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

RAHN HOMES SERVICES D/B/A
BENJAMIN FRANKLIN PLUMBING

and **Cases 18–CA–318406**
18–CA–348467

RAHN HOMES SERVICES D/B/A
ON TIME SERVICE PROS

and

MINNESOTA PIPE TRADES ASSOCIATION

Rachael M. Simon-Miller, Esq., and *Selma El-Badawi, Esq.*,
for the General Counsel.

Grant T. Collins, Esq. (*Felhaber Larson*) of Minneapolis,
Minnesota, for the Respondent.

Diana R. Cohn, Esq., and *Christine Kumar, Esq.*,
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of Washington, DC, for the Charging Party.

DECISION

CHARLES J. MUHL, Administrative Law Judge. On May 3, 2023, a plumber working for Respondent Rahn Home Services provided Owner Jeff Rahn with a letter notifying him those employees had initiated a union organizing campaign. The letter was signed by Scott Ludwig, an organizer for Charging Party Minnesota Pipe Trades Association. The very next day, the Respondent removed a job posting for a licensed plumber from the Indeed.com website.

Within days, plumbing supervisor Brian Mueller had multiple conversations with employees about the union organizing campaign. Then on May 11, 2023, Owner Rahn held an all-plumbers meeting to discuss the campaign. That meeting began with Rahn repeatedly telling the plumbers that he was ready to hire two new plumbers, if he just could find them, to spread their work around. Almost immediately after that meeting, Ludwig began a salting campaign by visiting the Respondent's facility and submitting a job application. As Ludwig left the facility, Rahn followed him out to the parking lot. Ludwig observed Rahn holding his cell phone in a manner that appeared to indicate he was photographing Ludwig and his vehicle. A couple of days after Ludwig submitted his application, Kassey Marshall, the Respondent's human resources manager, spoke to Ludwig over the phone and advised him that the Respondent was in a hiring freeze.

The General Counsel's complaint in this case principally alleges that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by refusing to consider for hire or hire Ludwig due to his union activity. As will be discussed fully herein, I conclude that the Respondent's refusal to hire Ludwig was unlawful.[1]

[1] On July 25, 2024, the General Counsel, through the Regional Director for Region 18 of the National Labor Relations Board (the Board), issued a complaint and notice of hearing against Respondent Rahn Home Services in Case 18–CA–318406. The complaint was premised upon an unfair labor practice charge filed by the Minnesota Pipe Trades Association (the Union) on May 19, 2023. On August 8, 2024, the Respondent filed a timely answer to the complaint, denying the substantive allegations and asserting numerous affirmative defenses. On August 15, 2024, the Union filed a second unfair labor practice charge against the Respondent in Case 18–CA–348467. On November 25, 2024, the Regional Director for Region 18 issued an order consolidating the two cases, a consolidated complaint, and a notice of hearing. On December 9, 2024, the Respondent filed a timely answer to the consolidated complaint, again denying the substantive allegations and asserting numerous affirmative defenses.

In its answers, the Respondent admitted, and I so find, that it is an employer within the meaning of Sec. 2(2), (6), and (7) of the Act. The Respondent denied the General Counsel's complaint allegation that the Minnesota Pipe Trades Association was a labor organization. Sec. 2(5) of the Act defines a labor organization as, "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work." Scott Ludwig, a union organizer, testified that the Association assists local unions in negotiating first contracts. As an organizer, Ludwig speaks to employees about their rights under the Act, as well as union wages, benefits including health care, and other working conditions. (Tr. 189–191.) He specifically spoke to at least two of the Respondent's employees about union representation. Given this testimony, I conclude the Association is a Sec. 2(5) labor organization. *Don't Stop*, 298 NLRB 961, 962 (1990) (joint board serving as regional representative of several local unions was a labor organization where it represented employees concerning salary and benefits); *Lauderdale Lakes General Hospital*, 227 NLRB 1412, 1414, 1415–1416 (1977) (association and its subsidiary body were labor organizations where representative spoke to employees about organizing).

On December 17 and 18, 2024, I heard this case in Minneapolis, Minnesota. All parties were given the opportunity to examine witnesses and present evidence.[2] On February 14, 2025, the General Counsel, the Respondent and the Charging Party filed post hearing briefs, which I have read and carefully considered. On the entire record, I make the following findings of fact and conclusions of law.[3]

FINDINGS OF FACT

ALLEGED UNFAIR LABOR PRACTICES

I. BACKGROUND

The Respondent is engaged in the business of providing commercial and residential heating, air conditioning, plumbing, electrical, and home security services. The business operates out of a facility in Rosemount, Minnesota. In 2023, the brand name of the company was Benjamin Franklin Plumbing. Beginning January 1, 2024, the name changed to On Time Pro Services. Jeff Rahn is the Respondent's owner and general manager. Kassey Marshall is the human resources manager. Brian Mueller is the operations manager in the plumbing department. As of December 2024,[4] the Respondent employed 12 plumbers with varying skill levels. They were licensed/journeyman, experienced (but not licensed), or apprentice. The Respondent also had two employees who cleaned drains.

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[2] At the hearing, I granted the Charging Party's petition to partially revoke subpoenas served by the Respondent on the Charging Party and its employee/organizer Scott Ludwig. As the aggrieved party, the Respondent requested, and I agreed, to put the subpoena and petition to revoke in the formal record pursuant to Sec. 102.31(b) of the Board's Rules and Regulations. (ALJ Exh. 1.) For the reasons stated on the record, I reaffirm my ruling on the petition to revoke. The document requests at issue sought irrelevant information, were overly broad, or attempted to discover the Union's organizing strategy. (Tr. 350–359.)

[3] In order to aid review, I have included citations to the record in my findings of fact. The citations are not necessarily exclusive or exhaustive. My findings of fact are based upon consideration of the entire record. Any testimony in conflict with my findings has been discredited. In assessing witnesses' credibility, I primarily relied upon witness demeanor. I also have considered the context of the testimony, the quality of the recollections, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996), enfd. sub nom. 56 Fed.Appx. 516 (D.C. Cir. 2003). Of course, credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness's testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), reversed on other grounds 340 U.S. 474 (1951). My specific credibility determinations are detailed in the findings of fact.

[4] The terms "licensed" and "journeyman" are interchangeable, but I will utilize "licensed" in this decision.

Scott Ludwig is a union organizer for the Minnesota Pipe Trades Association. He has been in the position since June 2019. Prior to that, Ludwig worked as a licensed plumber since 2006. He has remained a licensed plumber in Minnesota since becoming a union organizer.

Marshall, the HR manager, is the point person in the Respondent's hiring process. She posts job openings on Indeed.com and also receives job applications in person at the Respondent's facility. For the latter, she puts an application in her "purple folder" and does not do anything with it if the Respondent does not have any job openings when the application is submitted. When a position subsequently opens, Marshall reviews the applications in her purple folder and any other applications that are submitted. She screens applicants via a phone call and, if an individual passes the screen, she sets up job interviews with her and owner Rahn. The two also make the hiring decisions.[5]

II. THE UNION'S ORGANIZING EFFORTS AND RESPONDENT'S REMOVAL OF JOB POSTINGS

In November 2022, the Respondent hired Anthony "Tony" Pugh as a licensed plumber. Although not employed by the Union, Pugh was working as a salt for it.[6]

On March 29, 2023,[7] Union Organizer Ludwig met with one of the Respondent's licensed plumbers, Ryan Kukuzke. Ludwig spoke about the Union and the employees it represented. He also discussed the wages and benefits, including health care and retirement, that the Union offered. Ludwig provided Kukuzke with union authorization cards.[8]

On April 18, the Respondent hired Logan Schultz as an apprentice plumber.[9]

On May 3, Kukuzke hand delivered a letter to Owner Jeff Rahn, informing him those employees had started an organizing campaign through Local 34 of the Plumbers Union. The letter further stated that an organizing committee had been established and it was led by Kukuzke. The letter described the rights employees had under federal law. It ended with a warning that the Union would file unfair labor practice charges if the Respondent retaliated against any employee for engaging in protected activity. Ludwig's signature and job title were on the letter. Rahn told Kukuzke that they should have talked to him first. Also on May 3, Ludwig sent authorization cards to all of the Respondent's plumbers via text or email. The

[5] Tr. 205–206.

[6] Tr. 52; R. Exh. 2. A "salt" is an individual who is being paid or asked by a union to work at a nonunion employer with the goal of spurring union organizing efforts there. The Supreme Court and the Board long have recognized that union organizers/salts who apply for positions with a non-union employer are employees within the meaning of Sec. 2(3) of the Act. *NLRB v. Town & Country Electric*, 516 U.S. 85, 88, 96–97 (1995); *M.J. Mechanical Services, Inc.*, 324 NLRB 812, 813 (1997), enfd., 172 F.3d 920 (D.C. Cir. 1998).

[7] All dates hereinafter are in 2023 unless otherwise noted.

[8] Tr. 54–58, 75, 138–40.

[9] R. Exh. 2; GC Exh. 26, p. 10.

plumbers' contact information was publicly available through the Minnesota Department of Labor (MDOL).[10]

Following Kukuzke's submission of the letter to Rahn, Plumber's Manager Mueller spoke to Kukuzke in person in the parking lot. Mueller "glanced" at Kukuzke's work truck and told him it had to be cleaned by the end of the day. Mueller did not look inside the truck before giving the instruction to Kukuzke. One of the Respondent's basic expectations for its plumbers was that they would keep their trucks clean. Mueller specifically had advised employees in the past of the need to clean their trucks. However, he had never instructed Kukuzke or other employees to do so before the end of the workday.[11]

On that same date, Mueller called Pugh. Mueller told Pugh "something" was going on. He said a couple of guys had received communications and that they were coming from one of their guys who had initiated it. Mueller then said it "[k]ind of feels like a fucking stab in the back a little bit" but he was just curious if Pugh had received anything. Pugh said he would check and let Mueller know. Mueller concluded by telling Pugh that a couple of guys had reached out to him about it and Mueller's response was "what the fuck is going on." Mueller did not use the words "union," "organizing," or "authorization card" during the call.[12]

On May 4, Pugh called Mueller back and told him he had received a union authorization card from Ludwig. Mueller responded that one of the guys there was trying to unionize the shop "out from underneath us." Mueller went on: "Kind of a fucking stab in the back to me and to the guy who writes the paychecks, too, but that's beside the point." Pugh asked what the card meant for them. Mueller replied that, if 30 percent of the guys signed cards, a union vote would be authorized. He added that, if 50 percent plus one vote in favor, the shop would become unionized and "fucking drag the ship into the ground." When Pugh then said that it would fuck up everything, Mueller replied, "It sure will, if it happens." He told Pugh he was "fucking furious" about it and that "[b]asically if you wanna work for a union company, fucking go work for one. Don't work here anymore. . ." Mueller added, "Sounds like it's just a couple of them I know of. . .that are doing this." Mueller concluded by telling Pugh that he was not sure if Pugh knew anything about the organizing so he figured he would ask and that the few guys Mueller had talked to were going to ignore it.[13]

On that same date, Marshall "paused" the Respondent's job postings for 10 of 11 positions, including licensed plumber, on Indeed.com. The pause meant that those jobs were no longer open for applications.[14]

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[10] GC Exhs. 2, 3; Tr. 58–59, 140–41.

[11] Tr. 119, 127–129, 131, 141–143, 154; R. Exh. 11. I credit Pugh's testimony on this topic where it conflicts with Kukuzke's based upon demeanor of the two individuals when providing that testimony.

[12] GC Exhs. 13, 14; Tr. 97, 254–257. Pugh recorded the conversation.

[13] GC Exhs. 15, 16; Tr. 105, 257–260. Pugh again recorded the conversation.

[14] GC Exhs. 10, 11; Tr. 228–229.

A day or 2 after the Respondent was notified of the organizing campaign, Ludwig visited the homes of plumbers utilizing addresses available from the MDOL. However, he did not speak to any plumber during those visits. In that same timeframe, certain plumbers complained to Mueller that Ludwig was harassing them by following them to customers' homes, gas stations, and home improvement stores. In that regard, Ludwig contacted plumber Michael Dressler at least three times, even though Dressler at some point asked him to stay away. However, Ludwig never threatened Dressler and Dressler never made a harassment complaint about Ludwig. Ludwig also approached plumber Kenneth Hills at a home improvement store and visited Hills' home when Hills' family members were the only individuals present. Hills had a sign in his yard stating "do not knock." Hills called the sheriff's department after Ludwig's visit to his home. Ludwig also attempted numerous times to converse with plumber Jon Weinhandl. On several occasions, Weinhandl told Ludwig to stop harassing him. However, Ludwig never threatened or physically intimidated Weinhandl. Ludwig also left the conversations after Weinhandl told him to leave.[15]

III. THE RESPONDENT'S MEETINGS REGARDING THE ORGANIZING CAMPAIGN

The Respondent scheduled an all-employee meeting for May 10 at a local community center. Prior to the meeting, Ludwig and Kukuzke stationed themselves outside on the other side of the facility and handbilled the plumbers with a document containing questions and answers regarding unionization. At one point, Mueller drove by the two, smiled, and waved at them. Kukuzke also saw the electrical manager standing in a doorway watching everything that he and Ludwig were doing. Mueller similarly came out of the building and glanced at them a few times.[16]

On that same date, Kukuzke emailed a letter to Rahn and Mueller complaining about being assigned to perform plumbing work in Wisconsin, despite Kukuzke not having a license to do so. Kukuzke attributed the work assignment to retaliation for the union organizing campaign. He advised Rahn and Mueller that, if he were assigned in the future to plumbing work for which he did not have a license, he would notify the appropriate legal authority. Also, that day, Kukuzke submitted a letter to the MDOL that the Respondent had unlicensed plumbers and HVAC technicians performing plumbing work without having a licensed plumber at the worksite to supervise the work. Ludwig helped Kukuzke draft the letters.[17]

[15] Tr. 61–62, 268–269, 328, 331, 335–337, 339–348; R. Exh. 38.

[16] Tr. 63–65, 143–144, 260–261, 297; GC Exh. 4. I credit Kukuzke's uncontroverted testimony that Mueller came out of the building and glanced at him and Ludwig a few times. (Tr. 144.) Mueller conceded that he saw the two while driving by, but thereafter "didn't engage with them or make any comments or contact with them at all." (Tr. 261.) However, he did not deny coming out of the facility and looking at them several times.

[17] GC Exhs. 6, 7; Tr. 145–146, 157.

On May 11, Rahn held an all-plumbers meeting at the Respondent's facility "to discuss the union activity."[18] At the start of a meeting, one of the plumbers mentioned an "installer" and then specifically stated it sometimes was hard with one guy and asked Rahn if he "ever consider[ed] maybe doing the position with two." Rahn confirmed the individual was talking about plumbers and said, "if I had two guys, I would do it in a minute." He further explained:

> After seeing how March was with the installers being able to crank it out and you guys being able to sell like that…we've talked about an installer position for plumbers for years. I mean, back when Frank used to talk to me about it, the concern was always if we don't have an install, what do they do, you know what I mean?" But now we're at a point where we have so many installs…if we can find two guys just to do installs, yeah.

Rahn went on to say:

> We've had positions open for plumbing installers. We just didn't have enough install [work] at the time. We certainly have enough, like I said, the two right now we just don't have people applying. But yeah, if I can get two licensed plumbers to do installs every day, take a load off of you guys and then let you keep running (incomprehensible) selling…

Rahn then described the benefits of having a plumber focused only on installs:

> If they only have something for the first call, they you guys can sell something later in the day, they can go and install those right away. It would be a beautiful system.[19]

Rahn spent the remainder of the meeting discussing the union organizing campaign. He explained that, if 30 percent [signed cards], there was a vote. He added if it passed, they would have a union and, if it did not pass, they did not have a union. Rahn said he had nothing to do with the timeline or how any of that stuff worked. He told the plumbers they would have to speak to the Union about it. Rahn also said that "if it doesn't come to a vote, do they just keep harassing guys or?" He added that his only point was to tell them his experiences and let them know "it ain't all of what they say" and it was now in their hands.

IV. LUDWIG'S SUBMISSION OF A JOB APPLICATION

After the meeting, Kukuzke contacted Ludwig and told him that the Respondent was looking to "fill two vans" [meaning hire two plumbers]. On May 12, Ludwig went to the

[18] Tr. 298.

[19] GC Exhs. 17, 18; Tr. 108, 148–150, 297–300, 324, 334–335, 339. Pugh also recorded this meeting. Because that recording is the best evidence of what was said at the meeting, I rely upon it for the factual findings concerning what Rahn said at the meeting. Although several employees provided abbreviated testimony on that topic, I do not rely on that testimony.

Respondent's facility to apply for a plumber job. Once at the facility, he asked an unidentified person for a job application and the individual provided him with one. He briefly left to obtain information he needed to complete the application. Shortly thereafter, Ludwig returned and submitted his completed job application and resume. After doing so, Rahn followed Ludwig out of the facility and into the parking lot until they reached Ludwig's vehicle. At one point, Ludwig turned around and saw Rahn with his phone out, appearing to be taking photos of Ludwig, his vehicle, and the vehicle's license plate. Ludwig then asked Rahn "What are you taking a picture of my vehicle for sir? What do you need that for?" Rahn gave an unintelligible response. Ludwig then asked Rahn if he was "gonna [surveil] what the Union was doing." Rahn replied no. Ludwig asked if Rahn taking a picture of his vehicle was no problem. Rahn replied "it shouldn't be, is it?" The two exchanged names and the conversation ended. Prior to this interaction, Rahn did not normally follow applicants out of the Respondent's facility or take pictures of their cars.[20]

Following the meeting, Plumber Weinhandl posted in the plumbers' chat group that a "[u]nion guy was [stalking] our shop. Jeff [Rahn] told me he came in and got an application. What a joke." Plumber Schultz responded: "Someone asked for the license plate of the union guy" and he posted Ludwig's plate number. Weinhandl responded with the make, model, and color of the car.[21]

A couple of days after Ludwig submitted his job application, Marshall and Ludwig spoke on the phone. Marshall told Ludwig that the Respondent was on an all-brand hiring freeze. Ludwig asked about his job application and resume. Marshall told him that she would keep the application on file and give him a call when a position opened up.[22]

The Respondent's qualifications for a licensed plumber position were that the individual had to be a licensed plumber and able to pass a drug screen and background check. Ludwig was a licensed plumber at the time he submitted his job application. He would have worked indefinitely for the Respondent in that position if hired.[23]

[20] Tr. 66–68, 301, 311; GC Exhs. 5, 19. Rahn testified that he had heard from plumbers that Ludwig was following them and visiting their homes, so he took the picture of Ludwig's car and license plate so he could identify him if he visited Rahn's home. (Tr. 302.)

[21] R Exh. 30.

[22] Tr. 69–70, 201, 211–212, 235; R. Exhs. 4, 9. I credit Ludwig's testimony that Marshall told him the Respondent was on a "all-brand" hiring freeze. Although she did not refer to it as "all-brand," Marshall confirmed that she told Ludwig about a hiring freeze and that she would keep his job application on file. (Tr. 235.) Rahn confirmed during cross examination that the hiring freeze was "all-brand" in response to a leading question. (Tr. 309–310.) That Marshall pulled 10 of 11 job postings on May 4 also supports the finding that it was "all-brand." (GC Exh. 10 and 11.)

[23] Tr. 71–72. Ludwig's demeanor was reliable when he testified as to his work plan if the Respondent hired him.

On June 20, just over 1 month from Marshall telling Ludwig of the hiring freeze, the Respondent hired an HVAC technician. On June 26, the Respondent hired a fleet and warehouse coordinator. On July 20, it hired another HVAC technician. On August 1, it hired a customer service representative.[24]

V. THE RESPONDENT HIRES A PLUMBER NEARLY ONE YEAR LATER

On March 20, 2024, the Respondent terminated Pugh.[25]

On April 23, 2024, almost 1 year after Ludwig submitted his job application, the Respondent hired Erich Danner as an experienced plumber. Like Pugh before him, Danner was a salt for the Union, although not employed by it. When he applied for the job, Danner did not disclose that he was a salt and a member of Plumbers Local 15. Although he was aware of the job opening, Ludwig did not submit a new application for it. Neither Marshall nor anyone else from the Respondent spoke to Ludwig about the job opening before filling it. Marshall also did not remove Ludwig's application from the "purple folder" in which she stored it and consider him for hire. In any event, Rahn would not have considered Ludwig for hire based upon the employees' previous complaints about Ludwig harassing them. Rahn thought his plumbers would quit if he hired Ludwig.[26]

Danner's 1st day of work was April 29, 2024. He had lunch with Mueller that day and made small talk about cars, as Mueller had just purchased a new pickup truck. On the ride back to the facility, the conversation turned to union organizing and Ludwig. Mueller told Danner that a union organizer was going around hitting on all of their guys and other companies. He detailed how the organizer was showing up at peoples' houses or at their jobs and he was "a fucking cocksucker." Mueller identified Ludwig as the organizer. He said he wanted Danner to be aware of it so he threw it out there, but he did not know what Danner's thoughts were on the matter. Mueller conceded that he came from being a union plumber but that Rahn would never go for that. He then added that, although he did not want to say too much or get in trouble, he was "pretty opposed" to having a union. Mueller advised Danner that most of the guys were against the idea. He added that things had gotten to the point that plumbers started filming Ludwig when he attempted to communicate with them. He said the plumbers threatened him with harassment complaints if Ludwig would not leave them alone. Mueller told Danner that Ludwig had parked down the street from jobs and waited for the Respondent's trucks to leave.[27]

The Respondent hired additional plumbers on July 11, September 6, and October 17, 2024. Ludwig was not one of them.[28]

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[24] GC Exh. 28.

[25] Tr. 215–218; R. Exhs. 2, 12.

[26] Tr. 167–168, 234, 302–303; GC Exh. 12; R. Exhs. 13, 14 (p. 58).

[27] GC Exhs. 21, 22; Tr. 171–173, 275–276. Danner recorded his conversation with Mueller.

[28] R. Exh. 15.

CREDIBILITY

Before analyzing the legal merits of the General Counsel's complaint allegations, a credibility determination must be made involving a critical issue: the Respondent's asserted reason for implementing a hiring freeze and withdrawing its licensed plumber job opening on Indeed.com on May 4. The Respondent contends that the plumbers' job performance issues and need for training caused the hiring freeze.

A. The Alleged May 1 Managers' Meeting

Marshall, the HR manager, testified about a weekly managers' meeting held on May 1, 2 days prior to the Respondent learning of the union organizing campaign. Marshall said that she, Rahn, and Mueller decided not to hire any additional plumbers until their training on the "perfect call" was going better. Mueller similarly testified that they discussed how the Respondent's standards were slipping considerably with the plumbers. They talked about their new hires and how they had not been trained properly. They concluded that they should halt hiring and focus on training the plumbers that they already employed. Mueller said that "a lot of the guys" needed training and specifically identified Pugh. Unlike Marshall, Mueller put the timing of this meeting as several weeks/up to a month before May. He added that the training started in January and the call process training came "a little bit later."[29]

B. The May 4 Pause on Job Openings, Including Plumber

As previously noted, Marshall emailed a representative at Indeed.com and requested that 10 out of 11 job listings, including plumber, be paused such that applications no longer could be submitted. That email was sent on May 4, the day after Kukuzke notified Rahn of the union organizing campaign.[30]

C. The May 11 Meeting Between Rahn and Marshall

Marshall further testified that, after the May 11 all-plumbers meeting, Rahn spoke to her about hiring installers. Based on their conversation on May 1, Marshall responded that she thought they were closing all positions and she did not have any jobs opened now because Rahn wanted to do the training. Rahn similarly testified that, after the meeting, he asked Marshall if they had any positions open. Marshall responded that they did not and reminded him that they had closed all positions to do the training.[31]

[29] Tr. 208–209, 262–264, 280–282.

[30] GC Exhs. 10, 11.

[31] Tr. 214–215, 300.

D. The Need for Training

As to the job performance issues allegedly prompting the hiring freeze, Marshall testified that the Respondent had a lot of new plumbers at the time and they had not gotten proper training on how to run a call to a customer. She described the perfect call as one where the plumber followed a number of steps, including putting shoe covers on before going into a home and letting the customer know what work was going to be done. She further testified that all of the department managers teamed up to put a major training schedule together in a binder. The training also involved two to three ride-a-longs per week, where an employee would perform a call with a manager alongside.[32]

Rahn similarly testified that he and Marshall noticed the quality of the Respondent's service calls was slipping. He further testified that, although the Respondent had a process for completing a service call, they could tell from customer complaints that employees were skipping some steps in that process. The steps included parking on the road, wearing shoe covers in the home, talking to the customer about the problem, checking the whole system, discussing what was discovered with the customer and giving them options for repair or replacement, confirming with the customer that they were satisfied when the job was completed, and cleaning up before departing. Rahn attributed the slipping performance quality to all the new hires they had and the lack of time to train them. He stated that the two decided to take a year off from hiring people and focus on getting the employees they had trained.[33]

E. Credibility Determination

I do not credit the testimony of the Respondent's witnesses that the reason why the Respondent implemented a hiring freeze on May 4 was the need to train its plumbers.

To begin, the Respondent presented no documentary evidence to corroborate its witnesses' testimony. It did not introduce any documents concerning the May 1 managers' meeting where the decision to freeze hiring is claimed to have been made. It did not introduce any documents of customer complaints. It did not introduce any documents setting forth its additional training program, despite Marshall testifying such documents were "in a binder" and that she could "get some" documents.

Next, the Respondent provided inconsistent statements regarding the reason for its failure to hire Ludwig. The Respondent submitted a position statement on August 29, during the investigation into the underlying unfair labor practice charge in this case.[34] In the statement, the Respondent's counsel stated: "On April 18, 2023, the Employer hired plumber Logan Schultz. With the addition of Mr. Schultz to its team of plumbers, the Employer had a full complement to meet its business needs. That is, the Employer did not need any additional

[32] Tr. 207–209, 212, 230–231, 238.

[33] Tr. 293–295.

[34] GC Exh. 26.

plumbers." Counsel further stated that the Respondent paused the licensed plumber job posting on May 4 as a result of its full complement of plumbers. What the position statement does not contain is any assertion that the Respondent paused its hiring because of a need to train its existing plumbers and new hires. The asserted reason for the hiring freeze in the position statement directly conflicts with the testimony of Rahn, Marshall, and Mueller that the hiring freeze was imposed for training. The Board has long held that a lawyer's position statement can be received as an admission where, as here, it contains a statement conflicting with a party's position at a hearing. *Raley's*, 348 NLRB 382, 501–502 (2006).[35]

It also bears mentioning that the asserted reason for the hiring freeze in the position statement may itself be pretextual. The position the Respondent posted on Indeed.com for job applications was licensed plumber. Schulz was an apprentice, not a licensed, plumber. Hiring him did not result in a full complement of licensed plumbers. That conclusion is further supported by the Respondent hiring Schulz on April 18 but leaving the position posted for more than two weeks later. The monthly cost to the Respondent of keeping a job posting on Indeed.com was between $800 and $1500 per job.[36]

Witness testimony contained other inconsistencies regarding the Respondent's alleged justification for the freeze. Mueller testified inconsistently with Marshall concerning when the training began. Rahn's offer to the plumbers in the May 11 meeting to hire two new installers is inconsistent with the testimony regarding instituting a hiring freeze at the May 1 meeting. If Rahn, Marshall, and Mueller had decided on a hiring freeze due to the need for training, Rahn would not have told the plumbers on May 11 that he wanted to hire two new installers. No employee witness testified that the Respondent increased training for plumbers or retrained them after May 1.

Finally, the Respondent's witnesses did not explain how a need to retrain existing plumbers meant that it could not hire any new plumbers. A new hire would need to be trained as well and could have been included in the retraining of plumbers. Nor did they explain why training plumbers on the "perfect call" would take an entire year to complete, especially when those steps included simple things like parking on the street, putting covers on shoes, telling the customer what work was being done, and cleaning up after a job was completed.

For all these reasons, I conclude that the Respondent did not institute a hiring freeze due to a need to train its plumbers.

[35] I further note that the Respondent's counsel, in his opening statement, made no reference to the need for training being the reason that the Respondent implemented a hiring freeze and could not hire Ludwig.

[36] Tr. 202.

LEGAL ANALYSIS

I. DID THE RESPONDENT REPEATEDLY VIOLATE SECTION 8(A)(1) IN CONVERSATIONS WITH EMPLOYEES AFTER IT LEARNED OF THE ORGANIZING CAMPAIGN?

A. The May 3 Conversation Between Mueller and Pugh

The General Counsel's complaint alleges that, on May 3, Plumbing Manager Mueller violated Section 8(a)(1) by interrogating and threatening employees, as well as creating the impression that employees' union activity was under surveillance. These allegations involve Mueller's conversation with Plumber Pugh on that date.[37]

The Board applies a totality-of-the-circumstances test to determine whether an interrogation is coercive of employees' rights under the Act. *Bannum Place of Saginaw, LLC*, 370 NLRB No. 17 (2021), citing *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub nom; *HERE, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Under this test, the Board considers a variety of factors including, among other things, the nature of the information sought (especially if it could result in action against individual employees), the position of the questioner in the company hierarchy, the place and method of interrogation, and the truthfulness of the employee's reply. *Rossmore House*, supra; *Vista Del Sol Healthcare*, 363 NLRB 1193, 1208 (2016); *Parts Depot, Inc.*, 332 NLRB 670, 673 (2000), enfd. 24 Fed.Appx. 1 (2001). The Board's test utilizes an objective standard and is not based on the subjective reaction of the employee. *Multi-Ad Services, Inc.*, 331 NLRB 1226 (2000), enfd. 255 F.3d 363 (7th Cir. 2001)

An employer unlawfully threatens employees by statements that reasonably tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *KSM Industries*, 336 NLRB 133, 133 (2001). The Board's standard for determining whether an unlawful threat was made is "whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction." *Double D. Construction Group, Inc.*, 339 NLRB 303, 303–304 (2003). The intent of the speaker in making the statement and the actual effect the statement has on the listener are immaterial. *Smithers Tire*, 308 NLRB 72, 72 (1992); *Puritech Industries*, 246 NLRB 618, 622–623 (1979). The Board considers the totality of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. *Concepts & Designs*, 318 NLRB 948, 954–955 (1995). Accordingly, the context in which the alleged threat was communicated is critical to determining how a reasonable employee could interpret the particular words spoken. *Cintas Corp. No. 2*, 372 NLRB No. 34, slip op. at 4 (2022).

Finally, the test for determining whether an employer has created the impression of surveillance is whether the employee would reasonably assume from the employer's statements or conduct that their protected activities had been placed under surveillance. *Greater Omaha Packing Co., Inc.*, 360 NLRB 493, 495 (2014).

[37] Complaint par. 5(a).

During their May 3 conversation, Mueller told Pugh that "something" was going on and a couple of guys had received communications from the individual "initiating it" [alleged surveillance]. Mueller added that he was just curious if Pugh had received anything [alleged interrogation]. He added that it "kind of feels like a fucking stab in the back a little bit" [alleged threat]. The conversation lasted less than 2 minutes.

I conclude that none of Mueller's statements to Pugh violated Section 8(a)(1). These vague statements are insufficient to establish that Mueller was discussing union organizing or asking Pugh if he had received an authorization card. Mueller never uttered "union," "authorization card," or "organizing" during the call. The statements Mueller actually made do not, as the General Counsel contends, establish that Mueller asked Pugh if he got an authorization card from the Union or that Mueller had told Pugh that other employees received cards.[38] Without the connection to union organizing, no interrogation, threat, or impression of surveillance occurred. An objective employee would not reasonably construe Mueller's statements as coercive. *Neptco, Inc.*, 346 NLRB 18, 20 (2005) (supervisor's statement that the employer was "cleaning house" did not violate Section 8(a)(1) as the supervisor made no specific reference to the union and statement was too vague to conclude that he was referring to union supporters or expressing the employer's views on union activity); Cf. *Direct Transit, Inc.*, 300 NLRB 629, 632 (1992) (supervisor unlawfully interrogated an employee when he asked "between you and I, have you heard anything about the union").[39]

B. Mueller's May 3 Instruction to Kukuzke to Clean His Truck

The General Counsel argues that the Respondent violated Section 8(a)(3) and (1) by imposing more onerous working conditions on Kukuzke due to his union activity. This allegation involves Mueller's May 3 instruction to Kukuzke that he had to clean his truck before the end of the workday. The instruction came after Kukuzke had presented the letter announcing the organizing campaign to Rahn.[40]

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[38] The Charging Party's arguments likewise presume that the conversation concerned union organizing and authorization cards.

[39] As the General Counsel concedes, Pugh's recording of the conversation is incomplete. Mueller's comments at the start of the recording are indiscernible and it is unclear how far the two were into their conversation when the recording began. In particular, the question that Mueller asked Pugh that resulted in Pugh responding, "I'll have to check" and "I haven't checked my email in awhile" is not in the record.

[40] Complaint par. 5(c). This theory of a violation is at odds with what the General Counsel pled in the complaint. The complaint allegation reads: "In about May 2023, at Respondent's facility, [Mueller] threatened employees with more onerous working conditions by inspecting an employee's truck and demanding that the employee clean his truck in retaliation for the employee's support for the Union." The complaint alleges that the Respondent's conduct violates Sec. 8(a)(1), not 8(a)(3). The General Counsel did not seek to amend the complaint to include the Section 8(a)(3) allegation. Nonetheless, I find it appropriate to consider it. *Pergament United Sales*, 296 NLRB 333, 334 (1989). The issue is closely connected to the subject matter of the complaint, because it involves the same set of facts (Mueller's conversation with Kukuzke). It also was fully litigated by the parties, with the Respondent choosing not

The Board's *Wright Line* test applies to the General Counsel's allegation. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), and approved in *NLRB v. Transportation Mgmt. Corp.*, 462 U.S. 393 (1983). Under that framework, the General Counsel, in part, must show by a preponderance of the evidence that, in response to protected activity, '. . .some legally cognizable term or condition of employment has changed for the worse."' *Bellagio, LLC*, 362 NLRB 426, 427–428 (2015), quoting *Northeast Iowa Telephone Co*., 346 NLRB 465, 476 (2006); *Aluminum Industries*, 343 NLRB 939, 940 fn. 11 (2004).

I conclude that the General Counsel has not demonstrated the Respondent took an adverse action against Kukuzke. During Mueller's May 3 conversation with Kukuzke, Mueller glanced at the outside of Kukuzke's truck, did not look inside the truck, then told Kukuzke he had to clean the truck before the end of the workday. A basic expectation of the plumbers' job was to keep their trucks clean. The plumbers were aware of this expectation. Thus, Mueller's request that Kukuzke clean his truck was not a more onerous working condition.

The General Counsel relies upon Mueller requiring that Kukuzke clean his truck *before the end of the workday*. However, no showing was made that cleaning the truck by the end of the workday put some sort of undue, additional burden on Kukuzke. The record does not reflect how often drivers cleaned their trucks, how much time it took them to do so, or when in the workday they did so. It also does not reflect how dirty Kukuzke's truck was on the outside when Mueller gave him the instruction. Moreover, Mueller did not ask Kukuzke to stay after work to perform the task. Finally, Mueller did not threaten Kukuzke with discipline if he did not clean his truck or for having a truck that needed cleaning.

Because no adverse action took place, I conclude the General Counsel did not meet the initial *Wright Line* burden. Mueller's instruction did not violate Section 8(a)(3). *Williamson Piggly Wiggly, Inc.*, 280 NLRB 1160, 1170–1171 (1986) (supervisor who left "to-do lists" for employees in the course of an organizing campaign did not impose more onerous working conditions, where supervisor previously left such lists and it was not established that the lists left during the campaign resulted in employees no longer being able to complete the tasks in the time allotted); *Allen Motor Express*, 172 NLRB 1320, 1331 fn. 23 (1968) (employer did not unlawfully impose more onerous working conditions on employee by making him wash his truck on his own time and at his own expense, where drivers had routinely done so prior to a union organizing campaign).[41]

to present any evidence concerning that conversation.

[41] The General Counsel's reliance on *Gavilon Grain, LLC*, 371 NLRB No. 79 (2022), is misplaced. In that case, more onerous working conditions were established because the employer required employees to take on additional cleaning of work areas each workday. The requirement also resulted in work being duplicated. No such showing was made here.

C. The May 5 Conversation Between Mueller and Pugh

The General Counsel's complaint alleges that, on May 5, Mueller violated Section 8(a)(1) by threatening employees and creating the impression that employees' union activities were under surveillance. These allegations involve Mueller's conversation with Pugh on that date.[42]

In contrast to his May 3 statements to Pugh, I find that Mueller violated Section 8(a)(1) as alleged during their May 5 conversation. First, Mueller told Pugh that one of the guys was trying to unionize the shop and that was "[k]ind of a fucking stab in the back to me and to the guy who writes the paychecks." The Board has long held that such "stab in the back" comments are unlawful threats. See, e.g., *Johnston Fire Services, LLC*, 371 NLRB No. 56, slip op. at 12 (2022) (after an employee changed his mind and decided to support a union, supervisor unlawfully displayed a knife and stated to employee "Well, that's the one I pulled out of my back"); *Treanor Moving & Storage Co.*, 311 NLRB 371, 376 (1993) (employees unlawfully told repeatedly that the employer viewed the employees' vote for the union as a "stab in the back"); *Paul Distributing Co., Inc.*, 264 NLRB 1378, 1382 (1982) (supervisor's repeated comments to employees that he felt like he was stabbed in the back after learning of union organizing campaign were unlawful).

Next, Mueller told Pugh: "if you wanna work for a union company, fucking go work for one. Don't work here anymore." Again, the law is well established that such comments constitute an unlawful threat of discharge. See, e.g., *Starbucks Corp*., 373 NLRB No. 123, slip op. at 1 (2024) (high-level supervisor made unlawful statement to an employee that "if you're not happy at Starbucks, you can go work for another company" in response to attempt by the employee to discuss union organizing and alleged unfair labor practices); *Equipment Trucking Co.*, 336 NLRB 277, 277 (2001) (employer statement to employee that the employer's president would run the company "any way she wanted, and if [the employee] didn't like it, find another job," threatened discharge because it conveyed that the employer considered union and other protected activity incompatible with continued employment); *Ramar Dress Corp.*, 175 NLRB 320, 327 (1969) (supervisor's comment to employee that "[I]f you do so want a Union, - if you people want a Union, why didn't you go to a shop where there is a Union"). Mueller's statements to Pugh in response to union organizing activities of employees implied that support for the Union was incompatible with continued employment. *Rolligon Corp.*, 254 NLRB 22, 22 (1981).

Third, Mueller told Pugh that, if the shop got unionized, it would "fucking drag the ship into the ground." The comment implicitly threatened that unionization would result in the closure of the Respondent's business, rendering the statement an unlawful threat. *Neises Construction Corp.*, 365 NLRB 1269, 1271–1272 (2017) (employer telling an employee that it would be "crushed" if the union won the election was an unlawful threat because employees would reasonably understand that being 'crushed' leads to closure); *Amptech, Inc.*, 342 NLRB 1131, 1135 (2004) (employer's statement to employees that it viewed union organizing drive to be a "personal attack" and would "explore all of [its] options for the future" was an unlawful

[42] Complaint par. 5(b).

implicit threat of plant closure); *Mangurian's, Inc.*, 227 NLRB 113, 121 (1976) (supervisor's statement that, if the union came in, the employer would "go under and close their doors" was a threat of closure).

Finally, Mueller told Pugh that it "[s]ounds like it's just a couple of them I know of…that are doing this., but yeah. Somebody walked in and put a letter on [Rahn's] desk yesterday." At the time of the statement, Kukuzke was the only known union supporter, yet Mueller asserted that he knew of multiple employees supporting the union campaign. Mueller did not disclose to Pugh how he found out about the employees' union support. Under these circumstances, Mueller's statements created the impression that the Respondent was surveilling its employees' union organizing activities. *Stevens Creek Chrysler Jeep Dodge*, 353 NLRB 1294, 1296 (2009) (emphasis in original), affd. and incorporated by reference 357 NLRB 633 (2011), enfd. mem. sub nom. *Mathew Enterprise, Inc. v. NLRB*, 498 Fed. Appx. 45 (D.C. Cir. 2012) (employer unlawfully creates the impression of surveillance when it "tells employees that it is aware of their union activities, but fails to tell them the source of that information" because the "employees are left to speculate as to how the employer obtained its information, causing them reasonably to conclude that the information was obtained through *employer* monitoring."); *Aggregate Industries*, 371 NLRB No. 78, slip op. at 1 (2022) (employer violated the Act where supervisor told employees that employer knew they were troublemakers" but did not reveal source of that information); *Caterpillar Logistics, Inc.*, 362 NLRB 395, 396 (2015) (statement that "management already knew everyone who was involved in the organizing effort" unaccompanied by the source of the information was unlawful).

For all these reasons, I conclude that the Respondent violated Section 8(a)(1) by Mueller's statements to Pugh on May 5 in all the manners alleged in the General Counsel's complaint.[43]

D. The May 11 All-Plumbers Meeting

The General Counsel's complaint alleges that Rahn violated Section 8(a)(1) by promising employees benefits if they did not support the Union; coercively photographing union-affiliated job applicants; and giving employees the impression of surveilling union activity. These

[43] In reaching this conclusion, I reject the Respondent's asserted defenses. First, the Respondent relies upon Mueller's testimony offering his subjective reasons for making the statements. But determining the statements' lawfulness requires that they be evaluated from the perspective of an objective employee. *Smithers Tire*, supra. Next, the Respondent contends that the statements were too vague, citing cases where the Board so found. However, Mueller's statements here involved specific text which, as detailed, the Board repeatedly has concluded violated the Act. Third, the Respondent relies on the context of the conversation and points to lawful statements by Mueller telling Pugh he could not tell Pugh what to do and he should do what he wanted to after making the stab-in-the-back comment. This argument ignores that Mueller made three other unlawful comments in the same brief conversation. Finally, the Respondent argues that Pugh could not have been threatened because he was working as a union salt. Because salts are statutory employees, the Board has long rejected this argument. *Miller Electric Pump & Plumbing*, 334 NLRB 824 (2001).

allegations arise out of the May 11 all-plumbers meeting and Ludwig's submission of a job application later that same day.[44]

1. Promise of Benefits

A promise of benefits during an organizing campaign violates Section 8(a)(1) if it states or implies that it is conditioned upon employees abandoning union support. *Reliance Electric Co.*, 191 NLRB 44, 46 (1971), enfd. 457 F.2d 503 (6th Cir. 1973); *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). To determine whether a statement is an express or implied promise of benefits, the Board considers whether, in light of the surrounding circumstances, employees would reasonably interpret the statement as a promise. *Viacom Cablevision*, 267 NLRB 1141 (1983). "The lawfulness of an employer's promise of benefits during a union organizational campaign depends upon the employer's motive." *Imagefirst & Laundry Distribution*, 366 NLRB No. 182, slip op. at 2 (2018) (citing *Network Dynamics Cabling*, 351 NLRB 1423, 1424 (2007) (citations omitted)). The determination to be made is whether the employer acted to curtail unionization. *Royal Manor Convalescent Hospital*, 322 NLRB 354, 361 (1996), enfd. mem. 141 F.3d 1178 (9th Cir. 1998).

Applying that framework here, I conclude that Rahn's statements in the May 11 meeting were unlawful. Rahn told the plumbers that they had so many installs that "if we can find two guys just to do an install, yeah." He said at another point "if I had two guys, I would do it in a minute." He added that the Respondent "certainly had enough" install work and "if I can get two licensed plumbers to do installs every day, take a load off of you guys and then let you keep running. . .that will" [help]. Taken collectively, Rahn's statements indicated that he would hire two new plumbers to reduce workload, if he could just find two interested applicants. This amounted to an implied promise of benefits. *Superior Emerald Park Landfill, LLC*, 340 NLRB 449, 460 (2003) ("[T]he fact that an employer couches the promises of benefits in language that does not guarantee anything specific does not remove the taint of illegality").

Because the General Counsel has shown that Rahn promised a benefit during an organizing campaign, the Respondent must establish a legitimate business reason for the timing of that promise. If not, the Board infers improper motive and interference with employee rights under the Act. *Regency House of Wallingford, Inc.*, 356 NLRB 563, 577 (2011); *Yale New Haven Hospital*, 309 NLRB 363, 366 (1992).[45] The Respondent made no argument that it had a legitimate business reason for telling employees at the May 11 meeting that it intended to hire two new plumbers. Absent that showing, I infer that the Respondent had an improper motive

[44] Complaint par. 6.

[45] In certain cases, the Board has found a "link" between the promise of benefit and an attempt to get employees to reject the union. *Gelita USA Inc.*, 352 NLRB 406, 406 (2008), reaffd. 356 NLRB 467 (2011); *Dyncorp & Grant Turner*, 343 NLRB 1197, 1198 (2004). However, the Board has not indicated that the General Counsel has the burden of establishing such a link. Moreover, imposing that burden would be inconsistent with the Board's long-established holding that improper motive is inferred where a promise of benefit is made during an organizing campaign.

for the announcement—defeating the Union—and conclude that its promise of benefit violated Section 8(a)(1). *Raley's, Inc.*, 236 NLRB 971, 972–973 (1978).

2. Surveillance

The next complaint allegation concerning the May 11 plumbers meeting is that the Respondent engaged in unlawful surveillance when Rahn coercively photographed union-affiliated applicant Ludwig.

An employer's mere observation of open, public union activity on or near its property does not constitute unlawful surveillance. *F. W. Woolworth Co.*, 310 NLRB 1197, 1197 (1993). However, photographing or videotaping such activity clearly constitutes more than mere observation, because such pictorial recordkeeping tends to create fear amongst employees of future reprisals. Id.; *Waco, Inc.*, 273 NLRB 746, 747 (1983). Moreover, photographing in the mere belief that something might happen does not justify an employer's conduct when balanced against the tendency of that conduct to interfere with employees' right to engage in protected activity. *Flambeau Plastics Corp.*, 167 NLRB 735, 743 (1967), enfd. 401 F.2d 128 (7th Cir. 1968), cert. denied 393 U.S. 1019 (1969). Accord: *NLRB v. Colonial Haven Nursing Home*, 542 F.2d 691, 701 (7th Cir. 1976) ("the Board may properly require a company to provide solid justification for its resort to anticipatory photographing"). Thus, an employer engaging in such photographing or videotaping must demonstrate that it had a reasonable basis to have anticipated misconduct by the employees. The inquiry is whether the photographing or videotaping has a reasonable tendency to interfere with protected activity under the circumstances in each case. *Sunbelt Mfg., Inc.*, 308 NLRB 780 fn. 3 (1992), affd. in part 996 F.2d 305 (5th Cir. 1993).

After Ludwig submitted his job application, Rahn followed him out of the Respondent's facility until they reached Ludwig's vehicle. During that walk, Ludwig saw Rahn with his phone out. Rahn appeared to be taking photos of Ludwig, his vehicle, and the vehicle's license plate. Ludwig asked Rahn why he needed the photo and whether he planned on surveilling union activity. Rahn said no.

Rahn's actual or apparent photographing of Ludwig's vehicle violated Section 8(a)(1). Ludwig, an employee, was engaged in protected union activity by submitting his job application to the Respondent as part of the Union's salting campaign. In response to that protected activity, Rahn followed him out of the facility and held his cell phone out in a position where it appeared to be either photographing or videotaping Ludwig and his vehicle. Thus, Rahn's conduct went beyond mere observation and was unlawful. *Cobb Mechanical Contractors, Inc.*, 356 NLRB 686, 686–87 (2011) (supervisor engaged in unlawful surveillance of union salts where he held something that looked like a regular camera and appeared to be taking pictures of them, irrespective of whether he actually photographed them); *Quality Mechanical Insulation, Inc.*, 340 NLRB 798, 814 (2003) (photographing of salts and their vehicles after they applied for jobs violated Section 8(a)(1)).

The Respondent did not establish that Rahn had a reasonable basis for Rahn to anticipate that Ludwig would engage in future misconduct. Rahn's justification for trying to take the photos was that he wanted to be able to identify Ludwig if Ludwig visited his house. That concern arose from the reports Rahn received from employees that Ludwig was trying to converse with them at their homes and other locations. But Ludwig's activity in that regard was protected and Rahn did not receive any reports that Ludwig engaged in threatening behavior with employees.

The Respondent violated Section 8(a)(1) when Rahn attempted to photograph Ludwig and his vehicle and surveilled his protected activity.

The final complaint allegation on the May 11 all-plumbers meeting is that the Respondent unlawfully gave employees the impression of surveillance by providing employees with the make and model of a Union representative's vehicle. This allegation is premised upon the messages of two plumber employees, not supervisors, in the plumbers' chat group following Ludwig submitting his job application. The plumbers provided the group with Ludwig's vehicle description and license plate number. I conclude that this complaint allegation should be dismissed. The chat text indicates only that Rahn told a plumber that Ludwig had submitted a job application. It made no mention of Rahn telling him about Ludwig's car or license plate. Rahn was not a member of the chat group.[46] This evidence is insufficient to establish that the Respondent bears responsibility for the employees' disclosure of Ludwig's vehicle and license plate.

E. The April 29, 2024, Conversation Between Mueller and Danner

The General Counsel's complaint alleges that, on April 29, 2024, the Respondent violated Section 8(a)(1) when plumbers' manager Mueller (1) denigrated the Union to employees by using sexually demeaning and offensive language to describe the union representative; (2) threatened employees with unspecified reprisals by telling employees that Rahn will never go Union; (3) interrogated employees by telling employees that Mueller was opposed to the Union and then asking employees for their thoughts on the Union; and (4) threatened that the next time the union representative approached Mueller, he would file a harassment complaint against Ludwig. These allegations involve the conversation between Mueller and Danner on that date, nearly a year after the Respondent because aware of the union organizing campaign.

In that conversation, Mueller identified Ludwig as a union organizer, said he was showing up at plumbers' houses and jobs, and called him "a fucking cocksucker." He said he wanted Danner to be aware of it [Ludwig's union organizing], but he did not know what Danner's thoughts were on the matter. He also told Danner that Rahn would never go for a union. Mueller further stated he was not in favor of unionization. Finally, Mueller told Danner that things had gotten to the point that some of the plumbers had threatened to file harassment complaints if Ludwig did not leave them alone.

[46] Tr. 118, 130.

I conclude that Mueller unlawfully interrogated Danner about his union sympathies when he asked Danner what his thoughts were about union organizing, in the same conversation where Mueller said he was not in favor of it. The law is well-settled that supervisory questioning regarding employees' thoughts or sentiments involving a union may constitute an unlawful interrogation. See, e.g., *Apple, Inc.*, 373 NLRB No. 52 (2024) (supervisor asking employee what he thought about the union organizing efforts at the employer was unlawful); *Central Distributing Co.*, 187 NLRB 908, 916 (1971) (supervisor asking employee his thoughts about the union was unlawful). I also conclude that Mueller unlawfully informed Danner that it would be futile for the plumbers to select the Union as their bargaining representative when he told Danner that Mueller would never go for a union.[47] See, e.g., *Fred Commercial Erectors, Inc.*, 342 NLRB 940, 942 (2004); *Lewis Carpets, Inc.*, 260 NLRB 843, 849 (1982);

I also hold that neither of the remaining two allegations have merit. To begin, the word "cocksucker" is, without question, sexually demeaning. But the Board has long recognized that a reality of labor relations is its exchanges by heated and bitter language. *Franzia Bros. Winery*, 290 NLRB 927, 932 (1988). Mueller's use of "cocksucker" one time does not rise to the level of coercion. Cf. *Domsey Trading Corp.*, 310 NLRB 777, 779 (1993), cited by the General Counsel and involving numerous, far more appalling statements. Finally, Mueller's statements about harassment complaints constituted a report concerning what already had taken place in the past. He specifically referenced plumbers filming Ludwig when he attempted to communicate with them and threatening Ludwig with harassment complaints if Ludwig would not leave them alone. The statements were not, as alleged, a threat that Mueller would file a harassment complaint against Ludwig the next time the union representative approached him.

II. DID THE RESPONDENT VIOLATE SECTION 8(A)(3) AND (1) BY REFUSING TO HIRE LUDWIG?

In *FES*, 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002), the Board set forth its framework for analyzing refusal to hire allegations. Pursuant to that framework, the General Counsel must, under the allocation of burdens set forth in *Wright Line*, 251 NLRB 1083, enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), first show that: (1) the Respondent was hiring or had concrete plans to hire; (2) applicants had the experience or training relevant to the announced or generally known requirements of the positions for hire; and (3) antiunion animus contributed to the decision not to hire the applicants. If the General Counsel makes this initial showing, the burden shifts to the Respondent to demonstrate that it would not have hired the applicants even in the absence of their union activity.

Subsequently, in *Toering Elec. Co.*, 351 NLRB 225, 233–234 (2007), the Board held that, before an employer's motivation for a refusal to hire can be considered, the General Counsel must establish that the job applicant was "genuinely interested in seeking to establish an

[47] Although the General Counsel's complaint alleges this statement as a threat of unspecified reprisals, I conclude that it is more appropriately characterized as a threat of futility.

employment relationship" in order to be considered a Section 2(3) employee entitled to the Act's protections. To do so, the General Counsel must show that there was an application for employment. If an employer then puts at issue the genuineness of the applicant's interest through evidence that creates a reasonable question as to the applicant's actual interest, then the General Counsel must prove, by a preponderance of the evidence, that the application reflected a genuine interest of the applicant to become employed by the employer. Id.

I conclude that the General Counsel has met the initial *FES* burden. As previously discussed, Owner Rahn told employees at the May 11 all-plumbers meeting that he would hire two new plumbers to performs installs "in a minute" if he could just find them. This establishes that the Respondent was hiring or, at the least, would hire. Ludwig also unquestionably was qualified for the licensed plumber position.

The Respondent contends that Ludwig did not have a genuine interest in employment with the Respondent and thus is not a statutory employee entitled to the Act's protections. I do not agree. To begin, no dispute exists that Ludwig submitted an application for employment on May 11. He also testified credibly and without contradiction that he would have accepted a position with the Respondent if offered and would have no plans to quit.[48] *Edwards Painting, Inc.*, 364 NLRB 1974, 1997 (2016) (applicants testified credibly that they would have accepted a position with respondent, if offered).

To show a reasonable question as to Ludwig's actual interest in employment, the Respondent starts by noting his lack of contact with Marshall, even after learning of the April 2024 opening. Of course, that ignores Ludwig's contact with Marshall in May 2023 and Marshall's statement to Ludwig then that she would keep his application on file and contact him when there were openings. If she abided by what she told Ludwig, he had no reason to contact the Respondent when it had an opening in April 2024.

Next, the Respondent argues that Ludwig repeatedly harassed certain plumbers, who in turn reported the harassment to Rahn and Mueller. Ludwig also appears to have started a rumor that Rahn was going to sell the company. The Respondent views the harassment and rumor as misconduct inconsistent with a genuine interest in employment. Ludwig did repeatedly speak, or attempted to speak, to a number of employees about the union and was rebuffed. But none of those employees indicated that he was threatening in the interactions. In any event, "[i]t is well settled that the Act allows employees to engage in persistent union solicitation even when it annoys or disturbs the employees who are being solicited." *Ryder Transportation Services*, 341 NLRB 761 (2004), citing *Bank of St. Louis*, 191 NLRB 669, 673 (1971), enfd. 456 F.2d 1234 (8th Cir. 1972). Ludwig's conduct did not rise to a level where loss of the Act's protections is justified. The Respondent's contention that Ludwig was not a bona fide applicant because of that conduct is rejected.[49] *Network Dynamics Cabling, Inc.*, 341 NLRB 735,

[48] Tr. 71–73.

[49] I likewise reject the Respondent's argument that Ludwig's lack of work as a licensed plumber since June 2019 demonstrates he did not have a genuine interest in working for the company. Ludwig's lack of recent paid employment in the field is a byproduct of him already being employed by the Union

747 (2004) (high salaries earned as union organizers, potentially harmful picketing and hand billing activities, and chance that salts would only work for brief periods of time were insufficient to show that salts were not bona fide applicants); *Aztech Electric Co.*, 335 NLRB 260 (2001) (salts do not lose statutory employee status because they might try to harm an employer).

I conclude that the Respondent has not presented evidence that creates a reasonable question as to Ludwig's actual interest in working for the Company.

The final issue on the General Counsel's initial burden is whether the Respondent harbored animus towards the Union that contributed to its decision not to hire Ludwig. The Board has identified numerous factors that may be relied upon to demonstrate an employer's discriminatory motive. Those factors include: the timing of the employer's adverse action in relationship to the employee's protected activity; the presence of other unfair labor practices; and evidence that an employer's proffered explanation for the adverse action is a pretext. *Lucky Cab Co.*, 360 NLRB 271, 274 (2014). Pretext may be demonstrated by false reasons for an adverse action, as well as shifting explanations to justify the adverse action. *Windsor Convalescent Center*, 351 NLRB 975, 984 (2007), enfd. in relevant part 570 F.3d 354 (D.C. Cir. 2009); *Inter-Disciplinary Advantage, Inc.*, 349 NLRB 480, 509 (2007).

The record evidence soundly supports a finding that the Respondent harbored anti-union animus. On timing, HR Manager Marshall pulled the job posting for a licensed plumber off the Indeed.com website 1 day after Plumber Kukuzke provided owner Rahn with the letter announcing the organizing campaign. Regarding other unfair labor practices, both Rahn and Plumber Manager Mueller immediately began violating Section 8(a)(1) by threatening, interrogating, surveilling, and promising benefits to their employees.

As to pretext, the Respondent's shifting explanations for not hiring Ludwig provide the most powerful insight to the Respondent's animus. The Respondent's initial explanation was that it hired a plumber the prior month and had a full complement of plumbers. But Marshall did not remove the licensed plumber position from Indeed.com after that employee was hired, which would have been the logical response. Instead, she left it up until May 4, the day after

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as an organizer.

I also find no merit to the Respondent's contentions that Ludwig was not a Sec. 2(3) employee because he was a Sec. 2(11) supervisor with the Union. In that regard, the Respondent points to Ludwig providing assistance to plumber Kukuzke with drafting the organizing letter to Rahn and letters to the Minnesota Department of Labor and the Respondent's supervisors about work issues. It also is premised upon Ludwig providing a tape recorder to certain Respondent employees to record conversations they had with management. Finally, it is premised upon Ludwig getting Danner to apply for a job with the Respondent as a salt. Again, Ludwig, as a salt, was a Sec. 2(3) employee. Moreover, all of these activities were part of his salting campaign and constituted protected concerted activities of the three employees.

Finally, the Respondent argues that Ludwig was not an employee because he was employed by a "person who is not an employer." The contention is that Sec. 2(3) excludes from the definition of employee "any individual employed. . .by any other person who is not an employer." This argument is meritless. The Union here is a labor organization acting as Ludwig's employer and Sec. 2(1) of the Act includes labor organizations in its definition of persons.

learning of the union organizing campaign. At the hearing, the Respondent's witnesses changed course. Rahn, Marshall, and Mueller asserted that the Respondent's plumbers needed extra training because of performance issues. As explained above, I found this explanation to be false and did not credit the testimony of the Respondent's witnesses concerning the need for training. The Respondent did not document this supposed need and no employee testified as to significant changes in training after the job posting was pulled. Finally, the notion that a need for retraining of the plumbers meant the Respondent could not hire any new plumbers is nonsensical. A new hire would need to undergo training and simply could have been added to the group of other plumbers that also needed training, if the Respondent actually was providing it.

The combination of shifting explanations and a false explanation for removing the job posting establishes the Respondent's animus. *Precipitator Services Group, Inc.*, 349 NLRB 797, 799 (2007) (finding animus based on employer's lying to union applicants about availability of jobs); *Jesco, Inc.*, 347 NLRB 903, 905, 907–908 (2006) (same).

Thus, the burden shifts to the Respondent to demonstrate it would have refused to hire Ludwig absent his union activity. To meet its burden, the Respondent relies on the identical arguments it made regarding Ludwig's genuine interest in working for the company. Many of those arguments are irrelevant to its shifting burden, i.e. Ludwig never contacting the Respondent after submitting his application on May 11; not reaching out to employees about his job application; helping Kukuzke draft letters; and Ludwig's work history. The only remaining arguments are that Ludwig harassed employees, which I have found was protected conduct, and started a false rumor that Rahn was going to sell his business. The latter, even if true, hardly rises to the level of offense sufficient to warrant a refusal to hire. Moreover, the Respondent did not present any evidence of job applicants besides Ludwig who it refused to hire for an open plumbing position due to prior occasions of harassment or due to the supposed hiring freeze.

As a result, I conclude the Respondent's refusal to hire Ludwig as a licensed plumber violated Section 8(a)(3) and (1). *Merit Electric Co.*, 328 NLRB 212 (1999) (employer failed to show hiring would not have occurred in absence of knowledge that applicants were salts).[50]

[50] Having found that the Respondent's refusal to hire Ludwig violated the Act, I decline to consider the General Counsel's complaint allegation that the Respondent also refused to consider Ludwig for hire. The remedy for a refusal-to-consider violation would be subsumed within the broader remedy for the refusal to hire allegation. *Wismettac Asian Foods, Inc.*, 370 NLRB No. 35 (2020); *Jobsite Staffing*, 340 NLRB 332, 333 (2003).

CONCLUSIONS OF LAW

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

2. The Union is a Section 2(5) labor organization.

3. The Respondent, by Mueller on the telephone, violated Section 8(a)(1) of the Act on May 5, 2023, by: threatening employees with plant closure by saying that unionization would drag the ship into the ground; threatening employees by telling them that supporting the Union was like stabbing him and Owner Rahn in the back; threatening employees by telling them that, if they wanted a union, they should go work for a union company and not with the Respondent; and creating the impression of surveillance by telling employees that he knew of a couple of employees who supported the Union.

4. The Respondent, by Rahn at Respondent's facility, violated Section 8(a)(1) of the Act on May 11, 2023, by: promising employees a benefit if they did not support the Union, namely that he would hire two new plumbers; and surveilling employees' union activity by appearing to take photographs of union-affiliated job applicants.

5. The Respondent, by Mueller in a vehicle, violated Section 8(a)(1) of the Act on April 29, 2024, by: threatening employees with unspecified reprisals by telling them Rahn would never go union; and interrogating employees by asking them what their thoughts were on the Union while also telling them he opposed unionization.

6. The Respondent violated Section 8(a)(3) and (1) of the Act on May 11, 2023, by refusing to hire Scott Ludwig due to his union activity.

7. The Respondent did not violate the Act in the other manners alleged in the General Counsel's complaint.

REMEDY

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

The Respondent shall be ordered to cease and desist from refusing to hire individuals because of their union membership, affiliation, or activities. Furthermore, the Respondent, having discriminatorily refused to hire Scott Ludwig, shall be ordered to offer him instatement and make him whole for any loss of earnings and other benefits he may have suffered as a result of the unlawful discrimination against him. The Respondent also will be ordered to

remove from its files any references to the refusal to hire Scott Ludwig and notify him in writing that this has been done and that the refusal to hire will not be used against him in any way.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall compensate Ludwig for any direct or foreseeable pecuniary harms incurred as a result of the unlawful adverse action against him, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. The Respondent shall further compensate Ludwig for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 18, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the proper calendar year. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. The Respondent shall also, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), within 21 days of the date the amount of backpay is fixed by agreement or Board order, file a copy of each backpay recipient's W-2 forms reflecting the backpay award.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Respondent's facility in Rosemount, Minnesota, wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 5, 2023. When the notice is issued to the Employer, it shall sign it or otherwise notify Region 18 for the Board what action it will take with respect to this decision.[51]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[52]

[51] The General Counsel has requested as a special remedy that the Respondent be required to read the notice to employees. I find the Board's traditional remedies adequate to remedy the Respondent's violations of the Act.

[52] 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.

ORDER

The Respondent, Rahn Homes Services d/b/a On Time Service Pros, Rosemount, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   a. Threatening employees with plant closure by saying that unionization would drag the ship into the ground

   b. Threatening employees by telling them that supporting the Union was like stabbing the Respondent in the back

   c. Threatening employees by telling them that, if they wanted a union, they should go work for a union company and not with the Respondent

   d. Creating the impression of surveillance by telling employees that the Respondent knew of a couple of employees who supported the Union

   e. Promising employees a benefit if they did not support the Union, namely that the Respondent would hire two new plumbers

   f. Surveilling employees' union activity by appearing to take photographs of union-affiliated job applicants

   g. Threatening employees with unspecified reprisals by telling them the Respondent would never go union

   h. Interrogating employees by asking them what their thoughts were on the Union while also telling them the Respondent opposed unionization

   i. Refusing to hire individuals due to their union activity and

   j. In any like or related manner interfering with, coercing, or restraining employees in the exercise of the rights guaranteed them by the Act.

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

   a. Within 14 days from the date of this Order, offer Scott Ludwig immediate employment (instatement) in the positions for which he applied, or, if such positions no longer exist, to a substantially equivalent position.

   b. Make Scott Ludwig whole for any loss of earnings and other benefits, and for

any direct or foreseeable pecuniary harms, suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

c. Compensate Scott Ludwig for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 18 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 year.

d. File with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Scott Ludwig's corresponding W-2 form(s) reflecting the backpay award.

e. Preserve and, within 14 days of a request, or such additional time as the Regional Director for Region 18 may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records, and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

f. Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire, and within 3 days thereafter, notify Scott Ludwig in writing that this has been done and that the refusal to hire will not be used against him in any way.

g. Within 14 days after service by the Region, post at all of its facilities in Rosemount, Minnesota, copies of the attached notice marked "Appendix."[53] Copies of the notice, on forms provided by the Regional Director for Region 18 after being signed by the Respondent's authorized representative, shall be posted by the Respondent, and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not

[53] 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."

altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 5, 2023.

h. Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., March 27, 2025

Charles J. Muhl
Administrative Law Judge[54]

[54] The Respondent argues that the National Labor Relations Board and its administrative law judges are unconstitutional. I decline to address this argument, as the claim is more appropriately dealt with in the first instance by the Board or federal courts.

APPENDIX

NOTICE TO EMPLOYEES

Mailed 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 threaten employees with plant closure by saying that unionization would drag the ship into the ground.

WE WILL NOT threaten employees by telling them that supporting the Minnesota Pipe Trades Association (the Union) was like stabbing the owner and supervisor in the back.

WE WILL NOT threaten employees by telling them that, if they wanted a union, they should go work for a union company and not with Rahn Home Services (the Company).

WE WILL NOT create the impression of surveillance by telling employees that the Company knew of a couple of employees who supported the Union.

WE WILL NOT promise employees a benefit if they did not support the Union, namely that the Company would hire two new plumbers.

WE WILL NOT surveil employees' union activity by appearing to take photographs of union-affiliated job applicants.

WE WILL NOT threaten employees with unspecified reprisals by telling them the Respondent would never go union.

WE WILL NOT interrogate employees by asking them what their thoughts were on the Union while also telling them the Company opposed unionization.

WE WILL NOT refuse to hire individuals due to their union activity.

WE WILL NOT, in any like or related manner, interfere with, coerce, or restrain employees in the exercise of the rights guaranteed them by the Act.

WE WILL, within 14 days of the date of this Order, offer immediate employment to Scott Ludwig in the positions for which he applied, or if such positions no longer exist, to substantially equivalent positions.

WE WILL make Scott Ludwig whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms resulting from our failure to hire him, less any net interim earnings, plus interest.

WE WILL compensate Scott Ludwig for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 18 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 year.

WE WILL file with the Regional Director for Region 18, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of the corresponding W-2 forms reflecting the backpay award.

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

RAHN HOME SERVICES
(Respondent)

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.

Federal Office Building, 212 3rd Avenue S, Suite 200 Minneapolis, MN 55401-2221
(612) 348-1757, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 18-CA-318406 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, (414) 297-3819.