UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GOKE TECHNOLOGY LLC d/b/a GT SECURITY SERVICES GTS[1]

and **Case 09-CA-312117**

GINA MAHONE, AN INDIVIDUAL

Linda Finch, Esq.,
for the Acting General Counsel,[2]
Eric B. Hershberger and Tonya McCreary Williams, Esqs.,[3]
for the Respondent
Gina Mahone,
for the Charging Party.

DECISION

STATEMENT OF THE CASE[4]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This hearing was held on August 21-22, 2024, and January 15, 2025, in Columbus, Ohio, over allegations that Goke Technology LLC d/b/a GT Security Services GTS ("Respondent") violated Section 8(a)(1) of the National Labor Relations Act ("Act"). In mid-September 2022, Respondent's owner, Matthew Adegoke, hired Gina Mahone to be a security guard and paid her more than the other guards because of her prior experience. About a month into her employment, Mahone had a conversation with another guard in which they discussed their wage rates. That guard later complained to Adegoke about being paid less. On October 27, 2022, Adegoke questioned Mahone about her conversation with the other guard regarding their wage rates. He told her not to have any further "personal" conversations while at work and accused her of creating a "toxic environment."

At some point in October 2022, Mahone notified Adegoke that she would be resigning. On October 28, she texted Adegoke that she was rescinding her resignation and would continue working. Adegoke allowed her to remain but informed her that in order not to create further issues, he was going to begin paying her the same as the other guards, which meant a wage reduction for her. Mahone objected, stating that reducing her wages to satisfy the other guards was not going to work for her, and

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[1] The parties stipulated that Respondent's correct legal name is as set forth above. (Tr. 177-178).

[2] On February 3, 2025, President Donald J. Trump appointed William B. Cowan to be Acting General Counsel of the National Labor Relations Board. For ease and consistency, I will refer to the Acting General Counsel, the former General Counsel, and the Counsel for the General Counsel collectively as the General Counsel.

[3] During this case, Respondent has had 3 different attorneys. The first was Gary A. Reeve, who represented Respondent during the Board's investigation. The second was Tonya McCreary Williams, who represented Respondent in filing its answer and at the first two days of the hearing. The third was Eric B. Hershberger, who represented Respondent on the final day of hearing and in submitting its post-hearing brief.

[4] Abbreviations used in this decision are as follows: Transcript citations are "Tr. Vol. ___, pp ___"; General Counsel Exhibits are "GC Exh. __"; and Respondent's Exhibits are "R Exh.__." Although I have included certain citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not limited to those, but rather are based on my review and consideration of the entire record.

she asked Adegoke to send her the documents that she had signed (from her personnel file). Two days later, Adegoke removed Mahone from the work schedule, without providing her an explanation. Based on her unexplained removal from the schedule, Mahone concluded that she had been discharged.

On February 13, 2023, Mahone filed the original charge in this case, alleging she had been unlawfully discharged. She amended that charge on May 26, 2023, adding that Adegoke also unlawfully interrogated her and threatened her was a wage reduction. Based on those charges, the Regional Director for Region 9 of the National Labor Relations Board ("Board"), on behalf of the General Counsel, issued a Complaint and Notice of Hearing on May 10, 2024 ("Complaint") alleging that by this conduct Respondent violated Section 8(a)(1) of the Act.[5] On June 5, 2024, the Respondent filed its answer denying those allegations and raising various affirmative defenses ("Answer").[6] The primary issue is whether Mahone voluntarily resigned or was discharged.

At the hearing, the parties were given a full opportunity to introduce relevant evidence, to examine witnesses, and to argue their legal positions. The General Counsel and Respondent also submitted post-hearing briefs, which I have carefully reviewed. On the entire record, and after carefully considering the arguments raised by the parties, I make the following

FINDINGS OF FACT[7]

A. Jurisdiction

Respondent is a limited liability company with an office and place of business in Columbus, Ohio, where it provides security guard services to commercial enterprises. Respondent is solely owned by Matthew Adegoke and doing business as GT Security-GTS. During the 12-month period ending May 1, 2024, Respondent, in conducting its operations, provided services valued in excess of $50,000 for Elite Investigations Ltd. ("Elite"), an enterprise operating within the State of Ohio that is directly engaged in interstate commerce. At all material times, Elite has been a corporation with an office and place of business in Yonkers, New York, and has been engaged in providing security guard services throughout the United States. In conducting its operations during the calendar year ending December 31, 2023, Elite performed services valued in excess of $50,000 outside the State of New York. Based

[5] The General Counsel amended the Complaint to modify the remedies sought, specifically to make Mahone whole for any loss of earnings and for any other direct or foreseeable pecuniary harms suffered as a result of Respondent's unlawful conduct, with interest. (GC Exh. 2) (Tr. 7-8).

[6] Respondent raised the following four affirmative defenses: (1) Mahone has failed to state a claim upon which relief can be granted under the Act or Board Regulations; (2) the Board lacks jurisdiction over the subject matter of this Complaint for any relief that exceeds the relief authorized by the Act and Board Regulations; (3) Mahone is not entitled to any relief, injunctive, equitable, or any damages whatsoever; and (4) Mahone is solely responsible for the circumstances that led to her unemployment when she resigned on her own accord. Although Respondent reserved the right in its Answer to raise additional defenses, it did not.

[7] The Findings of Fact are a compilation of the credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the Findings, such testimony has been discredited, either as in conflict with credited evidence or it was incredible and unworthy of belief. In assessing credibility, I relied upon witness demeanor, the context of their testimony, the quality of their recollections, 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 NLRB586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003).

on the foregoing, Respondent admits that, at all material times, Elite has been an enterprise engaged in commerce, and that Respondent has been an employer engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 9) (Tr. V. II, pp. 176-178) (Tr. V. III, pp. 221-222; 224-225). I, therefore, find that this dispute affects commerce, and the Board has jurisdiction pursuant to Section 10(a) of the Act.[8]

B. Alleged Unfair Labor Practices

1. Background

In September 2022,[9] Elite acquired the contract to provide security guard services for Chipotle Mexican Grill, Inc. ("Chipotle") at its corporate office on 500 Neil Avenue, Columbus, Ohio. Elite subcontracted that work to Respondent. Prior to Respondent assuming the contract, Chipotle contracted with Haven Security to provide guard services. Gina Mahone worked for Haven Security as guard, and she was assigned to the Chipotle corporate office for about a year. After Haven Security lost the contract, Mahone applied for a guard position with Respondent. Chipotle representative Ben Conway asked Adegoke to hire Mahone, if possible.

On September 12, Adegoke interviewed Mahone. He asked about her prior wage rate, and she told him she earned $19 per hour. He offered to pay her $17 per hour, and she accepted. Her $17 per hour rate is reflected as her "desired" wage rate on her employment application, which she completed on the same day as her interview. (GC Exh. 5). Mahone began working for Respondent that same day.

Throughout her employment, Mahone worked at the Chipotle corporate office. She worked every Monday through Friday, from 4 p.m. to 12 a.m. Her immediate supervisor was Isaac Gatwood. Mahone worked with another guard named Zach Woltz.

According to Adegoke, on about October 14, he learned that Mahone intended to resign. This occurred while he was at the Chipotle corporate office speaking with Ben Conway, who told Adegoke that Mahone had applied for a receptionist position at Chipotle's corporate office. Adegoke then went and spoke with Mahone. She confirmed she had applied for a position with Chipotle and was giving him her two-weeks' notice. (Tr. V. I, pp. 45-46; 65-66). Mahone denies this. She admits she applied for a receptionist job at Chipotle in late September but learned in early October that she had not been hired. (Tr. V. I, pp.154-156). She testified she would never have given her notice that she planned to resign unless she knew she had another job lined up. (Tr. V. I, pp. 140-142).

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[8] Attorney McCreary Williams admitted to the amended allegations in paragraph 2 of the Complaint establishing that Respondent is an employer subject to the Board's jurisdiction. (GC Exh. 9) (Tr. V. II, pp. 176-178). At the resumption of the hearing, Attorney Hershberger acknowledged that Respondent had admitted to these allegations and did nothing to seek to withdraw from them. (Tr. V. III, pp 220-222; 225). However, in his post-hearing brief, Hershberger contends the interstate commerce activities of Elite in 2023 and Respondent's May 1, 2023 – May 1, 2024 revenue are insufficient to demonstrate indirect commerce jurisdiction over the charges or the Complaint, because all services Respondent provided were performed in Ohio. In raising this argument for the first time on brief, Hershberger failed to allege any evidence not available to Respondent at the time Attorney McCreary Williams admitted to the amended allegations establishing the Board's jurisdiction. Absent such evidence, or any other compelling circumstances, Respondent is bound to its prior admissions. See *Milford Manor, Inc.*, 233 NLRB 1283 fn. 1 (1977).

[9] Hereinafter all dates refer to 2022, unless otherwise stated.

2. Conversation Between Woltz and Mahone

According to Mahone, on October 21, she arrived for work at the Chipotle corporate office and was greeted by Woltz at the front desk. Woltz told Mahone that he was her new supervisor and then began asking her how much she was earning per hour. Mahone initially did not respond to the question. Woltz then asked her if she earned $15 per hour. Mahone said no but said she did not feel comfortable telling him how much she earned. Woltz commented that he had worked for Respondent for a long time. That was the end of their conversation. (Tr. V. I, pp. 102-103).

According to Adegoke, Woltz called him upset following his conversation with Mahone. Woltz stated that Mahone was complaining about how much she was being paid, and that is when Woltz found out her wage rate. He asked Adegoke why Mahone was earning more per hour than he was when he had been working for Respondent longer than she had. Adegoke tried to calm Woltz down and told him he would find out what was happening. That was the end of their conversation. (Tr. V. I, pp. 35-36).[10]

3. October 27 Telephone Conversation Between Adegoke and Mahone

After speaking with Woltz, Adegoke texted Mahone multiple times asking her to give him a call. (GC Exh. 4). Adegoke wanted to meet in person, but Mahone was unable to get to Respondent's office. The two eventually spoke over the telephone on October 27. According to Mahone, Adegoke questioned her about her conversation with Woltz. He began by asking who first brought up the topic of wages. Mahone stated that it was Woltz, and then she relayed the rest of their conversation, including that Woltz stated he was her new supervisor. Adegoke responded that Woltz was giving her misleading information about being her supervisor, and that he would talk to Woltz about that. Adegoke then stated that Woltz had been with the company too long to talk about pay with anyone or make any type of drama at work. Mahone responded that she was not lying, and that Woltz had been starting a lot of drama at work. (Tr. V. I, pp 107-109). Adegoke told Mahone that he wanted her conversations at work to be strictly business. He did not want her to talk about her personal life or anything else, and he did not want her having any disagreements with Woltz. (Tr. V. I, pp. 120). According to Mahone, she responded that was fine, but if there were any more issues or drama when she went to work that night, or if she felt uncomfortable, she would put in her two weeks' notice. (Tr. V. I, pg. 110). According to Mahone, this was the first time she ever mentioned resigning to Adegoke.[11]

According to Adegoke, he spoke to Mahone about her conversation with Woltz because he was trying to calm everybody down. (Tr. V. I, pp. 73-74; 81-82). He told Mahone that Woltz reported that she was not happy and complaining about her wage rate while at work. Adegoke, by his own admission, told Mahone that she was creating a "toxic environment" and that "everybody is upset." (Tr. V. I, pg. 73). He then told her, "[W]e can't have that happen at work." (Tr. V. I, pg. 74).

[10] Woltz was not called to testify at the hearing.

[11] For the reasons explained below, the dispute over when Mahone first provided Respondent with her resignation notice is largely irrelevant to deciding the allegations at issue. To the extent it has relevance, I credit Adegoke over Mahone on that point. He had a sincere and straightforward demeanor, and he was more forthcoming in his responses. I also found his testimony was more logical and consistent with the other evidence.

4. October 28 Text Exchange Between Adegoke and Mahone

On the evening of October 27, Mahone went to work and had "no issues or drama" with Woltz or any other employee. As a result, on the morning of October 28, at 7:30 a.m., she texted Adegoke, "Hey Matthew, I'm going [to] recant my two weeks' notice. I'm going to stay and just keep things strictly work wise." (GC Exh. 4(a)). Adegoke texted back at 8:14 a.m., "Good morning Gina, I am please (sic.) with your decision but in other (sic.) not to make things worse and create more issues among teams I will have to pay you same pay rate as others. Everyone is making $15 besides those that work weekends get paid $16." (GC Exh. 4(a)). Two minutes later, Adegoke texted Mahone asking her to call him so they could discuss it further. (GC Exh. 4(a)).

Mahone called Adegoke later that night. He told her he would need to cut her pay to $15 per hour, so there would be no further conflicts with the other employees. Mahone told him that it was unfair to cut her pay, and that he was favoring Woltz because he had been working for Respondent longer. Adegoke denied that he was showing favoritism. Mahone reiterated that it was not fair to cut her pay to satisfy the other employees. She then hung up the phone on him. (Tr. V. I, pp. 113-114).

At 9:09 p.m., Mahone texted Adegoke, "Yea this is way beyond unprofessional." Six minutes later, she texted him, "To satisfy your employees you choose to cut my pay is not going to work for me and unprofessional." (GC Exh. 4(b)). At 9:18 p.m., Adegoke texted, "Gina I knew you're upset but hanging phone (sic.) when we are still talking is not a good thing. I'm trying to clarify things with you and making sure we are all in (sic.) the same page. This is not about pleasing one person this about been (sic.) fair to everyone. All this shouldn't have been a discussion at all if conversation with individual relating to pay has not come up." (GC Exh. 4(b)). Mahone responded a few minutes later, "I just need all my documents that I signed emailed to me at [email address]." (GC Exh. 4(c)).[12]

5. Removal from the Schedule

Respondent posts the weekly work schedule every Sunday by 10 p.m. on an online app called Homebase. As stated, Mahone was regularly scheduled to work Mondays through Fridays, from 4 p.m. to midnight. On Sunday, October 30, she checked the Homebase app and saw she was not assigned any shifts for the upcoming week, or beyond. (Tr. V. I, pp. 123-125) (GC Exh. 8). No one contacted her to provide an explanation, and she contacted no one to request one. She simply concluded from the circumstances that she had been discharged. (Tr. V. I, pp. 125-127).

Adegoke prepares the weekly schedule. He confirmed he did not schedule Mahone for any shifts, but he denies that she was discharged. He testified that based on their October 28 telephone conversation and the text messages that she sent, as well as the fact that she did not contact him after, he concluded that she had resigned. He determined he could not risk assigning her shifts and then her not show up for work.[13] (Tr. V. III, pp. 278-279). Adegoke, however, did not contact Mahone or otherwise determine whether she had, in fact, resigned.

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[12] Mahone testified that she was asking for Adegoke to provide her with her personnel file. (Tr. 121). She did not explain in her text or during her testimony why she was requesting her file. At some unidentified point, Respondent provided Mahone with her signed Ohio employee registration application, her application for employment, and a non-disclosure agreement. (GC Exh. 5).

[13] During the Board's investigation into the charges, Attorney Reeve provided a position statement addressing Mahone's separation. In the statement, which Adegoke testified he did not review before it was submitted,

LEGAL DISCUSSION

A. Overview

The Complaint alleges Respondent violated Section 8(a)(1) of the Act: (1) on about October 27, when Adegoke interrogated employees about their concerted activities and the concerted activities of other employees; (2) on about October 28, when Adegoke threatened to reduce employees' pay because they discussed their wages with other employees; and (3) on about October 28, when Respondent discharged Mahone because she had engaged in protected, concerted activities by discussing wages with other employees.

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 rights under Section 7 of the Act. Section 7 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)).

The Board recognizes that "there is no more vital term and condition of employment than one's wages, and employee questions or statements about wages clearly constitute "protected" activity. *Rogers Environmental Contracting*, 325 NLRB 144, 145 (1997), quoting *Cal-Walts, Inc*., 258 NLRB 974, 979 (1981). See also *Triana Industries, Inc*., 245 NLRB 1258, 1258 (1979). Additionally, statements and discussions about wages are deemed "inherently concerted" activity, regardless of whether they are engaged in with the express object of inducing group action. See *North Mountain Foothills Apartments, LLC*, 373 NLRB No. 26, slip op. at 8 (2024); *Automatic Screw Products Co*., 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992). The rationale is that wages are the "grist on which concerted activity feeds," and such discussions are often preliminary to

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Attorney Reeve stated: "Because of her two-week notice, Mahone had been taken off the schedule and replaced. Due to mistrust issues, and Mahone's unhappiness with her pay reduction not being acceptable to her, GT chose to accept that notice and not accept her attempted rescission of her resignation." (GC Exh. 3). The statement does not explain what "mistrust issues" existed.

In Respondent's answer, Attorney McCreary Williams asserted that Mahone resigned to accept another position with Chipotle, and Respondent accepted her resignation, and Mahone later attempted to retract her resignation when the other job fell through. Attorney McCreary Williams asserted in the Answer that Respondent did not, and was under no obligation to, accept Mahone's retraction of her resignation, but it invited her to apply for another security position. (GC Exh. 1(g)). There was no evidence presented showing that Respondent invited Mahone to apply for any another position.

organizing or other action for mutual aid or protection. *Aroostook County Regional Ophthalmology Center*., 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. See *Belle of Sioux City, L.P*., 333 NLRB 98, 101 (2001). And it remains true regardless of whether the listener agrees with the speaker or joins in the cause. See *Mushroom Transportation Co., Inc. v. NLRB,* supra at 685. See also *Renew Home Health*, 371 NLRB No. 165, slip op. at 1-2 fn. 2 (2022)

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B. Interrogation

The General Counsel alleges that Adegoke violated Section 8(a)(1) on October 27 when he interrogated Mahone over the telephone about her earlier discussion with Woltz regarding their wage rates. Respondent denies this. In assessing whether an employer's questioning of an employee amounts to unlawful interrogation, the Board considers the totality of the circumstances. *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). In making that determination, the Board considers the factors set forth in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): (1) the background, or history of employer hostility and discrimination; (2) the nature of the information the questioner seeks; (3) the rank of the questioner in the company hierarchy; (4) the place and manner of the interrogation; (5) the truthfulness of the employee's reply; (6) whether the employer had a valid purpose in obtaining the information sought about the questioning; (7) whether a valid purpose, if existent, was communicated to the employee; and (8) whether the employer assured the employee that no reprisals would be forthcoming should they support the union. The Board has held the *Bourne* factors should not be mechanically applied or used as a prerequisite to a finding of coercive questioning, but rather used as a starting point for assessing the totality of the circumstances. *Westwood Health Care Center*, 330 NLRB 935, 939 (2000). In the end, the inquiry is whether the questioning at issue would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their statutory rights.

After examining the totality of the circumstances, I conclude Adegoke's questioning of Mahone violated Section 8(a)(1). Adegoke initiated their conversation by texting her multiple times asking to meet, without explaining why. The two eventually spoke over the telephone.[14] During that conversation, Adegoke questioned Mahone, specifically asking who initiated the discussion about wages. When Mahone explained what happened, Adegoke expressed disbelief and told Mahone she was not to have any more conversations about her personal life with Woltz while at work. Adegoke concluded by telling Mahone that her discussions with, or "complaining" to, Woltz about her wages was creating a "toxic environment."

Applying the *Bourne* factors to this conversation, the nature of the information Adegoke was soliciting--who initiated the wage discussion--was Mahone's actual or perceived protected activity. As Respondent's owner, Adegoke is the company's highest-ranking official, as well as the person who hired Mahone (and set her rate of pay). He initiated the conversation. Mahone's responses to Adegoke's questions were truthful. However, that does not detract from the coerciveness of the questioning, because the implication was that whoever initiated the discussion about wages had done something wrong. Mahone reasonably believed she needed to defend herself against accusations of

[14] The Board has found that an unlawful interrogation need not occur face to face, and it may occur over the telephone or via text message. *RHCG Safety Corp*., 365 NLRB 852 fn. 4 (2017) citing to *McGlaughlin v. NLRB*, 652 F.2d 673, 674 (6th Cir. 1981)).

wrongdoing. Furthermore, Adegoke did not articulate any valid purpose for questioning Mahone. He testified he was trying to calm everyone down because Woltz was upset about Mahone complaining about her wages and creating "drama" at work, but he did not communicate that to Mahone prior to his questioning. Finally, Adegoke failed to provide Mahone with assurance that there would be no reprisals for her actual or perceived protected activity. On the contrary, he told her he did not want her to have any further "personal" conversations with Woltz while at work. Up to that point, the only "personal" conversations between Mahone and Woltz that Adegoke was aware of was their discussion about wage rates. The implication of his directions to Mahone was that additional discussions about wages could result in negative consequences for her. Based on the foregoing, I conclude Adegoke's questioning of Mahone would reasonably tend to interfere with or restrain employees in the exercise of their Section 7 rights.[15]

C. Threats

The General Counsel next alleges that Adegoke violated Section 8(a)(1) on about October 28, when he threatened to reduce Mahone's wage rate because she had, or was believed to have had, a protected discussion about wages with Woltz. Respondent denies this. The Board's standard for analyzing whether a statement constitutes an unlawful threat is whether under the totality of the circumstances it has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Section 7 rights. *Lush Cosmetics, LLC,* 372 NLRB No. 54, slip op. at 3 (2023). This is an objective standard; therefore, the intent of the speaker and the effect on the listener is immaterial. Id. See also *Multi-Add Services*, 331 NLRB 1226, 1228 (2000), enfd. 255 F.3d 363 (7th Cir. 2001).

In considering the totality of the circumstances, which are largely undisputed, I conclude Adegoke threatened to reduce Mahone's wage rate because she engaged in, or was believed to have engaged in, protected activity by discussing wages with Woltz. As stated, on October 28, Adegoke texted Mahone that moving forward she would be paid the same as the other guards, in order not "to make things worse and create more issues among the teams."[16] This change would amount to a $2 per hour wage reduction for Mahone. When Mahone objected, stating that it was unprofessional and unfair to reduce her wage rate to satisfy his other employees, Adegoke responded, "This is not about pleasing one person this [is] about [being] fair to everyone. *All this shouldn't have been a discussion at all if conversation with individual relating to pay has not come up*." This last statement lays bare the connection between Mahone's protected activity and the threatened or announced wage reduction. Threatening or announcing that an employee's wages will be reduced solely because they engaged in, or was believed to have engaged, in protected wage discussions is a clear violation of Section 8(a)(1).

D. Separation of Mahone

The General Counsel finally alleges that Respondent discharged Mahone by not assigning her any further shifts because she engaged the protected, concerted activities by discussing wages with

[15] There is no allegation that Respondent separately violated Sec. 8(a)(1) when Adegoke told Mahone to cease having conversations with Woltz about personal matters while at work, or when he told Mahone the conversations she was having with Woltz about wages was creating a toxic environment. The Board has long held that prohibiting employees from discussing wages violates Sec. 8(a)(1). See, e.g., *Waco, Inc.*, 273 NLRB 746, 747-748 (1984).

[16] As stated, while there is a dispute over when Mahone first provided Respondent with her two-weeks' notice, that dispute is largely irrelevant because she rescinded that notice in her October 28 morning text to Adegoke, and Adegoke accepted that rescission in his reply text less than an hour later.

Woltz. An employer violates Section 8(a)(1) when it discharges or otherwise discriminates against an employee because they engaged in, or were believed to have engaged in, making statements or having discussions with others about wages or benefits. See *North Mountain Foothills Apartments*, 373 NLRB No. 26 (2024) (Board held discharge unlawful based on employer's belief employee was discussing compensation package with other employees). See also *Hyundai Motor Mfg. Alabama, LLC*, 366 NLRB No. 166, slip op. at 2 (2018); *Alternative Energy Applications, Inc.*, 361 NLRB 1203 (2014). Respondent contends that Mahone resigned and was not discharged.

When assessing the lawfulness of an adverse employment action that turns on employer motivation, 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 (1982), approved by *NLRB v. Transportation Management Corp*., 462 U.S. 393, 395 (1983). Under this framework, the General Counsel must first make an initial showing sufficient to support the inference that employees' protected conduct was a motivating factor in the employer's adverse employment action. The elements required to sustain the General Counsel's initial burden are establishing: (1) the employee engaged in protected activity; (2) the employer had knowledge of that activity, and (3) the employer exhibited animus against the protected activity. Once the General Counsel has established those elements, the burden shifts to the employer to demonstrate that it would have taken the same action in the absence of the protected activity. Motive is a question of fact that may be inferred from both direct and circumstantial evidence on the record as a whole. *Intertape Polymer Corp*., 372 NLRB No. 133 (2023).

Before applying *Wright Line*, the preliminary inquiry is whether Mahone was discharged or voluntarily resigned. When an unlawful discharge is alleged, the General Counsel first must establish that a discharge occurred. *Nations Rent, Inc*., 342 NLRB 179, 181 (2004). The fact of a discharge does not depend on the use of formal words. *Lance Investigation Service, Inc.*, 338 NLRB 1109, 1110 (2003); *Hale Mfg. Co*., 228 NLRB 10, 13 (1977), enfd. 570 F.2d 705 (8th Cir. 1978). The issue is whether the employer's statements or actions at the time—when viewed from the perspective of a prudent employee—would reasonably lead the employee to believe they had been discharged. *North American Dismantling Corp*., 331 NLRB 1557 (2000), enfd. in part 35 Fed. Appx. 132 (6th Cir. 2002); *C.J. Krehbiel Co*., 227 NLRB 383, 384 (1976).[17] If the employer's statements or actions created ambiguity or confusion which reasonably caused an employee to believe they were discharged or, at the very least, that their employment status was questionable, the burden of the results of that ambiguity must fall on the employer, and, with it, the responsibility to clarify, particularly when it is result of the employer's wrongdoing. See *Flat Dog Productions, Inc*., 331 NLRB 1571 (2000), enfd. 34 Fed. Appx. 548 (9th Cir. 2002) (quoting *Brunswick Hospital Center, Inc*., 265 NLRB 803, 810 (1982)). See also *Kolkka Tables & Finnish American Saunas*, 335 NLRB 844, 846 (2001); *Gasko & Meyer, Inc*., 255 NLRB 658, 664 (1981). Cf. *Pink Supply Corp*., 249 NLRB 674, 674 (1980) (no inference drawn against employer regarding ambiguity when discriminatees passed up an opportunity to learn of their employer's intentions directly when they refused to talk or question him as to whether they were discharged, and there was no evidence of employer's wrongdoing).

In reviewing the evidence from Mahone's perspective, I conclude she reasonably believed that she had been discharged when, without explanation, she was not scheduled for any future shifts. The

[17] Although the Board most often applies this framework to strike situations to determine if there has been a discharge or resignation, it has applied it to other types of protected, concerted activity as well. For example, in *Castro Valley Animal Hospital, Inc*., 370 NLRB No. 80 (2021), the Board affirmed application of this framework to determine that an employee's unexplained removal from the work schedule after raising concerns about breaks and job assignment was the result of an unlawful discharge, not a resignation.

chain of events is largely undisputed. After Mahone's rescinded her resignation, Adegoke threatened or announced he would reduce her wage rate because of her actual or perceived protected activity. Mahone objected, stating that reducing her wages to satisfy the other guards "was not going to work for [her]" and she requested documents from her personnel file. Following this conversation, Adegoke removed Mahone from the next weekly work schedule. To the extent there was any ambiguity regarding Mahone's employment status following their October 28 text exchange, it was the result of Respondent's wrongdoing, because had Adegoke not unlawfully threatened to reduce her wages, there would have been no issues. As such, he bore the sole responsibility to clarify matters, and he failed to do so, leaving her to reasonably conclude that she had been discharged.

Having determined that Respondent discharged Mahone, I further conclude that General Counsel has met the initial *Wright Line* burden and established that the discharge was motivated by her actual or perceived protected, concerted activity. Mahone engaged in protected, concerted activity when she and Woltz discussed their wages on October 21. Adegoke knew of or believed in the concerted nature of that activity because Woltz informed him of the wage discussion he had with Mahone, and that is what prompted everything that followed. Adegoke's animus towards their wage discussion is indisputable. He unlawfully interrogated her, barred her from having any further "personal" conversations with Woltz while at work, accused her of creating a "toxic environment" by complaining about her wages, and then threatened or announced a wage reduction in direct response to her actual or perceived protected activities.[18] For the reasons stated, there is a clear causal connection between Mahone's protected activity and her eventual discharge.[19]

Respondent's sole defense is that Mahone resigned and was not discharged. It has presented no evidence establishing that it would have taken the same action in the absence of her actual or perceived protected activity. As a result, I conclude Respondent has failed to refute the General Counsel's case.[20] I, therefore, find Respondent discharged Mahone because she engaged in, or was believed to have engaged, in protected, concerted activity, in violation of Section 8(a)(1).[21]

CONCLUSIONS OF LAW

1. Goke Technology LLC d/b/a GT Security Services GTS ("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 Gina Mahone about discussing wages with other employees; (2) threatened to reduce Mahone's wage rate because

[18] Attorney Reeve conceded in his position statement that Mahone's unhappiness with her pay reduction was part of the reason Respondent did not allow her to rescind her resignation.

[19] Although not argued, I find Mahone also engaged in protected activity when she objected to Adegoke threatening to reduce her wage rate in retaliation for her actual or perceived protected wage discussions with Woltz. Protesting threatened retaliation for protected activity is in-and-of-itself protected activity.

[20] As noted, Respondent's prior attorneys offered shifting explanations for Mahone's separation. The Board has held that shifting defenses may be evidence of animus and proof that the proffered reasons are pretext for the employer's unlawful motivation. See *BS&B Safety Systems, LLC*, 370 NLRB No. 90, slip op. at 1 (2021); *MCPc Inc.*, 367 NLRB No. 137, slip op. at 4 (2019).

[21] In her post-hearing brief, the General Counsel argues that if I conclude that Mahone had resigned, her resignation in the face of the unlawful wage reduction amounted to constructive discharge. It is unnecessary for me to reach this argument. However, if it were, I would reject the argument as untimely. The General Counsel never presented this theory prior to or during the hearing, including in response to my direct inquiries about the nature of the discharge allegation and the applicable analytical framework. (Tr. V. III, pp. 227-228; 298-300).

she engaged in protected, concerted activities; and (3) then discharged Mahone by removing her from the work schedule because she engaged in actual or perceived protected activities by discussing wages with other employees.

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 Gina Mahone whole for any loss of earnings and other benefits incurred as a result of her unlawful discharge. 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 Mahone 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 her 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 Mahone for the adverse tax consequences, if any, of receiving lump-sum backpay awards, in accordance with Don Chavas *LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and file with the Regional Director for Region 9, 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 9 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[22]

ORDER

Respondent, Goke Technology LLC d/b/a GT Security Services GTS, Columbus, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[22] 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.

(a) Discharging or otherwise discriminating against its employees because of their protected concerted activities.

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

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

(d) 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 Gina Mahone 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 Mahone 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 Mahone for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 9, 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 Mahone.

(d) File with the Regional Director for Region 9, 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 Mahone's 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 Mahone, and within 3 days thereafter, notify Mahone in writing that this has been done and that the discharge will not be used against 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 Columbus, Ohio facility copies of the attached notice marked "Appendix A."[23] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by

[23] 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

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 October 27, 2022.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 9 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. February 05, 2025

_____

Andrew S. Gollin
Administrative Law Judge

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."

APPENDIX A
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 a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

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 threaten you with a reduction in wages because 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, within 14 days from the date of the Board's Order, offer Gina Mahone 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 Mahone 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 Mahone for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and we will file with the Regional Director for Region 9, within 21 days of the date the amount of back-pay 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 9, 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 Mahone's 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 Gina Mahone, 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.

GOKE TECHNOLOGY LLC d/b/a GT SECURITY SERVICES GTS

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

John Weld Peck Federal Building, 550 Main Street, Room 3003, Cincinnati, OH 45202-3271
(513) 684-3686, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at or by https://www.nlrb.gov/case/09-CA-312117 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS SECTIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (513) 684-3733.