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

SECURITY OFFICERS ASSOCIATION
OF AMERICA

and

Case 27–CB–321988
27–CB–324215
27–CB–328196
27–CB–328479

MIRANDA JUST, an Individual

and

BRANDON LEE PARISCOFF, an Individual

and

ASKIN BASARIR, an Individual

Todd Saveland, Esq.
for the Acting General Counsel.
Richard Rosenblatt, Esq.,
William R. Reinken, Esq.,
Rosenblatt, Gosch & Reinken, PLLC
for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Grand Junction, Colorado, on November 12–14, 2024. Following charges filed between July 8, 2023, and December 2023,[1] the General Counsel issued the consolidated complaint on May 28, 2024.

The employees involved in this case were employed by Triple Canopy, Inc. (the Employer or Triple Canopy). The complaint alleges the Security Officers Association of

[1] All dates are in 2023 unless otherwise indicated.

America (Respondent, SOAA, or the Union) threatened Charging Party Miranda Just with fines, fees, legal action, and other unspecified reprisals for criticizing the Respondent to other bargaining-unit employees and/or for refusing to become a member of SOAA, in violation of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). In its closing brief, the Respondent stated that, based on evidence adduced at trial, it no longer challenges the charges concerning Charging Party Just. Regarding Charging Party Askin Basarir, the complaint alleges that the Respondent reported perceived misconduct by Basarir to the Employer's managers in an attempt to cause him discipline, in violation of Sections 8(a)(3), 8(b)(1)(A), and 8(b)(2) of the Act. In its closing brief, the Respondent stated that, based on evidence adduced at trial, it no longer contests the charges concerning Charging Party Basarir.

The remaining allegations concern Charging Party Brandon Pariscoff. The complaint alleges that the Respondent threatened Pariscoff with legal action for criticizing the Respondent to other bargaining-unit members, and filed a defamation lawsuit against Pariscoff in the District Court for Adams County, Colorado, based on Pariscoff's criticisms of the SOAA, in violation of Section 8(b)(1)(A) of the Act.

On the entire record, after considering the briefs filed by the Acting General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Triple Canopy, Inc., the Employer, an Illinois corporation with an office and place of business in Reston, Virginia, and operations throughout the State of Colorado, provides security services at various federal facilities owned by the General Services Administration, and under contract with the Federal Protective Service. The Employer derives substantial revenue directly from the federal government, and annually performs services in excess of $50,000 in states other than Colorado. The Respondent admits, and I find, that Triple Canopy is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

In Colorado vernacular, the Western Slope is the part of the State west of the Continental Divide. The Front Range describes the eastern side of the State. (Tr. 23.)[2] Triple Canopy's

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "R Exh." for the Respondent's exhibit; "GC Exh." for the Acting General Counsel's exhibit; "Jt. Exh." for joint exhibit, "GC Br." for Acting General Counsel's brief" and "R Br." for Respondent's brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based my review and consideration of the entire record.

security officers were represented by the SOAA from October 24, 2022, to at least the date of the hearing. The bargaining unit consisted of:

> All full-time and regular part-time Protective Security Officers assigned by the Employer to the federal buildings located in the Colorado cities of Alamosa, Carson City, Colorado Springs, Durango, Glenwood Springs, Grand Junction, Gunnison, La Junta, Montrose, Pueblo, and Trinidad pursuant to the Employer's contract with the U.S. Department of Homeland Security for the provision of security services at said facilities . . .

(Jt. Exh. 3.) This unit encompassed the Western Slope cities along with Colorado Springs. Denver was included in a different SOAA unit. Another union, the Security, Police, and Fire Professionals of America (SPFPA) previously represented Triple Canopy's protective security officers (PSOs), until they were decertified in October 2022. The predecessor union to SOAA was USGOA 309. (Tr. 513, 566). During the relevant time period, Timothy Daugherty (Daugherty) was SOAA's president, Airlia Pueppke was treasurer, Bryan Evans was vice president, and Douglas Daugherty (D. Daugherty) was secretary.

B. Just's Email and SOAA President Daugherty's Response

Charging Party Miranda Just works as a PSO for Triple Canopy and is assigned in the Denver metro area. On January 20, Just sent an email to a majority of SOAA membership criticizing leadership for failing to negotiate certain issues for the collective-bargaining agreement (CBA) and disparately pursuing member grievances. Just stated that, after seeing the latest seniority list, she found discriminatory the SOAA's practice of bolding certain names and identifying them as freeloaders, and stated such disrespect was putting her at her limit even as a paying member. (GC Exh. 5.) SOAA President Daugherty responded the same day by stating the email was a violation of the Employer and Union policies and was prohibited because it was sent while Just was on duty. Daugherty responded to each statement in Just's email refuting it. He concluded by stating Just's tone was disrespectful and the manner in which she conveyed her concerns was "out of line." (GC Exh. 60.) Just replied on January 22, refuting Daugherty's email and concluding by stating she was withdrawing membership. On January 23, Daugherty responded privately to Just, telling her she kept "breaking policy by sending out mass emails," and she needed to stop, or he would take legal action. Daugherty called Just "ungrateful and too faced (sic)," and said, "[I]f you would like to quit the union that (sic) your perfect, right however, when the all union mandate goes into place, you will not be eligible for membership again, meaning you will lose your position with Tripple (sic) Canopy." Daugherty told Just that if she did not want to issue an apology letter to the whole union, she was free to leave. (GC Exh. 56.)

C. Pariscoff and Others' Dissatisfaction with the SOAA

Charging Party Brandon Pariscoff works as a PSO for Triple Canopy. Since February 2021, including at the time of the hearing, he was stationed at the Bureau of Land Management in Grand Junction, Colorado. Pariscoff expressed concern about how the SOAA was handling negotiations for a new CBA. On January 4, 2023, as a follow-up to previous discussions between Pariscoff and Randall Waltz, a representative with the predecessor union and with SOAA, Daugherty sent an update on negotiations. Daugherty conveyed that the company was dragging

its feet, and encouraged patience to let the process play out. (GC Exhs. 2–4.) Pariscoff believed there was more urgency, noting that their health insurance premiums had risen 150 percent, and that PSOs in Denver earned almost $10 more per hour. Pariscoff spoke with coworkers about the pace of negotiations, and they expressed concern that they could not stay with Triple Canopy at their current wage rates. Pariscoff discussed these concerns with D. Daugherty, SOAA's secretary.[3] (Tr. 31–33.)

1. Notice of Intent to Strike

Pariscoff spoke with six or seven coworkers about how to move negotiations forward. Based on these discussions, Pariscoff called the NLRB and spoke with a Board agent. After this conversation, Pariscoff and his coworkers discussed a possible strike. (Tr. 36–38, 457.) On February 4, 2023, seven employees, including Pariscoff, signed a notice of intent to strike, which was distributed to the other Western Slope employees. Pariscoff submitted it to SOAA leadership and the Employer on February 6, and asked that it be distributed to the membership. Daugherty responded by asking who produced it, and Pariscoff replied that it was a collective effort, but he (Pariscoff) had drafted it. (GC Exh. 6.) The purpose of the notice of intent to strike was to bring Triple Canopy and the SOAA to the bargaining table. Pariscoff testified that, in a phone call shortly before the email, Daugherty told Pariscoff he was in violation of the bylaws and they were going to be fired. (Tr. 44–49.) Daugherty sent out a mass email stating that Pariscoff's notice of intent to strike could get employees fired, and the email could get employees fired, fined, or both, because it violated SOAA and the Employer's policies prohibiting mass emails. (GC Exh. 16).

2. Daugherty's February 9 Email, NLRB Charges & Settlement, and Pariscoff's Continued Activities

On February 9, Daugherty sent an email to the SOAA membership stating that it had come to his attention that some members may be planning "independent, unsanctioned action" to pressure Triple Canopy. He notified the membership that SOAA was the exclusive bargaining representative for the Western Slope unit, they have been in talks for weeks, and they expected a counterproposal from Triple Canopy later that week. Daugherty notified the members that going on strike without SOAA's consent while they were still in negotiation, would subject them to discipline, including termination, with no recourse. He expressed confidence that the SOAA and Triple Canopy could reach a good contract through bargaining and encouraged members to let the bargaining process play out. (GC Exh. 8.)

Pariscoff, along with Basarir and Darnell Robertson, filed NLRB charges about the February 9 correspondence, which were resolved by an informal settlement agreement. (GC Exh. 9.) Early in the morning on March 17, Daugherty sent Treasurer Pueppke an email expressing that Pariscoff and others should join their own union and explaining that their actions harmed negotiations. Daugherty added:

> And the kid who started it named Brandon up at the BLM in Grand Junction when I called him to ask who started the petition he said who doesn't matter I wrote it and I'm

[3] Doug and Tim Daugherty are brothers.

> not talking to you anymore and hung up. So he's a dickhead and I think he's been in contact (sic) two years and the other people that signed the complaint have been on the contract less than two years. One of them keeps threatening me that he's going to file more complaints because we have not filed the proper paperwork and blah blah blah. Of course, we can't retaliate because they are within their rights to do all of this. However, they're doing it in a manner that is some what (sic) meant to be more punitive to me than solve the problem . . . So we'll see how that goes . . .The kicker is they have no money just like we had no money when we started the union and the national took it off from them not that it was a lot so we've been flipping (sic) the bill for all the negotiations and then they bite the hand that feeds them as if I have some motive to pay money to get them into the union so that I can screw them over . . . It's like a combo of stupidity and arrogance with these guys all rolled up into one. Anyway, karmas a bitch and I'm sure even if we take no further action against them people will know.

(GC Exh. 68.) Later that day, Daugherty sent the membership an email informing them about the settlement and referring to the source of the charges as three disgruntled Western Slope members. He attached the notice to employees that was part of the settlement agreement. He explained:

> In a few weeks after all the NLRB paperwork has been filled out, I will send out a more detailed description of what my (sic) went down in a very short period of time. Basically though three PSOs, on the Western Slope was (sic) not happy with my lack of cooperation to help them act outside of the best interest of the union, so they filed a complaint with the MLRB (sic). Rather than spend thousands of dollars in attorneys fees, and end up with someone (sic) of the same solution, without admission by Me or the SOAA of any wrongdoing. I agreed to what was in the previous email. In the later to come email, I will enclose the document that are (sic) involved minus the complaints by the individuals because they are not provided to me. They didn't like the letter that I sent to them and the fact that I would not provide everyone's email address of the rest of the Union. Either way the reason that everyone's email address is listed is because of their complaint so sorry about that but it was required to show proof that I sent out the notices.
>
> All in all it is, is it just a few disgruntled, western slope people that tried to use the NLRB as a tool to punish me for advising them that they could get in trouble for certain actions. As to the statement about being required for union membership if you put it together in context with the documents, you'll see how it could be misconstrued. So a simple phone call to me would've had it written that they decided to file an NLRB complain. (sic) In the end, there's no fines there's no nothing I just had to send out the emails and agree not to advise them of the issues that were addressed in the agreement again this is western slope and that the Denver metro body a (sic) PSOs.

(GC Exh. 10.) Pariscoff responded, using a pseudonym, criticizing the SOAA leadership. He encouraged members to resign and cease paying dues. He then filed another NLRB charge. (Tr. 59; GC Exh. 10; R Exh. 16.)

On March 24, Pariscoff emailed William Reinken, the SOAA's attorney, a list of questions about the structure of the SOAA. He asked if the Western Slope/South was a local

union and whether they were separate from Denver. Reinken responded they were not a local union, that all bargaining units were localized to Colorado, and that union members in good standing had the right to run and vote for leadership positions in the SOAA. (GC Exh. 54.) The same day, Reinken sent the membership an email about negotiations, and requested availability for a Zoom meeting. After talking to his coworkers in Grand Junction, Pariscoff sent Reinken an email asking some questions ahead of the meeting. Among other things, Pariscoff raised the pay disparity between members in Denver and members in other locations. In subsequent emails, Reinken and Pariscoff discussed the notice of intent to strike. Reinken and Pariscoff exchanged additional emails about who was eligible to vote in the ratification vote, with Reinken informing Pariscoff that only those who had signed and returned membership cards would be eligible. (GC Exh. 11.) The Zoom call took place on March 28. Reinken and the members who attended discussed the negotiations. Pariscoff told Reinken that some members had filled out a dues authorization card previously but no dues had been deducted. (Tr. 69–70; GC Exh. 11.) Pariscoff filed another NLRB charge related to whether the SOAA could collect dues without a CBA.[4] (Tr. 69.) On March 29, Reinken provided Pariscoff a copy of the Constitution and Bylaws. (R Exh. 14.)

Pariscoff and Gene Reilly, a former PSO at Triple Canopy and an officer of the prior union UGSOA Local 309, exchanged texts on March 31. Reilly informed Pariscoff that, among other things, the SOAA had paid their lawyer over $50,000 in one year. (Tr. 155–156; GC Exh. 27.) At some point, Pariscoff also saw the SOAA's meeting minutes from December 10, 2022, reflecting $9,000 per quarter to retain a lawyer. (Tr. 158; GC Exh. 28.)

On May 10, Reinken sent members forms to fill out to become members to enable them to vote in the upcoming ratification vote, scheduled for May 22. (GC Exh. 12.) On May 18, Pariscoff signed a membership authorization card and returned it to Reinken. (GC Exh. 13.) He was not informed he would need to start paying dues at that point, so he did not sign a dues checkoff card. (Tr. 78–79, 82.) On May 22, Reinken sent the SOAA's constitution and bylaws to new members. (GC Exh. 14; Jt. Exh. 4.) Under the constitution and bylaws, dues are set at two hours of pay per month. When Pariscoff signed his membership card, he was on FMLA leave and was not receiving pay. (Tr. 82–83.) He was on FMLA leave from approximately the end of April to June 4, 2023. He used paid time off for a week of the leave. (Tr. 354–355, 400, 406.)

3. Pariscoff's Internal Union Charges, Information Requests, June 28 Email, New CBA, and Pariscoff's Membership Status

Around May 9, Pariscoff filed internal union charges against Daugherty alleging malfeasance and conduct detrimental to the organization. Several other employees, including Basarir, signed the charges. Among other things, the charges alleged public shaming, threats and coercion, approving funds without a vote, refusing to allow members on the website to review bylaws, making false statements, advising members they needed to pay dues to be a member, and failing to hold quarterly meetings. The charge included a request to inspect the SOAA's financial records. (GC Exhs. 17, 37; Tr. 199.) On May 24, Treasurer Pueppke emailed Pariscoff in response, stating she could provide the SOAA's financials at any time. She provided spreadsheets with financial information from 2021 and 2022, and LM-3 annual reports to the

[4] The charge was dismissed.

Department of Labor, and said there were no financial records prior to 2021. On May 25, Pueppke said she was not permitted to provide any further documentation, and said any requests should go through Reinken. (GC Exhs. 18, 19, 21.) Pariscoff noticed discrepancies between the SOAA's financial statements and the LM-3 reports filed with the Department of Labor, and took issue with reports of "gifting" to SOAA officers.[5] (Tr 123–124, 132; GC Exh. 20.) Pariscoff sent his requests for documents, including the requirements to vote on expenses over $1,000, the Department of Labor LM-3 forms, and whether trustees were appointed, to Reinken, but did not receive any further information. (Tr. 117.)

On May 29, Reinken held another meeting with the members of the strike committee, which included Pariscoff. [6] (GC Exh. 23.) Daugherty attended, and they discussed negotiations, potential impasse, and striking. After a 72-hour strike on June 1, Triple Canopy agreed to the SOAA's request for higher wages.[7] (Tr. 135–138.) The parties reached an agreement and entered into a contract effective June 4. The new CBA contained a union security clause. (Tr. 100; Jt. Exh. 2.) According to an email Daugherty sent to the members on June 25, the new CBA took effect on July 1, 2023. (GC Exh. 24.)

On June 14, Pariscoff filed internal union charges against Pueppke. (Tr. 201; GC Exh. 39; R Exh. 2.) Pariscoff started a petition to recall President Daugherty on June 21, and decided to run against him.[8] Forty-six members signed the petition. (GC Exh. 26; Tr. 148–152.)

On June 28, Pariscoff sent members an email, entitled "Union Financials" expressing his concern about the SOAA's financial leadership and alleged violations of the bylaws, and urging members to sign the petition to recall Daugherty. The email included some of the SOAA's expenses and attached some of the financial spreadsheets Pariscoff had received from Pueppke. Pariscoff noted they spent $44,000 on an attorney in 2021, which he extrapolated from Peuppke's spreadsheets. He also stated they accrued over $1,000 of expenses at a luxury hotel without a membership vote. Specifically, Pariscoff wrote, "In May 2021, they treated themselves at a luxury hotel! Today's rate is 378.00 a night." He described the hotel as "luxury" based on the hotel's description of itself on its website. (Tr. 143–146, GC Exhs. 19, 25.) Pariscoff filed additional internal union charges against VP Bryan Evans on June 29, alleging he was causing the trial to favor the accused by, among other things, scheduling it at the SOAA attorney's office, precluding Pariscoff from consulting the SOAA attorney, and scheduling it in violation of notice requirements. Pariscoff also alleged that Evans had a conflict of interest and should recuse himself. (GC Exhs. 36, 38; Tr. 200.)

On June 30, Evans sent an email scheduling the trial for the charges against Daugherty and Pueppke for July 26. (GC Exh. 40.) Also on June 30, Pariscoff asked Daugherty for meeting minutes and votes since 2020. Daugherty asked why Pariscoff needed to examine the minutes. Pariscoff responded that the LMRDA [9]required disclosure of the minutes. Daugherty replied that

[5] Pariscoff had obtained the LM-3 reports from the Department of Labor's website. (Tr. 123.)

[6] Pursuant to the bylaws, "All members in good standing are eligible for appointment to committees." (Jt. Exh. 3.)

[7] There was no retroactive pay.

[8] Forty-six members signed the petition. (GC Exh. 26; Tr. 152.) Pariscoff signed the petition as "Brian H" because he feared retaliation.

[9] The LMRDA is the Labor-Management Reporting and Disclosure Act.

the request was denied. Pariscoff notified the Department of Labor about this and filed another NLRB charge. (GC Exh. 31; R Exh. 16.) That same evening, at 8:08 p.m., Pariscoff signed a dues checkoff authorization card, and received confirmation he electronically signed it, even though he believed he was already a member in good standing.[10] (GC Exh. 29, Tr. 159–161.) Although Pariscoff e-signed the card at 8:08 p.m., Daugherty reported that Pariscoff was removed at midnight on June 30. (GC Exh. 65.) Pursuant to the bylaws, deductions will be made "upon written authorization from the Employee on a form provided by the Union and delivered to the Employer." (Jt. Exh. 2.)

On July 12, SOAA VP Evans sent Pariscoff a letter stating that he had ceased paying dues, he was in arrears, and his membership had expired. Others who had signed the internal union charges were similarly notified. The letter told Pariscoff to contact the SOAA if he wanted to become a member. Pursuant to the SOAA bylaws, members are automatically expelled on the last day of the second month in which they cease to pay initiation fees, dues, and assessments. Notification in writing that the member is in arrears is required. Pariscoff was not notified he was in arrears until the day he was kicked out of the union. Pariscoff filed a grievance on July 17. It turned out the SOAA had asked Triple Canopy not to deduct Pariscoff's dues, and then issued a subsequent directive to start deducting them. (Tr. 166, 196, 212, 292, 377–378, 387, 469–470; GC Exhs. 29, 35, 65; Jt. Exh. 2.) Both Daugherty and Pueppke had failed to pay dues for several months over the years and were not expelled. (Tr. 580, GC Exh. 66.)

4. Pariscoff's July 17 Email, Further Criticisms, Cease and Desist Letter, July 22 Union Meeting, and Member Resignations

Pariscoff sent a draft email to a few members on July 16, informing them of the upcoming union trial and asking for input. (GC Exh. 33.) A few employees provided feedback. (Tr. 181–182.) On July 17, Pariscoff sent a letter to the entire membership informing them of the upcoming union trial. He attached documents, described above, relating to revocation of his membership, the dues authorization card he had signed, stating that the card was proof he was a paying member, as well as the previous NLRB settlement notice. The email then stated:

> They have effectively silenced those who are exposing their unlawful and unethical conduct. If you think my email regarding financials were bad, that was only 5% of the evidence I have as I know they read these emails. It would be strategically ignorant for me to post all of my **225 gages of evidence** against them. Perhaps, an open and transparent trial would change this dialogue.
>
> Other things you should know about the trial:
>
> 1. They have been spending thousands of dollars from our dues to protect themselves between NLRB charges and internal union charges. The attorney has collected over 6 digits defending leadership for misconduct. Nothing like claiming to be non-profit and using said funds for a personal attorney!

[10] The website registered the signature in Greenwich Mean Time, which calculates to 8:08 p.m. Mountain Time.

> 2. I was going to show discrepancies in finance documents at the trial that even a 2nd grader would know is wrong and it appears they are running two books. Makes sense to deny all requests for financials despite LMRDA requiring they do so. Regardless of the law, they claim transparency.
>
> 3. They wanted to hold the trial on a Wednesday and at the ATTORNEYS office.
>
> 4. All Certified letters have come from the attorney's office, therefore union dues to fund internal matters!
>
> 5. The attorney admitted to consulting with leadership over the INTERNAL charges. Emails are in the 225 pages of evidence.
>
> 6. The letter of revocation of rights and privileges came from the attorney's office.
>
> 7. Denied access to minutes from meetings. Yes, minutes!
>
> 8. Revoking our rights and privileges only 7 days before a huge union meeting and 10 days before a trial. The CBA has only been in effect since July 1st. As an example of some of the evidence regarding this issue, I have attached a membership card that NONE of you have ever seen. Again, only a sliver of the evidence.
>
> 9. How do you prevent another popular candidate from running against you for President? Virtually Expel him!
>
> 10. As a union officer, you know the CBA requires a 30 day notice for time off requests, yet you schedule the trial within 26 days of notice.
>
> 11. Why brag you won a strike for the Western Slope and in return expel 60% of them in less than two weeks of the CBA going into effect.
>
> 12. Why would any union claim someone owes union dues when they were out on Federal Medical Leave Act "FMLA" for 2 months? Sounds illegal!

(GC Exh. 42, emphasis in original). Pariscoff also included a brochure outlining members' legal rights under the LMRDA, and included a link to the petition to recall Daugherty.

Daugherty responded later that evening, stating:

> To begin, you are correct that SOAA did not require folks in the Western Slope/CO Springs unit to pay dues while we were awaiting the CBA to go into effect. That did not, however, absolve anyone from owing initial fees and dues for the time they were a member. If I remember correctly, you signed a membership card right before the ratification vote so you could participate in the vote but have never paid any dues or initiation fees. Under the Constitution and Bylaws, you were required to do so before

> June 30, 2023 but failed to.[11] As a result, you were expelled on July 1, 2023 and are not currently a member of SOAA.
>
> As for the initiation fee document you've attached, SOAA has not received any initiation fee from you and the image does not show that any $40.00 initiation fee was actually paid, to whom or at what time. If you have any documentation showing $40.00 coming out of a paycheck and being directed to SOAA, we can contact Triple Canopy to figure out what's going on. Please also confirm that this document doesn't reflect an initiation fee for the predecessor union.
>
> SOAA has not received any dues checkoff form from you, at least not until this email. It appears that you sent the form directly to Triple Canopy instead of the Union. Our practice and procedure is for folks to send those forms to the Union and then the Union provides them to the Company. Now that we have your form, we can send it over and begin the dues deduction process.
>
> That being said, you are still in arrears and cannot be reinstated until you are fully paid up. . .

(GC Exh. 43.)

On July 19, Pariscoff again emailed the membership informing them that they challenged the SOAA as to why they were not processing union dues checkoff cards and expelling members, and speculated that they were trying to hinder the internal union trial. (GC Exh. 43.) Also on July 19, Daugherty sent Pariscoff a letter to cease and desist from making defamatory statements and to recant the false statements in his June 28, 2023 email. The letter warned that failure to do so may result in SOAA taking legal action.[12] (GC Exh. 44.)

On July 21, Pariscoff emailed Daugherty asking various questions about the upcoming internal trial. (GC Exh. 45.) The next day, Pariscoff sent an email to the membership taking issue with some of Daugherty's behavior. (GC Exh. 46.)

Pariscoff attempted to attend a July 22 union meeting by Zoom, but the host, Daugherty, kept him and others in the waiting room.[13] (Tr. 237, 471.) Another member recorded the meeting. Daugherty started out by discussing the internal complaints from Pariscoff and other members, stated they were not in good standing, and explaining that much of what they complained about occurred prior to Daugherty becoming president. Daugherty mentioned a letter from their accountants, Biz AccountPros, which said that new accounting software had been implemented, and it corrected formula errors from the SOAA's 2022 spreadsheets.[14] Different viewpoints on whether to dismiss the internal charges or go to trial were discussed. The membership decided to form an investigative committee to allow both sides an opportunity to air their issues. They

[11] At the hearing, it was clarified that dues were to be paid "on or by" June 30, not "before" June 30. (Tr. 290.)

[12] Pariscoff picked the letter up from his P.O. box on August 4. (Tr. 232.)

[13] Charging Party Basarir was also not let into the meeting.

[14] The spreadsheets referenced were GC Exhs. 19 and 21, and the Biz AccountPro letter, dated July 22, 2023, is R Exh. 4. Pariscoff never received the revised financial documents. (Tr. 399.)

discussed Pariscoff trying not to pay dues. Daugherty stated that if a member filed a dues deduction card and dues were not taken out, that was not the member's fault. Daugherty discussed the money paid to the attorney in 2021 and 2022, and that membership had voted on a monthly payment. Reinken came into the meeting and said the internal charges were null and void because the individuals who filed them were no longer members. He suggested sending out a letter dismissing the charges but in the interest of transparency, they were having an investigative committee look into the allegations. The membership discussed it and agreed. Reinken asked the members to consider whether to file a lawsuit against Pariscoff for the statements made in his emails, and expressed confidence in the SOAA's likelihood of success. Membership voted to sue Pariscoff for defamation. (GC Exhs. 55, 55a).

After the meeting, Jordan White resigned his SOAA membership based on how the vote for the lawsuit occurred. Charging Party Basarir resigned his membership and withdrew his dues checkoff authorization on July 24. Basarir stated that he signed his checkoff card and was not let into a union meeting, "where all they did was bash my coworker for an entire three hours anyways." Skylar Donovan also resigned on July 24, noting that she had signed her dues checkoff card, was kicked out of meetings, and disallowed a vote on union decisions. Krystal Pitney also resigned on July 24, echoing that she had signed a checkoff card but had been denied access to the July 22 meeting.[15] (GC Exh. 58.)

On July 25, 2023, Pariscoff sent an email to Daugherty with the subject line "Rescinding membership" asking to cease all deductions because he considered his expulsion permanent. He rescinded his membership because he did not want to fund the SOAA's defamation lawsuit against him. (R Exh. 3; Tr. 300.)

5. Pariscoff's July 26 Conversation with SOAA's Accounting Firm and Dismissal of Union Charges

Jordan White told Pariscoff about the Biz AccoutPros letter Daugherty shared at the union meeting. On July 26,[16] Pariscoff called Biz AccountPros to see if they had done an audit for SOAA. He Googled Biz AccountPros and called the number that appeared. He recorded the meeting. Pariscoff, who did not identify himself by name, spoke with Jacob Yates. Pariscoff asked if Yates could review some documents to see if there were any discrepancies. Yates responded that it would depend on what Pariscoff needed and suggested a consultation. Pariscoff then asked if Yates was from Iowa because of his area code, and Yates confirmed he was in Glenwood, IA. Yates said he could meet Pariscoff but did not know where he was coming from, and Pariscoff responded that he had a teleworker who lived in Glenwood.[17] They discussed the costs and scope of work. Pariscoff said he worked for a "tiny association" and "we're thinking their numbers don't match." After more discussion, Yates asked Pariscoff to identify the

[15] Joshua Jesse resigned his membership on July 19 because he was leaving Triple Canopy. Over a year later, on September 23, 2024, Brandi Willever resigned her membership because of a dispute over seniority and other issues not materially related to the instant facts. (GC Exh. 58.)

[16] There is some dispute as to whether the call was July 26 or July 28. A follow-up email from Pariscoff to Yates indicates the call was on July 26. (GC Exh. 49.)

[17] Pariscoff testified he thought Yates may have been referring to Glenwood Springs, Colorado. In any event, Pariscoff did not have an employee teleworking in Glenwood Springs, CO or Glenwood, IA at the time. (Tr. 365–366.)

company. Pariscoff hedged, and then stated, "[O]ur little corrupt[18] union was claiming you did a complete audit on them and I find that very disturbing. So." Yates asked if this was for the SOAA, and Pariscoff responded it was. Yates responded that Biz AccountPros had taken on SOAA's monthly work. They discussed the work performed, and Pariscoff asked about coding certain payments as gifts. Yates said he would need to look, as he did not have the books in front of him. Pariscoff asked for Yate's email address, which Yates provided. Pariscoff said he would send Yates an email and asked him to keep the conversation confidential. (GC Exhs. 48, 48a.)

Later that afternoon, Pariscoff emailed Yates with the spreadsheets and LM-3 reports, and asked him to review them for discrepancies. He also asked Yates to forward him the payment amounts they discussed. Pariscoff offered to pay for the review. (GC Exh. 49.) Yates did not respond. (Tr. 245.) At the time of the call, Pariscoff had rescinded his membership and admittedly did not have a right to the SOAA's financial records. (Tr. 361.)

On August 2, PSO Derek Fields emailed Pariscoff and informed him that the internal union charges had been dismissed because the charges had not been signed by a sufficient number of members in good standing. Fields informed Pariscoff that, despite the dismissal, the membership voted to form an investigative committee to determine the validity of the allegations. Fields asked for a digital copy of the charges. Fields said he was nominated as the committee's chair, and he intended to conduct a full and fair investigation. Pariscoff responded, expressing concern that Adams had chosen Fields as "jury" and did not provide a digital copy of the charges.[19] (GC Exh. 50.)

Pariscoff's attorney set an email to Daugherty on August 2 requesting the SOAA's FORM LM-1, 2, 3, and 4 since February 29, 2020, and any other documents required to be maintained by the LMRDA, including supporting records, minutes, and voting records. (R Exh. 5.) The SOAA denied the request because Pariscoff was not a member and did not have the right to review the documents. (R Exhs. 5–6.)

Pariscoff filed NLRB charges on August 21, regarding the threat to sue him. (R Exh. 16.)

6. The SOAA's Defamation Lawsuit against Pariscoff

On September 26, Daugherty redistributed the NLRB settlement agreement he had previously sent the membership on March 17, and he disavowed his statements in the March 17 email that undermined the settlement agreement. (GC Exh. 52.)

On October 9, the SOAA and its officers filed a defamation lawsuit against Pariscoff in Colorado District Court. Pariscoff was served on October 11. The lawsuit alleges Pariscoff defamed the SOAA in his June 28 and July 17 mass emails, and in his July 28[20] conversation with Yates from Biz AccountPros.

[18] The transcript of the meeting shows "crook" not "corrupt." When I slowed down the audio, I heard "corrupt". It is difficult to hear, as the word is said quickly. In any event, whether "crook" or "corrupt" was said does not materially impact this decision.

[19] The committee did not ultimately issue a report.

[20] The complaint lists this conversation as July 28, but as noted above, the evidence shows it was July 26.

Paragraph 13 of the lawsuit alleges: On or about June 28, 2023, Defendant published several false and defamatory statements via email to over one hundred current and former SOAA-represented bargaining unit members. The email unlawfully disseminated SOAA's confidential financial records without Plaintiffs' permission. Additionally, the email falsely alleged embezzlement and improper use of Union funds by claiming that Officers "treated themselves at a luxury hotel!"

Reinken believed the reference in Pariscoff's email about the current nightly rate at the hotel implied that the SOAA officers spent the night at the hotel, which was false. (Tr. 532–533; R Exh. 1.)

Pariscoff did not reference embezzlement in the June 28 email or in any email. He did not believe the SOAA embezzled money, he just noted discrepancies in their books. (Tr. 257.) Pariscoff believed the statement that the union officers "treated themselves to a luxury hotel" was true because they expended union funds at a hotel that advertises itself as a "luxury hotel." (Tr. 146; GC Exh. 25.)

Paragraph 15 of the lawsuit alleges: On or about July 17, 2023, Defendant again published several false and defamatory statements via email to over one hundred current and former SOAA-represented bargaining unit members. The email falsely alleged that SOAA and its Officers "revoke[d] all rights" of Pariscoff and associated individuals in an effort to "end a trial against [SOAA and its Officers] for misconduct and misappropriation of funds[.]" Pariscoff falsely claimed that he was "a paying member" of SOAA as of July 17, 2023, suggesting that Plaintiffs took unlawful action against Defendant while being "a paying member". In fact, SOAA is not aware of Pariscoff ever paying any dues to the Union.

Reinken believed that Pariscoff falsely claimed he was a paying member in furtherance of his claim that revocation of rights and expulsion were inappropriate. Reinken also believed the email falsely accused the SOAA of misconduct and misappropriation of funds. (Tr. 537.)

Pariscoff testified as to his belief that dues would only kick in once a CBA took effect.[21] (Tr. 76, 166.) He pointed to Daugherty's email, stating that "SOAA did not require folks in the Western Slope/CO Springs unit to pay dues while we were awaiting the CBA to go into effect." Daugherty further explained that Pariscoff had not paid the required initiation fees. (GC Exh. 29.) Pariscoff believed he was a paying member because he had signed a dues checkoff authorization on June 30.[22]

Paragraph 16 of the lawsuit alleges: The July 17, 2023, email goes on to falsely accuse SOAA and its Officers of having "effectively silenced those who are exposing [SOAA and its Officers'] unlawful and unethical conduct." Moreover, the email falsely claims that he has "225

[21] Charging Party Basarir also held this belief. (Tr. 470.)

[22] I find the evidence, detailed above, establishes both that Pariscoff signed his dues authorization on June 30, and that Daugherty told him and other members that the CBA took effect on July 1. The evidence also establishes that other members, including Daugherty and Pueppke, were not automatically expelled for failure to pay dies.

pages of evidence" against SOAA and its Officers and that the June 28, 2023, email "was only 5% of the evidence" Pariscoff possessed purportedly showing "unlawful and unethical conduct."

Reinken believed that the statements that Pariscoff and the other Charging Parties were effectively silenced, that SOAA officers engaged in unlawful and unethical conduct, and that Pariscoff had 225 pages of evidence and that it was only 5 percent of the evidence, were false. The July 17 email proved Pariscoff had not been silenced, and there were other venues available, such as the Colorado Department of Revenue, the IRS, the Department of Homeland Security, the NLRB, and the Department of Labor, where Pariscoff could voice his concerns. As to the evidence, Reinken testified that there was no misconduct by officers and therefore Pariscoff could not have evidence of it. (Tr. 544–545.)

Pariscoff asserted that he was "effectively silenced" because he was denied the opportunity to present his evidence at the internal union trial. (Tr. 213.) Part of the evidence he intended to present was that the SOAA did not have a trustee, in violation of the bylaws.[23] (Tr. 103.)

Paragraph 17 alleges the July 17 email contained a litany of false statements listed in the following subparagraphs.

17(a): "They [SOAA Officers] have been spending thousands of dollars from our dues to protect themselves between NLRB charges and internal union charges."

17(b): "The attorney has collected over 6 digits [$100,000] defending leadership for misconduct"

Reinken testified that the law firm had not collected more than six digits defending leadership for misconduct, and he had never billed $50,000 a year to the SOAA. (Tr. 546–547.) He did not represent the predecessor union in connection with any LMRDA or internal union charges, and prior to Pariscoff's May 2023 charges, he had not represented the SOAA in connection with any internal charges. Reinken's firm did not collect over $100,000 for legal work for the NLRB and internal union charges. (Tr. 550–551.)

Pariscoff said he relied on statements from Sue Altholtz, Gene Reilly, and Michael Burke, as well as the absence of records for the year 2000 in making this statement. (Tr. 321.) He stated:

> So the -- the six digits that I relied on was because, in this statement, I was going to show and my fellow members about the transition from 2019 all the way up to SOAA. So that includes -- because, again, I was referencing Union leadership going all the way back. I didn't say going all the way back, but my intent at the internal trial is to show the transition from the UGSOA with Hemingway, Brian Evans, Airlia Pueppke, and Jeffrey Meyer along with their counsel, Will Reinken, how they transitioned.

[23] Reinken admitted that he was not aware any trustees had been appointed. (Tr. 574.)

(Tr. 322.) Pariscoff also discovered December 2022 meeting minutes that indicated $9,000 per quarter to retain a lawyer. (GC Exh. 28.) On cross examination, Pariscoff said the statement generally referred to the internal trial. (Tr. 326–327.)

17(c): "I [Pariscoff] was going to show discrepancies in finance documents at the trial that even a 2nd grader would know is wrong and it appears they are running two books."

Reinken believed this was defamatory because "running two books" colloquially describes a fraudulent scheme where an entity has one set of finances that are public, which hides expenses, and another set of finances which are the real books. (Tr. 552–553.) The reason for the discrepancies Pariscoff noticed were due to coding and formula errors by Treasurer Pueppke, not an intent to hide finances. (Tr. 556–557.)

By "running two books" Pariscoff meant the numbers from one set of documents did not match the other.[24] He did not mean that records were falsified, and by saying it "appears" they were running two books, he was indicating he did not know what was really going on. Had Pariscoff believed there was a crime, he testified he would have notified the authorities. (Tr. 330–331.)

17(d): "Makes sense to deny all requests for financials despite LMRDA [Labor Management Reporting and Disclosure Act] requiring they [SOAA Officers] do so."

Reinken believed this was a false statement because Pueppke had provided some financial information to Pariscoff. (Tr. 557–558.)

Pariscoff admitted that Pueppke provided some of the financial information he requested, but it was not complete. Because the information provided was not complete, Pariscoff considered it a denied request. (Tr. 336–337.)

17(e): "Regardless of the law, they [SOAA Officers] claim transparency."

17(f): "[SOAA Officers] denied access to minutes from meetings. Yes, minutes!"

Reinken denied the request for the minutes because Pariscoff did not provide a reason for the request, which was required under the LMRDA, 29 USC 431(c).[25] (Tr. 560.) The Acting

[24] It is undisputed that some of the numbers in the internal financial documents did not match the LM-3 submissions. I agree with the Acting General Counsel that an adverse inference, that the SOAA did not share corrected 2021 and 2022 financial documents, is warranted based Daugherty's failure to testify in light of Reinken's stated lack of knowledge. (Tr. 608.) See *Government Employees (IBPO)*, 327 NLRB 676, 699 (1999), enfd. mem. 205 F.3d 1324 (2d Cir. 1999).

[25] This statutory provision states, in relevant part: "Every labor organization required to submit a report under this subchapter shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report."

General Counsel asserts that if the SOAA wanted to tell members that Pariscoff did not provide a reason under the LMRDA, it could have done so, it could have provided the minutes without an articulation of just cause under the LMRDA, and regardless, the statement that Pariscoff's request for minutes was denied is true. (GC Br. 68.)

17(g): "The CBA [collective bargaining agreement] has only been in effect since July 1st [2023]."

Reinken believed this was a false statement because the CBA on its face states it is effective June 4, 2023. (Tr. 560.) He testified it was only defamatory to the extent it's consistent with Pariscoff's attribution of misconduct by alleging false statements. As to Daugherty stating it took effect on July 1, Reinken understood this to mean the various economic benefits memorialized in the CBA. (Tr. 561.)

Pariscoff referenced the July 1 effective date of the CBA because that was the date Daugherty said the CBA took effect in his June 25 email, and Pariscoff had no reason to believe Daugherty's statement was false. (Tr. 258; GC Exh. 24.)

Paragraph 18 alleges: The July 17, 2023, email falsely asserts that SOAA and its Officers expelled Defendant - a "popular candidate" - to prevent Pariscoff from running against the current Union President in an election.

Reinken believed the statement was false because the Union did not expel anyone, and the statement implies that Pariscoff could have run for president but for the expulsion, was false because he had not been a member long enough to run for office. (Tr. 562–563.)

Pariscoff explained that he could not run for president because he had been expelled. The election was January 1, 2024. Assuming he had not been expelled or rescinded his membership, Pariscoff would have been a member from May 2023 until January 2024 at the time of the election. Pariscoff thought the requirement to be a member for a year before running for office could be waived in the bylaws because his understanding was they were a new local. Reinken told Pariscoff they were not a local union, but also stated that union members in good standing had the right to run and vote for leadership positions in the SOAA. Pariscoff said Daugherty referred to him and others as members as early as February. (Tr. 345–349.)

Paragraph 19 of the lawsuit alleges: The July 17, 2023, email falsely states that SOAA and its Officers "expell[ed] 60% [of the bargaining unit] in less than two weeks of the CBA going into effect.

The email Pariscoff sent referred to the Western Slope, not the bargaining unit. When asked why he referred to 60% of the bargaining unit in the defamation complaint, Reinken said it was because members of the SOAA colloquially refer to the bargaining unit Pariscoff belongs to as the Western Slope, even though it also includes Colorado Springs. (Tr. 564–565.)

Pariscoff did not state that 60 percent of the bargaining unit, which including Colorado Springs was 26 people, was expelled, but rather that 60 percent of the Western Slope was expelled, which was 6 to 7 people. (Tr. 258.)

Paragraph 20 of the lawsuit alleges: The July 17, 2023, email falsely alleges that SOAA and its Officers improperly claimed Pariscoff owed union dues while Defendant was "out on Federal (sic) Medical Leave Act 'FMLA' for 2 months", suggesting such action was illegal.

Reinken believed this was false and defamatory because it claims that being charged dues while out on FMLA is illegal, and he knew of no law preventing it. (Tr. 566–567.)

Pariscoff testified that when he used the term "illegal" he was talking about civil law, not criminal. (Tr. 357.)

Paragraph 21 of the lawsuit alleges: The July 17, 2023, email contains an attachment highlighting rights that Pariscoff falsely claims that SOAA and its Officers violated. Defendant writes, "Since the union won't advise you of your rights, I will. See attached brochure of your legal rights under the LMRDA. I have highlighted the ones they violated in my union charges they just silenced with an unlawful and blatant retaliatory revocation of privileges." By making these false statements, Pariscoff engaged in defamatory misconduct.

Pariscoff testified he attached the brochure he received from the Department of Labor investigator and highlighted the provisions the SOAA violated. Pariscoff believed the Department of Labor had an issue with the bonding, but did not answer directly when asked whether the SOAA was found to be in violation of the LMRDA. (Tr. 228.)

Paragraph 22 of the lawsuit alleges: Continuing his pattern of dishonesty, manipulation and gaslighting, Pariscoff's July 17, 2023, email references a petition which he falsely claims has the support of forty (40) SOAA members "around the state."

Pariscoff testified, and the evidence shows, that 46 people signed the petition as of June 21. (Tr. 152; GC Exh. 26.) Nobody testified about this allegation on behalf of the Respondent.[26]

Paragraph 24 of the lawsuit alleges" On or about July 28, 2023, Pariscoff contacted Plaintiffs' accountants, and intentionally misrepresented himself as a potential client. Instead of contacting the main office line, Defendant called a staff accountant in a subterfuge to gather information. After realizing that Pariscoff could not glean the information he wanted, Pariscoff admitted that he was affiliated with SOAA.

Paragraph 25 of the lawsuit alleges: During the phone call with Plaintiffs' accountants, Defendant falsely alleged that SOAA and its Officers had provided the accountants with a false set of books.

Paragraph 26 of the lawsuit alleges: Pariscoff's statements made in the phone call to Plaintiffs' accountants were made despite Pariscoff knowing that the statements were false and with reckless disregard for whether such statements were false.

[26] The Respondent likewise did not provide argument about this allegation.

Reinken spoke to Biz AccountPro's principal, Wyatt Yates, and employee Jacob Yates.[27] Wyatt informed Reinken that an individual had contacted them, misrepresented himself, and made certain allegations that the SOAA had two sets of books. (Tr. 568.)

Pariscoff testified he did not misrepresent himself as a potential client. (Tr. 259.)

The defamation lawsuit claims Pariscoff's false and reckless statements accused the SOAA of crimes, caused economic and reputational harm, and the statements were made with intent to harm SOAA. The lawsuit alleges Pariscoff's statements were false and were made with actual malice, and requests economic and injunctive relief. (Jt. Exh. 1.) As to damages, Reinken testified that several members dropped their membership after Pariscoff's defamatory comments. (Tr. 570.) The lawsuit is administratively closed pending the outcome of the instant proceeding, subject to reinstatement by the SOAA. (Tr. 18.) After the case was administratively closed, Pariscoff re-joined the union, signed a checkoff card, and has been paying dues. (Tr. 303.)

7. February 2024 Union Meeting and Daugherty's Statements

A union meeting was held on February 17, 2024, and a member recorded it. Daugherty said when someone is on FMLA leave they do not pay dues. (GC Exhs. 59 p. 32, 59a.) He later stated:

> Well, at some point we have to do have a more detailed cost analysis as to whatever. I mean, the main goal in suing him wasn't to bankrupt him, it was to get him (Crihfield) no, stop (Daugherty) to to get him to stop. (Crihfield) Because if we don't do anything and he can just giving us 1000 every fucking time (Daugherty) that's exactly what it was. And so far, it seems like that has been fairly successful. The only really thing that he has out, I mean he he attacked me through the company and some other stuff, the only thing that he has there are two suits with the labor board that are conjoined. They're basically the same thing and they'll make a decision on it.
>
> . . .
>
> I conceded and I probably shouldn't have. And then he took that as a weakness, I guess, and just kept filing, filing, filing. So that's the only one that he's really won. The other ones have all been dropped, every other thing has been filed against us has been dropped.

(GC Exhs. 59 pp. 144–145; 59a.)

D. Allegations Regarding Charging Party Basarir

Meanwhile, on September 14, 2023, SOAA President Daugherty visited Grand Junction and worked at the same courthouse as PSO Askin Basarir, who usually worked with PSO Krystal Pitney. Basarir photographed Daugherty taking pictures of the monitors where he was posted to show that Daugherty was taking photos to find irregularities in an attempt to get Basarir disciplined. Triple Canopy Supervisor Captain Justice instructed Basarir to take the photos. On September 25, Daugherty sent a letter to Triple Canopy Contract Manager Michael Mumby

[27] The Yates are brothers.

taking issue with Basarir's conduct and "hostile" behaviors. (GC Exh. 63.) Basarir was not formally disciplined, but Justice told him to remove his unauthorized medical kit from his duty belt. (Tr. 478–479.)

IV. Analysis and Decision

A. Legal Standards

Section 8(b)(1)(A) of the Act provides that it is an unfair labor practice for a labor organization or its agents to restrain or coerce employees "in the exercise of the rights guaranteed in section 7 [section 157 of this title]: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 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 and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title]."

Under Section 8(b)(2) of the Act, it is an unfair labor practice "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) [of subsection (a)(3) of this section] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

The Supreme Court set the relevant framework for cases involving alleged retaliatory lawsuits in *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 748–749, (1983), holding:

> [T]he Board may not halt the prosecution of a state-court lawsuit, regardless of the plaintiff's motive, unless the suit lacks a reasonable basis in fact or law. Retaliatory motive and lack of reasonable basis are both essential prerequisites to the issuance of a cease-and-desist order against a state suit.

In coming to this conclusion, the Court balanced the Board's broad remedial provisions aimed at preserving Section 7's protections with the right to petition the courts for redress of grievances guaranteed by the First Amendment. A reasonably based lawsuit, whether ongoing or completed, does not violate the Act, regardless of the motive for filing it. *BE&K Construction Co*., 351 NLRB 451 (2007) (*BE&K II*). The first question presented, accordingly, is whether the SOAA's defamation suit lacked a reasonable basis in fact or law.

A lawsuit is baseless if no reasonable litigant could realistically expect success on the merits. See *BE&K II*, 351 NLRB at 457; *Atelier Condo. & Cooper Square Realty*, 361 NLRB 966, 968 (2014). The Board considers factors such as whether "the plaintiff's position is plainly foreclosed as a matter of law or is otherwise frivolous," and whether the claims are based upon "plainly unsupportable [factual] inferences" or "patently erroneous submissions with respect to

mixed questions of fact and law." *Allied Mechanical Services*, 357 NLRB at 1229, enf. denied 734 F.3d 486 (6th Cir. 2013), quoting *Bill Johnson's*, 461 U.S. at 731, 745 fn. 11, 747.

In addition, the Acting General Counsel must establish that the plaintiff, "did not have and could not have reasonably believed it could acquire through discovery or other means evidence needed to prove essential elements of its causes of action." *Milum Textile Services*, 357 NLRB 2047, 2053 (2011). The Board "may draw guidance from the summary judgment and directed verdict jurisprudence" in the appropriate forum to determine whether a lawsuit is reasonably based. *Allied Mechanical Services*, 357 NLRB at 1229, quoting *Bill Johnson's*, 461 U.S. at 746 fn. 11; see also *Milum Textile Services*, above. If there is a genuine issue of material fact that turns on credibility of witnesses or on the proper inferences to be drawn from undisputed facts, a lawsuit cannot be deemed baseless and should not be enjoined. *Bill Johnson's*, 461 U.S. at 744-745; *Beverly Health & Rehab. Servs., Inc*. 331 NLRB 960, 961 (2000). Similarly, if the lawsuit raises genuine legal questions for which there is any realistic chance that the plaintiff's legal theory might be adopted, the lawsuit cannot be deemed baseless. *Bill Johnson's* at 746-747. "The Board's reasonable basis inquiry must be structured in a manner that will preserve the state plaintiff's right to have a state court jury or judge resolve genuine material factual or state-law legal disputes pertaining to the lawsuit." Id. at 749.

To prevail in the defamation suit, the SOAA's burden consists of more than proving defamation. "Rather, it must also prove the Federal overlay of actual malice, as pleaded in the state suit complaint." *Beverly*, 331 NLRB at 962. Under *Linn v. Plant Guard Workers*, 383 U.S. 53, 55 (1966), if the SOAA cannot prove both actual malice and injury allegations, then its case will lack merit.[28]

"To show actual malice, a plaintiff must establish that the speaker made the challenged statements with knowledge of their falsity, or with reckless disregard of whether they were true or false." *Beverly*, 331 NLRB at 963. Malice must be shown by "clear and convincing proof." Id., quoting *Dunn v. Air Line Pilots Assn*., 193 F.3d 1185, 1192 (11th Cir. 1999), cert. denied 120 S.Ct. 2197 (2000). "Thus, a defamation claim escapes labor-law preemption only if (1) there is a false statement of fact; and (2) the plaintiff proves actual malice by clear and convincing evidence." *Dunn*, 193 F.3d at 1192; *Beverly* above.

B. Analysis and Findings

1. Protected Activity

As the Board has recognized, it is "elementary" that "an employee's right to engage in intraunion activities in opposition to the incumbent leadership of his union is concerted activity protected by Section 7." *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979). There is no doubt, and the Respondent does not appear to dispute, that Pariscoff engaged in extensive protected activities. His correspondence (often concerted) criticizing the SOAA's leadership, and his numerous charges, both internal and external (also often concerted), including

[28] This standard also applies to public officials. Because *Linn* requires the element of actual malice here, I need not decide whether the SOAA's officers are public officials.

NLRB charges, are clearly protected activities. Respondent likewise does not dispute that Just and Basarir engaged in protected activities, as detailed above.

2. The Defamation Lawsuit

Turning to the lawsuit, the elements required to prove defamation in Colorado are: (1) an actionable statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence; and (4) damages. See *Williams v. Dist. Ct.*, 866 P.2d 908, 911 fn. 4 (Colo. 1993). Under *Linn*, actual malice is also required. "Actual malice," as an element of a defamation claim under the First Amendment and Colorado law, "can be shown if the author entertained serious doubts as to the truth of the statement or acted with a high degree of awareness of its probable falsity." *Coomer v. Make Your Life Epic LLC*, 659 F. Supp. 3d 1189, 1205 (D. Colo. 2023), appeal dismissed, 98 F.4th 1320 (10th Cir. 2024).

I find this case is very similar to *Beverly* and it is governed by the Board's analysis in that case, which in turn was governed by *Bill Johnson's* and *Linn*. The Court in *Bill* Johnson's, 461 U.S. at 745, stated:

> When a suit presents genuine factual issues, the state plaintiff's First Amendment interest in petitioning the state court for redress of his grievance, his interest in having the factual dispute resolved by a jury, and the State's interest in protecting the health and welfare of its citizens, lead us to construe the Act as not permitting the Board to usurp the traditional fact-finding function of the state-court jury or judge.
> . . .
> Just as the Board must refrain from deciding genuinely disputed material factual issues with respect to a state suit, it likewise must not deprive a litigant of his right to have genuine state-law legal questions decided by the state judiciary.

I find that resolution of many of the issues in the defamation lawsuit require either credibility determinations, inferences based on the facts, resolution of mixed questions of law and fact, and/or questions of law, and therefore the lawsuit is not objectively baseless. For example, one portion of Pariscoff's July 17 email alleged to be defamatory states:

> They have been spending thousands of dollars from our dues to protect themselves between NLRB charges and internal union charges. The attorney has collected over 6 digits defending leadership for misconduct. Nothing like claiming to be non-profit and using said funds for a personal attorney!

Am I to infer that Pariscoff's statement in his email that the work defending the union against misconduct allegations referenced attorney's fees back to 2019 all the way up to SOAA, as Pariscoff testified? Or does this statement encompass just the NLRB and internal charges discussed herein? Resolution of what, if any, inferences should be drawn from this language bears on its truth, and is for the state court.[29] See *Beverly*, 331 NLRB at 962, fn. 6.

[29] The Acting General Counsel cites extensively to Colorado law regarding how the Colorado courts interpret words in arguing that Pariscoff's statement was not defamatory. (GC Br,. 63, fn. 10.) This

Similarly, the lawsuit allegation that, during his phone call with Yates from Biz ProAccounts, Pariscoff falsely alleged that SOAA and its Officers had provided the accountants with a false set of books, is open to interpretation under Colorado law. During the call, Pariscoff informed Wyatt that the "books are different" and then referred to the SOAA as "our little corrupt union." The juxtaposition of these statements could certainly be read to suggest the SOAA was being dishonest in its bookkeeping. The Acting General Counsel admits that whether the discrepancy between the SOAA's internal financial documents and the LM-3s filed for 2021 and 2022 "rises to the level of misconduct is certainly up for debate. . . ." (GC Br. 59.) Resolution of this, a mixed question of law and fact, rests at least in part on credibility and inferences that I am constrained from drawing, and is for the state court.[30]

With regard to the statement in Pariscoff's June 28 email that the officers "treated themselves to a luxury hotel," the Acting General Counsel asserts that this was an expression of Pariscoff's opinion. (GC Br. 53.) Under Colorado law, determination of whether a statement is an expression of opinion entails a three-part test. See *Keohane v. Stewart*, 882 P.2d 1293, 1299 (Colo. 1994). "The determination of whether a statement constitutes fact or opinion is a question of law." *Seible v. Denver Post Corp*. 782 P.2d 805, 809 (Colo.App.1989), citing *Brooks v. Paige*, 773 P.2d 1098 (Colo.App.1988). As *Bill Johnson's* makes clear, questions of law are for the state court to decide.[31]

As to actual malice, the Board in *Beverly*, 331 NLRB at 963, stated:

> The Respondent has alleged actual malice in its suit. The Unions correctly state that the Respondent did not introduce evidence of actual malice at the unfair labor practice hearing. Nonetheless, we cannot agree, as the Unions argue, that "the General Counsel proved that [the Respondent] cannot carry the *Linn* burden of proving actual malice in the publication of th[ese] statement [s]." We leave to state court adjudication whether the

---

indicates that state court is the appropriate venue to resolve the dispute. See *Bill Johnson's*, 461 U.S. at 744 (ALJ erred by conducting "virtual trial" on the merits of the state court claim).

[30] There are other allegations which, to resolve, require credibility determinations or inferences to be drawn from the facts. In its brief, the Acting General Counsel, relying on *Allied Mechanical*, 357 NLRB 1223, 1234 (2011), asserts that violation exists if any one allegation in the lawsuit is baseless, and was filed and maintained for a retaliatory motive. (GC Br. 51.) I reviewed *Allied Mechanical* and did not read it to stand for such a holding. I note that for at least one allegation of defamation, paragraph 22 of the lawsuit, there is no supporting evidence or argument from the Respondent. I do not find, however, that this renders the lawsuit entirely baseless given the many allegations with disputed facts and/or questions of law. Recently, the Board severed and retained for further consideration whether the Respondent violated Section 8(a)(1) of the Act by filing and maintaining a partially baseless and retaliatory lawsuit in *Kirin Transportation, Inc*., 374 NLRB No. 4 (2024).

[31] The same rationale holds true for paragraph 20 of the defamation complaint, where the Acting General Counsel argues that the allegation was stated as opinion, not fact. (GC Br. 73.)

It is important to note the Respondent's lawsuit is at the pleadings stage. The only conclusion I reach at this stage is that the allegations concerning the statements in the lawsuit on their face are not baseless. A Colorado court ultimately may conclude on the merits of the complaint allegations that certain statements constitute opinion, not fact. For now, this is a genuine state-law legal question, and the Board "must not deprive a litigant of his right to have genuine state-law legal questions decided by the state judiciary." *Beverly*, 331 NLRB at 961.

> Respondent can establish that the Unions "acted with a 'high degree of awareness of probable falsity of' factual statements or in fact 'entertained serious doubts as to the truth of [its] publication.'" . . . Whether the Respondent can meet this burden will determine whether its defamation suit is actionable under *Linn*. (quoting *Dunn*, 193 F.3d at 1197–1198).

The SOAA has undisputedly alleged actual malice in the defamation lawsuit, and therefore determination of whether the standard has been met is left to the state court.[32]

The Acting General Counsel argues that the SOAA cannot show damages, as required to prevail in state court. The Respondent asserts it pled special damages, including that Pariscoff's conduct caused reputational harm and a loss of membership. [33] This is a material dispute that will rest on application of Colorado law regarding harm. See *Keohane*, 882 P.2d at 1304 ("[I]t is the prerogative of the individual states to decide what type of damages, including emotional harm alone, may be compensable in a defamation action.")[34]

Based on the foregoing, because I have found the defamation lawsuit is not objectively baseless under extant law, the proper course of action is to hold the allegations related to the lawsuit in abeyance until the Board receives notification that the state court has resolved the lawsuit. At that point, I can determine, based on the state court's action, whether the state court suit lacked merit.[35] Since the validity of the cease and desist letter, i.e. the threat to file a lawsuit, is inextricably intertwined with the issue of whether the lawsuit itself violated the Act, that allegation is likewise held in abeyance. Thus, the allegations in the Acting General Counsel's complaint concerning the defamation lawsuit are dismissed, but the Board will retain jurisdiction

---

[32] I note Board's caution *Beverly*, 331 NLRB at 963, that the "necessary malice requirement is a heavy burden in defamation cases arising out of labor disputes" and will be required should the Respondent press on with the defamation suit.

[33] The Acting General Counsel's argument that members have a right to resign is unavailing. Of course they have such a right, but this does not mean the Board can foreclose the SOAA's attempt to prove that Pariscoff's statements were defamatory and were the cause of resignations.

[34] I am constrained by *BE&K II* from making a finding as to retaliatory basis. See *Childrens Hospital Oakland*, 351 NLRB 569, 571 (2007) ("[If a lawsuit is reasonably based, the analysis ends there, and we will not further inquire into the plaintiff-respondent's motives for filing or maintaining it.") I note, however, the direct evidence of retaliatory motive present in this case, and highly doubt the strength or weakness of the Respondent's case in the defamation action can materially impact this evidence.

[35] "If judgment goes against the employer in the state court, however, or if his suit is withdrawn or is otherwise shown to be without merit, the employer has had its day in court, the interest of the state in providing a forum for its citizens has been vindicated, and the Board may then proceed to adjudicate the . . . unfair labor practice case." *Bill Johnson's*, 461 U.S. at 2172.

Given the uncertainties involved, I strongly encourage the parties to resolve this matter out of court. I feel compelled to add I am troubled by SOAA President Daugherty's behavior, particularly concerning Pariscoff's dues checkoff authorization. The gamesmanship here was blatantly obvious and was counterproductive at best. I am mindful of the impact the defamation lawsuit has had on Pariscoff. The First Amendment, however, and the legal precedent interpreting it, protects the rights of parties to file lawsuits such as the one at issue here, and I would be overstepping my authority if I were to thwart those rights. Hopefully, common sense and a reasoned approach from both sides will prevail, and the parties will find a way to resolve their disputes and coexist.

for further consideration upon prompt notification by any party of a final, binding determination or resolution of the merits by the State of Colorado.

3. Allegations Regarding Just and Basarir

The Respondent does not contest the allegations concerning Just and Basarir. I find that the Acting General counsel has established that the Respondent violated the Act by threatening Just with fines, fees, legal action, and other reprisals, and otherwise making coercive statements to Just for criticizing the Respondent to other members and/or refusing to become a member of the SOAA. I further find the Respondent violated the Act by attempting to cause the Employer to discipline Basarir by reporting perceived misconduct as alleged.

CONCLUSIONS OF LAW

1. By threatening Miranda Just with fines, fees, legal action, and other unspecified reprisals, and by making coercive statements to her for criticizing the Respondent and refusing to become a member of the Respondent, the Respondent SOAA has violated Section 8(b)(1)(A) of the Act.

2. By attempting to cause the discipline of Askin Basarir because he criticized the Respondent, filed charges against the Respondent with the Board, and/or refused to become a member of the Respondent, the Respondent SOAA has violated Sections 8(b)(1)(A), 8(a)(3), and 8(b)(2) of the Act.

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

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.

Having found the Respondent threatened Miranda Just with fines, fees, legal action, and other unspecified reprisals, and made coercive statements to her for criticizing the Respondent and refusing to become a member of the Respondent, the Respondent shall be ordered to cease and desist from such actions.

Having found the Respondent attempted to cause the discipline of Askin Basarir because he criticized the Respondent, filed charges against the Respondent with the Board, and/or refused to become a member of the Respondent, the Respondent shall be ordered to cease and desist from such actions.

The Respondent will be ordered to post a notice stating it has violated the Act as described herein, will cease and desist therefrom, and will not in any like or related manner violate the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[36]

ORDER

The Respondent, Security Officers Association of America, its officers, agents, and representatives, shall

1. Cease and desist from

a. Threatening members with fines, fees, legal action, and other unspecified reprisals, and making coercive statements for criticizing the Respondent and refusing to become a member of the Respondent.

b. Attempting to cause the discipline of members because they criticize the Respondent, file charges against the Respondent with the Board, and/or refuse to become a member of the Respondent.

c. In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

a. Within 14 days after service by the Region, post at its offices and locations where bargaining-unit members are employed, copies of the attached notice marked "Appendix."[37] Copies of the notice, on forms provided by the Regional Director for Region 27, 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 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 January 23, 2023.

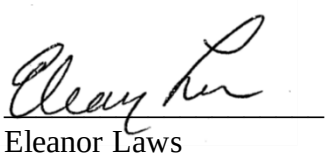
[36] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

37 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."

b. 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.

It is further ordered that the complaint allegations concerning the defamation lawsuit are held in abeyance until the conclusion of the defamation case in state court in Colorado, at which time any of the parties may petition for such relief as they deem appropriate.

Dated, Washington, D.C. April 4, 2025



Eleanor Laws
Administrative Law Judge

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 threaten you with fines, fees, legal action, and other unspecified reprisals, or make coercive statements to you for criticizing the Security Officers Association of America and/or refusing to become a member of the Security Officers Association of America.

WE WLL NOT attempt to cause you discipline because you file charges against the Security Officers Association of America with the National Labor Relations Board, and/or refuse to become a member of the Security Officers Association of America.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Security Officers Association of America has taken to comply.

SECURITY OFFICERS ASSOCIATION
OF AMERICA

(Labor Organization)

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.

600 17th Street, 7th Floor, North Tower, Denver, CO 80202-5433
(303) 844-3551, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/27–CB–321988 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, (303) 844-6647.