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

CURALEAF MASSACHUSETTS, INC.

and

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1445

Cases 01–CA–346545
01–CA–346553
01–CA–346576
01–CA–346585
01–CA–350390
01–CA–350415

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for the General Counsel.[1]
Jeffrey D. Dilger and Nicholas Garcia Lisle, Esqs.,
for the Respondent.
G. Alexander Robertson, Esq.,
for the Union.

DECISION

STATEMENT OF THE CASES[2]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This hearing was held on May 13-16, 2025, in Boston, Massachusetts, over allegations that Curaleaf Massachusetts, Inc. (Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (Act) in response to a union organizing effort at its Oxford, Massachusetts facility (Oxford facility).

On February 16, 2024, employees from the Oxford facility, including Aiden Rawson, Ryan Handlin, and Fay Worthington, conducted a "march on the boss" in which they presented their manager with a letter signed by a majority of the facility's employees demanding that the Respondent voluntarily recognize and bargain with the United Food and Commercial Workers Union, Local 1445 (Union) as their collective-bargaining representative. The Respondent declined the demand.

On February 23, 2024, the Union filed a representation petition in Case 01–RC–336464. On March 4, the parties entered into a stipulated election agreement. Pursuant to that agreement, an election was held on April 5, which the Union won 15-3.

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[1] On February 3, 2025, President Donald J. Trump appointed William B. Cowen to be Acting General Counsel, replacing former General Counsel Jennifer Abruzzo. For ease and consistency, I will refer to the Acting General Counsel, the former General Counsel, and counsel for the General Counsel collectively as the General Counsel.

[2] Abbreviations in this decision are as follows: Transcript citations are "Tr. ___"; Joint Exhibits are "Jt. Exh.____"; General Counsel Exhibits are "GC Exh. __"; the Union's Exhibits are "U Exh. ___"; and Respondent's Exhibits are "R Exh. ___". Although I have included certain citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based upon my review and consideration of the entire record.

On April 12, 2024, the Respondent filed objections contesting the results of the election. The Regional Director for Region 22 overruled those objections, and, on July 23, issued a decision certifying the Union as the exclusive bargaining representative for the following unit (Unit):

> All full-time and regular part-time employees at the [Respondent's] adult-use cannabis dispensary, operated by Curaleaf Massachusetts, Inc., and medical-use cannabis dispensary, operated by Curaleaf North Shore, Inc., at 425 Main Street in Oxford, Massachusetts; excluding managerial employees, guards, professional employees and supervisors as defined in the Act.

The Respondent later requested the National Labor Relations Board (Board) review the Regional Director's decision. To date, that request remains pending at the Board.

The Union filed the charges in Cases 01–CA-346545, 01–CA–346553, 01–CA–346576, and 01–CA–346585 on July 18, 2024, and the charges in Cases 01–CA–350390 and 01–CA–350415 on September 12, 2024.[3] The Union filed the first-amended charges in Cases 01–CA–346576 and 01–CA–346585 on December 11, 2024, and the first-amended charge in Case 01–CA–346553 on January 14, 2025. Based on those charges, the Regional Director for Region 1, on behalf of the General Counsel, issued a consolidated complaint on January 17, 2025. She later filed a first-amended consolidated complaint on March 28, 2025 (Complaint).

The Complaint alleges that shortly after the march on the boss, the Respondent granted an employee a promotion-related pay increase to discourage union activity, threatened to withhold annual and other wage increases if employees selected the Union as their bargaining representative, and prohibited employees from discussing terms and conditions of employment, including workplace incidents, investigations, and discipline. It also alleges the Respondent more strictly enforced its attendance policy by removing the ten-minute grace period for clocking in after the start of a scheduled shift, disciplined Rawson and Handlin, and later terminated Handlin and Worthington, because of their union activities. It further alleges that following the election the Respondent unilaterally changed its employee discount program for Unit employees by removing a discount on third-party products purchased at non-Oxford facilities without providing the Union with notice or an opportunity to bargain, and it refused to provide the Union with relevant information requested for bargaining, including a seniority list, job descriptions, the health insurance plan, the dental and vision plans, the short-term and long-term disability plans, the life insurance plan, and the 401(k) plan. On April 11,

[3] On August 27, 2024, the Union filed a charge in Case 01–CA–349176, alleging the Respondent violated Sec. 8(a)(5) and (1) of the Act since about July 24, by (1) failing and refusing to recognize and bargain with the Union, and (2) failing to provide the Union with requested information relevant to its role as bargaining representative. The Union later filed a first-amended charge in Case 01–CA–349176, removing the second allegation. That second allegation is now in Case 01–CA–350415.

On September 30, the Regional Director for Region 1 issued a complaint in Case 01–CA–349176, alleging that the Respondent violated Sec. 8(a)(5) and (1) by refusing to recognize and bargain with the Union as the certified collective-bargaining representative of the Unit employees. On October 16, the Respondent filed its answer. In the answer, the Respondent denied that the certified Unit was an appropriate unit for the purposes of collective bargaining, and, therefore, it had no obligation to recognize and bargain with the Union. On October 24, the Regional Director filed a motion for summary judgement in this test-of-certification case. (Jt. Exh. 1). To date, the motion remains pending at the Board.

2025, Respondent filed its answer to the Complaint denying these allegations and raising various affirmative defenses (Answer).[4]

Based on my review of the record, assessment of the witnesses, and consideration of the parties' post-hearing briefs, I make the following Findings of Fact and Conclusions of Law

FINDINGS OF FACT[5]

A. Jurisdiction

The Respondent is engaged in the sale of cannabis and cannabis-related products at retail facilities across the country. Annually, in conducting its operations, the Respondent derives gross revenues in excess of $500,000, and it purchases and receives goods at its Oxford facility valued in excess of $5,000 directly from points located outside the Commonwealth of Massachusetts. The Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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

B. Background

1. *Operations, Hierarchy, and Agents*

Curaleaf operates retail facilities in Hanover, Provincetown, Ware, and Oxford, Massachusetts, and a production and cultivation (i.e., grow) facility in Webster, Massachusetts. The company sells products at its retail facilities that it grows, as well as products from third parties.

The Oxford facility is a stand-alone building that is divided into a medical-use dispensary and a recreational-use dispensary. The medical-use side is for customers who have been diagnosed with a qualifying medical condition, have a medical certification card, and are at least 18 years of age. The recreational-use side is for all other customers who are at least 21 years of age.

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[4] The Respondent raised numerous affirmative defenses in its answer that it did not present evidence on or address in its post-hearing brief. I, therefore, need not address those defenses.

[5] The General Counsel called Aiden Rawson, Ryan Handlin, Fay Worthington, Denise Gliniecki, and Gilford Murphy, and the Respondent called Amy Anderson, Robert Peterson, Carly Cole, and Alyssa Sandstrom.

To the extent their testimony is contrary to my Findings of Fact, it has been considered and discredited. In assessing witness credibility, I relied upon a variety of factors, including demeanor, the context of the testimony, the quality of the recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996), enfd. sub nom. 56 Fed.Appx. 516 (D.C. Cir. 2003). Of course, credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of what a witness says. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp.,* 179 F.2d 749, 754 (2d Cir. 1950), reversed on other grounds 340 U.S. 474 (1951). Specific credibility findings relevant to the allegations are contained below.

The manager of the Oxford facility is Alyssa Sandstrom. She has held this position since late November 2023. Prior to Sandstrom, the manager was Bailey Snow. The assistant facility manager is Alberto Pena. Prior to Pena, the assistant manager was Mike Dacri. Dacri was discharged in early March 2024.

The Oxford facility manager reports to a district manager. At all material times, the district manager for the Oxford facility was Derrick Culver. Culver later resigned.

Curaleaf has among others a human resources department and an investigations department. The company divides its facilities into geographic regions. Amy Anderson is a regional director covering the northeastern states. She oversees the human resource partners in that region. Those partners included Deb Pollard, who later resigned, and Carly Cole. At various points, Pollard and Cole were assigned to assist management at the Oxford facility with human resource matters.

Robert Peterson is the director of the investigations department. He oversees all regional security managers. Regional security managers perform various tasks, including investigating employees for potential theft, dishonesty, and other improper conduct. At all material times, Joseph Frederico was the security manager for the facilities in Massachusetts and Connecticut. Frederico later resigned.[6]

2. Job Duties, Purchases, and Discounts

The Oxford facility is primarily staffed by team leads and budtenders. Team leads are keyholders who open and close the facility, count the registers, ensure there is adequate change in the safe, and prepare the daily bank deposits. The budtenders are sales associates who assist customers with selecting products, placing orders, and processing transactions.

The Respondent uses a point-of-sale (POS) system (called Dutchie) to process all transactions. The registers have a touch-screen tablet and cash drawer. The lead or budtender will begin each transaction by checking the customer's identification. This serves two purposes. It confirms the customer is of legal age, and it is used to pull up their customer profile, if any, in the system. The profile contains the customer's name, date of birth, contact information, purchase history, loyalty points, and available promotions or discounts.

The Respondent offers various promotions and discounts to eligible customers. For example, medical-use customers, when they renew their medical-certification card, will receive four $50 coupons from the Respondent that they can use (one at a time) on non-sale products totaling $100 or more. Another example is the employee discount. Oxford facility employees receive a discount of 40 percent. With limited exceptions, the employee discount cannot be combined, or "stacked," with other promotions or discounts.[7]

Regarding the employee discount, if the lead or budtender is uncertain about the customer's eligibility for the discount, it cannot rely on the profile or what auto-populates on the transaction screen.

[6] Culver, Sandstrom, Pena, Frederico, and Pollard are admitted supervisors and/or agents of Respondent, within the meaning of Section 2(11) and (13) of the Act. Culver, Frederico, and Pollard were no longer employed as of the hearing, and I draw no inferences from the Respondent's failure to call them as witnesses.

[7] The two exceptions are the loyalty points from prior purchases, and the $10 coupon given to use during the week of their birthday. (Tr. 580).

They must verify eligibility by checking the customer's paycheck stub to see if they remain eligible, or by checking to see if they have an active Curaleaf email account. (Tr. 76–78).[8] If the bud tender or lead knows the customer is no longer employed, or they cannot verify the customer's current eligibility, they must manually remove the employee discount. This is done by clicking a red "x" next to the "employee discount" that appears on the items listed on the checkout screen. (R Exhs. 23-24). Additionally, if the customer is using another promotion or discount that cannot be stacked with an employee discount (e.g., recertification coupon), the screen will state "DO NOT STACK." The lead or budtender then is to manually remove one of the discounts. (R Exhs. 23-24) (Tr. 568-578).

3. Policies

The Respondent maintains a handbook containing various policies. Each employee receives a copy of the handbook when they are hired, and they electronically sign a form acknowledging receipt. The same holds true for any updates to the handbook. The Respondent issued updates in June 2023.

i. Attendance Policies

The handbook contains the Respondent's attendance and reporting for work policy. It states, in relevant part, that an employee with more than three unapproved occurrences (absence or tardy) within a three-month rolling period will face corrective action, up to and including discharge. Prior to June 2023, a tardy was arriving more than 10 minutes late for the start of a shift. (R. Exh. 19). In its June 2023 updates, the Respondent changed the definition to arriving more than five minutes late for the start of a shift. (R. Exh. 16). The parties refer to these as grace periods.

ii. Work Relationships and Anti-Harassment

The handbook's introduction contains a policy addressing working relationships. It requires that employees respect one another and accept personal responsibility for professional, respectful and considerate behavior. (R. Exh. 16). The handbook also contains the anti-harassment, discrimination, and retaliation policy. This policy prohibits offensive conduct of any kind, regardless of whether it is motivated by protected class status. That includes "[o]ffensive or derogatory jokes, comments, slurs, kidding, or teasing." (R Exh. 16).

iii. Progressive Discipline

Regarding corrective action, the handbook sets out the Respondent's progressive discipline policy. The steps include verbal warning/counseling, written warning, final written warning, and discharge. Based on the circumstances, the Respondent may elect, at its discretion, to forego progressive discipline altogether, to move to a higher level of corrective action, or to move directly to discharge. Misconduct that involves dishonesty, violation of law, or significant risk to safety or the well-being of others is grounds for immediate discharge. The same holds true of a violation of the anti-harassment, discrimination, and retaliation policy. (R Exh. 16).

C. Alleged Unfair Labor Practices

1. Aidan Rawson Wage Increase

[8] A separated employee remains eligible for the employee discount through the end of the pay period following their separation, usually up to two weeks. That period is noted on their paycheck stub.

Aidan Rawson worked at the Oxford facility from June 2023 to April 2025, when he resigned. He began as a budtender earning $17 an hour. In November 2023, he was promoted to a team lead. Bailey Snow, the manager at the time, told Rawson that the Respondent typically does not promote or give wage increases to employees before they reach their six-month anniversary. But Snow told Rawson that because the Respondent had an immediate need for a lead, and Rawson had prior experience, he was given the promotion and a "preliminary" raise to $19.50 per hour. (Tr. 40).

Leads typically start at $20 per hour. Rawson spoke to district manager Derick Culver about when he would receive the full increase to $20 per hour, and Culver indicated it would be after he reached his six-month anniversary, in December 2023. (Tr. 49). In December 2023, Rawson communicated separately with Culver and facility manager Alyssa Sandstrom about his increase. They each told him that they were working on it, and they would get it to him as soon as possible. Neither provided a specific date. (Tr. 51). About a week later, Rawson contacted Culver and told him he wanted to be paid the increase retroactively to the date he should have begun receiving it. (Tr. 85). Culver did not say anything in response to this (Tr. 86–87).

On February 16, 2024, a group of employees from the Oxford facility conducted a march on the boss. It happened at around 12:30 to 1 p.m. (Tr. 54–55). It consisted of about 15 to 20 employees, including Rawson. They presented Sandstrom with a letter containing the signatures of about 19 employees, demanding that the Respondent voluntarily recognize and bargain with the Union as their exclusive representative (demand letter). (R Exh. 6). Rawson's signature appears on the demand letter.

Human resource representative Carly Cole was at the Oxford facility that day and was present for the march on the boss. Later that afternoon, between 2 to 3 p.m., Sandstrom and Cole called Rawson into Sandstrom's office. Sandstrom and Cole informed Rawson that his requested increase to $20 per hour had been approved, and that it would be paid retroactively to January 1, 2024. (Tr. 56). That was the end of the meeting and Rawson returned to work.

The Respondent introduced the change form approving Rawson's wage increase with retroactive pay. (R. Exh. 18). It contains the electronic signatures of those involved. The first three signatures are from Sandstrom, Culver and regional director Adam John. Each signature is timestamped on February 8. The next signature is from Adam Bartunick, a representative from the Respondent's total rewards department. His signature is timestamped on February 9. The final signature is from Cole. Her signature is dated February 16, but it is not timestamped.[9]

[9] Carly Cole testified about the approval process for Rawson's increase to $20 per hour. I give Cole's testimony little weight. In general, I did not find her to be a reliable witness. Her recollection was limited and vague on critical points, and her responses were often non-responsive, unsupported, and/or inconsistent.

For instance, Cole testified the decision to give Rawson the increase was in response to his repeated inquiries, which she acknowledged began in late 2023. (Tr. 476). When asked to provide specifics about the decision-making process and the timing, Cole stated she could not recall or failed to provide any details, particularly regarding the period between November 2023 and early February 2024. (Tr. 515).

Cole also testified the decision to grant the increase was made when she created and circulated the change form, which occurred on or before February 8. She later testified the decision was done once Bartunick signed off on February 9. According to Cole, Bartunick's signature was critical because total rewards must approve all off-cycle wage increases. She further testified that "as soon as" total rewards signs off, the change form can be submitted to payroll, and the increase will be put into place for the next payroll cycle. (Tr. 476). That did not occur here because, as Cole later acknowledged, she too had to sign off on the form before it could

The Respondent also introduced a text message exchange between Sandstrom and Culver dated February 9. (R Exh. 22). In the text exchange, Culver asked Sandstrom for Rawson's cell phone number so that he could call and tell him about the wage increase. Sandstrom later provided Culver with Rawson's contact information. Culver thanked her but stated he was able to obtain the number on his own. The record does not reflect whether Culver ever attempted to contact Rawson.

2. Meetings to Discuss the Union and Alleged Threats

Beginning in early March, the Respondent began holding meetings at the Oxford facility to discuss the Union. These meetings, which were optional, were held in the basement. The basement contains the employee breakroom (with a kitchen and sink), a storage closet, and a side office. Sandstrom spoke at each of the meetings. Occasionally, Culver or someone from human resources would also be present

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be submitted to payroll. (Tr. 476–477). The Respondent sought to portray her signature as merely pro forma, adding that she has never overridden the approval of a change form. (Tr. 476–477).

Later, when asked to explain the seven-day gap between Bartunick's signature and her own, Cole's response was largely non-responsive. She testified she receives "a ton of these change forms" that accumulate in her inbox, and they do not need to be sent to payroll until near the start of a new pay period. So, for "organizational purposes," she will let them sit in her inbox until closer to the date they need to be sent. (Tr. 532–533). One issue with this explanation is the parties stipulated that the next payroll cycle following Bartinuck's signature began on February 11. (Tr. 701–702). Consistent with her stated practice, Cole should have signed Rawson's form and submitted it to payroll before the start of that pay period. Cole, in her responses, offered no explanation why it was not.

There also are significant issues with Cole's testimony regarding when exactly she signed the form on February 16. When asked why there was no timestamp for her signature, Cole stated her "best estimate" was that it was because she initiated the change form, and that perhaps her signature was timestamped differently. (Tr. 533). That offers no clarification because, as stated, there is no timestamp for her signature. Nor is there any other evidence indicating when she signed the form that day giving final approval for Rawson's increase.

Later, when asked whether she signed the form before or after the march on the boss, Cole testified as follows: "I know that I was [at the Oxford facility] that day to deliver this message to [Rawson]. That was my purpose for being in the store on February 16th. I recall having the conversation prior to [the march on the boss]. With my experience in Hanover [a unionized retail facility] … I would have probably paused and asked for a second opinion before having any one-on-one conversations with anybody after that point. (Tr. 537–538). The issue with this response -- in addition to being non-responsive -- is that Rawson credibly testified the meeting happened *after* the march on the boss.

There is no support for Cole's testimony on the reason why she was at the Oxford facility on February 16, or that the meeting with Rawson occurred before the march on the boss. Sandstrom, who testified after Cole, did not testify about the meeting with Rawson. She and Cole both testified that Cole came to the Oxford facility at least once every other week, and this visit would have coincided with the timing of Cole's normal visits. It stands to reason that Cole would have communicated with Sandstrom in advance that she intended to inform Rawson about the wage increase during her February 16 visit, and there is no indication the two ever discussed the matter. There also is no testimony about what, if anything, Cole and Sandstrom discussed between the march on the boss and the meeting with Rawson.

Finally, there was no explanation given for why Cole wanted to notify Rawson about the increase, and why she wanted to do so in person on February 16. Up to this point, all of Rawson's communications about the wage increase had been with Sandstrom or Culver, never with Cole. There is no evidence Cole, or any other human resource partner, informed employees about their wage increases, or, if so, that it was done in person.

For these reasons, I do not credit Cole's testimony that the decision to grant the increase was finalized and announced prior to the February 16 march on the boss and submission of the demand letter.

Rawson and two other employees, Gilford Murphy and Denise Gliniecki, were among the employees who attended these meetings. They offered limited and varied testimony about what Sandstrom allegedly said and the context in which it was said.

According to Rawson, Sandstrom told employees at one of the meetings that "the Union will make it harder for us to give the raises we want to give you." (Tr. 60). When asked whether Sandstrom provided any explanation as to what she meant, Rawson said she "essentially" was trying to say the Union would add in extra steps that would make raises more difficult. But when asked to provide specifics, as opposed to paraphrasing, Rawson could not recall anything. (Tr. 60–61).

Murphy, who is a budtender who worked at the Oxford facility from October 2023 to July 2024, recalled that at one of the meetings Sandstrom stated something to the effect that the company wanted to give raises, but it would be unable to if the employees voted yes for the Union, because they would have to negotiate with the Union. Murphy acknowledged she was paraphrasing and could not specifically recall what Sandstrom said. (Tr. 264).

Gliniecki, who is a greeter at the Oxford facility, recalled that Sandstrom stated at one of the meetings that now that the employees have decided to go union, the company cannot give raises because that is up to the union, and they (the Union) make that decision, not management. She also recalled that Sandstrom mentioned the company has another location (Hanover) that had unionized, and they did not get any raises. When asked about any specific phrasing Sandstrom used when discussing the wage increases, Gliniecki recalled she said that if the company wanted to give employees a raise, it would not be able to because the Union would have to approve it. She did not recall any other specifics. (Tr. 254–255).[10]

3. Changes in the Grace Period and Resulting Discipline

In June 2023, when the Respondent updated its employee handbook and modified its attendance and reporting for work policy, it reduced the grace period from 10 minutes to five minutes. The attendance and attendance-related disciplinary records for the Oxford facility show that in the months following the change several Oxford employees regularly were six-to-nine minutes late for work, and no one was disciplined. (GC Exhs. 13 and 15).[11]

This non-enforcement continued after Sandstrom became the manager in late November 2023, and for the next four months.[12] Sandstrom gave several reasons for not enforcing the revised grace period. First, she testified that, consistent with her established practice with her prior employer (Starbucks Corporation), whenever she took over a new store, her initial focus was to get to know the

[10] I give little weight to the testimony of Rawson, Murphy, and Gliniecki regarding Sandstrom's alleged statements. Each had a limited or vague recollection of what was said and the context in which it was said. Although Gliniecki appeared to recall more, and was more confident in her testimony, she appeared to me to be testifying based on her impressions of what Sandstrom said rather than what she said. As discussed below, the evaluation of alleged unlawful threats requires evidence about what was said and surrounding circumstances. That critical evidence is lacking here.

[11] As the General Counsel points out, between July 2023 and the start of March 2024, the following employees repeatedly clocked in between five and 10 minutes after their scheduled start times without discipline: Hallie Mongeau (23 times), Daryl Foisy (13 times), Atilla Mariane (27 times), and Brooke Nowlan (58 times).

[12] The Respondent introduced discipline it issued in late 2023 for excessive tardiness under the revised grace period, but none of those employees worked at the Oxford facility. (R Exhs. 20-21).

team, learn how they operate, understand the store's specific challenges, and build relationships rather than immediately begin enforcing strict discipline. She described a typical period of about two-to-three months to acclimate and observe the workplace and employees before transitioning to rigorous enforcement and oversight practices. (Tr. 542–545; 694–695). Second, she testified she had been advised by her district manager and other leaders that her first priorities should be inventory management and re-establishing solid leadership and relationships in the store, as the team had been without stable leadership for several months. As a result, her immediate attention was not on enforcing time and attendance discipline, but on addressing these primary concerns and restoring order and morale to the store. (Tr. 545; 621). Third, she testified she did not initially realize the extent of the attendance issues. It took "about two to three months in" before she noticed that multiple employees were late on a regular basis. Her early days involved working a training schedule and familiarizing herself with the Deputy scheduling system and its reporting features. She discovered the relevant timekeeping reports and patterns of lateness only after a few months, stating, "That wasn't evident probably until about two to three months in. So, typically, I would come in a little bit later. So, it wasn't until later that I discovered Deputy—which is the scheduling system—a little bit more, that I actually had access to reports." (Tr. 546).[13]

Beginning in late February 2024, Sandstrom determined that stricter enforcement was necessary. (Tr. 545). She decided to proactively "reset expectations" for the staff, clarifying the policy requirements and making sure the employees understood the change to a five-minute grace period, and that more than three tardies/absences within a three-month period would result in discipline. (Tr. 546). On March 4, 2024, Sandstrom began holding meetings with employees to explain the policy, what it meant, and that it would be enforced moving forward.

Following these meetings, Sandstrom began tracking attendance and when employees clocked in and out. She recorded this information on an Excel spreadsheet, which was introduced into the record. (GC Exh. 11). Following the meetings to reset expectations, Sandstrom began issuing employees (progressive) discipline when they had occurrences in excess of the permitted amount.

[13] I give no weight to Sandstrom's stated reasoning for her sudden enforcement of the previously unenforced revised grace period. Her claimed lack of knowledge of the tardiness issue at the Oxford facility during her first three-plus months as the manager is simply incredible. Even if she regularly arrived in the morning after the other employees, she was present when the afternoon/evening employees arrived, and the attendance records show several of those employees regularly arrived more than five minutes late for work. Also, I find her claimed issues with the Deputy scheduling system to be equally unbelievable. Facility managers are responsible for scheduling employees, validating and modifying timecards, and approving leave requests, all requiring access to and familiarity with the Deputy system. If she lacked access to or familiarity with the system for three-plus months, she likely would have raised that with her district manager or human resources partner, and they would have taken steps to address it. There was no evidence of that. Second, her claimed wait-and-see management style is suspiciously convenient, unsupported, and inconsistent. As noted, Sandstrom testified she implemented this approach at prior jobs. She never explained why she chose three months (after the march and the petition) versus two months (prior to the march and the petition) to begin more strictly enforcing the tardiness policy. There also was no explanation for why attendance, which is a straight-forward assessment, required an additional month for her to monitor before taking any action to address it. There also was no explanation why she waited three months before even discussing the policy and the revised grace period with employees. Finally, it is internally inconsistent for her to contend that she chose to be lenient in not enforcing the policy while at the same time contending that she was unaware that tardiness was a rampant issue at the facility.

One of the employees disciplined was Ryan Handlin. Handlin began working as a bud tender at the Oxford facility in August 2023. He also was one of the employees who signed the demand letter and participated in the march on the boss.

On June 7, 2024, Sandstrom and assistant manager Alberto Pena met with Handlin. Sandstrom handed Handlin a corrective action form stating that he was receiving a verbal warning for excessive tardiness. The form listed Handlin's occurrences over the prior month. They included tardiness on May 2 (6 minutes), May 11 (7 minutes), May 12 (57 minutes), May 16 (6 minutes), My 18 (6 minutes), May 19 (6 minutes), May 20 (8 minutes), May 24 (7 minutes), May 27 (6 minutes), May 28 (34 minutes), May 29 (9 minutes), June 3 (21 minutes), and June 7 (7 minutes). (GC Exh. 8). Handlin did not deny being late on those dates, nor did he offer any explanations for why he was late on those dates.

At this meeting, Sandstrom offered to change Handlin's start time (and reduce his shift by an hour each day, and she asked if he thought it would help him get to work on time. Handlin said no, because he knew it would reduce his hours and result in a loss of overall pay.

Following the meeting, Handlin remembered his tardiness on May 12 had been excused by Sandstrom at the time because he had a doctor's appointment. He explained this to Pena. Pena went and spoke with Sandstrom. He returned and told Handlin that Sandstrom had agreed to remove the reference to the May 12 occurrence, but she would not rescind the verbal warning. (Tr. 157). While several of Handlin's tardies were in excess of the revised, five-minute grace period, with this correction only two were in excess of the original, ten-minute grace period.

The General Counsel also introduced discipline issued to several other Oxford employees after March 4, 2024. Those employees included: Rhiannon Burmer, Alyssa Charron, Siobhan Clark, Todd Daigneault, Daryl Folsy, William Fishbeck, David Kenchanh, Hallie Mongeau, Gilford Murphy, India Torres, and Atilla Mariane. (GC Exhs. 13).[14] It appears that all but Charron's May 16 verbal warning, Fishbeck's May 24 verbal warning, Handlin's June 7's verbal warning, and Daigneault's November 12 verbal warning would have issued under the original, ten-minute grace period.[15]

4. Discipline of Rawson

As outlined, the team leads have additional cash-handling/accounting responsibilities. At opening, they count and ensure that each register drawer has a set amount of starting funds. At closing, they count down each register so that only the starting funds remain. Any excess cash is set aside and included in the bank deposit. The leads must ensure the counts of the register drawers and deposits are accurate. Variances must be reported to management. (Tr. 557–558).

[14] Mongeau was later discharged because of her attendance. Rawson testified he asked Sandstrom why Mongeau had been terminated, and she responded that it was because of her attendance, and that "corporate told her that she needed to 'strike the hammer down.'" (Tr. 99). Sandstrom denied making this statement. (Tr. 563).

I credit Sandstrom over Rawson on this point. The statement was inconsistent with any other statement Sandstrom (allegedly) made. Additionally, Rawson appeared at times to put his own spin on conversations and provide his impressions rather than what was said. An example was his description of Sandstrom's statements about the Union during the employee meetings. I find this was another of those instances.

[15] The record does not reflect whether the Respondent also tolerated violations of the original, ten-minute grace period at the Oxford facility prior to March 2024.

The Respondent has a security and asset protection training manual. It addresses cash variances. It states that when management becomes aware of variances, it is required to follow-up, retrain, and coach the employee involved. If the issues continue, then management is required to pursue performance management. (R. Exh. 7). "Performance management" is not defined but presumably would include corrective action.

On about April 22, 2024, Sandstrom observed that Rawson was failing to perform his counts correctly. She gave him suggestions on how to improve. (Tr. 557-558). Over the next month, Sandstrom monitored Rawson's counts. She noted that on May 5, he miscounted two drawers, one was under by $20 and one was over by $39.79. On May 10, he miscounted one drawer, which was under by $50. On May 15, he miscounted two drawers, one was over by $16 and one was over by $10.10. On May 21, he miscounted two drawers, one was over by $22 and one was under by $33.10.

On May 22, 2024, Sandstrom met with Rawson and informed him he would receive a verbal coaching. The coaching had two parts. The first part was for the continued cash-handling issues. (R Exh. 2).[16] Sandstrom verbally detailed the above incidents. She then reminded Rawson that they had previously spoken about his counts. Rawson acknowledged they had spoken, but he denied she ever told him he had been doing something wrong. (Tr. 64; 125).

The other part of the coaching was for failing to maintain a respectful work environment. Sandstrom stated she heard Rawson had called her a "bitch" on about May 5. Rawson did not deny this, and they did not discuss it further.[17] The meeting ended, and Rawson returned to work.[18]

5. Discipline/Discharge for Improper Employee Discount

i. Discovery of Improper Application of Employee Discounts and Stacking

As stated, Michael Dacri, the former assistant manager at the Oxford facility, was discharged on about March 6, 2024. The morning after, Sandstrom held meetings in which she informed the employees that Dacri had been discharged. According to Sandstrom, several employees were very upset, and they left the meeting and "stormed out of the building." (Tr. 603).

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[16] The written coaching addresses each of these miscounts. It states that moving forward Rawson would be expected to accurately count down his drawers and create deposits at the end of his each of his closing shifts and maintain accurate cash handling throughout all shifts. It warned that further violations may result in further disciplinary action, up to and including discharge. (R. Exh. 2).

[17] Rawson, during his direct examination, explained what happened. He stated the employees had access to the video feed from the surveillance cameras inside and outside the Oxford facility. The feed allowed them to see customers coming in from the parking lot, as well as where other employees were in the facility. The Respondent suspended that access for a period. Rawson and other employees wanted it restored. He tried more than once to talk to Sandstrom about it. On about May 5, 2024, he went to her office to discuss it. Sandstrom asked if they could talk about it later. Rawson told her they had tabled the matter for three weeks and he wanted to discuss a solution. According to Rawson, Sandstrom "kind of brushed [it] aside." This upset him. As he walked away, he said under his breath "this bitch." (Tr. 65–67).

On cross examination, Rawson was asked whether he believed using that language violated company policy, and he responded "[c]ertainly." (Tr. 123).

[18] Sandstrom testified she would have issued Rawson the coaching just for his failure to maintain a respectful work environment. (Tr. 556-557). I credit this testimony. I do not believe Sandstrom would have allowed Rawson to call her a "bitch" without some discipline, and a verbal coaching is the lowest level of discipline.

About two months later, Dacri came into the Oxford facility as a customer, on the medical-use side. Sandstrom, who was in her office at the time, overheard Dacri talking to the budtenders, and he told them he got a new job at another dispensary. According to Sandstrom, Dacri was acting "suspicious." She became curious why if Dacri had a job at another dispensary, where he likely received an employee discount, he continued to shop at the Oxford facility, where he no longer received an employee discount. (Tr. 589-590). This led Sandstrom to review Dacri's recent transactions. She saw he made four purchases following his discharge. They were on March 27, April 14, May 1, and May 16, 2024. For each, the employee discount was applied. For three of the four, the $50 recertification coupons were also applied on top of the employee discount, in violation of the Respondent's anti-stacking policy. Sandstrom reviewed which budtenders handled those transactions. The May 1 transaction was handled by Faye Worthington, and the other three were by Ryan Handlin. Sandstrom also reviewed the surveillance footage to confirm that it was Worthington and Handlin, and not someone else using their logins, who handled the transactions. (Tr. 590–592).

On March 27, 2024, Dacri purchased items with a total retail cost of $315. He was allowed to use the employee discount ($130) and the recertification coupon ($50), as well as his loyalty points ($4), which reduced his cost to $135. On April 14, Dacri purchased items with a total retail cost of $248. He was allowed to use the employee discount ($99.20) and the recertification coupon ($50), reducing his cost, with tax, to $98.88. On May 1, Dacri purchased items with a total retail cost of $195. He was given the employee discount ($78), which reduced his cost to $117.00. On May 16, Dacri purchased items with a total retail cost of $305.00. He was allowed to use the employee discount ($132) and the recertification coupon ($50), as well as his loyalty points ($10), reducing his cost to $123.00. (R. Exh. 14).

On May 20, 2024, Sandstrom emailed security manager Joseph Frederico (copying Culver) to ask him to investigate what she characterized as a "pretty open and shut" matter. (R. Exh. 12). She explained that following Dacri's discharge on March 6, she was "almost certain" that she had removed his employee discount from his profile, but there was a "small chance [she] could be wrong." She stated that following his discharge Dacri was given the employee discount on March 27, April 14, May 1, and May 16. Based on Dacri's transaction history and the surveillance video, the budtenders responsible for giving him the discounts were Handlin and Worthington. Sandstrom added that everyone at the facility knew Dacri had been discharged because they "all made a huge ruckus about it when it happened." Regardless, she noted that employees are to validate eligibility for the employee discount by checking the section on the paystub that reads "employee discount valid until XX." Sandstrom also noted that it appeared that someone added the employee discount back onto Dacri's profile at the first transaction (by Handlin) and then it was auto-applied thereafter. Sandstrom notified Frederico that Worthington was on a six-week leave of absence that may be extended.

Frederico replied to Sandstrom that day, asking if the POS system automatically applies the employee discount. Sandstrom responded that it does but that the employee handling the transaction is responsible for verifying continued eligibility, and, if the customer is not eligible, the employee is to manually remove it by clicking the "x" to the right of the discount line for each of the items. Sandstrom added that during the first transaction it appeared as though Handlin pointed to the discount [on the screen] and laughed with Dacri and another coworker. (R. Exh. 12).

Frederico responded that it appeared to be discount abuse, but he was going to look a little deeper. He added that he wouldn't expect human resource to discharge "anyone over this because the system automatically initiates a discount … unless of course if [Handlin] admitted to knowing." (R. Exh. 12).

Frederico later asked if the employee discount was still active on Dacri's account, and Sandstrom responded that it was not because she made sure to delete it as soon as the matter came to her attention. (R. Exh. 12).

On June 5, Culver emailed regional director for human resources Amy Anderson and human resource partner Deborah Pollard (copying Frederico), asking for a recommendation for what action to take against Handlin and Worthington for giving Dacri the employee discount following his discharge. Culver added that after speaking with Sandstrom it sounds like the employee discount was never removed from Dacri's Dutchie profile, however, both Handlin and Worthington knew he had been discharged and allowed the transactions without notifying a manager. (R. Exh. 12).

ii. Investigatory Interview of Handlin and Subsequent Discharge

On about June 14, 2024, Frederico met with Handlin in the basement of the Oxford facility.[19] Frederico asked Handlin about the transactions he had with Dacri on March 27, April 14, and May 16.

[19] I give Handlin's testimony little weight and, instead, rely upon the related reports, statements, and correspondence. (R Exhs 5, 6, 13; GC Exh. 18). In general, Handlin had poor recollection, and his testimony was self-serving and unsupported. (Tr. 160–162). However, I credit his admissions to knowing Dacri was no longer employed at the time of each of the transactions. (Tr. 161–162; 181–183).

Handlin undermined his credibility when he attempted to minimize his role regarding the transactions. He initially testified that while he knew Dacri was no longer employed, it was his understanding that Dacri could continue to receive the employee discount until a manager removed it from his profile. (Tr. 181). This is both unsupported and contradicted by the credible evidence. Rawson, whose testimony I credit on this topic, confirmed that if the budtender or lead handling the transaction knows a customer is no longer an employee, they have both the ability and responsibility to manually remove the discount by clicking the red "x" that appears next to each item for which the discount has been applied. (Tr. 116–117). The same holds true for stacking coupons and with the employee discount. Handlin eventually acknowledged as much on cross examination:

> Q. Isn't it your job, part of your job responsibility as a budtender, to verify that somebody who is using an employee discount code is still an employee?
> A. I believe so.
> Q. And in the cases of [Dacri's] transactions, you knew that at the time of the transaction [he] was not an employee?
> A. Correct.
> Q. And yet you did not delete the employee discount from the transaction?
> A. So if I were to delete the employee discount and then add another item, for example, it would auto-populate again. And then if there would be any other discounts, it would auto-populate as well.
> Q. Correct. But you would be able to, as the transaction progresses, if I have four items, all right. I scan one item, the employee discount pops up.
> A. Mm-hmm
> Q. Right? You can delete it off of that item?
> A. I can, yes.
> Q. And then when you scan a second item, the employee discount code pops up again. Correct?
> A. Yes, and then even if I removed it from the first item, it would pop back up on the first item.
> Q. Okay. But at the end, when you're done scanning all four, you can delete all four of them?
> A. Yes, unless there's any other discounts involved.
> Q. Right. And then if there are any other discounts involved--
> A. --Right--

According to Frederico's report, Handlin stated the POS system automatically applied the employee discount to former employee Dacri's orders, and Handlin failed to take action to remove it. Handlin admitted that he was aware the recertification coupons could not be stacked with the employee discount. He also admitted stacking the recertification coupon on to the employee discount on three separate transactions. The total loss caused by these actions was $511.20. Handlin wrote and signed a voluntary statement detailing these events and acknowledging that he had erred in failing to follow policy. (R Exh. 5). He also entered into a restitution agreement to repay the $511.20.[20]

Frederico prepared an investigation report. (R. Exh. 14).[21] The report was shared with Deborah Pollard. Pollard spoke with Amy Anderson. They all agreed that Handlin should be discharged for discount abuse.[22] Five days later, on June 25, Handlin was notified about his discharge. (R. Exhs. 25 and 26).

Q. --That are either auto-populated or not. Right, then you can do with those discounts what you need to? Correct? You could delete them? You could keep them?
A. Potentially, yeah.
…
Q. Okay. And so the, when we talk about stacking, stacking would include discounts and coupon discounts. Correct?
A. Can you rephrase that?
Q. Yeah. So part of the transaction--I think you testified to it--was about these $50-recertification coupons?
A. Right.
Q. And isn't it true that a $50-discount coupon can't be stacked with an employee discount?
A. Correct.

(Tr. 184–186).

Handlin further undermined his credibility when he claimed he did not know, at the time of the transactions, that he had given Dacri the employee discount. He claimed that discounts are not itemized on the receipt, and there was no way of him knowing if the employee discount had been applied. I reject this. As stated, the Dutchie system will display on the tablet screen whether the employee discount has been applied. It will also indicate if there is stacking. Furthermore, I conclude it would have been evident to Handlin that the discount had been applied based on the savings involved. As stated, the employee discount reduced the cost of Dacri's purchases 40 percent, between $100 to $130 per transaction. It was, by far, his largest source of savings. Listed or not, there is no way Handlin would have seen the total amount due and not known the employee discount had been applied on each of the transactions at issue. (R. Exh. 25).

Consistent with these findings, I reject that when Handlin gave Dacri the discount or stacked it with the recertification coupons, he did so mistakenly or unintentionally. (Tr. 160–162; 186). Handlin worked as a budtender for eight months. He knew Dacri was no longer employed, and he (Handlin) had the ability and responsibility to manually remove or unstack the discounts at issue. He knowingly or intentionally chose not to.

[20] Handlin contends he was coerced into writing the statement and agreeing to the restitution agreement. He testified he agreed to whatever Frederico accused him of and wrote and signed whatever Frederico told him to, because he wanted to keep his job. While I am certain Handlin wanted to keep his job, I reject that he was coerced or acting under duress when he prepared his statement and signed the agreement. Frederico used investigative tactics to get Handlin to be forthcoming and honest, but he did not threaten Handlin or condition his job on agreeing to those terms. (Tr. 194–196).

[21] Frederico prepared an initial draft, which he shared with Pollard, and then a revised draft. In the initial draft, Frederico wrote that Dacri's March 6 discharge was because he was believed to have been "pushing the team to go [u]nion and providing the [U]nion with insider information." (GC Exh. 18). This language was later removed.

[22] Anderson testified the Respondent discharges employees for discount abuse or misuse, regardless of the amount involved, because it is viewed as theft. (Tr. 346-347). As discussed below, the Respondent presented evidence of two other employees, from its Hartford, Connecticut facility, who were discharged for discount abuse/misuse. (R. Exh. 15).

iii. Investigatory Interview of Worthington, Directive, and Discharge

While the Respondent was meeting with Handlin, Worthington was on a medical leave of absence. She returned to work in late July. On July 26, she was called into a meeting in the basement area of the Oxford facility. Pollard was there in person, and Frederico was participating remotely via videoconferencing. Worthington testified she was caught off guard and was nervous when she entered the office in the basement. She does not recall exactly how the meeting began, but Frederico asked her whether she waited on Dacri on May 1. Worthington stated that she had. Frederico then asked her if she noticed that the employee discount had been applied, and Worthington stated she had. Frederico then asked if when she noticed the discount she spoke to anyone else about it, and Worthington stated she had not. (Tr. 222–223).[23] Worthington then prepared a hand-written statement and signed it. (R. Exh. 11). Unlike Handlin, Worthington was not given a restitution agreement to sign.

At the end of the meeting, Frederico instructed Worthington not to discuss their meeting with anyone.[24] He did not identify any exceptions or a duration of time. (Tr. 225–226).

Frederico prepared an investigation report. (R. Exh. 13).[25] The report was shared with Pollard and Anderson. Similar to Handlin, they decided to discharge Worthington for discount abuse. (Tr. 347-348).[26] On August 30, 2024, Worthington was notified about her discharge. (R. Exh. 27-28).[27]

6. Post-Election Refusal to Bargain and Provide Information

i. Changes to Employee Discounts

[23] In general, I found Worthington to be a credible witness. She had a candid and forthcoming demeanor, and she provided clear and consistent testimony on both direct and cross examination.

Worthington testified that when she was checking Dacri out on May 1, 2024, the POS system applied the employee discount to each of the products he purchased. Worthington was aware that Dacri was no longer an employee. She told her leads (Nick DeMarco and Attila Mariani) that the employee discount still appeared on Dacri's profile. They told Worthington they were unable to remove it from his profile. Worthington looked on Dacri's phone and saw that he had a Curaleaf email from earlier that day. Based on that, Worthington believed Dacri was eligible for the employee discount and applied it to each of the items he purchased. (Tr. 220–221).

Later when she was interviewed by Frederico, and he asked whether she asked anyone before applying the discount, Worthington said no. She testified she gave this answer at the time because she was nervous and frightened. (Tr. 224–225). I credit this testimony.

[24] Worthington initially testified Frederico told her she "wasn't allowed to speak of it to anyone. The meeting." (Tr. 225). A few moments later, when she was asked again what Frederico said, she testified he told her "not to discuss this with anyone." (Tr. 226). In reconciling these two similar statements, I credit that Frederico told Worthington not to discuss their meeting with anyone.

[25] There also were two reports regarding Worthington. The first report indicated that Worthington also had improperly stacked the employee discount onto a $50-recertification coupon. That was incorrect and was later removed. (Tr. 441-444) (GC Exh. 18).

[26] Anderson testified the decision to discharge Worthington was made at the same time they decided to discharge Handlin because they "knew that it would most likely end in termination once he conducted the formal interview based on what had transpired." (Tr. 381). Anderson testified that Pollard recommended discharge because they both applied the employee discount to someone they knew was no longer an employee. (Tr. 391).

[27] Worthington was allowed to work several shifts between her meeting with Frederico and her discharge. The Respondent's witnesses did not provide any explanation for this.

As outlined above, Oxford employees received a 40 percent discount on all their purchases, including both Curaleaf products and third-party products. In June 2024, Curaleaf changed its employee discount program. (U Exhs. 1–2). Although there was some initial confusion about what had changed and who it affected, Sandstrom eventually communicated the changes to the employees at the Oxford facility. She explained they would continue to receive the 40 percent discount on all products they purchased at the Oxford facility, as well as on all Curaleaf products purchased at other Curaleaf facilities. The only change was they would no longer receive a discount on third-party products purchased outside of the Oxford facility. (Tr. 35–-37).

Rawson testified that two Oxford employees lived near and made purchases at the Respondent's Ware facility, which was about an hour drive from the Oxford facility. One of the employees was budtender Matthew Marchand and the other was assistant manager Brandon Michon. (Tr. 82–83). There was no evidence offered regarding these individuals or their purchasing history.

ii. Information Requests

On June 5, 2024, the Union's vice president/bargaining director Shaun Murphy mailed Sandstrom a request for bargaining dates and a request for information. (GC Exh. 2). In the information request, the Union asked for the following:

- Seniority list including: full name, date of hire, rate of pay, department, home address, tel. number.
- Job Descriptions for all bargaining unit positions
- Health Insurance Plan
  1) Summary plan description
  2) Health plan enrollment census, including employee name, date of birth, plan type (ind, 2-party or fam).
  3) Current health plans rates
  4) Employee & employer contribution amounts toward premium.
- Dental Plan and Vision:
  1) Plan enrollment census including, employee name, date of birth, plan type (ind, 2-party or fam), dependent name.
  2) Current plan rates.
  3) Current employee & employer contribution amounts toward premium.
  4) Current summary plan description
- Other:
  1) Short-term disability, long-term disability, plan desig, rates and enrollment information.
  2) Life insurance, rates and enrollment information
  3) Vision insurance plan design, rates and enrollment information
- 401 K - Summary Plan Description

(GC Exh. 3).

That same day, the Respondent's attorney, Kaitlin Kaseta, responded to Murphy stating that the Union has not been certified by the Board as the employees' bargaining representative, which meant the requests were premature. On July 24, 2024, Murphy emailed Kaseta notifying her that the

Board had certified the Union as the bargaining representative the day before, and he again was requesting proposed bargaining dates and the above information prior to bargaining. (GC Exh. 2).

The Respondent did not respond to Murphy's July 24 requests. In its Answer, the Respondent acknowledges receiving the request and that it did not provide the requested information based on its ongoing challenges to the Union's certification.

LEGAL ANALYSIS

A. Section 8(a)(1)

1. *Overview*

The Complaint alleges the Respondent independently violated Section 8(a)(1) of the Act when it granted employees a promotion-related pay increase to discourage union activity, threatened to withhold annual and other wage increases if employees selected the Union as their bargaining representative, and prohibited employees from discussing terms and conditions of employment, including workplace incidents, investigations, and discipline. Section 8(a)(1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights under Section 7. Section 7 of the Act affords the employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

2. *Pay Increase to Rawson*

The General Counsel alleges on about February 16, 2024, the Respondent granted Aiden Rawson a promotion-related pay increase to discourage union activity. The General Counsel contends the Respondent granted Rawson's wage increase from $19.50 to $20 per hour after learning of the Union organizing effort, and after learning of Rawson's support for the Union through his signature on the demand letter and his participation in the march on the boss, which all occurred on February 16, 2024. The Respondent contends the increase had nothing to do with these activities; it was in response to Rawson's repeated demands for the increase, and it was decided a week prior.

It is a violation of Section 8(a)(1) for an employer to announce or grant a wage increase or conferral of benefit during a union organizing effort where the purpose is to impinge upon employees' freedom of choice for or against unionization, or where the action is reasonably calculated to do so. See *Brown-Forman Corp.,* 373 NLRB No. 145, slip op. 10–11 (2024) (citing to *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964)). The lawfulness of the announcement or grant of a wage increase during an organizing effort depends upon the employer's motive, and the Board will infer an improper motive when it occurs after the employer learns of the organizing effort. Id. The employer may rebut the inference of an unlawful motive by proving that the action was part of a previously established policy or plan, decided upon prior to the onset of union activity, or prompted by a legitimate business justification. Id. See also *Hogan Transports*, *Inc*., 363 NLRB 1980, 1983 (2016); *Vista Del Sol Health Services, Inc*., 363 NLRB 1193, 1193 fn. 2 (2016); *Network Dynamics Cabling*, 351 NLRB 1423, 1424 (2007); *Capitol EMI Music*, 311 NLRB 997, 1012 (1993). However, even if the employer's decision was not itself unlawfully motivated, the employer still must establish it would have announced or implemented the increase, at the same time, if there had been no union activity. *NP Red Rock LLC*, 373 NLRB No. 67, slip op. at 2 (2024). See also *Air 2, LLC*, 341 NLRB 176, 186–187 (2004); *Arrow*

Elastic Corp., 230 NLRB 110, 113 (1977), enfd. 573 F.2d 702, 705–706 (1st Cir. 1978); *Emery Air Freight Corp*., 207 NLRB 572, 576 (1973); *Revco Drug Centers of the West*, 188 NLRB 73, 77 (1971).

The Respondent's decision to grant Rawson the wage increase was initiated on February 8, but it was not finalized until February 16, when human resource partner Carly Cole signed off on the change form and submitted it to payroll. As outlined, the record does not reflect when Cole signed and submitted the form in relation to the march on the boss and the demand letter. The Respondent contends the timing is irrelevant because Cole's approval was merely pro-forma, and that she has never failed to approve a change form. The fact remains that her signature was necessary for the increase to be effectuated. And as stated, Cole failed to offer a coherent, credible explanation for why it took her nearly a week to sign and submit the form.

This is significant not only to determining when and why the decision was finalized to grant Rawson the increase, but also to whether the Respondent would have announced or implemented the increase on February 16 if there had been no union activity. Cole testified that she planned to go to the Oxford facility on February 16 for the purpose of informing Rawson about the increase before having any knowledge of the organizing effort, and that she and Sandstrom *likely* met with Rawson about the increase before the march on the boss and the demand letter. For the reasons stated above, I do not credit Cole's unsupported testimony on these points. I instead credit Rawson that Cole and Sandstrom informed him about the increase an hour or so *after* learning about the organizing effort.

The Respondent contends it was simply following through on an earlier promise to grant Rawson the increase. But each time Rawson inquired about the increase between November 2023 and January 2024, Culver and Sandstrom told him they were working on it, but there was nothing definite stated. There also was no evidence of a plan or apparent urgency to announce or implement the increase until after the Respondent learned of Rawson's support for the organizing effort.

Based on the evidence and the lack thereof, I conclude the Respondent has failed to establish whether it would have announced and implemented Rawson's increase, at the same time, in the absence of his union activity. I, therefore, recommend finding that the increase violated Section 8(a)(1).

3. *Threats to Withhold Pay Increases*

The General Counsel next alleges that on about March 18, 2024, manager Alyssa Sandstrom threatened during employee meetings to withhold annual and other wage increases if employees selected the Union as their bargaining representative. The General Counsel relies on the testimony from Rawson and Gliniecki that Sandstrom told employees that if they voted in the Union, the Union would make it harder for Respondent to give the employees raises. The Respondent denies any threats and contends that Sandstrom merely indicated that if a union was formed, raises could only be given following bargaining during which the Union could reject the company's proposals for wage increases.

An employer violates Section 8(a)(1) by threatening to withhold wage increases if employees select a union to represent them. See *Valmet, Inc*., 367 NLRB No. 84, slip op. at 1 (2019); *Twin City Concrete, Inc*., 317 NLRB 1313, 1318 (1995) The Board's standard for analyzing if an employer's statement constitutes an unlawful threat is whether under the totality of the circumstances it has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Section 7 rights. *Lush Cosmetics LLC*, 372 NLRB No. 54, slip op. at 3 (2023). This is an objective standard, making the intent of the speaker and the effect on the listener irrelevant. Id. See also *Multi-Add*

Services, 331 NLRB 1226, 1228 (2000), enfd. 255 F.3d 363 (7th Cir. 2001). The General Counsel has the burden of proving a violation by a preponderance of the evidence.

Statements by employer representatives violate Section 8(a)(1) if, in context, they reasonably could be understood by employees as a threat of a loss of wages or benefits that leave employees with the impression that what they may ultimately receive through bargaining depends upon what the union can induce the employer to restore; it, however, is not a violation when the employer makes it clear that any change or reduction in wages or benefits will occur only as a result of the normal give-and-take of negotiations. *Taylor-Dunn Mfg. Co*., 252 NLRB 799, 800 (1980). An employer may lawfully communicate to its employees "carefully phrased" predictions about "demonstrably probable consequences beyond [the employer's] control" that unionization will have on the company, provided that the predictions are based on objective facts. *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618 (1969). However, if the employer predicts, without any supporting objective facts, that it may or may not act solely on its own initiative for reasons unrelated to economic necessities and known only by the employer, then the employer's prediction is a threat of retaliation that violates Section 8(a)(1). *Daikichi Sushi*, 335 NLRB at 623–624.

The General Counsel argues the evidence presented establishes the alleged violation, and that the Respondent failed to question Sandstrom about her presentation(s). Nor did it seek to introduce any evidence regarding the context in which the alleged statements were made. Thus, according to the General Counsel, it cannot be contended that Sandstrom was explaining the give-and-take process of bargaining or otherwise carefully phrasing her statements regarding her belief as to demonstrate probable consequences.

Based on my review of the evidence, I find the General Counsel has failed to meet their burden of presenting sufficient evidence to establish the alleged violation. Determining whether an unlawful threat has been made requires clear and credible evidence about what was said and the circumstances surrounding those statements. As stated above, I give little weight to the General Counsel's witnesses about Sandstrom's alleged statements. They each lacked a clear and detailed recollection of what was said and instead paraphrased or provided their impressions, without any context. I, therefore, recommend dismissing this allegation.

4. *Prohibit Discussions or Disclosures Regarding Meeting*

The General Counsel next alleges that on July 31, the Respondent, through investigator Joseph Frederico, prohibited employee Faye Worthington from discussing her terms and conditions of employment, including workplace incidents, investigations, and discipline. This concerns the instruction Frederico gave Worthington at the end of his meeting with her because she applied the employee discount to Dacri's purchases on May 1.

Section 7 of the Act gives employees the right to discuss discipline or ongoing investigations involving themselves or coworkers, and an employer may restrict those discussions only where it shows that it has a legitimate and substantial business justification that outweighs employees' Section 7 rights. See generally, *Hyundai America Shipping Agency*, 357 NLRB 860, 874 (2011), enfd. in pertinent part 805 F.3d 309 (D.C. Cir. 2015); *Phoenix Transit System*, 337 NLRB 510, 510 (2002), enfd. 63 Fed.Appx. 524 (D.C. Cir. 2003). See also *Inova Health System v. NLRB*, 795 F.3d 68, 85 (D.C. Cir. 2015). In *Stericycle, Inc*., 372 NLRB No. 113 (2023), the Board set forth the current standard for analyzing confidentiality rules arising out of workplace investigations. Under *Stericycle*, the General Counsel must "prove that a challenged rule has a reasonable tendency to chill employees

from exercising their Section 7 rights." Id. 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." Id. If the General Counsel carries the burden of showing a "tendency to chill," then the rule is presumptively unlawful. Id. If the rule is shown to be presumptively unlawful, the employer may avoid a finding that it violated the Act if it shows 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." Id. In evaluating the rule, the Board returns to a "case-specific approach" that looks to "the specific wording of the rule, the specific industry and workplace context in which it is maintained, the specific employer interests it may advance, and the specific statutory rights it may infringe." Id. slip op. at 20. In determining if the rule is narrowly tailored, the Board will evaluate any explanations or illustrations contained therein regarding how the rule does not apply to Section 7 activity. Id. slip. op. at 22 fn. 26.

Frederico told Worthington he did not want her to speak about the meeting with anyone and/or he did not want her to discuss it with anyone. Either statement has a reasonable tendency to chill an employee from exercising their Section 7 right to share with and solicit the support of other employees over a matter that could (and eventually did) affect employment. The Respondent contends there was nothing unlawful in Frederico imposing this restriction because he was conducting an ongoing personnel investigation, involving sensitive medical information about a customer, and the restriction was limited to the duration of the investigation. The Respondent further contends there can be no violation because at no point did Worthington indicate that she felt as though she was not able to communicate with a representative of her choosing, like a Union representative or an attorney, and, in fact, upon her termination, she told Sandstrom that she would be contacting the Union about the investigation and her discharge. I reject these contentions. Frederico provided Worthington with no explanation for the restriction or whether there were any exceptions. Nor did he inform her the restriction was limited to the duration of the investigation. And, under Board law, Worthington's subjective reactions to the restriction are irrelevant to determining whether it violates the Act.

For these reasons, I conclude the restriction Frederico imposed on Worthington was unlawfully overbroad and indefinite.[28] I, therefore, recommend finding that it violated Section 8(a)(1).

[28] The Respondent relies upon *Apogee Retail LLC*, 368 NLRB No. 144 (2019), which was overruled by *Stericycle, Inc*. In *Apogee Retail*, the Board held employers generally have a substantial interest in maintaining a fair investigation, encouraging employees to come forward with allegations, and to protect employees from retaliation or repercussions. To that end, it held that investigative-confidentiality rules *that only apply for the duration of the investigation* were categorically lawful. The Board found that "justifications associated with investigative confidentiality rules applicable to open investigations will predictably outweigh the comparatively slight potential of such rules to interfere with the exercise of Section 7 rights." 368 NLRB No. 144 slip op. at 8. Accordingly, the Board held that confidentiality rules limited to open investigations were lawful, obviating any further need for a case-by-case balancing of competing Section 7 rights and management interests. The Board also stated in *Apogee* that its holding "does not extend to rules that would apply to nonparticipants [in an investigation], or that would prohibit employees—participants and nonparticipants alike—from discussing the event or events giving rise to an investigation (provided that participants do not disclose information they either learned or provided in the course of the investigation)." Id., slip op. at 2 fn. 3. Even if *Apogee Retail* remained applicable law, the restriction Frederico imposed was unlawfully overbroad because it was not limited to the duration of the ongoing investigation, or to the information she learned or provided during the investigation.

B. Section 8(a)(3) Allegations

1. *Overview*

The Complaint, as amended, also alleges the Respondent violated Section 8(a)(3) and (1) of the Act by more strictly enforcing its attendance policies by removing the ten-minute grace period for clocking in after the start of a scheduled shift, issuing a verbal warning to Rawson, issuing a verbal warning to Handlin, terminating Handlin, and terminating Worthington, all because the employees assisted the Union and engaged in concerted activities, and to discourage employees from engaging in those activities. Section 8(a)(3) of the Act makes it an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Violations of 8(a)(3) are also derivative violations of 8(a)(1).

2. *More Strictly Enforcing Attendance Policies and Discipline of Handlin and Others*

The General Counsel alleges that since about March 2024, Respondent has more strictly enforced its attendance policies against employees at its Oxford facility by removing the ten-minute grace period for clocking in after a scheduled shift, because of the Union organizing effort.[29] The

[29] Paragraph 10 of the Complaint originally alleged that on "[a]bout March of 2024, Respondent more strictly enforced its attendance policies by removing the ten-minute grace period for clocking in after a scheduled shift." The General Counsel, during their case-in-chief, announced they intended to amend and then moved to amend this allegation to allege that "[s]ince about March 2024, Respondent has more strictly enforced its attendance policies against its employees, including but not limited to Rhiannon Burmer, Alyssa Charron, Siobhan Clark, Tod Diagneault, William Fischbeck, Daryl Foisy, Ryan Handlin, David Kenchanh, Atilla Mariane, Hallie Mongeau, Gillian (Gilford) Murphy, and India Torres, by removing the ten-minute grace period for clocking in after a scheduled shift at its facility." (GC Exh. 16). The wording of this amended allegation, which changed the temporal scope, is consistent with the language of the charge in Case 01–CA–346545. That charge alleges, in relevant part, that the Respondent "has discriminated against employees … in order to discourage union activity … *since about late March 2024*, by enforcing its attendance policies more strictly." (emphasis added). It is also consistent with the Region's letter to the Respondent soliciting evidence on the charge. (GC Exh. 10).

For the reasons stated on the record, I granted the General Counsel's motion over the Respondent's objections. (Tr. 300–311). I reaffirm that ruling now. Section 102.17 of the Board's Rules and Regulations authorizes the administrative law judge to grant complaint amendments "upon such terms as may be deemed just." In *Rogan Brothers Sanitation, Inc*., 362 NLRB 547, 549 fn. 8 (2015), the Board set forth the following factors for determining whether a judge should allow an amendment to the complaint during the hearing: (1) whether there was surprise or lack of notice, (2) whether there was a valid excuse for the delay in moving to amend, and (3) whether the matter was fully litigated. In applying these factors, I found the General Counsel first learned these and other employees had been disciplined, in part, under the revised grace period only after the General Counsel received subpoenaed documents from the Respondent. In response to stated concerns that those disciplines issued after March 2024 may not be relevant or covered in light of the wording of the allegation, the General Counsel promptly moved to amend. The General Counsel included the names, to the extent known, of those allegedly disciplined under the revised grace period to provide the Respondent with more specific information regarding what was being alleged before resting their case. There was a pause in the hearing to allow the General Counsel time to take these steps and to memorialize the amendment in writing, and there was lengthy discussion regarding the scope of the amendment. (Tr. 275-287; 300-313). The Respondent was offered additional time to prepare its defense to the amended allegation. (Tr. 309-310). Thereafter, the matter was fully litigated with the presentation of exhibits and testimony. The Respondent has raised no arguments in its brief that it was deprived of its right to present evidence or argument regarding the amended allegation.

General Counsel separately alleges that on about June 7, the Respondent issued Ryan Handlin a warning for occurrences under the revised grace period, because of his protected and union activities.

It is an unfair labor practice for an employer to enforce rules, including those related to attendance, more strictly in response to union organizing activity. See generally, *Dynamics Corp. of America*, 286 NLRB 920, 921 (1987); *Neises Construction Corp*., 365 NLRB 1269 (2017); *San Luis Trucking, Inc*., 352 NLRB 211, 229 (2008), adopted as modified after remand 356 NLRB 168 (2010), enfd. 479 Fed.Appx. 743 (2012); *Hudson Oxygen Therapy Sales Co*., 264 NLRB 61 fn. 2 (1982). Where such a violation is found, the Board orders that all discipline issued pursuant to the stricter enforcement be rescinded and expunged. *Dynamics Corp*., 286 NLRB at 921. As outlined, the discipline at issue is that issued for violating the five-minute grace period.

When assessing the lawfulness of an adverse action that turns on employer motivation, the Board applies the analytical framework set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved by *NLRB v. Transportation Management Corp*., 462 U.S. 393, 395 (1983). To prove a violation under *Wright Line*, the General Counsel must demonstrate, by a preponderance of the evidence, that the employee's protected or union activity was a substantial or motivating factor in the employer's adverse action against the employee. *SBM Site Services, LLC*, 367 NLRB No. 147, slip op. at 2 (2019). The General Counsel satisfies the initial burden by showing that: (1) the employee engaged in union or other protected activity, (2) the employer had knowledge of the activity, and (3) the employer had animus against union or other protected activity. Animus can be established through direct evidence or inferred from circumstantial evidence on the record. *Intertape Polymer Corp*, 372 NLRB No. 133, slip op. 6–7 (2023).[30] Circumstantial evidence of discriminatory motive may include, among other factors: the timing of the action in relation to the union or protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons, offered for the action; failure to conduct a meaningful investigation; departures from past practices; and/or disparate treatment of the employee. Id.

If the General Counsel establishes the above, the burden then shifts to the employer to demonstrate it would have acted the same had the statutorily protected activity not occurred. *Wright Line*, 251 NLRB at 1089. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must persuade, by a preponderance of the evidence, that the adverse action would have taken place absent the protected concerted or union activity. *Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 1–2 fn. 5 (2022), and cases cited therein. If the employer fails to meet this burden, a violation will be found because a causal relationship exists between the employee's protected activity and the employer's adverse action. *Intertape Polymer*, supra. The employer's burden also cannot be satisfied by proffered reasons that are pretextual, i.e., false reasons or reasons not in fact relied upon. Indeed, where the reason advanced by an employer for the adverse action either did not exist or was not actually relied on, the inference of unlawful motivation remains intact, and is in fact reinforced by the pretextual reason proffered by the employer. Id.

[30] In *Intertape Polymer*, the Board reaffirmed that in applying *Wright Line* the Board looks to whether the evidence as a whole supports a reasonable inference that protected activity was a motivating factor in a challenged employment action. With regard to the General Counsel's burden to prove animus specifically, the decision clarifies that either direct or circumstantial evidence can support a finding of animus, and that there is no requirement that the demonstrated animus be directed toward the employee's own protected activity or even the employee against whom the employer has taken action. However, the General Counsel still must establish that protected activity was a motivating factor in the employment action at issue for there to be a violation.

As outlined, Respondent changed the grace period for arriving late to work from ten minutes to five minutes when it revised its employee handbook in June 2023, but it did not begin enforcing that change at the Oxford facility until after learning about the Union organizing effort. The Respondent first learned about the organizing effort on February 16, 2024, when the employees conducted the march on the boss and presented Sandstrom with the demand letter. About two weeks later, on about March 4, Sandstrom began meeting with employees to "reset expectations" regarding the Respondent's attendance policies. She informed employees of the change to the grace period made nine months earlier, and she stated that moving forward employees would be expected to adhere to that grace period, or face discipline.

The attendance and attendance-related disciplinary documents between June 2023 and March 2024 establish that the Respondent did not enforce the five-minute grace period until after it learned of the organizing effort. Several Oxford employees regularly arrived between six and nine minutes late for work prior to March 2024, and none were disciplined for those occurrences. Beginning in March 2024, the Respondent began enforcing the five-minute grace period policy and disciplining employees. Based on the documentary evidence, there were four Oxford employees who would not have been disciplined had the Respondent not begun enforcing the five-minute grace period (Charron's May 16 verbal warning, Fishbeck's May 24 verbal warning, Handlin's June 7 verbal warning, and Daigneault's November 12 verbal warning).

Applying the *Wright Line* factors, I conclude the General Counsel has established that the union organizing effort was a substantial or motivating factor in the Respondent's decision to begin enforcing this previously unenforced five-minute grace period. There is no dispute that the Respondent had knowledge of the union organizing activities at the time it reset expectations and began enforcing the revised grace period. The General Counsel cites the sudden and suspicious timing of Sandstrom's actions, as well as her inconsistent and seemingly conflicting explanations for her prior inaction, as evidence of animus. As noted, Sandstrom claimed that for the first few months of taking over as manager she was unaware of the attendance issues. She claimed that it took her three months to become sufficiently practiced in Respondent's attendance software, Deputy, to run reports to see the extent of the issue. Sandstrom made no attempt to explain how she, as an experienced retail manager, needed three months to fully appreciate the severity of the attendance issues at the Oxford facility, and why, if she were having issues, she did not raise them with or seek assistant from her district manager or the human resources department, even though she was meeting with Cole on a biweekly basis.

She then claimed that she has a practice, as a manager, of waiting three months before imposing discipline. The General Counsel argues, and I agree, that it is difficult to see the logic or value in taking a hands-off approach on the issue of attendance for that length of time. It also does not explain why she waited three months to even discuss the attendance policies with the employees. And, of course, she failed to reconcile how if she was not aware of the severity of the tardiness issues, she was consciously taking a wait-and-see approach before addressing them with employees. The bottom line is that Sandstrom's testimony on this matter is not credible, and all the other evidence establishes that the Respondent was not concerned with adherence to the five-minute grace period until immediately after learning of the organizing effort. Respondent's stated explanations for its prior inaction are pretextual. I, therefore, conclude it cannot establish that it would have taken the same action, of suddenly and more strictly enforcing the five-minute grace period, in the absence of union activities.

As a result, I recommend finding the Respondent violated Section 8(a)(3) and (1) when it began more strictly enforcing the five-minute grace period. I similarly recommend finding that the

Respondent violated Section 8(a)(3) and (1) when it disciplined employees, including, but not limited to, Handlin, under its stricter enforcement of this grace period.

3. *Verbal Coaching of Rawson*

The General Counsel next alleges the Respondent discriminatorily issued Rawson the verbal coaching on about May 22, 2024, for cash-handling issues and for failing to maintain a respectful work environment, because of his protected and union activities. In applying the *Wright Line* factors, I find the General Counsel has established that Rawson was a known Union supporter who participated in the march on the boss and signed the demand letter.[31] As for animus, the General Counsel raises several arguments, most of which I reject.

First, the General Counsel argues animus should be inferred from the timing of the discipline because each of the cash-counting errors at issue occurred after the April 5 election. I am unpersuaded by that argument. Unlike with the Respondent's sudden change to begin enforcing the revised grace period, there was no evidence of any change in the Respondent's expectations of Rawson's job performance. Rawson acknowledges as much. He stated the job of a lead has always included accurately performing counts and handling cash. Additionally, unlike with the revised grace period, there was no evidence that Rawson had issues that were tolerated or ignored until the Respondent learned about the organizing effort.

The General Counsel next argues animus should be inferred because none of the miscounted money was missing. They argue, "In fact, if one combines the overages and underages listed in the warning, the drawers actually had *more* money in them than Rawson had counted." I do not see the merit of either of these arguments. Rawson's job was to perform his counts correctly, and he was issued the coaching for repeatedly failing to do so after being reminded.

The General Counsel also argues animus should be inferred from the evidence of disparate treatment.[32] They rely on Rawson's testimony that crass language was not out of the norm at the Oxford facility. The only example Rawson gave was that a budtender may tell a customer, "this shit is fire or this stuff is good." (Tr. 94). Evidence of a budtender using profanity to favorably describe the quality of the Respondent's products to customers is substantially different than using profanity to insult the facility manager.

While I reject these arguments, I am persuaded by the General Counsel's remaining argument, which is that animus should be inferred from the other unfair labor practices that preceded Rawson's coaching. This includes giving Rawson the wage increase and more strictly enforcing the revised grace period, both of which I found to be violative acts to discourage support for the Union. Consequently, I conclude the General Counsel has met their initial burden under *Wright Line*. The burden then shifts to the Respondent.

Under *Wright Line*, the Respondent's burden is not to identify legitimate grounds for which it *could* impose discipline, but to persuade that it *would* have disciplined the employee, in the absence of

[31] Rawson testified he also wore Union pins that read "union busting is disgusting" in the workplace. The General Counsel failed to present evidence establishing that management observed Rawson wearing those pins.
[32] There is no contention that Rawson's conduct or coaching should be analyzed under *Lion Elastomers LLC*, 372 NLRB No. 83 (2023). I, therefore, need not reach that issue.

the protected activity. *Intertape Polymer Corp*., supra slip op. at 7-8. In determining whether the employer has met its burden, the Board may consider whether there has been comparable conduct and treatment. *Starbucks Corp*., 374 NLRB No. 8, slip op. 7-8 (2024). It also may consider whether the employer's response, including any discipline, is consistent with its policies or practices. *Starbucks Corp*., 372 NLRB No. 122, slip op. 4-5 (2023).

Here, there is no evidence of comparable conduct or treatment. And contrary to the General Counsel's argument regarding profanity, there is no evidence of disparate treatment. The Respondent instead relies on its policies and argues its conduct was entirely consistent with those policies and the procedures outlined therein. The first policy the Respondent relies upon is in the security and asset protection training manual. It states that when a cash variance occurs management is "required" to coach and retrain the employee. If the issues persist, management is "required" to pursue performance management. The Respondent argues, and I agree, that Sandstrom acted in accordance with this policy regarding Rawson's cash-handling/variance issues. After observing him fail to perform his counts correctly on April 22, 2024, Sandstrom gave Rawson suggestions for improvement. Thereafter, she monitored his performance. After Rawson continued to have issues, Sandstrom met with him and issued the verbal coaching, which contained the Respondent's expectations regarding Rawson's performance moving forward.

The next set of policies the Respondent relies upon are the work relationship and anti-harassment policies. The former requires respectful behavior and treatment of coworkers, and the latter prohibits, among others, offensive or derogatory comments or slurs. Under the anti-harassment policy, the Respondent is to take corrective action, as necessary, when it determines there has been a violation. The corrective actions include counseling/education, suspension, and discharge. As outlined, Rawson admitted to calling Sandstrom a "bitch," which is an offensive and derogatory slur, and that it "certainly" violated company policy.

Overall, I conclude the Respondent has presented sufficient evidence and argument to prove that it would have taken the same action against Rawson in the absence of his protected activities. The evidence presented establishes violations of these policies, and those policies require some level of corrective action. The level of corrective action is within the Respondent's discretion. While these policies, as well as the progressive disciplinary policy, authorize harsher punishment, the Respondent, here, opted for the lowest level of corrective action available, a verbal coaching. The only lesser response would be for it to take no action. Based upon my review of the evidence presented, I conclude it would be inconsistent with these policies and the procedures outlined therein for the Respondent to take no action in response to the continued and/or admitted violations at issue.

For these reasons, I conclude the Respondent has met its burden. I, therefore, recommend dismissing this allegation.

4. Discharge of Handlin and Worthington

The General Counsel further alleges the Respondent discharged Handlin and Worthington because of their protected and union activities. The General Counsel notes that, like Rawson, Handlin and Worthington were known Union supporters who participated in the march on the boss and signed the demand letter. The General Counsel raises several arguments for why animus should be inferred, and, like Rawson's discipline, I find most of those arguments unavailing.

The General Counsel argues animus should be inferred from the Respondent's discharge of former assistant manager Mike Dacri. In the initial draft of Frederico's investigatory report, he references that Dacri was discharged "due to pushing the team to go [u]nion and providing the [U]nion with insider information." They argue this admission about the reason for Dacri's discharge is evidence of the Respondent's general animus against the Union. Citing *Toering Electric Co*., 351 NLRB 225, 232 fn. 45 (2007), they argue that anti-union animus against individuals who are not statutory employees may be used as evidence of animus for adverse actions taken against those who are. They further contend that Frederico's comment about the motivation for Dacri's discharge in the investigation report, which went unrebutted and otherwise unexplained, suggests the Respondent's overall animus toward Dacri and his role in the organizing effort tainted the investigation and subsequent decisions to discharge Handlin and Worthington.

While the Respondent's reason for discharging Dacri may be evidence of anti-union animus, I decline to infer that animus tainted the Respondent's investigation of Handlin or Worthington. As stated, on May 20, 2024, Sandstrom emailed Frederico (copying Culver) asking him to investigate what she characterized as a "pretty open and shut" matter" of discount abuse. She explained that on four separate occasions following Dacri's discharge on March 6, 2024, Handlin and Worthington had given him the employee discount on his purchases. Both knew Dacri had been discharged in early March because employees made a "huge ruckus about it when it happened." During their meetings with Frederico, both Handlin and Worthington admitted knowing that Dacri was no longer employed when they gave him the employee discount. In other words, they admitted to knowingly giving Dacri a sizable discount he was ineligible to receive.

Frederico later responded asking if the Dutchie system automatically applied the discount. Sandstrom replied that it did, but the employees are required to verify eligibility and manually delete the discount by clicking the "x" to the right of the discount line if they cannot. Frederico responded based on what Sandstrom had reported that it was discount abuse, but he was going to look a little deeper. He added that he would not expect human resource to discharge "anyone over this because the system automatically initiates a discount ... unless of course if [Handlin] admitted to knowing."

The General Counsel focuses on the first part of Frederico's statement to argue animus because even Frederico did not believe that discharge was appropriate. This argument selectively ignores the remainder of Frederico's statement in which he indicates discharge would be appropriate if Handlin (or Worthington) admitted to knowing that Dacri was no longer eligible. As stated, both Handlin and Worthington made that admission when they acknowledged knowing that Dacri had been discharged months prior and, therefore, was ineligible for the discounts on each of the transactions at issue.

The General Counsel also argues animus should be inferred based on the nature of Frederico's investigative tactics. Specifically, they argue that rather than conduct an investigation Frederico appeared more interested in getting a confession to justify a pre-determined outcome. I disagree. Sandstrom reported to Frederico that she suspected Handlin and Worthington had improperly given Dacri the employee discounts that resulted in financial losses for the Respondent. She provided the details and asked him to investigate, which is consistent with corporate policy and practice. Frederico met with Handlin in person and Worthington over video conferencing. Frederico impressed upon them each the importance of answering his questions truthfully and explaining what happened.

The General Counsel asserts that Frederico's questioning of Worthington was intimidating and led her to forget information that would have helped exculpate her. Although workplace investigations can be intimidating, there was nothing about Frederico's method of questioning Worthington that

appeared to be out of the ordinary. He began by asking Worthington if she remembered waiting on Dacri on May 1, and she stated she had. He then asked if she noticed the employee discount, and she stated that she had. He then directly asked her whether she spoke with anyone before giving Dacri the employee discount, and she replied she had not. Worthington testified she had spoken to her leads before giving Dacri the discount, but she failed to mention that fact to Frederico because she was frightened and forgot. There, however, was nothing that prevented Worthington from later providing that information to Frederico or someone else in management at any time in the month between the meeting and her discharge, including during her discharge meeting.

The General Counsel also argues the Respondent's course of conduct after learning that Handlin and Worthington had given Dacri the employee discount was indicative that their discharges were motivated by animus. At the outset, the General Counsel notes the Respondent has a progressive discipline policy and neither Handlin or Worthington had any prior discipline, and that Respondent "leapfrogged" over the steps in its policy to discharge them. However, as outlined, the progressive discipline policy allows the Respondent to skip steps and immediately discharge for dishonesty, which includes discount abuse or misuse. The General Counsel and the Union both argue that Handlin and Worthington made innocent mistakes and, at most, were negligent in performing their jobs. As discussed above, I reject that these were innocent mistakes or negligence. Handlin and Worthington knowingly gave Dacri discounts he was not eligible to receive, resulting in losses totaling over $600.[33]

Next, the General Counsel and the Union argue animus should be inferred based on the evidence of disparate treatment. They argue the Respondent discharged Handlin and Worthington but took no action to investigate or discipline Sandstrom for failing to remove the employee discount from Dacri's profile following his March 6 discharge. The argument being that if Sandstrom had done her job correctly, none of this would have happened because no discount would have appeared on Dacri's profile. In Sandstrom's May 20 email to Frederico (copying her supervisor Culver), she acknowledges she may have failed to properly remove the discount. She requested an investigation that would, in part, uncover whether that was the case, or whether the discount had been added back. In contrast, Handlin and Worthington did not come forward to admit possible wrongdoing or invite an investigation. Additionally, while Sandstrom may have acted negligently by failing to remove Dacri's discount from his profile, Handlin and Worthington acted intentionally by giving Dacri a discount they knew he was no longer eligible to receive. As such, I find the situations to be distinguishable.

While I reject these and other arguments the General Counsel raises for inferring animus, I am persuaded by the General Counsel's argument that animus should be inferred from the Respondent's earlier unfair labor practices. In particular, I conclude animus should be inferred from the Respondent's stricter enforcement of its revised grace period and the resulting discipline issued to Handlin for violating that revised grace period. I, therefore, conclude the General Counsel has met its initial burden. The burden now shifts to the Respondent to prove, by a preponderance of the evidence, that it would have discharged Handlin and Worthington in absence of any protected activity.

The Respondent, to meet its burden, presented evidence of a comparable situation at its Hartford, Connecticut facility. In about September 2023, the Respondent discharged two employees

[33] The General Counsel and the Union rely upon Worthington's checking and confirming that Dacri had an active Curaleaf email account as a defense or as absolving her of any wrongdoing. According to Rawson, the budtender checks the paycheck stub or email account to verify if they are *uncertain about the customer's employment status and eligibility for the discount*. There was no uncertainty here. Worthington knew Dacri's employment had ended several months earlier, and she gave him a discount she knew he was not eligible to receive.

from that location for discount abuse. (R Exh. 15). According to the documents, CS rang up a transaction for EP, an employee at that facility. The transaction was not rung up under EP's account. Instead, it was rung up under XR's account. XR was a medical-use customer who was not present. EP informed CS that he had been given permission to make purchases under XR's account because XR was his "brother." EP asked CS to apply the employee discount to the transaction. Although XR was not an employee, CS agreed to apply the discount, which reduced the cost by $62.70. About a month later, EP was working and rang up his own sale under XR's medical-use account. During the transaction, EP issued himself $10 of loyalty points from XR's account. The Respondent investigated both transactions. Frederico interviewed EP and CS, with Deborah Pollard present. EP and CS each admitted to conduct that amounted to discount abuse, and they each prepared a handwritten statement. At the conclusion of the investigation, both EP and CS were discharged. (R Exh. 15) (Tr. 434–435).

I find these situations to be comparable to Handlin and Worthington. In both, the employees involved were engaged in dishonesty by intentionally requesting or providing a discount they knew the receiver was ineligible to receive. The General Counsel argues they are distinguishable because in the Hartford situations there was potential misrepresentations and possible violations of confidentiality laws. While those concerns may have existed, the investigation report, under "Disposition," focuses only on the proven financial losses that resulted from the application of the employee discount and loyalty points. That indicates that in both sets of situations the Respondent was focused on the acts of dishonesty that resulted in financial loss to the company.

Based on the foregoing, I conclude the Respondent established it would have taken the same actions regardless of Handlin and Worthington's union activities. I, therefore, recommend dismissing those allegations

C. Section 8(a)(5) Allegations

1. *Overview*

The Complaint next alleges that the Respondent violated Section 8(a)5) and (1) of the Act when it changed the discount program without providing the Union with an opportunity to bargain, and when it failed or refused to provide the Union with requested information about Unit employees. Section 8(a)(5) makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees." Section 8(d) defines the phrase "to bargain collectively" as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . ."

An employer must bargain in good faith with the collective-bargaining representative of its employees over changes affecting their wages, hours and other terms and conditions of employment. *NLRB v. Borg-Warner Corp*., 356 U.S. 342, 349 (1958). An employer's obligation to bargain attaches at the time the union wins the election, and the employer acts at its peril when it fails or refuses to bargain while post-election proceedings are pending. *Mike O'Connor Chevrolet Buick-GMC Co.*, 209 NLRB 701 (1974), enfd. denied on other grounds 512 F.2d 684 (8th Cir. 1975). See also *L. Suzio Concrete Co*., 325 NLRB 392, 396 (1998), enfd. mem. 173 F.3d 844 (2d Cir. 1999). That includes failing or refusing to provide the union with requested information about the unit employees. *Alta Vista Regional Hospital*, 357 NLRB 326, 327 (2011), enfd. sub nom. 697 F.3d 1181 (D.C. Cir. 2012).

2. *Unilateral Change Affecting Employee Discount on Third-Party Products*

The General Counsel alleges that in about June 2024, the Respondent unilaterally removed the Unit employees' discount on third-party products purchased at Respondent's facilities other than the Oxford facility, without providing the Union with an opportunity to bargain. Employee discounts are generally considered to be a term and condition of employment and a mandatory subject of bargaining. *Gulf Refining & Marketing Co*., 238 NLRB 129, 132 (1978); *Central Illinois Public Service Co*., 139 NLRB 1407, 1409, 1415 (1962), enfd. 324 F.2d 916, 918-919 (7th Cir. 1963). There is no dispute that following the election the Respondent made the change at issue without bargaining with the Union.

The Respondent contends it had no obligation to bargain with the Union while its challenges to certification remained pending. It further contends that even if those challenges prove to be unsuccessful, it had no obligation to bargain because the General Counsel has failed to establish there was a change that required bargaining.

As the Respondent notes, before an employer's obligation to bargain is triggered, the General Counsel must establish that the change at issue was material, substantial and significant. See *International Shipping Agency, Inc*., 369 NLRB No. 79 (2020); *North Star Steel Co*., 347 NLRB 1364, 1367 (2006); *Crittenton Hospital*, 342 NLRB 686 (2004). The General Counsel contends the Respondent's change to the employee discount program was such a change. They rely upon *Caterpillar, Inc*., 355 NLRB 521 (2010) for support. In that case, the employer implemented a "generic first" policy for prescription drugs. Prior to the change, employees could choose a generic drug for a copayment of $5 or a brand-name drug with higher copayments ($20 for preferred and $35 for nonpreferred drugs). The employer later eliminated its subsidy for brand-name drugs unless they were specifically required by a physician, or a generic drug option was not available. The Board found the unilateral change violated the Act. It held that changes are material, substantial, and significant when they impair employee choice or discretion related to the use of their benefits or when they change the costs. Id. at 523. Prior to the change, employees had the discretion to choose between generic drugs or brand-name drugs as they saw fit. The only consequence of choosing a brand-name drug was a higher copayment. Following the change, employees effectively no longer had the discretion to choose brand-name over generic drugs, because if they chose a brand-name drug without their physician's approval, they were forced to pay the full retail price. Id. The General Counsel contends the Respondent similarly restricted employees' choice and discretion when it unilaterally removed the employee discount on non-Curaleaf products purchased at non-Oxford facilities, like Hanover, Ware, or Provincetown.

I find *Caterpillar* to be distinguishable. In that case, the employer's change effectively foreclosed the employees' ability to purchase brand-name drugs unless one of the exceptions applied. The same cannot be said about the change here. Oxford employees still had the choice and discretion to purchase the same products, with the same discount, as they had before. The only limitation was that if they wanted to purchase non-Curaleaf products at the discounted price, they had to do so from the Oxford facility, which is where the employees all worked. Rawson provided testimony about one Unit employee who purchased from the Ware facility, but there were no specifics on that employee's purchasing practices, including whether and from where he purchased non-Curaleaf products.

Based on the limited evidence presented, I find the General Counsel has failed to meet its burden that this was a material, substantial, and significant change. I, therefore, recommend dismissing this allegation.

3. *Refusal to Provide Requested Information about Unit Employees*

The General Counsel alleges that since about July 24, 2024, the Respondent has failed and refused to provide the Union with requested information about Unit employees, specifically a seniority list, job descriptions, the health insurance plan, the dental and vision plans, the short-term and long-term disability plans, the life insurance plan, and the 401(k) plan. An employer's duty to bargain includes the duty to supply the union with requested information that is relevant and reasonably necessary to the union's performance of its representational responsibilities. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956). Information related to the unit employees' terms and conditions of employment is "presumptively relevant" and must be furnished upon request. *Metro Health Foundation, Inc*., 338 NLRB 802, 803 (2003); *Hofstra University*, 324 NLRB 557, 557 (1997).

From the outset, the Union made it clear to the Respondent that the requested information was to prepare for contract negotiations. That information directly relates to the Unit employees' wages, hours, and other terms and conditions of employment and is presumptively relevant. The Respondent does not challenge either of these points or raise any other defenses for its refusal to provide the information. Its sole argument is that it was not obligated to provide the requested information because it was contesting the Union's certification as bargaining representative.

The Board has held an employer's duty to provide requested information that is relevant to the union's role as bargaining representative is not excused because the employer is challenging the results of the election or the representative's certification. See generally, *Wismettac Asian Foods, Inc*., 370 NLRB No. 62, slip op. at 1 fn. 1 (2020); *National Hot Rod Ass'n*, 369 NLRB No. 110 (2020); *NP Palace LLC*, 368 NLRB No. 148 , slip. op at. 6–7 (2019) (citing *Didlake, Inc*., 367 NLRB No. 125, slip op. at 1 fn. 2 (2019)); *Transit Connection, Inc*., 365 NLRB 1402, 1403 (2017); and *United Cerebral Palsy of New York City*, 343 NLRB 1 (2004).[34]

[34] The Respondent contends this allegation is barred under Board law because of the General Counsel's separate pursuit and litigation of the test-of certification charge in Case 01–CA–349176. It argues that the General Counsel cannot break its failure-to-bargain claims into multiple complaints; it must consolidate all related charges into one complaint and litigate those matters in one hearing. For support, the Respondent cites to *Peyton Packing Co*., 129 NLRB 1358, 1360 (1961) and *Jefferson Chemical Co., Inc*., 200 NLRB 992 n. 3 (1972).

Peyton Packing and *Jefferson Chemical* together establish that the Board generally will not permit the General Counsel to relitigate the lawfulness of specific conduct in separate proceedings by asserting that the conduct violates different sections of the Act, and that a decision on the part of the General Counsel not to include conduct encompassed by a pending charge in the complaint may bar a subsequent complaint concerning that conduct. They, however, do not require that charges filed during the pendency of another unfair labor practice proceeding involving the same respondent must be consolidated into that proceeding regardless of the circumstances. Instead, except where the General Counsel has attempted to twice litigate the same act or conduct as a violation of different sections of the Act, or has attempted to relitigate the same charges in different cases, the Board has recognized that such a blanket rule in favor of consolidation would improperly interfere with the General Counsel's discretion, and, in some cases, could unduly delay the disposition of pending cases. See generally *Service Employees Local 87 (Cresleigh Management)*, 324 NLRB 774, 775 (1997). See also *Frontier Hotel and Casino*, 324 NLRB 1225 (1997).

The issues in *Peyton Packing* and *Jefferson Chemical* are not present here. The Union withdrew the refusal-to-provide-information allegation from the charge in Case 01–CA–349176 and separately alleged it in Case 01–CA–350415. While the General Counsel could have chosen to consolidate and litigate the refusal-to-provide-information allegation with the refusal-to-recognize/bargain complaint, it was not required to do so.

Here, the Respondent admittedly refused to provide the Union with the requested information that is presumptively relevant solely because it was challenging the Union's certification. Based on the cited Board law, I recommend finding this violated Section 8(a)(5) and (1).

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 about February 16, 2024, when it granted a promotion-related wage increase to Aiden Rawson in order to discourage union activity.

3. The Respondent violated Section 8(a)(1) of the Act on about July 31, 2024, when Joseph Frederico indefinitely prohibited employee Faye Worthington from discussing her terms and conditions of employment, including workplace incidents, investigations, and discipline.

4. The Respondent violated Section 8(a)(3) and (1) of the Act since about March 2024, when it began more strictly enforcing its attendance policies against employees at its Oxford facility by removing the ten-minute grace period for clocking in after a scheduled shift and replacing it with a five-minute grace period because of the employees' Union activities, which also included applying this five-minute grace period to issue discipline to employees like Ryan Handlin on about June 7, 2024.

5. The Respondent violated Section 8(a)(5) and (1) of the Act since about July 24, 2024, when it failed and refused to provide the Union with the information requested on that date about Unit employees, including a seniority list, job descriptions, the health insurance plan, the dental and vision plans, the short-term and long-term disability plans, the life insurance plan, and the 401(k) plan.

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

REMEDY

Having found that the Respondent engaged in unfair labor practices, I shall order it to cease and desist and to take certain affirmative actions designed to effectuate the purposes of the Act. The Respondent shall post the attached notice at its Oxford, Massachusetts facility in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010), and *Durham School Services*, 360 NLRB 694 (2014). In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

On these findings of fact and conclusions of law, and on the entire record in this case, I issue the following recommended[35]

[35] 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 waived for all purposes.

ORDER

The Respondent, Curaleaf Massachusetts, Inc., at its Oxford, Massachusetts location, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Granting promotion-related wage increases to employees in order to discourage union activity.

(b) Indefinitely prohibiting employees from discussing their terms and conditions of employment, including workplace incidents, investigations, and discipline.

(c) More strictly enforcing its attendance policies against employees by removing the ten-minute grace period for clocking in after a scheduled shift and replacing it with the five-minute grace period because of the employees' Union activities, including applying this five-minute grace period to begin disciplining employees.

(d) Failing and refusing to provide the United Food and Commercial Workers Union, Local 1445 ("Union") with requested information that is relevant and necessary to its role as the certified bargaining representative of all full-time and regular part-time employees at the Employer's adult-use cannabis dispensary, operated by Curaleaf Massachusetts, Inc, and medical-use cannabis dispensary, operated by Curaleaf North Shore, Inc., at 425 Main Street in Oxford, MA, but excluding managerial employees, and guards, professional employees and supervisors as defined in the Act.

(e) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed 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 Board's order, the Respondent will rescind any attendance-related disciplines issued as a result of its reduction of the grace period from ten minutes to five minutes at its Oxford, Massachusetts facility, including, but not limited to, issued to Ryan Handlin on June 7, 2024, and it will notify Handlin and each affected employee that this has been done and that the discipline will not be used as a basis for any future personnel action or made reference to in response to any inquiry by any employer, prospective employer, employment agency, unemployment insurance office, or reference-seeker, and it will remove from its files all references to any attendance-related disciplines issued as a result of our reduction of the grace period from ten minutes to five minutes at the Oxford, Massachusetts facility

(b) Within 14 days of the Board's order, the Respondent will provide the Union with the information it requested on about July 24, 2024.

(c) Within 14 days of the Board's order, the Respondent will rescind its restriction imposed on Fay Worthington indefinitely prohibiting her from discussing their terms and conditions of employment, including workplace incidents, investigations, and discipline, and it will notify her that this has been done and that it will not be used as a basis for any future action.

(d) Post at its Oxford, Massachusetts facility copies of the attached notice marked "Appendix."[36] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by an authorized representative of the Respondent, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail a copy of the notice to all current employees and former employees employed by Respondent at any time since February 16, 2024.[37]

(e) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that that Respondent has taken to comply.

Dated, Washington, D.C. September 19, 2025

Andrew S. Gollin
Administrative Law Judge

[36] 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."

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

APPENDIX

NOTICE TO EMPLOYEES

(To be printed and posted on the official Board notice form)

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose a representative 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 announce or grant wage increases to employees in order to discourage union activity.

WE WILL NOT indefinitely prohibit employees from discussing their terms and conditions of employment, including workplace incidents, investigations, and discipline.

WE WILL NOT more strictly enforce attendance policies against employees by removing the ten-minute grace period for clocking in after a scheduled shift and replacing it with a five-minute grace period because of the Union organizing effort, including disciplining employees for violating that more strictly enforced policy.

WE WILL NOT fail or refuse to provide the United Food and Commercial Workers Union, Local 1445 ("Union") with requested information that is relevant and necessary to its role as the certified bargaining representative of all full-time and regular part-time employees at the Employer's adult-use cannabis dispensary, operated by Curaleaf Massachusetts, Inc, and medical-use cannabis dispensary, operated by Curaleaf North Shore, Inc., at 425 Main Street in Oxford, MA, but excluding Managerial employees, and guards, professional employees and supervisors as defined in the Act.

WE WILL rescind any attendance-related disciplines issued as a result of its reduction of the grace period from ten minutes to five minutes at its Oxford, Massachusetts facility, including, but not limited to, issued to Ryan Handlin on June 7, 2024; **WE WILL** remove from our files all references to any attendance-related disciplines issued as a result of our reduction of the grace period from ten minutes to five minutes at our Oxford, Massachusetts facility; and **WE WILL** notify each affected employee that this has been done and that the discipline will not be used as a basis for any future personnel action or made reference to in response to any inquiry by any employer, prospective employer, employment agency, unemployment insurance office, or reference-seeker.

WE WILL provide the Union with the information requested on July 24, 2024

WE WILL rescind the oral restriction imposed on Fay Worthington prohibiting her from discussing their terms and conditions of employment, including workplace incidents, investigations, and

discipline, and **WE WILL** notify her that this has been done and that it will not be used as a basis for any future action.

CURALEAF MASSACHUSETTS, 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:

10 Causeway Street, 10th floor, Boston, MA 02222-1001
(617) 565-6700 Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/01-CA-346545 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 OFPOSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHERMATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITHITSPROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (617) 565-6700