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

GE APPLIANCES, A HAIER COMPANY

and Case 09–CA–332521

LADONNA S. DAWSON, AN INDIVIDUAL

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for the General Counsel.
Lira A. Johnson, Esq.
for the Respondent.

DECISION

STATEMENT OF THE CASE

KIMBERLY R. SORG-GRAVES, Administrative Law Judge. On December 20, 2023, LaDonna Dawson filed the charge in Case 09–CA–332521 with Region 9 (Region) of the National Labor Relations Board (Board), which was amended on June 3, 2024, alleging among other things that GE Appliances, a Haier Company (Respondent) issued her a written warning and discharged her in retaliation for engaging in protected activities. On July 11, 2024, the Region issued the complaint in this matter, and on July 19, 2024, the Respondent filed an answer thereto. (GC Exh. 1(g) and (i).)

I heard this matter in Louisville, Kentucky on October 22, 2024. I afforded all parties a full opportunity to appear, introduce evidence, examine and cross-examine witnesses, and argue orally on the record. General Counsel and Respondent filed posttrial briefs in support of their positions.

After carefully considering the entire record, including my observation of the demeanor of the witnesses and the parties' briefs, I make the following findings and conclusions.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent is a corporation with an office and place of business in Louisville, Kentucky, (Respondent's facility) where it has engaged in the manufacture, assembly, and the nonretail sale of home appliances. In conducting its operations during the 12-month period ending July 1, 2024, Respondent sold and shipped from its facility goods valued in excess of $50,000 directly to points outside the Commonwealth of Kentucky. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits, and I find, that the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers AFL-CIO (IUE), Communications Workers of America,

AFL-CIO (CWA), Local 83761 (the Union) is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(h) and (j).)[1]

Based on the foregoing, I find that this dispute affects commerce, and the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES FACTS

Credibility

In coming to credibility determination, I take into consideration a variety of factors that the Board has endorsed, including, but not limited to, the witness's demeanor, the context of the witness testimony, 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, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination; therefore, I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

Dawson's body language, facial expressions, and her demanding inquiries during breaks about the amount of time the proceedings made it evident that she consistently exhibits an unusual amount of agitation. Her demeanor changed little during her testimony, and she presented as telling the truth as she understood and remembered it.

Despite this effort, there were notable inconsistencies in her testimony. For example, in testifying about delays in receiving her pay, discussed more below, she accused a human resource employee of opening a bank account in her name. Later she admitted that her first two payroll checks were deposited into an account of hers that was likely in the payroll system from her prior employment. She withdrew the money from that account. (Tr. 79; R. Exh. 7 at 1–5.) Only employees have the access information needed to change how their pay is distributed in electronic payroll system. (Tr. 252–254.)

At other times Dawson was not able to remember certain things accurately and did not easily admit that she was unsure. For example, Dawson contended that she only received one paper check from Respondent, but Respondent had copies of three paper payroll checks dated November 9, 17, and 24, that were endorsed by Dawson and posted as paid on different dates. (Tr. 80, 256; R. Exh. 1 and 7.) Viewing the checks did not seem to fully refresh her memory, because her responses to how many checks she received were still ambiguous.

Part of Dawson's confusion may have been caused by Respondent's counsel repeated questions about whether her first two pays were reissued in paper checks. A review of

[1] Abbreviations used in this decision may include: "Tr." for hearing transcript; "GC Exh." for the General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "Jt. Exh." for Joint Exhibit; "GC Br." for the General Counsel's Brief; and "R. Br." for Respondent's Brief.

Respondent's payroll records reflects that Dawson was correct and that they were not reissued.[2] Therefore, I find some of her testimony reliable and other unreliable where it conflicts with her own statements, documentary evidence, and other witnesses' testimony that is consistent with documentation.

Dawson's supervisor, Manager Crowe, sent Senior Human Resources Manager Weird (HR Mgr. Weird or Weird) emails about her significant interactions with Dawson close in time to their interactions. (Tr. 187; R. Exh. 4.) Despite having sent these emails, Crowe's testimony about those interactions was curt and lacked the detail contained in her emails. (Tr. 185–186; R. Exh. 4.) Crowe testified only to the basics of what occurred in most of her interactions with Dawson, stating that she could not recall the exact details. (Tr. 186–188, 204, 218.) Despite the brevity of her testimony in comparison to her emails, her limited testimony did not conflict with her documentation of the interactions. In her testimony, Crowe made no attempt to embellish the facts as stated in her written documentation, nor does her written documentation appear to dramatize the interactions. Therefore, I find that Crowe's close in time written communications as the most reliable evidence about the interactions.

Background

LaDonna Dawson worked for Respondent in 2021 for a couple of months. She was reemployed by Respondent, on October 19, 2023[3]. Dawson worked the first shift. (Tr. 19.) In 2023, Dawson initially worked in building AP3, on the P1 dishwasher tub assembly line, in the "fill funnel screw" section. Her responsibilities included taping the drain hose of dishwashers, shooting a screw into it, and putting a plug into the top. (Tr. 39, 160.) From some statement during orientation, Dawson was under the impression that employees working in building AP3 never received overtime, which was not accurate information. (Tr. 37, 159.) In its new hire paperwork Respondent informs its employees of its shift schedules, the possibility of overtime, extending regular shift hours, rules of conduct, disciplinary procedures, probationary period rules, and its dress code, including the wearing of safety glasses with side shields. (Tr. 151–155, 159, 169; R. Exh. 2.)

The work that Dawson performed for Respondent was covered by the following collective-bargaining agreements: the 2020-2024 National Agreement between the Respondent and the International Union and its affiliated locals and the 2020-2024 Local Supplemental Agreement between Haier U.S. Appliance Solutions, Inc. and IUE-CWA Local 83761, The Industrial Division of the Communications Workers of America, AFL-CIO, CLC. (Tr. 22; Jt. Exhs. 2, 3.) Dawson signed up with the Union during orientation and started paying Union dues and fees. (Tr. 36.) The Respondent also maintains its Appliance Park Manufacturing Production Guidelines. (R. Exh. 3.)

[2] A review of the second information box, entitled Pay Slip Information, shows no physical check number for the first two payroll periods. A review of all the documents does not indicate that a physical check with an assigned check number was ever issued for those two pay periods. (R. Exh. 7.)

[3] All dates herein are in 2023 unless otherwise noted.

Before Dawson's first day at work, on October 17, the Respondent issued an overtime notice for employees assigned to the P1 Test and Pack and the P1 Door Line and Tub Structure departments, where Dawson worked. (Jt. Exh. 3.) The notice stated that employees' schedules would be extended to 2:54 as needed from October 24 until December 1. There is no contention that the notice did not comply with the collective-bargaining agreements and the production guidelines, requiring the Company to provide notice a week before mandatory overtime starts. (Tr. 115, 116, 119–122, 165, 219.) When new hires start after an overtime notice has been issued, they are provided with the notice on their first day of work and are not required to work overtime that first day. (Tr. 179.)

Dawson's Early Interactions at Work

On November 3, 2023, Dawson reported that her tape gun was moved, leading to interactions with New Hire Ambassador Queenan, Senior Human Resources Manager Weird and Chief Union Steward Sims. (Tr. 19, 44.) Dawson was allotted a certain amount of space on the assembly line, which equates to a certain amount of time, to perform the 3 tasks required of her. (Tr. 39.) If an employee does not complete the required tasks before the assembly line moves the appliance being assembled beyond the allotted space, the line will stop. To maximize the time allotted to her, the tape gun, which is mounted to a table and dispenses precut pieces of tape that she was assigned to apply, was positioned at the beginning of her allotted space on the line. (Tr. 89-92.)

Upon returning to her job position after lunch, Dawson felt that the tape gun table had been moved giving her less time to perform her work, which made her "frustrated." (Tr. 44, 45, 91, 92, 97.) Dawson was able to move the table, which was estimated to weigh less than 10 pounds. (Tr 89-91, 127.) Despite Dawson being able to easily reposition the table to her liking within her allotted workspace on the line, she raised this issue with the team leader and Chief Steward Sims that day. (Tr. 44, 45.) Sims asked her and the team leader if they had seen anyone move it because he or the team leader would ask them to stop, but no one had. (Tr. 126-127.)

New Hire Ambassador Queenan spoke with Dawson. (Tr. 127, 162.) Queenan explained that others working on different shifts or covering for Dawson may arrange the work area differently. Queenan suggested that Dawson assess her work area and arrange it before starting to work. Dawson responded that she did not think that was her responsibility, so Queenan suggested that Dawson ask the team leader to do it before Dawson's shift. (Tr. 162.) Dawson asked to be moved to another position, but Queenan did not have that authority and told Dawson she would have to make that request to her supervisor. (TR. 164.) Mgr. Crowe also looked at the situation and could not tell the table had been moved but asked the team leader to check it every morning. (Tr 186, 187.)

Despite their efforts, Dawson still insisted that someone from human resources come speak to her about the situation. Sims asked for assistance from HR Mgr. Weird, who came out to the line. (Tr. 127, 222-224.) Weird and the others there could not determine if or by whom the table had been moved. Dawson became more agitated, raised her voice and pointed her finger at Weird. (Tr. 223, 236, 237.) Weird noticed that employees were starting to watch the interaction,

so she asked Dawson to come to the office. Weird reexplained the situation there and it was not raised again. (Tr. 224.)

Also on Friday, November 3, Dawson had an incident with team leader McGrady, who marked her face with a bingo dauber. McGrady was working next to Dawson and was using the dauber to mark parts. Dawson leaned over to perform her work and the dauber in McGrady's hand marked her face. (Tr. 39, 87.) Dawson testified that she asked to go to the restroom to clean her face after McGrady offered her a dirty towel to wipe it off. (Tr. 40.) McGrady, who regularly relieved workers from the line, covered Dawson's work while she was in the restroom. (Tr. 41.)

While in the restroom, Dawson took a picture of the dauber mark on her face.[4] (GC Exh. 2.) Dawson showed the picture to Chief Steward Sims. Sims testified that he asked her if it was done on purpose and Dawson replied that she did not know. Sims asked McGrady who said it was an accident and that she had apologized. Sims let the matter drop. (Tr. 130.)

Dawson testified that she did not believe that McGrady had accidentally marked her with the dauber. (Tr. 87.) When asked why she believed this, Dawson stated: "Because my station and my -- my station and my time had been cheated previously before that, so I already knew they already had ill intentions for me coming in the door." (Tr. 87.) When asked if the person who daubed her had ill intentions, Dawson responded, "I think the whole process. I mean, just because how things went from the checks to the -- all the way down the line. I mean, it was a problem from day 1 since I walked in that door." (Tr. 88.)

Later that day, McGrady reported the incident to first shift, P1 Manager Crowe as accidental on her part, stated that she apologized, and sent Dawson to the restroom to clean it off. (Tr. 184; R. Exh. 4.)

On Monday, November 6, Dawson reported the incident to Crowe. Dawson was upset and stated that she did not understand how that could have happened by accident. Crowe then emailed HR Mgr. Weird passing on Dawson's view of the incident and stating that McGrady reported the incident on November 3 as accidental on her part, and that she apologized over and over, and sent Dawson to the restroom to clean it off. (R. Exh. 4.)

Weird responded by email stating that "[team leader McGrady] and the area steward came to me this morning concerned with the work environment [Dawson] is creating with screaming, cussing and being on her phone." Weird questioned whether they could move her to another assembly line because Weird wanted to present to Dawson "that due to her concerns on that line I'm moving her to be more successful even though nothing has been substantiated." Operations Manager Seibert was pessimistic about any move improving the situation and an email response to Weird stating:

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[4] Dawson testified that she wore prescription safety glasses at work that were paid for by the Respondent. (Tr. 59.) Yet, in the picture she took of herself with the dauber mark on her face, she was wearing the non-prescription safety glasses provided by Respondent. (Tr. 86.)

> We can move [Dawson], even though I do not normally like to move people without addressing the issue that caused it, I did talk with her the first time she had an issue, with Mickie, Chris, her steward, and I could not get her to understood (sic) that she was not maliciously being targeted. She seemed so paranoid that someone was out to get her, that I almost did a probable cause on her. Based on the interaction I had with her, I do not think moving her will help. I believe she creates circumstances in her head and then believes them to be true. If we do move her, should we consider an area where she would work without such close proximity to others? Perhaps wire rack loading a machine all to herself would suit her better. I just know that all of our assembly areas have people within 4 feet on both sides and sometimes across from them, and this does not feel like the best situation for her. . . (R. Exh. 4 at 3.)

Business Leader Siebert, to whom Mgr. Crowe reports, responded to the email stating that they could move her to another position on the assembly line but that there were not many options without others working right next to her. Based upon the record, this move did not occur until November 13. (Tr. 190, 191; R. Exh. 4 at 1.)

Sometime during the week of November 6, Dawson received a volunteer overtime sign-up-sheet from another employee that is a separate overtime system than the mandatory overtime that was already in effect. (Tr. 166.) Dawson initially signed the overtime sign-up sheet but later had her name removed. (Tr. 43, 44.)

Payroll Mix-up

Dawson expected to receive paper payroll checks at her home address but had not received her October 27 and November 3 pay checks by November 8. She went to human resources and spoke to Human Resources Generalist Atherton, who had Dawson access her own online account. (Tr. 239, 240.) They realized that Dawson's bank account information from the first time she worked there had not been removed from the system and her checks had been deposited there. (R. Exh. 1 at 7, 8.) Dawson no longer used that account. Atherton helped Dawson correct the online information so that she would receive her next check at her home address and told Dawson that she would have to call the Pay and Benefits Center to have her previous checks reissued. Dawson called the Center and was given a special claim number. Dawson understood that Respondent's Payroll Specialist Parker would need to approve it before the checks would be reissued, but Parker said that was not necessary and that the Center would reissue them based upon Dawson's communication. (Tr. 42, 43, 92–94, 114, 241–246; R. Exh. 6; GC Exh. 4 at 5.)

On November 8, Dawson also spoke to Chief Steward Sims about not receiving her checks.[5] Sims testified that he spoke with payroll specialist Parker and learned that the payroll

[5] I was unable to discern from Dawson's testimony if she had already spoken with a payroll specialist before first raising the issue with Sims. Dawson contends that she had to make more than one inquiry of Sims to resolve the issue and his assistance was still unsatisfactory. (Tr. 82.) I laid out the sequence of events considering how their testimonies align and the time and date of the email messages concerning the issue.

system was set to make electronic deposits to a bank. (Tr. 42, 43, 112, 113; R. Exh. 6.) Sims testified that when he told Dawson what happened she told him she no longer used that bank. He explained that she needed to work with payroll to fix it. (Tr. 113, 125, 126.)

On November 9, Dawson again asked Sims to help solve the payroll issue. (Tr. 46.) Sims sent emails to payroll employees Parker and Eisner, copying Mgr. Crowe, and HR Mgr. Weird, explaining the situation and requesting it be corrected. (Tr. 114; GC Exh. 4.) Parker responded a few minutes later again explaining that Dawson needed to call the Pay and Benefits Center to get her checks reissued. (GC Exh. 4, at 4.) Sims put a copy of the email in her work area and told her she would have to work with payroll. He started to walk away. Dawson testified that she had the team leader cover her position and followed Sims. (Tr. 46.) Dawson was displeased and addressed Sims about his failure to resolve the situation and described her comments to him as: "I just pretty much told him that you're rude. I can't trust you. You know, you're supposed to be here representing me, and you're not doing none of the above." (Tr. 44.)

Sims' testimony is similar but paints a more aggressive attitude coming from Dawson. Sims stated that he told her that he could not fix it and that she would have to work with payroll. (Tr. 113.) Dawson insisted that he needed to fix it and "started cussing" him. (Tr. 113.) Sims testified, "She followed me. And as she's following me up the aisleway, she stops to…" Before his sentence was finished his testimony was cut off by a subsequent question by General Counsel. (Tr. 113-114.) When Respondent counsel questioned Sims about this exchange General Counsel objected based upon relevancy. I asked Respondent counsel to explain the relevancy. Instead, Respondent counsel moved on to another subject.

Respondent Moves Dawson to a New Position on the Assembly Line

On November 13, Crowe and McGrady approached Dawson on the line and told her that they were moving her to a new position on the same line but at the other end. (Tr. 47, 180.) In that position she installed the rollers on a third rack in the appropriate dishwasher model when it occasionally passed by on the line. (Tr. 48.) This work was located relatively close to a dock door that was allowing the cold outside air into the facility. (GC Exh. 3.) Dawson took a picture of the open door on her cell phone. (Tr. 53, 207; GC Exh. 2.) Dawson secured coverage for her work and went to Human Resources. Sims and Weird were called to speak with her. Dawson testified that they had a "What do you need now?" attitude with her. (Tr. 53.) She asked how many attendance-points she would receive for going home early because she was not dressed for the cold air coming in through the dock door. She was informed that she would receive 2 points. As a probationary employee, she only had 3 points available. (Tr. 53.) Dawson testified that they acted like she should be happy to have work and should return to her work, which she did. (Tr. 53.)

HR Mgr. Weird testified that when she arrived at the office business leader Seibert, Chief Steward Sims, and Dawson were in the office. (Tr. 224.) Dawson complained that her new position had a lot of down time and that the area was cold. Weird told her that she was supposed to clean the area during downtime. Dawson became agitated and left the office saying that she was not going to do any cleaning. (Tr. 225.)

While Crowe testified that it was her and the head count leader, who works under her, responsibility to provide any new employees with active overtime notices on their first day of work, Dawson contends that she did not receive the October 17 overtime notice until she was moved to the new position on November 13. (Tr. 54, 181; Jt. Exh. 3.) While the exact date that Dawson first received this letter is unclear in the record, as discussed below, Dawson asked for another copy of the letter on November 14, indicating that she had first received it sometime before that date.

Overtime work depends on the production needs at the time. After the required advance notice of possible overtime is given, supervision announces during the last hour of the shift whether there will be overtime that day. (Tr. 182.) In her new position, Dawson recalls working 10 minutes of overtime one day and 28 minutes a second day. Each time she was informed by another worker that they would be working overtime shortly before the end of the regular shift. (Tr. 57.)

Dawson's Raises Concerns about Overtime Schedule

About 15 minutes before the end of her shift on November 14, Dawson was informed by a team leader that they would be working overtime. Before talking to Dawson, Mgr. Crowe received a text from the headcount leader asking her to speak with Dawson about the overtime schedule and informing her that line leader Spaulding and union steward Massey had also tried to explain it to her.[6] After Crowe's initial conversation with her, Dawson then spoke to the headcount leader again and spoke to Crowe a second time. (Tr. 204, 213.) Other employees started looking at the commotion and therefore were less attentive to their work. (Tr. 202, 203.) Crowe also recalled telling Dawson to put her safety glasses on properly because she was wearing them on her head. (Tr. 208.) Crowe did not know whether Dawson had her position covered during these conversations, but covering Dawson's work prevented the team leader from performing other work. (Tr. 216, 220.)

After her second conversation with Dawson, Crowe received the call from Union Vice-president Gilbert. (Tr. 198, 199, 214.) He said that he had just spoken to Dawson. (Tr. 202.) In response to his request for the overtime notice, Crowe emailed him the notice dated October 17, stating only, "I hope this helps." (R. Exh. 4 at 9 and 10.)

Dawson testified to receiving the notice about 15 minutes before the end of the shift and about the second conversation she had with Crowe. Dawson asked the line leader to cover her workstation so she could go to human resources. She passed Mgr. Crowe who was standing at the stairs at the bottom of the line. From where they were standing, they could not see Dawson's

[6] The record is clear that Sims is a chief union steward, and Foster is a union steward. Also, there are one or two stewards for each line in the facility. (Tr. 102, 107, 111.) The headcount leader and team leader positions are in the bargaining unit. (Tr. 179, 180.) From my reading of the record, headcount leader Massey and/or team leader Spaulding were also stewards. (Tr. 202, 204.) When asked if Dawson had spoken to anyone "in the union," Crowe responded that Dawson spoke to Spaulding and Massey. Later Crowe affirmed "that [] Spaulding and [] Massey from the union -- or union stewards had spoken with Ms. Dawson before she talked to [Crowe]." (Tr. 204.) Nothing in the record contradicts this testimony.

workstation. Dawson first describes their interaction as a conversation where she asked if there was any regulation on how much notice that they had to give workers before expecting them to stay for overtime, because they might have an after-work commitment. (Tr. 58.) Dawson denies raising her voice more than necessary to be heard over the machinery. (Tr. 72.) Crowe responded that the employees could be at the timeclock and still be called back to finish items in production. (Tr. 58.) Not trusting that Crowe's statements were correct, Dawson called the Union for confirmation. (Tr. 58.) The Union requested a copy of the overtime notice which was forwarded to the Union and again provided to Dawson. (R. Exh. 4 at 9.)

Later, Dawson described the interaction as that Crowe stopped her as she walked past and asked her why she was off her position. (Tr. 61) Dawson replied that she was going to speak with human resources. Crowe said that she was not allowed to speak to human resources at that time and to return to her workstation. (Tr. 61.) Dawson asked why she was not allowed to speak to human resources then, because by the time she got done working overtime they would no longer be in the office to help her get the answers she needed. Dawson testified that she just agreed and returned to her workstation. (Tr. 62.) Dawson denies raising her voice more than what was necessary to be heard over the machinery. (Tr. 72.) Dawson denies that Crowe made any comment about her safety glasses during this conversation. (Tr. 63.)

At 3:10 p.m. Crowe sent HR Mgr. Weird and email account of her interaction with Dawson stating:

> I would like to document today [Dawson] has been working in our test & pack area since yesterday. Test & Pack is also on OT as is Tub structure the last area she worked in.
> [Dawson] was inform by the team leader they would be staying over to work OT today around 15 minutes before end of shift. Team leader contacted me and said he needed me to come back here on the 3rd rack job (which is the job I placed Ms. Dawson on Monday.)
> When I get back there he said she was yelling and fussing about having to work and that he has to give her more than a 15 minutes notice and asked could I please speak with her. When I arrived to the job my headcount leader (Bob) was also explaining to Ms. Dawson and told me I just gave her another 0T letter because she said she lost it. I proceeded to asked how can I help her. She immediately started complaining saying he told her 14 minutes before the end of shift she had to work over and she knows that isn't right[.] I tried to explain the best I could that OT is not decided until the end of the day due to that is the only time it can be determined and just like when she worked on tub structure we do the same in this area. She continued to get louder and louder pointing her finger saying "so your trying to tell me he can tell me 14 minutes before end of shift I have to work" I again said Ms. Dawson you were given an OT letter like everyone else. She repeated herself again and made the statement let me document you. I told her I was going to walk away if she continued to yell and disturb the rest of the area. She continue to repeat herself at that point while this was going on I asked to pull her glasses down 3x then I told her I needed her back on her job because it was

running. (she had moved to the station down below). She repeated herself again saying so you trying to tell me. I repeat myself. she made the statement let me recorded you. I told her she could not & walked away & at that point told the headcount leader he did not have to stay either.
He came over after a lit bit and said he tried explaining to her again but she didn't listen and told him she was about to recorded him also so he walked away.
20 minutes later Ms. Dawson came over to the ball deck where I was & said how much longer on the OT[.] I told her I wasn't sure but again she had up to [a]n hour. She repeated with the "so you trying to tell me you don't have to give me a time" I told Ms. Dawson I need for you to go back to your job because 01 was still running. She said no ma'am 630's are not even coming. I told her to please look down on the loop and there was a 630's right there and would be coming around to her very soon so please go back to your job. She said I am going to HR I told her that is fine but she will have to wait until her 0T was over. She walked still fussing and yelling.
Other employees came up to me very concerned & asked what was wrong with her.
Traci, she constantly creates a hostile work environment & very difficult to work with.
Shortly after that [Chief Union Steward Bradley] called on the phone and asked me did I know [Dawson] & could I send him a copy of the OT letter I did email him a copy.
(Jt. Exh. 4; Tr. 24, 192–197, 200–202.)

At 3:19 Weird responded advising Crowe to issue a written warning to Dawson "for her actions today." Weird suggested that the following be included as the basis for the discipline notice:

Failure to follow instructions from Company management (failed to listen to instructions by you to go back to her work area and to put her safety glasses on)
Minor violations of safety rules (not wearing safety glasses properly and was told three times to put them on correctly)
Gross Misconduct (arguing (consisting of yelling and fussing) with Team Leader causing a disruption in the operation; yelling at ABL and pointing finger at ABL)
(Tr. 23, 227, 228; Jt. Exh. 4.)

On November 15, Crowe sent Weird and other management officials an electronic message about another conversation with Dawson on November 14, which states:

I felt I should document the conversation Me & Ms. [Dawson] just had (it's nothing negative but I feel I should write it down anyway due to it seems she interprets most of our conservations wrong. I was over in the back of the test pack area by the vacuum job and [Dawson] approached me and said can I asked you a question but I am not trying to start any trouble. I told her to go right ahead & please do she asked if I could write something down that stats she can stay a whole hour. I explain to her the 01 letter she was given is notification in writing & I could not give her anything else I also reminded her not matter how long we

> work it if it's less then an hour that's once her job is doing running and she would like to stay the full hour then all she would have to do is come or have someone get me for her & if she would to stay the whole hours to please let me & I would find something for her to do the remaining of the time. (Tr. 131; R. Exh. 4 at 11, 12.)

On November 15, the Union Steward Kelly asked Dawson to come to the office with her. They met with Crowe and HR Generalist Atherton. At Crowe's request, Atherton had asked security to be on standby for the meeting. (Tr. 247.) Crowe informed her that they were writing her up for gross misconduct because she had disrespected her. (Tr. 64, 111.) Dawson answered that she did not feel like she disrespected Crowe and wanted to make amends. (Tr. 64.) Dawson signed the write-up, not knowing she had any other choice. Dawson denied that Crowe stated anything further. Dawson returned to her work. (Tr. 65.) The write-up stated that the reason for the discipline was "Gross Misconduct! arguing (consisting of yelling and fussing) causing a disruption in the operation." (Jt. Exh. 6; Tr. 25–28.) Weird's practice was to restate the written warning language as the reason for discharge. (Tr. 231.) Dawson was upset during the meeting but not to the extent that security was needed. (Tr. 247.)

Later that day Dawson was about 2 minutes late returning from lunch. Crowe was at her workstation and told her not to let it happen again. (Tr. 66.)

Written discipline issued to probationary employees is reviewed by human resources to determine whether a violation of their probation has occurred. (Tr. 228.) After work that day, Dawson received a call from the second shift human resources manager and was told that she had been terminated for gross misconduct and not to report to work the next day. (Tr. 66, 229.)

The record is unclear why only one of Weird's three suggested reasons for the discipline was listed on the write up: "Gross Misconduct! arguing (consisting of yelling and fussing) causing a disruption in the operation." (Jt. Exh. 6; Tr. 25–28.)

The Union filed grievances concerning the written warning and her termination. (Jt. Exh. 8; Tr. 28, 29.) In denying the grievance, Weird gave all three reasons for discipling Dawson listed in her November 14 email. Chief Union Steward Sims said that he investigated the grievance by talking to Mgr. Crowe and Union Steward Foster. (Tr. 203, 231.) They told him that during her probationary period Dawson was yelling and refusing to return to work and to wear safety glasses as directed. (Tr. 109-110, 129.) Respondent refused to withdraw or downgrade her discipline because they had "met with [Dawson] several times to discuss actions prior to issuing [the] warning notice." (R. Exh. 5; Tr. 235.) Ultimately the grievances were withdrawn. (GC Exhs. 6, 7, 8; Jt. Exh. 6; Tr. 25–28, 31, 232–234.) Because Dawson was still in her probationary period, the CBA's grievance procedure did not allow the Union to arbitrate her discipline/discharge. (Tr. 109.)

Comparative Discipline Evidence

The Respondent frequently issues written disciplinary notices to employees for "gross misconduct," including yelling, cursing, using abusive language, insubordination/not following directions, and safety violations, including not wearing safety glasses. (GC Exh. 5.) When employees who are still in their probationary period receive written notices, the discipline is

reviewed by the Human Resources department, and they are frequently discharged for conduct that more senior employees may receive less stringent discipline. (Tr. 151–157; GC Exh. 9.)

General Counsel cites disciplines to support the contention that Respondent's lack of investigation concerning Dawson's discipline shows animus towards her protected activity. General Counsel cites four discipline notices and contends that some "probationary employees received multiple disciplinary actions before being discharged by Respondent," (GC Br. at 17, citing GC Exh. 9, at 7, 9, 10, 22.) While these discharges list more than one reason for the discharge, they each refer to one discipline action. Other times, employees were discharged after their second warning for things like careless workmanship and "insubordination, minor violations of safety rules, and failure to following instructions from Company management or Security." (GC Exh. 9 at 12, 14, 15.)

Similar to Dawson's discharge, some of the discharges occurred one day after management became aware of the situation. (GC Exh. 9 at 9 and 21.) In situations where there was more serious conduct like threatening behavior, including throwing things, the employee was discharged the same day. (GC Exh. 9 at 10.) Less threatening behavior, including "abusive language, gross misconduct which included yelling and causing a disruption in the workplace." similar to the behavior in which Dawson engaged, resulted in discharge on the same day. (GC Exh. 9 at 18.) Many of the longer gaps between warnings/suspensions and discharges involve concerns for intoxication, which likely required blood test results. (GC Exh. 9 at 2, 11, 13, 19, 21, 25.) Discipline for sleeping during work hours often resulted in being discharged after a few days. (GC Exh. 9 at 23, 24.) The following are summaries of discharge letters to probationary employees issued in 2023:

--On May 3, employee GG told her team leader that she was going to HR but "grab[bed] her things and left the plant, park without permission." On May 4, GG was issued a written notice and suspended "pending termination review as probationary employee." On May 16, GG was discharged for violating the Rules of Conduct by this conduct during the probationary period. (GC Exh. 9, at 1.)

--On May 4, employee TJ was suspended due to concerns he was intoxicated while working. On May 16, based upon investigation results he was discharged for working "under the influence of an intoxicant. (GC Exh. 9, at 2.)

--On May 18, employee RI was issued a written notice for sleeping during shift hours. On May 26, he was discharged for sleeping and inappropriate behavior after being issued the warning. (GC Exh. 9, at 4.)

--On May 22, employee PP was issued a warning notice for leaving work without permission and abusing company time. On May 24, he was discharged. (GC Exh. 9, at 3.)

--On May 26, 2023, employee TG left the building, plant or part without permission. He told the team leader he was taking half of an attendance point, because he "hadn't gotten much sleep. He also told the team leader that "he forgot to clock out, so he came back in and clocked out." TG was issued a written notice and HR was to follow up. He was discharged on May 30. (GC Exh. 9, at 5.)

--On May 26, employee ST was issued a written notice for "gross misconduct, immoral conduct or indecent behavior, and loafing or abuse of company time and leaving the park without permission." He was discharged on May 30. (GC Exh. 9, at 6.)

--On May 26, employee SR was issued a written notice for "gross misconduct, immoral conduct or indecent behavior, and sleeping during working hours." She was discharged on May 30. (GC Exh. 9, at 7.)

ANALYSIS

Positions of the Parties

The complaint alleges that Respondent violated Section 8(a)(1) and (3) of the Act by issuing Dawson a written warning and subsequently discharging her. General Counsel contends that Dawson was unlawfully discharged for engaging in the protected concerted activity of questioning whether Respondent's overtime requirement was consistent with the collective-bargaining agreement covering her work in contradiction of the *Interboro* doctrine.[7] General Counsel also contends that Dawson's discharge was the result of unlawful retaliation for her protected activity in violation of Section 8(a)(3) under the *Wright Line* analysis. Respondent contends that General Counsel failed to prove that Dawson engaged in protected activity under either of these doctrines.

Analysis under the Interboro Doctrine

Thus, the primary issue is whether Dawson was engaged in protected concerted activity under *Interboro* and related cases. See, *NLRB v. City Disposal Systems, Inc. 465 U.S. 822 (1984).* See, *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822 (1984). An employee's statement or action may be protected concerted activity if it "is based on a reasonable and honest [even if mistaken] belief that he is being, or has been, asked to perform a task that he is not required to perform under his collective-bargaining agreement, and the statement or action is reasonably directed toward the enforcement of a collectively bargained right." *NLRB v. City Disposal Systems, Inc*., 465 U.S. 822, 837 (1984).

Here, I find the record does not support the conclusion that Dawson had a reasonable and honest belief that the collective-bargaining agreement's overtime provisions were being broken. First, there is no evidence that she referenced any overtime provisions of the collective-bargaining agreement and therefore could argue the provisions were contrary to the notices she received about performing overtime that day. Second, she had received the overtime notice that informed her that the shift could be extended as much as an hour prior to when the issue arose. When the issue arose on November 14, she received a second copy of that notice and a pamphlet explaining the overtime policy. Also, at least two other unit employees, one or both of whom was apparently a union steward, attempted to explain that the policy was being followed. She refused to accept the information they provided to her. Also, other longer-term employees around her continued working overtime without complaint. These attempts to explain the policy to Dawson were communicated to Mgr. Crowe when she was first asked to speak to Dawson about the issue. Crowe attempted to explain the same policy, but Dawson was displeased with

[7] *Interboro Contractors, Inc.,* 157 NLRB 1295, 1298 (1966), enforced, 388 F.2d 495 (CA2 1967).

this explanation. A few minutes later, Dawson had an additional conversation with a unit member about the same issue. Then Dawson sought coverage for her work to speak to human resources. On her way she spoke to Crowe a second time about this issue. Crowe again told her that the required notice had been given and that she could not give earlier notice of overtime each day. Crowe directed her to wear her safety glasses correctly and return to her workstation. Upon returning to her workstation, Dawson reached out to Union VP Gilbert, who contacted Crowe to ask for the same overtime notice documentation that had already been shared with Dawson on multiple occasions to respond to her question.

The facts in this case are distinguishable from other cases where employees were found to have an honest and reasonable belief that a contract provision was being violated. For example, in *King Soopers, Inc.,* the Board found that the employee had an honest and reasonable belief that her contractual rights were being violated when her belief was consistent with her union representative's interpretation, and it was inconsistent with what had been witnessed in the past, and with employee's regular duties. 364 NLRB 1153, 1154 (2016). Thus, in *King Soopers* the employee relied upon information provided and her personal experience on the job to develop her reasonable belief.

In contrast, the only testimony from Dawson that supports her belief that the overtime notice was not sufficient was that she understood from statements made during her orientation that there would be no overtime, despite the orientation materials stating differently. Dawson refused to accept the information provided to her and the reaction of her fellow employees who continued working unaffected by the overtime requirements. Thus, the record does not establish the basis upon which Dawson developed her beliefs about the required overtime notice. While Dawson disliked the policy and/or believed it was unfair, that is not the same as a reasonable belief that it violated the collective-bargaining agreement.

When Dawson spoke to Crowe the second time about this issue, Dawson was seeking to ask the human resources department about it, not a union official. After the second time that Mgr. Crowe spoke to her about the issue asking her to wear her safety glasses correctly and return to her workstation, she did reach out to Union VP Gilbert, who asked for the same overtime notice documentation that had already been shared with her to respond to her question. I do not equate a refusal to accept or believe what one is being shown in documents and told by fellow employees, union officials, and management as a reasonable and honest belief. Ultimately, the *Interboro* doctrine is couched in the concept of concerted activity of attempting to enforce the collective-bargaining agreement. I see no evidence of concerted activity to support a reasonable and honest belief in a contractual violation where Dawson simply refused to accept the information provided by all involved. Unfortunately, Dawson's conduct in this situation followed a pattern of being unable or unwilling to reasonably understand or accept information shared with her.

Considering all the circumstances, I do not find that Dawson engaged in protected concerted activity by questioning the overtime instructions she received pursuant to the *Interboro* doctrine in violation of Section 8(a)(1) as alleged in the Complaint.[8]

Analysis under Wright Line

When assessing the lawfulness of an adverse employment action that turns on employer motivation, the Board applies the analytical framework set forth in *Wright Line, a Division of Wright Line, Inc*., 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp*., 462 U.S. 393, 399–403 (1983). To sustain a finding of discrimination, the General Counsel must show that the employee's protected activity was a motivating factor in the employer's decision by establishing that: (1) the employee engaged in protected activity, (2) the employer knew of that activity, and (3) the employer had animus against the protected activity, which must be proven with evidence sufficient to establish a causal relationship between the protected activity and the adverse action. *Tschiggfrie Properties, Ltd*., 368 NLRB No. 120, slip op. at 6, 8 (2019). See also *Mondelez Global, LLC*, 369 NLRB No. 46, slip op. at 1-2 (2020). Animus toward the protected activity can be shown through direct or circumstantial evidence, including evidence the employer's stated reasons for the adverse action are pretext. This may include suspicious timing, false or shifting reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, tolerance of behavior for which the employee was allegedly fired, and disparate treatment of the discharged employee. See *Shamrock Foods Co*., 366 NLRB No. 117 (2018); *Lucky Cab Co*., 360 NLRB 271, 274–275 (2014); *Medic One, Inc*., 331 NLRB 464, 475 (2000).

If evidence establishes these factors, the burden shifts to the employer to show it would have taken the same action in the absence of the employee's protected activity. *Wright Line*, 251 NLRB at 1089. An employer cannot simply present a legitimate reason for its action; rather, it must persuade by a preponderance of evidence that the same action would have taken place in the absence of protected conduct. See *Bruce Packing Co*., 357 NLRB 1084, 1086–1087 (2011), enfd. in pertinent part 795 F.3d 18 (D.C. Cir. 2015). The General Counsel may also offer proof that the employer's proffered reasons for the decision were false or pretextual. To find the proffered justification(s) pretextual, the surrounding circumstances must support an inference of unlawful motivation. *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019).

Respondent's Knowledge of Dawson's Protected Activity

As discussed above, I do not find that Dawson engaged in protected concerted activity by reasonably believing that she was enforcing the collective-bargaining agreement when insisting

[8] If, contrary to my conclusion, Dawson is found to have engaged in protected concerted activity by seeking to assert a reasonable and honest belief that she was enforcing a contract provision, I find insufficient evidence that her conduct removed her from the protection of the Act. (See cases cited by General Counsel.) The Respondent makes no argument that her conduct was sufficiently egregious to remove her from the protection of the Act if she had been engaged in protected activity. The evidence establishes that Dawson yelled, fussed, refused to follow directions including putting her safety glasses on. Although this conduct distracted other employees from their work because they were looking in Dawson's direction, it did not disrupt the workflow. Based thereon, I find insufficient evidence that her behavior removed her from the protection of the Act, if an reviewing body finds she was engage in protected concerted activity.

on speaking to human resources about the mandatory overtime. While that conduct was not found to be protected, the record establishes that the Respondent knew Dawson sought information and assistance from the Union on multiple occasions during her short employment. Thus, the Respondent had knowledge that Dawson engaged in protected union activity.

Animus and Causation

The Board considers circumstantial as well as direct evidence to infer discriminatory motive or animus, such as: (1) timing or proximity in time between the protected activity and adverse action; (2) delay in implementation of the discipline; (3) departure from established discipline procedures; (3) disparate treatment in implementation of discipline; (4) inappropriate or excessive penalty; and (4) employer's shifting or inconsistent reasons for discipline. *CNN American, Inc.*, 361 NLRB 439 (2014) (citing *W. F. Bolin Co. v. NLRB*, 70 F.3d 863, 871 (6th Cir. 1995); *Camaco Lorain Mfg. Plant*, 356 NLRB 1182, 1185 (2011); *Praxair Distribution, Inc.*, 357 NLRB 1048, 1048 fn. 2 (2011). The Board "may infer from the pretextual nature of an employer's proffered justification that the employer acted out . . . animus, 'at least where . . . the surrounding facts tend to reinforce that inference.'" *Electrolux Home Products*, 368 NLRB No. 34, slip op. at 3 (2019) (quoting *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (emphasis in *Electrolux Home Products*). 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/or (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). Furthermore, the Board has held that even when the employer's rationale is not patently contrived, "weakness of an employer's reasons for adverse personnel action can be a factor raising a suspicion of unlawful motivation." *General Films, Inc.*, 307 NLRB 465, 468 (1992).

Here, the General Counsel contends that Respondent's animus towards Dawson's protected activity is evidenced by the timing of the discipline and discharge in relation to her protected activity and a lack of investigation of the incident on November 14 before issuing the discipline. The Board has held in some situations the failure to conduct a meaningful investigation into allegations of misconduct close in time to an employee's protected activity can constitute evidence of animus. See *Midnight Rose Hotel & Casino, Inc. v. NLRB*, 198 Fed. Appx. 752, 757–758 (10th Cir. 2006) (employer's failure to conduct a meaningful investigation was evidence of discriminatory intent); *Airgas USA, LLC*, 366 NLRB No. 104, slip op. at 3 fn. 12 (2018).

In this case, Dawson received the written discipline and then was discharged the day after she reached out to the Local Union's Vice President, who in turn asked Mgr. Crowe for the overtime notice to give to Dawson. Mgr. Crowe sent the notice and a short message stating, "I hope this helps." The next day when Crowe presented the written discipline to Dawson, she arranged for Union Steward Foster to be present. Nothing in management's actions or communications evidence animus towards employees seeking assistance from their union representatives. On the contrary, the record shows that management sought to include the Union

representatives in their interactions with employees and promptly responded to Union officials' inquiries in handling disputes with Dawson.

While the discipline and discharge occurred the day after she sought information from the Union about the overtime policy, it was also the day after she yelled and fussed and refused to accept what coworkers, management, and union officials told her about the overtime policy, and failed to put on her safety glasses and return to her work station upon being directed to do so. The comparative evidence shows that some probationary employees have been discharged on the same day that they caused a disruption on the work floor including engaging in refusal to follow directions, loud disagreements, and other aggressive behaviors. Similarly to Dawson's situation, there is no indication that these other "disruptions" caused other employees to stop working. A review of the discharge notices does not reveal whether any additional investigation occurred after the issuance of the discipline notice except for employees awaiting intoxication screening results. Weird testified that no additional investigation into Dawson's case was needed because Mgr. Crowe documented her interaction with Dawson and with other employees and union officials about Dawson's actions.

Based upon the foregoing, I find that the record does not establish that Respondent held animus towards Dawson for engaging in protected activity. Therefore, General Counsel has not met the burden of proof to establish a violation under *Wright Line*.

CONCLUSIONS OF LAW

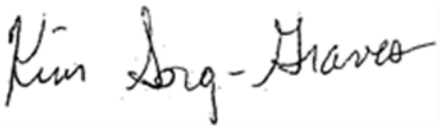
The General Counsel has not proved by a preponderance of the evidence that Respondent violated Section (8)(a)(1) or 8(a)(3) and (1) of the Act, as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C., August 12, 2025.



Kimberly Sorg-Graves
Administrative Law Judge

[9] If no exceptions are filed as provided by Sec. 102.48 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.