BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

BRYNN MARR HOSPITAL, INC.

and **Case No. 10-CA-328533**

MISTY MARIE BLANCHARD,
an Individual

Anthony J. Fitzpatrick, Esq.,
for the General Counsel.
Diane Apa Hauser, Esq.,
(Paisner Litvin Hauser)
Chesterbrook, Pennsylvania
for the Respondent.

DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. I heard this case on April 1 and 2, 2025, in Jacksonville, North Carolina. Misty Marie Blanchard, an individual, filed the original charge on October 24, 2023, and amended charges on November 20, 2023, and July 29, 2024. The Regional Director for Region 10 of the National Labor Relations Board (the Board) filed the Complaint on December 13, 2024. The Complaint alleges that Brynn Marr Hospital, Inc. (the Respondent or the Employer) violated Section 8(a)(1) of the Act when it placed the Charging Party on administrative leave, and subsequently discharged her, because she concertedly complained about working conditions in an email to management, in social media posts, and in a text message to a supervisor. The Complaint further alleges that the Respondent maintained a Social Media policy that interfered with employees' rights under Section 7 of the Act in violation of Section 8(a)(1) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a North Carolina corporation, operates a hospital in Jacksonville, North Carolina where it annually derives gross revenues in excess of $250,000, and purchases and receives products, goods, and materials valued in excess of $5000 directly from points outside the State of North Carolina. The Respondent admits, and I find, that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

II. BACKGROUND

The Respondent operates a mental health hospital in Jacksonville, North Carolina. This case concerns the suspension and subsequent termination of Misty Marie Blanchard (M. Blanchard[1] or the Charging Party) – a registered nurse (RN) at that facility. M. Blanchard began working at the Respondent in 2019, but left in August 2020 before returning to work with the Respondent in November 2022. In May 2023, M. Blanchard began working full-time (36 to 40 hours per week) for another employer, but continued her employment with the Respondent on a pro re nata (PRN), i.e. "as needed," basis. Transcript at Page(s) (Tr.) 26, 30; General Counsel Exhibit Number (GC Exh.) 8 (M. Blanchard describes the other job as "full time"). As a PRN nurse with the Respondent, M. Blanchard did not have a set schedule and "could pick" from among available shifts, but did not receive retirement benefits. Tr. 26, 30. M. Blanchard remained in the PRN status at the time when the Respondent placed her on administrative leave and terminated her. M. Blanchard's husband, Craig Blanchard (C. Blanchard), has worked for the Respondent since January 2023 as a Medical Health Technician (MHT). Tr. 28.

M. Blanchard's duties with the Respondent included overseeing the work of the MHTs and coordinating with various therapists, social workers, and physicians. M. Blanchard's regular supervisor at the Respondent was Hannah Allen – a nurse manager – however, M. Blanchard often worked night shifts under the immediate supervision of other nurse managers or of "house supervisor" nurses who were present when Allen was not. Tr. 88-89. The house supervisors report to the Respondent's nurse managers who, in turn, report to its director of nursing (DON), Sheila Maraan. During the relevant time period, the Respondent's human resources director was Teresa Foster and its chief executive officer (CEO) was Cynthia Waun. Regarding the decision to discharge M. Blanchard, human resources support was provided to the Respondent by Randy Maez, a regional human resources director with the Respondent's parent corporation – United Health Services (UHS). Tr. 219-220.

[1] The Charging Party's spouse is an employee of the Respondent and figures significantly in the facts of this case. In order to distinguish them I use their first initials, referring to the Charging Party as M. Blachard, and to her spouse, Craig Blanchard, as C. Blanchard.

III. M. BLANCHARD COMPLAINS ABOUT HARASSMENT BY CO-WORKER

Starting in April of 2023, M. Blanchard began voicing complaints that herself and her husband, employee C. Blanchard, were being subjected to workplace harassment by Randy Mello, an MHT with the Respondent. The behavior that M. Blanchard complained about included Mello repeatedly telling other employees that M. Blanchard and C. Blanchard were "crackheads"[2] and also telling M. Blanchard that C. Blanchard looked like a homeless person. On April 29, 2023, M. Blanchard complained about Mello's behavior to house supervisor Diane Torres. Torres responded, "that's just how Randy[Mello] is." Tr. 31-32. That spring, M. Blanchard also reported the problem to a nurse manager, Lindsey Baldrige, and to four additional house supervisors Tr. 32-33

On May 21, 2023, M. Blanchard had a text exchange about Mello's behavior with house supervisor, Jenna Speer. Speer wrote that she herself had witnessed Mello loudly and repeatedly making derogatory statements to other staff about both of the Blanchards. GC 5. In the exchange, M. Blanchard asked whether she should send an email documenting Mello's conduct and Speer responded, "Yes. 1000 percent he called [C. Blanchard] a crackhead at least 15 times." Speer noted that "I don't think [Mello] realizes you can hear everything on these units" and now "he's moved on to talking about" another employee. Speer wrote that she and another staff member had talked about "how bat shit nuts" Mello was, and that she herself had tried to escape unpleasant conversations with Mello by changing the subject, but he persisted. Speer advised M. Blanchard, "[p]lease do right (sic) the email" and include CEO Waun among the recipients because DON Maraan never takes problems to Waun for fear of losing staff. Speer also offered to "go in and talk too" if needed, and suggested language for M. Blanchard to include in her communication to Waun.

In addition to bringing her complaints to house supervisors, M. Blanchard also discussed Mello's conduct with co-workers, including in a May text exchange with Emily Bruner, GC Exh. 4, R Exh. 10, an RN at the Respondent, Tr. 171. In that text exchange, M. Blanchard stated that the complaints about Mello were not hers alone, but that a "million people have made statements about him and nothing has happened." GC Exh. 4. M. Blanchard told Bruner that "Kimi [a house supervisor] and Justin have been telling me for a few weeks now to please just send in my statement." Bruner reviewed the statement that M. Blanchard had prepared and responded that it was "phenomenally worded." In addition, on May 21, M. Blanchard posted a request for advice on responding to a co-worker who was telling other staff that you are a crackhead. GC Exh. 3. She received multiple responses, including recommendations from staff at the Respondent that the offensive conduct should be reported to human resources. GC

[2] The record does not provide any support for this accusation. To the contrary, M. Blanchard testified at the hearing and gave no indication of being under the influence of any substance. Emily Bruner, who worked with M. Blanchard and C. Blanchard, wrote to M. Blanchard, "I'm soo sorry y'all are going through that, you nor Craig have ever given me crackhead vibes lol not even in the slightest." GC Exh. 4.

Exh. 3; see also Tr. 37-38 (Angela Cyphers and Kayla McMillen are co-workers of M. Blanchard).

Eventually, on May 21, M. Blanchard sent an email to the Respondent with her written complaint about Mello GC Exh. 6, Tr. 43-44. The email was addressed to, among others, Waun (CEO), Maraan (DON), Lindsey Baldridge (nurse manager) Hannah Allen (nurse manager and M. Blanchard's direct supervisor), and Kimberly (Kimi) Smith (house supervisor). M. Blanchard also forwarded the email to the Respondent's human resources department. Tr. 99. In the email, M. Blanchard identified multiple co-workers who had reported that Mello was telling people to stay away from M. Blanchard and C. Blanchard because they were crackheads. M. Blanchard also reported that Mello had come to her work area, even though he was assigned elsewhere, and tried to start an argument with her over her work performance. M. Blanchard cited workplace rules regarding harassment and stated that "all staff that have been witnesses to [Mello's] poor behavior are in agreement with this statement and agreed to be interviewed if necessary."

The same day that M. Blanchard sent the email complaint, May 21, Waun responded. GC Exh. 6. Waun wrote: "I am beyond sorry that this has happened and has been going on for a while. I will meet with Sheila[Maraan] on Monday to review this behavior and possible solutions . . . . I appreciate so much the work you and Craig[Blanchard] do at the hospital and I appreciate you bringing this matter to my attention." Respondent took Mello off the work schedule while it investigated his conduct. Tr.103-104. Waun met with M. Blanchard on May 25 and gave her an opportunity to add any information that she had not included in her May 21 email. Tr. 46,103-104. As of June 4, M. Blanchard was satisfied with the way the Respondent had addressed her complaint about harassment by Mello. Tr. 103.

IV. MARAAN TELLS M. BLANCHARD TO "FOLLOW YOUR CHAIN OF COMMAND" AND M. BLANCHARD'S SUBSEQUENT EMAIL TO MARAAN

On June 4, 2023, Maraan (director of nursing) had a brief conversation with M. Blanchard in the nurses' station. M. Blanchard told Maraan that "everything was going good." Then Maraan said "follow your chain of command." Tr. 47-48. M. Blanchard responded that she had followed the chain of command and nothing was done, and Maraan stated: "You're not in trouble. Follow your chain of command." When Blanchard continued by stating that she had previously raised the problem with "everyone,"[3] Maraan told her a third time, "follow your chain of command," and then left the nurses' station.

[3] M. Blanchard did not claim that, and the record does not suggest, that she raised her concerns regarding Mello with Maraan before making her written complaint to, among others, Maraan's superior, CEO Waun. M. Blanchard had been advised by house supervisor Speer to send the complaint to Waun because Maraan was unlikely to alert Waun on her own. GC Exh. 5.

M. Blanchard found the exchange with Maraan concerning and, later the same day, discussed it with Donna Simpson, the nurse manager acting as M. Blanchard's supervisor that day. Simpson told M. Blanchard "that the only way that anything would happen is to address it with Sheila[Maraan] in writing." Tr. 49. That day, M. Blanchard, began a text exchange with house supervisor Speer, in which M. Blanchard opined that Maraan's "chain of command" talk "would be considered retaliatory" and that "part of me says let her have it!" GC Exh. 11. Speer responded, "I would do the same." M. Blanchard stated that Maraan "is a bully and thinks she can do whatever she wants." M. Blanchard wrote that she was considering sending an email to Maraan "about her behavior and CC Cynthia[Waun] about it!" Speer said, "I wouldn't blame you."

On June 12, M. Blanchard made a written complaint, by email, to Maraan about the June 4, "chain of command" exchange. Tr. 49-50; GC Exh. 7. In the email, M. Blanchard stated that the instruction was uncalled for since she had previously reported Mello's conduct to two house supervisors. She asked, "How long was I supposed to keep working in an unsafe situation before it was addressed?" M. Blanchard stated that in her view the only thing that Maraan should have said to her was "I'm sorry that happened to you." M. Blanchard told Maraan that, aside from the "chain of command" conversation, she was "extremely happy" with how the Respondent had handled her complaint about Mello. M. Blanchard texted Speer about the email, stating "I'm gonna get fired" because "I don't feel like [the email to Maraan] was very nice." GC Exh. 11.

The same day that M. Blanchard sent the email complaint to Maraan, June 12, she received a response from Maraan. GC Exh. 7. Maraan said she was sorry about "what happened" and apologized for "the miscommunication." Maraan stated that her purpose in directing M. Blanchard to follow her chain of command was to make sure that the Respondent would "know[ ] about the problems . . . immediately" so that it could be "addressed as soon as it happened." Maraan stated, "I am glad you contacted me and informed me how it made you feel . . . . I told you you were not in trouble, because you are not." She closed by saying "If you have further concerns . . . we can meet in person." In addition to responding in this email, Maraan also contacted M. Blanchard by text message that day. Respondent Exhibit Number (R Exh.) 7. Maraan's text message stated: "I'm sorry for my approach when we talked. It was not what I intended. I really just wished that it was addressed sooner and that is not your fault. That's really all I was trying to say. Thank you for the clarification. Again my apologies." M. Blanchard responded with "Thank you" and a "smile" emoticon, however, at the hearing she testified that she viewed Maraan's apologies as an insincere attempt to "cover herself." Tr. 106.

V. TREATMENT OF C. BLANCHARD

M. Blanchard considered Maraan's "chain of command" comment to be retaliation against her for engaging in protected concerted activity by complaining about harassment by Mello. Tr. 111. M. Blanchard believed that Maraan also retaliated for that protected activity by punishing C. Blanchard – M. Blanchard's spouse and an MHT with the Respondent. M. Blanchard testified that C. Blanchard told her that he was

upset because he appeared for work to find that his scheduled 12-hour shift for that day had been reduced to 4 hours. Tr. 75-76, 113, 116. In addition, M. Blanchard testified that C. Blanchard told her that he had been informed that the decision to reduce the shift was not made by the regular scheduler, but rather by Maraan and a nurse manager. Tr. 76, 113. C. Blanchard also told M. Blanchard that Maraan had started using the facility's security cameras to monitor his cigarette breaks. Tr. 56. In addition, C. Blanchard told her that Baldridge had counseled him for allegedly documenting a patient's attendance at a time when the patient had already been discharged. Tr. 55-56. M. Blanchard saw these criticisms as "one more thing happening against Craig or myself." Tr. 56. M. Blanchard's testimony regarding what C. Blanchard told her about purported retaliatory acts against him was hearsay. I do not consider this testimony for the truth of whether the Respondent actually took the actions against C. Blanchard, but I do consider it as evidence of M. Blanchard's belief that the Respondent had taken those actions.

On June 4, M. Blanchard shared with house supervisor Speer her concerns that Maraan was retaliating against C. Blanchard. Regarding the criticism about C. Blanchard taking excessive cigarette breaks, Speer responded that C. Blanchard was only taking 3-minute breaks, not 15-minute breaks. M. Blanchard told Speer that Maraan "is lying" about the breaks. GC 11, Pages 9 to 10. M. Blanchard stated that Maraan "is a bully and [Baldridge] is her puppet" and Speer responded, "That she is."

VI. M. BLANCHARD'S SOCIAL MEDIA POST AND FURTHER TEXTS ABOUT BULLYING AND MARAAN

In addition to complaining about Maraan to supervisors Simpson and Speer, M. Blanchard discussed those issues in text exchanges with co-workers and in social media posts that were viewable by some co-workers. In one text exchange, occurring on June 11, co-worker Shawna Brambley told M. Blanchard that Maraan was wrong to confront her about the "chain of command." Tr. 79, GC Exh. 12. Brambley told M. Blanchard that she was "so fucking tired of the politics here" and that she had not been satisfied with the way the employer responded to employee reports about problems with co-workers. In addition, Brambley suggested that M. Blanchard should attempt to hold Maraan responsible by having a "lawyer find out how many total complaints [Mello] has against him from patients AND staff and why NOTHING was done about it." GC Exh. 12 (emphasis in original). M. Blanchard responded in a text, which stated: "I really should. I Donny (sic) want to give her a heart attack with her heart condition." The two discussed the possibility of M. Blanchard replacing Maraan as DON, and Brambley stated "that would be sweet." They also discussed Maraan's statements about her own health issues. Brambley stated: "great. Our DON is medically fragile and manipulative a[s]f[uck]. My God I wish UHS would shit can all these ppl." In a subsequent text exchange on June 16, M. Blanchard asked Brambley to assist her by providing a copy of the prior day's schedule to help establish that Maraan had retaliatorily changed C. Blanchard's schedule.

Regarding the text that read, "I *Donny* want to give her a heart attack," M. Blanchard testified that what she meant to write was "I *don't* want to give her a heart attack." Tr. 141-142. Based on my reading of this text, in the context of the full exchange, I see no reason to doubt M. Blanchard's testimony in this regard. Indeed, even without reference to M. Blanchard's testimony on the subject, I find that the reasonable reading of the "I Donny want" mistake, given the context of the sentence and of the entire exchange, is as "I *don't* want." The Respondent has not suggested any other meaning that it believes should reasonably be ascribed to the word "Donny," but rather simply asserts that the comment is "disturbing." Brief of Respondent at Page 9. At any rate, the record does not show that the Respondent had obtained this text at the time it made the decision to discharge M. Blanchard, although one of the "rumors" upon which the Respondent relied may have been a misreading of the text.

While off-duty on June 20, M. Blanchard wrote a social media post that was accessible to select co-workers and supervisors at the Respondent. GC Exh. 10, Tr. 62-63, 163. M. Blanchard started the post by stating that she was at a restaurant having an alcoholic beverage after an extended stretch of workdays. She stated that her aspiration was to finish leadership training and leave "bedside" nursing. Someone, not a co-worker, Tr. 65, responded "Get it boss lady!!" and M Blachard replied: "I've got a vendetta against a current person in a leadership position . . . I'm coming for her and she doesn't even know it! I am so tired of bullies in healthcare, and how everyone just considers it the norm and does nothing about it." After that comment, M. Blanchard and the other individual returned to talking about becoming "leaders" who could, among other things, "run a hospital" and "hold facilities accountable." The privacy settings that M. Blanchard used on the social media site meant that the post was only accessible to M. Blanchard's "Facebook friends"[4] – a group that included some persons who worked for the Respondent as nurses, house supervisors, and a nurse manager. Tr. 36-37.

Although she did not include Maraan's name in the post, M. Blanchard testified that Maraan was the person she was referring to when she said she had a "vendetta" against a "person in a leadership position." Tr. 66-67. M. Blanchard testified that what she meant by those statements was that she was building a record for Maraan's termination by keeping track of everything Maraan did. Tr. 66. M. Blanchard stated that she was pursuing this course because of Maraan's "chain of command" statement to her and Maraan's alteration of C. Blanchard's work schedule. She conceded that her use of "vendetta" was a "very poor choice of words. Tr. 147.

VII. GOSSIP AND RUMORS CONCERNING PURPORTED STATEMENTS BY M. BLANCHARD

As discussed above, M. Blanchard had discussed some of her concerns regarding workplace harassment with Bruner, another RN. At that time, M. Blanchard and Bruner and herself were friends at work and also "friends" on social media. Tr. 171. At trial, Bruner stated that M. Blanchard and herself, shared a "dark sense of humor"

[4] This means that these people had requested "friend" status and that M. Blanchard had granted it.

that they expressed in their social media posts, and which was typical of nurses at the facility. Tr. 174, 186.

At the end of May 2023, Bruner was promoted to supervisor, Tr. 170-172.[5] Bruner developed concerns that M. Blanchard "was starting to become hyperfocused" on workplace antagonists. Tr. 174-175. Bruner testified that, at a "nursing leadership" meeting she attended on June 21, the participants discussed rumors that M. Blanchard had written texts threatening the safety of Maraan, who was also at the meeting. Tr. 175-177. Bruner testified that she had not seen any of the rumored text threats, Tr.177, but that the rumors discussed included that M. Blanchard had texted about "pushing Sheila[Maraan] over and her having a heart attack," and about "driving around [Maraan's] neighborhood and setting her house on fire." Bruner did not say whether or not she was one of the individuals who alerted the leadership meeting attendees to these rumors, but she did testify that she alerted them to the "vendetta" comment that M. Blanchard had posted the previous day, June 20, and which Bruner was able to access as a Facebook friend of M. Blanchard. Tr. 178-179. Maraan asked Bruner to share that post with the human resources department. Tr. 178-179. Bruner provided human resources staff with the portion of the post, discussed previously, in which M. Blanchard complained about "bullies" in healthcare and stated "I've got a vendetta against a current person in a leadership position . . . I'm coming for her and she doesn't even know it!" R Exh. 15.

In May and June 2023, Sarah Ihrig, a human resources generalist, had what she described as "personal level" conversations with Maraan during which Maraan said that she felt threatened by M. Blanchard and was scared to come to work. Tr. 199-200.[6] Ihrig did not herself witness any threatening conduct by M. Blanchard and did not testify that she reported her "personal level" conversation with Maraan to anyone else.

VIII. RESPONDENT PLACES M. BLANCHARD ON LEAVE AND THEN DISCHARGES HER

On June 21 – the day after M. Blanchard posted the "vendetta" comment and the same day as the nursing leadership meeting at which rumors of explicit threats were discussed – Theresa Foster, the Respondent's human resources director, placed M. Blanchard on administrative leave. Foster told M. Blanchard that the suspension was based on a violation of the Respondent's social media policy. Tr. 52. Foster told M. Blanchard that she would be contacted when the Respondent's investigation into the matter was complete. At that time, the most recent shift that M. Blanchard had worked with the Respondent was on June 12.

[5] At the time of Bruner's testimony, the Respondent had further promoted Bruner to the position of nurse manager. Tr. 170-172.

[6] Maraan herself, who is no longer employed by the Respondent, was not called to testify. Therefore, there was no testimony from Maraan that she had the concerns referenced by Ihrig, or, if so, about what led to them.

Later during the day that she was suspended, M. Blanchard sent an email to hospital CEO Waun. GC Exh. 8. She asked for an update on her harassment complaint about Mello (who she knew the Respondent had stopped scheduling) and expressed concern about Maraan's "chain of command" comment, and then raised the subject of her recent suspension "due to posts I made on Facebook about an employee." She objected to the suspension, stating that, since she had a full-time job at another employer, "how does anyone know who my posts are about if there isn't a name?"

After suspending M. Blanchard, Foster sought advice on how to proceed from Maez, a regional human resources director with the Respondent's parent company, UHS. Tr. 221-222. Foster provided portions of M. Blanchard's texts and social media posts for Maez's review. R Exh. 18. What was initially sent for review included a post in which M. Blanchard complained about "retaliation from D[irectors]O[f]N[ursing]s," and texts from June 11 and 12 in which she expressed her view that Maraan was taking retaliatory action against C. Blanchard, and stated her intention to build a record that might lead CEO Waun to fire Maraan. The information that Maez initially reviewed included a portion of the M. Blanchard restaurant post from June 20, but did not include the comment about having a "vendetta" against someone in a leadership position.

On June 22, Maez responded to Foster that what M. Blanchard was "posting out there looks like it may be protected by the NLRB." He characterized the statements in the text exchange as "workplace banter" and said he did not see them as "a threat to anyone." R Exh. 18, Tr. 224-225. In response to that, Foster supplemented the material that Maez had already reviewed with the portion of the June 20 restaurant post in which M. Blanchard made the "vendetta" comment. R Exh. 18.

When Maez was asked at the hearing whether he considered the "vendetta" comment a threat, he responded, "There was also some rumors going around the hospital about the fact that she was – [M. Blanchard] was going to [Maraan's] house and burn her house. And or there was also a heart condition rumor that was going." Tr. 227.[7] Maez testified that Foster and himself concluded the vendetta comment was a threat directed at Maraan, even though Maraan was not named in the post. Maez said that the conclusion that the post was referring to Maraan was based on the fact that M. Blachard had "specifically called out" Maraan in the text exchange he reviewed. Tr. 226-227, 230-231. He testified that the Respondent's conclusion that the vendetta post was a threat of violence, not just a threat to instigate Maraan's firing, was based on "the additional rumors that – that seemed to go a little bit more deep with, you know, going to her neighborhood and setting the house on fire and you know, causing her heart condition." Tr. 230.

[7] The position of the Respondent's counsel at trial regarding the rumors was: "We are not asserting the truth [of the rumors] . . . . These were rumors that were brought to decision makers' attention and considered as part of the conclusion that the vendetta post was a personal threat." Tr. 227.

While testifying, Maez claimed that he did not view the vendetta post as something that "had to do with work." Tr. 231. That testimony was not credible. Maez had previously stated that the way he reached the conclusion that the vendetta comment was about Maraan, even though it did not name her, was by considering M. Blanchard's texts that "specifically called out" Maraan. Tr. 227; see also 230-231. In those texts what M. Blanchard was "calling out" Maraan about was purported workplace retaliation against C. Blanchard and herself. R Exh. 18. Those texts expressed M. Blanchard's desire to document Maraan's conduct in hopes that the documentation would lead to Maraan's dismissal. R Exh. 18.

Among the recommendations that Maez made to Foster was to have a conversation with M. Blanchard, R Exh. 18, and to "investigate[ ] . . . and see if she can get some credible evidence in regards to those rumors," Tr. 240. The record does not show that Foster, or anyone else, did anything to investigate the rumors that M. Blanchard had threatened to burn Maraan's house down or to intentionally cause her to have a heart attack.[8] Indeed, the Respondent's detailed interview summary makes no mention of asking M. Blanchard about those specific rumors. R Exh. 1. Nevertheless, Maez repeatedly stated that the Respondent relied on those rumors as a basis for concluding that M. Blanchard's "vendetta" comment was a violent threat against Maraan.

Foster interviewed M. Blanchard by phone on June 22, with Ihrig (HR generalist) also on the line. R Exh. 1,[9] Tr. 57-58. According to the Respondent's interview report, M. Blanchard's accuser was Maraan, and the applicable policy was the "Social Media Personnel Policy HR-003." No other policy was listed. Foster asked M. Blanchard to share any recent social media posts about the healthcare industry and nurses. M. Blanchard responded by saying she posted about being treated inappropriately by a supervisor at her other workplace, Tr. 148, and that this was "just the latest example out of a thousand" in which superiors had used an inappropriate tone. She also stated that, while CEO Waun's response to her allegation against Mello had made her feel "heard" and "very respected," Maraan's subsequent conversation with her about the allegation "didn't make me feel very good about" the Respondent. Tr. 58.

During the interview, Foster quoted the "vendetta" post and asked M. Blanchard to explain it. R. Exh. 1, Tr. 146-147. In response, M. Blanchard did not acknowledge that "the person in a leadership position" she was referring to was Maraan because "I didn't want to help them fire me." Tr. 146-147. Although M. Blanchard did not

[8] The Respondent did not even call Foster as a witness. Instead, it presented the testimony of Maez, who stated that Foster, not himself, was the one who conducted the investigation. Tr. 233.

[9] R Exh. 1 is a detailed report prepared by the Respondent regarding the investigation and interview. At the hearing, M. Blanchard reviewed the report of the interview and stated that it was accurate in all but one respect. Tr. 147-148. Moreover, the interview report, although supplemented in some respects by testimony, was not contradicted by that testimony. Therefore, I credit R Exh. 1, except with respect to the one correction that M. Blanchard referenced at the hearing.

specifically explain to Foster what she meant by "vendetta," she did tell her that if "I'm threatening to do something, it's an email, talking to a superior or getting something in writing about what happened" and not a threat to a nurse's safety. R Exh. 1.

On June 27, Foster, with Ihrig present, spoke to M. Blanchard by phone and informed her that she was being terminated for violating the social media policy. Tr. 83.[10] Prior to when the Respondent discharged M. Blanchard, it had never disciplined or counseled her for any type of misconduct or performance shortcoming. Tr. 83-84. The one performance review that M. Blanchard received at the Respondent was positive. Ibid.

Although, as discussed above, the Respondent did not call Foster as a witness, it did have Maez testify about the discharge decision. Maez stated that "vendetta is a very triggering word, and it seems like it could be a threat." Tr. 226. As discussed above, Maez said that the conclusion that it not only "*could be* a threat," but actually *was* a threat was reached based on the rumors that M. Blanchard had made other, more explicit and violent, statements. See also, supra, footnote 7. Maez testified that he concluded that M. Blanchard's statements violated the social media policy, the workplace violence policy,[11] and the work rules policy,[12] Tr. 231-232, although, as previously noted, the social media policy was the only one cited in the Respondent's written report on the investigation and by Foster when she explained the administrative leave and discharge decisions to M. Blanchard.

Maez testified that his decision that discharge was the appropriate penalty gave no consideration to the fact that the Respondent had never previously disciplined, or counseled, M. Blanchard for conduct or performance, and that her one performance review was positive. Tr. 83-84, 241.[13] He also testified that the decision to discharge M. Blanchard was not impacted by the fact that she had denied that the vendetta comment was about Maraan. Tr. 230-231.

[10] I credit M. Blanchard's testimony that the only policy that Foster cited to her as a basis for the discharge was the social media policy. Tr. 83. I considered Ihrig's contrary testimony that Foster also cited "employee conduct and work rules" policy. Tr. 201-202. I note that the only policy cited in the Respondent's own record of its investigative interview and decision is the social media policy. R Exh. 1. Moreover, Foster, the human resources official who conducted the investigation and conveyed the discharge decision to M. Blanchard, was not called as witness and the Respondent's failure to do so was not explained.

[11] The Respondent's "Workplace Violence" policy, prohibits, inter alia, "threats or acts of violence in the workplace." R Exh. 3.

[12] The Respondent's "Employee Conduct and Work Rules" policy prohibits, inter alia, "Aggressive behavior including but not limited to verbal or physical abuse/threats." R Exh. 4.

[13] The Respondent's Employee Guidebook states: "While we prefer to address unsatisfactory performance through a progressive corrective action process, we reserve the right to bypass any progressive step(s) and impose the degree of corrective action, including immediate employment termination, which may be appropriate." R Exh. 2, Page 14.

IX. POLICES OF THE RESPONDENT

The General Counsel argues that the Respondent's Social Media policy unlawfully interferes with the employees' exercise of their rights under the Act. The challenged policy, which is four pages in length, includes the following:

> II. Purpose
>
> * * *
>
> The Company recognizes the importance of the Internet and social media sites in its business and its employees' personal lives. The Company supports the rights of its employees to interact knowledgeably and socially on the web through social media.
>
> The Company must balance employee interests in social media with the Company's business interests which includes ensuring that use of social media does not compromise patient confidentiality, violate HIPAA, or expose PHI.
>
> Nothing in this Policy is designed to interfere with the rights of any employee pursuant to the National Labor Relations Act or any other applicable laws or regulations.
>
> III. Policy:
>
> A. Employee Responsibilities When Using Social Media
>
> * * *
>
> 4. Personal Content. The Company respects its employees' right to express personal opinions when using personal social media web pages and does not retaliate or discriminate against employees who use social media for personal, political, organizing, or other lawful purposes. However, Employees understand that the Company reserves the right to request an employee to remove content on any social media that violates this or any other policy of the Company. The Company also reserves the right to contact social media sites directly and request removal of information, where applicable. If employees choose to identify UHS or a UHS Facility as their employer, they must abide by the Company's expectations of appropriate online conduct/expression.
>
> In particular, an employee's use of Social Media should never:
>
> a) Unlawfully threaten, defame or harass any person;
> b) Contain or promote unlawful hate speech;

c) Violate any Company policy such as the Code of Professional Conduct, Conflict of Interest, or any policy relating to relationships with or treatment of patients;
d) Result in unauthorized disclosure of trade secrets or proprietary/confidential information (See Section C, below);
e) Violate HIPAA and/or expose Protected Health Information (PHI).

* * *

B. Employees who use Social Media for Work Related Reasons

* * *

4. The Company adheres to all relevant federal, state, and local laws regarding electronic communications, and the Terms of Use for various social media platforms.

C. Confidentiality and Proprietary Information

1. Employees may never share information that is a trade secret or similar proprietary and confidential information, which is described below, about the Company without express written consent in advance from the CEO/Managing Director or designee. Trade secret and confidential and proprietary information may include information about financial data, business strategies, methods and techniques, marketing plans, and financial records.

2. The Company protects its copyrights, trademarks, patents, trade secrets, customer lists, and other sensitive, proprietary, and confidential material. Employees must respect the law regarding copyrights, trademarks, rights of publicity and other third-party rights. To minimize the risk of a copyright violation, employees should provide references to the sources(s) (sic) of the information they use and accurately cite copyrighted works they identify in online communications. Do not infringe on any logos, brand names, taglines, slogans or other trademarks of the Company or its parent, subsidiary or any affiliated entities.

3. These are given as examples only and do not cover the range of what the company considers confidential and proprietary. Disclosing information may be a violation of federal, state or local law in addition to being the basis for termination of employment.

* * *

F. Violations of Company's Social Media Policy

Employees who violate the Company's Social Media Policy may be subject to corrective action up to and including immediate employment termination even if the conduct occurred off duty or on an employee's personal computer or other electronic device. Before corrective action is imposed, the Company will consider factors including the severity of the harm or potential harm that could have resulted from the violation; whether any social media

> conduct might be protected pursuant to the National Labor Relations Act (for example, discussing involving terms or conditions of employment); whether the conduct may have violated any applicable laws or regulations; and the employee's level of cooperation in mitigating any harm that may have occurred as a result of the violation.
>
> Employees who use social media for defamatory or other illegal purposes may be subject to legal action by the Company or other individuals or entities.
>
> Employees are encouraged to report suspected violations of the Company's Social Media Policy, including security breaches, disclosure of proprietary business information or patient information, and trademark infringement to supervisors, other managers, or to the human resources department. They may also report violation by using the Company's corporate compliance hotline.

GC Exh. 2. M. Blanchard testified that she did not believe that the Respondent had provided her with a copy of the social media policy. Tr. 91-92, 94-95.

In its brief, the Respondent mentions other company policies that it claims M. Blanchard violated. Specifically, it alleges that she violated its workplace violence policy (which prohibits "harassment, intimidation, verbal, written and physical threats"), R Exh. 3, and its employee conduct and work rules (which prohibit "aggressive behavior including but not limited to verbal or physical abuse/threats"), R Exh. 4. As noted above, however, the social media policy was the only policy referenced in the Respondent's investigative report and when Foster explained the forced leave and discharge decisions to M. Blanchard.

DISCUSSION

I. SOCIAL MEDIA POLICY

An employer violates Section 8(a)(1) of the Act by interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act. Those Section 7 rights include the right "to engage in concerted activities for the purpose of . . . mutual aid or protection." The social media policy that the General Counsel alleges violates employees' rights does not expressly restrict Section 7 activity and was not shown to be adopted in response to Section 7 activity. In *Stericycle, Inc.*, the Board articulated the standard for determining whether the maintenance of a work rule that does not expressly restrict employees' Section 7 activity, and was not adopted in response to Section 7 activity, nevertheless inhibits such activity in violation of Section 8(a)(1) of the Act. 372 NLRB No. 113, slip op. at 1-2 and n.3 (2023). The Board stated that, in such circumstances, the General Counsel must "prove that a challenged rule has a reasonable tendency to chill employees from exercising their Section 7 rights." Slip op. at 2. When evaluating whether the General Counsel has done so, the rule is interpreted "from the perspective of an employee who is subject to the rule and

economically dependent on the employer . . . . even if a contrary, noncoercive interpretation of the rule is also reasonable." Ibid. If the General Counsel carries the burden of showing a "tendency to chill," then the rule is presumptively unlawful. Ibid. If the rule is shown to be presumptively unlawful, the employer may escape a finding that it violated the Act by showing that the rule "advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule." Ibid. The Board stated in *Stericycle* that this approach was a version of the approach set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), and a rejection of the approach set forth in *Boeing Co.*, 365 NLRB 1494 (2017).[14]

I find that the General Counsel has not shown that the Respondent's social media policy has a reasonable tendency to chill employees from exercising their Section 7 rights. The policy prohibits employees from using social media to publish five types of statements – those that: (1) threaten, defame or harass any person; (2) contain or promote unlawful hate speech; (3) violate any Company policy such as the Code of Professional Conduct, Conflict of Interest, or any policy relating to relationships with or treatment of patients; (4) result in unauthorized disclosure of trade secrets or proprietary/confidential information; and/or (5) violate HIPAA and/or expose Protected Health Information. Neither these prohibitions, nor other portions of the policy highlighted in the General Counsel's Brief, would reasonably tend to chill employees in the exercise of their Section 7 rights.

A remote possibility exists that an employee would read the prohibition on posts "relating to relationships with or treatment of patients" as extending far enough to impinge on employee complaints that they are not being provided with the staffing levels, or other resources, required to give patients appropriate care – a type of complaint that is protected by Section 7.[15] Any such reading, however, is rendered unreasonable by consideration of the multiple clauses in the policy that make clear it does not apply to employees' Section 7 activity. The first "savings clause" appears in the "Purpose" section of the policy and explicitly states that "Nothing in this policy is designed to interfere with the rights of any employee pursuant ot the National Labor Relations Act or any other applicable laws or regulations." The General Counsel's recitation of the Social Media Policy in its Posthearing Brief conveniently skips the entire "Purpose" section that includes this clause. On the second page of the Policy, the Respondent commits to respect "employees' right" to use social media for "organizing,

[14] Therefore, in this decision I will give no weight to Board decisions that apply the *Boeing* approach to the extent those decisions make a determination about whether a work rule or policy unlawfully interferes with Section 7 activity.

[15] See, e.g., *Manor Care of Easton, PA*, 356 NLRB 202, 232-233 (2010), enfd. 661 F.3d 1139 (D.C. Cir. 2011) (employee's letter to State representative regarding inadequate staffing is protected by the Act), *Valley Hospital Medical Center*, 351 NLRB 1250, 1252-1253 (2007), enfd. 358 Fed. Appx. 783 (9th Cir. 2009) (employee's letter to newspaper criticizing nurse workloads is protected), *Mount Desert Island Hospital*, 259 NLRB 589, 589 fn.1 and 593 (1981), affd. in relevant part and remanded 695 F.2d 634 (1st Cir. 1982) (employee's letter to newspaper, in which he "attack[ed] the hospital's safety levels and administration" is protected activity).

or other lawful purposes." The third page of the policy includes a general statement that "[t]he Company adheres to all relevant federal, state and local laws regarding electronic communications." On the fourth page, the Respondent states that it will not issue corrective action without first considering whether the social media conduct "might be protected pursuant to the National Labor Relations Act." I find that any risk that employees would reasonably be chilled in their exercise of Section 7 rights that can be conjured from the Respondent's social media policy is eliminated by the inclusion throughout the relatively brief 4-page policy of these statements reassuring employees that it will respect their rights. *First Transit, Inc.*, 360 NLRB 619, 621-622 (2014) (a "savings clause" may clarify the scope, and render lawful, an otherwise ambiguous rule); cf. *Flamingo* Hilton, 330 NLRB 287, 290 (1999) (an employer work rule interferes with employees' Section 7 activity by prohibiting abusive or insulting language "without making clear that such rules are not intended to bar lawful union organizing propaganda"). It is not surprising that the record does not contain evidence suggesting that the Respondent's employees were actually chilled in the exercise of their Section 7 rights. M. Blanchard, for her part, testified that she did not even remember having received the policy.

For the reasons stated above, I find that the evidence does not show that the Respondent's maintenance of its social media policy restricted employees' Section 7 rights in violation of Section 8(a)(1) of the Act.

II. ADMINISTRATIVE LEAVE AND TERMINATION OF M. BLANCHARD

The General Counsel alleges that the Respondent violated Section 8(a)(1), when it placed M. Blanchard on administrative leave and then terminated her employment because she engaged in protected concerted activity by posting to social media and texting about workplace concerns. Since the post and text exchange are indisputably what prompted the Respondent to take the challenged actions, the pertinent questions are whether the post and text exchange were protected concerted activity and, if so, whether M. Blanchard's conduct in the course of that activity caused the activity to forfeit the protection of the Act. *Lion Elastomers LLC*, 372 NLRB No. 83 (2023), vacated and remanded by 108 F.4th 252 (5th Cir. 2024); *Phoenix Transit System*, 337 NLRB 510, 510 (2002) enfd. 63 Fed.Appx. 524 (D.C. Cir. 2003); see also *Novelis Corp.*, 364 NLRB 1452, 1453-1454 n.12 (2016) (the question of whether an employer acted unlawfully by imposing discipline on an employee for conduct in the course of the employee's protected social media post does not turn on motive and the Board's *Wright Line*[16] analysis is inapplicable), enfd. in relevant part 885 F.3d 100 (2d Cir. 2018) and

[16] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983). The Respondent asserts that the allegations that it unlawfully disciplined M. Blanchard should be analyzed under the burden shifting approach set forth by the Board in the *Wright Line* decision. However, in *Lion Elastomers LLC*, the Board reaffirmed that the *Wright Line* burden shifting approach is inappropriate where, as here, the employer based the discipline on the employee's conduct in the course of otherwise protected activity. 372 NLRB No. 83, slip op. at 1-2. The Respondent argues that I should not follow *Lion Elastomers* because that decision has been

Chromalloy Gas Turbine Corp., 331 NLRB 858, 863-864 (2000), enfd. 262 F.3d 184 (2d Cir. 2001) (same).

A. Protected Concerted Activity

An employee's activity is concerted when it is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Meyers Industries*, 281 NLRB 882, 885 (1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert denied 487 U.S. 1205 (1988). This "encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." 281 NLRB at 887.

The evidence here shows that the June 20 social media post and June text exchange with Speer that prompted the Respondent's challenged actions were concerted protected activity.[17] This is so both because M. Blanchard's post and text exchange concerned group complaints about Maraan's perceived bullying, retaliation, and inaction on complaints, and also because those posts and texts were a logical outgrowth of the May 21 complaint she made to the Respondent about alleged harassment by Mello. Since the May 21 complaint to Waun and the June 12 complaint to Maraan expressed the concerns of at least two employees – M. Blanchard and C. Blanchard – those complaints were concerted. *Franklin Iron & Metal Corp.*, 315 NLRB 819, 822-823 (1994), enfd. 83 F.3d 156 (6th Cir. 1996); *Landgrebe Motor Transport*, 295 NLRB 1040,1044 (1989); see also *Nestle USA, Inc.*, 370 NLRB No. 53, slip op. at 1 n.2 (2020) (employee engages in protected concerted activity by raising a group complaint regarding harassment). Indeed, in her response to the May 21 email, Waun expressed her appreciation to both M. Blanchard and C. Blanchard.

At any rate, the record provides ample evidence that M. Blanchard was expressing the concerns of a group of employees wider than herself and C. Blanchard. In M. Blanchard's text exchange with Bruner regarding the complaint she subsequently made about Mello's conduct, M. Blanchard noted that a large number of other employees had made complaints about Mello, but the Respondent had not taken appropriate action. Moreover, before presenting the May 21 complaint to the

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vacated and remanded by the Court of Appeals for the Fifth Circuit. 108 F.4th 252. That argument fails not only because the Court of Appeals in that case did not address the validity of the Board's stated limits on the applicability of *Wright Line* (as opposed to the relevance of those limits given the posture of the case), but more importantly because the Board has a long-established policy of nonacquiescence to adverse appellate court decisions. *See Tri-State Rigging LLC & Zachery Wayne Edwards*, 374 NLRB No. 21, slip op. at page 2 n. 3 (2025), and cases cited therein.

[17] Other text exchanges with M. Blanchard are discussed above (e.g., the May 21 text exchange with Speer, the May text exchange with Bruner, the June 11 text exchange with Brambley), but the Respondent does not claim that it acted based on those, or even that it was aware of them at the time it acted. See also Tr. 222, 224.

Respondent, she obtained the input of Bruner, who reviewed and commented favorably, on M. Blanchard's draft. In addition, Blanchard posted a general request for advice on how to respond to co-worker harassment and other employees responded by, inter alia, urging her to raise the matter with the Respondent's human resources department. In the written complaint sent to the Respondent on May 21, M. Blanchard told the Respondent that her complaint had the support of "all staff that have been witnesses to [Mello's] poor behavior." Lastly, on June 11 – the day before M. Blanchard sent an email complaint to Maraan – M. Blanchard and co-worker Brambley had a text exchange during which they shared their criticism of the performance of the Respondent's managers. Brambley told M. Blanchard that she was "tired of the politics here," did not feel that managers responded appropriately to complaints about problem employees, and expressed the view that "nothing was done" even after multiple employees complained about Mello's conduct. Agreeing with M. Blanchard about management deficiencies at the Respondent, Brambley stated that "all these people" should be fired. See *Caterpillar, Inc.*, 321 NLRB 1178, 1179 (1996) (the Act protects employees attempts to provoke a supervisor's removal when the supervisor's conduct impacts working conditions).

The specific conduct by M. Blanchard that prompted the Respondent to take action against her were part of a continuing effort to address the group concerns about the workplace. The private social media post, which was visible to some co-workers at the Respondent, included her complaints about workplace bullying and management's response to it. Although the post did not mention Maraan by name, M. Blanchard credibly testified that she was talking about building a case for Maraan's removal, and the Respondent acknowledged that the post was about Maraan. In the other material that the Respondent relied on – the June text exchange – M. Blanchard was raising a complaint to house supervisor Speer about Maraan's workplace conduct, which M. Blanchard characterized as harassing, retaliatory and bullying.

Given the above, M. Blanchard's activities were not only concerted, but, because they concerned problems with employees' working conditions, were protected. Specifically, those activities addressed perceived workplace harassment, bullying, and retaliation, and management's non-responsiveness to employee complaints. Concerted complaints about those types of issues are "for mutual aid and protection," and are protected by Section 7 of the Act. See, e.g., *Nestle USA, Inc.*, supra, slip op. at 1 supra (harassment); *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 17-18 (2018) (bullying); *Marburn Academy, Inc.*, 368 NLRB No. 38, slip op. at 11 (2019) (retaliation); *Yukon Mfg. Co.*, 310 NLRB 324, 332 and 335 (1993) (poor supervision by plant manager).

B. Did M. Blanchard's Conduct During the Protected Concerted Activity Result in Forfeiture of Protection

Since the Respondent based its decision to take the challenged disciplinary actions against M. Blanchard on her protected social media post and text exchange, those disciplinary actions violated the Act unless the Respondent can show that M.

Blanchard's conduct in the course of the otherwise protected communications forfeited the Act's protection. *Nor-Cal Beverage Co.*, 330 NLRB 610, 611-612 (2000) (if it is determined that the misconduct alleged by the employer did not cause the employee to forfeit the protection of the Act, the causal connection between the discipline and the employee's protected activity is established and "the inquiry ends").

I analyze whether M. Blanchard's otherwise protected post and text exchange forfeited that protection using the factors that the Board set forth in *Pier Sixty, LLC*, 362 NLRB 505, 506-508 (2015), enfd. 855 F.3d 115 (2d Cir. 2017), which are cited by both the General Counsel and the Respondent. Brief of the General Counsel at Pages 22-23; Brief of the Respondent at Page 27.[18] In *Pier Sixty* the Board based its decision about whether an employee's otherwise protected social media post about a manager's asserted mistreatment of employees included conduct that forfeited the Act's protection on the following factors:

> (1) whether the record contained any evidence of the Respondent's hostility towards the protected activity; (2) whether the Respondent provoked the posting conduct; (3) whether the employee's conduct was impulsive or deliberate; (4) the location of the employee's social media post; (5) the subject matter of the post; (6) the nature of the post; (7) whether the Respondent considered language similar to that used by the employee to be offensive; (8) whether the employer maintained a specific rule prohibiting the language at issue; and (9) whether the discipline imposed was typical of that imposed for similar violations or disproportionate to the offense.[19]

[18] I do not address the question of whether M. Blanchard's activities forfeited the Act's protection by applying the factors set forth in *Atlantic Steel*, 245 NLRB 814 (1979), which the Board has stated are "not well suited [to cases] involving employees' off-duty, offsite use of social media to communicate with other employes or with third parties." *Triple Play Sports Bar and Grille*, 361 NLRB 308, 310 (2014), affd. 629 Fed.Appx. 33 (2d Cir. 2015). I also do not apply the forfeiture-of-protection standard relied on in *NLRB v. Electrical Workers 1229 (Jefferson Standard)*, 346 NLRB 464 (1953) and *Linn v. Plant Guards Local 114*, 383 U.S. 53 (1966). Those cases are inapplicable because they address the circumstance, not at-issue here, in which the employer argues that an employee's defamatory or disparaging statements about the employer's products or services caused the employee to forfeit protection. See *Novelis Corp.*, 367 NLRB at 1453-1454 n.12.

[19] In *Pier Sixty*, the Board relied on, and applied, these factors. I am aware that the Board was doing so pursuant to a "totality of the circumstances" standard that had been applied by the administrative law judge and not challenged on exceptions before the Board. However, in *Lion Elastomers*, 372 NLRB No 83, slip op. at 1 to 2 and n.5, the Board reaffirmed the "totality of the circumstances" test that the Board applied in *Pier Sixty.* See *Intertape Polymer Corp.*, 372 NLRB No. 133, at slip op. 1 and n.4 (2023) (noting that the *Pier Sixty* test governing social media posts and most conversations among employees, has been effectively restored by Board's decision in *Lion Elastomers*, supra.); see also *List Industries, Inc.*, 373 NLRB No. 146. slip op. at 1-2, 36 (2024) (Board affirms the reasoning of an administrative law judge's decision that applied the *Pier Sixty* factors in a case that turned on whether an employee's otherwise protected texts included misconduct that caused the forfeiture of protection.).

I find that the first three of these factors weigh in favor of finding that M. Blanchard forfeited protection. On this record, I cannot conclude that the Respondent bore animus towards M. Blanchard's protected complaints about harassment, bullying, retaliation, and management inaction. To the contrary, the evidence shows that CEO Waun and DON Maraan responded quickly and sympathetically when M. Blanchard brought her concerns to their attention on May 22 and June 12. Specifically, the Respondent immediately stopped scheduling the alleged harasser (Mello), and Waun expressed her apologies and thanked M. Blanchard for reporting the issue. Similarly, in response to M. Blanchard's complaint about the "chain of command" comment, Maraan immediately apologized, thanked M. Blanchard for raising the matter, and reassured M. Blanchard that her intention had been to make sure that the Respondent was able to address M. Blanchard's complaints promptly. Although I do not question that M. Blanchard believed the Respondent was hostile to her protected activity, the matters that led her to that belief – Maraan's rather anodyne "chain of command" comment[20] and the unexplored hearsay regarding things that C. Blanchard told her he had heard about his own treatment – fall far short of establishing such animus, especially in light of the Respondent's expressions of gratitude to her for bringing the issues forward and the apologies for her distress. For the same reasons, I find that the Respondent did not provoke the threatening reference to Maraan. The evidence shows that the Respondent promptly and sympathetically responded to the concerns she presented on May 21 and June 12, and does not provide meaningful support for viewing their responses to her as a provocation. In addition, the evidence shows that M. Blanchard's social media post was deliberate. It was not something she fired off in an exasperated state or in immediate response to a provocation. Rather she was at a restaurant and musing optimistically on her prospects for professional advancement when she posted the vendetta comment.

I find that the fourth factor, the location of June 20 social media post weighs in favor of continued protection. The post was made on a private social media page that could only be seen by those to whom M. Blanchard had granted "friend" access. There is no allegation that the post was accessible to Maraan or could be viewed as a threat made directly to her. Rather, Maraan heard about the post, which did not name her, from a third party. Cf. *Triple Play Sports Bar*, 361 NLRB at 312 (social media post that was made on the employee's personal page and was not directed at the public did not lose protection of the Act, even though it "could potentially be overheard by a . . . third party"). Nor does the record show that the post was accessible to patients or customers with a resulting interference in operations. In addition, M. Blanchard posted the comment while alone, during non-working time, outside the facility – which the Board has seen as favoring continued protection. *Pier Sixty*, 362 NLRB at 507. Similarly, the

[20] I note that the General Counsel has not alleged that under the circumstances present here the "follow your chain of command" comment was retaliatory or otherwise a violation of the Act. In addition, the General Counsel does not argue that the statement prohibited communications between employees or with third parties, rather than as Maraan explained to M. Blanchard, that the statement encouraged the communication of workplace issues to company officials who could address them promptly.

June text was made to a single supervisor who had lent a sympathetic ear to M. Blanchard's workplace concerns and offered to help M. Blanchard address those concerns with the Respondent.

I find that the fifth and sixth factors – the subject matter and the nature of the post and text – weigh in favor of continued protection. As discussed above, the subject matter concerned workplace bullying, retaliation, and inaction on complaints. As discussed previously, this subject matter falls squarely within the Act's protection. The nature of the post and the text exchange also supports continued protection. Although M. Blanchard said she had a "vendetta" against someone in leadership, by that she meant that she planned to gather evidence of Maraan's poor performance affecting working conditions in order to instigate her removal – an activity that the Board has found protected. *Chromalloy Gas*, 331 NLRB at 863; *Caterpillar, Inc.*, 321 NLRB at 1179. The post and text that led the Respondent to take the challenged actions did not suggest that M. Blanchard meant anything else by "vendetta." Specifically, the post does not reference, or suggest, a threat of physical violence,[21] a campaign of slander,[22] or other improper attack. Indeed, during the Respondent's investigation of the post, M. Blanchard explained to Foster (human resources director) that if "I'm threatening to do something, it's an email, talking to a superior or getting something in writing about what happened." In addition, the texts that Maez testified he relied on to surmise that the vendetta comment was about Maraan state that M. Blanchard's desire was to document Maraan's conduct in hopes of instigating Maraan's dismissal.

I also note that the tenor of the post was more cheerful than angry, did not include profanity or insubordination, and discussed M. Blanchard's optimism about her professional future. The fact that the comment did not identify the "person in a leadership person," or even the employer involved, also weighs against seeing it as an unprotected direct threat of violence. The Board has found ambiguous, but quite aggressive statements, to be insufficiently threatening to cause a forfeiture of protection. For example, employees did not forfeit protection by telling a supervisor "it was going to get ugly" so he "better bring boxing gloves"[23]; or by telling a company official "if you're taking my truck, I'm kicking your ass right now."[24] I note, moreover, that the Respondent does not claim that M. Blanchard had any history of violent actions. Indeed, the Respondent had never disciplined or counseled M. Blanchard and had given her a favorable performance evaluation.

In order to cast the subject matter and nature of M. Blanchard's otherwise protected post and text exchange as so extreme and egregious as to forfeit protection,

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[21] See *Boeing Airplane Co.*, 110 NLRB 147, 150 (1954) ("[a]ctivities which have been held to be unprotected . . . have included such conduct as violence, or threats of violence"), set aside 238 F.2d 188 (9th Cir. 1956).

[22] See *HCA/Portsmouth Regional Hospital*, 316 NLRB 919, 919 and 930 (1995) (employee's effort to raise support for a supervisor's removal by recklessly spreading false rumors is not protected).

[23] *Kiewit Power*, 355 NLRB 708, 710 (2010), enfd. 652 F.3d 22 (D.C. Cir. 2011).

[24] *Leasco, Inc.*, 289 NLRB 549, 549 n.1 (1988).

the Respondent resorts to reliance on workplace gossip and rumors that M. Blanchard had made other, less temperate, statements.[25] The Respondent, however, did not show that it had substantiated the truth of those rumors. Indeed, it did not show that it investigated their veracity or even that it specifically asked M. Blanchard about them. An employer cannot strip an employee's protected concerted statements of protection by reference to unsubstantiated rumors and gossip about that employee. See *Dr. Frederick Davidowitz, D.D.S.,* 277 NLRB 1046, 1047-1048 (1985) (Board rejects the employer's defense that it discharged employees based on rumors of misconduct that it did not attempt to verify); see also *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21, 22-23 (1964) (an employer violates the Act by firing employees who were engaged in protected union activity even if it acted because it honestly believed a co-worker's false allegation about union violence).[26]

I find that, on the record here, the seventh and ninth factors – how the Respondent treated similar language/violations – weigh neither in favor of nor against continued protection. The parties did not provide meaningful evidence regarding the discipline issued to other employees for making statements that management deemed threatening, or even showing that the Respondent knew about any other employee making statements comparable to M. Blanchard's.[27] Nor was there a showing about whether the Respondent generally adhered to a progressive corrective action process that would have worked in M. Blanchard's favor since she had no prior history of performance or conduct issues and her only performance review had been positive.

Regarding the eighth factor – whether the Respondent "maintained a specific rule prohibiting the language at issue" – weighs lightly in favor of continued protection. The Respondent's social media rule states that employees should not "unlawfully threaten, defame or harass any person."[28] The statements that M. Blanchard made in the post and in her June text exchange with Speer do not do any of those things. As noted above, to the extent that M. Blanchard was making a threat, it was to seek Maraan's removal – an activity which, was not "unlawful," but, rather, protected by the Act. The reason I view the Social Media Policy as weighing in favor of continued protections is that it specifically states that it is *not* meant to "interfere with the rights of any employee pursuant to the National Labor Relations Act," which includes the right to engage in

[25] See Tr. 227 and 230. See also, supra, footnote 7.

[26] Judge Learned Hand has pointed out that "accept[ing] rumor and gossip in place of undismayed and unintimidated inquiry" creates an unacceptable risk of "general suspicion and distrust." Address by Judge Learned Hand at the 86th Convocation of the University of the State of New York, Oct. 24, 1952, at Albany, New York, quoted in 63 Yale Law Journal 206, 232 (December 1953).

[27] Bruner stated that many nurses at the facility had a "dark sense of humor" that they expressed in social media posts. However, the evidence did not detail such posts or show that they were comparable to M. Blanchard's. Nor did the evidence show that management was aware of the posts to which Bruner referred.

[28] The Respondent's "Workplace Violence" policy, prohibits "threats or acts of violence in the workplace," and its "Employee Conduct and Work Rules" policy prohibits "verbal or physical abuse/threats." Neither of those policies was referenced by the Respondent at the time it investigated and terminated M. Blanchard.

protected activity as M. Blanchard did in the relevant communications. Indeed, Maez's written reaction when Foster first reached out to him was to point out that M. Blanchard's statements could be protected by the Act.

Although I consider it a close call, I find that the four factors that favor continued protection for M. Blanchard's June 20 post and June text exchange with Speer outweigh the three factors that favor forfeiture of that protection. I am given some pause by the evidence indicating that the Respondent did not act based on any hostility to M. Blanchard making the concerted complaints about workplace issues, but rather acted based on a concern – hastily arrived at and insufficiently supported – that M. Blanchard was threatening Maraan's safety. See *Burnup & Sims*, 379 U.S. at 22 (a violation of Section 7 rights does not necessarily depend on the existence of bias). However, to approve of an employer's reliance on unverified workplace rumors and gossip as a basis for taking adverse action based on an employee's otherwise protected activity would profoundly undermine employees' ability to exercise Section 7 rights. Cf. *Dr. Frederick Davidowitz, D.D.S.,* supra, and *NLRB v. Burnup & Sims, Inc.*, 379 U.S. at 22-23.

Since the Respondent indisputably took action based on M. Blanchard's June 20 post and June text exchange with Speer, and M. Blanchard did not engage in conduct in the course of that protected concerted activity that caused a forfeiture of the Act's protection, I find that the Respondent violated Section 8(a)(1) of the Act on June 21, 2023, when it placed M. Blanchard on administrative leave,[29] and on June 27, 2023, when it discharged M. Blanchard.

CONCLUSIONS OF LAW

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

2. The Respondent violated Section 8(a)(1) of the Act on June 21, 2023, when it placed M. Blanchard on administrative leave, and on June 27, 2023, when it discharged M. Blanchard.

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

4. The Respondent was not shown to have violated Section 8(a)(1) of the Act by maintaining the "Social Media Policy" at its Jacksonville, North Carolina, facility.

[29] I note that although I find that the Respondent violated the Act by placing M. Blanchard on administrative leave while it investigated her conduct, there is no allegation, and I do not find, that the Respondent violated the Act by investigating her conduct.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, the Respondent must make M. Blanchard whole for any loss of earnings and other benefits incurred as a result of the unlawful actions against her. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall also compensate M. Blanchard for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful conduct, including reasonable search-for-work and interim employment expenses, if any, regardless of whether those expenses exceed the individual's interim earnings. See also *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons,* supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Additionally, the Respondent shall compensate M. Blanchard for the adverse tax consequences, if any, of receiving lump-sum backpay awards, in accordance with *Tortillas Don Chavas*, 361 NLRB 101 (2014), and file with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each affected employee in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. In addition, pursuant to *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021), the Respondent will file with the Regional Director for Region 10 a copy of the backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

I note that in May 2023 – the month before the Respondent placed M. Blanchard on administrative leave and discharged her – M. Blanchard had taken a full-time job with another employer and voluntarily changed her employment status with the Respondent to "PRN." In PRN status, M. Blanchard had no set schedule, but could choose whether to work shifts that the Respondent made available to her. The backpay calculation for M. Blanchard is to be based on her position as a PRN employee. To base it on earnings for a time period that included when she was working a full-time schedule with the Respondent would create a distorted, exaggerated, assessment of what she lost in earnings and benefits, and compensate her for losses that were not incurred. Cf. *Central Freight Lines, Inc.*, 266 NLRB 182 (1983) (distinguishing between full-time employees and part-time employees for purposes of calculating backpay).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[30]

ORDER

The Respondent, Brynn Marr Hospital, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) placing any employee on administrative leave because he or she engaged in protected concerted activity.

(b) terminating the employment of any employee because he or she engaged in protected concerted activity.

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

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

(a) Within 14 days of the date of this Order, offer Misty Marie Blanchard reinstatement to her position as a PRN nurse at its facility in Jacksonville, North Carolina, without prejudice to her seniority or other rights and privileges she would have enjoyed absent being unlawfully placed on administrative leave and discharged.

(b) Make Misty Marie Blanchard whole for any loss of earnings and other benefits incurred as a result of its unlawful actions against her, as set forth in the remedy section of this decision.

(c) Compensate Misty Marie Blanchard for the adverse tax consequences, if any, of receiving a lump-sum backpay award and file with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar quarters.

(d) Within 14 days from the date of this Order, expunge from its files all references to the unlawfully imposed administrative leave and discharge of Misty Marie Blanchard and notify her in writing that this has been done and that the unlawful actions will not be used against her in any way.

[30] 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.

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

(f) Within 14 days after service by the Region post at its facility in Jacksonville, North Carolina, copies of the attached notice marked "Appendix."[31] Copies of the notice, on forms provided by the Regional Director for Region 10 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 notice shall be distributed electronically, such as by text, social media, internal smartphone app, email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at that facility at any time since June 21, 2023.

(g) Within 21 days after service by the Region, file with the Director for Region 10 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 27, 2025

PAUL BOGAS
U.S. Administrative Law Judge

[31] 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."

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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT place you on administrative leave, terminate your employment, or otherwise discipline you because you exercise your right to bring work-related issues and complaints to us on behalf of yourself and other employees.

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 offer Misty Marie Blanchard immediate and full reinstatement to her former job as a PRN nurse without prejudice to her seniority or any other rights and/or privileges previously enjoyed.

WE WILL make Misty Marie Blanchard whole for any loss of earnings and other benefits, and for any other direct and foreseeable harms, suffered as a result of our unlawful adverse actions against her.

WE WILL compensate Misty Marie Blanchard for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

WE WILL file with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

WE WILL file with the Regional Director for Region 10 a copy of the W-2 form(s) reflecting the backpay award.

WE WILL remove from our files all references to the administrative leave and termination of Misty Marie Blanchard and **WE WILL** notify her in writing that this has been done and that our unlawful actions will not be used against her in any way.

BRYNN MARR HOSPITAL, INC.
(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.

Harris Tower, 233 Peachtree Street, N.E., Suite 1000, Atlanta, GA 30303-1531
(404) 331-2896, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at http://www.nlrb.gov.case/10-CA-328533 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, (470) 343-7498.