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

	Cases 13–CA–301810
AMAZON.COM SERVICES LLC	13–CA–304768
	13–CA–319685
and	03–CA–299328
	03–CA–299957
DREW DUZINSKAS, AN INDIVIDUAL	03–CA–301917
	03–CA–302091
and	03–CA–302172
	14–CA–305671
AMAZON LABOR UNION	29–CA–298749
	29–CA–300805
and	29–CA–307076
	29–CA–307667
CONNOR SPENCE, AN INDIVIDUAL	29–CA–308068
	29–CA–308071
and	29–CA–308983
	29–CA–316634
LUCAS KLEIN, AN INDIVIDUAL	29–CA–331028
	03–RC–301507

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DECISION

CHARLES J. MUHL, Administrative Law Judge. The General Counsel's sprawling complaint in these cases alleges that Respondent Amazon.com Services, LLC, committed numerous violations of Section 8(a)(1) and (3) of the National Labor Relations Act in response to employees' union organizing and protected concerted activity. The allegations involve facilities located in the metropolitan areas of Albany, New York; Chicago, Illinois; New York City, New York; and St. Louis, Missouri.

The bulk of the complaint allegations pertain to the Respondent's off-duty access policy, which it promulgated nationwide in the summer of 2022 and enforced thereafter. The policy states: "During their off-duty periods (that is, on their days off and before and after their shifts), employees are not permitted inside the building or in working areas outside the building." As discussed fully herein, I conclude that, although it promulgated the policy during employees' union organizing, the Respondent established legitimate business justifications for the timing of that promulgation which had nothing to do with protected activity. Therefore, its promulgation of the policy was lawful.

I also find that, by and large, the Respondent's enforcement of the off-duty access policy did not violate the Act. In particular, I find that the Respondent did not unlawfully discharge Conner Spence for his extensive violations of the policy. To be sure, the General Counsel demonstrated that the Respondent issued discipline to off-duty employees who engaged in protected activity in nonwork areas of a facility before and after their shifts. But the General Counsel did not establish, by specific examples, that the Respondent failed to enforce the policy against employees who also were in a facility while off-duty but not engaged in protected conduct. In contrast, the Respondent produced numerous examples of it enforcing the policy against employees who violated it in manners other than engaging in protected activity.

Finally, I conclude that the Respondent repeatedly violated the Act when its supervisors or agents prohibited off-duty employees from engaging in union and/or protected concerted activity in the parking lots of facilities in Albany, Chicago, and St. Louis. The supervisors or agents also unlawfully threatened to call police, and actually did call the police, when the employees engaging in protected conduct refused to leave the parking lots. The Respondent also violated Section 8(a)(1) by maintaining an unlawful solicitation policy.

For 10 days from February 20 to July 24, 2024, I heard these cases in person in Chicago, Illinois; St. Louis, Missouri; and New York City (Brooklyn), New York. On October 25, 2024, the General Counsel, the Respondent, and the Union filed posthearing briefs, which I have read and carefully considered. On the entire record, I make the following findings of fact and conclusions of law.[1]

STATEMENT OF THE CASE

On January 17, 2024, the General Counsel, through the Regional Director for Region 13 of the National Labor Relations Board (the Board), issued a fourth amended order transferring and consolidating cases, consolidated complaint, and notice of hearing against the Respondent in lead Case 13–CA–301810. (GC Exh. 1(kkkkk)). The fourth complaint contained allegations arising out of cases in Region 3 (Albany), Region 13 (Chicago), Region 14 (St. Louis), and Region 29 (Brooklyn). The complaint was based upon charges and amended charges filed by multiple charging parties from July 14, 2022, through November 30, 2023, as detailed in par. 1 of the complaint. On January 31, 2024, the Respondent timely filed an answer to the complaint, denying the substantive allegations and asserting numerous affirmative defenses. In its answer, the Respondent admitted, and I find that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act. In its answer, the Respondent denied the Sec. 2(5) labor organization status of the Amazon Labor Union, based upon lack of knowledge. Nonetheless, I find that the Union is a Sec. 2(5) labor organization, as the Board already has so found. See *Amazon.com Services, LLC*, 373 NLRB No. 136, slip op. at 24 (2024); *Longshoremen ILWU*, 372 NLRB No. 66, slip op. at 1 fn. 1 (2023) (taking judicial notice of prior Board decisions). References to the complaint in this decision are to GC Exh. 1(kkkkk), as further amended at the hearing.[2]

[1] On October 25, 2024, the Respondent filed a motion to correct the hearing transcript. Having reviewed the proposed corrections and absent any opposition, I grant the motion.

[2] The case proceedings are fully contained in GC Exhs. 1(a) to 1(rrrrr).

ALLEGED UNFAIR LABOR PRACTICES[3]

I. DID THE RESPONDENT VIOLATE SECTION 8(A)(1) BY PROMULGATING AN OFF-DUTY ACCESS RULE IN RESPONSE TO EMPLOYEES' UNION ACTIVITY?

FINDINGS OF FACT

The Respondent is engaged in the business of online retail sales from numerous facilities throughout the United States. It is headquartered in Seattle, Washington. The facilities involved in these cases are located in the states of Illinois, Missouri, and New York. The Illinois facilities are found in Joliet (MDW2 and MDW4), Channahon (ORD2), Monee (MDW7), and Romeoville (MDW6), all near the Chicago O'Hare or Midway airports. The Missouri facility is located in St. Peters (STL8), just outside of St. Louis. The New York facilities are located in Castleton-by-Hudson (ALB1) just outside of Albany and the borough of Staten Island (JFK8), near New York City's Kennedy airport. The number of employees working each shift at these Respondent facilities numbers in the hundreds to thousands.

A. The Prior Settlement Agreement and Elections During the Notice-Posting Period

On December 22, 2021, the Respondent, the General Counsel, and the Charging Parties in Case 13–CA–275270 entered into an informal settlement agreement. The unfair labor practice charge in that case alleged that the Respondent promulgated and maintained an overly broad off-duty access policy that prohibited employees from being on the Respondent's property until 15 minutes before or after their work shifts. The Respondent agreed to rescind its off-duty access policy, which was in effect nationwide. As part of the settlement, the parties agreed to the following provision:

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[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.

> In the event we [the Respondent] wish to reinstate a lawful rule regarding off-duty employee access to our buildings, we will only do so after the 60-day [notice] posting period for the instant charges has concluded and said notification to employees must also state that the rule will not be discriminatorily enforced against employees [engaging] in protected activity.[4]

The settlement agreement also contained a provision concerning potential non-compliance by the Respondent with any of the agreed-upon terms. Upon such noncompliance, the provision permitted the General Counsel to reissue the original complaint against the Respondent, then move for default judgment with the Board.

Also on December 22, 2021, the Amazon Labor Union (the Union) filed a representation petition for employees at the Respondent's JFK8 facility in Staten Island.[5]

On January 21, 2022, the Respondent certified for the General Counsel that it had posted the notice required by the settlement agreement.[6] Thus, the posting period initially was scheduled to end on March 21. In the interim, a question arose from a representative in the General Counsel's office in February concerning whether the posting period should be extended. However, that issue never was resolved. As a result, the Respondent did not implement a new off-duty access policy immediately after the 60-day period expired and the notice remained posted beyond the period.[7]

On February 4, the Union filed a representation petition seeking to represent employees at the Respondent's LDJ5 facility in Staten Island.[8]

On March 31, the General Counsel issued a tally of ballots for a second representation election at the Respondent's BHM1 facility in Bessemer, Alabama. The petitioning union there was the Retail, Wholesale, and Department Store Union (RWDSU). The union lost that election.[9]

On April 1, the General Counsel issued a tally of ballots for the JFK8 election, which showed the Union won by a count of 2654 to 2131. That same day, the

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[4] GC Exh. 3.

[5] R. Exh. 9(j); Case 29–RC–288020. The Union previously filed a petition for JFK8 on October 25, 2021, but later withdrew the petition. R. Exh. 9(d).

[6] All dates hereinafter are in 2022 unless otherwise noted.

[7] R. Exh. 9(k) and 9(m).

[8] R. Exh. 9(l). Case 29–RC–290053.

[9] R. Exh. 9(n); Case 10–RC–269250. The election in that case was held by mail ballot that were mailed to employees on February 4 and counted beginning March 28.

Respondent issued a statement on its website concerning the Staten Island union vote. It read:

> We're disappointed with the outcome of the election in Staten Island because we believe having a direct relationship with the company is best for our employees. We're evaluating our options, including filing objections based on the inappropriate and undue influence by the NLRB that we and others (including the National Retail Federation and U.S. Chamber of Commerce) witnessed in this election.[10]

On April 7, both the Respondent and the RWDSU filed objections to conduct affecting the election at BHM1 in Bessemer.

On May 11, the General Counsel certified the results of the representation election at the LDJ5 facility. The Amazon Labor Union was the petitioner in that election. The Union lost the election.[11]

On May 12, the General Counsel confirmed to the Respondent that the notice posting period in the settlement agreement for Case 13–CA–275270 had concluded.[12]

B. The Respondent Implements a New Off-Duty Access Rule

Joseph Ofori Agboka is the Respondent's vice-president of people, experience, and technology for global operations. In the supervisory hierarchy, Agboka is third in line below Amazon's chief executive officer. He began his employment in April 2020 and took on his current position in June 2021. Prior to Amazon, Agboka worked for General Motors (GM) for 24 years. There, he spent a significant amount of time in labor relations positions overseeing 40,000 unionized GM employees. GM maintained off-duty access rules for those employees for safety purposes.[13]

At some point between April 1 and May 12, Agboka evaluated whether the Respondent should implement a new off-duty access policy once the notice posting period expired. He decided it should and then drafted such a policy, which states in relevant part:

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[10] R. Exh. 9(o); GC Exh. 20; Tr. 195, 1094; Case 29–RC–288020. This election was in person from March 25 through 30.

[11] R. Exh. 9(p); Case 29–RC–290053.

[12] R. Exh. 9(q).

[13] Tr. 1073, 1092–1093; R. Exhs. 17–20. The Respondent promulgated the off-duty access rule at issue in Case 13–CA–275270 prior to Agboka's start date.

> **Purpose**
> Employee safety and security is important to Amazon, and this policy describes the safe and secure access to Amazon buildings and working areas outside of buildings. This policy allows Amazon to more easily ascertain who is present and enables Amazon to plan our support staffing, services, maintenance and related functions accordingly.
>
> **Overview**
> During their off-duty periods (that is, on their days off and before and after their shifts), employees are not permitted inside the building or in working areas outside the building.[14]

On May 13, the day after the General Counsel notified the Respondent that the settlement notice-posting period had expired, Agboka sent the draft rule to his direct supervisor, Beth Galetti, who responded "I support." In the memo, Agboka also included the justifications for the new off-duty access rule. He wrote that the purpose of the policy was to enable the Respondent to easily ascertain who is and is not in a facility. On safety, Agboka noted the Respondent's emergency preparedness response plan, which included identifying suitable evacuation points in the facility. Those exits needed to accommodate the maximum number of employees on shift at the time. He further stated an emergency response team had to sweep the facility during an evacuation and conduct headcounts of individuals inside to ensure all employees were accounted for. On security, Agboka wrote that the gratuitous presence of non-working individuals in a facility strained efforts to guard against theft, removal, or damage of product; Respondent property or employees' personal belongings; violence or other threats directed at employees; and data privacy breaches or misappropriation. In that regard, Agboka noted that the Respondent's inability to clearly ascertain whether individuals present in the facility should be clocked in could result in timecard discrepancies and time theft.[15]

On June 1, the General Counsel advised the Respondent that the cases resolved by the December 22 settlement agreement had been closed upon compliance.[16]

On June 30, the Respondent implemented its new off-duty access rule.[17]

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[14] Jt. Exh. 2. During the notice posting period, Agboka evaluated the safety circumstances the Respondent was dealing with and their impact on the adoption of a new, lawful off-duty access rule.

[15] Tr. 1088–1089, 1099–1103, 1109, 1111; Jt. Exh. 1 and R. Exh. 21.

[16] R. Exh. 9(r).

[17] As will be discussed below, the Respondent revised the rule on July 8, but the revision was not to the text of the policy set forth above.

C. The Respondent's Justifications for the Off-Duty Access Rule

At the hearing, Agboka testified concerning his justifications for implementing the off-duty access rule. First and foremost was to ensure the safety and security of employees, including by being prepared for natural disasters or other emergencies. This concern was at his forefront in the spring of 2022 because of a recent tragedy at a Respondent facility in the St. Louis metropolitan area. In December 2021, a tornado struck the facility and killed six people. That night, Agboka was involved in determining how many employees were inside the facility and who those employees were when the tornado hit. Questions arose concerning whether individuals who were not scheduled to work were in the building and the Respondent needed to know they had evacuated everyone from it.[18]

Another justification for the policy was the Respondent's existing emergency preparedness plan, which established the maximum number of employees who could be in a facility. That maximum applied to the number of employees who were scheduled to be working each day. Off-duty employees present in a facility jeopardizes adherence to that maximum.

Finally, Agboka had years of experience and comfort with off-duty access rules that were adopted by GM for safety and security purposes. Agboka believed it was prudent for the Respondent to move forward with the rule for the same reasons.[19]

On the timing of the rule promulgation and implementation, Agboka was aware that the Respondent could not implement the rule until the notice posting period for the settlement of the first off-duty access rule case ended. Upon receiving that confirmation on May 12, Agboka proceeded with the implementation beginning the next day.[20]

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[18] Tr. 1085–1090. See also Tr. 1112, 1119–1120, 1123–1126, 1128–1132, 1180, 1193–1200; GC Exh. 54; Jt. Exhs. 1–5; R. Exh. 21. Agboka also was aware of employees dying due to acts of violence at Respondent facilities.

[19] Tr. 1085, 1128–1130.

[20] Tr. 1085, 1108–1109. I credit Agboka's testimony concerning his reasons for implementing the new off-duty access policy. His demeanor when testifying was reliable and convincing. In addition, no dispute exists as to the facts underlying his justifications for the new policy. Finally, the memo he drafted contemporaneously with the rules' implementation corroborates much of his testimony concerning the justifications for the new policy.

Contrary to the General Counsel, I do not find Agboka's lack of discussions with other supervisors about the new policy during its drafting or the lack of further documentation about what he did to be indicative of an unlawful motive. Agboka did detail in writing for other supervisors his reasons for implementing the policy and they concurred with his reasons. The substance of the policy itself is merely one sentence long. Agboka was the third highest ranking supervisor for the Respondent. And Agboka undoubtedly spoke to legal counsel about the new policy before its implementation. Given those circumstances, I find nothing suspicious about the

D. Additional Proceedings Involving the General Counsel and the Respondent

In Case 09–CA–298870, the Board granted the General Counsel's motion for summary judgment on March 29, 2024, and held that the Respondent's maintenance of its new off-duty access rule from June 30 to July 8, violated Section 8(a)(1). During that time period, the rule contained a reservation of rights clause giving the Respondent the right to depart from the rule when it deemed it appropriate. The Board found that the clause unlawfully provided the Respondent with the discretion to decide when and why off-duty employees could access the facility. That was the sole basis for the Board finding the violation. The Respondent deleted the clause as of July 8, and the General Counsel is not alleging in this case that the Respondent's maintenance of the revised July 8 version of the rule is unlawful.[21]

In Case 13–CA–275270 (involving the settlement agreement discussed above), the Board granted the General Counsel's motion for default judgment on September 10, 2024, based upon the Respondent's noncompliance with the settlement. The Board found that the Respondent breached the settlement based upon the violation found in Case 09–CA–298870. In particular, its promulgation of the June 30 off-duty employee access rule violated the settlement's requirement that, in the event it wished to reinstate an off-duty access rule, the Respondent had to notify employees that the rule would not be discriminatorily enforced against employees engaged in protected activity. As a result, the Board found that the Respondent violated the Act as alleged in the complaint for Case 13–CA–275270. That allegation was that the Respondent violated Section 8(a)(1) by promulgating, maintaining and enforcing a prior version of its off-duty access rule that prohibited off-duty employee access to exterior, nonwork areas of the Respondent's facilities.

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1) of the Act by promulgating its off-duty access rule on June 30 to discourage its employees from engaging in union or protected concerted activity.

An employer has the right to promulgate and maintain an off-duty access rule for employees where certain conditions are met. *Tri-County Medical Center*, 222 NLRB 1089 (1976). Those conditions are that the rule:

steps Agboka took to draft and implement the policy.

[21] The General Counsel's complaint contains allegations regarding the Respondent's maintenance of the off-duty access rule from June 30 to July 8, 2022. (Complaint pars. 7(b), 7(c), 7(d), and 7(e)). Given the Board's decision, I need not address those allegations.

> (1) limits access solely with respect to the interior of the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity.

Despite having that right, the law is well established that an employer's promulgation of a rule in response to employees' union activity violates Section 8(a)(1). See, e.g., *Care One at Madison Avenue*, 361 NLRB 1462 (2014); *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958 (2004); *City Market, Inc.*, 340 NLRB 1260 (2003). Where a rule is promulgated in the context of a union campaign, a reasonable presumption exists of a nexus between the two events. *City Market*, above. Once that nexus is established, the burden shifts to the Respondent to show that the timing of the rule's promulgation was due to matters apart from the organizing campaign. Ibid. See also *NLRB v. Roney Plaza Apartments*, 597 F.2d 1046, 1049 (5th Cir. 1979), enfg. 232 NLRB 409 (1977).

To begin, the General Counsel has established that the Respondent's June 30 promulgation of its new off-duty access rule occurred in the context of union organizing. Multiple union organizing campaigns, including JFK8, were ongoing during the April 1 to May 12 time period when Agboka was evaluating and drafting the new off-duty access rule. Representation elections were conducted at the Respondent's BHM1 and JFK8 facilities with tally of ballots issued on March 31 and April 1. Election results were certified in the organizing campaign at the Respondent's LDJ5 facility in Staten Island on May 12. This evidence is sufficient to establish a nexus between the rule's promulgation and the organizing campaigns based upon timing.[22]

As a result, the burden shifts to the Respondent to establish that the timing of the off-duty access rule's promulgation was not due to the union organizing but rather to another, non-discriminatory reason. I conclude that the Respondent has met that burden.

The first legitimate business justification for the timing of the rule's promulgation is the impact of the settlement agreement in the first off-duty access rule case and the General Counsel's own conduct enforcing it. The settlement between the General Counsel and the Respondent explicitly gave the Respondent the right (which it would have had under the law in any event) to implement a new, lawful off-duty access rule after the 60-day posting period expired. On January 21, the Respondent certified to the General Counsel that it had posted the required notice. Thus, based upon the

[22] In reaching this conclusion, I reject the Respondent's argument that it is inappropriate to consider organizing activity at any other Respondent facility other than JFK8 to establish a nexus between the promulgation of the rule and union organizing. The rule being promulgated was nationwide in scope and applied at any Respondent facility in the United States. Moreover, Agboka, the sole person responsible for the rule, is the Respondent's third highest ranking official and has national HR oversight responsibilities.

settlement, the Respondent could have promulgated a new rule as early as March 22 (or just before the March 25–30 election at JFK8). However, the Respondent did not do so, because the General Counsel raised concerns in mid-February that called into question whether the posting period would be extended. The General Counsel took no action on those concerns but, three months after raising them, confirmed to the Respondent that the posting period had closed on May 12. Only then did Agboka finalize a draft of the new rule. The Respondent did not even implement the new rule until June 30. By that time, the elections at JFK8, BHN1, and LDJ5 had long concluded. If anything, the Respondent's conduct suggests a desire to avoid a situation where it appeared the rule was being promulgated to interfere with those elections.

In contrast, the General Counsel's conduct raises eyebrows. On the one hand, the General Counsel agreed to give the Respondent the authority to promulgate a new off-duty access rule. On the other hand, the General Counsel then determined that the Respondent's promulgation of a new policy—in conformance with the settlement agreement—was a discriminatory act. Beyond that, the General Counsel does not acknowledge that its own conduct influenced the timing of the implementation of the rule. Instead, the General Counsel correctly points out that the settlement did not relieve the Respondent from its burden of explaining the timing. Nonetheless, the chronology of events involving the settlement unquestionably establishes that the Respondent met that burden.

Bottom line, the timing of the rule's promulgation resulted from the settlement of the first case, the Respondent's compliance with that settlement's notice posting requirement, and the General Counsel's conduct. This is sufficient, standing alone, to constitute a legitimate business justification not involving union organizing for the timing of the Respondent's implementation of the new off-duty access policy.

Beyond that, the Respondent established a second, legitimate business justification for its June 30 implementation of the off-duty access rule: the safety of its employees. The Respondent operates facilities with an enormous number of employees working on each shift. At JFK8, the total number was over 1000 per shift. The size of the workforce presents significant challenges during a natural disaster or emergency where employees need to be evacuated from a facility. In that circumstance, the Respondent understandably wants to be able to identify all the people who are in the building. It also wants to limit, to the extent possible, the number of off-duty employees in the facility when such emergencies occur. The off-duty access rule did just that, limiting the employees who could access the inside of the facility to those who were on-duty and working a scheduled shift. The policy's prohibition on off-duty employees being inside a facility lessens the chances of someone being left behind in an evacuation. It also enables the Respondent to avoid having a total number of employees in the facility that is above the maximum number who can be properly evacuated in an emergency.

That Agboka would conclude such a policy was warranted for safety reasons is unsurprising given his direct involvement in responding to the major tragedy a few months earlier in St. Louis. A tornado struck one of the Respondent's facilities and six people died. Agboka was personally involved in responding to the situation. He encountered difficulties in ascertaining all of the individuals who were present at the facility. Addressing such a catastrophic event no doubt left a lasting imprint on Agboka.

An employer fails to establish a legitimate basis for the timing of the promulgation of a rule during union organizing where it does nothing more than offer mere assertions of misconduct. See, e.g., *Care One at Madison Avenue*, 361 NLRB 1462, 1464 (2014) (employer's claim that its reposting of workplace violence policy due to threats made by certain employees was not a legitimate business justification for the posting where employer presented no specific evidence that threats were made and investigated); *Boulder City Hospital*, 355 NLRB 1247, 1249 (2010) (employer did not investigate employee complaints about harassment related to union solicitation, and therefore "had no reason to believe " it needed to post a memo prohibiting such harassment). In contrast here, the Respondent did not make a "mere assertion" that its off-duty access rule was necessary for safety. Rather, it backed up that assertion with a specific, horrific example of why an off-duty access rule was necessary: the December 21 tornado and the resulting employee deaths.

The General Counsel argues that the Respondent did not promulgate the off-duty access rule due to safety concerns, relying on the fact that the Respondent did not take every step imaginable in the policy to ensure that off-duty employees were not in a facility. Agboka did concede that the off-duty access rule does not limit an employee's ability to enter a facility with a badge, irrespective of whether they are on duty or off duty. Moreover, the Respondent can generate a ledger based on the badge swipes of employees who are in the facility, enabling them to track on- and off-duty employees. Nonetheless, Agboka provided compelling testimony that the policy he drafted was "a measure in communicating with employees and hopefully, again, trusting and honoring transparency with employees that they will not choose to be on the property when they're not there for scheduled working hours."[23] That the Respondent did not take more aggressive measures to keep off-duty employees outside of its facilities does not mean the Respondent was not concerned about safety when it implement the rule.

For all these reasons, I conclude that the Respondent did not unlawfully promulgate its June 30 off-duty access policy.[24]

[23] Tr. 1126.

[24] Complaint par. 7(f).

II. DID THE RESPONDENT VIOLATE SECTION 8(A)(1) BY MAINTAINING AN OVERLY BROAD SOLICITATION POLICY?

FINDINGS OF FACT

Since February 2, the Respondent has maintained a solicitation policy, which states in relevant part (emphasis added):

Policy

The following activities are prohibited:

- Solicitation of any kind by employees on company property during working time;
- Distribution of literature or materials of any type or description (other than as necessary in the course of our job) by employees in working areas at any time; and
- Solicitation of any type on company premises at any time by non-employees.

Examples of prohibited solicitation include the sale, advertising, or marketing of merchandise, products, or services (except as allowed on for-sale@ alias), *soliciting for* financial or other contributions, memberships, subscriptions, and *signatures on petitions*, or distributing advertisements or other commercial materials.

Exceptions

The only exceptions to this policy are communications for company-sponsored activities or benefits, or for company-approved charitable causes, *or other specific exceptions formally approved by the company*. *All communications under these exceptions must also have prior approval of Human Resources.* Violation of this policy may result in immediate disciplinary action, up to and including termination of employment.

Solicitation Policy FAQ

What are some examples of solicitation that are prohibited, unless legally protected?

- The sale, advertisement, or marketing of things like merchandise, products, subscriptions, or services (except as allowed on for-sale@alias).

- Distributing advertisements, marketing communications, or other commercial materials.
- Solicitation for financial or other contributions (for example, money, time, services) for any cause, including a charity.
- *Solicitation for* memberships, subscriptions, or *signatures on petitions.*
- Distribution of literature or materials of any kind.
- *Organizing or seeking participation in* political, charitable, or *protest activities*.
- *Encouraging others to sign up for a mailing or distribution list used for any of the above purposes*.

What are the exceptions?

As exceptions to this policy, solicitation is permitted for:

- Company-sponsored benefits (for example, health plans and employee discount programs).
- Company-sponsored business activities (for example, internal marketing and advertising, company events, and learning activities).
- Company-approved charitable causes.
- *Specific exceptions approved by Human Resources.*
- *All legally protected activity as defined under local law.*

In the US, when is solicitation legally protected?

In the US, solicitation is legally protected if it:

- Does not use any company electronic systems (for example, email, Phone Tool, Amazon Wiki, Chime, and calendaring), company equipment (for example, bulletin boards, furniture, mail slots, elevators, and posters); and
- Relates to terms and conditions of employment. Terms and conditions of employment include pay, work hours, benefits, and job duties. They do not include the products we sell, our customers, and non-work related social or political causes; and
- Happens during non-working time.

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1) by maintaining an overly broad solicitation policy.

The Board has long recognized the principle that "[w]orking time is for work. " Thus, a no-solicitation rule prohibiting solicitation on company property only during "working time" is presumptively lawful, absent evidence that the rule was adopted for a discriminatory purpose. *Harbor Freight Tools USA, Inc.*, 373 NLRB No. 2 (2023); *Conagra Foods, Inc.*, 361 NLRB 944 (2014). In contrast, rules which prohibit solicitation during "working hours" or while employees are "on the clock" are presumptively invalid. *Burger King*, 331 NLRB 1011, 1012–1013 (2000); *Our Way, Inc.*, 268 NLRB 394 (1983). In addition, solicitations cannot be banned during nonworking times in nonworking areas, nor can bans be extended to working areas during nonworking time. *Food Services of America, Inc.*, 360 NLRB 1012, 1016 (2014). See also *Peyton Packing Co.*, 49 NLRB 828, 843-844 (1943), enfd. 142 F.2d 1009 (5th Cir. 1944); *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 & fn. 10 (1945) (approving the Board's standard for no-solicitation rules as set forth in *Peyton Packing*).

Applying that legal framework here, the very beginning of the solicitation policy states that solicitation by employees is prohibited on company property during working time. So far, so good.

But the issue thereafter is that the policy does not, either explicitly or implicitly, make clear to a reasonable employee that solicitation is permitted in work areas during non-working time. That legal right is not included in the language of the policy at the very beginning. Instead, the last "frequently asked question "at the very end of the policy states that solicitation is legally protected "in the US" if it "happens during non-working time. " No mention is made that such legal protection applies in both work and nonwork areas.

Moreover, the placement of this language at the very end of the needlessly lengthy and poorly organized policy means it is as far removed as possible from the policy's declaration at the start that solicitation is prohibited on company property during working time. Thus, an employee reading the policy is required to link the two statements together and determine when and where solicitation is permitted. This ambiguity concerning when employees can and cannot engage in protected conduct must be construed against the Respondent, the drafter of the policy, as employees should not have to decide what conduct is and is not lawful. *T-Mobile USA, Inc.*, 369 NLRB No. 50, slip op. at 14 (2020).

The lack of clarity is even more problematic because the policy lists numerous examples of protected Section 7 activity which are prohibited (during working time). The activities include soliciting signatures on petitions, organizing or seeking participation in protest activities, and encouraging individuals to sign up for communications concerning both of those activities. Without clarity as to when and where these protected activities are permitted, a reasonable employee could conclude that such protected activity is not permitted in work areas during non-work time.

The same lack of clarity applies to the policy's statement that the company may formally approve specific exceptions (including those detailed above) to its solicitation prohibitions. This could be read in two ways by a reasonable employee. First, the language, read literally, gives the Respondent the ability to approve an employee's request to engage in protected activity during work time, which the policy otherwise bans. Second, the language enables an employee to request permission from the Respondent to engage in protected conduct during nonwork time in either work or non-work areas. In either circumstance, a requirement in a solicitation policy that employees obtain permission from a supervisor before engaging in protected activity renders the policy unlawful. *Garten Trucking LC*, 373 NLRB No. 94 (2024), citing *Schwan's Home Service*, 364 NLRB 170, 173 (2017) (citations omitted); *Saginaw Control & Engineering, Inc.*, 339 NLRB 541, 553 (2003) ("[t]he Board law is clear, employees do not need [their employer's] permission, written or otherwise, to engage in protected activities") (citing *Brunswick Corp.*, 282 NLRB 794, 798 (1987)).

Accordingly, the Respondent's maintenance of the solicitation policy violates Section 8(a)(1). *Harbor Freight Tools USA, Inc.*, supra, slip op. at 1–3 (finding that the employer's solicitation and distribution rule was overbroad as written because it failed to clarify that the solicitation ban did not extend to employees' working areas during their nonworking time).[25]

III. DID THE RESPONDENT VIOLATE SECTION 8(A)(1) BY PROHIBITING EMPLOYEES FROM ENGAGING IN UNION OR PROTECTED CONCERTED ACTIVITY AT ITS CASTLETON-ON-HUDSON, NEW YORK (ALB1) FULFILLMENT CENTER?

A. The Events on August 23 and 31

FINDINGS OF FACT

The Respondent operates a facility in Castleton-on-Hudson, New York, just outside of Albany. The facility is known as ALB1.

On August 17, the Union filed a representation petition with the General Counsel's Region 3 Albany office in Case 03–RC–301507. The Union sought an election to represent employees at ALB1.

On August 23, Christian Smalls traveled to the ALB1 facility at the request of employee Heather Goodall. Smalls was a former employee of the Respondent who worked at JFK8, a facility on Staten Island. He also was one of the founders and the president of the Amazon Labor Union. He went to ALB1 to speak with employees and

[25] Complaint pars. 6(a), 6(b), and 6(c).

answer questions they had about the Union. Smalls was joined by, among others, Goodall and Gerald Bryson, another former employee of the Respondent at JFK8. They initially gathered near picnic tables just outside the entrance to the facility.[26]

ALB1 Loss Prevention Manager Richard Rivera was alerted to their presence. He and fellow Loss Prevention Manager Timothy Hines went outside. Rivera observed three to five people in the area. He recognized Smalls as one of them. Rivera introduced himself and told the group that if anybody was not an employee, they would have to leave the property. Smalls responded that he was an employee but provided Rivera with a fake name. Smalls also held up an Amazon badge while covering the name and picture on the badge. Bryson did not respond, including to say he was an employee. Thus, Rivera asked the two to leave. He did not ask the remaining individuals to leave because they were employees. Rivera then reentered the facility to give Smalls and Bryson time to leave. However, the two did not do so. When Rivera returned outside shortly thereafter, he again asked them to leave the property and returned to the inside of the facility. Again, Smalls and Bryson did not leave. Instead, they moved to a nearby bus shelter in the parking lot. Rivera approached them there and again said, because they were non-employees, they needed to leave the property. Smalls responded that he was at a public bus stop. Rivera returned to the inside of the facility. Once again, Smalls and Bryson did not leave. At that point, Rivera called the police and reported that Amazon had nonemployees in the parking lot who had been asked multiple times to leave and refused to do so. The police came out to the facility and spoke to Smalls and Bryson. After a lengthy discussion, the two finally left the property in a vehicle.[27]

On August 25, Rivera and Supervisor Danny Sandoval spoke to employee Goodall when she was in the employee resource center of the ALB1 facility. Goodall was off duty. Sandoval told her that, because she was off the clock, she would either need to clock back in or leave the building.[28]

On August 31, Smalls, Bryson, and Flowers returned to ALB1 and again were stationed at the bus shelter. Goodall again stayed near the facility entrance. Hines was the primary loss prevention manager on duty at the time. After being notified that non-employees were gathered at the bus shelter, Hines and Donoghue went outside to the parking lot. Hines recognized Smalls and Bryson as two of the individuals at the bus shelter. Having been present for the events on August 23, Hines was aware that they were non-employees. Hines told them that all non-employees had to vacate the premises. Smalls and Bryson responded that they had the right to be there under Section 7. Like the week before, Hines and Donoghue went back inside the facility to give Smalls and Bryson time to leave. Again, they did not. This sequence occurred four times. At that point, Hines called the police. He advised them that non-employees were

[26] Tr. 502–505, 528, 532.

[27] Tr. 528–532, 802–822, 1291–1294, 1297; R. Exhs. 15, 16.

[28] Tr. 889–895.

congregating on facility property. He asked them to come out and request that the non-employees leave. The police did come out, spoke to Smalls and Bryson, and the two then left.[29]

At the time of these two events, Bryson was no longer employed at JFK8. The Respondent discharged him on April 17, 2020. On June 17, 2020, Bryson filed an unfair labor practice charge with the Board. The charge alleged that the Respondent violated Section 8(a)(1) by discharging him for engaging in protected concerted activity. In particular that activity was advocating to the Respondent's JFK8 managers that they address certain COVID-19 related safety measures. It also included demonstrations outside JFK8 to protest the Respondent's failure to temporarily close the facility for disinfection and cleaning.[30]

The representation election in Case 03–RC–301507 was conducted on October 12, 13, 15, and 17. The Union lost the election by a count of 206 to 406.

LEGAL ANALYSIS

The General Counsel's complaint alleges that, on August 23 and 31, the Respondent violated Section 8(a)(1) of the Act by denying its off-duty employees access to the Respondent's premises, thereby prohibiting them from engaging in protected activity. The complaint also alleges that, on those same dates, the Respondent violated Section 8(a)(1) by calling the police on off-duty employees and non-employee union organizers to prevent them from engaging in protected activity.

The Board has long held that an employer's own off-duty employees cannot be barred from outside non-working areas, including parking lots, except where justified by business reasons. *Tri-County Medical Center, Inc.*, 222 NLRB 1089, 1089–1090 (1976). No dispute exists that the Respondent, by Rivera and Hines, told Smalls and Bryson on

[29] Tr. 532–534, 1287–1290, 1294–1300.

[30] In Case 29–CA–261755, the General Counsel issued a complaint against the Respondent on December 22, 2020. The complaint alleged that the Respondent violated Sec. 8(a)(1) by discharging Bryson due to his protected concerted activity. On April 18, Administrative Law Judge Benjamin Green issued his decision in the case. He concluded that the Respondent's discharge of Bryson was unlawful, as alleged in the complaint. Exceptions to Judge Green's decision were filed. At this time, the case remains at the Board awaiting decision. I take administrative notice of the Board's proceedings in Case 29–CA–261755. GC Exh. 70 is Judge Green's decision. After Judge Green issued his initial decision, the Board remanded the case to him for further evaluation in light of the Board's decision in *Lion Elastomers, LLC*, 372 NLRB No. 83 (2023). Judge Green issued a supplemental decision on January 29, 2024, in which he reaffirmed that the Respondent unlawfully discharged Bryson due to his protected concerted activity.

two occasions that they had to leave the property. The question is whether Smalls or Bryson were off-duty employees.

As noted, the Respondent discharged Bryson on April 17, 2020. As a result, Bryson was a former employee when he visited the ALB1 facility on August 23 and 31 to discuss the Union with employees. Nonetheless, Bryson remained a statutory employee within the meaning of Section 2(3) of the Act. The Board has long held that "employee" means "members of the working class generally" including "former employees of a particular employer." *Denny's Transmission Service*, 363 NLRB 1864, 1864 fn. 1 (2016), citing *Little Rock Crate & Basket Co.*, 227 NLRB 1406, 1406 (1977). See also *Waco, Inc.*, 273 NLRB 746, 747 fn. 8 (1984); *Briggs Manufacturing Co.*, 75 NLRB 569, 570–571 (1947). As a statutory employee, Bryson was entitled to access the ALB1 parking lot and engage in protected activity.

Were that not enough, Bryson likewise is a statutory "employee" because he was challenging the Respondent's discharge of him through an unfair labor practice charge at the time he visited the ALB1 facility. Section 2(3) specifically defines a statutory employee to include "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute. . . ." Section 2(9) defines a labor dispute as "any controversy concerning terms, tenure or conditions of employment." Bryson alleged in his ULP case that his employment with the Respondent ceased as a result of him asserting COVID-19 safety concerns, a controversy over conditions of employment constituting a labor dispute. See *Kellwood Co.*, 299 NLRB 1026, 1029 (1990), enfd. 948 F.2d 1297 (11th Cir. 1991) (discharged employees are entitled to be considered employees of the employer for the purpose of serving as election observers pending resolution of charges against employer).

The Respondent's arguments to the contrary do not alter the conclusion that Bryson was an employee. First, the Respondent contends that the General Counsel's complaint alleges that Bryson is a "non-employee union organizer" subject to different property restrictions.[31] The complaint does no such thing. The complaint alleges that the individuals threatened by the Respondent's conduct were "off-duty employees of the Respondent and non-employee union organizers." No names of employees are included in the allegation, but Bryson fits into the category of an off-duty [former] employee.

Next, the Respondent notes that Bryson never told Rivera or Hines that he was an employee. However, the fact that he did not identify himself as an employee has no effect on his right to engage in protected conduct in the Respondent's parking lot. *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, slip op. at 1–2, 27 (2018).

[31] Complaint pars. 13(c) and 16(b).

Under these circumstances, Bryson was an employee when he attempted to speak to other employees about the Union in the ALB1 parking lot on August 23 and 31. By directing him to leave, thereby causing him to stop engaging in protected activity on nonwork time in a nonwork area[32], as well as calling the police to ensure that occurred, the Respondent violated Section 8(a)(1) as alleged in the General Counsel's complaint. *Methodist Hospital of Kentucky* and *Winkle Bus Co.*, supra.[33]

B. The Union's Objections in Case 03–RC–301507

On October 25, following its election loss, the Union filed 23 objections to conduct allegedly interfering with employees' free choice in that election. On October 20, 2023, the Regional Director for Region 3 severed objections 1, 6, and 7 for consideration by Region 13, because certain of those objections were coextensive with Region 13's consolidated complaint in this case. On October 24, 2023, the Regional Director for Region 13 issued an order consolidating objections 1, 6, and 7 with the existing consolidated complaint in this case and set them for hearing.[34]

"[I]t is the Board's usual policy to direct a new election whenever an unfair labor practice occurs during the critical period since '[c]onduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of a free and untrammeled choice in an election.'" *Clark Equipment Co.*, 278 NLRB 498, 505 (1986), quoting *DalTex Optical*

[32] The parties also put forth evidence on whether the bus shelter was private property owned by the Respondent or public property where Smalls and Bryson would be permitted to stand irrespective of their employee status. Having found that Bryson was an employee when engaging in union activity at ALB1, the issue concerning the ownership of the bus shelter need not be resolved.

[33] Complaint pars. 13 (except 13(b) because Rivera did not threaten to call the police) and 16. Having found that the Respondent violated Sec. 8(a)(1) based upon Bryson's "employee" status, I decline to address whether its conduct towards Smalls likewise violated the Act. Any finding of a violation would result in the same remedy.

In the posthearing brief, the General Counsel withdrew complaint pars. 8(a) and 9 dealing with events at the Respondent's ALB1 facility on July 24, 2022. (GC Br., p. 22, fn. 24.)

In complaint pars. 8(e) and 12, the General Counsel alleges that the Respondent violated Sec. 8(a)(1) by calling the police on off-duty employees and nonemployee union organizers who were engaged in protected activity at ALB1 on August 15. In the posthearing brief, the General Counsel concedes that the Respondent did not call the police on that date. (Tr. 859, 939.) Accordingly, I dismiss par. 12.

In complaint pars. 8(g) and 14, the General Counsel alleges that the Respondent violated Sec. 8(a)(1) by denying off-duty employees (Heather Goodall) access to the ALB1 facility on August 25 to prohibit her from engaging in protected activity. However, Goodall did not testify and the evidence relied upon by the General Counsel to demonstrate the violation otherwise fails to establish that Goodall was engaged in protected activity on that date. (Tr. 890–894.) Thus, I likewise dismiss complaint par. 14.

[34] R. Exh. 14.

Co., 137 NLRB 1782, 1786 (1962). The only exception to this policy is "where the misconduct is de minimis: 'such that it is virtually impossible to conclude' that the election outcome has been affected." *Sea Breeze Health Care Center*, 331 NLRB 1131 (2000), quoting *Super Thrift Markets*, 233 NLRB 409 (1977). In determining whether misconduct could have affected the results of the election, the Board has considered the number of violations, their severity, the extent of dissemination, and the size of the unit. *Detroit Medical Center*, 331 NLRB 878, 880 (2000) (citations omitted). Other factors the Board considers include the closeness of the election, proximity of the conduct to the election date, the number of unit employees affected, misconduct of the other parties, and degree of a party's responsibility for the misconduct. Ibid.

To begin, it bears mentioning that the Union did not call any witnesses in support of its objections. The Union likewise made no argument in its posthearing brief regarding the objections.

Objection 1 states:

> During and before the critical period, on June 30, 2022, the Employer changed its access policy to prevent workers from accessing non-work areas during non-work time in order to prevent Petitioner and workers at ALB 1 from engaging in their Section 7 rights. The Employer's policy change prohibited workers from coming to non-work areas of the ALB 1 warehouse during non-work time greater than 15 minutes before their shift and/or 15 minutes after their shift ended. The Employer also used this policy to prohibit Petitioner and ALB 1 employees from exercising their Section 7 rights outside the warehouse during nonwork time in nonwork areas. The Employer acted intentionally to interfere with Petitioner and employee supporters' ability to inform workers as to their rights to form and join unions and to restrain their ability to inform their fellow workers of the benefits of unionization. This policy has also been discriminatorily applied against Petitioner and workers who support the Union. Employees in support of Petitioner have been solely suspended or disciplined for violating this policy when exercising their Section 7 rights. Employee voters were aware that Petitioner supporters were being disciplined for supporting the Union, thus chilling their Section 7 rights. The reason for this change in policy was directly related to the Petitioner's representation election victory at JFK8 and for the purpose of curtailing and interfering with workers' Section 7 rights. The effect of this change of policy has prevented a free and uncoerced exercise of choice in this election at ALB 1.

Objection 1 lacks merit. I have concluded that the Respondent lawfully implemented its off-duty access rule on June 30. No contention is made that the Respondent's revised July 8 rule is facially unlawful. The Union presented no evidence of the Respondent's supervisors discriminatorily applying the rule to ALB1 employees. It presented no evidence that the Respondent's supervisors disciplined or discharged

ALB1 employees for violating the policy while engaged in protected activity. To the extent the Union is relying on such conduct at other facilities of the Respondent, it presented no evidence that ALB1 employees were aware of that conduct.

Objection 6 states:

> During the critical period and before, worker organizer Goodall set up a table outside the warehouse to distribute literature in support of Petitioner. On numerous occasions members of security and managers would come out of the warehouse and watch who was stopping at the union table and oftentimes ordered Goodall to either remove the table or move it. On one occasion Amazon.com Services also called the local police to harass Goodall claiming that Goodall was "trespassing" and "picketing". This type of behavior caused workers to feel intimidated, restraining them from learning more about the union. This surveillance destroyed any possibility that the Region was able to conduct a free and fair election.

This objection likewise lacks merit. Again, Goodall did not testify at the hearing. Instead, Load Prevention Manager Richard Rivera testified[35] in extremely limited fashion that, on August 15, Goodall set up a table near the entrance of ALB1 with food items on it. Upon observing Goodall, Rivera told her that employees were not permitted to erect a table, but she could go to existing picnic tables nearby. Rivera's testimony does not establish that Goodall was engaged in protected activity at her table at that time. It does not establish that Rivera was watching other employees visiting Goodall at her table. It does not establish that Rivera called the police in response to Goodall being at her table. It does not establish that any other employees overheard Rivera's conversation with Goodall. The events on August 15 did not impact employee free choice in the election.

Finally, objection 7 states:

> During the critical period the Employer threatened to arrest and called the police to intimidate former Amazon employees, Christian Smalls and Gerald Bryson. Smalls and Bryson sought to campaign about the benefits of unionization from a public transpo1iation bus stop for the CDTA by claiming they were trespassing on the Employer's private property. These threats were well known by the workers, potential voters, at the facility and created an atmosphere of fear and intimidation which prevented a free and uncoerced exercise of their free choice in the election.

[35] Tr. 858–862; R. Exh. 15.

Objection 7 is meritorious. I have concluded that the Respondent violated Section 8(a)(1) on August 23 and 31. On those dates, Rivera instructed Bryson, an off-duty employee, to leave the ALB1 parking lot and called the police to have him removed when Bryson refused to do so. These violations occurred during the critical period between the Union's filing of the petition and the election.

Nonetheless, a second election is not warranted given the de minimis objectionable conduct that occurred. The number of violations is small. The violations are not particularly severe. Although Goodall observed the violations, no evidence was presented that other employees witnessed them or that Goodall told other employees what had occurred. The number of employees in the bargaining unit totaled nearly 1000. The conduct occurred roughly 6 weeks prior to the election. The Union lost the election by a significant margin, garnering less than 34 percent of the vote. None of the factors the Board considers when determining the potential impact on free choice supports ordering a second election. Thus, I decline to set aside the ALB1 election. *Bon Appetit Mgmt. Co.*, supra (isolated misconduct in a large bargaining unit, the lack of evidence of any dissemination, and the sharply lopsided vote meant it was "virtually impossible" that the conduct effected the election); *Coca-Cola Bottling Co.*, 232 NLRB 717, 718 (1977) (declining to set aside an election despite 8(a)(1) violations consisting of interrogations affecting two employees out of a unit of 106 employees).

IV. DID THE RESPONDENT VIOLATE SECTION 8(A)(1) BY PROHIBITING EMPLOYEES FROM ENGAGING IN UNION OR PROTECTED CONCERTED ACTIVITY AT ITS ST. PETERS, MISSOURI (STL8) FACILITY?

A. The Events on July 31

FINDINGS OF FACT

The Respondent operates a fulfillment center where online orders are packed for shipping in St. Peters, Missouri, near St. Louis. The facility is identified as STL8. Roughly 4000 employees work there. The Respondent contracts with a private company to provide security at the facility. Security guards are stationed at the front of the lobby just inside the facility's entrance. They can observe employees entering and exiting the facility from their vantage point. Employees have to badge in after entering the facility. When employees exit, they must proceed through metal detectors designed to prevent product theft. If a detector goes off, a security guard will take the employee for a secondary screening. The guards also patrol the parking lots of the facility to ensure compliance with parking rules.[36]

[36] Tr. 295–299; 354–357.

In May, a group of employees there created the "STL8 Organizing Committee" to seek a better workplace environment, including higher pay and safer working conditions. Justin Lopez was one of the employees who was active on the committee. Lopez spoke with coworkers about the committee and handed out "commitment cards" for employees to participate in the committee's activities.[37]

On July 31, Lopez stationed himself in the STL8 parking lot when he was off duty and attempted to get employees to sign a petition with five demands for improvements in working conditions. A flyer had a QR code on it that linked to the petition. Lopez began walking about four rows from the entrance of the facility and placed flyers on the windshields of vehicles. As he walked the first row, he was approached by a security officer named Chris McGhee. The officer was wearing an Allied Universal security guard uniform and an Amazon badge. Lopez had seen McGhee before when McGhee was stationed at the front desk of the facility. Lopez showed McGhee the flyer and attempted to give it to him. McGhee told him he was not allowed to distribute the flyer in the parking lot. After Lopez told McGhee he could, McGhee responded that, if McGhee went inside and got the police and loss prevention, they would tell him the same thing McGhee did. The conversation ended and Lopez immediately left the facility.[38]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent, through security guard/agent McGhee at the STL8 facility, prohibited an employee from engaging in the protected activity of distributing union literature.[39]

An employer may not prohibit employees from distributing union literature in nonworking areas on nonworking time. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803 (1945). Specifically, the Board has held that "[t]he distribution by off-duty employees of union literature in company parking lots is clearly protected by Section 7 of the Act" absent a showing that any work performed there is integral to the business

[37] Tr. 338–343.

[38] Tr. 343–354; GC Exhs. 36 and 37. Lopez' testimony was uncontroverted, as McGhee did not testify.

[39] The unfair labor practice charges associated with the General Counsel's STL8 allegations were filed by an attorney, Lucas Klein, who represents one of the discriminatees in this case. The Respondent argues that, because Klein is not an "aggrieved party" under Section 10(b) of the Act, the Board lacks jurisdiction to pursue the STL8 allegations. The Supreme Court and the Board have long held that anyone can file a charge to initiate an NLRB case. *Bagley Products,* 208 NLRB 20, 21 (1973); *NLRB v. Indiana & Michigan Electric Co.,* 318 U.S. 9, 17–18 (1943); see also Sec. 102.9 of the Board's Rules and Regulations stating: "Any person may file a charge alleging that any person has engaged in or is engaging in any unfair labor practice affecting commerce." The Respondent does not contend that Klein is not a person.

operations. *St. Luke's Hospital*, 300 NLRB 836, 837 (1990); *Meijer, Inc*., 344 NLRB 916, 917 (2005), enf. in relevant part 463 F.3d 354 (5th Cir. 2006). Here, Security Guard McGhee instructed Lopez not to put flyers on vehicles. He followed that instruction with reference to bringing out the police or loss prevention personnel. Lopez left the parking lot immediately thereafter. McGhee's statements were unlawful. *Methodist Hospital of Kentucky, Inc.*, 318 NLRB 1107, 1134–1135 (1995) (security guards violated the Act by telling employees they could not distribute literature in the employer's parking lots); *Winkle Bus Co.*, 347 NLRB 1203, 1219 (2006) (threating to call the police or calls to the police in response to employees' protected activities violate Section 8(a)(1) of the Act).

In its answer, the Respondent denied that McGhee was a Section 2(13) agent of Amazon. As the party alleging that McGhee is an agent, the General Counsel bears the burden of establishing that status. *Pan-Oston Co.*, 336 NLRB 305, 306 (2001). The General Counsel contends that McGhee had apparent authority to act on the Respondent's behalf.

It is well-settled that the Board looks to common law agency principles in order to determine whether a particular individual is an employer's agent. *SAIA Motor Freight, Inc.*, 334 NLRB 979 (2001). An individual may be an agent pursuant to Section 2(13) where they have either actual or apparent authority to act on behalf of the party in question. *Cornell Forge Co.*, 339 NLRB 733 (2003). A finding of apparent authority turns on whether, "under all circumstances," employees "would reasonably believe" that the purported agent "was reflecting company policy and speaking and acting for management." *Pain Relief Centers, P.A.*, 371 NLRB No. 70 at p. 20, quoting *Pan-Oston Co.*, supra at 305–307; see also *Kauai Veterans Express Co.*, 369 NLRB No. 59 at p. 9, fn. 4 (2020). Agency status must be established "with regard to the specific conduct that is alleged to be unlawful." *Pan-Oston Co.*, supra at 306.

The security guards at STL8 are stationed at the front of the facility, where they monitor employees' entrance and exit. If need be, the guards search employees for product theft. They also patrol the parking lot to determine employee adherence to rules there. On the date in question, McGhee walked to Lopez in the parking lot and instructed him to cease distributing his union flyer. Under these circumstances, Lopez would reasonably believe that McGhee's instruction was company policy and McGhee was speaking on behalf of the Respondent. Accordingly, McGhee had apparent authority and was a Section 2(13) agent. See, e.g., *Perdue Farms*, 323 NLRB 345, 351 (1997), enfd. in relevant part, 144 F.3d 830 (D.C. Cir. 1998) ("placing the guard in a position to stop persons entering the plant premises and to confiscate materials," an employer has "cloaked the guard with at least apparent authority" as its agent); *T-Mobile USA, Inc.*, 369 NLRB No. 50 at p. 19–20 (2020), remanded on other grounds 6 F.4th 15 (D.C. Cir. 2021) (security guards are agents of an employer where they "monitor who enters and exits the property" as well as "detain people at the front desk and require identification ").

The Respondent violated Section 8(a)(1) by prohibiting Lopez' protected activity of distributing his union flyer in the parking lot.[40]

B. The Events on October 18

FINDINGS OF FACT

Kayla Breitbarth was another employee of the Respondent who joined and participated in the STL8 organizing committee. In 2022, her activities included speaking with co-workers on breaks or before and after work to recruit them to the organization. She also circulated petitions asking for higher wages and a safer workplace, using cards with QR codes on them. On one occasion, she attempted to give a card to General Manager Jeremy Howe but Howe ran away from her, so she taped it on his office window. She tried to give the card to other managers as well, but they refused and said they did not have authorization to accept it.[41]

On October 18, at approximately 9 p.m., Breitbarth and two other employees who were organizing committee participants entered the STL8 facility and went to the 3rd floor breakroom. The three employees were off duty. A handful of employees already were in the breakroom. Breitbarth and her cohorts attempted to interact with employees who entered the breakroom by offering them flyers and/or cupcakes. Shortly after their arrival, Operations Manager Matt St. John visited them. After confirming they were not on duty, St. John told them they had to leave the building. Breitbarth told him he was violating their rights. The three employees did not exit the building.[42]

Upon learning of their activity, HR Business Partner Jordan Howard and Senior Operations Manager Deon Grady also went to the breakroom. Howard was aware from past interactions with Breitbarth that she worked the day shift. He approached the group and, seeing the three employees had their badges on, said that he knew they were Amazon employees. Howard then asked them if they were on the clock and they responded no. They told him they were there to hand out flyers and it was their right to do so. Howard told them that they could not be in the warehouse when they were off the clock, but they were welcome to head out of the building and continue what they were doing in the parking lot. Breitbarth again told them they were impeding on her right to be there handing out flyers. Howard responded that he was not approaching her because of what she was handing out, but because she was inside the warehouse without being on the clock. He also told the employees that it was a safety concern to have employees in the building when they were off duty. At some point, Assistant

[40] Complaint par. 10.
[41] Tr. 276–280.
[42] Tr. 280–286,

General Manager Daniel Batt joined the conversation. Batt reiterated that he was not telling them they could not hand out flyers, but they could not be within the warehouse because they were off the clock. Batt also said that they were free to go out to the parking lot and continue what they were doing. As the discussion continued, Howard told the employees that, if they did not comply with the off-duty access policy and leave the building, it could lead to an insubordination claim. The employees then left the building. During the interaction, the supervisors did not check if any other individuals in the breakroom were off duty.[43]

In the same 9 p.m. timeframe, three employees, including Robyn Scott, went to the 1st floor breakroom and similarly set up shop at a table with organizing committee flyers and cupcakes. Batt and Human Resources Business Partner Gabe Doney went down to the first floor and arrived at their table. Batt confirmed with the three employees that they were off duty. Batt then told them they were in violation of the off-duty access policy and asked them to leave the building. Batt told them they could go to the parking lot to talk to employees. Scott and the other employees responded that Batt was violating their federal rights. The three employees packed up and left the facility. At the time of the conversation, 50 to 100 other employees were in the breakroom. Batt did not speak to any of those individuals concerning whether they were off duty.[44]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1) of the Act on October 18[45] by selectively and disparately enforcing its off-duty access rule only against employees engaged in union and/or protected concerted activity.

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[43] Tr. 286–290, 317–319, 431–442, 453, 462–471; R. Exh. 6. Breitbarth, Howard, and Batt testified about their interaction on October 18. Their testimony largely was consistent. However, Breitbarth had poor recall of the discussion and provided no specifics. Some of her offered testimony did not appear in affidavits she gave to the General Counsel during the investigation of this case. Thus, where her testimony conflicts with that of Howard or Batt, I credit the supervisors. In particular, I do not credit Breitbarth's testimony that the supervisors threatened to call the police or security to have the employees removed. I also do not credit her testimony that the supervisors told the employees they could not bring in food.

[44] Tr. 387–399, 471–474, 489. Batt and Scott testified about the events in the 1st-floor breakroom. Their testimony largely was consistent, except that Scott testified that the supervisors told them they were in violation of the 15-minute policy, not the off-duty access policy. The 15-minute policy was the Respondent's prior off-duty access rule, which prohibited employees from being in the facility outside of 15 minutes before and after their shift. That policy no longer was in effect at the time of this conversation, so I do not credit Scott's testimony in that regard. Where other conflicts in testimony exist, I likewise credit Batt as his recollection of the interaction was more detailed.

[45] The complaint alleged the timeframe as "about October 10" and the evidence establishes that the events occurred on October 18.

Unlawful selective and discriminatory enforcement of a facially-valid rule is established when an employer enforces its policy "against statutorily protected activity while not enforcing it against other similar activity under similar circumstances." See, e.g., *Pier Sixty, LLC*, 362 NLRB 505, 525–526 (2015); *Stabilus, Inc.*, 355 NLRB 836, 839 (2010).

As of October 18, the Respondent's off-duty access rule prohibited employees from being inside the facility or in working areas outside the building if they were off duty, defined as days off and before and after their shifts. On that same date, several employees engaged in protected activity in the Respondent's breakrooms by attempting to speak to employees and provide them with flyers concerning organizing the facility. However, all of the employees engaged in protected activity were off duty at the time and violating the off-duty access rule. The Respondent then enforced the rule by telling the employees they had to leave the facility if they were off the clock. Thus, the General Counsel has shown that the Respondent enforced its policy against statutorily protected activity.

Nonetheless, the evidence presented by the General Counsel is insufficient to establish the Respondent failed to enforce the off-duty access rule against employees engaged in nonprotected but similar activity under similar circumstances. Entirely missing are specific examples of other off-duty employees setting up shop in a breakroom to solicit employee support for or distribute information on a different cause and supervisors knowingly allowing them to do so.

Instead, the General Counsel argues that the Respondent's supervisors only asked the employees engaged in protected activity if they were off duty, but not the other employees in the breakrooms at the same time. This argument lacks merit. STL8 has over 4000 employees total working in the facility. It is impossible for any supervisor to recognize all of those employees or what shift they worked on. At the time of the employees' protected activity, roughly 50 to 100 employees were in the first-floor breakroom and 20 to 40 were in the third-floor breakroom.[46] The sheer volume of employees made it infeasible for the supervisors to ask each employee whether they were off duty. Beyond that, none of the other employees in the room were engaged in solicitation or distribution. Finally, accepting the General Counsel's argument would mean the Respondent had the burden of demonstrating it uniformly enforced the off-duty access policy. But the Board does not place such a burden on the Respondent when evaluating a claim of disparate enforcement of a policy. Rather, the General Counsel must establish that other employees violated the off-duty access rule while engaged in nonprotected conduct and were not reprimanded by the Respondent. No such showing was made.

[46] Tr 396, 426, 489.

The General Counsel also points to employee Lopez' testimony that, on one occasion, he visited the STL8 facility on a day off to retrieve a jacket he had left behind and briefly spoke to General Manager Jeremy Howe on the way out of the facility.[47] Howe did not ask Lopez if he was on duty that day. This isolated incident simply is insufficient to establish discriminatory enforcement. See, e.g., *Avondale Industries*, 329 NLRB 1064, 1231 (1999) ("single instance . . . does not prove disparate treatment"); *Albertsons, Inc.*, 289 NLRB 177, 178 fn. 5 (1988) (disparate application of rule not shown by isolated instances); *Kendall Co.*, 267 NLRB 963, 965 (1983) (disparate enforcement of policy not shown by isolated deviations). Likewise, the testimony of Lopez and Breitbarth that employees would show up early to work and just hang out on some occasions is too vague to show disparate enforcement.[48]

Accordingly, I conclude that the Respondent did not selectively or discriminatorily enforce its off-duty access policy on employees at the STL8 facility on October 18.[49]

V. DID THE RESPONDENT VIOLATE SECTION 8(A)(1) BY PROHIBITING EMPLOYEES FROM ENGAGING IN UNION OR PROTECTED CONCERTED ACTIVITY AT ITS FACILITIES IN THE CHICAGO METROPOLITAN AREA?

A. The Events on August 3 at the Respondent's MDW4 Facility in Joliet, Illinois

FINDINGS OF FACT

Drew Duzinskas works as a "picker" for the Respondent at its MDW4 facility in Joliet, Illinois. In that role, Duzinskas receives and fills orders by picking items out of stored inventory. At this facility, supervisors, human resource employees, and loss prevention employees each wear a vest with a distinct color so employees can identify what position they hold.[50]

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[47] Tr. 358–362.

[48] Tr. 287, 357–364.

[49] Complaint par. 19(a). The General Counsel's complaint also alleges that the Respondent violated Sec. 8(a)(1) on that same date by threatening employees with discipline in retaliation for the same protected conduct. This allegation centers on Howard telling Breitbarth that, if employees continued to refuse to leave the facility, a claim of insubordination was possible. Other than a conclusory sentence arguing for a violation, the General Counsel did not make a legal argument as to why the statement was unlawful. In any event, the Respondent was lawfully enforcing its off-duty access policy by asking the employees to leave the facility. They refused to do so multiple times after the initial request. Given their continued disobedience, Howard statement was a lawful description of what could occur if they refused to leave. Therefore, I dismiss complaint par. 19(b).

[50] Tr. 56–61.

In March, Duzinskas created a "25 to Survive" petition with coworkers seeking to raise the base minimum wage at Amazon to $25 per hour. During that month, Duzinskas and employee Barry Haywood (who works at the ORD9 facility in Channahon, Illinois) positioned themselves outside at the front of the facility and attempted to get their coworkers to sign the petition. In the summer of 2022, the two visited other nearby facilities to obtain additional signatures of employees supporting the petition. They also spoke to employees about collective action regarding working conditions.[51]

On August 3, Duzinskas and Haywood stationed themselves in the parking lot of the Respondent's MDW2 facility, which is across the street from MDW4. They arrived around 5 p.m. so they would be present during a shift change when employees would be entering and leaving the facility. They were distributing literature and attempting to obtain signatures in support of the petition. An unidentified male approached Duzinskas and Haywood. He asked them what they were doing. Duzinskas responded that they were exercising their rights under Section 7 and distributing literature. The man responded that they were on private property and needed to leave. He asked them to go to a bus stop across the street off of the facility's property. The man also told them that he had been watching them and taking pictures. He added that they had not engaged anyone from management. The man told them that, if they did not leave, the next call would be to the Joliet police department. Ultimately, the police did arrive at the facility. Duzinskas overheard the man telling the police that they were on private property, had no right to be there, and had been asked to leave. Duzinskas and Haywood left the property. Almost immediately thereafter, Duzinskas posted about the incident on his TikTok page, which was followed by employees at both the MDW2 and MDW4 facilities.[52]

On August 5, Chanel Kyles, a senior human resources business partner at MDW4, emailed Duzinskas concerning "Distribution in MDW2 Parking Lot." Kyles stated:

> I understand that you were at MDW2 recently in the associate and visitor parking lot, attempting to distribute fliers to other associates at that location. I also understand that someone in loss prevention at MDW2 instructed you to leave and contacted the police. I am writing to make sure you know that you have the legal right to be in exterior non-working areas (such as the associate and visitor parking lot) at our location and at other locations, such as MDW2, during your off-duty time, for purposes of engaging in protected concerted activity. This includes communicating

[51] Tr. 67–72.

[52] Tr. 72–89; GC Exhs. 4, 25, and 26.

> with other associates about working conditions. No one should have asked you to leave the parking lot, and on behalf of the company, I apologize for the mistake. Management has communicated with the MDW2 loss prevention personnel involved in the situation, to ensure that he is familiar with associate rights in this regard.[53]

LEGAL ANALYSIS

The General Counsel's complaint alleges that, on August 3, the Respondent's employees engaged in protected concerted activity at the MDW2 facility by talking to and collecting signatures from employees in support of a petition seeking higher pay. The complaint further alleges that, because of that protected activity, the Respondent violated Section 8(a)(1) by: (1) instructing employees that they cannot engage in that protected concerted activity and directing them to leave the property and go across the street; (2) engaging in surveillance of employees to monitor and/or discover their protected concerted activity and telling employees that the Respondent had their activity under surveillance; (3) threatening employees with calling the police if they did not leave the property and actually calling the police; and (4) instructing employees that they do not have a right to be on Respondent's property outside of the MDW2 Joliet facility, directing employees to leave Respondent's property, and orally instructing the police to remove the employees from Respondent's property.

As previously discussed, off-duty employees have a Section 7 right to engage in protected activity in nonwork areas. On August 3, Duzinskas and Haywood, as off-duty employees, spoke to employees about and solicited their signatures on a petition seeking a pay increase while stationed in the nonwork area of the MDW2 parking lot. Nonetheless, a loss prevention representative told them they were on private property and needed to leave. He told them, if they did not leave, the next call was going to be to the Joliet police department. The police did come out to the facility. The individual told the police that Duzinskas and Haywood were on private property, had no right to be there, and had been asked to leave. Thereafter, Duzinskas and Haywood left. I conclude that, by these statements, the Respondent violated Section 8(a)(1) by threatening employees due to their protected concerted activity. *St. Luke's Hospital*, 300 NLRB 836, 837 (1990); *Methodist Hospital of Kentucky, Inc.*, 318 NLRB 1107, 1134–1135 (1995); *Winkle Bus Co.*, 347 NLRB 1203, 1219 (2006).

In reaching this conclusion, I reject the Respondent's argument that the statements were lawful because they had no negative impact on the employees' protected conduct going forward. The Respondent points to Duzinskas and Haywood obtaining approximately 1500 signatures on their petition for higher wages without any

[53] Tr. 156–159, 182; GC Exh. 1(qqqqq). A similar email was sent to Haywood. (Tr. 143; GC Exh. 1(qqqqq).) Duzinskas also posted the apology email on his TikTok.

interference.[54] It similarly notes that it displayed a poster by the MDW4 facility's time clock informing employees that they have a right to solicit for unions and to distribute union literature during nonworking times in nonworking areas.[55] Finally, the Respondent relies upon the apology emails sent by HR representatives to Duzinskas and Haywood reiterating that they had the right to engage in protected activity in the parking lot when off duty. The subjective impact of employer statements on employees is not a factor in evaluating the legality of those statements under the Act. Moreover, the fact that the Respondent largely permitted the employees to engage in protected conduct means nothing more than that they followed the law. That an employer follows the law on many occasions does not give it carte blanche to violate the Act at a different time. The apology letter did not meet the Board's requirements set forth in *Passavant Memorial Area Hospital*, 237 NLRB 138, 138 (1978), because it was not distributed to all of the employees at MDW4.

However, I also conclude that the Respondent did not unlawfully surveil employees' protected concerted activity on August 3. An employer's routine observation of employees engaged in open Section 7 activity on company property does not constitute unlawful surveillance. *Eddyleon Chocolate Co.*, 301 NLRB 887, 888 (1991). But an employer violates Section 8(a)(1) when it surveils employees engaged in Section 7 activity by observing them in a way that is "out of the ordinary" and thereby coercive. *Aladdin Gaming, LLC*, 345 NLRB 585, 585-586 (2005), review denied sub nom. *Local Joint Executive Board of Las Vegas v. NLRB*, 515 F.3d 942 (9th Cir. 2008). Indicia of coerciveness include the duration of the observation, the employer's distance from its employees while observing them, and whether the employer engaged in other coercive behavior during its observation. *Sands Hotel & Casino, San Juan*, 306 NLRB 172 (1992), enfd. sub nom. mem. *S.J.R.R., Inc. v. NLRB,* 993 F.2d 913 (D.C. Cir. 1993).

The only evidence relating to the surveillance allegation is the loss prevention employee's statement to Duzinskas and Haywood that he had been watching them and taking pictures. This lone statement, absent any additional evidence, is insufficient to show that this observation of off-duty employees in the Respondent's parking lot was out of the ordinary. Moreover, the loss prevention employee did not specify how long he had been observing them or how far away he was while doing so. Although the individual made other unlawful statements in the same conversation, that factor alone does not make the lone statement on surveillance coercive. Accordingly, I dismiss this allegation. *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177 (2018) (simple observation of two employees openly engaged in union activity in the employer's parking lot did not violate Section 8(a)(1)).

[54] Tr. 136.

[55] R. Exh. 4; Tr. 171–172.

Accordingly, I conclude the Respondent violated Section 8(a)(1) of the Act on August 3 at the MDW4 facility in some, but not all, of the manners alleged in the General Counsel's complaint.[56]

B. The Events on August 25 at the Respondent's MDW7 Facility in Monee, Illinois

FINDINGS OF FACT

On August 25, Duzinskas and Haywood visited the Respondent's MDW7 facility in Monee, Illinois, again to distribute literature, collect petition signatures, and speak to employees. The two were stationed just outside and to the right of the main entrance. About 20 minutes after their arrival, three individuals approached them. All were wearing vests that indicated they were with loss prevention. One of the loss prevention individuals told Duzinskas and Haywood that they were in violation of the solicitation policy. Duzinskas responded that they were not soliciting. He said they were engaged in protected concerted activity. The loss prevention individuals also asked them what they were doing. Duzinskas responded that they were distributing literature and collecting signatures, conduct that was protected under Section 7. He showed them a copy of an unfair labor practice charge alleging that employees were engaged in protected activity by collecting signatures in a parking lot. The loss prevention individuals asked Duzinskas and Haywood for their names and to show their badges, then recorded their names on a form stating the two were "unregistered assets." Two of the three individuals then went back inside the facility. The remaining individual stood 20 feet away and observed Duzinskas and Haywood as they spoke to employees.[57]

LEGAL ANALYSIS

The General Counsel's complaint alleges that, on August 25, the Respondent's employees engaged in protected concerted activity at the MDW7 Monee, Illinois facility by talking to and collecting signatures from employees in support of a petition seeking higher pay. The complaint further alleges that, because of the protected activity, the Respondent violated Section 8(a)(1) by: (1) instructing employees that they cannot engage in protected concerted activity; (2) instructing employees engaged in protected concerted activity that they follow its overly-broad "Amazon Solicitation Policy "; (3) instructing employees engaged in protected concerted activity to leave the

[56] I find merit to complaint pars. 11(c), 11(d), and 11(e) (except for the allegation that the Respondent orally instructed the police to remove the employees because no such instruction was established). I dismiss complaint par. 11(a) because the loss prevention individual did not state to Duzinskas and Haywood that they could not engage in protected concerted activity in the parking lot and only asked, not instructed, the two to go across the street. I also dismiss complaint par. 11(b) alleging unlawful surveillance.

[57] Tr. 98–106; GC Exh. 3, p. 2, 32.

Respondent's property; and (4) engaging in surveillance of employees to monitor and/or discover their protected concerted activity.

To summarize from above, Duzinskas and Haywood again were engaged in protected concerted activity in the parking lot of the MDW7 facility in Monee, Illinois on August 25. Three loss prevention representatives spoke with them. The representatives asked what they were doing, told them they were violating the solicitation policy, and asked for and recorded their names. After two of the representatives left, the remaining one stood nearby and observed Duzinskas and Haywood for an undetermined period of time as they spoke with employees

Applying the same reasoning discussed above with respect to the events on August 3 at MDW4, I conclude that the Respondent violated Section 8(a)(1) when its agents told Duzinskas and Haywood that they were violating the (unlawful) solicitation policy by their conduct on August 25. But the two had a protected Section 7 right to solicit signatures from employees on a petition to improve working conditions while off duty and in the Respondent's parking lot. Thus, the agent's statement was incorrect and coercive. However, I find no merit to the remaining complaint allegations about the August 25 interaction. The Respondent's agents did not instruct Duzinskas and Haywood that they could not engage in protected concerted activity. The agents also never told the employees that they had to leave the property. Finally, the limited testimony concerning an agent's observation of Duzinskas and Haywood while they were engaged in protected activity is insufficient to establish unlawful surveillance.[58]

C. The Events in Late August/Early September at the Respondent's ORD2 Facility in Channahon, Illinois

FINDINGS OF FACT

As previously noted, Haywood works out of the Respondent's ORD9 facility in Channahon, Illinois. In late August/early September, Haywood went with another employee to the ORD2 facility, also in Channahon, to obtain signatures of employees on the $25 to Survive petition. They were stationed about 20 feet outside the main entrance to the facility. An individual wearing a yellow supervisory vest approached them and said they were not supposed to be there and should leave. Haywood responded that he had a right to be there collecting signatures and they were going to continue doing so. The individual turned around and went back inside the facility. Haywood and his coworker collected signatures for about an hour and a half.[59]

[58] Thus, I find merit to complaint par. 15(b) and dismiss complaint pars. 15(a), (c), and (d).

[59] Tr. 135–141, 145; GC Exh. 4, p. 4.

LEGAL ANALYSIS

The General Counsel's complaint alleges that, in late August/early September, the Respondent's employees engaged in protected concerted activity at the ORD2 Channahon, Illinois facility by talking to and collecting signatures from employees in support of a petition seeking higher pay. The complaint also alleges the Respondent instructed employees that they should not be at the property engaging in their protected concerted activity. These allegations are based on the supervisor's statement to Haywood that he was not supposed to be there and should leave.

Again, as an off-duty employee, Haywood had a protected Section 7 right to collect signatures from employees in support of the petition for increased pay. By telling him that he needed to leave the property, the Respondent violated Section 8(a)(1). *St. Luke's Hospital*, 300 NLRB 836, 837 (1990) (employer violated Section 8(a)(1) when a director of security told an off-duty employee he would need to leave the employer's parking lot when he was found to be leafletting). See also *Meijer, Inc*., 344 NLRB 916, 917 (2005), enf. in relevant part 463 F.3d 354 (5th Cir. 2006); *Tri-County Medical Center*, 222 NLRB 1089 (1976).

The Respondent argues that the statement to Haywood was lawful because he did not leave the property and instead collected approximately 125 employee signatures.[60] Again, the standard for evaluating whether a statement is coercive is objective, not subjective. A reasonable employee being told by a supervisor to leave the property while the employee is engaged in protected conduct would be threatened by the statement and less likely to engage in such conduct going forward.

The Respondent also contends that no evidence was presented that the supervisor knew that Haywood was engaged in Section 7 activities.[61] However, it is well established that evidence of employer knowledge of protected conduct is not a necessary element of an 8(a)(1) violation. Rather, the test is whether the Respondent's conduct would reasonably tend to interfere with, threaten, or coerce employees in the exercise of their Section 7 rights. *Alliance Steel Products*, 340 NLRB 495 (2003); *Meijer, Inc.*, supra.

The supervisor's statement to Haywood that he should leave the property violated Section 8(a)(1).[62]

[60] Tr. 140, 145.

[61] Tr. 140–141.

[62] Complaint par. 17.

D. The Events on September 23 at the Respondent's MDW6 Facility in Romeoville, Illinois

FINDINGS OF FACT

On September 23, Duzinskas and Haywood visited the Respondent's MDW6 facility in Romeoville, Illinois. Again, he was distributing literature on workers' rights and collecting signatures on the $25 to Survive petition in the parking lot. Duzinskas was approached by a member of management, a security guard (Matthew Horchmayr), and a human resources representative. A member of the group asked what he was doing. Duzinskas told them he had every right to do what he was doing. He specifically said they were exercising their Section 7 rights to distribute literature and gather petition signatures. He added that the presence of anyone from management or security would potentially have a chilling effect on his engagement with employees. He told them that they were not going to leave until the police came. One of the management representatives told Duzinskas they did not want him doing what he was doing and he should leave. At some point, Horchmayr called 911 and stated: "We have two solicitors that are on private property. We've asked them to leave. Um. So, Amazon has asked them to leave. I'm with security and they're refusing to leave, they said they're only going to leave if the police come." The police then arrived at the facility. Duzinskas showed the police a copy of the email he received from Kyles on August 5 stating that they had the right to engage in protected activity in the parking lot. Shortly thereafter, Duzinskas and Haywood left.[63]

LEGAL ANALYSIS

The General Counsel's complaint alleges that, on September 23, the Respondent's employees engaged in protected concerted activity at the MDW6 Romeoville, Illinois, facility by talking to and collecting signatures from employees in support of a petition seeking higher pay. The complaint also alleges the Respondent violated Section 8(a)(1) by: (1) instructing those employees to leave the property; (2) threatening employees with calling the police if they did not leave the property; (3) contacting the police, who came to the Respondent's MDW6 Romeoville facility; (4) engaging in surveillance of employees' protected concerted activity; and (5) interrogating employees about their protected concerted activity.

On September 23, Duzinskas and Haywood again were engaged in protected concerted activity in the parking lot of the MDW6 facility in Romeoville, Illinois. The Respondent's supervisors and agents approached them and said they did not want the two doing what they were doing and they should leave. Then the security guard called

[63] Tr. 89–98, 223–224; GC Exhs. 5, 5(a), 5(b), 27, and GC 33; Jt. Exh. 7.

the police and asked that they come to the facility to get the employees to leave. The police later arrived at the facility. Duzinskas and Haywood then left the facility.

Again, applying the same reasoning discussed above with respect to the events on August 3 at MDW4, I conclude the Respondent violated Section 8(a)(1) when its supervisors or agents told Duzinskas and Haywood to leave the facility while they were engaged in protected solicitation in the parking lot. Its agent also unlawfully called the police and had them come out to the facility to get the employees to leave. And its agent unlawfully interrogated Duzinskas by asking him what he was doing there. However, the Respondent's representatives did not threaten to call the police. Its agent only called the police after Duzinskas said he would not leave unless the police came out to the facility. Moreover, no evidence supports the allegation of unlawful surveillance and the General Counsel made no argument concerning the allegation.[64]

VI. DID THE RESPONDENT'S MAY 8, 2023, DISCIPLINE OF DREW DUZINSKAS FOR VIOLATING THE OFF-DUTY-ACCESS POLICY VIOLATE SECTION 8(A)(3) AND (1)?

FINDINGS OF FACT

In December, Duzinskas reached out to the Union and obtained authorization cards to begin a formal organizing campaign. On March 17, 2023, Duzinskas and another employee began collecting signatures on cards from the MDW4 parking lot, where they were stationed for 13 hours that day.[65]

On April 26, 2023, Duzinskas' work shift at MDW4 ended at 4 p.m. At that time, he went to the main breakroom of the facility. He positioned himself near the front entrance. Duzinskas attached a sign with "Union" written on it to a cooler and placed it on a table. He also laid out literature and authorization cards on the table.[66]

At 4:06 p.m., HR Business Partner Jennifer Vogrig chat texted Senior HR Manager Bryan MacFarlane that Duzinskas was in the breakroom after his shift with a sign. Vogrig also wrote that they should not address Duzinskas in the front of the room and give him a platform. She added that they should document what was happening and then "seek to understand" by conversing with Duzinskas before his next shift. She ended by saying they could loop legal in the next day.[67]

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[64] Thus, complaint pars. 18(a), 18(c), and 18(e) are meritorious and complaint pars. 18(b) and 18(d) are dismissed.

[65] Tr. 107–109.

[66] Tr. 109–113; GC Exh. 6.

[67] GC Exh. 28.

After Duzinskas sat down, a number of employees entered the breakroom to attend an "affinity group" meeting. The Respondent held those meetings to support various causes, including veterans and body positive peers. The meetings were held when employees were on paid working time. The affinity group meeting that day was for environmental sustainability. That meeting lasted about 45 minutes. Duzinskas had to move his materials to a nearby table as the affinity group was utilizing a screen that dropped down near the table he originally occupied. When the affinity group exited to go pick up garbage in the parking lot, an employee stopped and spoke to Duzinskas about the organizing campaign. Duzinskas provided the employee with some of the literature he had.[68]

Thereafter at around 4:45 p.m., MacFarlane approached Duzinskas. MacFarlane asked him what he was doing and Duzinskas explained it to him. Duzinskas also asked MacFarlane if he had heard about a recent ruling by the NLRB about off-duty access to breakrooms. MacFarlane responded he had not. He then said that, regardless of that, Duzinskas was violating the off-duty access policy, whatever ruling he was referring to did not apply at MDW4, and the expectation was that he would gather his things in a reasonable amount of time after his shift and then leave the facility. Duzinskas asked MacFarlane if he had to leave and MacFarlane said yes. Duzinskas left the facility.[69]

On May 8, 2023, Duzinskas' supervisor, Jacob Blue, called him into a meeting with Vogrig. Blue stated that Duzinskas had been observed violating the off-duty access policy by being in the breakroom when he was off duty. Duzinskas asked what the nature of the discipline was and Blue told him it was a coaching, the lowest form.[70]

LEGAL ANALYSIS

The General Counsel's complaint alleges that, on April 26, 2023, at the MDW4 Joliet, Illinois, facility, the Respondent, by Brian MacFarlane, instructed employees engaged in protected concerted activity that they must leave Respondent's facility within "a reasonable amount of time " after the end of their work shift and that they were not allowed to engage in union or protected concerted activity in Respondent's facilities. The complaint also alleges that, on May 8, 2023, the Respondent violated Section 8(a)(3) and (1) by issuing Duzinskas a documented coaching due to his protected activity.

[68] Tr. 113–117, 228.

[69] Tr. 117–119. MacFarlane testified credibly that he did not approach Duzinskas until after the affinity group meeting ended because it was his practice not to have any conversation that could lead to discipline in a group setting. (Tr. 228.)

[70] Tr. 120–121; R. Exh. 1.

In determining whether an employer's adverse action towards an employee is unlawful, the Board applies the mixed motive analysis set forth in *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 Management Corp.*, 462 U.S. 393 (1983). Under that framework, the General Counsel must demonstrate by a preponderance of the evidence that the employee's protected conduct was a motivating factor for the employer's adverse action. *SBM Site Services, LLC*, 367 NLRB No. 147, slip op. at 2 (2019). The General Counsel satisfies the initial burden by showing (1) the employee's protected activity; (2) the employer's knowledge of that activity; and (3) the employer's animus. *Austal USA, LLC*, 356 NLRB 363 (2010). Proof of discriminatory motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003). A discriminatory motive may be established by: (1) the timing of an employer's adverse action in relation to the employee's protected activity; (2) statements and actions showing an employer's general and specific animus; (3) the presence of other unfair labor practices; and (4) evidence that an employer's proffered explanation for the adverse action is a pretext. *National Dance Institute-New Mexico, Inc.*, 364 NLRB 342, 351 (2016); *Lucky Cab Co.*, 360 NLRB 271, 274 (2014). Pretext may be demonstrated by: (1) an employer's false reasons for an adverse action; (2) disparate treatment; (3) departure from past practice; (4) shifting explanations by an employer for an adverse action; and (5) the failure to investigate whether the employee engaged in the alleged misconduct. *ManorCare Health Services-Easton,* 356 NLRB 202, 204 (2010); *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).

If the General Counsel makes the initial showing, the burden shifts to the employer to prove that it would have taken the adverse action against the employee even in the absence of the employee's protected activity. *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004). The employer cannot meet its burden merely by showing that it had a legitimate reason for the adverse action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. *Roure Bertrand Dupont, Inc.*, 271 NLRB 443, 443 (1984). When the employer's stated reasons for its decision are found to be pretextual—that is, either false or not in fact relied upon—discriminatory motive may be inferred but such an inference is not compelled. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019).

The General Counsel has met the initial *Wright Line* burden. By the time the Respondent issued the documented coaching to Duzinskas in April 2023, he had been engaged in protected concerted activity on numerous occasions in August and September of 2022. In addition to his union activity on April 26, he also engaged in union activity on March 17, 2023, when seeking to obtain employee signatures on authorization cards in the parking lot of his MDW4 facility. In addition, Duzinskas had

filed multiple unfair labor practice charges against the Respondent.[71] The Respondent had knowledge of most of this protected conduct (aside from the March 17, 2023, union activity). Animus is established by the other unfair labor practices the Respondent committed in its dealings with Duzinskas when he was engaged in protected activity in the parking lots of the company's facilities. In addition, Vogrig's comment to MacFarlane that they should not give Duzinskas "the platform" by immediately confronting him at the front of the breakroom indicates animus towards his activity.

Thus, the burden shifts to the Respondent to establish that it would have disciplined Duzinskas even in the absence of his protected activity.

To meet this burden, the Respondent relies upon other disciplinary actions it issued to employees for violating the off-duty access rule.[72] The Respondent implemented the revised off-duty access policy on July 8. From February 18, 2023, through June 24, 2023, at the MDW4 facility, the Respondent issued discipline to six employees besides Duzinskas for violating the policy. The disciplines included two documented coachings like Duzinskas received and four first written warnings. A documented coaching issued on February 22, 2023, to an employee that was in the facility for a little more than 16 hours. The employee did not leave between shifts due to a lack of transportation. The second documented coaching issued May 4, 2023, to an employee who was in the facility for 3 ¼ hours while not on shift. Duzinskas received his documented coaching on May 8, 2023, for being in the facility while off duty (for roughly 45 minutes). A first written warning issued February 18, 2023, to an employee who slept in the breakroom for 9 ¼ hours overnight while off-shift. A first written warning issued February 23, 2023, to an employee who was in the facility for a little more than 48 hours. The employee did not leave the facility between shifts due to a lack of transportation. A first written warning issued April 4, 2023, to an employee who, while on shift, was sleeping in the breakroom due to not feeling well. A first written warning issued June 24, 2023, to an employee who was observed in the facility while not on-shift. The employee was dropped off early due to family transportation needs.[73]

This evidence establishes that the Respondent has consistently enforced its off-duty access policy at MDW4 since the policy was implemented, both before and after it issued the documented coaching to Duzinskas. Moreover, the discipline Duzinskas received was typical of that issued for similar violations of the Respondent's off-duty access policy, based upon the amount of time the employees were in the facility while

[71] GC Exh. 3. I also reverse my rejection of GC Exh. 2 at the hearing and admit the exhibit into the record. The exhibit is one of the unfair labor practice charges filed by Duzinskas prior to the charges in this case.

[72] R. Exh. 1.

[73] Certain of the disciplines do not indicate how long the employee had been in the breakroom while off duty. The disciplines do not indicate when or how supervisors learned of the employees being in the breakroom while off duty.

off duty. In particular, Duzinskas received a documented coaching for being in the breakroom while off shift for roughly 45 minutes, a timeframe in a similar vicinity of the other documented coaching (3 ¼ hours). As a result, I conclude that the Respondent has met its shifting *Wright Line* burden. *Troy Grove*, 371 NLRB No. 138 (2022) (employer established that it would have disciplined employee even absent his protected conduct where employer presented evidence that it had disciplined numerous other employees for similar misconduct); *PPG Industries, Inc.*, 337 NLRB 1247, 1254 (2002) (employer met its *Wright Line* burden where four other employees received the same or similar discipline for the same conduct); *Honda of America Mfg., Inc.*, 334 NLRB 746, 748 (2001) (employer's discipline of an employee not unlawful where it was typical of discipline the employer imposed for similar violations).[74]

The General Counsel's arguments to the contrary are unconvincing. First, the General Counsel notes that the conduct of many employees who were disciplined for violating the off-duty access rule was much more severe than Duzinskas' conduct. But the employees who stayed for much longer periods in the breakroom received more serious discipline: first warnings commensurate with their violations. The General Counsel next argues that MacFarlane and Vogrig knew of Duzinskas' presence in the breakroom six minutes after he arrived there but did not immediately confront him, meaning they caused him to violate the off-duty access rule. But Duzinskas could have left the breakroom at any time during that 45 minutes and chose not to do so. His belief that the NLRB had cleared him to station himself in the breakroom and engage in union

[74] I further note that the General Counsel did not allege or explicitly argue that the Respondent's discipline of Duzinskas violated the Act because it was imposed pursuant to an unlawful off-duty access rule. See *Southern Bakeries, LLC*, 368 NLRB No. 59, slip op. at 1–2 (2019); *Double Eagle Hotel & Casino*, 341 NLRB 112, 112 fn. 3 (2004). In that regard, the Respondent conceded that, although not in the written rule, its off-duty access policy required employees to enter and exit the facility within a "reasonable amount of time." (Tr. 1411–1413.) Indeed, MacFarlane told Duzinskas that he was violating the off-duty access policy because the Respondent's expectation was that he would gather up his things and leave the facility within a reasonable amount of time. Exactly what is reasonable is undefined.

In *Amazon.Com Services, LLC*, 373 NLRB No. 40 (2024), the Board found the Respondent's off-duty access rule in effect from June 30 to July 8 unlawful. That version of the policy was the same as the one in this case, except it contained additional language stating: "This policy may change from time to time, with or without advance notice and Amazon reserves the right to depart from the policy when deemed appropriate." The Board found that language unlawful because it gave the Respondent discretion to decide when and why off-duty employees could access its facilities. Likewise, here, supervisors have discretion to determine what constitutes a reasonable amount of time, which may vary depending on the reason an employee provides for arriving early or staying late. Because the rule grants that discretion, it arguably is unlawful. Nonetheless, absent this specific argument being advanced by the General Counsel, I decline to so find.

activity likely meant he would have remained in the breakroom longer if MacFarlane had not come to see him.[75]

Therefore, I dismiss the General Counsel's allegations regarding the Respondent's issuance of a documented coaching to Duzinskas on May 8, 2023.[76]

VII. DID THE RESPONDENT VIOLATE SECTION 8(A)(3) AND (1) BY DISCIPLINING AND DISCHARGING EMPLOYEES FOR VIOLATING THE OFF-DUTY ACCESS POLICY AT ITS FACILITY IN STATEN ISLAND, NEW YORK (JFK8)?

A. The Events on July 26

FINDINGS OF FACT

The Respondent operates a facility in Staten Island, New York, identified as JFK8. The main work shifts are day shift and night shift. Day shifts normally end at 5:15 and 5:45 p.m. Night shifts begin at 5:45 p.m. and 6:15 p.m. For each shift, the average number of employees is roughly 1200.

Derrick Palmer works in the pack department of the JFK8 facility. Palmer also is the cofounder of the Amazon Labor Union and served as its vice president. In that position, he oversaw the Union's organizing efforts both inside and outside of that facility. The campaign began on April 20, 2021. On December 22, 2021, the Union filed a representation petition with the General Counsel's Brooklyn office seeking an election to represent certain JFK8 employees.[77] On April 1, the General Counsel issued a tally of ballots showing the Union won the election by a count of 2654 to 2131 out of a bargaining unit of 8325 employees. During the period from December 22, 2021, through April 1, Palmer and the Union utilized an organizing strategy called "Occupy the Breakroom," where organizers would speak to employees and provide them with union pamphlets in the breakrooms. Palmer engaged in this conduct inside the facility when he was not scheduled to work.[78]

Again, the Respondent implemented the off-duty access policy involved in this case on June 30 and revised it on July 8. This occurred after the Union's election win at JFK8.

On July 26, Palmer was at JFK8 with fellow Union Organizer Brett Daniels. They were not scheduled to work that day. They went to the first-floor breakroom to engage

[75] I further note that the employees whom the Respondent disciplined for violating the off-duty access rule had different reasons for being in the facility while off duty and no one but Duzinskas was engaged in protected activity.

[76] Complaint pars. 22 and 25(x).

[77] Case 29–RC–288020.

[78] Tr. 671–676.

in union activity, including passing out pamphlets to employees. Palmer was wearing a union shirt. Two management representatives approached Palmer and Daniels and told them they were in violation of the off-duty access policy because they were at the facility while off the clock. At the time of this conversation, approximately 50 other individuals were in the breakroom. Palmer asked the representatives if they were going to ask other people in the breakroom about their compliance with the off-duty access policy and the representatives responded that they will get to that. However, they did not speak to any other individuals in the breakroom. Palmer and Daniels left the facility.[79]

Two days later, the Respondent issued verbal coachings to Palmer and Daniels for violating the off-duty access policy.[80]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(3) and (1) by issuing Daniels a verbal coaching due to his union activity on July 26.[81] The Board's *Wright Line* framework applies to this allegation.

As to the initial *Wright Line* burden, no question exists as to Daniels engaging in union activity on July 26. He went into a JFK8 breakroom and communicated with employees about union organizing. The Respondent obviously was aware of this conduct. Its supervisors went to speak to Daniels, who was wearing a union shirt. They told Daniels he had to leave because he was violating the off-duty access policy.

This allegation hinges on the animus element of the initial burden. The Respondent asserts that it was indiscriminatorily enforcing its off-duty access policy and had no animus towards Daniels' protected activity. The General Counsel argues that the Respondent's justification for the discipline is a pretext. To establish pretext, the General Counsel once again relies upon the supervisors' failure to ask other employees in the breakroom if they were off duty and violating the off-duty access rule. Again, though, the General Counsel is turning the *Wright Line* burden of proof on its head. The burden is not on the Respondent to show that it verified the other 50 or so employees in the breakroom at that time were on duty. Rather, the burden is on the General Counsel to establish disparate treatment to support the pretext argument. In particular, the General Counsel must show that the Respondent permitted other employees to engage in the same or substantially similar conduct as Daniels in the breakroom while off duty and did not tell those employees to leave the facility. The only evidence presented by the General Counsel in this regard was that certain employees did stay in the breakroom before and after their shifts. What was lacking was evidence that the Respondent's

[79] Tr. 696–703.

[80] GC Exhs. 45 and 71.

[81] Although the Respondent issued a verbal coaching to Palmer, the General Counsel's complaint does not allege that verbal coaching to be unlawful.

supervisors were aware of the employees doing so and let them stay in the facility.[82] Beyond that, the fact that many employees were in the breakroom on July 26 at the time Daniels violated the off-duty access rule does not establish, on its own, that any of them were off duty. Certainly, there were no other employees, on that date or otherwise, who were sitting at a table in the breakroom speaking to employees and handing out literature to advocate for a cause while they were off duty. The General Counsel has failed to demonstrate disparate treatment.

Accordingly, I conclude that the General Counsel did not meet the initial *Wright Line* burden due to a failure to establish the Respondent's animus to Daniels' protected activity.[83]

B. September 28

On September 28, Palmer, Connor Spence, and Tristan Martinez went to the breakroom in the JFK8 facility to engage in union activity with employees during the day shift. All three individuals were off duty at the time. They each wore a yellow vest with "organizer" on the back. Inbound Operations Manager Aaron Parsons and Operations Manager Andrew Grossman were informed that some employees were in violation of the off-duty access policy in the breakroom. They were tasked with meeting the employees and telling them they needed to leave the facility. When the supervisors arrived in the breakroom, Grossman asked Palmer, Spence, and Martinez if they realized they were in violation of the off-duty access policy. Spence asked how Grossman knew they were not supposed to be there. Grossman responded that he worked with Spence, knew he was a night-time employee, and should not be there right now. Palmer asked the supervisors if they had inquired of any other workers inside the breakroom whether they were off duty as well. The supervisors did not respond. From there, the groups went back and forth with the supervisors asking Palmer, Spence, and Martinez to leave and the three employees responding they had a right to be there and refusing to leave. At the time of the conversation, a few hundred individuals were in the breakroom. The supervisors did not speak to any other employees in the breakroom at that time. At some point, Parsons and Grossman left the breakroom and returned to the main office to report what had occurred. When they later returned to the breakroom, Palmer, Spence, and Martinez had departed.[84]

[82] See Tr. 564, 642–645, 736, cited by the General Counsel.

[83] Complaint par. 25(i) is dismissed.

[84] Tr. 550, 678–679. No party contends that Martinez was off duty. I credit Parsons' testimony about the September 28 conversation where it conflicts with that of Spence or Palmer. In particular, I do not credit Palmer's testimony that a management representative told them that they approached the three because of the union vests they were wearing. Parsons gave detailed and convincing testimony concerning the reason he was sent to talk to the group and that reason was a violation of the off-duty access policy.

On November 9, the Respondent issued a documented coaching to Palmer for violating the off-duty access policy on September 28. On November 19, the Respondent issued Spence a documented coaching for violating the off-duty access policy on September 28.[85]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(3) and (1) by issuing Palmer and Spence documented coachings due to their union activity on September 28.

For the same reasons set forth in the legal analysis section above regarding the discipline of Daniels and Palmer for their July 26 conduct, I find no merit to these allegations.[86]

C. October 3

On October 3, a fire broke out at JFK8 around 4:30 p.m. and employees were evacuated from the facility. When employees notified Palmer of the fire, he decided to go to the facility even though he was not scheduled to work that day. Palmer was joined by four other individuals, including Spence, Daniels, Martinez, and employee Michelle Valentin Nieves. They all wore vests with "union organizer" on them. During Palmer's first visit, he remained outside the facility. After the Respondent decided to send the day-shift workers home with pay, Palmer left.[87]

A little past 6 p.m., Robert Greene, an HR business partner at JFK8 at the time, arrived at the facility. Mike Tanelli, a senior HR business partner, informed Greene of the fire and that the New York fire department put it out. Tanelli also reported that the fire department had inspected the facility and cleared it to return to business operations. Shortly thereafter, Palmer received communications from night-shift employees that they were sitting in the breakroom and not working. Palmer decided to return to the facility. He did so, entered JFK8, and went to a breakroom on the first floor.[88]

Normal operations resumed around 7 p.m. and 1100 employees returned to work. However, about 80 to 90 employees refused to do so because they did not believe it was safe, claiming they could smell smoke. The employees wanted the facility shut

[85] Tr. 551–552, 678–683, 1338–1354, 1360; GC Exhs. 46, 47, and 48 (Bates stamp 619). The General Counsel and the Respondent agree that Martinez likewise received a documented coaching for violating the off-duty access policy on September 28, but that documented coaching does not appear to be in the record.

[86] Complaint pars. 25(ii) and 25(iv) are dismissed.

[87] Tr. 554–555, 621–623, 683–684, 695.

[88] Tr. 685–686, 1672–1677.

down and night-shift employees sent home with pay. Palmer, Spence, Daniels, and Martinez led this group. When Senior Operations Manager Adebodun Aina announced via a bull horn to employees in the breakroom that it was safe to go back to work, Palmer asked Aina how he knew it was safe. Aina told him the fire department said so. Palmer asked for proof but none was provided. Then the union representatives and employees began chanting that they would not return to work and wanted to be sent home with pay. Aina repeated the direction two more times without success. He then returned to the main office. He was joined there by Greene, Tanelli, and Operations Manager Pete Carollo.[89]

The group of employees who did not return to work eventually made their way to the main office area of the JFK8 facility. That area has an entrance at the front, another at the back, and offices and cubicles. When arriving at the office, the employees chanted "home with pay." Daniels screamed out to the crowd that they would not leave until they were sent home with pay. Ania told the employees they were free to use their time off and go home if they did not feel safe. At some point in the interaction, Daniels put his hand onto Tanelli as they were speaking.[90]

When Greene arrived there, he went into an office in the back where Tanelli appeared to be speaking on the phone. The two had the office door closed. Palmer, Spence, and Martinez repeatedly opened and closed the office door asking for an update. They wanted to speak with the person with whom Tanelli was on the phone and said the group was getting rowdy. They added that the employees needed to be sent home with pay right now and were not leaving until they were given that. Tanelli told them he was on the phone, needed the office space for a private discussion, and asked them to leave.[91]

At some point, Palmer and Martinez told Greene they were going to open the door to the office Tanelli was in and let the employees inside. Palmer warned Greene that it was his last chance. Then Martinez opened the door and led the employees into the office. They chanted home with pay. While holding a cell phone, an employee named Jimmy Anderson got in Greene's face and shouted expletives and a racial slur at him while laughing. Another handful of employees retrieved hot cups of coffee from a machine in the office and began throwing the coffee onto office windows. At one point, Martinez screamed to the employees that Amazon hired these college kids who knew nothing about what they were doing and paid them three or four times the salary the employees made while doing half the work. Palmer, Spence, and Martinez also walked around Greene in a circle several times.[92]

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[89] Tr. 686–688, 1678–1682.

[90] Tr. 688–690, 1682–1685, 1687–1689.

[91] Tr. 1690–1692, 1695–1696.

[92] Tr. 1691–1694. Greene testified at the hearing that he viewed the employees' complaints about their wages as a "negative sentiment" or "agitative statement." (Tr. 1749–1750.)

The group of employees remained in the office for at least 3 hours. At the end of this time period, Greene heard Palmer, Spence, and Martinez say to one another that they will file a ULP. Martinez said to the employees that there was nothing the company could do to them because they were engaged in protected concerted activity and they would not be penalized and would get paid for this. He added that he would file a ULP and told the employees they could go home. The group then left. About an hour or 2 later, Palmer received an email notifying him that he had been suspended pending an investigation.[93]

Following this incident, the Respondent's loss prevention team began a process of identifying the employees who were present in the main office. Using video footage and badge scans into the office, the Respondent identified 40 to 50 people who participated. From there, they investigated the conduct of the identified employees to determine if it violated any policies. The individuals who participated were suspended with pay pending investigation. The Respondent spoke to each participant individually and informed each one that the company respected their right to engage in protected concerted activity but they also needed to be respectful and safe when doing so.[94]

Ultimately, the Respondent determined that the employees who were scheduled to work but who refused to return to work did so due to safety concerns. As a result, the Respondent did not discipline those employees and paid them for the time they were on suspension. The Respondent did not discipline them for violations of the off-duty access policy, because the employees were scheduled to work on October 3.[95]

The Respondent also determined that other employees had violated different policies by their conduct on October 3 which warranted discipline. The Respondent terminated Anderson for workplace violence, specifically putting his phone in Greene's face, calling him a racial slur, and laughing. The Respondent issued discipline to Palmer, Spence, Martinez, Sherwood, and Nieves for violating the off-duty access policy. In particular, on November 7, the Respondent issued Daniels a documented coaching; on November 9, the Respondent issued Palmer a first written warning; on November 19, the Respondent issued a first written warning to Spence; on November 26, the Respondent issued a verbal coaching to Nieves; and on December 1, the Respondent issued a documented coaching to Martinez[96]

[93] Tr. 688–690. Greene and Palmer testified concerning what occurred at JFK8 on October 3. Their testimony largely was consistent. Where it conflicts, I credit Greene, who provided far more and vivid detail about the events and appeared reliable when testifying. In contrast, Palmer's testimony about what occurred was abbreviated and appeared incomplete, in particular about what occurred over the 4 hours he was there in the evening.

[94] Tr. 1697–1702.

[95] Tr. 1520–1524, 1742–1745.

[96] Tr. 650–652, 751–759, 1705–1712; R. Exhs. 41, 42, 43, 48; GC Exhs. 60 and 71.

As to the Respondent's enforcement of the off-duty access policy upon other employees, seven other employees received discipline for being in the JFK8 facility during nonworking hours from the July 8 implementation of the policy through January 7, 2024. This included a verbal coaching to Scarlett Young on December 4, for sleeping in the breakroom. It included JC Luengas on September 23, 2023, who was waiting for his next shift because he lived far away. It included Natiangue Diaby on October 7, 2023, who was sleeping in the "prayer room" waiting for the next shift due to living far away. It included Landry Chibeze on January 6, 2024, who was playing billiards and refused on multiple occasions to provide his name or badge to supervisors. It included Deon Garricks on January 7, 2024, for playing billiards. It included Djadji Diop on January 20, 2024, who claimed an unidentified individual told her to wait. It included Kervens Jeanjoseph on January 5, 2025, who was waiting for the next shift and had no place to stay. The last six employees all received a documented coaching. None of the seven employees was shown to be a union supporter.[97]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the documented coachings the Respondent issued to Palmer, Spence, Nieves, and Martinez for violating the off-duty access policy on October 3 violated Section 8(a)(3) and (1) because they were due to the employees' union and protected concerted activity.

Again, the Board's *Wright Line* standard applies. As to the General Counsel's initial burden, no question exists that the discriminatees engaged in protected conduct of which the Respondent was aware.

However, animus is another story. The General Counsel first relies upon Greene's testimony that the employees' complaint about their pay compared to what supervisors made was a "negative sentiment."[98] But that constitutes Greene's opinion of the employees' complaint about their wages. He did not respond to their complaint by expressing hostility towards it at the time the complaint was made. He likewise did not testify that he was angered by their complaint. This simply is insufficient evidence to establish animus.

The General Counsel further argues that animus is established by the Respondent's disparate treatment of the union organizers compared to other employees who violated the off-duty access policy. Again, the problem with this argument is that the General Counsel provided no examples of employees who violated the policy where the Respondent was aware of the violation and did not issue discipline to the employee.

[97] Tr. 1430–1444; R. Exhs. 31–37.

[98] Tr. 1748–1749.

Instead, the General Counsel relies upon employee testimony that they arrived before or after their shifts and sat in the breakroom.[99] However, the employees were not asked if any supervisors were aware of their conduct. Without management knowledge of what they were doing, disparate treatment cannot be established.

The General Counsel also points to the Respondent not issuing discipline to employees who participated in the refusal to work but were not union organizers. However, the Respondent (wisely) determined that discipline was not warranted for employees who engaged solely in (the protected activity of) a work stoppage related to safety concerns. Those employees did not violate the off-duty access policy because they were scheduled to work that day.

The General Counsel's last argument is that the Respondent kept the union organizers on suspension for a longer period of time than the other employees who participated in the walkout. I find nothing nefarious about the Respondent taking time to properly investigate the matter. Moreover, employees are paid when they are on a suspension pending investigation.[100] Finally, Spence's investigation involved two incidents, the one on September 28 and the other on October 3.

As a result, I conclude the General Counsel has not met the initial *Wright Line* burden, because animus towards the discriminatees' protected conduct has not been established.[101]

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[99] Tr. 564, 642–645, 736. The General Counsel also relied upon testimony about hypothetical situations, which I deem irrelevant. (Tr. 1603–1604.)

[100] Tr. 1472–1473.

[101] Complaint pars. 25(iii), 25(v), 25(vi), and 25(vii) are dismissed. Complaint par. 25(viii) alleging that the Respondent issued an unlawful first written warning to Martinez also is dismissed. The record contains no evidence that Martinez received such a warning.

However, I do note that, had the General Counsel met the initial burden, I would have concluded that the Respondent did not meet its shifting burden to demonstrate that it would have disciplined the discriminatees even absent their union activity. The Board has found that "in the absence of countervailing evidence, such as that of disparate treatment based on protected activity, the Respondent [can meet its *Wright Line* burden] by demonstrating that it has a rule … and that the rule has been applied to employees in the past. " *Avondale Industries,* 329 NLRB 1064, 1066 (1999) (quoting *Merillat Industries,* 307 NLRB 1301, 1303 (1992)). The Respondent issued discipline to Martinez, Nieves, Palmer, and Spence on dates from November 9 through December 1. The Respondent's examples of enforcing the off-duty access rule upon employees not engaged in union or protected concerted activity began on December 4 through January 5, 2025. Thus, all of the examples occurred after, not before, the discipline to the discriminatees. The Respondent did not demonstrate a consistent past practice of enforcing the off-duty access rule prior to its discipline of the discriminatees.

D. The Respondent's Discipline and Discharge of Conner Spence

BACKGROUND FINDINGS OF FACT

Connor Spence began working for the Respondent in August of 2017. From May 2021 to November 2023, Spence worked at the JFK8 facility. Spence also was one of the founding organizers of the Amazon Labor Union. During his employment, he served in a number of union positions. From October 2021 to June, he was the vice president of membership. From June to November, he was the secretary treasurer. Spence routinely wore clothing with union insignia on it while working. This included vests that said "organizer" on them.[102]

1. Did the Respondent unlawfully issue Spence a first written warning for violating the Off-Duty Access Policy on December 7?

FINDINGS OF FACT

On December 7, Spence went to JFK8 to deliver union newspapers and update employees on organizing activities. Spence met employees/union members Ruel Mohan and Manny Thompson. They were speaking on the production floor in Spence's work department. The other employees were working at the time. Area Manager Jack Rozak, whom Spence directly reported to, observed Spence talking to the employees. Rozak was aware that Spence was not on the schedule that day, so he notified Operations Manager Ryan. The two confirmed Spence was not scheduled to work and went to speak to him. Ryan told Spence he was not scheduled to work that day and was in violation of the off-duty access policy. Ryan asked Spence to leave. Spence walked out of the facility. The supervisors did not converse with Mohan or Thompson. On December 10, the Respondent issued Spence a final written warning for violating the off-duty access policy on December 7. During a meeting when he received the discipline, Spence told the managers that the off-duty access policy was unlawful on its face and was discriminately enforced.[103]

[102] Tr. 541–545.

[103] Tr. 564–566, 951–954. I credit Rozak's testimony where it conflicts with Spence's testimony. Rozak provided greater detail and Spence's testimony was very brief. In particular, I credit Rozak's testimony that Spence was on the production floor. Spence confirmed he was speaking to the employees in "my department but near the green walkway," the latter used by employees to walk around the facility. He then stated the green walkway was not a work area. That testimony is irrelevant if the conversation took place on the production floor, a work area.

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(3) and (1) by issuing Spence a first written warning on December 10, for violating the off-duty access policy on December 7. The Board's *Wright Line* standard applies to this allegation.

I conclude that the General Counsel has not met the initial *Wright Line* burden. To begin, a significant question exists as to whether Spence was engaged in protected conduct that day. The Board does not condone solicitation or distribution when employees are in work areas on working time. *Food Services of America, Inc*., 360 NLRB 1012, 1016 (2014). Spence was on the production floor in his department that day to deliver union newspapers to employees and to give employees updates on organizing activities. If the record established specifically that he had distributed union newspapers to employees while they were working on the production floor, then Spence was not engaged in protected conduct. However, his testimony is insufficient to demonstrate he engaged in distribution with the two employees. Spence said he had "gotten pulled into a conversation "with the two but did not describe the conversation or whether he had provided the two with union newspapers. Without the connection, it cannot be said that Spence's conduct was unprotected.

Nonetheless, animus of the Respondent to Spence's December 7 conduct was not established. The General Counsel relies upon Rozak not asking the two other employees if they were off duty. But Rozak personally observed the two working as they were talking to Spence. Under these circumstances, the Respondent lawfully asked Spence to leave and it lawfully issued him the December 10 first written warning for violating the off-duty access policy.[104]

2. Did the Respondent violate Section 8(a)(1) on April 14, 2023, when its supervisors conversed with Spence and another employee?

FINDINGS OF FACT

On April 14, 2023, Spence and fellow Organizer/Coworker David Desiree Sherwood went to the JFK8 facility even though they were not scheduled to work. They wanted to speak to coworkers about getting an appeals panel restarted that would allow employees to challenge final written warnings or terminations. They each walked through their own department and then met up in the main breakroom. Rozak observed Spence talking to another employee with a clipboard in his hand and paper on the clipboard in a work area. Rozak was aware that Spence was not scheduled to

[104] Complaint par. 25(ix) is dismissed. I further note Spence received a first written warning in light of his prior violations of the off-duty access policy on September 28 and October 3.

work that day. Rozak reported what he saw to Senior HR Manager Tyler Grabowski and HR Manager Rob Greene. Rozak was directed to speak to Spence and he took Area Manager JP Anacreon with him. Rozak found Spence and Sherwood in the main breakroom. He told the two that they were observed in their respective departments and he wanted to remind them of the no solicitation policy. Spence responded that they were not violating that policy and the policy did not preclude them from exercising Section 7 rights. Rozak asked if the two were scheduled to work. They responded no. Rozak asked them what they were doing in the building and Spence said union activity. Rozak advised the two that if they were not scheduled to work, they were in violation of the off-duty access policy and he needed to ask them to leave. Spence responded that the policy was unlawful on its face and discriminatorily enforced. He said the NLRB had overruled the policy. Spence told Rozak he could verify that with HR. Rozak again asked the two to leave and he departed the breakroom. The two did not leave.[105]

About 45 minutes later, Senior Operations Manager Adebodun Aina and Greene came into the breakroom and spoke with Spence and Sherwood. Aina asked Spence if everything was ok and Spence replied everything was fine. Aina then asked if there was any reason why he was there while off duty. Aina asked if Spence had any barriers he was facing as to why he was there. Spence responded that he was waiting on a friend. Aina asked Spence if he was aware of the off-duty policy. Spence said he understood the policy. Aina said the two were not scheduled to work and were in violation of the off-duty access party. He asked them to leave. Spence again said the policy was unlawful on its face and discriminatorily enforced. Aina repeated his first comments. Spence asked him if they were asking or telling them to leave and what would happen to them if they did not leave. Aina responded that they would be written up for insubordination if they did not leave. Spence responded that was all they needed to hear and he and Sherwood left.[106]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1) on April 14, 2023, by: (1) disparately enforcing its off-duty access rule against employees engaged in union and protected concerted activity; (2) threatening employees with discipline for engaging in the same activity; and (3) implying that employees could not engage in union and protected concerted activity because of the Respondent's no-solicitation policy.

[105] Tr. 566–568; 653–655; 955–959.

[106] Tr. 568–570, 656–657, 1712–1716.

The General Counsel's first allegation concerning the meetings on April 14, 2023, is that the Respondent, by Rozak and Aina, disparately enforced the off-duty access policy against employees. The General Counsel's only argument of disparate enforcement is that the Respondent's supervisors did not ask other individuals in the breakroom whether they were off duty. But the witness testimony provided in that regard is insufficient to establish that anyone else was in the breakroom, was off duty, and was not asked by supervisors if they were off duty and needed to leave the facility. Spence testified that, during the conversation with Aina, the breakroom was "fairly empty at that time" and there "may have been a couple" of employees.[107] Sherwood's only testimony was responding "yes " to a question posed concerning whether any others were in the breakroom at the time of their conversation with Aina.[108] No further details were provided. Absent that information, I cannot conclude that the supervisors failed to enforce the off-duty access policy against other employees who were in the breakroom and off duty.[109]

The General Counsel's second allegation is that the Respondent threatened employees with discipline due to their engagement in protected activity. During his conversation with Spence and Sherwood, Aina told them they were in violation of the off-duty access policy and he asked them to leave. In response, Spence asked Aina what would happen if they refused to leave (after they already had refused Rozak's request that they leave). Aina told them they would be disciplined for insubordination. Having found the supervisors lawfully applied the off-duty policy to Spence and Sherwood on that date, Aina's statement likewise was lawful. Spence asked him the question and Aina reasonably responded that the refusal of the employees to follow a supervisor's lawful instruction would constitute insubordination. Aina's statement was not a coercive threat under Section 8(a)(1).[110]

Finally, the General Counsel's complaint alleges that the Respondent implied that the employees could not engage in their protected conduct on April 14, 2023, because of the Respondent's no-solicitation policy. In this regard, Rozak observed Spence on an off-duty day talking with employees on the production floor while holding a clipboard with paper on it. Rozak told Spence he had so observed and then reminded him of the solicitation policy. He did not tell Spence he had violated that policy, he did not ask him to leave the facility for violating that policy, and the Respondent did not discipline him for violating the policy. Rozak's apparent conclusion that Spence could be engaged in prohibited solicitation was reasonable under the circumstances, given Spence's conduct. Rozak's statement about the solicitation policy did not violate Section 8(a)(1), as it was not a coercive threat.[111]

[107] Tr. 569.

[108] Tr. 656.

[109] Complaint par. 20(a) is dismissed.

[110] Complaint par. 20(b) is dismissed.

[111] Complaint par. 20(c) is dismissed.

3. Did the Respondent violate Section 8(a)(1) on April 18, 2023, when its supervisors conversed with Spence and another employee?

FINDINGS OF FACT

On April 18, 2023, Spence talked to fellow organizer/coworker Brima Sylla in the third-floor breakroom while Spence was off duty. Sylla was working that day but was in the breakroom roughly a half hour before his shift. Operations Manager Endri Qosja observed Spence there while Qosja was taking his break. Qosja was aware that Spence worked a part-time schedule which involved weekend shifts, but this was a Tuesday. Thus, Qosja confirmed that Spence was not scheduled to work that day, then went to speak to him. Qosja brought Operations Manager Ariana Ovadia with him. Qosja told Spence he was not scheduled to work that day and needed to leave the building. Qosja and Ovadia left the breakroom but returned shortly thereafter. Spence still was in the breakroom. Qosja again told Spence that, because he was not scheduled for the day, he could not be in the building. Spence asked Qosja how he knew Spence was not scheduled. Ovadia interjected and said that Qosja knew who he was because Spence worked in the building. She added that, if Spence was unscheduled to work, he needed to leave. Qosja then specifically asked Spence to leave. Sylla told Spence that they should just leave and the two left the breakroom. At the time of this conversation, two to three individuals were in the breakroom. Qosja did not speak to them because he did not recognize them. Shortly thereafter just outside the breakroom, Spence overheard Ovadia tell Sylla that Amazon was not recognizing the Union and so he did not have a right to be in the building. Spence interjected that one had nothing to do with the other and employees had the right to organize in the workplace.[112]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(1) on April 18, 2023, by: (1) disparately enforcing its off-duty access rule against employees engaged in union and protected concerted activity; and (2) surveilling employees engaged in protected activity.

[112] Tr. 570–575, 726–730, 1372–1378, 1383–1385. Spence, Silla, and Qosja testified concerning their April 18, 2023, conversation. The findings of fact are a conglomeration of their testimony where no conflicts exists. The only conflict was whether Spence was scheduled to work that day, as he claimed, or was not scheduled, as Qosja testified. I credit the latter's testimony because Spence testified in ambiguous fashion that he "technically" was scheduled to work that day. His testimony about being in the breakroom before his shift also was elicited with a leading question. In any event, no dispute exists that, at the time Spence was in the breakroom, he was not on duty.

I conclude that the circumstances of this encounter differ from the ones discussed above and the Respondent discriminatorily enforced the off-duty access policy against Spence on this date. Sylla was present for the entire conversation between Spence and the supervisors. At no point did Qosja or Ovadia ask Sylla if he was scheduled to work or off duty. They also did not determine if Sylla actually was scheduled to work that day. The sole focus on Spence coupled with the failure to question Sylla establishes discriminatory enforcement of the off-duty access policy on that date, a violation of Section 8(a)(1).[113]

4. Did the Respondent unlawfully issue Spence a final written warning for violating the Off-Duty Access Policy on May 2, 2023?

FINDINGS OF FACT

On May 2, 2023, Spence and Sherwood entered the JFK8 facility to meet a coworker in the main breakroom around the evening shift change. As Spence and Sherwood were walking towards the breakroom entrance, they passed Greene who asked them if they were scheduled to work right now. (Greene was aware that Spence was not scheduled to work that day.)[114] Spence did not respond and continued into the breakroom. Greene then asked Sherwood if he needed any support from HR. Sherwood said no. Greene asked him if he was scheduled to work and Sherwood responded no. Greene told him he was in violation of the off-duty access policy and he had to ask Sherwood to leave the building. Sherwood did so. Meantime, Spence was meeting with coworkers in the breakroom. Greene approached them and told Spence that he had to leave the building if he was not scheduled. Spence responded that he was not leaving, he was there to have a conversation, and he would leave when he was done with it. Greene then raised the possibility of Spence engaging in insubordination. Spence again told Greene he was not leaving and Greene should do what he had to do. Greene walked away. At least 100 people were in the breakroom at the time of this conversation.[115]

On May 5, 2023, the Respondent notified Spence that he was suspended pending investigation. He remained on suspension until June 12, 2023. On that date, Spence

[113] Thus, complaint par. 21(a) is meritorious. However, complaint par. 21(b) is dismissed as no evidence of surveillance was introduced.

[114] I credit Greene's testimony that he was aware that Spence was not scheduled to work that day. (Tr. 1717–1718.)

[115] Tr. 576–580, 656–657, 1716–1719; R. Exh. 10 (final written warning to Spence issued June 13, 2023).

returned to work and the Respondent delivered to Spence a final written warning for violating the off-duty access policy on May 2, 2023.[116]

LEGAL ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(3) and (1) by issuing Spence a final written warning on June 12, 2023, for violating the off-duty access policy on May 2, 2023. The Board's *Wright Line* standard applies to this allegation.

I again conclude that the General Counsel did not meet the initial *Wright Line* burden. Greene had no knowledge that Spence was engaged in protected conduct. He initially observed Spence walking in the facility and then in the breakroom. Spence did not tell Greene he was engaged in protected conduct. He said only that he was there to have a conversation.

Similarly, Greene had no animus to any protected conduct. Greene simply asked Spence if he was scheduled to work and told him he would have to leave if he was not. If animus is established anywhere on May 2, it would be Spence's animus towards Greene's lawful instruction that he leave the facility if he was not scheduled to work. Spence initially ignored Greene's inquiry as to whether Spence was scheduled to work. He then twice refused to comply with Greene's instruction that he leave the facility. Instead, he told Greene that he would leave when he was done with his conversation. Beyond that, the Respondent issued Spence a second final written warning, when it could have terminated him under its progressive discipline policy for his violation of the off-duty access policy.

To establish animus, the General Counsel points to the fact that the Respondent did not discipline Sherwood for violating the off-duty access policy that same day. However, this does not constitute disparate treatment, because the conduct of Spence and Sherwood was not the same or similar. Unlike Spence, Sherwood complied with Greene's request that he leave the facility if he was off duty. He was not insubordinate.

For all these reasons, I conclude the Respondent's issuance of the final written warning to Spence on June 12, 2023, was lawful.[117]

5. Did the Respondent unlawfully suspend Spence on October 23, 2023, and discharge Spence on November 29, 2023?

[116] Tr. 580.

[117] Complaint par. 25(xi) is dismissed.

On October 10, 2023, Spence took voluntary time off and went to JFK8 to engage in union activity. On that date, HR Manager Arvinth Thangavelan parked his car prior to his shift and observed Spence and another individual carrying an arm full of shirts as they entered the building. At the time, Thangavelan was aware that Spence was not scheduled to work that day. Once Thangavelan entered the facility, he met with Grabowski and the two verified that Spence was not on the schedule. Then two area managers arrived and reported to him and Grabowski that Spence was soliciting other employees while they were working. Thangavelan went to speak with Spence. They met on the green mile walkway. Employees were walking back and forth on the walkway as the two spoke. Thangavelan asked Spence if he was scheduled to work that day. Spence responded that Thangavelan was aware of his mid-shift and had no reason to ask him that. Spence added that he was on his way out anyway. Thangavelan asked Spence if he would show Thangavelan on his phone that he was scheduled to work that day. Spence responded that he did not have to do that. Spence also told Thangavelan during the conversation that Spence liked him, but Thangavelan knew Spence did not agree with the policy and he did not want to have to name Thangavelan in his lawsuit.[118]

On October 18, 2023, Spence again went to the facility to engage in union activity on a day he was not scheduled to work. At one point, Thangavelan again spoke to Spence in the green mile walkway. Thangavelan asked Spence if he was scheduled to work that day. Spence asked Thangavelan if he knew Spence's position on the off-duty access policy. He added that it was a day that he normally would be scheduled to work so he did not know why they were having this conversation. Spence then walked away.[119]

On October 23, 2023, Greene and Thangavelan met with Spence. Greene said that he wanted to discuss times when Spence had been observed in the facility when he was not scheduled to work. He said the times were October 10 and 18. He asked Spence if he had any explanation for being in the facility on those dates. Spence responded that he already knew Spence's position on the off-duty access policy. Thangavelan told Spence he was being put on a paid suspension pending investigation for violating the off-duty access policy on those two dates.[120]

[118] Tr. 582–584, 1571–1574, 1577–1582. The transcript incorrectly identifies Arvinth Thangavelan as "Ervin" in Spence's testimony. Spence also violated the off-duty access policy on October 9, 2023, but the Respondent did not discipline him for that violation. (Tr. 1575-1577.)

[119] Tr. 585–587, 1582–1583.

[120] Tr. 587–589; GC Exh. 63.

On November 29, 2023, the Respondent notified Spence that he was terminated for violating the off-duty access policy on October 10 and 18, 2023. Grabowski ultimately made the decision to terminate Spence. He consulted with legal given prior litigation involving Spence. The Respondent gave Spence two separate final written warnings before discharging him, which was not the standard practice.[121]

LEGAL ANALYSIS

The General Counsel's complaint alleges that, on October 10 and 18, 2023, the Respondent violated Section 8(a)(1) by disparately enforcing its off-duty access policy upon employees engaged in protected conduct. The complaint also alleges that the Respondent violated Section 8(a)(3) and (1) by suspending Spence on October 23 and discharging Spence on November 29, 2023, due to his union and protected concerted activity.[122]

I conclude that the Respondent did not disparately enforce its off-duty access policy on Spence on October 10. Spence continued his established pattern of entering the facility on an off day to engage in union activity. Thangavelan became aware of this, confirmed that Spence was not scheduled to work, and then questioned Spence about it. Spence refused to confirm or deny that he was scheduled. This was lawful enforcement of the off-duty access policy.

The General Counsel again argues that disparate treatment is established by Thangavelan's failure to ask other present employees if they were off duty, in particular the other individual Thangavelan saw with Spence in the parking lot. But the unidentified individual was not with Spence when Thangavelan spoke to him. That means Thangavelan never had an opportunity to inquire as to the individual's work status that day. The General Counsel also argues that Thangavelan did not ask any employees walking on the green mile walkway if they were off duty. As already has been repeatedly concluded, that Thangavelan did not randomly stop some or all of those individuals to inquire if they were off-duty does not establish disparate enforcement. The General Counsel provided no specific examples of Thangavelan seeing individuals on the walkway who he knew were not scheduled and declining to enforce the off-duty access policy on them.

For all these reasons, I conclude the Respondent did not violate Section 8(a)(1) on October 10.

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[121] Tr. 589–590, 1467–1471; R. Exh. 11.

[122] Complaint par. 23 states that the violations occurred "on multiple occasions in late September and in October 2023, including on October 18." However, the General Counsel makes no legal argument concerning the events which occurred on that date. Rather, the General Counsel relies upon a conversation which occurred on October 10.

This same conclusion applies to the Respondent's conduct on October 18. On the latter date, Spence again was inside JFK8 engaged in union activity when he was off duty. Thangavelan asked him if he was off duty and Spence provided a nonresponse. No other employee participated in that conversation. Thus, Spence violated the off-duty access policy and Thangavelan did not disparately enforce it on Spence.[123]

The Respondent put Spence on a paid suspension pending investigation of his conduct on October 10 and 18. Having found that the Respondent did not violate the Act on those dates and Spence did violate the off-duty access policy, I conclude the suspension was lawful.

Finally, turning to Spence's discharge, I again note that the *Wright Line* standard applies and no dispute exists that Spence engaged in protected conduct of which the Respondent was aware. To establish animus, the General Counsel argues in the posthearing brief that the Respondent disparately enforced the off-duty access policy against Spence on December 7; April 14 and 18, 2023; May 2, 2023; and October 10, 2023, because he was with other employees on those dates but supervisors did not ask those employees if they too were off duty.

On December 7, Spence was with two fellow employees during his conversation with management but supervisor Rozak saw Spence talking to employees on the production floor while they were working. Thus, no need existed for Rozak to ask the two employees if they were off duty.

On April 14, 2023, Spence was with Sherwood and supervisors spoke to both of them concerning whether they were off duty and violating the policy. No other employees were present.

On April 18, 2023, a supervisor did speak with Spence when he was accompanied by fellow employee Sylla, and the supervisor did not ask Sylla if he was off duty that day.

On May 2, 2023, Spence and Sherwood both were asked by supervisors to leave the facility after they confirmed they were off duty.

On October 10, 2023, a supervisor observed Spence with another individual outside in the parking lot, but Spence was the only individual present for the subsequent conversation with a supervisor inside the facility.

Thus, the General Counsel established only that the Respondent engaged in disparate treatment on one occasion (April 18, 2023, with Silla). The one anomalous

[123] Complaint par. 23 is dismissed.

instance of disparate treatment is insufficient to establish animus. According to *Septix Waste, Inc.*, 346 NLRB 494, 496-497, 505-506 (2006); *Synergy Gas Corp.*, 290 NLRB 1098, 1103 (1988). Accordingly, I conclude the General Counsel has not established animus and has not met the initial *Wright Line* burden as to the Respondent's discharge of Spence.

Even if the General Counsel had met the initial *Wright Line* burden, I would conclude that the Respondent met its shifting burden of demonstrating it would have discharged Spence even absent his union activity. The list of Spence's violations of the off-duty access policy is extensive and long ranging in time: September 28; October 3; December 7; April 14, 2023; May 2, 2023; October 10, 2023, and October 18, 2023. The Respondent followed its progressive discipline steps and only deviated them for the beneficial purpose of giving Spence a second final written warning. Finally, the Respondent had been consistently enforcing the off-duty access policy on employees who were not engaged in union activity both before and after its discharge of Spence. Three employees were disciplined before on December 4; September 23, 2023, and October 7, 2023. Three employees were disciplined after on January 5, 6, and 7, 2024. Given these circumstances, the Respondent has established it would have discharged Spence absent his union activity and did not violate Section 8(a)(3) and (1) in doing so.[124]

CONCLUSIONS OF LAW[125]

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

2. Charging Party Amazon Labor Union (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by maintaining its "Amazon Solicitation Policy. "

4. The Respondent violated Section 8(a)(1) of the Act on July 31, 2022, by prohibiting employees from distributing union literature in the parking lot of the Respondent's St. Peters, Missouri facility (STL8).

5. The Respondent violated Section 8(a)(1) of the Act on August 3, 2022, at its facility in Joliet, Illinois (MDW2), when its employees were engaged in protected conduct in a parking lot and its agent, due to that activity:

    a. instructed employees that they did not have a right to be on the

[124] Complaint pars. 25(xi), 25(xiii), and 25(xiii) are dismissed.

[125] In the posthearing brief, the General Counsel withdrew complaint pars. 8(a) and 9.

Respondent's property outside of the facility and directed employees to leave the property:

b. threatened employees with calling the police if they did not leave the property; and
c. contacted the police who then came to the facility.

6. The Respondent violated Section 8(a)(1) of the Act on August 23, 2022, at its facility in Castleton-on-Hudson, New York (ALB1), when its employees were engaged in protected conduct and its supervisors, due to that activity:

a. repeatedly telling employees they could not engage in their protected conduct in non-work areas outside the facility and had to leave the property; and
b. called the police to prevent employees from engaging in their protected conduct.

7. The Respondent violated Section 8(a)(1) of the Act on August 25, 2022, at its facility in Monee, Illinois (MDW7), when its employees were engaged in protected conduct and its supervisors instructed the employees to follow its unlawful solicitation policy.

8. The Respondent violated Section 8(a)(1) of the Act on August 31, 2022, at its facility in Castleton-on-Hudson, New York (ALB1), by instructing employees engaged in protected conduct in non-work areas outside the facility that they had to leave the property and calling the police when they refused to do so.

9. The Respondent violated Section 8(a)(1) of the Act in late August/September 2022, at its facility in Channahon, Illinois (ORD2), by telling employees engaged in protected conduct in non-work areas outside the facility that they should not be there and had to leave the property.

10. The Respondent violated Section 8(a)(1) of the Act on September 23, 2022, at its facility in Romeoville, Illinois (MDW6), when speaking to employees engaged in protected conduct in non-work areas outside the facility, by:

a. interrogating employees about their protected conduct.
b. telling employees that the Respondent did not want them doing what they were doing and the employees had to leave the property; and
c. contacting the police when employees refused to leave.

11. The Respondent violated Section 8(a)(1) of the Act on April 18, 2023, at its facility in Staten Island, New York (JFK8) disparately enforced its off-duty access policy against employees engaged in union and protected concerted activity.

12. The Respondent has not violated the Act in any of the other manners alleged in the complaint.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I shall order it to cease and desist and to take affirmative action designed to effectuate the policies of the Act. In particular, I order the Respondent to rescind its solicitation policy at all its facilities nationwide.[126]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[127]

ORDER

The Respondent, Amazon.com Services, LLC, St. Peters, Missouri (STL8), its officers, agents, successors, and assigns, shall

1. Cease and desist from

   (a) Prohibiting employees from distributing union literature in nonwork areas outside the STL8 facility.

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

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

[126] Given the violations that I have found, I decline the General Counsel's request for special remedies. The Board's standard remedies are sufficient to address those violations.

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

(a) Post at its St. Peters, Missouri (STL8) facility copies of the attached notice marked "Appendix A."[128] Copies of the notices, on forms provided by the Regional Director for Region 14, 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its Hadley, Massachusetts facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix A" to all current and former employees employed by the Respondent at the facility at any time since July 31, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 14 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.

The Respondent, Amazon.com Services, LLC, Joliet, Illinois (MDW2), its officers, agents, successors, and assigns, shall

1. Cease and desist from

[128] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(a) Instructing employees engaged in protected activity that they did not have the right to be in nonwork areas outside the facility.
(b) Directing employees engaged in protected activity in nonwork areas outside the facility to leave the property.
(c) Repeatedly threatening to call the police on employees engaged in protected activity in nonwork areas outside the facility; and
(d) Calling the police on employees engaged in protected activity in nonwork areas outside the facility.

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

(a) Post at its Joliet, Illinois (MDW2) facility copies of the attached notice marked "Appendix B."[129] Copies of the notices, on forms provided by the Regional Director for Region 13, 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its Hadley, Massachusetts facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix B" to all current and former employees employed by the Respondent at the facility at any time since August 3, 2022.

[129] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens, and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Within 21 days after service by the Region, file with the Regional Director for Region 13 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.

The Respondent, Amazon.com Services, LLC, Castleton-on-Hudson, New York (ALB1), its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instructing employees engaged in protected conduct that they could not engage in such conduct in non-work areas outside the facility and they had to leave the property; and

(b) Calling the police to prevent employees from engaging in protected conduct.

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

(a) Post at its Castleton-on-Hudson, New York (ALB1) facility copies of the attached notice marked "Appendix C. "[130] Copies of the notices, on forms provided by the Regional Director for Region 3, 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic

[130] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens, and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its Castleton-on-Hudson, New York facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix C" to all current and former employees employed by the Respondent at the facility at any time since August 23, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 3 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.

The Respondent, Amazon.com Services, LLC, Monee, Illinois (MDW7), its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instructing employees to follow an unlawful solicitation policy in response to their protected conduct.

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

(a) Post at its Monee, Illinois (MDW7) facility copies of the attached notice marked "Appendix D."[131] Copies of the notices, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the

[131] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens, and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its Monee, Illinois (MDW7) facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix D" to all current and former employees employed by the Respondent at the facility at any time since August 25, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 13 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.

The Respondent, Amazon.com Services, LLC, Channahon, Illinois (ORD2), its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees engaged in protected conduct in nonwork areas outside the facility that they should not be there and had to leave the property.

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

(a) Post at its Channahon, Illinois (ORD2) facility copies of the attached notice marked "Appendix E."[132] Copies of the notices, on forms

[132] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens, and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice

provided by the Regional Director for Region 13, 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its Channahon, Illinois (ORD2) facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix E" to all current and former employees employed by the Respondent at the facility at any time since late August/September, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 13 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.

The Respondent, Amazon.com Services, LLC, Romeoville, Illinois (MDW6), its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their protected conduct;
(b) Telling employees that supervisors did not want them doing what they were doing (engaging in protected conduct) and the employees had to leave the property; and
(c) Contacting the police when employees refused to leave.

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

previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board " shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(a) Post at its Romeoville, Illinois (MDW6) facility copies of the attached notice marked "Appendix F."[133] Copies of the notices, on forms provided by the Regional Director for Region 13, 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its Romeoville, Illinois (MDW6) facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix F" to all current and former employees employed by the Respondent at the facility at any time since September 23, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 13 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.

The Respondent, Amazon.com Services, LLC, Staten Island, New York (JFK8), its officers, agents, successors, and assigns, shall

1. Cease and desist from

[133] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens, and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Disparately enforcing its off-duty access policy against employees engaged in union and protected concerted activity.

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

(a) Post at its Staten Island, New York (JFK8) facility copies of the attached notice marked "Appendix G."[134] Copies of the notices, on forms provided by the Regional Director for Region 29, 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its Staten Island, New York (JFK8) facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix G" to all current and former employees employed by the Respondent at the facility at any time since April 18, 2023.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 29 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.

[134] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens, and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The Respondent, Amazon.com Services, LLC, Seattle, Washington (headquarters), its officers, agents, successors, and assigns, shall

1. Cease and desist from

Maintaining an unlawful solicitation policy which prohibits employees from solicitation in work areas on nonwork time.

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

(a) Rescind its "Amazon Solicitation Policy. "

(b) Post at its facilities nationwide "Appendix H."[135] Copies of the notices, on forms provided by the Regional Director for Region 13, 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, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed any of its facilities nationwide, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix H" to all current and former employees employed by the Respondent at the facility at any time since February 22, 2022.

[135] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens, and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 23, 2025

Charles J. Muhl
Administrative Law Judge

APPENDIX A

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 prohibit employees from distributing union literature in non-work areas outside the STL8 facility.

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

AMAZON.COM SERVICES, LLC
(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.
1222 Spruce Street, Room 8.302, St. Louis, MO 63103-2829
(314) 539-7770, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 13-CA-301810 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, (314) 449-7493.

APPENDIX B

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 instruct employees engaged in protected activity that they did not have the right to be in non-work areas outside the facility.

WE WILL NOT direct employees engaged in protected activity in non-work areas outside the facility to leave the property.

WE WILL NOT threaten to call the police on employees engaged in protected activity in non-work areas outside the facility.

WE WILL NOT call the police on employees engaged in protected activity in nonwork areas outside the facility.

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

AMAZON.COM SERVICES, LLC
(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.

Dirksen Federal Building, 219 South Dearborn Street, Room 808, Chicago, IL 60604-1443
(312) 353-9158, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 13-CA-301810 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, (312) 353-7170.

APPENDIX C

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 instruct employees to follow an unlawful solicitation policy in response to their protected conduct.

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

AMAZON.COM SERVICES, LLC
(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.

Dirksen Federal Building, 219 South Dearborn Street, Room 808, Chicago, IL 60604-1443
(312) 353-9158, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 13-CA-301810 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, (312) 353-7170.

APPENDIX D

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 tell employees engaged in protected conduct in nonwork areas outside the ORD2 facility that they should not be there and have to leave the property.

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

AMAZON.COM SERVICES, LLC
(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.

Dirksen Federal Building, 219 South Dearborn Street, Room 808, Chicago, IL 60604-1443
(312) 353-9158, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 13-CA-301810 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.

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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, (312) 353-7170.

APPENDIX E

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 interrogating employees about their protected conduct.

WE WILL NOT tell employees that supervisors did not want them doing what they were doing (engaging in protected conduct) and the employees have to leave the property.

WE WILL NOT contact the police when employees refused to leave the property.

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

AMAZON.COM SERVICES, LLC
(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.
Dirksen Federal Building, 219 South Dearborn Street, Room 808, Chicago, IL 60604-1443
(312) 353-9158, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 13-CA-301810 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, (312) 353-7170.

APPENDIX F

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 disparately enforce our off-duty access policy against employees engaged in union and protected concerted activity.

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

AMAZON.COM SERVICES, LLC
(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.

One Metro Tech Center, 20th Floor, Suite 2000, Brooklyn, NY 11201-3838
(718) 330-7713, Hours: 9 a.m. to 5:30 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 13-CA-301810 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, (718) 765-6190.

APPENDIX G

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 maintain an unlawful solicitation policy which prohibits employees from solicitation in work areas during nonwork time.

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

WE WILL rescind our "Amazon Solicitation Policy " at our facilities nationwide.

AMAZON.COM SERVICES, LLC
(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.
Dirksen Federal Building, 219 South Dearborn Street, Room 808, Chicago, IL 60604-1443
(312) 353-9158, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 13-CA-301810 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.

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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, (312) 353-7170.