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

PEPPERJACKS OF ANNAPOLIS JUNCTION LLC
D/B/A NOTCH 8 BREWERY

and Case 05-CA-328932

REBECCA SPITZER, AN INDIVIDUAL

Ben W. Palewicz, Esq., for the General Counsel
Andrew Granzow and Lauren Granzow, Pro Se,
Laurel, MD, for the Respondent

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Baltimore, Maryland on January 14, 2023. Based on timely filed charges,[1] the General Counsel issued a complaint on September 20, 2024 alleging that Pepperjack's of Annapolis Junction, LLC d/b/a Noth 8 Brewery (the Respondent), violated Section 8(a)(1) of the National Labor Relations Act (the Act)[2] on or about May 4, 2023[3] by discharging Rebecca Spitzer (the Charging Party) because she engaged in concerted activities with other employees by discussing pay, overtime, employee breaks, sexual harassment, and health and safety laws. The Respondent's answer denied the material allegations and asserted that Spitzer was not discharged, but rather, engaged in various forms of misconduct and abandoned her job.[4]

[1] The Respondent contends that service of the charge to Respondent's registered address at 10150 Junction Drive in Annapolis was defective because it omitted Suite No. 2, where the office is located. (Tr. 9-12.) That assertion lacks merit because Respondent's answer admitted that the charge was served upon it "by U.S. mail on October 31, 2023," thereby rendering it timely under Section 10(b). (GC Exh. 1-F at 1.)

[2] 29 U.S.C. § 158(a).

[3] All dates are in 2023 unless stated otherwise.

[4] The answers avers in part: "The Respondent SENT HOME for the day the Charging Party at 4:15 p.m. on May 4 while an investigation was conducted resulting from complaints from the Charging Party's colleagues and Crew Management that the Charging Party was engaged in conduct detrimental to the business, drinking alcohol while working, inexplicably and illegally serving customers beer from other competing local breweries and petty theft. Testimony from Maddie Winters submitted while three additional colleagues are prepared for in person testimony. The aforementioned allegations are grounds for immediate termination, reporting to the county liquor board and prosecution. (GC Exh. 1-F at 2-3.)

On the entire record,[5] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel and Respondent,[6] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a limited liability company with an office and place of business in Annapolis Junction, Maryland, has been operating a public restaurant selling food and beverages (the facility, Noche 8, or brewery). In conducting its operations at the facility, the Respondent annually derives gross revenues in excess of $500,000, and purchases and receives goods valued in excess of $5,000 directly from points outside the State of Maryland. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations

The Respondent operates three adjoining businesses at it place of business in Annapolis Junction: a sandwich shop, which opened in 2018; a coffee house, which opened in 2020; and Noche 8, which opened in 2021. The three businesses are not always open at the same time and employees are often tasked with covering shifts and breaks at more than one of the businesses. Employees are scheduled for shifts through a scheduling app called "7 Shifts". The Respondent also makes the GroupMe messaging platform available to employees to enable them to communicate with management and each other.

Noche 8 sells food and alcoholic beverages pursuant to a license issued to Andrew Granzow by the Howard County Licensing and Liquor Board (the Licensing Board). Granzow is familiar with the Licensing Board's Rules, which require him or anyone in a "supervisory capacity" to have an approved alcohol awareness certificate (alcohol certificate) and be available during the breweries hours of operation.[7]

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[5] Andrew Granzow's opening statement, as I reminded him, was not considered as evidence.

[6] Respondent's Proposed Statement of Fact includes new assertions about the implications of Spitzer drinking at Noche 8 after hours—OSHA compliance, premises liability and negligence, insurance implications, and the potential for criminal charges—were not pled in its answer.

[7] The Licensing Board's Rules do not require bartenders to have a certificate to serve alcohol. However, Andrew Granzow's assertion that a bartender working alone needed to have an alcohol certificate is essentially correct (Tr. 120-124.). The county licensing rules require that "[a] license holder or person in a supervisory capacity shall be certified by an approved alcohol awareness course and be on the premises during the hours in which alcohol may be sold, unless the person is required to be absent for no more than 2 hours in the case of a bona fide emergency." The rules also require license holders to "keep on their licensed premises and have available for inspection at all times "records containing the legal names, aliases, addresses, date of birth, and social security numbers of all persons currently employed by the establishment and of persons so employed during the preceding 12 month period." (GC Exh. 3 at 9, 27, 29; Tr. 120.)

Andrew Granzow has held the position of Respondent's Partner and has been a supervisor and agent pursuant to Sections 2(11) and 2(13) of the Act, respectively. Lauren Granzow acted at the material times as an agent for the Respondent pursuant to Section 2(13) of the Act. She handled the Respondent's human resource functions, including hiring and record keeping, and employee scheduling through a scheduling app called "7 Shifts."[8] Lauren Granzow also oriented new employees regarding the Respondent's policies, including their right to one free entre and beer during their shifts. However, employees had to purchase any side dishes or additional food.[9]

B. Spitzer's Job Performance

On March 14, the Respondent advertised openings for "beertenders" (bartenders) at Noche 8.[10] Spitzer applied for the position and received a text message from Andrew Granzow confirming receipt of the application and asking Spitzer to call him. He messaged Spitzer again a few hours later to "[c]all me when you can. Lauren is her name . . . she will be there until 4. Today would be great."[11]

Spitzer responded by calling Andrew Granzow on the first occasion and Lauren Granzow on the second occasion. She was then interviewed by Lauren Granzow. Although she had no prior bartending certification or experience, Spitzer was hired as a beertender at Noche 8.[12] Initially, she shadowed and was trained by another bartender, Jayde Gary. During her employment by the Respondent, Spitzer was in the training stage and, like another beertender, Jennifer Merello, never obtained an alcohol certificate. As a result, the Respondent was required to have a certified bartender working alongside her at all times.[13]

Spitzer consumed a free entree during her shifts. She would also purchase additional food and drinks. Spitzer would pay for any additional food and drinks at the cash register. She would order food from the kitchen staff, print a receipt, sign it, and place it in the cash register. Spitzer, like other bartenders, would drink a beer after her shift and was never told that she drank too much.

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[8] The General Counsel's unopposed motion dated February 7, 2025, to amend the complaint at Paragraph 3 to allege Lauren Granzow's agency status is granted. In response to the motion, the Respondent admits that Lauren Granzow has been its agent pursuant to Section 2(13). (Tr. 132, 141-142, 145-146.)

[9] Lauren Granzow did not dispute Spitzer's credible testimony regarding that policy during the hiring interview. (Tr. 43-44, 69.)

[10] GC Exh. 4 at 1.

[11] These two text messages were the only times that Andrew Granzow communicated with Spitzer in that manner. Each time, Spitzer called as requested. (R. Exh. 2; Tr. 58-59.) While employed, Spitzer text messaged Andrew Granzow only once regarding a problem with one of the beer taps. Granzow did not respond. (R. Exhs. 1-2; Tr. 58-59.)

[12] Spitzer did not recall ever being asked by Andrew or Lauren Granzow if she had an alcohol certificate. (Tr. 41-42.) Lauren Granzow credibly testified that newly hired beertenders were told that should get an alcohol certificate at some point: "There's not like a set, you must have it by day 4." (Tr. 148-150.) In any event, the Respondent has never discharged a beertender for failing to obtain an approved alcohol certification. (Tr. 149.)

[13] Lauren Granzow's testimony that Spitzer always needed someone to work alongside her because she was a trainee is consistent with the Liquor Board's Rule that either the licensee or a supervisor with an alcohol certificate be present at all times during operating hours. (Tr. 95, 153-154.) In any event, there is no credible evidence to support Respondent's Proposed Statement of Fact that Spitzer was monitored by the Respondent during her employment and found to perform poorly.

Spitzer and other beertenders also brought in beer from other breweries to share with coworkers after hours. Spitzer never charged anyone for beer that she brought in from other breweries.[14] Nor was she ever told by any supervisor or employee that she abused her employee food and beverage privileges.[15]

Having been told by Gary that it was acceptable to provide customer's dogs with food, Spitzer did the same on occasion. She was never told that she could not give food to customers' dogs. No managers or coworkers criticized on how she spoke to customers, for sitting down on the job too much, or spending too much time looking at her phone.[16]

C. Spitzer's Concerted Activities

About three to four weeks after she began working at Noche 8, Spitzer overheard coworkers speaking about the number of hours they worked and the lack of coverage so they could take breaks.[17] Maddie Winters told Spitzer that she often worked at all three businesses—Noche 8, Pepperjacks, and the coffee house, as well as the Respondent's restaurant in Scaggsville, Maryland. She worked as much as 45-50 hours a week between the four businesses. Spitzer told Winters that she was entitled to overtime if she worked over 40 hours a week because the three businesses operated under the same license.

Around the same period of time, Spitzer also spoke with other employees, Vitali Belva, "PJ," "Cory," and Morello. Belva and PJ complained about the lack of coverage during breaks and Belva also complained about working multiple shifts between the three businesses. Cory, who worked solely in the coffee shop, complained that she worked long shifts and the coffee shop often lacked the coverage to enable her to take a break. In each of these conversations, Spitzer told her coworkers that they could reach out to the National Labor Relations Board or the Department of Labor for more information. However, Spitzer's view about employee's rights to breaks and overtime was not shared by one employee, Jennifer Merello. Morello did not express any workplace concerns. However, whenever Spitzer brought up the issues of breaks and overtime pay, Merello would respond that the restaurant business was different from retail.

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[14] The Respondent's asserts in its Proposed Statement of Fact that Spitzer violated Maryland Alcoholic Beverage Article § 6-301 by "admitting to drinking alcohol on the premises after hours." However, that section requires only that license holders sell alcoholic beverages for consumption on their premises only. That section did not apply because Spitzer did not resell the beer that she brought in from the outside.

[15] Contrary to the Respondent assertions in its Proposed Statement of Fact, Spitzer's credible testimony that she neither engaged in, nor was accused of, improprieties on the job, was corroborated by Merello. (Tr. 44-47, 93-97, 103-108.) Lauren Granzow's assertion to the contrary, on the other hand, was neither supported by testimony of persons with personal knowledge or evident from the group text discussion of employees sympathetic to the Respondent, including her vague assertion that "this had happened, again, in less than 24 hours." (Tr. 153-154; GC Exh. 6.)

[16] In addition to corroborating Spitzer's testimony, Morello testified that Spitzer "loved" her job, customers "loved her," she never interacted with customers in an inappropriate manner, and never heard coworkers complain about her. (Tr. 45-46, 96.)

[17] Spitzer's credible and undisputed testimony regarding conversations with coworkers about their working conditions was corroborated Merello and the group text messages between employees about their conversations with Spitzer and Andrew and Lauren Granzow. (GC Exh. 6.; Tr. 47-52, 78-80.)

On May 2, Spitzer contacted the Maryland Department of Labor regarding the Respondent's employee break and overtime practices and policies.[18]

D. Spitzer's Discharge

On May 4, Spitzer arrived early for her shift and went to the coffee shop for a cup of coffee. About 5-10 minutes after she sat down, Andrew Granzow approached and asked to speak with her. They went to Granzow's office, where he angrily told Spitzer that "someone he trusted "told him that she was speaking with other employees about their breaks and overtime, and urging them to file cases against him. Granzow added that he was not going to tolerate those types of "backdoor" conversation between employees. Spitzer admitted to having those conversations. She did not, however, tell Granzow that she advised other employees to file cases. Granzow then told Spitzer that she was not needed and to go home. Spitzer left.[19] On the same day, Noche 8 advertised on Facebook that "WE'RE HIRING Beertenders – APPLY NOW."[20]

At 9:33 a.m. on May 5, Spitzer text messaged Andrew and Lauren Granzow asking if "I'm still on the schedule for tomorrow 5/6; am I to report for that shift?" Neither one responded to Spitzer so she texted them again at 5:29 p.m.:

> I just saw that I no longer have access to 7shifts; so is it a fair assumption to say I've been terminated? It would be nice to actually be told. I'd like it in writing. And please email me copies of all of my paycheck stubs. Lauren has the address.[21]

Almost immediately, Andrew Granzow placed three phone calls to Spitzer, but Spitzer did not answer any of the calls.[22] Lauren Granzow then messaged Spitzer: "If you wish to discuss answer the call[.] We don't go via text." Spitzer replied: "I prefer everything be in writing." With the exception of emails sent by Spitzer to the Respondent requesting pay stubs in May and June, and an inadvertent text message on July 30, there were no further communications between them.[23]

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[18] GC Exh. 6 at 1-2.

[19] Andrew Granzow testified that Spitzer was not discharged on May 4 but did not elaborate as to what he said to Spitzer that day. (Tr. 130.) Accordingly, I base this finding on Spitzer's credibly detailed and undisputed version of their meeting in Andrew Granzow's office on May 4. (Tr. 52-54, 65-66.)

[20] The Respondent's advertisement of bartender positions on the same day that he sent Spitzer home is compelling evidence that it had no intention of calling her back to work. (GC Exh. 4 at 2.) This fact is reinforced by the Respondent's failure to produce the May 4 advertisement in response to the General Counsel's subpoena request for "documents, including social media posts and exchanges related to hiring between March 4th, 2023, and May 15th, 2023." (Tr. 130.)

[21] Jt. Exh. 1; Tr. 54-55.

[22] Although not explained on direct examination, Spitzer conceded on cross-examination that she refused to take any of the phone calls from Andrew Granzow because she "wanted everything in writing" and based on "how the conversation went the day before went, I didn't feel that it was the best idea to have conversations that were not in writing." (Tr. 55, 61-63, 70-72.) Andrew Granzow, on the other hand, testified that it was his policy not to communicate with employees regarding their employment by text message. (Tr. 129-130.)

[23] R Exhs. 1.

Subsequently, the Respondent described the end of its relationship with Spitzer in a filing to the Maryland Department of Labor as a separation based on job abandonment.[24]

E. Employees Discussed Spitzer's Activities

Spitzer's concerted activities were also discussed by the Respondent's employees in group texts.[25] On May 3, Jayde Gary informed his coworkers about Spitzer's activity:

> Hey guys. So apparently [Spitzer] called the department of labor on Lauren and Andrew [Granzow] yesterday over some little shit. Was contemplating warning them, but wanted to know how y'all felt first."

Gary described Spitzer's call to the DOL as "[s]omething about us getting over time and mandated breaks." (p. 1.) In response to Elise's question whether Spitzer resigned, Justin replied, "[s]he didn't quit I'm working with her now lol." (p.2.) Jayde added, "But if I told them they might fire her." Justin advised against informing Andrew and Lauren Granzow because "you don't exactly know what she told them and it could start up more drama then what the DOL will actually end up doing." (p. 3.)

On May 4, Elise asked Maddie Winters if she was working and to "[g]ive us all the juice." Winters confirmed that she was working, and shared that Andrew and Lauren Granzow "came in early to help because it was busy and Lauren Granzow asked to speak with her. After speaking with Lauren Granzow, Winters shared:

> [S]o I am the only one who would make overtime anyways, but I don't make overtime at any one business because all are separate. [S]he's PISSED" (p.4.)

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[24] In its answer, the Respondent also asserted that, although Spitzer was "removed from the scheduling pool app to allow other bar tenders, with legal certification, to be notified and 'bid' on her responsibility at the bar. This is no way relieved her responsibility to work on May 6th as agreed on May 4th." The Respondent further asserted that Spitzer then "defaulted into a terminated position . . . for reasons listed as – VOLUNTARY ABANDONMENT OF POSITION in a NOTICE OF SEPARATION to the Maryland Department of Labor. (GC Exh. 1-F at 3.) In his testimony, Andrew Granzow did not allude to job abandonment, instead attributing Spitzer's discharge to subsequent discoveries stated in Respondent's answer—she lacked a Howard County certification to serve alcohol, illegally served alcohol from other establishments to Noche 8 customers, and stole from the business. He conceded, however, that those assertions were based on "allegations" brought to his attention and he never acted on them or reported them because he "didn't have enough time to investigate." (Tr. 119-126, 128-130.) Lauren Granzow's hearsay testimony was also less than convincing and inconsistent. She initially testified that she based those accusations on conversations with unspecified employees during the seven weeks that Spitzer worked there. (Tr. 145-148.). On cross-examination, however, and without further explanation, she vaguely explained that she never approached Spitzer "[b]ecause this had happened, again, in less than 24 hours." (Tr. 153.) Moreover, the Respondent's assertions of Spitzer's misconduct were credibly refuted by Morello. (Tr. 93-97, 103-104, 108.) Finally, the Respondent's assertion that Spitzer engaged in petty theft was also unproven. Andrew Granzow admits that he received this allegation from an unnamed employee, but never investigated it because he did not have enough time to do so. (Tr. 129.)

[25] The 17 pages of text messages were produced by Morello. (GC Exh. 6.)

Justin and Elise replied that they did not know that overtime and breaks were an issue. Winters replied that "we are allowed to take breaks, she was just asking us to clock out when we do." Speculating about Spitzer's motivation, Justin replied:

> Only so she can smoke is my guess otherwise you can eat during, go to the bathroom during and whatever else during [your] shift if [you] do it at the right time. I mean [you] should technically clock out for breaks unless its factored into your hours a day but that's not a thing in restaurants so clock out and clock back in it's not that big of a deal to [your] pay for a 15 [minute] break.

Elise asked if Lauren Granzow knew that Spitzer was the one who contacted the Department of Labor. Winters replied,

> I have no clue. She said she has an idea of who it may be but didn't say who. Elise replied, "[t]hey must be livid. I'm guessing that means she's not working tonight.

Morello replied, "[d]amn I really hope they don't think it's me." Winters replied that "[s]he is working tonight. They aren't firing anyone." After several comments about shift coverage, Elise replied, "Ah gotcha, I figured it was her. [Winters], you better stay the full day and get in that new overtime!! (laughing emojis) (pp. 5-7.) Justin then asked,

> Is anyone else is surprised that the department of labor acted so quickly, unless she called previously and only just got around to telling Jayde about it. I really want to know what [is] the notice they must've received. Yeah, that's a fast ass response time from Tuesday night to Thursday morning.

Winters speculated that "they just called to warn her or something and she explained it to them so I think they aren't going to do anything. Elise agreed. (pp.7-9.)

At 4:08 p.m., Winters posted that Spitzer "[just] got fired." Winters explained that she "felt bad" because they told me like 30 minutes before she came in so I knew and couldn't say anything." Spitzer "came in an hour early just to hang out with me and then [A]ndrew comes up to her after she's complaining to me about working the next three nights and took her to the office and fired her, so awkward . . . I felt bad." (pp. 9-11.)

Morello replied that she too "felt bad though she did love working there. But getting fired for being a whistle blower sounds kinda illegal." Winters disagreed, asserted that the Respondent did nothing wrong, and Spitzer tried to damage the business and they nothing wrong . . . [I] like [Spitzer] but she shouldn't have done that.

Morello replied that Spitzer "would always compare things back to retail or just "labor laws" and wouldn't accept the fact the food industry especially plays by their own rules. Does it make it right no, but like we all mentioned we've hall had worse jobs." Gary agreed, adding that he was "looking forward to coming to work and not having to deal with lies, rumors, and constant complaints. I'm gonna take more shifts, and hopefully our new people will be chill." Winters replied that, "[t]hanks to [Spitzer], I'm working 16 hours today." (pp. 11-13.)

At about 4:53 p.m., Spitzer messaged Morello about her discussion with Andrew Granzow. Morello took a screenshot of the message and shared it with her coworkers (p. 13):

> He basically told me that he didn't need that around & he's done a lot to help people who work for him. He said he was told by "people he trusts" and asked me if I made any phone calls. Which I didn't , and I told him. I'm not worried about the details, in all honesty.
>
> They took me off the scheduled for today & removed me from the GroupMe chat but [it] still shows that I'm scheduled in Sat to close. So I have no fucking clue.
>
> But I'm just operating under the assumption that I don't have a job there anymore & I'll start looking elsewhere.
>
> I can't even blame them. They're trying to protect themselves & their business. And I've only been there a month.
>
> No reason for them to believed anything I say. Not like I've had any actual conversations with them.
>
> Someone will just have to let me know if I'm banned & not allowed to visit [y'all].

During the afternoon on May 5, coworkers continued to speak about Spitzer. Jayde referred to Spitzer as annoying and asked Winters who she was "rooting for here?" Juston commented, "[p]aper [trail] . . . she's looking to sue potentially . . . only reason she wants everything in writing." (p. 14.)

About two hours later, Morello informed the group: "I JUST GOT FUCKING FIRED!!!" Winters commented that Spitzer had "[n]o reason to sue, she['s] gonna lose money in the long run," then asked Morello why she was fired. Morello replied that Andrew Granzow "just called me and said he's taking the bar in a new direction and wants to clean house. I can't believe I'm fucking unemployed now. FUCK them seriously fuck them. (p. 15-17.)

LEGAL ANALYSIS

I. APPLICABLE LAW

In proving that an employer unlawfully discriminated against an employee to hinder Section 7 activity, the General Counsel must make a prima facie case that the employee's protected activity was a motivating factor in the adverse employment action. That burden is satisfied with proof that the employee engaged in protected concerted activity, the employer knew of that activity, and the employer bore animus towards that activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002). If the General Counsel makes that showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6 (2023), enfd. 2024 WL 276 (6th Cir. 2024).

The causal link may be established by direct evidence or "inferred from circumstantial evidence based on the record as a whole." *DHL Express (USA), Inc.*, 360 NLRB 730, 730 fn. 1 (2014) (inferring animus where employer discharged employee one day after employee engaged in union activity); *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003) (employers' actions were motivated by union animus where union supporters were suspended less than two weeks after a second election was ordered and discharged a few weeks after union was certified).

Circumstantial evidence which might support a finding of discriminatory intent might include the timing of the adverse action in relation to the employee's protected activity, the presence of other unfair labor practices, disparate treatment of the discriminatees, the employer's perfunctory investigation, shifting defenses by the employer, and evidence of pretext. *Lucky Cab Co*., 360 NLRB 271, 274 (2014), enfd. Mem. 621 Fed.Appx. 9 (D.C. Cir. 2015) (animus evident from discharge of union supporter two weeks after organizing effort intensified, contemporaneous Section 8(a)(1) violations, disparate disciplinary treatment, shifting defenses, failure to allow discriminatees to respond to allegations of misconduct, falsified documentation and abrupt changes in discipline, and false reasons for discharges); *ManorCare Health Services–Easton*, 356 NLRB 202, 204 (2010) (final written warning to union supporter established by close proximity of time to protected union activities, employer's unlawful interrogation, threats, failure to investigate, departure from past disciplinary policy in basing discipline on an outdated prior warning, and confiscation of union literature); *Windsor Convalescent Center*, 351 NLRB 975, 984 (2007), enfd. in relevant part 570 F.3d 354 (D.C. Cir. 2009) (unlawful motivation for suspensions and terminations of employees for protected and union activities indicated by disparate disciplinary treatment, false or pretextual reasons for the discipline, failure to investigate or ask employees' for their versions of incident before imposing discipline).

If the evidence as a whole "establishes that the reasons given for the [employer's] action are pretextual—that is, either false or not relied upon—the [employer] fails by definition to show that it would have taken the same action for those reasons, absent protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis." *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004), citing *Wright Line*, supra at 1089. See also *Cintas Corporation*, 372 NLRB No. 34, slip op at 5 (2022), citing *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007) (employer's burden not met by merely showing a legitimate reason).

II. THE RESPONDENT VIOLATED SECTION 8(A)(1) BY DISCHARGING SPITZER ON MAY 4

A. The Respondent Had Knowledge of Spitzer's Concerted Protected Activity

Within several weeks after she started her employment, Spitzer's began engaging with coworkers who were discussing the number of hours they worked and missed breaks due to a lack of coverage. Spitzer told Winters told, who worked as much as 45-50 hours a week between the Respondent's four businesses, that she was entitled to overtime if she worked over 40 hours a week. She also spoke with three other employees—Belva, PJ, and Cory—who complained about working long shifts and the lack of coverage for breaks. In each of these conversations, Spitzer told her coworkers that they could reach out to the National Labor Relations Board or the Department of Labor for more information. Morello, however, did not agree with the advice

Spitzer gave to other employees. In Morello's view, the legal requirements for breaks and overtime in the restaurant business was different than those in the retail industry.

On May 2, Spitzer contacted the Maryland Department of Labor regarding the Respondent's employee break and overtime practices and policies. Spitzer's actions were clearly a continuation of Spitzer's workplace advocacy regarding employee work breaks and overtime pay. See *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992) (noting that "individual action is concerted where the evidence supports a finding that individually expressed concerns are logical outgrowth of the concerns expressed by the group"), supplemented by 310 NLRB 831 (1993), enfd. 53 F.3d 261 (9th Cir. 1995).

By May 4, Andrew Granzow had learned of Spitzer's protected concerted activity and called her into his office for a private meeting. In that meeting, Andrew Granzow informed Spitzer that he learned about her conversations with other employees about breaks and overtime, and urging them to file cases against him, from "someone he trusted."

B. Spitzer's Discharge Was Motivated By Unlawful Animus

Andrew Granzow's animus toward Spitzer's protected concerted activity was established by his statements to her on May 4. He called Spitzer into his office before her shift began and angrily told that her was not going to tolerate employees engaging in those kinds of "backdoor" conversations. Further evidence of unlawful motivation is also established by the timing of Andrew Granzow's sudden investigation of Spitzer immediately following their May 4 encounter. See *Intertape Polymer Corp.*, 372 NLRB No. 133 (2023), slip op. at 6-7 (circumstantial evidence of a discriminatory motive may include the timing of the adverse action in relation to the protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; and the failure to conduct a meaningful investigation;

C. The Respondent Failed to Establish that it Would Have Discharged Spitzer in the Absence of Her Protected Concerted Activity

The burden now to shifts to the Respondent to prove that Spitzer's discharge would have taken place even in the absence of the protected conduct. Based on the credited evidence, the Respondent did not satisfy its burden.

In the Respondent's answer, it states that Spitzer was disciplined after receiving complaints from employees that Spitzer engaged in "drinking alcohol while working," "illegally serving beers to customers from other competing local breweries," and "petty theft." The answer further states that the Respondent removed her from the bartender pool and group chat when it discovered that she did not have the "legal certification to serve alcohol in the state of Maryland." The credited evidence, however, established otherwise.

First, the Respondent has never discharged a bartender for failing to obtain an alcohol certificate. While the Liquor Board Rules require the license holder or a supervisor to be on hand during operating hours *and* possess an alcohol certificate, it does not require the same of bartenders. Spitzer was not a supervisor, but rather, a trainee. Moreover, the Respondent knew that

Spitzer—like Morello—did not have an alcohol certificate when it hired them and never discussed it with either of them after they were hired.

Second, the Respondent's assertions of misconduct uncovered during the pretextual investigation of Spitzer were far from proven. Spitzer was never counseled or discipline during her employment by the Respondent. Her credited testimony, corroborated by Morello and the group text between their colleges, effectively refuted the hearsay testimony of Andrew and Lauren Granzow that Spitzer took excessive breaks, drank beer on the job, did not perform her work, brought in and served beer from other breweries, and had inappropriate conversations with customers. Also unproven was the pled allegation that Spitzer engaged in petty theft.

Finally, In its answer, the Respondent also asserted the pretextual excuse that Spitzer was "removed from the scheduling pool app to allow other bar tenders, with legal certification, to be notified and 'bid' on her responsibility at the bar. This is no way relieved her responsibility to work on May 6th as agreed on May 4th." The Respondent further asserted that Spitzer then "defaulted into a terminated position . . . for reasons listed as – VOLUNTARY ABANDONMENT OF POSITION in a NOTICE OF SEPARATION to the Maryland Department of Labor. In his testimony, however, Andrew Granzow did not allude to job abandonment, instead attributing Spitzer's discharge to meritless excuses that she did not have an alcohol certificate, illegally served alcohol from other establishments to Noche 8 customers, and stole from the business. Moreover, Andrew Granzow, angrily sent Spitzer home on May 4 because she engaged in protected concerted conduct. He then refused to respond in writing to her subsequent text messages requesting explanations as to whether she should report for her scheduled shift on May 6, and then whether she was terminated after her access to the scheduling app was cut off.

Based on the preponderance of the evidence, the Respondent violated Section 8(a)(1) of the Act by discharging Spitzer on May 4. See *Intertape Polymer Corp*., 372 NLRB No. 133, slip op. at 7 ("the employer's burden in this regard cannot be satisfied by proffered reasons that are found to be pretextual, i.e., false reasons or reasons not in fact relied upon.").

CONCLUSIONS

1. The Respondent, Pepperjack's of Annapolis Junction, LLC d/b/a Noth 8 Brewery, is an employer engaged on commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent violated Section 8(a)(1) of the Act on May 4 by discharging Rebecca Spitzer because she engaged in concerted activities with other employees, and contacted the Maryland Department of Labor, regarding the Respondent overtime and break policies.

3. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the polices of the Act.

The Respondent, having discriminatorily discharged Rebecca Spitzer on May 4, 2023 because she engaged in protected concerted conduct regarding the Respondent's overtime and break policies and practices at Noche 8 and the Respondent's two other businesses in Annapolis Junction, MD, must offer her reinstatement and make her whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

The Respondent shall reimburse Spitzer in amounts equal to the difference in taxes owed upon receipt of a lump-sum backpay award and taxes that would have been owed had there been no discrimination. The Respondent shall also take whatever steps are necessary to ensure that the Social Security Administration credits her backpay to the proper quarters on her Social Security earnings record. To this end, the Respondent shall file with the Regional Director for Region 5, 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.

The Respondent shall remove from its files any references to the discharge and notify Spitzer in writing that this has been done, and that the discharge will be used against her in any way. The Respondent shall also be ordered to post copies of the attached notice in places at all three businesses where notices to employees are customarily posted and on the Respondent's GroupMe messaging platform.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[26]

ORDER

The Respondent, Pepperjack's of Annapolis Junction, LLC d/b/a Noth 8 Brewery, its officers, agents, successors, and assigns, shall be ordered to:

1. Cease and desist from:

(a) Prohibiting employees from discussing working conditions and legal options employees have to confront potential violations of the law.

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

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

(a) Within 14 days of the Board's Order, offer Rebecca Spitzer reinstatement to her

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

position as a beertender or, if that position no longer exist, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges to which she would have been entitled.

(b) Within 14 days of the Board's Order, pay Rebecca Spitzer for the wages and other benefits she lost because the Respondent discharged her, less any interim earnings, plus interest.

(c) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix" at its three Annapolis Junction businesses. Copies of the notice, on forms provided by the Regional Director for Region 5, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other materials.

(d) Within 14 days after service by the Region, post and maintain copies of the attached notice marked "Appendix"[27] on Respondent's GroupMe messaging site for 60 consecutive days.

(e) Remove from the Respondent's files all references to the discharge of Rebecca Spitzer on May 4, 2023.

(f) Notify Rebecca Spitzer in writing that this has been done and that the discharge will not be used against her in any way.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certificate 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 19, 2025

Michael A. Rosas
Administrative Law Judge

[27] If the Respondent's office 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 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

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.

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

WE WILL NOT discipline or discharge you for voicing complaints about our break or overtime policies or other terms and conditions of employment to other employees, or for discussing with other employees the legal options they may have.

WE WILL reinstate Rebecca Spitzer to the same or similar position to that which she held before we discharged her.

WE WILL pay Rebecca Spitzer for the wages and other benefits she lost because we discharged her, less any interim earnings, plus interest. Rebecca Spitzer has voluntarily waived her right to seek reinstatement to her former job.

WE WILL remove from our files all references to the discharge of Rebecca Spitzer on May 4, 2023, and **WE WILL** notify her in writing that this has been done and that the discharge will not be used against her in any way.

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

PEPPERJACKS OF ANNAPOLIS JUNCTION LLC
D/B/A NOTCH 8 BREWERY
(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

Bank of America, Tower II, 100 S. Charles Street, Suite 600, Baltimore, MD 21201-2700
(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/05-CA-328932 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.

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 PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (410) 962-2880.