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

AMAZON.COM SERVICES, LLC AND ITS SUBSIDIARY, AMAZON AIR[1]	
and	Cases 09-CA-307021 09-CA-310708
GRIFFIN RITZE, AN INDIVIDUAL	
and	09-CA-314834 09-CA-314850 09-CA-316073
STEVEN KELLEY, AN INDIVIDUAL	09-CA-316086 09-CA-316439
and	
NICHOLAS HAUSER, AN INDIVIDUAL	
and	09-CA-316422
BRAEDEN PIERCE, AN INDIVIDUAL	
and	09-CA-316429
JASON GAY, AN INDIVIDUAL	09-CA-316568

Jonathan D. Duffy and Nell M. Kennedy, Esqs, for the General Counsel.
Jamie R. Rich, John P. Phillips, and Victoria Vitarelli, Esqs. (Seyfarth Shaw LLP, Sacramento, California, Houston, Texas and New York, New York) for the Respondent.
Rachel R. Rekowski and Pamela M. Newport, Esqs. (Herzfeld Suetholz Gastel Leniski and Wall, PLLC, Cincinnati, Ohio,) for the Charging Parties.

[1] Respondent submits its correct name is Amazon.com Services, LLC.

DECISION

STATEMENT OF THE CASE, JURISDICTION AND FINDINGS OF FACT

Arthur J. Amchan, Administrative Law Judge. This case was tried in Cincinnati, Ohio, April 22-24, August 19-23, October 8-11, November 19-22, 2024 and January 13, 2025. The matter was heard before Administrative Law Judge Ira Sandron. On June 25, 2025, Chief Judge Robert Giannasi reassigned this matter to me pursuant to Board Rule 102.36(b) due to medical reasons which have rendered Judge Sandron unavailable for further action on this case. I have read and considered the entire record and the briefs filed by the General Counsel, Respondent and the Amazon Labor Union on behalf of the Charging Parties.

The Charging Parties named in the caption filed the charges in this matter between November 14, 2022 and April 17, 2023. Region 9 issued a consolidated complaint on March 5, 2024. The General Counsel amended the complaint on April 23, 2024, G.C. Exh. 2.

Respondent is a Delaware limited liability company with headquarters in Seattle. It has facilities throughout the United States, including the one involved in this matter which is located at the Northern Kentucky/Cincinnati, Ohio airport, (KCVG).[2] At this location Respondent warehouses and distributes consumer products throughout the United States. Respondent annually derives gross revenues in excess of $500,000 annually. It annually sells and ships goods valued in excess of $50,000 directly to locations outside of Kentucky from KCVG. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The Amazon Labor Union-KCVG was at all times material to this case a labor organization within the meaning of Section 2(5) of the Act.

Respondent's KCVG facility is a major air hub for distribution of freight. It is regulated by the Transportation Security Administration (TSA). Amazon and the Kenton County Kentucky Airport Board are parties to an Exclusive Area Agreement (EAA), approved by TSA. That agreement establishes Respondent's acceptance of area security for the KCVG property it leases from the Board. Amazon is required by the EAA to maintain perimeter security fences and signs, use CCTV, conduct regularly scheduled roving security patrols and use access control systems to deter, detect and delay access by unauthorized persons. Part of the Amazon facility is designated as an air operation area (AOA), which has heightened security requirements. The AOA consists of locations used for the movement of aircraft. All such areas are designated security display areas, requiring badge access, perimeter controls and detection and prevention of unauthorize access.

Amazon employees work in 2 distinct areas, the ramp, where planes are parked, loaded and unloaded, and sortation where packages are sorted, sent and received. The ramp area is within the AOA, the sortation area is not. Most areas involved in this case, the ramp parking lot, the sortation parking garage and the bridge or walkway between this parking garage and the sortation building are not within the AOA. Approximately 3500 people work for Amazon at KCVG.

[2] More specifically near Hebron, Kentucky.

Employee concerted activity began at KCVG in November 2022. It focused on seasonal pay and a cost-of-living increase. This activity led employees to organize an independent union, Amazon Labor Union-KCVG. Several of the charging parties, including Griffin Ritze, Nicholas Hauser and Braeden Pierce were instrumental in this activity.

Incidents in which Respondent is alleged to have violated the Act

November 10, 2022 (amended complaint paragraph 5(b))

Charging Party Griffin Ritze testified that after clocking out on or about November 10, 2022, he began distributing union leaflets in an outdoor smoking pit and the main ramp breakroom. While doing so, Ritze testified that he was approached by an employee of Allied Universal, a third-party security contractor. Ritze testified that this person told him he could not be doing that (distributing literature) on Amazon property. Ritze testified that this individual identified himself as the Allied Universal account manager. After the conversation, Ritze testified that the individual went to Aviation Security (Amazon's in-house security operation). The General Counsel introduced an audio recording. Exh.G.C.– 9, of a conversation which, on its face, appears to corroborate Ritze's testimony.

I dismiss this complaint allegation for several reasons: the first reason is the inconsistency of Ritze's testimony and recording with the charge he filed on November 14, 2022. In that charge, Ritze identified Adrian Melendez, Respondent's Director of Operations, as the person who approached him 4 days earlier. The charge does not mention Allied Security or a security guard. Later, Ritze identified Beau Ollic, a former Allied employee, as the individual who approached hm. Ollic was not working at KCVG in November 2022. The audio recording does not sufficiently establish the date on which it was made or the location at which it was made. For all these reasons, I find that the General Counsel's evidence on this allegation is insufficiently reliable to prove a violation of the Act. I therefore dismiss complaint paragraph 5(b).

January 17, 2023 (complaint paragraph 5(c))

On January 17, 2023, Charging Parties Ritze, Hauser and Jordan Martin and Rachel Burkhardsmeier were distributing union handbills in the outside smoking pit, a non-work area. There were approximately 50 employees present in the pit, some from the day shift and some from the night shift, Tr. 1117. Area Manager Joshua McWilliams approached these employees. He first asked them if they were aware of Respondent's solicitation policy[3] and also asked them if they were on break.

[3] Respondent's solicitation policy prohibits:
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.

Ritze, who was a tug driver[4] on the ramp, answered affirmatively and stated that he had finished his work on the ramp. After being led by Respondent's counsel, McWilliams testified that he told the employees that unless the employees were on one of their official 15-minute breaks, or 30-minute lunch break, they should be helping with the reset, T. 1119-20. McWilliams brought up reset after discussing the solicitation policy, Tr. 451. The reset is a period at the end of a shift when ULDs (unit load devices, into which packages are loaded) are placed in locations for the next shift to access them conveniently.

There is contradictory evidence as to whether Ritze and other employees were authorized to be in the smoke pit at the time and whether the employees had gone to the smoke pit at the end of their shift regularly in the presence of management without any manager confronting them. What is uncontroverted is that McWilliams only confronted the employees distributing union literature and made no effort to get any of the other employees in the smoke pit to assist with reset. This is despite his testimony that he went to the break area to get associates to help with reset, and despite his knowing that some of the other 50 employees in the break area were also from the first shift. When McWilliams approached the employees, he first addressed Respondent's solicitation policy and whether the employees were on a break. He did not immediately tell them that he needed help with the reset, G.C. Exh. 11, Tr. 1118-1120.

It is also clear that this conversation occurred close to clocking out time for the employees distributing handbills and that they could not have assisted in reset after they clocked out, Tr. 1127. If there was time for them to assist with reset, that was also true of other first shift employees in the break area.

Analysis

The General Counsel alleges that Respondent, by Joshua McWilliams violated Section 8(a)(1) by selective and disparate enforcement of its solicitation policy. However, the record might establish a violation of its selective and disparate enforcement of its break policy by only enforcing it against employees handing out union flyers. Only the union hand billers were asked to complete their shift by assisting in reset, although other employees may have been available for this task. If additional hands were needed to complete reset on January 17, McWilliams could have ordered those in the break area, who were not on their official break, to assist in this task. He did not do so.

I decline to find a violation of Section 8(a)(1) because the record is not sufficiently developed as to which other employees were in the smoke area and whether they were on break or just arriving for their shift. Moreover, the record does not establish that McWilliams had any way of determining whether any other particular individuals were on duty.

As to solicitation, the General Counsel's evidence regarding selective and disparate enforcement is so weak that I decline to find a violation in this regard. The General Counsel

[4] A tug is a cart that moves ULDs, unit load devices, large aluminum containers that contain packages.

established at best a few isolated instances of non-union-related solicitation and distribution of which Respondent may have been aware. I dismiss this complaint item.

March 18, 2023 Union Rally

The Union organizing committee held a rally to promote its organizing campaign on Saturday, March 18, 2023 in the outside parking lot for the ramp building. This lot is also referred to as the GSE (Ground Service Equipment) lot. The Union announced in advance that Chris Smalls, a former Amazon employee, who was president of the Union at Amazon's facility in Staten Island, New York, would speak at the rally, G.C. Exh. 17.

The ramp parking lot is not within the Area of Air Operations. Prior to March 18, anyone could drive into the parking lot without showing an Amazon identity badge. A public bus stopped in the lot, as did Uber/Lyft drivers, food delivery drivers and other non-employees, Tr. 1088, 1096-97. Respondent did not have a rule or procedure as to how long a non-employee could remain in the parking lot. Manager Kris Moore testified that when he orders food to be delivered to him at work, he would have the delivery person wait in their car while he came out to get it, Tr. 1097. Allowing a Door-Dash driver to wait in the parking lot is not the kind of business need that would entitle Respondent to make an exception that did not also apply to union organizers.

The committee advertised the rally in advance by posting signs by the public streets around KCVG, social media posts and email. A handbill stated that Chris Smalls, from the Amazon Labor Union in New York, would speak at the rally, G.C. Exh. 17. On March 16, Amazon texted its KCVG employees cautioning them not to share their personal contact information with people at work or outside of work. The text continued:

> It's important to remember you have no obligation to speak to any person or group, including a union organizer, and you have no obligation to share your personal information…

I regard this as direct evidence of anti-union animus. There is no evidence that Respondent cautioned its employees about sharing their personal information with the other non-employees it knew were sometimes in its parking lot.

On the day of the rally, Amazon notified its employees of the rally through its A-Z employee portal application. It advised employees to be prepared to show their Amazon employee identity badge to enter the parking lots at KCVG, something Respondent had never done previously.

On March 18, Respondent's security personnel manned a checkpoint at the entrance to the ramp parking lot and checked employee badges before allowing cars in the lot.[5] Chris Smalls surreptitiously entered the parking lot in a vehicle with other employees.

[5] Some of the security personnel in this case worked for Respondent's Aviation Security (AvSec); some for a security contractor, Allied Security.

Table One outside the ramp building

Charging Parties Steven Kelley, Braeden Pierce and Jordan Martin set up a table to the side of the entrance of the ramp building.[6] They displayed a union banner and placed union authorization cards on the table. Shortly thereafter Liz Hamedi, Respondent's Assistant General Manager and Husam Al Hili, its Aviation Security manager, approached Pierce and Martin, who were manning the table, Tr. 1900-1911.

Hamedi testified:

> There was a table being set up at that point in time right by one of the main entrance walkways. …the request from myself was just to ask the team not to set the table up in that direct walkway. Knowing that in the next hour and a half, we were going to have shift change and knowing that we didn't understand how large the potential rally would be…
>
> Tr.1911-12.[7]

Hamedi asked the employees to move the table; they refused citing the NLRA. Hamedi and Husam Al Hili came back to the table a second time and again asked the employees to move the table. The employees again refused to do so. On at least one occasion, Hamedi suggested the employees move their table to a location where there isn't an entrance to the ramp/GSE building—which would give the Union less access to the employees they wished to solicit.

Video exhibits, G.C. Exhs. 24. 26 and 56, shows the location of table 1 and establishes that it did not impede egress or ingress to the ramp building. [8] They also show that Hamedi was very polite and reiterated that the employees were entitled to distribute union literature somewhere in the parking lot. The videos also do not support Al-Hili's testimony that there was a danger of the union table being blown over or its literature being blown all over the parking lot. He admitted that there was no damage, and no injuries caused by the Union tables, Tr. 2031-32.

Management, including General Manager Karthik Pandian, visited table 1 several times during the day, asking (or directing) the employees to move. Each time, they refused to do so.

Table 2 in the parking lot near the public bus stop

Charging Parties Ritze and Hause pushed 2 or 3 collapsable tables together and set up on a raised relatively wide sidewalk in the ramp parking lot by the public bus stop.[9] They hung a union banner on the tables and placed union literature, authorization cards, buttons and T-shirts on them.

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[6] This is indicated with a 1 inside a small white square on G.C. Exh. 22.

[7] Al-Hili's testimony establishes that he doesn't recall much at all about what transpired on March 18. He was also led quite a bit by Respondent's counsel. I decline to credit any of his testimony that is not otherwise established as fact.

[8] Al-Hili conceded that table 1 did not block the door to the ramp building, Tr. 2033.

[9] This is indicated with a 2 inside a small white square on G.C. Exh. 22.

Assistant GM Hamedi and Al Hili visited this table after visiting table 1, Tr. 1928-30, G.C. Exh 23. Hamedi asked the employees to move table 2, asserting that the area was too congested. Griffin Ritze told Hamedi that the employees had a right to be in that location and refused to move the table. The video of the encounter does not support Respondent's assertion that the location of table 2 either interfered with the movement of employees or presented a safety issue. Neither does G.C. 25, a later confrontation between Ritze and Al Hili. That video shows table 2.

In the video, the Union banner is fluttering only slightly, and the pamphlets and other union literature are not being blown about. The video does not support Respondent's assertion that the table was in danger of being blown into the parking lot and damaging vehicles. G.C. Exh. 27, which shows a discussion (or confrontation) between Karthik Pandian and Chris Smalls near the bus stop also does not support Respondent's assertion that the location of table 2 created a safety hazard or impeded the movement of employees. In light of this, I credit Nicholas Hauser's testimony that everything on the table was secure, Tr. 547-48. There is no evidence that the union tables and materials caused any damage to anyone or anything on March 18 or produced litter on Respondent's property.

Continuation of the union rally outside of Respondent's property

At the conclusion of the union rally in the GSE (ramp) parking lot, it continued on public property at the corner of Aero Drive and Day One Drive. Husam Al Hili continued his surveillance of the union supporters outside of the KCVG facility, Tr. 2024-2026, G.C. Exh. 34, as did Mark Guest, Senior Manager for Aviation Security, and others, Tr. 1838-40, 1844-48, 1853-61, G.C. Exh. 54 e.g., at 1721 hours. G.C. Exh. 55.

Alleged threat to call the police and/or having Chris Smalls arrested.

Charging Party Steven Kelley testified that Karthick Pandian threatened to have Chris Smalls arrested for trespassing. Pandian denies doing so. I find Kelley's testimony no more credible than Pandian's and dismiss paragraph 6(c)(iii).

Surveillance of union activity on March 18, 2023 (amended complaint paragraph 7(b)(iv))

The General Counsel alleges that members of Respondent's management engaged in surveillance when Ritze and Hauser gave speeches from the bed of a truck parked in the ramp parking lot during the union rally. Ritze testified to seeing two managers, Kyle Makemson and Spencer Harvey hanging around the area near the truck. Both Makemson and Harvey credibly testified that they were working inside the facility, not outside during the rally.

However, 2 security guards were posted throughout the rally in the GSE (ramp) parking lot, G.C. Exh. 47. They were periodically monitoring the parking lot. G.C. Exhs. 54, 55 and 55a establish that Respondent's security team was closely monitoring the activities at the GSE parking lot throughout the rally. The rally was under video surveillance by Respondent. Respondent's security activity logs, mention, for example, that Griffin Ritze was walking the

ramp parking lot at 1431 hours (2:31 p.m.). At 1547 hours Respondent's security recorded that authorization cards were being signed. The log notes that former employee Edward Clarke was being interviewed by the media at 1625 or 1635 hours.

Analysis

Badge Check at Entry to the Parking Lot (Paragraph 7(b)(i) of the amended complaint, G.C. Exh. 2)

Respondent's checkpoint was instituted on March 18 in response to the planned union rally in the parking lot. Respondent has not established that it could not have protected its property interests and its security obligations by other means, i.e., employing its personnel to prevent access to secure areas. As to excluding Chris Smalls, prior to March 18, Respondent knowingly allowed non-employees access to its parking lot and had not imposed any requirement as to the length of time they could remain there. It had no reasonable expectation that the presence of non-employees in its parking lot would present a security threat or would result in violence or property damage.

Whether or not Respondent's institution of a check point and badge checks to enter its parking lot violates Section 8(a)(1) depends on whether or not these measures were justified by special circumstances, *Starbucks Corporation,* 374 NLRB No. 10 (2024). These measures were clearly implemented in response to union activity. Respondent has not established that it would have instituted the check point and badge check in the absence of union activity. If these measures were required by TSA or the EAA, they would have been implemented prior to March 18. I find that establishment of the check point and badge checks upon entry on March 18 violated Section 8(a)(1) because Respondent did not have a reasonable expectation of violence, a breach of security areas or other concerns that justified these measures.

Other Surveillance and interference with union activity

An employer's routine observation of employees engaged in open Section 7 activity on or near the employer's property does not constitute unlawful surveillance. However, an employer violates Section 8(a)(1) when it spies on employees engaged in Section 7 activity by observing them in a way that is out of the ordinary and thereby coercive. 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. *NCRNC, LLC d/b/a Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 3-4, 6-7 (2022); *Aladdin Gaming, LLC*, 345 NLRB 585, 585-586 (2005), petition for review denied 515 F.3d 942 (9th Cir. 2008).

The Board's test for determining whether an employer has unlawfully created an impression of surveillance is whether, under all the relevant circumstances, reasonable employees would assume from the statement or conduct in question that their union or other protected activities have been placed under surveillance. The standard is an objective one, based on the rationale that employees should be free to participate in union activities without the fear that members of management are peering over their shoulders, taking note of who is involved in

union activities, and in what particular ways. *Metro One Loss Prevention Services*, 356 NLRB 89, 102 (2010).

The record herein established not only the impression of surveillance, but actual surveillance. Respondent had and has a legitimate interest in preserving the integrity of its property. However, its actions on March 18 went far beyond what was necessary to accomplish this end, *Arrow Automotive Industries,* 258 NLRB 860, 861 (1981). Indeed, Respondent has made no showing that it could not have protected the integrity of its property by less coercive means.

While any airport presents important security considerations, KCVG is no different than any commercial airport in the United States, including the public side of CVG. Anyone can enter CVG, individually or with a group, without being screened or observed prior to reaching TSA security. Respondent had no reasonable expectation that there would be violence and attempts to breach security on March 18.

By any standard, Respondent's conduct on March 18, would reasonably tend to restrain, coerce, or interfere with employees' Section 7 rights and thus violated Section 8(a)(1), *American Freightways Co. Inc.,* 124 NLRB 146, 147 (1959); *Mediplex of Danbury,* 314 NLRB 470, 472 (1994). Respondent's motivation for its conduct is irrelevant to a Section 8(a)(1) violation. Given Respondent's anti-union message in its A-Z app on March 16, and March 18 text regarding enhanced security, employees would reasonably be intimidated by the constant presence of managers, supervisors and Amazon security personnel at the March 18 union rally. The affected employees included not only the pro-union employees attempting to attract supporters, but also those employees who may have been merely seeking more information about the Union.

Respondent submits that the Charging Parties had no right to set up tables on Amazon's property, R. brief at 64. The Act requires a balancing of the employer's property interests and employees right to organize, *Republic Aviation Corp. v. NLRB,* 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 1372 (1945). In this case, I find that balancing does not allow an employer to prohibit employees from setting up small tables in the parking lot, which as I find, did not present any compromise of Amazon's property interests. Amazon would like the Act to require employees to conduct their organizing efforts in a very ineffective manner. Employees would either have to carry handbills on their person or lay them on the ground where they would be more likely to be blown away than if they were secured, as they were on a table. Moreover, on March 18, Respondent did not demand that the employees take down their tables, it told them to move the tables to another area of the parking lot, where the Union would have had less opportunity to engage potentially interested employees.

March 23, 2023: disparate and/or illegal enforcement of Respondent's off-duty and solicitation policies in the breezeway (amended complaint paragraph 6)

The record in this case and in 09-CA-311529 establishes that Respondent allowed distribution and solicitation from tables in the breezeway for company approved events. This record also establishes illegal enforcement of the rule against pro-union employees in a non-

work area.[10] This issue is closely connected to the allegations in the complaint and was fully and fairly litigated, *Pergament United Sales,* 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). The application of Respondent's off-duty access policy on March 23, 2023 is addressed in the briefs of all parties; General Counsel's brief at 19-22, 45-46, 49-50, 73; Union brief at 8-11; Respondent's brief at 7, 13, 31-39).

On March 23, 2023, pro-union employees Griffin Ritze and Nicholas Hauser set up a table in the breezeway/bridge connecting the sort building and the parking garage for that building. This area is outside of the security check points of the sort building, Tr. 1167. They began distributing pro-union literature. Neither Ritze nor Hauser was on duty. They were repeatedly approached by Respondent's managers, including the highest-ranking Amazon representative on-site, Karthick Pandian, challenging their right to be in the area when off-duty and requesting that they affirm their identity as Amazon employees, by checking the validity of their badges, Tr. 644-645, 1003-08. This was done despite the fact that Hauser's badge was visible to the naked eye, G.C. Exh. 37, and that nobody could legitimately question whether both employees worked for Amazon, at least after the initial badge check. Pandian raised the specter of disciplinary action up to and including termination, Tr. 1008, G.C. Exh. 39.

Since June 30, 2022 Respondent has had in effect a policy at KCVG providing that:

> 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.

Jt. Exh. 3.

This rule became effective sometime after employees founded the Amazon Labor Union at 2 of Respondent's locations in Staten Island, New York. *Amazon.Com Services*, LLC, 373 NLRB No. 136 (2024).[11] This policy was found to comply with the Act by Administrative Law Judge Charles Muhl in case 13-CA-301810 et. al. (July 23, 2025). That decision discusses in detail the origins and development of the rule.

The area in question connects a parking garage to the third floor of the facility's sortation building, Tr. 557. It is clearly depicted in G.C. Exhs. 37, 39 and R. Exh. 39, and has been described as a "breezeway," by both General Counsel witnesses and Pandian, Tr. 2151, 2157, 2160. It was also referred to as a skywalk, bridge[12] and a foyer. As Respondent notes, there are four walls, windows and a roof over the breezeway and smoking is not allowed inside the breezeway. Unlike the parking garage, the area is "finished." Respondent's brief in 09-CA-311529 at page 6 states, "the sort building includes an enclosed foyer that is approximately 80 feet wide and 120 feet long…" However, the breezeway is outside the sortation building security area. One must walk from the breezeway through sets of doors to reach the badge screening

[10] The General Counsel stated on the record that it is not challenging the lawfulness of the off-duty access policy Tr. 288-89. The policy is lawful on its face, but that does not mean it is lawful when applied to all non-work areas.

[11] The KCVG Union is not formally related to the Staten Island Union.

[12] I infer that there is nothing below this structure connecting the parking garage to the first and second floor of the sortation building.

area, Tr. 1011-12. Anyone who drives into the parking garage can gain access to the breezeway, 1091.

On March 23, a person did not have to show an Amazon security badge to access the parking garage or breezeway. Most importantly no work is performed in the breezeway, Tr. 1000-1001, 1091.

Respondent regularly sets up swag tables in the breezeway to distribute snacks, pins and other small items to employees who are off the clock and on the way home, Tr. 1090-91. 2191. Respondent's human resources employees distributed such things as t-shirts, end-of-shift snacks from tables set up in the breezeway/sky bridge, Tr. 284. This is confirmed by the record in Case 09-CA-311529: On November 6, 2023, Respondent authorized 5 tables to be set up in the breezeway/skybridge from which it distributed swag (small items), R. 10 at 1:20; Exh. 11. G.C. 51 a (at minutes 19-22), 51 b pp. 13-14. Tr. 1999-2005. Respondent has allowed various colleges to solicit and set up tables in the breezeway as part of its Career Choice Program, 09-CA-311529: Tr.1202-08, 2555-56. Pursuant to this program, colleges are invited to inform employees of their offerings and solicit employees to enroll in Career Choice through their school. Other sanctioned events were also conducted from tables in the breezeway.

Respondent's brief states, "It cannot be credibly disputed that this area is inside the building." Assuming that to be accurate, Respondent does not assert that work is performed in the breezeway. Moreover, the breezeway is as much an extension of the parking garage, also a non-work area, as it is of the sortation building.

Black letter law is that an employer may limit access to its off-duty employees only to the interior of the plant and other working areas. *Tri-County Medical Center,* 222 NLRB 1089 (1976). Exceptions must be justified by business reasons.

> We conclude, in order to effectuate the policies of the Act, that such a rule is valid only if (1) it 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 those engaging in union activities. Finally, except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside non-working areas will be found invalid.

In so far as Respondent prohibited off-duty employees from the breezeway, it violated Section 8(a)(1). Not only did it apply its rule to a non-working area, the rule was not generally disseminated to employees and was applied disparately. Although the off-duty access rule became effective on June 30, 2022, there is no evidence that Respondent ever communicated to its KCVG employees any rule conforming to the criteria set forth in *Tri County Medical Center.* Respondent's sole method of communicating this rule to KCVG employees was through its A-Z app and on its Inside Amazon webpage. Respondent did not communicate the rule to employees at their daily stand-up meetings. There is no evidence contradicting the testimony of Griffin Ritze and Nicholas Hauser that they were unaware of it, Tr. 357, 376 (as of November 10, 2022), 562 (as of March 23, 2023). In case 09-CA-311529, other employees testified that they were unaware of the off-duty rule until November 2023.

Moreover, the record establishes that Respondent never enforced this rule via disciplinary measures until December 2023.

Additionally, Respondent's rule as enforced in the breezeway is illegal in prohibiting the distribution of literature by its employees in non-work areas when they are not on duty, *Stoddard-Quirk Mfg. Co,* 138 NLRB 615 (1962).

Reappointment to the learning ambassador position

In 2022, Respondent created the learning ambassador position. These employees train new employees, in addition to doing other job functions.[13] There are 10-15 learning ambassador positions per shift at the ramp and another 10-15 per shift in sortation. In 2022, amongst those selected to be learning ambassadors were Charging Parties Braeden Pierce, Nicholas Hauser and Steven Kelley. All 3 were prominent supporters of the Union, particularly Pierce and Hauser.

Hauser spoke at the rally near the public bus stop inside the GSE parking lot and at the rally outside the KCVG property. Pierce spoke at the second rally. Both rallies were closely monitored by Respondent, e.g. G.C. Exh. 54 (e.g.,1603 hours) and G.C. Exh. 55 (e.g., 1556-1559, 1602—04) including video monitoring.

Learning trainers audit and train the learning ambassadors. They are higher paid (tier 3) employees than learning ambassadors (tier 1, Amazon's starting pay grade). Learning ambassadors do not receive extra compensation for being a learning ambassador. Thus, Nicholas Hauser, for example, received pay solely as a tier 1 ramp associate. Nevertheless, employees considered learning ambassador to be a desirable position and a potential avenue to promotion. Steve Bostelman's testimony at Tr. 1261 suggests that being a learning ambassador is a factor in obtaining a promotion, but not a determinative factor.[14]

In November 2022, Respondent announced that incumbent learning ambassadors would have to reapply for their positions. This announcement was made by the Global Operations Leadership and Development Team (GOLD) at Amazon's Seattle headquarters and applied corporate-wide. To apply, an employee had to scan a QR code and fill out an online application. Hauser and Pierce reapplied and were not selected. There is no evidence that they were not selected because their performance as a learning ambassador was deficient.

Pierce and Hauser were notified of their non-selection in April 2023, shortly after Respondent's awareness of their role in the March 18, rally and management's confrontation with Ritze and Hauser on March 23, Tr. 577, 692.

Pierce was rated by his manager Spencer Harvey. Harvey gave Pierce the highest rating possible in scoring him on his reapplication to be a learning ambassador, Tr. 1495. Harvey gave Pierce a higher rating than employees who were selected to be learning ambassadors in April

[13] Steven Kelley testified that he spent half his time working as a learning ambassador and the other half performing his duties as a ramp associate.

[14] Bostelman was head of the learning department at KCVG from January 2022 to January 2024.

2023, R. Exhs. 27 a & b[15]. Pierce was the only applicant that Harvey rated that he knew was pro-union, Tr. 1513.

Harvey was under the impression that his rating would be determinative as to which applicants would be selected, Tr. 1516. The rating form filled out by Harvey gave no indication that the number of skills (process paths) or incumbency as a learning ambassador was to be considered, R. Exh. 18. There is no indication that Harvey was told these would be factors. In fact, he considered Chad Rimsky's experience as a learning ambassador to be a plus in rating him for reselection, Tr. 1498. Of the 29 employees listed on R. Exh. 24a, Pierce, Hauser and Joseph Riley were the only applicants with experience as a learning ambassador who were not selected for 2023. Riley's rating from his manager was 68%. Unlike the ratings given Pierce and Hauser, there is no evidence that anyone with a manager's rating that low was selected

I find that Respondent's reasons for not selecting Pierce and Hauser, such as the fact that they were already learning ambassadors, are pretextual. I also find that they were not selected due to their union activities.

Nyjhai Benjamin, an area manager at KCVG, rated Hauser. Benjamin was aware of Hauser's support for the Union. When he rated Hauser, he had been his manager for no more than 2 months. Benjamin did not receive any instruction as to how he was to rate the ramp employees he supervised, Tr. 2210. He did not know who made the final selection decision or what criteria they used. Benjamin did not consider whether or not an applicant was already a learning ambassador, Tr. 2211-12.

Respondent explains its failure to select Hauser in part due to the fact that he listed only 2 process paths (job skills) on his application. However, its own documents show that he had 5, R. Exhs . 24A & 40A.[16] Benjamin rated 7 applicants. Mandi Brooks, who was selected, had only 1 process path compared to 5 for Hauser. Benjamin gave her the same rating, 75%, that he gave Hauser.[17] Marvin Whiteside, who was also selected, received a 78% rating from Benjamin but had only 3 process paths. I find that Respondent's reliance on process paths for not selecting Hauser is a pretext intended to cover-up its discrimination against Hauser in this process.

Respondent contends that Kelley never reapplied. Nevertheless, Steve Bostelman, then the head of the learning department, knew that Kelley wished to continue as a learning ambassador, Tr. 1395-1401. However, I am unable to conclude that Respondent's failure to select Kelley violated the Act due to the fact that Pierce and Hauser were able to apply via the process chosen by Respondent. There appears to be no motive for Respondent to ignore Kelley's application, when it at least went through the motions of considering the applications of Pierce and Hauser.

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[15] Christen Cole was selected despite having a lower rating from Harvey than Pierce. Cole also was already a learning ambassador. Ruth Godinez had a lower rating, but no prior experience as a learning ambassador. Elba Peralta had the same rating as Pierce and like Pierce was already a learning ambassador.

[16] Nicholas Baker's testimony as to what Respondent's records show regarding Pierce's process paths is irrelevant. He did not examine that record until January 2025, Tr. 2290, R. Exh. 44.

[17] 2 other applicants, Minnie Brooks and Ruth Godinez, who had 75% ratings from their manager, were also selected.

Respondent also contends that the 3 quit as learning ambassadors because they turned in their learning ambassador vests before they were required to do so. However, the 3 surrendered their vests after they'd been told they had not been selected to continue in that position. Moreover, what Pierce and Hauser did after the selection is irrelevant to this matter. Respondent did not fail to select them because they quit.

On January 9, 2023, Adrian Melendez informed other KCVG managers that he would like to ensure "that one of our tenets is to rotate in as many new ambassadors as feasible so all of our team gets a chance at these roles here at KCVG," R. Exh. 14. There is no evidence that any similar "tenet" was applied at any other Amazon facility.[18]

Approximately 17 of those selected to be learning ambassadors in 2023 had been learning ambassadors previously. The managers who rated applicants for the 2023 positions were not given any criteria by which to do so.

Steven Bostelman, a current Amazon manager in Texas, who was the learning operations manager at KCVG in 2023 testified that he and his subordinates, Jeannie Sharpe and Josh Archer made the decision as to who to select to be a learning ambassador, Tr. 1303. Sharpe and Archer did not testify and there is nothing in the record as to what their role in the decision making constituted. There is also no credible evidence that precludes the possibility that others had input in the selection process. Bostelman's testimony at Tr. 1303 does not do so.

Analysis

In order to establish a violation of Section 8(a) (3) and/or (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002); *General Motors,* 369 NLRB No. 127 (2022).

Respondent submits that failure to select Pierce and Hauser to continue as learning ambassadors does not constitute an "adverse action" for which it can be liable. It bases this contention on the fact that these employees suffered no loss in pay and no changes in their hours or work location. However, Pierce and Hauser reasonably believed that being a learning ambassador may have put them in a position for future promotion. Spencer Harvey's testimony supports the reasonableness of that belief, which establishes their non-selection as an "adverse action," see *Strother v. Southern California Permanente Medical Group,* 79 F.3d 859, 869 (9th Cir. 1996). Given the number of employees who applied to be a learning ambassador, it is clear that Pierce and Hauser were not the only employees who deemed the position to be beneficial to

[18] Ryan Smith's testimony at Tr. 1766-67 does not establish anything to the contrary. Smith was led to mention rotation of new ambassadors and does not know if the Global Ambassador Program was applied consistently at Respondent's facilities.

them. It may also be true that employees considered teaching for 50 percent of their working time to be preferable to spending 100% doing their other job, i.e., loading and unloading airplanes.

As to the *Wright Line* factors: Pierce and Hauser, engaged in union activity and Respondent was aware they had done so when selecting learning ambassadors for 2023. The record demonstrates considerable animus towards that activity, such as Respondent's caution note to employees before the rally, surveillance of Pierce and Hauser's union activity and its application of its off-duty access policy to Hauser in a non-work area on March 23.

The timing of Respondent's decision not to reoffer Pierce and Hauser learning ambassador positions also supports the finding of discriminatory motive. This is particularly true given it is unclear when the selection decisions were made, aside from the fact that they were made after the March 18 rally, in which Pierce and Hauser played a prominent part, *Case Farms of North Carolina,* 353 NLRB 257, 260-61 (2008).

In sum, the General Counsel has met its initial burden. Respondent, on the other hand, has not established that it would not have selected Pierce and Hauser in the absence of their union activity. Respondent's use and misuse of subjective criteria in selecting learning ambassadors makes it virtually impossible for it to establish a Wright Line defense, *Waterbury Hotel Management, LLC,* 333 NLRB 482, 529 (2001) enfd. 314 F. 3d 645 (D.C. Cir. 2003). Also see *B. J. & R Machine Co.,* 270 NLRB 267, 269 (1984).[19]

Conclusions of Law

Respondent, Amazon.com Services violated Section 8(a)(1) by;

Instituting a check point and badge check procedure to gain entry to the ramp parking lot on March 18, 2023.

Engaging in surveillance and otherwise interfering with employees' union activity at the rallies on March 18, 2023;

Applying its off-duty access policy to off-duty employees distributing union literature in a non-work area, the breezeway between the sortation parking garage and sortation building, on March 23, 2023.

Applying its off-duty access and solicitation policies to employees distributing union literature in the breezeway between the sortation parking garage and sortation building in a discriminatory manner.

[19] I do not rely on Pierce and Kelley's testimony as to what learning trainer Tracy Maus told them about the reasons they were not selected to be learning ambassadors. The testimony is somewhat inconsistent and, assuming Maus made the statements, it is unclear who was the source from whom she acquired her information.

Respondent violated Section 8(a)(3) and (1) in failing to select Braeden Pierce and Nicholas Hauser to continue as learning ambassadors in about April 2023.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

Order

Respondent, Amazon.com Services, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression that they are surveilling union activity
(b) Engaging in the surveillance of employees' union or other protected activities
(c) Establishing a check point and a badge check procedure unless justified by legitimate security concerns.
(d) Denying employees reappointment or appointment to the position of learning ambassador or any other position because they have engaged in union activity or support a union
(e) Applying its off-duty access rule to employees engaged in protected activity outside of areas requiring an Amazon ID badge to enter. i.e., the breezeway/skybridge between the sortation building and its parking garage and applying this rule in a discriminatory manner.
(f) Applying its solicitation rules in a discriminatory manner.
(g) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

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

(a) Reappoint Nicholas Hauser and Braeden Pierce to learning ambassador positions and credit them with uninterrupted service as a learning ambassador since their original appointment.

(b) Within 14 days after service by the Region, post at its KCVG facility copies of the attached notice marked "Appendix".[21] The notice shall be in English and in additional languages if the Regional Director determines that a significant number of employees are unable to read English well. Copies of the notice, on forms provided by the Regional Director for Region 9,

[20] 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.

[21] 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."

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Electronic notices must also be in languages other than English if the Regional Director reasonably so determines. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 18, 2023.

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

Dated, Washington, D.C., August 18, 2025

Arthur J. Amchan

Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain with us on your behalf.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT enforce our Off-Duty Access Policy to prevent you from distributing union literature in non-work areas that are not inside areas requiring an active Amazon employee badge, when you are not on duty. For example, we will not prevent you from distributing union literature in the breezeway or skybridge that connects the sortation parking garage to the third floor of the sortation building.

WE WILL NOT apply our Off-Duty Access Rule or Solicitation Rules in a manner that discriminates against employees engaged in union or other protected activity.

WE WILL NOT threaten you with discipline or discharge for distributing union literature in non-work areas that are not inside areas requiring an active Amazon employee badge, when you are not on duty.

WE WILL NOT create the impression that we are spying on your union activities.

WE WILL NOT spy on your union activity.

WE WILL NOT establish a check point and require you to show a badge to enter our parking lots unless justified by legitimate security or other concerns.

WE WILL NOT discriminatorily prohibit non-employees from entering our parking lots because they did so to engage in union activity.

WE WILL NOT refuse or fail to select you for any position, including learning ambassador because you engage in union activity or are known or suspected of having supported a union.

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, within 14 days from the date of the Order, reappoint Nicholas Hauser and Braeden Pierce to their learning ambassador positions, retroactive to the date they initially became learning ambassadors.

Amazon.com Services
(Employer)

Dated_____ By_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

If you wish to contact an NLRB agent, you may call the Board's toll-free number 1-844-762-6572 or contact the Board's Region 9 office at 550 Main St., Rm 3-111, Cincinnati, Ohio 45202-3271, Tel: 513-684-3686, Hours 8:00-4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CA-307021 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, (513) 684-3686.