credibly explain in this proceeding or elsewhere why Mason's misconduct warranted termination while the insubordination of other employees, set forth below, did not. Jarrett testified that she submitted her recommendation to Jonathan Pearson. Jarrett then testified that it, "was processed" (Tr. 452).

Leola Roberts testified that Jarrett's report was vetted by

Mason to deliver microwaves to line 2 after he knew that they were being delivered by another employee. Thus, my factual finding as to what occurred on April 28 is limited to the following: Fair asked Mason to deliver microwaves to line 2 on at least one occasion and she did not do it.

[7] It is unclear what Huqq, who testified in this proceeding, has to do with this case. He spoke to Mason in a very agitated fashion because he was missing some parts he needed on line 1. It is unclear whether this had anything to do with Fair's request that Mason deliver microwaves to line 2. Fair's statement in GC 11, indicates that Fair only asked Mason to deliver to line 2. Huqq did not know who was the materials' team lead for line 1 and was unfamiliar with James Allen who held that position.

[8] Fair and Huqq testified in this proceeding; Collins and Cox did not. Huqq's testimony is inconsistent with that of Fair. It was also obvious that he remembered very little of what occurred on April 28. I regard his testimony to have absolutely no probative value regarding any issues in this case. However, I would note that Huqq did not remember production on assembly line 1 stopping on April 28, Tr. 422.

[9] Pearson is a partner in the Fisher & Phillips law firm which represented Respondent in this proceeding. Fisher & Phillips did not represent Respondent during the two election campaigns. Another law firm represented Respondent in settling other unfair labor practice charges in 2017, GC Exh. 3.

[10] It is not clear in what form the proposed discipline was presented to Shaffer. It could have been GC Exh. 5, but there is no testimony that this was the case.

[11] Jarrett now has Roberts' job. In April and May 2017, she reported to Roberts.

[12] Roberts conducted the meeting on May 5 because Jarrett was not at the facility.

David Smith, Respondent's vice president of human resources and Tim O'Rourke, an Electrolux in-house attorney.[13] Smith had been the interim human resources director at this Memphis facility, apparently from sometime before August 2016 up until or prior to February 2017 when Roberts was hired (GC Exh. 10, Tr. 435). Any input from Smith regarding Mason's termination did not constitute legal advice.[14] There is no evidence regarding the review of Jarrett's recommendation or any deliberations regarding her recommendations by Pearson, Smith, O'Rourke or anyone else. There is no evidence as to whether any of the "vetting" occurred before Jarrett recommended termination. There is no evidence as to whether Jarrett communicated with Pearson, O'Rourke or Smith after her meeting with Mason on April 28—other than to submit the statements she received from Fair.

Leola Roberts, then Respondent's human resources director, testified that Diane Jarrett discussed the findings of her investigation with Roberts. Jarrett testified this occurred late in the day on April 28. It is unclear as to who made the final decision to terminate Mason and on what basis, Tr. 494. It appears from Paul Shaffer's uncontradicted testimony that a final decision to terminate Mason was not made until May 1 at the earliest and possibly as late as May 5.

Jarrett's testimony that Mason terminated because she disrupted Respondent's operation is not credible. First of all, the testimony of Mason and Chris Fair establish that the assembly lines stopped running on April 28 for reasons unrelated to Mason's failure to bring microwaves to line 2, Tr. 197, 354–355. None of the affidavits made or collected by Fair on April 28 indicate that Mason's misconduct had any impact of production (GC Exh. 11). Secondly, the fact that Respondent waited a week after the insubordination to terminate Mason is an indication that Respondent did not consider her misconduct to be particularly serious. This is also an indication that Respondent did not distinguish Mason's case from other employees guilty of similar misconduct on the grounds that she was a team leader. Respondent's interim agreement with the Union, Respondent Exhibit 6 allowed the company to immediately suspend Mason for a serious violation other than one involving violence, weapons or drugs.

At the time of Mason's termination, Respondent's rules on conduct and disciplinary action were contained in its employee handbook (Exh. GC—12 at pp. 49–52). Respondent has a progressive discipline policy. Generally, an employee is not terminated until they commit a fourth policy violation following a documented verbal counseling, a written warning, a suspension without pay plus a final written warning.[15] The handbook lists a number of types of misconduct that "may result in disciplinary action, up to and including termination of employment." Among these is insubordination (i.e., refusing to follow legitimate instructions of a superior directly related to performance of one's job). There is no evidence that Respondent terminated Mason as a result of its progressive discipline policy.

The record shows that Respondent has disciplined a number of employees for insubordination without terminating them.[16] Respondent appears to contend that it is improper to rely on the disciplinary records it produced pursuant to the General Counsel's subpoena because they were not authenticated by a witness, R. Brief at 44. However, Respondent did not introduce any evidence questioning the authenticity of these documents—despite my repeated offer to consider any such evidence. I find that General Counsel Exhibits 13–19 are authentic pursuant to Federal Rule of Evidence 901 and are admissible and probative, *Alexander's Restaurant & Lounge,* 228 NLRB 165, 168 fn. 6 (1977); enfd. 586 F.2d 1300 (9th Cir. 1978). Indeed, Respondent in producing these documents in response to the General Counsel's subpoena implicitly authenticated them, *United States v. Brown,* 688 F.2d 1112, 1116 (7th Cir. 1982).

Rule 901 states that authentication as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims. By way of illustration the rule provides examples of authentication conforming to the requirements of the rule. Relevant to this case are examples (4) distinctive characteristics—in this case disciplinary records on Electrolux letterhead, signed by Electrolux managers and (9) Evidence of an Electrolux process or system. With regard to example (4) I would note that Respondent's Exhibit 2, a disciplinary form introduced by Respondent, looks very much like General Counsel Exhibits 14–19.

The evidence that Mason was treated disparately is as follows:

General Counsel Exhibit 13: An employee, who previously had been repeatedly insubordinate, was verbally counseled for another instance of insubordination on January 12, 2015. He was then suspended for 5 days for leaving a mandatory meeting without permission on February 19, 2016. On February 25, 2016, after several additional instances of insubordination, Respondent terminated the employee.[17]

General Counsel Exhibit 14: An employee was given a 5-day suspension on May 1, 2018, for being unwilling to perform tasks assigned by her supervisor. Although characterized as "inappropriate behavior," the misconduct is clearly insubordination as well.

General Counsel Exhibit 15: An employee was disciplined short of termination or suspension on September 21, 2015, for insubordination and job abandonment.

[13] O'Rourke is deceased. His name is incorrectly rendered as O'Rourk in the transcript.

[14] It is also not clear the vetting by Pearson and/or O'Rouke constituted legal advice.

[15] On its face, the handbook appears to call for termination regardless of how long in the past prior violations occurred.

[16] The evidence that Respondent has not taken disciplinary action against other employee-members of the union negotiating committee is irrelevant to the issue of whether it discriminated against Mason. It is well established that an employer's failure to take action against all or some other union supporters does not disprove discriminatory motive, otherwise established, for its adverse action against a particular union supporter, *Master Security Services,* 270 NLRB 543, 552 (1984); *Volair Contractors, Inc*., 341 NLRB 673, 676 fn. 17 (2004); *NLRB v. W.C. Nabors Co.*, 196 F.2d 272 (5th Cir. 1952); cert. denied 344 U.S.865 (1952), *CNN America, Inc.,*361 NLRB 439, 500 (2014); 362 NLRB 293 (2015) , affd. in relevant part *NLRB v. CNN America,* 865 F.3d 740 (D.C. Cir. 2017).

[17] This employee received lost wages for his 1-week suspension pursuant to a settlement agreement, GC Exh. 3. He apparently was not reinstated.

General Counsel Exhibit 16: An employee was given a written warning on September 8, 2016, for texting on her cellphone while riding a piece of equipment. She continued to do so after being told by a supervisor that she could not text and drive equipment. On November 7, 2016, she received a 5-day suspension for failing to follow instructions on closing all work orders that she delivered to the assembly line. Respondent fired this employee on December 12, 2016, for refusing to cooperate with an external auditor. The auditor was reviewing discrepancies caused by the employee's failure to follow proper inventory scanning procedures on November 19.

General Counsel Exhibit 17: An employee was given a written warning on July 8, 2014, for ignoring his supervisor's instructions as to when to go to lunch on several occasions. The same employee received a 5-day suspension on November 9, 2016, for insubordination. This employee refused to set equipment when asked to do so by his supervisor.

General Counsel Exhibit 18: On January 12, 2017, an employee received a verbal counseling for insubordination. The employee refused to run her press because she believed she was entitled to a rest break. 15 minutes of production time was lost as a result.

General Counsel Exhibit 19: On July 11, 2016, an employee was given a 5-day suspension for insubordination, i.e., refusing his supervisor's request to relieve a press operator during a 5-minute break. This employee had received a written warning for poor job performance a month or 2 earlier.

Respondent argues at page 45 of its brief that even if admissible these documents do not permit an inference of disparate treatment. First of all, Respondent argues that these documents do not indicate whether or not the employees disciplined less severely were engaged in union or other protected activity similar to that of Mason. In fact, these records, in the absence of evidence to the contrary, do show that at least some of these employees did not engage in union activity similar to that of Mason. Less severe discipline with regard to the employees in General Counsel Exhibits 13, 15, 16, 17, 19 was imposed prior to the certification of the Union on October 5, 2016. Some of this less severe discipline was also imposed prior to the filing of the Union's second representation petition in the summer of 2016 and some even prior to the first representation election in May 2015. In no instance has Respondent established that it terminated an employee, who was not a union activist, for a first instance of insubordination.[18]

Analysis

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel 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.[19] 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).

If a respondent's reasons are pretextual—either false of not actually relied on—the respondent fails by definition to meet its burden of showing it would have taken the action for those reasons absent the protected or union activity. See Pro-Spec Painting, Inc., 339 NLRB 946, 949 (2003). Moreover, a showing of pretext also supports the initial showing of animus and discrimination. See Wright Line, supra, 251 NLRB at 1088 fn. 12, citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966).

J'Vada Mason engaged in union activity, most notably her participation in the union's collective bargaining committee. Respondent was aware of Mason's participation on the union committee. The Union identified her to Respondent as a member of the committee by letter in January 2017. Management representatives also saw Mason at bargaining sessions between January and April 2017. Finally, Respondent's management was aware of Mason's attempt to contradict plant manager Gulka at a mandatory employee meeting just prior to the second election.

While there is only a little evidence that Diana Jarrett or Leola Roberts knew of Mason's union activities, Jonathan Pearson, Tim O'Rourke, and David Smith, who participated in the decision to terminate Mason were aware of her presence at collective bargaining negotiations. It is unclear as to who in management, besides plant manager Gulka, was aware of her conduct at the captive audience meeting.

Even assuming, as Respondent contends, that Jarrett and Roberts were the sole decision makers, I conclude that they were aware of Mason's union activities. I so conclude in part due to Respondent's failure to give any credible explanation for the disparate treatment of Mason as compared with other insubordinate employees.

Additionally, in its brief at page 32, Respondent acknowledges that knowledge of Mason's involvement with the negotiating committee can be imputed to Jarrett and Roberts. Moreover, both likely were aware of Mason's union activities through Erika Robey, then Respondent's labor relations manager at the Memphis plant. Robey reported directly to Leola Roberts, Tr. 376.[20]

Robey was on the company collective bargaining team and thus saw Mason at negotiating sessions. She attended the April 28 meeting with Mason, Jarrett, Chris Fair, and others at which she took notes about what had occurred earlier that day regarding Mason's insubordination. Robey also took notes at the May 5

[18] The fact that Mason was a team lead is irrelevant to the issue of disparate treatment. Respondent has not articulated this as a basis for treating Mason more harshly than other employees.

[19] *Flowers Baking Co.,* 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).

[20] Robey's name is incorrectly transcribed as Ruddy at Tr. 376–377.

meeting at which Leola Roberts terminated Mason.[21] Testimony at transcript pages 24, 453 and 465 establish that Robey and Jarrett had a discussion prior to April 28 about complaints that Mason had raised at a negotiation session.[22] It defies credulity to believe that Robey, the plant labor relations manager, who was familiar with the events of April 28, played no role in the deliberations leading to Mason's termination.

Evidence of Animus and Causation

Mason's uncontradicted testimony establishes that Respondent harbored animus to at least some of her union activities, e.g., challenging management statements at a mandatory meeting just before the second election. Additionally, I infer animus from Respondent's inability to explain why she was terminated and other employees guilty of insubordination were not.

The National Labor Relations Board may infer discriminatory motive from the record as a whole and under certain circumstances, indeed not uncommonly, infers discrimination in the absence of direct evidence. When the Respondent's stated reasons for its actions are found to be false (i.e., "pretextual reasons"), discriminatory motive may be inferred. In turn, "pretext" is sometimes, if not often, inferred from a blatant disparity in the manner in which an alleged discriminatee is treated as compared with similarly situated employees with no known union sympathies or activities (i.e., disparate treatment), *Pontiac Care & Rehabilitation Center,* 344 NLRB 761, 767 (2005); *New Otani Hotel & Garden,* 325 NLRB 928 fn. 2 (1998); *Fluor Daniel, Inc.,* 304 NLRB 970, 970–971 (1991); *Sears Roebuck & Co.,* 337 NLRB 443, 443–445 (2002); *Citizens Investment Services Corp.,* 342 NLRB 316, 330 (2004).

Given Respondent's failure to offer any explanation for the disparate treatment of Mason, I find that the reason for her discharge, i.e., insubordination on April 28, 2017, is pretextual. When the reason given for discipline or discharge is found to be pretextual, the causal relationship between the employee's protected activity and discipline or discharge may be inferred, *La Gloria Gas & Oil,* 337 NLRB 1120 (2002), affd. 71 Fed.Appx. 441 (5th Cir. 2003). I infer discriminatory motive in this case. I conclude that Respondent seized upon Mason's misconduct to retaliate against her because of her union activity, *Golden State Foods Corp.,* 340 NLRB 382, 384–386 (2003).

The General Counsel also alleges that Respondent discharged Mason in retaliation for protected concerted activity apart from her union activity. However, I find that Respondent did not violate the Act in terminating Mason due to alleged other protected activity (e.g., complaining about a pay disparity; protesting the posting of a bathroom sign-out log; protesting favoritism on the part of Larry McClendon, who was Chris Fair's supervisor; or complaining about Fair). Assuming that alleged protected conducted was protected and concerted, the record is insufficient to establish that Respondent bore animus towards Mason as a result of that conduct or that it was related in any way to her termination.

[21] Robey left Respondent's employment in June 2017 and was not called as a witness by either party.

[22] Respondent did not produce Robey's April 28, 2017 notes in response to the General Counsel's subpoena because it could not locate them, GC Exh. 21.

CONCLUSION OF LAW

1. Respondent violated Section 8(a)(3) and (1) in discharging J'Vada Mason on May 5, 2017.

2. The Respondent, having discriminatorily discharged J'Vada Mason, must offer her reinstatement and make her 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).

3. Respondent must also compensate J'Vada Mason for her search-for-work and interim employment expenses regardless of whether those expenses exceed her 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), *King Soopers, Inc.,* 364 NLRB No. 93 (2016), enforced in pertinent part 859 F. 3d 23 (D.C. Cir. 2017).

4. Respondent shall file a report with the Regional Director within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, allocating J'Vada Mason's backpay to the appropriate calendar year(s), *AdvoServ of New Jersey, Inc.,* 363 NLRB No. 143 (2016). 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, *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB 101, 102 (2014).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, Electrolux Home Products, Inc. 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 Local 474 or any other union.

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

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

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

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

[23] 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.

(c) Compensate J'Vada Mason for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating J'Vada Mason's backpay to the appropriate calendar year(s).

(d) 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 J'Vada Mason in writing that this has been done and that the discharge will not be used against her in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the

(f) 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.

(g) Within 14 days after service by the Region, post at its Memphis, Tennessee facilities copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 15, 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 May 5, 2017.

(h) 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. July 2, 2018

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 Local 474 (IBEW) or any other union.

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 J'Vada Mason full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make J'Vada Mason 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 her discharge, plus interest compounded daily.

WE WILL file a report with the NLRB's Regional Director, within 21 days of the date on which backpay if fixed, allocating J'Vada Mason's backpay to the appropriate calendar years.

WE WILL compensate J'Vada Mason 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 J'Vada Mason, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

ELECTROLUX HOME PRODUCTS, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/15-CA-206187 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.

[24] 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."