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

UNITED STATES POSTAL SERVICE

Respondent

and

Case 07–CA–292942

NATIONAL ASSOCIATION OF LETTER CARRIERS (NALC), AFL–CIO

Charging Party

Matthew E. Ritzman, Esq.,
for the General Counsel.
Arthur W. Eggers, Esq. and *Carmen Green, Esq.,*
for the Respondent.
Steven A. Davidson, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

Christine E. Dibble, Administrative Law Judge. This case was tried, by agreement of the parties, using Zoom video technology on January 9, 2024. The National Association of Letter Carriers (NALC), AFL–CIO (the Union/Charging Party) filed charges in Case 07–CA–292942 on March 22, 2022.[1] (GC Exh. 1(a).)[2] The Union filed a first and second amended charge on June 2 and September 28, respectively. On December 14, Region 7 of the National Labor Relations Board (NLRB/the Board) issued a Complaint and Notice of Hearing. On December 29, the United States Postal Service (the Respondent/USPS/Postal Service) filed a timely answer to the complaint denying all material allegations in the complaint and asserting several affirmative defenses. Subsequently, the Respondent filed an

[1] All dates are in 2022, unless otherwise indicated.

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "R. Exh." for the Respondent's exhibit; "Jt. Exh." for Joint exhibits; "GC Br." for General Counsel's brief; and "R. Br." for the Respondent's brief. My findings and conclusions are based on a review and consideration of the entire record and may include parts of the record that are not specifically cited.

amended answer and affirmative defenses to complaint and notice of hearing dated May 18, 2023. (GC Exh. 1(m).)

The complaint alleges that:

(1) During the 6 months prior to March 22, the Respondent has maintained Employee Handbook AS-805 (AS-805) that contains the following overly broad or unlawful policies at its facilities throughout the United States in violation of section:

a. Rule 5-1 Policy:

Postal Service information resources must be used in an approved, ethical, and lawful manner to avoid loss or damage to Postal Service operations, image, or financial interests and are used to comply with official policies and procedures on acceptable use. Personnel must contact the manager, Corporate Information Security Office, prior to engaging in any activities not explicitly covered by the following policies:

a. Personal use of government office equipment including information technology.

b. Electronic mail and messaging.

c. Internet.

d. Prohibited uses of information resources.

e. Protection of sensitive personal and Postal Service information.

All Postal systems (on premise, hosted, cloud) must display or provide a link to notify users of the Postal Service terms of use and privacy notice.

b. Rule 5-3.1 Prohibited Use:

Do not use Postal Service provided computing devices, including mobile devices, to check non-Postal Service (e.g., personal, supplier, contractor, and vendor) e-mail accounts (e.g., Hotmail, Yahoo, Excite, MSN) or social media. Do not use personal electronic devices to receive, process, store, or send mail containing Postal Service sensitive-enhanced, sensitive, or non- publicly available information. Other prohibited activities when using Postal Service e-mail include, but are not limited to, sending or arranging to receive the following:

d. Any material that may defame, libel, abuse, embarrass, tarnish, present a bad image of, or portray in false light, the Postal Service, the recipient, the sender, or any other person.

h. Chain letters, unauthorized mass mailings, or any unauthorized request that asks the recipient to forward the message to other people.

(2) About March 18, the Respondent unlawfully suspended the computer and email privileges of its employee John Odegard (Odegard) because he was a union official and assisted the Charging Party and engaged in concerted activities, and to discourage employees from engaging in these activities in violation of Section 8(a)(1) and (3) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following[3]

FINDINGS OF FACT

I. JURISDICTION

Respondent admits and I find that Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101, et seq. (PRA) gives the NLRB jurisdiction over the Respondent in this matter.

At all material times the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview of Respondent's Operation

The Postal Service is an independent agency of the United States government responsible for delivering mail service throughout the United States and operates postal facilities nationwide, including its facility in Ann Arbor, Michigan (AA facility/AA installation). Since January 2021, Carmelo Orlando (Orlando) has

[3] My findings and conclusions are based on my review and consideration of the entire record not just those cited in this decision, and the demeanor of the witnesses. I have also considered the relevant factors in making my credibility findings which include: "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, e.g., *Daikichi Corp*., 335 NLRB 622, 623 (2001), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB,* 111 F.3d 1460, 1465 (9th Cir.), cert. denied 522 U.S. 948 (1997).

served as the postmaster at the AA facility. He supervises about 250 employees over three postal installations and, at all relevant time periods, has been a supervisor of the Respondent within the meaning of Section 2(13) of the Act.

During the period at issue and continuing, the AA facility's city letter carriers have been represented by NALC local branch 434 (local 434). Carol White (White) was a union steward. (Tr. 46.) Since October 2016, Odegard has been the president for local 434. In his role, Odegard handles grievances on behalf of the Union, appoints union stewards, meets with the Respondent's supervisors, managers, and the AA facility postmaster about grievances, meet with the postmaster about collective-bargaining agreement (CBA) enforcement, and other related workplace matters. The Respondent records union duties that Odegard performs while on duty hours as "union time" or "official steward duty time."

B. Respondent's Email System and Protocols

The Corporate Information Security Office (CISO) creates and oversees the Respondent's policies and procedures relating to its information technology and security. It was created because of a cybersecurity breach the Postal Service suffered in 2014 or 2015. Michael Tingle (Tingle) currently works in CISO as the manager of policy, quality, and compliance and is responsible for the development and publication of CISO policies. He is in the headquarters cybersecurity unit in Morrisville, North Carolina.

The Respondent's administrative support manual (ASM) contains a subset, AS-805, which covers information resources and information technology security. It addresses how the Postal Service secures and protects its network infrastructure by using the industry best standards and practices to develop its own policies to use in-house. Tingle was involved in drafting changes to the current AS-805 edition which was completed in 2022. The Respondent leverages several industry standards to ensure that its policies are in alignment with industry best practices and standards. Publicly available industry standards used by the Postal Service are the National Institute of Standards and Technology (NIST), International Standardization Organization (ISO), and the Center for Internet Security (CIS). The Respondent annually reviews any updates to the NIST, ISO, and CIS guidance. Its review and revision process of the ASM or AS-805 is lengthy and allows the Union to also review the proposed revisions and object to any policy changes to AS-805.[4] The American Technical Research and Consulting firm (Gardner) has a contract with the Postal Service to provide it with "technical research documents" and consult on cybersecurity issue. (Tr. 125–126.) Gardner will also occasionally review the Respondent's cybersecurity policies for updates. Tingle can begin the process to

[4] Tingle gave undisputed testimony that the Union has not objected to revisions to the ASM or AS-805 during his tenure. (Tr. 123–124.)

review AS-805 when necessary but it takes at least a year or more to update and publish any approved revisions. (Tr. 140.) If the Respondent is notified that portions of AS-805 are unlawful, it can, after an extensive review process, make revisions without rescinding the AS-805 in its entirety. (Tr. 141–142.)

AS-805, section 5-3 notes that access to the Respondent's email system is authorized for "personnel whose duties require e-mail to conduct Postal Service business." (Jt. 1.) Tingle gave undisputed testimony that the Postal Service has about 630,000 employees but fewer than 225,000 of those employees have network access and even fewer than that number have email access. City carriers do not typically have access to the Respondent's email network. Employees granted email or network access must take the Postal Service's mandatory cybersecurity training. Moreover, the Respondent's entire workforce is required to take annual "cyber safe training." (Tr. 132.) The training is conducted online and lasts about 20 to 30 minutes. The cyber safe course was first offered in 2019.

AS-805, section 5-3.1 (H) prohibits employees from generating unauthorized mass e-mails because it can negatively impact the network due to the limited amount of available bandwidth. Tingle insists that rescinding AS-805, section 5.1 would have negative implications for the Respondent's operations because it would leave employees with no restrictions on when and how to use the Postal Service's information resources.

In addition to his role as president of branch 434, Odegard works at the Respondent's AA installation as a city letter carrier. His immediate supervisor is Christopher Davis (Davis) and, as previously noted, Orlando is the PM. Although the Respondent is not required to provide Odegard email access, "a few years ago" he was given authorization by a former PM to use the Postal Service's email network so that in his role as the local union president, he can communicate with members, management, and union officials about union issues and workplace concerns. (Tr. 24–25, 40.) Odegard also has a personal Gmail address that he uses to conduct Union business but does not have a NALC email address. Odegard's Gmail address does not contain the Postal Service's directory of employees; and his Postal Service emails are not automatically forwarded to his personal Gmail account. Odegard and Orlando agree that while Odegard does not need computer or the Respondent's email access to perform his union duties. Orlando acknowledged that Odegard was given those tools to make it easier for Orlando (and presumably other management/supervisors) to communicate with Odegard because the Respondent's email network is secure. A requirement for Odegard to have email access is for him to take "CyberSafe Fundamentals" training for employees. (R. Exh. 2.) The record shows he had not completed the required training for 2023.

C. Safety Talks

Kimberly Green (Green) is currently the District Manager of Safety for Michigan District 1. She has worked for the Respondent for about 35 years with her current office located in Detroit, Michigan. In her role, Green oversees daily operations in the safety department and develops accident and reduction programs for facilities in her district. There are approximately 302 facilities in her district. Among other duties, Green is responsible for sending information to the field locations about safety topics, e.g., weather related concerns, vehicle accidents. Safety information that she sends to the field facilities is also referred to as a safety talk. The notices are essentially talking points on safety topics for managers to communicate to their workers. Although Green does not create the safety talks, she is responsible for sending them to local management for them to share it with their employees through an in-person talk, commonly referred to in the facilities as "huddles." Safety concerns are reported on the Respondent's form 1767. (GC Exh. 3.) Green is not usually involved with specific safety issues at the facilities which are supposed to be addressed first by local management. If, however, a safety concern is raised directly with her, she can send training materials to a manager or supervisor to assist them in addressing the concern. Green prefers that safety issues are first raised with local management before the party or parties contact her for assistance.

Orlando confirmed that about once a week, he receives a safety talk email from Green to disseminate to his employees. He holds the safety talks about twice a week on the workroom floor where he reads the information sent from Green to his workers. Orlando acknowledged that during the period at issue, there were a lot of form 1767s submitted with most related to masking compliance for COVID. Daily, he would get 1767s alleging violations of the masking mandate. It became such a large issue that management began conducting investigative interviews and issuing discipline. Nevertheless, Orlando believed that the system for abating the 1767s was working well. Although he did not know if all the outstanding safety complaints had been addressed, Orlando felt that he and the Union were working well together to address the issue. (Tr. 94–95.)

D. March 18 Email Incident

After becoming district manager of safety, one of Green's safety specialists created the "list serve" that she uses to communicate to people about safety issues. She is unaware of whether union officials are on the list. However, Odegard gave undisputed testimony that other managers and union officials outside the Ann Arbor location have access to Michigan 1 ACE.[5] On March 18, Green sent a mass

[5] Michigan 1 Ace is the Respondent's email group for "all ACE users or at least the email users within the Michigan 1 District." (Tr. 28.)

distribution email to the individuals on the email group, Michigan 1 ACE, entitled "You Are a Valued Employee Safety Talk." The email stated,

> Thank you for your contributions to a safe work environment. The title says it all, "You Are A Valued Employee."

(GC Exh. 4.) The email included an attachment outlining the talk on general safety measures employees should consider in performing their tasks. While on union designated time, Odegard responded to Green's email about 3 hours later writing in part,

> We are NOT valued employees in Ann Arbor. We have several 1767 safety hazards that go unabated and not responded to. We have employees, including supervisors, that walk around without masks. We have supervisors 'vaping' on the workroom floor. Management does not bother to meet on grievances concerning safety, either. So please, make sure you have the facts straight here when you say 'you', because we in Ann Arbor are not.

(GC Exh. 5.) Green was surprised when Odegard responded directly to her on the email stream because normally she does get a response about her safety talk emails since they are merely informational and meant for managers to disseminate to their employees. Green testified that she reacted with confusion about Odegard's reply because the form 1767s that she received had been "abated." Also, the safety complaints referenced in Odegard's email response are not initially filed with her but rather with the employee's local installation. Green noted that she has never met Odegard and does not interact with individual union stewards at the various postal stations. Although Greed did not take personal offense to Odegard's email response, she felt it was unprofessional. Moreover, Green believed that Odegard's complaint was with local management. In fact, Odegard agreed that his email reply did not contain any questions addressed to Green but rather was simply an "emotional response." Green did not respond to Odegard's email because the district manager asked her not to reply. Nonetheless, after getting Odegard's email, Green researched the form 1767s that Odegard claimed were outstanding in the Ann Arbor facility from 2019. There were six 1767s filed in 2019 but no more were received until December 2023. Four of the six form 1767s were abated. Based on her review, she found two form 1767s that she thought were alarming. Green admitted that it was Odegard's email response that prompted her to research and discover the alarming and unabated 1767s.

During this period, the COVID pandemic was ongoing, so the Respondent implemented a mask mandate. However, there were several complaints and employee confrontations over the masking requirement, emulsifier use among some workers, and managers vaping on the workroom. Odegard expressed his safety complaints about these actions to management and several grievances were filed

over the safety concerns. Odegard felt the safety concerns were not being acknowledged or resolved by management. Consequently, Odegard replied to Green's March 18, email because he felt her message was hypocritical. Odegard did not expect a direct response from Green but thought that she would contact him indirectly to determine the reason for his response to her email. The evidence shows that his email response did not include any attachments, nor did Green respond to him or ask him for documentation to support his complaint. Odegard does not have Green's personal mobile number or email address. Also, he had no prior interactions with Green, except through her safety emails and in special meetings with the district. Odegard noted that he is only able to contact the Michigan 1 ACE group through the Respondent's email system.

Odegard corroborated Green's testimony that the form 1767, used to report safety hazards, is given to management, usually the immediate supervisor, to address local level safety concerns. After the form 1767 is filed with local management, a meeting is held to try to resolve the issue. If the safety issue cannot be resolved, the Union can either file a grievance or an Occupational Safety and Health Administration (OSHA) complaint. It is possible the complaint can land in arbitration. It is management's responsibility to forward locally filed form 1767s to the district if applicable. Odegard has no first-hand knowledge of whether local management forwarded 1767s to the district. However, Odegard admits there is no provision in the CBA that allows for contact with the district level safety "people" to resolve the concerns (Tr. 51).

Shortly after Odegard sent his reply to Green's March 18 email, he tried to retrieve an email from the Respondent's server but discovered that his ACE access was suspended. He was not given advanced notice nor an explanation for the suspension. Consequently, on March 18, the Union, through Odegard, filed a request for information with Orlando that read in part, "please list the reason why [ACE] account was disabled." (GC Exh. 6.) Orlando responded, "abuse of email" and attached a copy of Odegard's clock rings for March 18. Id. Subsequently, Odegard and Orlando met in-person to discuss the reason for the suspension. Orlando stated that he stood by his reason for suspending Odegard's computer and email access. Orlando also mentioned that the district manager "wasn't too happy" about Odegard sending the email to everyone. No one else was present for their conversation. On April 9, the Union, through Union Steward Carol White, sent a follow-up request for information. The information request asked for Odegard's training records on email protocols and policies; and interviews conducted with Odegard on "possible abuse of email privileges." (GC Exh. 7.) Management responded that there was no record of training nor investigative interview(s).

Orlando and Odegard appear to agree that it was not normal for Odegard to respond to Green with an email that included everyone on the Michigan District 1 ACE email directory. Like Green, Orlando felt that Odegard's email response to Green was "a little uncalled for" because it included everyone in the Michigan

District 1. (Tr. 94.) Initially, Orlando did not consult anyone before suspending Odegard's email (and presumably computer) access. Subsequently, Orlando received a directive from upper management that Odegard's email access should be removed; and he informed those officials that action had already been taken. The management official he spoke with about CP's suspension of email and computer access was POOM Tony Hubbard (Hubbard). Orlando admits that he did not inform Hubbard that Odegard was acting in his role as union president when he replied to Green's email. Orlando insisted that he removed Odegard's email access as he would have for "anybody [who] does something like this." (Tr. 97.) Moreover, Orlando contends that Odegard was not treated differently because he has removed access in the past from two employees in the Ann Arbor facility and two people in the Livonia office for similar violations. However, Orlando acknowledged that none of those employees were union officials.

Orlando felt compelled to remove Odegard's email access because he did not address his complaint through the proper chain of command. Odegard explained to Orlando that he mistakenly thought his email reply was only sent to Green, so he accepted the explanation. After Orlando discussed the incident with him and Odegard completed the email training, his email access was reinstated and computer access returned. Orlando acknowledges that he did not investigate the matter prior to suspending Odegard's access. However, Orlando noted that he did not discipline Odegard for violating what he perceived to be company policy on misuse of the email system. He could not recall the specific policy number on which he based the suspension. Orlando estimated that the suspension lasted a month or less. Orlando admits that at times there was "animosity" between him and Odegard about meeting to discuss grievances; and they were having communication issues in their respective roles as management and union official. (Tr. 96, 102.) However, he felt the issues had been resolved. Nonetheless, Orlando acknowledged that he felt Odegard's complaints about safety issues at the Ann Arbor facility made management "look bad." (Tr.103.)

IV. Discussion and Analysis

A. Employee Handbook: Rule 5-1

The General Counsel charges that the Respondent's AS-805 handbook violates the Act because it includes several overly broad or otherwise unlawful rules. Specifically, the General Counsel argues that rule 5-1 restriction mandating that employees must "contact CISO prior to engaging in any activities not explicitly covered" under the activities listed at rule 5-1(a)—(e)," would be understood by employees to require them to get approval before engaging in other Section 7 activities not explicitly listed. The General Counsel contends that rule 5-1 places overly broad restrictions on employees' use of information resources because it contains an prior approval restriction which is prohibited under Board case law.

Chromalloy Gas Turbine Corp., 331 NLRB 858 (2000); *Brunswick Corp*. 287 NLRB 794 (1987).

Second, the General Counsel argues that rule 5-1 prohibition against "Section 7 activity that causes "loss or damage" to Respondent's "image" is unlawful because employees would reasonably understand this to ""include use of any 'information resources,' as that term is broadly defined . . . to advance complaints about management or working conditions because such complaints would undoubtably cause "damage" to Respondent's "image."" (GC Br. 12.) According to the General Counsel, this language is so broadly written that it gives employees no guidelines for determining what type of conduct the Respondent finds objectionable, and therefore it would chill the exercise of employees' Section 7 rights.

Third, the General Counsel argues that rule 5-1 prohibition against "Section 7 activity that causes "loss or damage" to Respondent's "financial interests" is unlawful because it restricts Section 7 activities, for example, "using information resources in grievance matters which could result in a financial remedy, speaking out publicly about unsafe working conditions, or taking such complaints directly to respondent's customers." (GC Br. 13.) According to the General Counsel these activities would "reasonably be understood to damage Respondent's financial interests." Id.

The Respondent counters that AS-805 does not violate the Act because (1) it does not explicitly restrict Section 7 rights; (2) it was not promulgated in response to union activity; and (3) it has never been applied to restrict the exercise of Section 7 rights. (R. Br. 14.) Moreover, the Respondent argues that the Board "cannot modify or rescind regulations promulgated by an independent establishment of the executive branch." (R. Br. 16.) The Respondent also contends that NLRB's attempt to rewrite the cybersecurity policies in the AS-805 is beyond its regulatory purview and not authorized by Congress. Last, the Respondent argues that the NLRB is not empowered to infringe on its "legitimate interest in implementing cybersecurity," and the Act prohibits the Board from revising the Respondent's regulations that were agreed to in the parties' CBA. (R. Br. 21.)

In *Stericycle, Inc. 628*, 373 NLRB No. 113 (2023), the Board adopted a new standard for analyzing if an employer's facially neutral workplace rules run afoul of Section 8(a)(1) of the Act. *Stericycle* overturned *The Boeing Company*[6] and instead "builds on and revises" the Board's test in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004).[7] In *Lutheran Heritage Village-Livonia*, the Board held that if a rule specifically restrains Section 7 rights, the rule is invalid. *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). See also *Waco, Inc*., 273 NLRB 746, 748 (1984) (it is an unlawful restriction on Section 7 rights if a work rule explicitly

[6] 365 NLRB 1494 (2017).

[7] The Board in overruling *Boeing Co.*, also overruled *LA Specialty Produce Co.*, 368 NLRB No. 93 (2019), and the work rules cases relying on them.

prohibits employees from discussing wages with coworkers). Even if the rule does not restrict specific Section 7 rights, it may still be unlawful if employees would reasonably interpret the rule to prohibit Section 7 activity. *Longs Drug Stores California, Inc*., 347 NLRB 500, 500–501 (2006); *Lutheran Heritage Village-Livonia*, supra at 647. The Board stated, ". . . in determining whether a challenged rule is unlawful, the Board must . . . give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights." *Lutheran Heritage Village* at 647; *Lafayette Park Hotel*, 326 NLRB 824, at 828 (1998) (citing *Norris/O'Bannon*, 307 NLRB 1236, 1245 (1992)).

Under the standard established in *Stericycle*, the General Counsel must prove that the disputed rule(s) "has a reasonable tendency to interfere with, restrain, or coerce employees who contemplate engaging in protected activity." *Stericycle,* supra, slip op. at 13. In determining if the tendency to interfere with, restrain or coerce employees is reasonable, the Board will interpret the rule from the viewpoint of the reasonable employee who is financially dependent on the employer; and therefore, likely to interpret an ambiguous rule as prohibiting protected activity the employee would otherwise perform. If an employee could reasonably interpret a rule to restrict or prohibit Section 7 activity, the General Counsel has satisfied his/her burden of proof even if the rule could also reasonably be interpreted not to restrict Section 7 rights nor intend for its rule to restrict Section 7 rights. Once the General Counsel has established this burden of proof, the employer may rebut the presumption that a rule is unlawful by showing the rule promotes legitimate and substantial business interests that cannot be achieved by a more narrowly tailored rule. See *NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773, 781–782 (1979); *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 507 (1978); *Republic Aviation Corp.*, 324 U.S. at 803–804. In determining whether work rules are overbroad, the Board returns to a "case-specific approach" that looks to "the specific wording of the rule, the specific industry and workplace context in which it is maintained, the specific employer interests it may advance, and the specific statutory rights it may infringe." *Stericycle* at slip op. 20.

I find that the rule as written is so overly broad that employees could reasonably interpret the rule to have a restraining or coercive effect on them engaging in protected activity and, or union activity. The Respondent's Rule 5-1 requirement that employees must attain authorization prior to using its information resources for activities outside of those listed at 5-1a-e violates longstanding Board holdings. *Chromalloy Gas Turbine Corp*., 331 NLRB 858, 858 – 859 (2000); *Brunswick Corp*., 282 NLRB 794 (1987); *Enterprise Product, Co*., 265 NLRB 544, 554 (1982), citing *Peyton Packing Co*., 49 NLRB 828 (1943). The rule defines "use of information resources" in an unlawfully broad manner because it is not limited to work time or work areas. The Rule 5-1 requirement that the Respondent's information resources must be used in an "approved, ethical, and lawful manner to avoid loss or damage to Postal Service operations, image, or financial interests" is all-encompassing. The rule appears to require that employees

get approval before "engaging in any activities not explicitly covered" by policies listed at Rule 5-1a-e. (Jt. Exh. 1.) I find that it is unlawful because it lacks specificity on what conduct is prohibited. Consequently, employees would reasonably interpret the rule to reach into protected, concerted activities. Moreover, the rule fails to specify that the restrictions are limited to work hours which would reasonably lead employees to believe, especially union representatives, that they must get prior approval from the Respondent to communicate with bargaining unit members about nonunion and union protected activities. Within the context of the policy, employees would reasonably infer this as a limit on their Section 7 rights because the rule is not narrowly tailored to make clear that those rights are not implicated.

I also find that Rule 5-1 is overbroad in violation of the Act because the provision fails to define or offer employees clarification on the specific type of speech that would violate the Respondent's policy. I find that the provision would reasonably tend to chill employees in the exercise of their Section 7 activities. For example, employees would be discouraged from emailing coworkers about methods of addressing objectionable terms and conditions of employment, criticizing management's actions, or emailing complaints to their union or employee representative protesting their terms and conditions of employment. See *Costco Wholesale Corp.*, 358 NLRB 1100, 1101 (2012) (rule unlawful that subjected employees to discipline, including termination, for any electronic posting that damaged the company, defamed any individual, or damaged any person's reputation).

Although Rule 5-1 does not explicitly restrict Section 7 rights, I find that employees would reasonably interpret the rule as restricting his or her rights to engage in protected concerted activities and, or union activities. The Board established standards for assessing whether work rules are unlawfully overbroad. In *Lafayette Park*, supra, the Board held, "The appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights. Where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice even absent evidence of enforcement." Id. at 828. The Board further opined in *Albertson's, Inc.*, 351 NLRB 254, 259 (2007), "In determining whether an employer's maintenance of a work rule reasonably tends to chill employees in the exercise of Section 7 rights, the Board will give the work rule a reasonable reading and refrain from reading particular phrases in isolation."

Advocating for workplace safety on behalf of unit employees and disparaging management's actions as they pertain to terms and conditions of employment are the epitome of Section 7 activity. If employees were engaged in a contentious relationship with management over terms and conditions of employment, in this case agitating for a safe work environment, it is not unreasonable for employees to believe that Rule 5.1 restrictions would apply to their efforts. For example,

Odegard was advocating for safe working conditions for employees. Specifically, he was engaged in sometimes contentious discussions with management to try and force them to adhere to mask mandates and prohibit supervisors from vaping on the workroom floor. Orlando also admits that there was "animosity" between him and Odegard surrounding difficulty with them meeting to discuss grievances involving these issues. Rule 5-1 mandates that the Respondent's information resources must be used in an approved, lawful manner to avoid "loss or damage to Postal Service operations, image, or financial interests" does not give parameters within which to judge the meaning of those terms, through examples or clarifying definitions. The Board has consistently held that ambiguous work rules are construed against the employer, which applies to this case. *Flex Frac Logistics,* 358 NLRB 1131, 1132; *Brunswick Corp.*, 282 NLRB 794 (1987). Since the rule includes use of all the Respondent's information resources, employees would reasonably interpret this as prohibiting discussions among employees or with those outside the workplace about disagreements with management on addressing workplace issues. In fact, rule 5-1 specifically restricts employees from using its information resources, without approval, share information related to "employees or customers" that may damage its "service operations, image or financial interests." (Jt. Exh. 1.) In numerous decisions, the Board has consistently held that rules precluding negative conversations about coworkers or mangers are facially invalid. In *Hills & Dales General Hospital*, 360 NLRB 611 (2014), the Board again reiterated this proposition by finding unlawful the employer's rule prohibiting "negative comments" about coworkers and managers and engaging in "negativity."

I find that the overly broad and ambiguous language of rule 5-1 could lead employees to reasonably interpret it to prohibit heated discussions and arguments about a myriad of protected subjects, including safety concerns, grievance related issues. Moreover, the Respondent's suspension of Odegard's computer and email access for agitating on behalf of unit employee's is evidence that the rule is used as a cudgel to suppress employees' Section 7 rights. See, e.g., *Roomstore*, 357 NLRB 1690, 1690 (2011) (employer violated the Act by establishing and enforcing a rule that "prohibit[s] any type of negative energy or attitudes" because it is unlawfully overbroad); *Hills & Dales General Hospital*, at 612 (Board found unlawful work rule mandating that employees "represent [the employer] in the community in a positive and professional manner").

Accordingly, I find that the maintenance of Rule 5-1 violates Section 8(a)(1) of the Act.

B. Employee Handbook: Rule 5-3.1 (d) and (h)

The General Counsel argues that under *Ceasar Entertainment d/b/a Rio All-Suites Hotel & Casino*,[8] Rule 5-3.1 (d) and (h) violates the Act because it is overly

[8] 368 NLRB No. 143 (2019).

broad and "unlawfully restricts employees from using their personal electronic devices to receive, process, store, or send mail containing non-publicly available information." (GC Br. 18.) Specifically, the General Counsel argues that the broad language of the rule also covers nonwork devices without a legitimate business justification. Moreover, the General Counsel contends that the plain language of the rule would unlawfully cause employees to reasonably believe that they are prohibited from using their personal electronic devices (e.g., mobile phone, computer, etc.) to "receive, process, store, or send mail containing . . . non-publicly available information." (Jt. Exh. 1.) The Respondent counters that the rules do not explicitly restrict Section 7 rights, were not developed in response to union activity, have never been used to restrict the exercise of Section 7 rights, and cannot "reasonably be construed to prohibit Section 7 activity." (R. Br. 14.)

The Board in *Caesars Entertainment* overruled *Purple Communications* and returned to the standard established in *Register Guard*. In *Register Guard*, the Board established a modified standard for determining whether an overly broad rule is discriminatory in its application. The Board in *Register Guard*, holds that personal employee communications are not the same as communications that solicit employees to support a group or organization. 351 NLRB 1110, 1117–1119 (2007), enfd. in pertinent part 571 F.3d 53 (D.C. Cir. 2009); see also *Starbucks Corp.*, 373 NLRB No. 44, slip op. at 1 fn. 3 (2024) (in the absence of a challenge from one or more of the parties, the Board's discrimination standard in *Register Guard* applied to an allegation that the company discriminatorily removed and prohibited posting union materials on a community chalkboard in the café). Under this standard, the General Counsel must show that the Respondent disparately enforced rule 5-3.1 against Odegard because of his protected union activity. See *Register Guard*, 351 NLRB at 1119 (dismissing a claim that the employer discriminated against union related emails because there was no evidence that the employer allowed employees to use email to solicit for nonwork-related reasons). The Board in *Caesars Entertainment* observed that the employer has the property right to control the use of its communication resources, which includes its email systems, but cannot do so in a discriminatory manner. Moreover, the Board held that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other, or proof of discrimination." *Caesar Entertainment* slip op. at 10.

I find unpersuasive the Respondent's argument that the General Counsel cannot show that Rule 5-3.1 is unlawful because the rule does not explicitly restrict Section 7 rights. The standard set forth in *Caesar Entertainment* does not require that an employer's rule "explicitly restrict" protected rights. The General Counsel must, however, present proof that the employer discriminatorily applies the facially neutral rule. In this case, the General Counsel points to, as proof of discrimination, the Respondent suspending Odegard's computer and email access for advocating on behalf of bargaining unit members by sending a mass email calling out safety

concerns in the workplace and agitating for action to resolve the problems. I discuss later in the decision my reason for finding that Odegard's reply to Green's email is protected union activity. In his response, Odegard raised issues regarding workplace safety on behalf of unit employees. His complaint led Green to discover that there were two 1767s from the AA facility that she found "alarming." It was Odegard's email response that led to Green investigating his complaint. His action is the epitome of protected union activity. See *T-Mobile USA Inc.*, 371 NLRB No. 163 (2022) (discriminatory enforcement of workplace rules against an employee for sending emails about union matters). Moreover, the General Counsel argues that neither Rule 5.1 nor 5-3.1 specifically bans "replying all" to an email. In this case, Odegard did not initiate an unauthorized mass email to Green and the other individuals on the Michigan 1 ACE email list. Rather, he hit "reply all" in response to Green's email. (GC Exh. 5.) I agree with the General Counsel that sending a mass email is different than *replying* to a mass email which the rule does not prohibit.

I also find unpersuasive the Respondents arguments that the rules do not violate the Act because they have never been applied to restrict Section 7 rights, nor can they reasonably be construed to restrict those rights. The Respondent notes that the Union has never objected to the adoption of the rules. However, the reason the Union had not resisted adoption of the rules is because they had not been discriminatorily applied until the incident at issue. The Respondent also contends that no witnesses testified that the rule infringed on Section 7 rights. However, this is not accurate because Odegard testified to that very fact. He noted that the district manager "wasn't too happy" about him sending to everyone on Green's email a reply complaining about safety violations and management's failure to address them. (Tr. 43– 44.) Moreover, Orlando admitted that there was hostility between him and Odegard surrounding grievance scheduling; and Odegard's email response made management "look bad."

The Respondent also insists that its treatment of similarly situated employees proves that it did not apply the rule in a discriminatory manner. Orlando gave undisputed testimony that in the past he removed two employees in the AA facility and two employees in the Livonia site for similar rule violations. However, none of those employees was a union official nor is there evidence that the individuals were sending mass emails on matters related to protected, concerted or union activities. The limited evidence shows that one of the employees was sending threatening emails and the other employees were sending too many messages and, or random messages without first following the chain of command. (Tr. 98–99.) The evidence does not show that those employees were similarly situated to Odegard. Therefore, any comparisons between Odegard's action and those of the employees is irrelevant.

Based on the evidence, I find that the maintenance of Rule 5-3.1 violates Section 8(a)(1) of the Act.

C. Request to Modify Register Guard and Overrule Rio All-Suites

The General Counsel requests that the Board use this case to reconsider the modified discrimination standard established in *Register Guard*, overrule *Rio All-Suites*, and expand *Purple Communications* to cover other methods of electronic or information technology. (GC Br. 25.) *Purple Communications* emphasized that employers are not required to provide email access to its employees in the course of their work, but once it has done so, employees are entitled to use the system for statutorily protected discussions about their terms and conditions of employment during nonworking time, absent a showing by the employer of special circumstances that justify specific restrictions. Therefore, an employer cannot, with a few exceptions, withhold from employees, access to its email system based on the content of their emails. In *Purple Communications,* the Board articulated several reasons for its decision to overrule *Register Guard*. It found that *Register Guard* gave too much weight to employer's property rights over employees' "core Section 7 right to communicate in the workplace about their terms and conditions of employment"; the majority in *Register Guard* did not understand the importance of email as a way for employees to engage in protected communications, and its dramatic increase in usage since *Register Guard* was decided; and the majority in *Register Guard* wrongly placed more weight on the Board's equipment decisions than "those precedents can bear." Id., slip op. at 5. The Board held "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems." Id., slip op. at 1.

Since the Respondent's requests are directed to the Board and beyond my jurisdiction, I will not address them any further in this decision.

D. Suspension of Odegard's Email and Computer Access

The General Counsel notes that *Wright Line*[9] is used to analyze whether an employer's action violates section 8(a)(1) and (3) of the Act but not if the employer's action is based on the employee's protected concerted activity with no other reason articulated. The General Counsel argues that the suspension of Odegard's computer and email access should not be analyzed under *Wright Line* because the action was taken against him due to his protected concerted activity, and the Respondent did not articulate another reason for the action. Therefore, the General Counsel insists that under Section 8(a)(1) whether the Respondent's action violated the Act should be based on whether the action has a "reasonable tendency" to interfere, restrain or

[9] 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982).

coerce employees, not any actual effect on specific employees" determines if the Act has been violated. (GC Br. 32.)

Respondent contends that it did not violate section 8(a)(1) of the Act because its actions did not interfere, restrain, or coerce Odegard in the exercise of his Section 7 rights. Further, the Respondent argues the evidence shows that under a *Wright Line* analysis, it did not take unlawful action when revoking Odegard's USPS email and computer access. According to the Respondent, Odegard did not engage in protected concerted activity because "a mass email response cannot be considered protected activity in this case." (R. Br. 8.) The Respondent claims that it did not have knowledge of Odegard's protected, concerted activity nor animus towards him. The Respondent contends that it would have suspended Odegard even in the absence of any protected conduct.

Section 8(a)(1) of the Act provides that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. The rights guaranteed in Section 7 include the right "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." See *Brighton Retail, Inc*., 354 NLRB 441, 441 (2009). An employer violates Section 8(a)(1) of the Act if it disciplines or discharges an employee for engaging in activity that is "concerted" within the meaning of Section 7 of the Act.

The Board applies the *Wright Line* analysis to evaluate whether an adverse employment action violates Section 8(a)(3) of the Act. The burden is on the General Counsel to initially establish that a substantial or motivating factor in the employer's decision to take adverse employment action against an employee was the employee's union or other protected concerted activity. In order to establish this initial showing of discrimination, the evidence must normally prove: (1) the employee engaged in union or protected concerted activities; (2) the employer knew of the union or protected concerted nature of the activities; and (3) the adverse action taken against the employee was motivated by the activity which must be proven with evidence sufficient to show a causal connection between the averse action and the protected activity. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 2–3 (2019). Circumstantial evidence may be used to show animus. Elements to support a showing of unlawful motivation may include, among other factors, suspicious timing of the adverse action; false or changing reasons provided for the adverse action; failure to conduct a meaningful investigation of the alleged employee misconduct; departure from past practice in imposing the adverse action; and disparate treatment of the employee. See *Tschiggfrie Properties, Ltd*., 368 NLRB No. 120, slip op. at 4, 8 (2019); *Medic One, Inc*., 331 NLRB 464, 475 (2000). The evidence must establish that a causal connection exists between the employee's union or other protected concerted activity and the employer's adverse employment action against the employee. *Tschiggfrie Properties, Ltd*., 368 NLRB No. 120, slip

op. at 8. The *Wright Line* analysis is not applicable when there is no dispute that the employer took adverse action against the employee because the employee engaged in union or protected concerted activity. *Phoenix Transit System*, 337 NLRB 510, 510 (2002), enfd. 63 Fed.Appx. 524 (D.C. Cir. 2003).

Once the General Counsel has met its initial showing that the protected conduct was a substantial or motivating reason in employer's decision to take the adverse action, the employer has the burden of production by presenting evidence the action would have occurred even absent the union or protected concerted activity. The employer does not have to prove that the disciplined employee committed the infraction alleged. Rather, the employer only needs to establish that it had a reasonable belief the employee committed the misconduct alleged and acted on that belief when it took the disciplinary action against the employee. *McKesson Drug Co.*, 337 NLRB 935, 937 fn. 7 (2002); see also *Bally's Atlantic City*, 355 NLRB 1319, 1321 (2010), enfd. 646 F.3d 929 (D.C. Cir. 2011). The General Counsel may offer proof that the employer's articulated reason is false or pretextual, and if found to be false or pretextual, discriminatory animus may be inferred. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3. The General Counsel, however, retains the ultimate burden of proving discrimination. *Wright Line,* id.

Although the General Counsel contends that the Respondent's motive is not at issue, I disagree. The Respondent argues that Odegard's email and computer access were suspended because it violated the Respondent's handbook policy and was outside normal email procedures. Whereas the General Counsel argues that the Respondent admitted that its sole reason for its action against Odegard was due to the email he sent. The Respondent contends that suspension of Odegard's access to the email and computer was not because of his role as a union official but rather because it was "unprofessional" and sent outside the chain of command. (Tr. 78, 98, 106.) I find that a *Wright Line* analysis is appropriate in this case because the Respondent's motive is at issue.

1. Smith's protected union and/or concerted activity and Respondent's knowledge

The Respondent insists that Odegard did not engage in protected, concerted activity because he "was not using his email to carry out his role as a union [official]." (R. Br. 9.) According to the Respondent, Odegard's act is not protected because (1) there were established protocols available and "historically" used to address labor issues; (2) the purpose of his email was "to admonish management, not to advance employee interests"; and (3) the issues he complained about in the email had already been resolved. The General Counsel counters that Odegard's action is a classic example of protected, concerted activity because he was voicing concerns about workplace safety to management on behalf of bargaining unit employees. (GC Tr. 33–35.) Further, the General Counsel argues that Odegard's email constituted union activity because he complained about a violation of the

CBA's requirement that the parties must use provisions in article 14 to "maintain a safe environment for all employees, including adherence to COVID-19 protocols for as long as necessary." (GC Br. 35.)

The Respondent claims because Odegard was not acting in his role as a union official when he sent the email, it is not protected activity. I disagree and find that Odegard submitted the email response in his role as the Union's representative. The evidence shows Odegard signed the email noting his title as Local 434 president. Moreover, Odegard was on official union time when he received and responded to Green's email. (Tr. 29–30.) Further, Green's email was sent only to managers and those who had access to the Michigan 1 ACE email chain. The evidence established that Odegard was given email and computer access to make it easier for Odegard and Orlando to communicate via email regarding union business. Moreover, Orlando admitted that city carriers do not typically have access to the Respondent's email system. (Tr. 97.) Odegard provided undisputed testimony that he received access to the USPS email system to conduct duties in his role the president of Local 434. There is also no evidence that Odegard used his Postal Service computer and email for personal business.

Moreover, the evidence clearly establishes, and I find, that Odegard engaged in protected concerted activity when he responded to the mass email sent by Green. The Respondent admits and the evidence shows that in his Union role, Odegard lodged official complaints about safety violations. In the email, Odegard complained about several "unabated" workplace safety issues, supervisors vaping on the work room floor, and employees working without masks. (GC Exh. 5.) It is undisputed that Odegard in his role as Local 434's president had repeatedly raised concerns with management that its mask mandate during COVID was not being enforced. He also complained about a supervisor vaping on the workroom floor in violation of policy. Advocating on behalf of bargaining unit members for resolution of workplace safety issues is a classic example of protected union and, or concerted activity. Accordingly, I find that these acts are the epitome of protected concerted activity; and the Respondent had knowledge of them prior to taking adverse action against Odegaard.

2. Animus

Although the General Counsel insists that *Wright Line* is not appropriate under the facts of this case, nevertheless, she argues that there is direct and circumstantial evidence of animus. According to the General Counsel, the following actions are evidence of the Respondent's discriminatory animus: timing of the suspension of Odegard's computer and email access; failure to conduct a meaningful investigation into the circumstances of Odegard's mass email; and Orlando's admission that there were "issues meeting" because of "animosity" surrounding the grievances filed by the Union. (Tr. 96; GC Br. 33, fn. 72.)

The Respondent denies it showed animosity towards Odegard engaging in protected concerted or union activity. Again, the Respondent argues that Odegard was not engaging in protected concerted activity when he responded to Green's email. Moreover, the Respondent notes that it has "an extensive history working with Mr. Odegard in his capacity as a union steward to resolve labor issues." (R. Br. 10.) According to the Respondent, it had already resolved the issues Odegard complained about in his mass email so there was no credible reason to send it.

I find the Respondent's arguments unpersuasive. I have previously found that Odegard's actions constituted protected concerted and union activities. Regardless of the parties working history, the evidence is sufficient to show that this instance was based on discriminatory animus. It is undisputed that Odegard's email and computer access were suspended within a day of him complaining about the Respondent's failure to adequately address safety concerns that he had raised on behalf of unit members. The Board has consistently held that the timing of an employer's adverse action might constitute circumstantial evidence of discriminatory animus. See *Success Village Apartments*, 348 NLRB 579, 579 fn. 5 (2006); *Gavilon Grain*, 371 NLRB No. 79 (2022) (adverse action occurring 1 to 2 days after protected action is strong evidence of animus). The evidence is undisputed that Odegard's email and computer access were suspended because his response to Green was sent to everyone on her original email chain. The suspension occurred the same day that Odegard respondent to Green's email, March 18. (GC Exh 4, 5, 6.) Consequently, I find that the timing of the suspension is strong circumstantial evidence of discriminatory animus.

The Respondent claims that Odegard's action was an attempt to embarrass management as opposed to addressing legitimate workplace concerns on behalf of unit members. In support of its argument, the Respondent notes that Odegard's safety concerns had been resolved prior to his email response to Green. However, the evidence shows otherwise. Green credibly testified that after receiving Odegard's email she reviewed the 1767s and discovered that there were two from 2019 that she found "alarming" which had not been resolved. (Tr. 81, 86–87.) Although Green testified that the AA facility did not have a history of safety concerns, it does not negate Green's testimony that because of Odegard's email she found two 1767s that were unresolved. Therefore, the evidence shows that there were at least two outstanding safety concerns that had not been addressed. Moreover, during a period preceding the email incident, the evidence shows that Odegard had continued to complain to about supervisors vaping on the workroom floor, and employees failing to adhere to COVID protocols.

Based on the evidence, I find that the General Counsel has established its prima facie case.

3. Pretext for discriminatory animus

I find that the General Counsel has presented sufficient evidence to prove that the Respondent's articulated reason for suspending Odegard's email and computer access is a pretext for discriminatory animus. The Respondent contends that the sole reason for suspending Odegard's email and computer access was because he violated a provision in the employee handbook. In denying animus was a factor, the Respondent points out that on three or four occasions Orlando has revoked employees' email access. I do not find this argument persuasive because, as previously found, the evidence fails to show that on any of those occasions were the employees engaged in protected concerted or union activity. (R. Br. 12; Tr. 98–99.) Consequently, they are not similar to the facts at issue.

The Respondent also argues that it would have taken the same action against Odegard regardless of his protected activity because of "the serious security consequences wrought by Handbook violations." (R. Br. 13.) According to the Respondent, the "unauthorized" mass emailing causes stress on its "limited bandwidth." Moreover, mass mailings require the security operations center to spend extra time and resources, depending on the content of the email, to block further emails on that topic(s). (R. Br. 13; Tr. 130–131.) I find this argument unpersuasive. The assertion about vague "security consequences" resulting from unspecified handbook violations is not a legitimate nondiscriminatory reason for its action. Rather, I find that it is a pretext for punishing Odegard for engaging in union activity. Orlando admitted that during this period there was hostility between him and Odegard because of discussions surrounding grievances. Moreover, Orlando acknowledged that he felt Odegard sent the email to make the AA facility's managers "look bad." (Tr. 103.) I find that these admissions, coupled with the totality of evidence, support a finding that the suspension of Odegard's email and computer access was a pretext for discriminatory animus.

Last, Orlando did not attempt to conduct even the most minimal investigation before meting out the suspension. There is no evidence to show that a delay caused by a short investigation would have been an unnecessary burden on the Respondent's operations. In fact, the evidence shows that once Orlando spoke with Odegard about his reasons for sending the mass email, he was able to quickly make the decision to restore Odegard's email and computer access.

Based on the evidence, I find that under the *Wright Line* analysis the Respondent violated the Act when Odegard's email and computer access were suspended because he engaged in protected union activity. Consequently, I do not need to address the General Counsel's alternate theory of a violation of Section 8(a)1) and (3) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, United States Postal Service, provides postal service for the United States and operates various facilities throughout the United States. The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the PRA.

2. The National Association of Letter Carriers, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and, or 8(a)(3) of the Act by:

(a) Promulgating and maintaining in the Respondent's Employee Handbook AS-805, Rule 5-1 and 5-3.1 with overly broad or otherwise unlawful language that prohibits the use of the Respondent's information or communications resources in ways that could defame, libel, abuse, embarrass, tarnish, present a bad image of, or portray in false light, the Postal Service, the recipient, the sender, or any other person. Promulgating and maintaining rules with a prohibition against permitting nonapproved individuals to access information or information resources, or any information transmitted by, received from, printed from, or stored in these resources, without the Respondent's prior written approval.

(b) Removing computer and email access from an employee (John Odegard) for engaging in protected concerted or union activities.

4. The above violations are an unfair labor practices that affects commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not violated the Act except as set forth above.

REMEDY

Having found that the Respondent has engaged in a certain unfair labor practice, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have concluded that rules 5-1 and 5-3.1 in the Respondent's Employee Handbook AS-805 are unlawful, the recommended Order requires that the Respondent revise or rescind the unlawful rules and advise its employees in writing that the said rules have been so revised and rescinded.

As I have concluded that the Respondent's suspension of employee John Odegard's computer and email access is unlawful, the recommended Order requires

that the Respondent reinstate his access and advise him in writing that his access has been reinstated.

Further, the Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, United States Postal Service, operating nationwide, including its facility in Ann Arbor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining rules that unlawfully restrict employees in the exercise of their Section 7 rights because the rules are overbroad.

(b) Interfering with, restraining, and coercing employees in the exercise of their Section 7 rights by suspending or denying them access to information resources because they are attempting to exercise those rights.

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

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

(a) Within 14 days from the date of the Board's Order, revise or rescind the rules and/or documents found to be unlawful as set forth above.

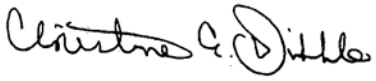
(b) Within 14 days from the date of the Board's Order, reinstate employee John Odegard's computer and email access. Expunge any reference to his suspension from such in all personnel files and records, both official and unofficial, and notify him in writing that it has done so and that the suspension will not be used against him in the future in any way.

[10] 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.

(b) Within 14 days after service by the Region, post at its facilities nationwide copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 18, 2022.

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

Dated: Washington, D.C. March 3, 2025



Christine E. Dibble (CED)
Administrative Law Judge

[11] 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 representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT promulgate and maintain policies in our Employee Handbook AS-805 that prohibits use of our information or communications resources in ways that are unlawfully broad or restrict employees in the exercise of their Section 7 rights.

WE WILL NOT deny employees access to our information resources because they seek to exercise their Section 7 rights by engaging in protected concerted activity or union activity.

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 revise or rescind the unlawful provisions of our Employee Handbook AS-805, rules 5-1 and 5-3.1.

WE WILL restore employee John Odegard's computer and email access and expunge any reference to his suspension from all official and unofficial files maintained by the Respondent and notify him in writing that it has done so and that the suspension will not be used against him in the future in any way.

UNITED STATES POSTAL SERVICE
(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.

Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, Michigan 48226-2543
Telephone: (313) 226-3200
Fax: (313) 226-2090
Hours of Operation: 8:30 a.m. to 5:00 p.m. ET
Hearing impaired callers should contact the Federal Relay Service by visiting its website at www.federalrelay.us/tty

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/07-CA-292942 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, 505-248-5128.