North Mountain Foothills Apartments, LLC *and* Jasper Press. Case 28–CA–286885

February 21, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS PROUTY AND WILCOX

On May 30, 2023, Administrative Law Judge Andrew S. Gollin 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 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 and to adopt the recommended Order as modified.[2]

We adopt the judge's conclusions that the Respondent violated Section 8(a)(1) of the Act by interrogating employee Jasper Press about discussing his wages and by orally promulgating an overly broad and discriminatory directive prohibiting him from discussing pest control issues with third parties. In so doing, we note that the Respondent did not raise any argument concerning these allegations to the judge. Accordingly, we deem the Respondent's arguments on exceptions to be untimely raised and thus waived. See, e.g., *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989) ("A contention raised for the first time in exceptions to the Board is ordinarily untimely raised and, thus, deemed waived."), enfd. mem. 922 F.2d 832 (3d Cir. 1990). In any event, we note that, even if the Respondent had properly challenged the judge's conclusion that it unlawfully interrogated Press, we would adopt it for the reasons stated by the judge.[3]

Pursuant to Section 102.46(a)(1)(ii) of the Board's Rules and Regulations, we disregard the Respondent's bare exceptions to the judge's conclusions that the Respondent violated Section 8(a)(1) by orally promulgating an overly broad and discriminatory directive prohibiting Press from discussing his wages and housing subsidy with other employees and by threatening Press with unspecified reprisals and loss of housing benefits for engaging in protected concerted activities. See *Starbucks Corp. d/b/a Starbucks Coffee Co.*, 372 NLRB No. 50, slip op. at 2 (2023) (disregarding exception in the absence of supporting argument). In any event, we note that, even if the Respondent had properly excepted to the judge's conclusion that it unlawfully threatened Press, we would adopt it for the reasons stated by the judge.

Finally, in adopting the judge's conclusion that the Respondent violated Sec. 8(a)(1) by discharging Press, we find, for the reasons stated by the judge, that Press engaged in protected concerted activities. We additionally agree with the judge that the Respondent believed that Press engaged in protected concerted activities. In particular, we observe that the Respondent's owner and operations manager, Carrie Matteson, testified that she believed Press' compensation discussions were "being used as a way to rile up the work environment" and that she worried they were affecting employee camaraderie. See *Lou's Transport, Inc.*, 361 NLRB 1446, 1447 (2014) (the operations manager's testimony that he believed an employee's actions were "stirring up the crowd" established that the respondent believed them to be protected concerted activities), enfd. 644 Fed.Appx 690 (6th Cir. 2016); *United States Service Industries*, 314 NLRB 30, 31 (1994) (vice president's statement that the respondent could not tolerate employee "stirring up the other workers" established

[1] The Respondent has implicitly 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] Although the judge's notice included a provision concerning a rescission of the Respondent's unlawful directives, he inadvertently failed to include it in the recommended Order. We shall correct this omission, consistent with the Board's standard remedy for the violation. See, e.g., *Omega Construction Services, LLC*, 365 NLRB No. 72, slip op. at 4 (2017). We shall also modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with our decision in *Paragon Systems, Inc.*, 371 NLRB No. 104 (2022). We shall substitute a new notice to conform to the Order as modified.

[3] Even assuming the issue of the directive were properly before the Board, Member Prouty would find that it was unlawful for the reasons stated by the judge. Regarding the Respondent's argument that the directive was lawful to prevent Press from disparaging the Respondent to its tenants, Member Prouty notes that in *NLRB v. Electrical Workers Local 1229 (Jefferson Standard*), 346 U.S. 464 (1953), the Supreme Court held that employees' circulation of a leaflet disparaging the employer's products, without disclosing any connection to a labor dispute, was unprotected. In this case, however, the Respondent *itself* linked pest control issues to working conditions by stating "But definitely, definitely, pest control discussions with residents? That's a never. Your work conditions are nobody's business but yours except for that now everyone is aware of them." Further, pest control in the Respondent's building was inextricably linked to Press' working conditions as housing in the complex was part of Press' compensation package. Accordingly, Member Prouty would find the Respondent's *Jefferson Standard* argument without merit.

its belief that she engaged in protected concerted activity), enfd. mem. per curiam 80 F.3d 558 (D.C. Cir. 1996).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, North Mountain Foothills Apartments, LLC, Phoenix, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

"(a) Rescind its directives prohibiting employees from discussing their wages and housing subsidy with other employees and from discussing pest control issues with third parties."

2. Substitute the following for paragraph 2(g) (as relettered, 2(h)).

"Post at its Phoenix, Arizona facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the 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 the facility at any time since August 12, 2021."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. February 21, 2024

Lauren McFerran, Chairman

David M. Prouty, Member

Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activities.

WE WILL NOT interrogate you about your protected concerted activities.

WE WILL NOT orally promulgate overly broad and discriminatory directives prohibiting you from discussing your wages and housing subsidy with other employees or prohibiting you from discussing pest control issues with third parties.

[4] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." 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."

WE WILL NOT threaten you with unspecified reprisals or the loss of housing benefits if you engage in protected concerted activities.

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

WE WILL rescind our directives prohibiting you from discussing your wages and housing subsidy with other employees and prohibiting you from discussing pest control issues with third parties.

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

WE WILL make Jasper Press whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, and WE WILL also make him whole for other direct or foreseeable pecuniary harms suffered as a result of the discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Jasper Press for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, a copy of Jasper Press' corresponding W-2 forms reflecting the backpay award.

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

NORTH MOUNTAIN FOOTHILLS APARTMENTS, LLC

The Board's decision can be found at https://www.nlrb.gov/case/ 28-CA-286885 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

Lisa Dunn, Esq., for the General Counsel.
Edmundo P. Robaina, Esq., for the Respondent.

DECISION

INTRODUCTION[1]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This hearing was held on April 18, 2023, in Phoenix, Arizona, over allegations that Northern Mountain Foothills Apartments, LLC (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (Act) with its discharge of Jasper Press.

Press began working for Respondent as a maintenance technician on August 10, 2021. Almost immediately, Respondent received reports that Press was talking with others about his compensation. On August 12, one of Respondent's owners, Carrie Matteson, approached Press and questioned him about this. She later informed him during a tape-recorded meeting that he should not be telling employees about his compensation, and that he also should not be talking with tenants about pest control issues. The following day, Respondent discharged Press, citing his alleged failure to properly complete work assignments.

On November 29, 2021, Press filed the charge in this case. He amended it on December 27, 2021. On March 2, 2022, the General Counsel, through the Regional Director for Region 28 of the Board, issued the complaint and notice of hearing. The complaint alleges that Respondent violated Section 8(a)(1) of the Act when it: (1) interrogated Press about his protected concerted activities; (2) orally promulgated an overly broad and discriminatory directive prohibiting him from discussing his wages with other employees and pest control issues with third parties; (3) threatened him with unspecified reprisals if he engaged in protected concerted activities; and (4) later discharged him for engaging in protected concerted activities. Respondent filed timely answers in which it denied the alleged violations and raised various affirmative defenses.

At the hearing, all parties were afforded the right to call and examine witnesses, present any relevant evidence, and argue their respective legal positions.[2] The General Counsel and

[1] Abbreviations used in this decision use the following format: "Tr." for the Transcript, "GC Exh." for the General Counsel's exhibits, "GC Br." for the General Counsel's Brief, and "R. Br." for Respondent's Brief. Although I have included several citations to the record to highlight specific testimony or exhibits, my findings and conclusions are not limited to those portions and instead are based on my review and consideration of the entire record.

[2] The General Counsel orally amended the complaint without objection to correct certain dates. Paragraph 4(a) was changed to "From about August 10, 2021 to about August 17, 2021." Paragraph 4(b) was changed

Respondent filed post-hearing briefs, which I have carefully considered.[3]

Based on the entire record, and for the reasons stated more fully below, I conclude Respondent committed the violations substantially as alleged.

FINDINGS OF FACT[4]

JURISDICTION

Respondent is a limited liability company that rents and manages apartments, including the 194-unit North Mountain Foothills Apartment Complex (Complex) in Phoenix, Arizona. During the 12-month period ending November 29, 2021, Respondent, in conducting its operations, derived revenues in excess of $500,000 and purchased and received goods valued in excess of $5000 directly from points outside the State of Arizona. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

Background

Carrie Matteson and her husband Michel Gareau own Respondent. Matteson is also the operations manager. At the time of Press' employment, Noemi Soto was the Complex's property manager and Lisa Stearns was the assistant property manager. Respondent also employed maintenance technicians, including Dwayne Mims and Tyler Spence. In addition, Respondent contracted with Jose Diaz to perform maintenance and repair projects, and contracted with Joe Scott to maintain and repair the Complex's chiller system.[5] Scott employed a helper named James Cosgrove.

The Complex's chiller system is an "ancient" HVAC system that requires "a lot of maintenance." (Tr. 18-19). It consists of two refrigeration units housed onsite that process and circulate cold water through a piping system to individual air-handling units in each of the apartments. The water is moved through the unit and over a coil, and then a fan blows air over the coil, resulting in the release of cool air out into the apartment. (Tr. 213). High temperatures outside lead to increased condensation in the units, particularly if not properly insulated, and that condensation, along with clogged drainage lines, can result in leaks and water damage. (Tr. 171).

When a tenant has an issue, they contact the office staff who prepare a written work order. The work order is assigned to a maintenance technician. Upon addressing the issue, the technician completes and returns the necessary paperwork to the office letting them know the work order had been completed. (Tr. 43). Tenants also may bypass the office and speak with the technicians directly about issues.

Job Posting and Hiring of Press

In July 2021,[6] Respondent experienced an increase in work orders due, in part, to record high temperatures in the Phoenix area. It placed an advertisement for an "Apartment Maintenance Technician/General Laborer/Handyman." (GC Exh. 2). It stated the applicant "should have skills and experience in a variety of disciplines, from drywall hanging to carpentry to painting. You may also deal with plumbing or electricity issues . . . Some HVAC and appliance repairs may be needed as well for non-warranty-related work." The person hired would be expected to perform service requests within 24 hours.

Press applied for the position. Matteson reviewed his resume and was particularly impressed with his experience working with HVAC and cooling systems. (Tr. 87-88). She communicated with Press, interviewed him, and eventually offered him the position. (Tr. 57-59)(GC Exh. 3). On July 28, she emailed Press that he would be paid $25 an hour and receive use of a three-bedroom apartment in place of a bonus. (GC Exh. 4). Regarding the apartment, Matteson stated "[t]his is a monthly $1,500 investment from the company, so we would be looking for high performance, reliable/dependable/quality work and skills that contribute to increased [return on investment] over the course of the year." Press accepted the offer but informed Matteson he could not start for two weeks because he needed to provide his current employer with notice that he was resigning. Although Respondent needed someone immediately, it agreed to the delayed start date because Respondent needed someone with Press' experience. (Tr. 40).

August 10–11

Press began work for Respondent August 10. He attended a morning staff meeting with Matteson, Soto, Stearns, Mims, Spence, and Diaz. Matteson began by introducing Press and informing the others about his experience and that he could be of

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to "About August 12, 2021." Paragraph 4(c) was changed to "About August 13, 2021." (Tr. 21–22).

[3] At the conclusion of the hearing, the General Counsel moved to amend the complaint to allege additional violations. (GC Exh. 8). I advised the parties to brief the motion and the alleged violations. In her brief, the General Counsel moved to withdraw her motion to amend, noting Respondent had no objection. (GC Br. 2 fn. 3). The motion to withdraw is approved.

[4] The Findings of Fact are a compilation of the stipulated facts, credible testimony, and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as in conflict with credited evidence or because it was incredible and unworthy of belief. In assessing credibility, I primarily relied upon witness demeanor. I also considered the context of the testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008) (citing *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), rev'd. on other grounds 340 U.S. 474 (1951)).

[5] Respondent asserts that Diaz and Scott are independent contractors, not employees. The General Counsel does appear to challenge that assertion. However, because the evidence is limited, I make no finding regarding their status.

[6] All dates refer to 2021, unless otherwise stated.

help to them if they needed it. (Tr. 129). Matteson then turned her attention to the outstanding work orders and stated that they needed to be resolved. Press estimated there were about 70-80 work orders at the time. (Tr. 130).

Later that morning, Press worked with Diaz on replacing an air-handling unit in an apartment. The project took several hours and it was not completed because Soto called them to handle another project. While the two worked, Press commented about the number of work orders. He expressed shock as to how many there were but stated he was up for the challenge because he was getting paid $25 an hour and had a $1,500 monthly housing subsidy. Diaz responded that sounded like a good deal. He also agreed with Press that there were a lot of work orders. (Tr. 133-135). As they continued to work that morning, Press commented about the dilapidated condition of the Complex, specifically the unkempt grounds, the number of cockroaches, and the leaks caused by aging equipment.

Later, Press and Diaz worked on a project for a tenant who had recently moved units because her prior unit had a cockroach issue. Press apologized to the tenant and stated they were going to work on correcting the issue. (Tr. 136)-137).[7] Diaz and Press eventually completed the second project.

Later that day, Press was assigned to work with another maintenance technician named Cassidy (last name unknown) on a work order. The order was to "make ready" an apartment for a new tenant, which included making any repairs or fixes needed before the tenant moved in. (Tr. 138). As the two worked together, Press brought up the large number of work orders. He again stated that he was up for the challenge because he was earning $25 an hour and getting a $1,500 housing subsidy. He also commented on the poor condition of the Complex and that it made working there difficult. Each time he brought these topics up, Cassidy changed the subject. (Tr. 138-139). Press could not recall if he and Cassidy completed the work order that day.

On August 11, Soto assigned Press to complete certain work orders. He does not recall talking to any employees that day. He testified that certain of the work orders may not have been completed because Soto would call or text him and send him to perform another job.

Press believed that part of his job was to determine if there were areas where Respondent was losing money or could be more efficient. He noted that certain of the work orders involved leaks or related issues with the air-handling units. Press spoke to Scott, the contractor who oversaw the chiller system, and asked to look at the chiller units. Press suspected that certain of the leaks may have been caused, in part, by the coils in the air-handling units. Press told Scott to get bids on the cost of replacing the units. Scott did not know who Press was. (Tr. 218-219).[8] Scott later contacted Stearns in the office about his conversation with Press.

At some point during the day, Soto contacted Mims and Diaz about a work order for unit F23 that had been assigned to Press. There was a ceiling leak likely coming from the air-handling unit. Soto asked them to check to see if the work had been done. Each went to the unit and the work had not been done, and Press was not around. Mims and Scott ended up completing the work. (Tr. 179-180)(Tr. 196-197). Diaz also noted there was a project Press had been assigned in Building C, where the drain line from the air-handling unit had to be unplugged and cleaned, and it was not. Diaz ended up performing that work and later notified Soto. (Tr. 180-181).

Mims had a conversation with Scott's helper, James Cosgrove, in which Cosgrove told Mims that Press mentioned to him about how much he was earning, and Cosgrove asked Mims if he knew anything about that. Mims told Cosgrove he did not. Mims later reported this to Soto because, while there was no policy against discussing wages, he personally did not believe Press should be discussing them with others. (Tr. 197-199).

On August 11, Press texted Matteson asking if she had any time to talk about some better organization at the Complex. In the text messages, Press sent photos of what appeared to be cockroaches in the buildings. Matteson asked if the two of them could talk in the morning. (GC Exh. 3, p. 15).

August 12 One-On-One Conversation Between Press and Matteson

On the morning of August 12, at around 9 a.m., Matteson approached Press while he was out near the mailboxes attached to the leasing office. (Tr. 142). She told him she had heard that employees knew how much he was earning and asked if he knew anything about that. According to Press, Matteson appeared upset when she spoke. He stated her voice was higher than normal, and she leaned in close to him when she spoke. Press responded that he did not know anything about it. He told her that maybe someone overheard him discussing his salary with his wife on the phone. Matteson stated they would have another discussion later and then she walked away. Press testified he lied to Matteson about discussing his wages because he believed that if he told her the truth, she would fire him on the spot.[9] (Tr. 143).

August 12 Tape-Recorded Meeting Between Press, Matteson, and Soto

Later that same day, at approximately 1 p.m., Press went to the office and met with Matteson and Soto. Press recorded the meeting. The recording and revised transcript, which the parties stipulated were complete and accurate, were introduced into evidence. The pertinent portions of the meeting are as follows:

> MATTESON: So, Jasper.
> PRESS: Yeah.
> MATTESON: I'm now being told the people are learning that housing was part of the deal for you, too.

[7] Diaz was called to testify by Respondent, but he was not questioned about any of these conversations with Press. I, therefore, credit Press' uncontroverted testimony. Press had a clear and detailed recollection of what occurred, and his testimony about events is consistent with the information later reported to management and discussed by Matteson during her subsequent conversations with Press discussed below.

[8] Press also shared with Scott how much he was earning, which Scott interpreted as him "bragging." (Tr. 226-227).

[9] Matteson recalls having multiple conversations with Press on August 12, but she could not recall this conversation. (Tr. 72-73). I have credited Press' uncontroverted testimony because it is reasonable and logical, and it is consistent with comments Matteson made in their meeting later that afternoon that is discussed below.

PRESS: Okay.
MATTESON: You are making my life really tough.
PRESS: Okay.
MATTESON: Like, straight out of the gates.
PRESS: Okay.
MATTESON: This is not in a million years how I imagined this was going to go down.
PRESS: Yeah. Well how --
MATTESON: Like people telling me how much money [you're] making.
PRESS: I'm sorry, I didn't think that was a secret.
MATTESON: And that you'd be already deciding to put our A/C guy on like shopping around to make things more efficient.
PRESS: Well I thought you wanted me to do that based off of our --
MATTESON: Well, work orders were kind of number one, based on our last conversation.
PRESS: Mm-hmm.
MATTESON: And yesterday, I wasn't here.
PRESS: I've been focused on the work orders. You know, I've mostly just left it to Joe to find -- because these coils that were putting in are actually what are causing the majority of the leaks. And I just can't put another one that's brand new that's leaking, because it's just not a good setup. So --
MATTESON: Right.
PRESS: I'm just trying to think ahead and solve your leaks for you in the future.
MATTESON: Right. While I appreciate that, we have to be smart about communication. How it's done.
PRESS: Okay.
MATTESON: And the fact now, that this is just this red-hot issue, with everyone apparently knowing exactly how much you make, that you do live in here, except for that now you won't be living here, because you'd never live here in hell, because of pests --
PRESS: Well –
MATTESON: You see where I'm headed right now?
PRESS: I think they're probably embellishing that because I never said there's no way in hell that I'd ever live here. You know, I actually hadn't quite made-up my mind.
MATTESON: Well, I'm starting to make up mine.
PRESS: Okay.
MATTESON: You know what I'm saying? This is a really bad kick-off.
PRESS:. Mm-hmm.
MATTESON: And, this is not how I want to be coming into the office.
PRESS: Okay. So --
MATTESON: So, I don't know what to say here, other than this is not going in the right direction.
PRESS: Okay
MATTESON: So, can we fix this? I don't know. But, I will tell you that trust and confidentiality is working number one.
PRESS: Okay.
MATTESON: And that's already chiseled away at --
PRESS: Well I –
MATTESON: And we are the problem solvers, and we're well aware of the fact that we're in crisis. We are looking for people to get us out of it, not talk about it.
PRESS: Okay.
MATTESON: So, this is, this is very challenging.
PRESS: Okay. I understand. I'm very sorry that everybody knows how much I'm being paid.
MATTESON: So am I --
PRESS: -- and what the conditions are. You know,
MATTESON: Because now I got to run a whole crew.
PRESS: Okay.
MATTESON: Like, honestly I don't even know what to say right now. But, going from a crisis situation, to now into a deeper crisis situation? Not how I, not what I'm waiting around two weeks for. Personally.
PRESS: So everyone is mad because they feel they're being paid too little in comparison to me?
MATTESON: How could you bring in a brand-new guy with these ripe conditions? And if you want to improve the way that we are ordering coils and how the piping is working or whatever, that is a discussion that you would have with us, not with the A/C guy. And having him chasing stuff down.
PRESS: Okay.
MATTESON: Because time is really of the essence.
PRESS: Mm-hmm.
MATTESON: And here we are, like right in the thick of it. There's stuff we do off-season, there's stuff we do on-season.
PRESS: Mm-hmm. Okay. So. --
MATTESON: I'm worried.
PRESS: What can I do for you right now in this moment? Do you have an idea of what you need from me, or, do you need time to think about that?
MATTESON: I definitely have to go think about that. But, for today, we really have to get on the same page with the fact that fixing leaks is tantamount. Getting everything done to absolute perfection and optimization within the next 48 hours is not going to happen. A lot of these discussions we're not even ready to have.
PRESS: Okay.
MATTESON: Because we are in crisis mode. But definitely, definitely, pest control discussions with residents? That's a never. Your work conditions are nobody's business but yours except for that now everyone is aware of them.
PRESS: Okay.
MATTESON: I have a hornets' nest to deal with here. So, I'm shocked frankly. So what we have to do right now is figure out damage control on my end, which is my problem, I didn't need this. And, figuring out the work order situation.
SOTO: Mm-hmm.
MATTESON: So, we have to be very professional and very to-the-point and fix things as quickly as possible with work orders. That's always the rule. I was hoping that you would come in and do that. Yes. We can't have this big, new, plan for optimizing things for right now.
PRESS: Okay.
MATTESON: We're in emergency mode.
PRESS: Okay.
MATTESON: So, somehow, we have to keep our heads down, get as much done as possible as quickly as possible. And I'll be

back in touch tomorrow. But I've got now some huge problems that I've got to go figure out how to solve.
PRESS: Okay.
MATTESON: So, if we can do that, it would be great. Can we try to make this work this afternoon and see how things go?
SOTO: Yeah.. We'll see what. -- how much gets done. I'll report to you how many work orders were taken out today, total, in between everybody and individually. And then I'll tell you how many were finalized.
MATTESON: Because a call back situation is what we're looking to end, in addition to the efficiency of---we can't have guys coming in here doing three work orders a day.
PRESS: Okay.
MATTESON: You know what I'm saying?
PRESS: Mm-hmm.
SOTO: Or half doing them.
MATTESON: Right and is this an issue of lack of training? In which case I would fully expect anybody who comes on board that honestly knows how to solve a problem. Say a water leak in a kitchen. Here's how to solve that problem. I know how to solve that problem. I can see that this water leak was actually not fixed to standard. Here's what was done wrong. This could be fixed quickly and correctly, let's do it, I will show you how. Like that whole training aspect, that is definitely part of what we do here, especially with Tyler because he's brand new.
SOTO: Mm-hmm.
PRESS: Okay.
MATTSON: That is what we're doing here. But there also has to be some common sense. If you're showing somebody how to fix something right, three times in a row, four times in a row, and that's just not clicking, and that other person is always getting call- backs. Okay. That's a situation. But having them never trained properly in the first place? That's a separate problem period so we're trying to figure that out right now and camaraderie is really important for that.
PRESS: Okay
MATTESON: And this whole situation has not built camaraderie at all.
PRESS: This situation with them knowing my wage?
SOTO: And your housing and all that other stuff?
MATTESON: I mean Jiminy Crickets.
SOTO: Backfired, really bad.

(GC Exhs. 5((a)-(c)).

The remainder of the meeting was spent discussing how to make sure the technicians (Spence and Mims) were properly trained on how to deal with the issues they were facing, particularly leaks, with the focus on Spence because he was newer. At no point did Soto or Matteson directly inform Press that Respondent had issues with his performance.[10]

August 13 Termination

Press reported to work on August 13 and worked his entire shift, without incident. Matteson testified she spoke to Soto on August 13 and learned that tenants had called back following work orders Press had completed and were not satisfied with the work performed or complained that the issue was not fixed. (Tr. 101). Matteson also testified that Soto told her that it still was difficult to work with Press because he would not respond to her calls.[11] At some point, Matteson spoke to her husband, Gareau, and the decision was made to discharge Press.[12] On the evening of August 13, Soto called Press and informed him that he was being discharged. The reason Soto gave was that Press had allegedly failed to complete two work orders to satisfaction. Press disputed these claims, and the conversation ended.[13]

[10] At the hearing, the General Counsel asked Matteson why she raised concerns during the August 12 meeting about Press' discussions with employees about his compensation. Matteson testified: "It was an annoyance because I felt as though it was something that was being used as a way to rile up the work environment." (Tr. 100). When Matteson was later asked to explain how Press' discussion about his wages "riled up" the work environment, she testified: "Well, I just felt as though here are these guys doing their very best and completing, let's say, five work orders a day, and then along comes someone new who is not completing any work orders fresh out of the gates when you would think they would be doing their best. And there are also sort of, you know, I guess, poking the ribs, by the way, buddy [this is how much I am getting paid.]" (Tr. 109). She also testified that Press' discussions about wages affected camaraderie among employees. Matteson explained: "I don't know if you could say it was my impression. But you can certainly say that it was my worry. I did worry about that." (Tr. 109).

[11] Soto and Stearns no longer work for Respondent, and they were not called to testify. Respondent's counsel stated he could not subpoena them because neither he nor his client had their current addresses. He did not identify any other efforts made to locate them or establish they were otherwise unavailable to testify. Therefore, Matteson's testimony about the concerns Soto and Stearns allegedly shared are uncorroborated, and I conclude any weight I give those statements (as relayed by Matteson) is outweighed by Matteson's own statements during the tape-recorded meeting.

[12] During his testimony, Gareau denied knowing that Press had discussed his wages or housing subsidy with others, or that he had discussed pest control issues with tenants. He stated that his wife did not share this information with him; she just made him aware of the "situation." (Tr. 26–27). In general, I did not find Gareau to be a credible witness. He did not appear to testify with a sincere and honest demeanor, and his testimony was largely uncorroborated or illogical. On this point, his testimony was largely contradicted by his wife. Matteson testified she had told her husband that Press was discussing his wages and housing subsidy with other employees, and how upset that made her. (Tr. 70–71). I credit Matteson on this point.

Gareau also testified he made the decision to discharge Press, alone, after having conversations with Diaz and Scott. I do not credit this. To begin with, it is frankly incredible that Gareau made the decision without the involvement of his wife, particularly when she was the one who hired Press and communicated with him. Gareau, on the other hand, never met, observed, or interacted with Press. Also, neither Diaz nor Scott corroborated having any conversations with Gareau about Press prior to his discharge. (Tr. 182)(229–230).

[13] Gareau generally testified that Respondent had hired people in the past who claimed to have certain skills, and if they flopped in the first day or two, they would be fired. (Tr. 44). Scott testified he recalled having persons claiming to have experience in HVAC or maintenance come in who did not have the requisite knowledge, and they were either discharged or quit shortly thereafter. (Tr. 221–222). Mims recalled one technician who was discharged after a few weeks because of performance issues, and another technician who was gone after a few days because he was not able to perform the work. (Tr. 201–203). Mims could

LEGAL ANALYSIS

A. Overview

As stated, the General Counsel alleges that Respondent violated Section 8(a)(1) of the Act when it: (1) interrogated Press about his protected concerted activities; (2) orally promulgated an overly broad and discriminatory directive prohibiting him from discussing wages with other employees and pest control issues with third parties; (3) threatened him with unspecified reprisals if he engaged in protected concerted activities; and (4) discharged him for engaging in protected concerted activities. Respondent denies each of these allegations and contends it discharged Press solely because of his poor job performance.

Section 8(a)(1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Section 7 of the Act provides employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." For the activity to be protected, it must be both "concerted" and "for mutual aid or protection." See *Fresh & Easy Neighborhood Market, Inc.*, 361 NLRB 151, 152–153 (2014). "Concerted" activity "encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." See *Meyers Industries*, 268 NLRB 493, 497 (1984), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), supplemented *Meyers Industries*, 281 NLRB 882, 887 (1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). "Mutual aid or protection," in turn, "focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to 'improve terms and conditions of employment or otherwise improve their lot as employees.'" *Fresh & Easy*, supra, 361 NLRB at 153 (citing *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978)). Cf. *Mushroom Transportation Co., Inc. v NLRB*, 330 F.2d 683, 685 (3rd Cir. 1964) ("Activity which consists of mere talk must, in order to be protected, be talk looking toward group action. . . [I]f it looks forward to no action at all, it is more than likely to be mere "griping.").

The right of employees to discuss their wages and terms and conditions of employment with each other is a core substantive right protected by the Act. See, e.g., *Triana Industries, Inc.*, 245 NLRB 1258, 1258 (1979). Discussions about wages are deemed "inherently concerted" activity, and as such are considered protected, regardless of whether they are engaged in with the express object of inducing group action. See *Automatic Screw Products Co.*, 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992) and *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014). The rationale is that wages are a "vital term and condition of employment," the "grist on which concerted activity feeds," and such discussions are often preliminary to organizing or other action for mutual aid or protection. *Aroostook County Regional Ophthalmology Ctr.*, 317 NLRB 218, 220 (1995), enf. denied in part on other grounds 81 F.3d 209, 214, 317 U.S. App. D.C. 114 (D.C. Cir. 1996); See also *Trayco of S.C., Inc.*, 297 NLRB 630, 634-635 (1990), enf. denied mem. 927 F.2d 597 (4th Cir. 1991). This is true even if the discussion involves only a speaker and a listener. *Belle of Sioux City, L.P.*, 333 NLRB 98, 101 (2001). This is also true regardless of whether the listener agrees with the speaker or joins in the cause. See *Mushroom Transportation*, 330 F.2d at 685.

B. Interrogation

The General Counsel alleges that on August 12, during their one-on-one conversation out by the mailboxes, Matteson unlawfully interrogated Press about his protected activities, in violation of Section 8(a)(1). In determining whether the questioning of an employee about suspected protected activity constitutes unlawful interrogation, the Board applies a totality-of-the-circumstances test. *Rossmore House*, 269 NLRB 1176, 1177 (1984), affd. sub nom. *HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). This test considers various factors, including: the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; the nature of the information sought; the identity of the interrogator, i.e., his or her placement in the employer's hierarchy; whether the interrogated employee was an open or active union supporter at the time of the questioning; the place and method of the interrogation; and the truthfulness of the interrogated employee's reply. Id. See also *Westwood Health Care Center*, 330 NLRB 935, 939 (2000). Another factor is whether adequate assurances against reprisal were provided. See *RHCG Safety Corp.*, 365 NLRB No. 88, slip op. at 2 (2017). These factors "are not to be mechanically applied;" they represent "some areas of inquiry" for consideration in evaluating an interrogation's legality. *Rossmore House*, supra, fn. 20. The core issue is whether the questioning would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their statutory rights. This is an objective standard. *Multi-Aid Service*, 331 NLRB 1126 (2000), enfd. 255 F.3d 363 (7th Cir. 2001).

In considering these factors, I conclude that Matteson violated Section 8(a)(1). She is the highest-ranking management official at the Complex, and the person who interviewed and hired Press. She approached him and initiated the conversation while he was alone. She appeared upset and pointedly asked him about how others knew how much he was earning. Discussions among employees regarding their wages is statutorily protected activity, and Matteson's question was clearly designed to uncover such activity. She made this inquiry without explaining its purpose and without providing Press with any assurances against reprisals. Press testified he lied when he responded to her because, under the circumstances, he believed Matteson would have discharged him on the spot if he had answered truthfully. Under the totality of the circumstances, I conclude Matteson's inquiry would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

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not recall the second person's name or any specific details about his issues or his separation.

C. Overly Broad and Discriminatory Directives

The General Counsel next alleges that on August 12, during the tape-recorded meeting in the office, Matteson violated Section 8(a)(1) when she orally promulgated overly broad and discriminatory directives against: (1) Press telling or discussing with other employees his compensation package, including his wages and housing subsidy; and (2) Press discussing pest control issues at the Complex with tenants.

The Board has held that rules and policies, whether written or oral, that reasonably can be viewed as prohibiting employees from disclosing or discussing their wages or methods of compensation violate the Act. *Parexel International, LLC*, 356 NLRB 516, 518 (2011).[14] In the meeting in the office, following the morning exchange in which Matteson interrogated Press, Matteson and Soto met with him to express their frustration that he had told employees how much he was earning and receiving housing as part of his compensation deal. Matteson stated it was now a "red-hot issue" that she had to deal with. She commented that this "was a really bad kick-off" and that things were "not going in the right direction." Matteson stated that "trust and confidentiality" were "number one" and Press had "chiseled away at that" by disclosing this information about his compensation to the others. She commented that the disclosure of this information caused Respondent to go from "a crisis situation" to "a deeper crisis situation." Press asked what he needed to do to help fix the situation, and Matteson commented that employees, including him, needed to "keep their heads down, get as much done as possible as quickly as possible." In other words, discussing the terms of his compensation package had caused problems and needed to stop, and he needed to focus exclusively on completing the work orders. I find these directives, without limitation as to time or location, were overly broad and reasonably tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1).

Matteson's instruction regarding discussing pest control issues was more direct. She said "pest control discussions with residents? That's a never. Your work conditions are nobody's business but yours except for that now everyone is aware of them." Matteson went on to state that Press discussing these issues, along with his wages and housing subsidy, had created "a hornets' nest" for her to now deal with. The Board has long held that "employees have a right to discuss among themselves, and with the public, information about their terms and conditions of employment for the purpose of mutual aid and protection." *Motor City Pawn Brokers*, 369 NLRB No. 132, slip op. at 6 (2020) (citing *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565-566 (1978)); *Guardsmark, Inc*., 344 NLRB 809, 809 (2005). Matteson's statement broadly restricting Press from discussing pest control issues with tenants impacts his ability to discuss and potentially solicit support on matters affecting the employees' working conditions, including on the nature and volume of their work orders. See, e.g., *Boch Honda*, 362 NLRB 706, 715-716 (2015) (upholding employees' right to comment about the terms and conditions of employment and the right to seek support from the public over their working conditions); *Santa Fe Hotel & Casino*, 331 NLRB 723, 730 (2000). Such a restriction, without limitation, similarly has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1).

D. Unspecified Reprisals

The General Counsel also alleges that on August 12, during the tape-recorded meeting in the office, Matteson violated Section 8(a)(1) when she threatened Press with unspecified reprisals for engaging in protected concerted activities. The Board has held that an employer violates Section 8(a)(1) by threatening employees with unspecified reprisals for engaging in protected activity. See, e.g., *Metro One Loss Prevention Services Group*, 356 NLRB 89, 89 (2010); *Alaska Ship & Drydock*, 340 NLRB 874, 878 (2003). As with other threats, the Board looks to the totality of the circumstances to determine if there is a violation.

The clear purpose of the meeting was for Matteson to chastise Press for his actual or perceived protected activities and to redirect his focus exclusively to completing the work orders. At multiple points during the meeting Matteson expressed her frustration with Press' protected activities, told him that it was causing her problems with the other employees, and said that she did not know what she was going to do in response. At one point, Matteson commented about Press discussing his housing subsidy and that he was not certain he would live in the Complex because of the pest control issues. After Press stated that was an exaggeration and that he had not made up his mind on whether he was going to live there or not, Matteson abruptly stated she was starting to make up *her* mind, indicating that Press may no longer have that option or benefit if he continued discussing these topics. I find these statements, under these circumstances, to be a threat of unspecified reprisals if Press continued with the protected activity, in violation of Section 8(a)(1).

E. Discharge

The General Counsel alleges Respondent discharged Press because he engaged in concerted activities with other employes for the purposes of mutual aid and protection by, among other ways, discussing compensation with other employees. The Board has held an employer violates the Act when it discharges an employee because they either engaged in, or were believed to have

[14] This remains true under *Boeing Co*., 365 NLRB No. 154 (2017), which set the standard for determining whether a facially neutral work rule or policy, when reasonably interpreted, would unlawfully interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. In *Boeing*, the Board established three categories of rules. Category 1 includes rules that the Board designates as lawful to maintain, either because (i) the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of statutory rights; or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. Category 2 included rules that warrant individual scrutiny in each case as to whether the rule would prohibit or interfere with statutory rights, and if so, whether any adverse impact on statutorily protected conduct is outweighed by legitimate justifications. Category 3 includes rules that the Board will designate as unlawful to maintain because they would prohibit or limit protected conduct, and the adverse impact on employees' statutory rights is not outweighed by justifications associated with the rule. The Board held an example of a Category 3 rule would be one that prohibits employees from discussing wages with one another. Id., slip op. at 3–4, 15.

engaged in, protected conduct. *Stephens Media Group-Watertown, LLC*, 371 NLRB No. 11, 29 (2021) (citing *Hyundai Motor Mfg. Alabama, LLC*, 366 NLRB No. 166, slip op. at 2 (2018) (finding unlawful discharge based on belief employees engaged in protected concerted activity, regardless of whether they actually did so). When assessing the lawfulness of an adverse employment action that turns on employer motivation, and there is evidence the employer had a mixed motive for the adverse action, the Board applies the analytical framework set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989, 102 S. Ct. 1612, 71 L. Ed. 2d 848 (1982), approved by *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395 (1983). Under *Wright Line*, the General Counsel must initially show that: (1) the employee engaged in or was believed to have engaged in Section 7 activity, (2) the employer knew of or believed that activity occurred, and (3) the employer had animus against the activity, which must be proven with evidence sufficient to establish a causal relationship between the adverse action and the activity. *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 6, 8 (2019); see also *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 1–2 (2020). Animus can be established through direct evidence or inferred from circumstantial evidence. See *Medic One, Inc.*, 331 NLRB 464, 475 (2000) (evidence supporting an inference of animus and discriminatory motivation includes suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, disparate treatment of the discharged employees, and shifting defenses).

If the General Counsel establishes these factors, the burden shifts to the employer to show it would have taken the same action in the absence of the employee's protected activity. *Wright Line*, 251 NLRB at 1089. An employer cannot simply present a legitimate reason for its action; rather, it must persuade by a preponderance of the evidence that the same action would have taken place in the absence of the protected conduct. See *Bruce Packing Co.*, 357 NLRB 1084, 1086–1087 (2011), enfd. in pertinent part 795 F.3d 18, 417 U.S. App. D.C. 281 (D.C. Cir. 2015); *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004). The General Counsel may also offer proof that the employer's reasons for the personnel decision were false or pretextual. *Relco Locomotives Corp.*, 358 NLRB 229 (2012), affd. 361 NLRB 911 (2014), enfd. 734 F.3d 764 (8th Cir. 2013). When the employer'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. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019).

In applying this framework, I conclude the General Counsel has established a prima facie case of discrimination. As discussed, Press engaged in, or was believed to have engaged in, protected activities by discussing his compensation package with other employees.[15] As stated, discussions about compensation are inherently concerted and protected, regardless of their express objective or the reaction of others. Matteson knew or believed this protected activity had occurred, and she exhibited animus toward it, most notably by her statements during the recorded meeting the day before his discharge. At the hearing, Matteson acknowledged her unlawful motivation when she testified she considered Press' discussion about his compensation to be an annoyance that was a way to "rile up the work environment." She also confirmed the problems it caused for her with the other employees, and the effect it had on employee "camaraderie." Based on the context in which these statements were made, I conclude that Matteson was referring to Press' protected activities, not, as she claims, a reference to her concerns the employees would be upset that she had hired and was paying someone who could not perform the work.

In its defense, Respondent argues that it was Gareau, alone, who made the decision to discharge Press, and he was unaware of any of Press' actual or perceived protected activities at the time. I have rejected both arguments. I also reject Respondent's assertion that it discharged Press solely because of his work performance. Matteson cites to Press' alleged failure to complete work orders to satisfaction, communicate effectively with the office, and complete and return paperwork regarding his work orders as the reasons for his discharge. However, these alleged issues were never directly raised with Press prior to his discharge, including during the August 12 recorded meeting. The only issues raised during that meeting, and raised repeatedly, were that he was discussing his compensation package with others, discussing pest control issues with tenants, and talking with Scott about solutions to what was causing certain of the work orders.

Moreover, even if Press' job performance played a role in the decision to discharge, I conclude that Respondent has failed to meet its burden of establishing it would have taken the same action in the absence of his actual or perceived protected activities. Gareau and Scott offered general and vague testimony that, in the past, Respondent discharged employees within a few days when it became clear that they lacked necessary skills and/or could not perform the job. Respondent, however, offered no specific, detailed information of this occurring, precluding me from evaluating whether they are comparable situations. Mims testified about one employee, whose name he could not recall, that he believed was discharged after a couple days. But Mims could not recall any details, including what that individual's issues were or the reasons for his discharge.[16] Based on this vague and limited evidence, I conclude Respondent has failed to meet its

[15] Respondent contends that Press' statements to Scott, Diaz and Cosgrove should not be considered because they are independent contractors or employees of independent contractors, and not statutory employees. I make no finding regarding their status because it is immaterial. Press spoke directly with Cassidy (last name unknown) about his wages and benefits, and Mims was indirectly made aware from Cosgrove about the information Press was sharing, and that information was shared with Respondent, and Matteson's statements to Press demonstrate her concern over his discussing his compensation package, and that it would "rile up the work environment" and affect camaraderie.

[16] The General Counsel cites to Soto's and Matteson's statements during the August 12 meeting about their concerns that other maintenance technicians, particularly Tyler Spence, not having the necessary training to perform the tasks being assigned. The General Counsel argues that despite these concerns, Respondent took any action against Spence, likely because he had not engaged in or was believed to have engaged in any protected activities. Based on the limited evidence presented

burden, particularly in light of the overwhelming nature of Matteson's animus-laden statements the day before his discharge.

I, therefore, conclude Respondent discharged Press because he engaged in actual or perceived protected activities, in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

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

2. Respondent violated Section 8(a)(1) of the Act when it: (1) interrogated Press about discussing his wages; (2) orally promulgated an overly broad and discriminatory directive prohibiting him from discussing his wages and housing subsidy with other employees and prohibiting him discussing pest control issues with third parties; (3) threatened him with unspecified reprisals if he continued to engage in protected activities; and (4) then discharged Press for engaging in actual or perceived protected activities.

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

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Among the latter, the Respondent must make Press whole for any loss of earnings and other benefits incurred as a result of their unlawful terminations. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall also compensate the discriminatees for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful conduct, including reasonable search-for-work and interim employment expenses, if any, regardless of whether those expenses exceed the individual's interim earnings. See also *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Additionally, the Respondent shall compensate Press for the adverse tax consequences, if any, of receiving lump-sum backpay awards, in accordance with *Tortillas Don Chavas*, 361 NLRB 101 (2014), and file with the Regional Director for Region 28, within 21 days of the date the amounts of backpay are fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. In addition, pursuant to *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021), the Respondent will file with the Regional Director for Region 28 a copy of the corresponding W-2 form(s) reflecting the backpay awards.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order[17]

ORDER

Respondent, North Mountain Foothills Apartments, LLC, Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees because of their protected concerted activities.

(b) Interrogating its employees about their protected concerted activities.

(c) Orally promulgating overly-broad and discriminatory directives prohibiting employees from discussing their wages with other employees or discussing pest control issues with third parties.

(d) Threatening its employees with unspecified reprisals and loss of housing benefits because employees engaged in protected concerted activities.

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

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

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

(b) Make Jasper Press whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against him, in the manner set forth in the Remedy section herein.

(c) Compensate Jasper Press for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year for employee Jasper Press.

(d) File with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Jasper Press' corresponding W-2 forms reflecting the backpay awards.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Jasper Press, and within 3 days thereafter, notify Jasper Press in writing that this has been done and that the discharge will not be used against

regarding Spence and any performance issues, I decline to find evidence of disparate treatment.

[17] 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.

him in any way.

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

(g) Post at its Phoenix, Arizona facility copies of the attached notice marked "Appendix A."[18] Copies of the notice, on forms provided by the Regional Director for Region 28, 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, text messaging, posting on social media, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the 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 August 12, 2021.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 28 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 at Washington, D.C., May 30, 2023.

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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT threaten you with unspecified reprisals because you engaged in concerted activities.

WE WILL NOT ask you about your concerted activities.

WE WILL NOT threaten to take away your housing benefits because you engaged in concerted activities.

WE WILL NOT tell you that you cannot discuss pest control issues in our apartments with your coworkers, our residents, and/or anyone else.

WE WILL NOT tell you that you cannot engage in concerted activities.

WE WILL NOT discharge or otherwise discriminate against you because you engaged in concerted activities.

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

WE WILL rescind our directives that you cannot engage in concerted activities and that you cannot discuss pest control issues in our apartments with your coworkers, our residents, and/or anyone else.

WE WILL offer Jasper Press (Press) immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed because we discharged him.

WE WILL make whole Press for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL make Press whole for any other direct or foreseeable pecuniary harms incurred as a result of the discrimination against him, including reasonable search-for-work and interim employment expenses incurred, plus interest.

WE WILL compensate Press for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

WE WILL, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, file with the Regional Director for Region 28 a copy of Press' corresponding W-2 form(s) reflecting the backpay award.

WE WILL file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for Press.

WE WILL, within 14 days, remove from our files all references to the discharge of Press and WE WILL, within 3 days thereafter, notify Press in writing that we have taken this action, and that the materials removed will not be used as a basis for any future personnel action against him or referred to in response to any

[18] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work, and the notices may not be posted until a substantial complement of employees has returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means.

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

inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or otherwise used against him.

NORTH MOUNTAIN FOOTHILLS APARTMENTS, LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-286885 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.