

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

DISH NETWORK L.L.C.,

Respondent

Cases 27–CA–341724

and

ADAM L. COATE, an individual

Charging Party

Hillary Ping and Noor Alam, Esqs.,
for the General Counsel.

Jonathan J. Spitz and Nicholas A. Scotto, Esqs. (Jackson Lewis P.C.),
for the Respondent.

DECISION

STATEMENT OF THE CASE

LISA FRIEDHEIM-WEIS, Administrative Law Judge. This case was tried in Denver, Colorado, before me on July 15-16, 2025, during which time I afforded all parties a full opportunity to be heard, to examine and cross-examine witnesses, to make motions, and to introduce evidence.¹

Adam Coate (Charging Party or Coate) filed the charge and first amended charge against DISH Network L.L.C. (Respondent or DISH) on May 7, 2024 and July 9, 2024, respectively and the General Counsel issued the complaint on May 19, 2025. Respondent filed its answer to the complaint on May 29, 2025. The complaint alleged that DISH violated Section 8(a)(1) of the Act. (GC Exh. 1.) Post-trial, the parties jointly moved for an extension of time for the filing of briefs, which was granted to September 17, 2025.

¹ References throughout the decision shall read as: Tr. is Transcript; GC Exh. is General Counsel's exhibit; R Exh. is Respondent's exhibit; and J Exh. is Joint Exhibit. The Act refers to the National Labor Relations Act. The Board refers to the National Labor Relations Board.

ISSUES

Specifically, the complaint alleges that:

1. Coate engaged in protected concerted activities regarding terms and conditions of employment, including:
 - a. In about November 2022, raised concerns regarding the lack of ability to work remotely, the lack of flexible work schedules, and employee parking;
 - b. In about August 2023, raised concerns regarding the lack of ability to work remotely, the lack of flexible work schedules, and insufficient paid time off;
 - c. In about September 2023, raised concerns regarding the lack of ability to work remotely, the lack of flexible work schedules, insufficient paid time off, and employee work-life balance.
2. Respondent violated Section 8(a)(1) of the Act by laying off Coate on November 7, 2023 because Coate engaged in the above-referenced protected concerted activities.

Respondent denied all these allegations, with the exception that it admitted that it laid off the Charging Party on November 7, 2023. (GC Exh. 1(g), para. 4(b)).

In its affirmative defenses, inter alia, Respondent asserts that Coate did not engage in any protected concerted activities, that he was laid off for cause, and further, that his immediate post-layoff behavior precludes reinstatement. (GC Exh. 1(g), p. 2.)

Based on the entire record, including my observation of demeanor of the witnesses,² and after considering the briefs filed by the General Counsel and the Respondent, I make the following decision, together with a recommended order to the Board:

I. FINDINGS OF FACT

A. JURISDICTION

Respondent admits, and I find, that it is a limited liability company with an office and place of business in Englewood, Colorado, and is engaged in the business of providing satellite television and other media services. Respondent admits that it annually purchased and received goods valued in excess of \$50,000 at its Englewood, Colorado facility directly from points outside the State of Colorado. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. (GC Exh. 1).

² Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

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

B. BACKGROUND

1. Coate's Pre-Layoff Employment and Respondent's Hierarchy

Coate was employed by Respondent from May 2, 2022 through November 8, 2023³ as a software test engineer II in the Information Technology (IT) department. Specifically within that department, Coate was on the Interactive Voice Response (IVR) team in the Testing Quality Assurance (TQA) portion of the IT Department. In this position, Coate worked with one other IVR employee, lead employee Rosana Martinez, to develop new features, find bugs, write test cases, and execute the test cases into release for the automated phone systems for DISH and Boost Mobile. (Tr. 24–25). The IVR portion of the team based in the United States consisted of just Coate and Martinez. In lay terms, Coate worked to create, fix, adjust, and improve the automated system that DISH customers called into for assistance from the automated voice system, directing them to choose a service. Coate testified that he was hired so Martinez, who trained him, could spend her time creating the automated call-in system in Spanish while he manned the English system. (Tr. 118–119).

Coate reported to TQA Manager Brett Gibbons as his direct manager for the first six months or so of his employment with Respondent, after which he reported directly to TQA Manager Andrew Macey. (Tr. 26). Gibbons and then Macey in turn reported to Julian Bishop, the IT Director of TQA.⁴ In 2023, there were about 70 to 80 employees on the TQA team within the IT department. (Tr. 244; 345). Bishop reported to Tosha Zeitlin, a Vice President of IT for the Program Management Office (PMO). In her role as VP of IT PMO (which she held through September 2023 before advancing to the position of Vice President of Boost Mobile Program Management Operations),⁵ Zeitlin oversaw program management, quality assurance, the TQA team (including the IVR team), technical assurance and performance team, overseeing approximately two hundred (200) employees in the Denver metro area at Respondent's three different offices in Grand Central, Colorado, Littleton, Colorado, and the Meridian, Colorado Corporate campus (also known as the Englewood location). (Tr. 243–244).

³ Unless noted otherwise, all dates hereinafter refer to 2023.

⁴ When DISH merged with EchoStar at some time after Coate's layoff, the name of the TQA division of the IT Department was changed to Technical Assurance and Performance (TAP). Bishop was the Director of TQA during Coate's employment, and continues to date as Director of TAP. (Tr. 244, 344). Bishop is responsible for the approximately 70 United States-based employees on the TAP Team (there are another 80 TAP employees based in India). Within TAP, the TAP employees test the work of the IVR Team. (Tr. 345-346).

⁵ Zeitlin was laid off by Respondent as of December 31, 2024 and thus was not employed by Respondent at the time she testified during this trial. (Tr. 242).

2. The “DISH Way”

Respondent maintains a written policy that also functions as a corporate mission statement called the “DISH Way.” The “DISH Way” encapsulates the culture, the vision, and the mission of DISH by and for its employees. (Tr. 245; R Exh. 5). Zeitlin explained that the DISH Way represents the values and principles that Respondent lives by and operates by, encapsulated by the abbreviation “CPAW,” which stands for Curiosity, Pride, Adventure, and Winning. All DISH employees receive the printed and digital versions of the DISH Way upon hire and annually. Zeitlin observed that longevity with Respondent is very important to Respondent, and that it is codified as principle number 3 in the DISH Way. (Tr. 246–247; R Exh. 5, p. 4). Zeitlin testified that making decisions based on what is in the best long-term interests of DISH is highly valued and that DISH has a long-tenured employee base, which is critical to its foundation for how it represents the culture at DISH. (Tr. 247).

In keeping with this company culture, DISH management holds weekly meetings at many levels with each other and with their employees. Moreover, upper-level managers hold monthly or quarterly meetings with their employees. When Zeitlin was VP of IT Program Management, she held monthly “coffee chats” for her entire team, either virtually or in-person depending on which of the three metro Denver offices she was at for the meeting. Meetings with Zeitlin for IT employees were optional but encouraged. (Tr. 247–249).

C. ALLEGED UNFAIR LABOR PRACTICES

1. Coate’s Alleged Protected Concerted Activities and Other Events Pre-Layoff

a. 2022 Coffee Chat

During his tenure at DISH, Coate attended between six to ten coffee chats held by Zeitlin for the IT Department in 2022 and 2023, mostly virtually (through Google Suites). During these coffee chats, Zeitlin would present a topic relevant to the IT department, leadership, team building, technology-related topics, and the DISH way. The coffee chats were between forty-five (45) minutes to an hour long; Zeitlin presented for about 75% of the time allotted and then took questions and comments for about 25% of the time. (Tr. 27–28; 34–35; 248).

In October or November 2022,⁶ Coate spoke up toward the end of Zeitlin’s monthly coffee chat.⁷ Coate participated virtually at this coffee chat as he was at his desk in the Meridian campus and Zeitlin was presenting from another DISH Denver metro office. There were about 70 employees present at this particular coffee chat – some in person and some virtually. Coate did not have his camera on during the coffee chat. (Tr. 250). At the end of Zeitlin’s

⁶ Coate testified that this particular coffee chat was in November 2022; Zeitlin testified that it was October 2022.

⁷ This was the only coffee chat during which Coate asked any questions or made any statements. Coate acknowledged that he attended about four of Zeitlin’s coffee chats before the October or November 2022 coffee chat and about four to six additional coffee chats after the October or November 2022 coffee chat. (Tr. 34).

presentation, Coate stated that it did not appear that there was enough parking for all the DISH employees, and he suggested that DISH let all employees work one staggered remote day per week to cut down on the parking lot congestion by twenty (20) percent. Coate then raised the idea of a four-day work week, and specifically about working four 10-hours days because, as
 5 opposed to working five days per week, “I didn’t really consider that to be balanced.” (Tr. 29–30, 131–132). In addition, Coate stated he may have told Zeitlin that a 45-minute commute each way (which is the length of his personal commute) is a long commute and he may have raised the European model for workweeks. (Tr. 131–132).

10 According to Coate, Zeitlin did not respond to his suggestions and did not answer his questions and moved on to the next question from another employee. After being prompted, Coate testified that Zeitlin seemed a little upset or angry after he spoke. (Tr. 30). Coate testified that two employees messaged him privately through the DISH internal Google messaging app during this coffee chat congratulating him for his courage in speaking out about these issues that
 15 others are afraid to speak about and “kind of cheering me on.” (Tr. 33–34, 131, 134). No Google messages or other written communications from this coffee chat were produced by any party during trial.

20 Zeitlin recalled this specific coffee chat differently. According to Zeitlin, Coate raised the issues of working from home and having a four-day workweek since Europe was looking at a four-day workweek. Zeitlin told Coate that DISH was not looking at this model since the culture of the company was to be in-person during operating hours. Zeitlin testified that Coate kept going into his personal aversion to working in-person, that his drive was very long, and that if he could work from home, it would be beneficial to him. Zeitlin stated that Coate did not raise any
 25 other employees’ views or group concerns – that he only addressed his own view of wanting to work from home for his own personal reasons. (Tr. 250–251).

30 Zeitlin testified that she gauged the other employees’ surprised reactions (Zeitlin stated that no other employees spoke during this coffee chat) and tried to ask Coate questions about himself to get a read on what was happening. She asked Coate if he was aware of the in-person policy that was such a big part of the company and did he not know this when he took the job six months ago? Zeitlin then invited Coate to visit her office for a meeting to talk and to have further conversation with her offline. (Tr. 251–252).⁸

⁸ Where Coate and Zeitlin have different recollections of the October or November 2022 coffee chat, I credit Zeitlin. Zeitlin testified consistently about the coffee chat on direct examination and cross-examination, whereas Coate argued with DISH counsel on cross-examination rather than answered open-ended questions more than once and then supplied additional justifications for his persistent commentary during the coffee chat. (Compare Tr. 124-126, 129, 133, 135, 138-139 to Tr. 250-257, 269-270, 273-279, 291-294). I give little weight to Coate’s insistence that he was entitled to continue to disrupt the coffee chat because he said believes in the First Amendment. (Tr. 133). Moreover, Coate provided no evidence to support his feeling that Zeitlin was angry with him or did not care for him, or provide any support as to why she did not like him or harbored animus toward him after their two brief interactions. On the other hand, Zeitlin testified credibly that she would be happy to meet with Coate and that she was not upset with his coffee chat questions. She further testified that she voluntarily sat next to Coate at the holiday party only one

Prior to this October or November 2022 coffee chat, Coate claimed that he spoke to two co-workers about his concerns about parking and having a work-life balance: Yetsi Napp and Carlos Loya. Coate testified that he spoke with Napp (who is no longer with DISH but was a security test engineer) during lunch once every week or two during June and July 2022 and that he spoke to her about these concerns “pretty much every time we had lunch.” (Tr. 30–31). Coate brought up the parking issue and the four-day workweek, and Coate testified that Napp thought it was reasonable to work from home when there was snow and ice on the ground.⁹ Coate also testified that he spoke to TQA release manager¹⁰ Carlos Loya virtually via the computer (Loya lives in El Paso, Texas and is a fully remote employee of DISH) in June and July 2022 about working remotely, having a flexible schedule, and a four-day workweek.¹¹

Coate acknowledged that he did not feel comfortable around Zeitlin and he did not like the way she answered his questions during the coffee chat. (Tr. 123–124). Coate did not discuss with Napp or Loya or any other employees that he was going to raise the issues about parking or the workweek or having a better work-life balance with Zeitlin at the October or November coffee chat. Coate stated that he did not think (or could not remember) that he planned on bringing up any of those topics before the coffee chat. Coate could not remember what questions any other employees asked after he finished making his comments to Zeitlin, but acknowledged that if anyone did ask other questions, none were related to working from home.¹² (Tr. 124–125). Coate did not recall whether Zeitlin offered to meet with him in her office to discuss his concerns. (Tr. 135).

Coate did not answer directly when asked whether he kept pressing his issues with Zeitlin during the coffee chat and whether he would not allow her to proceed with her meeting. However, immediately after this October or November coffee chat, Coate discussed it once with his then-direct manager Brett Gibbons. According to Coate, Gibbons pulled him aside and told him that Zeitlin seemed to be upset because he (Coate) had “persisted” during the coffee chat, and that the executives prefer employees to bring up an issue once and then go discuss it privately with them afterwards. (Tr. 35–36). In his affidavit, Coate stated “Gibbons also stated that Zeitlin had a problem with me not letting the matter go.” (Tr. 133). Coate testified that Gibbons never gave him a hard time about working remotely when he needed to (such as for a doctor’s appointment or an appliance delivery). (Tr. 123).

to two months after the coffee chat. (Tr. 257, 292-293). Zeitlin in fact gave Coate a higher than average raise in Spring 2023, months after the two had any interactions. (Tr. 139).

⁹ Napp was not subpoenaed or otherwise called to testify at trial. Coate testified that he asked her to testify, but she allegedly declined because she was afraid. (Tr. 130).

¹⁰ It was not asserted by any party that Loya is a manager, supervisor, or agent under the Act. Coate testified that as a TQA release manager, Loya checked to make sure the software updates went smoothly. (Tr. 31).

¹¹ Loya was not subpoenaed or otherwise called to testify at trial. Coate testified that he asked Loya to testify but Loya declined. (Tr. 130).

¹² Coate further testified that the reason no one asked any questions about working from home was because they were too afraid of retaliation and that DISH retaliates against its employees and former employees. (Tr. 126).

b. December 2022 Holiday Party and Employee Survey

i. December 2022 Holiday Party

Aside from the October or November 2022 coffee chat when he made the comments as described above, Coate's only other interaction with Zeitlin was in December 2022 at the DISH office holiday party, at which Zeitlin seated herself next to Coate. (Tr. 36–37). The office played "white elephant" at the holiday party in 2022 – a game in which participants choose gifts without seeing who they are from, unwrap them, and then can trade their gift for another gift depending on their number. Coate believed that he commented on a white elephant gift that he received at the December 2022 holiday party as "girly," and that this comment may have upset Zeitlin.

Again, Zeitlin recalled the interaction with Coate at the holiday party differently. Zeitlin testified that she approached the open seat next to Coate but that he told her that she did not have permission to sit next to him. After an uncomfortable moment, Coate relented and allowed Zeitlin to sit next to him. Zeitlin testified that Coate made her and everyone else at the party uncomfortable during the white elephant game because he was commenting negatively on the quality of the presents and was not happy with any of the gifts. (Tr. 253–255). From her interaction with Coate at the coffee chat and at the party, Zeitlin concluded that Coate was not interested in other people or the group and that he was not interested in collaboration or how other people were perceiving the situation, but instead was "very much about himself." (Tr. 256).

Coate testified that he did not recall telling Zeitlin that she did not have permission to sit next to him. He also did not recall getting upset with the white elephant gift exchange or having any hostility toward Zeitlin or anyone else but stated that he believed a white elephant gift exchange was inappropriate for an office setting because people are taking gifts from one another. (Tr. 136–137).

In January 2023, about two weeks after the holiday party, Coate testified that Macey told him during their weekly meeting that Zeitlin was upset by something Coate had said and to be careful around the executives. According to Coate, Macey did not specify or explain his comments. (Tr. 36–38).

Coate believed that Zeitlin did not like him after the coffee chat, and Coate acknowledged that he tried to avoid Zeitlin in the office after the coffee chat. (Tr. 137-139). Coate and Zeitlin had no further direct contact after the December 2022 holiday party. (Tr. 141).

ii. 2022 Employee Survey

In December 2022, Coate completed the anonymous internal DISH employee survey that is sent to all employees annually, and he provided write-in answers to all of the optional questions. Coate submitted his anonymous survey and optional written answers on December 12, 2022. (Tr. 38–40; GC Exh. 2). On December 20, 2022, Coate took a screenshot of one of his

write-in answers and texted it to Loya. In the portion of the response he sent to Loya, Coate responded (in part) as follows to the following questions:

Q: How happy are you working at the company?

A: I have to drive 45 minutes each way in bumper-to-bumper traffic because a billionaire doesn't trust his employees to work from home."

Q: I rarely think about looking for a job at a different company.

A: I'm constantly on the lookout for a company that's actually willing to reinvent itself...DISH is a sinking ship without any vision or direction...I do not have confidence in DISH in the long term...Layoffs will surely be the punishment that the lowly peasants have to pay for the bad decisions of the billionaires steering the ship aimlessly." (GC Exh. 2, 3).

Loya replied to Coate's private text with a laughing with tears emoji and a quote: "Driving us off a cliff and expect us to smile while doing it." (GC Exh. 3). There is no evidence that Coate shared this text exchange with anyone, and Coate testified that he never discussed his 2022 survey response with anyone from management.¹³ (Tr. 47).

c. Spring 2023

In Spring 2023, well after the 2022 coffee chat, and after the 2022 holiday party, Coate received a "meets expectations" evaluation and a 3% raise. (Tr. 98–99, 139). The average "meets expectations raise in Spring 2023 was 2.5%. Zeitlin made the decision to give Coate the 3% raise. (Tr. 139; 268–269). In addition, DISH laid off several employees in the summer of 2023, which included four employees in the IT department. Coate was not among those laid off at that time. (Id.).

d. August 2023 Employee Survey

Around August 9, Coate submitted the 2023 DISH employee survey (still anonymous and still with the option to submit write in answers). (Tr. 51–53; GC Exh. 4). According to Coate, supervisor Macey warned him one-on-one before the 2023 survey was issued to "be careful" of the words he used in his answers to the survey because his words could make him identifiable. (Tr. 50–51).

As he did in 2022, Coate chose to submit lengthy write-in responses to the optional questions along with the survey answers. He saved the write-in answers and emailed them to himself. (GC Exh. 4). Some of the write-in answers Coate provided stated the following:

Q: Why do you feel your career goals cannot be met at this company?

A: My courage and conviction are punished rather than rewarded by the policies of Dish. I am still being punished to this day for some great ideas I presented to my Vice President nearly a year ago. Upper Management is basically The Thought Police or Ministry of Truth. If you

¹³ Coate testified that he also told former employee Napp about his 2022 survey responses in December 2022. (Tr. 47).

dare to acknowledge the elephants in the room (Flexible schedules, Work From Home, Parking Congestion, etc) then you get punished.

Q: What excites you about the company's future?

A: Not much. Dish is the least innovative company I have ever worked for by far...There has not been a single day where I have looked forward to coming into work at Dish. Working at Dish is psychological torture plain and simple. (GC Exh. 4).

In mid-August, Macey held a virtual team meeting comprised of about 10-15 TQA employees about the aggregate survey results. Macey¹⁴ asked the team what he could do better as a supervisor and he wanted feedback after seeing the aggregate results from the surveys (which he did not discuss) so he could improve his own performance as a manager. (Tr. 48-50, 173).

e. Comments in the Lunchroom

Coate testified that a few weeks after the 2023 employee survey, he overheard employees he did not know (but who he assumed to be in human resources) who were sitting at the next table in the employee cafeteria (about 5- or 6-feet away) talking about the 2023 survey results. Coate stated that these employees were talking about his answers because they were discussing: work from home; DISH not trusting employees to let them work from home; having a flexible schedule; paid time off; and the European model. (Tr. 53–55). Coate testified that he believed DISH wanted to hide all areas of employee discontent, but he also claimed that these unknown human resources employees were discussing areas of employee discontent (the very ones he wrote about on the survey) in the open employee cafeteria. (Tr. 168–169).

f. 2023 Emails Between Coate and Management about 2023 Survey

On September 25, Doug Balsbough, the Chief Human Resources Officer for DISH at that time, sent a company-wide email to all employees about the 2023 employee survey. Balsbough thanked the over 9,000 employees who responded to the survey and then broke down the results, which he noted ranged between a 72% favorability rating and an 85% favorability rating in five key metrics. (Tr. 311; JX 1, p. 2). One of the key indicators was employee retention.

¹⁴ Coate included nothing but positive comments in the write-in portion of the survey about Macey, stating “He has always shown a kindness and concern that I have everything I need to complete the work in front of me. He has always been there for me if any issues arose and was always open to hearing what I have to say.” (GCX 4). Moreover, Coate testified that Macey did not give him a hard time when he raised his concerns to him about working remotely, the commute, leaving home at dark to commute, having a five days of work and two days of rest was not a good balance, having to wake up to an alarm clock, and having a better work/life balance in Europe. To the contrary, Macey simply stated that DISH was an in-office company. Macey never turned down Coate's requests to work from home on an as-needed basis (about 8 to 10 times over the course of his 18-month employment with DISH). According to Coate, Macey never reacted negatively to his concerns. (Tr. 120-122).

Coate replied to Balsbough and the general Human Resources email address and said: “Interesting spin on the results. I notice you didn’t mention anything negative in your summary. Pure corporate propaganda.” (Tr. 311; J Exh. 1, p. 2; GC Exh. 8, pp. 2–3).

Balsbough responded to Coate that evening, emailing his thanks for Coate’s feedback and emphasizing that each team would be meeting with its manager to share the results for that particular workgroup and discuss possible actions in response. (Id.).

The next morning, Coate emailed Balsbough directly and stated that he overheard “some of your team members in the lunchroom discussing the elephants in the room that were mentioned repeatedly on the survey. Namely:

- 1) Low PTO compared to Europe
- 2) Work From Home
- 3) Issues With Upper Management
- 4) Work-Life Balance

“How long do executives think they can continue to ignore the will of the people? Honestly, I am now very motivated to start a union since it’s clear that upper management is determined to ignore the will of the people.” (J Exh. 1, p.1; Tr. 56).

Balsbough replied by email to Coate that he would be sending him a meeting invitation to discuss his perspective face-to-face. (Id.).

g. 2023 Meeting with HR Manager Doug Balsbough about Surveys

Coate met with Balsbough in Balsbough’s office on October 5. Coate raised his concerns about having a hybrid work-from-home system,¹⁵ having four 10-hour days, and having more paid time off like they do in Europe. Coate also stated that he did not like having high-deductible insurance benefits or that the company was so strict on punching in – he relayed a personal story that he punched in exactly at 9:00 a.m. once and got in trouble even though he was not late. Coate repeated what he had stated in the email chain – that he had overheard people he thought to be human resources employees talking about workplace issues he had raised in the survey which were not reflected in the survey results – issues like working from home, more paid time off, the flexible schedule, and the European model.¹⁶ (Tr. 58–61, 163, 314–315).

Coate stated that there had been a lot of studies that showed improvement in productivity and morale around the world using a 4-day workweek.

Balsbough listened to Coate’s concerns and replied that DISH is an in-office company. (Tr. 61). Balsbough told Coate that he should have been notified of that when he was first hired, and Coate admitted that he had been. Balsbough reiterated that DISH is an in-person company

¹⁵ Coate testified that he raised the hybrid work environment because “I know basically everybody at DISH wants to have a hybrid work environment where they’re allowed to work from home a couple days a week.” (Tr. 60). Coate testified that “I believed in a hybrid setting. I wanted one or two days remote for everybody.” (Tr. 117).

¹⁶ According to Coate, Balsbough seemed annoyed that he mentioned the European model for having 6-8 weeks of paid time off. (Tr. 60-61).

and that DISH is not the place for him if he wants to work remotely. (Tr. 61). Balsbough addressed the studies on morale and productivity with the 4-day workweek and stated it depended on which study you look at – that some studies show that productivity and morale go even lower after an initial boost. (Tr. 62). Coate countered Balsbough and stated that four days
 5 of work and three days of rest is a much better balance, and that happier better rested employees are going to be more productive and make the company more money. (Tr. 189-190).

According to Coate, he told Balsbough that he is the type of person to stay and improve things and “fight for what I want and what I now that everybody else wants” rather than run
 10 away. (Tr. 61). Coate stated that the company’s founder enjoyed not allowing employees to work from home and forced them to commute so he could sell more real estate and make more money. Coate added that capitalism only benefitted the few with money and power. (Tr. 190). Coate testified that Balsbough’s only suggestion to address his concerns was that if he was so
 15 unhappy here, he could find employment elsewhere where they allow work from home or start his own business so he could have the type of accommodations he was looking for. (Tr. 63, 150, 191).

Coate replied that he was mostly happy at DISH – that it was the best paying job he ever had, he had a lot of autonomy, he was not micromanaged, he enjoyed the work he was doing, and
 20 he liked most of the people he worked with. (Tr. 64). Coate told Balsbough that he was always open to and looking for other opportunities, but DISH had been his only job offer so he had to take it even though it was in-person. He said he was staying for the money. (Tr. 191–192). When Balsbough did not agree to any of Coate’s suggestions, Coate testified that he told Balsbough: “[s]o you’re actively ignoring the will of the people. So I’m forced to start a union
 25 so that, you know, we’ll no longer be asking you and being ignored, and instead, we’ll be telling you what we want.” (Tr. 64). Balsbough responded that he had dealt with unions before in previous jobs, that he was not afraid of unions, and that it was fine. (Id.).

Coate testified that he never raised the idea of leaving DISH and that it was management
 30 who brought up the idea of him leaving DISH. Coate told Balsbough that it was always hard for him to get a good job like this one and that DISH was the only company that had made him an offer, so while he might look for jobs on Indeed once in a while for a few minutes at a time,¹⁷ he was overall happy with the job. He just wanted to make a few improvements that would not cost a lot. (Tr. 64-65, 145). Coate elaborated that he wanted to keep his job mostly because of his
 35 salary and because he needed the money. Coate acknowledged that his survey responses were negative (i.e., DISH is a typical psychopathic and sadistic corporation which seems to enjoy psychologically torturing its employees) and that he did not like the direction of the company and what it spent its money on. (Tr. 145-146). Coate felt he had ideas of how the company should be spending its money such as on original programming over cable, but “I wasn’t being
 40 listened to.” (Tr. 146–148). According to Coate, at the end of their meeting, Balsbough told him he would keep their meeting confidential. (Tr. 65). Coate acknowledged that Balsbough was welcoming during their meeting and that Balsbough thanked him for his courage and candor in

¹⁷ Coate equivocated at first as to whether he told Balsbough he was looking for other jobs. Coate denied that he told Balsbough he was looking for other jobs, but he also testified that he told Balsbough he was looking for other jobs but did not apply to any. (Tr. 149).

speaking to him. (Tr. 172, 188–189; R Exh. 3). Coate also acknowledged that, prior to this meeting, his relationship with Balsbough was cordial. (Tr. 123).

5 Similar to Zeitlin, Balsbough's¹⁸ recollection of his October 5¹⁹ meeting with Coate differs in several respects.²⁰ According to Balsbough, what started as a discussion quickly digressed and changed into Coate becoming very heated in his tone and his words. Coate got very loud, he said that DISH and its founder were evil, that the government was terrible, and that capitalism was terrible. (Tr. 312). Coate told Balsbough it was a travesty that he had to wake up with an alarm clock and come to work before the sun comes up. Coate complained that he had to
10 commute 45 minutes each way to and from work in bumper-to-bumper traffic. (Tr. 332). Coate was so loud that Balsbough's assistant had to walk into Balsbough's office to ask if everything was ok. Coate told Balsbough that he hated working for DISH and that it was a terrible place to work. After Coate made these statements, Balsbough asked Coate if he hated it so much, why not look for a job elsewhere. (Tr. 312–314, 150). Balsbough characterized Coate's behavior in
15 his office as a rant that went well beyond the subjects in the employee survey, that Coate only spoke about himself and his own personal concerns, and that he said nothing about other employees. (Tr. 312–314, 318).

20 Balsbough testified that prior to his meeting with Coate about the email concerning the 2023 employee survey responses, he had never seen Coate's write-in comments, and that he still to this day has not seen Coate's write-in comments. (Tr. 335). Balsbough did not recognize Coate's comments when they were shown to him on the witness stand and testified that he doubted he would recognize any employee's specific comments. (Tr. 332–335).

25 **h. October 6 Management Email Chain Among Managers Regarding Coate**

On September 26, the Human Resources representative who mans the DISH "voiceoftheemployee" email box shared Coate's September 25 "interesting spins on the results" email with several Human Resources representatives. On October 6, the email chain was sent to

¹⁸ Balsbough testified about the genesis of the DISH employee surveys, and his involvement as the head of HR in selecting the timing for the survey, the contents of the survey, the distribution of the survey, as well as the review of the results and doing a cursory high-level communication back to all employees about the results of the survey. (Tr. 305–306). Balsbough also testified that he is very familiar with the "DISH Way" and the culture of teamwork and commitment to DISH, including the in-person atmosphere of the company. (Tr. 303–304).

¹⁹ Balsbough testified that the meeting may have taken place on October 4.

²⁰ Where Coate and Balsbough digress in their recollection of their meeting, I credit Balsbough. Though Coate testified on direct that he merely raised a few concerns and that "I know basically everyone at DISH wants a hybrid working environment," Coate acknowledged on cross-examination that he spoke to Balsbough about his own working situation and that he pushed ideas on Balsbough that he believed he had innovated. (Tr. 147–149, 180–187, 225). Coate's testimony that he was a visionary and that Balsbough wasn't listening to him and not implementing his ideas carries little weight. (Tr. 148–149). Balsbough, on the other hand, testified consistently on direct and cross-examination. Balsbough acknowledged that Coate raised starting a union and that he simply responded that DISH was an in-person working environment. (Tr. 61–65, 144, 191, 218).

Julian Bishop, who was at that time the IT Director of the Technology Assurance Performance (formerly TQA) team. (GC Exh. 8). Vidya Kunigal, the Senior Human Resources representative for the IT Department, forwarded it to Bishop with an email stating that they should discuss it at their next one on one meeting (which was scheduled for October 9). Bishop answered that he agreed. (GC Exh. 8).²¹

i. October 9 Email From Coate

Coate emailed Balsbough on October 9, asking him what the process looks like for starting a union at DISH. (Tr. 65–66, 318; J Exh. 1, p. 1). Balsbough did not respond, testifying that he did not think it was his job to explain to Coate how to form a union. (Tr. 318, 65–66). Coate testified that he did not mention a union to any other employees. (Tr. 175).

j. Meeting With Bishop

On or around October 10,²² Coate was called in to meet with Bishop. They met alone in Bishop’s office for 30 to 45 minutes. According to Coate, Bishop told him that he had been forwarded an email Coate sent and that it was inappropriate to be sending emails like that to the executives. Coate testified that he inferred it was the September email he sent to Balsbough about the corporate spin on the survey results, but that Bishop did not elaborate. Coate did not discuss his write-in answers to the 2023 survey with Bishop. Coate testified that he thought he told Bishop that DISH was “ignoring the will of the people” about working from home and about flexible schedules. Coate stated that the survey results did not reflect the actual opinions in the written answers submitted by the employees. Coate stated that he felt he had “no other option but to start a union to get us what we wanted.” (Tr. 68–70).

According to Coate, Bishop said that DISH was in dire financial straits and that it only had a 50/50 chance of surviving and that this would be the worst time to start a union. (Tr. 69–70). Bishop then suggested that if Coate was not happy with the conditions there, he should work somewhere else that had the accommodations that DISH did not offer. (Id.). Coate told Bishop he was not going to quit – that he liked the pay, the work, he liked his managers, and he was mostly happy at work – he just had a few things to wanted to change like working from home and working four 10-hour days. (Tr. 69–70, 370–371). Coate testified he could tell that the meeting was taking a negative turn, so he changed the topic to a discussion of new ideas for video consumption, leading the meeting to end on a high note. (Tr. 71). Coate acknowledged that Bishop asked him what he could do to make Coate happier at DISH, and that when Coate suggested more department meetings, Bishop agreed that was a good idea. (Tr. 194). On cross examination, Coate acknowledged that he listed his concerns about DISH with Bishop and specified what would make him happier with the job: work from home; a flexible schedule; working four 10-hour days. (Tr. 193–194).

²¹ Zeitlin testified that she was made aware of Coate’s dissatisfaction when her Human Resources representative Kunigal told her about it in their weekly one on one meeting in late September/early October. (Tr. 257–258). Zeitlin testified that Kunigal informed her that no one else besides Coate had expressed such dissatisfaction with the survey results. (Tr. 258).

²² Bishop stated the meeting was likely on October 11. (Tr. 347).

Bishop recollects his meeting with Coate differently.²³ Bishop testified consistently with Zeitlin that he learned from Zeitlin that Coate had responded negatively to the 2023 employee survey and he also received the email chain from Kunigal with Coate's comments in early
 5 October. Bishop testified that he wants all of his team members to be happy, so he arranged to meet with Coate. (Tr. 346–347). Bishop asked Coate about his email to Balsbough (that Balsbough “spun” the 2023 employee survey results) and asked what he could do to understand how Coate felt about the company. Coate listed a litany of his concerns, including his frustration about having to come to the office in-person every day, about how Europe had a better hybrid
 10 working model, and about the billionaires who run the company and who want people in the office every day so they can raise real estate prices. Bishop told Coate that DISH was an in-person company five days per week and that it was “the core of our culture.” (Tr. 348). Bishop asked if he was so unhappy, what kept him here, to which Coate answered that he liked the money he was making, and that he was always looking for other jobs but had not found any.
 15 Bishop testified that Coate did not raise other employees' concerns, just his own. (Tr. 348–349). Bishop stated that he did not tell Coate that it was inappropriate for Coate to send the email to Balsbough. (Id.). Bishop acknowledged that Coate did mention in passing during their meeting that he wanted to start a union. Bishop did not respond to Coate and testified that he remained silent on that subject because it was way beyond the scope of his role. (Tr. 368–369).

20 After this meeting, Bishop told Zeitlin about his meeting with Coate, provided a recap, and told Zeitlin that Coate was looking for other jobs. (Tr. 349).

k. Meeting With Macey

25 A few days after Coate met with Bishop, Macey raised the Bishop meeting with Coate during their weekly one on one virtual meeting. Macey told Coate that Bishop had told him about Coate raising his concern about working from home. Macey reiterated to Coate that DISH was an in-office company. Coate reiterated to Macey that DISH was ignoring the will of the
 30 people and that “everyone wants to work from home.” Coate told Macey that Balsbough's positive summary of the survey results were not accurate and that this is why he was forced to start a union. Coate acknowledged that the virtual meeting was getting loud because his former manager Gibbons came to his cubicle and asked him to take his laptop into the conference room

²³ Where Bishop and Coate diverge in their recollection of their October meeting, I credit Bishop's recollection. (Tr. 120, 146, 143, 348–349). Coate admitted that Bishop tried to make their meeting pleasant and to see what he could do to make Coate more content at DISH, so I find it incredible that Bishop would suddenly start talking about unions and what a terrible time it would be for Coate to start a union at the company. (See Tr. 69–70; 368–369). It is not determinative of the credibility issue, but I find it informative on the issue that the General Counsel stated on the record that an 8(a)(3) charge Coate had filed for layoff due to union activities was dismissed. (Tr. 102). Moreover, Bishop's testimony that he never knew Coate as the employee identified in the October email chain as the one with a “known behavior issue from this employee” or that he never saw the comment Zeitlin made about Coate (that he did not align to DISH culture) on her pass on the November layoffs was corroborated by Zeitlin. (GC Exh. 8, J Exh. 2 Tr. 290, 292, 363–366).

(which he acknowledged he did).²⁴ Coate testified that Macey then made some jokes to smooth things over and they turned to a discussion of other topics. (Tr. 71–73).

Coate agreed that he had a very good relationship with Macey. Coate acknowledged that he had discussed several issues during the meeting with Bishop, including: his desire to work a hybrid schedule; the work-life balance in Europe; that working five days with just a two day weekend was not a good work-life balance; that he had to leave his home to commute to work when it was still dark outside; and that he did not like waking up to an alarm clock. (Tr. 119–121). Macey never gave Coate a hard time about wanting to work remotely on occasion. (Tr. 121–122). Coate allowed that when he told Macey about wanting to start a union at DISH, Macey told him that he (Macey) belonged to a union in England and that there were good aspects to it. (Tr. 151). Coate does not recall Macey making any negative comments about unions. (Id.).

Coate testified that he never mentioned to any of the DISH managers that he talked to Loya or Napp (or anyone else) about any of his work-related concerns. To the contrary, Coate testified “No, I put my neck out there for everybody.” (Tr. 199).

2. November 8 Layoff of Coate and Coate’s Reaction

a. Determination to include Coate in the Layoff

Around September, Zeitlin learned that DISH was going to need to do a large company restructuring with a significant number of layoffs – around 15% of the workforce in the United States. At the time Bishop met with Coate in October and then filled in Zeitlin on their meeting (including Bishop telling Zeitlin that Coate was looking for other jobs), Senior Vice President Jamie Williams had asked Zeitlin to take a first pass at the IT Department list (J Exh. 2) and comment on names she thought would be appropriate for the upcoming layoff. Zeitlin testified that Williams asked her to do this first pass at names for layoff at the same time that Bishop had reported to her that he met with Coate and that, per Bishop, Coate was looking for other jobs. (Tr. 261–263, 279, 291). Bishop did not mention a union when he reported back to Zeitlin. (Tr. 291–292).

Zeitlin had been told that this was going to be a deep cut with no backfilling. Zeitlin chose Coate as one of the employees in her department for the upcoming layoff. Zeitlin testified that she included Coate on the list for three reasons: (1) her personal interactions with Coate; (2) Bishop told her that Coate wanted to leave; and (3) of the two IVR employees, Martinez was bilingual and could continue to do the IVR work in both English and Spanish whereas Coate could not perform the work in Spanish. Zeitlin stated that continuity of the IVR functions was paramount because there would be no backfilling after the layoffs, and if Coate left to take another job after the layoffs, they would not be able to backfill his position. (Tr. 264–266). Zeitlin explained that the “known behavior issue” she attributed to Coate in the October email exchange among the managers (GC

²⁴ I find that Coate’s admission that he got loud on this occasion with a supervisor he liked as corroboration of Balsbough’s and Bishop’s testimony that he got strident and loud when he spoke with Balsbough in October and on November 8 as well as when he spoke to Bishop in October.

Exh. 8) resulted from her personal interactions with him at the 2022 coffee chat and the holiday party, because he had called Balsbough's email pure corporate propaganda, and because Coate had an issue with the DISH culture. (Tr. 277–278).

Therefore, when Zeitlin took the first pass at the list to mark employees for layoff, Zeitlin marked Coate's name and added in the comment section 'issues aligning to culture.' (J Exh. 2, p. 3; Tr. 266, 286). Zeitlin testified that she wrote "issues aligning to culture" about Coate for several reasons. She stated that by not wanting to work in-office, Coate did not align with the "DISH Way." In addition, Zeilin stated that she considered Coate disruptive, showed disregard for others, and made other employees uncomfortable. (Tr. 266–267, 286, 294). Zeitlin never talked to Balsbough about Coate. (Tr. 293–294). Zeitlin was not the final approver of the layoffs. Zeitlin never looked at the list again and was not asked for further input about the layoffs after she took the first pass on the list. Managers more directly aligned to the employees were consulted separately after her. (Tr. 287, 290). At the time of the November 8 layoffs, Zeitlin was no longer on the IT Team. (Tr. 289).

In late October, Williams informed Bishop that there were going to be widespread layoffs. Williams showed Bishop his laptop with a list of five names of employees in Bishop's department and told Bishop to review the list, make any changes he felt necessary, and get back to Williams. There were no comments next to any of the names. Williams told Bishop that the scope and continuity of work was not to change. (Tr. 349–350).

Coate's name was one of the five names in the TAP Department on Williams' screen. Bishop testified that he looked at the five names in conjunction with certain metrics: performance, time in the job, and coverage for the work. (Tr. 350).

Bishop testified that he left Coate's name on the list for two reasons: (1) Coate told him that he was looking for other jobs; and (2) there were two people on the IVR Team, so there would be coverage, and Martinez was both bilingual and senior to Coate. (Tr. 351).

According to Bishop, Coate's complaints did not factor into his decision to keep Coate on the list.²⁵ Bishop never heard about Coate's confrontation with Zeilin at her October 2022 coffee chat until this trial. Bishop never saw JX2 with (or without) Zeitlin's written comment about Coate until this trial. Bishop never had a conversation with Zeitlin that Coate did not align to DISH culture. (Tr. 365). Moreover, Bishop did not know how Williams compiled the list of five names that included Coate. Williams did not share that information nor did he provide any other information aside from the names themselves to Bishop. Williams never gave Bishop a hard copy or emailed copy (or any copy) of the list. (Tr. 366). Bishop confirmed that he made the final decision on his own regarding the five names from the TAP Department and that he personally laid off each of those five employees on November 8, including Coate. (Tr. 352–353).

²⁵ Bishop did actually make a change to the list because one of the employees on the list of five was the only employee tested customer support for the DISH television service, so Bishop kept that employee and swapped him out with an employee from the data warehouse. (Tr. 367-368).

Approximately 25 employees, including Coate, were laid off from the IT Department on November 8, which was part of a larger company-wide layoff of about 800 employees.²⁶ (Tr. 268). Williams himself was one of the employees and managers who was laid off on November 8. (Tr. 195–196, 244).

b. The Layoff

On November 8, Bishop walked over to Coate's desk and asked him to come into his office. Coate immediately exclaimed loudly that he was getting fired because he wanted to start a union.²⁷ As Coate and Bishop walked the 60 to 70 feet to Bishop's office, Coate made the same remark loudly two or three more times. Bishop and Human Resources representative Dave Antilla met with Coate inside Bishop's office. Bishop repeatedly tried to get through the script he was reading from to every employee who was being laid off that day, but according to Bishop, Coate escalated by calling Bishop a puppet and a liar. (Tr. 356).

Coate testified that Bishop told him he was part of a layoff, that he would receive 60 days' pay, and that the layoff was not performance related. Coate replied that of course it was not performance related – he was being laid off because he tried to start a union. Bishop told Coate it had nothing to do with that. Coate told Bishop that the layoff was retaliatory for talking to Balsbough about the survey responses and the issues he raised. Bishop repeated that it had nothing to do with that. (Tr. 75–76).

Bishop and Antilla walked Coate to his desk to gather his belongings. According to Bishop, Coate escalated the matter further by calling Antilla a “corporate bitch” and using the “f***-word” several times as they escorted him to his cubicle to retrieve his belongings.²⁸ Bishop testified that Coate was shouting across the entire floor so everyone could hear what was happening, and that people came out of a closed conference room because they could hear Coate shouting that he was being fired for wanting to start a union. (Tr. 356–357).

c. Post-Layoff Behavior²⁹

Bishop and Antilla started escorting Coate toward the door of Building 2 where the IT Department was located on the DISH Meridan campus. However, instead of leaving through the front doors of Building 2, Coate demanded to see Balsbough before he left.

²⁶ Coate was insistent that 500 employees were laid off on November 8, not 800. (R Exh. 2), though he acknowledged that while 499 other people were laid off with him on November 8, 400-600 more employees were laid off soon after in a second wave. (Tr. 196).

²⁷ Coate testified that he said “Oh, I tried to start a union, so you guys are laying me off.” (Tr. 74). Again, Coate's 8(a)(3) layoff due to union activities charge was dismissed, appealed and the dismissal was upheld. (Tr. 102).

²⁸ Though he initially denied it by claiming he could not recall during cross examination, Coate eventually admitted that he called Antilla a “fucking corporate bitch.” Coate testified that Antilla instigated it by rushing him while he was collecting his belongings. (Tr. 180, 218).

²⁹ Respondent asserts that Coate's post-layoff behavior precludes his claim, assuming arguendo that I find his layoff to be illegal under the Act, for reinstatement. Therefore, I will include the evidence of Coate's post-layoff behavior and analyze whether it affects any remedy I order herein.

According to Coate, he decided that he needed to speak to Balsbough before he left. He walked through the IT Department, which was the size of a football field, through an atrium, through the cafeteria, and into Building 1, which housed the HR Department. Coate

5 acknowledged that Antilla followed him but did not touch him.³⁰ (Tr. 212). Coate testified that he walked from Building 2 to Building 1 through the cafeteria with about 100 people in it, the atrium, and through the HR Department, yelling or speaking very loudly multiple times that he was laid off because he tried to start a union. (Tr. 184–185, 219–221).

10 Coate went to Balsbough's office at the back end of the HR Department. Coate initially testified that Balsbough's office door was open and that he did not recall going into Balsbough's office. Coate did recall that Balsbough came out of his office to speak with him. (Tr. 182–183). Coate initially denied that anyone told him not to walk over to Building 1 to talk to Balsbough, then he stated that he did not recall that anyone told him not to walk over to Human Resources, 15 then he said he did not remember, and finally he acknowledged that someone or several people may have told him not to go over to Human Resources in Building 1, but that he had to take this "one last chance to partake in protected concerted activities." (Tr. 179–182). Coate acknowledged that Antilla (whose name he did not know) told him not to go to Balsbough's office after they left Bishop's office. (Tr. 225). Coate testified that it was his right to alert his 20 coworkers and that he had no reason to go to Building 1 that day (and that he worked 100% of his time in Building 2) but that he wanted "to alert my coworkers that I'd been retaliated against for trying to start a union." (Tr. 221–223).

Coate initially testified that he did not recall ever going inside Balsbough's office and 25 stated that Balsbough saw him and came outside his office to talk. (Tr. 182). Coate then testified that he "may have" stepped inside Balsbough's office, which he said was open, but that he stood several feet away from Balsbough in his office. (Tr. 187, 213–214, 224). Coate testified that he did not recall going into Balsbough's office and standing over his chair at the far side of the office. (Tr. 183, 187). Coate stated that he could see from where he was standing 30 "by" Balsbough's office door that Balsbough was on a video call, that he could see the computer screen from the door, and that the video box for the other participant had his/her video off. (Tr. 182, 187). Coate acknowledged that he did "not recall the details of how it all down." (Tr. 183). Coate did eventually acknowledge that he walked into Balsbough's office and asked to speak with him. (Tr. 224). Coate did not recall raising his voice to Balsbough's assistant (who sits 35 outside his office) or that the assistant told Coate not to go into Balsbough's office. (Tr. 185).

According to Coate, he spoke very calmly to Balsbough and told him that he (Balsbough) got him laid off because he tried to start a union. Balsbough told him he had nothing to do with Coate's layoff, and that a lot of people from a lot of departments were being laid off that day. 40 Coate testified that he said he knew it was retaliation for trying to start a union. (Tr. 215). Coate acknowledged that approximately four managers/Human Resources representatives/security personnel had gathered around Balsbough's office during this interaction and that after he spoke

³⁰ Coate testified that Antilla rushed him at his cubicle and did not even give him a box for his possessions, so he had to carry them in his hands, and that by doing this, Antilla humiliated him. (Tr. 178, 210–211).

with Balsbough, they escorted him out of the building. (Tr. 179–180, 184). Coate acknowledges that the police arrived at the building as he was leaving after his interaction with Balsbough, but testified that he had no interaction with the police. He said what he wanted to say to Balsbough, he left the building, and he did not return. (Tr. 179, 184). Coate testified that he did not recall
 5 calling Balsbough evil or a fucking asshole or telling him “fuck you.” (Tr. 195-196, 224–225). Coate acknowledged that once he walked away from Balsbough’s office and toward the exit turnstile, he tried to turn around to go back into the building to talk to others but the security guard convinced him not to do so. (Tr. 215–216).

10 Balsbough and Bishop both recall the post-layoff walk from Bishop’s office to Balsbough’s office and the conversation with Balsbough differently.

According to Bishop, after Coate had already escalated their meeting in his own office, Coate declared loudly that he was going to talk to Balsbough and that he walked through
 15 Building 1, through the cafeteria, and through Building 2 to the HR Department, shouting and cursing all the way. (Tr. 356–357). Bishop heard Antilla tell Coate not to go to Balsbough’s office and stated that he needed to leave the building, but Coate did not listen. Bishop, Antilla, Brett Gibbons, and an additional Human Resources manager followed Coate through Building 1 and the cafeteria and into Building 2, at which point Bishop veered off to the security desk to
 20 seek assistance for what he perceived to be a dangerous situation. (Tr. 356–358). The other three managers stayed with Coate. Bishop then doubled back from the security desk to Balsbough’s office, where he encountered the three managers, Coate, Balsbough, and two security officers inside Balsbough’s office. (Tr. 358).

25 According to Balsbough,³¹ he was in his office with the door closed since he was on a video call. Balsbough described his office and the location of his desk and chair in his office: the office is approximately 16x10 feet with a wall of windows at the far end. Balsbough sits with his back to the door, facing the windows. His desk is situated about 10 feet from the door. (Tr. 321).

30 Balsbough testified that he was sitting in his closed office on November 8, he heard a lot of noise and commotion, and then Coate stormed in. Coate did not knock and did not ask to come in. Balsbough swiveled around in his chair to see the door since he sits with his back to the door, and he saw Coate standing right over his chair, flailing his arms, yelling, and making
 35 accusations. (Tr. 322–323). According to Balsbough, Coate said “Fuck you Doug Balsbough...you’re the asshole who did this to me...you’re going to pay for this.” (Tr. 323). Balsbough testified that Coate called him an asshole or used the word “fuck” at least ten times. Balsbough confirmed that Bishop and one or two other people were there, the person he had been speaking to on Zoom saw it, as did the head of Security, who had been called to
 40 Balsbough’s office. (Tr. 323–324).

³¹ Balsbough testified that he played no role in Coate’s layoff (or in anyone’s layoff) and that he did not know until Coate came to his office on November 8 that Coate had been part of the mass layoff. (Tr. 318–319).

Balsbough testified that he was very concerned for his physical safety during this interaction with Coate. He remained seated in his office chair when Coate first came into his office in an attempt to calm Coate down. Balsbough then slowly stood up so as not to look aggressive. Balsbough told Coate he had nothing to do with his layoff. Coate continued to yell, finally ran out of steam, said one last “fuck you,” and then left Balsbough’s office. Balsbough could hear him yelling all through the Human Resources suite (offices on the outside ring and cubicles in the middle) as he left. (Tr. 325–327).

Balsbough testified DISH took precautionary measures immediately. Balsbough said he was very concerned Coate would come back into the building. The police were called to the Meridan campus. The Human Resources area was locked down so no one could enter. A picture of Coate was created and distributed to all of DISH’s Denver offices with a “do not allow access” alert. (R Exh. 6). Balsbough was moved out of his office to a different office in a different building so he was not at ground level near windows. DISH brought in more plainclothes officers that day to the Meridan campus. Balsbough testified that DISH only took these measures because of Coate and that DISH had no issues with any of the hundreds of other employees it laid off on November 8. (Tr. 327–330).³²

d. Post-Layoff Applications to DISH³³ and Communications from Coate to DISH

Coate testified that while his exact position was not posted after he was laid off, four similar positions were posted online. (Tr. 82, 85, 96, GCX 5). Coate applied to these positions, but he was not called in for interviews or hired for any of these positions. Coate acknowledged that he did not know if any of the positions were filled. (Tr. 197).

Bishop testified that Coate’s position had not been filled to date. Bishop’s team work chart shows that, prior to November 8, Coate and Martinez performed the IVR work, and it

³² Where Coate and Balsbough differ in their testimony of the post-layoff conversation, I credit Balsbough. First, as of the end of the week of his testimony in this case, Balsbough was retiring from Respondent, so he has less than a full allegiance to Respondent moving forward. Second, Balsbough gave specific answers that did not change from direct examination to cross examination. Third, Bishop was present for most of the interaction, and his testimony corroborates Balsbough’s recollections of the events. Finally, Coate acknowledged or admitted several loud and disruptive statements and actions from the time he was laid off (that walked through the buildings while speaking loudly to all about his rights, that he did in fact go inside Balsbough’s office, that he did curse, and that he did call one of the human resources representatives a “fucking corporate bitch”) until he finally walked out past the police who had been called in because of him. (Tr. 180–187, 213–221). I give this final point the most weight because Coate’s own testimony about his post-layoff activity wavered, which lessens his credibility.

³³ The General Counsel asserts that Coate’s post-layoff applications to other similar positions at DISH (and DISH’s failure to consider or hire Coate for any positions) constitute proof of further animus against Coate. I will include the evidence of Coate’s post-layoff applications to DISH and analyze whether I find it to constitute animus. I note that Counsel for the General Counsel made it clear that she was not proffering any of this evidence for a failure to hire allegation and I will not consider it for such a proposition herein. (Tr. 79–81, 97).

shows that only Martinez performed the IVR work after November 8. Bishop's team work chart shows that only one employee did a temporary IVR job after November for three or four months, and that the discreet project on which that employee assisted has been completed. (Tr. 361-362; R Exh. 7).

After his layoff, Coate did not go back to the DISH facility in Meridian or to any other DISH campus. (Tr. 229). He did email People Operations at DISH in early December to ask for some DISH corporate policies and any paperwork he felt should have received when he was laid off. Coate testified that he sent the emails because he felt humiliated by not being treated with dignity for trying to start a union. (Tr. 229). Coate wrote to Human Resources, *inter alia*, that Dave Antilla (whom he incorrectly referred to in his December 11 email as Doug) was a hitman, that DISH was a terrible company to work for, and that the Human Resources department was "HELL REVEALED." (R Exh. 1, p. 3). In a subsequent December email in the same chain, Coate wrote (copying Balsbough and Bishop) that Balsbough lied to him and that Balsbough and Bishop had retaliated against him for stating that he was laid off for trying to start a union. (R Exh. 1, p. 2). Coate requested that DISH do an investigation into his layoff. (R Exh. 1).

On December 26, Coate emailed DISH again, asking for an update about the investigation into his lay off, and two days later he sent a lengthy email detailing his thoughts that his layoff was bogus and retaliatory in an attempt to bust a union. (R Exh. 3).

On February 24, 2024, Coate emailed DISH and stated that he did his own investigation and concluded, *inter alia*, that "DISH colluded to retaliate against me for attempting to start a union." (R Exh. 2).

On February 4, 2025, Coate emailed Bishop and Balsbough, claiming that they stole his idea regarding artificial intelligence technology and then laid him off to "cover their tracks." (R Exh. 4).

ANALYSIS

A. CREDIBILITY

Evaluating certain issues of fact in this case requires an assessment of witness credibility. Credibility determinations involve a consideration of the witness' testimony in context, including factors such as witness demeanor, "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole." *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), *enfd.* 56 Fed.Appx. 516 (D.C.Cir. 2003); see also *Hill & Dales General Hospital*, 360 NLRB 611, 615 (2014). Corroboration and the relative reliability of conflicting testimony are also significant. See, e.g., *Pain Relief Centers, P.A.*, 371 NLRB No. 70 at p. 2, fn. 4, 14 (2022), *enfd.* 2023 WL 5380232 (4th Cir. 2023) ("detailed account" of meeting provided by employee witnesses credited where Respondent witnesses "skipped almost all of the moment-by-moment details" except for legally significant statements); *Precoat Metals*, 341 NLRB 1137, 1150 (2004) (lack of specific recollection, general denials, and comparative vagueness insufficient to rebut more detailed positive testimony). It is not uncommon in making credibility

resolutions to find that some but not all of a particular witness' testimony is reliable. See, e.g., *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014).

In addition, the Board has developed general evidentiary principles for evaluating witness testimony and documentary evidence. For example, the Board has determined that the testimony of an employer respondent's current employee which is contrary to the respondent's contentions in the case may be considered particularly reliable, in that it is potentially adverse to the employee's own pecuniary interests. *Avenue Care & Rehabilitation Center*, 360 NLRB 152, 152, fn. 2 (2014); *Flexsteel Industries*, 316 NLRB 745 (1995), *aff'd*, 83 F.3d 419 (5th Cir. 1996); *Shop-Rite Supermarket*, 231 NLRB 500 (1977).

As a general matter, in making credibility resolutions here I have considered the demeanor of the witnesses, the context of their testimony, corroboration via other testimony or documentary evidence or lack thereof, the internal consistency of their accounts, and the witnesses' apparent interests, if any. Any credibility resolutions I have made are addressed and incorporated into my analysis herein.

As discussed in my Findings of Fact, *infra*, I find that Zeitlin, Bishop, and Balsbough were generally credible witnesses overall. They each provided specific and detailed testimony regarding the topics they addressed, which was predominantly consistent on direct and cross-examination. They provided a complete recitation of their conversations with Coate and included facts that might not be to DISH's advantage (i.e. Coate stating that he wanted to start a union). I find Zeitlin's and Balsbough's testimony particularly reliable. Zeitlin, though she was a manager during the operative events, left the company in December 2024 and has no current allegiance to DISH. Likewise, Balsbough testified that he was retiring from DISH at the end of the same week as his testimony, so he will not have any continued allegiance to DISH. Most critically, I found Zeitlin, Balsbough, and Bishop to be consistent in their testimony about their dealings, separately and together, with Coate.

I find that Coate was less than a fully credible witness. On direct examination, Coate provided very detailed and precise testimony about what he said to the various managers and about what they said to him. However, Coate equivocated several times on cross-examination about a number of things he also said to the managers and about things they said to him and his memory was markedly worse. When confronted with lapses in his direct testimony, Coate often responded by stating he did not recall or did not remember certain positions of conversations with Zeitlin, Balsbough, or Bishop. On at least a handful of occasions, and after being pressed as to what he said to a manager or a manager said to him, Coate finally acknowledged certain statements that were potentially harmful to his case.³⁴ I find this curious at best since Coate

³⁴ Coate equivocated about several aspects of the October or November 2022 coffee chat with Zeitlin (Tr. 124-126, 129, 133, 135); Coate equivocated about several statements he made during his October 2023 meeting with Balsbough and especially during his post-layoff interactions with Balsbough on November 8 (Tr. 147-149, 180-187, 225); and Coate offered several alternate theories about several statements he made during his October 2023 conversation with Bishop (Tr. 120, 146, 143, 348-349).

testified in a most assured manner on his direct examination. Coate's marked difference in recall for different parts of the same conversations when it suited him casts substantial doubt on the reliability of Coate's testimony when it differed from that of Zeitlin, Balsbough, and Bishop. It was also difficult to differentiate between Coate's emotional reaction to events and his factual recollection of them during his testimony about his interactions with Zeitlin, Balsbough, and Bishop. His recall was at times selective and self-serving; his responses on cross-examination were often evasive, non-responsive, or argumentative; and his demeanor was guarded and unbelievable as indicated throughout my Findings of Fact above.

Coate also insisted that he had spoken to other employees about workplace concerns, but Counsel for the General Counsel called no other witnesses, so any alleged statements by other employees are unsubstantiated hearsay and carry no weight in my determination.³⁵

Therefore, when objectively weighing what was said and by whom during Coate's conversations with Zeitlin, Balsbough, and Bishop, both before and immediately after he was laid off, I credit Zeitlin, Balsbough, and Bishop to the extent that the testimony about these conversations conflicts.

B. NOVEMBER 8 LAYOFF OF COATE

1. Legal Standard and Framework

To prove that an adverse employment action violates Section 8(a)(1) of the Act, the General Counsel must demonstrate that: the employee engaged in activity that is "concerted" within the meaning of Section 7 of the Act; Respondent knew of the concerted nature of the employee's activity; the concerted activity was protected by the Act; and Respondent's adverse action against the employee was motivated by the employee's protected, concerted activity. *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 15 (2018); *Lou's Transport, Inc.*, 361 NLRB 1446, 1447 (2014), enfd. 644 Fed. Appx. 690 (6th Cir. 2016); *Correctional Medical Services*, 356 NLRB 277, 278 (2010). Proof of discriminatory motivation (animus) can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. Circumstantial evidence of discriminatory motivation may include, among other factors: the timing of the action in relation to the union or other 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 disparate treatment of the employee. *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6–7 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024); *Medic One, Inc.*, 331 NLRB 464, 475 (2000). If the General Counsel satisfies the initial burden of showing of discrimination, then the burden shifts to Respondent to present evidence, as an affirmative defense, demonstrating that it would have taken the same action even in the absence of the

³⁵ I also note that these alleged conversations with the other two employees, Napp and Loya, occurred in June and July 2022 even according to Coate, far in time from the November 8, 2023 layoff. Moreover, as noted *infra*, Coate admitted that he never mentioned any other employees or his alleged conversations with these employees about work-related concerns to any members of management prior to his layoff.

employee's protected activity. See *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 15; *Timekeeping Systems, Inc.*, 323 NLRB 244, 244 (1997).

2. Coate Was Not Engaged in Protected Concerted Activity

The first issue is whether Coate engaged in any known or suspected Section 7 activity prior to his discharge. To qualify, the activity must be both “concerted” and engaged in for the purpose of “mutual aid or protection.” *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). “[W]hether an employee's activity is ‘concerted’ depends on the manner in which the employee's actions may be linked to those of his coworkers.... The concept of ‘mutual aid or protection’ focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to improve terms and conditions of employment or otherwise improve their lot as employees. Id. (internal citations omitted).

Activity is “concerted” if it is engaged in with or on behalf of other employees and not solely by and on behalf of the employee himself or herself. See also *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). An employee's subjective reason for engaging in the activity is irrelevant to whether it is concerted; the Board applies an objective standard to determine concertedness. *Circle K Corp.*, 305 NLRB 932, 933 (1991), enfd. mem. 989 F.2d 498 (6th Cir. 1993). Also, an employee need not secure another's agreement on a course of action for the activity to be concerted. Id.

A single employee may be engaged in concerted activity if he/she seeks “to initiate or induce or to prepare for group action” or brings “truly group complaints to the attention of management.” *Marburn Academy Inc.*, 368 NLRB No. 38, slip op. 10 (2019), citing numerous authorities. This includes preliminary discussions related to contemplated or planned group action, regardless of whether that action comes to fruition. *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964). Cf. *Kingman Hospital, Inc.*, 363 NLRB No. 145 (2016).

However, concerted activity does not include griping or activities of a purely personal nature that do not envision group action. See *Quicken Loans, Inc.*, 367 NLRB No. 112, slip op. at 3 (2019) (employee's profanity-laced statement in public bathroom regarding a customer call routed to him in the presence of another employee and supervisor did not amount to protected concerted activity as there was no evidence that the employee had any preexisting concerns on the matter and did not seek to initiate or induce group action); *Alstate Maintenance, LLC*, 367 NLRB No. 68, slip op. at 1 (2019) (individual griping does not qualify as concerted activity solely because it is carried out in the presence of other employees and a supervisor). See also *Mushroom Transportation Co., Inc. v. NLRB*, 330 F.2d at 685 (court held “a conversation may constitute a concerted activity although it involves only a speaker and a listener, but to qualify as such, it must appear at the very least it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of employees... Activity which consists of mere talk must, in order to be protected, be talk

looking toward group action. . . [I]f it looks forward to no action at all, it is more than likely to be mere “gripping.”).

In *Fresh & Easy*, supra, the Board majority held an employee engaged in protected concerted activity when she, in support of her sexual harassment complaint, asked coworkers to sign her handwritten reproduction of an offensive whiteboard message posted in the breakroom. The majority found her solicitation of assistance was “concerted,” even though the coworkers were annoyed by her request and did not support her complaint. 361 NLRB at 153. It also found her activity was for “mutual aid or protection” based on the “solidarity principle,” which states coworkers have an interest in helping an aggrieved employee even if that employee is the only one with an immediate stake in the outcome because “next time it could be one of them that is the victim.” Id. at 156.

The General Counsel argues that Coate engaged in protected concerted activity by advocating for group concerns about working conditions such as remote work, flexible work schedules, work-life balance, and parking. After reviewing the totality of the evidence, I reject these arguments and find the General Counsel has failed to meet her burden.

In reviewing the objective evidence, I conclude Coate’s activities were purely personal, focused solely on Coate changing his work schedule to one he preferred and deeply believed to be advantageous. Unlike in *Fresh & Easy*, Coate did not ask any coworkers for any help. To the contrary, Coate admits that he never raised it to management that he had never discussed any of his ideas about a better work schedule or a better work-life balance with any co-workers. Instead, he specifically chose not to tell management that he shared conversations or concerns with any co-workers and that he alone “put his neck out there for everybody.” (Tr. 199). There is no record evidence of Coate looking forward to group action other than his claims that he wanted to or was trying to start a union. There was simply no evidence whatsoever that Coate planned any group action. Additionally, there were no witnesses to testify that they shared Coate’s concerns or spoke to Coate about these concerns. Nothing in the communications between Coate and managers suggested Coate was initiating, inducing, or preparing for group action, or was trying to bring truly group complaints to the attention of management.

Rather, the evidence showed that Coate spoke by himself and for himself every time he spoke to Zeitlin, Balsbough, and Bishop. Moreover, his coffee chat comments to Zeitlin were made in October 2022, sufficiently far in time from his November 2023 layoff so as to carry limited, if any, weight. His survey responses addressed his personal qualms with the in-person work demands of DISH. I find no group action was initiated, planned, or contemplated during Coate’s interactions with DISH management for employees’ mutual aid or protection. See *Quicken Loans, Inc.*, supra slip op. at 3 (activities of a purely personal nature that do not envision any group action are not protected).

Citing to *Meyers I* and *II*, the Board held that ““individual gripping does not qualify as concerted activity solely because it is carried out in the presence of other employees and a supervisor and includes the use of the first-person plural pronoun.” 367 NLRB No. 68, slip op. at 7. Here, Coate’s comments during the October or November 2022 coffee chat were made in the presence of other employees, but no one else spoke about his comments or assented to Coate’s point of view. The remainder of Coate’s comments about his work-life balance and remote work

were made in one-on-one conversations with Balsbough and Bishop. Overall, nothing in the record suggests the personal concerns he raised with DISH management about his work schedule evolved into collective concerns.

5 Accordingly, I find that, prior to his layoff, Coate was advancing personal as opposed to collective concerns and not engaging in activity for the purpose of mutual aid or protection, and Respondent did not regard him as doing so.

3. Coate Was Not Laid Off for Protected Concerted Activity

10

 Although my finding that Coate was not engaged in protected concerted activity ends the matter, I will address the issue of motivation in the event the Board disagrees with that finding. The General Counsel argues animus should be inferred from the timing of Coate's layoff a few weeks after he spoke with Balsbough and then Bishop. Animus may be inferred from
15 timing when there is no other legitimate explanation for the adverse action.

 From the General Counsel's perspective, the most significant evidence of animus is Zeitlin's comment on the first pass of the layoff list that Coate did not align with DISH culture, and that this is code for Coate being slated for removal for engaging in protected concerted
20 activities, along with his 2022 and 2023 Survey responses, which establishes the necessary causal connection between that protected activity and his discharge. I reject these arguments.

 As discussed, Zeitlin's testimony evidences legitimate reasons to find that Coate did not align with the DISH Way that had nothing to do with any protected concerted activities.
25 Namely, Coate deeply disagreed with having to work five days per week, to commute 45 minutes each way in the dark, did not believe that the managers were listening to or valuing his ideas, and that he was always on the lookout for another job (and lamented that he had not been offered any other positions elsewhere). Any "instigating" behavior Coate demonstrated was his and his alone. The record is devoid of any evidence that Coate's actions or even statements were
30 connected whatsoever to group action, either expressly or implied.

 Further, I find the General Counsel's reliance on *Boddy Construction Co.*, 338 NLRB 1083 (2003) to suggest that Zeitlin's comments should be construed as animus to be a stretch and not applicable to the facts of this case. In *Boddy Construction*, *supra*, the Board upheld the
35 administrative law judge's findings that the employer found the charging party to be a disruptive influence because of his union support and that use of the term "instigator" was a euphemism for the employee's prounion sentiments. In that case, the judge and the Board relied on the testimony of a third-party subcontractor, who overheard and testified pursuant to subpoena that management referred to the charging party as an instigator during a union drive. There is no
40 third-party witness in this case, and no testimony aside from Coate's that anyone thought of him as an instigator of others.

 Moreover, the record as discussed above is clear that it was Bishop, not Zeitlin,³⁶ who made the decision to lay off Coate. Bishop never saw Zeitlin's comment that Coate was not

³⁶ On brief, the General Counsel makes much of Zeitlin's involvement in Coate's layoff, but as

aligned with the DISH Way. Bishop never saw Coate's employee survey write-in responses. Bishop never had any discussions with Balsbough before he decided to keep Coate's name on a lay off list that was shown to him by another manager without any descriptors or explanation. Bishop changed one of the names on that list, but kept Coate (and three others) on the list.

5 Bishop testified that it was Coate's personal discontent with DISH as an employer and its focus on in-person work, Coate's dislike of his own personal commute, and especially Coate's active desire to seek another job elsewhere that cemented his decision to keep Coate on the list of those being laid off in a long-planned layoff of at least 500 people.

10 Further, the General Counsel did not provide any evidence to show that it treated Coate differently from any other employees, that the managers failed to contemplate the choices they were making in their layoff decisions, or that they departed from any past practice in conducting the November layoffs. To the contrary, the record evidence shows, and Coate admits, that he was given a higher than average raise in 2023, and that he was not included in a summer 2023
15 layoff that preceded the November 8 layoff.

For these reasons, the General Counsel failed to establish animus and a causal connection. Consequently, I find the General Counsel failed to establish a prima facie case of discrimination regarding Respondent's decision to lay off Coate.

20

Finally, if the Board disagrees with my finding that the General Counsel did not sustain her burden of proving a prima facie case of a discriminatory layoff, I further find that DISH satisfies its burden of showing that it would have laid off Coate regardless of any protected concerted activity. I disagree with the General Counsel that the "redundancy" of Coate's
25 position is either overstated or betrayed by the record. The record evidence is un rebutted that at least 500 people and as many as 800 (including Coate) were laid off on November 8. Despite Coate's claims that many or all of those employees were laid off in a conspiracy just to cover up his own layoff (Tr. 196-197), the evidence shows that a large layoff was coming at DISH in November. The record is also clear that Martinez was senior to Coate in the IVR position, that
30 she was the lead, that she had trained him, and that she was the only one of the two of them who was bilingual. Further, aside from one temporary project, the record shows that Coate's position has not been backfilled since November and that Martinez is performing all the IVR work.

DISH has showed it had a legitimate justification for laying off Coate on November 8.
35 See *Mitsubishi Hitachi Power Systems Americas, Inc.*, 366 NLRB No. 108, slip op. at 15; *Timekeeping Systems, Inc.*, 323 NLRB 244, 244 (1997). DISH made deep cuts on November 8, laying off hundreds of employees. Bishop took Coate seriously when he mentioned that he was looking at other jobs and that he did not like several things about his employment at DISH. Bishop did not have contact with Zeitlin about her suggestions for layoff. Bishop did not talk to
40 Balsbough about Coate. There is no record evidence that Bishop had Coate's survey answers from 2022 (which, as addressed was far in time from layoff) or from 2023. In short, Bishop

Zeitlin acknowledged, she was fairly far removed from the day-to-day work of those under her management at Coate's level. This is why she did a first pass at layoffs based only on her own knowledge of interactions with employees, but then was no longer a part of the layoff calculation. (Tr. 262-264, 280, 283-284, 290).

included Coate on a layoff list that numbered in the hundreds because Coate was not happy with many aspects of his job, he was looking for other jobs, and because the other person (senior to Coate) who specialized in his type of work was being retained. I find that DISH has met its burden to show that it would have laid off Coate regardless of any protected concerted activities.

C. RESPONDENT’S AFFIRMATIVE DEFENSE REGARDING REINSTATEMENT

If the Board disagrees with my finding that Coate was not illegally laid off in violation of the Act and deems Coate due a remedy in this case, I will address the issue of reinstatement.³⁷

DISH argues that Coate’s post-layoff conduct was so egregious as to bar reinstatement as a remedy. The General Counsel disagrees that anything Coate did rises to a level to which he would be barred from reinstatement. On this issue, if the Board determines that DISH violated the Act by laying off Coate, I agree with the General Counsel that reinstatement is appropriate.

Under the post-discharge misconduct standard, the test is whether DISH proved “misconduct so flagrant as to render [the discriminatee] unfit for further service, or a threat to efficiency in the plant.” *Fund for the Public Interest*, 360 NLRB 877, 877 (2014) (quoting *Hawaii Tribune-Herald*, 356 NLRB 661, 663 (2011), enfd. sub nom. *Stephens Media, LLC v. NLRB*, 677 F.3d 1241 (D.C. Cir. 2012)). The Board has found that post-discharge misconduct precludes reinstatement only in “extraordinary situations,” such as when a discriminatee made death threats, hit a supervisor with a car, or threatened to report a parole violation in order to influence testimony at a Board hearing. *Id.* at 877 (collecting cases). Thus, in *Fund for the Public Interest*, for example, the Board found that the discharged employee’s comments, published in the local press, that his employer ran a “Ponzi scheme to get money out of progressive people” did not present the type of extraordinary situation warranting a denial of reinstatement. This is because “the Board affords discriminatees leeway in consideration of the experiences they have suffered when assessing their postdischarge comments . . . [A]n ‘evaluation of post-discharge employee misconduct requires sympathetic recognition of the fact that it is wholly natural for an employee to react with some vehemence to an unlawful discharge.’” *Id.* at 889 (quoting *Trustees of Boston University*, 224 NLRB 1385, 1409 (1976), enfd. 548 F.2d 391 (1st Cir. 1977)). The Board has imposed this heightened burden on employers for post-discharge misconduct because “[e]mployers who break the law should not be permitted to escape fully remedying the effects of their unlawful actions based on the victims’ natural human reactions to the unlawful acts.” *Hawaii Tribune Herald*, 356 NLRB at 662. See also *United Parcel Service, Inc.*, 372 NL:RB No. 158 (2023) (holding that the discharged discriminatee’s post-discharge behavior was offensive but did not warrant denial of reinstatement).

Coate admitted that he marched through the DISH campus to address Balsbough, raised his voice throughout his walk through the campus, and cursed and yelled at Balsbough and at least one Human Resources representative. In addition, Balsbough testified credibly that he felt threatened by Coate’s behavior and that other employees felt alarmed, and even triggered, by

³⁷ DISH does not make the argument that Coate should be barred from backpay. Should the Board disagree with all my findings on the merits of the case, my recommendation that Coate remains eligible for reinstatement applies to backpay as well.

Coate's behavior as he paraded through Human Resources on November 8.³⁸ Coate also told Balsbough "I'll make you pay," which could be objectively unsettling from the perspective of a reasonable manager.³⁹

5 However, even if Coate yelled, cursed, briefly stood over Balsbough's chair as Balsbough alleges, and said the words "I'll make you pay," I do not find that this behavior rises to the level the Board requires to render an employee unfit for further service. Coate was not violent, did not make physical contact with any employees or managers, left the building after he had his say without police escort, and never returned to the building even as he continued to
10 interact with Human Resources in writing about his strong feeling that he was fired illegally. In short, though Coate certainly reacted angrily, subjectively frightened Balsbough, and may have may statements that would offend the reasonable employee or manager, I cannot find that Coate's actions constituted an "extraordinary situation" warranting a denial of reinstatement. Therefore, if the Board disagrees with my finding that Coate was laid off legally, I find that
15 Coate's post layoff actions were not sufficiently flagrant or violent to extinguish his right to reinstatement.

CONCLUSION OF LAW

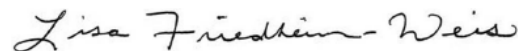
20 Based on the foregoing, I conclude that Respondent has not violated Section 8(a)(1) of the Act.

 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴⁰

ORDER

The complaint is dismissed in its entirety.

30 Dated, Washington D.C., September 30, 2025



35 Lisa Friedheim-Weis
Administrative Law Judge

³⁸ One employee in the Human Resources department had been a witness to the Columbine shooting in Colorado, and, subsequent to Coate's march through Human Resources on November 8, she had to take several days off from work because of her exposure to Coate. (Tr. 325).

³⁹ Coate denied saying "I'll make you pay," and he testified that he told Balsbough "I'll make DISH pay – I am going to sue DISH." (Tr. 371).

⁴⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.